

**ICANN**

**Moderator: Brenda Brewer  
July 28, 2016  
9:00 am CT**

Coordinator: The recordings have started.

Yuko Green: Thank you. Hi, everybody. This is CWG IANA Meeting Number 85. Today's 28 July, 2016 at 14 UTC. I will now hand it off to the chairs.

Jonathan Robinson: Thanks, Yuko. Hi, everyone. It's Jonathan Robinson. I'll be leading the call today. And we've set out a call schedule together, Lise and myself, and we'll be communicating that with you later if you aren't already familiar with elements of it. But essentially our plan is to meet over the next four or five weeks on a Thursday at different times and we'll communicate that schedule to you, and Lise and I will, and so far as our own schedules permit, try to alternate in chairing the different meetings.

So I would be not surprised if you were feeling a little overwhelmed by the recent deluge of information. I've certainly found there's quite a high volume. So just make a couple of remarks on that. Obviously as I've said before, ICANN staff are running the implementation and our job is ensure that the work they do is consistent with our proposal in a manner not dissimilar to an

implementation review team. And to rely on the professional help of Sidley where necessary.

Sidley is also, as of the last past couple of weeks or so, working directly with ICANN Legal in order to not have to channel everything through the Client Committee and/or the CWG and to, in that sense, make things more efficient.

But rest assured, that doesn't mean that we are not being communicated with. Well one concern, it's not a concern but it's a sort of fact of the matter is that quite a lot of the communication is coming through the Client Committee in the first instance and so that list has become much more active. And then we are passing that back up to the CWG list as appropriate and wherever possible. But that's been a striking point especially over the last week or possible two.

What we need to achieve in this meeting, I think, is three things primarily. There will be some other points but the three primary things we need to achieve is, if at all possible, confirm our public comment submission regarding the PTI articles. Sidley have prepared a letter, and I'll come back to that in a moment, but that would be good to do especially since the PTI articles public comment period closes on 31 of July and that is on the critical path and one of the most currently time critical issues.

I think we also expect to hear from Josh from Sidley on the naming functions agreement. And where we are with that. And I think we'll hear together probably from Josh and Greg where we are with the work on the IANA IPR. And I think if we can become up to speed with and be clear on – as clear as possible on our positions on those three items we will walk away having had a very productive call. Let's see what we can do.

In the meantime, we have a – I'm just checking through our outstanding actions which aren't, I apologize, up in front of you but I've got them in front of me. I've got a note of them. And I think for the most part we're on top of those. I'm not concerned that there's any significantly outstanding there. So I won't bore you by going through this and trust me that we are reviewing those on a regular basis and we'll capture a new set of actions at this meeting and to the extent that they are - the previous ones are not dealt with we won't let them slip.

So I think at that point I'll just pause for a moment and see if anyone's got any questions or issues on that introductory set of remarks following which I'll move us on to hear from ICANN staff on the implementation updates. Okay, seeing no hands raised I'll direct us right on then to the implementation update, which I expect will be led by Trang from ICANN staff. So please go ahead, Trang.

Trang Nguyen: Thank you, Jonathan. Can you hear me okay?

Jonathan Robinson: Yes, Trang. Nice and clearly, thank you.

Trang Nguyen: Terrific. Thank you. And while Brenda is loading the slides today we'll be giving you an update of progress on the various implementation projects and then I prepared one slide for you on the various PTI documents that are currently in play and summarize, as I understand it, the current status of all of those items. So we can do a quick review of that and that will be, hopefully a nice setup for you to lead into the Agenda Item Number 3.

Brenda, do we – if we can move to the next slide please? Next slide. Next slide. Next slide, please. And thank you very much. As you can see on your slide, the parallel testing has been completed and the RZMA, the finalized

RZMA with VeriSign has been posted as well for a public review period that would end at the end of this month.

With regards to the names SLEs, we've held one call with the design team A and a call was also opened to those members of the CWG that would like to attend. And the recording of that call has been circulated. On that call we shared with the design team A as well as the CWG all of the data that we had collected over the last three and a half months or so on the new measurements that the CWG had defined. And then based on the data collected, a set of proposed thresholds.

And it was a very productive call. We had received some good feedback and are working on reviewing those feedback and updating the thresholds as appropriate. What we've circulated as a follow up to the design team A and CWG feedback yesterday was a table that basically shows the proposed targets that were set by certain members of the CWG back in the Istanbul meeting about a little over a year ago. And then the thresholds – the data – what the data that we have collected show, and then also what our proposed thresholds were and hopefully that will be a good side by side comparison for the work moving forward to get the thresholds set for these metrics.

I'd like to note that in the first report that we had circulated to the design team A as well as the CWG, I believe there were a couple of measurements where there was zero occurrence that had happened during the data collection period. So there wasn't anything that any data basically to base a proposal on.

So we initially left those as blank on the report that we had circulated to the DTA and the CWG and the feedback that we had received on the call was that to try to use as much as possible historical data to set thresholds for those

measurements if there was zero occurrence of those during the data collection period.

And for one of them we do have historical data that we could use but for the other there is no historical data to pull from. We agreed on, with the DTA and the CWG, that attended the call was that staff would go back and try to propose some reasonable thresholds for those metrics. So that's the work that's going on right now, quite a bit of work there. And a lot of involvement and a lot of good feedback.

So we hope to continue the dialogue and drive this to conclusion and agree on – and achieve an agreed upon set of thresholds with DTA as well as with the CWG over the next couple of weeks.

I'll take a pause there and see there's any questions before moving on.

Jonathan Robinson: Thanks, Trang. Any questions or points from anyone? Paul. Paul Kane, go ahead.

Paul Kane: So, can I just echo the good work that ICANN have done to date or IANA staff have done to date. The call we had on the 21st was not an SLE call, it was more ICANN IANA (unintelligible) of the data they had collected. We are yet to have a DTA call. And I will speak to Trang after this call as to timings and more probably operate a Doodle poll.

They sent out an email to all members of the CWG, 177 folk, and 15 people attended. But the main thing I'm very pleased was that all of the DTA members did attend and the call lasted an hour. So I think it's moving in the right direction.

One of the things we were also shown, as part of the information sharing that they had gathered, was the dashboard. You may remember DTA wanted to have a pictorial representation of performance. And I think the dashboard will be very well received by the community once it is launched. It's currently in beta. We don't have private viewings, we've only seen it on the one occasion, but it seems to certainly inform the community better.

I see Jaap in the chat said, how many DTA members? There are three members from the gTLD community and three members from the ccTLD community. And IANA staff. That's the DTA side. But I do hope we can have a DTA call in the near term.

The big issue is obviously for a service level agreement all aspects need to have a threshold; nothing should be left blank. And I think the recommendation will be we use best efforts to come up with an appropriate threshold and then leave it for the Customer Standing Committee, CSC, to refine it once additional information is there. But it's very important that all aspects of the service level agreement are populated.

And there was something that landed in the mailbox this morning that, to be honest, I haven't looked at in detail. But in some instances, the performance proposed by ICANN is better than the performance expected or anticipated by the DTA at the time of the Istanbul meeting.

So it's very much a work in progress but I sincerely hope we will have a DTA call in the near term. Thanks.

Jonathan Robinson: Thanks, Paul. So, can I ask would you like help to set up that DTA call? And also in the same time, is there a plan to have another meeting between – of the sort that you just had between DTA and any other interested parties and

ICANN staff? So two questions really, do you want help to set up a DTA call? And if so, within what sort of timeframe? And second, are you expecting another follow up call. And this may be a question for Trang of the type that you've just had.

Paul Kane: So I would welcome a DTA call being facilitated by ICANN. If they ran a Doodle poll we could get the members present. I think it is useful to have other members of the CWG participate but at the moment we have to do a little bit of heavy lifting to get this document knocked into shape, and then I think having a wider audience would be sensible again because at the moment we don't – we don't know what we don't know because we've only just recently received the information.

Jonathan Robinson: All right, Paul, why don't you go ahead...

Paul Kane: Chuck joined the call and was very valuable.

Jonathan Robinson: Okay sorry, finish what you were going to say? I thought you'd finished.

Paul Kane: Chuck joined the call and his comments were exceptionally valuable. And it's comments like that which are useful, but we just need to get the SLE populated so then we can work on the refinements.

Jonathan Robinson: All right. So certainly we'll capture an action that you want to set up a DTA call as soon as possible. Was I correct in understanding that you would like to invite others such as Chuck, who are interested and who may be able to contribute to that DTA call?

Paul Kane: May I make a suggestion that initially we just focus on DTA members, but then sort of we do one DTA members and then open it up once we have the

document in – complete. It's just a little premature at the moment. But I'm happy for more people to be involved but the more people you have sometimes the background, the historical information, needs to be known. And so we spend a lot of time educating over the one-hour call. But I think it'd be best to do DTA first, populate it and then have CWG later.

Jonathan Robinson: Okay. So I just want to clarify what your request was. Go ahead and get on with the DTA call and then coming out of that, I think we should set up – it feels to me, Trang, come back on this if you would to, Trang, but is it premature to set up the follow on call the call like you just had? Or would you like to wait until DTA have met? Trang, go ahead with that one.

Trang Nguyen: Hi, Jonathan. It seems to me that it would probably be best if the DTA call happens and then we have a follow up call with the larger group. I don't know if Paul concurs but I think that's probably the right order of things.

Jonathan Robinson: No, correct, that's understood, it's just the question is really would you like to set that up – would you like an action to set that up right away or would you prefer to let the DTA call run its course and then decide?

Trang Nguyen: No, we can go ahead and take an action item now to set up both calls.

Jonathan Robinson: Great. Let's do that then. All right, Trang, did you have anything more you wanted to add as part of this implementation update?

Trang Nguyen: Just a – at least one more item (unintelligible) Jonathan, so if we can move on to the next slide? And I'm conscious of time so I will try to move through this quickly.



Thank you very much, Brenda. I'm going to skip over the IANA IPR because I know that's one of the agenda items and I believe Greg is going to be providing a more detailed update on that. A quick update to the group on RZERC. As you know, we had closed the public comment period and the staff report was actually due on Sunday, this past Sunday. We are unable to, at this point, publish the staff report on the RZERC because as I mentioned on the last call, we are in discussion with the RSAC to ensure that the way that we are proposing to address their concern that they raised during the public comment window, is satisfactory so we are continuing to have discussions with the RSAC and are waiting to hear back from them on our proposed language.

So as soon as we have that closed we will go ahead and publish the staff report as well as the revised charter document. So that's the quick update on RZERC. I'll pause and see if there's any questions there?

Okay, and then so all of the appointments have been forwarded onto the ccNSO and GNSO Council for them to review and do a final approval of the entire CSC membership slate. So we expect that to happen on or around August 10 so we are on track to have that completed before August 12 when we have to submit our NTIA report.

And escalation processes, I'll just mention it really quickly as – that involves updating IANA process documentations based on the clarification that the IOTF had given us and is about fairly well into being done. It just need a final internal review and then it should be completed. So we don't anticipate any issues with completing that by the time we have to submit our implementation report to NTIA as well.

And I think, Jonathan, that (unintelligible) I do have one slide on PTI that hopefully will set you up for Agenda Item Number 3.

Jonathan Robinson: Great. Thank you, Trang. We'll do that then, move on to...

((Crosstalk))

Trang Nguyen: Alan, did you have a question on one of the items on that slide before we move on to PTI?

Alan Greenberg: Yes, thank you. Just a very quick one. On the CSC what you said implies to me, but I'd like confirmation, that with the exception of the ASO, who said they won't participate, we have names from all of the groups that requirement or the option to participate, is that correct?

Trang Nguyen: Yes, that's correct, Alan.

Alan Greenberg: Thank you very much.

Jonathan Robinson: Okay great. Thank you, Trang. Let's move on to Section 3 of the agenda where we deal with the key issues where we've been receiving comments from Sidley. And these are really in and around the documentation and incorporation and contractual positions associated with PTI.

So the first one we need to deal with, and I hope we're in pretty good shape here, is the PTI articles of association. And as you will know, or perhaps recall, there were two outstanding issues, possibly two and a half depending on how fine your memory is of this. Certainly Issue 1 was the purpose of PTI. And Sidley committed to go back and discuss this with ICANN Legal based

on conversations that had taken place within the CWG. And a new phrasing was prepared and proposed to this group.

There were various comments in support of it, and to the best of my memory, no comments against it. So to that extent, we may be in a position to simply accept that purpose as it now stands. And the way in which we're going to deal with this is we're going to send a letter into the public comment prior to 31st of July when it closes. So ideally I'd like to agree this communication from Sidley, which you have the 27th of July draft in front of you on the screen and will have received it by email, and this includes the new purpose.

You have scrolling rights and magnification rights, you know, control of the document in front of you. So I would encourage you to go down to the top of Page 2 where the purpose is articulated. And I note, Matthew, your agreement to that language in the chat is in addition to those that have agreed on email so that's helpful to have.

So I might as well read it for good form. "The specific purpose of the corporation is to operate exclusively to carry out the purposes of the Internet Corporation for Assigned Names and Numbers, a California public nonprofit public benefit corporation, by performing the IANA function on behalf of ICANN." And that is – that's the agreed purpose language between ICANN Legal and Sidley. And which has not received any objections from our group.

So condition on there being no further comments or objections, that will stay in this letter. And well our submission on the public comment and will carry over also into the PTI bylaws. And so that the two become consistent or mutually consistent.

And then we had another change, which we had agreed, in fact, on our previous call and so in that sense by seeing it in the submission on the public comment this becomes a second reading of that. And this is to do with our ability to alter the articles in future. And what it says here is these articles may only be adopted, amended or appealed in whole or in part with the approval of at least two ICANN directors and to Nominating Committee directors, both of these refer to directors of PTI, ICANN appointed and Nominating Committee appointed or appointed is the wrong word, it's best – ICANN – they are all ICANN appointed but as defined the corporation's bylaws we refer to them as ICANN directors and Nominating Committee directors.

In addition, not only do they have to be approved by at least two of each of the classes or types of directors, they have to be approved also by the member. So there's a threshold to modifying the articles and that's what the amendment that's being proposed by the CWG in its submission. So we have two key components of our submission.

And then – so that's it. That's our proposed submission. I think for good order there's a third point. And please come in if you have any questions or comments because what I'd like to do is distill this and agree that this is our submission. I'll pause there and hear a response or comment from Avri. Go ahead, Avri.

Avri Doria: Thank you. Avri speaking. I guess one thing that I've been having a conversation with someone in the background on and we're trying to understand is the case of there being either IFR or SCWG recommendations for some change in PTI.

Now, if that comes to – now that has a whole process for going through it, getting Board approval, and if it doesn't get Board approval, having the whole EC escalation and all of that. And so that seems to be well contained.

But by having this high threshold that even the PTI Board has to agree with those recommendations when – I'm not quite I see any way for the community that came up with these recommendations to have anything to say about them. Saying, no, and therefore blocking that. I'm sort of concerned that some of the degree of control that the community needs to have may be slightly too blocked, and that's a concern I have and perhaps someone can explain why I'm wrong. Thanks.

Jonathan Robinson: I won't attempt to explain whether you're right or wrong. I suppose all I can – I can see your point, Avri, you've got these recommendations coming out of this IFR type process and then the PTI Board is not bound to do so and can affect – it's a high threshold for change. I don't know if anyone else has – can offer any sort of informed comment or input on that. That's a – it's quite a subtle point going on. So I'm just going to repeat so that I – to make sure I understand it.

Essentially you've got a recommendation from an IFR or SCWG type process and it's gone through all of the due process and it now has to be implemented. The concern is that it takes a very high threshold for the PTI to implement it and therefore it could be blocked at the PTI Board level. Which of course is attractive, in one sense in that articles can't be readily modified. But it creates an impediment to a condition where there's a strong community desire for them to be modified. Have I captured that accurately, Avri?

Avri Doria: Sorry, finding my unmute button. This is Avri again. Essentially yes. The one additional component is that there's no real recourse, in other words, with the

ICANN Board making a decision that's in accordance with those recommendations, there's a whole appeals mechanism and EC process and Board spilling and all that stuff as a backup, as a mechanism whereas with the PTI I'm really not sure that there's anything that goes beyond their answer. So that would be the only piece I would add to what you said. Thanks.

Jonathan Robinson: But I suppose the alternative. Thanks, Avri. I suppose the alternative is that – is a weakening of the ability – of the requirement on the PTI Board to change the articles, which has other knock-on implications. I think there's not – I'm not seeing any hands up here and I can't offer much more here. So I think – oh I see a couple of hands come up now. So let's hear from Alan first and then go to Josh.

Alan Greenberg: Isn't this one of the cases where we have leverage through the ICANN Board? ICANN Board can unilaterally change the PTI Board and we have some level of coercion or control or influence over the ICANN Board. So I thought that's the escape hatch in all of these processes?

Jonathan Robinson: That's a good point. Intransience in the PTI Board could ultimately be overruled by the member. Typically, one wouldn't expect that to happen because the Board would have been appointed at least in part according to the community's wishes. But if the Board was going against the community's wishes one could see how the ICANN Board the might exercise that form of power with reason.

Let's go to Josh and then Alan come back in if you need to.

Alan Greenberg: No, I'm fine.

Josh Hofheimer: Yes, I was going to – so I was going to say what Alan captured. I was going to add that. But so I think that is true and to add to it, the articles themselves are relatively narrow or at least, you know, at a very high level. And actual amendments to the articles hopefully will not be all that, you know, likely or necessary once established.

And if the Board is, you know, intransigent about doing it then you can affect replacement of the Board the way that Alan described. And I also think that some of the things that would come out of an IFR review or that whole process, some of those changes should be capable of being implemented without necessarily requiring a change in the articles of incorporation given their sort of, you know, 30,000 foot view of things.

And you'd have the same issue there in that if they - if there's (transients on) implementing these community, you know, mandated or require changes, then there could be a governance change of the board to bring them about.

Jonathan Robinson: Thanks. I see a checkmark from (Cheryl) recognizing that in the chat and I must say, I thought that was a good penetrating question but to my mind some good answers, as well, and thanks, Alan for that, and Josh.

There is an additional question that was raised previously, I think I'm in the CWG and then got a small exchange on within the client committee, I believe, and that was in and around the jurisdiction of - and the ability to change the jurisdiction of PTI.

Technically it is possible, but I think the question, Matthew, maybe could remind us of the question that I think the question was, your concern was that technically it was possible for the PTI board, I think, to modify the jurisdiction of PTI.

Matthew Shears: Yes, Jonathan, can you hear me?

Jonathan Robinson: Yes, Matthew, hear you okay.

Matthew Shears: I think that's absolutely right. It occurred to me at some point in time, and I think it we said earlier, was that the issue of the location of PTI is that the PTI board could change.

We have discussed a lot the various powers of the empowered community, vis-à-vis, ICANN, in terms of the fundamental and standard bylaws and the issue of jurisdiction and other things.

But we've never really thought about whether or not the empowered community should have some say over possible jurisdiction or location change for a PTI.

And that was a question that was raised and I think that it does - I do find it surprising that we - that the empower community would have a say over something such as, for example, whether or not it's (a) nonprofit but would have a say over where the IANA functions might be - the principal office for the IANA functions or for PTI implementing IANA functions would be located. And that was the issue that was raised. I hope that helps. Thanks.

Jonathan Robinson: It does, Matthew, and just for my part, just to be clear, I referred to jurisdiction and that was technically correct, it was location. In the concern is the location is specified, and in principle, with a four-fifths majority it would be possible to change that principal office location by the PCI board.



Now I guess, in some ways, this is linked to the previous, in a sense that to that take place, there are safeguards in the form of the ICANN board in its ability to put in place the board members and so on.

But, yes, thank you, Rebecca for clarifying that in the chat. I misspoke when I referred to the jurisdiction. It's the principal office that Matthew was questioning. It would be a bylaw amendment passed by the PTI directive in that case. Matthew, did you raise her hand again?

Matthew Shears: Yes, if I may. Jonathan, I just raise this as a point of (concern). You know, obviously I think that's - and you mentioned, the thresholds a relatively high. It just seems to be somewhat of an anomaly that the function that the empowered community have taken such an interest in now are effectively responsible for the multi-stakeholder community, would not have some more direct say over the location of the PTI. Thanks.

Jonathan Robinson: Okay, well, thanks for raising that and I think subject to any other comments, I would suggest that this is - yes, my concern with this - if they - Rebecca says it could give the EC - the empowered community and approver right by (unintelligible) article.

But, if so, we need to add it to the comment (matter). So that's the issue. This is - and not to in any way seem to be disingenuous but this is sort of the 11th point, and I know Matthew raised it a while ago.

It's really - my concern is we have to get this letter writing we have to decide whether or not this is a sufficient concern that we wanted to go into this comment letter because this comment letter is drafted as is and, to that extent, to the extent that we don't object to it now, it's ready to go.

And the other question is, is did we ask this - and (Acrim) asked in the chat - and I guess this would be my thought as well to some extent, and it's a good counterpoint, is the location really that much of a concern?

And, in fact, would we not want to be readily located in whatever the most appropriate point is? You know, if, for good reason, it was decided that it would be located elsewhere, are we that concerned about the location?

I supposedly think of my - you know, to the extent that it's not separated, is location that much of an issue? And the likelihood is that ICANN is - to the extent that it remains - and not separated from ICANN, in other words an ICANN affiliate, ICANN is going to be motivated to keep the PTI either co-located or relatively nearby.

And I guess to the extent that it's a decision to move it elsewhere, for good operational reasons, why wouldn't we accept that? And if became a problem operationally, we would have the mechanisms under the review processes to challenge that.

So I just wonder whether we're making too much of this, in fact, and should leave that freedom of location with (unintelligible) to (the five) threshold as it stands.

We may even be sort of over empowering in the community with - and sort of tying two hands behind ICANN's back on location when it may not be necessary.

It would be great to get any other guidance of anyone feels strongly either way. If you feel that is sufficient - that having the - four-fifths of the PTI

board is a sufficient protection on location, and actually it's not such a big deal, let me know.

Or if you feel strongly that this is a serious concern and does need to be a modification in the articles or at least a point made in this public comment letter, please - I would appreciate your guidance. Greg, come in.

Greg Shatan: Thanks. Greg Shatan for the record. And I'm not going to answer your question with an answer but maybe with a comment, at least as far as I understand it.

Even if the principal office were to be moved out of California, as a California corporation, it's still fully subject to California law into the - as a nonprofit subject to the oversight of the California attorney general no matter where its office tends to be.

It might complicate things somewhat if it domiciles itself, say, in Nevada. And that is also subject to the laws of Nevada since it's physically present there.

But, you know, given that it will tell a continuing nexus to California legally, I'm not as concerned as I otherwise would be unless there are reasons why that's insufficient and they should be concerned about that.

And I think that, you know, I'm certainly one who likes to pick legal (nits) where I see them but this (nit) may even be too small for me to pick especially in the grand scheme of all the things we want and need to get done in the likely oversight and interest that any such decision would have if it were to come before the board. Thanks.

Jonathan Robinson: Okay, well my - thanks, Greg. My thought is on this that it's a good spot my temptation is to stick with what we've got given the different arguments we've heard in a couple of the positions expressed in the chat.

I don't think it's actually cut and dry but it feels like this is unlikely to be the case, that it would be moved. There are some suggestions that we should trust ICANN and my view is that I guess ICANN - this isn't affiliate of ICANN.

ICANN is going to want to keep it close by and to the extent that ICANN is operating out of that location, it's very likely that it's affiliate will be co-located in the issue of location will become much more of an issue in the event of separation, but that's an entirely different question and issue.

So, Matthew, full respect to you for picking the point. My temptation is not to open this up at this point and to stick with the letter as is. Of course, none of that precludes anyone from making their own submission to the public comment if they feel strongly about this or any other issue.

But on behalf of the CWG, my temptation is to stick with the letter, more or less in the form that it is, and move us on to the other issues. Thank you for your understanding, Matthew, you expressed in the chat.

All right, let's keep things ticking over then and move on to the PTI governance documents and so subject to any other concerns being raised, which I don't anticipate, this draft of the letter that you've seen, just to be clear before we move on, will be the one that we will submit as our official comment.

I expect that we will submit that 24 hours from now so let me just make that the point, that the intention will be to submit that within approximately 24

hours from now and that will be the case and that'll be the chair submitting that with (Sidley)'s draft.

On the PTI governance document, then, we need to - I've got an echo from an open line. Thank you. On the - where are we with a document? I suppose with the PTI governance documents now, we've got the public comment closing on 7th of August, and remembering that these were motivated - the three documents are the conflict of interest policy, the board code of conduct in the expected standard behavior.

ICANN provided the first draft of these documents are motivations but driven by the - in essence, the NTIA review of the proposal and in part, the - both good practice in general and NTIA's points that, if that, it wasn't NTIA.

I think it was the GA they reviewed the documents. So what else can correct me there, but there was a recommendation for this kind of documentation. And then these were based on the existing ICANN board documents.

I can produced those. (Sidley) reviewed them and we're at a revised version at this point. I guess my question to (Sidley), and this probably goes to Rebecca, is there anything controversial in here?

I mean, my understanding is in many ways what needs to be done here is that these need to be - (Sidley) made some revisions are ICANN legal - are there any issues in there that are causing consternation or difficulty between the ICANN legal and (Sidley) or is there anything in particular that you would like to flag?

Because my sense is this is work in progress and I'm not sure that you need a whole lot from the CWG at this stage. But do come in and correct me if I'm wrong and in any event, provide your input. Thanks, Rebecca.

Rebecca Grapsas: Thanks, Jonathan. Just to clarify, we did receive some revised versions back from ICANN legal late on Tuesday. I've gone through them. I didn't see anything major there. I do know that (Sherri) wanted to take a pass through but I don't think that there's anything controversial there. So I think it will be relatively straightforward. Thank you.

Jonathan Robinson: Okay, thanks, Rebecca. So we will continue to communicate any developments that take place in these documents to the CWG but we don't anticipate that this should not be particularly controversial because they are relatively (standard) form documents that have been modified and updated to meet PTI requirements.

And (Sidley) has been assisting with those reviews. So then we move on to the PTI bylaws next. And in that case, I'm trying to remind myself which draft we're at.

I think we're out for public comment. We obviously need to synchronize the purpose and (Sidley) will work with us to draft a public comment. I wouldn't mind a little nudge as to where we are with that work and what, if any, outstanding issues, or if this is still, again, work in progress with ICANN legal.

Could you give me some assistance here? I don't think this is - I think this is open and work in progress but I'm not sure there's, from my recollection, there's anything we need to do right now, Rebecca.

Rebecca Grapsas: So when we circulated the comment letter for the - on the articles, we also circulated an updated comment letter on the bylaws. I'm not sure (Brenda) can load that into the Adobe room.

That essentially we - it follows the same format and it goes through each of the comments that we had discussed - (Cheryl) had discussed with the CWG to the last couple of calls, so the comment letter follows the same format.

Each of the edits we're suggesting is highlighted in the letter itself and then we've included the full set of the (marked) up bylaws in the exhibit. In terms of the open items, there are really only two things.

One is, in Annex C, and I know this will come up when Josh talks about the naming functions contract, and the other thing is the budget timing issue. I'm not sure if Chuck can comment on that, on the (DPTA) side.

But that's really all there is. Everything else is a straight transcription of what we would - we had discussed with (CRDG) except for one item which is in relation to the approval thresholds.

So what we did there was we basically conformed (Susan)'s section. I know - I don't see it on my screen. I'm not sure if others do - Section 511-3A, we had conformed...

((Crosstalk))

Rebecca Grapsas: Yes, okay. We had conformed to the approval right in relation to transactions where director has a material financial interest and that - we've conformed that to the conflicts of interest policy which ICANN legal has signed off on but you haven't seen those comments yet so it all kind of come together at the

end when you see our comments on the PTI governance documents. But that's the only comment that hasn't gone through the CWG yet and that's in Section 6 of that comment letter, if you have that in your emails. Thank you.

Jonathan Robinson: Thanks, Rebecca, we do and I think the way I'd like to leave this at this stage, subject to other questions and comments, and I see Chuck has got his hand up and I'll come to him in a moment, but is for members of the CWG to review this.

As you said, we'll come to the incorporation of the provisions of Annex C and in any agreement discussion in a moment. But in addition to that, is obviously the budget and other issues.

So I think the way to handle this is to give the group - you've given us a good overview there and to give the group an opportunity to read this. There has been a deluge of documents to the group and if anyone has any concerns or issues to then raise them.

We'll come back to this perspective submission in the public comment on the next call. But in the meantime, let me the for two Chuck and see what you have to say or ask, Chuck.

Chuck Gomes: Thanks, Jonathan and thanks, Rebecca. I don't have much to add other than what I said, I think, in our last call. If Xavier and his team, along with (Elise), have proposed a high level budget development and approval process that, in the opinion of design team (O) members meets the CWG requirements, what has to happen next - and my understanding is they are working on this - is the details of that process need to be written up and then reviewed by design team (O) and the full CWG.



I note that Xavier is on the call so I don't know if he wants to add anything but that's where we're at right now in my understanding.

Jonathan Robinson: Thanks, Chuck. Come in, Xavier.

Xavier Calvez: Thank you everyone. Can you hear me?

Jonathan Robinson: Yes, we hear you. It's a little loud, Xavier. It's distorting slightly so maybe just move slightly away from the microphone but otherwise we hear you well.

Xavier Calvez: Okay, thank you. Is it better now?

Jonathan Robinson: Yes.

Xavier Calvez: Okay, and just to add to what Chuck said that we are - we had reviewed with the (DTO) proposal. This proposal is now moved into external validation and also reviewed with the board finance committee who oversees with us the overall planning process for ICANN and this being a new element, we want to be able to ensure that the (BFC) has full visibility on it and its applications.

So this is an internal validation process and as it gets finalized, we will then resubmit it to the DTO for just a quick validation and then it will be offered to the CWG to review.

Woman: I can't hear anyone either.

Man: You might be on mute.

((Crosstalk))

Man: All right, thanks, (Kevin).

Man: Sounds like...

Woman: Jonathan?

Jonathan Robinson: Sorry, I get interrupted. Apologies everyone. I'm on the phone and I got interrupted on another line. Okay, so that - I think that will come back to that on the next call when we review that - this letter in more detail and others have had a chance to read through it.

So I think that's the way to handle that. And with that then I think we can move on to the mailing functions agreement which is the next key item under these different areas.

Now, looking at that, I think it will be useful, Josh, for you to give an overview of the latest revision to that and to talk us through that. And obviously in particular, any key issues you'd like to highlight including the incorporation of Annex C because as you know, that's been a thread that's been running through.

And, at one point, we're talking about whether or not that would - those provisions were incorporated within either the bylaws or the annex or the naming functions agreement.

In the final event, it's been decided that they will be incorporated there but it would be good to highlight how that's been done and any other key points is like to make. So let me hand it to you, Josh, and see where we go from there. Josh, no we don't hear you if you are speaking.

Josh Hofheimer: Apologies. Can you hear me now?

Jonathan Robinson: Yes, Josh.

Josh Hofheimer: Okay, so thank you. I was - thank you Jonathan. And, you know, as requested, we did review and provide comments to both the naming functions agreement and the services agreement headers for the benefit of CWG to consider and also for - to be reviewed with ICANN legal.

A large - a number of the comments are simply to provide some clarity and make the document a little bit more accessible, you know, such as building out the robust definitions section we did add.

With regard to Annex C, though, we do note also, and there was an exchange on this last night, you know, with Samantha - with Sam Eisner, that there are number of the principles and proposals from Annex C were either - you know, have either been, you know, woven into the governance document for PTI or were included here in the naming functions agreement.

There are some provisions that we expanded upon slightly because we believed that, you know, the Annex C comments provided some additional language or concept they needed to be included that wasn't fully captured in the naming functions agreement.

And there somewhere, you know, we were not entirely certain whether the language or the proposal that had come from (Sidley)'s text a few months ago and recommendations of how to implement the principles of Annex C.

Some of the - if some of those proposals were not adopted, you know, the reasoning behind those and - so we've added some of those in with some requests for clarification a request for confirmation of their applicability.

Obviously where things were, you know, at one point in the original Annex S term sheet which was more of a placeholder but have been superseded by the continued work in progress of, you know, CWG and ICANN.

And those (concepts) were superseded. We can include those. So I don't have anything in particular at this stage that really jumps out at me as something that necessitates a discussion at the CWG level.

A fair amount of this right now is kind of working through the kind of legal implementation of the views of the community and with ICANN together to make sure that it's captured effectively.

I guess my real question is, you know, one of process for the community. I know that ICANN had requested comments by tomorrow, and from our view, this is, you know, ready to go to ICANN legal.

But, Jonathan, what are the intended next steps here? Is this going to be published to a larger group or is this something that we should, as we handled - as we did with the governance documents that perhaps ICANN legal and (Sidley) should have an exchange or two directly on some of these to see if we can do so down to a discrete set of questions that need to come back to CWG.

Jonathan Robinson: Josh, I think it's the latter in my view and I'm sure someone will come in and correct me if they see differently. This is the group that you have in front of you. Now, this is the CWG and the recordings are available to anyone who wants to contribute.

So I think it's exactly where we are, is that there are now - there is the opportunity for (Sidley) to use best efforts to iterate this down and distill it down to anywhere where you believe there are substantial or significant points that need to be brought back to the CWG.

And if you feel that it satisfactorily - to the extent that it does satisfactorily represent the proposal and the attention here in the bylaws are adequate in doing that, then sorting that out with ICANN legal directly, I think is exactly what we asked you to do.

So I think it's very much that latter point. But I would ask of anyone has any questions or issues around this, and if not I think we leave you to do that iterative work to get these as close to final as possible.

And, you know, it's not a given that the CWG will need to submit a public comment. If all the issues are satisfactorily resolved in advance of the public comment, the CWG may not need to submit anything on the public comment, that it's really just (sort of) a mechanic we're working to where, in the event that they are not - that the timeline dictates that the document needs to go out for public comment and the CWG remains not fully satisfied, that's when we take advantage of the public comment.

Man: Okay, (unintelligible) question on...

Jonathan Robinson: Sorry, Josh, you respond and then we'll let Paul come in. Go ahead, Josh.

Josh Hofheimer: Yes, I - just question. I don't have (Tran)'s excellent timeline in front of me. What is the plan for - perhaps (Tran) or somebody from ICANN legal can answer. What's the plan for when this document will be open, that we put out

for public comment? When will that open and close, that window, and currently what is that anticipation?

Jonathan Robinson: I think I misspoke, Josh. Actually, I think it's already out for public comment. I'm juggling one too many balls. It is already out for public comment and the public comments closes on the 11th of August.

So our deadline to submit anything that remains outstanding or the key issues that come out of this discussion is the 11th of August, so we wind up, and all likelihood, doing a similar thing that we've done with the articles.

Please - Trang, could you just - I mean, I see you have made the point that the 7th of August is the target date to open the public comments. I've got a note telling me the 7th of August is a public comment (unintelligible). That's what my notes tell me. If - can you please, ICANN staff, just confirm the public comment period for PTI bylaws?

Man: You mean for the naming functions agreement.

Jonathan Robinson: Sorry, naming functions agreement. Sorry.

Trang Nguyen: Jonathan, this is Trang. Can you hear me?

Jonathan Robinson: Yes, Trang.

Trang Nguyen: Oh, terrific. Thank you. Yes, confirmed that the - we are hoping to start public comment on the naming function agreement on August 7th and August 7th is also the date that the public comment window for the PTI governance document closes.

But yes, the - so currently what the CWG and what (Sidley) is reviewing is the first draft of the naming function agreement and we hope to get some feedback on the first draft before we turn around another draft that would be published for public comment. And, of course, the CWG could continue to submit additional comments during the public comment period if needed.

Jonathan Robinson: Yes, thanks, Trang, so my original point was correct. It is possible that we settle this - try to - it going to public comment and from the CWG's point of view, at least, it may be that we do not need to submit anything in the public comment. Paul, you go ahead next - Paul Kane.

Paul Kane: So very briefly, concerning Annex C - someone has got their microphone on. I would like to understand or if you wouldn't mind Josh at a later date just telling us precisely where the terms of Annex C have been encapsulated within either the naming agreement or the bylaws or wherever they are. Our job now I see is the community have agreed to CWG's proposal. We just need to make sure that it is correctly captured in the governance documents.

I did skim read and I apologize only overnight basically the documents before us. And some of the wording proposed by Sidley to address Annex C doesn't seem to be captured nor does the essence of the message that Sidley was trying to convey. So it would be very helpful just to reassure all members of the CWG if you could, you know, go through it and say yes it is captured in Item 7 of the naming agreement or Item 3 of the bylaws -- wherever it is captured.

And if I may have the microphone because I was advocating quite robustly that the bylaws were a possible vehicle. And I think that was echoed by Sidley that some aspects could be captured in the bylaws, some could be captured in the naming agreement and some could be captured in both. And I want to

make clear that is not - I do not hold this view ICANN from a Western culture and it is not with the Western culture that subsequent agreements outside of bylaws are the key documents for how our company is governed.

But for our colleagues in other parts of the world particularly Asia it is common practice that the bylaws are quite prescriptive in the activities a company can and should undertake to the extent that supplementary agreements are significantly left standing. And my argument was and I believe it to have been accepted at the time -- this is months ago -- that the bylaws are the appropriate home for certain descriptive tasks limiting that they would be within the bylaws because that is as ICANN a global body that would accommodate our colleagues who do not share the Western legal approach.

So personally I am very comfortable with the documents that have been put forward but I do think we have a duty to serve a broader audience and to make sure the bylaws do appropriately address and are available to our colleagues from other parts of the world with different cultures. Thank you.

Jonathan Robinson: Thanks Paul. I won't address that second point that you made but just I am aware I believe that the most recent version which is the one you see in front of you now of this document only came out at sort of 5:00 am UK time this morning and only came to the CWG some hours later. So just to be aware that you may not have been looking at the most recent version which took steps to carefully review the incorporation of the issue or the - to absorb the issues highlighted in Annex C. Alan go ahead.

Alan Greenberg: Thank you very much. I'm not quite sure if this falls under this item or AOB. I'm certainly not a trademark expert nor have I paid a lot of attention to what has been going on. And as many of you know I early on advocated that this whole IPR and trademark issue should be something handled in a lot lower



key than it ended up being. And with the request of the Numbers community we didn't have much choice but to make it more formal than some of us would have liked.

I'm very concerned with the emails I've seen this morning, my morning, from both the protocols and the Numbers community or at least people from each of those communities that they are - that they think there are some issues which might stall this whole process. So although the CWG technically may only be interested in whether these documents meet our aims we have an overall desire to see this transition happen.

And timing is really tight at this point and I'd like to get some assurance that it's not just we that are happy but all of the communities. And I guess there are four, the three IANA communities and the IETF trust that has to be willing to go ahead with this or the whole thing falls apart. And I'm quite worried that we're hearing mumblings and simply being assured that don't worry it will be addressed or it's not time yet and I have a great sense of unrest because of it.

Jonathan Robinson: Okay Alan that's some interesting points. They relate to the IANA IPR which we'll come to shortly after this. And we'd be just dealing with some naming functions agreement now and...

((Crosstalk))

Alan Greenberg: Oh okay. I wasn't sure if this was the item or the sum total of what we were discussing.

Jonathan Robinson: It's a forthcoming item but any prospective or existing confusion is understandable. I mean the naming function event is - does not specifically

deal with the IANA IPR. And we will - it does not primarily deal with the IANA IPR and we will deal with that in a moment.

Alan Greenberg: I'm sorry. I jumped the gun then.

Jonathan Robinson: Okay so any other comments, questions or points in and around the naming functions agreement bearing in mind the process that Josh outlined a moment ago whereby this will be refined through further iterations with ICANN legal? And to the extent that Sidley has concerns or issues they'll be brought back to this group and that we may be able to resolve it all prior to the document going out for public comment. Greg your hand is up. Go ahead.

Greg Shatan: No actually I put my hand up to respond to Alan's remarks. And I'll wait till the appropriate point in the agenda though I hate to leave the thought of those remarks hanging over the conversation but I'll reserve my remarks. Thanks.

Jonathan Robinson: Thanks Greg. We'll get as soon as we can. All right seeing no other hands up I think we have a clear direction and that's captured in the most recent action by (Yuka) where Sidley will work directly with ICANN legal to further develop the naming function agreement. Now the services agreement -- and Josh correct me if I'm wrong here -- I mean I think there's really two points. One at this point we only have a headline table. I don't think we have a draft of the services agreement. And second the really the key issue is if there is any overlap between the naming functions agreement and the services agreement. Is there anything we need to say at this stage? I don't think so?

Josh Hofheimer: No Jonathan if I may. Sorry I didn't have my hand up. It's Josh.

Jonathan Robinson: Please go ahead. Go ahead.

Josh Hofheimer: Yes the services agreement is just headers at the moment. The only, you know, the only potentials or the concept of overlap occurs in the sense that the services agreement defines or is supposed to set out the resources the ICANN is going to make available to PTI so that PTI can actually perform the IANA naming functions that are required under the naming function agreement. So in a sense there, you know, it includes, you know, a physical assets, employee resources and the like. And the budget is kind of discussed in both places. But in the sense those, you know, successful provision of those services is in a way a precondition to PTI being able to do its duty so, you know, we have made that reference or suggested that that reference being made in the naming functions agreement so that it's clear that ICANN has this obligation to do that which it's, you know, covenanting to do in the services agreement.

Beyond that I think, you know, that's the way that the two are most connected. Beyond that for the most part the services agreement the way I, you know, sort of can extrapolate from the headers is that it is intended to, you know, be more of a description of kind of the back office administrative and technical resources that are going to be made available to PTI to do the work it needs to do. And assuming that there is a proper allocation of budgets to PTI to do that which does undergo, you know, empowered committee review I think that all of that should work, you know, fairly effectively.

Jonathan Robinson: All right.

Josh Hofheimer: If there's any substance...

((Crosstalk))

Josh Hofheimer: You know, if there's any substance in the services agreement that goes beyond that there really, you know, we feel should more be reflected in the naming

functions agreement then we can, you know, point that out when we actually see the written draft.

Jonathan Robinson: Okay thanks Josh. And just to put that in a sense in a way that just to make sure everyone's properly oriented on this the naming functions have been clearly the principle agreement between ICANN and the PTI. And what ICANN has argued for is that not all of the back office functions as it were so that administrative and back-office functions need to be incorporated into that primary agreement and therefore it makes sense to split into two agreements. There was some initial concern with what that meant in the absence of any definition of what would be in each agreement at this stage. We now have the draft of the naming functions agreement and we have a heads of terms on the services agreement so we're in much better shape to understand that. But until we see the draft of the services agreement we can't be fully satisfied and that's where we are in the process. So work in progress and we can come to that as and when we have the sort of reviews of the naming functions agreement and development of the services agreement. Paul go ahead.

Paul Kane: On this on the email list and it relates to the GAC principles I would like to just clarify and correct actually one thing I said which was there seems to be a frequent reference of the GAC principles. And I cited that the GAC principles had been superseded withdrawn archived. I think that refers to the GAC principles of 2000. The GAC principles of 2005 as I understand have been superseded replaced by the framework of interpretation policy that was approved by ICANN board. I need to be very careful that the GAC offers advice which is nonbinding. And we need to be very careful that the discretion of the board is not fettered by activities of external parties.

In the UK that would violate UK corporate law if external parties can damage the way a private company operates because I don't speak US law but I do

think certainly the version I saw one needs to be significantly or very careful on referring to policy that is not actual policy. It is mere advice and it is by its very nature non-binding. But so I just want to highlight that because it's a very important issue for the CC community. Thanks.

Jonathan Robinson: Okay so Paul if I am - do you need to - you put out an email as you said about this and I haven't - I read it briefly and I did see that. I think it would be good for you to check that and having - I see (Cheryl) makes the point in the chat that the framework of interpretation takes into account the GAC principles as opposed to supersede those.

I think it would be good to make sure that that point is clearly articulated if it hasn't already been done so. If you want to update it at all in the email so that in reviewing and developing the opinions and input on these documents Sidley is properly informed on that issue. So if - thank you Paul. And in fact we should even just capture that (Yuka) that Paul Kane will commit to highlighting the position of the GAC principles and guidelines 2005 principles and guidelines and the framework of interpretation so that these can be properly understood or incorporated or not into the documents.

Checking the comments here. Okay so I'd encourage people to the extent that there is debate or discussion on this to make sure you're clear in looking at these documents. It sounds like there's both GAC colleagues and CC colleagues who need to have a look at this and make sure they are satisfied that these are either satisfactorily and accurately positioned in the documents that are subject to our discussion at the moment, the naming functions agreement or not and keep a close eye on this. And we can come back to this if indeed the concerns remain.

Good, all right. I think that gives us the opportunity to move on to the IANA IPR which is both an important and urgent issue. And rather than try and attempt to introduce the issue myself I, you know, the I'll just be clear that who's been working on this there's some background that we've talked about before. There was an IANA IPR group that consisted of myself, (Lisa) and Greg. And we worked together with the other operational communities to develop a set of principles.

Those principles were then agreed on as a mechanism with which to develop the legal framework around holding of the IPR. And we've got into that working on that legal framework with the best efforts attempt to incorporate those. And one key issue was the suitability or not of the IETF trust and at least in its current form. And one of the key challenges was that we were told why the IETF trustees that the trust would be very difficult to modify.

So there's a very delicate balance there to walk between putting the IANA IPR into the trust in a form where it can't readily be modified and yet providing appropriate protections to the three different operational communities as that IPR is moved from one location to another. So let me hand over to Greg to bring you update - up to date because we had a meeting with the members of the different operational communities and the IETF trust primarily focused on the suitability of the IETF trust and the issues but also on the draft agreements for licensing and holding the IANA IPR. Greg and by the way and Sidley has been actively involved in that as well so I guess this will be something where Josh will want to come in as well. But Greg why don't you give us some up to date position as to where we are and then Josh if you feel there's items to add please let us know.

Greg Shatan: Thanks Jonathan. It's Greg Shatan for the record. And to follow on the introduction we did have a call at the top of the week with - which was the

primary purpose was to have CWG reps including Sidley on the - that were dealing with this talk with the IETF's trustees and also with their council to fill in our understanding and council's understanding of the way the IETF trust works and whether it, you know, they, you know, continue to raise any, you know, serious suitability questions. And that call was recorded and I believe that recording is or will be available. And to summarize I think at least in the result I would say what we heard was largely consistent with at least my understanding of how the trust works and that while it may not be suitable perfectly for the job it's - it can be made acceptable through the agreements.

And that's the approach that we've endorsed really since the beginning back, you know, in our own proposal and then again in the principal terms document that Jonathan referred to. So really the focus kind of shifts to making sure that the documents acceptably deal with the concerns that, you know, might be raised by the way that the IETF trust works. So that there were no bombshells in either direction really in the call regarding suitability. Some of the rest of the call was spent discussing the agreements but not much really and then the rest spent discussing timeline and the need to get to where we get to and leaving sufficient time for public comment on those documents to allow them to be put in place at the appropriate time which is just around the corner.

As you'll also have seen a first draft had been circulated by the IETF trust to the other communities including our own. And the - we have just sent back a reviewed and revised versions of both the license agreement and the community agreement. And I would say to, you know, to speak to Alan's concerns that, you know, this isn't iterative process not that we have a lot of time to iterate, nor do I expect that we'll need, you know, a lot of iterations. I think that the first draft in the view of those of us reviewing it did not capture all of the elements of the principal terms. In return I think that the initial view

of at least a couple of the other parties are that the - our draft may have overcompensated for that.

But the backing and (fourthing) of getting to an agreement typically includes just that sort of thing. And I think that overall I would say that the goodwill and good faith that has characterized all of the discussions in getting to this point between the communities will amply allow us to bring this project home in a timely fashion. I am hopeful that there are no - there's not going to be any need for any, you know, lines drawn in the sand but rather for some careful discussion and balancing of concerns and views and the like.

So, you know, this is kind of a corollary to the statement that those who like constitutions and sausages should not watch either of them being made. So I think that attacking goodwill in the chat perhaps is not the best way to engender goodwill. But in any case I'm hopeful that we have reservoirs of goodwill that we can move forward with if on. I don't think this is the time or the place to discuss the details at this point rather see that, you know, what we could work out amongst the communities in the forum where that's being worked out. But that's view - there's - so there's comments have been as noted sent back to the other groups.

There's also a third document that's in play which is the assignment agreement from assigning the IP, the - from ICANN to the IETF trust. We haven't circulated a comment on that. And in to a great part it may be helpful for ICANN to comment on that first because I think they have much more of a level of what you might call a dog in the hunt in that particular agreement than any of the other communities do. And I'd rather perhaps rather see what they have to say about that agreement before seeing if there is anything really to comment on in that document. So I don't know Josh if you want to. Well actually we have a queue.



Jonathan Robinson: Greg let's hear if Josh has anything to add first and then we can hear from either comments in the chat and or other questions. So let's hear from Josh if he has anything he'd like to add or supplement to what you said.

Josh Hofheimer: I do really have anything to add to that what Greg captured there. I think that, you know, we have a task, you know, getting to a place where we think where both, you know, sort of all of the participants in the IPR through process agree that the definitive agreements, you know, accurately reflect the intent of the principles or the, you know, the proposed principal terms. I think we're not quite there yet but hopefully we can get there soon.

The principal area difference -- somebody asked about critical differences -- is in that I see is in determining what sort of body or what group is empowered to make a finding that the use by ICANN and PTI of the intellectual property is in violation of the license or of the, you know, the principles under which it's been authorized to use that IP and whether that ultimately should be a decision that the IETF trust can make or it's something that really is a decision that the empowered community through the operational communities that are being created here those subgroups that that can make.

And given that the very because we're talking about trademark licenses and domain name licenses the very definition of what it means to be violating those license terms depends upon how effectively the services are being provided. And there I think CWG has always made it clear that there is a lengthy process for the community determining how those services are being provided. There's quite, you know, articulate and detailed process for reviewing those services by a PTI and if there's inadequacies in how those services are being provided for identifying them calling for a resolution or remediation, sorry. And there is a process and then if the community, you

know, or complainants are not satisfied with those services are being provided to further escalate that. And in a way that might ultimately lead to the transition of those services away from PTI.

And I think the CWG has always and the Names community has always expressed a concern which I thought we captured in the proposed principal terms that there shouldn't be or there shouldn't be a separate process by which a different group would determine that those services are adequate or inadequate. And by terminating the IP license you then divorce the IP itself, the IP from the services themselves and that didn't seem to be an appropriate process to do without the voice of the community and the involvement in the community.

Jonathan Robinson: Okay thanks Josh. That's stimulated a couple of - a few people to come up in the chat. And I think if you it's potentially created I don't know how clear this is is for others. It's pretty technical stuff in some ways. There's a - there was an agreement in principle to transfer the IPR to the IETF trust. And the issues were what legal or other impediments might it face. And it looks like we've got to a point where it can be done. This is in my personal interpretation subject to agreement on the community agreement. And the challenges that the balance between as I see it the way in which how that community agreement is structured or developed.

So I hope that's a hopeful simplistic understanding of where the current access or issue or principal issue is any way. And let me defer to others now got Chuck, Avri, and Andrew in the queue there so why don't I go to you Chuck? Go ahead.

Chuck Gomes: Thanks and thanks for all of the information on this. I have several questions. The first one is fairly straightforward one. Is the IANA IPR work being

completed a prerequisite for the transition to occur? Now the understanding that's been communicated to all of us is that the work likely will go right up to the transition happening the end of September. And what happens if it isn't done and the transition happens on time?

It seems to me that we need to - these are really critical questions. I mean there - is there an alternative plan if or what is the plan if it's not done and everything else for the transition is ready to go at the end of September?

Jonathan Robinson: Well Chuck that's an interesting question and I'll give you an initial answer and I will just hold the microphone open if anyone else wants to come in on this prior to going to the next person in queue.

ICANN at one point offered to commit to transfer the IPR within a window of time post-transition. We had a call if I recall correctly, a sort of overall transition management call at which that point was discussed.

And some in the community felt very strongly that that was not sufficient and that it was necessary to make that transfer occur ahead of or coincident with the transition.

So it has been a subject of some discussion. But right now the working assumption is that the transfer must take place prior to or coincident with the transition. It's part and parcel of the transition. But that hasn't necessarily always been the case. That's my understanding.

I'm just going to hold the mic open. I'm aware that Avri, Andrew and Greg are in the queue. If anyone has a particular point on that very specific question of Chuck's, please make yourself known. Right. Hearing no intervention...

Avri Doria: This is Avri. I was going to include that in what I was asking about.

Jonathan Robinson: Okay. But did you have a different or alternative answer to that...

Avri Doria: I also had...

((Crosstalk))

Avri Doria: No. I don't have an answer. I have a further question on it.

Jonathan Robinson: Okay. Well let's run with that for a moment then. Go ahead.

Avri Doria: Okay. So first of all, I'm trying to understand. It's very difficult when you're not in the room where everything's being discussed to truly understand it. And I did read the response to Sidley comments. It seems to have a whole lot of CWG stuff.

But on this I guess I don't understand what tipped the balance. (And I) - the IPR is probably owned, protected, managed at the moment. So is there some party to this whole quite partite transition that is saying no, we can't agree.

And as I don't understand what makes it critical that it be done before the transition? Is that a CWG position? Is that a position of the other operational communities? How has that changed from yes, it's a good to have before the transition but it's not a must before the transition to it being a must before the transition? Thanks.

Jonathan Robinson: Thanks Avri. I recall that it was Alissa who had made that point previously. And I see she's reiterated that in the chat. I didn't want to speak for her. But Alissa's made the point in the chat that from her point of view and it

was - it's in the proposal and it's not a nice to have. It is a prerequisite for the transition.

I would offer any alternative interpretation to that. That's where that - that's where that position was set out at, as I say, an overall transition management meeting. And it hasn't been challenged since.

Avri Doria: Is that in the ICG proposal to ICANN? I don't remember. I confess I did not play close attention to IPR until I was awakened to it in the last day - not day. So I'm kind of curious. Is it in the ICG proposal or is that something that came out of the implementation work?

Jonathan Robinson: Andrew confirms it's in the ICG proposal and Alissa makes reference to the fact that it is a requirement to the proposal in the chat. I haven't - I must confess I haven't gone back and checked whether it - take that on face value (unintelligible).

Avri Doria: I take your word for it. Yes. I take it their word for it. I mean obviously if they say it's there, it's there at least from my perspective. Okay. So that answers my question. If it's in there since the beginning as a requirement, then, you know, it's (seems) like it would be a requirement that that did get resolved. I'll back off on my other questions until everyone has spoken on this.

Jonathan Robinson: Thanks Avri. I'm not hearing any other comments on this. So why don't you come back to your - come to your second question so we...

Avri Doria: Okay.

Jonathan Robinson: ...can move through the queue.

Avri Doria: Right. The other one I basically had is in reading this document from Sidley, there's a lot of action items for the CWG. They don't look like they're always (op). They look like there's things to consider, you know, most anything beyond the two that were listed or two or three that were listed in the critical category.

Are these things that we're supposed to be talking about and working on now or are these also things that we've been told let the people in the room get it done and then we'll come out to you and say, you know, is this okay?

Or are these things that we really should be considering now given the stresses we're hearing of what's going on in the room and such and is it really something that we should be more involved in at this point? Thanks.

Jonathan Robinson: Good questions. I think Greg or Josh, would you like to comment on the number of open items that exist in that document? I should stress that there was a draft from the IETF. There's a review and a further draft from Sidley in response. And that's where we're at now.

In terms of Avri's question, Josh or Greg, what do you think about how much of that should be coming back to the CWG at this point for resolution or how much of it is better discussed or more effectively discussed in the smaller - in our IPR Group?

Greg Shatan: This is Greg. That's not the easiest question to answer. I suppose I would like to see what we can work out amongst the groups working on the agreement from all sides.

And at that point see what is left if anything to put before the CWG as an open issue for guidance recognizing that we need to move quickly but we have -

Andrew indicates the trust is meeting this afternoon. We have a call scheduled for Tuesday, all hands on that call. And that, you know, I think hopefully between that and work on the list and on the agreement we can bring that forward considerably.

To go back to what Josh stated, Josh I think was looking at one specific instance but as Andrew noted, not the only instance. And perhaps it helps to be a little more general in terms of where I think the tension between the two drafts is.

But first with regard to Josh's particular example, the idea that the IETF trust could terminate a license with the IANA functions operator that's performing satisfactorily for the community or communities and the - essentially force a community or communities to get rid of that IANA operator or somehow work without the IANA domain names and identify it as such, which while it's not impossible is highly burdensome to say the least.

Seems to be a tail wagging the dog sort of thing. So I think that was what the draft, you know, tried to avoid and recognize hopefully that the IP license agreement is really subsidiary to the arrangements that are being made between each of the communities and the IANA operator in this case currently ICANN and then down to PTI.

But, you know, could be something else in the future. More generally the tension I think relates to the level of oversight by the communities of the IETF trust activities relating to the IANA IPR. And the vehicle for that is, you know, fairly apparent from this is a community coordination group, which will have representatives of each of the three communities.

And I think the tension is to what extent does the community approve the actions of the IETF trust? To what extent does the IETF trust have the final say on things? What are the options if the final say is not suitable to one or all of the communities and the like?

So I think it's - they're really all along that line. So that I think is kind of the general question. And I'll stop there for the moment.

Jonathan Robinson: Thanks Greg. I think that captures well. That is the - that's - my reading of it was that that's where the axis of concern exists, that the community group might - there's a balance of power, if you like, between the community group and the IETF trust in and around the IANA IPR. And that's where the discussion needs to take place is what is a satisfactory balance of power, if you like. Andrew, you've been very patient. Please come in now.

Andrew Sullivan: Thank you. So I think that Greg did justice to the gap that I at least see between the CWG's comments and what I personally think ought to happen. I want to emphasize (a member) of the IETF trust by virtue of being IAB Chair and I am part of the group on the trust side that is doing the negotiation for this.

But the trust is not taking a position right now. We're going to meet later today so I'm speaking only for myself. It's super important that you all understand that.

I did send - back at the beginning of June I sent some comments to earlier versions of questions about this to the CWG list on the 3rd of June in fact. And as I pointed out then and as I will point out again now, we do have a basic disagreement I think about the way that the ultimate authority over these marks and these domain names have to be.



And there are two (practical) limitations here. The first one is really a lot. There is no way to make any adjustments to the trust agreement. And I believe that that extends to the way the trust operates in general.

And the reason for that is because of the ability of the IETF community to raise an appeal about such mechanisms but that would take us well past the time when this transition has to happen.

So we have a really serious practical barrier that is before us. And some of that practical barrier I am sorry to say has emerged because we have taken so long to get to the brass tacks of actually negotiating these agreements.

This is awfully late to be negotiating the detailed agreements rather than spending all of our time polishing a terms document. Nevertheless here we are.

So the other thing that I would say is that fundamentally the advice that I have received from my counsel about the trust obligations and my fiduciary responsibility to the trust, when then has a fiduciary responsibility to defend its mark is that we can't give away the authority to defend that.

And the CWG Council appears to be taking the position that we have that ability. And I got to be perfectly honest with you. I don't feel comfortable taking somebody else's lawyer's advice on what I can and can't do. And that's really where the - where what I think the large gap is.

My belief is that the initial drafts that we circulated appropriately gave the CCG the influence and power with respect to the trust to direct it and that the

trust was in fact communicating its intention and goal to implement community decision.

But for formal reasons the trustees need to have the ultimate and final authority over all of this. And my reading of the suggestions back has been that the - that that power has - is moving slightly.

Now I appreciate that it's very uncomfortable to be in a position where somebody who's going to hold the intellectual property on which you are depending basically is saying look, we've got this body for you. We're going to consult with you but you have to trust us.

But frankly we've got two weeks. You're going to have to trust us or this is going to fall apart. I want people to understand that we do not have time to set up a new body to do this.

Maybe we could have a year ago but we don't have time to do it now. As a practical matter we could do it this afternoon as a - or as a legal matter. But as a practical matter, we have to come to agreement about all of the balances of power and that's precisely the thing that we're going to have to argue about right here.

I don't think we have time to do this. That's really what I'm concerned about. And I hope that people will take the good will on that - Greg was mentioning earlier as read here.

The IETF trust agreed to do this because we thought it was helpful to the community. We are not gaining any advantage from this. This is a pain in our neck. It's not fun to be adding this responsibility to us. And the only reason we're doing it is because we ran out of time.

So it could be that we could revisit this later as a practical matter when, you know, all of the ducks have settled and we can find, you know, maybe a more agreeable mechanism over the long haul.

But in my opinion, we're going to have to - we're going to have to face that there's just a level of faith that people are going to have to take that the trust is not going to abuse its ability to do this. And if we can't do that, we're going to be hosed.

Jonathan Robinson: Thanks Andrew. I think between you and Greg, you've clearly articulated where the axis of concern is. I mean there's clearly two points here. One, is it a necessary condition of the transition that the IANA is - the IPR is transferred. Clearly there's some strong views about that and the working assuming that - is that it is.

Second, to the extent that it is transferred to the IETF trust, which as you and others have articulated is in many ways the only show in town. What additional conditions or protections or criteria are put in place in and around that transfer?

And that seems to be the key axis. And I only say that to make sure that we understand where the concerns are. But I think it's sensible to defer to the others in the queue at this stage. Greg, I would ask since you have had some good air time previously that you speak very briefly so we can accommodate others behind you.

Greg Shatan: Oh, just briefly to respond to Andrew. And I think he does capture things as well that - I think we have, you know, a difference of view - different view of exactly, you know, how the two drafts, you know, manage the tightrope walk

that we need to balance, you know, the various different concerns and requirements.

I think that the specific example that Andrew gave regarding, you know, power to enforce the trademark is one that is not impossible; actually probably fairly achievable even in the time we have to wordsmith the right balance and to find, you know, more fundamentally than wordsmithing the right balance.

I've done it before in somewhat similar circumstances; do it again. I think that, you know, we can get over this. (We) just need to, you know, kind of put a bit of a sprint on here toward the finish. But I don't think there's anything that's at all out of our grasp to get this done.

I think that with regard to counsel's advice, again, we just need to get people on the phone talking to each other, try to resolve these things so that we have agreement. The sooner the better. Thanks.

Jonathan Robinson: Okay. Well the soon - currently we have a plan to talk on Tuesday next week. It maybe that we need to bring that forward in some way. Let me go to Chuck next.

Chuck Gomes: Thanks all. And I certainly appreciate the extensive discussion. And thanks for the answer to my first question, which was is it - is this a prerequisite. And I heard yes it is a prerequisite.

Whereas the discussion's been very helpful, it doesn't give me any confidence that we're going to get this done in time to reach the end of September, 1st of October deadline.

So that brings me to my - another key question I ask. What do we do if that doesn't happen? I haven't heard anything in response to that. And then the next thing - the last thing I'm going to say is one that I'm glad I'm not in the room with some of you when I say it because I might get shot.

I know that we have avidly tried to avoid any possible changes to the CWG ICG proposal. And I fully support that. But I do wonder whether we're at a point where we need to consider making an adjustment to the proposal so that this is not a prerequisite if it can't be done. And I support all the efforts and even the confidence of some that it can be done and I hope that's true.

But I think we're too close to the end to just sit back and wait and not have an alternative plan. And one way to handle that would be to make an adjustment to the CWG ICG proposals so that it's not a prerequisite but that it is handled in a responsible manner. And I'll stop there.

Jonathan Robinson: Thanks Chuck. Suggestion noted. I won't make any comment on that at this point. But I take your point that from all practical purposes we're under quite some time pressure now and we either need to find a way of resolving the solution that's on the table or thinking creatively about what other avenues we have to release the pressure of this particular point. So I won't say any more at that point. Alan.

Alan Greenberg: Thank you. With respect to what Chuck said, even if we had a mechanism to change the ICG report, it's not the CWG part that was really the driving part. It's the numbers community. And I don't know what their process would be to withdraw one of their requirements. So clearly that's not an easy way to proceed.

One thing that hasn't been discussed today is the risk analysis of us concluding an agreement, which is not failsafe and perfect or even acceptable from our point of view. And I think we have to look at that.

When we talked about risk analysis of the intellectual property going poof, disappearing, or the domain name going poof, disappearing, the impact on the three communities were different.

The impact on the -- if I remember correctly -- the protocols community was quite large because right now for better or worse the domain name is embedded in software.

The impact on the numbers community was not particularly large. And the impact on the naming community would be awkward. Certainly ever registry in the world would have to know who to contact if not IANA. And the name of IANA would probably have to change but we would survive.

So in the unlikely chance that this whole thing blows up and we actually not only, you know, we lose custody of the ability to use it - let's say the naming community lose custody, we can adapt. It is not going to kill us if that happens. It will be awkward and embarrassing and a pain the butt. But that's all it would probably be.

So, you know, can we accept something less than what we really need from a true intellectual property to guarantee absolutely we will have custody of these? Yes. I think we can accept something less at this point in the name of expediency and getting this working. Thank you.

Jonathan Robinson: Okay. And just to respond to items in the chat before coming probably most appropriately to Alissa. I mean in my sense there is absolutely no -

nothing other than complete commitment to getting a satisfactory solution and making the transition take place on time.

I mean I think it'd be a tremendous shame if this in a sense relatively small item got in - was (the spinner) in the works. We need to all commit to both the good will and the mechanics of trying to make this work.

We have a set of principles. We have discussion I would say about how those principles are interpreted in the legal documents that they ultimately give rise to. And we've got to work to make that happen.

It's the same in any major transaction. It always gets thorny towards the final end and we'll work on it. So for the moment I think we carry on. We meet as soon as possible, no later than next week Tuesday. Let me hand over to you Alissa.

Alissa Cooper: Thanks Jonathan. And I fully agree with what you just said and what Alan said as well. I think it - the relative importance of this particular item as compared to what is actually at stake in this transition is so lopsided that it saddens me the idea that people would suggest a delay or a cancellation of the transition over this. So I think everyone is committed to working to avoid that.

I mean having written all of this in the chat, I just wanted to reiterate that this - the transfer of the IPR is indeed a requirement of the IPC proposal speaking here as the Chair of the ICG. And I think, you know, personally I just find it a little bit frustrating because the question has come up sort of over and over and over again.

And I think if it wasn't a requirement, if it hadn't been a requirement from the beginning, then, you know, we wouldn't have set up the subgroup to work on

it and there wouldn't have been, you know, the - even on the discussion on the proposed principle terms wouldn't have sort of been cut off prematurely.

But I think it's obvious from all of the steps that were taken that the terminating point for this decision has been the same as every other requirement in the proposal.

And if it hadn't been, then people would have taken a lot more time and probably organized the work somewhat differently and even consider the option space differently if we had - if we had had a lot more time. And I think lots of folks would have been interested in an option aside from the IETF trust.

So I just wanted to - I hope that that aspect can sort of be put to bed because, you know, as someone who worked hard on the proposal and I know all of you did as well, I don't want at this late date for people to be kind of reopening it. And not just on this aspect but if we reopen this aspect, then it leads for potential for reopening other aspects and I think we all know that that could be a pretty problematic situation.

So appreciate the opportunity to work together on this. I think we can find a resolution that works for everyone. But it's going to require a lot of close attention from everyone involved in the next two weeks, essentially the next two days. So thanks.

Jonathan Robinson: That' Alissa. So clearly an unequivocal view from you that it's a necessary condition for the transition to the question of whether or not an alternative trust could be considered. Well it was certainly a possibility. Right now in the case that it feel very unlikely that any alternative could be developed in the very short time available.



So it's a matter of the third option then, which is the one we were working on, is making sure that the IETF trust is a satisfactory vehicle. And there we have the constraint that Andrew mentioned very clearly, which is that there are real, real practical limits on any modifications to the trust.

So it boils down to this community agreement and making sure that it satisfactorily balances the interests of the different groups. And clearly at the moment there's some differences of view to the strength of which that can be applied. And that's the challenge. So we'll work at it and see what we can do to sort this out.

I think that brings us to the end of the call. I will just highlight one other point. On Client Committee Item 4 it's clearly a very active time because a lot of these are legally related issues. I mean on the AOB we have a series of meetings coming up.

I mentioned that essentially the CWG is scheduled to meet every Thursday from - for the next five weeks. The times will rotate on - we've done a careful look at the participants - the active participants and their time zones and so on.

And on balance 1400 UTC is most favorable to everyone. So we will run three of the five meetings at 1400 and then we will shift six hours one way and eight hours the other way. And you'll see those coming through in the appointments to accommodate others. And we've tried to make a balanced judgment based on who's participating, what time zone they're in and try to recognize rotation.

So thank you everyone. That's a pretty meaty discussion we've had on a variety of issues. And I'm sorry we lost concentration a little when I was

interrupted earlier in the meeting. But I think you all agree on the - for the most part we've held on to things and we finished very shortly over time but it was probably necessary to do so.

So we'll be in touch on email. We will meet with the IPR issue very shortly. And we plan to meet with the CWG one week from today. Thanks again.

END