
UNIDENTIFIED FEMALE: This meeting is now being recorded.

BECKY BARR: Okay, Becky Burr in Los Angeles. Let's just go around the room so people know who's in the room here.

BERNARD TURCOTTE: Bernie Turcotte.

AMY STATHOS: Amy Stathos.

HOLLY GREGORY: Hi. Holly Gregory from Sidley.

KAREN [inaudible]: Karen [inaudible].

CHERINE CHALABY: Cherine Chalaby.

JOHN JEFFREY: Sorry. John Jeffrey.

UNIDENTIFIED MALE: [inaudible]

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

SAMANTHA EISNER: It's Sam Eisner.

DAN HALLORAN: Dan Halloran.

CHRIS DISSPAIN: Chris Disspain.

BECKY BURR: Is there anybody else on the line who is not in the Adobe room? Cherine, we heard you, although, it looks like you're in the Adobe room, as well. Anybody else?

Okay, we are reporting in from our first day of work here in Los Angeles. I can report that it appears to be sunny outside, but none of us have been outside. We've been working very hard.

The focus today was on the CWG-related bylaws and on Article I: Mission Commitments and Core Values. We have gone through both of those and we'll be turning drafts overnight. I believe that there are a series of questions related to the CWG bylaws. Holly, should I turn it over to you for those questions?

HOLLY GREGORY: Sure. We're actually turning it over to Sharon Flanagan.

SHARON FLANAGAN: Great. We're trying to send this list to this group here, so hopefully, you'll get it. Although, we don't have posting rights, so it may get hung

up. I'll just try to walk through the list of questions that have come through the comments we've received from the ICANN team on the CWG bylaws draft from March 18th.

So the first question relates to when we have an action, whether it's an IFR set or recommendations or special IFR or SCWG set of recommendations, if the board rejects the recommendations, then there is a process to go to the empowered community. The question is if the board approves the recommendations, it just takes the recommendations just as they come from the IFR, for example, and says, "Yes, we approve. We agree," is that the end of the process, or does it then still need to go to the community?

I think the suggestion from the team here was that if the board approved it as recommended, there may not be a reason to then go back to the empowered community and that it could just end at that point. That's one question.

I don't know. Are we going to go question by question and answer?

CHRIS DISSPAIN:

Sharon, my suggestion would be that, first of all, we need to find a way of getting these questions out to the [community] as soon as we can.

SHARON FLANAGAN:

We don't have posting rights.

CHRIS DISSPAIN:

So if you send them to me, I can send them or someone can send them. Let's just get them sent out. That's the first point.

The second point is no, I don't really think there's a lot of use. But if people have got a comment they want to make, that's fine. But I don't think there's much to be gained by debating on this call.

I think people need to read the questions, think about them, and if people want to send notes to us with their thoughts, that would be helpful. I mean, I'll be guided by the group, but it's just that we're not going to be going to discuss in detail with everybody, but maybe others want to.

SHARON FLANAGAN:

Okay, then I'll just go through them and just tick through them one by one. So that's the first question, and that's global and applies to the various processes where there's a board action and then potentially a rejection by the community.

The second point comes up and relates to the IANA functions contract. If ICANN is proposing a material amendment or waiver to the contract between ICANN and PTI, as we, Sidley, had drafted in the matrix, we had language that said that the empowered community has the power to reject those kinds of material amendments.

A question was asked whether that was really the appropriate mechanism, and whether instead, it should go to the registries or the customers. For example, should it go to CSC, or should it go into the IANA Function Review?

If you think about both CSC and IFR, those processes allow for ... This is very distracting, Holly. Holly just logged in and I'm getting an echo of everything I say.

Okay, so if you look at the CSC and IFR processes, those processes allow for amendments to be proposed by those groups. I think there's already an acknowledgement that those are the groups that will understand when amendments to the contracts might be appropriate. So the question is when the amendment is coming from ICANN, should those be the groups that are looking at it rather than the empowered community?

The next topic is number three: CSC related and is an understanding that the CSC charter has its own amendment process that doesn't require board approval, but there was a request that there be an opportunity for the ICANN Board to consult on amendments to the CSC charter – not approval, but consultation.

The next question or point of confirmation, number four, relates to the IANA problem resolution process. There is reference in the CWG draft bylaws to a remedial action plan, and there was a footnote from Sidley as to whether that would be included in the IANA functions contract.

I think that's just an open question, and we just wanted to confirm. I think the group here thought that was the right place for the detailed remedial action plan, just to put it in the contract, and we just wanted to get confirmation that says everyone else agreed with that.

BECKY BURR: I just noticed there's nobody in the room from the CWG, so we probably need to make sure we get these things out to the CWG. But maybe, if you could, just summarize at the highest level what the issues are to the group.

SHARON FLANAGAN: So higher level?

BECKY BURR: Yes.

SHARON FLANAGAN: Too detailed. Okay, so the next set of issues relate to IFR. There's just some detailed questions about process, time frame, how we manage the potential for periodic IFR at the time when maybe a special IFR is also occurring, and then if there is a delay in a process, does the community have a say in that, or is it just that the delay just goes forward?

It's hard to do these at a high level because these are actually pretty detailed questions, so I think it's all or nothing. But I will skip some of them because they're very specific issues.

One question that we spent a fair amount of time talking about today was one of the requirements for IFR to review and evaluate the relative performance of the IANA functions pre and post transition. What does that really mean, and should instead of always referencing back to, let's say, 2016 performance, should instead that process just be a one—year look back wherever we are in time?

If it's 2050, you're looking at 2049. You're not looking back to 2016, so that was something we talked a fair amount about.

We also talked about the inputs for the IFR and whether the reports that have been requested by CWG, whether those reports would be more appropriately referenced in a contract rather than the bylaws. Let's see what else.

Questions about time frames for amendments. There were some questions about appointments to the IFR Team and who makes certain appointments, questions about the standing of the IFR Team. There was no provision for disillusion of the body, so the thought was at some point, it probably should just be dissolved, and then some questions about quorum and other process.

The next topic was the special IFR. There's some overlapping points that are present in the periodic IFR and also in the special IFR. Questions primarily on process and public comments and when public comments will be solicited.

Then lastly, on the SCWG and the separation process, some questions about how the RFP process works, whether the RFP process, if it were undertaken, would also conform to the ICANN RFP guidelines then in effect, and then some questions about costs associated with SCWG recommendations and how those costs get factored into potentially the new IANA function operator, and then, again, some more process points about quorum and whether SCWG would have some point in time at which it was dissolved.

So you can see, there are a handful of, I would say, more bigger-picture issues, and then a lot of very detailed questions that just need I think a quick reaction to so we can know what direction to take on drafting.

BECKY BURR: Thanks, and I have to apologize to all of the people I maligned by saying there was nobody from CWG on the list. Although, I don't think that Greg was on when I made that statement.

So we have these detailed questions and we have a punch list essentially. Can you just explain what the process is for getting these things resolved or closed?

SHARON FLANAGAN: That's a good question. I don't have the answer to that.

BECKY BURR: So that's one of the discussion points. Holly, go ahead.

HOLLY GREGORY: Yeah. I had assumed that one of the purposes of holding these calls at the end of the day was so that we could get some input and help resolve some of these issues from the group, but I could have a misapprehension on that.

CHRIS DISSPAIN: No. I don't think you do, but I think people need to get something before the call. For example, now we could look at this and maybe if we

had a call in – not that we’re going to, but if we had a call in five-hour’s time, people might have a chance to think about it. So I wonder if we could maybe currently work for tomorrow’s call by making sure that we can get some stuff out as we’re going, which might be useful, so that when we come to have the call tomorrow afternoon, maybe some people will have had stuff for a longer period of time.

HOLLY GREGORY: Maybe the goal is that tomorrow’s call will focus on these questions.

CHRIS DISSPAIN: Maybe a bit longer.

HOLLY GREGORY: And to the extent we can get something out tomorrow on other issues as they go, but it may be a struggle at the same time. We’ll try, but we may have to do it on our own rolling basis.

CHRIS DISSPAIN: I think on a rolling basis may work.

HOLLY GREGORY: That suggests today’s call will be very short.

CHRIS DISSPAIN: And also that obviously, I don’t know what people on the group think, but we can talk now and listen to people now. But it strikes me that the

best way of working this through is going to be to hear from people e-mailing thoughts and whatever and bouncing things. Maybe not.

SHARON FLANAGAN: I don't know about e-mail. I think probably a call is ... [crosstalk]

CHRIS DISSPAIN: Okay, I'm fine with that.

HOLLY GREGORY: The difficulty with the e-mail is you can get an awful lot of back and forth with more heat than light, and the kind of chance for a discussion where you can really resolve things and help move people thinking and influence, I think it's more helpful. I think also just following the e-mail list, and people responding at different points in time, can just take up a lot of time.

BECKY BURR: So I think an action item is to get the questions and the punch list out to the CWG group so that they have it, and to make sure that they understand that the call tomorrow will be scheduled and that talking about it will be a major agenda item to get these issues resolved.

SHARON FLANAGAN: Let me ask this question. We just sent out the two documents – the questions from today and the punch list – to the bylaws coordinating group. You mentioned CWG. Do you want us to send this to CWG as a whole, as well?

BECKY BURR: No.

SHARON FLANAGAN: You mean the group. You meant this group.

BECKY BURR: We have Lisa and Jonathan and the relevant CWG folks on the bylaws coordinating group.

UNIDENTIFIED MALE: [inaudible] If you're comfortable, it might help, too, that if you guys could say, "We're fine with these points [inaudible], and that way, we [inaudible]."

GREG SHATAN: I can't hear who is speaking right now.

CHRIS DISSPAIN: We're just having a little bit of an internal discussion, Greg. Won't be a sec.

SHARON FLANAGAN: Okay, so trying to do this real time then, so going back starting from the top.

HOLLY GREGORY: Just so that they know what we're doing, Chris suggested that it might be helpful for you to hear from the CWG lawyers around where we would recommend you come out on some of these questions and where we think there's broad agreement, so Sharon's going to walk through that now.

GREG SHATAN: That would be very helpful.

SHARON FLANAGAN: Okay, the first point was whether if the board approved recommendations of an IFR, special IFR, or SCWG. If the board approved those recommendations, was there a need to go through empowered community process?

Our recommendation is that no, there should not be a need. The one exception would be separation. I think separation, to us, we read that proposal to require the community to actually act. That's not going to be a regular occurrence. Maybe it will never be an occurrence, but if that were to come to pass, that had a separate treatment in the proposal, so we think separation is a different animal.

But currently, the periodic reviews, the special, and then even the SCWG, we thought if the board accepted those recommendations just as they were, there wouldn't be a need to go back to the community and say, "Yes, again, are you okay with this?" Okay, so those were our thoughts on number one.

Number two: who should have the power to reject material amendments to the IANA functions contract that were initiated by ICANN? Should it be the empowered community, or should it be more focused on registries customers?

Our reaction to that is it did seem more logical that it would belong more with registries customers and be treated more like how it's already treated with CSC and the period IFRs. That since they're the ones who are recommending amendments, they probably are the logical place to receive proposed amendments coming from ICANN, so we thought that was okay.

The third is board consultation right on CSC Charter. That seemed fine.

AKRAM ATALLAH: Excuse me. I didn't hear the details of the amendments to the IANA contract.

SHARON FLANAGAN: Sure, okay. Going back to that one, if ICANN proposes a material amendment to the contract between ICANN and PTI, who has the right to approve or reject those amendments? The question is should it be the full designator empowered community, or instead, should it be the CSC/periodic IFR Team? That's the question.

AKRAM ATALLAH: There is no answer to that right now. Is that what you're saying?

SHARON FLANAGAN: I would say, the Sidley view, council for CWG's view is that it made sense for it to go to CSC or IFR because they've already been tasked with recommending amendments, so it seemed logical that they should also receive proposed amendments.

AKRAM ATALLAH: Agreed. Okay, all right. Thank you.

SHARON FLANAGAN: Okay, so then you heard on CSC Charter, board consultation right. We thought that seemed fine.

Number four was would the remedial action plan that, if contemplated by the proposal, would that reside in the IANA functions contract? We thought that made sense.

Moving to question 5 through 17, which all relate to the periodic IANA functions review (IFR). Number five was what is the time frame for the special IFR, and should it be shorter than a periodic IFR?

We have no view on that really. The suggestion was it should line up with the one-year time frame that the AOC reviews have there with referencing the CWG proposal to an expectation that it would take nine months, so one year seems generally inline with that. It seemed fine with us. It's more operational, but we have no objection to it.

Number six on the list is confirm that there won't be a simultaneous period IFR and a special IFR, and if there were a special IFR, the periodic IFR will be delayed.

We think that's right and we think that's consistent with the intention of the proposal. There was already language in the CWG proposal that acknowledged that we didn't want these things running simultaneously, so it's really more just a question of clarifying, adding a little more detail that if there were a special IFR going, that a periodic IFR would be delayed. We thought that was fine and consistent with the proposal.

Number seven on the list is a related point, which is if there is a delay, if there is a special IFR and then there's a periodic IFR that would just be coming in due course, the idea is that it would be delayed, and do you need to go back to the community for some kind of approval on a delay?

We didn't think that was necessary. That seemed like a lot of process to address a point that seemed to be already contemplated by CWG, which is that you wouldn't have a reason to be running a periodic IFR and a special IFR at the same time, and that was probably not a good use of resources, so we thought it made sense that we not reference back to a community approval on that delay. That was not something that the CWG proposal specifically contemplated anyway.

Number eight is a very detailed question I think probably best reviewed when you get the copy of it. There's reference to part of the IANA function review mandate is to review oversight structures and that's very vague, and so one of the questions that was raised here is whether oversight structures really means CSC and the empowered community mechanism as it relates to the naming services. Not everything in the world that's oversight in ICANN, but specific to the services that are at

issue in the CWG proposal, the naming services. So we think that clarification makes sense.

Number nine is the one I alluded to in a little more detail earlier, which is the requirement that when an IFR is being done, that the team will review the relative performance of the IANA functions pre and post transition to see if the service levels are consistent.

The point that was raised here is that pre-transition, let's say it's 2016, doesn't measuring against pre-transition 2016, at some point, doesn't that become obsolete, and is that really the right benchmark? Are we forever set in stone? You're always referencing back to 2016, or instead, should the referencing back be to the prior period so that you're always getting the better performance. You wouldn't get any worse performance.

But if ten years from now, the services are much better than they are today, that the standard you'd hold to is those better services, not what they are today, and so that was one question we talked about. We thought that made sense.

Or alternatively, you'd have some sunseting of the reference back to the pre-transition period because at some point, that's just going to be a [scale] period to be looking at. So we thought that would be fine to instead have a moving, constantly updating benchmark as opposed to a fixed in time pre-transition benchmark. That was number nine in the questions.

Number ten relates to during an IFR, the CWG proposal contemplates that PTI will provide the reports that it is regularly making. It will provide access to those reports to the IFR Team.

The suggestion was rather than trying to list the specific reports in the bylaws, it would make more sense to reference the reports that are required to be delivered by PTI under the ICANN PTI contract. So we thought that was fine also. What it means is that when the ICANN PTI contract is drafted, it's really important that those reports that are in the CWG proposal are specifically picked up, and so that's an implementation issue.

We asked the question – and I think we still have the open question – which is what exactly is the process for creating the ICANN PTI contract? It is a corner stone or one of the corner stones of the CWG proposal, and I think it's really important to understand how it's getting drafted, when it's getting drafted, and the process around it. But this is just one example, so if we take the reports out of the bylaws and reference back to the contract, we think that's okay, but we do need to keep that note to know that when it's time to do the contract, those reports need to be all listed and covered.

The other point that was raised on the reports is that there might be narrow circumstances for which the reports are provided by PTI. For example, to ICANN. But they really should not be distributed to the IFR Team. The example was given of a transition period where re-delegations are being managed by the ICANN Board, and very, very sensitive information could be made available to the board as part of that, and that report could have some serious issues, as I understood it,

if it were made available more broadly. So the thought was to have some principle-base standard that would say that if there were compelling reasons – security issues, government concerns – if there were compelling reasons to exclude reports, those could be excluded, but if possible, those reports would be presented in a redacted form.

I think on that one, it's really a question of how that principle would get drafted and whether people could be comfortable that the exception doesn't swallow the rule itself, and so I think that conceptually, we thought it was okay, but we really would need to see how that would get drafted.

We're still in the IFR category. Number 11 was there is a reference in the CWG proposal to the idea that if there were recommendations coming out of the IFR process, that if there were something that were being proposed that uniquely affected ccTLDs or gTLDs that it would not move forward in the face of opposition from, for example, the GNSO member if it's a gTLD issue.

This I think is pure clarification. We think the reference to GNSO members is incorrect because there isn't a GNSO member per se as part of the IFR Team.

What there is is there are different stakeholders, and one of the stakeholders is the registry stakeholder group. The thought there was if there's opposition, we're not talking just generally GNSO, we're talking about the registry group, and so clarify that so that now referencing a GNSO member of the IFRT isn't really accurate anyway, and so we thought that what that really meant was the registry stakeholder group.

Number 12: this is a question that we had raised, which is in looking at the bylaws, the IFR has the power to recommend amendments to the SOW, and we wondered if that was really intended to be the entire IANA functions contract.

So our recommendation would be to change that, and reference the IANA functions contract unless someone says, “No. That wasn’t the intent. We really did mean just the SOW.”

Number 13 is a pretty mechanical point. Once amendments are recommended as part of the IFR process, the CWG proposal contemplates that there is a time frame for implementing the amendments and that that time frame is decided by PTI and the IFR Team, and the request is that we clarify that ICANN is also a part of that timeline discussion. They are a party to the contract.

We thought that made sense that both parties to the contract should be consulted on the timeline along with the IFRT.

Number 14: we don't have a view on. It's really just a request for clarification.

There was a question about reference for the IFR Team. There was reference to appointments of the numbers and protocols operational communities and question to get more specificity around who exactly is doing that. I think we said we had asked that question, too, and so that question has now come up more broadly.

Number 15: a question was raised. Should there be a geographic diversity requirement or goal added to the IFRT membership?

We don't have a point of view on that. I don't know if that was discussed during the design team process, but it was just a question that was flagged.

Number 16: a question was asked. The IFR Team, we all agree and the proposal is clear, it is not a standing committee. It gets created at a time when there's a need for a review, and the request here is to clarify when it gets dissolved. For example, after this delivery of a final report.

We thought that for good housekeeping, that probably makes sense to at some point in time, when it's clear that it's dissolved, and so if you all agree, we just have to decide what is that final moment where we can say, "The work is done. It's time to disband and wait until the next periodic review."

Number 17: we had put in a quorum requirement. We, Sidley, had put in a quorum requirement to the draft bylaws for CWG, and the question is do we really need a quorum requirement? If the IFRT is acting by consensus, should there not be a quorum requirement at all?

We don't have a point of view on that. That's something really for the CWG to weigh in on.

Okay, so then moving to special IFRs, we've got two questions there. The first question relates to a public comment period of the initiation of a special IFR. There was just a question about whether there will be a public comment period and what the mechanism was. Is that right, Rebecca?

Number 19 is there was no public comment period articulated for the recommendations coming out of a special IFR prior to board action, and

there was a request to add a public comment period to give the board information about what the community's perspective is before they act.

Then the last category is the SCWG and separation process – questions 20 to 24. Question 20 relates to the SCWG to the extent that it determines that an RFP is necessary. It has the authority to run the RFP process.

The request for clarification here is to clarify that ICANN's existing publicly available RFP guidelines would govern that RFP process. The thought was that the ICANN guidelines on RFPs have been created with the goal of ensuring that the RFP is done legally and meets conflict of interest standards and the like.

We thought that would be okay, but we think it's important that we clarify that if it's ICANN's RFP guidelines, they should be existing publicly available guidelines. Meaning the guidelines can't be moving targets.

So if SCWG says, "It's time to do an RFP," ICANN couldn't create new RFP guidelines that would make it somehow harder to implement. It would have to be the ones that were in place before the SCWG made that recommendation.

Number 21 was a question about there's language in the CWG proposal that's been picked up in the bylaws that says that ICANN, if there is a transition, ICANN has to cover the fees of any SCWG recommendations, and ICANN can't cover those costs by simply raising the fees from TLD operators to cover that cost.

I think that ICANN was fine with that if we're talking about the transition, so if the costs are about the transition, they agree that those

costs of the transition shouldn't be passed on through higher fees. But the question was raised, well, what if the new operator that's selected by the SCWG through the RFP process, what if that new IANA operator has a higher cost structure?

In that case, would ICANN be permitted to change the fees consistent with what's required by that new cost structure? I think that's just a question, and I don't know the answer. I don't think we have a point of view on that one because I don't know what CWG had in mind when they were referring to the costs of the SCWG recommendations and whether it was really the cost of the implementation moment in time or it was more prospective.

Number 22 is the same question we had in the IFR context, which is more clarity on the appointments to the SCWG for numbers and protocols. In those communities, exactly who is making that appointment?

Then 23 is, again, a corollary that was raised on the IFR, which is how do you dissolve and when do you dissolve the SCWG?

Then 24 is another repeating comment, which is quorum requirements. Is it really necessary given this is the body asking through [consensus]?

I don't think we have a perspective on that either. We don't oppose it. I don't think we have an opinion on it. I think that was it.

BECKY BURR:

Okay, so the notion would be that we have a substantive discussion and try to nail down answers to those questions on tomorrow's call.

HOLLY GREGORY: Yes.

BECKY BURR: Okay, great. The other thing that we did today was work through the Mission Commitments and Core Values Section One of the Bylaws provisions. We're not ready to talk about the details on it. I think just to report that we spent a significant amount of time really making sure that we were on the same page with respect to the goal of clarifying, but not changing ICANN's mission, and I think we had very, very productive conversations about that.

We did receive a draft from ICANN on Friday, and I think that the attorneys for the CCWG are going to turn a draft based on our very productive conversations so that we'll be in a position to talk about specific language tomorrow.

There were a couple of specific questions, in particular with respect to the protocols language and the numbering language. I've sent those questions out to the relevant folks with respect to get answers on that. So Andrew has received and responded tentatively to it, and I expect to hear back from the ASO on that. But if we can really nail down the language on the Mission Commitments and Core Values, we'll have a significant purchase on moving forward because that's the heart of our effort at some level with respect to the bylaws.

Anybody else want to say anything about the discussion on the Mission Commitments and Core Values? Oh, sorry. Go ahead, Sam.

SAMANTHA EISNER: I actually don't have a comment on the mission and core values section. I wanted to return back to the CWG discussion because I forwarded to the list – and you guys might receive two e-mails on this – Rebecca's draft was quickly off the [inaudible] list, but we're not sure if she has posting rights, so I sent it, as well, so you guys could see it.

But also included in there is a punch list that Sidley had previously provided to the CWG. We sent it to this larger group because we think that that represents a couple of other areas where there are some specific items that still remain outstanding that need to be filled in before the bylaws can be completed, and so we wanted to raise those to the level of the bylaws coordinating group so that we had one central place where we could identify all the outstanding issues.

So those also could be something that's on the table for information to be provided tomorrow. But I wanted to flag that, though, it's a separate document, that is also something that's on the critical path that we'd love for this group to help us get to resolution on.

BECKY BURR: Okay, any other comments on that? I don't see any hands in the room. Any questions on the CWG stuff?

Any other comments in the room here on the discussion that we had on mission commitment and core values? John Curran, I see you're online and I sent you a copy of the question on the numbering issue. Okay, anybody in the Adobe room have questions on the mission commitments?

Okay, I think that's our report from day one. We've got a lot of work done. We're working very well, and I think our pace is picking up as we work through the how to work together and make these discussions the most fruitful they can be.

CHRIS DISSPAIN:

Yeah, just to say that – not because they need me to say it – but I think there's been a really collaborative attitude amongst the lawyers today and the observers, as well. There's some good energy in the room and things are getting done, so I'm encouraged by today, and hopefully, we'll have more progress to report by tomorrow.

BECKY BURR:

All right. Thanks everybody. We will talk with you tomorrow.

CHERINE CHALABY:

Thank you.

BERNARD TURCOTTE:

Bye all.

[END OF TRANSCRIPTION]