

ICANN

**Moderator: Brenda Brewer
September 8, 2016
9:00 am CT**

Coordinator: The recordings have been started. You may now begin.

Yuko Green: Thank you. Hi, everybody. This is a CWG IANA meeting Number 91 on 8th of September, 2016 at 1400 UTC. I will now hand it off to Jonathan.

Jonathan Robinson: Thank you, Yuko. Hi, everyone. Ninety-one. I hope we get this job done in less than 100. Welcome. It may be that we can, as Jaap as said in the chat, it may be that we can done with the work relatively quickly here but we do need the work done so let's concentrate on what we have to and see where we get to.

I think you're well aware by now that the purpose of what we're doing is to try and ensue that the implementation being run by ICANN staff is consistent with their proposal. And that Sidley have been working quite substantially directly with ICANN in order to not involve the CWG and all of their minute details in and around the contract and documents. But the substantive issues have been coming back to the CWG and I think we've got a few of those to deal with now.

In the last week in the week since we last met there's obviously been that NTIA letter to ICANN on the 31st of August, which actually that predates just our previous meeting now that I look at it. Although I'm not sure it was published prior to our previous meeting, indicating that the transition is likely to go ahead, but that there was – they couldn't – that there was a possibility of an extension. And you can look at that letter directly if you haven't – if you aren't really aware of it.

The IANA IPR has also met on the 6th of September. And the work is progressing there. And we'll deal with that a little more in the appropriate section under the agenda. There was a circle transition facilitation meeting, one that Fadi kicked off initially and has been hosted by ICANN, which really tried to bring all elements of the different groups working on the transition together. That's really more of a reporting and coordination forum.

And then you will have seen the revised and hopefully very near final agreement that – document that in particular those that came out shortly before this call. And I apologize that some of you may not have had the opportunity because of different time zones to look at those. But everyone's been working hard to try and move things along.

So here what we want to do is conclude the naming function agreement if possible. I'm not sure that we can conclude the services agreement but we can certainly get an update on that. And move ahead with the outstanding points on the IANA IPR.

The naming function agreement public comment closes tomorrow so that's the most urgent task is to try and nail that down. And my understanding is that as of our last call a week ago the outstanding point was Paragraph 4.7 which we have – to the best of my understanding, more or less dealt with on list.

So let's – before I move on to that key issues under Number 3 let's get a quick implementation update from staff. And I know some of the Sidley people can only be on for the first hour so I think we'll get to that very shortly, that section Number 3.

So, Trang, if you're willing and available perhaps you could give us a quick update to Item 2. I don't see anyone raising their hand. If you do have interim points or questions, please do feel free to raise your hand and we'll come to you as soon as possible. And in the meantime I'll hand over to Trang for Section 2 of the agenda.

Trang Nguyen: Thank you, Jonathan. Hello, everyone. So what you see here in the Adobe Connect room is the slide that we've shown on the last couple of meetings that summarizes the remaining work that the CWG is undertaking.

The first item is that naming functions agreement. And as you can see they are, the first deadline for that document is the closing of the public comment period, which is this Friday. And then there is an ICANN Board meeting scheduled for September 15 and so we would need to finalize a staff report and get it posted prior to that Board meeting because this item is on the Board's agenda for consideration and approval on the 15th.

And then prior to September 30, but after September 15, the PTI Board will need to meet and improve the agreement for signature as well and then before September 30 the agreement needs to be signed by both ICANN and PTI.

As an update, as Jonathan noted earlier, a redline of the agreement was sent out to the CWG just a few hours ago. And that is the result of the discussions that Sidley and ICANN have had. As Jonathan noted, there is potentially a

minor change to the language in Section 4.7 that we will discuss under agenda item Number 3, but from ICANN's perspective we think that that is in pretty good shape.

On the services agreement comment there is no public comment for that agreement that there is – it needs to go up to the ICANN Board for approval, which as previously mentioned is September 15. So by then we just need to finalize that agreement by that date.

And similar to the naming functions agreement, the PTI Board will also need to approve the agreement and then before September 30 ICANN and PTI will have to sign it.

A redline of the services agreement was also circulated by Sidley a few hours ago. And I think we are in good shape as well with this document. There are a couple of areas where ICANN is going to be drafting language on. One is around the seconded employees and another around the methodology for the cost development for the services that are in the agreement.

So we have in principle agreed to these concepts with Sidley. We just need to get the language drafted and agreed to. And we are hoping to get that over to Sidley for review – I'm hoping to get the language for the methodology for the cost development today, and then the seconded employee language hopefully today or tomorrow as well.

And as it relates to the IANA IPR agreements, the public comment for those agreements closed on September 12. All of the subsequent days, you know, have not changed from the previous couple of meetings that we have.

So in the interest of time I will stop there and, Jonathan, I'll turn it back to you and be happy to take any questions. Thank you.

Jonathan Robinson: Trang that was succinct. Let's leave the slide up for a moment or two while we see if there are any questions or comments. And in fact absent any other content, let's leave it up there anyway. It's useful as an overall picture of the key issues and activities. So until we need to see other content, suggest staff, that you just simply leave it up there. Any questions or comments for Trang before we move on to the next section of the agenda?

Okay thank you. So far so good. Let's move on then. So you'll see that Item 3, which is the key issues components that need resolving or moving forward, most critically, as I said, in terms of timing at least, is the naming functions agreement. And that naming functions agreement to remind you, our plan is to submit with a brief covering letter from the CWG cochairs a cumulative redline and clean copy of our proposed changes to the agreement.

I checked a few hours ago and there were no other comments, so that's kind of interesting in and of itself. But it also means that our comment will have a pretty significant place in all of that. So we don't propose to write a detailed narrative on the agreement but rather to submit a cumulative redline.

And my recollection is that from our last meeting on September 1 we resolved the outstanding issues in the table save for Item 4.7 and some language was proposed by Paul Kane and then discussed amongst the CCs and then further revised language was proposed which I understand is acceptable to CCs and potentially acceptable to ICANN.

So we may even have resolved this all offline. I don't know if anyone has any comments they'd like to make in relation to the language of 4.7. My

understanding is that's broadly settled by virtue of the discussion that's taken place on the CWG mailing list.

Josh, please go ahead.

Josh Hofheimer: I don't know if she's on as well but there have been some further conversation - or maybe Trang can speak to this -- with perhaps the ccTLD representatives -- about making one final change in the naming function agreement regarding the particular, you know, portions of the bylaws that might be referenced for guidance around the whole Section 1.3 issue.

Looks like Trang...

((Crosstalk))

Josh Hofheimer: ...something in the chat.

((Crosstalk))

Jonathan Robinson: Josh, I'm not sure if others missed you, but I missed your first – the first portion of your remarks there. The audio didn't kick in for a brief moment. But as you now note, Trang has posted that ICANN is okay with the suggested language which was posted by Paul earlier. So I think we have a common view of the wording for Section 4.7 and that is posted in the chat at this stage. Did you want to come back with anything, Josh?

Josh Hofheimer: No, I think that, yes, I don't think we have any particular – Sidley doesn't have any particular objection or view on this. So if it's something that has been approved by CWG and ICANN working together then just pass that along to us, we'll drop it into a final redline, Trang, that we can circulate with

the draft cover letter that we did send in the email, you know, late last night our time as well.

So if you want to pull that up, Jonathan, or if you have any comment on that we can close off the naming function section.

Jonathan Robinson: I think, Josh and others, my understanding was that 4.7 was the outstanding point and it appears that – and Paul was driving that or at least managing that, if you like, or coordinating it from the CC point of view. And ICANN is okay with that proposed language and so it seems like we have something settled.

Paul, did you want to comment? Come in.

Paul Kane: Thank you very much. I'll be very brief. I think we've said everything. Yes, Josh, I'm pleased to say that there was just one further clarification that was needed which has been done online. And that's really just to enforce ICANN's role specifically as defined within its bylaws and the wording is simply as – under ICANN's bylaws when referencing the supporting organizations. So very minor.

But I think it has been done and I assume someone from CWG or ICANN staff will forward you the amended text, as I believe it's actually contained also within the chat session. So thank you all very much for that. We just need the CWG to ratify the amended language and then possibly close this whole work item and conclude the naming agreement. Thanks.

Jonathan Robinson: Thanks, Paul. And then if Sidley could confirm that the – well before we go to that, just make sure, for the sake of good order, are there any other questions or comments on this name function agreement? It's the sort of

going, going, gone type thing because we need to submit this within approximately the next 24 hours into the public comment so any other concerns or questions around the naming functions agreement?

And then we have a fairly standard form letter that is also in that (unintelligible) that was sent around to you earlier, as far as I recall, I'm just going to check that myself, that deals with the element of the – yes, not the letter of instruction but the comment letter. Yes, and that communicates on behalf of the CWG using the chairs. Thank you.

No, this is not the one. Yes, sorry, this is the one. Thank you. So this is the letter that will go from the CWG written, you know, signed off by the cochairs essentially submitting this cumulative redline as our composite comment on the naming functions agreement.

Okay, let's put that one to bed. I will just, for the sake of good order, review that with Lise. I'm sure we're happy with the wording, but it's essentially a functional communication and the substance is in the redline document. So that should be okay.

And with that, we'll close that item and move on to the services agreement. Now, the CWG hasn't been that intimately involved in the content of the services agreement. You heard from Trang earlier that the deadline – effective deadline for that is next week, a week from today. And that may not give us a chance to discuss it in a meeting in a group meeting as such.

I wonder if there's anything that either Sidley or ICANN would like to highlight from that or if anyone in the group has any concerns or questions? This has largely been handled by Sidley and ICANN together with very light

oversight as far as I can see. We haven't weighed in on any substantial points here. But then again nor have any substantial points been raised with us.

So any concerns, questions or indeed comments perhaps from Sidley or ICANN on the status of this agreement other than what Trang said earlier? I mean, Trang highlighted the two points in terms of the outstanding areas of focus, the – the one was the secondment and the other, Trang, you can remind me. But if Sidley would like to come in and make any remarks on that, your sort of level of satisfaction with that, that might give the group some comfort.

Yes, go ahead, Josh.

Josh Hofheimer: Thanks, Jonathan. Yes, you know, so we have been working with ICANN staff. There also has been review, you know, or some discussion of particular items in prior CWG conversations and on the thread. Chuck took it upon himself to coordinate DTO review at our request and so there has been some input along the way and some revisions.

And I think that from our perspective there do not appear to be any sort of disagreements or open items that remain at this point that require further CWG input in order to settle those items. If there's anything that CWG members want to weigh in on or ask questions about, you know, by all means they should do so.

But except for those two items that Trang had noted, that are still being closed out, I don't think that there's anything further. And we'd be prepared to, you know, recommend approval by CWG of the services contract once those items are closed.

Jonathan Robinson: Thanks for that input, Josh. So then, Trang, as a point of process, ideally we would formally sign this off at the next CWG meeting. But how does that correspond with the Board meeting to follow either immediately or shortly afterwards or coincident with the next CWG meeting? If you could have a look at those timings that would be helpful.

Trang Nguyen: Yes, Jonathan. Let me look into that. I'm not certain. I need to look at the Board meeting agenda to see exactly when the Board meeting on Thursday would take place and how that correspond to the timing of the CWG meeting. So give me a couple minutes to look into that.

Jonathan Robinson: For your information, I mean, CWG meeting is scheduled for 0600 UTC next week this time. And right now it looks like it would be effectively to formally sign this off, for which we may be able to do by (unintelligible) I'd welcome suggestions from anyone if they feel we can sign this off at this meeting that may be an efficient way of doing it conditional on Sidley's sign off. In fact, and I intended to propose that to the group.

Sam Eisner, I see your hand is up. Go ahead, Sam.

Sam Eisner: Hi, Jonathan. I just put words into the chat as well, but the CWG meeting is about 6-8 hours before the ICANN Board session is scheduled next week. Of course, we wouldn't have any objection if the CWG was willing to do a conditional sign-off today. I think that would make it much easier for confirmation in our Board papers.

Jonathan Robinson: Thanks, Sam. That's good to know. So, you know, it strikes me that that may be the way to go is that the CWG should conditionally sign this off subject to satisfaction of Sidley on the two outstanding items.

But I note Matthew Shears has made a – in the chat that he asks a question around the Section 3.3b. And I'm not familiar with that particular area. Does anyone – is anyone able to respond to that or deal with it? Josh, your hand is up I think from previously but you may well be able to respond to that or someone else may be able to come in on that, Sam or someone on that 3.3b. Sam, go ahead.

Sam Eisner: Sure. Thanks, Matthew, for the question. The performance standard section in 3.3 should not have any implication for any of the communities in the way that the service is provided. This is – it's really providing the cover that first of all, you know, we need to perform to the standards that are given to us and the procedures that were established. You know, for the other communities we're doing a subcontracting arrangement. They've had an opportunity to weigh in on this agreement as well if they wanted to.

And then for the B part, just to clarify because I think – I know we had some conversation with Sidley on this, the section in B that says that we can terminate certain provisions of the services that are provided, these are talking about highly operational services. And this actually could be, for example, if ICANN elected to no longer have vision coverage as part of its benefits package that ICANN would also – that would be a type of change that wouldn't have any impact on the security and stability or resiliency of the domain name system.

And ICANN is only obligated to provide the same services to those employees working with PTI that it provides to those employees who are working fully within ICANN. And so that would be the type of service that's able to be permitted. So we're not looking at the technical things in terms of this termination of service. Just to give you an example and to give the group some comfort about what we're trying to get to in that section.

Jonathan Robinson: Sam, and that's acknowledged on both Matthew and Cheryl Langdon-Orr in the chat. Good, well I propose to the group then that subject to Sidley being satisfied with the additional work to be done, and we would expect a communication from Sidley to that effect, that the group signs off on the services agreement to save this being potentially the single item that we deal with at next week's meeting or – and or to just assist in the run-up to the Board meeting.

I may have passed over a question from Josh. Did I miss any questions, please raise your hand if I did before we do that. And Paul Kane, I note your checkmark for that approach. Cheryl, thank you. And I see Paul Kane, your hand is up. So, Paul, why don't you come in with your comment next.

Paul Kane: So I have – I don't have any substantive comments on the services agreement (unintelligible) I haven't had a chance to read it. And I'm not opposed to your particular suggestion but may I just – just as a matter of process suggest a certain time window for participants and members to raise any issues online and then failing any comments of substance then we progress to basically say that the agreement by default has been accepted. Just that it does help things forward.

And then we're not seeing to be rushing things through bearing in mind the document's only just recently been released. The other suggestion may be would it be an idea to bring the CWG meeting forward 24 hours or so just to formally ratify and then we've done our job properly. But I'm relaxed on both. I don't think I will have any substantive comments on the service agreement, it was just about process. Thanks.

Jonathan Robinson: Thanks, Paul. Good and fair comments. I think, just to make it clear though, that we have seen various drafts of this going back to the sort of middle of last month so this – it isn't that we've just seen this but, correct, it is, in this version, it is recent. So I accept your point. I think it's a very good one. So let's put a clock on this for comment and response. I'm wondering if midnight UTC, that feels about like 36 hours from now, we could do slightly longer but close of business Monday Chuck suggests, that's fine by me as well. So let's look at midnight UTC Monday for any substantive comments or issues.

And it may be that in that time Sidley have even dealt with the outstanding matters with ICANN given the sort of timetable that Trang talked about earlier. So thanks, Paul. Thanks, Chuck. I think that makes sense.

So let's record that, please, that we will hold the services agreement open for comment or question from the CWG until midnight UTC Monday at which point if there are no comments or questions we can consider it signed off conditional on Sidley's sign-off on the outstanding points or we'll need to resolve any matters that come up in that interim period. Okay. Thanks for your contributions there, everyone. That's useful. And that moves us on with respect to the services agreement.

The next issue is the IANA IPR which we have a form of a letter of instruction to ICANN. And we have had a meeting with the IPR, the multiple operation community IPR groups in the meantime on the 6th of September.

So there's the draft letter up in front of you. I wouldn't mind either Greg or Josh reminding the group where we stand in terms of the content of this because there was some recent discussion on the list, including very recently prior to the call, but I think it was then recognized that actually the desired

changes were actually – have actually been made. So I believe this is current and satisfactory.

But it would be useful if Greg or Josh – we could hear from you on the status of this or anyone else, frankly, Chuck or someone else who's been tracking it closely. But I think we're in reasonable state here. So any volunteers? Greg, go ahead.

Greg Shatan: Thanks. This is Greg. Can you hear me?

Jonathan Robinson: Yes, it's a little...

((Crosstalk))

Greg Shatan: Okay. I'll speak briefly and then maybe, you know, Josh can fill in as well. I think the letter of instruction at this point is actually fairly straightforward. And, you know, tracks the community agreement and basically, you know, paragraph – the key items are that the CWG will act in the names community – the person that this is appointing ICANN or requesting that ICANN sign the community agreement and that the CWG will be kind of the point of contact on behalf of the names community in dealing with ICANN as the signatory.

And will appoint the initial CCG members and including the cochair. And that the cochair will take most of the action required on behalf of the names community thereafter. I think there are some questions that really kind of revolve around the issue of whether we need approval from the chartering organizations, you know, and what level of approval that might need. So rather than - and it seems like there are some tweaks that have been suggested by (Elise) and by Chuck in particular that will kind of make things seem a little less - that'll make it clear that we're not signing - or rather Jonathan and

Lise, as chairs, are not signing on behalf of the chartering organizations per se but are in essence kind of signing for the names community.

So I think we'll need to make some revisions here. They're, you know, clearly not made, having, you know, been made, you know, suggestions were made, as Jonathan said, very recently. But I think that we can essentially remove the language that's in the letter that would, you know, require kind of express approval and formal approval by each of the chartering organizations, which would take more time than we have and require more bandwidth than it frankly deserves, and basically, you know, make it clear that it's kind of sufficient - we're specifically within the remit of the CWG to instruct ICANN to sign this community agreement and, you know, make it clear obviously that we have representatives from chartering organizations here, you know, particularly as members and that, you know, that's kind of how this is flowing.

Other than that issue, you know, which is critical but in a sense more a matter of procedure than substance, I think the rest of it is fairly straightforward. I'll turn it to Josh now and see what comments he may have and we'll look forward to kind of, you know, wordsmithing based on the suggestions on the list and working with Sidley to make sure that we have enough authority built into this agreement - into this letter so that it works, but not so much authority that it would require a whole bunch of express actions by each chartering organization. Thanks.

Jonathan Robinson: Thanks, Greg. I see that -- to help you and Josh -- there was some dialogue in the chat by me recognizing the concerns that had been expressed, but I thought they had been resolved. And Chuck says that having looked at the most recent redline, they may be resolved. So I just - it would be useful to confirm that in and around that point you made. So, Josh, I'm not sure how

much of that was clear to you, acknowledging that you are not on the list, but feel free to come in and then we can take it from there.

Josh Hofheimer: Thanks, Jonathan. I mean I understood from - Greg did forward me last night some of the exchange that had taken place. I haven't seen anything that would have happened this morning. But there was some question about whether or not the particular chartering organizations needed to, you know, affirm or, you know, ratify this and instruct CWG prior to signing.

What we did sort of thinking about that, what we did to try to address that issue is to state that and remove some of that time pressure was to put in language in the last draft that we did circulate showing some of those changes on top of what Greg had made that basically said that CWG would be acting on behalf of the chartering organization that, you know, have affirmed or thereafter affirms or subsequently affirm in writing that they agree to be included in the names community.

So in that way they would be going back to those communities and getting their, you know, in affect getting their buy in, but it wouldn't be something that needs to be done prior to this agreement being executed -- prior to this letter, I should say, being executed.

Jonathan Robinson: Thanks, Josh. That seems practical and I see that that's covered in the text here. As Chuck said, it may be helpful if staff could post the redline version of this if it's available to just to see that change and how that change has been accommodated. But in essence what we will do is assume the authority to sign and effectively I think give the chartering organizations the opportunity to buy into that or walk away from being part of the names community, which one wouldn't expect that to be the case but at least we cover for that possibility.

And I guess the key change here is that in paragraph one after the brackets containing GAC where it says that has affirmed or hereafter affirm in writing that they agree to be including herein each consenting SO or AC and collectively the names community. So, Josh, can you confirm that's a change you made more - most recently and that's effectively dealing with that issue in the way that you described?

Josh Hofheimer: Correct, that is.

Jonathan Robinson: That's helpful. (Elise), (unintelligible) I see you there. Hopefully (Elise) and sort of (George), yes I see (George) is also here, hopefully that does with that explanation it satisfies your concerns that were raised on list and that we can proceed and then communicate it back to the chartering organizations and ideally as a matter of form and formality obtain that subsequent affirmation.

As far as I can tell, and I hope I didn't miss something; please remind me if I - okay, so (Elise) is still worried about the use of the word "on behalf of." Let's have a look there at that point. Sends their request to develop...

Josh Hofheimer: The "on behalf of" language applies only with respect to those chartering organizations that do affirm their agreement either now or subsequent. So the on - the CWG wouldn't be providing this instruction on behalf of a chartering organization that did not affirm.

Jonathan Robinson: So looking at the chat I mean you see (Sharon) saying that no SO/AC is bound by this until they agree to be. So the GAC or any other SO or AC could agree later. But then (George) suggests that perhaps we should separate the CWG authority from the endorsement of the chartering organizations in two sentences so it's clear.

Any other thoughts or comments? Yes, as Josh said, I mean I think that this is a legal point. It's a legal terminology which is that it's only binding with respect that they - that such SOs or ACs affirm now or later. Go ahead, Greg.

Greg Shatan: Thanks. This is Greg. I think maybe this is more of a question for Sidley than a statement, but I think it's certainly okay if some of the SO/ACs affirm afterwards, essentially confirmatory affirmation or whatever. But what - it seems to me it would be a little awkward if none of the SO/ACs confirmed that they agreed with this before it went out or in whatever way that it would need to so that we would feel that we were acting on behalf of the chartering organizations.

On the other hand I think the CWG acting solely, you know, for the CWG and not for the chartering organization to my mind is a little bit kind of stretching our remit to say that, you know, that we represent the naming community. It may not be stretching it too much but kind of divorcing the idea that this is ultimately, you know, the representation of the community that's taking place.

So this - apologize for not being more focused but trying to see what path forward we have, you know, one of which might be having the, at least some organizations, those that may be able to have a little bit more speed, affirm this more quickly and then the rest can catch up. Consider that it took probably three months for all of the chartering organizations in fact to become chartering organizations in the first place, it's not - it's certainly not unheard of.

The alternative is to look at whether we, the CWG, can essentially take on the mantle without saying that we're doing it on behalf of the chartering organizations and still feel confident that we're, you know, speaking for the names community as such. Thanks.

Jonathan Robinson: Thanks, Greg. I'll let Josh respond and then see if anyone else has comments. I mean I tend to think a little like (George). I see (George)'s comment where he says if we see there's an implementation issue of CWG recommendations, the CWG does indeed have an authority of its own, the supplemental endorsements from the chartering organizations were to give it supplemental (unintelligible).

So I'm - that's currently what I think. I'd like to hear from Josh, but my feeling is that it may be better to divorce the endorsements from giving this - it feels almost cleaner that the CWG simply makes the instruction, communicates the chartering organizations, and ideally seeks their affirmation but that may not be a necessary condition for confirming the signing authority.

Josh, what are your thoughts or where were you coming from on this?

Josh Hofheimer: Thanks, Jonathan. So part of this, the way it was structured was because we do have to define the names community for the community agreement so that the IATF trust, which is the counterparty to that agreement, knows, you know, sort of who it has to go back to look for instruction regarding the interaction to be taken, the limited interaction to be taken to the community agreement.

So there - one way or the other there needs to be sort of a coming together and some consensus reached on what that names community should be. So I agree with Greg that it does create - there's the potential for some limbo period in a way if no SO or AC agrees to come on to this, you know, to undertake this role and have their chairs undertake this role. Then I think the stakeholders would have to sort of reconsider who they're going to have be that names community. So it might be helpful to hustle around a little bit and get

confirmation that, you know, there is at least one that is affirmed and willing to do that.

Otherwise, I still think we sort of loop back into the - we sort of loop back into the same problem of not adequately defining the names community. I mean we could - yes we could write it that this letter comes from the CWG and then in the sub paragraph two below, which talks about once the CWG, you know, dissolves, the names community will be, you know, right now it will be comprised of - or will be represented by the chairs of the SOs and ACs that do consent to take on that role.

We could just state that language there. But I guess at that point we've left again the question of who the names community is. So I think I might - I probably could - I could - certainly I think Sidley could support it either way but, you know, I think I have a slight preference for stating it the way that we've set it up right now it pushed people in the direction and towards the understanding that the SOs and ACs need to consider this issue and designate their chairs to be their representative for purposes of the names community definition. And so that if that doesn't happen, then the party can just rethink what that names community would be and perhaps go in and amend the community agreement later as well.

Jonathan Robinson: Okay let's hear from Alan and then Sam and see if we can start to draw some threads out of this and as well as from the chat. So go ahead. And, Greg, I don't know if that's the hand - I think that was your previous hand up so I'm going to go to Alan and then either remove - yes okay great. Thanks, Greg. So Alan, go ahead.

Alan Greenberg: Thank you. Could I have Sam go ahead? Because in the chat she was making another suggestion, and it may be more relevant to have her go first and then I'll come in. Thanks, Alan. Please go ahead, Sam.

Sam Eisner: Thanks everyone. This is Sam Eisner from ICANN Legal. I think that this is a complex issue and clearly you guys have put a lot of thought into this and are still working through it. I wanted to throw out a different suggestion that might give the community time to focus on more about how the CCG reps will be appointed and how the community wants to work through their role in the community agreement on the IPR side.

And maybe also that ICANN, we had some sort of note from the CWG asking, you know, some sort of official record, the CWG has requested it, ICANN served as at least the initial signatory to the agreement on behalf of - as an implementation item and then ICANN could send back a note to confirm that ICANN would be willing to serve in this role and that ICANN would commit that any direction - anything that requires discretion in the - in acting within the community agreement role ICANN would wait for direction from the community.

And then that would still give the community time to figure out what that means and how you're going to come together with identifying your representatives, et cetera. And that way we don't have to spend, or maybe you don't have to spend, the time to perfect this letter but we could just have a paper commitment from ICANN to wait for your direction and then you'd have the time to move forward. I just want to offer that as an alternative that might be a simpler path.

Jonathan Robinson: That's a creative alternative if they wish to fall back on. My personal at least reluctance to that is we may be 95% to the way forward and if we can

close off on where we are, that could be useful to put this to bed rather than leaving it as an open item that still needs going forward. But I accept this could provide a release valve if we can't find a solution. So let's see what others say. And Alan, you deferred to Sam, so you go ahead, please.

Alan Greenberg: Thank you very much. I clearly am not empowered to speak on what the ALAC will decide, but I cannot imagine a scenario where we would not ultimately agree that the chairs, and I would add or their delegates because there's always the issue of whether the chair should be the point person or someone else, who should act on it.

We started this whole process by the chartering organizations creating the CWG to draft, for their approval admittedly, a proposal on behalf of the names community. We have passively agreed that the CWG has that responsibility but admittedly with their ratification. But it's clear the CWG and thus the chartering organizations by de facto do represent the names community or - because otherwise there is no basis for us to have made that original decision and no basis for the NTIA to have - for the ICG and the NTIA to have accepted it.

So I think we're on good ground now. I think we can presume there will be ratification of anything reasonable or if not we can change the document at that point. So I'm not going to opt for, you know, which version of the words we use but I think anything reasonable at this point given the need to proceed quickly is going to be acceptable by the significant number of the chartering organizations or we can change, after the fact change the terminology. Thank you.

Jonathan Robinson: Thanks, Alan. I think that's reasonably consistent with - at least where I would see our mandate, and we've got to be careful not to stretch that but at

the same time, as you rightly point out, we were tasked with preparing a proposal and this is a critical implementation detail of the final proposal.

(Sharon)'s made a constructive suggestion in the chat that we could modify "on behalf of" to "for the benefit of or at the request of", and Chuck has put a notice forth for the benefit of. I like that because it certainly seems to at face value get around the concerns of (unintelligible) but I'll let them speak for themselves. And (Elise) put in the chat some support for the use of for the benefit of, as has (Megan) and (Sevine) and others. So it looks like that might provide us with wording that people feel comfortable with.

So it strikes me that if we use "for the benefit of", as suggested by (Sharon), and we indicate that - and we continue with the language that says "that has affirmed or hereafter affirm in writing," creates opportunities for the chartering organizations to come quickly on board to have the requisite time, it does seem to provide us with the way forward.

What I would suggest we do, and I think we can capture this an action as soon as this letter is settled, that we communicate the form of the letter to the chartering organizations and seek that they do affirm in writing their support for the plan.

Josh, please come in.

Josh Hofheimer: So, Jonathan, I just wanted to come in with one related item. This seems to have been settled, but on the, you know, the public comment period on the IATF trust for the IPR license agreement and the community remit itself comes to a close I think Wednesday or Thursday next week, on the IPR sort of working group calls, there had been a suggestion that the - because just as with the naming functions agreement there's been continued sort of work that

has been done on those documents since they were posted for public comment, there have been continued revisions that have been worked by the IATF trust, the various operational communities, and ICANN.

And we had suggested that the trust follow a similar path to what has been done here in that they post redlines of those documents at the end of the comment period and explain that the subsequent changes have been the result of further discussion and, you know, exchange of ideas, et cetera. I think they do plan to do that, and I just wanted to confirm with this group and that - or make sure that that is sufficient for CWG or does CWG also feel that it needs to do, you know, a similar posting on behalf of the CWG community and stay like we've done with the naming functions agreement perhaps on its own post the redlines and say that these are part of those negotiations or kind of rely on that IATF trust posting of those documents.

I just wanted to put that out there so that it could be discussed. (Sharon) can -- I'm going to have to drop off this call for another meeting -- but can check that chats and discussion to see what sort of follow up we need, or (Sharon) is on the call as well.

Jonathan Robinson: Thanks. And I (unintelligible) (Sharon) and note that point. So just - I'm going to put that in a slightly different way. In these regular IPR-related meetings, our group, the CWG, has three representatives on that - in that group, and that's Lise Fuhr, myself, and Greg Shatan. The three of us have been working together with Sidley to represent our interests or sort of naming community interest in that whole structure in negotiating and dealing with agreeing with the IATF trust. The IATF trust has nominally held the pen, so to speak, and are - and as those discussions have continued since the document was up for public comment, further redlines have been developed.

Now - and so what is going to happen is - what's proposed to happen is that a redline, as Josh said, will be posted with collectively agreed edits as the public comment on behalf of the various parties. And I'm feeling that's enough, and Josh is right to ask the question does the CWG want to do anything else and - so that's the question really, is there anything else that needs to be done?

And I'll pause there to see if anyone does have any comment or suggestion. So it's either a point of information, this is what will happen and it will happen pending no other comment or input from the CWG, but if anyone has any comments or concern about that, please feel free to raise it.

Okay, so absent that comment, that is what will happen. That's the process that will take place. You will see that the public comments on the community agreement will be effectively updated by virtue of a cumulative redline that's being discussed whilst it's been up for public comment, and that will influence the final output. We could certainly circulate that redline to this group if we haven't already done so.

Now the final outstanding point is clearly these names community reps, and we haven't really dealt with it as -- and thanks (Shawn) for your comment and support of that process, just to go back to that -- but as far as I can see, we have neither dealt with any suggested reps or a process to appoint at least the interim reps and the CCG names co-chair.

My understanding of this role is it's not a particularly functional role. In a sense, it's almost a symbolic role. It's a requirement to manage the instructions if and when they - instructions need to be made. So this is not a particularly taxing or demanding role. I wouldn't mind some discussion or suggestions. I could put a strawman out to you. I was trying to think this through and the one strawman possibility is that we use the three reps that have been on this IPR

group, which is myself, Lise, and Greg, to do this - to be the interim reps until such time as the naming community decides to appoint different reps and a different co-chair.

The one concern I could see with that is you end up with a GNSO, a ccNSO, and in effect what some might see as a second GNSO person. I personally don't feel like there's a lot of scope for bias or concern here but other may have. So I'll put that to you as a strawman. I don't know if anyone has any other suggestions for a mechanism or individuals or how we might get to this point of appointing some interim reps. It feels to me like we need to do something relative soon.

And to be clear, this is my own idea. I haven't communicated this even with or socialized this with Greg and Lise. I was just trying to think in advance of this call what the options might be. Any suggestions, comments on either how we might get to some interim reps for the naming community to populate these square brackets? And also I wouldn't mind a reminder as to when the deadline for that. So if someone could provide a reminder in the chat as to when the deadline for when we require these and then let's hear from any others on comments on these.

Go ahead, Alan.

Alan Greenberg: Thank you. Is it possible that we name the reps and then say, similar to the wording in the agreement here, that they will take direction from the chairs of the chartering organizations by, you know, decisions by consensus? Then they remove, to a large extent, the worry about who they are. That is, they agree to act in that way. If someone is speaking, I can't hear them.

Jonathan Robinson: Hi Alan. Sorry, I lost connection from another blip in the connection - apologies to you and others. I would like someone to comment on that but my understanding is that is already covered and that the rest do take direction from either CWG or the Co-Chairs. So Greg puts his hand up. Let's go to Greg on that point.

Greg Shatan: It is Greg again for the record. First I would say that I am flattered and offer my own condolences to myself and to Jonathan and (Lisa) as well and I would be willing to serve and clearly it will be done so only under the direction of (unintelligible), you know, that the CWG or the chartering organization chairs and they are the one generally formulated this under the letter of instruction is that the CWG would act in that capacity, the directing capacity until it failed to exist and then thereafter the chairs or their delegees would act to instruct the main - with the representatives.

I think - I don't think that needs to be dealt with in that detail in this letter which is a letter of instruction to ICANN. I think that there could be a, you know, brief up, you know, letter of appointment if you will which makes it clear that you are serving solely a representative capacity and as directed capacity and not, you know, (unintelligible), you know, don't have a broad ranging brief to do so and I think, you know, similar to while we are dealing with the letter of instruction we can kind of structure this now and then as we get the, you know, approval of the SOACs for the letter we also, you know, have been approved this setup.

In terms of a deadline since we are putting on these meetings in the letter and the letter needs to go to ICANN in time for ICANN to essentially accept the responsibility and sign I think that needs to be in front of them for the board meeting. I will let Sam speak to, you know, the exact timing that which everything has to get funneled into the board so everything, you know, all the

bits and pieces that need to be approved meet - are approved so unless we take the Names out of the letter which I think it is probably better to have them in, you know, that the timing is driven kind of by the approval process. Thanks.

Man: (Unintelligible).

Alan: Somebody is noisily typing.

Jonathan Robinson: I think that was Greg's mike coming out Alan. So there is a little bit of discussion on the chats around the fact that the co-chairs already interim a board appointee for PTI and that this may be too much for their task list and I did - I proposed that it was more - it didn't seem to me like this is a significant task and I may be misunderstanding and then Chuck has suggested that we propose this to this list and also in any event that this would require a co-chair to be chosen from the three as well.

So look I think Alan wants to come in and any other comments will be welcome but I think that is a good point. I certainly wouldn't want to push it any further than this which I just said, a (unintelligible) line suggestion so I think it would be great if (unintelligible) independent of myself could put that as a straw man suggestion to the list - not to manipulate things but I just think it is appropriate that someone else who is supportive of that or the possibility at least and we get a thread going on how we get these three representatives going as soon as possible. Let's hear from Alan and then Paul Kane. So Alan go ahead - Alan Greenberg.

Alan Greenberg: Thank you very much. I was going to suggest that we say this is as an interim appointment but since it is all contingent on the CWG existing and lord help us I hope it is going to cease to exist someday soon for either the transitioning happening or it doesn't happen right now and we - whatever.

The point I was making really was not that are these people going to take direction but we probably need to put as a pre-requisite for there being named that they sign an agreement saying they will take direction. That was the main thrust of what I was saying. Other than that I have no problem with this.

Jonathan Robinson: Okay, thanks Alan. Let's go on to Paul Kane.

Paul Kane: So thank you Jonathan and I don't think I have a big issue with any of this but I do - I am reading in the chat (Shawn)'s point and - oh, can you hear me, no. Hello, can you hear me? There we are - hello.

Man: Yes, we can hear you.

Paul Kane: Hallelujah so I am just really picking up on the chat that (Shawn) has been entering.

Jonathan Robinson: I am not hearing Paul and suspect others may not be. We might be hearing them on telephone but not AC audio - sure Paul.

Woman: I am on the phone and I can hear Paul.

Jonathan Robinson: (Unintelligible).

Paul Kane: All right, let me just put my point out and then I will...

Jonathan Robinson: (Unintelligible)...

Paul Kane: All I am saying is...

Jonathan Robinson: ...so just go ahead.

Paul Kane: Great thank you. Well first of all thank you Jonathan for...

Jonathan Robinson: (Unintelligible).

Paul Kane: First of all thank you Jonathan for the proposal. I don't have a strong view but I am reading in the chat (Shawn)'s and I think that is quite varied in that it is one of optics. Very - I am delighted that you are willing to stand as interim PTI Board Member, you and (Lisa) of course but bearing in mind this is a job that one is only interim and two are - I sincerely hope it doesn't involve too much of anyone's time.

I do think it would be sensible just to touch base with the chartering organizations as to who if they have another candidate if they want to progress anything but do make the suggestion that you are willing to stand if you think appropriate.

I just - I am very wary of (Shawn)'s point and it is just optics, that is all.
Thanks.

Jonathan Robinson: Thanks Paul I think it is a good. As I said I put it, you know, as a concern that (Shawn) raised about any perceived conflict of interest or otherwise so it seems this is something we do need to work on. Bear in mind that there are - one of the challenges that we have here is that there are three reps and more than three chartering organization. You know, that is another issue. It is - I think there was some discussion on this previously which suggests that perhaps ccNSO, GNSO and (unintelligible) and other so we do need to get this going and work on it so I am wondering whether we have reached a natural point in this discussion where we can't take it much further but let's

see from Greg whose hand is still up so Greg go ahead if you have a new point to make.

Greg Shatan: Thanks, it is Greg and I did think about, you know, (Shawn)'s point, was about to agree with it and then decided I don't think it is an issue, at least not an issue other than potentially optical because (Jonathan Lee) are serving as independent directors on the PCI Board and really as representatives of the Names Community in doing so and so are really there as watchers as well so it is really in a sense more of the same to be kind of watchers of the ITF Trust and again really of the actions of ICANN and IANA PCI in doing so.

So I don't think it poses an actual conflict and if it is - as long as it is clearly understand that every, you know, their functioning here in their Names Community tasks and it is not like having say the head of PTI, the President of PTI also somehow serving as the Names Community rep - that would be a little peculiar but I don't think this is peculiar at all. You know, beside if there are more volunteers out there can do that but this is interim and as soon as the dust settles, you know, there probably can and should be a more regularized process for selecting these representatives who normally serve one year terms but can be removed, replaced in a way for advising them and maybe even without getting to broke about it.

Some form of a rotation or presumptive rotation among the different chartering organizations so that it isn't, you know, always, you know, the same chartering organizations appearing a majority of the time unless that is where all of the interest is and all of the nominees etc. etc. but I think that for the purpose and for the moment this should be sufficient and optically appropriate as well. Thanks.

Man: (Unintelligible). Thanks.

Jonathan Robinson: Okay so look that is clearly stimulated a bit of discussion thinking about the optics, the conflict of interest issues and the various other points and Chuck rightly points out that we do need to finalize this letter now.

My understanding in opening this discussion was that the letter was essentially finalized say for the discussion on those members so if I have misunderstood or have anything incorrect please let me know but I understood on the basis of the earlier discussion that we had essentially finalized the letter where we modified the wording. As suggested by (Sharon) we took the other wording in the recent red line which you see in front of you and I think in (unintelligible) we had to file the letter so if I have missed something let me know and say for that which I have proposed we draw a line on the ones we see - heard from Alan.

We now need a thread based on this straw man proposal with discussions that we have had here, really a thread to try and work out how we determine the interim names but that doesn't - that shouldn't stop us finalizing the letter as per Chuck's point. Alan, your hand is up. Go ahead Alan Greenberg.

Alan Greenberg: Thank you very much. May I suggest that we can fix the problem of the optics by changing paragraph two and I am not going to try to wordsmith it here to say that "These appointments are as long as the CWG exists or until the chairs of the chartering organization decide by consensus that these people should be replaced," - that says it can happen almost immediately if the chairs don't like these appointments but it gives us three names to put in the document.

The CWG conceivably - we thought the CWG was going to dissolve itself well over a year ago at this point - it didn't so let's not assume it will dissolve

immediately but give the chairs the ability to replace them even if the CWG continues to exist.

Jonathan Robinson: To be clear - I mean the paragraph above that already says, "The process effecting the CCG representatives and CCG names chair will be determined by the Names Community," so the chairs can do that in any event.

Alan Greenberg: I understand but the next paragraph says until, "In the event the CC - the CWG no longer exists," and I am just saying that that should not be the only trigger point which can say it.

As I said I am satisfied with this but if we are worried that there may be an optics issues then give the chairs the ability to do it much quicker. You know, we need (unintelligible) and we come to a conclusion it should be three other people, it is done.

Jonathan Robinson: I still think that we haven't got a clear direction to appoint - I wouldn't mind hearing from Sidley that you have - that you don't need any more direction on the content for the letter saved for this issue around the initial representatives. I am not sure it is appropriate to force a conclusion at this stage. It seems to me like we need a little more discussion on that and as Greg says the paragraph doesn't appear to limit the removal of reps. (Sharon) let's give you an opportunity to comment if you would like to on. You know, you have heard the discussion and the concerns here. We don't have an agreement on initial names. We have some concern that if we do put initial names, whomever they might be that they need to be replaceable relatively easily.

Do you think you have got enough to finalize the letter say for placing the names in there?

Sharon Flanagan: Thanks Jonathan. Yes, I think we do. I think the only change would be if there is no ability to name the three people now then we would have - we would have to change that paragraph but assuming we can name those three and if we want to add some additional language at Alan's suggestion of just making it clear that they are initial and that they can be replaced I think that that works fine.

Jonathan Robinson: Okay so, Sharon, thank you. What I have heard is some discomfort with my straw man suggestion of the names but I haven't - but I have heard some argument for retaining named - it seems to be that we do need to have named individuals if at all possible. They are dramatic if we don't so I suggest we take the (unintelligible) list, run the discussion and try and find a way to agree on how we might use some named individuals either through volunteers or other mechanisms and we work on that on list at this stage.

Okay, well I think that is as far as we can take this right now. We have agreements on the substance of the letter. We are missing the names. We need to discuss that and any issues that arise out of any suggested names and we will have to deal with this on the mailing list and then if necessary pick it up at our next call.

(Sharon) and Greg or (Sharon) could you just sort of articulate that last point in the chat just to make sure that I and we understand that one?

Sharon Flanagan: Sure, I think what Greg was saying in the chat is that this is really more of an internal matter. The letter - this letter is direction from the Names Community to ICANN so how the Names Community wants to be able to swap out their representatives is really I think what Greg is saying, more of an internal matter and so if that - if people agree with that then I was saying that perhaps that would be something that could be covered in whatever letter of direction the

three individual representatives would sign which would be a simple letter that would say, you know, we will, you know, serve at the request of the community and take direction from the community and will resign upon the request of the community or something like that.

Jonathan Robinson: That is a good point and I think I agree with that. I think what would be useful then (Sharon) is to put alongside this letter that just to make up that draft. I think that would be very helpful because then it is quite clear that the two, those two go hand in hand and this letter to ICANN, this proposed letter that - of appointment if you like, of the CCG reps which would then give others the comfort that perhaps that where the direction is being given and that these reps can be removed at the discretion of the Names Community.

So for the sake of good order I think that draws a line under this point and really formally at least we should make that instruction via the client committee that we ask - that is a good point so there is a qualifier there from (Sharon) that the co-chair should be someone who knows IP right as well.

I mean I didn't go so far with my proposal but what I had envisioned in fact was in thinking it through with (Lisa) and myself and Greg Shatan as the co-chair so that - I didn't articulate that in my straw man proposal but that was what I had thought and would - that would be consistent with the one (unintelligible) IP rights well. And let me not push that point any further. I think the key is that we are simply to drop the letter of appointment with the CCG reps which makes it clear the limits and the (unintelligible) instruction. Let's put that in under the number four for the client and we need to make sure that goes through the client committee for due process and Greg highlights that ideally that should be in the instruction letter since the co-chair has particular responsibilities.

Why in the instruction letter? Surely that is in the appointment letter. Greg go ahead.

Greg Shatan: Thanks, this is Greg Shatan again. I - the reason it should be in the instruction letter is because ICANN needs to know who the Chair is because the Chair by the way the Community Agreement is set up the Chair is entitled to speak for their community and for - and to give direction on behalf of the community but needs to expressly state that this is coming from that community.

The other two representatives don't have that particular power, if you will and so the idea is that the - ICANN needs to be aware of who is the Co-Chair so that it can rely on the capacity of that particular individual speaking in their capacity and expressly stating that there is for the community and, you know, obviously this would have to be at the direction of the community and the letter of appointment could indicate that the - with the Chair, you know, can only say that he is speaking at the direction or she can only say speaking of the direction of the community if in fact that direction has been given but that is where ICANN has to know who is speaking as chair. Thanks.

Jonathan Robinson: I think that becomes a specific question (Sharon) and you said it should be an instruction that I think what you mean is it should be identified in the Co-Chair - the Co-Chair should be identified in the instruction that - not that it should be someone who knows IP right - that is not necessary as I understand it to be identified in the instruction that - and therefore that the instruction letter as it currently stands is adequate. Yes, it is the sequence, (unintelligible).

Okay, so I think just in case anyone else was confused by that the instruction that as it stands is substantially complete apart from a couple of minor modifications - minor modification agreed today and we will ask Sidley to assist with appointment letters and we will pick up on our email list for

discussion in and around the perspective appointees and their backgrounds, qualifications and any issues around conflict of interest.

All right, I think that deals with the subject of the meeting and I will now move us on then to any other business and see if anyone has anything else that they need to raise in relation to the work of the CWG and the implementation work being undertaken by ICANN. I see a hand up from Chuck Gomes so I will refer to Chuck - go ahead Chuck.

Chuck Gomes: Okay, thanks Jonathan. I just want to raise the issue of the independent review process that the accountability CCWG is working on. It has been my understanding that we in the CWG expected that work to be completed before the transition happens. Information I have seen is that that is not going to happen, not all of it, before the end of the month or by the end of the month but my understanding is also that the essential elements of that will be finalized by the end of the month and that the things that need to be finalized after the transition, assuming it happens on target, can be completed afterwards.

I just wanted to make sure - first of all test my own understanding and make sure all of us in the CWG are on the same page in that regard so again I have had some conversations with key people in the CCWG and I think it is pretty clear that all of the tasks won't be done before the transition but I personally have been assured that those elements that are essential will be done in time.

So I am communicating that. If people have different understanding I welcome that but I thought we should - because I think we were targeting in the CWG that it would all be done in time for the transition - I don't think that is the case, I don't even think it is realistic because of public comments

needed and things like that but I am confident that essential pass will be done in time. Thanks.

Jonathan Robinson: Thanks Chuck, good point. Any comments or responses to that set of points raised by Chuck around the independent review - anyone able to provide any better insights or understanding of where that is, anyone from staff worked on the implementation?

Woman: (Unintelligible).

Jonathan Robinson: Okay so Trang confirms in the chat that the process is captured in the bylaws and that the IRP will be functional at the time of the transition, assuming it takes place on the 30th of September, 2016. Chuck I am going to assume that is your hand from previously and go to Avri - yes, go ahead Avri.

Avri Doria: This is Avri speaking and perhaps with a little trepidation but I am a member of the group that is working on that and I believe that what Chuck says corresponds to the case - the bylaws, the essential mechanisms, the - for how the IRP works will be done. We have got three pending issues that we are bringing to the CCWG in the next week and I don't exactly remember when but basically.

There are other things like how these new panels get instantiated and the processes that we go through between the staff and the communities in terms of putting in names and having names selected. Some of that is still to be discussed further but there is an empaneling in place in this proposal. It is just that some of those - so but the essential part of the appeals mechanisms will be done and hopefully other people from that group who are also here will correct me. I am not the leader of the group I am just one of the legally knowledgeable people on the group. Thank you.

Jonathan Robinson: Chuck for the question and Trang and Avri for your input. I hope that is sufficient to set your mind at rest for now Chuck but it does sound like we have got to keep an eye on that over the next week or two.

All right, any other points or issues required. I guess we can take an action to monitor the developments of the IRP. Yes, thank you. Okay, good word. It looks like we might have wrapped things up 30 minutes ahead of the full two hour schedule. That is useful. Thanks everyone for a (unintelligible) meeting. It should be pretty clear from the notes what we need to do next and I think that is useful. We have knocked off a couple more of the biggish items that need to be dealt with.

Talk to you on the (unintelligible) and of course likely at the - not so friendly at least as far as the west coast of the USA and possibly east coast is concerned at our meeting at 0600 UTC in one week's time. Thanks everyone. Bye for now.

END