

**ICANN**

**Moderator: Brenda Brewer  
April 6, 2016  
7:00 am CT**

Chuck Gomes: All right, let's go ahead and start the recording.

Grace Abuhamad: Chuck, I believe the recordings are started.

Chuck Gomes: Okay thanks. This is – thanks, Grace. This is Chuck Gomes and this is the Design Team O meeting on the 5th of April, 2016. Welcome to everyone. Is there anyone who is in – not in Adobe Connect? If you would speak up I would appreciate that. So sounds like everyone's in Adobe Connect. And so we'll do roll call based on that.

And we will go ahead and confirm the agenda. I put quite a little detail in the agenda just for my own sake to stay on top of things. I'm involved in a few too many things right at the moment. This week is super busy with so many things going on. And I know that's the case for just about all of us. So you can relate to that.

Anyway, we have a very important agenda today especially with regard to the bylaws language because, as everyone I think knows, there's a lot of time sensitivity with regard to that. And so any changes to the agenda or questions

about the agenda, comments about the agenda before we jump right in? I see that Alissa is in, that's great – in on audio.

Okay, so let's go ahead and go to Agenda Item 3 that you have in front of you there. And let's take a look at the – I see the bylaws language that I put in there for Sidley disappeared. So hopefully you can look at that. Not sure why that disappeared. But their language, I can read it for everybody, okay it's there now.

So, “To maintain ongoing operational excellence and financial stability of the IANA function, so long as they are performed by ICANN or pursuant to contract with ICANN, ICANN shall be required to plan for and allocate funds sufficient for the future expenses and contingencies reasonably related to the performance of those functions.”

So that is the language that Sidley drafted and is currently in the draft bylaws that are under review. And the one person on my list who responded to that was Mary. So if Mary is able to speak to that I'd like her to share her comments and anything else she has to say with regard to that first. So, Mary, would you go ahead and do that and then I'll call on Paul.

Mary Uduma: Okay hello. Can you hear me?

Chuck Gomes: Yes.

Mary Uduma: Can you hear me okay?

Chuck Gomes: Yes.

Mary Uduma: Is my voice clear enough? Can you understand me?

Chuck Gomes: It is. Can you hear me?

Mary Uduma: Okay. Yes, I can hear you. Okay. I reviewed the language and I saw that it was pretty much what the spirit of our recommendation, recommendation (unintelligible). And reading further on your email and it was input and comments from (unintelligible) narrow with that being the practical implementation of the management of PTI's funds.

So I thought that it would be – it would be simpler to implement if we think about having a first charge ICANN's revenue to fund PTI. And I suggested a percentage of registration fee, call it domain name IP and other services. (Unintelligible) to PTI operations fund either monthly or quarterly. And I'm assuming that it will be independently managed. And for that it will be a (unintelligible) fund for PTI in case there is a risk of bankruptcy with ICANN, which is very rare, I agree.

So and again, I'm of the opinion that this should be a kick off fund, a fund that is up to one year expenditure of PTI. Taking from the current reserve fund of ICANN, and certified, as you suggested in your email. So those are the things because I saw that if IANA function services operation, financing, is taken as a first charge from ICANN's revenue, so there would be no problem of whether there would be fund or no fund to (unintelligible) the services of the IANA function.

And again, the function is not only for ICANN or for DNS – domain name since IP or the ASO and the IETF are also indirectly (unintelligible) the ICANN MOU agreement with those communities. So in order to have financial stability and (unintelligible) then make the first charge ICANN (unintelligible) for the financial, operations of the PTI.

Did you hear all that I said please?

Chuck Gomes: Yes. And we also of course can see on the screen what you sent via email as well.

Mary Uduma: Okay that's fine.

Chuck Gomes: So thank you very much. And we'll give people a chance to respond to that as well as we'll give them a chance to react to the Sidley drafted language as well. And without – this is Chuck speaking. So without me saying more let's just jump right into the queue and go to Paul.

Paul Kane: Thank you very much, Chuck. So with regards to the bylaw language proposed by Sidley to be candid, I think it is somewhat weak in that PTI as a separate independent affiliate, albeit it part of ICANN, or administered by ICANN, it is the PTI that needs to effectively budget and plan for. It is ICANN who pays for.

So I would suggest after the close of brackets PTI shall be required to plan and ICANN shall be required to allocate funds sufficient for the future expenses as described by PTI board. I'm assuming the PTI board will ratify the budget that is required for the stable operation of PTI. And they will inform ICANN board of the quantum they require for the stable operation.

An interesting conundrum has arisen in that it could be that the staff of PTI would prefer to be under the employment – under an employment contract with ICANN on secondment to PTI. In which case there's always almost going to be a reverse payment from the PTI budget back to ICANN for those members of staff on secondment. So I think the bylaw proposal is possibly not

as – certain CWG members had indicated nor a proposal had actually proposed.

With regard to Mary's comments, I understand Mary is really wanting to ensure a stable funding base. I think we have a stable funding base in that we are supportive of ICANN corporate's mission and ICANN corporate has mechanisms for raising revenue from its various customers which, as she rightly says, cover the spectrum.

I do think the proposal of charging a fee per name or getting into the intricacies of how funds are collected at a bylaw level, is possibly inappropriate. But also I think it's quite a complicated proposal. So I would suggest taking the higher level view of keeping the bylaw recommendation high level but also very precise in that parties are mandated to undertake certain tasks.

And one thing I think Mary is trying to capture, which seems to be slipping for some reason, and I don't understand why, but she is wanting to make sure that there is cash, pound notes, or dollars sorry, assigned specifically to PTI and under PTI's control. So the executive board of PTI can spend the money on projects associated with PTI's operation in the way it wishes.

But there seems to be – there is mention of budget but budget is not cash. Budget is an academic numerical exercise which may or may not be met. What Mary is trying to do is end up with cash. I think it's quite a cumbersome way of getting it. But I agree with Mary's tenet which is primarily to have cash available to the executives of PTI where the cash is obtained directly from ICANN for the stable operation of PTI. Thanks.

Chuck Gomes: Thanks, Paul. This is Chuck again. And before I go to Olivier, just a couple things I want you to hold on to that we won't react to right now. And one of those is the editing of the bylaws language because you'll see that in Item 3f. We'll come back to that so don't forget that.

And also I wanted to comment on the fact that in the CWG call yesterday one of the things that was – that confirmed what you're saying that there seemed to be agreement on was that the bylaws language needs to be fairly high level, specific but high level so that we're not getting into specific solutions with regard to funding but like that. So I think in the CWG call yesterday what I took out of that was that there's support for that, pretty broad support if not unanimous support in that regard.

So thanks for that. And we're going to come back to some of the things you said as we continue this discussion. So let me go to Olivier now.

Olivier Crépin-LeBlond: Thank you very much, Chuck. Olivier Crépin-LeBlond speaking. And just to say that Paul has raised some very valid points. I was going to touch on the same thing so I'm not going to repeat what he said. On the input from Mary, I think that, yes, there certainly is this concern about details that I also have.

I wondered, and I have missed a few of the calls which were not DT-O calls, I missed a few of the implementation calls, so I'm not exactly sure where we are with regards to who contracts with who because obviously we're dealing with the naming issues but we do have the other two operational communities.

They – last I remember they were contracting with ICANN that was then getting PTI to do the work for them. Are they now contracting directly with PTI? Because if they're contracting with ICANN then whatever – I'll just ask

that question first and then – because they might be contracting with PTI in which case the rest of what I have to say has nothing to do with it.

Chuck Gomes: Thanks, Olivier. This is Chuck. And to my understanding, no, they are not contracting with PTI. PTI will be performing the services, however ICANN makes that happen. There's agreement in the CWG that PTI will perform the IANA services for all three operational communities.

But to my understanding there's no indication that the numbering or protocol communities will be contracting directly with PTI, they would be contracting with ICANN as best as I understand it. So let me stop there. And if you want to continue please go ahead.

Olivier Crépin-LeBlond: Yeah, thanks very much, Chuck. It's Olivier speaking. So that then raises a flag for me because we've been focusing on trying to make sure that PTI can continue operating if something really bad happens to ICANN like ICANN having to file for Chapter 11, let's say. The problem we have there is that because everyone is contracting with ICANN that contract with PTI becomes void as well.

And so no matter what we try and do with the escrow and anything else, as I think it was mentioned on the previous call, if there was an escrow then the escrow would be with ICANN having the key to that escrow. And then, well, there is no way for it to happen.

If there was a bank letter of credit that letter of credit would have to be, I believe, attached to ICANN and not attached to PTI. I may be wrong on this. But so it raises an additional issue. And I guess we probably have to make this. I don't think it's something that will go in the bylaws. But it's certainly

something we need to work out before we proceed forward with having something that's operational. Thanks.

Chuck Gomes: Thank you, Olivier. And, yeah, I'm pretty confident we'll need some legal advice this week probably to deal with a few of these questions, some of which you raise, but thanks for that. Mary, it's your turn again.

Mary Uduma: Yeah, Mary speaking here. Can you hear me?

Chuck Gomes: Yes.

Mary Uduma: Okay. My suggestions are not for the bylaw language. I just said that we should (unintelligible) to making the PTI funding first charge to ICANN (unintelligible). So I'm not expecting that all these details will work. The issue be at the high level, that's why I suggested that the language (unintelligible) captured what the spirit behind our recommendations. So I'm not expecting that these details that I put in here, these are just, you know, for our own discussions. If it is acceptable, fine. If it is not acceptable, that's all so we could go ahead with that.

So I'm not suggesting that all these that I put in here should be in the language at all or bylaws or bylaws language at all. Okay? I needed to make that clarification as we continue discussion on this. Thank you.

Chuck Gomes: Thank you, Mary. Thanks for that clarification. So you're in agreement on the bylaws language not being too specific so that's very good. I will say, for those that didn't read my message, or in case I didn't make it clear in the email message yesterday after the CWG call, or on the – excuse me – not the CWG call but the call on the bylaws review is what I'm referring to for the CWG.



And I shared that I didn't think this statement fully meets the objective that Design Team O and ultimately the CWG as a whole wanted to accomplish. And the reason for that was I raised the issue of bankruptcy, Chapter 11.

And was told that this language would not mercenarily, my interpretation was this language would not necessarily solve the problem that we were trying to solve our problems we were trying to solve when we first suggested some bylaws language. And since then Sharon from Sidley has come back and confirmed that conclusion.

So I suspect that we're going to have to tweak the language a little bit. And we'll get to that going forward. But let me stop there and let Xavier jump in.

Xavier Calvez: Thank you, Chuck. Just wanted to try to clarify something because on the suggested bylaw language Paul was making an indication that the PTI should be referenced in ICANN bylaw, and that's what I think is a bit strange to have the PTI plan or planning, which I would assume PTI would plan, but that the planning by the PTI would actually be referenced in the ICANN bylaws.

Because even if knowing that the PTI would need to plan for its activities so that the services are being rendered adequately. ICANN still need to plan anyway as well for those funds to be allocated for the IANA function. So it seems a bit weird to me that the PTI would be referenced in the bylaws especially because if the function would be performed differently than by the PTI in the future then the bylaws would need to be changed as well. That would be – I...

((Crosstalk))

Paul Kane: So I agree with you, Xavier. It was a slip on my part. You are correct, in a corporate bylaw you do not specify the – another corporation by name. One tends to specify it by an affiliated – or any and all affiliated organizations shall be required to plan and budget for their needed – their requirements. ICANN shall be required to allocate sufficient funds. So you're correct to pick me up on naming and organization. I was – it was sloppy language.

You would normally say “an affiliate of ICANN shall be required to,” if that makes sense.

Xavier Calvez: Thank you.

Chuck Gomes: Xavier, go ahead, please.

Xavier Calvez: Thank you. Separately I wanted to try to have you or the group or yourself, Chuck, try to clarify also what I felt – and I may have not looked at it correctly or misunderstood it, but I find there's two different topics and I'm not clear which ones we are trying to address with this conversation.

There is the bylaw objective, which I don't see the relevance to affecting the bylaw but the comments from Sidley from yesterday or today has in the sense that the bylaws state an objective independently of its – how that objective is achieved, because that's not what you put in the bylaws is not the how but you put the what you want and sometimes why you want it as well. The bylaw doesn't usually specify the how.

And that the how is actually an implementation exercise which I think a lot of the solutions or conversation that we have had either in this call or in previous calls on how do we do this, can we have a cash account or bank account, can we have a reserve fund and so on, on an escrow, all those are implementation

solutions or potential solutions that actually, in my views, require a much more in depth analysis and validation than we can do on calls like this on the fly without the expertise that I think we are probably most of us lacking to be able to evaluate a fully designed solution.

Because I think we're suggesting ideas but this is the beginning of an exercise rather than completing it. And I'm confused as to what we're trying to achieve in the very short term versus in the longer term of implementation. And I don't know if even my question is clear. But, Chuck, if you've understand can you try to help clarify it for me?

Chuck Gomes: Sure, Xavier. This is Chuck. And I am not suggesting that we should put the how in the bylaws statement. But when I read it and I seem to get confirmation from Sharon from Sidley on this in the bylaws call yesterday, it, you know, ICANN could plan for and allocate funds sufficient for future IANA function services and their expenses. And that could all be useless if they were under a bankruptcy situation.

So – and I don't – I'm probably not the one to tweak the language but how do we word it so that there is – that the bylaws require ICANN to fund the IANA functions in such a way that in a case, however unlikely it may be, that ICANN has to file for bankruptcy, as one example, PTI, the IANA functions operator, will still be able to go on functioning and the funds for funding it won't be tied up.

Now I don't know what the correct language is there. But did I answer your question?

Xavier Calvez: Partially yes. So – and (unintelligible) the first part. So it sounds to me it's the word "allocating" funds that seems to be triggering the issue because I have

the impression that you're considering the language is inadequate on the basis that funds would be in the PTI and that if there is no insulation from a bankruptcy of ICANN then that's not achieving the objective.

But I think the objective is actually well defined. The question is the how we try to achieve that objective would be – needs to be a solution that does achieve that objective in that in the case of a possible bankruptcy of ICANN then the solution puts in place needs to allow the continuation of the funding of the IANA function.

So I actually think it militates towards my point that I think the language of the objective is what needs to be in the bylaw and that we need to actually be less specific even then allocating funds, as we say right now, so that we then say the objective is that ICANN funds the IANA function. How needs to be in all cases basically, whether there's a bankruptcy of ICANN, the PTI funding needs to be insulated, or any other type of risks basically it needs to be insulated.

Am I spelling out correctly what I think you're pointing the issue to be?

Chuck Gomes: Thanks, Xavier. This is Chuck again. I think so but it still doesn't give me a comfort level and it may just be my own personal problem, I don't know. But you said some things like, you know, adding some words to even with allocate funds that are sufficient for future expenses regardless of ICANN's financial situation or something like that. I don't know. We can talk more about that. Let me turn it over to Paul.

Paul Kane: Sorry, I was on mute and talking to myself. So, Xavier, I agree with you that the how is an implementation issue and we should only be focused on the high level issues of bylaw drafting. Can I ask sort of a parallel question? In your

vision, the long-term vision, forget the bylaws for a second. But in your vision do you see PTI being effectively a department within ICANN as it is today? Or do you see it being an independent separate body financially within ICANN of tomorrow?

Chuck Gomes: Go ahead. This is Chuck. If you'd like to respond.

Xavier Calvez: Thank you. And I actually find it difficult to answer that question because there is the – since there's a legal entity that legal entity, the PTI, the legal entity has its own financial statements. And therefore has its own revenue and its own expenses and its own balance sheet and so on. So there is separation from that perspective.

Does that mean that the legal entity needs to have its own separate bank account? Absolutely not. Many groups have a completely centralized treasury, for example, across hundreds of subsidiaries, which is much more effective usually for those larger groups, while each entity having the complete integrity of its financial statement and the concrete control over its financial and treasury requirements, by the way.

So separate bank account, as an example, is not creating that independence. It's the governments of the company's financials that actually create the independence (unintelligible).

So the future vision is, trying to come back more precisely to your question, the legal entity, PTI, would be separate, it would have its financial statements depends upon whether the resources that contribute to delivering the IANA functions would be all legally and contractually located within the PTI or whether they are located into – contractually in ICANN and then seconded or subcontracted to the PTI.

The – I think the answer to your question may be a bit different. So I'm sorry if I'm muddying the topic further. But again I feel that we're actually going into implementation topics when trying to design the bylaws. And I think we were confusing ourselves with that approach which is back to my second comment to Chuck earlier.

Chuck Gomes: And this is Chuck jumping in. And I think it's safe to say, and I think this is what Xavier was just saying, is that PTI will be an affiliate of ICANN. And we're back to the how versus the what again even on this issue. So how that is structured – or maybe I should say it this way – regardless of how that is structured in its relationship with ICANN, it would be a separate affiliate. Forget about where it's located, forget about whether it has a separate bank account or things like that. Legally, it would be a separate entity. Am I correct in saying that, Xavier?

Xavier Calvez: I think so, yes. I agree.

Chuck Gomes: Okay, I just wanted to kind of...

((Crosstalk))

Xavier Calvez: I think that's exactly the distinction – you're making very well the distinction that I was trying to make that irrespective of how the IANA functions are organized within PTI, the financial stability of the IANA functions need to be stated as a requirement. And that's where the bylaw should be addressed.

But irrespective of the how so that the ability to maintain financial stability of the IANA functions is not conditioned by the how. And I think you made that point much clearer than I was managing to do it.

Chuck Gomes: Thank you. That's – let me just jump back to Paul for a second. Paul, did that make sense?

Paul Kane: I think it makes sense. And I respect where Xavier is coming from. But – and he's right that we are – or my question is sort of bridging on high level and also on how. My thing – because we don't seem to (unintelligible) quickly is if we can address how briefly that will help clarify the bylaw side or the mechanisms for achieving it.

Simply because I believe that the CWG members are wanting to see full financial autonomy for PTI. Funds come from ICANN. The executive board, the board of directors of PTI, determine how those funds are spent. Xavier's vision, if I'm not mistaken, is basically there is one pool of funds of which a certain amount is allocated to PTI. And then at the discretion of the board of ICANN such expenditure will be allowed.

In the CWG proposal the discretion of expenditure rests with the board of PTI, not with the board of ICANN. And so if we can just...

((Crosstalk))

Xavier Calvez: With your respect, Paul, I didn't say any of that. I didn't...

((Crosstalk))

Paul Kane: No, no, no...

Xavier Calvez: I didn't make any assumptions.

Paul Kane: No, no, I'm just trying to understand your vision. And you were very good in the way you conveyed your vision and that you are indicating that that is yet to be determined. We are up against a very tight time clock and I just thought it may be helpful to explore your vision to see if it's aligned with what we're talking about. And then – even if didn't, I don't mind, I just wanted to have a look at your vision. And you're right, you didn't say those words precisely. And I was inferring stuff for which I apologize. But...

Xavier Calvez: No, no.

((Crosstalk))

Xavier Calvez: ...complicated subject. I actually am trying to understand, and that was my original second question to Chuck, why we think it's urgent that we address the how when I think the urgency is on the bylaws. And my point is that the bylaws should not try to address the how because otherwise we tie the bylaw to the how which is actually impairing the ability to ensure that the principles that the bylaw are supposed to set are effectively set and then met through implementation.

So I was putting in the chat that when you say can we still address the how quickly? I'm concerned that this is actually – that may create the risk of making a lot of assumptions and mistakes because we've been discussing a few types of options, but we had not been able to validate whether those options are even actually options or not.

I'm taking the same example again, bank account. It's completely useless to have a separate bank account at the PTI if it's not insulated from ICANN's bankruptcy, as an example for the objective that we have.



So it's an inoperative solution if – it's not a solution – if we – if there is not an insulation from bankruptcy standpoint and there is many probably other types of analysis that we need to be able to provide the group with in order to validate what options are available and how we choose from those options as part of the implementation process, which I think this will be well placed to conduct. But not in the next 10 minutes, I think is an error.

Chuck Gomes: Okay so we're just about halfway through our time so we need to move ahead. Let me – Olivier's been patiently waiting there and his arm is probably getting sore from holding it up so long. So let me let him jump in.

Olivier Crépin-LeBlond: Thanks very much, Chuck. Olivier Crépin-LeBlond speaking. And I'm glad the hand is only an e-hand, which doesn't require very much strength or stamina to keep up.

I think we - yeah, we're trying to fix more than one thing here and also what's on the screen is actually more than one thing. So there's the bylaws language proposed by Sidley which goes a certain way.

And I would say I'm satisfied with part of it as in what – that it would actually achieve what we want to achieve as far as the financial stability of the IANA functions, as long as ICANN is in business and everything runs well and even if ICANN decides to reduce its budget and so on, the bylaws language proposed by Sidley appears to be somehow safeguarding the ongoing operational excellence and financial stability of the IANA function. That's one thing. And that seems to be the really time sensitive thing that we need to agree on.

On the other stuff I see where we're not quite there yet. And certainly when it comes down to the possible ideas for multiyear funding Xavier mentioned that he didn't see any problem in having PTI still use the ICANN bank account.

From my own experience in having conducted joint ventures in the US, my legal advisors on every time did mention that a separate bank account that would be untied to either of the firms conducting the joint venture, and I gather in this case that would be untied to ICANN itself, would certainly safeguard the funds a lot more than if they were in an ICANN bank account and earmarked as being PTI owned funds.

It's just the way that bankruptcies take place. And certainly you have an outside adjudicator or whatever the name is – administrator – coming in and basically taking a sledgehammer to crack an egg open. So that's a bit of a concern there.

And the points with Sidley have brought forward on the use of an escrow agent. Well, we know that by having an escrow that would effectively keep the hands off the creditors of ICANN if ICANN was to fold. And on a bank letter of credit it would need to be a bank letter of credit that would be issued by – I would say even by PTI and it would have to be an irrevocable letter of credit.

If it's a letter of credit that's irrevocable but launched by ICANN, my – what I remember from some business I have conducted through international letter of credits, was the case of well, that doesn't preclude the company on the other side not being paid if my company went bankrupt. So – and that was always something, you know, the sort of small print at the bottom of the letter of credit. So anyway that's the points there. Thank you.

Chuck Gomes: Thank you, Olivier. This is Chuck again. And, again, we're obviously – like you said, there are two things. There's the bylaws language and there's the how we might implement the bylaws language. The one thing we need to get resolved this week, it'd be great if we could do it today, I'm not sure that's possible but if it is that'd be great – is the bylaws language.

We're going to have to work on the how and that's on the agenda. But I'm going to change the order of the agenda a little bit unless the rest of you think that we can't deal with the bylaws language without talking about the how. One thing for sure, we're not going to resolve the how even this week so we're going to have to come to terms with some bylaws language before totally resolving the how.

So the question I'm going to ask after I go to Mary is, do we have to know how it's going to be done to make any suggested edits to the bylaws language? And I'll stop there. I have – there's at least one concern I have with regard to the bylaws language but I'll come back to that. Mary, it's your turn.

Mary Uduma: Okay. Thank you. Mary here speaking for the record. And I have wanted to ask you, Chuck, whether you have – whether your suggestion (unintelligible) your suggestion or what the Sidley has suggested about bankruptcy to be included in the language they have proposed. If not, I think that (unintelligible) in the language because it said ICANN shall be required to plan for and allocate funds sufficient for the future expenses and contingencies.

I think is high level enough and for me I don't have – I don't have additional (unintelligible). If we want to see (unintelligible) if not I think the language pretty much captures what the objective is. But we have, I agree with everybody, we deal with the how better because my suggestion is about how.

But in terms of the language I think if anybody has anything to add or you, Chuck, you have something to add to the language, maybe you propose that and then we see how we at least get done with the language. And we are running against that. Thank you.

Chuck Gomes: Thank you. Let me – before I go to Xavier let me tell you where my concerns are right now with the language. First of all when it says for future expenses, okay, they could provide for expenses for six months. I think we're looking...

Mary Uduma: Okay.

((Crosstalk))

Chuck Gomes: I think we're looking for more than that. The – and allocating funds – they could allocate funds and those funds could be canceled because of a court proceeding. Okay? I guess what I'm looking for, and maybe it's not possible but I'm going to pursue it a little bit further anyway, that is ensuring that funds sufficient for at least two years are ensured. That's kind of where I'm going with regard to my concerns with the language.

The language the way it is right now is high level and it needs to be at high level. But do we have anything there that would give us a chance to challenge the bylaws – challenge the fact that the bylaws were not fulfilled? In other words, the IANA functions were not sufficiently funded in case of any kind of risks with regard to ICANN's financial situation even the freezing of their funds. So that's where I'm at on that. Now let me stop again and go to Xavier.

Xavier Calvez: Thank you, Chuck. I was going to suggest a slight amendment at the language to try to address the concern that you were pointing out earlier relative to

segregation of funds and bankruptcy and so on and suggest something that would be less restrictive and therefore more forceful in the sense of more general. And let me go to it because I'm actually concerned that – sorry, let me suggest the language and I'll then explain why I'm suggesting it.

Chuck Gomes: Good.

Xavier Calvez: What if we would say after the parentheses, or the brackets, ICANN shall be required to plan for and fund sufficiently for the future expenses and contingencies reasonably related to the performance of those functions. The reason I'm suggesting that is because the notion of allocating may sound like it's segregated funds and a fraction of fund. And when I say “to plan for and fund sufficiently” it's actually not restricting to allocating funds.

But no matter how, which and the how is what we're going to deal with in the next weeks or months, no matter how ICANN needs to fund the expenses. To me the notion of future expenses, to get to Chuck's proposal just now, the notion of future expenses has the advantage of not being restrictive as to whether it's six months or 10 years.

And by introducing a specific duration like two years, for example, even though it's at the minimum two years, in your proposal, Chuck, it indicates that there's a good and a bad. The bad is less than two years and the good is more than two years. And I think this is subjective and – or it's circumstantial rather than a permanently general requirement.

So future expenses – it sounds to me that it was actually designed to not be restrictive as to – or limiting as to what is the period of time. ICANN needs to fund the expenses of IANA functions irrespective of the timeframe. So I thought that the limitation of the – sorry, that specifying a timeframe was

actually limiting the requirement rather than increasing it. I'll stop there.

Thank you.

Chuck Gomes: Thanks, Xavier. This is Chuck. By the way, I like the change from "allocate funds" to "fund." I think that is, in my opinion, is very good. The – would it make – would it work to also add somewhere in that change independent of ICANN's financial situation, or maybe uninterrupted performance of those functions. Something like that would give me even more comfort. But let me stop there. You can think about that. And I'll turn it over to Paul.

Paul Kane: So I always – I think it's not wise to be drafting bylaws on the fly. But I like some of Xavier's thoughts in that it's actually allocating cash. And I'm a cash guy. So just again, the same points of (unintelligible), of Xavier, just after the brackets, something along the lines of, not final by any means, "any and all affiliate companies associated with ICANN shall be required to prepare a multiyear budget for the stable operation of the affiliate and submit such budget to ICANN to allocate and attribute funds to the affiliate sufficient for their future expenses and contingencies," etcetera, etcetera.

So there we are highlighting a number of years, whether it's two or three, again that's almost an implementation thing. We're allocating cash so therefore it's a ring fenced if the implementation is done correctly – mechanism. And I think we're all on the same page. I just put those words out. I don't think it's wise to draft on the fly. But I'll just – I welcome other people's thoughts.

Chuck Gomes: Thanks, Paul. And we're not going to be the final drafters so – but the problem is with the time constraints we have this week we've got to give Sidley enough direction so that they can tweak this language and propose draft language that would of course need to be supported by the full CWG and

ultimately by the community in the bylaws themselves. So understand what you're saying now.

I have concerns about getting into multi – having – talking about affiliates in general and requiring them to do multiyear budgets. And, again, most of that is the how anyway. And what we really want to ensure is uninterrupted funding of the IANA functions. And if we take what Xavier said, and change from allocate funds to just, if I understood it correctly, and fund future expenses and contingencies to ensure a performance of those – uninterrupted performance of those functions – would that language, I mean, does that cover, I mean, that starts – I think that starts what I'm concerned about.

I don't know if the language is right. I'm the wrong one to decide that. But does what I'm saying at least make sense? There's two things. Safe fund, like I think Xavier suggested. Fund future expenses and contingencies to reasonably ensure uninterrupted performance of those functions in the future. Does that follow? Is there any disagreement with that?

Thanks, Xavier, for the comment in there. And that's at a high enough level that I think it gets at the concern I had. And I think is consistent with what we as a design team, and the CWG as a whole, wanted. And I'm going to look at what Olivier – I haven't been able to keep up with all the chats. I'm looking at what Olivier wrote right now.

“ICANN shall be required to plan for and fund sufficiently for future expenses and contingencies reasonably related to the performance of those functions.”

Well, again, I'm suggesting that, “fund sufficiently for future expenses and contingencies to ensure uninterrupted performance of those functions.”

Does that work? Thanks, Cheryl, for your feedback. And, yeah, got it, Olivier, thanks. Is that – and let me go to Grace. Grace, go ahead.

Grace Abuhamad: Thanks, Chuck. So I have two – I've been trying to follow the conversations. I have two versions of the bylaw in the notes with text in red bracketed to indicate sort of the changed language. The first one is, I think, what captured Xavier and your suggestion. The second one captured Paul's suggestion. I don't know if you intend to merge both or do something. But I'm trying to come up with the right text. And I know it's hard to wordsmith on the call. But if you could just look at those two options and give me some direction there.

Chuck Gomes: And where am I supposed to look? I don't see anything in red.

Grace Abuhamad: Oh, in the notes. If you – and you may have to scroll a little bit.

Chuck Gomes: Up. Scroll up. Oh, there we go.

Grace Abuhamad: Scroll down.

Chuck Gomes: It's up. I was down too far. Okay thanks. I will look at that right now. And everybody, please look at that. If you need to scroll up it's right under intent of the bylaw. And so the first version then says, "to maintain ongoing operational excellence," we can skip by that, "ICANN shall be required to plan for and fund sufficiently the future expenses and contingencies reasonably related to the uninterrupted performance of those functions."

I personally like that. Let me look at what you have in the second paragraph. "To prepare a multiyear budget," again, Paul, and I'd like you to respond to this, I think we're getting into too much detail, I mean, ICANN already does



prepare a multiyear operational plan. But if we start asking them to prepare a multiyear budget it gets harder and harder to do that. And I think that also leans more on the how side more than it does what we need in the bylaws. But, Paul, let me ask you, are you comfortable with that first paragraph the way it's changed?

Paul Kane: So the word that's missing in the first one is "allocate." Fund sufficiently doesn't actually mean put cash in a bank account; it means put a line item in a budget. And that's what I was trying – I'm happy to drop the multiyear. Multiyear was what the CWG had been advocating, which is why I put multiyear in. I share Xavier and your concern that we're getting somewhat prescriptive by including multiyear. I'm happy to drop that.

My goal is to ensure that whoever is operating PTI, the executive director can be assured that they have staff that are going to be paid for, whether they're on secondment from ICANN and ICANN is effectively reimbursed for the expenditure of their staff. I just want to make sure that the board of PTI has the cash available to do it.

And so allocated is missing from that particular draft.

Chuck Gomes: So, Paul, this is Chuck. Let me – to me, and we must be looking at it differently – to me fund is stronger than allocate. But you seem to be thinking that allocate is stronger than fund. So I'm not sure how to reconcile that. I thought that what Xavier suggested was stronger than just saying allocate. They can allocate funds, that's just no different than budgeting in my mind. They budget for the funds. They're allocated according to the budget. But...

((Crosstalk))

Chuck Gomes: Go ahead.

Paul Kane: By allocating effective – what I was trying to get at and maybe it’s an inappropriate term, you’re taking the cash, I want to come back to the word again, you’re taking the cash out of the control of ICANN board and ICANN senior executives and you are specifically assigning it to the PTI board and the executives at – or the senior executive at PTI. So maybe allocate is incorrect. But I just want to make sure they have the cash to be able to ensure stable operation.

Chuck Gomes: Of course, this is Chuck. So of course cash literally we all know that there’s really not a necessarily an exchange of cash. So and I’m not sure that the word “cash” helps us. But what if we were to say, “to plan for and fund the IANA functions operator,” that’s getting at your one point there with regard to making sure that it is that. Does that help?

And while you’re thinking about that, Olivier, go ahead.

Olivier Crépin-LeBlond: Thanks, Chuck. It’s Olivier speaking. As an analogy I could tell you, Chuck, that I’m going to give you \$1000 but I’m keeping it in my hands but I’m saying I will give it to you. The day that I go bankrupt someone is going to come over and say well you’re holding \$1000 in your hand; these are not going to Chuck, these are staying with whatever we’re going to do to pay creditors.

What Paul is basically saying is he needs to see that \$1000 to go into Chuck’s hands, not remain in Olivier’s hands.

Chuck Gomes: Are you suggesting, Olivier, this is Chuck, that that needs to be in this bylaw statement?

Olivier Crépin-LeBlond: Well, that's the way that I understand Paul's point of view. I would say – I would certainly feel – I wouldn't say the sum and so on, but I – and I don't know what language to use to point to that. The way that it says at the moment it says, you know, ICANN is – plan for and fund sufficiently the future expenses. Yes, it will, according to its bylaws, but if it goes bankrupt these go out the window.

And I don't know whether that needs to be put in the bylaws or how that can be written down. I just don't have the right term for it. And allocate is probably not the right term either.

Chuck Gomes: Yeah, I'm not comfortable with allocate. But this is Chuck again. That's what the purpose of uninterrupted is, okay? It's got to be done in a way that provides uninterrupted performance of those IANA functions. And if that's done any way that it can be interrupted then it doesn't meet the bylaw. You know what I'm saying? Xavier, go ahead.

Xavier Calvez: And to – thank you, Chuck. And to that point, I think that the point of fund versus allocate and uninterrupted actually basically requires to implement something as a mechanism for funding that does insulate the PTI from ICANN's bankruptcy or other issues that ICANN could have because the funding is not conditioned by being separated by the cash being separated or not, the funding is simply saying, I don't care how you do it, you need to fund. Whether you have the cash in the PTI or not.

((Crosstalk))

Chuck Gomes: Yeah.

Xavier Calvez: Yeah. Because I know Paul is very keen on the cash being separated but I actually think it's not providing much if there is no legal insulation. Because you can have as much cash as you want in PTI, you can even have all the cash of ICANN in the bank account of the PTI, it doesn't insulate it if it's not insulated legally. You see what I'm saying? It doesn't matter where it is, it's like you're moving your precious clock from below the table during an earthquake. It doesn't make a difference.

Now that's presuming, and we need to validate that from a legal standpoint, that the bankruptcy regulation would be allowing the PTI to be insulated from ICANN which my uneducated view is that it wouldn't – but maybe I'm wrong, and I think we just need to get that analysis done.

Chuck Gomes: Yes. And so I would – this is Chuck. I would suggest one more edit in the first paragraph, Grace. So it says to plan for and fund sufficiently the future expenses and contingencies to ensure uninterrupted performance of those IANA functions.

Yeah, now let me turn it to Mary. Go ahead, Mary.

Mary Uduma: Thank you, Chuck. Mary speaking. I want to ask, just like Olivier ask, if there is a bankruptcy and your creditors come in with (unintelligible) the IANA function operation (unintelligible) concentration in allocating funds. In the case there is a bankruptcy – I hope you are getting me – are you hearing me?

Chuck Gomes: Yes.

Mary Uduma: Okay, great. (Unintelligible) I'm trying to consider (unintelligible) on how is it – how is the PTI sufficiently (unintelligible) or protected in the case of bankruptcy with what we are (setting) here to plan for and fund sufficiently

the future of (unintelligible) when the bankruptcy will happen, the creditors will come and where is the guarantee that even if you say uninterrupted where is the guarantee in this statement that PTI will be given such charge in whatever that is realized.

Chuck Gomes: So...

((Crosstalk))

Mary Uduma: ...may need to help us here.

Chuck Gomes: So, Mary, this is Chuck. If – however it's decided to fulfill this bylaw it ends up leaving PTI vulnerable because of a bankruptcy then the bylaw was not fulfilled. In other words, if...

((Crosstalk))

Chuck Gomes: ...if there's the possibility of interrupted – the services being interrupted – then the solution that was chosen was the wrong solution. And so when we actually start working on the how we're going to have to have legal help, financial help, whatever we need, to make sure that it provides the maximum guarantee that the services will not be interrupted because of that solution. You want to respond to that, Mary? Does that make sense?

Mary Uduma: I see what you're saying. I see what you're saying. Okay, maybe we get to how. Probably that will be covered under how because I see that if you said fund plan – and fund with allocation you can have the funds, you are not allocating it to PTI. And when there is bankruptcy it cannot be allocated. But if we are saying that we'll plan for and allocate sufficient funds for the future expenses and contingencies to ensure uninterrupted.

So I think whoever is going to, you know, handle the bankruptcy (unintelligible) the objective and in the bylaws here. And the PTI will not be (unintelligible) affected by such. But if you think that this covers it, fine. Maybe when we get to the how we put in the order such that (unintelligible) financial stability of the PTI. Thank you. I hope you understand what I said.

Chuck Gomes: So let me – thanks, Mary. Before I go to – to anyone else, let me ask you. Grace has put in the chat the latest language, okay?

Mary Uduma: Okay.

Chuck Gomes: Is – would you suggest any edit to that? Is there something that’s missing or that you would add? Or do you think this is ready to submit to Sidley?

Mary Uduma: For me I would have say allocate sufficient funds. That’s what I would have said. But I think you don’t like the language “allocate” so I’m not an English specialist so I (unintelligible) in the language because provide or – would not solve the problem. So I believe that it is allocated, that means there really a cash backing for the fund. That’s what I think.

Chuck Gomes: This is Chuck. I didn’t follow it. Are you suggesting an edit to the text?

Mary Uduma: This is Mary. Did you hear me? I’m saying...

Chuck Gomes: Yes, but I’m not sure whether you are suggesting an edit or not and if so what’s the edit?

Mary Uduma: The edit is allocate sufficient funds.

Chuck Gomes: Okay hold on a second. Let me scroll so I get that in front of me. So you would say shall be required to plan for – well it already says “fund sufficiently” would you say – just change it to “and sufficiently fund”? I’m not following. Does somebody else know the change she’s suggesting?

Mary Uduma: Oh my goodness, I’m sorry. Mary speaking again.

((Crosstalk))

Mary Uduma: ...we got from – excuse me? Hello, this is Mary speaking. The language of the Sidley saying allocate funds. For me is stronger than just is fund.

Chuck Gomes: So the stronger language is to say fund instead of allocate?

Mary Uduma: Allocate funds sufficient.

Chuck Gomes: So you like the word “allocate” in there, is that right?

Mary Uduma: Yes. I do.

Chuck Gomes: Okay. Yeah, to me that seems weaker than fund but what does everybody else think? I don’t think we need to belabor that one. Paul, go ahead.

Paul Kane: So thank you very much. I have to say I don’t speak Californian. Mary and I, we speak English – and – or English English. And so I would be guided very much by what the lawyers suggest. Certainly on my side of the pond normally you allocate funds specifically and it puts it out of arms length of the parent body. In California, in America, you might use a different approach. But if we could park the allocate debate? I know I raised it, I apologize for raising it. I

think Sidley can advise us what works in California and America. That would be good.

At some point, not at this point, Xavier is speaking French English. At some point it would be good to emphasize the need for a multiyear, whether it's two or three years, multiyear pot, I'm going to use the word cash again, I don't mean to but that's how it is, just because if there is a bankruptcy of ICANN frequently that takes a long time to resolve. We need to make sure that the staff have stable employment at PTI and they need the resources to be able to achieve it.

So I'm guided by you. I think we've had a great conversation. I think we've almost agreed. And I think that Sidley are the ones that it's the way to go. Olivier is just saying in the chat now. Yeah, thanks.

Chuck Gomes: Let me scroll down to see what Olivier is saying because I was looking up above. So, Paul, are you suggesting that we need multiyear in the bylaws? If it's – if there's any chance of it...

((Crosstalk))

Paul Kane: I don't mind.

Chuck Gomes: Go ahead. Paul.

Paul Kane: Yeah, but normal corporations work on a financial cycle. And corporations only have, frequently, particularly if they're run by vulture capitalists, they only have a very short term view. The reason for stipulating multiple years of operating funds is to ensure PTI's senior executive management and directors



have the resources to be able to have longevity bearing in mind their only source of income is from ICANN.

But if we can park multiyear in brackets, give it to Sidley and let them come back I think that would be a better use of our time.

Chuck Gomes: Okay, thanks. Thanks, Paul. I'm just scrolling back up to see where we put that. Where would you put "multiyear"? I thought it might be real obvious but I...

((Crosstalk))

Paul Kane: Just in an email to Sidley saying is it possible to capture multiple year – it's just that...

((Crosstalk))

Paul Kane: ...was what the CWG members suggested and then we've been true to our members.

Chuck Gomes: Thanks.

Paul Kane: And I agree with Cheryl that basically it is an implementation thing. But again, if the administrator comes in he can say, right, I'll allocate funding just for one year for IANA; the rest of it I'm going to go grab, it needs to be ring fenced properly. So...

Chuck Gomes: Okay.

Paul Kane: ...leave it to the lawyers.

Chuck Gomes: Okay.

Paul Kane: Who speak Californian.

Chuck Gomes: So in addition to the language that we have so far a couple points maybe can be put to Sidley. One of them being some in the group thought that the word “allocate” was better than “fund.” And then also the concept of multiyear is also one that was discussed in this. So please keep those things in mind.

So the plan then on this is that I guess it’s me, Grace, do you want me – I probably better be the one that sends this. If you would send me that language in a email, Grace, with the other two points – I think I’ll remember the other two points. So if you just send me the language in an email I will send to Lise and Jonathan and Greg and who’s the other member of the client committee for CWG?

Grace Abuhamad: Maarten Simon.

Chuck Gomes: Yeah, Maarten, okay. I will send to them this request to get legal advice because I don’t think I or us have any authority to request legal advice. So I will, right after this call, send that off and with a little bit of context so that they know what we did here today. Any objections to that? Okay. Thanks.

((Crosstalk))

Chuck Gomes: All right now for the rest of our agenda, since we only have 10 minutes max, we – I want – we won’t get into the how today because that’s a lot longer discussion. We’ll try and get into the how on Thursday. I did – I want to let you know, and I see CC’d DT-O, but I did send to – and I forgot Maarten but I

sent to Greg and Lise and Jonathan a request for legal advice on the question that Xavier asked with regard to the escrow thing so that we could get that going in case that becomes one of the options.

So and again, we don't have to get the how resolved this week, the bylaws language is what's needed. So just to let you know, I did send that off requesting legal advice. I'll do the same thing on what we did today. I know it took us a long time on this but I actually think this is – it was time well spent. And hopefully it will pay off.

Xavier, go ahead.

Xavier Calvez: Thank you, Chuck. I just wanted to clarify what you just said about requesting legal advice on the escrow. I was simply saying in my email earlier that we need to have an analysis relative to bankruptcy, not specifically to (unintelligible).

And I actually did not necessarily suggest that we request Sidley for it but that we have the ability through the implementation plan to develop or obtain that type of analysis whether it's from Sidley or from ICANN Legal or from whoever else. It doesn't have to be Sidley in my view, it can be anyone from a legal standpoint. And I think I recall that...

Chuck Gomes: Did we lose you, Xavier?

Cheryl Langdon-Orr: I think we've lost Xavier.

Xavier Calvez: ...that it can be – that it can be sent out because I think that would be the beginning of the answer hopefully. And the other question that I had for you, Chuck, is I think we should talk about what we need to do to define or offer –

let me rephrase – to come up with a finalized proposal of how to achieve financial stability. The reason I'm saying that is that I think there's a fair bit of work that designing during calls is not going to work. I think it takes a lot more analysis and documentation to do.

And I wanted to raise that point to see how the group prefers to proceed because I just don't see us on the fly without the adequate knowledge and expertise and competence, being able to design a solution effectively. And I wanted to offer an alternative. But I don't know if that's what you want to do now.

Chuck Gomes: Yeah, well I do want to – this is Chuck – I did want to do that but we obviously don't have time now. I hope to get started on that in our call on Thursday. And – but you're right, this is not – it's not – that's not a short term task. And it's not – we don't have enough expertise among ourselves probably to complete the test, like you said. So absolutely, we will start working on that.

The other thing I want to cover before we close today is the possibility of comments on the draft operating plan and budget for fiscal year '17, which is the item Number 4 on the agenda. Now I sent around some comments – possible comments. But a lot of those are things that would really help us, in my opinion, if we receive some feedback with Xavier or his team on those shortly.

And there's not a lot of them. I suspect most of them, Xavier, can probably answer in a – in short order. And that will help us, because they're mostly clarifications. And then that would help us know where to go from there. So I guess what I'm going to do is just ask does anybody have any problem with me submitting those comments?

He probably already has them since he participates on our list, those comments to Xavier. And just asking him to respond to those in short order if that's possible so that then in a – in maybe our call on Thursday we can get the answers to those things and then decide next steps in terms of developing the comments. Any objections to that if I just do that? Not all the questions need a quick response but the one that he can respond to or one of his team members I think it'll help us do the next step there.

And the reason I'm covering that now is because we're running out of time in developing comments and getting them to the full CWG and so forth before the end of the comment period at the end of the month. So no objections to that. I see a checkmark from Cheryl. Thanks. So I'll go ahead and so that's another action item for me.

And, Xavier, do you want me to resend those or do you want to just use what I sent to the DT-O list?

Xavier Calvez: Sorry, no, I have your email with the documents. And I can try to respond to those. I think in – it's not specific to what you sent, Chuck, but just for everyone to understand, when we receive questions or clarifying questions in order for the party who sends those questions to be able to submit comments we are very careful in sorting out what we think are clarifying questions versus those questions that are actually comments and should be themselves submitted as comments because we see a lot of that coming through.

So for example, Chuck has indicated in – as one comment that the graph on the PTI structure, for example, was not clear in that clarification should be provided. It's really on its own a comment in the sense that it indicates that there is more information that needs to be provided on a specific topic.

And I would want – this is of interest, in my view, to many other potentially to many other community members than simply the DT-O, because maybe other community members or public – members of the public could have the same question.

And therefore I would want to have that question being a public comment so that we also answer it as a public comment and that answer is available to everyone. So we are carefully looking at those clarifying questions as to whether they are just clarifying question in order to make then a subsequent comment or they are themselves public comments or eligible as a public comment. Just wanted to make that general comment.

But I have the document that you offered that you sent and I can use it as-is and respond to it accordingly.

Chuck Gomes: Thank you, Xavier. This is Chuck. And that's fine. When I drafted those I didn't differentiated between the two categories and as you know, I fully understand what you're saying there. So really what I'm asking you to do is just to respond to the clarifying ones. And...

Xavier Calvez: Okay, understood.

Chuck Gomes: ...the other ones will become part of our comments that we propose. So that's perfectly understandable. And thank you for making that point. That's very good.

Olivier Crépin-LeBlond: Chuck. Olivier.

Chuck Gomes: Yes, Olivier.

Olivier Crépin-LeBlond: Yeah, and apologies. Thank you. It's Olivier Crépin-LeBlond speaking for the transcript. Apology, I seem to have lost connectivity – Internet connectivity in my hotel room. But just a quick point from this, you mentioned here CWG Stewardship comments on the draft FY'17 operating plan and budget. I would contend that these are not CWG Stewardship comments but they would come from either the chair of the DT-O or from the cochairs of the CWG.

Because the CWG itself I think does not have in its charter the ability to respond to comments.

Chuck Gomes: Yeah, and I think you made that point in another meeting so...

Olivier Crépin-LeBlond: Yeah. That's right. So just...

((Crosstalk))

Chuck Gomes: ...don't get hung up in my language there.

Olivier Crépin-LeBlond: Okay. As long as it's understood that's fine.

Chuck Gomes: The intent is, though to – whatever comments we come up with is to put them before the CWG as a – because they're really the sponsoring organizations or chartering organizations. So – but I would like the CWG to look at those and make sure they don't have any concern about me submitting them or some subset of DT-O or whatever. So point taken.

Olivier Crépin-LeBlond: Full support from me on this as well. Good. Thanks. And thanks for drafting those; they're really, really good. Thank you.

Chuck Gomes: Yeah, and there'll be other things we want to comment on but that was just my first cut. I promised something yesterday and I barely succeeded in getting that done. So our time is up. Anything else we need to talk about? Our next meeting is on Thursday at 2000 UTC. It's an hour earlier than this one. So we will have another busy agenda on Thursday. Thanks for the healthy discussion. I think we made some progress. And I will get on my action items right now. Okay.

Cheryl Langdon-Orr: Thanks, Chuck. Thanks, everyone. Bye for now.

Chuck Gomes: Okay.

Grace Abuhamad: Bye.

Chuck Gomes: Bye.

Olivier Crépin-LeBlond: Thanks, everyone. Thanks, bye-bye.

END