

ICANN

**Moderator: Brenda Brewer
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9:00 am CT**

Yuko Green: Hi, everybody. This is CWG IANA Meeting Number 93 on 22 September 2016 at 1400 UTC. I will now hand it off to Jonathan.

Jonathan Robinson: Thanks, Yuko. We have a little bit of background noise. I'm not sure if that's coming from your mic or another one. So if we could be sure that all mics are on mute if you aren't actually contributing to the call?

Josh Hofheimer: Jonathan, this is Josh Hofheimer. I'm on audio only and going on mute.

Jonathan Robinson: Thanks, Josh. We'll record you as present.

Greg Shatan: And this is Greg Shatan as well. I'll be on audio only for the next few minutes.

Jonathan Robinson: All right, Greg, thanks. We'll record you as present also. Anyone else on the audio only? Otherwise, we'll take the additional presence or roll call from those present in the Adobe Connect room. For those present plus Greg Shatan and Josh Hofheimer. All right, great.

So I hope this won't be an extended meeting. We've really got to focus in on a couple of items under Action 3 of the menu. But just to clarify where we are, we're clearly coming to a head with the key work on the implementation. Both Lise and I are here - the cochairs are here on the call today but I'm expecting to chair the call for the most part.

And clearly that implementation was all geared towards working round a September 30 deadline and in order to anticipate the 1st of October and the transition. It won't have escaped any of you that there has been certainly a lot of smoke generated around the transition and whether or not something can be done to in some ways delay it. So there are - it is a reality that there are certain risks present to that timeframe but in essence our job is to work under the - working assumption that we have to get our work done by September 30 in order to be fully prepared for an October 1 transition and that is the working assumption on which we are basing our efforts.

The ICANN Board, I understand, met last week - they were in Europe and met in - and dealt with various items and it's a matter of public record, and that includes - included the approval of the IANA naming function contract and the services agreement. So those are both signed off and approved by the ICANN Board. And in addition they approved the composition of the five-person PTI Board so that is now set and ready to go as key pieces in the jigsaw that make up this transition.

For the record the PTI Board includes from the community nominated appointments of your two cochairs, Lise and myself, and in addition five - sorry, three members of staff to complement the two of us, that's Elise Gerich, David Conrad and Akram Atallah and was anticipated some time back.

So really the primary purpose of this call is to deal with some detailed matters around the IANA IPR and wrap up on those. That's really the key purpose of the call and that's covered in Section 3. But prior to moving to that I suggest we just have a brief update from staff as to any other items or any details around those I've already mentioned, and then we can move on to the substance of the call under Item 3.

Any questions or issues before we move on to Item 2? Okay good. Let's hear from ICANN staff then under Item 2 and then we'll move on to 3 thereafter.

Trang Nguyen: Thank you, Jonathan. This is Trang. I'll just give a very quick update. This is a - we have removed the IANA naming function contract as well as the service agreement because, as you mentioned, the ICANN Board had approved them last week so essentially the remaining piece of work left that we have to deal with, as you mentioned, is the IANA IPR topic.

As you can see we have completed several of the timelines or dates, milestones, that were anticipated in this work plan that was set out by the three operational communities to finalize the IANA IPR agreements. There have been several calls to finalize and agreed upon any final language for the agreements. And I believe the next step is that the IETF Trust will be meeting a little later today to consider and potentially approve the agreements. And then there is some work left for the CWG to also consider which will be covered in agenda Item Number 3.

The date - the ICANN Board did have a meeting last week. We did inform the ICANN Board that we would need another meeting - to have another meeting - for them to have another meeting prior to September 30 to approve the final agreements if they are ready for approval and for signature. So the date for that ICANN Board meeting is not set. But the Board has been briefed and

informed that there will be another meeting to be held if the agreements are at a point where they can be taken up by the Board for final consideration and approval.

So that is it in terms of the remaining work. As Jonathan mentioned we don't know yet what will happen with the transition. As of right now we are still proceeding to get everything that we need to get down from an implementation perspective in place so as to allow the IANA functions contract to expire. And so that our stance in terms of an implementation approach.

As I mentioned, any number of possibilities is still possible at this point with regards to the transition is still possible that the transition could take place, October 1 or it could be possible that there could be a continuing resolution that will be passed with some language relating to NTIA's ability to relinquish their role. So that is up in the air but we do know is what we can control which is the work that we are currently doing. I'll stop there, Jonathan, and take any questions.

Jonathan Robinson: Thanks, Trang. Any questions or issues arising from that brief update from Trang? Okay good. Thank you, Trang. Then Item 3 really, we have to be in the next meeting of the IETF Trust as was highlighted, in order to deal with the various key agreements. And there are a couple of outstanding points, in fact three outstanding points that we really need to deal with.

And let me describe those very briefly and then we can work through them, not necessarily in this order. But we need to ratify or at least confirm the definition of the names community. There is a letter of instruction that we previously agreed, a letter of instruction to ICANN, regarding the IPR. And there was language defining the names community in that. So in effect, we

have a definition in a different document and we just need to confirm that that maps over onto that community agreement. Which I think it does but it's important to clarify that and make sure that definition is agreed.

We need to make sure that we deal with the composition of the CCG and we had some discussion on that over the last two meetings and we've had some nominations on the list. And we need to deal with an issue that's come up I guess relatively recently in the IANA IPR group. And Jari attempted to help with elaborating on that, an email yesterday, in fact I think I might have asked him to do to assist us in making sure we are clear on this. And that is to do with the fact that we need an effective date for the agreements and they need to be signed.

So I think it may be most helpful to deal with - we could deal with them in any particular order but I know Jari has made himself available for this. And that participants in the prior discussions on this who may want to speak to this signing an effective date of the agreements is Greg and Lise have both then on that quite substantially as well as Jari who's here. So let's have a look at what we've got here.

Here is the proposed wording. And what it says is that there is going to be an effective date at which these agreements become - come into force. And there are two points about this. One, but there is an effective date and it is - it occurs only if the IANA functions contract between NTIA and ICANN is terminated.

And as Jari said in his email, there was some discussion as to whether this should proceed in any event. And so that's one point that's encapsulated here. This wording says it will not proceed, a transfer will not proceed unless the transition occurs.

And then in addition, the document only holds valid if such happens before February 1, 2017 at which point the agreement terminates. And there's two key points in here. One that it's only valid if the IANA functions contract terminates. And two, that our agreement has of itself a termination date approximately 4 months from the first of October.

So I don't know if anyone else would like to speak to those points, if my background has been adequate. And I see Jari's hand is up right away so let me invite him to speak and others may wish to either speak or respond to these points in the issues raised within it. Go ahead, Jari.

Jari Arkko: Yes, hello, everybody. So I think you already said most of what the context here. I want to add a couple of other things. First of all, it's really, really important that we do sign the contract today. And it's one hour and 45 minutes until the call so hopefully we can get this done. And it's not about us. If we don't execute at the end of this month, then nobody can blame us for that. And I think that's actually quite important.

Plus, as Jonathan said, we had some discussion about exactly when to make the contract effective and debate even. We ended up with a compromise here and I think people can live with that. So the idea is that you know, if the transition happens or if the contract lapses at the end of this month then this takes effect immediately. And if it doesn't then it will take effect whenever that contract finally stops us. So that's the beginning part.

That ending part is kind of, you know, if you read the text it kind of - it may look (unintelligible) here but it's relatively standard practice that you have any contracts with, you know, that cannot be put into effect immediately they have to have some kind of ending because people don't want to be tied forever.

And the IANA, I'm sorry, the IETF Trust, in particular consists of (unintelligible) people on, you know, it's not - some may be more careful than others. I feel my colleagues, in particular, are very, very careful. They want to be, you know, checking things over time and their mode of operation is that they make contracts but if nothing happens then they don't - an opportunity to check again and that doesn't mean that we cannot do something after this; it means that we have to discuss and resign, right?

So that's why the ending date is there. And it's relatively firm from our perspective, given as we already do this in other contracts. And we've actually been around the map or all over the map in the different contracts. Some of the contracts relating to transition have no ending dates. Some of them have a year. Some of them have three months. And this is one is kind of in between.

That's where we are. Hopefully this is acceptable and the rest of the contract are also okay for you guys. And looking forward to (unintelligible) this or approving it. Thank you.

Jonathan Robinson: Thanks, Jari. Let me hand strayed over to Lise for any response and input. And I see Greg and Paul have also put their hands up so we will let the conversation run a little around this subject. Go ahead, Lisa.

Lise Fuhr: Thank you. To be honest, I was not on the call yesterday. I was on the call Monday so I've been part of this discussion but not the whole discussion. For me I agree with Jari, it's very important that we confirm this agreement today as we need to move on with it and it's been discussed for a long time. Personally, I would've preferred to see the termination date or checking date to be six months instead of this in between first of February. But if this delays any acceptance of the agreement I would not stand firm on this.

That regarding the transfer of the IPR I just want to make a quick comment on that. I don't have any strong opinion is the IPR should be transferred or not but now it's been decided that it should be done in relation to the transition. But for me the mandate is quite clear, it can only be done from this group's side if there is a transition. So our mandate is if a transition happens we need to also transfer the IPR.

I don't think we have any mandate to do anything about the IPR beyond that. But that was, well, my side, yes on this. Thank you.

Jonathan Robinson: Thanks, Lise. And because I was in on those calls and you and I have discussed this, I think I would just emphasize that key point, notwithstanding any view that you or I might have had personally about whether the IPR should transfer regardless of whether the transition takes place, I think our key concern when we talked about it was we were in that IPR group with a certain mandate and part of our overall mandate was to deal with the IANA IPR as part of this overall mandate to work on the transition from a names community...

((Crosstalk))

Jonathan Robinson: Can we have our microphones muted if you're not speaking please? We have an open microphone from someone. Anyway so let me just conclude that very briefly by saying that that was - so we felt unable to enter into the discussion of whether or not the IRP should be transferred independent of the transition hence the sticking to the fact that these were coupled transactions.

Let me hand the microphone over to Greg.

Greg Shatan: Thanks, Jonathan. Greg Shatan for the record. Just a couple of ancillary points. The way that the - the way that the language is set out here, you know, accomplishes number of things. First, this allows the agreement to be signed in advance of the effective date or even if the effective date is, you know, somewhat uncertain which is the current case.

So we don't have to wait and sign a document with particular effective date or engage in any, you know, complex maneuvers such as holding documents in escrow so to speak, and only exchanging upon a contingency. So this is the kind of most straightforward way to deal with the situation we have in front of us.

Second, the contingency is of course the IANA function contract being terminated which will only happen if the transition is occurring. So if that doesn't occur then this document won't become effective.

Lastly, in any document where you've got essentially four different parties and a lot of complex reasonably complex things going on around it, you're going to need to come to some common terms that may not be exactly what any one party would do if they were the king of the forest. So what we have here is, you know, as in any agreement, the end product of a set of discussions. So, you know, should be viewed as such.

And, you know, as Jari alluded to, for the IETF Trust has one other agreement, the SLA or MOU document with - relating to the IANA functions, which also has a similar check in date as well. And in spite of the phrasing of the language in front of you, I think that's all it should be looked at as. So it's just an opportunity to see if there are changed circumstances, if there's some reason that externalities have changed such that there's a reason to revisit all of this.

But I don't think there's any, you know, reason to make much of this language overall. And certainly as it says in the end other than this there's no right to revoke or terminate the agreement prior to the effective date. So depending upon what happens in the outside world, all of this could be completely moved. So from my point of view this is a blip. The language works. It's, you know, while the language is not consistent across all agreements of all parties, this is reasonably consistent with a number of the agreements and kind of strikes a balance between language that's in different agreements with regard to the treatment of the effective date. Thanks.

Jonathan Robinson: Thanks, Greg. I'll go straight on to Paul. Paul Kane, come in.

Paul Kane: Thank you very much. So my headline is 'I'm in favor of the wording as presented simply because I don't want us, CWG, to hold up anything. The IETF Trust are very kindly willing to step forward. The thing before us now is whether it's effectively the six month that Lise referred to or the shorter period that's being referenced.

The headline though, again, is let's try and ensure the transition is able to happen because everything is in place. And if we're only being offered a shorter period than six months, whilst six months might be elegant, let's just proceed on the basis which everyone will agree to or I hope everyone will agree to and get the thing signed now so that at least we, CWG, are not the impediment to having every aspect of this transition fulfilled.

If it's delayed, if beyond our control the transition is delayed, then we can revisit the agreement closer to the end of the next transition period date, whenever that is. But let's hope the transition will happen now and if it is it would be good to have all the documents in place. Thanks.

Jonathan Robinson: Thanks, Paul. And I see a checkmark in the room for that intervention or for input and the checkmark comes from Greg. Go ahead, Jari.

Jari Arkko: Yes, I agree with what others have said. I just want to add one more thing kind of historical note about this, you know, that this contract being - or the - being in effect being conditional on the transition. I mean, there was, indeed, discussion and this is the deck that we have in front of us.

But there's obviously, you know, two sides to that discussion that one way of looking at this is like you guys are looking at this, you know, you are here for the project, the transition project, we, for instance in the IETF, look at it slightly differently, that we are, you know, from the IETF and we, like, you know, take an example from some other contracts that we, you know, every year before the transition process we were able to sign a new SLA, you know, on a yearly basis and now we've been, you know, not successful in getting that done because people are very scared of putting into effect any new text.

And so this is operational versus, you know, big project dilemma here. But, you know, like I said, it's what we have. I think people, you know, myself included, can live with this. So I think we should just do this and start reading the news when the transition happens or not.

Jonathan Robinson: Okay. Thanks, Jari. And I think we should acknowledge that point. There is a subtle difference there, which could be seen as quite significant in that this is - seemingly bound up with the transition as far as the names community has been concerned and may not have been so to others. And we've approached it in the spirit that we've worked with on all of this to attempt find middle ground wherever possible. I think we should recognize that and appreciate the various parties have attempted to find that middle ground.

So I think my sense, Jari, is that you have this wording and we can put this to bed. If, for whatever reason, there is any desire to extend this and comes up I think we should give you the discretion to do that but failing that, the wording as before us, is acceptable. But my sense is that if any - if there's any room to move there is some willingness to extend this date slightly up to say six months or even 12. But I think we should give that to you. From our point of view we can accept the substance of the wording and hand that over to you to work with. Is that acceptable to you, Jari? Is that a useful basis to go forward?

Jari Arkko: I think that's acceptable. I mean, my attempts on it because we're sort of, you know, what we have yesterday, we will take that forward, try to get it signed, not rock the boat in any particular fashion. We understand your points but our goal is to be, you know, prudent and careful and, you know, keep tracking that. And not desire to, you know, set the deadline of any sort. But I think that that's...

((Crosstalk))

Jonathan Robinson: Well good. You have - good. Sorry, I didn't mean to cut across you.

Jari Arkko: I'm done.

Jonathan Robinson: Okay so you have that wording then, Jari, and we can leave that with you and that deals with that sub point here. The other areas we have to deal with under this - under this item are the CCG reps and the definition of the names community. Let's put up the definition of the names community next and make sure that that's not a cause for any concern. And I'll remind you again, that this was the language that is derived from the letter - the letter of

instruction to ICANN regarding the IANA IPR and is indeed the draft language in the contract that will go to the IETF Trust shortly.

So if we could just see that definition and make sure there are no concerns or issues with that, please that will be useful. So there you have the definition in your screen in front of you. You don't have scrolling rights because it's just - the key part of the contract is that which is in front of you. And it's essentially saying that - it confirms the request of the cross community work for the benefit of those listed, of its listed chartering organization and goes on to list them and define those chartering organizations of the CCWG as collectively the names community.

I see a hand up from Jari. But I know that's an old hand so thanks, Jari. Any other comments or questions in and around this definition or indeed any points of support? In fact, the purpose of bringing this in front of you is just to make sure there are no objections. So I guess really what I'm calling for is that there are no objections to this definition. Like I say, it has been used in a previous document.

And for the sake of good order Lise and I felt that we didn't want - there had some been discussion in the IANA IPR group as to what the definition was. This was put forward as the presumed definition and we just wanted to make we had ratified it. So if we do not see any objections to that definition, that will be the definition that goes forward in this agreement. And seeing no objections or hands raised I think we will consider that to be the working definition for the purposes of this agreement.

So finally then, in this area of the IANA IPR, we are required to have three representatives for the so-called CCG. And those three representatives were - there was a willingness of the cochairs to stand as representatives and together

with Greg Shatan who the three of us have been active in dealing with this IANA IPR issue.

There was some concerns expressed at one or more previous calls about whether or not that was appropriate in terms of workload and prospective conflict or any other issues. And it was agreed that we would call for nominations or volunteers within a certain definition, which we duly did. We put a deadline on it and we then extended that deadline by 24 hours. And within that period we received three nominations and/or self-nominations. And the names put forward were Maarten Simon, Christopher Wilkinson and Greg Shatan.

My working assumption, and I'd be very happy for anyone to speak to this, is that of those three, one of them has to be a cochair and my working assumption is that we will be putting Greg Shatan's name in as that cochair given his experience of both dealing with the issues of the group, the CWG, the IANA IPR and indeed intellectual property issues as is his profession.

But if anyone has any concerns with that, either that point, the cochair - respective cochair, and/or the nominations or if there are any other nominations let's hear those now or any responses to those. Matthew asked in the chat when is the deadline for nominations? Matthew, we set that deadline initially for Tuesday evening at midnight UTC, and then we extended it up to including this call. So there is the prospect of additional nominations but we do have three at this point. So we can fill all three slots if need be.

Chuck asks if they are interim reps. I don't think we've called them interim reps, Chuck, although in - there is no reason that we couldn't revisit or ratify this, you know, re-ratify or deal with this at some point in the near future. In general, the interim was applied to - as I understood, the term "interim" was

applied more to Lise and myself as begin inserted as interim. But again, if anyone would like to speak to that I'm happy to of course hear that.

So my working assumption or understanding is that these are not interim reps, they are there until the respective groups seek to replace them or they seek to have themselves replaced. Lise, go ahead.

Lise Fuhr: Thank you, Jonathan. Well, the ccNSO nominated Maarten Simon for a year because, as we know the procedure has not been really settled so - and we felt it was important to get three nominations so I think that that's why the ccNSO chose to say it one year. But call it interim or not, they have nominated Maarten Simon for a year and we'll revisit then. Thank you.

Jonathan Robinson: And Josh helpfully confirms the exact or at least the summary of the exact language that the appointment letter has them serving until they either resign or the names community places replaces them. So we place the reps in as CCG reps and then they have the opportunity to either resign in future and be replaced.

So any concerns with those three names? Maarten Simon, Christopher Wilkinson and Greg Shatan? If not, I propose to you that we put those three reps in place as our three CCG reps and their names will go into the documentation.

And for your reference that we now have in front of us in the Adobe screen the appointment letter which we had previously discussed and drafted with other names square bracketed at least as far as the two reps are concerned with Lise and mine but all other respects they're the same. And there you see the - and, Maarten, thanks for your support for Greg in the role of cochair. And acknowledging his experience and appropriateness for the role.

Okay, I think we can take that in the absence of objections or any concerns raised that those three names we will put forward as our three CCG reps with Greg in the cochair so thank you to those three for both being willing to stand and taking on this role. So that deals with that item.

In fact, that more or less deals with the substance of the work for this call. And it's hopefully a short call. We've had many long calls and many late meetings over the time for in various time zones. But there is one other point and that is clearly, as I've said at the outset, there's some overarching concern over the politics of this transition and what may or may not happen particularly as it's been played out in the US.

And thank you, Jari, thanks for your help and cooperation with us and appearance on the call.

So the possibility is, and I think we should flag this with you, that it may be helpful at some point for Lise and myself, as cochairs of this group, to draft a form of letter in support of this and perhaps highlighting the work of this group and indicating all of the efforts and the diligence that's gone into this. And it may be appropriate for us to communicate with that either in direct support of the NTIA and the work that's gone on.

So I guess what I would like to flag with you, and Lise and I had considered flagging with you, is are there any concerns with such an approach? And Elise may wish to speak in her role as chair of the overall coordination group of all of this work. So let me hand over to Elise and then we can see if anyone else has any other comments or questions. Go ahead, Elise. No audio from you yet (unintelligible) to type into the chat. She will reconnect in due course. Any

other comments or points on this or questions on this particular point? And then while we wait for Elise to come in?

Okay, well while we wait for that I'll refer to one other point under the any other business and of course invite others to raise if they have to. It's not clear the we have any additional work at this stage from the point of the CWG and the implementation. So currently, as it stands, we do not have an additional call scheduled for next week Thursday. And I just wanted to draw that you to your attention. You may sigh a huge sigh of relief and I'd be very pleased to hear that.

But I'm just letting you know that at the moment we have no call scheduled. We feel we've covered all of the loose ends that need to be dealt with merely assuming that we go towards this September 30 lapse of the contract and associated October 1 transition. So that's the working assumption. There are no additional meetings to follow. Right, so we have Elise back in the room so, Elise, see if you can come in on audio now.

Elise Gerich: How is it now? Can you hear me?

Jonathan Robinson: We hear you or I hear you loud and clear. And I assume others do.
Thanks, Elise.

Elise Gerich: Okay great. I actually was joining the queue just to confirm the last topic on the IANA IPR that the names community is prepared to sign or to have ICANN sign the agreements. I know that there was, you know, discussion about all the various points that were left and there seemed to be consensus on them. But I just wanted to confirm that the names community is good to go with the agreements.

Jonathan Robinson: Yes, Elise, but that's been my understanding, we've agreed all of the other substance of that agreement and it was those outstanding points. But it's a fair point to double check that and ask if anyone has any other concerns in and around the IPR agreement.

Elise Gerich: Okay. I think if one of you can send an email to the IANA IPR list just indicating the results of this call after it's over that would be great.

Jonathan Robinson: Yes, that we can do that, that can come. So let's create some - an action on the chairs to confirm that and we can do that, the co-chairs, to confirm that to the IANA IRP list. Are there any other points that anyone would like to raise or any other questions or issues before we can call this meeting to a close? Okay great, well that's good to hear. It's obviously uncertain times and as I said at the outset, we've worked very hard to get this point and let's see where we go from here.

We'll inevitably be in touch by email and we'll call the group to a meeting if there is any good reason to have - to do so. But right now on behalf of co-chairs, Lise and myself, thanks everyone. We've worked very hard together over a sustained period of time with some awful difficult issues to navigate and extensive (unintelligible) help and service from ICANN staff. So well done to everyone and thank you all very, very much. So good. End of a process let's hope. And let's all wish that it comes to a successful conclusion on September 30. Thanks again and we'll be in touch via email.

END