

ICANN

**Coordinator: Brenda Brewer
May 31, 2016
1:00 pm CT**

Operator: Recordings have been started.

Grace: Thank you very much. All right. Jonathan I'll turn it over to you. This is the Client Committee Meeting. It is now 19:02 UTC on the 31st of May.

Jonathan Robinson: Thanks Grace. And welcome everyone. I suggest we get going. And welcome to Josh and Sharon and noting that we have on the call (Josh Hofhemier) and (Sharon Flanagan) from Sidley. Myself, Jonathan Robinson, Lise Fuhr and Greg Shatan , and Grace (unintelligible).

So all I think we should be able to whip through this agenda rather quickly and just – it feels to me like it's as much an update as crosscheck as to where we are as a substantive call. But let's see what we need to cover as and when.

We have various documents just to touch on and you'll see we propose an agenda on the top right hand corner of your screen there to work through those various items.

So the first item we have there is to come back on the points on Annex C which we discussed at some length in the last call. And of course, in front of you as we discussed in the chapter, is an overall timeline of what we're trying to work to. So are we clear on the questions or comments about the time of which we could take now. If not I suggest we just go straight onto that Annex C point.

(Greg) noting that you have a parallel call which is another reason why we'll work through this in relatively short order on this we need to delve into something in particular.

So Sharon I think the first point on Annex C goes to you. I have noticed that (Paul Kane) who informed the previous planned committee calls substantially over the issues on Annex C. And you have responded in a timely way. So thank you. You put all of your points back in but then (Paul) came back with one minor point that still needed to be dealt with. So I should check with you if you have any concerns or issues around that or you think that that's going to be readily dealt with.

Sharon Flanagan: Jonathan this is Sharon. I may have missed an email but then we get copied on the (Paul Kane) comments?

Jonathan Robinson: I think what happened was I just checked that doubt it was copied I think only to you rather than... (Paul) is not a member of the Client Committee and doesn't have posting rights to the Client Committee. So let me just highlight for you what the points he made was there. What he said was the drop bylaws look fine. I think we're almost there.

And then he made a point about looking into the current NTI ICANN contract. The goal is to ensure stability to reach the CCTW registry and reach his customers.

And then he highlighted Section C2.9.2. That's not showing up in the prefix or the PTI. Let me just dig into this a little and see. The he's made is he's happy with the language proposed but they need to add an additional clause to capture the ICANN IANA does not necessarily work around current CCT or the registry managers.

And it's just covered in the current contract with ICANN but it's missing in the PTI Bylaws contract. So I think the easiest way to deal with this is to copy the point referred to in the current NTI contract into this; which I'll do here. And that's the point that he's referring to.

Sharon, go ahead if this is now familiar to you. You perhaps need more time to look at it.

Sharon Flanagan: Yeah. Haven't looked at this but is this a contract item rather than the bylaws item?

Jonathan Robinson: (Paul's): perspective is it should be the same position as before where ideally it should be reflected in both but at minimum should be reflected somewhere. And this is in the current contract between NTI and ICANN.

Sharon Flanagan: Okay. That sounds fine to me. I have to find the underlying language. It looks like maybe you pasted in here. No requirement of a contract between the contractor and any party requesting such changes. I thought we – did not say that already? We say a number of (foreign) corporations shall not require a

contract in order to provide services to the cc's. Is this procedure or is this for both g's and cc's?

Jonathan Robinson: I - that's a good question. I'm not sure how general this is. That's a good point. Lisa do you know what to mark are you familiar with this?

Lise Fuhr: Actually Jonathan, no. I don't know to be honest on that. I was trying to find an email but I can't find it. But yeah.

Jonathan Robinson: Okay. Well then what we'll do is -- we'll make sure you get -- that this correspondence is copied via the Client Committee to you Sharon. And if you'll view it that this is already sufficiently covered, come back to us on that.

Grace, I think you were copied in on the original email back from (Paul): So if you could do that and make sure, thank you; that that goes back to via the Client Committee. This is a final detail that needs to be tidied up and noted that you will deal with that.

So I think we shouldn't dwell on this and let's derail the call for now. We should just make sure that Sharon's had the opportunity to see it and we'll pick it up separately.

Lise Fuhr: Yeah. But having a quick read I think it's on the cc's because it's still -- it's not a contract with LTC and I think it continues to be (Paul's) problem that we need to take care of. Those who were not having a contract with ICANN or PTI because that is the case now that people that IANA's actually handling TLD's, CCTLD's that are not having any relation or any contract with ICANN or IANA as such.

Jonathan Robinson: Correct. So the question then as Sharon said is this already covered in the existing or not and that's really the point. Is it already covered? I agree with you. It's a CC issue because it specifically refers to service or it would appear to anyway. Exactly and so Sharon's point is I agree on number four. So the question is why is (Paul) not satisfied?

Lisa, perhaps you can follow up with (Paul) as well and just ask why is not point four not a satisfactory as Sharon points out in the chat. The corporation shall not require a contract in order to provide services.

Lise Fuhr: Yes. Well, I'll let it...

Jonathan Robinson: It could be just the strength of the language here Sharon and the comprehensiveness of it. And that the point four currently says it's ensuring the contract where an existing contract language appears to be more comprehensive Sharon. So Sharon proposes to potentially expand the number four and if you could cross check that with (Paul) if it's already an expansion of number four that's really been sought here to cover the more variable circumstances Lisa. That would be helpful.

Lise Fuhr: I'll do so. Thank you.

Jonathan Robinson: Okay. Great. All right. That's the only point outstanding on Annex C. Let's see for communicating the existing outcomes proposed on the back of the last call to the CWG. So I think the next point is then it gives us the opportunity to go on to the PTI Bylaws. I'm not sure there's a whole lot to be said here Sharon but feel free to come in as you see fit in a moment.

Potentially you have come back with a comprehensive set of points throughout the draft bylaws which really have a series of questions for the

CWG. And I think from our point of view this hasn't been properly digested or processed by the CWG yet. So in my view and where we're at and I discussed this with Lisa earlier. Is that this really needs to be now structured into some form of table and put before the CWG for responses. And in fact we are likely to go even further and prepare some draft responses for the CWG so that we're not looking at a blank page of responses.

And Sharon before that I think we might ask you to come onto the next CWG call. So we need to communicate with you when that is and ideally hope that you would have availability for that. But is there anything we should know or be thinking about when reviewing those – your comments on the draft bylaws that we couldn't cover or shouldn't cover in the CWG meeting? Yes.

Sharon Flanagan: Jonathan this is Sharon. I think we could cover it all on a call or through working through a table. The items for obviously proceeding at the CWG are the notes to the CWG. There are notes to ICANN but I don't think those require CWG input.

And I think for the most part these are all really self-explanatory. There's a couple that are more significant than others. One I just would know it would just be to what extent quorum and voting is going to require something more than a simple majority of three of the five directors. So it's something to think about and make some decisions on. But we can work to that on the call or through feedback in a table.

Jonathan Robinson: Thanks Sharon. And Grace to the extent that you are involved in the preparation of that table I wonder if maybe, and maybe I wouldn't mind that quick thoughts from Lisa or Grace or anyone. Do we leave the notes to ICANN in there? Or do we simply – maybe we keep it simple actually. It strikes me from a point of view of the CWG if anyone is particularly

interested they can look in the primary document for the notes to ICANN. But to the extent that they are questions for CWG it feels to me like that's the table that we wanted. It's really all about what is required from the CWG.

I guess go ahead Grace and then...

Grace Abuhamad: Hi Jonathan. Yeah. Just to clarify. So I started working on the table and right I've right now only included the notes to CWG because like you said I felt that was what the focus would be for the table. I'm happy to edit it if...

Jonathan Robinson: Yes Grace. Subject to what Lisa had to say I think that that makes sense. Go ahead Lisa.

Lise Fuhr: I think it makes sense to distinguish between the CWG questions and the notes for ICANN but I think for the sake of transparency it would be good to have both tables. And I know people are not having a lot of time but it would be nice to see the answers coming from ICANN on this just for information for the CWG. Thank you.

Jonathan Robinson: But if we are to do that for practical purposes then they should be separated out. Because for the effectiveness of walking the CWG through the document I wouldn't like to say here's a point, now we skip over the next two. Here's another point. I think it would be good to have the questions for the CWG in one continuous table even if there is then a tracking document that looks at their points or issues for ICANN on the responses. Are you okay with that approach Lisa?

Lise Fuhr: I'm absolutely fine. I think two tables are perfect.

Jonathan Robinson: Okay. Actually the more urgent one is the work that is the questions for the CWG for the call on Thursday. So to the extent that they need to be prioritized I think you would agree Lisa we need the questions for the CWG call on Thursday.

Sharon thank you for your comments in the chat. I'll come to you in a moment and ask them. But yes I don't think our plan is to go beyond the two hour point and we'll do our best to work through it systematically and efficiently.
Maarten you go ahead.

Maarten Simon: Yes it's Maarten. I do agree with the suggestion to work through it this way. I do have a question for Sharon though. That is the document contains now a number of suggestions that you did toward ICANN next to the notes. Do you have any idea when ICANN will respond to that? Or do they wait for the (CWG) response first?

Jonathan Robinson: Thanks Maarten. I think that should be said to Sharon. That's probably more a question for – that we can ask as a question to ICANN Stark. And we can maybe make that as an action for Grace to transmit to ICANN Stark to ask when we can expect to see a response to the points made by Sidley in the bylaws. And so we understand what the timeframe is for responding. And thanks Grace. That's to you for offering the chat anyway. Okay.

So that's where we are as far as the bylaws are concerned. And I'm just going to move us on then in the interest of time on to the next point. And please call me back if you think we are missing something.

That's a good point Sharon on the articles. So actually I need a bit of help here. I'm not sure how substantial or not any comments or issues within the articles are. So Sharon, come in on that one please.

Sharon Flanagan: There's only one question and it just relates to the threshold for approval of amendments to the articles. I just want to make sure that we covered it in the table. Thanks.

Jonathan Robinson: Good point. Thank you. It feels to me that the table could be the same table as you appear to suggest any way. Yes Grace thank you. And that's the same table. That makes – that seems efficient. Good. We seem to be in agreement on that. Okay. Good.

And the next item on our agenda here for this call which is Item 3 which is an ICANN PTI contract. And here we received as you all know and recall a set of headline points which Sidley has been through. And Josh I don't know if you lead that but you certainly returned it to us with a series of comments on that.

And I guess there's not a lot to be said at this stage. Our understanding is that at this point those comments are now fed back into ICANN for drafting. And the purpose of this was to have flushed out key issues early on so that the initial substantive draw or substantial draw definitely contains and it doesn't go too far off track. By all means come in now and process of substance to give us any thoughts you have here.

Josh Hofheimer: Yeah. Thanks Jonathan. Yeah. I was sort of leading with Sharon's involvement as well but the drift that we're focusing on the response here. And we were tracking against the various documents that have sort of informed what this ICANN PTI contract should look like and should contain. You know some of it being the old annex as term sheet or that was just a – recognizing that was a good faith effort and a placeholder at the time as well as the bylaws, and references and the draft bylaws in the existing contract and the various proposals.

But we did – I guess in our mind we also had some questions that were directed in the footnotes to CWG versus directly to ICANN. Again, I don't know if its worth at this stage creating – going through the CWG directed questions, or if you really want them converted to ICANN questions, and all feeding back to ICANN which is putting together this header.

Jonathan Robinson: Josh I need some guidance or either a third of the review of that at this stage. I am not quite sure what to do here. I'm not sufficiently familiar with your responses. I'm more familiar with the responses on the bylaws document. So that's a good question. I don't know if anyone else has any views about this. I had expected that they were mostly directed towards ICANN and I have been through it briefly once that perhaps it's worth revisiting that again and accepting this....

((Crosstalk))

Josh Hofheimer: It's really – sorry. Didn't mean to interrupt.

Jonathan Robinson: Please go ahead.

Josh Hofheimer: Okay. Look you're absolutely right Jonathan. Most of the questions are directed to ICANN and not to CWG. There are a couple of threshold questions that are addressed to CWG. And maybe they don't need to go to the larger group but there are things that can be considered here and then converted to an ICANN type comment.

A couple of questions on the first page about what's the proper scope? And did ICANN reflect the proper scope for this engagement? And for the responsibilities of PTI?

And then there was one question at the end. I mean looking through the materials, the statement of work for PTI is function and service is going to be pretty important. And it's not clear to us at least who would be drafting, who will be preparing the initial draft for that statement of work. I don't know if that's something that CWG had considered and wants to make a proposal.

Jonathan Robinson: Thanks Josh. That's a helpful reminder. I do recall seeing that statement of work point now. It seems that we may need to have a similar or, in fact, I'm tempted to have it all in this single table broken out into sections. The bylaws, the articles, and then the third section being related to the ICANN PTI contract. Lisa, what were you...

Lise Fuhr: Thank you. Sorry I was just on mute while I was talking to myself. I actually think it -- both with the question of scope and who to draft the statement of work is actually going to be. Well, it should be discussed within the CWG as a matter of principle. And I don't know of course we could have someone draft an answer. But these are also very principal matters. What I see some of the others are minor twitches to how we are actually interpret the proposal.

So actually I'm tempted to actually have those two discussed either on the IOTF's call as soon as possible or the next CWG call. And it could be of course an idea to discuss it on the IOTF's first as kind of a sounding board and then go on to CWG.

Jonathan Robinson: As a question of pragmatics we actually have the call, the CWG call coming up consequently ahead of the next IOTF call. So I suggest that, I said it's a moment ago Grace. The substance of this table of questions is going to be in and around the PTI Bylaws. We clearly have one additional point associated with the articles. And I think the third section of the same

document or the same table can highlight these two points. Even if they are of substance – of the nature as Lisa says that make them difficult for staff to propose an answer or an outcome. Just capturing them in that same table feels to me like a useful single tracking document.

Josh Hofheimer: Jonathan as I quickly scroll through this again, our notes. Really the only – the most substantive note is the question that I already asked for CWG and consider who should be putting together the initial draft of the actual statement of work. You know on the header document everything else really is directed to ICANN.

Jonathan Robinson: But that's helpful and I like the way it was previously. So it's really just a matter of going – that point just to the extent that the table acts as a placeholder for that question. Let's leave it in there for the moment and if that turns out to be a clumsy format for it we can look elsewhere. But at least the question is captured there.

I guess an alternative, I'm sorry to ramble on this a little bit. The alternative would be to simply make sure that's covered Grace in the agenda for the CWG call. So maybe, I'm sorry. I'm kind of back tracking on this because I can see the table could become complicated.

So let's keep the table at bylaws and articles and then separately we will ask for the group the question and then a section of the ICANN PTI contract of this statement of work points. So I'm sorry to have flipped on this a little bit. That feels like a neater way of doing things. Thanks for helping clarify it Josh. Does anyone have any counterpoints? Or are you happy with that as a way of work. So it looks like Lisa is happy with that at the moment. Then will go ahead and work it that way Grace.

So if you could either just recall that or capture all the notes. The table deals only with the bylaws and articles. And then separately we will as the group about one or more questions arising out of the ICANN PTI contract work. And for the majority of the work arising out of Sidley's review of that it simply goes back to ICANN Legal to stop the draft document which will reflect that input. Thanks Maarten for your comment in the chat as well.

Okay. And let me just pause a moment to see if there's any notes that need to be taken there. Correct Grace. That seems to capture it. So we'll deal with that.

Then moving on to Item 4 which is the IANA IPR points. Assuming we don't – Josh call me back. Let me just give you a moment to confirm it. Is that sufficient for the moment on the ICANN PTI contract?

Josh Hofheimer: It's a fine solution. Thank you.

Jonathan Robinson: All right. So then on the IANA IPR -- Josh I think this is a document with you. And my recollection or understanding is that this is still under review with Sidley. And I guess my question might be confirming that. And if so would you expect to have a review or response on it?

Josh Hofheimer: Are you talking about the IATF proposal?

Jonathan Robinson: There is a joint document on IANA IPR. The joint pieces of prepared document on the IANA IPR.

Sharon Flanagan: Jonathan, this is the document we were talking about this weekend.

Josh Hofheimer: Oh, that we got from (Greg)?

Sharon Flanagan: Mm-hm. Yes.

Josh Hofheimer: Yeah. We're going to have that back to you all tomorrow

Jonathan Robinson: Okay. Perfect. So actually we will be able to see. Which means then I wonder if that's going to be sufficient. It might be – let's have a look at the document before we decide what if any of you all at Sidley's help we would need on the CWG call. How – maybe Josh can you give an indication on how substantive your feedback is on that. Is it more on detail points or is it likely to be quite substantial with some changes or issues arising?

Josh Hofheimer: So look I think a little bit is just helping kind of tease out the thread if you will. And so some aspect of it is just getting into another layer of detail. As you peel back the onion and considering where things can go. But I guess the one bit of substance that may spark more conversation really is more at the top level. And what I mean is what kind of changes or what things does IATF as a trust need to consider for itself in order to fulfill these responsibilities. So what changes would need to be made to the charter for the trust. You know, what sort of commitments we need to be made vis-à-vis the trustees who have to be the registered owners.

And then I think probably the most important issue to be considered and discussed further is everything has been focused on what recourse should there be if PTI is not performing properly and it's relieved of his duties. And then how do we go about moving the license and intellectual property rights from PTI to a third-party. What's that process look like but to a successor?

But I guess the flipside that we have to be mindful of is thinking about what sort of commitments do we need to get both in amending the charter of the trust, and potential consequences to ensure that the trust is doing its job. And

if the trust were breaching its obligations vis-à-vis control of the IPR and licenses to PTI and ICANN. What consequences would there be for the trust. And how with the multi-stakeholders affect control or regain control of that IPR intellectual property rights in order to get them into a body that would steward them properly. And how do we do that without – with full transparency. And without created undue leverage for any interested party?

So I guess that's the one piece. And it's something that we raised in our memo some time ago. I think it was back in April maybe of last year even. When talking about that IATF trust as a potential party controlling the intellectual property rights. And so I think that's just something that needs to be flushed out further.

Jonathan Robinson: Josh and that's just (Greg) commenting and the chat suggests that (unintelligible). What that tells me, I'm hearing you talk is that in essence this is going to be in the first instance at least a communication to the CWG as to your review. And I think to the extent that you can summarize that in a header comment or a covering email or something with your responses that will be helpful.

Also, if you can create that (unintelligible) of the primary issues that would be very helpful. But in any event it sounds like an issue that we will have to go back to the other two key communities in the overall process numbering in the protocols community to discuss this with them. So that's going to be a minor challenge as (Greg) says. So that would be interesting.

It feels to me like the key outcome is for information to the CWG at this stage and a discussion with the other communities. Let me pause here because others have input.

Josh Hofheimer: And what I think I will do just so we can be certain it doesn't get separated from the specific comments. I'll put it in as a general comment to the actual document. I had it in for now -- it's in a draft. It's in a comment at the end. So I didn't want people to scurry off down that rabbit hole before they reviewed the document. You know the other comments to the document itself which I think does contemplate a lot of issues. But if you feel it's appropriate I'll bring it up front to the beginning as a general comment.

Jonathan Robinson: Certainly I do if it's in essence an overarching point. I think that would be helpful. So yeah. And we can see how we navigate that from there.

Josh Hofheimer: And the one other comment Jonathan that -- it's on some level. It's kind of minor but hasn't really been discussed yet. Is how will the IATF trust be compensated for the use of the intellectual property and for the services it provides? Because there are some costs even if the sort of the person hour work is on a volunteer basis. There are other costs that will be out-of-pocket costs for maintaining the registries and the domain names and the trademarks and those sorts of things. And also for the way that it's set up right now for the trust to enforce IP if it needs to which would involve lawyers and that sort of thing. So it's just something that people have to consider too.

Jonathan Robinson: Josh my recollection was this has been at least in part (unintelligible) to the extent it was. And (Greg) may recall my memory was that this was discussed. My expectation was that the trust would be prepared to absorb such costs. But I may be misrepresenting it. I think would be valuable too. I like this as a point even if it is the same answer is reiterated or indeed it flushes out a different answer.

Josh Hofheimer: Well if that's the case then fine. But at least right now the document that was shared with us is silent on who pays for whatever expenses are incurred in

connection with prosecuting, maintaining, and enforcing, and defending the IP. So we've already – we've highlighted that as a question and we'll pass it back.

Jonathan Robinson: And (Greg) confirms my recollection and I remain convinced that it's very useful that you raise this point and we clarify the answer. So thank you. Good. Okay. So that deals with that. We have discussed the CWG call on Thursday. I think so and maybe it would be helpful to have Sharon on that call.

Moving on to Item 5 now. Sharon I mean it sounds like you may or may not want Josh on that call. The primary purpose of Sidley's involvement is to assist us with covering the inputs you have made on the PTI Bylaws. That's really what this is about. So to the extent that you feel you may be able to cover that for yourself great. If you feel you need additional support then we can work with that as well. Sharon, go ahead.

Sharon Flanagan: Yeah. I'm happy to cover the PTI articles and bylaws. That's fine. To the extent that there is any desire to talk about the contracts or the IPR then Josh and also join.

Jonathan Robinson: So I think we should note that Grace. To the extent that we expect to cover any substance on the contract or the IPR we should invite Josh to the call and we will decide that as soon as possible. Okay.

I guess it didn't really -- the question is are there other questions of the next steps? I mean we have the overall PTI formation activities and timeline that was shown at the beginning of the call and has remained on screen throughout. The expectation is for the most part on a contract that will go back to ICANN Legal to review and develop.

We've talked about the table dealing with the comments on the PTI Bylaws. If something is missing here in terms of process, next steps, or other issues.

Sharon, go ahead.

Sharon Flanagan: I would just reiterate the comment I made earlier. Just the more advanced notice we can have the better in terms of when documents will be coming out from ICANN and what the turnaround time is. It will just help us with our planning and making sure we can meet those deadlines. Thanks.

Jonathan Robinson: I suggest – I see that Grace is making noted that immediately. And I suggest we turn that no into an action to be communicated back to the project team as a reminder. (Grace) so that goes back to trying a new code just to reiterate that out of this planned committee call is reminder of the previous questions that need to be kept in the loop as far as any timelines and turnaround times are concerned.

Okay. Great. Well, that serves the purpose required of this call. Thanks very much everyone unless there is anything else? I don't see hands up at this stage. We should be able to call the call to a close.

All right. Thanks again everyone. Thank you Sidley. Thanks Client Committee participants. We'll be in touch soon.

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