

ICANN

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

Coordinator: The recordings are started.

Grace Abuhamad: Thank you very much. So, everyone, this is the 14th - our 23rd Client Committee call at 1430 UTC on the 15th of July. And we'll turn it over to Greg Shatan who is chairing our call today.

Greg Shatan: Thank you, Grace. Greg Shatan. Welcome to the Client Committee call Number 23. Unused to chairing since Jonathan chairs nearly everything I do, including most of my meals at home. But nonetheless, I'll soldier forth.

The first item on the agenda is the proposed principle terms document. And I think where we stand on that is that we've received a shortened list of about half a dozen open items, comments, from Sidley, having whittled down the initial list that was about 20 or so. And we have that in a chart which we received from Josh. I would suggest the next thing we need to do, and I'll take a first crack at this, is to put in the third column and put in, you know, proposed CWG or Client Committee responses to the comments and then try to close those off with Sidley either with action items or resolution.

And...

Lise Fuhr: Sounds like fine for me, Greg.

Greg Shatan: yeah, and I should be able to do that, you know, over the weekend since the weekend is only two more working days until Monday. And then I think the other related item, and I see that efforts have started in that regard, is to talk with representatives of eh IETF trust in order to discuss some of the open items that are raised in the Sidley comments, you know, regarding funding of the various efforts of the IETF trust in its role as owner and potentially enforcer of the intellectual property rights. And look at, you know, how they intend to do that and what - it has some greater understanding of their operations as well.

Finally, so I'll look forward to seeing that scheduled. I see that, you know, the outreach has been made to at least to Andrew Sullivan, maybe Andrew and (Yari), on that. and they're kind of putting together their team and they'll get back to us. So that's underway.

lastly, we've received the IETF first draft of a community agreement and license agreement which at the appropriate time in its lifecycle will get split into three parallel agreements. But shouldn't be split yet so that we can keep common draft as long as possible. I understand that's also in the hands of Sidley, and Josh, I believe, is turning or has turned to looking at those two drafts. I intend to do so as well. I have not yet done so.

I think the community – obviously they're both important agreements but the community agreement in terms of accountability, oversight and the like is really critical in terms of creating, you know, dealing with the somewhat unusual fact pattern that we're dealing with.

I see Sharon confirms that Josh is revising those agreements. So maybe I will wait to see his revisions before doing anything more than a casual read of those documents so that I can kind of work on top of his work or we can all work on top of his work.

So I think that covers Agenda Item 1. Anything else on that first item?

Lise Fuhr: Greg, I only have that – do we have any timing accept that you’ll do the schedule for Monday and then the next step is to discuss it with the others or do we – when do we plan to actually fill out that extra column? Is that what you’re going to do and are we going to discuss your suggestions?

Greg Shatan: Yes, that would be my plan is not merely to create an empty column but actually to fill it with stuff, would not take me the whole weekend to create a column. So I see we have a Tuesday meeting of the plenary. And perhaps we should, in advance of that on the list, go through it and see if there’s a point in coming back to the – we can report on some further progress on that call. And if we think it’s appropriate perhaps we have Josh on that call. I think that would be 7:00 am his time, which is slightly preferable to the 11:00 pm call on Thursday.

Lise Fuhr: Yes, that sounds like a good idea.

Greg Shatan: And so hopefully we’ll have some sense, you know, where we stand at that point both the open items on the principle terms and on the, you know, some reflection at least on the initial drafts that we’ve received. You know, and understanding that they have been presented to us with the caveat that they really are just opening documents and not intended to reflect any final position of the IETF or the IETF trust. We’ll take them with that expansive view.

So I think that would, you know, should keep us moving forward toward Tuesday and then we can keep moving through after that. Next on the – oh, Grace, your hand is still up.

Grace Abuhamad: Thanks, Greg. Yes, so I'm looking to schedule the IETF trust call on the 25th based on the emails from Andrew and (Yari). But what I was wondering about is whether you wanted any Sidley counsel on that call or not and if I should include them in the Doodle poll that I'll be sending out later today.

Greg Shatan: I think it makes good sense for Josh to be on that call. You know, I think it's all part of the universe of figuring out this relationship that falls under the IPR but really also looking at the, you know, how the IETF trust will deal with its role. So I think since Sidley, you know, since Josh is the person at Sidley who has adopted these agreements and this, you know, topic I would say he's the right person to be on the call. I don't know, Sharon, if you have any different view.

Lise Fuhr: No, but – sorry to intervene but we need – I think we need someone from Sidley there. Of course whoever it's going to be, Josh or Sharon, well it's up to Sidley to decide on behalf of who's best fitted for that task. But for me it's important because I think the others will bring the lawyers so it's not to be bringing lawyers to lawyers but we might get some questions where it's nice to have some advice from Sidley. Thank you.

Greg Shatan: Sure. Well, I think that makes sense and certainly I expect to be on that call, not that I'm here in my capacity as lawyer. So let's move on to the second agenda item, update on work in progress, PTI articles, bylaws, naming and intercompany agreements. And here I might call on Trang, if that makes sense, as our master of all progress.

Trang Nguyen: Hi, Greg. Can you hear me?

Greg Shatan: Yes. Yes.

Trang Nguyen: Okay terrific. Thank you. So my understanding from yesterday's CWG call is that Sidley is going to be preparing a summary of all of the outstanding issues on the articles of incorporation as well as the bylaws for review and discussion with the CWG next Tuesday.

And then by next Tuesday we will also be sending over to Sidley the redlines of the code of conduct, conflict of interest policy as well as expected standards of behavior against the ICANN documents of the same so that they can review that. So we're working on that and we'll send it over as soon as possible to Sidley. So I think that's currently the status of the bylaws, the governance documents as well as the articles of incorporation.

With regards to the contract, we are, as I mentioned yesterday, we are very close to having that done. I think we – I don't see any issue with us being able to finalize those documents and circulating them today. So we'll get out today the naming functions contract, the term sheet or headers – section headers of the intercompany services agreement, as well as the two subcontracting agreements for the numbers and the protocol parameters.

Greg Shatan: Thank you, Trang. Any questions for Trang (unintelligible). I'm coming back on myself. I have no questions for Trang on that point. Sounds like things are moving along. And that moves us to AOB, which I think would...

((Crosstalk))

Lise Fuhr: Greg, sorry to intervene again.

((Crosstalk))

Lise Fuhr: Could you please – this is not a question to Trang but this is really a question to the Client Committee as such because we had a CWG call yesterday and I've been looking at the notes, I haven't had the time to go through the audio yet. But my question is only could you please repeat the way forward for Sidley for – what were the agreements? I'd just like to have it on the record too the way we go forward from here with the governance document, the naming contract and the bylaws.

Greg Shatan: Maybe it would help to just – since you're not in the Adobe Connect the next item in, which is really the AOB, is to review the action items from the CWG call.

Lise Fuhr: Oh sorry, I couldn't see that, sorry.

Greg Shatan: Yes.

Lise Fuhr: I rest my case, sorry.

Greg Shatan: That's the AOB. So let's go through that and see there may be some questions. And I don't know if there's a way to mute whoever is speaker is feeding back into the line. Oh, it seems much better. First action for the chairs is for CWG to submit Sidley's comments on the PTI articles of incorporation as part of the as part of the CWG's own public comment submission on those articles whenever that is timely to do so but obviously don't have to wait for the deadline, and shouldn't.

Next is an action item on Sidley to prepare a table of current issues in the bylaws for the CWG to resolve and/or respond to public comment on bylaws. Sharon, do you have any further comments? I should say bylaws and articles.

Sharon Flanagan: Yes, should say bylaws and articles. And then on the first action item, the chair submitting our comments on the PTI articles, that's fine, however there is an additional comment that CWG has raised on the PTI articles which relates to just more generally what the purpose should be. And so I don't know if the chairs would prefer to wait and consolidate and present one set of marks – articles rather than just submitting the Sidley comments and then following up with any changes to the purpose.

Greg Shatan: I'll leave it to the chairs of which we have one. My personal view is we should submit one consolidated comment.

((Crosstalk))

Greg Shatan: A hand from Lise.

Lise Fuhr: No, sorry, I agree with that and I think we should have one comment where we have that partway together with Sidley's comments. Sorry to – I can't see any hands so...

((Crosstalk))

Greg Shatan: We don't have a large group so that's fine. I do have hands, however, from Maarten and then from Sharon.

Maarten Simon: Yes, well, my hand is not on this point so maybe – are you complete with the list of actions that Sidley has to do now? Because otherwise we first complete that and then I have another question.

Greg Shatan: Okay. Is there somewhere we need to go with that?

Maarten Simon: Okay. The question I have because we make the list with the comments on the bylaws and the articles and but we also still have this Annex C, 7 and 8 – Sections 7 and 8 text. And I haven't paid attention well when we started the draft of this document. And so I can't remember what the whole idea behind it was. And because I noticed the response of ICANN and they sort of simply said, this is not something we should come up with now.

So I think we – I don't know if we have to discuss it here or in the CWG group as a whole. But I wonder how we go forward with that one.

Greg Shatan: Well seems to me my view was that, you know, Annex C was kind of a rules to live by and appropriate kind of benchmark or checklist for reviewing, you know, any of the outputs of the CWG or any of the implementation of our outputs. So seeing where any outputs kind of conflict with Annex C is, you know, a completely appropriate exercise. There isn't any language from Annex C that itself should end up in any operative documents since it's a, you know, more kind of a 10 commandments sort of a document in and of itself, you know, for how the CWG's work should be done and viewed.

So, you know, that said, we need to, you know, somebody needs to review that chart and, you know, make sure that, you know, if there are places where it seems like the implementation has arisen and created a conflict with those principles we need to take a hard look at why and whether that needs – that

implementation needs to be aligned with the principle or if there's, you know, good reason for that variance.

Lise Fuhr: Greg, I have a question. Are these principles taking out from the contract with the NTIA? And if so, shouldn't we ensure that those are replicated in a way that ensures the same level of protection for the registries?

Greg Shatan: I think that's the same, I mean, it's a slightly different concept but I think, you know, that's another, you know, yardstick of whether, you know, the implementation is proceeding appropriately. If there's a lot of variance from what the NTIA agreements are that's, you know, creates an issue.

So I've got hands from Maarten and Sharon. I'm not sure – I have a hand from Sharon.

Sharon Flanagan: Yes, Greg, I agree with what you said. I view it as a yardstick as well against which you measure the proposal. We did provide language to be included in the bylaws because there were some who felt strongly it should be in the bylaws. We had originally noted that a lot of these concepts seemed more appropriate in the contract than the bylaws.

At this point I really don't see it as a legal issue. There's not really much more Sidley can do to advance this. I think the relevant stakeholders need to have a discussion, you know, if someone needs to review ICANN's response to the Annex C items and what their concerns are. And I think there probably needs to be some kind of a conversation. But I don't really see what more we can do to help push that forward other than participate on those calls.

Greg Shatan: Right, no, I appreciate it, Sharon. And I agree with that. I think this is a policy question, you know, if there's, you know, any particularly legal aspects to

them obviously want your input but, you know, thinking about all the recent discussions we've had about cost and cost effectiveness, we should be capable, we being the multistakeholder community, should be capable of delving into policy questions just as much as we need help on legal advice and sometimes how to turn policy into legally appropriate documents. Not sometimes, all the time.

But trying to, you know, draw that line correctly so that we're not just bringing Sidley into every call just because it's comfortable to have them there at the same time not sidelining Sidley or inappropriately out of some penny wise, pound foolish concern. So, but I think you're right that, you know, on this particular item the chart put together, it's very helpful. We have ICANN's comments, it's very helpful to see those.

And then we need to, as stakeholders, take that forward from here. So I think that's an action item for the CWG is to overtake that. And I know that Lise is particularly fond of those principles in Annex C. So hope that that will be reflected as we move forward.

Maarten.

Maarten Simon: Yes only to confirm that if it's an action for the CWG then it's good but we'll have to have a debate on it. But thank you.

Greg Shatan: Yes, definitely certainly, you know, point for discussion. Moving down the review of actions from the CWG call, the action Greg to share the draft language on purpose with the CWG, I will do that. I see there's an, you know, active discussion even as we speak on the CWG list of how that purpose should be expressed.

My view was to take the somewhat, you know, relatively detailed definitely of the IANA functions that was in the original articles of incorporation and work forward from there. And I think that may be reflected in the current mission. But at least that's what I'll put on the list. And I'll do that today since the conversation is moving forward whether or not I do so. So I'd better do so.

Next action item was to request that Sidley review the PTI governance documents so I think that – Sharon, is that understood that you review the other governance documents which would be the conflict, the conduct and I think behavior?

((Crosstalk))

Sharon Flanagan: Yes, and that's fine, Greg. We haven't gotten the redlines yet so we really want to get those before we review because it'll just make the review more efficient and maybe Trang can kind of report in on what the status is on that.

Greg Shatan: Yes, I think Sam said that they would come up with those so I don't know if Trang has any further visibility on that redlining process. Trang is typing. Yes, we'll try to get them out today, very good. It's always good to have somebody who's in charge of progress because otherwise you can sometimes end up without any.

Last action item, before ICANN, ICANN to provide – oh there we are – ICANN to provide redlines of the ICANN governance documents compared to the proposed PTI governance documents since the PTI documents are based off of ICANN documents. Okay, asked and answered on that last action item.

Sharon.

Sharon Flanagan: Trang, can you remind us when the comments are due – when the public comment period closes for the three governance documents if those have been (unintelligible).

Trang Nguyen: Those three documents, the public comment closes on August 7.

Sharon Flanagan: Okay and then so a question for the Client Committee. Do you want to have one consolidated comment letter from CWG on articles, bylaws and the three governance documents? It seems like that that would be ideal if the timing works.

Greg Shatan: Well there are three different public comment periods. Just to look at the public comment schedule, the draft PTI articles of incorporation comment is due the 31 of July. The PTI governance documents, that being that collection of three, is due on the 7 of August. And the comment on the bylaws is due the 11 of August. Now if that seems to be an artificial set of distinctions, that may make it harder rather than easier to comment. And I note that we've had issues, you know, especially looking at articles without bylaws, sometimes come to the conclusions that are incorrect.

If it seems to be, you know, really artificial and creating unintended difficulties to do three separate comments we might look at how to deal with that. But, you know, the overall post-comment handling of comments – post comment period, you know, typically involves putting together an analysis as soon after the end of the comment period as possible, etcetera. So we need to kind of balance process against any possible issues that might raise.

So I see Sharon's hand and then Trang's.

Sharon Flanagan: Yes, one suggestion on the PTI articles, since our comments are fairly minor, and we've already submitted them, we submitted the same day...

((Crosstalk))

Greg Shatan: Trang, could you mute until you're speaking? I think you're the – yes, there you go.

Sharon Flanagan: Thank you. One suggestion is on the articles I think the long lead time item on the articles is the purpose, I suspect, I haven't seen the chats -or the emails but I assume that's the more challenging issue to resolve. And so if it's not resolved in time by July 30, you know, maybe what we do on the articles is we submit the Sidley comments, which were fairly minor and actually ICANN already has them, but formally submit them.

And then if it's possible reserve on the purpose and note that the purpose and the articles will need to ultimately be conformed to the purpose in the bylaws and that will be reflected in the bylaw comment letter.

Greg Shatan: Thanks, I think that makes sense. I think the purpose should be resolved by then. I basically see, you know, three choices there broadly speaking. One is the articles as they stand, which is just as the PTI does anything that ICANN asks it to, which seems too broad. Second, which was suggested by Chuck or Seun, is to just add "in connection with IANA services," which might work. And the third is to be the most detailed, which is to enumerate the – and describe the three types of IANA functions, names, numbers, protocols, as was previously done in the ICANN articles and put that in.

So those broadly speaking, it's going to be a menu of those three. And I would think that, you know, hopefully in the next two weeks or probably in the next

week, we should be able to land on one or the other. It's probably not the first so it's got to be either the second broad but restricted, or the third, which is the more, you know, descriptive. Trang.

Trang Nguyen: Yes thanks, Greg. But from a timing perspective I just wanted to provide some context as to why we had to do three separate public comment periods. The reason being that we need the articles of incorporation done with adequate time for staff to complete the analysis and updated the articles of incorporation and then file for incorporation. It is important to us that that – the incorporation process happens before we submit our implementation report to NTIA on August 12.

So we have a very short, condensed – actually staff analysis period for the articles. The articles' public comment period closes at the end of the month. And I think we've given ourselves just five days, and we may need five days depending on how many comments and changes come in, to finalize that, post it, get Board approval and then also file for incorporation.

And so it's important for us to be able to file for incorporation prior to that date – that August 12 date. So as Sharon suggested perhaps what I could suggest is prioritizing those items where there is overlap between the articles of incorporation and bylaws.

And I heard too, on yesterday's call, it's the purpose and then a voting threshold for amendment. So if we can prioritize those for discussions, which impact both the articles and the bylaws, and hopefully we can come to some kind of finalization on those two items by the end of the month for submission of public comments on the articles. So that's sort of why we had to separate out the articles of incorporation and start the public comment period early for that one.

With regards to the other governance documents, what we were trying to do is see if it possible to get those finalized before August 12 as well. And at least at minimum, complete the public comment period for that and also the analysis, the staff analysis.

For those documents since they are PTI documents, they will not be formally adopted until the PTI Board is seated, which we feel is just an administrative task and can take place later but for the purposes of our submission of the August 12 report to NTIA we wanted to also show progress and completion of that item if possible.

And the reason we're trying to get all of these things done by August 12 is for any item where there's not done we have to provide line of sight and rationale to NTIA – very specific rationale and confidence – we have to tell NTIA why we are confident that these items will get done before September 30 because, remember, they have to make a decision on whether or not to extend the IANA functions contract. And this August 12 report and what we put in it and how much we can get done by August 12 is going to be the basis for them making that decision.

So from our – from ICANN's perspective, we're trying to get as much done as possible by August 12 and then for those items that we cannot get done we have to be able to provide a sense of confidence to NTIA that they will get done by September 30.

So that's just – I wanted just to give some context as to why, you know, we started three public comments instead of just one. And why the push to try to get everything – as much done as possible by August 12. Thank you.

Greg Shatan: Thanks, Trang. That's very helpful to have that context. Sharon.

Sharon Flanagan: Yes, I would really push on that August 12 date because on the assumption that it needs to be filed and finalized by August 12, the articles and the bylaws are completely linked. You pointed out the amendment threshold is one example; purpose is another example. And one of the challenges with this project is documents get locked in and then we're told that when we have issues that come from later documents, well, it's too late because the other document is locked in and we can't change that first document. We had that with the ICANN bylaws, for example, on this whole PTI contract issue.

So and there are no documents that are more linked than articles and bylaws. I would really press on that and whether that's really the right path. I don't – I don't know why you can't send them the draft of the articles as they stand recognizing that there may be some conforming changes against the bylaws. But to lock in the articles when the bylaws have only just closed the comment period, that seems like that's going to create some problems for us going forward.

Greg Shatan: Trang, any thoughts on that? I'm not sure if this is a decision of yours or whose decision this is.

Trang Nguyen: Well, I don't know that is the decision so much as I think a continuing conversation and seeing how things unfold. I think a couple of things that had been raised that I do see a linkage between the two documents have been the purpose and the amendment threshold. Now if there's any other issues that has been raised by Sidley that does have a connection to the articles I think that's what we'd need to identify. And maybe prioritize in terms of discussions to see if those can be closed out within the next three CWG calls.

So I think that's sort of maybe the exercise that we need to go through.

Greg Shatan: All right, I think it makes sense to accelerate the discussion of the bylaws or make sure that we don't kind of get relaxed about that based on deadlines and really looked at the articles deadline as really the deadline for at least identifying issues that are, you know, linked issues and realizing that, you know, we can't just arbitrarily close the articles where the, you know, where there is a linked issue.

I know that in some states, for instance, Massachusetts, when you file for incorporation of a nonprofit you have to file both the articles and the bylaws at the same time. That doesn't mean that bylaws can't later be amended of course, and sometimes they may be rather formulaic bylaws that are filed with the articles, but at least, you know, that's a – one state that recognizes the linkage that seeing the articles without the bylaws is really only half a loaf or half of the question being answered.

Lise Fuhr: Greg? Greg? This is Lise.

Greg Shatan: Yes.

Lise Fuhr: Sorry to jump in.

Greg Shatan: Yes, Lise, go ahead.

((Crosstalk))

Lise Fuhr: I hear what Sharon is – yes, no thank you. I hear what Sharon is saying and I would really like to discuss this with Jonathan and we will get back on how to proceed on this timing issue of the articles and the bylaws.

Greg Shatan: Thanks.

Lise Fuhr: But I would look into it with Jonathan.

Greg Shatan: Yes, it's important comment. And speaking of Jonathan, he emailed in the meantime, "I am unavoidably delayed, sincere apologies. Jonathan." Which makes me believe that he will not be on this call before it ends. And we're actually at the end of our items so I think we – into AOB. So is there any other other business that anybody would like to raise at this point?

Hearing no other business, as long as we have our action items in order from this call, I think we can call this...

((Crosstalk))

Lise Fuhr: No, sorry to interrupt again. Yes...

((Crosstalk))

Greg Shatan: Please go ahead.

Lise Fuhr: Okay. It's just I don't know if we should arrange another Client Committee call or make a Doodle because it seems that things are moving really fast now. So I'm just thinking we might need another call next week. So...

Greg Shatan: We have one set already for...

Lise Fuhr: Okay.

Greg Shatan: ...half an hour earlier than today at this time.

Lise Fuhr: Okay good.

Greg Shatan: So...

Lise Fuhr: If we have that I'm all good.

Greg Shatan: ...1400. Yes, we're set for 1400 on the – July 22. And it's a good reminder that before adjourning one call one should either announce the next call if it is scheduled or talk about scheduling it so we've now done both of those things. So if there's any further business I'll pause and then start speaking and then be interrupted. Okay that was the pause. If there's no other business I will call this meeting adjourned.

Lise Fuhr: Thanks.

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