

**ICANN**

**Moderator: Brenda Brewer  
August 4, 2016  
2:20 pm CT**

Nathalie Vergnolle: This is the CWTI meeting number 86 on August 4, 2016 at twenty UTC. I will send it over to Jonathan.

Jonathan Robinson: Nathalie, actually it would be great if you could just - your microphone is a little soft. It would be great if you could confirm that you're hearing me loud and clear.

Coordinator: Recordings have started.

Woman: Yes we can hear you loud and clear.

Jonathan Robinson: Okay great. So hi everyone. It's Jonathan Robinson. I'll be chairing the meeting and as you heard in the preamble Lise Fuhr sends her apologies. That needs to be out there. In any event recorded (in notes) already.

So you've seen the agenda captured in the top right there. It's obviously being quite clear a busy time. There's a lot of work going on in the implementation and tracking that and understanding where the (need) focal points for the group are is no mean feat.

I'm certainly finding at times hard to keep up with where everything is so if you are, you're doing well. I'll try and guide you through it with the help of ICANN staff and Sidley representatives who are here tonight, or tonight my time anyway, and we'll work our way through it systematically and hopefully pick up on the key points that need CWG input.

Really over the last week there's been quite a significant amount of work done on the IANA IPR related work. And you'll see there's a document being circulated and I think Josh will talk us through that a little later in the meeting and give you a sense of that.

(Elyssa) is also here on the call and she's helped by coordinating and doing the chairing role of that sort of multi, cross-group representing the different operational communities. And that's being effective and good progress so that's encouraging.

Obviously the chairs have made the formal submission on the PTI articles to the public comment period and we need to do the same on the bylaws so I want to come to that and make sure we appear on the letter that's planned to be sent in on behalf of the CWG.

There's also the overarching transition implementation coordination call. It went relatively underattended. I suspect some of that's down to it being summer months in the Northern Hemisphere and perhaps others thinking that things are largely heading in the right direction.

I know that (DTA) or former (DTA) group have had some activity on the SLE calls. (It's best to leave) feedback on the naming functions contract but we'll come to that all as we work our way through the agenda.

I think that's a quick sum of high level points. Are there any questions or issues before we go into item number 2 and get the latest updates on the implementation work from staff?

Okay, seeing no hands I'll hand straight over to Trang to give an update on the implementation and we'll probably get some input as you see in the subbullets later in that under section 2 from Paul Kane and Chuck if they're able to provide us (unintelligible). So over to you Trang.

Trang Nguyen: Thank you Jonathan. I think everyone has scroll control of this document. This is a slide that we had used to present (status) to the program - position program facilitation management call last week which Jonathan referenced a minute ago.

Essentially what we presented to the transition program facilitation management group that attended that call and one of the things that we wanted to highlight for you today is that the next big milestone for us is the submission of the implementation report to NTIA on August 12.

As you all know, when NTIA issued its own report assessing the ICG and CCWG proposals, it had requested that ICANN submit an implementation report on August 12 to identify which areas of work has been completed and which areas of work are still remaining to be completed.

And based on that information, NTIA would then make a decision or make a determination on whether or not the IANA functions contract should be extended. So that's the next big milestone for us is that August 12 date.

And so as you can see on this slide there are several items that we are working on with you that are slated for completion by around the August 12 date. So really quickly I just want to go through and highlight where we are with those items.

As you can see on track 1 which is the parallel testing and root zone management - root zone maintainer agreement, those items have been completed.

The service level expectations or SLEs for the naming community Paul will give an update on the work on that in a little bit. But we've made tremendous progress with the DTA I believe in the last week or so. So we're still very hopeful that we would be able to arrive at the initially agreed upon set of SLEs by mid-August.

The next two items, the service level agreement with the member communities as the supplemental agreement with the IETF have both been signed. So those items are completed. I'm going to skip over PTI for a second and come back to it.

The root zone evolution review committee or RZERC, we have sent out a request to the appointing organizations to appoint representatives to the RZERC earlier this week and have requested that they send ICANN their appointments by August 12 so that we can also report to NTIA that that requirement has been met.

The customer standing committee, all of the appointments have been forwarded on to the GNSO and ccNSO councils who are slated to meet early next week to provide the final approval of the membership of the CSC. So we

don't see any issues with that being completed by the time that we have to submit an implementation report to NTIA.

IANA Intellectual Property Rights or IPR, that is work that the community is undertaking. And I know we have a significant portion of the agendas today dedicating to providing you with an update on that. The progress that we are reporting here is the community's progress that they are tracking and reporting.

So that work will not be - obviously be completed by the middle of August. But I think there is a plan in place and a timeline that the community is tracking against for completion of that work by September 30.

The IANA Operation Escalation processes, that's just a matter of updating our process documentation to reflect the changes that the CWG had indicated in the proposal. And that work is essentially done. It's just going a final round of internal review. So there would be no issues with finishing that by the middle of August.

And then coming back to PTI, there is several pieces of work going on around PTI and we have a significant portion of the agenda today also discussing this. But essentially there are three pieces of PTI. There is the incorporation. There are all of the contracts between ICANN and PTI.

And then there are all of the governance related documents like the bylaws and the conflict of interest policy and the board code of conduct and the expected standards of behavior.

Sam is going to be giving us an update on the articles of incorporation and the work that we are doing to summarize and analyze the comments have been

submitted under articles. So I'll finish going through the rest of my updates and I will ask Sam to provide a quick update on that.

The various contracts – there are four contracts as you recall between ICANN and PTI that are being contemplated. The naming functions contract that will allow PTI to perform the naming services. There are two subcontracting agreements for the number and protocol parameter services. And then there will be a services agreement between ICANN and PTI that will spell out the shared services arrangement.

We have some time dedicated today to also discuss the naming functions agreement. And a draft of that has been circulated for your as well as Sidley's review.

For the subcontracting agreements, we've heard back from the IETF. We've circulated those to the number in IETF and have heard back from the IETF with no comments essentially, no issues or concerns with the document.

And essentially the feedback there was that that is an internal agreement between ICANN and PTI and so therefore the IETF does not feel the need to provide any comments to that document.

We are waiting to hear back from the number community. And we've asked that they provide us with any feedback that they may have on that subcontracting agreement by August 7 so that we can try to finalize that document by August 12.

And then the last document is a services agreement. We are working very hard internally to try to finalize that document and share it with you. As of today

it's looking like we are targeting early to mid of next week to share that document.

And that is a document that does not require a public comment period so we believe that we would have sufficient time for review and any adjustments to that document as needed before it is finalized.

So I will stop there and - unless there are - and see if there are any questions before I ask maybe Sam to give us a quick update on the PTI articles of incorporation.

Sam Eisner: Seeing no hands this is Sam Eisner from ICANN Legal. On the PTI articles of incorporation as this group knows the public comment closed recently on that and there were three comments received including Registries Stakeholder Group, the CWG, and the NCSG.

ICANN's completed its review of the public comments and analyzing the comments in assessing whether or not changes are needed to the PTI articles as a result.

We've identified that the changes proposed by the CWG in the annex of their comments reflect the sum and total of the changes that we think are necessary to address the comments received in public comment.

And so we've - as we did on the ICANN bylaws we've actually provided a draft copy of that report in the proposed bylaws - I'm sorry, the proposed articles to Sidley just for (Sidley to) check over it and to make sure that they agree that it remains consistent with the proposal.

However we are expecting to present the revised PTI articles of incorporation incorporating the changes that the CWG recommended in its - in the comments to the board for authorization to form PTI next week using that form of the articles.

So we'll be – we hope that at this point next week we'll be able to identify that that has happened. So if you have any further questions on that please let me know. Jonathan if you're talking we can't hear you.

Jonathan Robinson: Sorry Sam. I thought you said if you have any comments then you were asking others for comments so I was just pausing to see if anyone responded. (Macia) has a question in chat.

So Sam just to close that up, the articles were drafted. They were put out for public comment. The CWG with Sidley's help put in our comment. There were some others and you expect to incorporate those. They're going to be run past Sidley one more time and that is likely to be - that will then crystalize the articles to be the basis for the formation of PTI.

Sam Eisner: That's right.

Jonathan Robinson: Thank you. (Matthew) you asked what NTIA is specifically expecting from ICANN and what is completed. Maybe Trang you could reiterate that or recapture that for (Matthew) and others (unintelligible).

Trang Nguyen: Thank you Jonathan. So (Matthew) I had to step out for just a second so just reading (Matthew)'s question again. "What is NTIA specifically expecting from ICANN and what is expected to have completed by August 12? Or are they expecting an overall update?"



(Matthew) I think they are expecting a report from us that basically specify a readiness if you would for the transition, so in very specific terms what needs to be done and the things that are needed to be done, what has been completed and what is outstanding.

And then for the items that are outstanding, what's our plan for completing them and specifically by when. So it's a very detailed and specific report that they are asking for. And as for what would be completed by August 12, that's being reflected here in this chart that you're seeing anything where there's an anticipated date of completion around mid-August is what we expect would be completed by then.

The RZERC is extended through the end of August which is not accurate. That really should be reflected as mid-August. So essentially the only three items would be the IANA IPR work, the IRP work on the CCWG track, as well as some of the naming and services agreements as well as the PTI bylaws would be the items that would extend past August 12.

Jonathan Robinson: Thanks Trang. That gives us then the opportunity to move on from that so we can - when we come onto item 3 we can note essentially that the PTI articles are now dealt with. But I think we have the opportunity here in another too before we finish up here to get an update from Paul Kane.

I think there was one or more calls scheduled in the past week on dealing with the named SLEs so it would be good to hear from Paul on that. And then we'll get an update on the outstanding items in relation to PTI budget. I think Xavier's hopefully available on the call to help out with that point as well.

So Paul, come in and give us an update on where things progressed and what sort of state you are as far as getting the SLEs finalized.

Paul Kane: So thank you Jonathan. We've held a service level expectation agreement call. And I'm pleased to say that there was good progress on the last call. I had my staff in the last 24 hours review the official document that was endorsed by the SLE group and also by the CWG.

We've identified a number of areas, a small number I want to stipulate that have not been addressed yet. The proposal is that the SLE group meets again with ICANN who have been very constructive throughout the whole process. And we just need to make sure that all parameters have been appropriately addressed.

And then I hope to be able to come back to the CWG with confirmation that all aspects that we had identified have thresholds specified and we have a professional SLE going forward. So a very positive report. I'm very grateful to ICANN IANA for their constructive comments.

As I say we've just identified a couple of issues that have not been addressed and I hope they will be addressed possibly on a call very early next week with a view to coming back to the CWG possibly towards the end of next week with confirmation that all elements have been identified. So things are moving forward positively. Thank you.

Jonathan Robinson: Thanks Paul. Any comments or questions in relation to that before we move on? Good. That's good to hear Paul. I'm sure you'll keep us posted and keep us (picking over) (unintelligible).

I know there's been some discussion between ICANN Finance and the (DT) (unintelligible). I think the (unintelligible) or at least the (unintelligible) (status) within ICANN staff. And Xavier I'm hoping you'll be able to give us

an update to where that's (go to) next. So let me pass over to you and thank you for raising your hand. Let me hand the mic over to you.

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

Man: Yes.

Xavier Calvez: Okay, thank you.

Jonathan Robinson: Oh yes.

Xavier Calvez: Thank you. So the current status is that after having the - presenting the first draft to the (DTO) of the overall PTI IANA budget process, we have went into a mutual validation of that process. I now need to provide back to the (DTO) a finalized version of the document. And I will add to it a suggested language from all the bylaw that supports the description of the budget process for PTI.

And I'm expecting to do that by the end of tomorrow. And from this point I think the (DTO) will review this, finalize this suggested approach and then be able to submit it to the CWG.

I don't want to provide the news to Chuck that he doesn't yet have but we believe that this whole approach of the plan and the bylaw drafting is very consistent and supports the first draft and confirms the first draft that we had reviewed with the (DTO). So I'm confident that it quickly to a satisfactory closure on that. (Unintelligible) if there's any questions. Thank you.

Jonathan Robinson: Thanks Xavier. Any additional comments or questions that any would like to bring up at this point? And I see Sharon asked in chat will this provide just changes to Section 9.2 and 9.3 of the bylaws.

Xavier Calvez: This is Xavier. Yes we will provide suggested changes to those sections.

Jonathan Robinson: That's helpful. Good well that's those key points then. And that's useful. (Inquest) deals with all of that section actually. (Unintelligible) to bring forward the IANA IPR discussion. Got quite a bit to get through. Let's just look at the other points. Perhaps we could deal with that. Think we should probably just work our way through this.

Christopher I know you did request that but there's quite a bit to sort out here so I think it's probably best we just pick it up. I want to make sure we have sufficient time for that. I've become concerned about the amount of time because our reading of that and understanding that position is a crucial problem that we are making that area move forward. So we do need to get to that and get to it with good substance.

So fortunately under three we've already dealt with articles of incorporation under our previous section two. So that's essentially closed. As far as the PTI governance documents are concerned, which is the three points, three subbullets and the next bullet, the conflict of interest policy, board code of conduct and expected standard of behavior, these have been through various iterations and discussion.

And we are now at the point where of course there are - it may not be clear to you because it's not always been clear to me what point we are in the timing of each of these. These are out for public comment and that's due to close imminently.

And prior to that closing we need to get our public comment in, which Sidley has worked with us to get sorted out. And so I think I should give Sharon an

opportunity here to just highlight a couple of key points here. There's a letter on behalf of CWG which Sidley has helped us draft or essentially drafted, and covers the key points in all three. So let me hand over to you Sharon. I'm sure you're definitely equipped to describe this in detail.

Sharon Flanagan: Thanks Jonathan. I'm going to keep it fairly high level because I know there's a full agenda and I think we're in very good shape on these documents.

So we've been working with ICANN Legal on these three documents and we are signed off - we and ICANN Legal are signed off I believe on the standards of behavior and the code of conduct.

The conflict of interest policy we have one final change we sent over yesterday that ICANN Legal is looking at. But I think we're quite close.

So we circulated to the client committee and I notice it got forwarded on to the full CWG draft for the comment letter as well as the cumulative markups of the three documents showing the changes. All of these changes I think are kind of in the way of conforming changes or changes just to line up with the applicable law.

So I don't think there's anything that's particularly noteworthy. And I think as I said I think we're in good shape and we should be able to close these out I would hope in the next day. And if anyone has any thoughts on the comment letter let us know but otherwise we think we're in good shape. Thanks.

Jonathan Robinson: Sharon and I note the agreement from Sam Eisner in the chat. So just as I said in the chat, your correspondence with those documents was posted to the list. So Christopher (unintelligible) is that a hand that you wanted to come in on?

Christopher Wilkinson: Can you hear me?

Jonathan Robinson: Yes Christopher.

Christopher Wilkinson: That's great. I read the letter on comments since the CWG. Is that what you're discussing now? Because the main points I wish to make was to (demure) from the amendment regarding the chairmanship of PTI.

I think it would be actually much better to ensure the chairmanship of PTI is as neutral as possible among the other interested parties and that consequently the best solution would indeed be that the chairmanship of PTI should be one of the nominees from the nominating committee.

I don't see the reason for the amendment that has been proposed. This refers to Section 5.4/5.3 of the draft letter of board chairman/chairperson.

Jonathan Robinson: Thanks (Chris). We did go round the houses on this in quite some detail before we settled on it. But as Sharon said this is a PTI bylaws point. So we are currently on the governance documents and the letter associated with those.

And it's understandable that there's numerous (unintelligible). There is a letter which is due to be sent in our PTI bylaws we'll come to, and as Chuck notes in the chat. And there's others saying also we did spend a lot of time on the whole balance with the board and the selection and the chair and so on.

Christopher Wilkinson: Well I've been on the (unintelligible) for the past couple weeks, so (unintelligible). But I think it's important because the alternative would be that the chairperson would be selected from one or other of the operating

communities. And it might prove to be quite difficult to find a neutral and mutually acceptable chair from all the other communities.

The whole point to having the balance on the ballot of the nominating committee appointees should be and would be to create a balancing and a neutral component of the board which would be mutual benefit from the chairmanship of appointed among the nominating committee nominees. Otherwise why do you have the nominating committee nominees?

Sharon Flanagan: Jonathan can I come in on that one?

Jonathan Robinson: But I said that. And as far as I can tell the audio is okay from where I am. Just letting you know that those of you who are having difficulties – I'm not suggesting you are – but I'm receiving it loud and clear.

Sharon did you want to respond? I'm tempted just to run this point out because otherwise we just push it to the bylaws. So let's just deal with this now, the current wording, how we arrived there and what it deals with. So if you're happy to respond on that (please).

Sharon Flanagan: Yes I will. So the concern that was raised is if we limited the chair of PTI to one of the nominating committee directors you potentially would rule out other qualified directors to serve as chairs so you might limit your pool and not end up with the best person.

And I think based on the concern you raised the counterbalance is that in order to have a quorum – so in order for the board to actually meet – there has to be one member of the nominating committee present, at least one member of the nominating committee directors and one of the ICANN directors.

So there's no ability for -- if it's an ICANN chair -- to call a PTI board meeting and not involve the nominating committee members. They will all be there. At least one must be there in order to call the meeting to order. So we thought with that protection that would make sure that there's a real benefit and role of the nominating committee directors. Thanks.

Christopher Wilkinson: Well Jonathan I see this argument. But I really don't follow it. First of all the nominating committee has the responsibility of appointing very high level and very competent and appropriate nominees. And if the nominating committee knows that one or other of their appointees would become chair, that would certainly and should very strongly influence the choices that they make.

I'm more concerned about the need for (probable) neutrality and potentially the difficulty of managing differences of view among different operating communities.

Jonathan Robinson: I think there's been a couple of points here. First of all it would be useful if we could just be reminded the exact form of words that was settled on or is in the current document because I am sure not everyone is well familiar with the detail and especially with various movements.

And so it would be useful. (Unintelligible) I sense your voice isn't in great shape. So if you would like to get someone else to do it (unintelligible) otherwise comment.

Woman: If you don't mind then I don't mind it. So it is in Section 5.4 of the bylaws and it says the chairperson of the board will be elected annually by majority of the directors in office.



And it says the president shall not be a chairperson. So we have ruled the president out that is considered to be good governance. But any of the other four directors would be eligible.

And the chair has the ability to call meetings which is probably the most important power of the chair. But under the bylaws there are others who can call meetings including any two directors.

Jonathan Robinson: And I guess there is a couple of questions. I mean this was the subject of extensive discussion and we considered – and it wasn't just over the last week or two. This stretches back a number of weeks if not months.

And there were various contemplations including insisting that it was a nominating committee director. And there were concerns of various sorts. I have a lot of sympathy with the argument that I think on balance we went around the houses on this as I say and we settled where we did.

It is just it would be difficult to open it up because in principal we can then open up anything.

I was going to say I am personally sympathetic to your point but we did give this a lot of time and energy and this is where we landed. So it accurately reflects where the group landed after the discussions as far as on all that.

Christopher Wilkinson: Well I apologize Jonathan for not being able to follow every one of these meetings. But may I submit by my statement today I have changed the balance.

This is really very, very serious. If you abstract from the nominating committee the responsibility that have been given to it that is changing the

institutional and political balance of the PTI significantly and personally I do not accept it.

Jonathan Robinson: Chuck is next in the queue.

Chuck Gomes: Thanks Jonathan. And thanks Christopher for your strong objective. But I would have an equally strong objection to making a change right now. We did vet it very carefully. We talked about it a lot over several meetings.

And frankly the group came to the conclusion, the working group came to the conclusion that what is in the bylaws now is the best solution. I certainly respect that you strongly disagree with that but there are many of us who strongly disagree with making a change at this time.

So if any one of us can stop the train we have a problem in terms of moving this thing forward and I don't think that is a direction we want to go.

Christopher Wilkinson: Well Chuck we agree on many things on this one seem to disagree. So Jonathan in that case why is this on the agenda at all? I rest my case.

Jonathan Robinson: I thank you. I think there is a couple of points I will make. One, it is come up slightly higher on the agenda due to you raising that point and we had planned it to be.

But nonetheless it is our intention to submit a letter on behalf of the CWG that says agreed additional changes that need to be made on the basis of either of the work that Sidley has being doing the last while together with ICANN legal.

Separately however, I would say that there is nothing to stop you individually putting in – there are seven days open on the public comments on the PTI bylaws and there is nothing to stop you submitting these points in via the public comment period and making that point by that group in addition to in this group.

Christopher Wilkinson: I might do so. I might do so.

Jonathan Robinson: Okay thank you.

Christopher Wilkinson: More generally, ladies and gentlemen the nominating committee is the essential balancing instrument in the whole of the governance of ICANN and the PTI to ensure that there is no capture and to provide independent members who are competent and responsible for finding the balance and the final decisions.

Because otherwise ICANN and PTI risks of becoming an instrument of the operating community which is first anti-competitive and second, not credible vis-à-vis the outside world as a self-regulating of business.

So I seriously warrant these kinds of devaluations of the nominating committees responsibilities particularly as they have been previously expressed. I will leave it at that Jonathan and I reserve my positions.

Jonathan Robinson: Thank you Christopher. But to note we still have two nominating committees appointed directors. It is just not guaranteed that one of them will be chair. Just to be clear on that. There is no change in the numbers it is simply not guaranteed that one of them will be chair.

But that is to take anything away from this it is just to make sure it is crystal clear for all of us.

Christopher Wilkinson: So the nominating committee has to be damn sure that they appoint the best possible members of this board.

Jonathan Robinson: Yes thank you. Noted.

Let's get back to where we were which is to make sure that we recognize that – so we are dealing with PTI obstacles in corporation to date. We have the PTI governance documents and Sidley have dropped a form of letter to cover all of those.

Sharon in ICANN legal are concerned that there are no major outstanding points on those and so we should be able to submit a letter on behalf of the CWG dealing with the outstanding points that have been discussed in the interim on those PTI governance documents.

That is to say the conflict of interest policy, the board and the expected status of behavior. So...

Man: Jonathan you have a...

Jonathan Robinson: Are there any questions or comments in and around that CWG letter dealing specifically with the PTI governance documents? Before I close that out.

Okay so the next item as we work our way through the agenda is the naming functions agreement which Sharon made clear in the chat earlier is still the subject of discussion between ICANN legal and Sidley as to various details.

But I think one of the key threads that has run through our various discussions for some time has been inclusion of the points covered in (unintelligible) proposal.

And so the chairs have asked for ICANN legal to give us an update on the naming functions agreement and in particular I think there is an active table of comparison up there (unintelligible). And in particular the effective inclusion of Annex C.

So Sam if you are available to talk to that that would be very helpful. And so we can understand how that is taking place and what the issues or if there anything you feels there needs to be discussed or covered there?

Samantha Eisner: Excuse me. Sure Jonathan. Again this is Sam Eisner for the record. (Unintelligible) or Nathalie or (unintelligible) if you have the Annex C table that you can post. I know this was circulated a while ago to the CWG.

So I believe the CWG should have seen it a couple of weeks ago as we were working on the PTI bylaws because that is the first place that this issue really popped up.

And so as you know, as CWG and the client committee was working with Sidley on the PTI bylaws. There was a request from a participant or multiple participants I am not sure of how the request came up. To make sure that Annex C was reflected within the PTI bylaws and the contract as appropriate.

And so at that point when we were submitting the PTI bylaws we developed this table because we went through the Sidley tax that was developed as a

means to try to reflect the Annex C principles and identified some concerns with the language.

So we have – I think on the bylaws section we have identified some appropriate principles for inclusion within the bylaws that made sense to capture some of the context from Annex C. So on the bylaws that issue is closed.

With the recent Sidley inputs that were returned on the IANA naming functions contract, excuse me. There was Sidley included many elements from their Annex C proposed language table. And ICANN is actually still in the process of reviewing how those items were put in place.

So Nathalie I am not sure – there is a separate table that should have been submitted if someone can help find it. It was an ICANN document that has more columns than the item you have just put together.

The document that was just put up was the Annex C language as proposed by Sidley. But what ICANN did was go through and take a look at the language, try to compare it to what was actually in Annex C as well as some identification of the language that starts of the proposal and is introduced within Annex C.

To again, flag for the group whether or not these are really the types of things from the proposal that are appropriate for attempts to translate them into language for the contract at this time.

One of the primary issues that we noted was that the Annex C of the CWG proposal is entitled, principles in criteria that should underpin the decision on the transition – for the stewardship for the names functions.

And the introduction stated that the principles and criteria within Annex C were meant to be the basis upon which decisions of the NTIA stewardship are formed.

And so they were meant to be a principles against which the proposals were to be tested before CWG sent them to the ICG.

And so it wasn't clear from the outset from the inclusion the proposal that they were actually intended to translate independently into language after the proposal had been submitted.

Using that as a background when you look at the actual text of Annex C it has very high level principles such as the activity that the proposal should include. Provisions are predictable clearly rooted and agreed in applicable policy set by the relevant policy body.

Now that of course is also a really high level principle that makes sense to appear within the bylaws right? I believe we have just that predictability aspect peppered through because that is what PTI is supposed to do. It is supposed to predictability implement the policies that are developed elsewhere.

So what we saw in the version of the agreement that was sent back from Sidley was that there are other places where language has been put in into the naming functions contract that actually in our view contradicts the established policy.

For example, the contractor shall not be authorized to make material changes in the policies and procedures without the express written consent of the impacted registry.

And that suggests that there is actually individual registry ability to modify the procedures that PTI would do. And we have seen some other language that there is some concern.

I see Paul's hand. Paul if you wanted to go ahead.

Paul Kane: So thank you Sam and I understand your – I hear you are not very well and I wish you a speedy recovery. So Annex C should be and was considered to be and was considered to be an instrumental part of the CWG proposal.

The document that has been proposed and displayed a number of times on our screen was actually wording proposed by Sidley but could be contained within the PTI bylaws or could be contained within the contract or could be contained within both.

Remember many ccTLDs and I apologize to our gTLD colleagues. But Annex C refers to many ccTLDs predate ICANN.

And so you referenced in your introduction there was a requirement that there was a contractual obligation to follow ICANN policy. That is actually within ICANN's existing bylaws. One has to agree to follow ICANN procedures.

And so what Sidley have sought to do is capture the status quo both within effectively the PTI bylaws or within the ICANN contract.



Now I understand the PTI bylaws are out for public comment. And so therefore it may be that the opportunity for making sure that the safeguards are within the bylaws no longer exist.

But certainly it is vital that the diversity within the ccTLD community is captured within the contract between ICANN and PTI. As it used to be within 15 RFC, 1591 where effectively authority was decentralized from IANA and IANA effectively acted as a secretariat.

So my overarching thing is I am not a lawyer but I want to make sure that appropriate legal terms capture, restrain, encapsulate whichever term you wish to use. The role and mandate that PTI is about to undertake. Thank you.

Samantha Eisner: Thanks Paul. I think that we are all in full agreement that it is really – that is an essential thing that has to be achieved through all the documentation that supports PTI.

Be it in the bylaws. Be it in the articles. Be it in the contract. That there is nothing that is within those that allows PTI to act outside of the limited authority that has been given.

And that authority includes how it relates to all the customers including the ccTLDs and the special considerations that have been developed for the ccLTDs possibly through the framework. Of interpretation or all the history of the practice that has developed and the policies that have been developed that the PTI is responsible to implement.

So I think from that aspect I fully agree with the objective that you are hoping is reflected in here. So the document is now posted on the screen. And maybe

you want to release scroll control for people to have the ability to look through it yourself.

At the highest level I think that one of the issues that has originated with this is that there hasn't been – because there has been so much going on and the timeframe within which this Annex ceiling which has been developed there hasn't really been a lot of opportunity for those operators.

The TLD operators be they gTLDs or ccTLDs to actually take a look at the language that has been proposed and reflect on whether or not the language actually results in a change to how you expect the IANA services to be delivered.

So we would pause that any changes that suggest that individual registry operators have the opportunity to direct the PTI to act in a different manner towards them than to other registry operators.

So long as the one who impacted and wants a change in the policy to apply. That that's really not a fair reflection of what we expect PTI to do. We don't expect PTI to make policy or to modify policy. We expect PTI to operate in accordance with the policies that have been developed.

After the Sidley language was circulated at the end of last week on the IANA naming functions contract. I know that this hit the radar particularly of some of the ccNSO members and ccTLD operators.

And there was an exchange and I believe some of those on the client committee might have seen it. I don't know how much further it was circulated.

Where there was some specific concerns raised about language that was within that had been added particularly around some of the Annex C items. And it wasn't consistent with how things actually operate.

Sidley of course has been very active with the CWG but I think they would agree that they don't have the history and the deep understanding of the operations of the IANA functions in order to evaluate whether or not the text they were developing was actually consistent with those operation.

And so I think at this point I know that there has been some activity within some ccNSO members to try to already address some of their high level concerns.

But I would pause at this point and I know I have talked to a couple of the people who were on the distribution list of the initial proposed reactions to the Sidley language.

That it might make sense at this point for some registry operators including ccTLD and gTLD operators to look closely at some of the highlighted sections that we can help identify for you.

Where we that we think that the operational role of PTI might be expanded into areas that aren't authorized by policy. Or that might reflect an authorization to allow PTI to actually engage in new policies.

So if that is a way that we can go forward, you know, I would be happy to work with a small team to try to just get some of the operational language more appropriately inverted into the naming function contract as appropriate.

But keeping in mind Paul's ultimate goal which is to make sure that the naming function agreement doesn't do anything to impair and indeed respect the special relationship that ICANN has and the various types of relationships that ICANN has with the different customers of the IANA function.

Jonathan Robinson: Thanks Sam that is helpful. We will defer to Paul in a moment but that sounds like a practical suggestion. We will have to think about how to work that. Did you have more you wanted to say or did I cut across you there?

Sam Eisner: No I am pretty much done. Thanks.

Jonathan Robinson: And Paul come in and let's see whether we can make (unintelligible). My sense is that this Annex C from this document in front of us and amongst a flurry of documents is either not been seen or adequately digested and could be a useful basis on which to hold further discussions as you say.

As to how to satisfactorily map the concerns without changing the remit onto the naming functions contract. So Paul what are your thoughts?

Paul Kane: So firstly I would like to thank Sidley for many, many months ago capturing the concern and I think the language that Sidley has proposed does address appropriately the concerns that many and I hate to use the term ccTLDs have.

Do bear in mind that there are a significant number of ccTLDs that are not members of the ccNSO. The members of the ccNSO have agreed to follow policy developed through either a ccNSO process or an ICANN process. But there are many cc's that have explicitly not agreed to follow ICANN developed policies.

And I think to be fair to Sidley who are new to this industry they have captured the concern. Annex C was explicitly designed to be either in the PTI bylaws or in the ICANN contract or in both.

And Sam's idea of having a small working group provided it is comprised of parties that are both ccNSO members and they can go off and do their thing. And non-ccNSO members and they can go off and do their thing. And even gTLD members. I think this Annex C is designed also for gTLD members. They also need to be incorporated.

Provided the diverse community is captured then I think we could make progress with Annex C. But it is essential that the diverse community is adequately respected within the new framework going forward.

And I am happy to work with Sam who I have not actually physically met and to be candid, unlikely to physically meet. But I am very happy to work with Sam to try and make sure the diverse ccTLD community is adequately represented. Thanks.

Jonathan Robinson: Thanks Paul. I think it feels to me we are slightly out of sync here. We have got the right intentions and we need to pull this group together. When I (unintelligible) it is not clear to me that everyone has either adequately seen or digested this document in front of them.

There was a couple of postings which Sam referred to I think were the ones she was referring to were from (Christa Spain), Becky Burr and maybe some others that were inadvertently posted to the client committee meeting, the client committee lists rather than to the CWG list.

So we need to get a new thread dealing with this and pull in a representative group to run through this and try and settle the adequate mapping of the principles of Annex C into the naming functions agreement.

So if we could capture that whoever is taking notes I think it is maybe Nathalie or (unintelligible). If you could just capture that our intention is to take this as a working – this document you see in front of you the Annex C from the CCW proposal.

And take that document, pull together a group to work with ICANN legal and Sidley to try and make sure that this is adequately reflected in the naming functions agreement.

And I think (unintelligible) first of all that group has obviously digested what is in that document. And so we will need (unintelligible) start to pull that together. That group with a few volunteers from CWG and outside if need be to get the appropriate steering and input on this.

And Sam that is (unintelligible) as necessary or if necessary in conjunction with the public comment (unintelligible). But we aren't yet up to public comments on naming functions agreement are we? (Unintelligible) we may even get done ahead of that.

The target to post just so you know, the target to post the naming functions agreement was August 8. I don't know how we are with that target. Sam perhaps you can indicate where we are, where you think we are in terms of posting? If that intention is still to go (unintelligible) or if we are way behind on that.

Okay I was just looking for confirmation as to whether or not we were still targeting.

Samantha Eisner: I wasn't sure if that was to me or not. This is Sam. So we are – I am not sure if (unintelligible) we were hoping to post for public comment. It was next week at some point I believe.

Trang Nguyen: Hello this is Trang can you hear me?

Jonathan Robinson: Yes Trang.

Trang Nguyen: Okay terrific thank you. Thanks Jonathan and Sam. Yes the targeted date for posting of the naming functions agreement for public comment is August 8.

And as I mentioned I think we will still be on target to do that if we agree to carry on the discussions around Annex C during the public comment period. As I mentioned in the chat I think we are working on reviewing the set of feedback that we received from Sidley and hope to turn around another draft fairly soon.

You know so I think it is just a matter of, you know, agreeing with the group on when we could go out to public comment. The challenge about pushing that too far back is we are already into the month of August. And the public comment period is 30 days.

And so there is not a whole lot of dates left. And at some point we just need to make sure that the public comment period starts so we can – and while that is going on we can continue to work with the CWG to finalize any outstanding issues.

Jonathan Robinson: Understood Trang. Thanks Paul.

Paul Kane: So one of the tasks that I was given the last call we had was to investigate the reason or the rationale for the GAC principles being featured so prominently within the existing or the proposed agreement.

And to be candid, again, I want to emphasize, I do not participate proactively in the ICANN community. I am not familiar with the latest information. But there was a framework of interpretations working group which came up with a report which basically, again, I still need to get confirmation from our – from members of the CC community.

But the GAC principles, 2002 or 2000, have been archived; 2005 I understand, have been superseded but they are still in existence but effectively have been superseded by the framework of interpretation working group, which basically requires CC managers, and I apologize to our gTLD community, that require that the CC manager agrees to follow, proactively agrees to follow the GAC principles of 2005.

And so I think the many, many instances in which the GAC principles are highlighted in the naming agreement, as drafted, is completely inappropriate. And so I hear there's a major rush to try and get this thing published, open for public comment. But I do think we, as the CWG, have a duty to make sure that it is actually current rather than something that's being rushed through because my understanding is the reference to the 2005 GAC principles is not current; it has been superseded by the framework of interpretation.

You gave me a task last call to investigate, I've asked CC colleagues to actually tell me what goes on within the ICANN community, and I haven't heard anything back yet. But I think with the GAC principles and also the



Annex C issues, I would urge, encourage, cajole, a slowing down of the whole process because we want to make sure we get this right rather than rush it and try and get it right now because it won't be right if we rush it. Sorry. Thanks.

Jonathan Robinson: Thanks, Paul. So I think certainly that's some of the points that I'll pick up on this relationship between the GAC principles and the FOI and so were partly picked up and discussed in those posts by Becky and Chris. So I think I would strongly encourage that we pick this group up quickly. We started the meeting as soon as possible to review this table.

We – with ICANN Legal, and make sure that this is hatched out rapidly, while not rushing it, to your point, and whether that involves yourself, people like Keith Davidson who's familiar with this, Chris Disspain, Becky, others who can really speak with the appropriate level of expertise as to the issues in this because I think it's just – it's a specialist area and it clearly needs some work and attention to make sure that satisfactory incorporation in the naming agreement takes place without changing the position from where we are previously. Thanks, Keith. And note your position as Chair of the – and (unintelligible) working groups.

Kavouss, your hand is raised. Go ahead, Kavouss.

Kavouss Arasteh: Hello?

Jonathan Robinson: Hear you, Kavouss. (Unintelligible) sound now, Kavouss. Okay, I'll wait for Kavouss to get his audio sorted out. But in the meantime I'm very conscious of time and in particular the requirement to get to the IANA IPR work and also to make sure there's a common understanding of where we were with the – where we are with the PTI bylaws.

So I think we have a plan to go through this document and Paul and others with a strong interest in this need to please pay attention to this table in this document and we will bring together a small group to deal with this. In the meantime, I suggest that we...

Kavouss Arasteh: Jonathan, do you hear me?

Jonathan Robinson: Yes, I hear you now, Kavouss. Come in.

Kavouss Arasteh: Yes, I'm sorry. I was disconnected. Jonathan, I don't agree that we in the CWG are authorized to decide on the GAC principle 2005 and make a connection between that and framework of interpretation. There is some legal gap between the relations of framework of interpretations of any issues, including the principles.

So I don't think that our distinguished colleagues was right, that we're rushing on something. It is not up to CWG to make any decisions on this matter. It is very critical and I request that kindly take all necessary measures not to take that suggestion on board. Thank you.

Jonathan Robinson: So I don't think that changes the course of practical action, though, as to make sure that we review the wording in the draft as it currently stands and go through that systematically. Paul, you have another hand and I've got to move us on.

Paul Kane: So very briefly, Kavouss, I have to say I am not familiar with neither the GAC principles nor the framework of interpretation. My argument is I think we need to have a learned debate, considered opinion as to the relevance of both parties. The information I've received is that the framework of interpretation,

I'm going to say supersedes or requires the explicit consent of the ccTLD manager to accord with the 2005 GAC principles.

And I just – I'm just asking that rather than rush forward with a move to publish and seek public comment on the various formal incorporation documents associated with this transition, I'm just asking for a little more time so that there can be a small subgroup that actually does know what they're talking about and can inform the CWG representatives appropriately of what's going on. So I think we're both on this – or we're all on the same page. My point is we need to make sure we get this right rather than rush it. Thank you.

Kavouss Arasteh: Jonathan, may I reply? Hello? Could I reply?

Cheryl Langdon-Orr: We're not hearing you, Jonathan.

Kavouss Arasteh: Jonathan, could I reply? Please?

Paul Kane: Yes, just reply anyway, he's not listening so he can't hear us. He's not speaking.

Kavouss Arasteh: Yes, can I reply to you please?

Paul Kane: Go ahead.

Kavouss Arasteh: Yes. I have no problem to study on something. I did not oppose to what you said. I said that you said that you have heard that the framework of interpretation supersedes the GAC principle 2005. I don't share that view. What I am saying that before CWG make any decision whatsoever and before having a little group that there would be no participants of GAC if you have such impression please formally request that. That CWG understanding of

framework of interpretation is that it replaces the principle of 2005 in respect of the CC managers.

Make that question or raise that question to have a formal reply. I cannot represent entire GAC, but I can speak on behalf of my own GAC member that I'm a member, I don't share that view that there is such a superseding reality and so on so forth. You interpret something but interpretation does not mean that superseding that. If the law is interpreted the interpretation does not supersede the initial law. The interpretation explains how the law should be implemented.

So legally you cannot have a small group a few people without any participation of GAC and deciding that this supersedes or not. I have no difficulty with the study but okay write formally to GAC. Thank you.

Jonathan Robinson: Thanks. No intentions, I think, for the small group to decide that. There is really – the purpose of the small group is to look – and we've got distracted here. The purpose of the small group is to review this table and to make sure that the mapping – the appropriate mapping of any provisions within Annex C are covered in the naming function agreement. And this is not – this debate about whether or not these two supersede each other is not the core of the issue here.

I really have to move us on a little here. But, Alan, your hand is up. Come in.

Alan Greenberg: I was just going to point out that the chair of the framework of interpretation working group is on this call. He's made a number of statements. I don't think we need to convene another group to find out what the facts are. Thank you.

Jonathan Robinson: The purpose is not to find out the facts – the purpose that was suggested is not to find out the facts, it's simply to pay the adequate attention. There's a table in front of us, there's a document in front of us that deals with a series of points on the provision of the Annex C and the mapping to the naming functions agreement and/or – and the issue here really is how does this get done.

And there's been a dialogue between Sidley and ICANN Legal and we're at a point where there needs to be some work done to ensure that there are – so I'm just noting the points in the chat. So it's not specifically to deal with that issue.

All right so the purpose is to give the relevant effort to reviewing this table, which doesn't seem to have – had the time and effort put into it to make sure that it's either adequately covered or not. Chuck.

Chuck Gomes: Thanks, Jonathan. It seems to me we need to be very explicit about what's going to happen with this small group. Your explanation makes sense. And I understand that. But I think we need to do more than that. As several people have pointed out on the chat, we've got a very short window here. The 12th is a week from tomorrow.

So if this small group is going to do something to try and resolve the concern that Paul has asked – make sure that it's properly addressed, seems to me that group need to start meeting this week. I know there's not much left of this week, but as you can tell by comments in the chat, there's not a lot of interest in having a delay even though we probably all want it to be done right, I think we need to be very explicit in terms of who's on this group, when they're meeting and when they need to deliver, which undoubtedly needs to be before our meeting next week in order to pull this thing off.

So I'm just suggesting that we be very clear right now in this meeting about what's happening and when, otherwise we are going to be looking at delays and I don't think that most of us or maybe all of us want that.

Jonathan Robinson: That's a good point, Chuck. So I perhaps need some help here. I mean, this has been dragging on for some time. I mean, we had the prospect of trying to ensure that – and I'm very conscious of other points we need to cover in this meeting. We've had the concern about the effective inclusion of the provisions in Annex C. it's represented in this – the discussion between the original draft, ICANN Legal, Sidley proposed text and the ICANN notes.

Perhaps we're better off just keeping on the main list and not – I mean, I understand the concern about bifurcating it, and we're on a certain timetable. We need to get the naming functions agreement out. And we have time to continue to work on it during the public comment, I suppose. So I – I'd welcome some suggestions how best to deal with this practically and in the time available without housing it off into a different area. Paul.

Paul Kane: I have to say I think I agree with Andrew Sullivan's comments that is it better to get it right or get it done quickly, because if we don't get it done quickly it might not get done at all. I would like to get it done quickly. I think Chuck's comments are valid in that let's see if we can have a little group. I don't know anything about Chris Disspain's comments, nor Becky's comments. Chris Disspain used to be a ccTLD manager. He's no longer. Becky is still involved in the ccTLD stuff. I'm out of that world.

But what I would like to do is make sure that when we move forward, and I hope we can move forward next week, we've actually done it properly. Sidley has had this proposed wording out four months. I see there it says June. So it's

not as if it's new information. And it's slightly concerning that this is arisen at the last moment. It wasn't contained within the PTI bylaws where it should have been. It wasn't contained within the contract where it should have been.

I'm worried it's going to drop off. And so let's convene, in my opinion, a small working group and this has nothing to do with the GAC principles. This has nothing to do with the freedom of interpretation working group. I think Keith, as chair of the group, has made it very clear that the GAC principles exit. That's great. Thank you for the clarification.

I think that both parties need to agree to respect the GAC principles. That's great. I understand that now. But this is related specifically to Annex C, that's been on our agenda since I'm going to say April. And it's been pushed off, pushed off, pushed off, and the Sidley wording has been out since June.

So I propose that we actually discuss this in the next week, we form this group of whomever you think is appropriate, the chair, and we try and get it sorted. But I certainly don't want to hold things up, as Alan said, we need to get this done now or it might not happen at all. Thank you.

Jonathan Robinson: Paul, thanks. You know, I think I now regret the prospect of forming a small group. I think I have a concern that it could be, as Chuck said, without any kind of a remit or clarity, I think we might as well keep this on the main list. The list is small and the number of issues small enough to deal with. If we need to get people on a call to discuss this specific item, then we can. But I suggest you go through this table thoroughly and carefully as do others with an interest in this.

I will make sure I forward any mails on the subject that were inadvertently sent to the Client Committee mailing list and if people need to get together in

a group early next week to discuss this and as Stan points out, this document was circulated some time ago.

And so I think, Paul, I sent it to the group a few minutes ago. So I think the key thing to do is to look at this after a – on a clean slate tomorrow and make sure that it – and just highlight where, if any, there are remaining concerns and let's home in on those and get them sorted out on the list and if necessary we'll pull together a specific call to deal with this.

I think splintering it off into another group could cause us all sorts of problems and potential delays. Now, we have 30 minutes to go. Thank you, Cheryl.

And we really do need to get to the PTI bylaws for which we have a draft letter prepared by Sidley. And you should all have seen. I think I'm going to give Sharon a few minutes just to – or Josh, someone from Sidley, just a few minutes to talk to that and then we really do need to move onto the IANA IPR.

Thank you, Sharon, on the point that each of the 10 items should be walked through. It may be that you want to reiterate that when you come in on talking about the bylaws now. Thanks.

Sharon Flanagan: Thanks, Jonathan. Yes, what I would say about this chart is that these are very detailed policy and operational issues that have been identified. And I think the work that needs to be done is each and every item has to be gone through and resolved as to is it inconsistent with the current practice and procedures? It is inconsistent with the proposal? And Sidley's happy to join that call. But unfortunately, we're just going to go through each and every issue in order to get this worked through.



So let me turn to the bylaws. I think that's a relatively quick conversation because we've had, now, numerous calls on this topic. And you have seen a draft of the comment letter and that was mentioned on last week's call. We recirculated a new draft of the letter with just some minor changes.

I believe the only thing that's open at this point on the comment letter on the bylaws is the annual budget and the strategic plan. And we understand that that is going to be – language there is going to be proposed as early as tomorrow, I believe. And this comment letter is due on the 11th. So we do need to get it finalized. But I think everything is just as we've discussed and I don't think there's a need unless, Jonathan, you'd like me to, I don't think there's a need to go through it again.

Jonathan Robinson: Thanks, Sharon. And so just to be clear, this will be sent off very shortly on behalf of the CWG representing our public comments prior to the close, which is a few days from now. So that's – but I think we'll pull up a final draft if – without any redlines on it, circulate that to the group and very shortly thereafter submit it to the public comment.

So just checking the comment periods ends on August 11 so we've got a week to – no more than a week to put that in. Okay, no other comments or questions on that at this stage.

Andrew, we'll come to the IPR now. So let's move on. We've got half an hour and that should be, I hope, sufficient time for – to deal with the IPR. Like I said, there's been a couple of recent meetings. And the – the – and we've had quite some extensive discussions and it's been reasonably nuanced about how to ensure that we work with the IETF Trust as a vehicle to house the IANA IPR. But the concerns and issues raised by the different operational

communities, including our own represented by, in this forum by myself, Lise and (Greg), are adequately represented.

I think Josh is well equipped to describe those points to you and the sort of compromises and points that have been made so I'll hand over to Josh and let him talk you through that and we can take it from there.

Josh Hofheimer: Thanks, Jonathan. If the – if the – if Brenda, you or your colleagues could put – or Nathalie – you could put the deal talking points up for everybody to take a look at, that would be great. Okay.

Basically, as we know, there were a number of different issues that kind of were raised on a call with the IETF Trust and the different communities, I guess it was a week ago. And following that call, IETF Trust counsel, George Contreras and I, spoke about some of the legal distinctions between the, you know, what would be permissible under the, you know, trademark, intellectual property law and what would be permissible by virtue or under the IETF Trust agreement itself and, you know, Virginia trust law.

And in that discussion we were able to get a little bit better alignment and understanding of what some of the goals were. And we've put together a high level, what we felt were some of the most sort of significant issues that flow through both the IANA IPR license and the community agreement that worked off the principle, sort of a guiding principle that, you know, three things that were important in pursuing this process for CWG.

That, you know, that whatever organization is created or is empowered to hold the IP that the IP and the IP license does not interfere with the, you know, effective and functioning relationship between the IANA service provider and

the various communities, that the IP be effectively maintained and policed and that the IP be effectively enforced.

Obviously implementing all sounds good in principle, but implementing that, you know, created a decent amount of angst or has created a decent amount of angst at times. But we did work up some potential solutions that were discussed in a follow up call yesterday. And amongst the working group participants on those calls, there seemed to be consensus from the various communities that these were all acceptable compromises.

And we made it clear on that call, Jonathan, you know, and (Greg) made clear that we needed to take it back to the CWG to make sure that this community agreed with these approaches. And so I'll walk you through them now.

The first being whether or not – who should be the proper licensee of the intellectual property. Should it be ICANN or PTI? There were some – there was some discussion on that topic. I won't go into the background and the back and forth of all the discussion on each of these points. I think better just to explain where we've come out and why we've come out there and then can answer any questions.

Where we did come out was that we would have three separate licenses, one for each community so one for the names, numbers and protocol communities respectively. And the license would go from the trust to ICANN initially as the licensee because ICANN is responsible overall through the SLAs and other documents and relationships it has primary responsibility for providing the service.

As we all know, it has outsourced a substantial amount of that to PTI. And so ICANN would have the right, as the licensee, to sub-license with the consent

of the Trust. And the initial sub-licensee to PTI is going to be approved in the agreement.

So the IP itself will follow the services as well and that it will flow first to ICANN and then down to PTI. And ICANN will – as licensee, will remain responsible and liable for the, you know, any actions or omissions of the – of PTI as the sub-licensee.

Let me pause there and see if anybody has any questions or concerns? All right, seeing no hands I'll move on. So the next issue that came up was termination of the license. And this specifically referring to a termination of the license by the IETF Trust.

And there was – where we landed at the end of the day was that the Trust would not terminate, although it owns the IP, it was – it would commit in the contract that it – and to the community agreement – to the communities that it would not terminate any of the operational – any of the IP licenses for the benefit of the operational communities without either the support of that particular community, you know, the applicable community, or perhaps with an independent finding of fact from, you know, an arbitrator or some other perhaps court that a material breach has been carried and has not been remedied.

So that gives some, you know, significant – that provides a lot of protection and, you know, that commitment appeased a lot of concerns that the Trust itself might, you know, assert some independent oversight over the SLAs or over the actions of the community in monitoring the performance of the IANA service provider.

If the Trust is not going to terminate without even if it believes a breach has occurred, if it's not going to terminate without the support of the applicable community that concern really goes away.

In this, we'd also acknowledge, obviously, that – and this kind of goes without saying but the licensor, you know, the – and the licensee acknowledge that any unauthorized use of the IP might give rise to an infringement or other action by the Trust. And this could be done and would always be done in consultation with the operational communities.

But, unlike termination, it's not something that would be a formal matter that required their support or approval. There are some ready kind of ordinary course actions that the IETF Trust takes today, sending out cease and desist letters and the like, to try to prevent third parties from, you know, infringing upon the various intellectual property that it controls.

And we agreed that they didn't – we didn't want a cumbersome process of having to get approval from the operational communities to continue with that kind of conduct, but there'd be an expectation that there would be consultation.

So the next piece that was discussed was the maintenance of the IANA IPR and basically, you know, the Trust is committing to maintaining that IP so it will maintain the trademark registrations, the domain name registrations and anything else that is assigned to it in the current jurisdictions, in which it is currently registered.

In the future, if there are additional registrations, or domain names or sub domain names that are requested to be registered, those requests can be made by the licensee or by the operational communities. The IETF Trust would

consider those in good faith and it does reserve - the trust does reserve the right to require, you know, payment or some contribution of payment towards those registration fees. Which could get, you know, ownership - you know, fairly burdensome or costly if their - if a wide registration strategy is pursued. Primarily at the moment it's mostly just in the U.S. and so it's not - there aren't that many registrations. So it's not that expensive.

Enforcement of the IP follows a similar approach in that - oh, and I should make clear that with maintenance of the IP and additional registrations, even though a licensee may pay for it or a community may pay for it -- so that there's unity of ownership -- all of the IP would still be registered and owned by the IETF Trust. So to avoid confusion by having separate ownership.

On enforcement of the IP, here we've structured it so that the trust has the first right but not the obligation to choose to enforce the IP against third party infringers. And this would also be - you know, the expectation is that there would be consultation with the operational communities. But again, it doesn't necessarily require their approval because the trust is the owner. However, we do have also the scenario that if the trust chooses not to enforce, then -- subject to its approval, which wouldn't be, you know, unreasonably withheld - - the licensee could seek to enforce. And that's a fairly common approach when dealing with an exclusive license and one that, you know, everybody seemed comfortable with here.

There'd been some discussion about allocation of damages and largely this is a business issue. The trust is not getting compensation for - you know, it's not charging royalties or anything like that to PTI for use of the - for the license. And it will have to find funding if it's going to enforce an action. There had been discussion as to whether or not the trust should then get to keep damages after, you know, cost reimbursements to participants were made. Or if the

licensee -- if it is suing - if it's the party bringing the action -- would be able to keep the damages.

As a straw man, we proposed the idea that regardless of who the party is that's enforcing or making, you know, the enforcement that the damage awards could be split 50/50 after everybody recouped their investment - you know, their investment of costs and the like. And split 50/50 meaning split between the licensor and licensee. We'll see how people react to it. Again, it's ultimately just a business issue.

On the consultation point, what we did get clear - or I think got some consensus and agreement from the trust on is that -- and this is item number five -- that when the trust is supposed to consult with or seek, you know, advice from the community groups, that they would give thoughtful consideration to that advice. And there'd be a rebuttable presumption that the trust would accept such advice and recommendations. But, you know, if the trust in its reasonable discretion elected not to accept that advice, it would state the reasons why.

So in many ways as we discussed this we said, "We're trying to get to a similar place of deference to the trust advice that is similar to what deference is given to -- I mean, sorry -- deference is given to the advice or consultation and recommendations of the community in a similar way that deference is given to consultations or recommendations of the GAC." And if there was a reason for not following that advice that there'd be some further consultation and explanation as to why and also ultimately that there be a statement by the trust for why it chose not to take that advice and go in a different direction.

Item number six dealt with the - what happens -- you know, what are the consequences -- of the trust itself breaching the community agreement. Or

perhaps even breaching the license agreement. The real issue is if the trust breaches the community agreement, you know, we had proposed -- as many would recall -- that there would be a process and a method for the trust conveying or signing the assets -- the IP assets -- to a third party if that was determined to be the appropriate remedy for the breach.

The trust representatives made it clear that, you know, based on the current law - or the current language of the trust agreement, they do not have that ability. The trustees don't have the ability to affect that kind of transfer. So they did however commit that after - you know, as part of kind of implementation post signing, is what I really get -- after transition, I guess -- that the trust will seek from the trust community approval to amend the trust agreement to permit transfer of the INIPR in the event of a serious breach of the community agreement that, you know, a material breach that remains uncured and after which - and for which conveyance or transfer of the IP to a third party is an appropriate remedy. They can't guarantee that that would be agreed, but they will put that proposed amendment to the community.

And as part of the actual language, the trust would acknowledge that, you know, given that damages -- monetary damages -- are, you know, not going to be adequate remedies for breach of the community agreement, that it does (unintelligible) that remedies of specific performance would be appropriate. And those remedies could include a conveyance. So - because it's clear that if a court orders the trust to assign the assets to a third party that it could do that. But it can't as a matter of contract say that it would do that because of the trust agreement.

That said, still there is some risk, obviously, there that, you know, the trust could act in a way in defiance of the community and then be a lengthy process or perhaps court involvement to try to bring the trust back into line. But the



feeling was amongst the communities that there hasn't been - that kind of risk hasn't emerged to date. There hasn't been cause for concern in that way with the trust handling of the IP and, you know, given the -- I don't want to say overlapping interest of the stakeholders -- but given the fact that all parties in effect are trying to move in the same direction, it was unlikely for this kind of risk to arise or certainly to arise in the near future that would mandate or necessitate such a transfer.

But, the trust did recognize that the communities and especially the naming community did not want this to be moved -- after all the hard work -- to move the IP through transition out of ICANN to have it move into another entity from which it could never leave. So this is an attempt to provide an accommodation there.

And the final thing is CCG means the Community Coordination Groups, which is the - sort of a sub-committee or a group of three representatives from each of the operational community -- the names community, numbers, and protocols -- that would be parties to the community agreement and would help sort of provide advice and counsel to the trust with respect to administering the IP.

Final thing -- which is more of a legal issue -- is just that they did agree that given the California law is the law that's affecting and governing all of the transition processes and the agreements that are being into with respect to transition and implementation that the licensing community agreements will also be covered by California law. Jurisdiction or venue -- in other words, where you have to go to sue somebody -- is silent; there's no requirement -- at least right now -- that it be brought - the suit be brought in Los Angeles, which some of the other agreements do state. But at least we'll know we'll have the same state law governing.

So that's where we are. We're at the point now where we are implementing these -- you know, assuming that we do have agreement -- we're starting to implement these changes in draft agreements that are being circulated to actually see how these details are reflected. And then hopefully we'll get to a place where everybody is comfortable with going out for public comment by next week. So let me pause there and see if anybody has any questions on these seven points or concerns that they want to share with the group.

Seun Ojedeji: This is Seun, I'd like to stay in the queue.

Josh Hofheimer: Sorry?

Jonathan Robinson: Thanks Seun. Why don't you go ahead first then, and then we'll take Christopher Wilkinson who's hand's up. His hand has just come up after you. Go ahead, Seun.

Seun Ojedeji: Okay, thank you. This is Seun for the record. Thank you for the presentation. I just want to pick on the last comment you made about the - the (unintelligible) the CCG the group actually be in charge of the committee agreement. You said they're going to be parties. Does it mean that they are going to be the ones signing the agreement or what do you mean by parties to the committee agreement? Thank you.

Josh Hofheimer: Yes, they each - each of the operational communities is going to have to find some - and that is an issue that the CWG needs to work out. They each are going to have to find some party or some, you know, unincorporated association to be a signatory to the community agreement to represent, you know, the interests of the CWG or to represent the interest of the naming community, excuse me. Numbers and protocols communities have identified,

you know, one or more parties to be the signatories. It is something that CWG and the naming community needs to identify who they're going to put forward.

Jonathan Robinson: Thanks Seun.

Seun Ojedeji: Thank you.

Jonathan Robinson: So that's - thank you, Nathalie, for capturing. I think it's a key point that we'll need to identify the signing party. Thank you. Go ahead, Christopher.

Christopher Wilkinson: Hi, good evening again. Thank you, Jonathan (unintelligible). I think the question of separation and reparability of the IANA functions is a matter above the empowered community. And that may come up in the future. But it is completely inappropriate for this license agreement to write in to -- particularly this business of having three separate licenses -- write in a presupposition that separation will (unintelligible). I'm sure that lawyers will argue that this is just a formal faculty, but it looks very much indeed as if it's a presupposition. And as I mentioned in the comments that I sent in my e-mail to the list, I think all these references to the three separate licenses should be deleted. You are presupposing and - yes, upstaging the future responsibilities of the empowered community. So that I think would be my main point.

There are a few subsidiary points, which I would invite you to take into consideration. (Unintelligible) namely addressed to the IETF trust itself. This is a very lightweight organization - entity. As I pointed out, I have no idea -- strictly speaking -- what its relationships are with the internet society. But I noticed from recent documents that it has a budget of 50,000 euros - dollars. It's not very much compared with what the legal costs of this project. I want to be quite sure that the trust itself is fully able to fulfil the responsibilities which

this license agreement imposes upon it. And I think the current text is not balanced in that respect.

And the matter of international fair dealing, I would really insist that in the matter of the selection of an arbitration forum that the - that either the PTI or the trust call for proposals. Politically it is not appropriate to establish ab initio by this group that the American arbitration is - association is the forum for arbitration. (Unintelligible) do. We're not a public organization, so we're not subject to public procurement rules, but we are morally responsible for fair dealing at the global level. And that kind of presupposition at this stage is inappropriate.

And finally, it's a technical detail and I may have got this wrong, but I think that in A under protocol parameters service the amendment opens the door to proprietary protocols. I'm against that. That was not what we bought into in 1998. We bought into the IETF as an open source of - source of internet protocols. And I really take objection -- if I'm right -- that that amendment opens the door to proprietary protocols for reasons which I've expressed in the e-mail.

But the main point -- as I -- is no reference to three separate licenses. If you need to do that in the future, you will amend this license agreement. But for this agreement today, to presuppose that the separation will occur on the basis of separation of the three licenses, I think is a provocation. Thank you.

Jonathan Robinson: Thanks (Chris). Just a note if there's various responses in the chat from a number of people on that point of presupposition. (Andrew), Alissa, (Samantha) to some extent. To some extent (Toque). I'm not going to personally attempt to respond. I don't know if Josh, you want to pick up on any of those points. I'll give you the opportunity to respond and I'd like to go

to Avri's question, which you may be able to pick up on also there. I'm not sure. Josh, do you have anything you'd like to add?

Josh Hofheimer: Sure. I mean, I won't add anything to the discussion of the three licenses because I think the chat does adequately reflect it. I do know that separation of the IP from ICANN was a condition to the proposals that went in and a strong one from numbers and protocols. So, you know, we are where we are in that regard.

But on the comment about governing - you know, about the means of resolving a dispute, that statement in here was as an example if there were arbitration. Don't know that that necessarily will be the form for resolving dispute. It could be that it's litigated in the courts in the U.S. If the parties decided they want to try to specify an arbitral forum, then obviously you'd want to select one that, you know, was balanced and did appear to - and did have an adequate understanding of U.S. law and California law in particular, which would be the governing legal framework for any dispute. But I don't think that there was any assumption in putting this together that a particular arbitral body would control any disputes that might arise.

Jonathan Robinson: Thanks Josh. And...

Josh Hofheimer: Oh, and I'm sorry; also on Avri's point. Yes, so if the - if the communities, you know, if through the separation process, you know -- or through the escalation process in IRP -- it was determined that the services that were being provided by ICANN and PTI with respect to IANA services were not adequate, then the trust - the communities can direct the trust and the trust would adhere to that, you know, direction to terminate the license with ICANN and PTI and then to transition that license to whoever the replacement services provider may be.

That - you know, that may or may not be done through, you know, a transfer of the license. I think it's probably more likely that it would just be that the license is terminated and a new license is entered into with a replacement services provider for kind of unrelated legal reasons. But that is what would happen and the communities do have the power to direct the trust to make that change.

Christopher Wilkinson: Yes, but in that case you don't need to foresee any detail in that respect. The community will now enter into a new license.

Jonathan Robinson: I think - thanks. I mean, Josh was responding I believe to the question from...

Josh Hofheimer: To Avri's point.

Jonathan Robinson: Chat.

Josh Hofheimer: Yes.

Jonathan Robinson: This was - these - I just make an overall remark before we try and - well, there's a follow-on question from (Matthew). Let's just take the follow-on question, then, Josh, from (Matthew) if you want to pick up on that in the chat.

Josh Hofheimer: So there would still be - you could have it be that you'd have a single - you know, that all three licenses would be terminated if the IANA service provider was being replaced for all three communities. But it does also, you know, maintain the flexibility that if -- let's say -- you know, the numbers community was going to engage a different service provider but ICANN and PTI were

still going to provide the services for protocols and for names, that the license would be - you'd obviously have to work out some integration between the two services providers, but the IP license itself to the marks and to the domain names would still stay with - would still stay intact and in place and you wouldn't have that disruption of the license with respect to the use by the names community of the IP that was disrupted or displaced by some issue that arose with respect to numbers or protocols.

So I think overall this may seem to be a bit more complex, but hopefully it actually provides some stability in that no single - no single community can get kind of dragged into something by another community in connection with their dealings -- the operational community's dealings -- with the IANA service provider.

Jonathan Robinson: Thanks Josh. And on the subject of overall, I suppose that the point here is that this is - these set of principle resolutions of the top legal items we were quite a long way from this. In fact I felt concerned and there were various concerns about whether or not or how we might get to a solution that would work. And this represents some careful discussion and compromise both amongst the representative communities and the legal representatives. So I guess what we really need is the CWG to accept that on balance that this would in the context of where we've been working represents a recent or set of legal resolutions that enables us to go forward and make the progress we need to do in order to prepare the documents that will then ultimately go out for public comment.

Seun Ojedeji: Hello, this is Seun, can you hear me? I'd like to...

Jonathan Robinson: Seun, go ahead.

Seun Ojedeji: Okay, just a question - just a follow up to my first - or my initial question. So at what point really would names be determined in the (unintelligible) that will sign? Is it during the public comment or before the public comment?  
Thank you.

Josh Hofheimer: Seun, I'm not sure I understood that. Were you talking about the signatory to the contract or through - or were you (unintelligible) the representatives on the CC?

Seun Ojedeji: Yes, this is Seun for the record. Yes, as I understand what legal said is that there will be three people that are going to be signing the community agreement for the names. So my question is at what point or how exactly are we going to be determining who those three people are? Who is going to be determining that? Is it ICANN? Is it CWG? Thank you.

Josh Hofheimer: Hi, Jonathan, if I may...

Jonathan Robinson: (Unintelligible) so let me let (unintelligible).

Josh Hofheimer: I was just going to explain that the CWG needs to decide what entity or, you know, association will be the signatory to the community agreement. And then also to determine what - who will be the individual representatives -- at least initially -- of the names community as part of the CCG. But those individuals will not be signing or will not need to sign anything. The entity that is identified to be the counterparty to the agreement will be the only signatory on behalf of the names community. And then it's just a question of naming the representatives.

Seun Ojedeji: Oh, yes, this is Seun for the record.



Jonathan Robinson: Thanks Josh for clarifying that (unintelligible)...

Seun Ojedeji: Okay, that makes sense. (Unintelligible). Thank you.

Jonathan Robinson: Thanks Seun for your question and thanks Nathalie for capturing the alternate point. (Greg), you dropped your hand. Did you want to speak or are you satisfied with the answers being given?

(Greg): Yes, I think Josh covered it.

Jonathan Robinson: All right. I think we've just sailed (unintelligible).

Seun Ojedeji: Now, this is Seun, I'm fine with your response. Thank you.

Christopher Wilkinson: Jonathan, do I have the floor or has somebody else got the floor?  
Now what's happened?

Jonathan Robinson: Sorry, Christopher. My connection got interrupted. I need to bring us to a close, but by all means, your hand's raised, so go ahead then we'll have a last word from Alissa. My connection dropped temporarily.

Christopher Wilkinson: Well, the first point is where do we go from here? I have suggested that the license agreement should be subject to public consultation on the CWG list. An official of the internet society has indicated to me that the IETF Trust will undertake a public consultation on the basis of this license agreement. I'm not sure about that, because I've never seen a public consultation organized by the IETF Trust, but I may be - maybe this will be a first. And I trust that since these are drafts and I believe that the parties concerned are still discussing them that the points that I've made will be taken fully into account in the final version. Thank you.

Jonathan Robinson: Thanks, Christopher. To respond briefly, these are the high level points of potential resolution and compromise between the three different operational communities. As you can - as you're aware this is not necessarily a matter only for the CWG. But yes, as far as I understand -- someone can help me here -- but I - the intention is to then move these points forward into the draft agreements and ultimately those agreements will be posted for public comment.

Christopher Wilkinson: Thank you.

Jonathan Robinson: Thank you. Alissa, did you want to come in next?

Alissa Cooper: Yes, thank you Jonathan. Just one other point to highlight here, which is that we've also just in the last couple of days received comments from ICANN on the license agreement and the assignment agreement. And we'll -- beyond the issues that Josh laid out here -- there are some further edits going back and forth and the small group that contains all of the communities and the trust and ICANN is going to be meeting intensively over the next week to try and finalize all of these documents. So the goal is to have back to the CWG documents that are ready for public comments before the CWG meets again, which is next Thursday, correct? I believe that's what I have on my calendar.

So just wanted people to be aware that although we've reached good agreement in the small group around the points that Josh laid out, there are some other discussions still ongoing. And the objective is to have all of those at least in a stable enough condition where people feel comfortable with public comment going forward. And in the same manner that this group was discussing on this call, it's possible that individuals or individual entities can still file public comments if we don't perfectly resolve everything before

Thursday. But we intend to put it out for public comment on Thursday so that that can be reported to NCIA and ICANN's report.

Jonathan Robinson: Thanks Alissa; thanks for your help with that and for clarifying that part of the process. Okay, and so I think at that stage we have to wrap up the call. We've covered the key items that we needed to. We've got a little sidetracked in around the issue of Annex C, but hopefully we will pick that up on the list and systematically work through those points as discussed. So with that, I think I'll call it to a close and please pay close attention to the list. I know there's been a deluge of documents and we'll attempt to keep on top of things on the e-mail list and we plan to talk again at this - a week from now and in the meantime we'll continue with some of the intensive work on the open items here. That includes the IPR and incorporation of Annex C. So thanks very much for your attention and participation. And we'll look forward to talking with you again soon.

Seun Ojedeji: Thank you. Bye-bye.

Woman: Thanks everyone. Bye.

END