

ICANN

**Moderator: Brenda Brewer
May 23, 2016
11:00 am CT**

Coordinator: The recordings have started.

Grace Abuhamad: Thank you. All right, this is the Client Committee meetings. It's the 23rd of May, 1602 UTC. And I will turn it over to Jonathan and Lise to chair.

Lise Fuhr: Okay. It's Lise. Hi. Since Jonathan has a problem with audio I don't know if he wants us to wait or we can begin. But it would be nice to have everyone totally in the loop.

Grace Abuhamad: Jonathan, if you can't hear it may be best to restart your Adobe, yes. That may be the best way to go.

Lise Fuhr: He can't hear...

((Crosstalk))

Lise Fuhr: ...so we can't tell him.

Grace Abuhamad: That's true, all right. I'll send him a message.

Lise Fuhr: Yes. That's good, thank you Grace. Well while we're waiting I can ask if there is any – while this is a draft of an agenda, if there is any other items we could put them on the agenda now. Anyone has any other issues? Doesn't seem like it. Well when Jonathan is back in the loop we will invite you to actually give a short presentation of the issues you have with the documents with the PTI bylaws and the IANA PTI contract.

Greg Shatan: Hi, it's Greg. I've dialed in, can you hear me?

Paul Kane: Yes, Greg, we can.

Greg Shatan: I'm going to go on mute because I'm trying to multitask here so I'll go off mute if need be. I'm also in the Adobe Connect I hope – or will be.

Lise Fuhr: Grace, Jonathan says he's locked out of Adobe, he's asking to be let in.

Grace Abuhamad: Hi, Lise. Yes, I let him in and then my computer is frozen so Brenda is going to try to let him in but I also don't know what's going on exactly. It seems like there's some latency issue with Adobe.

Lise Fuhr: Yes, because he was actually showing for a short while on the screen...

((Crosstalk))

Grace Abuhamad: Yes, yes he was in exactly.

Lise Fuhr: Technology.

Grace Abuhamad: I'm going to suggest that we dial out to Jonathan just to make sure that he's connected. If you want to go ahead and start. Sorry for the delay on this.

Lise Fuhr: Yes, dial out to Jonathan and then let's start. Paul Kane, can you hear and talk and everything fine from your end? Can you do a presentation...

((Crosstalk))

Paul Kane: Yes, and I'm happy even to talk to myself so.

Lise Fuhr: Okay. Okay well.

Paul Kane: So first of all let me thank you for inviting me to participate in this call. I did participate in a recent CWG call and, Sharon, we're very grateful to you for participating in that call as well. So I think you're fairly familiar already with the issue.

And it relates to Annex C Section 7 and 8 which are very important to the CC community or specifically those CCs that do not have a contractual relationship with ICANN. Now I understand of course one can try and cover that off within the contractual relationship between PTI and ICANN, but I think it would be, as we mentioned on the CWG call, prudent better to face it in the bylaws of PTI.

Remember in the gTLD world, registry operators obtain their authority from ICANN. And so there is always a paperwork, a contractual relationship between the parties. In the ccTLD world they do not obtain their authority from ICANN, many CCs predate ICANN. And one touches on the very thorny subject of sovereignty. Certain cultures around the world will only consider a formation – corporate formation documents to be the thing that matters. And

so making sure that it is in the formation document, the bylaws of the corporation of PTI, to certain cultures is the only thing of standing.

The other advantage of it...

((Crosstalk))

Jonathan Robinson: ...audio now?

Paul Kane: Yes, we can, Jonathan.

Paul Kane: Shall I continue?

Lise Fuhr: Yes, please do so.

Paul Kane: So the other thing actually was raised on (unintelligible) calls which was in order to support ICANN in its continuing to deliver service via PTI, if it were clearly specified within the PTI bylaws, any party seeking to possibly express an interest in taking over PTI, would have the distinction between ccTLDs and gTLDs brought firmly into view because they too would be looking at the formation documents.

So I think there is significant merit that the bylaws do capture the important distinctions between ccTLDs, many of – not many, it's about 85 CCs that have no relationship with ICANN at all. Some CCs do have a relationship with ICANN by virtue of their membership of the ccNSO, but it's very important that either the ccNSO who set policy for ccNSO members, also do not seek to impinge upon the right of non-ccNSO ccTLD registry operators to function in a stable, robust and efficient manner.

And so, 7 and 8 do subtly distinguish between the various factions within the CC community. And I just think it's vital that it is contained within the bylaws and possibly also within the contract but the contract is not as important as being in the bylaws, in my view.

Do you have any follow-up questions, Holly or Sharon, please?

Sharon Flanagan: So, Paul, I just wanted to clarify. When we look at Annex C – and this is Sharon – we're only talking about Sections 7 and 8. And I think we'll need to – I think we need to walk through them. I don't know if now is the right time but just walk through them because some of them are I think, as I've called them, aspirational, and some of them are more concrete. And so the question is, you know, is this the language and it is sufficiently clear what it's requiring?

So is now the time to do that or is that – is that too...

Paul Kane: I have time now. I have sort of 20 minutes now if it's sensible. I'm happy to if that's helpful.

Sharon Flanagan: Okay well if everyone else is okay with that I think we should just kind kick through them, there aren't too many of them. So Section 7, policy-based, the decisions have to be policy-based and then there are these five sub points. First is to be predictable, the second is to adhere to laws and processes...

((Crosstalk))

Paul Kane: So let's go through them. Let's go through them if we may...

((Crosstalk))

Sharon Flanagan: ...be predictable. So what – I can imagine ICANN may say well what do you mean by that? How do we know if we're doing it?

Paul Kane: Right so if we may go back to the first principle. So within the CC community there is a lot of diversity. There are – we have the registry manager; ICANN call that term sponsoring organization. But the registry manager is the corporate entity, the legal person responsible for the stable operation of the ccTLD.

There is the administrative contact, and there is the technical contact. But there's also sometimes in certain countries sort of a hidden rule which has been approved by the registry manager that basically says also get confirmation from me before any changes are made.

And so the highlight here is it is making sure that the registry manager is not overruled by any party, that's also governments as well as the IANA ICANN entity as well. So they need to be objectively on policy agreed through a recognized bottom-up multistakeholder process.

Within each country, they have their own bottom-up multistakeholder process. And that will determine who, if any, third party should be involved in the process. So IANA must respect that process flow. So, yes, be predictable, but we have a labyrinth of various authorization models. Some the simplest, is the registry manager, the legal entity, appoints the administrative contact, appoints the technical contact, and those two parties are the ones that trigger changes at the IANA.

The more complicated one, is the registry manager is involved in the appointment of the admin and the technical but they could also be a third hidden authorization party for changes as well. So that is what that is about.

Sharon Flanagan: Okay but let's pause there. So it says a recognized bottom-up multistakeholder process or processes. So are you talking about...

Paul Kane: Yes.

Sharon Flanagan: ...the – who's processes? The CCs?

Paul Kane: Right, so there are multiple processes within – if you take, for example, I live in England and the organization that runs dotUK is Nominet. They have processes themselves that set the policies for running dotUK. With regard to who should be authorized to make changes in the IANA database, there is an understanding with the British government which can be changed, that it is the admin and technical contact appointed by Nominet subject to approval by the UK government who do – who elect not to exercise that right.

But they have a – what they call a reserve power to exercise that right if they wish. I run a ccTLD, and in my case I have been authorized by my processes, or by my community, to actually be responsible for the technical operation, and in the event of my cocking up, that is a ground for having me as the registry operator, replaced.

Then you go to more authoritarian regimes following less of a bottom up process, more of a top down process, that basically says, you will only come to the Ministry of Telecommunications for changes and the appointed contacts shall only defer to me. But it's a predictable format in terms of how IANA interactions are fulfilled.

Sharon Flanagan: And how does IANA, how does ICANN, how does anyone know what those – you're saying you have to comply with those processes, okay.

((Crosstalk))

Paul Kane: So...

Sharon Flanagan: The logical question is well how do I know what they are so I can be sure that I am, you know, following those processes?

Paul Kane: Right, so the CCs work on a decentralized model. So, again, this is where it's important to cover the differences between the gTLDs, which a contract-based where ICANN is the authority, and CCs where the CC registry manager is the authority. And they anoint, or they advise ICANN – sorry, they advise IANA of the changes.

In addition, the government may approach IANA and say, we want to be that hidden party, and IANA will turn around and say, we do not get involved in that, you go through your registry manager and then the registry manager will be forced, more or less, to appoint the third hidden contact. So it's a very different model from the gTLD model. But ICANN don't really like it because they want to try and put everyone in the same box, IANA respect it and have done ever since the inception of IANA.

Sharon Flanagan: Okay so to try to sum up in a way that is something they could manage to, I think what I'm hearing you say is that IANA should recognize the processes that are specified by the respective CCs.

Paul Kane: That is correct.

Sharon Flanagan: Okay. Okay. That – I think that’s clear.

Paul Kane: And be predictable.

((Crosstalk))

Paul Kane: So they are predictable so...

Sharon Flanagan: But let’s...

((Crosstalk))

Sharon Flanagan: Let’s dig through that, though. What does that mean to be predictable? If we’ve already...

((Crosstalk))

Paul Kane: Right so...

((Crosstalk))

Sharon Flanagan: ...follow your processes that you set out...

Paul Kane: Yes.

Sharon Flanagan: ...is that sufficient? What does it mean to be predictable other than just...

((Crosstalk))

Paul Kane: So predictable is, today IANA always refer – always refer matters to the registry manager. So it is – the predictability is there is no usurping the processes that are defined, namely ccTLD people sort it out and come back to us with the actions that you require IANA to take.

Sharon Flanagan: Okay but again that sounds to me like the same thing as what we just talked about which is following the processes that the CCs outline is that fair?

Paul Kane: Yes, it is a similar thing, yes.

Sharon Flanagan: Because when we say “predictable” they're going to say well that sounds like – that sounds like an SLE, so you need to tell us what that means. And if really what it means is you follow the processes that are set forward by each CC I think that's clearer, right?

Paul Kane: Yes, but there's only about four or five different models that currently exist today for CCs. But, yes, you are 100% right, it is clear, yes.

Sharon Flanagan: Okay fine. All right so let's tick that one off. Okay. So Number 2, adhere to laws – okay that's easy enough. Well let me ask this...

((Crosstalk))

Jonathan Robinson: Well, Sharon, before you move on, can I just check...

((Crosstalk))

Jonathan Robinson: Can I just check something? It's Jonathan. I just wouldn't mind checking something there. Can you hear me okay?

Sharon Flanagan: We can.

Paul Kane: Yes.

Jonathan Robinson: Can you hear me okay?

Paul Kane: Yes.

Jonathan Robinson: Yes, thanks. So, Paul, your volume is very loud, just to let you know that's it's sort of – it's disproportionately loud. If there's anything you can do to reduce your mic volume that'll be helpful.

Paul, I heard you say two things and I'm not sure Sharon's got two things so I just want to make sure, you said you wanted – it was your view that it should always be referred to the registry manager. And second, that there should be a respect of the individual or specific processes on a per ccTLD basis. So I thought I heard two things, not one. But maybe if you and Sharon feel that you've got this sorted out fine, but I just want to make sure that there are – there is only one thing, not two.

Sharon Flanagan: Do we still have Paul?

Paul Kane: Yes, sorry. I was just trying to adjust my microphone volume. I hope that is better.

Jonathan Robinson: Better. Much better.

Paul Kane: Great, thank you. So I believe we have covered it. I think the two elements are very related. And I want to emphasize that the CC community, although it would appear that, you know, there are 243 very different groups, the reality is

there are probably about five different models that IANA currently today addresses and accommodates admirably. I just want to make sure that continues.

Sharon Flanagan: Okay so if we can move on then to Number 2, adhere to laws slash processes. Okay so I think processes, I hope we've already covered. Is that fair, Paul?

Paul Kane: Correct.

Sharon Flanagan: Okay so let's talk about laws, adhere to laws. Are we saying adhere to the laws of each country for each CC?

((Crosstalk))

Paul Kane: So each registry – each registry has a legal requirement to accord with the laws in which they are incorporated based to operate from. Nothing ICANN or any other party can – or can or should do should put them in conflict with the national law. And so, yes, they have to respect the national law of the jurisdiction in which the registry is based.

Sharon Flanagan: And has that been an issue? Is that problematic or that's just how it is today?

Paul Kane: It is how it is today. There have been some issues with respect to data transfer, particularly out of – registrant data transfer out of the European Union particularly with respect to zone file access because in the past people were accessing zones – having access to zones and then effectively zone walking, capturing data and then going through the Whois and obtaining information as to who all the registrants were.

The introduction of DNS SEC has prevented zone walking and so therefore that problem disappeared. So there have been instances in the past where there was some abuse of national law and there was a requirement placed on registries to fix the issue, and technically that has been done using (IATS) standard, in this case, NSEC3, with opt-out which is different from that which ICANN mandate. ICANN mandates NSEC without the opt-out whereas most CCs do use the opt-out to prevent zone walking.

But today we get on well, we understand where things are, and ICANN never seeks to impose any conditions on us other than making sure that we operate the TLD in a stable and robust manner but that's in the interest of the registry operator because of course they're under a duty to their customers to make sure that they both accord with the national law but also deliver a robust service. Otherwise it could trigger a reassignment of the TLD.

Sharon Flanagan: And what if the local law – the law of that particular CC is in conflict with the law that governs ICANN or PTI? Then what happens?

Paul Kane: Well let's take a specific example. In Muslim countries, it is not possible to have content or not possible to have names of the Muhammad. And in Western countries it is possible. So in ccTLDs where there are such constraints, such names are not registered. But in the Western world they are, so the two live side by side.

And unfortunately in certain – and it is increasingly prevalent but in certain issues – certain countries certain name are restricted or access to certain names are restricted. So you might register a religious leader's name in the dotCom name space, but the ISP within the jurisdiction that bans the religious leader's name wouldn't resolve within that country. So the two – you

know, there is respect for national law whether it is imposed such as DNS filtering, or whether we just live alongside each other.

Sharon Flanagan: Okay. All right well I can't think of any particular examples where the CCs would say you must do the following to PTI and PTI says, we can't do the following because if we do the following that would violate our local law. I don't know enough about how those things would arise but is there any circumstance like that?

Paul Kane: There have been instances. I'll take a specific example, dotLV which is a European member state have a law that appoints the incumbent telephone operator to run the ccTLD registry. They went to law, went to a court, got a judgment from – I was going to say a Lithuanian – yes, Lithuanian or Latvian – Latvian court, got a judgment where the incumbent operator had to basically hand over the information and transfer the registry.

They were planning on going to US, Californian law, to prevent the transfer, basically buy time, get an injunction to buy some time. And once the incumbent telephone operator realized that running a registry was quite a complicated matter, they actually reconsidered their position after some significant period of time in a court, and have subsequently withdrawn their willingness to provide service. But the statute is still in place that says the telecom operator should be the party.

So it could be that the telephone operator went to California to try and get ICANN to force something through. But history has normally said go, source it out within your country, as happened in this case, and then come back and tell us what the results are.

IANA has to adhere to California law. And we're all aware of the Africa case. There might be some CC cases going to Californian jurisdiction to prevent IANA from doing something. But, again, we live in harmony, and there is respect for both sides. But on the whole IANA says go back to your local jurisdiction in which you're incorporated, and get a definitive answer from a court after due – proper and due process and they will – or the incumbent will be forced to follow the direction of the court.

Sharon Flanagan: Okay, well it may be that they are going to need some kind of carve out that, you know, they will adhere to the local law of the CC except to the extent that it is in conflict with laws governing them which seems like that's just...

((Crosstalk))

Paul Kane: Just and again I'm thinking of NU, it's important to emphasize it is the jurisdiction where the registry is operated from rather than the jurisdiction to which the – or the territory or country relates. Because in some instances there aren't many people on island the laws are – in NU's case they're the laws of New Zealand but dotNU is run – is a Boston company which is actually run out of Sweden.

So it's important that it is the jurisdiction where the registry is based rather than anything else.

Sharon Flanagan: Got it, okay. All right so okay so let's continue on to Number 2 because there's more packed in here. So it says it's going to continue to provide service in conformance with prevailing technical norms conforming with policy decisions and security and stability of the root zone itself. Okay so let's turn this into something that we can actually work with. What do you mean by prevailing technical norms?

Paul Kane: So within the registry community, we have the IETF that set technical standards, and they tend to be quite global in nature. But we also have, within our respective countries, we have technical experts who may differ with IETF standards or the standards themselves are open to interpretations.

And so prevailing technical norms are quite broad brush. Some of the RFCs, the technical standards, are not particularly specific, are not clear so they are open to interpretation. What is vitally important is the way interactions occur between applications does not impact the stable operation of how the Internet functions in general and obviously the root zone itself.

A specific example DNS amplification attacks, in December last year, the root server system was seriously impacted by one person hiring some bots and going of a name that didn't exist is one of the TLDs. The way it was stopped was actually by making that name exist. So it is very possible that the bad guys can try and break things by using the vagaries of the technical standards because they have not been implemented to a uniform standard.

So prevailing technical norms gives broad brush and it is fine for how we operate today because it gives the flexibility. Introducing a name to stop someone breaking the root server system was fine, it just happened that the TLD in question was able to do it quite efficiently but it was in conformance with the policy decisions of the registry, the registry decided we will introduce the name, there isn't the registry (unintelligible). We will introduce the name because we don't want to break the root zone system.

Sharon Flanagan: Okay but the language here says that they will conform with prevailing technical norms. I mean, that could mean anything and that could mean a standard that they simply – if the prevailing technical norm in a particular

jurisdiction is an impossible standard they can't, you know, they can't meet that, right? So how do we make this workable, practical, you know, so I'm trying to figure out a way to make it functional. So any suggestions there from those who know the operations?

Paul Kane: I don't. I mean, we all follow technical standards but there isn't a – there isn't a set standard – the standards are not written in a pre-final – well defined manner, they are very vague on purpose, which is why prevailing technical norms is almost best practice which is equally vague.

Sharon Flanagan: Okay I mean, we can put that out there, I just can imagine that those having to comply with it would feel uncomfortable but, okay, let's try with that. And then the last of the language is, again, seems kind of more aspirational conforming with, you know, security, stability okay so we'll just maybe leave it a bit general.

Let's go to Number 3, nondiscriminatory, what does that mean?

Paul Kane: So there are registries that pay ICANN for service or pay ICANN for the services that ICANN general delivers. An element of that is IANA related. There are registries that do not pay a penny to ICANN because they are basically running an ICANN within their own country and so they could potentially be paying twice.

And then there have been in the past, there haven't been any in recent times, when IANA ran out of money, which is why it's very important that the budget is effectively ring-fenced, but when the IANA run out of money the IANA operator basically asked the CC community for funding to ensure they could hire the additional staff they needed.

So the nondiscriminatory service is all registry operators, be they Cs or Gs, are effectively treated the same and the service level expectation document that I hope we will be able to work on and define the thresholds for, will go a long way to that end.

The other part of the nondiscriminatory is if you look at the recent dotAfrica case, I want to emphasize within the CC world this has not been that prevalent to my knowledge, sometimes ICANN try and encourage the reassignment of a ccTLD which would be completely inappropriate. There is a Caribbean island at the moment that ICANN is – ICANN, not IANA, may be – I am only hearing it third hand, may be wishing to have reassigned to another party.

And so the whole point of nondiscriminatory is just that, PTI is completely nondiscriminatory in the way it delivers service to both the Cs and the Gs.

Sharon Flanagan: Okay that's between the Cs and the Gs. Okay. Because nondiscriminatory could mean anything, right, but you mean particularly between CCs and Gs.

Paul Kane: CCs and Gs and within the CC community – within the registry community itself broad brush.

Sharon Flanagan: What do you mean? Paid or nonpaid? What would...

((Crosstalk))

Paul Kane: Paid or nonpaid...

Sharon Flanagan: Okay.

Paul Kane: ...ccNSO members, non-ccNSO members, GNSO members and the other one which I've forgotten. There are a number of different factions within the community all the registries should be treated on a nondiscriminatory basis.

Sharon Flanagan: Okay. All right, Number 4, auditable. What...

((Crosstalk))

Paul Kane: Basic – so this is to make sure that the whole process flow is – can be audited either independently or by those impacted parties so that if there is malfeasance it's visible effectively.

Sharon Flanagan: And is that addressed through the other processes that are in place, through CWG's work, CSC, IFR, is that sufficient?

Paul Kane: CSC is actually looking at the process, the performances that IANA have done. But it is a necessity that the information is there and available both for CSC to do their work but also for any independent party in the event of there being a dispute.

I'm not sure what ex-post review means, does that mean after the event?

((Crosstalk))

Sharon Flanagan: ...after the fact, yes, looking back.

Paul Kane: Looking back. I think the auditable looking back but my concern is to make sure that there is not a change that will impact the users. But certainly going onto the record every step of the way, so that there can be review of what

happened, and possibly a reversal to make sure that the impacted parties can be put in the same state as they were before the change.

Sharon Flanagan: So here's a question because what you're asking for is some kind of audit right. But the question is whether the work already done by CCWG and CWG addresses that. Because we can't simply say you have to give us an audit right, just throw that in there. I mean, that's a whole process, right? What does it mean, who's got the right, what's the standard?

So my question is because this whole annex appears to me to have been guidelines for what the proposal would need to look like in order to pass muster. And so my question is, does the combination of the CWG proposal and the CCWG proposal do they address actually both this point and the next point, auditable and appealable. I think they do. But if you have concerns, you know, let me know.

Paul Kane: So I have not been following the CCWG at all because ICANN does not impact my operations at all and I have no interest in – I never go – well never – I hardly ever go to an ICANN meeting. ICANN is not relevant in my modus operandi.

But I think the point these, 4 and 5, is that whether you go to – you know, the process should be auditable and appealable. Certainly I assume the accountability lot have made sure that processes are in place to appeal decisions of ICANN for those that are impacted by ICANN. For those that are not impacted by ICANN it would be appealable within the local jurisdiction. But irrespective, they would still need to be – have the notes there, the audit trail, to make sure that ICANN – sorry, IANA followed the correct process.

Sharon Flanagan: Okay well on appealable, I can say I know that the CCWG proposal does deal with appeals and I think we need to leave that as it is. That's a whole process, it's been very well thought through and developed. Auditable, I can go back and look, is there – I think what you're looking for is access to records so that you can determine whether the above items have been met, have the processes been followed, etcetera. So let me check on that one.

Again, I think of this one...

((Crosstalk))

Paul Kane: So today they do take notes but sometimes there are gaps within those notes. One of the things the SLE was seeking to do is to make sure that the whole process from start to finish has a full audit trail but also the impacted parties have access to that data set. What's interesting is although I'm working on the SLE, we are not being – or we weren't given access to the historical data because it contained some sensitive CC – or TLD identifying information.

But that was kind of the point but even if they made it anonymous we would still be okay but they won't give us that information either. But we need to make sure that there is a full audit trail for every action IANA does – a detailed audit trail, for both CCs and gTLDs.

Sharon Flanagan: Okay. All right well let's keep going and I think we can...

Jonathan Robinson: Sharon, just...

Sharon Flanagan: ...once we finish this list I think we need to talk about the placement because this is a good example – this is a good example of something that to me feels like a contract issue, you know, an issue where you'd want to outline audit

rights. Here's the kind of documents you have to keep, here's who gets access to them. It doesn't really feel like a bylaw issue. But we can come back to that.

All right so let's go to Number 8, diversity of the customers of the IANA functions. Okay, Number 1, needs to take into account variety of forms of relationships. Diversity of arrangements, what's – what are you trying to – specifically what are you trying to have...

((Crosstalk))

Paul Kane: So this is – as I mentioned already, within the CC community there is a diverse arrangement of those parties that have contracts with ICANN, those that are members of the ccNSO, those are not those registries that are not members of the ccNSO. There's a very broad brush.

Sharon Flanagan: Okay so, Paul, this sounds like this is a variation of nondiscriminatory. Is that fair?

Paul Kane: Correct, it's a similar idea. Yes.

Sharon Flanagan: Okay fine. Fine. Okay then I understand that one. Okay Number 2, provide a service without requiring a contract. Okay.

Paul Kane: Yes, that is an important element. In the past IANA was put under pressure by ICANN to only deliver service to those parties that had a contract in the early days, why a lot of – well, a lot – eight registries were encouraged to have a contract with ICANN because they wanted to make changes. It is important that no contract with ICANN or IANA, is a requirement for service.

Sharon Flanagan: Okay. That seems clear. And then the next – respect diversity, that’s the same point again so I don’t think we need to hit that one again. The next sentence, “Should not impose any additional requirements on the registry unless directly and demonstrably linked to the following.” Is that a variation on follow the processes set by the CCs unless the following?

Paul Kane: So, yes, so within the ccNSO, for example, they will formulate policy on X or Y, I don’t know. But that’s for the ccNSO members to adhere to because that’s why they’re members of the ccNSO. If, however, a member of the ccNSO no longer wishes to adhere to be impacted by that policy, they reserve the right to step out of the ccNSO and not be impacted by those parties.

So the – this one is very much the ccNSO cannot, should not impact non-ccNSO members but what is very important is that global security, stability and resiliency of the DNS, applies to all registry managers whether Cs or Gs.

Sharon Flanagan: Okay. Got it. Okay Number 3, okay so provide service notwithstanding any contractual disputes, okay. No additional requirements for prompt delivery. Same thing, no additional requirements unless linked to the following principles. All right, anything else to say on those – on 7 and 8 or should we go back now to talk about the placement of these whether in the bylaws or the contracts?

Paul Kane: Let’s do that, yes.

Sharon Flanagan: Okay. Okay so as a general principle, you know, I think of things that are specific concrete requirements of service, as mention one example, audit rights. Those are typically in a contract. Bylaws would be something that is more of a governance, like the nondiscriminatory...

Paul Kane: Right.

((Crosstalk))

Paul Kane: I agree with you. I'm very happy for the audit element to be within a contract, that's not a problem. The thing that needs to be, in my opinion, within the bylaws is the respect for the CC modus operandi because that is not, in my opinion, a contract element. And certainly if you look at the Syrian case and the North Korean case that is ongoing at the moment, they are – they are looking at the fabric of how – they're suing ICANN at the moment, and the bylaws, if the bylaws basically said, go and sort it out locally, come back to us, we do not have any authority, then it would save an awful lot of court time in California.

Sharon Flanagan: Okay. So the first concept that we talked about about being predictable, deferring to the CC processes, I think that could go in either place. I have a slight bias, I guess, towards the contract but just because I think of bylaws as truly governance type items but if you have a strong feeling it sounds like you do, for it to be in the bylaws I don't have a problem with that.

So I think this one, be predictable, Number 1, the lead-in of 7 and Number 1, which is all about following the CCs' processes, I think that could be – that could be in the bylaws if you wanted it to be. Anyone have any concerns about that? I see Greg typing but I don't know if it relates to this point so I'll keep going.

Comply with laws. That seems like that's okay for the bylaws. Conform to prevailing technical norms, to me that is more of a contract item. Okay, Greg, I see your comment about the contracts – the lack of contracts. Yes, I mean, I am talking about the IANA contracts, yes, yes. So either way the CCs are a

step removed, they're either trying to – they're – so the way the PTI ICANN contract is set up, there's a right in the ICANN bylaws to seek an IPR type process, sorry, an IRP process if ICANN is not enforcing the contract against PTI.

So that would be a place where if you put in something in the PTI ICANN contract that says IANA, you must do the following, you must observe what the CCs' processes are, and if IANA stopped doing that and ICANN did not enforce that then the community would have a right to enforce that. So that's a very clear path.

I don't know that there is actually a clearer path in the bylaws. I understand people like the idea of things in bylaws because it feels like a stronger commitment. But there isn't a similar path for an appeal mechanism through the PTI bylaws. It's really all in the contract. So if the goal is to make sure these are as strong a right as possible and as enforceable as possible, I think it's actually probably slightly better for it to be as part of the ICANN PTI contract. And Greg...

((Crosstalk))

Paul Kane: So I...

Sharon Flanagan: Go ahead, Paul.

Paul Kane: No I just I'm seeing Greg's comments with respect – there's a perceived benefit in buying the bylaws. And I have to say I think it is all about perception. You are coming at it from a very legal contract orientated society, within the CC community contracts between affiliated parties do not really

stack up. If it's within the formation document, then it is very clear that those lines cannot be cut across.

With respect to the ICANN community, remember, a fair few ccTLDs 80-something ccTLDs, have no involvement in ICANN at all. So it doesn't matter what's in the ICANN contract because it's ICANN to PTI. It does matter what's in...

((Crosstalk))

Sharon Flanagan: Can I stop you there, Paul? It will matter, it actually matters a great deal. It will matter to everyone who is an IANA customer what's happening at ICANN because that is the mechanism, that's where your enforcement and your empower lies. So if things aren't going well at IANA the way you will address that is through ICANN. So I think it matters...

((Crosstalk))

Paul Kane: I hear you but that's not – that's not where it's been in the past.

Sharon Flanagan: No I understand, yes, understood.

Paul Kane: In the past and probably in the future for the CCs that have a grievance, they will go directly to IANA and take issue with IANA probably through the courts. But what I'm trying to achieve is that if it's within the bylaws, and basically says to the CC, don't bother coming to us, sort it out locally and it will be – and then the IANA will follow the local determination, the jurisdiction in which the registry is based.

I personally concur with you that there is no difference between the bylaws and the contract. The contract does actually have certain merits because it's harder to change if you're privy to the ICANN circle. That is not what this is about. This is actually trying to make sure that the founding documents clearly identify and safeguard CCs' interests. If PTI leaves the ICANN fold, it goes with it. It has nothing to do with the ICANN contract, it's within the PTI founding documents. PTI goes off, it's still there.

Sharon Flanagan: Well, you know, where I think this may be leading us is to having things in both places unless they're really truly just kind of implementation like the audit rights, which I think really is a contract issue. And maybe...

Paul Kane: I agree.

Sharon Flanagan: ...the issue of the technical norms. But, you know, maybe the rest we put in both places. That would solve my concern which is maximizing enforceability which I think is actually the contract but solve your concern about for the non, you know, non-US people who are looking at this who get greater comfort in seeing this in the governing documents they will see it there as well. What do people think about that?

Paul Kane: Both works for me, putting it in both works for me, yes, good idea.

((Crosstalk))

Jonathan Robinson: So, Sharon and Paul, we're obviously at five minutes to the top of the hour. I mean, just hearing you talk that does seem like – that's sort of, as we say, belts and braces type, you know, covering it both ways does seem to be a logical mechanism. I am concerned that we're on Item 1 of the agenda and I'm just wondering if we can try and – how close we are to wrapping this and

we'll need to probably make a plan to deal with the other items or we could touch on it very briefly now. So how much more do you think we need on this or do you think we've pretty much covered it now?

Sharon Flanagan: I think we've covered it. I think I need to take the language of 7 and 8 and revise it to be something I think that we can implement and then, you know, Paul and others need to look at that and see if that revised language works. And I'll specify bylaws contract both, you know, for each of the pieces.

Jonathan Robinson: Okay. I think that's very helpful so that, Paul, if – and if we could just note that then, Grace, as the sort of action item so that the – essentially Sidley will take away the essence of this discussion and seek to incorporate it into the bylaws the (unintelligible) construct for both and that seems to capture that well so thank you both.

With respect to the rest of the agenda, I mean, essentially we had two points. We were hoping to get some update from Sidley on the document that you were currently reviewing, and really just flag with you, as you well know, that we sent you the form of headline document on the IPR.

I wonder what we say in just a couple minutes and whether or not we should schedule another meeting for the same time as this on Wednesday perhaps in 48 hours. Perhaps you could just give us any thoughts just acknowledge receipt of the IPR I guess and indicate the substance of the feedback you may have or not at this stage and whether it would be productive to meet again in 48 hours or whether we need a longer time with respect to the PTI documents.

Sharon Flanagan: Yes, let me just speak on the – so we're looking at the PTI articles and bylaws and we will circulate a revised version of those probably this evening to the Client Committee for distribution as you like. I think we're in reasonably

good shape on those but there are some – still some open points so that's I think in, you know, we've made good progress.

The PTI ICANN contract I think on that we have only just an outline of, you know, sort of the titles of the sections and no more. We can provide comments on that but I didn't know if there was more coming or if that was all there was for now. Does anyone know about that?

Jonathan Robinson: That's a really good question. I think what that is is a kind of heads of terms type headline document for which there is an expectation of initial feedback prior to drafting.

Sharon Flanagan: Yes, I think it's really – barely even that, Jonathan, I think it's literally like an outline. You know, it's just titles of sections. But – and that's fine. We can comment if we think there are missing sections, titles, that would be – that's fine. I think we can do that this week. So we'll go ahead and do that and then I assume then that will get built out into the full contract.

And then with respect to the IPR document that Greg sent over, I know Josh is looking at that. I don't – I think he was also thinking he would send something back this week. I can get you a better guidance on that after I speak with Josh.

Jonathan Robinson: Okay thanks, Sharon. And I understand your hesitation about how productive you can be on the contract headline. So I think a cursory review, any feedback you have even if it's a summary of oral feedback or areas that you think are missing and that keeps our sort of process rolling on that. And then if you can give us the update on the IPR as to when you think that that, you know, once you've spoken with Josh.

My concern about a call on Wednesday is I'm not sure we're going to be much further forward. You'll have given us the PTI formation documents with comments. I'm not sure we'll be able to offer you anything more. You may have a little bit of input on the contract but it's not going to be substantial. And the IPR, well again it may or may not have – we won't be in a position to discuss that with you. So my thought is that we should probably be pushing this forward a week or so.

In the meantime, we'll have an – implementation oversight meeting on Wednesday in any event. But let's – Lise, did you have a different view or something else to comment on this?

Lise Fuhr: I don't have a different view because I think it's a good proposal. I just want to remind you that well Trang and Yuko imagine that we had a two-week comment period and that's going to end on Monday – next Monday in a week. So if we are not to delay this process we need somehow to work on another speed or we need to do something. So and I don't know if we want to meet this deadline but it's just to be – just to know it's there.

Jonathan Robinson: Okay, Lise, so that's comments on the PTI formation documents, which we will of course have, but is it – does it include the contract as well? I mean, we will have an initial feedback so we will have initial feedback on the documents. We'll have the revised – I mean, as I understood from Sharon the revised – or the feedback on the formation documents should be imminent. And I see in the chat that Sharon suggests possibly talking Friday.

I had had a back channel discussion with Lise about that, Sharon, and I don't think that's practical for her at least. I'm not sure about other members of the Client Committee. So perhaps we need to get Grace to look at scheduling either Thursday, Friday, Monday, Tuesday and see what's possible for that,

you know, over that period. And then Lise, I suggest we do is we talk with the Implementation Oversight Task Force, the IOTF people, obviously Yuko and Trang, and relay where we are with this based on this call, our intention to have another Client Committee meeting in the near future and just to try and get a common understanding of where to next.

((Crosstalk))

Lise Fuhr: Okay that's fine.

Jonathan Robinson: Yes, Sharon. Actually to be fair, Monday is a UK holiday as well and I didn't want to raise that simply because I thought I might be alone in that but it's a holiday in the UK as well. So that's helpful to know. Let's not have Monday and then thanks, Grace.

Sharon Flanagan: Well I think the PTI documents – in terms of the process for looking at those, there are going to be some issues for CWG to discuss so you might want to think about how you do that whether it's a call among yourselves or you need us on a call or it's a Client Committee call, but we probably should map out some time on that.

Now we could – we could, once you see them you could consider whether they could go to ICANN at the same time with being subject to CWG's input just so that they've got the comments and can start thinking about them.

Jonathan Robinson: Sorry, just multitasking trying to capture the various bits and pieces. Yes. That sounds sensible. Well, again I don't think there's any point in us rushing to meet too soon regardless of the sort of all necessity to work at speed. I think we take your feedback; we share with CWG. We currently have a CWG meeting scheduled for June 2, which is obviously the following week. And we

see – we can schedule a Client Committee meeting in advance of that. But again, it maybe that we're out of sync. It depends what we manage to cover on the IOTF call and what feedback we get on the CWG list.

It's a little bit of a challenge the logistics of this because we, in many ways all of us need to work at a slower pace but there's a perceived or actual requirement to work faster. So I think we can only square that circle when we have the IOTF meeting on Wednesday and just talk to the project managers about this.

Okay so let's just try and wrap this up. I know we're five minutes past the hour. So, Grace, just to be clear, we're expecting the formation documents shortly. We're expecting some comments on the very light weight PTI contract, heads of terms. We're expecting feedback from Sidley on the IPR documents shortly.

We will have an update call with the IOTF on Wednesday. We will seek to schedule a Client Committee meeting, it looks to me like that's going to be likely Tuesday next week. It's unlikely to come in this week. And we have the CWG call for Thursday. And we just need to run all of this by the IOTF group and the project managers on Wednesday so that it's understood by everyone and see where that works.

So thanks. I think that's it. We're obviously losing Lise now. And thank you, Sharon. And we'll work with you to try and keep this on track. Okay, let's call it a wrap then. We can stop the recording and I think we have a plan of action for the next week or so.

Sharon Flanagan: Thank you.

END