

ICANN

**Moderator: Brenda Brewer
June 2, 2015
12:00 pm CT**

Coordinator: The recording has started.

Grace Abuhamad: Great thank you very much. Everyone welcome, it's the 56th meeting of the CWG, its June 2 and it is currently 1702 UTC. So I will now turn it over to Jonathan who is going to be leading today's call. Thank you.

Jonathan Robinson: Thanks very much Grace and welcome everyone including Lise who I know is on route and on the audio and will join us shortly. For the record we will record you as present at the meeting if you are in the Adobe Connect Room. Can we hear from anyone other than Lise who is on audio only, who is not in the Adobe Connection?

Olivier Crepin-Leblond: Olivier, Jonathan, Olivier so I'm also on audio only at the moment thank you.

Jonathan Robinson: Thanks Olivier, we've got you recorded then as present. All right good we've got quite a document to have a look at this evening so thanks very much to all of you, participants, members and staff who got us to this point. Its first draft of the final proposal and there's an opportunity now to give it one final

push between now and getting it out next week to get all of the loose ends wrapped up through first reading today and hopefully with a fair wind a final reading on Thursday, we'll see how we manage to do that.

It seems obviously logical that we concentrate the major effort of this call on undertaking that first reading and I'm proposing to do a page turn focusing on any areas of potential discussion or in need of comment. So I'd encourage you all to not hold back on your comments but certainly provide comments only where you feel it's necessary in order that we can make the progress with getting through that document. I'll work with you on items one through four, or one through five I guess of the agenda really because that includes the reading the proposal and then Lise will work through items six to eight and then I'll deal with the remainder.

Earlier we had very intensive set of meetings over Thursday and Friday last week and we had good and active participation. As you know we covered a range of different things from getting aligned on the sort of history of objectives for of the group and of the high intensity meeting through to a couple of solid sessions really looking through key items of the public comment, tackling some substantial issues like scope of the PTI Board, IANA functions review, separation review, these sort of weighty items that needed some substantial work in full session of the group.

It was very pleasing to see the progress we made and I hope that is all captured in the draw final proposal that we had a chance to look at for approximately 24 hours. So that was very encouraging and a great push to get us to this stage. I think we - are there any comments on those first couple of items before we have a brief update on where we are with the public comments? I'm trying to move through - anyone would like to make any

comments or questions respect to the agenda before we get on to the main substantial items? Okay let me keep us walking through then.

Under item three we've got an opportunity to just get an update on the public comments. I think its worth, Marika I'm not sure if you'd be prepared to do this or if anyone would start off just a very brief recap on the work to date and what we've done, where we are within the integration of those public comments into the proposal. I think it'd be useful to hear briefly on that process and an update on where we are in working our way through that. Grace go ahead.

Grace Abuhamad: Thanks Jonathan. So we ended up with 55 comments in total and the two that came in late, one was a comment received in French which we read through and there were no action items identified for the group. And then there was a comment received in English from a Chinese stakeholder which we also read through and had identified no action items for the group. So we've incorporated those into the public comment review tool that we will work on publishing and finalizing. But at this stage no new action items for the group.

So just to briefly go over sort of the process and then I'll turn it over to Marika to sort of give you an update of the status. But essentially what we did is we read through all the comments and we categorized them by section of the proposal so that they're sort of organized in a systematic way.

And then we provided a response - we provided a draft response for the CWG and identified areas where there would be some action items required on behalf you know action items for either design teams to address or the whole CWG. And we went through most of those or a large part of those over the high intensity meetings last week. And then a lot of the design teams have

been working on addressing those - some of the action items or some of the open questions on their specific mailing list or through some phone calls.

And we've been, as we've received comments incorporating those into the final review tool which is a long document.

It's currently about 100 - 200 pages long. The idea there is that we would post this document as the part of the report, the staff report for public comments and that way anyone who submitted public comment on the CWG proposal would be able to trace back how the CWG addressed their comment or received their comment, things like that. So that's the sort of mechanics in process and I'll turn it over to Marika if she wants to provide any update on the status.

Jonathan Robinson: Grace, before we go to Marika just one brief comment there. I think just from my clarifying on those two late, late submissions to the extent that there were no action items it may be that - maybe more accurate and you can correct this if I am right, you can (unintelligible) if I am right. To say that there were no additional actions arising from those other than had been covered by previous commenters.

Grace Abuhamad: That's correct.

Jonathan Robinson: Okay thanks so that's helpful thanks Grace. Okay, Marika go ahead.

Marika Konings: Yes so this is Marika. So as Grace noted we've now started updating the public comment review tool and based on first of all I think input as well that Chuck has provided, so Chuck noted a number of areas where he suggested a revised wording or additional text to be added in response to the initial draft that (unintelligible) provided. In addition to that we started inserting as well

some of the responses that we're (unintelligible) and as a result of discussions last week Thursday and Friday.

At the same time we're aware as well that a number of design teams are still actively working on their responses or the items that had been designed and detonated to their respective groups to develop responses for.

And as soon as those have been finalized and strictly to the CWG group we'll of course incorporate those as well. I think our intention is to have a hopefully final version for CWG review by Thursday's meeting but as noted to a certain extent also dependent on the progress that some of the design teams are making in their responses.

But I think in any case we'll plan to circulate what we have at that stage so that we'll already give an opportunity as well for group to review whether there any further comments or edits they would like to make before that document gets posted. As the summary and review of comments by the CWG.

Jonathan Robinson: Thanks Marika and of course those are integrated into the final proposal. So really the design teams have probably two responsibilities ideally tracking any of the relationship between their work and together with you the updates to the comments review tool. And then those should be integrated into the final proposal so it's a matter of checking that they are satisfactory integrated into final proposal.

So I think that covers items three A to C really. Does anyone got any questions or comments in relation to the work that's being undertaken and ongoing in relation to absorbing - reviewing and absorbing the public comments on the proposal so on the draft proposal.

Clearly very keen to move to actually reviewing the proposal itself. There is a point which feeds into our work as well and that is that there are a couple of questions outstanding to ICANN finance as to the financial implications of the proposal as its drafted and as its developing. And also in terms of question outstanding to ICANN legal.

Lise and I had a follow-up call with finance with (Delvia) from ICANN finance and he asked a few clarifying questions and in fact is I understand very close to if he hasn't already sent an update for that. So I think we should expect to receive that very, very shortly. I was just checking my email now to see if anything had come in.

I was expecting something imminently from him. It hasn't come in ahead of this call but I think it's reasonable to say that we expect to get something within the next 24 hours. So that's the input from ICANN finance. We have yet to hear anything from ICANN legal so that's outstanding and did escalate that with (Teresa) in our meetings last week so hopefully we will hear something shortly. But I can't report anything back at this stage. Any questions or comments in relation to that?

The call with (Delvia) was designed to really clarify his understanding of exactly what we were looking for and what our expectations were. For example at a transfer into the new entity and also I think he's a diligent and thorough finance person and so wanted to get behind what was going on for example what was the driver or motivation for setting up PTI in order to better understand what implications that might have forecasting. So I like I said I expect something to come very shortly and that should be able to be fed into the implications and reviewed by the group.

All right seeing no other hands up that brings us to the meeting, the (unintelligible) as it were of the call and the opportunity to go through on item five the first reading of the final proposal. It's currently set up for me to do a page turn. In some ways it would be great if you all had the opportunity to page turn and we could do that but I'm concerned that that might go slightly haywire then because we aren't literally on the same page. So Grace has just provided you a link, an online link, to where the draft final proposal exists for you to have an independent copy. But in order to manage the call as it were it feels appropriate to do a page turn.

Now probably the substantial areas are clearly where there are updates to section three, that's the substance of the proposal and the new content in section four and five. So I'll try and move us forward but if you do feel like you would like to cover any particular area or discuss it please just raise your hand and make reference to, I think the paragraphs are all numbered which is a great job makes it very easy to refer to.

And I know we've been doing that on the email so far already. So without further ado let me start working through, I mean clearly the glossary that's going to be reordered and we understand that to be the case. I mean this format should be familiar to you from previously; it's really highlighting where there are changes.

So I don't think I'm going to attempt to read out each item but I will hold briefly on the comment and please do you know for example this is the first substantial change about (unintelligible) policy, there's an addition relating to registries and registrars comment, 66, and it's integrated there. So if you want to stop me and clarify an issue or make sure that it's satisfactory incorporated because I know not all of you have had all that much time to review the final

proposal. But in the interest of working our way through it I will keep the page turn moving.

Moving to the oversight and accountability section, section two. Reference to public consultation and broad support for the key structures involved. Typing up the language to refer to the affiliate structure. And then moving onto the PTI (Board), (unintelligible) recent discussion on lists and other issues. So here I think I know when we discussed this on lists we were referring to paragraph 106, it comes up as 102, now why is that? Can someone just give me a quick hand there (unintelligible) 106 in Milton's email referring to this. Then it comes after more detail, 102 okay, policies (unintelligible) 106.

Yes so here we have the provision of construct to the PTI Board would be a range and I think we can go into have to take out - suggest we take out provisional. Provisional is a language that was used on - in high intensity sessions as we developed it.

But I would think we would want to firm that up to say the construct of the PTI Board will be a range of three to five people with - and so you may want to do some work and tighten that up and you have the exchange of emails on the prospective adding the two additional has changed to two additional independent directors in order to balance the Board from the - we know in order to keep it appropriately and tightly bound we need to have a majority of - Milton it's a good question on the five. We'll come back to that in a moment and see what makes sense in that respect.

Alan, go ahead.

Alan Greenberg: Are we, unless I'm misreading this, are we planning to not specify how we think the additional two directors would be named?

Jonathan Robinson: My understanding of what we got to on the email exchange was my proposal was accepted by a couple of people, that doesn't mean it's acceptable to the group as a whole. But I suggested that we certainly research the most independent directors so we make it clear that these are not in the language that we have been using so far inside or insiders - a note that (Sydney) were going to come back to us with perhaps a suggested less apparently conjugative term. But two additional directors would be independent.

Alan Greenberg: But we are not specifying it is the ICANN NomCom that does it or any other specific mechanism at this point?

Jonathan Robinson: No we - well yes that's correct in that we haven't yet specified it. I - that's an interesting question how we handle the appointment of those. We could look at some form of a (unintelligible) mechanism. Yes so to clarify, yes just to be 100% clear the recent email exchange was on the CWG list and the question was whether or not these two additional directors in addition to the three inside appointments would be - would have a form of independence. And I reflected that that's appeared to me to be good governance to have a degree of independence there but not so much that it tilted the balance from the inside Board which is the pre-requisite to have the, forgot the terminology now, the closely coupled, (decoupled) affiliate structure.

Alan would you like to speak again?

Alan Greenberg: Yes one follow-up. At one point there was a discussion of having an ICANN Board member as part of the PDI Board which is not an uncommon situation in industry. And this implies that we are definitively saying not that because we're not listing them as one of the insiders and presumably they can't be (unintelligible). Just confirming that was a conscience decision.

Jonathan Robinson: That's a good question because that was followed-up with an additional point you remember by Chuck asking as to whether or not the ICANN Board members would be - would qualify or be quantified actually as insiders or outsiders for the purposes of this particular test. So Holly's going to have that so let me hand it over to Holly.

Holly Gregory: Hi everybody so you know there's not a bright line legal test here but we did a lot of looking for parallel construct in the public company world where you often have subsidiaries who for one reason or another need to have an independent director on the Board. And in that construct - in that world, an independent director on the parent Board, so a director on the ICANN Board would be considered independent on the subsidiary Board.

The theory is as follows; ICANN has no control over its directors. In fact the control runs the opposite way and therefore you know ICANN management when you talk about these independent directors on PTI the goal is to be independent of ICANN management. And in that notion the ICANN Board directors would satisfy independence. If that's how we were thinking about it.

Jonathan Robinson: Thanks Holly. Milton do you have a follow-up point?

Milton Mueller: Yes I just wanted to say that the people that would like independent directors you know accepting Holly's point about it being legally defined as potentially independent Board member I think that the people that were like independent Board members view that is what they're going for. I think I like the you know the current make up of ICANN appointees.

The staff executive responsible for PTI, the CTO and the actual managing director and then you know those are all - essentially those people are

appointed by the Board. Certainly the Board would be appointing those people so the level of independence that we're looking for would probably not be satisfied by a Board member. It would be somebody who was selected either by the community or by you know by related communities. But you know from the other operational communities.

So I think I prefer that we go with a more independent, put it that way, a more independent Board member.

Jonathan Robinson: So Milton just out of interest there I mean that - when we specified two unspecified additional directors and to be clear I am quite happy to have them specified as two additional independent directors and if necessary to specific further what we mean by independence my - a couple - an opinion is I wouldn't go too far down the route just specifying the route of appointment. I think that as long as you qualify them in a certain way that should be okay.

In my mind I had thought that this created, and I think I expressed this in the high intensity, this created an opening for potential appointments from the other communities, the numbers and protocols communities as one route. But I don't know whether we need to specify that so that's something we might want to think about how tightly we specify all of this including...

Milton Mueller: I agree, we can't get too bogged down in the procedural issues of how they are appointed at this stage.

Jonathan Robinson: Before going to Alan just to answer your previous question, the chat which was on the range, part of the reason and we discussed this at (unintelligible) in the high intensity meeting, part of the reasons for having a range and you may - you or others may push against this. But part of the reason is not to be caught in some way by a technicality where your Board

becomes not - where it's mandated that it has to have a certain number in it. So typically it's more typical to specify a range so that it can function without all of the appointees but you can operate within a range. But you know others may feel it's important to be more tight on that specification. Alan?

Alan Greenberg: Thank you, I would not have a particular problem if the independent directors, some of them or one of them might come from the other communities. I think at large would have a problem if it was two independent directors ended up being a - someone selected by the regis - GTLD registries and CCTLD registries because that would start putting the registries in too many positions relating to IANA in a position of superiority over the other stakeholders. I'm not sure if we need to explicitly say that but we might, thank you.

Jonathan Robinson: Let me just if you can confirm that's a (unintelligible) moving it? If it is then I'll go to Greg otherwise we'll (unintelligible) and I'll come to you. Greg go ahead.

Greg Shatan: Thank you, Greg Shatan for the record. One other option which I assume but would ask to confirm is available is to also add non-voting liaisons to the Board who being liaisons and not voting would not affect or should not affect the math so that we could have for instance three inside appointments. Two independent directors appointment from within the ICANN community through some fashion and then liaisons from the other operational communities for instance.

So that would technically be seven chairs around the table but two being filled by liaisons. So it's just perhaps some other way - some other thing to consider. We may not need to get all the way down the road to such things at this time but if we want to leave room for the other operational communities but not necessarily our kind of remaining independent Board seats to the other

communities in lieu of any other folks from within the ICANN community or at least the (names) community to be more specific. That might be one way to do it assuming that the addition of two liaisons doesn't flip this into an independent Board. Thanks.

Jonathan Robinson: So it would be good to get any reactions to that. I think in some sense it sounds it has a degree of elegance about it. It could - we may want to, the one way of handling this would be to specify that it could function with up to three liaisons. So you created the opening but not the necessary condition for that to exist. But I do know (Stefan) and Martin both have expressed concerns about that. So yes that seems to be various concerns. Milton go ahead.

Milton Mueller: Well I think we're getting into this trap again where everything thinks that they need to be represented and we start making things way too large. The point again let's put this in the big picture. We're creating a separate entity and it's an affiliate which means it's controlled but the point is to have separation and I think okay I think I've been sold on the argument that for various reasons it needs to be what we were calling an insider Board but there's also people who don't see the point of the separation unless there's some independent non-ICANN appointed directors on the Board and I think those people made some very good arguments in the public comments and there's a lot of concern about what is the point of the separation. So I think that's what we need to be focusing on here.

Not you know specifically what stakeholder group it comes from, or who it's appointed from but at this point we need to accept the idea that the minority of the Board needs to be independent and that's part of the rationale of the separations to have some level of independent oversight over on the Board in addition to insider control by ICANN.

Jonathan Robinson: Thanks Milton, I see what appears to be, yes that's a good point that Alan makes that there's no reason why if we left it unspecified there's no reason why should it become a necessity or a desirable condition for the Board in future. I think Alan Greenberg makes a very good point that there's no reason why the Board couldn't invite observers to its Board meeting and maybe that's exactly - it strikes me that we have as Milton said elegant solutions that walks that tightrope of compromise between the various legal and member and participant driven requirements.

So that seems to be the perhaps elegant outcome if we don't expressly prohibit any observers or the participants that the Board sees fit but make it explicit that see a requirement for two independent directors and we've given our suggestions as to the executive roles.

Alan, go ahead.

Alan Greenberg: Yes thank you, I feel uncomfortable being completely silent on how the independent directors are named and given that in the chat of pass of NomCom chair has said it could be viable to have the NomCom, the ICANN NomCom identify these directors. I would suggest that we put in, not necessarily a recommendation, but a suggestion that subject to further discussion the CWG recommends that the ICANN NomCom be charged with identifying these directors.

Jonathan Robinson: Alan let me help with a slightly alternative wording and see if this works. I think the CWG recommends or requires even that the independent directors be appointed through an appropriate and structured process such as that undertaken by the NomCom. So again, NomCom may very well be the vehicle but we don't necessarily tie the hands. Do others feel strongly that we should go down the route of actually recommending the NomCom? Or should

we be specific that we expect it to be an appropriately rigorous process but not necessarily, and we can give the NomCom as an example.

Alan Greenberg: Jonathan if I may answer I'm certainly happy with that. The reference the NomCom implies that it's a community based methodology to select the people without being you know too constructive, too restrictive as to how that is done and I'm quite happy with that. I think we'd foolish to (unintelligible) mechanism when we had one but so be it.

Jonathan Robinson: Avri, comment on this point?

Avri Doria: Yes I think I build on, this is Avri speaking, I think I build on the last point that Alan made. The only community while mechanism we have for doing this is the NomCom. To put a requirement there and then leave it unspecified and unclear as to how we are going to do that I think is a mistake and a final. I think there is a mechanism that can do it.

The other operational communities actually have (unintelligible) on this. It's a well-known procedure I think we should just bite the bullet as it were and say it's the NomCom. Otherwise you know we've got another issue that's open that we're requiring the creation of something new again, thanks.

Jonathan Robinson: Okay so still wait and see whether others - how other feel on the chat or if anyone else raises their hand to support or argue against this. It looks like we've got probably on balance an acceptance of the NomCom. So I think we could specify both in that it should be an appropriately rigorous selection method for which we believe the NomCom would be more than well qualified. Something along those lines so we point to the NomCom as the qualified route. Is that satisfactory or would we like to insist on the NomCom?

Martin just to help you there I mean it's common to - certainly the GNSO is being asked for what qualities it wants. I'd be very surprised if other communities to which the NomCom appoints ask for their input as to the qualities and attributes required. So that is something we can work on. And Cheryl as a past NomCom chair confirms that - former NomCom chair.

Okay so it looks like a little bit of work, a little bit more work. It feels like we are relatively well settled on that. So it's a - it's the three executive, two additional independent, appropriately rigorous mechanism for which the NomCom would be (unintelligible). And we need to do some work in the interim on beefing up elements of that specification. But just to make sure we put some qualities and qualifications in there. Alan?

Alan Greenberg: Yes just one question for our legal advisors. I was under the impression that the PTI managing director, the IANA managing director would not have been classed as an insider Board. That's a staff member of the organization that the Board is overseeing. Just want to make sure I'm wrong on that and that person does count as one of the insiders.

Jonathan Robinson: Holly, go ahead.

Holly Gregory: Yes I would consider them an insider. They're under the control of either ICAAN the corporation or control of PTI the corporation. And that's sort of the universe that I consider the true internal at the moment as long as we are on the hybrid kind of mechanism.

Alan Greenberg: Okay thank you.

Jonathan Robinson: Thanks Holly. All right in which paragraph does the point on the SLEs the (unintelligible) come up? If you remain concerned about that post the

response is in the chat and so on we can come to that. Yes it's not - the argument here is not that it's responsible as the SLEs as such but responsible for performance case, the contract which will make reference to and encapsulate the SLEs.

Okay you make a point Kurt, let's let Josh respond if you'd like to Josh, go ahead.

Josh Hofheimer: Actually I wasn't going to respond to that point. I wanted to bring something up before you moved on.

Jonathan Robinson: Okay let me attempt to respond to Kurt. The - as I see it there isn't a conflict. ICANN is responsible of the performance of PTI through its controller PTI and therefore they are not in conflict, they should be aligned. And to the extent that ICANN can't get its subsidiary to perform adequately according to contract and in the view of those providing the oversight the escalation mechanisms kick in.

So you want them, if they are not aligned, then there's the prospect of a misalignment and pulling apart. So I think the objective on the steady state is that they are totally aligned and that the PTI performs according to ICANN's requirements and therefore we can hold ICANN to account for the performance of the jury.

Josh go ahead and make your point and then we'll see where we go from here.

Josh Hofheimer: If you're ready to move on - before you move onto statement of work I had one comment in the section above under 2AIA post transition IANA, paragraph 98.

Jonathan Robinson: Go ahead.

Josh Hofheimer: Just, since we don't have confirmation from ICANN financial or legal that they have no objection to the legal entity of being an NPC, I wonder if we wanted to - if it was appropriate to delete that comment at this time, just moved off of it. There it is.

Jonathan Robinson: Locating that point in the document. Which comment is it Josh, can you be specific?

Josh Hofheimer: For me it's paragraph 98 in the red line, or it's 2AIA, post transition IANA. The sentence begins with in order to legally (unintelligible). Yes there it is. Just wondered if it was premature to make this definitive.

Jonathan Robinson: Well we have no comment to the contrary Josh so unless we have, we have to come back and I think it's, the train is rapidly leaving the station. So ICANN legal has been on notice for some time. What can we - what can I say? Alan?

Alan Greenberg: Yes I hadn't noticed this before but that paragraph that Josh is talking about says we're going to transfer the IANA naming functions department. That implies we're not transferring the people doing the protocols and IP and numbers. And yet I thought we were transferring the entire IANA department.

Jonathan Robinson: According to this paragraph, 98, that we're just looking at now again?

Alan Greenberg: Yes the third, fourth line of it.

Jonathan Robinson: Yes got you, I think that's the point that (Andrew) made on the email. I believe staff are going to work at ironing that issue out.

Alan Greenberg: Okay sorry, I've been focusing on other things and I haven't looked at emails much, thank you.

Jonathan Robinson: Thanks Alan, Greg?

Greg Shatan: Thanks it's Greg, I'm just following up on that point. I think - I'm glad to hear that we're working that out. I think that you know the number of places where that kind of reference occurs with regard to IANA assets and functions and staff I think are a result of our - the awkwardness of trying to tiptoe around the requirement that we limit our proposal to naming functions and not presume to make plans for the others two.

But considering that we're talking about the team that will be used by the other two and not changing the what the output would be or anything that's you know really going to affect them, I think this was basically a (kludge) that just needs to be removed. You know clearly we're not going to, if there's not going to be a naming PTI and then numbers and protocol people left kind of back at the mothership. So I'm happy to see that (Andrew) caught that and that doesn't seem to be any serious countervailing thought that somehow we should you know split the baby which usually just results in a dead baby. Thank you.

Jonathan Robinson: A slightly uncomfortable analogy but I take the point Greg. It's absolutely right and I was tempted to intervene on this, it's exactly that issue we've been sensitive to not prescribing but it's starting to look like a solution that doesn't work unless we do this and it has been very helpful to have the comments and ultimately points from the other groups and yes so it's earnestly strong opposition set on this and I think that's the way we'll end up going.

All right let me keep us moving then through the document. Statement of work, Martin Boyle? Martin go ahead.

Martin Boyle: Sorry Jonathan I've moved on beyond the statement of work, I'll put my hand down and raise it when we get to 3A1D.

Jonathan Robinson: No problem, keep it there for the moment unless - we may get there anyway in the absence of any other intervention. Olivier go ahead, we might have you on mute. Just as a point I know it's probably difficult for you Olivier without being on the screen but in general if people could make reference to that paragraph number to the left if you have it, it's on the screen at the moment, 105, 106, etcetera.

Olivier Crepin-Leblond: Thank you Jonathan, Olivier speaking, I'm sorry it was for the previous, my adobe is very slow and I had put my hand up for the previous section but everything that needed to be said was said so I'll try and put my hand down now, it's stuck at the moment.

Jonathan Robinson: Thanks Olivier your hand is now down. Martin go ahead.

Martin Boyle: Thanks Jonathan this is Martin Boyle here. Yes I just would like to on paragraph 106 note that I put a proposal for wording as on the CPG stewardship list during the course of the European morning. What this was following up on my email Monday and trying to make sure that what we ended up with for the IANA function review recognized the very clear focus of the function review and in particular that we didn't end up by giving confusing messages to the outside world by the very large participation from the GNSO which generally is a policy group. So the wording I sent through to the list is one or two comments, I think all what I've seen so far have accepted

that. And so I would hope that perhaps we could consider the addition of that in due course, thank you.

Jonathan Robinson: Thanks Martin, for the record it's been posted in the chat and as notes to the meeting so I think we'll proceed with something unless objections to that are received. Milton go ahead.

Milton Mueller: I really support as you know from the list I support the idea of removing policy issues from the review but it looks to me from reading 106 that the review process is also supposed to (unintelligible) statement of work. And if our statement is the review mandate is strictly limited to evaluation against the existing statement of work I'm wondering how do you amend the statement of work? Are we assuming that this given its eternal and immortal? Or that it will need amendment? And if so how do we make sure that it's amended in a way that doesn't try to tilt the policy field in some direction or another.

Jonathan Robinson: Good point, I think that's something the lawyers could iron out and maybe Greg can help us with that.

Greg Shatan: Thanks, Greg Shatan again, when we were first discussing the review you know quite a number of weeks ago we actually had more reference to review the statement of work itself rather than review of the operations against the statement of work. The balance has shifted, I think that's the correct thing to have happened but we also lost the idea that we're actually going to review the statement of work as well.

And I think this also goes to the related point that's been discussed quite a bit about reviewing the SLEs. There's some who believe that we should stick with the current SLEs whatever they may be and change them post transition even if they bear no relationship to the current performance.

But regardless those will need review from time to time. I think both the SOW generally and the SLEs specifically should be part of this review process. But I think it should also you know have the same limitation against policy and you know perhaps when this is you know flushed out, limited to determining you know revising the SOW to reflect you know current practice or innovations or needs of the - of PTI or its customers.

Something along those lines so that it's not seen as a - not that I in fact actually think it ever would be but to make it clear to the observer that this is not a policy playground where the SOW could be used to you know bring in whoever - whatever groups you know favorite policy point. Thanks.

Jonathan Robinson: Thanks Greg, I'm sure this is familiar - we could make it something, make it simply subject to ensuring that it was subject to paragraph 106 reworded as per Martin's comments. We could just make provisions that such reviews were not to contravene that principle. Alan?

Alan Greenberg: Thank you very much, as something that Greg said as he was talking, pointing out that things shifted and we may have missed something or gotten it slightly wrong in this version. I think as we all do a final read through of this I think we have to keep in mind that we will make mistakes and want to make sure that we don't - in the fear of someone doing something horrible later that we don't lock things in so that they can't be changed to fix the errors that we will inevitably be making as we go - as we do this in the timeframe that we're doing it. Thank you.

Jonathan Robinson: Okay thanks, I think - thanks Alan, it's a good point. There's a line to be drawn between locking things down but not locking them so tight that we paint ourselves into a corner. Good, Martin go ahead.

Martin Boyle: Thanks Jonathan, I think there's actually two separate points about the statement of work. Firstly because here we're doing a review of the function and the performance as a function and in that particular case it's quite clear to me that you are reviewing performance against the existing statement of work. I think the second point though is that during the course of a review you're looking to see whether the statements of work remains valid.

And that I think when we went through the notice of inquiry and further notice of inquiry was quite clearly the basis of the consultation to look at what the statement of work needed to include. And I think my third point would be and in so doing you continue to maintain the distance with the policy making function and therefore what you're looking at is a statement of work that is based on the performance of the technical function which could include then upgrading the service level expectations and as Olivier said in the chat the - that it also appears in the (CSE) chart up. Thank you.

Jonathan Robinson: Okay so hopefully we've covered that well and given the draft sufficient information to develop that section satisfactorily and in the interest of getting us through the document I'll move us on then. I know there's references in the chat.

This is quite a substantial change now because we worked on the - in paragraph 110 the special IANA functions review but again unless you have concerns about the text that's now modified to reflect our recent work don't need to comment. Martin go ahead.

Martin Boyle: Thank you Jonathan, Martin Boyle here. Just to add the same comments that I did for paragraph 106 that I proposed a minor amendment and the minor addition to the end of paragraph 111 making clear the special IANA function

review is also independent of the policy development adoption and direct (CCTLD) ICANN contracts. Thanks.

Jonathan Robinson: Thanks Martin you remind me of a general point I made in my review of the document and that is to really ensure that there's given our intention that there is complete consistency between the special review and the regular review because they are intended in my understanding to be essentially the same thing. Grace?

Grace Abuhamad: Thanks Jonathan. So I just was wondering what we did is we worked - we just copied this in per the version that (Stephanie) had circulated. Do - is anyone from DTN on the call who can confirm whether this is the final version and we should be making edits to this or if you're working on another version that would incorporate Martin's comments for example and that we would then copy back in. I just want to know where we should be editing.

Avri Doria: This is Avri, I have no idea anymore. I know what we've been doing in terms of the separation across community working group which is the one that's in the drive document. I thought that we hadn't actually been working on an updated version of (F) at the moment other than the change that had gotten made last time for the double CCNSO - doubling up the CCNSO participation the IFR team.

I cannot find at the moment another document that we've been working on, on that. We've worked in the answers and we've worked on what was conversation we did at the last meeting. I do not believe we have another appendix (F) for you at this time. And I don't think we're working on one.

Grace Abuhamad: Okay thank you Avri and I think Greg has the same - confirms it in the chat.

Avri Doria: Right.

Grace Abuhamad: So then as far as staff is concerned we'll incorporate Martin's edit into paragraph 111 and we'll keep this version of the - we'll be working form this version of the special IANA function review.

Avri Doria: Yes, if I can continue, I can get - there was one error I think error in the appendix (F) on it where an extra person got added to the wrong category and got added to the registry stakeholder group as opposed to the CCNSO. So when I read through that was the only thing that didn't ring true to me from the last meeting.

I think I have an issue with Martin's edit though. And that's not that I think that this group should be doing policy but I do think that there is you know one of the whole things that we've gone through in the GNSO and in general in ICANN last year is the relationship between implementation and policy and that the policy concerns are not totally lost when you're talking about implementation and operational. So I think that in the IFR I would hate to see us too strictly say nothing that looks like policy may be discussed because implementation is often discussed in terms of policies made.

Or is discussed in terms of policies that need to be reworked elsewhere. So I'm a little uneasy about this complete prohibition of anything that may or may not be considered policy by someone in a sentence. So that concerns me, thanks.

Jonathan Robinson: Okay Avri thanks. Just a couple of points before we move on with the queue then. I think in the absence of any other information from the design teams I think we should certainly view as we were just saying there with respect to (DTS) that this is the master document, Grace, so unless you're - it is given to you as otherwise everyone should be working this as the master

document. And the design team should be flagging with you staff by the list any updates to that. Otherwise we do risk losing coherence at this late stage. Chuck?

Chuck Gomes: Thanks Jonathan, I am a little bit confused by paragraph 113. Now I sent some comments to the CWG list on this regard but I don't think the design team have had a chance to really look at those. But it says an IFR may determine that a separation process is necessary which could include an RFP for the performance of IANA naming functions. Or another separation process such as a divestiture of PTI. Now my first question is this; isn't an RFP a divestiture looking for a possible divestiture of PTI?

And then it goes on if the IFR determines that a separation process is necessary it will recommend the creation of the separation cross community working group and this issue would need to be - that's not the part that concerns me. But isn't the initiation of an RFP how a divestiture of PTI would be accomplished? And what would the other approaches that would be used because it says or another separation process. What other type of separation process would be used besides an RFP?

So my concern is really that the first couple of sentences there seem confusing to me. What am I missing?

Jonathan Robinson: So Chuck I think - so Chuck just in response I think I concur with Milton's points in the chat. There's two forms of potential separation as we haven't necessarily specified. And one is what we refer to back in Istanbul is outsourcing which of course ICANN may seek to do independent of whether or not there was a problem. In theory a company could outsource a technical function and the other is the actual removal of the subsidiary from ICANN's control, the affiliate from ICANN's control either temporarily or permanently.

Chuck Gomes: Thanks Jonathan but wouldn't both - this is Chuck again. Wouldn't both of those involve an RFP?

Jonathan Robinson: That's a really interesting question, it's technical. I mean I guess the one might be a change of control temporarily or permanently where you had - you sort of, you dealt with it at the - I guess it goes to heart what we've been talking about here where you dealt with it for example at the Board level.

You may change control at the Board and/or the membership level and just change the supervision of the function even though it was continued to be carried out by ICANN or alternatively as another stream you may keep the entity within ICANN but perform the function with different operational and technical capabilities.

Chuck Gomes: So Jonathan Chuck again. So I'll just end by saying I think it would be helpful if these two sentences had more detail and more clarity so that we I think somebody on the - I'm having trouble.

People who haven't been close to it like us are probably going to have even more trouble here and I think clarity is really important here. Thanks.

Jonathan Robinson: I agree it's a pretty technical point and I think one of the things we need to think about is where if anywhere we need help with this drafting, this wording.

We can see how we go with staff and I'd like to think where if in any of these places this is very important for the client committee in these, this 11th hour. I'd love anyone to help, you know, I guess it's up to staff really.

If staff and/or anyone from the group if we feel we are imprecise or at the level where we are unable to express this clearly enough we may need to seek some help here as well.

The queue is being patient so let me go to Alan.

Alan Greenberg: Thank you very much. Being patients just means my list has gotten longer. In terms of a question Chuck just asked I think the divestiture of PTI is one of the options.

You know, we could for instance decide five years down the road for tax reasons or whatever PTI should not be a wholly owned subsidiary or whatever of ICANN and therefore we need to divest PTI as it is.

Alternatively we may decide that PTI is dysfunctional and we need to just scrap it and go to someone else completely who will provide the service. So I think the sentence has to remain vague because we don't know exactly what kind of separation we're going to opt for, for whatever reason in the future.

But divestiture is only one of the ways we could do it there are other options. We're going back to the paragraph on the special review function. Two questions.

Number one, what if we schedule a special review just immediately prior to when a regular review would be required based on the timing? Does that mean we could have two of these going in parallel or does the special review restart the clock or something?

We may end up being in an awkward situation if we're not careful. So I throw that out and lastly this special review it says it's triggered by a vote of the ccNSO and GNSO.

The ALAC expresses their severe concern that these two organizations and the GNSO in particular which puts other stakeholders in a privileged relationship to groups such as the at large with the GAC who are not represented or the FSAC who are not representative of the GNSO.

That was going to be addressed as the SCC CSC escalation processes. So we haven't heard about how that group that design team is revising their stuff yet. And so I'm just reserving judgment on whether it is appropriate to have the ccNSO and the GNSO listed here given that we haven't talked yet about the regular escalation procedures. Thank you.

Jonathan Robinson: Okay Alan good points on the review talk and I note that Avri soon (unintelligible). I mean to my mind this goes back to your previous point where to some extent this is going to have to be dealt with in the implementation and this group is - and that's what I would expect good legal or technical drafting to deal with as the blows are dealt with and so on.

If we want to express that intention that we can capture that that a regular review should be started, you know, no less than 12 months or no more than, you know, some qualifier there.

Hold your other point as you say until we get an update from DTM and see whether you get satisfactory input there. Let me to go to (Marin) next.

Martin Boyle: Thanks Jonathan, Martin Boyle here. I just wanted to respond to a point that Avri made about the additional text for paragraphs 1 and 6 of 111. I'm sorry for taking you back a little bit.

I certainly agree with Avri that one of the key things in any statements of work is that the role of the IANA functions operator is to implement the agreed policy framework.

And the wording that I put forward was not intended to exclude that and I found that is why I specifically said does not include any policy or contracting issues.

It in particular does not include issues related to policy development in the adoption processes. So in other words leaving the implementation side. If Avri can suggest something that makes it clearer that the implementation against policy is something it would be judged then I would be happy to take that into account, thank you.

Jonathan Robinson: Okay well it happens that Avri is next up at the mike so go ahead Avri.

Avri Doria: Thank you. On (Marin)'s point I think the one that the words that worry me the most are or is valuation. And I think to eliminate evaluation of the policy process and the implementation is where my issue lies.

So perhaps just dropping those two words and it's not doing policy development or adoption processes. It could be indeed evaluating, you know, issues to do with the implementation of policy or even if the policy has been implemented correctly then holes that need to be fixed somewhere else somehow.

And we need a point for identifying that and so valuation is something I don't want to see left out I think. In terms of the paragraph that was not clear enough and, you know, obviously it is obviously not clear enough since people are confusing it.

I think what it's trying to do, Alan covered it quite well that process of an RFP to find a new provider is a very different activity than the process of deciding to separate the PTI further and to spin it out as it has a different entity. Those are really two different processes and that's why they're specified.

And the opening for some other process or another separation process is that in the world of possibilities of different separation processes I don't think we want to preclude that this group at that time within the mandate were giving it of not restricting its possibilities of saying - and there may be something that we haven't thought of that at that time becomes a reasonable option that they put on the table and consider.

So, you know, so I agree Chuck it wasn't clear and that kind of clarification of just a few more words on that would probably help. God I had a third subject that I - yes the one of the GNSO and the ccNSO being a validity to push this forward.

I think that the CSC as we'll see escalates to the point of the GNSO and the ccNSO. And I think that's appropriate because while they are multi-stakeholder I mean while they have multiple stakeholders in a different manner that they are both in supporting organizations that cover all the stakeholders dealing with names.

They do it differently, one does it in a global structure, one does it in a local structure but they according to 1591 but they both do it. So that now that - so that was to take us into the IANA function review.

The other step that took between the IANA function review and the separation across community working group process is that the Board is one more level of, you know, it's been stakeholders at the second level and now it's stakeholders at the full ICANN level decided that yes the need to go into the extra process.

Now at one point we did have the Board approving the special IFR also which would have given us both of those but then that was removed at a point from feeling - for in the discussion in this group not in the small group that that was just overkill and that we didn't need to take that extra step to start an IFR.

So that was the thinking that was in there. I don't think on the (DTN) group size there wasn't, outside there was any objection to the Board having to also approve going into an IFR but I think it was considered unnecessary, thanks.

Jonathan Robinson: Okay thanks Avri. I'll go straight to Lise, Lise go ahead.

Lise Fuhr: Thank you Jonathan. I was just thinking I can see in the chat that a lot of people would like this clarification and I was wondering Avri if we could have you do the wordsmithing on this clarification. You seem to have a good grip of what we need to clarify.

So if you could do that then maybe we'll have staff work with you on this too. This is a question for you Avri.

Jonathan Robinson: Thanks Avri and thanks Lise and I see Avri has put a checkmark there possibly with, together with Chuck since he asked the question but we'll leave that to your discretion I'm sure you'll be able to figure that out. So thanks Avri. Alan go ahead.

Alan Greenberg: Thank you I don't want to turn this into a philosophical discussion of how the GNSO should be constituted but just to counter Avri not all of us believe that the GNSO has all the stakeholders with an interest in naming functions at that table. So thank you.

Jonathan Robinson: Okay noted Alan thanks. Okay let me keep us moving then through the document that's some useful discussion there. That's the flowchart, reference to ICANN costs.

I made a comment here. I mean there's a series of comments I guess I made in a point. I should possibly introduce them at this point. They are recorded by the email and I hope that you will either come back against them.

They're not yet included in this draft for good reason they were only sent out an hour and a half before this meeting but I made a more explicit reference to not raising fees associated with a separation, operating costs on either key, either major contributions to ICANN funding and by implication the registrants who provide that through those.

So you'll see that in my list of small changes that I sent to the list. And Alan are you able to comment what stage - your comment here says DTF has pretty well decided this. This is approvals for major architecture and operational changes being escalated to the ICANN Board.

Is that where you've settled or is that yet to be settled?

Alan Greenberg: I have a new version of the whole section that is before the DTF right now and I hope to get closure on it by the end of the day. As I was reviewing what we had I realized that the main body text and the annex whatever it was N or M or something, number one was highly repetitive.

Number two had conflicting statements in them that they were similar but not quite the same. And what I've done now is essentially merged them into a single body in the body of the text so we'd no longer need the annex.

It is being specific on this point and a number of other points that were raised in the public comments and I hope to have that delivered by roughly the end of my day.

It was sent out a while ago and I'm told by at least some of the people in DTF they'll have their comments in today. So that will be a revision in total of the section.

Jonathan Robinson: Thanks Alan. Paragraph 150 is a new addition with respect to budgeting and planning. May we now move into the implications which is a section that none of us has given a lot of recent time to although by - it's explicit in much of what we've been discussing.

So Grace go ahead if you'd like to make some remarks as to the construction and (comments) to the session.

Grace Abuhamad: Yes Jonathan this is Grace. I don't know if it would help if I just kind of briefly went through it. I don't know how many people have had the chance to review Section 4 in detail but I can give sort of an overview and then (Bernie) maybe will come in and complete where I've missed any points.

So we essentially divided Section 4 into four sections. The first one covers operational implications so that's mainly pulled from some of the work that DTS had done.

Then the second part of Section 4 looks at the legal framework requirements. So there we pulled from the Sidley memo's and sort of our, the accountability framework that is being built around PTI.

So PTI itself and then CSC and IFR and the customer escalation mechanisms and customer complaint procedures right. Would you like me to scroll through the document to walk you through it Jonathan would that be easier?

Jonathan Robinson: That's not a bad idea because it gives, it highlights particular areas where comments could be made or questions asked so that's probably not a bad idea if you wouldn't mind doing that.

Grace Abuhamad: Sure and I'll just give an overview and then we can go back through it. So like I said this is the first part of Section 4 that you're looking at on the screen now and that's mainly built off of parts of DTS and Section 2 of the document.

Then this here 4B is the second part of Section 4 and it looks at the accountability framework as I was mentioning earlier and is really focused on some of the constructs around the framework of the proposed structure that we're building right.

So there the main focus is the CSC, the IFR and the escalation mechanisms that DTM worked on. And then the third part is - so we're proposing here sort of an assessment on the workability of the proposal because the ICG requested information on workability.

And so we did some, an assessment and (Bernie) may want to jump in here and explain how he developed the assessment. But we looked at all the different elements and the elements being analyzed are addressed in the first two parts of Section 4.

So they're detailed in the first two parts of Section 4 and then they're analyzed and determined on their, you know, determined workability is listed in the table on the right.

And this is just a summary and the whole detail of how the scores came out and what the method was is in the annex. So we can go to that as well and that may be a part where (Bernie) can come in and explain the detail a bit more if there are questions.

It warrants some, you know, if you have time it is worth looking at because it's very clearly explained but it just takes a minute to look through it. Following this table we have the reference to the CCWG accountability work stream one proposal and their stress test and so the stress tests that are relevant.

And what we did here is instead of going into detail on the stress test we noted that the stress tested existed in that document. We made a reference to that document and then we noted the ones that were relevant from the accountability group so that people could refer to them.

And we gave, you know, page details and things like that because the document on the accountability side is still in draft form we didn't think it was worth at this point in our proposal to go into detail or to copy paste just for the sake of doing that.

So we've confirmed with Cheryl who ran the stress test work party for the accountability group that these are the stress tests that correspondent best to the CWG work. So that's following the table.

And the last part of Section 4 is our implementation timeline. And we need some comments here and we may need a lot of input from the CWG. We just - I actually drafted this and sort of just put sort of an overview of what I thought would be in the implementation list.

But it may need some comment from you as to how, you know, how you want to order them et cetera. So there's some work needed on this section it's quite fresh.

And some of the questions that was raised this was cross checked with the Sidley punch list. So some of the questions that Sidley had raised in the punch list or that had come up in discussions with different design teams I've put back in to this implementation list.

So it should capture all the open items but it may be a question of how we want to present it and a few other sort of organizational editing stylistic choices.

And that's it for Section 4 we can go into Section 5 if you want but I think we might want to spend some time on Section 4 first. (Bernie) I don't know if you want to come in with any comments otherwise we can let the group.

Jonathan Robinson: Thanks Grace it's Jonathan speaking again. A couple of points and it's clear that this is relatively new to all of us and so it may be that this needs to go from medium rare as Cheryl puts it or Greg I see puts it to being a little

more cooked over the next 24 hours as we all have the opportunity to review this in detail.

So I think we want to do a detail page turn on this. I think this needs to be dealt with offline given that we've got only half an hour more in this particular meeting but that doesn't mean we shouldn't take any questions or comments at this stage.

So feel free to go ahead with questions or comments and points too. Good thanks Holly yes. What we discussed, the chairs discussed that in order to for the punch list to continue to be a valuable device we decided we would get on with the work as Grace has done here but not lose sight of the punch list but it needed to be a cross check against any and all of this.

So rather than to keep working through the punch list we felt that we would set it aside and then revisit it but keep it in mind as we did this work. So we will cross check again as Grace said there.

Thanks (Bernie). So any comments, questions or input that anyone would like to make at this stage recognizing that this Section 4 is new to you? All right well I would encourage you all to get on with it as soon as possible later in this day or tomorrow for those of you for whom this day is late now.

And let's feedback any comments, input on structural content as soon as possible to try and be in a position to systematically modify and ideally accept the updates to that.

Grace why don't you go on to Section 5 and then highlight the work that's being done there.

Grace Abuhamad: Sure thanks Jonathan. So I'll quickly go into Section 5. So essentially Section 5 is pretty straightforward. What we did is we took the five NTIA requirements and then we filled each one, each requirement we sort of went through and said and sort of wrote up why the proposal meets those requirements.

And I think if you read through this it's pretty straight forward it pulls from our draft and outlines where we meet the different requirements. I don't know how much details go in with this one I think it's pretty straightforward.

Section 6 is the community process section and we are still pulling that together but we will have that out to you tomorrow or tomorrow AOB, tomorrow end of day U.S. at the latest.

Jonathan Robinson: Okay thanks. So again I mean I've read through this and I expect some comments and that's not, there's not implied criticism there but I expect that the group will pick up on various detail points and but in general I think as you suggest Grace it's pretty self-evident how it's, how we're taken the three, the set of key requirements and worked through those from NTIA and dealt with.

So again I'd encourage a thorough read from as many of you as have the time and energy to do so on 4 and 5 so that you're in a position to accept or critique on terms of that as soon as possible.

Good, well I think that puts us in a position to have made a reasonable first reading and especially on the back of that intensity of the work that we did to put into it but that's very useful.

Just reemphasize the need to review and re-review the document so that you can give constructive input. Chuck. Chuck we don't hear you yet.

Chuck Gomes: Sorry about that I was talking to myself. First I want to ask a clarifying question and I apologize for going backwards in this document because I didn't catch one thing in time.

But am I clear that separation except in the case of something like a bankruptcy and I'm not sure what happens then but separation does not change ICANN's role of steward and as contractors.

And let me stop there and see if I can get an answer to that and I can word it, let me re-word it to see if I can do a cleaner job of that. Except in cases like a bankruptcy of ICANN am I correct in assuming that with regard to separation ICANN would still be the steward and the contractor?

Jonathan Robinson: Let me defer to others to provide their attempt at an answer to that and I see I have a queue already. So let's talk this through a little, Greg.

Greg Shatan: It's Greg Shatan again. It's certainly been my understanding that our latest plan is that ICANN essentially holds onto the granting end of the contract and thus is the steward and the contractor for PTI for IANA function services.

And that in the event of an RFP or in the event of a problem such that, of such magnitude that PTI essentially gets fired and an RFP is issued and a new company comes in to do the services they're doing it still under contract to ICANN.

So I don't think we have contemplated or at least in our latest iteration we may have previously contemplated taking the whole shooting match away

from ICANN as well but I don't think our current formulation goes to the point where ICANN would become completely divorced in any way shape or form from the IANA naming functions. Thanks.

Chuck Gomes: Thanks Greg, Chuck again. So okay my assumption was correct there but we have...

Greg Shatan: Or at least I'm agreeing with your assumption.

Chuck Gomes: ...yes right, thanks. So what happens if there is a bankruptcy? I mean my understanding is that under the non-profit approach that we're taking that PTI could still exist I think even if a bankruptcy occurred and probably would come out okay but it wouldn't have any funding mechanism or anything like that or the accountability mechanisms we rely on in everything.

Is that something that we leave for another day or another year or...

Greg Shatan: Well bankruptcy is a particular case. I think there is, you know, a lot to be said probably by our counselors on that point. I'd just say briefly that in legal life as opposed to in real life or maybe I should say the other way around.

With corporations and businesses typically bankruptcy is unless you're really managing your cash issues, your solvency issues incredibly badly bankruptcy should not lead to dissolution and sale of assets.

Bankruptcy should lead to reorganization and restructuring and exiting bankruptcy in a kind of refreshed position. So bankruptcy is viewed as kind of a cleansing process to restore some health to a sick company.

That means of course that a company has to recognize that it's sick with enough cash on hand that it can afford a bankruptcy restructuring. If a company waits too long and, you know, is at the brink of complete disaster then all that's left at that point is dissolution.

Those are very general points I'm not referring to the specific points of what might be different in a non-profit bankruptcy or bankruptcy under, you know, under any local laws or regulations or anything that might apply to ICANN per se.

But generally speaking when people throw around bankruptcy and I don't mean to say you're throwing it around Chuck but when people tend to use the term bankruptcy they tend to be thinking straight to dissolution and everything must go and the IANA server is being put on the street for the trash compactor to pick it up.

That's not typically, that's not a good bankruptcy that's a bad bankruptcy. A lot of banks - bankruptcy is actually a good thing for a lot of companies. Some companies have done it several times but that's not necessarily great.

Jonathan Robinson: Let me get back to the queue.

Chuck Gomes: Jonathan, Jonathan.

Jonathan Robinson: Go ahead, Chuck.

Chuck Gomes: Yes I just want to say I do have a totally different point but I do want you to go to the queue because I suspect they want to talk about this. So I'll leave my hand up but I'll come back after we finish talking about this.

Jonathan Robinson: Thanks Chuck. If you could drop it and re-add it that will get you back and I'll definitely come back to you that would be great. Now I can get back in the right order.

I'd like to go to Holly in just a moment but one thing I would say is it does flag something which I have been thinking about and the group might like to think about is when we - one of the advantages and Holly may speak to this in a moment, of the Public Benefit Corporation was there was a greater degree of protection against bankruptcy.

And one thing we may want to think about is whether we seek to have some funds, some emergency funds or some form of funds set aside and ring fenced if you like in some way to protect this entity PTI in the event of financial difficulties that ICANN no matter how they might emerge.

So that's just - I'll just put that in your minds to think about that as something we may want to come back to. Alan go ahead.

Alan Greenberg: Thank you Jonathan. You just covered my first point that my belief and I'm not sure we want to recommend it formally but I think if ICANN is being prudent once PTI is separated and presumably we use the Public Benefit Corporation which is somewhat isolated from ICANN in terms of bankruptcy I would presume that we would endow it with, you know, three years of operating and research funds.

So that should ICANN be in a position where it cannot provide additional funds that IANA still keeps running for a reasonable amount of time. I think that would be completely reasonable to set that money aside and actually transfer it to IANA or PTI so that there's no question it has operating funds to continue.

In terms of what happens if ICANN is bankrupt well as Greg says if it's just reorganization then there's no great issue. If we really are going to go down the tubes and be dissolved then I'm presuming that both the interest as a member in PTI and the stewardship itself are both assets that would somehow have to be disposed of or valued by the courts and that would be a really interesting thing certainly the latter one.

Jonathan Robinson: Alan I had intended before going to you just because she was clearly responding to Chuck's question. It was my error I had intended to and didn't do it but you need to think about whether, you know, that presumption that you make about the possible setting aside of funds you need to think about whether we want that in some way captured in the proposal.

Holly go ahead and...

((Crosstalk))

Greg Shatan: Jonathan I can ask quickly. I would like to see that in the proposal I'm not sure others agree.

Holly Gregory: So this is Holly and this has been a really good discussion and I agree significantly with Greg's points and also with Alan's points. You know, the question is if we create now that we're going to create PTI at the Public Benefit Corporation not for profit it does have real protection and separate entities from ICANN in a bankruptcy.

The pragmatic difficulty is of course that it is dependent on ICANN for funding. And so what you're talking about in terms of thinking about whether there needs to be a reserve, you know, is - and it needs to be reserved actually

in PTI's hands and not in ICANN's hands because it could be taken into bankruptcy as a good one.

This all said it's really very, very, very rare for not for profits of this type to become bankrupt. You're not dependent on, ICANN is not dependent on donations. I has a revenue stream.

It's whether or not PTI is currently in this hybrid model still connected to ICANN or separate it's going to need funding. And so the question really is, you know, what kind of commitment do you want to preserve at that moment of separation so that you know that if we ever get there PTI has a cushion so that it can, you know, withstand a little period of time as it gets its feet and has an assured revenue flow.

But in any event it's a helpful discussion to have. I think we're talking about risks that are very remote and that we've considered in thinking about this public benefit corporation structure.

Jonathan Robinson: Holly and if you wanted to make any other points about the technical points about separation whether I mean we have quite a discussion about in response to Chuck's original question about the forms of separation that might occur.

I feel like it is relatively clear in my mind but I may not have and others may not have so I don't know if you want to come back on that at all if you have a clear perspective or clearer perspective on that.

Holly Gregory: Jonathan I'm not quite sure what you're asking if you're talking about the different structures that we considered as bankruptcy protections. We did feel

that this was a better - this not for profit Public Benefit Corporation was a better structure than the LLC. Is that the point that you wanted expansion on?

Jonathan Robinson: Sorry for not being clear Holly. I think we got that and that seems to be generally accepted and moreover you've made a good point to say that this bankruptcy would appear to be a very remote issue in this particular instance.

The question is do you see it any different to that which is being discussed in the forms of separation that are possible given the sort of corporate construct that now exists.

In other words we've been talking about two prospective forms of separation I guess. One is at a sort of subsidiary level by virtue of a chain of control with the Board and/or the membership.

And the second is a separation by virtue of a different provider providing the actual services.

Holly Gregory: I think in either case we have the same concern that other provider is, you know, whether you go with another provider or this PTI really being spun out and then in a truly external notion you need to think about how is PTI assured of funding.

So that PTI as an entity does not go bankrupt. The good news is as long as PTI is closely connected to ICANN as a subsidiary you have the parents ability to if it wants to shoulder the burden and take care of its debts.

Although from a legal separation standpoint it doesn't have to. Clearly it's in its interest to do so.

Jonathan Robinson: Thanks very much. I'm going to come back to Chuck's other point and then I think I'm going to push us to go through the other components of the agenda mindful of where we are in the time.

I think it's a useful discussion I'm not sure it's answered absolutely clearly but I think we moved forward with clarifying some of the key points there.

Chuck over to you.

Chuck Gomes: Thanks Jonathan and yes it was very helpful to me I don't know if it was to others but thanks a lot for everyone who contributed. I'm going to totally change direction I think this is a much easier one Jonathan to deal with.

But I think there's an error in paragraph 150 if people want to look at that. This came from design team O and by the way design team O will be meeting again in about a half hour.

So but it says, PTI should submit a budget to ICANN at least three months in advance of the fiscal year to ensure the stability of the IANA services. That should say nine months not three months.

The thinking that we had in design team O was that if they that the - and you can see how the rest of the paragraph goes is that the IANA budget or the PTI budget should be approved sooner than the ICANN budget is typically approved which would mean they would probably need to have a budget to work with much earlier than three months.

Three months wouldn't give them a chance to approve it well in advance of the end of the fiscal year. And our thinking is, is for security and for stability in particular it's important that there is a budget approval in advance of the end of the fiscal year like ICANN typically does with its budget to make sure that there's no loss of stability and continuation.

So I'll leave it at that. If someone has questions they can ask but I think that's just an error correction.

Jonathan Robinson: Thanks for that Chuck and I'll just note and this will help staff in their drafting I think is that I haven't seen any objection to at least a suggestion from this group that ICANN gives strong consideration to a form of ring fenced funding to secure ongoing operations of the IANA function in the event of any form of financial instability in the parent.

So that there is some form of give good consideration to some form of ring fencing. Others may prefer stronger wording. That's a good point Avri what do we mean by defining that?

But setting aside a portion of funding possibly in some form of escrow such that it cannot be tapped for regular operations or it lead to it essentially reserved in some way. Alan.

Alan Greenberg: What you just said may negate what I was going to say but I was going to point out that if we do provide PTI with three years of funding that removes the necessity for worrying about the budget year boundaries.

But if we cordon it off and say they can't use it then obviously Chuck's concern comes back. Thank you.

Jonathan Robinson: I think to my mind they're independent concepts. One is the regular review and updating of the operational budget for the financial year ahead. The other is a form of reserve in the case of some kind of emergency and the size of that reserve could be for argument sake three years of the last full budget to be (mentoring). So something along those lines.

All right we have ten minutes to go and I'm going to pass over to Lise to deal with the next few items in the agenda and then we'll try and bring this to a conclusion at the top of the hour as scheduled.

Lise why don't you pick up on I think it's, is it item 6 on the agenda please.

Lise Fuhr: Thank you Jonathan. Yes it's item 6 it's the CWG accountability and I'll do it really quickly in order to keep within the timeframe. Well Jonathan and I had another very constructive and productive call with the CCWG chairs yesterday.

We agreed that the chairs will be pressing - the chairs, the accountability chairs will be pressing that our upcoming Webinars on the 11th of June in order to answer any questions and show support for our proposal.

And actually be able to answer questions regarding the conditionality in our proposal. We also did some coordination of what to, how to arrange the legal advice who is present during Buenos Aires and staff is to create a schedule for the lawyers on what sessions we think they should be present both for the CCWG and the CWG.

And as you might know we have a session for Monday for the meeting in Buenos Aires and we will also plan this closely with CCWG chairs. So overall we're coordinating really closely the communications with the accountability chairs in order to be prepared for the meeting coming up in Buenos Aires.

Furthermore we have talked about the phrasing conditionality in the CWG proposal and Jonathan and I are working in order to ensure this phrasing is done correctly and as clearly as possible.

We find that this conditionality is the one that really allows us to put out the proposal three months before the CCWG proposal is going to be set forward. So it actually is an important part of decoupling our proposal from the deliverances of the accountability group.

And Sidley will help us do this so we're making sure that everything is covered. This is also one of the issues that we have explained and discussed thoroughly with the accountability chairs.

And regarding the accountability public comment they are to close, they are about to close tomorrow on the 3d of June. Jonathan and I are working on a set of comments and that will comment on their proposal and the same time answer the questions that's been raised by the CCWG chairs in their submission to our comment, public comment process.

And we will also send it to the group of course when they're finalized but they need to be submitted by tomorrow evening. So this was a very quick walk through of the accountability issues.

Are there any questions? I see a question from Elisa. Are you talking about a process to map CWG and CCWG in the end? I'm not sure I completely understand if it's the mapping of - if they are meeting our requirements.

We haven't discussed this yet but I agree we need to have a process on the dependencies but it hasn't been discussed. I think this would be partly covered in some of the conditionality we will try and phrase for the proposal.

And I don't know Jonathan if you want to add to this.

Jonathan Robinson: Yes thank you. I mean I would say the short answer to Elisa is yes. We have recognized for some time that this proposal, one of the abilities that allowed us to focus our work was the ability to rely on the CCWG. One of the concerns that people have expressed along the way is well how do you know you can rely on them and the answer is because we make our proposal conditional on the satisfactory mechanisms being developed.

And that's why there's been this extensive liaison going forward. We have the legal advisors in common and it's very firmly our intention to have that dependency and interrelationship as tightly locked down as possible and that's exactly.

So Elisa in the final event we checked that off when we see what the CCWG delivers and that the intention is that yes they are correlated at that point. You're right we do have to look, a final look at the CCWG proposal.

Lise Fuhr: Okay thank you Jonathan. Any other questions? And I see Elisa is asking who is to decide if they fit that's your point. I would guess that - yes sorry Jonathan go ahead.

Jonathan Robinson: Perhaps you were going to say the same thing but I think it's in essence I would guess it's - I would think it's the chartering organizations have signed off on our proposal.

The CWG's proposal conditional on that and so the chartering organizations get to review the CCWG proposal and should make it that's certainly a very obvious mechanism by which that should be checked.

Lise Fuhr: Okay thank you. Any other questions on the accountability issue? Let's see we have two minutes left. I'll go really quickly through this. The communications because an overall timeline and milestones.

Regarding the communications it's important that the next couple of weeks this proposal was communicated as widely as possible. So we need your help in doing so to advocate the work of our group.

And we need to explain what we've gone through to build a solid and well considered piece of work that of course unnecessarily contains compromises as we all know.

So we would encourage you all to inform and educate the different groups and to aid in consideration for approval and support in Buenos Aires. So we're encouraging you all to do so and well Jonathan and I will have two Webinars on Thursday the 11th of June and we will do this one during the morning and one during the early afternoon.

And those Webinars will be based on a slide deck and that we will send to this group also for you to use in this education of the SOs and ACs. And once more we really encourage you to use those slides.

We have help from explain and doing the graphics together a comprehensive and explanatory set of slides. So we have just one quick question for you because we're thinking about if there is a need for interpretation during the Webinars.

So we'd like really quickly to hear any thoughts on the need for interpretation during the Webinar. Any thoughts on that? Greg your hand is up is that an old hand or a new one?

Greg Shatan: That is an old hand that I forgot about however I will comment that we at large have always advocated that if we want to get our messages out to people we should be working in multiple languages.

Lise Fuhr: Yes okay. Any other views on this? It looks like Jonathan and I will make a decision on the basis of one input, we'll see. Very quickly the session for the ICANN meeting I don't know if we have time to bring it up.

As it looks now there will be a meeting on Sunday, June 21 and it's going to be on IANA stewardship transition and enhancing ICANN accountability information session.

I'm not really clear what that's about but on Monday, June - Grace your hand is up do you want to explain those session...

((Crosstalk))

Grace Abuhamad: Sure it might be helpful. So Sunday, what Sunday's session is about is it's essentially an information session. They had this session in Singapore as well and it's a time for all the different heads of the communities.

It's sort of an ICANN organized session but it's the heads of the different working groups and possibly some other guests. And in Singapore we had Ira Magaziner and (Larry).

And it's sort of an information panel just too kind of give people an update on the process and give them a little bit of background. And I believe that Jonathan and these will be asked to speak on that panel.

Then after that there's a session on Monday that this is a coordinated session with the CCWG which will be sort of like a town hall which is as you know as we spoke about our dependencies earlier this is sort of an opportunity to work on that in a public context and to articulate that to the community.

Then that afternoon we have an engagement session. So the CWG has a session where we could present our proposal and sort of answer questions that may arise in the community and then sort of go through the proposal, have a public question and answer session something like that.

The next session for the CWG is scheduled on Thursday morning and that's a - right now it's schedule as a working session. So it depends on whether or not we need it as a working session or if we need it for another engagement session.

So it's sort of a little bit flexible at this time but we can finalize as we get closer to the date. There are a few other sessions on there that are on the schedule that came out today that are either CCWG accountability sessions or ICG sessions.

And those may be of interest to you just because of the overlaps and the dependencies between those three groups and the projects overall. So I will circulate a list of all the sessions to the group and then also a link to the schedule and that may help everyone sort of identify some key sessions for the meeting in Buenos Aires. I hope that helps.

Lise Fuhr: Thank you Grace. Martin Boyle.

Martin Boyle: Sorry if Jonathan wanted to say something first.

Lise Fuhr: Yes do you want to say - go ahead Jonathan.

Jonathan Robinson: I'm just keen to keep us moving. Go ahead.

Lise Fuhr: Okay Martin Boyle may - you have a comment.

Martin Boyle: Yes just a very quick point Lise and that is for the Thursday morning session that if I remember correctly is a session of the ICG. I don't know whether they are actually in direct conflict at the time but it would seem to me to be a little bit unfortunate if you were to do a working session that did overlap with the ICG. Thank you.

Grace Abuhamad: And that's a good point Martin so what we have is there is a CWG session and then it's followed by an ICG session. So there's a whole block where you could possibly if you really wanted to attend for four hours that morning.

However the ICD session does overlap with the CCWG session at this time. So we haven't been able to find this sort of compromise there but the CWG and ICG sessions do not overlap and all the CWG and CCWG sessions also don't overlap. So we did our best there.

Lise Fuhr: Okay thank you Grace. Very quickly next item the client committee instructions to Sidley. I have listed the three items and Jonathan please add if you have more than that.

We have Sidley to help us raising conditionality and we have (unintelligible) meetings that they were to look into compensation for PTI Board to be majority ICANN Board members and consider whether this is an inside or outside Board in the legal structure.

And I guess this was answered during the call today and consider another term. That was my third bullet for inside outside Board. Do you have any further Jonathan?

Jonathan Robinson: I think given the time that we need to - those are three points we had previously discussed and we do need to pick this up. I'm also conscious that our next scheduled client committee meeting with Sidley is on Thursday and that's after this, our next meeting of the CWG.

So it is my suggestion and plan that I will communicate this. I'll put a summary email you and I can talk tomorrow morning and we can put say summary email to Sidley in guiding them on what areas of work we do and don't need on the client committee list.

So I think that's the way to handle it to get it sorted out.

Lise Fuhr: Okay thank you and I'll hand it over to you.

Jonathan Robinson: Thanks Lise. So I'm going to wrap it up right away unless anyone has any urgent points. Clearly you'll be seeing a new draft of the document very shortly and we'll work with that.

And in the meantime concentrate on the existing draft in particular areas which you haven't seen before Sections 4 and 5 but also any refinements we've agreed on this call.

Thanks I'm sorry we've over run we've been pretty diligent about keeping to the time in general but clearly we had a lot to get through and we're up against the clock in a more broad sense.

Thanks everyone we'll be talking with you on list and during the next call on Thursday this week. Okay we can stop the recording and conclude the call at that point.

END