

**ICANN**

**Moderator: Brenda Brewer  
September 1, 2016  
3:00 pm CT**

Man: The recordings have started.

Yuko Green: Thank you. Welcome everybody. This is CWG IANA meeting Number 90 on September 1, 2016 at 20:00 UTC. I will now hand it over to Jonathan.

Jonathan Robinson: Thanks, Yuko, and hi everyone. Welcome to our call. We've got - it's not so easy to see how challenging or long the call will be. We've got a few things to deal with and so we'll see how we get on with this.

I guess reminding what I have done previously but during the call, is clearly we can start running the implementation and we're getting down to some of the very final points now.

And our job is to clearly ensure that the implementation is consistent with our proposal and to assist with any issues between external legal counsel and ICANN to try and - when and if there are thorny or nuggets they need to be dealt with.

We've given Sidley direction to work directly with ICANN and that's particularly pertinent to tonight - what would be tonight for me, today's call, in the sense that, as we deal with naming function agreement, a table has just been published which essentially - and we'll come to that in section three of the agenda which essentially lays out where ICANN Sidley have gotten to.

And in many cases, there is agreement between ICANN and Sidley. It's up to CWG to accept or not that status quo and then there are clearly a few issues in there that need some more detailed discussion, one of which at least has been getting quite some discussion on the list very recently.

And, in fact, things have been quite active on the list as you would have seen. So key objectives for today is really to try and make some good progress and ideally resolve the outstanding issues with the naming function agreements.

And the service agreement - we'll touch on that when we deal with where we are in the implementation but we're not quite ready to deal with it in this call. And then the other substantial point is the issues in and around the IANA IPR and signatory to the community agreement and the issues that arise from that - definition of naming community and nomination of CCG reps.

So those are really the two key areas of focus - dealing with the naming function agreement and pointing around the IPR. Just remind you, naming function agreement is out for public comment in its original or in its form as published.

And that public comment period closes just over a week from now on 9 September. I looked today and when I looked there were no comments published.

And one of the key issues that we'll need to decide is whether the CWG is going to submit a form of comment letter or alternatively a redline update on how we see the documents which may be the most elegant way of doing it, is to simply say, having deliberated on the documents that was sent out for public comment, we submit a revised version in redline format.

We can talk about that process as well which is, I think important to agree on and understand. So I think that's career at the moment and we've got a couple of substantial points, as I said, and hopefully we can make good progress on those.

Before we move on to those, does anyone have any points on that sort of preamble, the structure of the call, any points of clarification or understanding of the agenda? Any initial points that anyone would like to ask questions on or raise at this stage?

Okay, good. Well, we've got reasonable attendance and we've had active participation on the list which is good to see and we've got representative, of course, ICANN staff and ICANN legal staff as well.

And we've certainly got representatives of Sidley on the call so welcome everyone. Let's get moving on in with the implementation update from staff which I don't expect to be particularly long but it should set (and tell) us where we are. Let me hand over to you, Trang, for this section two of the agenda.

Trang Nguyen: Thank you, Jonathan. So (projector) in the Adobe Connect room is the slide that we had used as time and we are planning on using this slide to provide you with the implementation update from here on out.

This summarizes the remaining work that needs to be done in a good format. As Jonathan mentioned, the (P China Ling) function agreement is currently out for public comment which will end on September 9th.

And as you can see there, that is the date that we communicated last time and that has not changed. Before September 15th, we will need to publish the staff analysis and the final agreement.

And the ICANN board is scheduled to meet on September 15th and the agreement is on the board agenda for consideration and approval on the 15th. And it prior to September 30th the PTI board would also need to approve the agreement.

And then, of course, before September 30th, both ICANN and (PTI) would need to sign the agreement. The text that I've highlighted in blue is an update for you as to where we are with the agreement.

Yesterday Sidley had sent to the committee a redline against the version that was published for public comment as well as a table that summarizes the issues that we like - the remaining issues that we'd like to discuss with the CWG.

So that was circulated yesterday which has been forwarded onto the CWG. Just the - I think maybe a little over an hour ago, I circulated an updated table adding to it the item around Section 4.7 of the agreement which has a specific reference to Section 1.3 of the 2005 GAC principle.

As Jonathan mentioned, there's quite an active discussion around that topic on the CWG list so we've added to the table to provide an opportunity for further discussion.

With regards to the PTI services agreement, the timeline is there on the slide so I won't read it to you. And it has not changed from the timeline that was provided on the last call.

With regards to that agreement, Sidley and I can have been in the conversations and discussions. I think we're down to just a very few - I want to say maybe a handful or a little over a handful of items left for consideration.

The ball is in ICANN's court on that services agreement and we're hoping to get that is Sidley today with responses to their last round of edits. We anticipate that we should be able to work through most of, if not all of those items Sidley.

But any remaining items that we have, we will be sure to bring it back up to the CWG for discussion. The last item, remaining item of work, is the IANA IPR agreement.

Since the last call, there had been an IANA IPR call where the group had agreed on a timeline to finalize the agreement. As mentioned on the last call, the agreements are currently out for public comment which were closed on September 12th.

By September 19th, I believe that the community is anticipating that the analysis and discussions would conclude and that by September 21st the agreement is finalized.

On the 22nd of September, I believe there's an IATF trust meeting and so that's when approval of the agreements are anticipated to occur by the IATF trust and when the final approval from the community are also expected.

And then the anticipated timeline is that by September 26th, the ICANN board would approve the agreements and, of course, the agreements will be signed by September 30th.

So Lise, if I got any of those dates wrong, please correct me. And that is that in terms of an implementation, that is the update. Jonathan, I'll turn back to you and will be happy to take any questions.

Jonathan Robinson: Thanks, Trang. That seems distinct and clear. I suppose just one other comment and if you or someone working with you, hopefully prepared that status report in response to a question on list by Kavouss, I believe.

And so that anyone wants to sort of refer back to that, I think that was quite helpful summary point as to where we are also in terms of capturing where we are in the process.

Any other questions or comments in relation to this slide or the input from staff for the mechanics of where we are currently? Like I said a moment ago, a key issue for me will be how we deal with our comments or input on the (naming) functions agreement.

And we'll - I won't preempt the outcome of going to the table, but certainly once we've gone through that table, it seems to me we're going to end up with a sort of agreed variation to that document that's out for public comment.

And my feeling, which I'll (seed) with you, is that probably the most efficient way to provide that comment is to say the CWG, having reviewed the document out for public comment and in (consultation) with their own legal

advisors and ICANN legal, proposes the following variation to it (and offer that now) as public comment.

It feels to me like that's the most efficient way of doing it rather than going through a substantial letter detailing all of that as we have done in other areas. Let's see what we get to (with the table).

All right, so we can move now onto the key issues and as I said at the outset, we're really going to be dealing with just two primary bullets - the naming function agreement and the IANA IPR.

So let's (pull up) the table now and this was prepared for us by Sidley. You have hopefully seen this on lists and it deals with a number of different points. And I suggest here that the best way to deal with this is to simply walk through these point by point.

There aren't that many of them. I can count them. (It feels to me) like 10 or 12, something like that. I suggest we simply walk through these, check them and make sure we are either satisfied or have appropriate discussion on them and deal with it like that.

So they're numbered on the far left hand column, A1, A2, A3, et cetera, and A1 is - comes from Section 4.2 of the document and deals with - I'm wondering, Josh, is this is something you would feel comfortable - it may be better that since this is a Sidley prepared document, it might be helpful if you were to walk through it.

And then we can just take questions or input because - with that be okay with you? Do you feel in a position to do so? If not, I would be happy to do it. But it may be more appropriate and better coming from you.

Josh Hofheimer: No, (unintelligible) and this is - it's Josh. That's fine. I think it's something that I can start the conversation on. I think there are some specific issues that I'm going to defer to ICANN staff, ICANN legal, (Samantha) and Trang, to talk about the ICANN position.

Because some of these points, they were not - some of these open items were items requesting confirmation, I should say, are not ones that have, you know, specific legal significance or illegal tie into the CWG proposals that Sidley was hoping to vet but are more dealing with technical issues relating to the IANA services themselves.

And I think they can be closed out by a discussion led by Sam and Trang for their, you know, reasoning behind the position they had put forward. If people have a copy of the red line available, it might be helpful to look at that side-by-side as we go through this. The first item...

Jonathan Robinson: Josh just for the record, you send out - or it was sent out to the group, both the red line document in PDF format with the full red line and its tables. So they can be cross-referenced with one another, as you suggest.

And I'm perfectly willing to facilitate a discussion should that be necessary if we get to any points. I mean, my personal posture, and (I can seem) to offer significant impediments apart from that we've already got discussion on. But let's see how we go. So let me and that to you, Josh. Go ahead.

Josh Hofheimer: Okay, great. So the first issue is A1 which deals with the US presence and it's whether or not the language is sufficient to enable, specifies the primary responsibilities, or primary operations are going to be in the US.



But that doesn't preclude, you know, ICANN's belief, and we don't have any reason to object or disagree with that, but that does not preclude the possibility (or be) reason to promote employees are providing support which could come from other jurisdictions.

And so the initial question is, you know, to CWG, is this something that we can consider closed out or do people - you know, and there's the consensus that no further changes are required or does there need to be some discussion for this topic further?

Jonathan Robinson: So, Josh, it's Jonathan. I would suggest that you (sort of call) a question and if - and assuming there are no responses or objections, we can consider that closed.

So the issues is, does anyone have any objection to this resolution as presented or are there any points of discussion? And if not, we consider that particular item closed. Thanks.

Josh Hofheimer: There don't seem to be any objections to this item A1, so we will consider that one closed. The next one is also something that there had been some questions raised initially by - to the Paul Kane comment by Paul or Becky or others.

ICANN has responded with some changes that it believes addresses issues and provides some comment and further explanation and there hasn't been any for the discussion that we're aware of.

And they're asking if the language, as presented, with the changes, the limited changes here in 44D, that you can see, are sufficient to address CWG concerns are there any objections to the language, you know, as presented now in the red line. Okay, I think we...

Jonathan Robinson: Josh, you've got a hand up from Becky.

Josh Hofheimer: Oh, sorry. Go ahead, Becky.

Becky Burr: Sorry, I'm just trying to figure out where, on this list, the - what Item A, what this is.

Josh Hofheimer: Are you looking at the table, Becky, that's on the shared screen?

Becky Burr: Yes. Yes.

Josh Hofheimer: (So 82), which is Section 44D of the agreement.

Becky Burr: I think that this was okay.

Josh Hofheimer: Okay, so then if there's no objection by anyone else, we'll consider this one closed as well. So Trang or (Samantha), is this A3 now that has been sort of - is this the issue that's been, I think, getting the most recent direction and you all dropped this in? So why don't I turn it over to you all to discuss this issue? Either Samantha Eisner or Trang.

((Crosstalk))

Jonathan Robinson: ...want to come in. But, I mean, this clearly has been the subject of some discussion and it's recently included in - well, it's very recently included in the (table). This was an included in the original draft for the table.

And I think the key issue is the - well, the structure of the paragraph and there has been some discussion about how this could be perhaps reworded and the potential inclusion or what not of this reference Section 1.3.

What anyone from staff like to comment at this point is invited by Josh or would - and other than that - yes, and to Becky's point in the chat, there is some alternative language.

Becky, maybe it would be useful - I know it's on the list, but simply post that alternative language into the chat on the room because - and then perhaps you could speak to the change that's been made and proposed there so that others can understand what's being suggested because I'm not sure everyone has the opportunity to keep up-to-date with the latest discussion on (the list).

Sam Eisner: Jonathan, this is Sam while Becky's posting that.

Jonathan Robinson: Go ahead, Sam.

Sam Eisner: All right, first of all, you know, so clearly this has been an item of a lot of communication and discussion on the list. And I think it's important to note that this is something that we think is really important for proper reflection in the agreement but ICANN doesn't really have a position one way or the other on the reference of 1.3 or how the word applicable comes in.

You know, we think that if there's ever any question about what the PTI is supposed to apply, they should come back to ICANN and say, "Okay, we're not clear how to follow our obligation. Tell us what to do."

So, with that, you know, we've seen the language that Becky has presented and, you know, if it's something that the group agrees clears up some of the

confusion and some of the concerns that have come in because of the language, we would be supportive of moving that.

And we think that this - the most important thing is to make sure that the document reflects what the community sense is important and it. So we don't want to be too limited from one aspect or two but open and it from the other.

And then, you know, we think that, if the movement is towards removing the specific reference to Section 1.3, we think we could assist in modifying the other place that is included. It's in two places. So we would be supportive of whatever way the community moves forward on this.

Jonathan Robinson: Thanks, Sam. So Becky's posted the proposed revised language of Section 4.7 and notes also further that the subsequent discussion on the email list has suggested substitution of (substitute) consult where apply was previously used.

Becky, I think it might be useful if you just described very briefly how that paragraph has structurally changed and then let's see what level of support and concern there is with the revised proposed wording.

Becky Burr: Okay, thanks very much. So when the ccNSO and CC members on the CWG what we were concerned about is the reference to the - Section 4.7 directs the contractor to apply policies for (unintelligible) management.

And then went on to identify policies developed by the GNSO and the ccNSO and adopted by ICANN which are clearly policies. RFC1591, which has always been an ICANN policy, as interpreted by the framework of interpretation, which went through a very long policy discussion interpretation process and it is not new policy.

It's a guide to, you know, it is a - those hand-in-hand with 1591 and that was adopted by the ICANN board. But then third in the list is - contained GAC principles, the GAC 2005 principles on ccTLD delegation and redelegation.

And while the GAC principles are clearly the GAC (sees it) as advice and important advice, it's not an ICANN policy. It hasn't gone through any of the ICANN policy development processes or, you know, has been part of something that was adopted by the board as part of a policy development process.

In addition, by its terms, it applies in very particular - very specific circumstances. And we were concerned that including it in a list of policies undermined the concept of policy development at ICANN in a way that we were very concerned about.

And also, you know, just sort of didn't - it didn't - created potential confusion and also suggested potential applications beyond where it clearly applies by its terms.

So we had proposed some language to refer specifically to the section in the GAC principles that talked about where it applies and the GAC participants objected to that.

And so what I've attempted to do here is to say a contract is going to apply policies developed by the GNSO and the ccNSO and our C1591 is interpreted by the framework of interpretation.

And then in addition to these policies, the contractor would apply or refer to the GAC principles where they apply. So we've gotten rid of the reference to Section 1.3 which I believe was the source of objection by the GAC

participants and we've clarified that, while it - the GAC advice, the GAC principles, are not ICANN policy, they are to be applied or complied with where they apply.

Jonathan Robinson: Thanks, Becky, and I guess from a device point of view, it seems to me what you've also done quite elegantly is if removed this final section from under the umbrella of policy while still retaining it under the umbrella of responsibility and respect for stakeholders which is the overarching objective of the paragraph.

So you've separated out from under the policy umbrella but retained it under that and that, to me, seems to be an effective way of responding to some of the comments on the email list which was respectful of the concern that this may not be policy but wants to retain this umbrella of responsibility and respect for stakeholders.

So it seems to be an elegant proposal to deal with the concerns. Are there any questions, comments or responses to this proposed revised wording? And just for the record, Josh just supported the change, in fact, on changing apply to consult. And the proposed revised wording should include a change of the use of the word apply to consult. Chuck, go ahead.

Chuck Gomes: Thanks, Jonathan. Chuck Gomes speaking. Just a clarification, as some of you may have seen, although it was - it happened just shortly before this call, I responded to (Jorge) who looks like he's not on the call saying why I thought the inclusion of Section 1.3 was helpful because it was very specific.

And I think the more specific we can be avoiding vagueness is very important for PPI so that their directions are clear and it minimizes their need to go back and get for the direction.

That said, my question is, now that the reference to 1.3 is not going to be in their - and by the way, I support the alternative language with using the word consult instead of applied as Becky discussed, but I guess my question is, is it specific enough now so that there's no ambiguity in terms of what instructions PTI would follow?

And I don't know. Becky, I guess, first of all, that maybe to you so I'm glad to see your hand up. But I'm certainly open to listening to everyone that has any comments on this. Thanks.

Jonathan Robinson: Thanks, Chuck. Thanks for the question. Over to you, Becky.

Becky Burr: So although I think many of us would have preferred to include the reference to Section 1.3 which is very clear, I think, you know, there were two concerns that were being dealt with.

One was the sort of description of GAC advice as policy where policy has particular meeting. I think that the universally important concern. And so, although I think it would be clearer, I think it is adequately clear in this formulation where - so (with) where applicable and 1.3 is very clear.

And I would think that PTI would be able to read 1.3 and understand exactly where it would apply. But frankly, the where applicable and the limitation of 1.3 seemed much more important it was going to be in a list of policies because it would be hard for PTI to understand, you know, sort of how do you deal with one policy and another here?

I think, you know, describing it as something other than policy principles and particularly with the consult language I think we can live with it. And I think from a legal standpoint it's adequately clear, Chuck,

Jonathan Robinson: Thanks, Becky. Any other comments or questions? I know that Lise has put her comment in the chat that seems like a good compromise text and Chris agrees with Becky, I assume, most recent point that it's sufficiently or adequately clear as it stands.

So I think pending no other comments or objections this is the proposed revised language and the language that we will substitute for what was there previously in our current redline. And it seems to be – provide some form of compromise.

All right, seeing no other hands up in the discussion I think I'll hand back to you, Josh, for the – yes, and Becky notes – or ICANN staff that we do need to conform other sections of the agreement where the same issue might arise. So this effectively is a – becomes a master for those other areas.

All right, let's move on then. Josh, I'll hand back to you to deal with A4 onwards and let's see what progress we can make there.

Josh Hofheimer: Thank you. Thank you, Jonathan. And Trang did not that she will update or she'll make the conforming change in the other areas and (unintelligible) will help watch for that as well.

So the next item is A4, which is the inspection of deliverables and reports before publication. And it refers to Section 4.10a of the agreement. A question was raised about whether or not it was – whether or not it was appropriate or practical to have a blanket prohibition on publication of reports and other



deliverables by PTI. And I don't think that was the intent ICANN had in this language. But they've revised it to make it clear that they will develop with PTI a template that can be used for posting of reports and deliverables.

And so long as the information posted is on and consistent with the form of the template this section would not restrict or require inspection prior to publication. But if there is a change then there would be a need to work with – for a contractor to work with ICANN to get their, you know, approval and remedy the template or remedy the report and make any changes necessary.

So the question here again is if this change is adequate to address the concerns of members of CWG. And so let me is if there's no objection to this language as presented with the change in 4.10 that is noted in the chart and in the document itself then we can consider this closed.

I'll pause for a moment and see if anybody raises their hands. And nothing in the chat so we'll consider it closed.

The next item is in A5, which deals with performance exclusions in Section 5.3a. There was some question here raised about PTI's involvement with the root zone or performing tasks or services related to the root zone. And ICANN has revised the language here to make it very clear that contractor is not going to be performing those services that are performed by the root zone maintainer, which are contemplated by RZMA unless specifically authorized by ICANN to do so.

So I think, again, this is a question with this change, does CWG have any further objection to the language presented as a means of resolving this? I'll pause for any questions or comments in the chat. There being none we'll consider this one closed as well.

The next one is Item A6, which addresses 6.1c in the agreement. There were some comments here about the ability of people to access reports, minutes, discussions relating to the IANA naming functions that happened at the Board.

And ICANN have language in here that allowed it to read that those minutes in certain situations. And there was some concern raised about whether or not that created sort of an exception that a truck could be driven through, speaking proverbially, you know, and whether the exception would swallow the rule.

ICANN responded with some language that, you know, PTI would operate in an open and transparent manner and the would do so in a manner that's consistent with the concepts that are contemplated in ICANN's bylaws.

So again this is one that, you know, we're asking or ICANN is asking – Sidley had no further comment on this, and are asking for confirmation from CWG whether there's any objections or can this matter be considered closed as well. Okay so I think with no objection, no hands raised and no comments in the chat we will consider this one closed too.

The next one is Item A7, and it refers to Section 8.1 of the agreement. And this relates to the complaint resolution process.

Trang Nguyen: Hey, Josh, if I could maybe jump in on this one?

Josh Hofheimer: Yes.

Trang Nguyen: Because this has I think, one of the topics that ICANN wanted to raise to the CWG for discussion.

Josh Hofheimer: Correct. Thank you, Trang.

Trang Nguyen: Thanks, Josh. So Section 8.1 of the agreement describes the customer service complaint process. And as background information for those that are not familiar with the customer service complaint process, that is described in the CWG proposal, let me just take a minute to just sort of described the process and then phrase the question.

So the CWG proposal provides for two phases to the customer service complaint process. In Phase 1 anyone can submit a customer service complaint to PTI. And PTI staff would attempt to resolve it. And if the complaint is not resolved satisfactorily than the complainant can escalate in writing to PTI's management team at which time the CSC will be notified. And the complaint can also be escalated to the ICANN ombudsman.

So that's Phase 1 of the customer service complaint process that's in the CWG proposal. Now the CWG proposal says, and I quote, "If the issue is not addressed in Phase 1 and the complainant, which is the direct customer of PTI, the IFO, or the ICANN ombudsman can request mediation."

So it is this sentence in Phase 2 of the process that we are not clear about. It's not clear to us, you know, why the ombudsman, which is a place for neutral dispute resolution over issues of fairness, would be able to initiate mediation or what the ombudsman's ongoing role in that mediation is expected to be.

So we had reached out to Chuck, who was the design team lead for Design Team M, to inquire about this. And Chuck, I don't want to speak for you so I don't know if you want to – just to chime in and provide your thoughts on what this statement in Phase 2 was meant. So I see, Chuck, your hand is up so please come in.

Chuck Gomes: Thanks. This is Chuck. And what I'm going to share is going to be – are going to be thoughts of my own, not Design Team M. I didn't reach out to Design Team M a couple days ago. Not surprisingly, I didn't get any responses because we haven't been functioning for a long time. And certainly if there are any former Design Team M participants on this call, please feel free to speak up.

But in my recollection, which isn't terribly clear, I did go back though and look at Design Team M exchanges on our list and so forth. I really don't think that Design Team M had any intention of asking the ombudsman to do things that really weren't a good fit for the ombudsman.

What I think happened is we didn't really focus on that particular issue of what was appropriate for the ombudsman. I don't even recall us discussing that. I think what happened was because the ombudsman was listed as an option, and by the way in the CWG proposal the world of the ombudsman is an option – it was proposed as an option, not a requirement.

And so I think this was just something we didn't zero in on sufficiently. So I think in my own opinion I think that adjusting this to fit more appropriately to the agreed role of the ombudsman, in other words I don't think that it needs to stay the way it is allowing the ombudsman to request mediation.

The ombudsman is referred to in the Phase 2 recommendations so I don't know if we have to deal with that at all. I don't have strong feelings there. But my own personal opinion is that I think it would be appropriate to fix this so that we don't give the ombudsman the opportunity to request mediation.

And of course also thinking about the third party that would be working with the ombudsman they wouldn't have any standing to do that. So as staff rightly noted, there's some disconnects here with regard to the way it reads right now in Phase 2 of the escalation process. So I'm personally comfortable with fixing it to avoid the problems that staff identified.

Trang Nguyen: Thank you, Chuck. And we've been thinking through as well what a potential fix for this may be and perhaps, you know, something along the lines of, you know, the fact that if a complaint is escalated to the ombudsman through the established processes here and the ombudsman determines that the issue is still, you know, unaddressed by PTI adequately or that there is no ability to achieve resolution of the complaints through the ombudsman's office, then the ombudsman may take a next step which is to recommend that the parties proceed to mediation.

And if the complainant then wish to take up an ombudsman recommendation for mediation, obviously the CWG proposal does provide for that. So maybe the fixes something along those lines and we can work on some draft language that we can share with the CWG for consideration.

Jonathan Robinson: Thanks, Trang. Josh, are you going to come back in?

Josh Hofheimer: Yes, I actually don't know that that statement would be necessary. And I agree, it does – it still, to my mind, confuses the role of the ombudsman, which is supposed to be, you know, to provide good office in a way and to be a neutral party. And I don't think it should be in the position to evaluate whether or not there has been adequate resolution. I mean, I think if the complainant doesn't believe there's adequate resolution then the complainant can pursue it further. And that language is provided for in 8.1b.

And otherwise I don't think it's really up to the ombudsman or should necessarily be the ombudsman's role to make a factual assessment and recommend one way or the other. So I'd argue that were I to propose the language, you know, given what Chuck has said about DTM's sort of thinking here and what we all know an ombudsman's role to be as a general matter, I think the language that's proposed in 8.1a and B now sort of does sufficiently capture things.

Jonathan Robinson: Thanks, Josh. I think what we were asking for is for clearly you and ICANN Legal to resolve this as best possible and to come back to us and the comment we've had from the group, is from Chuck, recognizing that there is a potential issue and he's satisfied with that.

So, I mean, if others have an objection I think we should let you conform to the language that you agreed with ICANN Legal so far. And I see a checkmark from Chuck in the chat so that's helpful.

All right, unless others – and if there are other fresh hands raised or comments provided, I think we can move on to A8 then, Josh.

Josh Hofheimer: Okay, so I guess I do want to – maybe we're not sort of clear on this. My point was I think so ICANN had proposed, they put this item on discussion because they wanted to make sure that the ombudsman issue or they need to have the ombudsman have the ability to escalate was not something that was going to continue to be pressed.

And I think that with the explanation that Chuck provided, it seems to us that that's not a need to be there. So Sidley, what Sidley is saying is that we agree with the language as presented, you know, with a slight and related change in 8.1a.

And so if there's no further objection or concern from the CWG community we propose to consider this when closed as well as presented and don't think there's any need for further revision.

Jonathan Robinson: Correct, Josh. So that was my understanding as well, and I'm sorry if I didn't convey that effectively.

Josh Hofheimer: Chuck has his hand up.

Chuck Gomes: Yes, thanks. This is Chuck. I just want to clarify, Josh, are you saying that the statement that the ombudsman may request mediation doesn't need to be removed?

Josh Hofheimer: No I don't think there should be a statement that the ombudsman can request mediation.

Chuck Gomes: Okay good. This is Chuck. And that's all I wanted to clarify because that's what it says now and I think that needs to be fixed so I don't think we can just let it ride unless I'm missing something and, Trang, help me out if I'm getting that wrong.

((Crosstalk))

Trang Nguyen: I think what I'm hearing, Chuck, if you'd like to have the ombudsman be reflected in Phase 2 in some shape or manner that makes sense. But what Josh is saying is that currently the agreement does not provide for the ombudsman to request mediation as drafted. So I think what Josh was recommending is that based on what you said, Chuck, he does not believe that the ombudsman should be mentioned at all in the agreement.

But I think what I'm hearing you say, Chuck, is you want – you think that the ombudsman should be mentioned because it is in the CWG proposal that mentioned in such a way that makes sense.

Chuck Gomes: Yes, that's good. Thanks.

((Crosstalk))

Trang Nguyen: Is that correct?

Josh Hofheimer: I don't think that's correct.

Chuck Gomes: Thanks, Josh. This is Chuck. Appreciate it.

Josh Hofheimer: Yes. Sorry, I don't think that's what Chuck said. I think, Trang, I think you're creating something that doesn't exist and right now the language talks about the reference that the complaint initially gets referred to the ombudsman, that the ombudsman does not make an independent decision whether it should be referred further. That's up to the complainant is to decide if the complainant is not satisfied with the resolution reached or not reached with the benefit of the ombudsman's good office, then the complainant can choose to pursue it further.

And what I heard Chuck say was that he agrees with that approach and if that's the case there doesn't need to be any further change to Section 8.1. I don't think...

((Crosstalk))



Chuck Gomes: And this is – yes, and this is Chuck. Yes, I think – I think you're saying it accurately. Where we have the problem is the – our CWG recommendation says that the ombudsman may request mediation. And that I think was a – put in there without careful thought by Design Team M.

And so upon further thinking I don't think we have to worry about that unless somebody thinks we do, I definitely do not think we do. So it was just unfortunate wording in the recommendation from CWG, which came from the team I was leading, so I'll confess to that. Thanks.

Jonathan Robinson: Okay thanks, Chuck, and Josh, for clarifying that. I see Olivier wants to come in so, Olivier, did you have an additional point or question you wanted to ask in respect to this?

Olivier Crépin-LeBlond: Thanks very much, Jonathan. Olivier Crépin-LeBlond speaking. My question relates to the IRP. In the current IRP is the ICANN ombudsman given the ability to request mediation? Because if we are to write a process here – I mean, I'm just – actually it's an open question. If we are to write a process and we say, well, we're going to take the ombudsman out of the equation for being able to request mediation, would that clash with any IRP that currently allows for the ombudsman to do that?

Trang Nguyen: Olivier, this is Trang. I'll attempt to answer your question. Clearly, the ombudsman office, does not initiate mediation. So for us to actually provide that right would be a new right that the ombudsman would have. The ombudsman consider issues of fairness that are brought to him. And if he is – after consideration he wants to make a recommendation then he would do so via a report to the ICANN Board. So that essentially is the scope of his responsibility currently.

The ombudsman may use mediation as a tool, you know, to consider the issues that are brought to him.

Olivier Crépin-LeBlond: It's Olivier speaking. I believe the ombudsman may also offer mediation on other matters as well. But I was just checking on when it comes down to the IRP. So that's fine. Thanks.

Jonathan Robinson: Thanks, Olivier. I think that's a – that's a – yes, and Chuck confirms in the chat that as far as he's concerned the ombudsman doesn't have a role in the RFP. But as to this specific question here and (unintelligible) and I think we've satisfactorily resolved it, and have clarity on the way forward here. So let's give it back to Josh then to move on if you feel comfortable doing so, Josh.

Josh Hofheimer: Yes, so I think we can move on to Section A8, which deals with costs and refers to Section 10.1c of the agreement. There was some language – there was some language in the agreement – sorry – that talked about the general principle that PTI would not be charging for its services and any charges or fees levied would have to be approved by, you know, ICANN and would also be based on actual costs incurred.

There was some language in there about and the value of the resources utilized which was supposed to be – which Paul Kane raised a question about, and others, and we understand from ICANN that was intended to address indirect costs. But we believe that can be captured and has been captured in the – in other parts more effectively.

And so – and ICANN agreed that it does not need to be stated here. So it's been removed to avoid any confusion. So the statement – the language simply says now in 10C that if any – 10.1c – that if any fees are approved by ICANN

and charged they will be based on actual costs incurred. If there's no objection or request for any further discussion or language change there we can consider this matter closed as well. I'll pause for a minute. And no hands raised and nothing in the chat.

The next then is A8, and this deals with also with requests for information. And I wonder if I want to turn this one over to you to discuss how, you know, you all have attempted to resolve this in conjunction with Annex C as well.

Trang Nguyen: Sure, Josh. So for A9, requests for information, Sidley had previously suggested some text around this topic. And ICANN rejected the text that was suggested. And then there was a question that was raised by Paul Kane as to why it was rejected.

And ICANN provided a response that as discussed within the CCWG Accountability process, there really is no inherent right to inspection that goes beyond the directors or the member of PTI. And within the CCWG Accountability process, there was agreement to give the empowered community the ability inspect ICANN books and records in specific circumstances.

And, you know, the CWG proposal also didn't provide for this right of inspection for PTI or any references to the ICANN (unintelligible) process. So given the specific and unique operational role of PTI, we felt that the language that was previously proposed around requests for information should just not be dropped into the contract, you know, but that if there is going to be some text around that, that should be part of a broader discussion.

So what we – how we have instead proposed to address this was through the transparency and the language around the transparency section that commits

PTI to operating in a transparent manner and committing PTI to the same standard of transparency that ICANN is bound to by the ICANN bylaws. So that's how we have suggested to address A9.

Josh Hofheimer: Yes, and there was language that Sidley discussed with ICANN here that makes it express that contractor will cooperate with the dispute resolution IFRT and related escalation procedures in ICANN's bylaws and the contractor's bylaws and will produce documents and information in accordance with any of those reviews and procedures.

So it would keep – the intent being that if there is a review activity or documentation produced by PTI couldn't be shielded from that review because it's not a separate entity from ICANN. This contractually draws them into the same obligations.

Jonathan Robinson: So, Josh, is it proposed that – just to clarify – it's Jonathan speaking – that where you've talked – where the Sidley comment says, “consider as an alternative,” what are – is that alternative being – assuming the was no further comment from the CWG, would that alternative be put in to the document or where do we stand at present? What are we confirming?

Josh Hofheimer: Yes, so this – ICANN has agreed to insert this language in as alternative, so it is currently in the draft in Section 12.3. And if there's no, you know, further objection or need to look at some of the earlier language or to try and reinstate the earlier language the proposal from ICANN would be to consider this matter closed. And with the inclusion of the language that we suggested Sidley wouldn't have any further objection to closing the matter either.

Jonathan Robinson: Okay so subject to any other comments arriving from the CWG then in my view that is satisfactory, that alternative as presented in third column. So let's

just give a moment to see if anyone else has any concerns but from my perspective that seems to be a sensible alternative.

Josh Hofheimer: Okay. And there being no further objection we can consider this matter closed as well. And, Trang, if you could handle the final matter as well because this is quite a technical issue and I don't want to misstate anything.

Trang Nguyen: Sure, Josh. And so A10, which is where we are, refers to – I want to say Section 3 of the SOW, which carryover the DNS SEC provisions that are currently in the IANA functions contract. So we carried that over into the SOW. And that was a – upon Sidley's review of the initial draft of the contract, obviously, like – as Josh had mentioned, this is all quite technical stuff.

There was a note that asked whether or not this should be reviewed by anyone. And I just wanted to – ICANN responded that, you know, obviously David Conrad did review and go through the section and making sure that the way that we had carried over from the IANA functions contract is reflective of the current practices. So that has been done. And I don't know if the CWG wishes to do any additional review of this DNS SEC section, but that's what has been done.

Josh Hofheimer: So, Jonathan, I don't know if the right people are on this call to weigh in on this, but again, this would be one that if there's no objection or no belief that any further changes or in these baseline requirements need to be made then I think this matter can be considered closed as well. It was something that Sidley had wanted – had noted specifically because it is a technical matter and we wanted to make sure the right eyes from the CWG community were focused on this provision.

Jonathan Robinson: Difficult to comment, Josh. If – Paul – Paul, just to acknowledge that you’ve inadvertently come in late and you were a substantial contributor to much of this. We’ve worked our way through A1-10. I don’t want to draw us right back through the document but if there was something – a particular point in the table that you would like clarification on why it’s resolved I think we owe you that courtesy since you’ve put a lot of work in here. So I didn’t have a specific comment on A10, Josh.

Paul Kane: If I may, first of all, let me apologize to members of the CWG. I inadvertently had it down at the wrong time. I will do some reading up. I’ve only just basically bought this document up to look at so unfortunately I don’t have any comments.

Could you just – I guess I haven’t actually had a chance to read it yet. Are we discussing Item 10 now, just so I can catch up? I do apologize.

Jonathan Robinson: Paul, yes, we’re on A10. We’ve worked our way systematically through Items A1-10. And the...

Paul Kane: Perfect.

Jonathan Robinson: ...essence of most of it is there’s been a substantial dialogue between ICANN Legal and Sidley that’s resulted in compromised language that’s attempted to reflect the various inputs along the way. And for the most part, the issue has been is the CWG satisfied with the compromise language. And you can see from the record in the right hand notes there’s been some discussion on some of the points. But for the most part, there has been no objection from the CWG to the final compromise language that’s been reached. So that’s where we are.

Paul Kane: Okay thank you. I apologize again to all members. I'll try and come up to speed. Just my main or my overarching concern is for those ccTLDs, well for the ccTLD community in general of course, that's the party I'm representing. But for those ccTLDs who are not part of the ICANN framework to really respect the ICANN bylaw that ensures that they are not inherently bound by ICANN policy, however it is derived or created, unless they explicitly – give explicit consent to it.

But again, I apologize. I will read the comments. I do wish to reserve that opinion. And comment even on 1-10. But now I'm joining you. I'll try and keep up. Apologies again.

Jonathan Robinson: Thanks, Paul. There was quite substantial discussion on the list on Item 4.7 and that was probably the one we spent the most time on which is covered under Section A3 of this document. And so that's really probably most relevant to your point. And there was some revised wording proposed which we've essentially settled on and that – and I think there's – I'm not sure whether the CC participants on list and on the call are necessarily members of the ccNSO or not but there's been quite some substantial input from the CC participants.

And to Chuck's point in the chat, we are at a late stage. I mean, essentially summarized it and for the most part, I mean, we've gone through each of these and essentially considered them closed so it is important if there are any standing concerns that they get expressed quickly and pragmatically with a view to dealing with them because in essence we've dealt with most of these.

Josh, let me hand back to you.

Josh Hofheimer: Okay thanks, Jonathan. I think we can also add to the sort of closed list that A10, there haven't been any objections raised and that can be considered closed as well. And then I just wanted to say just, Paul, for your benefit you might also – when you're looking at the chart it may be helpful to look at the actual redline that we had circulated as well to the client committee when we sent the chart that has some of the proposed language changes inserted in convex so it might be able – easier to see how some of that plays out if you look at that alongside your review. We used that alongside in our discussion.

So, Jonathan, I turn it back to you at this point. I don't think there's anything else to talk about on the naming functions agreement. I do agree because there have been some minor changes that were done so there's even more redline than was specifically put into this discussion. So I agree that the simplest way and the most efficient way to present it to the community might be once we do get sign-offs for it for CWG to attach the redline version to its comment letter rather than walk through each of the items.

Jonathan Robinson: Thanks, Josh. Appreciate your input on that process as well. So just to highlight this point of process then, we will have a further meeting, the final meeting we can have before the close of public comment one week from today. So in essence we will be essentially signing off – assuming we go down this route of process and it seems to me to be the most logical way we present the latest version of the redline document and submit that as effectively our CWG comment to the public comment on this document.

And we will do that in the day following our next call, which is one week from now. So really what we'll be doing is effectively signing off on that redline at the next call. So if anyone's concerned about deadlines and timing, that's what it amounts to and the document is sort of burning up as we speak really.



So if there are any other comments on that process let us know. But failing that, I expect we'll see a further redline, which incorporates these changes as discussed in this meeting today and that will be getting close to our – the final version that we'll be submitting for public comment – during the public comment process.

All right, so that deals with the naming functions agreement. And the – we should publish that revised version as soon as possible to the list incorporating any changes that have been agreed on this call.

As far as the services agreement, you heard earlier that that's a work in progress, although it's imminent that we'll come to that review of that at the next meeting. And we can now move on to the IANA IPR point.

At last week's call, which I missed, it was agreed to proceed with ICANN as signatory. And it was agreed that Sidley would provide a form of letter to communicate that to ICANN but what is missing from that is a definition of the naming community. And there's been some discussion of that, which seems to be developing fairly well over the last – most recent past.

I wonder if – who I could ask to perhaps summarize where we are on that. So if we could see – I guess it would be useful to see the letter. Josh, maybe you'd like to make a few comments on that letter so we can agree the form of that letter and then come onto the detail points on the definition of the names community and the CCT reps, which Greg, I'll just prime you, you may want to initiate the conversation there or lead – summarize where we seem to be from our discussion on list because there's been some good input there and it feels to me like we are reasonably far down the track.

So, Josh, perhaps you could speak to the letter and the draft letter in the first instance?

Josh Hofheimer: Sure, happy to do so, Jonathan. And if ICANN could allow people's independent scrolling on the letter that would be helpful too. So, yes, as discussed last week, we did put together a letter of instruction. We thought that it be appropriate for this letter of instruction from – to come from the CC – or the CWG, the cross community working group – and be signed by the co-chairs of the group.

It does reflect the consensus reached by this group. And although it is not, you know, a formal legal entity, I think there's, you know, pretty strong – we feel there's pretty strong sort of or moral persuasion and persuasive power in having this instruction come from the CWG and have it be agreed to and signed and agreed to by ICANN.

So assuming that ICANN agrees with all these instructions and we've not yet gotten any feedback, they haven't reviewed this in any way, I think they're waiting to see that CWG was satisfied with the form and content of the letter and then they'll undertake a review as well. But assuming that to be the case then ICANN would enter into the agreement as well. This letter would acknowledge and accept to be bound by this letter instruction.

It does follow the Scenario 1 that was discussed previously. Still leaves open the opportunity if decided down the road after implementation to form a legal entity to represent the names community. But if not, then ICANN would hopefully continue to act under the confines of this letter.

The letter itself – I don't need to go into all the detail. It basically says that ICANN will, you know, take on this role. That it will appoint the CCG

representatives to the community agreement that are identified by the names community. And to avoid any confusion we've left a space to actually identify the initial three. It also states that ICANN won't remove or replace any of the CCG representatives or the co-chair without, you know, the approval or instruction of the names community.

It further states, to be clear, that those CCG representatives are going to handle a lot of the day to day function of interacting with and representing the names community with respect to the IETF Trust under the community agreement. And in Paragraph 3 ICANN would specifically state that it won't interfere with or override any decisions by the CCG representatives or CCG co-chair that are reserved or set forth as responsibility of those CCG representatives in the community agreement.

There is also the Paragraph 4 dealt with the IETF Trust agreeing to seek an amendment to their governing documents after implementation. But they wanted this to be something that they would do after a formal request was received from the various communities. Section 4 deals with that just giving ICANN instruction to respond and respect that decision or that request to be passed on from the names community.

Section 5 is probably the more important – one of the more important instructions with respect to this letter that comes from the names community. In this section we're specifically stating the community is specifically instructing ICANN that it shouldn't act without instruction from the names community on certain items.

And there are three items here in particular. One is to replace the IANA services operator if the community determines that that needs to happen. And that sort of ties in both A and B together. And then also any decision by the

names community to withdraw from the community agreement if, for whatever reason, the names community thought that it should not be a member or be a participant or signatory to the community agreement going forward. But ICANN wouldn't withdraw without, you know, instruction from the names community.

The final thing is sort of a catch all, and to the extent that there isn't a specific decision or power reserved to the names community or reserved to the CCG representatives, but the operational community or the signatory to the community agreement, in this case ICANN, is called upon to provide some consultation or advice.

You can imagine this coming up in connection perhaps with the Trust identifies a third party that's infringing on the intellectual property and wants some consultation and in the community agreement is supposed to consult with the names community prior to initiating any action against that third party infringer. In this case, that consultation would be with, you know, through ICANN and ICANN would consult with the names community.

And would, similar to what process we adapted – adopted with respect to the Trust in the community agreement and with respect to the GAC advice, there would be a rebuttable presumption that advice in Council provided by the names community would be followed by ICANN in this manner and if there weren't there would be some process for the two to come together and try to reach consensus on that decision.

So that's basically the letter of instruction. And the gaps that still remain, as we pointed out in the beginning, are, you know, how do we accurately or adequately describe the names community and who shall serve as the initial CCG representatives?

As Jonathan said, I believe Greg has been working on that with some others and so I'll either turn this back over to you, Jonathan, or can turn the mic directly over to Greg at this point.

Jonathan Robinson: Thanks, Josh. It's Jonathan. I'll briefly take the mic. And I guess we should just ask if there are any questions or comments on the letter before we go to those – other than those open items that we flagged. Okay seeing none let me hand over to Greg then to try and – Greg, if you could try and capture where you think we've got to on these and sort of rather than going back to first principles it might be useful because there's been some – as I say – quite substantial discussion on list.

And it feels like we've moved things along and perhaps you could try and summarize that and see if that gives us either a further jumping off point or indeed close to some form of agreed position we can work with.

Greg Shatan: Thank you, Jonathan. Yes, I think we've been round away a bit. This is Greg Shatan for the record. And no reason to discuss the journey but to thank those who've participated in the thread.

I think in the end we're probably over-thinking things in terms of trying to come up with some sort of brand new metaphysical definition of the names community. We've been acting – the CWG has been acting in the interests of the names community all along. And has done things far more significant than appoint people to a fairly minor oversight board, minor but critical of course.

But which will largely convey oversight that's already taking place in areas like the CSC and the like. Given that, we did – retreated I think from ideas of trying to define the plan in more totality of the names community of the global

world. And really went back to the issue of how – what organizations or instrumentalities can act for the names community to in turn instruct ICANN as, you know, was just discussed by Josh in the letter, and to appoint the CCG representatives, the Community Coordination Group representatives, that will come from the names community.

And I think after discarding some of the more far-ranging alternatives, the idea would be to take some group that probably represents essentially – not represents but that is drawn from the chartering organizations of the CWG, which could be the CWG itself; it could be some other methodology by which they would all act in concert; or it could be an implementation oversight team, which is acting in that regard.

You know, it could – or it could be even the CSC itself because a lot of this has to do with essentially quality control and really qualify of the services being rendered because that is one of the – that's half of the job is basically assisting the trademark owner or the IETF Trust with overseeing the quality of the goods and services offered under the mark the IETF Trust will own.

Since we already have mechanisms and all three communities have mechanisms to keep an eye on the service provider, there is no reason to create a separate monitoring function within the IETF Trust. And, you know, nor would they want to, you know, expend resources unnecessarily to do so.

So the other half of it is kind of keeping an eye on and working with the IETF Trust as the brand owner but brand owner really on behalf of or is steward for all of the communities.

So as a result it, you know, the best thing seems to be is to stick pretty close to our existing work and our existing structures. It may be – it would probably

require some change to the CSC, but – or the CSC could report to some other body or to really directly to the CCG representatives once they're up and running, any quality control issues that, you know, would then be reported to the brand owner.

And then have the other listed things that CCG representatives need to be told to do by the names community or those acting in the interest of the names community and then similarly, you know, we see in the letter in front of us what ICANN as the signatory would need to be told to do. And, you know, could be told by the CCG but in turn it comes down to who appoints the CCG and who does one turn to if you're the CCG or ICANN and you have to do something. And you're acting on behalf of the names community.

So I saw Jonathan's hand flit up. Just to take it back then, I think we're looking at some organization, the CWG, or something made up from the chartering organizations such as an implementation team or, you know, conceivably the CSC, but I don't want to overburden them with kind of oversight of the IETF Trust and plus the skill set may be a tiny bit different in kind of overlooking a brand owner on top of, you know, overlooking an IANA operator. So there you have it. Thanks.

Jonathan Robinson: So, Greg, as you were speaking I was sort of processing that and trying to figure out what to do. And when I look at the blank in the letter, the first thing the letter says, the letter agreement confirms the request of the community working group on behalf of the who. And to my mind it's the members of the CWG. I mean, that's – if we accept that the CWG has done all of this work on – as a representative of the names community it's on behalf of the members because the members were chosen to make up and comprise the CWG.

So in my mind that, that first hurdle seems relatively straightforward. It becomes slightly more – perhaps there’s another challenge in terms of dealing with the – dealing with the initial CCG representatives or – but perhaps what we need to do is look at, I mean, the challenge I guess is that the members of the CWG could or a successor CWG could change from time to time in that possible there could be other components or groups make up the membership.

But I’m not sure we can account for that right now. So it seems to me that the members make quite some sense. I would love to hear from some others.

Cheryl Langdon-Orr: Jonathan, Cheryl here. I just want to support that. I think that makes perfect sense.

Jonathan Robinson: Thanks, Cheryl. And I understand you can’t put your hand up so that’s useful to have your intervention there. And there’s a note from Matthew Shears agreeing with that suggestion in the chat as well.

Greg Shatan: Jonathan, a question. When you mean the members, do you mean the individual humans or are you referring to the chartering organizations that put those members there or some...

((Crosstalk))

Jonathan Robinson: I suppose, to be – sorry, Greg – to be clear I mean the member organizations on behalf of the member chartering organizations or the chartering organizations appointing members.

Greg Shatan: Thank you. I support that as well. And we’re back to kind of if – when the CWG or – evaporates, which eventually it will, who succeeds that role? I think as long as we exist in this body we can – we can probably select the



initial CCG just as we selected the initial CSC or worked to coordinate that. And can instruct any initial instructions. But we could have a – we need to have a successor.

Now of course, we could kick the can down the road and suggest that the CWG will appoint a successor in the role of, you know, names community organization at the time that itself subsides.

Jonathan Robinson: I guess...

Greg Shatan: So we don't have to do it now.

Jonathan Robinson: I guess I would suggest something – a sort of subtle variation on that. I mean, right now it's the – it's the chartering organizations. I think to the extent that there is a role to be played, and I admit it's a getting a little late for now, but if there was a role to be played by a successor organization, we could require that that successor organization, implementation oversight taskforce, or otherwise, was comprised representatives, member representatives from the chartering organizations.

So you could have an ad hoc group with member representatives in the same proportions as the CWG or something along those lines. So it essentially created a similarly representative body to deal with whatever else needed to be dealt in the future. If that – does that make any sense? Would that be of value? Greg notes in the chat that that would be fine in the sort of echo of the CWG. And, Avri, go ahead. Your hand is raised.

Avri Doria: Yes, thank you. This is Avri speaking. So I guess one of the things, I mean, have no problem that we're creating yet another bit of complexity. And I guess one of the reasons, and perhaps I'm just misunderstanding what's going

on, but one of the reasons we're not using the EC contract – a construct for it is because that doesn't yet exist.

But at some point that will exist when the CWG ceases to exist, largely the chartering organizations for CWG exist in that. I don't remember whether it's an exact one to one mapping but it's pretty close. So I'm – I guess I don't quite understand why we get into extra complexity. And it isn't the CWG doing it now and passing it to the EC once the EC is an existing thing. Thanks. Sorry.

Jonathan Robinson: Thanks, Avri. Personally I have to admit I'm not sufficiently clear on the scope and definition of the EC to comment on that. I see a checkmark from Alan. If anyone would like to speak to that it'd be helpful if this baton could be successfully passed to the EC. That may make sense. And I see a hand up from Alan followed by one from Josh. So let's hear from Alan first.

Alan Greenberg: I also – the exact composition doesn't matter. It's an authoritative body that we could give a task to even though it's not in the bylaws. So I would support that.

Jonathan Robinson: Just to be very specific, Alan, that being the point that Avri raised, the use of the EC.

Alan Greenberg: That's correct.

Jonathan Robinson: Thanks, Alan. Josh, go ahead.

Josh Hofheimer: From my – I haven't been as close to the final sort of organization of the EC. But (unintelligible) is that it kind of – it doesn't exist as a standing body but it springs into existence if there is a IFRT review or some sort of a dispute, an

escalation – dispute procedure, an escalation process and the result is reached and that result is called into question in some way or that the EC may choose to reject that result, you know, focused mostly on sort of ICANN’s performance of its duties or the IANA services.

And so while I agree it probably could fill a substantial portion of this role because things like transitioning away from the names – from PTI as the IANA services provider would not happen without the involvement of the EC, there are lots of – there are lots of, you know, sort of more minor or less substantive – not lots but there are less minor and less substantive requests or consultation that are made with the names community through the community agreement. And I don’t know if the EC is sort of going to be in the position to adequately come together and weigh in on those things on an as-needed basis.

Or if it would be better to have something that was a little bit more fluid like what’s been discussed with having the representative bodies of the stakeholder communities, those are the members of the CWG.

Jonathan Robinson: That’s an interesting point and I see a couple of hands raised. So let’s think this through quite carefully because you’ve got here, at the moment as we stand, we’ve got the letter agreement, the terms requested of the community working group on behalf of the charting organizations of the CWG. Those are my words.

In brackets, the (names) community that ICANN serves as signatory. It’s felt that we could nominate the initial CCG reps from within the CWG is what I’m understanding the working proposal to be. The question is, what happens when and if at some future point we need to elect new or remove or replace CCG representatives.

I must say having heard things, I'm tempted to leave this open and just say that the (names) community will come together in the way we have with the CWG. And then maybe with another CWG for that specific purpose and implementation of the (site) task force, as (Chuck) has said.

Or indeed, the alternative is that we ask the empowered community mechanism to deal with the best point but perhaps we don't need to actually specify it. What are your thoughts Alan? Or Avri, did you have your hand down anticipating speaking because if you did, let's hear from you first Avri.

Avri Doria: No, I put my hand down because I thought Alan was going to say much of what have to say about the empowered community having far more to do than just handling the IRFT and such.

And it is one of the mechanisms by which the community members will act together. So that's why I was thinking it's a convenience mechanism. But if the lawyers tell me that it is not about that, I guess I'll remain confused.  
Thanks.

Alan Greenberg: May I go ahead Jonathan?

Jonathan Robinson: Please do Alan.

Alan Greenberg: Okay. The concept of bringing together a mini CWG to appoint a person is mindboggling. The amount of effort that goes into selecting people like the CWG or even a mini version of it, is just overkill by an order of magnitude. I would have no problem saying, the board selects the person.

You know, with the EC can always overpower the board should they pick such a wrong person but I just think this is naming of a person and I don't

think it's a substantive issue. So I would just, you know, give the responsibility to the board if we really believe the community must weigh in on naming this person, then the EC I think is a viable place to do that.

Yes, it is not the kind of thing the EC normally does. Let them setup some rules. But the concept of bringing together a new group to name a person which may have to be done sporadically and may have to be on very short notice at any given time, I think is just overkill. Thank you.

Jonathan Robinson: Alan, Greg, that's a good point. And Greg put, said we could take a further look at the EC but also have the CWG act in this regard for so long as it exists. And again, I put the question to you and that is, do we need to nominate the body, whether it's the board, the empowered community, CWG?

Or can we not simply trust the names community could make these selections in any event? Greg, go ahead.

Greg Shatan: Greg Shatan again. You know, I think, you know, sir, I don't think the board would be the right place to select people. Plus it's not just a selection. It's who these representatives to back, to determine how to act when they don't feel that they're, you know, entirely within their own self, able to, you know, take the actions they need.

You know, and also who to instruct on some of these things. So I don't think that's right. I will kind of entertain again perhaps the idea of the customer standing committee. Perhaps, including its liaisons, although perhaps not. The PTAI liaison.

So, you know, not quite sure. It's not perfect either but it may be too small and too focused on operational things but those were the things that the CCG

or ICANN will act on, will be coming from either the CSC or from IFRs. So that's, it's at least half right as a possible place.

And, you know, perhaps another kludge and again we don't necessarily have to do any of this before the transition as long as the CWG exists. But another kludge could be to say that we will take, you know, call upon an organization in the form of the empowered but not the empowered community which I guess is an echo of the empowered community.

In a sense or somewhere along those lines there needs to be, you know, some sort of panel that just stands, that needs to, you know, deal with the CCG people and the like. And the decisions that need to be taken in oversight of both the ITS trust and, you know, and of ICANN as well. Thank you.

Man: Greg, I hear your proposal. I'm just trying to, I'd like to understand the deadline we're working towards here as well? What is our timeframe for sorting this out? It's my understanding that this is an urgent timeframe.

So I thought currently that we request that the community working group on behalf of the chartering organization with CWG selecting the initial representatives possibly and the, your suggestion regarding their proposal was consider the customer standing committee as the future select all, replace all such representatives. Alan.

Alan Greenberg: Thank you. The CSC is controlled by the registries and I would object strenuously to say they are, you know, the CCs and G registries are the names community. That is just a mangling of what the names community is. So that I would strongly object to.

I really, I'm not sure why Greg says the board would be the wrong place. The board is the group representing ICANN which embodies the names community and indeed the empowered community has oversight over the board. So it sounds like we're taking a simple answer and making it into a complex thing and I'm not quite sure why.

Jonathan Robinson: But Alan, isn't the board going to simply come back to the names community that is the chartering organization and say tell us who you want.

Alan Greenberg: It might. It may well. Or if someone dies, then we have to name someone immediately. They could simply do it at least on an interim basis.

Jonathan Robinson: And just for the record, there's a few notes on not only your comment Alan but Donna and Josh have pointed out that the (gist) of the CSC goes well beyond the charter of the CSC.

So that doesn't seem to be gathering much support at the moment. Josh you raised your hand? Let's hear from you if you can help us out of this or move us along. Josh, no audio from you yet.

Josh Hofheimer: Interesting. Sorry. This is Josh. It's an interesting idea Alan having the board take on this responsibility for the names community but it does seem to create some circularity there because ICANN is not supposed to take certain action without instruction from the names community.

And if that action just coming from an instruction of the board, then who's the board acting for? In that scenario, is it acting for the names community or is it acting for, you know, its fiduciary duty to ICANN with a duty of loyalty and the like? I wonder if that kind of, if that approach would create some confusion as to, you know, what hat the board member should be wearing

when they're making decisions and would not, perhaps unnecessarily complicate things when trying to decide what should be done.

You know, so thinking about the consequences of what that may look like, which Prospectus through the checks and balances of how ICANN is supposed to be acting in its capacity as signatory.

Seems to me that it might be better to have a little bit of distance between ICANN as signatory and the direction given by the names community, whether that comes from CWG initially and then the EC, if you believe it's adequate to deal with it and that may be appropriate or something else.

Jonathan Robinson: Thanks for that Josh. I would like to ask a question before going to the next person which is Greg. Is, could we deal with this? I don't want to avoid the problem but I think we do need we need a solution at the moment which gives us a representative of the names community and gives an opportunity to appoint the initial CCG reps.

Could we just deal with that and then deal with future representation of the names community after having settled that. So that's what I proposed to the group, whether we need to resolve this completely now and I see some suggestions in the chat, you know along the lines the chairs of (FSAC) or at least the chartering organizations. Greg, your hand's raised.

Greg Shatan: A suggestion I made in the chat maybe in kind of (reclining) is maybe just call on the chairs of the chartering organizations to be available for chartering consultation to the CCG members and to confer among themselves to and as necessary with their organization to come up with replacements as necessary.



That way we don't have to have, it's not really a standing body but the chair's always this and it's a small enough group that could be done. And I think they're kind of, you know, temperamentally suited to that sort of semi ad hoc role.

And we just let, if we just use the chairs of the chartering organizations and don't bring in the stakeholders' groups and constituencies, it's a very small group. It's what, five people. They should be able to, among themselves, do something rational.

And that's I think a better kind of representation of the names community than the ICANN board especially given that ICANN is already sitting in kind of at least two other places in this setup being the signatory and also being kind of the object at the bottom of the project.

So it's an easy and identifiable group that doesn't have to exist or be, or worry too much about who's, how many or who is being represented. Thanks.

((Crosstalk))

Jonathan Robinson: Well that seems to be gathering a little traction. Is that you Cheryl wanting to come in there?

Cheryl Landon-Orr: Yes it was, thank you. Next in queue.

Jonathan Robinson: Please go ahead.

Cheryl Landon-Orr: Thanks Jonathan. Cheryl Landon-Orr for the record. And thanks for that Greg. I certainly wasn't comforted by the concept of board. I supported the construct at the very beginning of the chartering organizations and I think the

chartering organizations as represented or as, sorry, the chartering organizations represented by their chairs is only a small drift from that on the refining point that I'm happy to go along with.

I think it needs to be the chartering organizations whether that's an embodiment in a full blown sense of the EC or whether it's a more agile and I think should be more agile system of co-chairs. My preference is for the latter rather than the former but right now I think we need to stick with the chartering organizations.

Jonathan Robinson: Thanks Cheryl and Greg's suggestion seems to have gotten a bit of traction from others in the chat as well, particularly Avri and Matthew and correctly. So it feels to me like we may have some direction here which essentially works with on behalf of the chartering organizations which are currently represented in this work by the CWG.

And whether or not we need to specify and find a way of specifying all their chairs as appropriate, (unintelligible) by their chairs. That's great to put in the chat. It's getting a little late both in time and the duration of the call.

I wonder if that's, Josh, do you think that's enough for you to start to work up another version of this then? Have you got enough to work with, if you've got the chartering organizations potentially represented by their chairs in future and the CWG at present?

Josh Hofheimer: Yes, I think we can, we can work out some language and we could share it with Greg or others, sort of what's top of mind just to make sure we get it. You know, right, and bring it back for the next week's meeting. That's fine.

Jonathan though, I guess the next question to you is what do you want to do about the three CCG representatives?

Jonathan Robinson: If it feels like we need to find a way of selecting those from within the group, we need to nominate those in the group. What I'm not clear on Josh and maybe you can help me here is, what's our deadline here. I feel like I've lost track of the deadline, when this is required by.

Josh Hofheimer: I'm pulling up the document again right now. There's been some discussions earlier about having those persons be identified at the time the agreement was entered into but then may have come out.

Jonathan Robinson: And is that time the 30th of September or sooner?

Josh Hofheimer: I'm looking.

Jonathan Robinson: Okay, thanks. Greg, do you happen to recall that timing?

Greg Shatan: I do believe that while we took the names out of the agreement, the idea is that still they would be, the CCG would exist at the time that everything fell into place. So they should be on, you know, by September 30th, they should be selected.

Jonathan Robinson: Yes, so that's consistent with my understanding that exactly.

Josh Hofheimer: Yes.

Jonathan Robinson: (Unintelligible) highlights that in the chat too as well.

Josh Hofheimer: Yes, there's nothing that says they are no longer attached by name. But I agree with Greg's comment that I think the intent is that this group be able to up and running as soon as the time we (unintelligible) into.

Jonathan Robinson: All right. So the outcome of the discussion is that essentially we want the chartering organizations as currently represented by the CWG and potentially as represented by their chairs in future to be responsible for dealing with these appointments.

And what we need to do now is CWG is identified those initial appointees. And so that's a task and action for the CWG that we're clearly not going to get into now. And I'll obviously talk with (Lisa) about that and we'll all talk together about what that process might be. But we're clearly going to have to work pretty fast on that so that we don't run right up to the September 30th deadline.

All right. Well thanks everyone. That was a constructive effort to get to that point. As far as I can tell that deals with the substance of what we needed to do on this call today. So I think it brings us to the AOB point of the call unless I've missed something which I don't believe I have.

So is there any other business or have I not covered everything? Is there anything else that anyone else would like to raise at this point? In terms of the schedule we're running for calls, our next call will be on the 8th. Today being the 1st, one week from today.

And it will take place at, I think our time is 1400 UTC for the next call. I'll check that in my diary to make sure. Yes, 1400 UTC, Thursday 8th September.

Josh Hofheimer: Is there, has an invite gone out for that? I'm not seeing it.

Jonathan Robinson: Let's just make sure that, I certainly have one but Josh, I'm not sure how generally that's gone out there. If we could just make a note naturally to make sure that Sidley is invited to that next call that would be great.

All right. I think that deals with the substance of what we needed today. Thanks very much everyone. There were some reasonably substantial issues to get through there and we've done so in the time allocated (unintelligible) the right approach. Thank you very much. Thanks to all who contributed. (See you in a week's time).

Woman: Thanks Jonathan. Thanks everybody. Bye.

END