

ICANN

**Moderator: Brenda Brewer
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11:00 am CT**

Greg Shatan: I will forward to the client committee or maybe Grace could forward to the client committee mailing list. It's quite a lengthy list but clearly counsel don't need to be present at all of those.

On the other hand since they are in Buenos Aires at the meetings they should, you know, go to all the meetings that they see fit but I think the question is where do we need counsel's kind of active and engaged participation or at least readiness to participate? Jonathan?

Jonathan Robinson: Thanks Greg. Were you referring to the work that Grace is doing that's preparing a sort of guiding schedule...

((Crosstalk))

Greg Shatan: Yes, I have seen a blogpost that went out to the CWG stewardship mailing list not too long ago that had what seemed like a laundry list of stewardship and accountability-related meetings but some of which are smaller group meetings, not meetings for the CWG but (many have), yes, so I guess I open

the floor to any thoughts on, you know, clearly we have our active meetings starting with the joint engagement session on Monday morning.

There's also the info session on Sunday afternoon which is staff-driven but Jonathan are you on the panel I think (Teresa) is chairing?

Grace Abuhamad: Greg could I come-in for a second?

Greg Shatan: Please do.

Grace Abuhamad: Thanks, so I think there's some confusion here about the different things that are going on so there's a blogpost that (Sam Dickinson) compiled that has all the list of sessions and that just as a general information to the community and I'll forward that to Sidley just so they have it.

And then there's a list on the Wiki that Brenda has put together for us that has all those sessions and actually (Sam Dickinson) used that to put into her blog and I copied that, just put that in the chat right now. I can also forward that link to Sidley.

And then there was a request from the chairs and this is why you may not have seen it yet Greg is there was a request from the chairs of both groups since they're sharing counsel for staff to put together a sort of a little schedule for the firm that they're able to go to different sessions.

And that's what I think Jonathan was referring to and I've been working on that and I was going to sort of present it today but there are a few sessions that overlap and so I have a draft that Brenda helped me put together - a draft calendar - and just clearing-up a few overlaps with the two groups with the CCWG chairs and the CWG chairs.

And then after that I think we can publish or send to Sidley sort of a schedule that has no overlap so that they know where they can go, where they should be for different times of the day and that kind of follows along with where the chairs are presenting and things like that.

So what I have on the screen now is just the draft with the overlaps in them and what I'm going to do is take the overlaps out now that I've confirmed them with the chairs and then send that to Sidley by end of day today. Does that help with some of the context there so there's three different things we're talking about?

Greg Shatan: Yes, that provides far more clarity and I think it's that document which would be the directed counsel-oriented document that would be, you know, helpful so there's I think rather than flogging completely the idea of looking at the schedule, it would make sense to wait for that to be circulated and, you know, see what questions arise if any regarding what the counsel's role would be at any of those meetings, clearly dealing with overlaps is always an issue.

You could be in nine places at once and still not be everywhere you needed to be, well maybe nine would do it but so I guess the question is absent that schedule is there anything that we should say about what we need counsel to do or should there be any kind of small meeting between the counsels and the chairs, the counsel, the client committee chairs or the like to prep for any of this?

Has that already been scheduled and I just don't know about it, not that I need to necessarily? I'll throw it open generally and specifically to Jonathan.
Jonathan I'm not hearing you.

Woman: Neither am I.

Greg Shatan: Now I see Jonathan's mic is muted on the Adobe Connect graphic. Maybe we can try to unmute Jonathan somehow. He's now resorted to texting having been muted. Jonathan I think maybe we hear you now?

Woman: We do.

Jonathan Robinson: Can you hear me now?

Greg Shatan: Yes, yes.

Jonathan Robinson: I don't know what happened there. No idea but look, let's just delegate this to Grace. We can work with her and she can be the sort of co-writer and if there's, I mean, there's all sort of schedules involved here so let's get the key schedule to the Sidley people where we sort of would like them to be and if there's other preparatory meetings we can coordinate that through Grace.

Greg Shatan: I think that makes good sense. Grace, you've been voluntold as was coined on a recent CCWG meeting, does that work for you Grace?

Grace Abuhamad: Yes, that works, thank you Greg.

Greg Shatan: Thank you so why don't we do that and not take the time to kind of discuss without the deliverables? It sounds like that will do 99% of what we could do in person and would drive any future discussion. I guess Sharon do you have any, you know, questions or thoughts that, you know, would be good to raise at this time as you're kind of prepping-yourself for the trip?

Sharon Flanagan: Yes, thanks Greg. I have a couple of questions. One is what is the just general goal of the CWG going into these meetings now that the proposal has been finalized and passed along and then second what do you envision our role, not specific to specific meetings but just generally what?

Is it just to be there as a resource to answer questions? Are there specific things that we need to prepare for? We've got about a week and so I just want to understand what the expectations are? Thanks.

Greg Shatan: Yes, I'll turn it over to Jonathan. I would say that you probably don't need to pack and asbestos raincoat but perhaps not. Jonathan?

Jonathan Robinson: Thanks Greg. I think Sharon that's a really good question. I mean, I think our goal is at its simplest is to obtain the approval from the chartering organizations. In order to do that we need to explain and educate on our proposal and that's various bits of detail including that which we have been - Lise your mic's open I think, doing that with or someone else's mic is open - including that to which we have (these) advice from you.

So you'll be there in a position to backup and assist us with any explaining we do with respect to our proposal, I think one of the critical elements of our proposal is going to be the linkage and conditionality on the CCWG's work.

So to the extent that you can help us explain how tight and effective that conditionality is, I think that will be key and then so those are our sort of objectives and the objective that I think you can help us with.

I think inevitably the PTI has received and in particular like a PTI board and the requirement for the entire nature of the board, this will attract questions

and issues and so to the extent that you're around and on-hand to assist us with answering questions on that kind of thing, that'll be great.

But I think those are the main points, educate, inform and persuade that it's a sound and robust, well-considered proposal and in particular that we can all - or not in particular - but in addition that we can rely the linkage with the account for this group. Thanks.

Greg Shatan: Thanks Jonathan. Lise?

Lise Fuhr: Thank you Greg. Yes, and I agree with Jonathan. Where I find that it is also very helpful that you are there is that you've been a part of the legal advisor for the accountability group's proposal too and that linkage is making it even more strong but you can actually explain what the solutions are in the accountability group too and say you are ensuring that the requirements are being met because you're actually advising both groups.

So I think that would be a really good feature because this part that the accountability is not finished is still raising some concern. Thank you.

Greg Shatan: Thank you Lise. Just one thing I'd like to add in terms of context is that in seeking the approval of the chartering organizations, we're dealing in more or less with a slightly different cast of characters than we've dealt with beforehand.

And most of the organizations are also the organization that have provided public comments in that they are, you know, tend to be unitary organizations. The GNSO where both Jonathan and I reside is a collection of different suborganizations each of which has consider this proposal separately and provided their comments.

But the GNSO as a whole has spent relatively little time considering its overall approval so that will be, you know, somewhat virgin territory and the GNSO counselors, Jonathan obviously and actually a huge exception.

And others, you know, have not necessarily been as plugged-in to this whole thing as those who have been members and participants from those suborganizations like the intelligence property constituency, the registry stakeholder group, you know, where Jonathan and I live in the opposite order of actually.

And so that's going to be interesting of course even in the case of the CCNSO, the CCNSO I don't believe commented as a whole just, you know, particular CCTLDs so there will be kind of new groups discussing things in a sense and even groups that, you know, submitted public comments.

You know, comments tend to be written by a small team and then approved by the larger group but in this case, you know, the larger group is really going to be have to approve the whole ball of wax so there may be more discussion, some new voices heard.

I don't expect any, shocking revelations but just anytime you introduce things to a slightly different group of people or in a different context there's bound to be, you know, a little bit of fresh heat generated.

That's my view, thanks. I'll take my hand down and see if there's anything further on this. Jonathan I'm glad to hear that the counselors have been educating - you've been educating them - or they've become educated. That's definitely a good thing. There's always something that needed planning and

you uniquely well-situated to have done so. Sharon, any other - you got a couple of questions?

Sharon Flanagan: No, I think Greg I think you answered them both. One is what you were trying to accomplish and the second was what we could do to help and I think I've got that clear now so thanks.

Greg Shatan: Great, great, glad that we were able to answer both those questions and of course always anticipate the unanticipated would be the last piece of advice and also nobody eats dinner before 9:00 apparently. Anything else on Buenos Aires for the moment, obviously we have a plan for how to deal with it after this call?

Seeing nothing, I'll move us on to beyond Buenos Aires and I think there's probably not too much as Jonathan said in pre-discussion not too much more to say except that we'll need to plan for that and probably best to plan for that as Buenos Aires closes and in the immediate time after that.

You know, we have all good hopes that the proposal will need little or no revisions after, you know, or after or to get the approval of the chartering organizations but we won't know that yet for some time.

And then we'll have to see what if anything we need to do as this moves-up to the ICG and then as we need to harmonize or help the ICG harmonize our proposal with those of the other two communities and so forth.

You know, hopefully there'll be relatively few legal questions but one can't hope for a complete lack of them since we are essentially setting-up a set of legal structures and relationships. Anything else on beyond Buenos Aires other than those musings?

If not, I will move us on to the next item, just see I don't believe there are any open items and deliverables on the CWG side but I just wanted to put this in as a checkpoint. I see Jonathan's hand is up.

Jonathan Robinson: Yes, and it's possibly as much for Item 3 and I don't want to drag us back into it but for one very brief remark. I do think as I said on a number of occasions we will need to look at what the scope of work we agreed with Sidley and how that scope changes in if you like the two additional phases that we now face.

One is the post-proposal phase, post-proposal approval if you like which is immediately post-Buenos Aires and the second is, you know, looking ahead to longer-term to implementation and with a view to both of those I suggest we get together shortly, you know, and review the relevant existing documents and whatever else after Buenos Aires and so that's for me after Buenos Aires is an agenda item for after Buenos Aires if you like.

Greg Shatan: Yes, I think that's a good point...

((Crosstalk))

Jonathan Robinson: Thanks.

Greg Shatan: Make sure we have the right remit and then right refine the team if need be as we move on to the next phase. I see Sharon's answered the question of Item 4 which confirms my recollection that there are no open items or deliverables which is a good thing.

That moves us on smartly to all other business, the first item being the conditionality point Jonathan? Any further thoughts on this?

Jonathan Robinson: No, thanks. We've already made that Greg so thank you for that and then the second is the IPR one which I suspect you're better in a better position - well you are in a better position - to explain but I just wanted to flag it with Sharon that this had come-up and so she knows it's floating around.

I don't think we should even attempt to resolve it here but I think she should be aware of it and it should be part of her understanding is that the issues as we go into Buenos Aires some...

((Crosstalk))

Greg Shatan: Right, you know, let me just briefly recap what's going on which is that in reviewing the final proposal as we were kind of refining it and making it, you know, final from to be sent on the chartering organizations.

I did an overall review and cleanup and made some changes primarily to the term sheet in Annex F of the proposal and one of the things that I noted was that it was silent on how it dealt with the IANA trademark or trademarks, there are a few registrations and the iana.org domain name.

And so I rather innocently added a section that said that ICANN which currently owns and controls those assets would license those assets on a royalty-free worldwide exclusive basis to PTI thinking that since everything ICANN is doing as the IANA would now be done in PTI, then exclusive license would be the appropriate way to cast that.

That much a discussion ensued over the last couple of days. Given the highly-conditional nature of the term sheet and the disclaimers that have been put all over the front of it and further by bracketing and making more vague the language that I had put-in regarding that license kind of left it to some extent as an open item to be considered.

But I think it is something where, you know, in spite of the fact that, you know, this is very much in my wheelhouse in my private practice, it's something where I think it would be good to have someone who's not perceived as a combatant so to speak join-in on this.

So I can most of this is in only two or three threads which I can attempt to forward. Actually probably the best thing to do is to just tag the appropriate places in the archives and have those looked-at or at least or ready to be looked-at when we figure-out how to join that issue appropriately.

So that's kind of where it's at as I say none of this has really leaked over to the client committee list and it really has been maybe a 48-hour whirlwind of discussion that took place on this point and about which it turns-out there is quite a lot of opinion.

And in particular it's an issue that raises issues between us and the or among us and the numbers and protocol parameters communities in particular the numbers community propose that the trademark and domain name not stay with ICANN at all but rather be transferred to an entity and maybe not even an entity per say known at the IETF trust.

But I think that's all I need to say now to kind of set the stage for and as I said I can go back to the e-mail archives and link to the appropriate threads or the

like so that this can be looked-at when the time comes but I'll stop talking and see Jonathan if you have anything, you know, to add or Sharon, any questions.

Jonathan Robinson: Yes, thanks Greg. My difficulty is I'm not sure I certainly wanted (team) to be aware of it. I think it would be unfair for them to travel to Buenos Aires and not being aware of it. How much we want to drag them into it as of this stage is really an interesting question. I don't know if the answer I don't know what level of involvement we want them to have.

But there's this issue floating around clearly of the iana.org domain name and the IANA trademark and the question is how does that get shared in the future including with PTI amongst the three entities? How does that get appropriately managed?

I'm just and we have to negotiate that together with the other groups and ICANN I guess. There's a four-way discussion to be had.

((Crosstalk))

Greg Shatan: Right, I think the point is and I think there's...

((Crosstalk))

Greg Shatan: Sorry, go ahead Jonathan.

Jonathan Robinson: I was going to say maybe a relatively simple solution is staring us in the face and is going to come out quite easily, I don't know.

Greg Shatan: It's entirely possible and I think that the end result and probably one of the better voices of reason on the discussion came from (Yari Arco) which said

that we all need to take a step back and discuss this, have a discussion among, you know, appropriate community members with the, you know, right skillsets to discuss this and not, you know, turn into kind of a football, a political football. He didn't use that analogy but I'm using that so I think we do need to take a step back.

I think that what I would say with regard to Sidley's involvement is to use to borrow a political term plausible deniability. Sharon and (Holly) are not trademark lawyers. Obviously they've, you know, dealt with trademark issues but they would not, you know, do it on their own.

And so I would say that this is not a governance issue per se. It is an implementation issue. It's an important issue. I don't necessarily need to cast it as implementation but, you know, (Holly) and Sharon are not, you know, exactly the right people we'd want to have from Sidley or whomever to deal with this.

So I think I would use that to some extent and I think I would also say that we need to take a step back from it and start go back to kind of facts and goals before we discuss, you know, nuances of who did what and when with regard to the IANA trademark itself, etcetera, etcetera, and that it doesn't need to start as a legal question at this point.

It may end-up, you know, needing some help from perhaps (Josh), perhaps a trademark licensing-type person but that I think is a step but it's not the next step. That's how I would look at it so I think that we will all I think there's good will on the part of - we ended-up with good will - on the part of all the communities who were participating in the discussion.

So I think there's, you know, appropriate ground to take there that this is not the team necessarily to take it up right now and I think we need to kind of reset the discussion, you know, based on the good will with which we ended the discussion on on the list and move forward, you know, in a solution-finding mode. That's all I would say, Sharon?

Sharon Flanagan: Thanks Greg and thanks for that background and we will when you send it to us we will take a look at the list-serve on the topic and I'm hopeful and I don't think we should wade into it now because I know we don't have a lot of time and it's probably not the right forum anyway but I'm hopeful that somewhere in that e-mail chain there's an explanation of why it wouldn't just be treated like any asset that gets transferred into PTI.

So I'll be interested to see that, I mean, fortunately Greg as you know we can do lots with IP and licenses, exclusive, non-exclusive so I'm confident there's going to be some workaround but I'll be interested to understand that issue and I hope to see some of that in the e-mails.

Greg Shatan: Yes, and I think there is some of that although it may be more discussion of why different groups might think that different homes plural or in the alternative might be the right place for that but yes, I think there'll be some light shed on that and they can all be discussed later.

So I think with that, that's probably more than enough said about the IP rights issue, not even touching on other IP rights for instance that the term sheet has copyrights and stuff being assigned back to ICANN on a work for hire and it being a work-for-hire agreement which again the term sheet is a starting point, not in any way a final document so it's just another item to discuss.

So I think that brings us to the end of the enumerated all other business. Is there any other fresh other business? Seeing and hearing none, I will announce exactly the time expected that this meeting is adjourned and that we look forward to all seeing each other in Buenos Aires and I thank you all for everything up to this point and the pleasure of working with each of you and all behind each of us so thank you and we are adjourned.

Jonathan Robinson: Thanks Greg, thank you very much.

Lise Fuhr: Thank you Greg.

Sharon Flanagan: Thank you.

Lise Fuhr: And have a nice day.

Greg Shatan: Thanks and goodbye and have a wonderful weekend and safe travels.

Lise Fuhr: Thank you, you too.

Greg Shatan: Bye, all.

END