

ICANN

**Moderator: Brenda Brewer
May 14, 2015
9:00 am CT**

Coordinator: Good morning, good afternoon. Please go ahead. Your recording has been started.

Greg Shatan: Thank you. Welcome to the Client Committee meeting on the 14th of May. We have, as I said, a short agenda, and we'll begin by discussing whether we have any outstanding deliverables that Sidley is expecting to bring to us, answers to question or otherwise, and likewise if Sidley is expecting anything from the CWG in order to continue with its work.

So I'll open the floor to anyone from Sidley. As (unintelligible) outstanding as the heads of term or term sheet so, you know, you should focus on that, among others, if there are any others. Thank you.

Josh Hofheimer: Greg, this is Josh from Sidley. Perhaps I can respond to that particular question, and that is in progress and as noted we expect to deliver that by Monday at the latest. And we've, as discussed before, we've taken the term sheet from the December proposal as the starting point but conforming that to the new transition model and also conforming it to changes that have been,

you know, been developed as part of the, you know, the iterative process, you know, around the CSC and other things.

Greg Shatan: Thank you, Josh. Do you think you need - I know I connected you with Paul Kane with regard to output of the design team. He was coordinating. Is there anything that you need from the other design teams specifically at this point? Do you need to contact them directly or not?

Josh Hofheimer: I don't think so. I think that, you know, that's a level of technicality that we're probably not focused on, at least here at Sidley as the authors are not focused on that primarily. There are some provisions that are still in there and we've - we will be flagging them for comment that, you know, that these need to be - the proposals as they currently stand need to be updated, you know, by the appropriate design teams and people responsible for some of the technical aspects of the agreement like (Paul)'s team (unintelligible).

Holly Gregory: Greg, this is Holly. I'm sorry to interrupt, but I'm having difficulty raising my hand. But I just want to say I think that from a workflow perspective, I think it's really important that we work through the client committee and you participate in the CCWG and the CWG calls. But I get a little concerned about having a lot of direct interchange with the design teams just from a perspective of wanting to keep it all sort of in the client committees control and oversight.

Greg Shatan: Thanks, Holly. I agree with that. I believe that the rest of us on our side do as well. I'm just thinking if there is any specific information that you'd want to have, whether we, you know, put you in touch directly or whether we act as a conduit is - the latter which I think is much more manageable. It's more about whether there's any need for substance. But the point on workflow procedure is well taken.

Holly Gregory: Thank you.

Greg Shatan: Thanks. And I think then, you know, what will, you know, essentially happen is that when the term sheet makes its way out to the CWG, we'll hear from those whose particular design teams or elements, you know, might breed on various sections or what we call (unintelligible), certainly it's just to be expected, you know, to the extent that they didn't make their way back into the revised proposal in coda.

I note that Jonathan has stated that -- Josh, is that a new hand or an old hand? Old hand -- that we owe Sidley the project plan with key milestones. Where does that stand, Jonathan?

Jonathan Robinson: Hey, Greg, I'll come in on that. It's something which has been through one iteration. We've seen it. It's actually going out to the group today. It doesn't contain sufficient detail that I want to share it. It, A, doesn't contain sufficient detail; and, B, doesn't clearly highlight where we expect input from Sidley, which I think are the two things really. My understanding from Sidley is you want insight into where we go at a high level and then detail of where you're expected to deliver at certain points along that path.

It's work in progress. I think we'll - that fact is we are getting what we want from you right now. We got those two memos, and this is no implied criticism whatsoever but they were just in advance of the last call, which was fine. Josh has now said you're working hard to get the heads of terms. So you've got things keeping you going that are in line with what we're trying to achieve and then we can look at the project plan.

So I don't have an absolute ETA for you when we'll be able to produce the project plan for you but I'm expecting it'll be out probably late this Monday and the same as your document. So we will share that with you as soon as we can in terms of highlighting where the key milestones are, the pressure points in terms of the project. Thanks.

Holly Gregory: Jonathan, again it's Holly and I apologize for not being able to raise my hand, I think one of the key things that we need an understanding of as soon as possible is what your expectations are around Buenos Aires, whether you want us traveling there. We assume that you do and we assume that between CWG and CCWG's needs we will need several of us there, but the more you can give us confirmation of that, the sooner - the more it helps us organize our team and other projects and as well as, you know, getting less expensive travel arrangements.

Greg Shatan: That's a very good point. Jonathan?

Jonathan Robinson: Thanks. I think it's a very good point and I'll respond to that directly. I mean I, surprisingly to myself and maybe to you, I haven't really been thinking about that. I've been so focused on various other elements that there hasn't been - I really would like to sleep on that. I'll talk to Lise and possibly others on the client committee. We need to think about that very carefully, what if any support we need from you in Buenos Aires.

I mean I think it goes to my point that I made in the chat, which I was going to come into on that sort of time and resource management, but it in essence it's all the same thing. We need to look at the terms under which we engaged you originally and understand at what point we think you've delivered according to those and at what point we're starting to consider engaging you on, you know, implementation or other further work, and again prepared to support that.

So it's part of a slightly bigger question, and I suspect we might need a follow-up call with you. So point taken, Holly, on the practicalities. We really need to resolve that quickly and we need to know what if anything we expect from you apart from just generic support. Because in principle we've - the hard work is all done up until preparing the final proposal.

So I guess what I'm in slightly rambling way saying is that in the back of my mind, I've been very focused on the production of the proposal and your assistance in getting to a proposal with integrity, substance and completeness. I was less focused on us needing you in Buenos Aires per se. So that's why it takes some thought now to think about whether we may or may not need you.

If you give us a few days to figure that out, but like I say, my overarching goal in thinking with respect to you guys was getting our proposal out by the relevant deadline, which is just over two weeks ahead of Buenos Aires and then - so that's where I'm at at the moment.

Holly Gregory: Well and I guess so, Jonathan, if I understand the sense is that you're in the comment period, you'll be getting comments back out, and then at some point you will be turning another proposal that reflects the comments and the group's reactions to the comments. What - is the notion that that proposal comes out before Buenos Aires and so that the proposing is done? I just assumed -- and part of this is coming from our other projects -- that in Buenos Aires you would be spending time considering the comments and continuing to develop and fine tune a proposal. But I may have it all wrong.

Jonathan Robinson: So, Holly, we really need to come back to you right away on this and be very clear what's happening. We are on a different timescale to the

accountability track, and I guess it's assumed that you understood and knew this. So this is why we need to clarify it.

Our public comment period closes on the 20th, six days from now. We then go into a period of a week where we absorb and quantify and review those public comments. And then we then go into a huddle for a couple of day on the 27th and 28th where we process and integrate those public comments together with any work we've done in the interim.

And our objective is then around a week after that or less in fact to product a final proposal that gets set out ahead of Buenos Aires for in principle approval by the chartering organizations in Buenos Aires, such that immediately post Buenos Aires that proposal can be submitted to the ICG for integration with the numbers and protocols proposal and their draft passed on through the ICANN board to the NTIA.

So we are on a fast track, and that's driven by a number of considerations, not the least of which is all the work that's got to be done by ICG in the integration going through the board onto the NTIA, NTIA considering it, implementation, recognizing that all of those different steps have to occur within what is perceived to be the overall political window for this transition to take place. And so...

Holly Gregory: Thank you, Jonathan.

((Crosstalk))

Jonathan Robinson: Okay, Holly. And just to finish, the final point is that's quite a different timetable to the accountability guys that are going to be producing a version of their proposal for review in Buenos Aires but they only expect the ICANN

board to finally vote on their proposal in Dublin in October. So they're going to go through another round of public comment and iteration between now and Dublin.

So the biggest pressure, which it comes back to you and us that we face in that context is this whole point I've been making about the conditionality of our proposal and the very careful wording that we need your help with in our proposal that say here's our proposal, here's everything complete, substantial and thoroughly done but if and only if the accountability mechanisms we understand are to be put in place are indeed put in place and ultimately acted on by the ICANN board in Dublin.

So because the criticism we might face is people say you're out of sync with accountability guys, how can we vote on your proposal and trust that it's a full, complete and sound without anyway the accountability is going to passed. And we said aha, but don't forget we've got this really clear conditionality built into our proposal. So that's it, Holly, in a nutshell.

Holly Gregory: Thank you very much, and I apologize to everyone if I've taken you off track. That's a very helpful clarity. I appreciate it, Jonathan.

Greg Shatan: Thanks. I think that takes care of that. I think that the - there is a slide, I think it's Slide 9, in the webinar slides which also shows a timeline for the immediate future, which I found to be helpful in organizing my thoughts around that point of time obviously. So if you don't have the webinar slides, you grab them off the wiki or we can circulate them around. I found that, as I said, to be helpful.

Are there any other -- just before finish item one -- any other outstanding deliverables that anybody is working on that we should identify? Jonathan?

Jonathan Robinson: Greg, it's not strictly a deliverable but there's just to highlight again for - that there's the punch list, which is nominally in Sidley's hands to update but it's been collectively updated a little on list. So I want to flag that with Sidley, make you aware that for example that Design Team C has put some updates in on item - on a set of items, and so it's a dynamic document that we'll just need to keep a track on.

Our last known agreement was that Sidley ultimately held the pen on that, but it has developed a bit of a life of its own. So I need to warn you of that and be aware of that.

Greg Shatan: Sharon?

Sharon Flanagan: What's the best way for us to track whatever the newest changes are in the punch list so we can incorporate those into the master that we're keeping?

Greg Shatan: That's a good question. Any thoughts before I contribute my own? Jonathan?

Jonathan Robinson: I think we should just nominate a point of contact on staff to post it to the client list, and I think that's the right way to do it is for Grace or one of the staff members to make sure it's posted to the client list. Because you're tracking the client list, you're not, as far as I know, tracking the main list. And this is part of where we found this minor issue with respect to the timetable.

You know, we're living in a world where we see the main list and the client list, you only see the client list and therefore perhaps aren't aware of this. So we just need to get to you any variance posted back to (unintelligible).

Greg Shatan: I think that makes sense and we should see that come in as an action item, you know, specifically on the punch list there. I see a question in the chat from Sharon. "Can you clarify whether we should plan to be on all Tuesday, Thursday CWG calls and if so have invites sent?" Any thoughts on that, Jonathan or Lise, as the chair of those calls?

Jonathan Robinson: Yes thanks, Greg. I thought we had agreed -- and we should capture this as an action again -- I thought we had agreed that Sidley would be invited to all calls. So at minimum, you should have an invitation. You should know when these are taking place. Whether or not you participate in them might be something you can check with the client committee. That's the way to do it.

Because we form an agenda 24 hours before, and on some of those it would have been wasteful to have you on them. And clearly on today's call, you were the call. So I think we need to very practically make sure you're invited to all CWG meetings and then that's the case, yes.

Greg Shatan: And I'll note that I see...

((Crosstalk))

Greg Shatan: I see them in my calendar for the next two weeks already. So if those invites haven't made their way to Sidley, we should ask staff to do so, so that they are - they have the same invites that we do. I recognize that sometimes the invites seem to have come, you know, rather directly before the actual call so I think we've gotten better at that. So again, if you don't have invites for the next two weeks, which I'm assuming you don't, you'll get them. So then I see Brenda will send those after the call, so that's good.

Sharon, is that a new hand?

Sharon Flanagan: Yes, a new hand. So that's great. Thanks for sending, if you could Brenda, send us the calendars. And then maybe if you could just let us know, you know, 24 hours in advance whether you need us on the call that would also just be helpful for us for planning purposes.

Greg Shatan: Sound good. I think that covers number one. We - adding in discussion of the punch list. That takes us to number two. I'll note the request for invites to the intensive meetings. So basically any meetings of the CWG as a whole should go to council. Any new issues arising from the calls or the e-mail list that anyone identifies? I think Jonathan has been waiting patiently.

Jonathan Robinson: Thank you. I wasn't sure where Josh was located. I see he's in California, so same issue. Two things. One, I would like to make sure that Brenda or whoever's taking those actually actively, if it's (Kimberly), actively captures that action to invite Sidley to the intensive meetings on the 27th and 28th, so that the invites are with you there.

And then the - in answer to item two, any new issues arising from those calls, well I understood that we've provisionally settled on insider board with perhaps some specifications for that insider board as well as a public benefit corporation.

So I think you, Sidley, probably need to digest that and having now, if the group's provisionally settled on that, we need your - you to respond and say, "Oh my God, we didn't think you would settle there. That cause serious concerns." Or, you know, perhaps this adds some more items to the punch list; it might strike some off but may add new items that now need to be considered. So it's really to digest that and respond as you see fit, if there is - if there are necessary responses. Thanks.

Sharon Flanagan: Greg, can I chime in there? This is Sharon.

Greg Shatan: Chime away.

Sharon Flanagan: Yes, so that's - we heard that as well on the call. I think the one thing -- and we can put it on the punch list -- I do want to make sure on the tax side that, you know, none of us is the tax lawyer here on this call and I want to make sure that ICANN tax/finance is comfortable that the entity may not be exempt. They're going to be in the best position to evaluate that. So I would like to have that added as an action item just to confirm that.

Greg Shatan: Thank you. We'll get that added in the notes as an action item: consultation with ICANN tax with regard to the possibility that PTI will be not be a tax exempt organization. Jonathan?

Jonathan Robinson: Thanks, Greg. I think the actions ensure that the punch list is updated to include that and any other items, but you're right. And I think that can then be a follow up with ICANN finance, who we have already requested - we sent a request to them looking for implications of PTI, and we can just say as a follow on to our point on implications of PTI, we note that there has been this progress piece review and consider this as part of your comments.

Greg Shatan: Yes thank you. And I think that, you know, also points out an overarching issue, which is that a punch list, you know, most of the time, you know, should be, in my opinion, treated as kind of a living document because if you do add in topic items, not invitations and such but substantive topics then those should be reflected on the punch list. And I'm assuming as you said that Sidley has the pen on the punch list and so will add those sorts of things in, unless that's a mistaken assumption. Josh? Josh, go ahead.

Josh Hofheimer: Sorry can you hear me?

Greg Shatan: Yes.

Josh Hofheimer: Okay. I actually was - wanted to comment on to add to what Sharon said about wanting to get comfort from ICANN tax and finance on PTI, and I think there's two issues there. The first was noted that getting comfort on the fact that they may or may not be, or PTI may or no be a tax exempt status or tax exempt corporation going forward.

And the second piece being getting their comfort on PTI as a precursor, having to apply for tax exempt status if it's a nonprofit public benefit corporation and getting them to think about the potential for implication on the overall tax status of ICANN as an entity and whether that, you know, may or may not be thrown into review.

Greg Shatan: Thank you, Jonathan. Seeing our timing, any other new issues as Jonathan highlighted some of the big two takeaways from today's call, though (Milton) might beg to differ with one or both of those. Despite of (Milton)'s statement that he speaks for most people, I tend to disagree as do many of us. And anything else then? Any other new issues? I'm not seen none. Josh? Old hand.

I think that moves us to time and resource management with three minutes left on the clock, at least for Lise. Jonathan?

Jonathan Robinson: Hey, Greg. I'm happy to call a wrap at this point. The reason I would want to see that on there - I mean there's two issues really. One is we've become sort of indirectly aware of the mounting bills for Sidley very good work that's been done today. So we've kind of got to - started to have a responsibility

handed to us, if we didn't already, at least in very stark contrast in dollar terms that we've got to be aware of that. So that's one point.

And then the second is the point I made in the chat, which I think we don't need to deal with now but in the relatively near future. And it may be when that - the time point might be when we submit the final document for public comment in about ten days' - sorry for transmission en route to Buenos Aires in about ten days' time, we need to take stock of what we asked Sidley to do, how much of that has been completed and what, if any, future scope of work could be done.

Now I think that might be something appropriate for within the scope of the client committee. We couldn't necessarily sign off on it but we could review the scope to day, look at what the prospective scope might be in future, take that back to the CWG and to ICANN for discussion and potential sign offs.

So it's more of - I think for the moment we've dealt with the urgent issues, which is how do we project manage between now and when we get the next proposal out, we have an open question about Buenos Aires, although provisionally I had thought that we wouldn't need much of Sidley support that, we will come back on that. I think we really need intensive support now in preparing the final proposal but possibly less so afterwards. And then we need to take stock afterwards and decide, you know, what the future roles of the CWG, the client committee and Sidley are as we go forward.

So I don't feel like there's necessarily much to say at this point other than what I've already said. Thanks, Greg.

Greg Shatan: Thank you, Jonathan. I think from the point of view of substantive management of workflow, you know, I think we're doing very well. I think

we've, as you said, become somewhat aware of the bill that - and therefore, you know, we need to, you know, figure out we can best kind of manage on the forward-looking basis in terms of resources and communication on that point.

But I think we, you know, given that it's now the bottom of the hour, it may make more sense for us to kind of get some information and save that, you know, as a topic for another - the next call. I guess if there are any comments that Sidley on whether you need to do anything differently with regard to kind of resources management? As I say, I think overall, you know, from the point of view of substance and results, I think we're doing quite well.

Holly Gregory: So, Greg, if I may, this is Holly, look this is a very unusual way of working and we've been thinking about and trying the best we can to make sure that we don't have a lot of redundancy. At the same time, you know, the breadth of the issues that are involved here that has required that we have a crew that has a varied set of skills and is staying up to date so that when something comes up, they're not having to dig back and do a lot reeducation.

Frankly, you know, we're dealing with our clients who are a lot of non-lawyers. An awful lot of time is spent on in sort of an educational capacity, and so it has been a very time-intensive project for a whole host of reasons. We will continue to try to do what we can to make sure that we rationalize, you know, how we spend the time. We do scrub through the bills. We are giving a discount, and frankly I'm going through a taking off a lot of time before we provide that information to the folks at ICANN.

I will commit that we'll continue to promise to do that, but I think there does need to be recognition on your side and on ICANN's side that this is a very

unusual project. It's - the implications of the project are significant and it's an unusual way of working, and that all really adds to the cost.

Greg Shatan: Thanks, Holly. I will say that I've spent close to 29 years sitting in your seat, obviously not all of those as a partner or lead type, but, you know, outside counsel. So I look at this, you know, from your point of view. And looking at it from my point of view at your point view, you know, I think I'm not, you know, I'm not troubled at all.

As a matter of fact, I acknowledge, as Jonathan says, that this is a unique project with unique demands, and clearly, you know, this is not intended to be any sort of, you know, the raising a flag but just as we realize that, you know, one of the unusual things is that we are kind of primarily working with you but we're not seeing the bills. So that's the only thing that I think might need a little bit of adjustment, although, you know, we're probably now in at least the seventh inning, to use a baseball analogy. Baseball games have nine innings for those that aren't aware.

So, you know, it's a little bit late to start managing the pitching staff but - in that sense, or the pitch count. But in any case, you know, that's the only thing that, you know, deters me at all, certainly not, you know, my sense of what, you know, the run rate is. You know, I've seen, while obviously significant, also, you know, completely, you know, as a general matter, not seeing enough to say it, but it seems appropriate to the task and knowing how much it takes to be responsive and to be expert that it's - there's a lot of paddling going on under water as the dust move along.

So in any case, I think we just need to, you know, figure out if there's anything we need to just kind of tweak, you know, kind of working methods or whether

we need to ask ICANN to share the bills with us just so we can get a sense of who's doing what at...

Holly Gregory: Greg, I'm going to say at the outset that I don't think it's a good idea if we get into transparency around bills for the broad community...

Greg Shatan: I agree with that 100%.

Holly Gregory: ...that have difficulty with the notion of paying a number of staffers at ICANN \$100,000, so this is a can of worms. That said, I'm open to talking with you and Jonathan and Lise that anything we can think of to help keep this a focused project and we clearly want to provide value and have you folks feel that we've provided value. And we understand that value is both providing high level work but doing it in an efficient manner.

Greg Shatan: Absolutely. I certainly - I get the sense you've been, you know, efficient, effective, responsive, have come up with a very steep learning curve incredibly quickly and that, you know, the proverbial triangle of good, cheap, fast, pick any two, we've definitely needed to be good and fast. And I think that under those circumstances you've actually been cheap or at least value for the money, under the circumstance.

And I take the point on \$100,000. I know at least at my prior firm we had some secretaries, experienced secretaries, who were probably making that much. So it's a matter of perspective and some parts of the world you can live for, you know, a lifetime on \$100,000 and in other places that's not even your rent.

In any case, I think that's probably all we need to say on this point. I'll take it to all other business. Any other business? Seeing no other business, I will

move to the last item on the agenda which is to call for this meeting to be adjourned. So I will thank you all. And I see Sharon is typing, "Bye everyone, thanks."

Woman: Bye-bye, everybody.

Greg Shatan: And goodbye, all.

Jonathan Robinson: Bye.

END