

ICANN

**Moderator: Brenda Brewer
November 23, 2015
3:00 pm CT**

Greg Shatan: Thanks and welcome to the third call I believe it is of DT-IPR of the CWG for IANA Stewardship on the 24th of November at 2100 hours or so UTC. So we have - I think the working method that we'll use for today's call is to go to the document in Google Drive, which everyone should be able to get into. And as I said, I'll stay in suggest mode as well as everybody else. And we can pretty much - we can go through the documents.

And there are a lot of comments from Milton and Andrew so they are both with us in spirit even though they're not with us on the call at least as of the moment. So at this point actually they've had more input into this document than anybody else. And that's fine. Actually kind of makes up for the fact the they're not here.

So we can begin at the beginning. I don't know if anybody has any comments on this header that DT-IPR has been discussing potential principles and requirements. I assume this will go out of the document or be edited significantly when we make a real proposal to the group or when we bring our stuff back to the group as it is. But right now kind of sets our working tone.

So happy to take a queue. Okay well seeing no queue maybe what we should do is start looking at the comments that are here and kind of work on accepting or not accepting them or commenting and reply to them and as well any other changes that people want to propose as we go through would be most helpful of course.

So there are edits here in the in Roman 1 Number 1 that essentially are designed as I read it to make a stronger statement about the IETF Trust being the only game in town in a sense. So I think, you know, the facts are neutral in the sense that the IETF Trust is the only option that's been proposed by any other community. We're of course in the - in the, you know, sitting in and to the idea that maybe we can come up with an option and maybe we'll come up with the same option.

But since there are only two groups other than ourselves that could come up with options, and one of them declined to do so, I don't know if saying it's the only known option may be a little strong. So maybe we can work with that a little bit. And I think that's a little less presumptuous in a sense. I don't know if anybody has any problems with that first edit. Take it not so we can move on to the second edit.

It says, "Please note here the Sidley analysis about the problems and costs associated with setting up a new trust." I know, staff, can you locate the relevant Sidley document and perhaps...

Grace Abuhamad: Yes, there's - yeah, I'll get that for you, Greg. There's only one Sidley document on this...

((Crosstalk))

Greg Shatan: Oh okay, that's good. I'm not sure that the word "problems" is, again, is a little non-neutral so without looking at the document I can't know whether it actually lists problems. But there are certainly going to be costs with setting up any new entity. Of course there are going to be costs with setting up all the arrangements around the existing entity as well. So that's kind of a please note here anyway so let's move along from that one for the moment.

Next here, Andrew added - thank you, Grace, that was fast. I guess I shouldn't be surprised by now but I always am. Andrew has added this section here or this may be a move actually - should it be a requirement the names community have an equal influence over the administration of the IANA trademarks and domain names? And this could be achieved through an advisory board specifically related to the IANA trademarks and domain names or achieved by a contract.

As we discussed, it could also be hypothetically achieved by having a trust that was controlled by all three communities but the IETF trust has indicated that they're not going to change their trust structure for such a thing. So I don't know if anybody has any comments on this, any thoughts on whether one of these alternatives is better than the other. And I think at this point we're still going to be dealing with alternatives rather than eliminating them. So it may be that this is just fine the way it is.

Grace Abuhamad: Greg?

Greg Shatan: Yes...

Grace Abuhamad: ...Konstantinos's hand up in the Adobe room.

Greg Shatan: Okay, Konstantinos.

Konstantinos Komaitis: Thanks. Hi, everyone. So I am trying to see - so B and C are more or less the same right? I think that the focus is rather - there is a change in focus. The focus is more on the administration of the IPR rather than the administration of the trust. And I think if I'm reading this correctly that Andrew's suggestion might be more what we might be - the question that we might be want to be asking in this context rather than the trust per se, if you know what I mean. I think that it is...

((Crosstalk))

Konstantinos Komaitis: ...and provides a clear path in relation to what we want to - is happening with relation to the names community. So perhaps we can bracket - and I cannot even believe that I'm using the word "brackets" - Number B and use Number C, I think it provides question. Thanks.

Greg Shatan: Okay. Yeah, I think that - I now see the distinction here. So, you know, one leaves, you know, B involves making changes in the administration of the trust itself and C is kind of a level down leaving the trust - the trust administration alone and just deals with the domain names themselves.

Grace Abuhamad: Greg, this is Grace. You also have a question from Akram in the Adobe Connect room chat. Would you like me to read it to you or...

Greg Shatan: I see it. Would you like us to get you a cost estimate for setting up and running a trust with the three communities as beneficiaries? I think it would be a fair question if we're going to talk about costs. I don't know that Sidley gave us an estimate on what they believed it would cost. But if we're going to be looking at costs as a factor we might as well have at least a ballpark understanding of what costs we're talking about.

And assuming that the rest of the costs will be more or less the same for creating contracts and the like and of course there'll be some costs associated with setting up an advisory board which would otherwise be part of the - absorbed into the costs of setting up another trust. So - but I think we can - we don't need to have a quote on setting up an advisory board. I think if we just get a number, an estimate, on the alternative trust that would be useful as a benchmark. Akram is typing. Okay.

Maybe there's a way to deal with B and C from a drafting point of view so it's clearer what the distinction is that's being made or maybe I'm just slow today. But concept is understood. I see Andrew has a comment about what he put here which is, "I don't know whether this was really the intent of B so I added it. If this is what the intent of B is then we can replace it. And I think we need to replace equal say in the administration of the trust with something less ambitious such as here."

Well actually I think they're two different concepts. Of course if the IETF Trust is to be the trust that is adopted then B is essentially has to come off the table because of the position of the IETF trust regarding its - not going to change its overall administration for this role. So I'm not looking at this point - I don't think we should be looking to come up with absolute principles that are somehow designed to eliminate one alternative or the other but I think we need to consider the importance of those principles as well so that we can ultimately make the decision using these principles.

Konstantinos Komaitis: Greg, this is Konstantinos. But isn't - so if for example there is the IETF you said that there would be no reason for B to exist. But even if we have a new trust then the question perhaps needs to be rephrased because have

an equal say with what - in comparison to what. I mean, we don't know what the governance structure of the new trust will be.

Greg Shatan: Well trusts have fairly limited...

((Crosstalk))

Greg Shatan: ...alternatives in terms of the structures because they're all - trusts have trustees and that's basically the only role kind of that's played other than if a trust, you know, may have employees and the like. But basically you have trustees and they form whatever decision making body you have. So not a lot of alternatives there. So, you know, likely an equal say in administration of the trust would be or they, you know, could be achieved through equal numbers of trustees. Or perhaps through some other element in the trust governance documents.

After that, you know, the advisory board and contract alternatives are basically the same for an existing, you know, adapting the - adopting the IETF trust without being able to adapt it much or using a new trust but not having the trustees be equal. There could also be completely neutral trustees although why anybody who is neutral to IANA and this world would want to be a trustee of this trust, you know, beats me.

And I see a - the next comment then I think is D. Milton has crossed out ICANN and/or the names community be a beneficiary of the trust. Milton comments, "ICANN is just a contracted IFO at the moment it is therefore not appropriate for it to be a permanent beneficiary of the trust." I think here ICANN was being looked at as a proxy for the names community. So if there is - the ultimate idea is to have the names community just like the numbers

and protocols of, you know, right now the only beneficiary of the IETF Trust is the IETF.

So I guess, you know, we may be able to borrow the community mechanism to be a beneficiary of a trust on behalf of the names community. But it certainly raises issues. Of course this goes back to the eternal problem that ICANN is a kind of serves as both the home of the names community and as the IANA and as the policy implementation body for all of this stuff. But that's a combination we have to live with. That one is certainly not changing any time soon.

So I think the - we can accept Milton's comment however I'll have to figure out what it means. How the names community would be a beneficiary if that is a - something that is seen as valuable by people. While we're on that point, any substantive thoughts on the question of whether the names community should be a beneficiary of a trust that holds the IANA trademark and domain names? Well that's one we'll think about I'm sure. Some editing here by Andrew just to kind of tighten up the language here.

I suggest we need to answer this. Here's a scratch suggestion I guess. "The owner must be neutral, it must not be captured or under the sole control of the IANA functions operator. That didn't include, should not be an IFO because to be the IFO is to be under the sole control of the IFO. No. I guess that is true. That is one of the - and that's very similar as the answer to kind of A or D as to what neutral means. So that could be another answer. So I think we should use that as an alternative.

Then we have B and C, which Milton has crossed out and says, "Neutrality means that the trust will license the trademarks and make the domain available to whoever the relevant operating community tells them to for their own

registry. That's all." And I guess the question is whether these two that have been crossed out have any - whether people think that these should be crossed out other than Milton in terms of being neutral, whether the owner should be neutral towards the views of the three operating communities or the owner should not be dominated by any of the operational communities. Any thoughts on either of these positive or negative?

Milton also adds, "It might be better just to articulate a narrow and broad definition with A and D collapsed into the narrow combination definition," which I think makes sense; they're pretty close to each other. And A, B, C and D, well that's probably not what he meant, but probably B and C combined into a broader definition or maybe all of them together into a broader definition.

And then asks, "Is there anyone besides Greg who supports the broader definition?" Any opinions either way, supporting these or supporting removing these or rather supporting the narrower definition versus the broader definition?

Konstantinos Komaitis: Greg, this is Konstantinos. So perhaps first of all I think that we might want to merge 2 and 3 independent and neutral. I think we're asking the same question more or less and the ICG mentions the word "independent" so for the purposes of consistency and to facilitate also the understanding of, you know, once it's finalized and goes back to the ICG with a recommendation perhaps we want to use independent.

Also perhaps we want to add F, the idea that Milton puts forward that independent also means licensing the trademark to the few operational communities. And now about the broaden - the narrow definition - I don't

think I have an opinion, I need to see the text first. I need to think about that, I mean, a little bit more. Thanks.

Greg Shatan: Right. I think - yeah so I think that we need to do - I can do is to, you know, take Milton's suggestion to try to combine these two. And I - I guess the question is is there a difference between neutral and independent? You know, the board used the term "neutral" as it described a neutral third party. So I know that we...

((Crosstalk))

Konstantinos Komaitis: So that's yes - so maybe we can use - sorry, so maybe we can use independence less neutral.

Greg Shatan: Yeah, I think the concepts are so close that trying to find a difference between them for the sake of doing so is probably a waste of our time. The ultimate concepts come pretty close. So I think we can combine 2 and 3. If there's anything here that's - I think we've already captured the owner should be independent of the IFO. Then there's the question of whether owners should be independent of all three OCs. And Milton says, "This was never what the numbers community meant by independent, it was only A which was being independent of ICANN."

That's an instructive in terms of what the numbers community thinks. We'll just put that up there for the moment. And I think as these get edited down to a smaller number of options it will get absorbed into the broader option. So now we have Milton adding in A and D, that makes sense. I don't think I was the only one supporting the broader definition. I think we can get rid of all this independent stuff, which is now more or less excess baggage. Get rid of these excess numbers.

Milton has added a new C I believe. Says, "Owner must be willing to allow usage of the domains and license the trademarks to the IFO preferred by each individual OC." That's certainly a necessary responsibility to the community. So we can accept that.

And Number 4, Milton has added something here at the end of quality control, "With the understanding that the ability to transfer the market and domain usage," I'm not sure that probably is the mark usage, "and domain use to a new IFO on request is the most important form of quality control." I'm not sure that that's quite right.

I mean, I think ultimately in a sense with any licensee the - if not the most important the most drastic form of displeasure with quality is to transfer to a new licensee. So I might make some changes here. Transfer the - generally means an outright sale or change of ownership so change to license. Any comments on this? And of course don't be shy. I'll leave mine as suggestions so people can see where the changes were made.

Next comment here from Andrew. "I'm okay with this but only if we specify how. I offered something but I'm not sure it's right," which is this ownership and management of IANA trademarks and domain names is different than it would be for a normal commercial entity. And that the trademarks and domain names are not to be used for normal commercial exploitation but instead are to be reserved for the narrow functions of the affected operational communities.

Well trademark usage embraces a lot of different things other than commercial exploitation. I get the overall sense here but it's a little too much to edit live. I don't think anybody is expecting to license this for T-shirts or for use as a fragrance. So in that sense it's not going to be exploited. But, you

know, most brands just exist to identify the service or the product and are not, you know, exploited in licensing programs anyway. But we can kind of leave that here in comment stage.

Milton has deleted "requirement." Yeah, I think that's just extra words. And Andrew has added "To the extent - owner must follow directions of the community or communities initiating separation to extend those instructions are compatible with the owner's responsibilities." I think that's correct and important. The owner can't stop being - acting like an owner.

And he says, "I've added this," I'm not quite sure what he's referring to because it's linked to the this word, "2." "I've added this so we don't get into the rat hole of imagining cases where the owner gets say an instruction to deny another community the use of the trademark or instruction to let the trademark lapse or something like that. Okay so that goes to the same comment. I think that's fine. Resolve that one.

Andrew has given us some examples of how IETF has exercised quality control with licensees indicating the one current licensee is the Secretariat since policing - and policing is easy because we use all their license services. So we'll just leave this here because that's really an informational note so if I resolve it it will disappear.

And Milton says, "There are some areas of," he comments on this, "There are some areas of different understandings, for example, the names community may consider PTI the IFO whereas the numbers and protocol parameters community considers ICANN the IFO." I'm not sure whether this is relevant myself. And, you know, since the IFO - since PTI will be under the effective control of ICANN it - whether there's a distinction that makes any difference and how that relates to needs and requirements is kind of vague to me. So I

think we can take this out. And if that distinction ever raises its head for some reason, you know, it will.

Next comment comes here from Andrew. "I think I don't understand this. It seems that this is either answered under one of the subparts of 1.1, in which case we can get rid of it or else it's a request that there be an assurance that the owner will actually live up to its commitments. I don't know how to promise the latter." Well, I mean, that would typically be done in a contract or possibly in governance documents.

As to 1.1, you know, that's where we're getting into kind of the trust - the control of the trust. But I think this is a bit different because even if the trust is not controlled or if there's not an administrative board there needs to be control by contract although that is discussed up in Section 1. It is a concept that is somewhat related to others that we have. And Andrew asks, "Would the CWG require the owner to be on an equal footing with all communities? Isn't this really a duplicate of Section 1?"

So I think we're really in both cases kind of getting to a question of duplicativeness here. And again I think that may need a little more quiet contemplation about how these relate to each other. So I think it's not completely an overlap but clearly needs to be a little bit tighter drafting.

Milton found a typo. Next looks like this is just edits. He's suggesting to say that this board position raises no issues. "As long as the - as operational control means the ability of the IFO to operate the domain according to normal DNS operational practices. Usual mechanism for this is to make the IFO the technical contact in the domain name registry. Ensure the domain name registrant cannot either make delegation changes to the domain or remove the tech contact without the tech contact agreement except in cases

where the registrant instructs the registrar to remove the tech contact and the registrar informs the technical contact of the impending change before taking it.”

I mean, I - certainly I think we can adopt that. I think the operational control that ICANN - I think is talking about is really not just the operational control of the domain but the control of the Website the domain points to. I suppose as long as they have operational control of the DNS it will point at the Website of the IFO's choice. So I think that's okay.

Next we have kind of a new section that came up sort of at the end. “What recourse should the names community have if the owner fails to perform either operationally or at the time of separation?” And just a couple of brief questions, “Should there be a dispute resolution procedure? Should there be the capability of removing the IANA trademarks and domain names from the owner?” Andrew remarks, “I don't actually see how this is possible. If the names community can do this then in effect the owner isn't really the owner but a leaseholder or something like that.”

I'm not sure that it's possible. I don't think that makes the owner into a leaseholder, I think they're a real owner. But they have certain responsibilities and in essence makes sense as to why this is a trust relationship at least even if it's not a trust for the community in the formal sense of the word, it's trust for the community's in fact. So it seems that there needs to be some recourse if the owner is just not doing what it's supposed to do.

Konstantinos Komaitis: Right, Greg, sorry, this is Konstantinos. But how can, I mean, going back to Andrew's question I think (unintelligible) a point. How can - if we are essentially saying that there's going to be a transfer of ownership of the IPR from the current owner to whatever system it ends up being create, any

operational (unintelligible) that is the satisfied actually remove the IPR from the owner since they would be the licensees of - for using that mark. I mean, I think that the dispute resolution procedure is, you know, is very valid and it makes a lot of sense. But I think I have the same - I have the same question as Andrew. I do not see how, you know, we would be able - any of the operational communities would be able to remove the trademark and the domain names from the trust, any trust that is out there. How will they be able to do that?

Greg Shatan: Well I think it would need to be, I mean, how is a mechanical question so I think that's - if we decide that that right should be there creating that right I don't think is terribly difficult. The question is whether that right should be there substantively.

Konstantinos Komaitis: But then if the right is there we're not really - we're not talking about real transfer of the IPR, right?

Greg Shatan: No, I think we actually are, I mean, as long - but there are certain - it means that there are certain expectations of the new owner that the community has these expectations and the, you know, if the community had full control of the trust, let's say it was a tripartite trust then it would be, you know, less likely perhaps that the...

Konstantinos Komaitis: Right.

Greg Shatan: ...the owner could go rogue. But what is your - let's say that the owner goes rogue what are you thinking, Konstantinos, should be the result or the method of dealing with it?

Konstantinos Komaitis: So I am - I think the dispute resolution makes sense and I'm trying to understand Point 2 because even if, for example, it is this tripartite structure and one of the operational communities says okay I'm not happy with the way the owner performs, holds or, you know, the trademarks, so remove them. First of all there are questions where would they go. And secondly, how does - if here is disagreement between the OCs how is this disagreement resolved? Do you see what I mean? Under Number 2. Under Number 1 I see a very clear process as to how that can happen.

Under Number 2 I do not see - I do not understand better yet how this even removing - even if there is an expectation and it's a very valid and logical expectation that this needs to be there, the owner of the trademark and the domain names can underperform, this is a possibility, but removing them where will they go?

Greg Shatan: At that point I think you'd have to create a new trust or find another holder that met the needs of the community. I think the issue is that...

Konstantinos Komaitis: Wouldn't those questions or these possibilities, you know, the creation of a new trust or go back to the operational communities, could those expectations or issues be addressed via the dispute resolution procedure? Essentially do we need Number 2 if we have Number 1 and Number 1 is designed in a way to address Number 2.

Greg Shatan: Well, I mean, Number 2 is essentially the nuclear option. I think that the difficulty is that the - if two communities are perfectly happy with how the owner is acting and the third community doesn't it seems to me that it - should not be or that it's unlikely that there's any way that it should be possible for that one community out of the three to force a transfer.

If two out of the three communities want to move to a different owner, because this owner has somehow gone bad, and any other escalation, you know, has failed, so what we're kind of talking about another form of separation, you know, maybe then they do need that right.

Kind of the worst case scenario is if, you know, if it's the IETF Trust and all of a sudden the IETF trustees change over and there's a new game in town and they decide they're going to somehow favor the IETF in their ownership management, administration of these domains and start throwing their weight around, and the other two communities are aghast, then, you know, what can be done?

And should there be a right to essentially kind of take this and move it away? I mean, we are taking it and moving it away right now from ICANN. So the fact - the idea that it could never be moved again is a little odd.

Konstantinos Komaitis: No, no, no, no. I don't think that it should not be moved again. I just do not see how the second can be done without actually creating some sort of a disruption. Because removing it, you know, creating a new trust, this will take time. In the meantime this will be staying in an underperformed entity. Do you see what I mean?

So the question that I have is isn't the dispute resolution procedure designing the dispute resolution procedure enough to include the possibility of actually ending up removing the IANA trademarks and domain names from the owner should the owner underperform.

Greg Shatan: No, I think that's right. And it - kind of, you know, goes back to all the accountability discussions that anybody who's spent time in that group has had which is that, you know, escalation ultimately leads to a nuclear option

but the nuclear option is part of the escalation process. So I think you're right, it is, you know, in one point, you know, we're talking about, you know, levels of dispute resolution and that is, as Milton says, the most powerful form of quality control is to move to a different provider.

My...

((Crosstalk))

Greg Shatan: Okay, I didn't notice that sorry. Probably turning away from the phone a little too much.

Konstantinos Komaitis: So perhaps we could say dispute resolution procedure, including the possibility of removing IANA trademarks and domain names from the owner or something like that. At least, you know, to be part - what I'm trying to say is the perhaps if we could make this part of the dispute resolution procedure rather than a standalone piece.

Greg Shatan: Right.

Konstantinos Komaitis: Because otherwise I do not see why the dispute resolution procedure would be used to begin with.

Greg Shatan: How does that look, Konstantinos?

Konstantinos Komaitis: I think that looks good. At least the way I read it it reads as if, you know, there is a dispute resolution it also includes this nuclear option that we have been discussing. It doesn't preclude, it doesn't just say that the only recourse would be to try to resolve this. If the community...

Greg Shatan: Right.

((Crosstalk))

Konstantinos Komaitis: ...to feel dissatisfied there is this option.

Greg Shatan: Yeah. And at the end here, and we are reaching the end, we have the - I just decided since you mentioned the, you know, ICG standards that were in the ICG, they're really, as I've looked through the ICG proposal really just all in the numbers community proposal which of course has been, you know, bundled up and made part of the ICG proposal. So I thought it just made sense to look at this section and see not that we would put this in here but to see whether we've - whether we see any areas of friction or incompatibility with what we're saying right now since in the end, you know, this has to work for all three communities. So...

Konstantinos Komaitis: So I don't think there is an issue of inconsistency or incompatibility. Personally the way I have read the numbers community proposal with what we have been discussing in the current substance of the document. One of the things perhaps that we might want to consider adding as one - as a criterion somewhere if you see on the first part of the third to last - no second to last line exactly that, in order to ensure that the assets are used in a nondiscriminatory manner for the benefit of the entire community.

Perhaps we want to include this as an additional requirement used in, you know, the IPR should be used in a nondiscriminatory manner for the benefit of the entire community or we might want to separate and make two requirements in a nondiscriminatory manner and the other one for the benefit of the entire community. I think we haven't really addressed this as directly perhaps as the first proposal. Especially for the benefit of the entire

community I think is something that is important to exist as part of the requirements.

Greg Shatan: Okay so I've added it back in kind of - back up in Section 1 here. Other than that identify an organization that is not the numbering service provider, we've done that. Well we haven't identified it but we know it won't be the numbering services provider. It is the preference of the Internet number community that the IANA trademark and IANA domain name be transferred to an entity independent of the IANA numbering services providers.

Okay so we've agreed to that. IETF would be acceptable. We know that. We haven't said that it isn't. The transfer of the trademark and IANA.org domain name to the IETF Trust will require additional coordination. And is preference that we - all relevant parties agree that these expectations as part of the transition. Not sure - that last sentence is interesting and I'm not sure that that's entirely within our remit but we should note that that they would like all relevant parties to agree to the numbers community proposal as a part of the transition. So...

Konstantinos Komaitis: Yes, I think that this should be added since it is in the numbers proposal and they clearly state that this is the preference. And I think also that the ICG in the report that they submitted they also, you know, have the expectation that - in terms of implementation of the operational communities would be coordinating.

Greg Shatan: Right.

Konstantinos Komaitis: So this is - perhaps we might want to have - and I'm sorry for adding this - but if the number community proposal is going to be deleted just we might keep Number 7 and just add expectations and one is coordination

and the other one is that the Internet's number's community, you know, is sort of expecting - so one expectation from the ICG is - I'm trying to go into the document which will take now some time. So I'm copying the text from the ICG, I hope I don't screw up this text.

I have this. So this is the ICG what I just added.

Greg Shatan: Oh okay.

((Crosstalk))

Konstantinos Komaitis: ...the ICG notes that the operational communities are coordinating these details and the ICG expects this coordination to continue during the implementation this is to ensure that the requirements are met. Some of the questions that the ICG received during the public comment period related (unintelligible) these details would become clear as the community proceeds as planned - the implementation. Perhaps we could add this as under expectations.

Greg Shatan: I think that makes sense. We certainly need to keep track of these. We can just make these numbered sections I guess.

((Crosstalk))

Konstantinos Komaitis: Shall we delete this, the numbers proposal?

Greg Shatan: Yeah, we can take this part here put it up here.

Konstantinos Komaitis: Yeah.

Greg Shatan: Delete the rest.

Konstantinos Komaitis: Okay sorry, I can delete this.

Greg Shatan: Oh no, don't undelete please, I'm just making a change here. Then we can delete the stuff that's in green. File just went haywire.

Grace Abuhamad: So just so you know I think we just had a late joiner, I think it might be Andrew Sullivan or I'm not sure, someone's joined as Late Guy.

Greg Shatan: Yeah, so I don't know who that is. They joined the...

Grace Abuhamad: It's Milton. It's Milton.

Greg Shatan: Oh okay.

Konstantinos Komaitis: Milton.

Grace Abuhamad: So, Milton, just so you know, we're working out of the Google docs so we're just - we're using the Adobe room just for recording purposes and some chat purposes but most of the work is being done in the Google doc.

Greg Shatan: So we've been through the Google doc, if you want to join us there. I've taken some of your comments and the rest that are - kind of need more work are kind of still there. With regard to the narrow and broad definition I think that's a good idea because there's too many alternatives that are really shadings of each other and so what we agreed to do was that I would take a crack at boiling them down to a narrow and a broad and putting them here so we could kind of discuss them as text just a little difficult to discuss them as alternative concepts so that text.

Also put in some wording that was suggested by Andrew which, again, will be I think mix-mastered into the narrow definition. And we've actually just reached the end of the document as you joined. And we were discussing and actually just putting in something near and dear to your hear, Milton, which is a reference to the ICG's expectations of the names community and of the communities generally and adding a section on expectations so that we keep those in mind.

I looked through the protocol parameters section of the ICG report and didn't see any actual expectations around the IPR although we know that separately they've agreed that they would be ready, willing, and able to stand the IETF Trust up as the owner.

So let's start over - well...

Konstantinos Komaitis: Let's not because...

Greg Shatan: Yes.

((Crosstalk))

Konstantinos Komaitis: ...at night here.

Greg Shatan: Yes, well there is that. It's a relatively palatable 5:09 pm in New York City. Made a little less palatable by being on the Accountability call until almost three o'clock in the morning.

Konstantinos Komaitis: Right, and that's why I feel bad saying that it's eleven o'clock here.

Greg Shatan: Well we can all compete on pain. I think the Australians have us all beat generally. In any case I think the next step in this document is really to boil down the whole neutrality definition. And we folded the independence definition into the neutrality definition so that's, you know, further streamlining that.

And then there's some other stuff that's been added that I think needs some massaging, you know, one of the statements by Andrew that we're going to work with. Trying to see if we can eliminate as many of these comments as possible. We'll leave that one because that's kind of more substantive. I think the rest of the comments that are still left all deal with the neutrality question so I'm going to leave them in the document while we're still working on the neutrality definition because they kind of get lost unless you go back to history once you mark them as resolved.

So and I see a question in the chat from Late Guy. "Was there any discussion of this dispute resolution procedure?" A short discussion mostly to say that the need result of that dispute resolution procedure could conceivably be removing the IANA trademarks and domain names from the owner. Also recognizing that that's probably not a power that any one community should have if the other two communities are satisfied with the owner. But once it gets to two communities that may be an issue. And if all three communities want a new owner that should be possible.

I think any dispute resolution procedure has to be aimed at trying to resolve the issues short of that type of separation because this is intended to work as a long term if not co-ownership situation cooperative situation with a single stable owner and three stable communities. And so that can't have stability at all costs but I think there should be a high bar to destabilizing the ownership

situation. So those are kind of some general thoughts on that. We could certainly put that in here. I have no objection to putting them in as notes.

I think what the particular dispute resolution procedure should be - and the good news is that we have several models of dispute resolution procedures in the Stewardship and the Accountability group's work. And I wouldn't want to invent - to reinvent the wheel.

Of course the situation here is a little bit different, we have three communities and not - which is it's somewhat different than anything that goes on completely under the ICANN umbrella as with the accountability group largely. And stewardship is really even more narrow since the disputes there really relate just to IANA functionality largely. But this is something we'll need to design.

There we have - anything further that anyone wants to say about the dispute resolution procedure? Certainly nothing more I want to say about it at this moment.

Milton Mueller: I just wonder if we really need it.

Greg Shatan: Well I think that there will potentially be disputes. You know, the owner is not necessarily going to be an angel; we certainly hope there will be. But I think that it would be overly optimistic to assume there will never be any issues between the communities and the owner or even potentially disagreements between the communities about what the owner is doing.

Milton Mueller: You think it's possible to make that a Work Stream 2 item or is that only applicable to the accountability process?

Greg Shatan: Well we're not in kind of implementation mode here so I don't think it has to be as robust as what's being worked out in Stewardship and Accountability. I think that we don't necessarily need to outline it fully or it could even be - I mean, dispute resolution procedures in a lot of contracts are often only a paragraph. So I think we've gotten used to dispute resolution procedures that start looking like building the pyramids but that's not the only method.

So let me think or any of us can think about a relatively succinct and not too drawn out type of dispute resolution procedures which usually, you know, start with talking at one level and then talking at a higher level, then mediation of people talking and then arbitration, you know, with cooling off periods and time - attempts to resolve and things like that and possibly involvement of ombudspople as well as mediators. That's kind of a 30-second smorgasbord of what could be, you know, part of a dispute resolution procedure.

I think it's - and I think it may be more important to kind of recognize and outline it. And I do think it would be kind of a Work Stream 2 or post-transition task to fully flesh out a dispute resolution procedure if we even need to do it at all. I think that kind of, you know, step by step sort of procedure without all kinds of bells and whistles may be sufficient.

And certainly I don't expect and don't hope that there will be any disputes in the first, you know, year or two, although there will be growing pains and there - but I think that if we - as has been suggested if there, for instance an advisory panel that involves all three communities that may also be a place where disputes can be avoided and resolved before getting to sort of across the table type of dispute resolution procedures.

So I don't think it has to be terribly formal and I wouldn't waste any more time than we've already wasted on it right now talking about it generally. So I

think it's something that should be relatively lightweight and should be expressed in a much more lightweight fashion than we have done in recent history with regard to other dispute resolution procedures to involve many drawings among other things.

Konstantinos Komaitis: Yes and if I may, just to add we might even want to say that this is something that can be done, you know, that can be one of the last (unintelligible) not a prerequisite at least in the beginning of trying to - of the implementation stage.

Greg Shatan: Okay, there are some more notes. I accidentally put in as an editor rather than a suggestor but you'll pardon me. I hope. Anything else? Any rags, any bones, any bottles today? Any rags? And points to the narrow and archaic cultural reference I just made.

Grace Abuhamad: Greg, I have a quick question.

Greg Shatan: Yes.

Grace Abuhamad: So what happens when there's a dispute among the three operational communities on something? Is there a way to mediate that dispute? I mean, I know we were kind of discussing that dispute resolution process but what happens among when the three operational communities don't agree, where does a dispute get resolved? And by whom?

Greg Shatan: Yeah, I think that is a separate question although we kind of - we kind of drifted into that discussion here. I'm just going to make a note of it here even though it's not quite the right place. I think that if we have an advisory board or a panel or, you know, a three sided table so to speak, where the three communities sit and deal with these things that that would at least be the first

place that such a dispute would get resolved. And perhaps if it did not get resolved just among those parties alone, you know, one could try mediation.

I guess the question is, is there a - is there a neutral daddy in the Internet governance world that could come in and try to help resolve a dispute between essentially ICANN or at least the names community of ICANN, the numbers community and the IETF protocols parameters community? ISOC - it can't be ISOC because IETF is a part of ISOC. So it may be that some sort of a mediation process would be necessary if it's unresolvable. But I think even then it might move from the three sided table to community leadership to try to resolve those things and failing that to some form of mediation.

One would hope that in a situation where we have people of very differing ideas who ultimately somehow seem to manage to come to consensus a shockingly high percentage of the time that an unresolvable dispute or irresolvable dispute would be virtually nonexistent. But those are kind of my thoughts on the process.

What about the IFO as the mediator? Well I think there are those who would probably question that repeatedly like with three question marks. I guess...

((Crosstalk))

Konstantinos Komaitis: Sorry, yes exactly, if we are to go back to the ICG proposal the (unintelligible) not to be involved in the - in dealing with the IPR because the (unintelligible) has made that as part of their recommendation that it needs to be independent.

Greg Shatan: Yeah, I mean, I think the IFO is by definition not neutral and Milton says, "Some of the disputes will be about what the IFO is doing or isn't doing or

about what it should be doing or what the communities should be telling it to do or not do or the like.” So it’s going to be at the very least a material witness or a football in the argument. And so therefore not qualified. I think we’ll just have to, you know, look for the, you know, the ghost of Internet past or something to come in and mediate. Hopefully we don’t get that far.

I was going to say Jon Postel but I just didn't want to talk about - it just seemed morbid. Let’s just think of it as a kindly spirit. Everyone is thinking the same thing. Well it is true right down to the beard.

I think on that note we can hope that the kindly spirit of Jon Postel is looking down on us and not completely, you know, is hopefully amused or isn’t disgusted to paraphrase Elvis Costello. So anything further at this point? If not I think what we’ll do is, you know, I will try to buff up the document as discussed here and others should feel free to continue to work in the document.

Oh yes, there are questions. What are the trademarks currently owned by ICANN? Whether they’ve licensed them. I think there was a document I circulated with what I believe to be the trademarks currently owned by ICANN that are the IANA trademarks at least - but it would be good if you could take back, you know, get questions answered about whether ICANN has licensed any of its trademarks including without limitation the IANA trademarks and how they’ve taken care of quality control and issues and enforcement issues. You know, quality control of their licensees and enforcement against unauthorized third party. So be good to get those answers.

With that I can’t think of anything else that we need to discuss for a moment so I will thank you all...

Grace Abuhamad: One quick - sorry, Greg.

Greg Shatan: Oh please do.

Grace Abuhamad: One quick question, so should we plan on having a longer section for an IPR update on the next CWG call? Do you think the document would be ready for a longer discussion or should we just plan a regular sort of 10-minute update from the IPR design team?

Greg Shatan: Good question. And that actually raises another very important question is when are we going to next meet which I think those two things I think are very much related to each other. Because the way the document is right now without another call I would say that a short update would be all we would be able to use. But maybe if we have one more meeting between now and then we can make some significant further progress on this point.

((Crosstalk))

Grace Abuhamad: The next CWG call is on December 3, Thursday.

Greg Shatan: Maybe we can do a Doodle poll for Monday Tuesday of next week or even Monday, Tuesday, Wednesday, you know, if this time works for people this is a - should be a good time for me. But I think we might as well do a Doodle poll especially because we have absentees.

Grace Abuhamad: Okay.

((Crosstalk))

Greg Shatan: ...who have been active in prior calls so.

Grace Abuhamad: All right and just a quick question to Trang, do you think we'll be able to have answers by that time next week or should we have the call anyway just to work on the document aspect regardless of whether the answers are coming in at that time or not? It's addressed to both Trang and Greg. I mean, I want to see what the purpose of the call is so we can assess how long and whether it's going to work out for next week. So maybe we should do it - based on Trang's answer maybe do a Doodle poll for Tuesday Wednesday instead of Monday Tuesday?

Greg Shatan: Sure.

Grace Abuhamad: Okay got it. Thank you.

Greg Shatan: I think with that we've covered everything we can cover and we've now actually covered the entire time period. So we will definitely now call this meeting adjourned. And we can stop the recording and I will thank you all and those of you who are here in the US and celebrating Thanksgiving have a happy Thanksgiving. For those of you in the Accountability group, I look forward to seeing you Thanksgiving morning on the phone. And until then everyone take care. Bye all.

Konstantinos Komaitis: Thanks, Greg.

END