

ICANN

**Moderator: Brenda Brewer
May 27, 2015
11:00 am CT**

Coordinator: The recordings are started.

Grace Abuhamad: Thank you. Okay, so for Josh's benefit...

Jonathan Robinson: Just might as well capture this meeting, this event.

Grace Abuhamad: Oh, okay. Yes, so this is the, ah, sorry, this is the client committee meeting on the 27th of May. And we have Josh Hofheimer on the phone line with me. And the rest of the group is in the Adobe Connect Room where we will take attendance there.

The agenda today, proposed agenda on the screen is Item 1, welcome. Item 2, Sidley role and public comment review, Item 3, Sidley role in high intensity work time, Item 4 Sidley role in Buenos Aires, Item 5 open deliverables, Item 6 AOB and Item 7 adjourn.

Greg Shatan: Thanks Grace, Greg Shatan here. And I agree with Jonathan we should add to the agenda perhaps as a new Number 5 above open deliverables Sidley input/memo on the PTI board and UA versus LLC versus non-profit.

Really for PTI its non-profit versus LLC for at the UA. That's a different discussion, different group.

Jonathan Robinson: Yes. So Greg, I think that may well come out or - in the wash when we talk about behind tentative work time. So let's see where we get to. It may come out in Number 3 anyway but let's see.

I mean it certainly was a proposal I made to the group yesterday.

Greg Shatan: Absolutely. So I think that, you know, now we are in the midst of the public comment review and I think we need to clarify what if any role we want Sidley to play.

My tendency is to think that certainly if we - as we go through the public comments and kind of into the high intensity work time that as open issues arise where, you know, the question is legal, no philosophical or commercial but needs a legal formal legal answer or, you know, more formal than kind of just the stuff that comes out of discussion that we - that's where we need to turn to Sidley.

I wouldn't think that we would ask them to read the entire public comment tool or much less all of the public comments. But I'm open to thoughts on that. Jonathan?

Jonathan Robinson: Thanks Greg. I think, you know, I'm pretty much with you.

I think that clearly the concern where we're coming into, a collective concern is when the public comments come in in a very raw format.

So the first thing we do is we get staff to prepare, then organize them, synthesize them, categorize them and then run that past the group.

So there's a lot of preparatory and background work that needs to be done that aren't either relying on Sidley to do nor to keep entirely abreast of.

But what we do need, you're right is to the extent that either challenges to or questions come out that require legal response, sure, I think we should tell them.

But I think we need to be - manage that reasonably carefully. So I think I'm with you on the approach. It's a question of how do we manage that? What - what - then what techniques do we use to manage and make sure that works?

Greg Shatan: Well I think the - I'm not sure exactly the answer to that. I think we need to as we go through the public comments and - or - and the resulting tools if we flag, highlight in some fashion areas where it's - it seems like without kind of a definitive legal answer or at least a, you know, appropriately definitive legal answer since I know that, you know, definitive legal answers can be 90 page large articles with 400 footnotes and that's not what we're looking for that we can't get over them.

And there's, you know, based on yesterday's call there's a lot of strongly held opinions. At one point I think one of our council, you know, wrote a fairly reasoned description of what, you know, the state of the review, the state of the law was and they - one of our contributors or participants just said that's wrong.

So, you know, that's clearly we have to get over that kind of thing and doing it in chat or on the fly on the call is not going to be going satisfactory.

So I think we need to - we've clearly flagged at least two issues which is the role of the PTI board which I think melds into the content of the composition of the PTI board. Those two are really linked in the form follows function issue.

And then the issue conceivably of whether we may be better off with an LLC which solves certain issues around board composition and control versus the non-profit of public benefit corporation in California that, you know, seems to be the more, basically the more basic idea since we're creating it essentially an affiliate of an existing public benefit corporation. Holly?

Holly Gregory: Hi Greg. Look, I really welcome the opportunity to have this call because we've been trying to understand, you know, how we can best help you and the role that you envisioned for us. So this is a great discussion to have. And we will take our guidance from you.

I do think that to ask us not to review, not to read the tool is a difficult request because it means that we're sort of flying blind in terms of context not knowing what some of the potential issues that may come up in the intensive are.

So we limit our ability to be prepared. And I guess maybe we should jump and talk about what you might need in the intensive if we are not to read the tool. So I'd just like to understand that.

Greg Shatan: Right. I think -- and obviously open the floor to Jonathan in just a second - there's several different aspects of the public comments. There's the raw public comments themselves.

There is the more lengthy tool. And I believe there was a digestible action focused version of the tool. I'm not sure if we have received that as well. And maybe you can shed some light on that.

You know, clearly to be uninformed going in makes - doesn't make sense. And at the same time it's not necessarily cost effective to have you slog through a lengthy and fairly undigested work product.

Jonathan?

Holly Gregory: Yes.

Greg Shatan: Or Holly...

Holly Gregory: Yes.

Greg Shatan: Holly, why don't you respond.

Holly Gregory: That's really all fine. We just want to make sure that we meet expectations. And, you know, it's not the kind of preparation I like to do when I'm advising a client. But if that's the direction we will certainly go with it.

Greg Shatan: Yes. I guess underlying all of this clearly is kind of the concern about cost because if cost were no object we would expect you to probably be as prepared as we would want our most diligent member of our group to be prepared.

So there is a balance there. And that's kind of - it's not the 800 pound gorilla. It was maybe a 150 pound chimpanzee.

Holly Gregory: But Greg my concern Greg is the penny-wise pound foolish approach right? The thing that's driving the cost isn't the basic preparation that we need to do so that we can get on a call and be informed.

The thing that's driving the cost is largely the way the group works. And we've, you know, we it's sort of - I guess if I may I'm just going to be open there to the lack of discipline around how issues are approached in trying to bring a group of 30 or 40 or 60 people into consensus by its nature especially when the - many of the folks aren't lawyers and we have to spend a lot of time educating and reeducating. That's - takes a lot of time.

Greg Shatan: Absolutely understood. And I did - I just did want to bring that up because I think that trying to balance being cost effective. Because if you're not well-prepared we're not going to get the maximum value out of what you bring to the table so, you know...

((Crosstalk))

Greg Shatan: ...this is a - a balancing act.

Holly Gregory: In fact, Greg if we're not well-prepared it's more likely that when a question is asked we either have to say we're sorry we can't answer that and go try to take time to dig into it or there's a chance we will misunderstand the question and provide advice that's not germane, relevant, (unintelligible) targeted and clear.

So I - but this is - you know, I hear the concern. Every time we've given an estimate into Sam Eisner we've said you're concerned about the cost and if you have any ideas about how we can help limit it that's great.

One of the things from our perspective that would be really helpful is to have advanced notice of agenda items so we know what kinds of expertise we (unintelligible).

I feel that often we're putting people on call because I don't know what's going to happen. And so I don't know who I'm going to need to respond to something, so some of that very simple clear direction at the outset would also be very helpful to us.

Right not we're trying to figure out - we've been trying to figure out for weeks what might happen in Buenos Aires and who we might need. We still don't have an answer for that on either side, either for CWG or CCWG.

We've just assumed at this point that CWG has no need for us in Buenos Aires. But...

Greg Shatan: Right...

Holly Gregory: ...I don't know if that's true.

Greg Shatan: Well we have that on the agenda so we can try to, you know, focus on that. Jonathan?

Jonathan Robinson: Yes I'm not convinced we're having the right sort of quality of discussion here. I mean I think both points are understood. Sidley by definition has to be well prepared in order to work effectively with us.

I think you have to help us managed costs. You know we have a responsibility to do that and it's equally incumbent on you. And we have to trust that your motivation is not to turn the meter but to provide cost effective advice.

And so somehow or another we have to get past this. We can't micromanage that. Although I do think collectively we have lost our discipline.

Now take Holly's point that there's a lack of discipline that is extremely frustrating in the CWG at times when we have to - we appear to make a decision or get to a point and they have to go back.

But to some extent there's a messiness inherent in the process in which we work. And we have to live with that. It's not, you know, a directed approach that some of us would - or many of us would probably feel more comfortable with if there was someone who was obviously in charge. But it's hard to steer from behind.

But I think as to the very specifics of this public comment, I mean what Grace has loaded up into the Adobe at the moment is the digest of the public comments. And at the highest level that gives you the trends that are coming out.

So the question is, is it cost effective use of Sidley's time to pour through the comments in whatever unrefined or refined form or is it satisfactory to look at it at this level?

And I suppose what we really should be doing is looking at this very high level as the document is in the presentation at the moment and saying and then Sidley comes back to the Client Committee and says look, we really feel in order to give you better advice we need to go into this deeper rather than, so, but, you know, we are also - we do - we also challenged by the virtue of the fact that we're working for this kind of process very fast which means by

definition again agenda items get prepared 24 hours before the call. We're also running to catch up.

So, I'm not quite sure I know the answers. I think we have to have this conversation and we're having it. And we have to work together to try and fix it.

Certainly what happened in the call yesterday I was really unhappy about. Because what ended up happening was we seemed to be going back having gone systematically through things with your very good guidance, Sidley's very good guidance and help and got to some key decision points. And we seemed to be overturning those or undermining those in the last couple of calls. And that's bothered me when actually that we're - so one of the things I was considering was whether there was a way in which we could get back to a more ordered or disciplined approach as you were saying Holly.

So, that's a little bit of input. I'm not quite sure how we fix this. I mean, but clearly agenda Item 2 is - Sidley is all in public comment. At minimum you have to look at this high level document. Question is how much further do you need to go into it to be when you are already well-informed over the particular issues? Thanks.

Greg Shatan: I guess my high level thought about going beyond the high level document is where there are particular claims or challenges or concerns or fund raised about some of the legal concepts.

And that's not fully laid out in the digest. There may be a need to drill down to the comments themselves.

So I think that it may be - I'm not sure if that's - I haven't, you know, experimented with, you know, with doing that exactly myself. But that I think might be the right approach which is not to say hands off the comments nor to say plow through the comments but rather to try to go to the relevant portions and the comments where challenges are being made that certain things, you know, will occur or can't occur because of certain setup or that - or the like.

Now obviously there are some things which are kind of mixed law and business. There's more than one way to fashion a board, a subsidiary.

They're not wrong. They're different. So we've made - that's kind of a combination of knowing what's legally expected on the one hand and also what's - and what's commercially appropriate and also what fits kind of the ICANN communities and the ICANN corporations' mindset.

So it's a delectate operation and, you know, I think if the idea is to avoid kind of brute force reading but at the same time having an understanding of what challenges are being made by the commenters to what we've generally proposed and also what challenges are being made now by members of the group to what it seemed like the group proposed just a few weeks ago.

Holly Gregory: Well look Greg, I - you know, I think - I don't think that so without having looked at the tool that more - in any more detail describes the comments it's hard to know the information we need.

I think what I'm going to offer to do is I plan to read what I need to read and I won't bill you for it. But I will not walk into calls unprepared and if that's the solution that's what we will do.

Greg Shatan: Well I certainly appreciate that. I think maybe it's an admission against interest. I wouldn't say not to bill anything for it but, perhaps to bill gently for it or in the sense kind of what we would have liked you to have billed in a sense but not nothing.

But I agree that if, you know, rather than...

Holly Gregory: (Unintelligible) it's hard for us to know what you would have liked us to build. We've been providing information about that cost. And we have received no feedback up until the point at which people said, the costs are high when we've been saying the costs are high. So we understand the issue.

The costs are high not because we are churning. The costs are high because there's a lot of effort and work that goes into trying to anticipate what is needed and then also to fulfill the many demands in a very fast paced and very complex high stakes project.

We are committed to providing you with value. And by value I mean, high quality advice at a reasonable cost.

So I'm - we're open to any idea to how to do that. I think the wrong way frankly is to say I don't think you should read this document. I mean to me that's sort of in my attorney client ethics. I have to think about what I need to review to feel that I'm prepared.

But we are willing I - so I've - I'm not suggesting that I'm having all attorneys read all the comments. I think that would be a huge waste of time. But I think there are one or two of us who need to see at least of level down from this very summary slide presentation that's on the screen right now.

And, you know, frankly if that's airplane reading if I can do it, you know, instead of other time I am - I don't intend to bill for that.

But I do have to say Greg that I find as a lawyer you understand sort of that need of having to make sure that you're comfortable with what you need to know.

Greg Shatan: Oh I understand. And I was - I spend more time kind of in your shoes than in mine. And I never like to bring a knife to a gun fight and so to speak. I like to be as prepared as the people I'm dealing with.

So I think that the answer is to try I think to read what you need to read, can deal with billing issues and, you know, or we'll just take it up on the offer not to bill.

There's more than enough time at, you know, overall that it'll still be spent at that, you know, relatively small amount of time. But coming in unprepared would be uncomfortable for all sides.

And I agree the presentation that's here is really just a kind of statistical. It's more of the days betting lines than it is anything analytical in terms of context.

Jonathan Robinson: Greg, can I speak?

Greg Shatan: Yes, please.

Jonathan Robinson: Look I think we really - we're in danger of spinning our wheels here. We - you know, we - the important point is that from the point of view of this client committee we are - that we argued with the CWG and we argued and fought

very hard to have the management of the relationship with Sidley through this client committee.

And the purpose of doing that was to make sure we gave Sidley clear and focused instructions and in so doing got the best value out of Sidley. We intend to continue doing that.

I don't think we want to nickel and dime or argue the toss over whether one or another document should be read. That's not the point of this conversation.

But it's also important Holly and colleagues to know that we got formally notified on Friday of the bills to date. That's the first we were formally notified of those bills.

That doesn't mean that we weren't responsible about working with you previously but it sharpens the picture for us to make sure that we manage our - that we as a client committee continue to manage the relationship such that we continue to get value from that.

So it's we really can't turn our wheels over one particular document. We just - we need to make sure we get best possible value.

Now it turns out as far as I'm concerned you more or less told us everything we need to know. And as far as I can see in the public comments there are no significant challenges to your legal advice.

Therefore it's really a question of us moving over which is what I said on the call yesterday into where you can help us as a trusted party of an advisor slightly less in the legal sense but partly reminding us of where we've come

from and where we need to get to so assisting us in getting through the sort of last few laps.

So I don't think we should be seeing ourselves as strongly across purposes. We just have a job on the Client Committee to manage you well. And by managing you well it's the duty of care to you as well and making sure we don't unduly, you know, utilize your resources or put you in a position where your bills don't seem to match the value we're getting out from you to others because we're all in the public eye in all of this.

Holly Gregory: Absolutely Jonathan. I really appreciate that. And that's the same point of view from which we come to this.

We welcome clear direction and ideas about how to keep things focused on our side. Because at the end of the day we do want to make sure that you and the group at large feel that it was - there was a value proposition.

And I think maybe we started this conversation on the wrong tact at - in terms of talking about your particular document.

I think what I'm taking away from the discussion so far is that, you know, you are not giving us a particular task vis-à-vis those comments at large.

We will use discretionary (unintelligible) and how we bill for that. And we will look to seriously discount it and make sure that no one is spending time on reviewing documents when they're really not needed to do so.

And we welcome the opportunity Jonathan to talk about how we can help the trusted advisor in moving forward.

We were fairly - I was fairly distressed by the conversation yesterday. I was distressed about a process issue as well which you as the chair may want to address at some point.

But there's an awful lot of chat going on that doesn't have anything to do with what the topic is at the moment that's being discussed.

And that means that people are missing important conversations that are happening, you know, the oral, you know, phone conversation in order to debate a point that's happening in the chat room.

Jonathan Robinson: Yes, thanks Holly. Greg if I may I'd like to respond to Holly. I mean I think that's very - so I think we're on the same page and I think we probably need to go to the next point in the agenda.

But you're right, I was - I mean I think that was - but thank you for raising that point. I mean I think that was uniquely evident yesterday. I've never seen it like that before where the chat was - in fact it's a question whether the meeting was taking place in the chat or in the formal meeting room.

The chats - and so I think we can usually use that in terms of setting out ground rules for the high intensity work time.

And so to me there were two issues, the one you've just highlight. And the second was that through a combination of our own work as a group and your substantial and good advice we had arrived apparently at or very near to a point which we were then the group was deviating from during the past two calls.

So how do we get back on track and what help can we get from Sidley over the next couple of days?

And there you - we come to another really challenging point Holly, Greg and others. We haven't yet formally set out the agenda for those two days. We know what we need to achieve. We need to the best of our ability close the various loose ends and in closing those take account of the public comments.

But it's challenging to do that. And we still have to chart out exactly what the map of those next two days is.

So would love to tell you exactly how those meetings are going to shape up and who we need when. But we're less well prepared in advance of those than we have been previously even Holly said. It's a real challenge.

And I'm being very candid with you that I'd love to tell you those all mapped out but it isn't. So the question is how can you help us and how can we ask for your help to get in shape for those - these next couple of days? Thanks Greg.

Greg Shatan: Thank you Jonathan. And I guess that is the question. Without an agenda seems to me that we are stuck probably, you know, with what Holly described which is basically having, you know, a team on the calls available to go wherever the agenda or the conversation takes us.

And that, you know, may be, you know...

Jonathan Robinson: No, Greg, that's not what I'm saying. That's absolutely...

Greg Shatan: Okay.

Jonathan Robinson: ...not what I'm saying.

Greg Shatan: Okay.

Jonathan Robinson: I'm saying we will enter into those meetings. We have six meetings. We will structure and organize them properly. I'm just saying I can't give you that detail now.

We know - we will -by the time we enter those meetings we will know we have to process the public comments. We have to get the group back on focus.

But we're certainly not going to wonder and weave our way through six two hour meetings without - we'll have a very structured process as we have to all of the other meetings we have to date. It's just that I can't give you that in fine detail now.

Greg Shatan: Sure.

Jonathan Robinson: And again, I don't think by implication it means that we have to have a full team of Sidley on the call. I think we can try and structure it as we did previously the high intensity meetings where we highlighted the particular meetings where we might need help.

But let me - I thought that Holly wanted to say something so I - let me back off and just make sure that she has a chance to say something if - or anyone else from Sidley.

Holly Gregory: Yes, I would Jonathan, thank you.

First as an aside we don't intent to have more than two or three people at most on the call, probably two for most of them.

In terms of how we can help you, I was taken yesterday with your suggestion Jonathan that it might be helpful to go back and recall to some extent the key decisions that the group has made and the rational for them.

It's a challenging - and at the time you said I thought you mean by today and I was thinking oh my God that's another all-nighter and I don't know if we can do it.

But in terms of thinking about it, it seems to me that there have been three or four key decisions like big decisions. And the rationales around them or the circumstances are fairly evident.

The one that's the most difficult is the one at the outset was sort of the big issue in Istanbul where we found you which was to what extent should the NTIA contract be transitioned to ICANN or to a separate outside entity?

And we have a full continuum of proposals along those lines. And at the end of the day and a lot of discussion and a lot of compromise we came to this notion of a PTI inside ICANN but as a separate legal entity that could be fully separated at some point in the future if need be.

And the value of therefore then ring fencing through definition what PTI is at a time when there is no dispute having a vehicle to move it out if you wanted to. And that was a compromise.

One of the difficulties around finding the rationale for it is it was a compromise. And I think what we are seeing in the discussion around who

should the board be of PTI and how should it be selected we are revisiting a lot of the disagreements around how separate should that entity be, how inside and how outside where are we on that continuum.

What I'm struggling with Jonathan in trying to think of the rationale, I can give the rationale for the inside and how we came to this.

But so much of this then becomes the eyes of the holder right? I think that's what we're struggling with now.

So I was trying to think about how helpful would it be to the group to read this with that and to also just have them understand that in some ways as soon as we start talking as I said, the devils in the detail.

As soon as we start talking about who is the PTI board by definition if you have an outside view and an inside view you are re-debating the issue that we thought was resolved when we picked an internal hybrid model.

So it's Jonathan it's delicate because I don't really want to open up the big debate right. And...

Jonathan Robinson: Right.

Holly Gregory: And we need to find a way to describe this in a say to say and so here's how we resolved it. And that's how we decided to resolve it to come to an internal PTI should give us some of the answer to how the PTI board should be.

Jonathan Robinson: I agree. And so it felt to me like there was a possibility of picking out those. And certainly in any event I mean to the point Greg earlier about the structure of the meetings it seems to me that that's a necessary condition to

have a successful set of meetings is that we level set with everyone where we - you know, the root.

I think we almost have to go back over the history a little bit and remind everyone of where we've - where we are, where we - you know, the route we've traveled and the critical decisions we've made.

What I guess I was thinking of yesterday on the call was along the lines you just talked about Holly was perhaps with your help - and it may be not in the form of a document. I mean this is what I guess we're talking with you about is what role you could play here in - well role play is probably not the world, how you could assist in making us and reminding us of the facts and the route we went to and the various things.

And some of them are based on effectively hard legal advice like it is no longer an inside entity if it has the majority of boards select from outside.

Now your memo is very, very clear on that. But I'm not sure the whole group remembers the detail or even has taken the opportunity to read it or was attendant on the call or calls when that was discussed. So these are the...

Holly Gregory: But there's a further wrinkle that we didn't contemplate in that memo which was we sort of assumed in the memo that the ICANN board would be picking the PTI board. But that also seems to be an issue that people want to debate to what extent this is a decision for the ICANN board versus not. And that also reads on is it really an internal entity or an external entity.

So I mean one thing that I was thinking Jonathan is at some point I think it makes sense for you maybe as an introduction to a discussion of the key

things that we'd agreed to when we put out the proposal is to say look, we have a proposal out there.

We are now working on fine-tuning and taking comment and but we are not walking away from a proposal.

And to the extent that we've discussed and debated issues in the past and come to some resolution we really need to try to hold to that rather than reopen debate...

Jonathan Robinson: Yes.

Holly Gregory: ...and sort of say look, I expect CWG after all of our hard work, I expect you folks to be committed to the proposal we put out, committed also to listening to the feedback and thinking how to take that feedback and make our proposal even better.

But this - that we can't be back at Istanbul.

Greg Shatan: Right.

Holly Gregory: You know, it won't read well on the CWG. It won't be helpful to the community.

And therefore, you know, let's not revisit every debate we've had. And then we can talk about let's remember why we got to PTI and what PIT was meant to be. Yes in some way it's a compromise.

And so if we view it as a compromise we have to think about what was the best part, what were we trying to accomplish?

It wasn't just to get everybody to agree to something. It was to try to take what we thought was best. And in order to do that when we talk about what the PTI board is we have to be careful that we're not unwinding the very reason for bringing PTI as a separate entity into ICANN.

Greg Shatan: Right...

((Crosstalk))

Holly Gregory: And you need to sort of set it up. And then maybe we could talk about in very short shift what are the benefits, what PTI was - we were doing this ring-fencing. We wanted to be able to have, you know, a separate ability for a contract discussion.

Albeit we understand that there's, you know, some tensions there, how much disagreement will you really, you know, is it really arm's length or not, maybe not perfectly arms' length but an ability to be arm's length at some point.

You know, we could walk through all of that and then maybe have a brief reminder of why in the lawyer's view PTI if - if this is how you agree to do it and - and PTI is an internal entity and not a separate, wholly separate external entity why it would make sense that it would be ICANN the corporation.

And it could be at the ICANN board level or it could be at the executive level. We don't have to decide that yet who pick - who picks the board and also why we from a legal perspective sort of think that the insider board was more of what was intended because you've built - you're building all these great accountability mechanisms for ICANN.

If you go to the outsider board now you have to build all of these redundant systems now for PTI.

Josh Hofheimer: This is Josh. Can you call hear me?

Greg Shatan: Yes Josh, go ahead.

Josh Hofheimer: Okay. Yes, Holly I wanted to - sorry, I was not able to raise my hand. And maybe I don't want to speak on top of what you said without giving people the chance to react to what you...

Jonathan Robinson: Go ahead Josh.

Josh Hofheimer: ...just said. But I'd like to - I was going to offer sort of as a next phase, next step in the process some thoughts. All right so I - I mean I've been listening to all of this and I agree 100% with what you said Jonathan. And I actually wrote down the same thing in my notes.

And then as Holly was expanding on that that the first meeting should be about - should level setting expectations and reminding people as Holly said that this is a compromise in how we got to where we are.

And the importance of this group working to compromise in hand and not using the detail stages and opportunity to try to bring back their own agenda and get to their own agenda which was not the results of Istanbul.

But as far as organizing the - and as far as organizing the actual six sessions Jonathan in my thought one of the things that I think we've struggled with and people have struggled with in their concerns about whether the board should be inside or outside is that they're not an inside board or an outside board is

they're not really focusing on the integrating the knowledge of the sort of exquisite oversight and accountability mechanisms that have been created for the community through the CSC and the IFR.

And so maybe we ought to put that cart first, we're going to put that discussion first. So I was going to suggest as far as an agenda to help people get to the stage that they realize that they're focusing at the end on what the board should look like we ought to - we might want to organize the discussions of the first meeting being about level setting expectations, recapping the history as you all have just discussed and focusing on what sort of the public comments and what the key issues are still to be resolved.

But it then seems to me that perhaps the second session or the third session would be - second and third together would be then working through the actual oversight mechanisms and dispute resolution mechanisms and filling in the details on that to get to a final proposal on those issues that are - that came through the public comments because there were some useful suggestions there that I think should be considered.

So working through the dispute resolution first and the community oversight first because I think that will remind people of the power that the community has to exercise control and to hold ICANN accountable.

And if we do that first I think it may hopeful that it may make the discussion venue of into a discussions next focusing on what exactly is the limited scope of PTI that is purely function and implementation and its remit does not include policy so we get a clear understanding cause that was also one of the things that was emphasized is getting a clear understanding and a desire to have PTIs mandate be as narrow as possible. And so we get clarity on that that would in effect be the fourth session.

And then and only then can we turn now once we have an understanding of both history and maybe the order changes a little bit, but history, PTI function and scope as well as dispute resolution and community accountability mechanisms.

Then we look at well what does the PTI board look like under this compromised scenario? And once we understand it's mandate instead of putting - deciding what the board is and then decide to mandate we get clarity and agreement on the mandate and then we say okay with that mandate what's the board need to be?

Holly Gregory: Okay Josh...

Josh Hofheimer: And hopefully...

Holly Gregory: ...I think we've got the point. Let's get some reaction.

Greg Shatan: Yes, I see Jonathan's hand is up.

Holly Gregory: And others...

Josh Hofheimer: Oh, yes but...

Holly Gregory: ...on...

Josh Hofheimer: But, the final thing just Holly was that then you can decide whether PBC or LLC.

Holly Gregory: Right, we got it.

Greg Shatan: Jonathan?

Jonathan Robinson: Yes that's very helpful in a number of ways. And so, you know, clearly what we're trying to do is think about the structure of the meetings and in so doing think about Sidley's prospective role in them.

And where this starts to point to is that potentially your role is not to produce some definitive paper that sets out the scene because the definitive papers have all been produced, but actually to work alongside us in both restating where we've got to and moving us on to where we need to get to.

And I think, you know, it strikes me that if we could work in a disciplined way along those lines that we could provide the appropriate leadership and management of the group such that people still have the ability to express their views but they weren't reopening old issues or necessarily going over old ground for the sake of it and so on.

So I think that starts to sound to me like a potentially very constructive approach to the whole thing and a way in which we could work - I mean that's a terrible cliché but in a kind of team with you rather than - because my original idea yesterday was that we get you to set the scene.

But I think we need a structured walk through with your help and to help bring us on track when we go off track and say look, you've dealt with that back then. You agreed this there because I think that's where the discipline of the group is so important especially at this very late stage in the process.

Holly Gregory: Right. And I...

Greg Shatan: Jonathan I'd just like to second that - your last sentence there. I was going to say the same thing but I'm just going to second what you said. That's critical.

Holly Gregory: I - and Jonathan that sounds absolutely right to me. And I think it also is going to - it's going to require some, you know, real - I think that you and (Lisa) have been strong leaders of this group and that people do listen to you.

And I think sometimes the more of this sort of at the outset that can come from you about the commitment to the proposal and making it better but not reopening it's much better coming from you and then using the lawyers where you can to, you know, focus in on a particular issue if you need be to say, look, this is the reason. Here were the legal reasons why we went this direction if - when you need it is helpful.

I think we also have to have real discipline on the Sidley side in terms of participating in the chat and in making comments because this is really delicate.

I was concerned yesterday at one or two points that maybe it was a comment or two from us that set some of the things off in the chat room. So I'm going to go back and look at that. But I think we need a lot of discipline.

Jonathan Robinson: Yes, it may be that some - I mean it certainly it's possible Holly and that some - and others that some prefer the chat as a mechanism. And then just doesn't have - it - that's fine and it's nice to use it but it's not the - it doesn't - it breaks up the discussion.

I just wanted to recognize one point that Josh made earlier which I do think is very important as well. And it's kind of what caused us the problem.

Where the recent problem started was on the call prior to this. And it sort of - I possibly should have re-anticipated it here.

But it's in going through the punch list which (Lisa) tried to do on the previous call and which I then try to do again here. I mean the punch list has gone a little off-track and we're going to tidy that up.

But the second thing is that Point 2 on the punch list is PTI board. And so you immediately rather than thinking taking a structured view like we've begun to talk about and Josh on the line a moment ago PTI board comes in way too much up front without nailing down all...

Holly Gregory: Right.

Jonathan Robinson: ...of the other areas we've agreed and worked on.

So I think, you know, you're thinking Holly and Josh is very helpful in sort of aligning with the way in which we needed to manage this.

Holly Gregory: Yes. I do agree the PTI punch list is sort of like, you know, biggest open issue first from our perspective and probably not the most helpful way to organize a discussion of the issues that you need to get through.

Jonathan Robinson: Okay. So just to help you Greg I think, you know, we've kind of - we've effectively talked now about the high intensity work time. We've kind of dealt with five on Sidley and put a memo to the board.

Greg Shatan: Yes.

Jonathan Robinson: What we haven't touched on is, is, you know, all of this will then produce a proposal, a final proposal which is going to go out.

And then our critical job for the two weeks prior to Buenos Aires is to do the sort of political and educational work of the different communities that - and so it's an open question what if any - and I don't have the answer to be honest with you. I don't have it quite clear in my mind what if any role there is for Sidley at that point once we've over and above a future role which is assisting us with implementation which we have yet to discuss.

But in terms of this proposal and getting it through the charting organizations and signed off by the chartering organizations in Buenos Aires that's an open question whereas you see on the CCWG side they're wide open still. They have a lot of open issues and their work is very much work in progress. Ours is intended to be a submitted proposal.

Holly Gregory: Right.

Greg Shatan: Right. They're kind of one major iteration behind us. And since this is...

Jonathan Robinson: Yes.

Greg Shatan: ...their first draft coming out so but I mean...

Woman: But I have a question...

((Crosstalk))

Woman: Yes, I have a question. Are you going to be in Buenos Aires for the CCWG Sidley?

Holly Gregory: Yes. Well as we understand it I will be there and then there will be a lawyer from the not-for-profit firm.

Woman: Okay.

Holly Gregory: To me that's really sin. So if there is a CWG need I will certainly try to cover it but, you know...

Woman: I see.

Holly Gregory: ...in the best of all worlds I'd like to bring one other partner, (Sharon) if she's available. So...

Jonathan Robinson: Okay.

Lise Fuhr: Because I was having this thought. I haven't confirmed that with you Jonathan. But my - while we might not have a need for legal advice for the proposal it might be good to have - are you available for giving people the possibility to ask you questions? Because you are still the neutral part where we're the one proposing it and having our proposal on state where you're, the legal advice is more neutral?

So I don't know if that would be helpful or not to have like half an hour, an hour of questioning time?

Greg Shatan: Jonathan?

Jonathan Robinson: Yes, thanks Greg. I think Lise makes a good suggestion. I hear Holly loud and clear. Personally I'm receptive to that. I think, you know, Holly and

(Sharon) did a sort of bang up job in Buenos Aires working together as a team. And that's not to take away anything from anyone else in the Sidley team.

But I think so in principal I think that's a good idea. I understand there's some real logistical fairs, hotels and issues that need to be resolved. Leave it with us Holly and we'll come back to you as soon as possible. We can discuss on the Client Committee on the mailing list.

But as I understand that the proposal is at the moment Holly plus someone from the other firm plus potentially (Sharon) as well.

And I think that could - that could be the right balance between, you know, cost and adequate servicing of our needs and coverage. It feels like the right balance.

So that's a good suggestion and really appreciate you making it and maybe just give us a little bit of time to digest it rather than make an on the fly decision. But I understand the urgency and I suspect we understand the urgency.

Greg Shatan: So I think...

Holly Gregory: (Unintelligible) and you have to forgive me for raising (Sharon). You know, she's some place in France celebrating her anniversary. And so I can offer her with impunity and she can do nothing about it.

Greg Shatan: Well thanks. I think we'll discuss this amongst ourselves and come back quickly. Grace I see your hands is up - hand is up.

Grace Abuhamad: Holly this is Grace. Just to quickly, do you have any confirmation yet from the CCWG accountability? Are they anticipating as well you and (Sharon) as well as (Rosemary)? I mean is - are we looking like we're hitting the same people or is it a different group or have you not received confirmation from them yet either?

Holly Gregory: We received an email from them which we forwarded to you which asks that Holly and (Rosemary) would cover CCWG.

So what I'm proposing is if CWG also has a need that we would bring (Sharon) and that way would have a little bit more bandwidth on both sides because she of course has been involved in everything.

But, you know, I've gone ahead and made plan reservations based on the CCWG email asking that I and (Rosemary) participate, haven't yet made hotel reservations. We were waiting to hear from your folks.

But I think, you know, if the trip is likely still on I probably need to make that (unintelligible).

Grace Abuhamad: Okay, thank you. Yes, I know I just wanted to ask for the record...

Holly Gregory: Sure.

Grace Abuhamad: ...so we're all clear on both side.

Holly Gregory: Absolutely.

Greg Shatan: Thanks. So I think we'll work this out, you know, in kind of in the coming hours hopefully and have an answer for you rather than try to work it out and

basically have one minute left here and, you know, it's just something that takes a little bit of internal conversation to get through.

I think the one thing that may be missing just quickly to touch on Number 5 that may need more clarity is kind of what the functions of the PTI board need to be.

So I think that was perhaps one of the many ways in which we went off the rails with regard to the PTI board was how much are they going to do and how much are they going to just act as kind of a conduit for ICANN's management of its subsidiary PTI.

So not asking for an answer on this call but that in terms of level setting...

Holly Gregory: Yes.

Greg Shatan: ...I think it may be helpful to visit that point.

Holly Gregory: Greg, one thing I thought that it would, you know, I'm just going to back and look at our memos and see if there's a place where we discussed it. I know we discussed other aspects of the board in detail. And if I find it, you know, just send it to the Client Committee.

One of our frustrations is I find on the call sometimes it seems like there's a limited group of people who actually read the stuff that gets produced.

Greg Shatan: Yes. And those who read it and yet have short memories too.

Holly Gregory: That can be our fault for not writing it in a clear and concise, you know, user-friendly way for non-lawyers. But, in any event, so do we have time to talk

about open deliverables? Because I would love any sense on your part of what you think our open deliverables are?

Greg Shatan: I'm not sure now that we have any open deliverables.

Holly Gregory: Neither am I. That's why I asked the question.

Greg Shatan: So, just yes, so if we have a - anybody else? Jonathan I see your hand is up.

Jonathan Robinson: Thanks, Greg. I think right now we don't. We clearly got this issue over the contract and the term sheet. But we haven't even digested that and given feedback on that properly yet.

So it feels to me like we're almost - and this is where I think we're coming to a point where perhaps at a our client committee next week once we've gone through or very shortly after that we need to come to you and say right, what was our original statement of expectation from you, have you delivered against all of that? And if so, what else might we want you to do in the future?

So I think we're coming to that conversation but I'm not yet prepared to have it. But right now I'm not aware of significant open issues outstanding.

Holly Gregory: Okay.

Greg Shatan: Right. I think the most open deliverable is us delivering our comments on a term sheet which Josh so acidulously worked on.

Holly Gregory: And at the point at which you want to have a discussion on the term sheet that is something that we need to know to make sure that Josh is on the call for that...

Greg Shatan: Certainly.

Holly Gregory: ...outside of my (unintelligible) spot.

Greg Shatan: Yes. Jonathan is that a new hand? Oh, old hand.

Jonathan Robinson: Well no but I just - I can't confirm that we won't ambush you with a term sheet. Therefore we'll...

Greg Shatan: Yes. And I'm sorry for implying Jonathan that you would ever run a meeting at which anybody was ambushed due to lack of an agenda by the way the - or the chair par excellence.

I think that brings us to AOB and is there any OB?

I think we have no other business other than what we've assigned to the CWG side of the client committee which is to sharpen the Buenos Aires proposition.

And then I guess on the Sidley side generally be prepared to kind of be that level setting and to some extent sheriff over the course of the next two days. You know, as per the agenda we'll make clear when and how that best takes place.

So I think with that we can adjourn and, you know, take it back to email for discussion on sharpening the Buenos Aires proposition. And obviously we'll, you know, look forward to the agenda for the next couple days.

Holly Gregory: Terrific.

Jonathan Robinson: Okay thanks Greg. Thanks everyone from Sidley from (Lisa) and myself and Grace here in Brussels in fact.

Man: Thanks.

((Crosstalk))

Greg Shatan: Thank you all.

Holly Gregory: Take care.

Greg Shatan: Thank...

Holly Gregory: Bye.

Greg Shatan: This meeting is adjourned. We can stop the recording and go back to our lives.
Bye all.

END