

**ICANN**

**Moderator: Brenda Brewer**  
**November 9, 2015**  
**3:00 pm CT**

Coordinator: Recordings are started.

Greg Shatan: Thank you. Why don't we get this call started as well? Welcome to the first call of DT-IPR of the CWG on IANA stewardship transition. I'm Greg Shatan and I have volunteered to be Rapporteur and facilitator for this particular drafting team.

Our primary purpose is to come up with principles and requirements and ultimately recommendation back to the full CWG regarding a future home for IANA trademark and domain name.

There are other IANA related IPR assets. Not entirely sure that they are within the remit of this IPR - of this DT but I think the one that clearly is in this front and center is the - related to the trademark registrations and domain names. And we'll stick to that at least at first so that we - since that is the primary expectation of this group from the CWG.

So why don't we start with a roll call? Grace or Marika, Brenda.

Grace Abuhamad: Okay. We can go ahead and run that for you. So the IPR members are Greg Shatan here; Konstantinos Komaitis also on the line; Maarten Simon also on the line; Nicholas Barbantonis also on the line. We are missing Suzanne

Woolf and Andrew Sullivan. And I believe also Milton Mueller who just joined today may not have been able to make the plan for the call.

And for staff we have your support team. So Brenda, Marika and myself. And then from the implementation side Trang and (Yuko) and (Andrew Hall).

Greg Shatan: Thank you Grace. That's very helpful. So in terms of where to start, I think that the document that was attached to one of the two emails that I sent is as good a place as any to start so that we can, you know, essentially get our bearings on this particular project. So I think that has been emailed. Has that yet been received? I've also made into Google Doc and I've just shared the link.

Marika Konings: Greg, I only got the first two emails. I think you're referring to a third. Is that correct?

Greg Shatan: Yes. I sent a third email about six minutes ago to the three of you.

Marika Konings: Yes. This is Marika. I haven't received anything yet.

Greg Shatan: All right.

Grace Abuhamad: I have not received it either.

Greg Shatan: That's the Internet for you. In any case...

Marika Konings: I did...

Greg Shatan: ...everyone should have received that document in the attachment for one of the two emails. So until we have it up on the screen - and you could also grab

it from the Google drive link that I've circulated - that I just put into the chat as well. But it may be a little awkward at this point to work in the Google drive document. Okay. The document should have been received.

Marika Konings: Yes. This is Marika. I've only posted the one now that I had in the attachment now but I'll go and load the one from the...

Greg Shatan: Okay.

Marika Konings: ...Google link and post that one.

Greg Shatan: Right. The only difference between the Google link and this one is that I've added a column, which is now blank and titled notes. So at this point we can just look at this one and maybe just keep notes in the notes column as we go along. And then we can transfer those to the Google drive document after we're done if that makes sense.

So I don't want to be the only one talking. Before we get to questions, I'm going to start really with the questions that are in the right hand column here that are in purple. So but before Question 1, I think we have kind of Question 0, which is what IPR are we talking about.

And just wanted to share my understanding and make sure that if anybody else has different understandings or additional understanding, then it's - then we should bring that out now.

There are three U.S. trademark registrations for the word IANA, for the IANA logo and for IANA with the name Internet assigned numbers authority together. I believe those are the three trademark registrations. And there are common law rights associated with those as well.

And then there's the IANA.org domain name and I believe that the .com and .net versions are also owned by ICANN currently. So that's the package of IPR that's the subject of our first and maybe only task, which is to find a new home for those or to spec a new home for those as part of our work. Anybody have any comment on that list? Any questions or additions?

Well I'll take silence as assent or - but certainly if there are questions, we can come back to them later. And I - between now and our next call or, you know, as soon after this call as I can, I do have a brief document that I prepared some months back that lists out the trademarks and all of the, you know, the vital statistics about each of those trademarks - trademark registrations and domain names. And we can have that as well for our work.

So I think that brings us to the first and really most open ended question identified initially on our (unintelligible) call of our first group may have been identified earlier or later but in any case it's listed here, which is what should the requirements - what should be the requirements of the trust to ensure continued operation, stability and security of IANA functions in the event of separation?

I'd actually like to split that into two questions. Or maybe they're all part of one, which is what should be the requirements of the trust? You know, what are in essence the requirements and specifications for the trust?

And clearly they need to meet the requirement of continued operations, stability and security in the event of separation. But they also need to meet the requirements of being operational during the period of time, which could be infinite before separation occurs.

So I think that's kind of a two-pronged test that needs to be - it needs to work now, it needs to work in the time of separation but what are those requirements?

So I look forward to some thoughts from the group on what those requirements would be. I have my thoughts but I don't want to, you know, pollute other people's thinking before I give them. So I'll look for some thoughts from the group. What should be the requirements of a trust to hold the IANA trademarks and domain name?

So I'll break in with one, which I think comes from several sources and it's cited in the ICG's report, which is that it should be neutral. I think that's a requirement that it doesn't have anything in particular to do with its role as a trademark owner per se but just as its role in holding an asset that has use and value to all three communities. So I would say that being neutral is one key principle that we need to keep in mind.

Then I think another is that it needs to be responsive and responsible to the three communities in some fashion. We don't need to get into what fashion there is yet although we will need to get into it sooner than later. But it needs to be responsible to the numbers community, the protocol parameters community and the names community.

Then I think another is that it needs to be capable of acting as a trademark owner and needs to have - be able to carry out the responsibilities that are, you know, by law and best practices those that trademark owners carry out, which, you know, given that this is a U.S. - these are U.S. trademarks and U.S. corporations to the extent that we have them that are involved.

Go by U.S. trademark law although I'm, you know, interested in thoughts about other tests and other parameters so that's no means an attempt to kind of cut off any discussions about other trademark principles at all.

But a trademark owner needs to be able to take care of quality control for goods and services that are offered under the trademark. Under U.S. law that's pretty much a - the most core responsibility if you're in the licensing business.

Secondly, needs to be able to police and enforce trademark rights if they are being infringed by third parties, which again is both, you know, good business as it were and good preservation of the assets and the value of the asset but also a requirement under U.S. law. But not in a clear requirement to go after every last potential infringer but to generally engage in policing and enforcement as well.

And then - and so those are really two that - the quality control obligation and the policing and enforcement obligation. At the same time since we want this to be neutral, we would want these not to be - such as the first one not to be done with too heavy a touch. But I think we'll get to that as we move deeper.

Konstantinos, thank you for interrupting my monologue. I was getting bored of listening to myself.

Konstantinos Komaitis: Thanks Greg. And hi everyone. I think that we could add to the list of requirements the fact that whoever holds this trademark suite has to have experience in holding any sort of - this is a trademark and of course basic trademark and fundamental principles of trademark law will need to be followed.

But at the same time, this is a trademark that relates to the specific set of functions. So to the extent that a body that is capable of understanding these functions and have experience in (holding) IPR - not necessarily in relation to these functions but in relation to issues as they are - as they relate to the Internet, I think it would be important. Thanks.

Greg Shatan: Thank you. I see we're getting that noted in the notes. A good point. I think another requirement that kind of relates to all of the above is that it needs to have the necessary funding to carry out these activities. It's nice to be able to say that they have the capacity to do it in the abstract but in real life that requires funding.

And that also requires access to personnel and typically outside trademark counsel. But there needs to be personnel that can take care of these early (pay person). And clearly that person has to have experience in managing trademarks (in some fashion). Kind of where the money goes in large part.

Any other thoughts on kind of high-level requirements for the - we'll call it the trust since that seems to be the desired kind of vehicle. Not necessarily implying it would be the IETF trust but just calling it the trust is good to have something to call it. Any other things on kind of requirements for the trust? Well let me ask Nicholas.

Nicholas Barbantonis: Hi. I was just thinking in the event of separation, there needs to be clear procedures on how the transition of licenses will be facilitated. I don't know. We didn't talk about that earlier.

Greg Shatan: No. That's very true and actually that was going to be - you anticipated me quite well. I was going to ask next, you know, what the requirements will be specifically about the separation as opposed to what we've been talking about

generally really as the operational requirements for the trust in the ordinary course of business when nothing is going wrong other than normal trademark matters.

But when we come to the point of separation, that is our - kind of our second - that's the second life of this - of the trust. So Nicholas, why don't you just restate what you were thinking in terms of requirements in that case?

Nicholas Barbantonis: Well, I mean the trust there should be some procedure in place where the trust is forced to comply with the orders but I don't know who will actually begin those orders. I supposed it will be ICANN. But that they're forced to have to comply with the licensing and transferring of those licenses in the case of separation. And if they don't comply, we need to put in place some kind of enforcement procedures.

Greg Shatan: Right. That's a good point. And I think might not be ICANN giving that - the separation would typically I think be initiated by one of the three communities. So it may be...

Nicholas Barbantonis: Yes.

Greg Shatan: ...that the protocol parameters or numbers community may be, you know, kind of giving the orders so to speak. And I can think of two ways that we could operationalize that. I'll just mention that and then I'll go on to Trang to capture a thought.

But one way is by contract. And that may also - and I think that also may include a bylaw as well. It may also include - the trust document itself should have requirements baked into the trust.



And the last possible way of dealing with this is to have trustees who are essentially placed there by each of the three communities. And so it'd be - and since they direct the trust, (they'll) be able to influence that trust. Those are not all - those probably all wouldn't need to be operationalized but that's kind of a laundry list I'm thinking of possible ways that the trust could be held accountable and at the point of separation. Trang.

Trang Nguyen: I have one last comment if I may.

Greg Shatan: Please.

Trang Nguyen: I read the Sidley memo yesterday. And, you know, the (scenario of committee) provides a good basis for our further work. I'm also (unintelligible) with the other communities' proposals. But there was particularly one thing that stood out and that's in relation with (IGS) trust framework proposal because of the (unintelligible) mentioned the possibility of amending the trust document.

And I feel one of the strong sides of the (unintelligible) memo is that the trust document shouldn't be contained of provisions just as you mentioned earlier. I don't know if that has been communicated with (IGS) trust yet or not. And if not, it should probably be so if there could be a viable candidate.

Greg Shatan: Right. I think that's a very good point. I think the protocol parameters and numbers community probably have seen the Sidley document since they have at least overlapping members who have been, you know, participating in our group.

I don't think that the specific question has been raised about amending the IETF trust document. If that were to be kind of a necessary requirement or a

possible requirement for taking on the generic - the role of the trust that holds the IANA IPR.

So I think that is - it's worth noting now that Sidley has I believe for about the trust document - I think we probably will want - as we work through things and get a little more specific, I think we'll want to look at that specific requirement, consider it ourselves.

I think, you know, Sidley obviously has, you know, given us good legal advice. But that doesn't necessarily mean that it's the end of our discussion. It's really the beginning of our discussion. But I think that is a good point. Sorry (unintelligible) has to leave. But, so in any case, I think that is another - that is a good point as well. Nicholas and Trang, are those old hands now?

Trang Nguyen: Oh yes. Sorry.

Greg Shatan: Oh no problem. So before we leave this first box, any other thoughts on requirements of the trust? Generally as an operational enterprise to hold and manage the trademark and/or to deal with the trademarks and domain names appropriately at the point of time of separation by one or more of the three communities.

Trang, is that a new hand? I'll take that - yes. I cannot hear you. Just maybe our staff can look into - I think you're probably on the Adobe room. We've had this problem from time to time. I'm dialed in on the dial in and you're in the Adobe room. And sometimes the two streams don't seem to meet.

So we'll - Trang will type his comment in the chat and I guess staff can see if they can resolve this problem for this call. Some reason it happens every once

in a while unless the people who were not - were the people who are also logged in to the audio for the Adobe room able to hear Trang? Yes or no.

Grace Abuhamad: He Greg. This is Grace. There's no issue on our end. We can't hear Trang but I think it may be an issue with the microphone volume on her side because it indicates the microphone is on.

Greg Shatan: Yes. I see the icon.

Grace Abuhamad: And it's not piping volume into the room.

Greg Shatan: Okay. Okay. Well I think we've troubleshot this problem enough. We'll be able to shortly. But I think that covers pretty much the first box for the moment. You know, we'll get these notes into the Google drive document. We can work from that.

These are clearly kind of like, you know, first level questions. And we'll need to get to some second level stuff, you know, before too long. Let's go to the second box.

Says the main takeaway from Sidley or at least a main takeaway from Sidley was that the owner of the mark needs to exercise some control oversight over the mark. And I would say that's both over the mark - use of the mark and also the use of the quality control of the goods and services.

So I think those are to aspects of quality control. Sometimes get mashed up a little bit. But the question is does the design team consider this one of the principles or requirements for the name community? Konstantinos.

Konstantinos Komaitis: Thanks. So we are talking about trademarks and trademark law is very clear that there needs to be some sort of quality control. Having said that, however, I do not think that this should be the priority or even one of (unintelligible) elements that we need to see.

This is not any - this trademark leads to the specific IPR issues not Coca Cola or is not Apple for that matter. It is ensuring that the primary focus is to make sure that the IANA services, the IANA name is being used by the appropriate communities in a manner consistent with the IANA function.

And I think you put it very well in the beginning Greg when you said that one of the requirements is to make sure that the security, stability and resiliency of the IANA function is also ensured through the appropriate treatment of the IPR.

So to the extent that this might be a requirement but I think that we need to be a little bit conscious of the parts that this is not a typical corporate trademark that needs to be as aggressive as protecting Coca Cola or Apple.

And to that extent perhaps it might be good to ask - to inquire ICANN what sort of quality controls have exercised over the trademarks over the years for us to get a sense as to what exactly has been happening with regards to that point over these past few years. Thanks.

Greg Shatan: Thanks Konstantinos. I think that there's a couple of different points to be made there. And I think one that I hear that I would kind of summarize is that quality control by the trust needs to be fit for purpose, which is it needs to meet minimum legal requirements for quality control both over the use of the mark itself and over the goods and services.

But given the relationship between the communities and between the community and the trust needs to be - take into account the unique relationships and requirements of this particular situation and not blindly follow kind of standard procedure as long as it meets legal requirements.

I think one point in terms of ICANN as far as I know, ICANN as never licensed the trademark so they've never really had to engage in quality control as such other than, you know, internally making sure that their use of the trademark is appropriate and that to the extent that they've allowed third parties to use that, we have to find out.

So I think it's kind of - it's good to ask whether they have licenses and if so, how they've handled that and, you know, how they've handled both the licensing aspect and the quality control and policing and enforcement obligations that come along with essentially being a licensor.

So we should make that an action item certainly to inquire about - to inquire with ICANN if they have licensed the trademark and if so how they've managed the quality control provisions. Any other comments on this question about whether exercising control and oversight is one of the requirements for the trust or the brand owner.

Let's move on to the second - Question Number 3, the second question in that box, which is does the design team think that the needs of all three operational communities should be taken into consideration in exercising control oversight of the IPR. Konstantinos.

Konstantinos Komaitis:        So I'm not sure whether this should be the question. There is - the ICG proposal is quite clear on the issue of the trademark. So to the extent that

the ICG proposal reflects the three operational communities then I - my -  
would be yes.

But I think that the direction should come from the ICG proposal. Whatever  
this design team in recommending should fit between the requirements and  
the expectations of the three operational communities as they have been  
expressed through the ICG proposal.

Greg Shatan: And what do you think, you know, a little more specifically with regard to  
what's in the ICG proposal? Sorry to put you on the spot on that, but.

Konstantinos Komaitis: So I have to go back and reread it. But I think that you've  
mentioned it. For example, there is a basic requirement that the trust needs to  
be an independent entity from the IANA functions operator. And we have to  
bear in mind here that for the (IGS) and the RIR the ICANN is simply the  
IANA functions operator whereby for the names community it will be the  
(unintelligible) that is simply that the IANA functions operator.

Greg Shatan: Thanks Konstantinos. I think this actually relates to the question that Trang  
has posted in the chat, which says one of the requirements that was just  
specified for the trust is that it be neutral. It would be helpful to further define  
what is meant by neutral.

I'll start with my thought on that, which is that to my mind that means that it  
needs to be equally responsive to and responsible to the three communities  
that are involved.

I would also say frankly that if I were looking at this from scratch that it  
would mean that it shouldn't be controlled by any one of the three  
communities.

Now clearly there were grave concerns with ICANN, which may or may not be the naming community per se, controlling the trademark and that the specification was to, you know, put it in neutral hands.

There are at least questions to be explored as to whether the IETF trust as currently configured is neutral and whether it can be configured to be neutral or if that neutrality can be achieved through contractual means as opposed to structural means. That's a little abstract at the moment. But it's something we'll need to get much less abstract about as we move along. Any other thoughts on neutrality?

I think it also - it can't be entirely neutral with regard to the IANA trademark because it is still the brand owner. And as the brand owner, you know, the good will and kind of value and association of the mark with a sort will become the - will become that of the trust.

So in a sense it's going to be neutral to the communities but it can't be neutral to the brand if it is going to be associated increasingly with the brand. And brands are not - brands are not so much assets in a sense as they are indicators of source and origin and the trust whatever trust it may be will be that brand owner.

Again, the situation is somewhat different given the type of mark and the type of uses that we're talking about but that it's still - we can't get entirely away from that concept even if we apply it somewhat differently in the context.  
Konstantinos.

Konstantinos Komaitis: Thanks Greg. So I can just open the ICG proposal and it looks - so I think that using the word independent but here one of the requirements - and

I think that relates to what neutral or independent means is that the IPR relate - it reads quote IPR related to the provisional IANA services remains within the community.

So this is one of the requirements. So the - how - when we go through the process perhaps of figuring out what independent means, then we might want to consider that this is part of a requirement by the numbers that the IRP related to the provisions of the IANA services. It's to be within the community.

And I think the way the RIR meant it when they use the word independent was to be independent of the IANA functions operator, not independent of the community.

So perhaps however because we have those requirements we need to go back through - this group needs to go back through the ICG proposal and extrapolate very, very clearly what these requirements are all about before we start going into our own interpretation.

Greg Shatan: Konstantinos, I think that's a good point. I think - I've actually created a three-page document, which I'll clean up a little bit and circulate, which extracts from the ICG proposal the various paragraphs that deal with the IPR. So rather than dealing with the whole hundred and some odd page document, a little bit of a kind of, you know, cheat sheet almost.

And we do have to consider that, you know, to some extent, you know, these are the proposals of the three communities that have been kind of lightly stitched together by the ICG. And so, you know, one of - and our role here is to determine kind of first what are the principles and requirements of the names community.



And then secondly working with the other two communities figure out how to fit our principles and requirements together with the principles and requirements of the other two communities.

So I think the ICG proposal is important and practically speaking, you know, we need to kind of work our way through it. At the same time, you know, we have to kind of have our own mind about this, which doesn't necessarily mean it needs to digress in any way from the ICG proposal. But clearly our kind of our mandate is to look at the principles and requirements of the names community.

Sorry guys. Notes are paused. Fire at (IGS) building. I'm very sorry to hear about that. That (unintelligible).

Konstantinos Komaitis: And I hope that is the case. But Greg, just one note - and sorry for jumping in.

Greg Shatan: Yes. Your hand...

Konstantinos Komaitis: Just one note on what you were saying. However, the ICG in their report that they just released have - there is an expectation that the coordination that has started in relation to the IPR will continue during the implementation stage to ensure that the requirements are met.

So to the extent that, yes, this is primarily for a recommendation to go to the CWG, but we need to be mindful of that the fact that this recommendation should not be distanced or alien from the other operational communities. This is - the ICG - there is an expectation that there is going to be coordination

between the three communities during the implementation space to meet the requirements that the ICG proposal says.

Greg Shatan: And I agree with you, Konstantinos. The way I see it there's kind of, you know, a few steps that we need to go through, and I'd like to not skip steps in a sense, which is to look at what the principles and requirements are for the names community and consider those in relation to the principles and requirements of the other communities and the certain requirements that were stated kind of by the ICG, which are not necessarily exactly what was stated by each of - by any of the three communities, and then, you know, figure out once we kind of bring all of this back to the CWG, you know, figure out what our recommendation is to the CWG as a whole and also figure out when in the course of all of this we should be interacting with the other two communities.

And my feeling about that is that, generally speaking, sooner than later but at the same time, I'd like to get our thoughts kind of formed before we engage in the necessary discussions with the other two communities and each of them had a chance to kind of think about this on their own and, you know, in a sense coming through that's harder for us to do. But that still to my mind we need to think about what our requirements are.

And I think also we need to think about, as we state potential requirements, which ones are must have and which ones are just nice to have, because they may - not every one of these necessarily might be a requirement as opposed to a best practice or a hoped for perimeter.

So - Konstantinos's asked, "What is the timeline for this?" Well that's a good question. As soon as possible is one admittedly vague answer. I think that initially the hope of the CWG that was stated when they first posted this was that there would be something to present back to the CWG at the meeting of

November 5. Given that it's November 9, that is clearly -- and this is our first call -- that is clearly not doable.

However I would say that given the schedule of the CWG call, I believe the next call is not this Thursday but the Thursday following but I could be wrong about that...

Grace Abuhamad: Hi, Greg, this is Grace. Just to confirm, yes, the call is going to be next Thursday, not this week.

Greg Shatan: So that's the 19th, if my calendar reading skills are still with me. So I think we should have a goal to at least have a - an interim report to give back to the CWG on the 19th. That doesn't necessarily mean we'll be done with our work, but I think we should be - report to them on where we stand, which means that we'll need to keep things moving at a fairly nice pace between now and then.

And I think we should expect to report back to the CWG at the next call after that. And maybe by then we'll actually be done, figuring the call is two weeks after that and that, you know, we'll need to do as much work as possible both on our list and on the CWG list in between calls, since the relatively relaxed schedule of the CWG is not really the same timeline as the compressed timeline of this design team.

So that would be kind of my goal would be to have a - kind of a working report to come back to the CWG a week from Thursday the 19th and then a - at least a - kind of a stable draft, if not a final draft, report and recommendations coming back to the CWG for the next meeting after that.

And I would think that if we haven't done so by then, by the 19th, that between the 19th and the following call we would want to engage the other

two communities and maybe the ICG as well. At that point we'll have better feedback and marching orders from the full CWG too, so that has that benefit.

So that would be my view on the timeline, and I think that will also require us to review after we've kind of fought through our own thoughts on this the protocols and perimeters - protocols, perimeters, and numbers community, and there's been some more detailed recommendations that have come out since then as well, so, in terms of potential structures and contract relationships that are in the way that could be put in place. So, you know, we'll need to work through this.

So I think what - overall my goal was to kind of take this - us down layer by layer as quickly as possible so that we can come up with ultimately an operational recommendation and one that is at least potentially consistent with and shared by the other two communities. It may not be exactly what they have right now but - because clearly we have, you know, we're one-third of the process, but at the same time if it doesn't work for everybody, it works for nobody.

So in terms of timing, we're about - we're timed to go through to 5:30 New York time. Sorry for being New York centric. It's now 4:50, so we have 40 minutes left and we are working through this list. Anything else on the questions two and three, that box there? If there's not, I'll move on to question four, but I want to give one last chance for comment on the question of the needs of all three operational communities.

I'll also ask those who are in (unintelligible) whether the fire is out now or at least under control.

Woman: Hi, Greg. It's - we're back at the meeting. We're fine. I think it's under control.

Greg Shatan: That's good. That's a little more excitement than one counts on.

So let's move on to question number four: What information remains to be provided to the design team? And this is in response to a summary note. The CWG agreed it would be useful to understand how the IETF trust manages existing trademark. So, you know, since we're working in a fairly compressed fashion and the IETF trust is clearly out there, there's no reason to wait to ask that question.

I think we've had some informal responses to that question already between August 6 and now. But I think going back to IETF trust and either asking them to dig up - if those informal responses were in writing, asking them to dig them up and just send them to us, or if they were, you know, just kind of oral reports, if they could put them down in writing, that would be helpful.

And as noted before, we also want to find out from ICANN whether they licensed the trademark. And we may as well as them how they managed the trademarks currently as well, and not just in terms of potential as licensor but just as a brand owner what actions do they take and have that taken so we can get a sense of kind of the current state of play.

We also need to confirm the list of trademarks and domain names. As I said I have a list that I made up, not invented but put together, that, you know, shows clearly the - all the fact, necessary facts, about the free trademark registration and the free domain name registration that are at issue. But we'll want to confirm that with ICANN and just get that out in front of the group.

So is there any other information we think we want that - kind of factual information we can get from other parties? And I think another type of

information we may want, maybe we don't know what it is exactly yet is any other legal advice we may want from Sidley as our counsel regarding any of the questions that are in front of us.

We don't know the answer to that question yet. It's possible we'll need some advice. It's certainly likely we'd want them to look at our operational recommendations once they're, you know, closer - once they exist, are closer to final.

Anything else on question number four? I'll move on now to question number five, which is a variation on a theme we've already touched on at least a couple of times. It says that on the 20th of August call, the CWG agreed on a neutral/independent trust and the communities can focus on requirements for this trust during implementation.

So question five is, "What does the design team propose to be the defining qualities of a neutral/independent trust that will serve in this role?" I think this may be one of the more difficult questions we end up having to answer. A lot of goes back to how we define neutral and independent. And I think we're going to need revisit those and revisit the sources from which those characterizations came so that we can kind, you know, carry them out and think about them.

And Konstantinos's very helpfully pointed us back to the ICG, and we need to look at other items as well. You know, and part of the question is whether there is a value in independence from all three communities or is there a value in a trust that is somehow jointly administered by all three communities, and can that administration or joint control be something that is contractual as opposed to restructuring the trust in some fashion or creating another trust that would be more of a joint trust.

I think these are things we're going to need to think about, and values we'll need to think about both, you know, as principled and also pragmatically as well, since clearly the IETF trust as it stands is not, you know, neutral or independent of the IETF. So, you know, that may or may not be an issue, but it's one I think we need to explore.

On this first call, I don't want to explore it fully, I rather want to kind of finish going through the work we're doing now. But I think that's something we should note, given that the IETF trust has as its beneficiary the IETF, which means that the - from a legal point of view, the assets are held - are legally owned by the IETF as the beneficiary and the IETF trustees are also - the IETF trust trustees are also members I believe of the administrative board of the IETF.

So we may want to get some advice from trust lawyers as to what that all really means and whether anybody should really care about it, because those might just be straw men in terms of concerns so I don't want to make too much out of the, you know, structure of the IETF trust but rather, you know, we would probably want to seek some advice whether and how that makes any difference.

Konstantinos?

Konstantinos Komaitis: Thanks. So again back to the issue of what do we mean by independent, I think that yes this would be a crucial point. Perhaps a good idea would be to revert back to the numbers communities. They were the first one that mentioned and that we confirm what specifically what they mean, even though in the proposal they seem to say and indicate that by independent they

mean an entity independent of the IANA functions operator. So to the extent they should be able to perhaps assist us.

And on another point that this team might want to think and given the very tight timeframe that we're operating and in general the transition timeframe, how time efficient it would be also to consider the possibility with of course we will need to discuss the possibility of creating another entity to perform this IPR and whether this can be also set up in a timely manner for the transition. Thanks.

Greg Shatan: Thanks, Konstantinos. So I think those are good questions and points. I think in terms of looking to the other communities, I would be a little wary only that I think that the names community needs to come up with its own thoughts on independence and neutrality and not just borrow those of other communities.

It doesn't mean we have to agree or disagree with them, but I think we need to kind of get there ourselves and think about, you know, what was meant - especially the CWG is the one I think that brought up the concept of neutral, so that, you know, it's clear from the numbers community that they're fine with the IETF trust proposal since they made it. And the protocol perimeters community indicated that they have no objection. So, you know, we're working with that as a background.

As far as how much time it would take to set up a new entity or for that matter to amend the structural documents of the IETF trust, that's something again we can ask counsel. My personal experience is it's probably something that can be done in 30 to 60 days, maybe even less depending upon how it's specked out what initial documents we have. But that's just my very general experience, not something to be applied necessarily here but just to be thought about.



I think it - while we have to balance in a sense being pragmatic about where we are and being backed into a corner and acting as if we have no real choice, which is why I think it's important for us to think about the principle and requirements and that we would have under these circumstances and, you know, make sure that they are met. It's a balancing act and to some extent it requires us to be at least rigorous in our thinking. So that's kind of my overall thought on that point.

Konstantinos is that a new hand?

Konstantinos Komaitis:       Sorry that's an old hand.

Greg Shatan:       Thank you. Hopefully it's not a burnt hand. So any other - in terms of the defining qualities, at this point I think, you know, we get down to some of the choices about how it could be neutral or independent, which I think there are, as I indicated very early in the call, I think at least several different modalities by which that could be achieved, some of which would fit well with the IETF trust, some of which would fit less well with the IETF trust. We'd have to look at those and think about them in terms of principles and requirements that we want to set out.

Any other thoughts on this defining qualities question? Seeing none at the moment, I'll move on to question six. You know, there's a lot to digest here. This is statement - question six and seven payoff of the statement of the 1st of September, which was a response to the ICG asking about the CWG's position.

Just quickly reading it out, "Accordingly the CWG hereby formally confirms that its position is consistent with that of the other two respondents, the ICG

RFP in that it has no objection to the IANA trademarks and the IANA domain name being transferred to an entity independent of the IANA function operator. For the avoidance of doubt, we view the CWG position as also consistent with the ICANN board statement of the 15th of August 2015 on the same subject." And that's one of the documents that was - or links that was distributed today, or redistributed today, before this call.

So the two questions, number six, "Does the design team confirm" obviously we don't have to confirm it right now -- but, "Does the design team confirm that IFO operational control and transfer of domain names is one of the principles and requirements for the names community?"

I'm not sure if that question is actually phrased right, to be honest, because really what we're talking about is control that's independent of the IFO and we said that we are okay with that. So respectfully, I actually think that question needs to be revised to say something like, "Does the design team confirm that operational control and transfer of domain names independent of the IFO is one of the principled requirements for the names community?"

Trang says in the chat, "I think the question is about whether the DT agrees with that operational control of the iana.org domain name remains with the IFO." Okay, good point. This is a question really about the domain name only. I think one of the things that ICANN board said was that we're fine with some third party, appropriate third party, owning the trademarks and domain names, but in terms of who essentially is running the website and the DNS and anything else that relates to how iana.org operates that that essentially needs to stay with the IFO and with - and remain being operated the way it is now for operational continuity.

So thank you, Trang, for saving me from a misinterpretation and redrafting. That was completely necessary. You're right, this about - basically about ICANN running the iana.org domain name and everything that's associated with that as long as it, you know, acting in the current capacity.

Thinking about it that way, my answer is yes I'm fine with that. I don't see that we need to have - that part of having ICANN be the IANA functions operator is that it needs to, you know, operate the domain. Konstantinos?

Konstantinos Komaitis: So, I'm sorry for sounding like a broken record, but I think this would be incompatible with the numbers proposal and the ICG on the basis that it's not just the trademarks, it's also the domain names that they want operating independent of the functions operator.

I will need to go back and read it, but I'm pretty sure that they're mentioning both the trademarks and the domain names. So we need to be a little bit cautious here that this does not create any sort of incompatibility.

Greg Shatan: Well I think if that's the case, that's one that we're going to have to work through carefully, because there we have at least a concern, you know, by the board. Obviously the board, ICANN board is not just positive, but we should look back at this and see, because I would find it a little bit odd if the IETF trust were actually kind of, you know, hosting and managing everything that was on the website and that all the domain name stuff and all the emails and everything like that that was actually being associated with, you know, kind of the operations that were taking place at ICANN.

So that just seems a little weird to me. So maybe we should all go back and look at what the proposal was because, you know, I clearly understand the idea that they want the ownership to be taken outside of the IFO, but it seems

to me that one of the functions of being the IANA functions operator is operating the website and other things that are associated with the domain name and the DNS record.

But let's go back and see what the other proposal said, but clearly we don't have to agree with the other proposal if that's what it says. So I think we need to kind of analyze that and, you know, that raises an interesting operational question.

I think that if the IANA trademark and domain name are essentially owned by the trust, whatever trust it may be, there would need, I think as (Nicholas) points out in the chat, that there could be contractual guidelines and supervision so that ICANN, you know, can't - if ICANN is operating the domain name, that they can't go off and say, you know, or redirect it to some other place or transfer it or - well they can't transfer it because they won't own it, but that they won't use the IANA domain for purposes without the kind of supervision of the trust.

And I think that's consistent with the brand owner exercising, you know, control over the use of the name and mark and the services. So basically, you know, a licensee operating the domain name is not unheard of. The licensee shouldn't own the domain name that's associated with the brand. That's the licensor or brand owner's position. But clearly if the work is being done by the licensee, then, you know, the day to day of the domain name would seem to be the responsibility of the licensee.

But I think we'll need to work through that question and look at how that's been dealt with in some of the other documents that are part of our background.

Anything else on this point, IFO operational control of the domain name and potentially transfer of that if they, you know, in the case of total separation and possibly even in the case of partial separation? Hearing nothing further on question six, we'll move on to a question which seems to be - I almost feel like this is a symphony where we keep coming back to the same theme in different movements.

Can the design team specify the elements that would define a neutral/independent trust? I think these are repetitive to some extent because they're coming off of, you know, takeaways from different calls but a lot of the same things were discussed. I don't think we necessarily need to discuss again this question. I think between now and the next call we'll need to flesh this out in terms of, you know, what those elements would be.

And I kind of made several alternative ways to accomplish elements of a neutral and independent trust and, again, clarify what other parties have meant when they've used the word neutral and independent and clarify what we think should be meant by neutral and independent since while agreement is good, we're not forced to agree. We need to agree because we agree.

So I think that is a point that we can - that we'll come back to clearly. It's a - it comes to the heart of our work, but not the only thing. Because regardless of how the trust is configured, there's going to need to be a license at least from the trust to ICANN or really to PTI, and it may come through ICANN but a sub-license to PTI, that's a possibility, or it could be a direct possibility to PTI.

And then consider what relationships need to be between the IETF as such, which is not exactly the same as the IETF trust, and the numbers community, how they would need to - what kind of relationships they would need to have with this entity, both for use of the brand essentially as a licensee and also as

an interested party, if not an actual co-owner, at least with contractual rights that are similar to an interested party.

So I think those are different questions that we'll need to deal with. So I think that I'll open the floor to any general remarks, anything that we've completely missed discussing, any other business. Again let's just stick to the trademarks and domain names issues, not to the other IPR issues because I think we - this is the question that's really been put to us just relates to those.

But with that limitation, I'll open the floor for any other business or any general remarks that anybody wants to make, especially given I'm aware that my percentage of talking here is way too high for a facilitator (rapotore), you know, more equivalent to that of an egomaniac. So any other remark of others?

You're all feeding my egomania. So I'll remain humble like other facilitators and (rapotores). I want to thank you. I know that I've probably thought about this more than many of you. I know Konstantinos's been thinking about it a lot, and there's some of the folks who are not on this call but are part of our group, (Andrew Sullivan) and Milton Mueller in particular, have been thinking about this a lot.

So in a sense this is a good call for some on the list who have not been, you know, kind of stewing in this particular juice for the last six months. And I think our next call, which we need to schedule before we get off this call or at least, you know, decide to have a doodle poll for our next call, will take us to.

So I expect that with some of the veteran discussion on our call that we will have a lively discussion then. I think it's good some who have not been on this

have had this chance to kind of walk through this. Konstantinos, I saw a hand flicker.

Konstantinos Komaitis: Yes. You did but then you just said what I was about to say, so I just decided not to spend more time on this call. So yes. Well said and very - great job.

Greg Shatan: Thank you. Thank you. Appreciate that. It's a bit of a tightrope walk. In any case, we certainly should have a call by this time next week. So the question is whether we should have a call before then. Today being Monday, would it make sense to try to have a call on Thursday or Friday, or should we try to just come back together in one week? Any thoughts on that point?

Konstantinos Komaitis: Greg, sorry if I may, I'm just jumping in the queue. I think that we need - it would be better to have a doodle, considering that as you've mentioned there are people who because of the IGF may need - they're not able to - they were not even certain whether this time will work for them next week or whether the day is going to work for them.

So would it be possible for staff to gather a doodle poll and actually provide, you know, let's agree on how many calls we think will be required for the November 19th deadline. I hear two, perhaps, you know, let's aim for two and we can ask staff if it would be possible to put together a doodle pool for two calls.

Greg Shatan: I think that makes sense. I think we can look at maybe having, you know, Monday, Tuesday of next week as potential times. I think the rest of this week is probably pretty much - well it has the same infirmities due to the IGF. And then we can see if that time will work for the following week as well. So I'll leave that to staff.

We seem to be - are we down to only Brenda on staff. I don't mean only Brenda. We're counting on Brenda for that. So we'll have a doodle on that. Thank you, Brenda.

Any other business before - Konstantinos, is that a new hand?

Konstantinos Komaitis: Sorry, that's an old hand.

Greg Shatan: Okay. I would just say that if you didn't have a chance between the last - before this call, you should go through the materials that have been attached. I will, as I promised, circulate to this group both the list of the trademark and domain names assets and also the extract of the ICG document.

And I'll post those both as Google Docs because especially the ICG document I've done my best to extract what I thought were the right things, but if somebody's looking at the ICG document and thinks I left out a paragraph that should be in there or the like, you know, it's just - it's a strict cut and paste job, you know, I'd be more than happy to have second hands and eyes on that.

So I think that is kind of our homework between now and then. And the other homework I think -- and maybe I'll talk to staff or our co-chairs about that -- is how to get inquiries to the IETF and to ICANN about their experience with, in the case of ICANN, managing the IANA trademarks and domain names, and with regard to IETF, their general experience as a brand owner and manager of trademark.

So those I think are the action items between now and then. And I think with that I will bring this call to a close and give you back ten minutes of your life and call this meeting adjourned. We can stop the recording.



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