

ICANN BOARD PAPER NO. 2015.06.25.1g

TITLE: **Approval of Payment of Certain CWG-
Stewardship Related Legal Costs**

PROPOSED ACTION: **For Board Approval**

EXECUTIVE SUMMARY:

As requested, and in support of the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG), ICANN retained Sidley Austin LLP to provide the CWG with external legal advice. The first invoice received for Sidley's work on the CWG is for US\$508,625.96. Under the Contracting and Disbursement Policy, Board approval is required for a disbursement of this amount. As this is work that was requested by the CWG, in support of the community processes in developing a stewardship transition proposal, and the work has already been performed by Sidley, the Board is being asked to authorize ICANN to take all steps necessary to pay the invoice in full.

BACKGROUND:

As the CWG was performing its work to develop a proposal on naming related functions, it identified that there were areas where the group could benefit from legal advice. The CWG stressed that this advice should not come from ICANN legal, and that an external firm that does not regularly provide advice to ICANN would be appropriate. Members of the CWG, together with members of ICANN legal, identified the appropriate skill set needed for the CWG needs, and then identified a shortlist of firms that retained the requisite corporate governance and corporate structuring skill set. A group of approximately seven firms was identified, and after availability and conflict considerations, CWG and ICANN then agreed to conduct jointly conduct interviews with three firms with national reputations in the U.S., as well as presence abroad. After those interviews, the CWG and ICANN agreed upon the retention of Sidley Austin LLP to provide advice and consult exclusively with the CWG regarding governance and the development of structures and/or solutions for enhancing accountability of the performance of the IANA functions relations relating to the IANA Stewardship Transition. Sidley agreed to discount its fees by 15% for this work. Sidley was retained

at the beginning of March 2015, and has participated in the CWG work since. The CWG manages the relationship with the firm through a Client Group consisting of members of the CWG. Sidley Austin is also providing support to the CCWG Accountability process, which is managing the relationship through their Client Group.

The invoice currently before the Board is for professional services rendered through March 31, 2015 and expenses incurred. Of note, Sidley was later retained to provide services to the CCWG-Accountability as well, and there is a pending invoice for that work that is US\$122,598.07.¹ As expected, the ramp-up costs reflected in the CWG bills as the firm was getting familiar with ICANN helped to leverage Sidley's expertise in working on the Accountability work.

ICANN is working with the CWG-Stewardship to identify ways to instil closer cost-monitoring measures in working with Sidley.

BOARD FINANCE COMMITTEE (BFC) RECOMMENDATION (*Subject to BFC Approval*):

The Board Finance Committee recommends that the Board authorize ICANN to take all steps necessary to make the disbursement of US\$508,625.98 to Sidley Austin LLP for professional services rendered and expenses incurred through March 31, 2015 for the CWG-Stewardship.

PROPOSED RESOLUTION:

Whereas, the Cross Community Working Group to Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG) identified that it required external legal advice to develop its proposal in support of the IANA Stewardship Transition Work, and after a detailed selection process, in March 2015 Sidley Austin LLP was retained to provide that advice.

Whereas, ICANN is responsible for the payment of fees for Sidley Austin LLP's advice to the CWG as called for within the engagement.

¹ As this invoice is within the ICANN management's approval authority, it is not before the Board at this time.

Whereas, ICANN is in receipt of an invoice for \$508,624.98 from Sidley Austin LLP for professional services rendered and expenses incurred through March 31, 2015 for the CWG-Stewardship.

Whereas, the Board Finance Committee recommends that funds be disbursed to Sidley Austin LLP in payment of that invoice.

Whereas, the Board remains committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged.

Resolved (2015.06.25.xx) the Board approves the payment of \$508,624.98 to Sidley Austin LLP for professional services rendered and expenses incurred through March 31, 2015 for the CWG-Stewardship and directs ICANN to take all steps necessary to make the appropriate payments.

PROPOSED RATIONALE:

As part of the work towards developing a proposal for the transition of the stewardship of the IANA Functions, the Cross Community Working Group Develop an IANA Stewardship Transition Proposal on Naming Related Functions (CWG) identified that it required external counsel to advise on aspects of its proposal. ICANN, in support of the transition proposal process, agreed to provide the CWG with external counsel. Members of the CWG, together with members of ICANN legal, identified the appropriate skill set needed for the CWG needs, and then identified a shortlist of firms that retained the requisite corporate governance and corporate structuring skill set. A group of approximately 7 firms was identified, and after availability and conflict considerations, CWG and ICANN then agreed to jointly conduct interviews with three firms with national reputations in the U.S., as well as presence abroad. After those interviews, the CWG and ICANN agreed upon the retention of Sidley Austin LLP to provide advice and consult exclusively with the CWG regarding governance and the development of structures and/or solutions for enhancing accountability of the performance of the IANA functions relations relating to the IANA Stewardship

Transition. Sidley agreed to discount its fees by 15% for this work. Sidley was retained at the beginning of March 2015, and has participated in the CWG work since.

The invoice for professional services rendered through March 31, 2015 and expenses incurred is of a level that must be approved by the Board for disbursement, in keeping with ICANN's Contracting and Disbursement Policy. As a result, the Board's taking this action today is in support of the ICANN community and processes, as well as in compliance with the Contracting and Disbursement Policy.

This invoice has been reviewed by staff to ensure that the billed hours and rates were consistent with the contractual terms. This invoice will be funded through the budget allocated for the IANA Stewardship Transition work, as previously approved by the Board. While this represents a significant amount of funds, the payment of this bill supports the hours of community work that were reliant upon receiving the counsel input, and also is in furtherance of ICANN's support of the community work towards the transition process. The attorneys' work is still on going, more invoices will be forthcoming, and it remains important for ICANN to support the community in getting the advice it needs as the transition-related recommendations are developed. The work of the attorneys for the CWG can be followed through conversations with the CWG's Client Committee, archived at <http://mm.icann.org/pipermail/cwg-client/>; for the CCWG, the attorney work can be followed through conversations with the Legal SubTeam, archived at <http://mm.icann.org/pipermail/ccwg-accountability5/>. As the funds that ICANN is spending are funds entrusted to it by the public, the Board notes how important it is for all involved in the oversight of the attorney work to make sure that the future work of counsel be continue to monitored closely to make sure that community funds are used responsibly and efficiently. There are no anticipated impacts to the security, stability or resiliency of the Internet DNS as a result of this action.

Submitted by: Samantha Eisner

Position: Associate General Counsel

Date Noted: 19 June 2015