

ICANN

Moderator: Brenda Brewer
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2:00 pm CT

Jonathan Robinson: Welcome back to the work of the CWG. I'm not sure what happened there. I'll be chairing this call. Lise, your co-chair, (may not have met) in advance of the call that we agreed that I would chair the call on the basis that she's actually not got that strong a voice at the moment, having caught a cold; ironically in the summer. But anyway we're working together and we'll work with you.

I hope we won't need the full two hours that this is scheduled for; significant amount of our work has been completed as you know, with the submission of the final proposal to the ICTs. So but we felt it was useful to come back together and cover up a couple of key points.

We have not yet had any formal requests for clarification or issues arising from the work of the (ICTFA) and review our final proposal and reconcile it with that the other two communities save for the issue of dealing with the question on the how we were dealing with the IANA trademark in our proposal. We'll come to that in just a moment in the next agenda item.

Before I go onto that update from the Client Committee are there any questions or issues anyone would like to raise now in respect to the agenda or any other items scheduled to appear on the agenda? Or something you'd like to see under A or B?

All right, seeing none, I'll keep us moving for the moment. We had - traditionally we have a sixth schedule of Client Committee at 14:00 UTC on a Thursday. As it was historically, we were meeting at 11:00 UTC on Tuesday so that's typically followed. Today it was ahead of this meeting and actually we talked briefly as the Client Committee and as to when we should go ahead with that.

And when we talked informally yesterday we felt that it was a good idea to do so because we felt we could better engage with the CWG having talked together as a Client Committee; and in fact having talked with (Sidley) as well.

So we went ahead and had that meeting at 14:00 UTC today and that's - for those of you that are interested - that's obviously recorded and available for you to pick up on. But, you know, I can pick up on the main points of that in any event and talk you through the considerations there; and see what comments or issues arise.

We touched on the issue - there's a background issue that's going on in relation to the work of the Client Committee. And many of you will be aware that I guess on the back of the Board having to sign off on the first major change of legal fees I assume that probably - I haven't checked this in detail; but my assumption is that trust of threshold of expenditure which required us going to the Board. And I believe - I wasn't present - but I believe this was the

subject some comment in the public forum or in any event it was raised as an issue.

So there's an ongoing concern over just making sure that there is prudent management of the legal resources and that the costs are managed effectively. And to that extent we had a meeting between Lise and myself, co-chairs of this CWG, the current chairs of the CCWG together with ICANN Legal and ICANN Finance because this is actually quite an administratively heavy and challenging task to make sure that instructions are given.

Ideally advance indications of the cost is made; future tracking of those against (only) billing is undertaken. And ICANN staff is effectively administering that function for us because we need to make sure it's all joined up.

So there was a call earlier this week to discuss that and that's some ongoing work in the background, trying to make sure that the administration and management of that is as effective as possible.

I think the outcome really is what I would like to propose, or I guess we would like to propose to the group is that it may be (implicit) to the group but I think we would like to make sure it's explicit and agreed that we include legal fees in the remit of the Client Committee and effective management of the legal fees.

So the Client Committee as you know is the conduit for effective instruction and coordination of the legal resources. It seems logical that the fees composite of that is managed and handled by the Client Committee in conjunction with ICANN staff in the way that I described a moment ago. But

we'd just like to formalize that and make sure that that's understood explicitly and agreed.

Are there any concerns or questions with regard to that? That legal fees point? Any issues that anyone would like to raise or questions arising?

Thanks (Greg) for that link in the Chat relating to the Board point on that.

Now the legally-related point that's come up in the interim is the point on the IANA trademark and domain names or related intellectual (policy). A couple of things have happened in the interim. I think during the course and someone can remind me of this of the ICANN meeting in B.A. we received a request during the course or shortly thereafter we received a request from the ICT to provide an update; which the chairs duly did.

And essentially we reiterated in writing what we had said at a couple of meeting in Buenos Aires; that if you looked there wasn't really any scope for interpretation. It was clear that our proposal was in effect silent on what to do with the IANA trademark and how to deal with that.

So to the extent that other responding communities and numbering and protocol communities had been concerned that there was a contradiction or that our proposal was in some way in conflict with those other proposals; we asserted that it was not and that we were in effect silent on that.

There's also been a note from the ICANN Board that we may be able to get up. And I'm not sure that everyone has seen that. Certainly I'm sure Grace can put a link into the Chat for that on the intellectual property. And the essence of that note is that the Board has said that they will not - the ICANN Board - they will not stand and use the intellectual property.

They commit to not using the intellectual property to interfere in any way. I'm talking colloquially here but in essence they commit to not using that to get in the way of any prospective separation in the future.

But all of that really means there isn't - the current proposal, the final proposal we wrote doesn't really deal with the IANA trademark and domain names. And you could say it doesn't need to. So this one opinion is it doesn't need to. Currently with ICANN our proposal is a subsidiary that will remain with ICANN and therefore the only issue really is one of what happened in terms of future separation. In fact the Board's addressed that. There's nothing to worry about.

I'm not sure that that's a universally held view and that we may need to be more explicit than that. And so on the back of the Client Committee meeting we considered asking (Sidley) for some help here and discussed that in a preliminary way.

So really it feels to me that we have two options here. We either remain silent and do nothing and effectively the presumption is that its marks of (wis) held with ICANN. PTI will have access to use those marks and domain names not exclusively but to the extent that we need to make use of them. And we rely on the Board - rely at least for the moment on the Board's assertions that it won't get in the way of future use of those.

Or the alternative is that we go to (Sidley) and say, "Look. We need some help here. And we need some proper expert help to look into this a little and tell us what - to sort of really evaluate what the options might be from our point of view."

Now many of you will know that's one of the - the current proposal from the other communities is one community has remained - effectively said they would suggest that's moved to the IETF Trust. And the other has said we have no problem with that option.

So we could ask (Sidley) to have a look at those scenarios from our perspective, probably talk with ICANN, the current holder of the mark; take essentially an input from the other communities. And I should say that Lise and I met with the chairs of the IANA Plan and (crisp) working groups and understood where they were at. And they're not planning to do anything at the moment. They believe their two proposals are self-consistent and therefore the only thing that would prompt them to do something different would be if we came along with a proposal that was in some ways not consistent with that.

So it seems to me we need to evaluate how do we feel about the mark remaining with ICANN, moving to the IETF Trust or an equivalent trust or moving to PTI. These seem like the likely three scenarios; and based on the discussions that - preliminary discussion with the Client Committee that's how - that seems to be an option.

Are there any comments or thoughts on that? Would anyone like to - oh that's a good question. Why would we ask (Sidley) rather than ICANN's Legal Team? Well that's a really interesting question. I mean I just may have a view on that but essentially ICANN is the existing holder of the mark.

And we in preparing our proposal had taken independent legal advice to make sure our proposal is both - and this is narrower where we should consider at least taking independent advice rather than asking ICANN's legal for advice. If we were to do that surely we would ask our independent advisors to at talk

with ICANN and understand their perspective on a properly almost as a first port of call.

Donna, go ahead.

Donna Austin: Yes, thanks Jonathan. I guess, you know, we talked - we spent some time talking about the cost of (Sidley) and it's obviously quite a reasonable cost. But I just wonder on this occasion whether this is something that, you know, really is within the rights of the (taser) whether we can just hand it over to ICANN's Legal Team. I just feel like sometimes we overthink this too much.

You know, ICANN's Legal Team probably has the expertise on this issue so why do we need to seek independent advice on it. You know, I just wonder if we're just being a little bit too over cautious here. Thanks.

Jonathan Robinson: Thanks Donna, great question. Are we overrating this and potentially adding costs that are not necessary. There's a couple of responses coming up so let me defer to those right away.

First Chuck. Go ahead.

Chuck Gomes: Thanks for this discussion Jonathan and Donna. It seems to me before we do anything including consulting with the ICANN Legal Team is that we ought to make sure that the other two communities are willing to accept the advice from the ICANN Legal Team. There's no use going through that exercise if they want something independent.

If they're comfortable with using the ICANN Legal Team as a first step, then in my opinion that's fine. Obviously we want to get clarification, but there's no use us spinning our wheels if we're doing something that the other two

communities might object to. So just simply getting their confirmation that that step would be okay; or any steps we'd take. I think we ought to be in sync with the other two communities in whatever we do.

Jonathan Robinson: Thanks Chuck. That's a very good point. And to me that's what we attempted to do by talking with some - as a first step earlier this week. And I think what we came away from that with was that their proposals were self-consistent as I said; and if we in a sense fell in line with their proposals. And there would be fine - we would become consistent with theirs.

We didn't discuss the possibility of getting legal advice from ICANN. We did talk about the possibility of getting independent legal advice. And we also understood that at least one of the other communities had had their own advice on this. And interestingly they said they would be perfectly willing to make that available to us as part of our process.

So we have access to - they were very open to any sharing information and assisting us in working through anything we needed to do with respect to this. So (Greg) your hand has come up.

Greg Shatan: Thanks Jonathan. I think we do need to be in sync in terms of process with the other two communities so that when we come to our conclusion with regard to that - the question at hand - we can go back to them, you know, with our thoughts in a way that kind of legally - both legally, appropriate and functionally appropriate. If we come back after all of this and agree to their proposal then I guess it doesn't really matter who we consulted as a matter of, you know, our own desire to get legal advice.

Or we all need to get legal advice. However if we disagree they may want to dive deeper either with their own counsel or with the counsel we consulted in

which case that's where the issue of ICANN Counsel giving the definitive advice to the CWG may fall short. Certainly no reason not to get their views on the matter.

But I think again the reason to get independent legal advice is the same as it has been generally although, you know, in this case we might like the advice that ICANN's legal counsel gives or some of us might like it.

The question that was whether that advice is, you know, we've kind of given it our interest or not and, you know, I generally don't have - not to be skeptical about the advice in advance. Finally I would note that to the best of my knowledge ICANN will probably end up turning to external counsel for expertise in this particular matter.

So it's all ICANN money either way but I could be wrong about that. It could be - but I do note that at least in trademark matters I've seen them handle to date have been handled by outside counsel and not by somebody within; although I've seen Amy Stathos's name on some things. But I don't believe that's an area of expertise. But we could always ask. Thanks.

Jonathan Robinson: Thanks (Greg). Seun?

Seun Ojedeji: Yes, thank you Jonathan. This is Seun for the record. I'd just like to convey two things. I think going through - I mean conversing with (DoDot) to communicate is good. It's actually one of the principles of all the people in the communications outside in the development of their proposals from this (sou gini).

And on the issue of this trademark I think it really we all know the zero (responding) to communicate. And one independent is in view of this considered (blue chip).

And I think - I don't see how (construction) will be secluded to three (unintelligible) inform the CWDZ more than what excludes the communities (unintelligible). And just because of the act of (pull dar). So I think if we need to use legal, actually is ICANN Legal to produce or more fact, also more information. Then that will improve our connection on the particular direction and in fact at the end of the view we have good approach.

And it varies in most to (unintelligible) that we (got reviews) from ICANN Legal here and then ask (unintelligible) to look at this especially from legal folks within our working group people like (Greg) or Lise. Think that's what ICANN Legal has provided is not valued or is not sufficient we can go further. But again I think this trademark is not a legal issue that we need to (unintelligible). Thank you.

Jonathan Robinson: Thanks Seun. And I took the essence of what you are suggesting to say was, you know, the first point being that we would struggle to get anything more out of the other communities without coming up with something more ourselves. And I tend to agree with you. I think they are where they are now and we need to - where we go next.

As for making ICANN Legal a first port of call I think that's a possibility. But Chuck does make the point that whatever advice will need to be acceptable to all three communities. Now I may be being naïve here but I can't see ICANN Legal suggesting anything other than that the mark remains with ICANN and that it is - and that appropriate use is granted to PTI to use it.

And it's clear already that that solution isn't - on the face of it - acceptable to the other communities since they have a counter proposal. So it feels to me like we might create a whole recycle by going to ICANN Legal who naturally and reasonably would say let us stay with us, we'll license it so we'll provide it for use in whatever appropriate way whoever needs to use it. And in the event of a separation we'll also undertake to do that.

But it feels that that's not - I just don't - intuitively or even more than intuitively, it's from my understanding so far is that simply won't fly with the other communities. Now it might fly if it came from (Sidley) or from an independent legal advice that said, "Look. Really you've got nothing to worry about provided it's covered in A, B and C ways contractually you're okay."

And I have a feeling that that might be slightly different than than if it's, you know, so that's the issue.

Alissa, go ahead.

Alissa Cooper: Thanks Jonathon. Just to kind of build on that point that you just made. I think from sort of an ICANN institutional perspective as you said everyone has access to the statement from the Board that was made. And the ICG - some of the ICG members have had follow-up questions which our liaison (Cho way) is liaising back and forth with the Board to try and get some clarification around the Board's statement.

So there will be some more information in that regard coming through the Board. But I had sort of thought in the discussions that were had at least kind of in the hallways in Buenos Aires that the idea of seeking legal advice was more specifically as regards to, you know, how trademarks generally (are used) and how does that apply in this case. Kind of very trademark-specific,

sort of (well as advice) not kind of ICANN institutional legal positioning or which is I think in terms of ICANN institutional position I think what we have, all of us, all the communities have at the moment is the statement from the Board.

So just wanted to kind of throw out that distinction in terms of, you know, if the CWG looking for help in formulating its positions I had thought that it was sort of looking for expertise in trademark law to try and help formulate that position as opposed to insight into what ICANN's institutional position on the issue is. And I would also say just suppose - I was going to say this to Jonathan (today) that at the moment, if we look at across the three proposals that the ICT has received.

What would happen when we go to implementation phase assuming that, you know, none of the proposals change I think is that the trademark was moved to the IETF Trust because that is the one community that made a specific proposal, made that proposal, and the other two are silent.

And so if nothing changes that what I would expect to happen and then the IETF Trust has said that it would accept the mark. So there does need to be further elaboration from the other communities if that's not what they want to have happen. Thanks.

Jonathan Robinson: Thanks Alissa. So those are helpful remarks. At least from my perspective. So just to be clear before moving to (Greg), I mean what we discussed at the Client Committee was the possibility of asking or instructing (Sidley) to look at the three scenarios, the mark's (faces) ICANN, the mark moves to PTI or the mark moves to a trust. And that trust could be the IETF.

And what would then happen is that this CWG would have some independent, expert advice on which to base our opinion. The challenge for me and I suspect for many of you, other than those who are real specialists in this area, is we don't have the expert knowledge to make a decision. And to that extent I'll - again this point is an important one, you know, ICANN Legal may or may not have the expert advice but really is knowledge.

And as (Greg) said they may well then send it out to outside counsel in any event. For us this is about having some form of expert input on which we can make a decision. And ideally it will be consistent with the other groups. Or failing that that they will see it as, you know, something that they can move towards. But first of all before we can even do that we need those scenario's evaluated and to the extent - we may be neutral on all three and maybe just go along with the proposal.

But it would be very good to do that on the basis of some knowledge and advice. Go ahead (Greg).

Greg Shatan: Thanks Jonathan. First it's very helpful for Alissa to have clarified that the view of the ICT is that if we don't state a position on this matter that they will take that as kind of silence equaling assent and go with the numbers proposal.

I'm violently opposed to allowing kind of a non-decision to be made by this group. I think this is an important point and I think it's one that we need to get right. And the only way to be sure that we're getting it right regardless of the conclusion we come to is through appropriate and expert legal advice.

And I think the only way that we can really get appropriate and expert legal advice that all of us agree that we can rely on, or that by and large most of us will agree we can rely on is by turning to our counsel for all the same reason

that we hired them in the first place; which is (Sidley) which certainly has that expertise on board in the firm. So to be more crisp of or straightforward about my views on this is that we should task (Sidley) with this matter because regardless of what ICANN tells us it will always be presumptively ICANN's position; and not neutral advice to this group.

And secondly I'm fairly convinced that they would need to expend similar amounts with their own outside counsel as we would with that retained for our benefit. So I think we should go forward with the suggestion which is that will give us the best result and the clearest comfort that whatever decision we're making and we should make a decision, that we're making an appropriate decision. Thanks.

Jonathan Robinson: Thanks (Greg). And just to Chuck's point about asking ICANN Legal to identify, seemingly we're talking directly to ICANN Legal about this, why the mark and domain name should not go to the IETF Trust. Certainly in the proposal that the Client Committee (is vesting) is that we would certainly - that would be one of the scenarios; that it's a trademark move to (ATRA) and/or the IEFT Trust and to give us an opinion as to what the issues for the naming community and our proposal might be in the event of that.

And it's quite possible that that comes back and says providing A, B, and C conditions are met, you should have no concerns about that. Or it might not be. And (Sidley) actually used the stress test site language when we discussed this with them. It's really about what we're - that might exist with each different scenario; what issues there are and to really help us whether it's some sort of matrix or test to evaluate it.

So I saw a couple of people agreeing with (Seth)'s proposal - I mean at least (Sal Visty) is on the Client Committee and worked with us on that. (Cheryl)

you seem to be supportive of this. I know there are reservations. Believe me I have reservations about incurring any costs that we don't have to. And I've been - a number of people have said to me you should be mindful of cost but also mindful of the quality of the advice and assistance we've got in getting where we did.

So my temptation is to - yes Seun to your question in the Chat, essentially that's what we'd be saying. There are I think and they may provide some others but at face value there are three scenarios that we would ask them to consider. We'd ask them to consider the scenarios with the trademark and the main (names) associated intellectual property; evaluate these with respect to understanding ICANN's position, the other two community's position and come back to use from the point of view of the CWG what might be optimal or acceptable.

And really evaluate those three scenarios so we knew what we shouldn't have, what we could live with and what might be best. And my hope would be that, you know, we could at least find something that they said you can live with this solution. It may not be absolutely perfect. We're advising you and your, you know, purely from your perspective. But given this, you know, and I can't predict what that outcome would be. But it would be good to get the advice.

And thanks for that information (Greg) in the Chat. So yes and Seun that's a really good point. So Seun makes a point in the Chat if we can have an idea of how many working hours it would take. So the way we intend to work from now on is to scope the work as we've done orally now, give that scope across to (Sidley) and ask for an indication.

We won't necessarily get a binding quote but I think without going into all the details I would like the group to know that there has been significant

discussions with the CCWG chairs and with Xavier from ICANN Finance who proved to be very helpful.

And ICANN Legal about just how to manage the external counsel for the cost and scope - doesn't just run openly. So we will do that first and we will ask for a cost indication. And you can rest assured that for some of us and that probably includes me; the cost will seem high no matter what. I mean, but we will manage it as best as possible and certainly get an indication of cost up front.

Okay. Thanks for that. The next area that we discussed with (Sidley) as the Client Committee was the issue of bylaws and how we might deal with the bylaws. Because essentially the work that's going to go on with the accountability group is that they are going to go through their process and ultimately propose some modifications to the bylaws that we are going to have to decide whether they meet our requirements.

When you think about the bylaws work some of those are very specifically meeting our needs; for example the creation of PTI. Some of those will need sign-off from us and some of the work on bylaws will - I mean at least from a CWG stewardship point of view. I'm sure many of us individuals have an interest in it but won't be in scope if you like.

So the question that we talked about and have been considering and I've personally been thinking about for a while - it's how much do we want to be involved in essentially - how much do we want (Sidley) to work on the bylaws on our behalf rather than receiving all the instructions from the CCWG. Do we want to be involved in this? Do we have - because of our expertise and knowledge of these does it make sense for us to instruct (Sidley) directly ourselves. Or those that are specific to our work.

Clearly this needs coordination with the CCWG and discussing with the chairs.

And Lise and I have a discussion with them running on this to try to understand it. Given that we are both using (Sidley) as legal advisors although the CCWG is also using a separate firm in addition we need to - it should be naturally, relative efficient since it's just coordination going. But the proposal here is that we consider using (Sidley) in the first instance to draft a sort of matrix and division of responsibility.

Which of the bylaws are going to have to be done and who is going to be instructing on which bylaw? And which bylaw changes?

So that's what's proposed here. And to be clear Seun good question; which are the bylaws. Here we are referring to ICANN's bylaws that will need to be modified to accommodate our proposal.

I think it's to be expected that there will be - but it's a good question; which bylaws are we talking about - PTI or ICANN and I think here we're talking about. The draft changes to ICANN's bylaws that accommodate the work of the CWG.

Any thoughts or comments on that? Chuck?

Chuck Gomes: Chuck speaking, thanks Jonathan. And this isn't specifically about that. But it seems to me we're making an assumption that using ICANN Legal and/or their outside counsel is more reasonable than using (Sidley). And that may very well be true.

But do we know that for a fact? It seems to me that we should confirm that. We're deciding whether to make a choice which we think will save money by using ICANN. But if they use outside counsel and it's just as expensive, we're spinning our wheels on something that won't save any money. Now maybe the Client Committee has already confirmed that and if so it would just be good to communicate that.

If not I think we ought to find out.

Jonathan Robinson: Thanks Chuck. I perhaps haven't been as clear as I can. We don't have insight into the rates at which ICANN hires its own outside counsel and how those compare to (Sidley). Although we did have ICANN Legal involved in the initial evaluation of the law firms and it wasn't a specific point made that, you know, on cost.

So let me just be clear where I think we are at the moment. What I think we've agreed and what we propose to do is to go ahead and subject to appropriate scoping is to instruct Sidley to evaluate the three scenarios in and around the IANA trademarks and domain names.

Second, what we're now talking about is to potentially use Sidley to help drafting the bylaw language that will ultimately need to be adopted by ICANN to execute or to implement the CWG's work.

But right now we're not asking - we're not proposing to ask them to go ahead and draft that but rather to simply scope out what the work will be and which areas they propose should be drafted under instruction from the CWG which should be drafted -- the CWG will sign off on; our group will sign off on -- and which areas our group will not have any significant input on.

So it's really an initial scoping exercise rather than actually doing the work. But of course it's like it will lead to doing the work once it's clear which areas are proposed to be worked on and providing that's consistent with where the CCWG sees things at. Greg, go ahead.

Greg Shatan: Thanks Jonathan. Greg Shatan for the record. I think, you know, briefly, Jones Day and Sidley Austin are roughly, you know, in the same area of the legal firmament as major multi-national firms. So putting aside any possibility that ICANN has a, you know, a fee arrangement with Jones Day that might give them a better, a slightly better per-hour deal, we're probably comparing varieties of apples, not apples and oranges in terms of fees.

Secondly I think any bylaws drafting exercise will in the end have to involve both ICANN Legal and presumably their outside counsel and Sidley because ICANN Legal will need to be assured that this works in their overall bylaws and that they can appropriately sign off to the board that they're not asking the board to - or that the board isn't being asked to approve bylaws that are going to, you know, have unintended consequences or otherwise aren't going to work.

At the same time, we're going to be need to be assured as a CWG that the bylaws as drafted through whatever process we arrived at make sense from the point of view of accomplishing our objectives. So I think at this point we're almost asking who should have the first serve in a tennis match rather than anything, you know, more significant than that.

I think whatever happens - and I, you know, personally would always like to hold the pen first if I'm drafting something that's going to be reviewed by someone I'm negotiating with or dealing with. But if I hold the pen second

I'm not shy, and I don't think Sidley would be shy about making whatever changes we felt necessary to accomplish the objective.

And then in turn Jones Day would not be shy about saying, "Well, you can't do that because look at this section of the bylaws. Now we have this issue." And in the end we'll get to where we need to get to because in the end I think we're all trying to accomplish the same thing. Thanks.

Jonathan Robinson: Thanks Greg. And then to Seun's question in the chat, which is an interesting one, is, "Do we know if the ICG would be requiring those bylaw details before submitting to NTIA?" And my expectation is no. I don't expect so, but clearly one area of the work of going forward is going to be respond to any questions or requirements for further clarification.

So I think as Greg said - and in many ways it's about setting expectations and understanding who would expect to make a first - provide the first language. And it's really where the expertise or where the origin of the work is. So yes, and I think that Lise makes a good point.

The fact that our proposal is dependent on the work of the CCWG, that's really the issue here is these things have to - it's less about what the ICG does and it's more about - and thank you Lise; that's helpful - it's more about making sure that our proposal meshes properly with the CCWG.

What we don't want to find is when the CCWG provides its final proposal -- and we can expect that to include language on the bylaws -- what we don't want to find is that members of our group or indeed anyone else said, "Well that's not consistent with the proposal of the CWG," which is why it makes sense to sort of work on this and in effect negotiate how that language might be developed over the course of the forthcoming period.

Seun says he agrees with Greg's suggested approach of using ICANN Legal for an initial draft. I'm not sure I heard that from Greg, so I'd like Greg to clarify that that's what - if that was what he was suggesting. I'm not sure I heard that.

Greg Shatan: No, that's the opposite of what I said. What I said was that I would prefer when I'm engaged in this in my professional capacity to have the first draft, to hold the pen first and would want the same for us.

However, it's not a die in the ditch type of issue because if we are the ones or our council are the ones that hold the pen second, they will not be shy about making whatever changes they need to make in order to make the bylaws look, you know, essentially as they would had they held the first draft plus whatever, you know, positive learnings they may have from the way ICANN handled it.

As an aside I would say that kind of the better and more sophisticated law firms I've seen, the less shy they are about making all the changes they see necessary in their clients' best interests. And I'm sure that Sidley would fall into that highly sophisticated category and look out for our best interests whether they draft first or second. But I'd rather draft first. Thanks.

Jonathan Robinson: Okay so let's just be crystal clear what's being proposed here. All that is being proposed here right now is that we go to Sidley and we ask them to prepare a matrix of the different likely bylaw changes and to suggest which of those they draft on our behalf, which of those we work on in conjunction with the CWG and ask Sidley they will help us to sign off on and which of those are likely to have nothing, we'll have no material interest in from the perspective of CWG. So that's what's being proposed.

It's not that we will actually go to instructing them to write the bylaws. We're going to first of all hear back from them which ones they propose to draft on our behalf so we would pick this up at a future date. That's well captured by whoever's writing the notes in that final bulletin.

So I guess what I would like to ask is if there's no objection to the (planning) committee proceeding with that step of getting that matrix laid out as covered by the action proposed there at the bottom of the right hand notes asking Sidley to develop a matrix to identify bylaw changes, identify which ones they would suggest drafting on behalf of the CWG, which are drafted by the CCWG that will need to be signed off by us, probably with their help so it meets our expectations and which of those we won't have to work with.

So that's what's being proposed. (Elise) I'll keep us in the interest of time - I'll keep us moving through the agenda but if there are any concerns or objections come back to that because I realize this is something which people might be just digesting as we speak. Theresa your hand is up. Go ahead.

Theresa Swinehart: Hi Jonathan and my apologies here. I think one thing that would be important is to try to have some consistency with what's also being done in the CCWG. I think as many are aware under the Dot Com (Act) and the legislation that exists and the discussions that occurred in the context of the Buenos Aires meeting there's a lot of bylaw work that's going to need to occur that has interdependencies.

And discussion with the CCWG was that ICANN Legal would play a role in the context preparing a draft, working with the community. Obviously the external law firm reviewing, etcetera, and that would be part of the discussion.

I think adding in another layer of complexity will really just slow down some of the discussions as opposed to ensuring that all the different areas of the bylaw provisions that need to be prepared and finalized as part of getting the final proposal ready get done in the most efficient and effective and resource conscious manner.

And so I would suggest that the group take a look at what was agreed to on the CCWG side which I'm sure many already have. There's a trial going to be done with the context of the AoC-related reviews and the bylaw provisions, other preparations being done by ICANN counsel then obviously working with the community on that and the external law firms working on that.

But I think that would lend a sense of efficiencies across all the different bylaw provisions that need to be drafted. Then just separately in relation to the IANA.org issue, that is a very complex area. I think as many know, there's different operational communities involved in that. I would suggest having a conversation with ICANN and ICANN Legal about that to fully understand both what the board statement is and to understand some of the areas that are relevant to that.

Jonathan Robinson: Thanks Theresa. So to - what would be very helpful is to understand if you are suggesting we should do anything different to those draft action items that are sitting in the notes at this stage because as they stand what we will do is we would go to (unintelligible) and say to them that we would like them to look at in particular the IANA trademark related issues, possibly to include the domain names like to include the domain names while the intellectual property and state three different scenarios from the CWG perspective.

Having consulted with ICANN Legal as to any historic or current (unintelligible) and let us know which of those scenarios retained with

ICANN move to a trust, move to BGI which if any or all of those are what the implications for the CWG proposal are. So that's the one.

And the second is then to (unintelligible) off to (staff) to draft the bylaws to develop a matrix as to which ones they would suggest would be drafted first by CWG - well by them on behalf of the CWG and which ones would be drafted by them and/or Adler on behalf of the CCWG that would ultimately need to be signed off by the CWG and then third which of those would need to be drafted by - well the third category may not even be necessary. That really is in the purview of the CCWG.

The question - does that second point in particular go too far in your perspective? Or are you suggesting we simply hold off from doing anything even in scoping those bylaw changes?

Theresa Swinehart: I think its fine to take a look at where one thinks that the bylaw changes are needed. But I would really suggest that there's a conversation with ICANN Legal, make sure that everybody's on the same page on where the bylaw changes are needed.

And then consistent with what's being suggested for the CCWG that the initial draft is done by ICANN Legal. One can do a test case in the context obviously of the CWG as is being done in the CCWG. And that this is done in an open and transparent way, shared with the community, obviously shared with the external counsel to give their views.

I think as (Bruce) had really nicely described in the discussions with the CCWG and the meeting that was held with the board and I think then subsequently on one of the lists that this is really just a partnership in working on getting the bylaw provisions done and getting them done in the most

efficient and effective way, ensuring that the framework and the principles and the objectives of what's in the proposals are fully captured and hence as a result that the work is conducted in an open and transparent way and in a partnership with the community to achieve exactly what's needed.

With regards to the IANA.org and the trademark issue, I think if the group agrees, I'd really suggest that maybe Sidley has a call with ICANN on that because some of it's actually not about a trademark issue. It's about a range of other areas that are relevant for the operational communities.

And again such a call could be done in an open way, transparent way and only of course if this group thinks that that's a helpful way to help inform the discussions most fully.

Jonathan Robinson: So thanks Theresa. To the trademark point, I mean to me it seems absolutely evident that Sidley should talk with ICANN Legal on the trademark and intellectual property issues. I don't think that will compromise their independence at all. Part of their fact finding and understanding.

So I'm going to go out on a limb and say I have absolutely no problem with that. And I'm sure others will come in if they do have any concern.

With the latter point, if indeed that is the case it feels to me like we potentially shouldn't take action at this stage because there's no point. And if in the final event we were to end up in a position where Sidley were not going to be drafting the first draft of any bylaws and all first drafts would be coming from ICANN Legal, which as Greg said a moment ago is not necessarily unacceptable.

It's a reasonable way of doing things. If it's still going to be reviewed by external counsel it doesn't make sense to do that second action item. I'm going to hold off here and let Greg and Alissa come in in that order. Greg go ahead.

Greg Shatan: Thanks Jonathan. First I'll join you on that limb and suggest that it certainly makes sense for Sidley to talk with ICANN Legal. They possess a whole range of facts and background that will be absolutely necessary to any analysis of the situation and they pretty much uniquely possess those facts, not just ICANN Legal but operational aspects of ICANN that deal with the actual IANA.org domain name and more importantly the Web site that is located through that domain name.

So that all needs to be learned. I would suggest that it not just be Sidley but perhaps a subgroup of folks from the CWG. So I will not surprisingly volunteer to be one of those people.

As to the second point, I think that the matrix of which bylaws are primarily the responsibility of the CCWG versus the CWG is absolutely something we need to understand. There are things that really we're executing on in this group that the CCWG would not be, you know, particularly well informed on and obviously vice versa.

That said, as I said before, there's no - if the overall approach is going to be that ICANN will take the first serve in this match, then, you know, I see no reason not to match up with that so to speak -- other than, you know, the possible issue of bandwidth. But again, you know, I think that as long as there's a dialogue, a collaboration, the back and forth on that, you know, we should just, you know, do what seems to be reasonable in the larger circumstance. Thanks.

Jonathan Robinson: Thanks Greg. Alissa?

Alissa Cooper: Thanks Jonathan. I would (unintelligible) extending the suggestion from Greg a little further in that if the information that ICANN Legal or ICANN staff would intend to share about the trademark and intellectual property is likely to be relevant not to (unintelligible) but to be (unintelligible), then what probably makes more sense than, you know, (unintelligible) of the (unintelligible) to have a broader call - a public call or a public (unintelligible) with (unintelligible).

(Unintelligible) community need to be aware of and thinking about. So I would be concerned that information and that (unintelligible) was defined only to Sidley or to the CWG. And apologies for sort of injecting (unintelligible) commentary into the CWG's meeting but this is where we're having the conversation, so...

Jonathan Robinson: Alissa from my perspective it's invaluable to have your input. It's very, very useful. Unfortunately audio was poor there, and I wasn't sure if it was just on my receiving end, but it seems like from comments in the chat that it was - the problem was had by others as well.

So it would be really - appreciate if you could just précis that point again. I know if it's a pretty comprehensive point it's always tough to ask you to go back and restate things, but I think it would be helpful for both currently now hearing you and part of the conversation and also for the record.

Alissa Cooper: Is that audio any better?

Jonathan Robinson: Yes much better.

Alissa Cooper: What I was saying was that I think kind of piggybacking on Greg's suggestion is that that conversation with ICANN Legal or ICANN staff about, you know, more information that they might have as regards to the trademark and the ad PR should include folks from the other communities.

Ideally it would just be kind of a public call that would be open to anyone who wants to join from any of the communities, given that the trademark and IPR issues have bearing on all of the communities - unless the items that Theresa had in mind were specific to the names function, in which case I would understand.

But I would certainly want any of that information or kind of public statement or anything coming from the ICANN side to be available for discussion with all of the communities and might as well kind of see them all at once I would say as opposed to just having a conversation with Sidley. Hopefully you could hear that, better.

Jonathan Robinson: Yes Alissa that was crystal clear. And I think it's a really good point, and I suppose it's linked but not exactly the same as the points that I made earlier about the willingness and therefore almost the expectation that any advice we receive would take input from the other communities including any legal advice they have received.

Now to the - I guess I can't really presume what form that takes as whether there's a kind of multi-way conversation or how that's noted and understood your point about if Sidley is to consult with ICANN Legal. Ideally other communities are informed or in present in the conversation. So that was much clearer, thank you. Lise?

Lise Fuhr: Oh thank you Jonathan. I was going to comment on the bylaw matrix, and I don't know if that's - we're on the other subject now.

For me, I still would like to have that with the help from Sidley even though ICANN Legal might take a first go of creating the bylaws because I find that that would give us a better direction of which bylaws we need to be more aware of and more in conversation with ICANN Legal on along the way and which ones that are more - that belongs more to the accountability group.

So for me this would give us good guidance, whatever process we choose.
Thank you.

Jonathan Robinson: Okay thanks Lise. Alissa your hand is still up. I'll just ask you to remove it unless you wanted to speak again. Okay so it seems to me that we have all the information we need at this point. We on the first item, we proceed with care and make sure we engage and continue to involve the other communities in whatever way we can as we go down this path.

And on the second it seems that the matrix is thought to be a good idea and it was the understanding that this needs to be (unintelligible) with the CCWG and the law firms. What we don't want, which is Theresa's point, is we're going on independent of each other.

These things need to be properly coordinated and understood before work is done, who is doing the first draft. And that seems to be critical.

Okay, let's have a look at the other items then. I think we spent longer on this point than possibly you might have imagined. But it does seem to have been useful to flesh it out properly.

As far as future work where Sidley is concerned I think that's something we can - I think we have more than enough to be thinking about for the moment. Really I think it's about the future work for which is the next item on the agenda. Any future work for the CWG for us.

Now clearly in some ways we'd like to say we've done our final proposal and that's it. But we may well need to respond to further queries and issues from the ICG. We'll ultimately need to monitor the work of the CWG and make sure that that continues to be aligned with what our expectations were because I think we really owe them a duty of care to provide an early warning.

Now fortunately we have enough commonality between our groups that it feels that we certainly should be in a position to keep a very close track of that. And I think there's a face-to-face meeting scheduled in Paris next week. I'm going to be on vacation but I believe Lise is planning to attend to track that very - and to be essentially representative of the two of us as co-chairs in addition to anyone else who's got a cross membership.

Lise Fuhr: Jonathan? Hi it's Lise. Yes I will participate in the meeting in Paris next week in order to ensure the coordination and cooperation with the CCWG together with the rest of the group. Thank you.

Jonathan Robinson: Thanks Lise. And clearly the objective as I said there is to make sure that - it feels to me like of course any contribution that can be made but really thinking about it, when these two proposals come together in the end, the issue is going to be does the CCWG proposal meet the requirements, the conditionality of the CWG.

And to the extent that it's in any sense seeming that it might not, we owe them as far as possible to give a warning and say, "Look, that doesn't feel

consistent.” And some close monitoring and continue to track that is vital, and so thanks Lise and anyone else who’s working on that.

And I know Theresa’s point just recognizing the value of the - from a cost point of view and subject matter, some support for potential first draft coming from the ICANN Legal which if that’s the way the CCWG is planning on working may well make the best chance from cost and efficiency point of view.

Another area of work that’s going on in the background is the work on the - what was the (unintelligible) drafting team to continue to make sure that we have the appropriate set of service level expectations in place at the time of the transition and that we can rely on the monitoring and the systems in place to be able to do that.

I don’t know if anyone would like to comment or question where we are in that, but that’s going - I’m confident that that’s going on in the background. Is there anyone else who would like to speak to that? Bernie go ahead.

Bernie Turcotte: Hi. Yes the work is ongoing. And as a matter of fact we’ll be having another meeting of the sub team which is trying to sort of create this first set of specifications right after this meeting. And we’re hoping that by the end of next week we’ll be done with that and that that can be shipped to the SLE Working Group, which is the new name for DTA and that they’ll be able to take a crack at that.

So work has been ongoing all the way from Buenos Aires and has not stopped and will not stop until it gets done.

Jonathan Robinson: Thanks Bernie. And I believe from discussions we had in Buenos Aires at some point there will be a project plan and an indication of how that's all going to dovetail with the various timing with these sort of overarching timing issues.

Is that still your idea that they'll become more visible project plans for the group to be able to see how the work on the SLEs will go and how that'll fit into the overall timetable for the transition and the work of the CCWG?

Bernie Turcotte: Yes. We'll only be able to do that after the SLE Working Group completes its assessment and settles into the final specs. And then we'll be able to produce an initial work plan for the community to look at.

Jonathan Robinson: Okay great. Thanks Bernie. That's helpful. Any questions or comments there? I guess we put Item 4 onto the agenda thinking really at some point we will need to - and it doesn't have to be dealt with in this call at all - but it is a recognition that at some point we need to be clear on what if any role the CCWG stewardship will have in implementation or whether there will be an implementation review team, and if so how might that be composed.

There are some sort of precedents if you like in the way this is done in other groups. And I'm familiar with the work of the GNSO where typically the chartering organizations direct the creation and implementation review team. What our charter doesn't specifically - the charter of this CWE doesn't specifically deal with implementation.

But we do make some comments around that so perhaps what'll be useful is to circulate the charter and even highlight where that deals with any issues close to implementation and just be - we need to think about what our role might be in any implementation work.

Are there any comments or issues that this stage? I think what we might do when we recirculate the charter is highlight a couple of areas where - while it doesn't explicitly deal with implementation it touches on related areas. So that could be something useful.

Unless I'm forgetting something, the main other point we wanted to raise on the AOB was just to talk about the fact that there is a prospective future meeting scheduled. And what we proposed to do there was put in a placeholder for a meeting every two weeks and then confirm 48 hours or so before whether that meeting was required or not.

The danger with not having placeholder meetings is that it might be very difficult for the group to get together and we don't give sufficient notice. So we suggested - the co-chairs suggested the preferred option is to put placeholder meetings in and to the extent that there are questions or issues arising then we have the meeting.

We won't have meetings for the sake of it, but if there are - I mean the most likely thing is responding to queries or issues arising from the (unintelligible). And if that is necessary then at least the group has got meetings (diaried).

Are there any concerns or objections to that? I see Cheryl agrees, thank you. So providing there are no significant objections I expect what we will do is we will - the action will be on staff to schedule those meetings and for those to be sent out as place holders and they will be cancelled at 48 hours' notice if there is no perceived need. Any other comments or questions? Grace?

Grace Abuhamad: Thanks Jonathan. Just a quick question on that. Would you like us to do rotating calls like 17 UTC and 11 - something like that - or would you just want to have them all at 17 or all at 11?

Jonathan Robinson: I think I would like and what I think is the correct thing to do is perhaps slightly different. I think we were rotating 17 and 11. It probably makes sense to continue with 17 and 11 as (unintelligible) slot. I know that either is probably unsatisfactory for half of the world, but that probably makes sense, to just continue (unintelligible) be on Thursdays.

And I guess absent another suggestion I would think we continue with the rotation as we did, which was every second Thursday and flipping between 11 and 17 UTC. I know that won't be music to your ears (Chuck) (unintelligible) 11 UTC. Absent something else it probably makes sense to do that. And we'll just have to see.

But the intention is not to meet as a matter of routine. The intention is to meet as and when necessary. So you can expect a number of cancellations.

Okay I think that's it. I'm going to pause for one minute and have a minute of radio silence just to make sure that we ensure that if anyone else has anything to say they would like to say, any input. Thanks, it's been a very nice balance between - I know I've spoken a lot, and I apologize for that but there was information to convey.

But we've also had good engagements in the voice and also plenty of help with chat. So that's useful. Grace?

Grace Abuhamad: Sorry Jonathan. I was just going to respond to Seun and offer that we would send - we'll send a schedule in an e-mail. We'll post it on the Wiki and then

we'll also have calendar invites. So that way the schedule will be clear for everyone. We'll be sure to do multiple different ways of getting the information out.

Jonathan Robinson: All right, good, thanks Grace. So it sounds like we're done. Thank you everyone. We'll try not to bother you unless there's work to be done. And we'll look forward to doing that work as and when we need to. Thanks again for attending and for a productive call.

Woman: Thank you guys.

END