

**ICANN**

**Moderator: Brenda Brewer  
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9:30 am CT**

Grace Abuhamad: Sure, thanks, Jonathan. Welcome everyone. This is the client community call on the 7th of July at 1433 UTC. The recordings have been started. We'll do the attendance based on the Adobe Connect room.

Jonathan Robinson: Right. Thanks, Grace. And so Lise will join us during the course of the call and I understood from the preliminary chat that Sharon will also join us for the call.

I'm going to make a couple of remarks and then probably hand over to Greg to discuss this with Josh. Where we are with this IANA IPR work is that we set up and do the work which, as Greg was quite involved with getting the principal terms sorted out.

And in our discussions with the numbering and protocols community, there was certainly an understanding today represented to us that they understood pretty clearly that we had settled on the IETF trust.

I think of you was always that we had settled on it subject to no overarching legal impediments are issues. There is some reasonable pressure from the other two communities to say why can't we just get off of this?

What is the reason? We really need you to, in essence, tell Sidley that this is the only option and we need to find a way to make it work. I think we're probably not yet ready to be as firm as that but that's the discussion we've had with them.

So we do need to be aware of that background of (this pressure) for us to simply settle on an especially at this perceived late hour and get on with making things work within the IETF (trust structure) unless there is a substantial reason why not to.

You obviously (ratedly) raised a number of issues and we tabulated those and Greg worked with Grace to structure and organize those. And we've had some conversations with the other parties since then and talking about the types and scope of the agreements to work with a community agreement, the licenses and try to make the agreement and dependent (parties).

So regardless of any discussions about the suitability or not of the trust, that we could still continue work on the agreements. And I think those are all the (remarks) I wanted to make.

And then I should probably hand over to you, Greg, and you, Josh, to lead us through the issues here and see, you know, within the substance of these what can and can't be done. I think that makes sense. Great, are you happy to pick it up from here?

Greg Shatan: Absolutely. I think so. And it might make sense to put up in the (stream) of the chart of comments. I realize that I didn't give in advance warning on that but hopefully each of you has a copy of that. It's been emailed around in the last few days.

There it is. And I think that what makes the most sense is really just to kind of walk through it by row and try to, you know, understand where we're at with regard to each issue.

So I think the first kind of grouping of issues are those under the general comments for the CWG and, you know, looking in the second column, those were, you know, broken down into four specific issues which were suggested as potential amendments to the IETF trust.

Given the extreme unlikelihood of amending the IETF trust document, we need to understand the significance and gravity of each of the concerns and whether, you know, if possible, alternative solutions are available for some or all of these.

While the idea of getting on with it has, you know, some appeal to some people, I'm not someone who just rejects the legal advice because I don't like the outcome of that advice.

On the other hand, (besides) that transaction orders we always try to get, yes, and to some common understanding what the other side, but before we do that, kind of need to understand where we're at on these issues, you know, particularly with the IETF as a suitable holder.

So you can just go right to the first, and which is the potential amendment permitting the IETF to on the IANA IPR and the first - as with it, and the third

column, what we need to understand is why or to what extent do we believe the IETF trust is not currently permitted to own the IANA IPR and how that could be resolved. So I'll stop talking.

Josh Hofheimer: Jonathan, can I...

((Crosstalk))

Jonathan Robinson: Please go ahead. I suspect it probably can be and if it's more or less dialogue between you and Greg and then others of us common. So I won't specifically queue the two of you to speak but if others want to comment, please raise your hand.

Josh Hofheimer: Okay. So we - thank you and, Greg, that's a good teeing off point and I appreciate sort of the background that you provided, Jonathan. And I also say at the beginning I agree that for the job of transactional areas to help client get to, you know, for a deal that is supposed to get done or for matter that is supposed to get done to help them get to that point in ways that respect, you know, everybody's interest in the goals.

So I'm in full alignment there. Again, to the specifics of this, I - we were not implying, and if we did imply it, there was a miscommunication, but we were not stating that we thought that the trust needed to be amended in the purpose in order to permit ownership of the intellectual property.

We wanted to make sure that people had considered that and looked at that language and, you know, arrived at their own conclusion that it did - it does permit, you know, one way or the other, the conclusion regarding the purpose.

We also looked at it ourselves and sort of sending this document off and, you know, on this particular issue, I don't have any opposition are concerned about the IETF trust owning the IPR and that somehow is being read to be in conflict with the purpose of the trust.

So, assuming that, you know, others involved and people that are involved in the trust believe that they are in a position with the current documents to own the IPR without requiring an amendment to the trust document, I don't have a reason to object to that.

((Crosstalk))

Jonathan Robinson: So Greg, I suggest you just go through it as rapidly as you reasonably can because they're obviously quite a lot of points. Feel free to just continue working your way systematically through these as rapidly as you can until we hit a thorny issue or a substantial (issue). You need to...

Greg Shatan: Right. Okay. You know, just to cap that piece off, the position of those who were constantly speaking as trustees and members of the IETF administrative level felt that the - since the purpose said the purposes are included but not limited to holding IPM connection with the Internet standards process and its administration that the purpose was broad enough to allow for this additional IPR to be held without changing the purpose.

I'll note that the Schedule A, which is called contributed IPR, may need to be changed, although it's not necessarily the case because this is - that needs to be analyzed and I haven't taken a look at that particular issue.

But if generally we're good on the purpose point, we can move on to the next one which is, were there any amendments or other solutions needed

prohibiting the IETF trust from transferring or in any way encumbering the IANA IPR except for transfer solely in accordance with the processes ultimately agreed for dispute resolution?

And are hoping feeling was that this could be dealt with in the community agreement which is between the IETF trust on the one hand and the three operational communities on the other hand, and...

Josh Hofheimer: My only concern - and I think we agree in principle that it could be dealt with in a side agreement, Greg, in these community agreements. But I guess my only concern from a sort of overarching governance perspective and enforceability perspective, you know, if the IETF try to engage in a transfer of the IPR.

And, you know, didn't disclose the existence of these community agreements to the buyer or to the, you know, the transferee that, you know, with that create sort of a bona fide purchaser problem for us, you know, or for the community with regard to the IPR?

Would it be better to have it in the organizational documents, that encumbrance in the organizational documents from an enforceability perspective? It seems to me that it would be stronger. You know, Holly may have view on this as well.

And I'll defer to her, too, but it seems that it may be a stronger prohibition if you had it in the governance documents but if people feel like, you know, either way it's going to be the same body trying to enforce those rights, whether it's a beneficiary under the trustor as a contractual condo party under the community agreements.

So those challenges of, you know, sort of legal standing and the like would still be there but is there a general prohibition effective enough in the side agreement or should it be, you know, to kind of be the - we really, really mean it kind of, you know, approach to put it in the document - in the governance agreement itself?

Holly Gregory: Josh, if I may, here's a place where I just think if we had a little bit more information about how the IETF trust operates, it would be helpful. How - if it operates in a way that's very transparent to the community, then we have less concern about something being in a side agreement, right, then if there's a chance that they can go off and do something quietly.

So I think that that's really a call for, you know, Greg, for you and Jonathan to help us with. But I think Josh had stated the concern while. It may be that that is the kind of concern that just doesn't apply here because, like everything else about ICANN, all of the stuff happens in a very, very public way. So if you can help us understand that, that would help us with our advice.

Greg Shatan: Well, this is Greg and I'm not a real guru on how the IETF or the IETF trust works. Generally, my understanding of it is that it's transparent but not exactly sure how and when any particular actions of the trust are, you know, made transparent or publicized to members.

So, you know, there is, you know, a Web site and all but I don't see, for instance, you know, meetings of the trustees. They may not meet, frankly, or may meet only in the technical fashion to satisfy the terms of the trust.

Holly Gregory: Okay, Greg, this is then - this is one of the points where we've raise with you what our concern would be from a legal perspective and how we would want to make sure that the community is protected.

You now need to tell us how you want to go forward with that so, you know, certainly a side agreement can work. We've told you what our concern would be from a legal perspective but let us know how you want to handle it.

Greg Shatan: Right. Well, I think that the community agreement will be a public agreement with well-specified, hopefully, methods of dealing with things so then, you know, the issue is, I think is if we can bind the trust not to take these actions through the community agreement, in my view it should be sufficient.

But if there are impediments to doing so, and, you know, we can make strong language of non-assignability that any assignment would be void (avincio) if attempted, blah, blah, blah. And I think also the particular IPR it question is, you know, will be somewhat in the public eye as well.

Holly Gregory: Greg, I think we can move on then.

Greg Shatan: Okay, good. And that make cover two other points as well.

((Crosstalk))

Jonathan Robinson: Greg, just - and Holly and Josh, I suppose what we're going to need here is to the - I'm just wondering in terms of sort of a practicality of this, who - I mean, at the moment we have table of the Sidley comment proposed CWG response.

Greg, a likely to then - I likely to update the proposed CWG response based on this sort of dialogue with Sidley now? Where are we going to take this question Mark I just want to make sure we move with the appropriate...



((Crosstalk))

Holly Gregory: If I could make a proposal, I think that we should revise our comments based on this discussion. I would like to use this discussion to then revise our comments.

Greg Shatan: Okay.

Holly Gregory: Okay?

((Crosstalk))

Jonathan Robinson: That would be great. And then we get essentially a revised Sidley, and based on discussions which gives us - and to the extent that you can make that which I'm sure you will, Holly, sort of practical guidance for the way forward - sort of a solution oriented guidance, that would be very helpful.

Holly Gregory: Exactly - solution oriented and I think there will be fewer comments because we're getting clarification here. Okay? So it'll be a shorter set of comments as well.

Jonathan Robinson: Please go ahead.

Greg Shatan: Okay, the third point is similarly, you know, prohibition against - or rather mandating a transfer of the IANA IPR to ICANN or its successor organization or in some other way, in the event of breach of the IETF trust obligations or trustee duty is established with respect to the IANA IPR.

So I think, again, we could deal with this in the community agreement unless there is a reason we can't. You know, acknowledging it would be stronger if

we could put it in the trust agreement but the chances of that - it would have to be, you know, revolutionary and necessary in order to do that. Sorry kind of in the same place as we are a number two for this one?

Holly Gregory: Josh?

Josh Hofheimer: Yes, you know, as a legal matter, I think it's the same - you can get to the same result. I just - this is one that does - you know, and it would be typical are would be rather common to have transfer provisions that within a contract, but what we're talking about is somewhat different.

And I think in a way it is unusual for a contract because it forces the owner in the contract - it forces the owner of the IP to effectively (unintelligible) if it breaches the contract.

You know, because contract law and courts generally respect the party's ability to, you know, breach of contract, and the usual remedy for breach of contract is damages.

And damages are seen to be, you know, the usual (respected) means of, you know, making a party (whole) monetary damages in the event of a contractual breach.

And so although the contract says that, you know, the IP would have to be transferred if they breach, I think that, you know, if the IETF - first of all, if it reaches, it's probably, you know, it may be in a position that it's choosing our which is not to respect the contract.

And it's going to create another hurdle potentially with the courts and maybe we can deal with this. And it goes to the larger issue of the dispute resolution

process for the community can bring a claim of dispute or can bring a claim of breach against IETF.

But by only having it in the contract as a contractual remedy, I think you do create a hurdle that you have to overcome potentially, you know, to some adjudicator, the hurdles being that specific performance, i.e., transfer is the only appropriate remedy and some other remedy would be appropriate.

Holly Gregory: Josh, can we include in the contract a very specific idea that the parties agree that the only appropriate remedy for breach would be specific performance of a transfer?

Now, will a court abide by that and argue - I think we can tilt the scale. I mean, we can make things 100% guaranteed, but I think we could tilt the scale with some very specific drafting that very clearly states that it's the intent of the parties to the intellectual property would transfer and that this is a specific performance remedy that's the only remedy that's available - that the parties agree is available.

Josh Hofheimer: So I - look, I think you can try to write the contract. You know, obviously we'll rate - you know, we'll work with whoever is drafting the contract to make sure that it's - those remedies and the (unintelligible) performance as a strong as possible.

I do think that, you know, and this is - one of you all are going to have - perhaps the community and CWG has to weigh the risks on. I do think that it would be a stronger argument to make for enforcing the transfer away from IETF if the IETF documents, the organizing documents, the trust (in itself) specifies that - and states that, you know, I breach of IETF - you know, I

breach of the trustee's duty or some action taken in contravention of the, you know, the conditions upon which there sort of...

((Crosstalk))

Holly Gregory: Josh, I understand that. I think we're being told that they want to find out how much of this they can do through (unintelligible) the documents and that there is not a big appetite to change the terms of the IETF trust.

So with that is sort of our guiding principle, you know, please let me know where you think we're really up against something we can do but I think we have to abide by Jonathan's direction to find solutions here.

Greg Shatan: I think what we need to do here is avoid stepping on a rake, as one of my former partners put it. Or, you know, having the names community step on a collective rate by putting something in an agreement that's essentially not enforceable or window dressing and that the IETF trust could basically ignore with impunity.

Or possibly even claim what's unenforceable. You know, as long as we can have a good provision in the community agreement, and, you know, a strong and tightly drafted and that the - you know, certainly these things are generally tell within the public eye or at least in the multi-stakeholder community eye.

You know, you need to be clear with all the parties what is being agree to but, you know, as long as we're not stepping on a rake here, I think, you know, we should be okay. You know, understanding that there is Plan B.

((Crosstalk))

Jonathan Robinson: Josh, just a couple of quick remarks here and then please do come back with your point. First of all, and Greg, direct maybe see it differently, my latest understanding is that the holding of the pen or the initial drafting of the community agreement may well be in our hands and that we may ask Sidley to do this.

So that's a question. Greg, is that your understanding, and you can come back on that because Josh made the point of whether we were reviewing the document or not.

Second, I do think that, to the extent that we have reasonable concerns, we can make reasonable requests that those concerns are addressed. Now, how they're addressed is - clearly this goes back to the point of pragmatics.

One option might be to seek and undertaking that - I mean, one of the points we're being told is, if the IETF is - trust will be very clumsily to change. So ideally, we're changing it.

However, a variation on that might be to ask for best efforts to change it at some future date post-transition. So it's not necessarily to make it a precondition but to seek something in the future. So that's just a couple of thoughts. Even that, I think is not particularly elegant and should be avoided if possible but that's just a thought to add to the mix. Back to you, Josh.

Josh Hofheimer: I guess what I was going to say, and I appreciate what we're trying to do - I would feel more comfortable perhaps with sort of this approach and with recommending this approach of I understood, you know, who is and what entities with legal rights are keeping watch in the sense over the IETF trust and its conduct and its actions.

Like, how is that entity being policed today? I think that would help us, you know, understand, and we need help from you all with it because that would help us understand how much risk or uncertainty there is in the approaches.

Holly Gregory: I agree with that, Josh. And it goes to my earlier point, you know, how much transparency - where little bit in the vacuum and that's why I think Josh's points are well-taken. But if we had a better understanding of how it functions, we are better positioned to help come up with a solution.

Greg Shatan: Sure. We can certainly, you know, get more information and I would even have one of the IETF trustees speak to that point. We've had two or even three of them regularly involved in this process - (Iari Arco) and Andrew Sullivan, as well as Ray Pelletier who's been more in the background.

The IETF trustees are co-extensive with the administrative board of the IETF which includes both kind of, you know, IETF insiders and some others in the kind of Internet governance here.

The IETF itself is an activity not a separately incorporated entity but an activity of the Internet Society, commonly called ISOC, and the chief executive of ISOC, Kathy Brown, serves as one of the IETF trustees.

And ISOC is a, you know, longtime and well-respected piece of the Internet governance oversight. I believe that they are also members of other entities who may - such as the Internet Architecture Board - service IETF trust these which is another piece of the kind of technical oversight of the Internet.

That's kind of the extent of my knowledge. I would say that (folks) from the name community of ICANN do not have any really, you know, participation

accept from time to time, that there may be technical numbers, for instance, of people's organizations who serve in the IETF and also participate in other aspects of ICANN, but you know, not necessarily the same people.

The people kind of most directly involved here are not IETF types. The IETF types are all engineers and, you know, we're not - more business, legal, policy types. So it's not a perfect relationship and that's kind of as much as I know.

((Crosstalk))

Josh Hofheimer: Has there ever been - I mean.

Holly Gregory: Let's move on.

Josh Hofheimer: Okay. Greg, I - on number four, I think having, you know a side letter agreement by the trustee, you know, affirming their duties an obligation as a trustee and committing to abide by those obligations is probably - I can't imagine why that would be a problem legally and something that we could support. We can kind of (ride it down) with our trust team but I'm sure that it would be fine.

Greg Shatan: Right. And I guess the question is whether this - this is again something that would normally be in the trust agreement, I assume, and there's probably parallel language to this with regard to the IETF IPR.

But it just doesn't extend to what we have here. I guess, that would be my question, whether this is - whether there's anything in the trust agreement that could actually be pointed to for this and obviate the need for a...

((Crosstalk))

Josh Hofheimer: For even having (an assigned) letter.

Greg Shatan: Yes.

Josh Hofheimer: It may be, it is something that, you know, we have not dug into but we can or you can look at that after the fact. The only distinction is that, because of the, you know, the process with US PTO, you know, that they require the trustees sign as the registered owners. So I don't know there are any other instances in which the trustees are taking personal action, you know, with that.

Greg Shatan: Yes, I think that's a good point and that is, you know, the underlying concern here. So I would push forward on the side agreement point. And so I think that would be the way to deal with that piece.

Josh Hofheimer: Yes.

Greg Shatan: And that probably, I think, takes us through one, two, three and four. One overarching question, and maybe this is - I don't have, you know, deep trust expertise and probably none of us on the call, you know, do, per se.

Whether there's anything here that the trust could not agree to in the community agreement, although my view is that we should try it and see what their reaction is rather than necessarily tie so the knots at this point.

Josh Hofheimer: Agree. I don't think it's worth speculating right now.

Greg Shatan: Right. And Jonathan, just answer your question, that you may have noticed just yesterday evening, we received some first draft of both the community



agreement and the license agreement from IETF which - or IETF trust to the extent that those are just emotional.

And I sent those around so while I wouldn't say that we would be initiating the first draft of the community agreement said there is a first draft, I think we would want to review those without - both of those agreements without any deference.

You know, and, you know, if they need to be completely rewritten, for now, you know, whatever it is, you know, use as heavy a pen as we need to, to make them say what we believe we should say. But I think we're going to start with those at least inform.

Josh Hofheimer: That's fine.

((Crosstalk))

Josh Hofheimer: Greg, just from a process, I mean, I - we've - I've gone through this and we've sort of had some internal dialogue and I've got a few notes and questions and comments. It might be easier for me to just respond to your point.

((Crosstalk))

Greg Shatan: I think the point regarding the trust were kind of most sticky because, you know, we had kind of a gaiting issue there were we were being looked at fish-eyed by the other folks about, you know, why we were being so, you know, not just accepting the IETF trust as our personal savior. So once we get past that and into the contractual stuff, I think it's smoother sailing. So I don't you grab the helm?

Josh Hofheimer: Okay, so the next comment is - and I'm going to identify these by the Sidley comment (wherever they) might be easier. So in footnote 7, Page 2, the party (SP) community agreement, I think we've all contemplated that we're going to have these community agreements.

The question then becomes who are the right counterparties on the community side? And, you know, it does, Jonathan and Greg, bring us into some of the same issues that we had in the larger discussion. We want to make sure that these entities, you know, sort of our legal - legally cognizable entities that are capable of (in portioning) their rights.

And especially if we're going to, you know, rely upon these agreements to make sure that the IETF trust is operating within its principles and mission and purpose. We're going to want to make sure that there is a - will then entity on the other side to enforce that and also a process by which those rights will be enforced.

Greg Shatan: Right, and there - for the other two parties or the other operational communities, it's fine. We have a serious problem, I think, on the - for the names operational community because unless we look to the newly invented and not yet informed empowered community which is never set up for this purpose, the only kind of legal entity is ICANN which, you know, is imperfect as such. So I don't have any bright answers unless we were to inform...

Jonathan Robinson: Nor do I. Nor do I, so I mean, it may be that this is just a gap at the moment and we have to put our thoughts (on) so I can't give you a better thought right now.

Greg Shatan: Yes, I think for the purposes of getting through this document, we would park that but recognize that that is, you know, possibly one of our biggest issues so let's do that.

Josh Hofheimer: I think the footnote (here) flows from that. It's the same response so I think we can - we have to park that in under the same issue and we can move on. And then in footnote 9, there you just answered the question, so I don't have any further comment on that, Greg.

The next row, footnote 10 was confirmed. The next note, footnote 14, this is just a question because for some reason - for whatever reason, and there may entirely be a valid reason, that the language in the sort of the MOU talks about registrations and changes to the domain name registration that administrative and technical sort of lead the required - their approval is required for - together for registration but then changes that are made require an approval only one but not the other.

And it seems to me why we would just make it consistent across the board - I just asked the question, why would we make this consistent across the board and have those - of any changes with the registrars be some changes that are approved by both the technical contact and the administrative contract? Just from a checks and balances perspective.

Greg Shatan: Yes, I think that question is to kind of open within the group as well.

Josh Hofheimer: Use of the group, which group are you referring to there?

Greg Shatan: The kind of I- the IANA IPR collaboration group which is basically us plus representatives of the other two communities.

Josh Hofheimer: Okay. All right.

Greg Shatan: (Who) produced this principle terms document.

Josh Hofheimer: Okay. So the footnote 15 is the next one and this goes to sort of the core issue which, you know, we've raised. If we're moving - and so this is a specific point about, you know, the trust - it says the trust shall arrange sufficient funds and this ties into a later comment, too.

It in think that the trust - at least, Greg, you reported in the notes that you didn't think the trust was going to be compensated for (the services). But there are real out-of-pocket costs, both filing fees and potential enforcement and (defense) and intellectual property.

So is going to pay for that? And - is the first question, and then the larger question which I'll defer, is, you know, what happens if the trust doesn't step up to its obligations or falls down in that regard?

You know, we talked about having the community contractor as a means for enforcing that but what does the process look like? And is there a process today? You know, this may be something that needs to be discussed on through the larger call with the trust, with ISOC, that sort of thing, to understand what happens today if the stakeholder community feels like ISOC or IETF is not living up to its obligations.

Greg Shatan: Right. I think that goes to the community agreement and I think that - the second part us. The first question, think, is one for the IETF trust, you know, how they think they're going to pay for this if - you know, this is basically (this becomes a) budget item of the ATF trust however, you know, a gets budgeted, presumably from IETF.

And somehow they're going to pay that, you know, out of their own pocket even though this is kind of being done for all the communities. It's just a question we can't answer but it's a question we need to ask. Thanks.

Josh Hofheimer: Right, because I think your response and it's picked up later, you didn't answer it. You said that they are not intending to be paid and that may be fine but it doesn't answer the following to that which is, well, who will pay for it?

Greg Shatan: Right.

Josh Hofheimer: Maybe it is still the trust, as you said, or maybe there's some reimbursement that is expected.

Greg Shatan: Right.

((Crosstalk))

Josh Hofheimer: I think the normal approach or a guess, then, I can put this in my suggested solutions would be to have the licensee reimburse the trust or, you know, make an advance payment to the owner of the IP to pay for these kinds of expenses.

That's the way I would typically handle it, you know, in a private party situation or in agreement with, you know, an academic red light and then that would make ICANN responsible for - ultimately responsible for paying the maintenance fees and the like which is probably the right way to handle it.

Greg Shatan: Right. And certainly we represent a licensee, I always want to licensor paying for the maintenance of what they own.

Josh Hofheimer: Unless they don't get a royalty.

Greg Shatan: Right. Right, if it's a royalty-free...

((Crosstalk))

Jonathan Robinson: ...to me, Josh, that seems like a pragmatic solution. I mean, I just put that in the chat. Jonathan, you could easily put that in. Just mindful we are at 30 minutes past the hour and we do want to have a little bit of time at the end to talk with you on the other issues of PTI contracts and (all).

Josh Hofheimer: So I think - I'm just looking at the - be mindful of what you just said, Jonathan, to see - I think we covered some of these things. And some of these are more minor.

We do, you know, talk about - we spent considerable amount of time talking about, you know, the ability to enforce breaches by ICANN. You know, there's the whole dispute process.

I think that the reason - the concern I have, and I think we would be - it would benefit us to have that discussion with the trust here in a way that's not going to put anybody on the defensive of course.

But there isn't anything that I've seen so far that addresses what I sort of crystallize and my footnote 18 comment and also in my footnote 24 comment. And both of these are things that, you know, that the MOU talks about in C3G but Greg talks about in the reverse.

He talks about the licensee breach and when I am trying to make clear and to make sure is that there is a respected process and a well understood process for someone to bring an action in the unlikely event that they feel the IETF trust has breached its duty.

What's the process for someone to make that claim? What's the process for that claim to be adjudicated? And then are we comfortable with whatever the results of that adjudication are that they will be rolled respected by, you know, by all parties including and especially the IETF trust as a registered owner of the IP?

That's what I think is missing so far. And I think that needs to be articulated. It may be something that in the community ringer right now, in the draft that is prepared.

It may be something that's in the trust documents. I sort of doubt it. And - but maybe it's there. But I think it's a discussion that's worth having with some of the trustees to consider or to ask them, and the other communities, perhaps, that are involved in this numbers and protocols, had they considered this and how they considered this playing out?

Jonathan Robinson: Josh, it's Jonathan. And I think that sounds like - great. We need to capture an action and set up within a week or so. We probably - I think Josh and Greg and others, what it feels like we need to do is revise this - prepare a revised Sidley comments as discussed, communicate that to our IANA IPO and invite them to a meeting with or without any legal representation.

That doesn't matter. But to provide - to have a clarifying discussion to try and understand some of these points directly with the trustees, ideally, with having

given the heads up by the revised comments. But that feels like a way to take it.

Josh Hofheimer: Okay. So I don't - I think a lot of these are details I agree with, some of the things that Greg has said in response at his comments have answered, you know, answered some of our concerns.

We can do as suggested and circulate a revised set of comments. Would you like us to do up - I just, from a process, how would you like that to be done, Jonathan?

Do you want us to go back and just provide your comments that are in - the way we had done them in the document itself and eliminate the footnotes that have been - and those questions that have been answered?

Do you want us to just add a fourth column to the right of this document that Greg prepared that has sort of Sidley revised comments with, you know, the dates that those are distributed?

Holly Gregory: I think - this is Holly. I think we want to really just do this chart and not have fourth column. I want to make it simple.

Jonathan Robinson: I agree with Holly. It's Jonathan. I agree with Holly so the simpler we can make it, and Holly's initial suggestions seem to indicate that you might even strip out rows of these - of this chart to the extent that they feel no longer necessary to make the point.

But, yes, I think that's probably right. So instead of having - we could simply replace Sidley comments with revised comments and perhaps even revised



CWG response, but something along those lines, as practical and as simple as possible.

((Crosstalk))

Josh Hofheimer: (I have no problem) with that, Holly. Yes, it doesn't track - and that look sick we've amended our comment, our initial comment, as opposed to sort of resolving based on discussion. But let's you and I take it up off-line.

Greg Shatan: I mean, think if we want, we can, you know, do a draft that notes, you know, that comments as a result. I think that some of the things that are questioned, you know, might be rephrased as recommendations.

You know, for instance, the simple question, what if the IETF trust breaches? You know, really underlying that is a recommendation which I've kind of, you know, provided in my own way in the third column. So it may be good to kind of adopt what you can from the third column as your recommendation, you know, to the extent that you can as well.

Josh Hofheimer: Okay.

Greg Shatan: I'm going to attend this back to you, Jonathan. I don't have anything further on this.

Jonathan Robinson: Okay, great. Thank you, Josh. Thank you, Greg. It feels like, you know, as I said, I don't feel too strongly if we had a fourth column that says revise comments. We'll leave it to the discussion of yourself and Holly.

In essence, what we want to do is to fill it down to the core issues that either need - that either have (our) recommendation or (strong) comment and/or an

open question that needs to be answered through a meeting with IETF trustees and/or representatives of the other operating communities.

So that feels like a good way forward. In terms of number two, and the update on the work progress, I mean, you know, we've got the articles all for public comment and we've had some response for you which unfortunately came in, I think, just after they went out for public comment.

But it doesn't feel like that can't be dealt with by simply weaving that into the public comment. We've got the ongoing work on the bylaws and then we've got this issue of the intercompany and names created the agreements.

So I guess, as I said in my opening remarks, our understanding is, or certainly was, that you were in direct contact with ICANN legal and that that would be the most efficient way of sort of ironing out all the wrinkles in this package of work and making sure that it stays true to the objectives of the CWG and (unintelligible) standard to you.

So the question is, what issues do we have? We're aware of one potential issue, think, with the articles that's been - that's come up. But maybe I should hand over to perhaps Holly or Sharon to come back to us with what concerns or issues you're dealing with and how we might go about trying to move forward.

Holly Gregory: Thanks, Jonathan. I defer to Sharon on this.

Sharon Flanagan: Yes, let me just give a brief update. So we did get the - both the articles in the bylaws back from ICANN. The articles came in late Wednesday night. The bylaws came in Friday.

We provided comments on Friday to the articles but ICANN had decided to post without waiting for those comments. So they're not major comments, so I don't think it's going to be an issue.

And we're asking and clarifying with ICANN legal whether there's anything else we need to do to make sure these comments get incorporated into the next draft since the comments were post-posting for public comment.

So if you all have view on the let us know that we consider that we've given them are comments and we hope that they'll be addressed. With respect to the bylaws, hello revised draft that we're working on it in response to ICANN's legal revisions.

We had a call with ICANN legal yesterday afternoon to walk through some of our thoughts on that. The questions for you all is can we go ahead and send those comments to the bylaws to simultaneously? We'll send them to ICANN legal and then to CWG at the same time. We think that will be most efficient but if anyone have any concerns with that approach, let us know.

Jonathan Robinson: Sharon, it's Jonathan. Just I think the short answer is that that's consistent with what we understand. There will be a direct discussion with you and between you and ICANN legal, and to the extent that you come across a point that's difficult to resolve, it comes back to us.

But to the extent that these are iterations and revisions, that's probably most efficient. I think that's what we understood it to mean by you working directly with ICANN legal, so keeping us informed is good, but making progress is also important.

Sharon Flanagan: Okay, so we will go ahead - you'll see that from us. We'll send it to the client committee and if you can then post it up to CWG, that would be great. A couple points that came up on our call yesterday, one is on the Annex C provision (seven), Sections 7 and 8.

This is the exercise we had gone through with CWG and it was led by Paul Kane about some aspects of the CWG proposal that people wanted to see in the PTI bylaws.

ICANN legal has some concerns with that. They think some of the things in Annex C are not consistent with the proposal. They were for suggesting that putting them in the PTI bylaws at all and we said that we thought it was important to CWG to include them in the bylaws that it had been specific conversations about that.

So it was determined they would go back and highlight where they think there are actual inconsistencies between the Annex C, Sections 7 and 8 is against the rest of the proposal. And so once we get that from them, I think it's going to be a conversation with CWG about how we address those items.

So that's one thing to note. The second thing to note is that we did have a discussion about, you know, details that end up in the PTI bylaws that are, you know, that are not directly in the proposal and that's - you know, to us, that seems totally normal and logical.

The proposal is in some respects, a summary, a term sheet, if you will, and so now we're flushing out the details. So the details are what we have all been working on.

But ICANN legal did just ask some questions about that. So I think we're making progress but we will still have a few issues to come back to you on and we'll let you know what we have more guidance on that. Thanks.

Jonathan Robinson: Thanks, Sharon. That's clear and I think that's helpful. A question, then, on the point - unless I missed it. Did you say about this issue of the separation and naming and the intercompany agreement and where we are with that one?

((Crosstalk))

Sharon Flanagan: We have heard, Jonathan, absolutely nothing on that score, so we don't know what's been decided. We don't know a status of agreement. So actually the could tell us what you think that, you know, the current state of affairs on that is, that would be very helpful.

Jonathan Robinson: I can help a little there. We have not seen - to the best of my knowledge, I don't recall seeing the headline structure of those - proposed structure and content of those documents. ICANN does seem very firmly of the view that it is practical and logical to have these in two separate documents and proposes to convince you of that.

So I think the next conversation you will have with them, you should expect to see, and we should expect to see shortly the proposed scope of each of those documents and the argument as to why they need to be separated and why that makes sense. So I guess we're all looking forward to seeing the substance of that in the argument for why.

Sharon Flanagan: Okay, Willie to hear that. We haven't heard anything more on that and, you know, the concerns we raised about the fact that a separate agreement is then, therefore, completely outside of the scope of the ICANN bylaws. So that's our

primary concern there. So does that mean, then, the (succunment) issue is - has been accepted or is that still open?

Jonathan Robinson: Yes, sorry for the lack of update on that. Yes, I can revise their proposal on the back of the sort of community responses in feedback. And in essence, what it's proposed and what it appears is likely to go ahead is that (succunment) will take place for limited period, no more than three years.

And new appointees will be appointed directly to PTI providing that the appropriate infrastructure, for lack of a better word, is in place to employ them within PTI and so in time, it should be that all PTI staff are indeed employed by and within PTI. So there's this sort of transition period where (succunment) will take place but it's not indefinite.

Sharon Flanagan: Okay, thank you.

Jonathan Robinson: So that's the case there. Lise?

Lise Fuhr: I have a question to the PTI in articles of incorporation. I don't know that it's premature to ask this now or if (we've emptied) the other issue.

Jonathan Robinson: Go ahead, Lise. We're right up against for time so go ahead with that.

Lise Fuhr: Okay, I will. That's, to Sidley, a question of Paul Kane raised in this during the IOTS, the implementation call yesterday evening where the articles of incorporation, article Number 3, says the specific purpose of the corporation is to operate exclusively for the benefit of, to perform the functions of and to carry out the purposes of the Internet Corporation for assigned names and Numbers, a California nonprofit public benefit corporation.

And Paul Kane was objecting to this because he found that it didn't take into account the multiple ccTLDs that were not in having an agreement with ICANN and this would kind of say that PTI would only serve the purpose of whoever is within the ICANN community. And there are several ccTLDs that are not within this community.

And I don't know if there is anything in the ICANN bylaws that covers those ccTLDs that are not having any agreement or any recognition of ICANN are we should try and incorporate them into this part of the article. Thank you.

Sharon Flanagan: So, Lise, it sounds like the suggestion is to expand the purpose of the PTI, of what, you know, PTI's purpose in his article. Is that right?

Lise Fuhr: Yes.

Sharon Flanagan: Okay, and is there - I think it would be helpful to see the emails or get some suggested language from Paul Kane.

Lise Fuhr: Well, Paul Kane raised it orally and this is - I can try and describe the problem and try to highlight what he's concerned about and - but there is no specific email.

This is more a concern that these articles to cover the ccTLD. It has no recognition or no agreement with ICANN because there are a lot of ccTLDs they don't really recognize ICANN as being the political body of anything but they need the services of the PTI and IANA because this is the system.

Sharon Flanagan: Okay, well, we'll take a look. It sounds like that that would be a comment that would come from CWG to ICANN through the public comment period, right?

Lise Fuhr: It does but I'm just - for me, I'm just asking if we're rolling the ccTLDs out and if we're, we need to take them into this article.

Sharon Flanagan: Yes, I don't see that in the language. So it doesn't say anything about having to have a contract, at least the version I'm looking at. So I'm just not sure I understand the concern with - based on what the language says.

It just says the specific purpose is to operate for the benefit of, performing the functions of, carrying out the purposes of ICANN and maybe needs to say something more general not tied to ICANN, just the naming function more generally, DNS or something...

Jonathan Robinson: Yes, I think that sounds right, Sharon, and so really, I think your point is right. I mean, what Lise is doing is putting you on notice, I guess, if it's a concern and it's a reasonable concern.

I happen to agree with you. I think that the CWG - I mean, so we need to bring this through the CWG and the CWG needs to collectively, on behalf of the naming community, recognize that the rematch is broader than just simply fulfilling the purposes of ICANN. And we've now notified Sidley to be on alert for that as well. So it feels to me like it covers it, if Lise, you're okay with that.

Lise Fuhr: Yes, I'm fine. I'm fine. I just wanted to have a first go on this and open the discussion so this is perfect. Thank you.

Jonathan Robinson: Okay, great. So we're not expecting you, Sharon, to do anything save for being aware of it. We hope that ICANN will respond to the public comment. It's a good suggestion and so, exactly. Thank you, Grace, for capturing that without being asked to. That's helpful.



All right, Greg, there is one outstanding point and I think which is Greg's point on how we deal with the first draft of the agreement (to see) from the IETF trust.

I guess really the option there is probably for - these need to be seen by Sidley and I guess from Sidley's point of view, they're either documents that you feel you can work with for a counterproposal is we understand the points being made in this and we would like to start with, you know, essentially from scratch but take these as a baseline document.

I don't feel strongly are no quite how we should take this, so I think, Greg, and Sidley, we're in your hands here to suggest, perhaps, we forward. I haven't even seen the documents yet so (it's difficult) to comment on the quality or sort of depth of how much they cover (unintelligible).

Josh Hofheimer: I haven't had the chance to look at the documents yet but I can't imagine that they wouldn't be, you know, more than an adequate starting point. I don't think it would be productive to say that we want to throw them out and provide our own draft. I'm certain that we can work with those and provide comments where need be or raise questions.

Greg Shatan: Yes, I agree and I guess - I think we should probably all be them. And not all, but I think I will and Sidley should and then I would think that even as we come back and kind of refine the Sidley comments, we could, you know, start drafting, you know, in alignment with those comments, you know, to the extent that you feel you've got kind of marching orders in all of this.

And, you know, we should ask for what we think we need to ask for and if it's - we'll hear back if it's not agreeable to either IETF trust or potentially the

other communities. I don't know that's premature, but, or at least we regroup, you know, on the list and discuss how to, you know, start turning those (docs).

Jonathan Robinson: Yes, let's have a look at them and see what people feel is the best way forward. But certainly, if - you know, I just simply- it's very difficult for any of us to comment without having seen them. Let's have a look at them and then hear on the client committee list what the best way forward is.

But indeed, they are reasonably competent of and reviewing comments make sense, but I think we have to be - if, for whatever reason they aren't or to match what was expected, then we deal with that as well.

Greg Shatan: Yes, I expect that they're not all that comprehensive and I expect they were going to have to add a number of provisions to them and revise others. But that's, frankly, just par for the course. The further away you get from a generally understood type of agreement, the more it tends to grow in draft.

And even true in a reasonable agreement, a reasonably well understood type of agreement, especially the party that wishes to be less lightly - you know, more lightly encumbered, tensed come up with a rather slim draft. And the party that is looking for, you know, some more power, control thickens it up. So I expect that will be the case.

Jonathan Robinson: Okay, great. Well, that sounds like we're all set then. Are there any other sort of points or any other points of business that anyone would like to raise? And, Holly, note your comment - or Sharon, sorry, that your comment in the draft PTI contract is due next week.

Any other comments, questions or points for the moment? Okay, great. So that was a pretty comprehensive piece of work. I think we know where we're going.

We've got the actions listed there and we look forward to working with you on the client committee list and we'll be in touch about the next CWG meeting, if we need her help there, Sidley.

So thanks very much for now and we'll crack on with all of this and hopefully you can work effectively, directly with ICANN in the meantime as well. Okay, thanks all. We can stop the recording and call the meeting to...

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