

IANA CWG Meeting #61 (9 July)

Attendees:

Members: Cheryl Langdon-Orr, Donna Austin, Eduardo Diaz, Erick Iriarte Ahon, Fatima Cambroner, Graeme Bunton, Greg Shatan, Jaap Akkerhuis, Jonathan Robinson, Lise Fuhr, Olivier Crepin-Leblond, Seun Ojedeji, Wanawit Ahkupta (13)

Participants: Alissa Cooper, Chuck Gomes, Gary Hunt, Greg DiBiase, Martin Boyle, Mary Uduma, Nathalie Coupet, Sabine Meyer, Sivasubramanian Muthusamy, Wale Bakare, Yasuichi Kitamura (11)

Staff: Alain Durand, Bart Boswinkel, Bernard Turcotte, Berry Cobb, Brenda Brewer, Grace Abuhamad, Marika Konings, Theresa Swinehart

Apologies: Andrew Sullivan, Maarten Simon, Matthew Shears

Please let Brenda know if your name has been left off the list (attendees or apologies).

Agenda

1. Opening Remarks
2. Update from Client Committee
3. Future work for CWG-Stewardship
4. Role of CWG-Stewardship in Implementation and Charter remit
5. AOB
6. Closing Remarks

Notes

Notes 9/7 - CWG-Stewardship meeting #61

1. Opening Remarks

- Final proposal has been submitted to ICG, but some items to be covered off during this call
- No feedback received yet from the ICG, apart from question in relation to IPR

2. Update from Client Committee

- Client committee met briefly prior to this meeting, preceded by an informal meeting of the members of the client committee yesterday
- Ongoing concern with regard to prudent use of legal resources and manage cost effectively. Chairs of CWG, CCWG, ICANN legal and finance met to discuss how to effectively manage resources and costs. Proposal to include legal fees in the remit of the client committee, in conjunction with ICANN staff. No questions or objections raised to this approach.
- Main points discussed during today's meeting were: 1) IANA Trademark / IPR - request was received from the ICG to provide an update with the chairs did confirming that CWG-Stewardship is silent on what to do with IANA trademark. ICANN Board also provided input to ICG on this topic (see http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-July/000814.html). CWG-Stewardship to determine whether or not it should take a position on this issue. Two options - remain silent (maintain status quo, and rely on commitment from ICANN Board) or ask Sidley for expert input to evaluate what the options are from the CWG-Stewardship's point of view. Other communities have indicated their preference to move it to IETF trust - based on conversations with IANAPLAN and CRISP, those groups have indicated that they are not planning to make any changes to their proposal, unless CWG-Stewardship would come forward with input that would conflict with their proposed approach. Should this be handled by Sidley or ICANN legal team, also taking into account desire to be prudent with regards to costs? Would first need to confirm with other communities if they would be comfortable with the ICANN legal team - if not, it would not make any sense to approach ICANN legal (who might also engage external expertise to address this issue). Other communities have also indicated willingness to share information concerning the legal advice that they have obtained. Likely that ICANN Legal input would be similar to the response provided by the ICANN Board, which is likely not acceptable by the other communities. However, if this input is provided by an independent party, such as Sidley, it might be received differently. Need to distinguish between advice on trademark law and insight into ICANN's position, where the former is what is likely needed as latter is already known. ICG would likely move forward with proposal to move trademark to a trust (IETF) unless the other communities indicate that this would not be acceptable. A non-decision is not desirable - as such CWG should get expert advice to base its position on whether it is in agreement with the current proposal or whether an alternative proposal is preferred. Sidley could be asked to conduct a stress-test approach; what risks exists with each approach from a CWG-Stewardship perspective. Evaluate these in view of ICANN's position and the proposal from the other communities to determine what is optimal and/or acceptable. As a point of information, there are 3 trademarks involved: (i) "Internet Assigned Numbers Authority," (ii) "IANA" and (iii) the IANA Logo, which consists of IANA in stylized letters plus Internet Assigned Numbers Authority.

Action item: Client committee to scope the work concerning IPR based on CWG-Stewardship discussion and will ask for an indication from Sidley on hours

/ budget involved to undertake this work. Client committee to instruct Sidley to talk to ICANN legal to obtain further insight and background to the IPR issue (possibly with involvement of other members of the CWG) - also consider involving other communities.

- 2) How to deal with Bylaws? CCWG will be proposing changes to the bylaws - CWG will need to determine whether these meet our requirements. Furthermore, there are ICANN Bylaw changes required that follow from CWG-Stewardship recommendations (e.g. PTI), does it make sense to instruct Sidley directly to work with the CWG-Stewardship on those ICANN bylaw changes that follow directly from the CWG-Stewardship proposal? Sidley could develop a matrix of new ICANN bylaws / changes to the ICANN bylaws required, identifying which bylaws are needed and who would be responsible for which. If CWG-Stewardship would consider using ICANN legal, it would need to confirm whether that would create cost savings or the work would be outsourced at a similar cost as Sidley. Consider asking Sidley to scope out the work related to bylaws and identify which areas are covered / addressed by CCWG and which ones may need to be addressed by CWG. Eventual bylaw drafting will need to involve ICANN legal / ICANN's external counsel to be able to advise the Board as well as CWG-Stewardship external counsel to provide input on whether proposed changes meet the intent of the CWG-Stewardship proposal. Does ICG require bylaw changes prior to submission to NTIA - not necessarily, but CWG-Stewardship is dependent on the proposal from the CCWG which will include bylaw details. Ensure consistency with approach taken by CCWG with regards to bylaw drafting and not introduce additional complexities.

Action item: Client committee to ask Sidley to develop matrix to identify bylaw changes, identify which ones they would suggest they would draft on CWG behalf, which ones are drafted by CCWG that need to be signed off by CWG and which ones are being prepared by CCWG that have no direct relationship to CWG's work. Future work on bylaw drafting does need to be co-ordinated with CCWG to not introduce additional complexities.

3. Future work for CWG-Stewardship

- CWG may need to respond to future queries of ICG
- Monitor the work of the CCWG, including possible early warning if need be. Lise is planning to attend CCWG F2F meetings in Paris to ensure on going co-ordination and co-operation.
- SLEs - work is ongoing. Sub-team is meeting later today - this group is tasked to draft specifications which will then be submitted to full SLE-team. A project plan is expected to be developed following agreement on specifications.

4. Role of CWG-Stewardship in Implementation and Charter remit

- At some point need to be clear what role, if any, the CWG would play in implementation. See for example GNSO environment in which a chartering organization directs the creation of an implementation review team.

Action item: Circulate charter in view of reviewing possible scope / role of CWG in implementation (charter may not be explicit but certain areas may allow for this kind of activity).

5. AOB

- Future meeting schedule: schedule placeholder meeting for every two weeks which then may be cancelled with 48 hours notice if it is determined that the meeting is not needed. Continue with rotating schedule on Thursdays (alternating between 11.00 and 17.00 UTC)

6. Closing Remarks

Action Items

Action item: Client committee to scope the work concerning IPR based on CWG-Stewardship discussion and will ask for an indication from Sidley on hours

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Transcript

[Transcript CWG IANA #61 9 July.pdf](#)

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Recordings

Adobe Connect recording is available here: <https://icann.adobeconnect.com/p7d75e72oym/>

MP3 recording is available here: <http://audio.icann.org/gnso/gnso-cwg-iana-09jul15-en.mp3>

Chat Transcript

Brenda Brewer: (7/9/2015 11:23) Welcome to CWG IANA Meeting #61 on 9 July @ 17:00 UTC.

Erick Iriarte Ahon: (11:54) hi

CLO: (11:55) hi all

Sabine Meyer (GAC - Germany): (11:56) hi guys!

Bernard Turcotte Staff Support: (11:56) hello all

Brenda Brewer: (11:56) May have delays getting onto phone bridge. Working on as quickly as possible. Thank you!

Jonathan Robinson: (11:57) Please enable audio in the AC if not already done so

Grace Abuhamad: (11:58) @Jonathan -- Cannot do that until the audio is connected. We are working on it

CLO: (11:59) damnible gremlins

Sabine Meyer (GAC - Germany): (11:59) yay, muzak!

CLO: (12:00) fingers crossed

Greg Shatan: (12:01) I got on rather quickly.

Greg Shatan: (12:01) Someone is clearing their throat....

Jaap Akkerhuis -- SSAC: (12:01) I was

Greg Shatan: (12:01) Gesundheit

Sabine Meyer (GAC - Germany): (12:01) so I guess I'm not the only one who caught a bit of a cold in BA.

Martin Boyle, Nominet: (12:02) Hi all

Mary Uduma: (12:03) Hello All

Lise Fuhr: (12:03) Hello all

Chuck Gomes (RySG): (12:04) Hi.

CLO: (12:04) hi

Seun Ojedeji: (12:05) Hello

Erick Iriarte Ahon: (12:05) hi

Greg Shatan: (12:06) Lost Jonathan

CLO: (12:06) audio

Wale Bakare: (12:06) Hi

Greg Shatan: (12:06) Gremlins

Grace Abuhamad: (12:06) lots of gremlins today

Sabine Meyer (GAC - Germany): (12:07) I blame the antipodeans in our group. you guys get past midnight before anyone else.

CLO: (12:08) hey if you want to be on calls at 0300 + come south :-) :-) :-)

Lise Fuhr: (12:08) @CLO yes you have all all the fun with late night calls :-)

Grace Abuhamad: (12:10) The ICANN Board passed a resolution in BA on legal costs: <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c>

Marika Konings: (12:13) Link to email from ICANN Board: http://mm.ianacg.org/pipermail/internal-cg_ianacg.org/2015-July/000814.html

Donna Austin, RySG: (12:16) Jonathan: why would we ask Sidley rather than ICANN's legal team?

Seun Ojedeji: (12:17) +1 to Donna on that

Seun Ojedeji: (12:18) that said, i think emphasising in our proposal that we are mainly concerned in ensuring PTI access to the marks and if that is ensured with the current holder then we would have no problem

Seun Ojedeji: (12:19) I don't get how the other 2 communities comes into this @Chuck?

Olivier Crepin-Leblond: (12:19) @Donna: isn't this to do with avoiding conflicted advice? Exactly as Chuck says, the other two communities would need to be ok with the ICANN Legal Team

CLO: (12:20) good point@ chuck

Chuck Gomes (RySG): (12:24) @ Sean: Ultimately whatever advice is used will need to be acceptable to all three communities.

CLO: (12:27) indeed @jonathan I agree

Olivier Crepin-Leblond: (12:27) Wow --I have always thought that this issue of iana.org trademark & registration was the least of our worries and somehow a non issue. I am flabbergasted about the amount of time this has taken to discuss on the mailing lists. I am now amazed about the amount of time we are discussing who to ask about this non-issue. sorry - I just feel this is not time well invested in this WG.

Lise Fuhr: (12:28) @Jonathan agree

Chuck Gomes (RySG): (12:28) One thing we should ask ICANN legal is to identify any reasons why the mark and domain name should not go to the IETF trust.

Lise Fuhr: (12:29) @Olivier this is important to the other communities and we need to have a common position on this

Chuck Gomes (RySG): (12:29) We can then evaluate their reasons.

Seun Ojedeji: (12:29) +1 to that question @Chuck hopefully that would help convince us about their objectivity

Seun Ojedeji: (12:33) well as far as i can tell, the CRISP did not engage legal before having an overall principle about trademark

Chuck Gomes (RySG): (12:34) Should the client committee ask for a comparison of the costs of ICANN outside counsel v. Sidley?

Chuck Gomes (RySG): (12:34) as = ask

Seun Ojedeji: (12:34) So the main question will still come back to us...what is it that the CWG wants with the trademark

CLO: (12:35) yup

Greg Shatan: (12:36) As a point of information, there are 3 trademarks involved: (i) "Internet Assigned Numbers Authority," (ii) "IANA" and (iii) the IANA Logo, which consists of IANA in stylized letters plus Internet Assigned Numbers Authority.

Seun Ojedeji: (12:36) okay thanks Jonathan, thats fine. If i may, can we have an idea of how many working hours it takes sidley to get this done? Is that efficiency checked in anyway?

Seun Ojedeji: (12:40) Which of the bylaws? PTI's or ICANN's?

Grace Abuhamad: (12:42) ICANN's for now @Seun

Seun Ojedeji: (12:42) Okay Jonathan i think there will be need to coordinate the bylaw changes with CCWG as i expect that CCWG will be more involved in ICANN bylaw changes

Seun Ojedeji: (12:44) That said, can we clarify (or do we know) if ICG would be requiring those bylaw/charter draft details before submitting to NTIA?

Seun Ojedeji: (12:44) Thanks @Grace

Jonathan Robinson: (12:46) @Greg. Good point about advice from two sets of law firms ultimately

Lise Fuhr: (12:46) @Seun we have made our proposal dependent on the proposal from CCWG and that will include the bylaw details

Wale Bakare: (12:47) I would think all inputs to the bylaw should be captured, rather than the two law firms

Seun Ojedeji: (12:48) thanks Jonathan and Lise

Seun Ojedeji: (12:48) I agree with Greg's suggested approach of using the ICANN legal for initial draft and having Sidley vet and further edit. There will be minor issues to resolve after by following that route

Alissa Cooper: (12:49) @Seun the ICG has committed to seeking confirmation from the CWG that the final output of the CCWG's work meets all of the CWG's requirements. But it is up to CWG to make that determination.

Seun Ojedeji: (12:49) Oh...apologies i guess i picked his compromise suggestion ;-)

Seun Ojedeji: (12:52) Noted @Alissa

Greg Shatan: (12:54) I did not see any proposal to add a "layer of complexity."

Chuck Gomes (RySG): (12:56) @ Theresa: It would be helpful if you identified what you thought was an added layer of complexity. (See Greg's comment above.)

Donna Austin, RySG: (12:59) I don't think Theresa was suggesting that bylaws would be reviewed by independent counsel, but rather ICANN would do a first draft and work in partnership with the community.

Jonathan Robinson: (13:00) @Donna. Agreed. But the community is supported by independent counsel.

Theresa Swinehart: (13:00) @Donna, yes, that's right.

Theresa Swinehart: (13:01) @Jonathan, yes, that's right

Jonathan Robinson: (13:02) @Greg. So you think regardless of who drafts (serves first) that Sidley matrix would still be useful?

Greg Shatan: (13:02) Bylaws are legal instruments. They must be reviewed by Sidley on behalf of the CWG.

Lise Fuhr: (13:02) @Jonathan I think the matrix is still needed

Greg Shatan: (13:02) Sound problems

Seun Ojedeji: (13:02) the audio is breaking, is this from my end

Donna Austin, RySG: (13:02) Perhaps i'm looking too far down the track, but I'm becoming concerned that we're creating a precedent for ICANN legal advice or work, being subject to a community engaged legal team.

Sabine Meyer (GAC - Germany): (13:03) it's not Seun

Grace Abuhamad: (13:03) Would you like a dial-out Alissa?

Donna Austin, RySG: (13:03) sorry, being subject to review by a community engaged legal team.

Greg Shatan: (13:03) I don't think we need to worry about precedent in an unprecedented situation.

Wale Bakare: (13:03) Same here

Lise Fuhr: (13:03) No we couldn't hear

Seun Ojedeji: (13:04) crystal clear

Greg Shatan: (13:06) @Jonatghan, yes the matrix is still needed, for division of labour between the CCWG and CWG.

Sabine Meyer (GAC - Germany): (13:06) good point, Greg.

Greg Shatan: (13:07) FYI, the "g" in Jonatghan is silent.

Sabine Meyer (GAC - Germany): (13:08) like the h in Shatan? /sorrynotsorry

sivasubramanian M: (13:09) good that the ccwg and cwg are now thinking of ICANN legal team. Apart from cost consideration, there is the added advantage of subject matter expertise and ease. The conflict of interest could be addressed towards the end by hiring independent advice for a second option

Greg Shatan: (13:14) Silva, I don't think that reflects the thinking or plan of this group with regard to dealing with ICANN legal vs. independent advice.

Greg Satan: (13:16) The "h" in Shatan is about as silent as I am....

CLO: (13:17) agree to placeholder meetings

Sabine Meyer (GAC - Germany): (13:17) :D

Sabine Meyer (GAC - Germany): (13:17) does that mean you don't want to spend your nights with us, Cheryl?

CLO: (13:18) :-)

Seun Ojedeji: (13:18) Okay thats an irony of the "h" expecially when its compared to your person

Chuck Gomes (RySG): (13:18) Will the meetings be on Thursdays?

Chuck Gomes (RySG): (13:18) :)

Sabine Meyer (GAC - Germany): (13:19) very good point, Jonathan.

Chuck Gomes (RySG): (13:19) Thanks all.

sivasubramanian M: (13:19) Greg I am on a train, it is hard to listen, I was responding to the notes first para

Seun Ojedeji: (13:19) Okay noted Jonthan but let the dafault meeting dates be sent for calender reminder

Greg Shatan: (13:19) @Seun, thanks, I think.

CLO: (13:20) OK bye for now then

Lise Fuhr: (13:20) Thank you, Jonathan

Seun Ojedeji: (13:20) Cool

Mary Uduma: (13:20) BYE ALL

Seun Ojedeji: (13:20) thanks and bye

Lise Fuhr: (13:20) @clo sleep well

Jaap Akkerhuis -- SSAC: (13:20) Bye all

Sabine Meyer (GAC - Germany): (13:20) thank you everyone!

Wale Bakare: (13:20) Bye all

Greg Shatan: (13:20) Thank you Jonathan and all!

Lise Fuhr: (13:20) Bye

Gary Hunt - UK Government: (13:20) Good bye all!

Erick Iriarte Ahon: (13:20) bye

Greg Shatan: (13:20) Bye.