

ICANN

**Moderator: Brenda Brewer
December 4, 2015
10:00 am CT**

Thomas Rickert: Are we expecting anyone else?

(Woman 2): That's it.

((Crosstalk))

Mathieu Weill: Okay. So the point of this call was to sync this point in the project to make sure we aligned on the way forward and make sure we get organized if there's anything in the organization to clarify in the next few weeks. We have a published report -- most applies to you -- and know we're very much looking into how do we stop the bylaw drafting in an efficient manner.

And I think in terms of pending requests -- which was my agenda Item Number 1 -- the only pending request -- from my understanding -- is the IRP drafting. Is that correct on your side, both Rosemary and Holly?

Rosemary Fei: We also owe you a memo on transparency that was requested. It's basically done, I just have to review it.

Mathieu Weill: A memo on transparency?

Rosemary Fei: Yes. I can...

Mathieu Weill: What did we ask for?

Rosemary Fei: ...look at the e-mails. It's not long, it's like a three-page discussion on approaches to transparency and the inspection right.

Mathieu Weill: Okay. Do we have that in the next request?

Rosemary Fei: I'm not sure you do. I haven't looked at it. I got the link this morning and haven't had a chance to look at it except on my phone where I could not find it. But we can certainly, as I said, track back the e-mails if that will help you.

Mathieu Weill: So that would be good, so that our list of requests is complete and we can update the summary page and ensure we - all the memos we're getting are obviously the ones that respond to requests.

Holly Gregory: Also, you know, I took a very quick look at that list and it doesn't always comport with our recollections or records around what's been certified. So, for example, it says that we were not asked to review the third draft proposal, and I don't know that that's correct.

Mathieu Weill: Well, you were.

Holly Gregory: Yes.

Mathieu Weill: You were

Holly Gregory: So we would appreciate that that...

Mathieu Weill: You were during the call.

Holly Gregory: Yes. I would appreciate if staff would fix that. In fact, I would appreciate it if staff could go back and look at all those things that are marked in red and just double-check that it's correct, that we weren't asked to do those things because our recollection is very much different.

Mathieu Weill: Okay. So we'll - our coaches will review with staff to ensure we've got appropriate reference to the moment where those requests were certified, and I think indeed we have some certifications took place meetings which may not have been formalized in the same way and will need to be reconfirmed. So we'll do that. And that's an action I think for coaches with staff. This I will only put it on the staff shoulders.

Okay. Should we move to our IRP drafting just to...

Holly Gregory: Yes, I am happy to provide an update on that.

Okay. We expect that by the next to the last week of December we will have a draft for you folks. So it's two weeks from now.

Mathieu Weill: In two weeks from now, okay. Because we'll try - we would probably put on the agenda or at the next CCWG call be discussion on the composition of the group -- the implementation group -- where we have received a number of applications for - Leon and Thomas I think will put it on the agenda next week. Right?

Leon Sanchez: Yes.

Mathieu Weill: Okay.

Thomas Rickert: Correct

Mathieu Weill: So that should be in sync and enable the group to form just before you submit the first draft. What's going to be the content of the draft? Is it going to be bio on - with their PHS clarify?

Holly Gregory: Well, we were asked to start drafting bylaws for the IRP.

Mathieu Weill: Okay.

Holly Gregory: We're taking - when we do that, however, what we're drafting is sort of a holistic approach. There's always a decision about how much to include in bylaws, how much to include in the related policy documents. We are just drafting it right now as bylaws -- and that determination can be made at a later stage -- but we need to draft it for the whole picture.

Mathieu Weill: Okay. So it's going to be very detailed but with the option to put some into a policy document; is that correct?

Holly Gregory: Absolutely. And, in fact, we would advocate that some of it be put into a policy document. We can have an obligation that that kind of policy also wouldn't change without some kind of approval right. We could treat it like a fundamental bylaw. But we do think that you probably want more of the detail collected in a separate document. But for now -- just for drafting needs -- we're just drafting it.

Mathieu Weill: Okay. So that's a piece of information that is certainly going to be useful for the whole group to see that it's making progress.

Any other questions on the IRP, Thomas or Leon?

Holly Gregory: Well, there was some - we wanted to note that there were some phrases where the proposal had some ambiguity around some of the issues that are important from the IRP process. And I can send you a little note about what those were. But in Annex 7 we noted that it hasn't been clearly addressed whether actions and inactions of PTI can be subject to an IRP, whether mediation is mandatory prior to initiating an IRP, what the standard of review is for matters that don't specifically relate to the article to bylaws.

And so we have some questions -- we can leave those for the group unless - you know, some of these things were things that we thought had been addressed in various IRP discussions but didn't seem to make it into the Annex. So you let us know how you want US to handle those kinds of things. But there will be places where we're going to need further guidance.

Mathieu Weill: I think that's the role of the implementation group here -- to provide the initial guidance -- and then we'll go for confirmation at the PC bridge level obviously once the document - the work is complete.

Holly Gregory: Terrific. There was one more issue. It's not really clear from Annex 8 whether a request for with consideration must be pursued prior to an IRP being commenced. We believe that it was -- at least in the discussions at the second draft proposal -- the notion was that the request for reconsideration had to happen first. So another little ambiguity in the current draft.

Mathieu Weill: Okay. That's the type of guidance the (unintelligible) group will be able to

provide...

Holly Gregory: Great.

Mathieu Weill: ...in the next stages.

Holly Gregory: And frankly in this draft go-round, we're going to make some assumptions. We'll highlight the assumptions so that the group can focus on them if we've made the wrong sort of - if we haven't gotten it right.

Mathieu Weill: Okay. Thomas or Leon, anything on the IRP?

Thomas Rickert: No. I guess we really need to allow for the implementation team to work with you. I think our duty is over at this stage more or less.

Leon Sanchez: Agree.

Mathieu Weill: So but we're really at the point where we need this group indeed to step in.

So the next item is the AoC review incorporation into the bylaws. That's the item where I am slightly confused about status because there was the input from ICANN legal and Jones Day and I think you started considering it...

((Crosstalk))

Holly Gregory: We sent you comment from Adler but not Sidley.

Mathieu Weill: Okay.

Rosemary Fei: We thought you didn't need to double team this one. So at that point the

language that's being reviewed was still changing and changing and changing. We were basing our comments on the second draft. So as we saw it continuing to change, we didn't think it made sense to do a - you know, a detailed, thorough, final vetting of something that had already changed quite a bit. So what we did was we had gotten as far as the Adler side reviewing and we just sent that to you.

Mathieu Weill: Okay. So what would be the next step now? Because we...

Holly Gregory: Well...

Mathieu Weill: ...still had...

Holly Gregory: We're - I think we need to know from you whether you want us to go now to the third draft proposal language or some other - or the final proposal language and re-do it and who you want to do it first and that kind of thing.

I think from my perspective the next step is to take it to the - now we have a third draft. We should take the AoC review and make sure that it's consistent with what's in the third draft. There may be further changes to the final draft, but we should at least get it updated to that degree.

Rosemary Fei: But, do you want Jones Day to do their thing first -- which is how we did it with the last round -- or do you want, you know - how do you want to proceed? Do you want throw it to all those simultaneously or...

Holly Gregory: No, it makes no sense to do it simultaneously. I would...

Mathieu Weill: No.

Rosemary Fei: I would maintain we need to decide who does it.

Holly Gregory: Right, Rosemary. What I would propose is that you folks closest to it - having had the pen - that you look at the third draft, bring it up to date. I think Sidley should spend no more than an hour to reviewing whatever you do and then it's done for - to send back to the chairs.

Rosemary Fei: And Jones Day will then look at it after that if they want.

Holly Gregory: Right.

Rosemary Fei: Okay.

Holly Gregory: I can - does that make sense, Thomas and Mathieu and Leon?

((Crosstalk))

Leon Sanchez: Yes, just for this - for process matters I'm not sure whether we should make sure this request is properly certified from - during the next 50GW (phonetic), for instance.

Holly Gregory: Well, you're going to see it was already certified to us. The issue has been that we've had a moving target, and so I don't know that it's a new certification. It's really a continuation to now bring it to where the group has finally come. I don't expect that there are great changes, but there has been movement in the - you know, in the intervening period between the second draft and the third draft. So, I mean, it's up to you if you think you need to certify it, but those are your process issues.

Rosemary Fei: I also would suggest that rather than ignore entirely the work that was done by

Jones Day and Adler Colvin it would be worthwhile for someone to at least look at that and tell us if there is - there are chunks that are unchanged. So if there's a reaction to that, that would be helpful so that we are informed with the next round.

Holly Gregory: I am just a little concerned if we start engaging in a big discussion around a draft that in some respects may not reflect what got into the third draft, that we could be spinning some wheels. I mean, how much time do you think it would take to simply update to the third draft and get it out?

Rosemary Fei: Well, right now the status of the document is that you have Jones Day comments in one color and our comments in another color. So I guess we'd want to preserve that. I don't know what else to do with it.

Holly Gregory: Of course you'd preserve that, but the Adler comments would - would you just do a new draft where the Adler comments you bring up...

Rosemary Fei: We won't have Jones Day comments on language that's new, obviously. What I'm saying is you'll...

((Crosstalk))

Mathieu Weill: Still but that doesn't matter.

((Crosstalk))

Rosemary Fei: ...that has parts of it that has been reviewed by Jones Day and parts of it that haven't and maybe...

Holly Gregory: I think that's okay. I don't think it matters. I think that...

((Crosstalk))

Mathieu Weill: Just the...

((Crosstalk))

Holly Gregory: ...the date.

Mathieu Weill: Okay. I think now the question I had was the same as Holly about how long would it take to update the (Adler) comments with the latest reports to be compliant with the said report?

Rosemary Fei: My guess is several hours.

Mathieu Weill: Okay. Could that be done, for instance, next week or something like this?

Rosemary Fei: Yes.

Mathieu Weill: I'm trying to move things forward.

Rosemary Fei: I think it could be done.

Mathieu Weill: Okay. So my proposal would be -- Thomas and Leon please step in -- would be that we certify this request that come from this investigation now that we are asking you to update the AoC review bylaw section with the latest report so it can be shared with the group and that's going to be what they want essentially -- any issues that they've got concerning it.

Thomas and Leon, are you okay with that?

Leon Sanchez: Yes.

Thomas I agree with that.

Mathieu Weill: We have the ability to do that now. So let's consider this certified. And we'll add this into the list of certifications.

Rosemary Fei: Great.

Mathieu Weill: We can complete this item which was in between.

Okay. Then we have the rest of the bylaw drafting. And here I'm asking - my question is how we can organize this to be efficient and whether there is a way to make sure we can deliver this quickly for all the review process that's going to take place and...

((Crosstalk))

Holly Gregory: It would be helpful for us to understand what the deadline is that you see for the bylaws and work backwards. We don't yet have a final proposal and so we are working - you know, one of - what we're - in the interest of efficiency, the most efficient way would be is to have a final proposal and then we know what we're drafting to, and I think this AoC issue gives you an example of that. When things are changing, we have to take more time and spend more wheels and there's more likelihood that we're going to miss something or get it wrong.

At the same time we understand that that's not potentially - you know, that there are concerns about meeting a potential timeline and that we may not

have the luxury of working from a final draft. So it would be helpful to understand what you see as the outer limit on the timeframe for getting bylaws done, and then we can talk about how best to meet that.

Mathieu Weill: Okay. My understanding from the overall timeline is that the bylaws would need to be approved around April by the ICANN Board and the latest...

((Crosstalk))

Holly Gregory: Then it sounds like we could work from a final draft. I mean, the bylaw drafting itself -- once we know what we're talking about, once we know what we're drafting to, we've always said that it's about a - we see kind of a six-week process.

Now we will have the IRP ahead of that time because that's being worked on now. It took us about six weeks. We've done the CWG bylaws. And that took us about six weeks, you know, before we got engaged in a - into the - an iterative process for the CWG to review and to move along.

So, you know, the clearer the final draft is, the clearer the instructions we have, the easier it is for us to move forward. That said, if there are pieces of it you think we could pick up now and start working on, we're happy to do that.

And this is all...

((Crosstalk))

Holly Gregory: ...of course, you know, the time that we need between Adler and Sidley, you know, not doing a whole lot of iteration and trying to nail things down further with a big group of people. That adds significant time.

Mathieu Weill: Okay. My view would be that we wait for the final report -- or at least beginning of January -- before initiating the rest of the bylaw drafting. What do you think...

Woman: We love that.

Leon Sanchez: ...and Thomas?

Holly Gregory: Rosemary, you agree with that, right?

Rosemary Fei: Absolutely. Yes. Are we talking about the beginning of April or the end of April? Do you have a sense? Because obviously that makes a difference.

Mathieu Weill: No. That's too difficult to say at this point.

Rosemary Fei: Then we should probably...

Holly Gregory: If we could get started - if we could get started in earnest from a final draft in early January, my goal would be by mid-February for us at Adler and Sidley to have signed off on a first draft of the bylaws that we've delivered to you for then there to be iteration.

Rosemary Fei: You broke up a little bit, Holly. What did you - when did you say we would do that? Maybe mid-February?

Holly Gregory: Yes, mid-February. Yes.

Rosemary Fei: I'm sorry. You just broke up. I couldn't hear what you said.

Holly Gregory: Okay.

Mathieu Weill: Good. And I think the point that I would prepare around December is trying to -- based on the 12 recommendations -- identify whether there are groups of recommendations that we can sort of slot into each other for efficiency of reviews. For instance, the request for consideration is going to go to work for the two (unintelligible) on the block about the powers. It's probably a single block.

The mission updates is going to be looked at very carefully by another group. So I think Thomas and Leon, we need to make sure we create those subgroups of recommendations so that review process and the (iteratic) process -- as you said -- can be (unintelligible) more efficiently.

But that's on our shoulder. I will put that as an action item for us.

Thomas Rickert: Yes. Correct.

Mathieu Weill: That leads me to the last question on the agenda, which was that we are being asked repeatedly by ICANN Finance for some form of estimate of the remaining costs on legal advice so that they can take that into account into the budgeting process for ICANN for the rest of the year.

And I would like to - I don't know whether you have any ability at this point based on the (unintelligible) reports you project whether we can expect the final drafting exercise that would take place in the first quarter of next year to be as intensive as the projected IRP expense, more expense, more intensive.

How would that compare...

Holly Gregory: I would...

Mathieu Weill: ...in your opinion?

Holly Gregory: I would expect that it's going to be more expensive in that there's more of it, right? It's quite a significant amount of work. One of the great difficulties I have in trying to estimate is we don't know yet how much clarity there will be -- additional clarity -- in the final report to direct us.

We don't know how much iteration there will be. We can't use as our baseline what this project would take for one of our normal clients because frankly, this is anything but a normal client.

It doesn't work in normal ways. We don't get clear direction from, you know, one or two people about, you know, what the outcome is to be. There is a huge amount of back and forth.

So that all presents real challenges. I can - we can go back and try to think it through. I can look and see what it costs on the CWG side to provide a draft. And maybe we can use that as a baseline to try to estimate. Frankly, it was...

Mathieu Weill: So...

Holly Gregory: ...less expensive than I thought it would be. But that's because we gave it essentially to just a couple of people in a room to work on. And there - it was only one law firm for that. Also you didn't have the complex issues that we need, you know, that we're - Adler has expertise that we don't and where we have expertise that they don't and that sort of back and forth.

Mathieu Weill: I think the CWG comparison is - could be very useful if you think that...

Holly Gregory: Well I can certainly...

Mathieu Weill: ...it's a similar...

Woman: I can certainly...

Mathieu Weill: ...level of complexity.

Holly Gregory: I could certainly let you know what that cost. There's some similarities in complexity. I think in terms of the breadth of what we need to cover in this set of bylaws, this is a broader set of issues.

But let me go look at that. We did it in about a six-week period. That alone -when we can really constrain it into a period of time to get to a first draft that helps with keeping costs down because it doesn't, you know, you're not allowing it to extend out forever and just really, you know, focusing in.

Rosemary, do you have any other thoughts about how we could best approach trying to estimate this?

Rosemary Fei: You know, I think what you've discussed I agree with. I think the concern with the comparison for the CWG is the two law firms because I do think that that adds a lot. It's not a, you know, it's not a 10% increase or something to add the second firm.

And I'm also not - I'll be very honest with you. If you decided that you wanted to work - you the co-chairs decided that you wanted to, you know, work primarily with Sidley and change our role, that's your choice too.

I mean I do think there is value in having the two firms. And you would be losing something. But...

Holly Gregory: Rosemary, you're not off the hook.

Rosemary Fei: Well but honestly...

Holly Gregory: I object.

Rosemary Fei: ...if cost is the primary consideration, having two firms is very expensive.

Mathieu Fei: Yes. But I think...

((Crosstalk))

Mathieu Weill: Yes, Thomas?

Thomas Rickert: Yes. This is Thomas. I think our group has made a very deliberate choice in deploying two firms. I think it would be unwise for us at this stage to question that. I much appreciate that you are trying to help streamline costs. But I wouldn't want to bring it up at this stage.

Holly Gregory: That's fine. I...

Thomas: Once...

Holly Gregory: I just - really the problem is when I - when you ask me how much this is going to cost - and we can look at what the CWG cost. But if we're going to have to go through it at the - pretty much the same level -- not quite -- as, you know, let's assume that Sidley does the first draft.

It's still going to be a pretty detailed review because that's the expertise you've asked us to bring. And so it takes time to exercise it. So, you know, I don't know. Probably if we take the CWG number, adjust for the breadth, and then inflate it for a second firm doing a careful review of the first firm's work, that's probably a reasonable way to approach the estimate.

Mathieu Weill: Okay. In terms of actions at this point we would expect Holly to provide a - an update on the cost of - on the CWG side or an estimate that we would then have to obviously increase by the impact of the second law firm when that's also value as well as obviously taking into account the nature iterations -- which I expect are going to be significant as usual with our group.

And so that's also something we need to factor in. But if we had a similar sort of an estimate based on the CWG experience that would be extremely useful. Holly, when do you think you could provide this?

Holly Gregory: I'll provide it by the end of next week. I'll work with Rosemary. We'll iterate. Is that soon enough?

Mathieu Weill: Oh, I think ICANN Finance is - it's going to be too late for them in their view. But to me, it's good enough. I'd...

Holly Gregory: Well when...

Mathieu Weill: ...rather have...

Holly Gregory: ...would...

Mathieu Weill: ...an...

((Crosstalk))

Mathieu Weill: They say they have the meeting on the 8 of December.

Holly Gregory: And the 8th is which day of next week? Does anybody know?

Mathieu Weill: I think its Tuesday.

Man: Yes.

Holly Gregory: So I will get it to you on... This is not something I want to work on over the weekend.

Mathieu Weill: No.

Holly Gregory: I will work on it on Monday. And if we can get it to you, we will try for that. But I'd want to have time for (Rosemary) to look at it and think it through with me. (Rosemary), perhaps you and I could have a call late in the day on Monday?

Rosemary Fei: Sure.

Holly Gregory: Because it's really just coming up with a number. But I need - there's a lot of work I need to do to go back and look at hours. And...

Mathieu Weill: I understand. I understand. And I make no promise to ICANN Finance.

Holly Fei: Okay. But we will do a best effort to try to, you know, we want to keep ICANN Finance happy too.

Holly Gregory: Seeing as they pay the bills.

Mathieu Weill: It's good that the call is recorded.

Rosemary Fei: So I'm still not seeing in the notes the item about the certification to update the AOC review provisions as the next step. And I'm just wondering, is there a reason it - I've mentioned it twice in the chat.

Mathieu Weill: I mean (unintelligible). I don't know. Brenda is taking the notes.

Rosemary Fei: Oh okay. So Brenda is saying it's offline as well. I - that's fine. I just...

Leon Sanchez: Okay. Alice is taking notes offline. Okay. So let's have the completed notes circulated amongst ourselves to make sure it's complete before finalizing in the next...

Woman: Correct.

Woman: And the other thing is...

Mathieu Weill: ...two hours.

Holly Gregory: If I could, the action item that Holly and Rosemary are to provide an update on cost by end of next week I think should be restated. It's that Holly and Rosemary will provide an estimate of...

Mathieu Weill: Yes.

Holly Gregory: ...the bylaws drafting cost to get to a first draft in a timeframe that's

mid-February by next week.

Mathieu Weill: Excellent. So that's indeed an estimate that we are asking for. We have the update on costs through ICANN Finance anyway. Is there anything else?

Holly Gregory: Well we - so there are some things that we've noted in the third draft. I don't certainly want to provide any kind of formal comment on it. And, you know, we certainly weren't asked and didn't do a scrub.

But I asked one of the - (Rebecca Grapsus), who's counsel and who is the person who drafted the CWG bylaws to go through the third draft and, you know, take a quick read. She's had to read it because she's drafting the CWG comment letter.

So I thought if she could also go and note any places where there were questions or ambiguities. And she did do that. I want to know if you'd like us to provide you that because you may find it helpful. But I didn't want to impose it on you.

Mathieu Weill: I think once that's in existence it would be foolish of us not to benefit from it. What do you think, Thomas?

Holly Gregory: It's not any kind of line item drafting. It's just some highlights with some questions including some of the questions I raised about the IRP at the outset. But there's some other issues as well. So just let us know who we should send it to. It's very high-level.

Thomas: Yes, by all means...

Leon Sanchez: I think you should...

Thomas Rickert: Why don't you send it to us...

Holly Gregory: Okay.

Thomas Rickert: ...at the (unintelligible)?

Holly Gregory: Okay. Will do.

Mathieu Weill: And we'll certainly share it with the whole group.

Holly Gregory: Or with the staff. I mean some of it - I don't know that it - I mean you take a look at it and decide whether it's worth sharing or just something to, you know, keep in mind as we get to the third - the final draft.

There's nothing surprising in it. But it's just noting some places where there's a piece of information that we thought had been developed that wasn't there or something like that.

Mathieu Weill: True.

Mathieu Weill: Okay. Is there anything else? Thomas? Leon? Rosemary? Holly? Or...

(Crosstalk)

Man: Good talk (unintelligible).

Holly Gregory: (Unintelligible) we're looking forward to a weekend off.

Man: Yes.

Holly Gregory: By the way, I do want to take this opportunity to say, you know, I think the staff really did yeoman's effort in getting across that deadline and the co-chairs as well. I know you were all working hard and up sleepless nights.

And, you know, I think that the draft is a much clearer, more straightforward draft than the first two drafts. So it's great to see that kind of progress. But I know that - I know the huge effort it took through a holiday week.

Mathieu Weill: Yes, they were...

Thomas Rickert: Thanks so much.

Mathieu Weill: ...doing tremendous efforts. And we'll certainly carry that message across to them, if they're not listening to the recording. And I hope they don't -- except for Alice who's going to take notes.

But that's - it's been very, very intense for them. And they've been delivering in outstanding manner.

Holly Gregory: Absolutely.

Rosemary Fei: I totally agree.

Mathieu Weill: All right. So yes...

Thomas Rickert: So we can adjourn, right?

Woman: We can adjourn. Go bake cookies.

Thomas Rickert: I will. Thanks so much. Take care, everyone. And...

Man: Take care.

Woman: Bye.

Thomas Rickert: ...(Leon), talk to you in a few hours with the board call, all right?

Leon Sanchez: Yes.

Man: Bye-bye.

Leon Sanchez: Yes.

Woman: Bye-bye.

Mathieu Weill: We're not over yet.

Man: Thanks, everyone.

Leon Sanchez: Bye.

Woman: Bye.

Man: Bye-bye.

END