BUENOS AIRES – CWG-Stewardship Working Session
Thursday, June 25, 2015 – 08:30 to 10:00
ICANN – Buenos Aires, Argentina

UNIDENTIFIED FEMALE:	All right, everyone, we're going to get started. We don't have anyone on the phone line, so I guess everyone is either in the Adobe Connect room or in the meeting room. If you are in the meeting room, please join the Adobe Connect room so that we can track hand raises. Otherwise, if you absolutely can't be in the room, if you raise your hand, I'll try to keep track of everyone. I'll turn it over to the chairs.
JONATHAN ROBINSON:	Good morning, everyone. At the end of a long meeting, thanks very much for turning up this morning. I was slightly worried we might end up with an empty room, but obviously the topic is still keeping you engaged. Good morning from Lisa and myself; Jonathan.
	I'm not going to say a whole lot, except to say that we have approval from all five chartering organizations, which is wonderful news. Great way to start the day.
	Very shortly after this meeting, Lisa and I will sit down and put together a covering note and communicate that formally to the ICG who I think are very keen to hear that from us so that they can get on with their work. I think that's all we need to cover for now. We'll work through various items in the agenda. It may be that we don't need the full time this morning. We may be able to get through this agenda fairly quickly. Let's see how we go.

First of all, dealing with this approval from the chartering organizations, I wonder if it would be – it may quite be helpful or it may be at least of interest to anyone from those different chartering organizations to provide any input or update to the group around those approvals. I'm going to go through them and see if there's anyone here from any of those organizations who would like to make a comment.

The one thing I just noticed is as people join us, are we going to take a roll call? Is that what you said about people being in the room, so we can note from the room? Okay.

Welcome those of you who have just joined us. Please, can you make sure you log into the Adobe Connect room so that we can record you as present via that?

I was going to talk to the ALAC, but I'll let Olivier settle down first. Is there someone from the ccNSO who would like to provide any kind of update or comment on the motion or are you happy for us just to have it recorded? Is there anyone from the ccNSO who would like to? Lisa, go ahead.

[LISE FUHR]:   Thank you. I was just looking at my fellow participants from the ccNSO, but they're not going to. Well, the ccNSO had their council meeting yesterday and they approved of submitting the proposal to the ICG. Actually, they had a sense of the room before that and

everyone was supporting this mission. So there was no one abstaining or no one was against it, so that was a very good result. Thank you.

JONATHAN ROBINSON: Okay, thanks, [Lise]. Olivier, are you in a position to give us an update as to the ALAC's deliberations and outcome. Just a brief update would be great for the group.

OLIVIER CRÉPIN-LEBLOND: Yes. Thank you very much, Jonathan. Olivier Crepin-LeBlond speaking on behalf of the ALAC. We have met earlier today and unanimously approved the report to pass on, so that's great news. No last minute rebellion.

We had two comments to be recorded. The first one is that the selection of the two PTI board members by the Nominating Committee or similar mechanism should attempt to address geographical diversity without sacrificing competence. The second one is that the success of the PTI will be contingent on ICANN ensuring adequate operational and R&D funding as well as other resources. That's all. Great news from the ALAC. Thank you.

JONATHAN ROBINSON: Wonderful. Thanks, Olivier. Thanks for that update. Is there anyone from the GAC here who would like to give us an update and is there one of our GAC representatives? Is there anyone who would like to give us an update?

Okay, absent anyone being able to do that, I can confirm that we have received the communication that the GAC has approved the submission of the report and we'll make sure that the record of that communication is available. I think it's been to the list. From memory, it's been to the list already so you should all have seen that. I'm not going to read it out for the record, but it will be covered in our transmission to the ICG.

What we propose to do, just to be clear, when we communicate with the ICG, we will provide them links to each of the relevant communications or motions from the different organizations, chartering organizations.

Okay. So next I have the GNSO working through it in alphabetical order. As you know, I'm chair of the GNSO Council. We had a meeting yesterday and the council had a number of resolutions before it including this one. [inaudible] eight [whereas] clauses, I think it's five resolved clauses, and the council voted unanimously to support the motion including the five resolved clauses and we'll make sure that the group is aware of that.

Whilst the motion was in no way conditional; it simply approved the transmission of the report. It did highlight in the resolved clauses recognition of various elements of the conditionality and some other details, but again I'll make that clear to the group.

Then finally we have the SSAC. Is anyone from SSAC here who would like to comment on the status of the motion or the way in which it was dealt with at SSAC? Again, we have SSAC I think it's 72. For me, what

was gratifying was we paid attention during our work to SSAC 69, and 72 from my quick reading – someone correct me if I'm wrong – confirms that the transmission of the final report is consistent with SSAC 69 which is great news. I think we treated that as a stress test, SSAC 69. So that seems to be very good news.

So those are the five approvals which is good. Has anyone got any questions or comments they'd like to make in relation to that work of the chartering organizations that might either be of interest of the group or shape in any way the communication that [Lise] and I will draft after this meeting? I've got James followed by Olivier.

JAMES GALVIN: Just a quick note that during the voting GNSO that a number of NCSG counselors noted that the issue with regards to the trademark is something that needs to be taken forward and obviously needs to be resolved before we go into any implementation phase. While it's not a blocking issue, it's obviously a key component as we go forward.

JONATHAN ROBINSON: Thanks, James. Noted. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you, Jonathan. Just to let you know that the full resolution of the ALAC will be sent to you. Since of course it has a few more things than just the two clauses that I've told you and put on the record here,

it does thank the whole working group and its co-chairs for the work that its done. Thank you.

JONATHAN ROBINSON: Thank you very much, Olivier. We'll look forward to receiving the full motion. All right, next item on the agenda looks to look at the future work of the CWG prior to submission to NTIA. We've broken it down prior to submission to NTIA and post-submission to NTIA.

[Lise] and I met this morning to work through this, and the thoughts we have. I'm going to go through those with you and would welcome any comments or questions surrounding those.

Of course the first thing we have to do is transmit the report, and as I said a moment ago, we plan to do that in short order after this meeting. Another item of work that is essentially open is that on the SLEs. That we still need to see a project plan for how those SLEs will be developed and the work towards finalization of that work.

Is there anyone from that SLE group here who could give us a quick update on that? Is there anyone available? Go ahead.

PATRICIO POBLETE: There is some going work between the group and IANA to begin collecting data to populate the numbers that need to be in place for the targets to be defined. There is a plan that that's going to happen in the very near future. Some software development needs to be done

and that would need ICANN to approve that. The plan is that we would be ready with what's needed at the time of implementation.

JONATHAN ROBINSON: Thank you. That's a helpful update. Can we just capture your name for the record?

PATRICIO POBLETE: Sorry, Patricio Poblete.

JONATHAN ROBINSON: Thank you, Patricio. Okay. So that's that piece of work that will be ongoing in parallel. We'll look forward to keeping an eye on that. We understand that the ICG will assess the work of this group. The timetable is to assess the work of this group by the seventh of July, and we expect that to be communicated with us according to the timetable on the eighth.

I guess we can expect that there may be clarifying questions in the meantime, so that's something we'll have to be on alert for. In order to deal with that, our plan is to have an additional meeting on the ninth of July. We'll communicate that to you in writing, but the plan is to do that at 17:00 UTC on the ninth of July.

I understand that the ICG plan is to try and produce a compiled proposal, or a compilation of the three proposals in whatever form they plan to do that and send that out for public comment on the 14th of July.

Any comments or questions about that? Chuck, go ahead.

CHUCK GOMES: Thanks, Jonathan, I actually want to back up to the SLEs, if I can. I made a suggestion to Kim Davies in his session with the Registry Stakeholder Group on Tuesday that I think it would be good if we as a CWG as a whole track and watch. He was going to take my suggestion back to Elise and the IANA team.

What I suggested to them is that they develop a budget – which they may already be doing – with the Design Team A group in terms of what the costs are going to be to be able to do the testing and to make sure the SLEs work and so forth. I think all of us have seen that plan. But there are going to be some added costs to them.

And we should, as a CWG, as the budget for IANA continues to be refined as more detail is added to it, we should include that in that budget going forward.

JONATHAN ROBINSON: Thanks, Chuck. But in essence, if I understand that point correctly, those are some pre-transition additional costs that may be incurred. It's a question of whether those are—

CHUCK GOMES: You're right, Jonathan. They are, but I don't think – they may actually need some additional funding to be able to accomplish those tasks. And I think that's fairly likely based on what it looks like they're going

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to need to do. So we should just make sure that that implementation part funding, if there is some needed, that it's covered. It may not be in next year's IANA budget, but it will need to be covered.

[LISE FUHR]: I think that's a very good point you're raising, Chuck, and I think that could be a part of that project plan that ICANN committed to giving after the actual principles and metrics has been chosen. This could be included in that project plan. Thank you.

JONATHAN ROBINSON: Is there an action for us? Are we expected to do something in this regard? Is that something to think about? We can keep an eye out. I guess we can monitor that project plan as it develops, and as part of the monitoring of that project plan, ask the question if it's adequately funded. I think that's probably the way to do it. go ahead, [Lise].

[LISE FUHR]: Well, I think it's also going to be an action point for the group that works with the SLE to help us monitor this. Thank you.

JONATHAN ROBINSON: Okay. So we can ask the group then to – as part of their project plan – to include seeking confirmation that any work that's required to be done as part of this pre-implementation, if you like, is adequately funded. Thanks. That's helpful input.

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Then I talked about the ICG process, the assessment of the CWG work, communication, our further meeting on the ninth. We cannot anticipate what questions may or may not arise, or perhaps we can. Go ahead, Alissa.

ALISSA COOPER: Thank you, Jonathan. I'm sorry for not raising my hand in Adobe Connect. I wasn't even sitting near a microphone. But I just wanted to clarify in terms of the time table for July. The ICG will be having a conference call to discuss the combined proposal on July 15, so it's unlikely to go out for public comment until the end of July or early August. And then we may have clarification questions for this group that come out of the public comment period as well. So just wanted to make sure people don't think we're being too aggressive. It's unlikely that we will have the proposal out for public comment in the middle of July.

JONATHAN ROBINSON: Thanks, Alissa. That's helpful. So in terms of our anticipated meeting on the ninth of July, that still makes some sense in that you expect to have assessed our proposal in its standalone form by the seventh and communicated with us [inaudible]. That's still consistent with your timetable, is it?

ALISSA COOPER: I think so. I mean, it's possible that your call being on the ninth and ours being on the eighth are a little bit close together for us to get

questions prepared for you, but I would hope that if we have any questions, they will have them ready before your call – perhaps just before.

JONATHAN ROBINSON: Okay. We can work with you on that. There's some other logistics why we need to meet on the ninth as opposed to after that. So we'll work on that and see how we can go.

ALISSA COOPER: Okay.

JONATHAN ROBINSON: Okay. There's something else in the pre-submission to NTIA. As the CCWG work develops, it strikes Alissa and myself when thinking through this morning that we will probably want to review the CCWG, the accountability work in draft form. Essentially, even if it's not formally, although we may choose to do something formal, I think it would be useful that this group checks that this groups that it continues to meet our conditions, because there's no point in them producing a draft report, putting it out for public comment and us being completely silent on it, if indeed it's starting to move away. I think we need to do some course correction at that stage and/or confirm that it's on track. That seems to be a key point that we'll need to be aware of.

So, actually, great. I think if we could capture an action there for this group, the CWG to meet really as shortly after – as soon as possible after – the CCWG final draft, assuming it is a final draft is prepared for public comment in the months ahead. And of course thereafter. James?

JAMES GALVIN: Sorry, I didn't mean to cut you off. Just a suggestion on process around this. The way that we reviewed and assessed SSAC 69 against the work that we were doing seemed to work very well and very effectively, and by possibly reviewing the CCWG proposal in a very similar way, in a very structured manner and then have a discussion on that structure that we do might be an efficient way of getting through it quickly.

JONATHAN ROBINSON: Yeah. I think we'd welcome any methodology that makes sense. Clearly, to the extent that we can do it efficiently and by some previously proven method, that will be very helpful. I understand that the SSAC does work in a very structured way, so that would be helpful.

Essentially the same will have to take place at the final report stage. So just anticipating that that will be a further piece of work prior to submission. I've used the analogy a couple of times. The reports go off on these separate tracks, but in the end they have to come back together and be seen to be a coherent package prior to submission of

that coherent package to the NTIA. That will be two key [inaudible] points along the way.

Any comments or questions other than that?

The next sub bullet point under item three is the issue of post-submission to NTIA. This is something I don't expect we can answer now, but it is something this group is going to have to think about what, if any, role. And if so, how will we undertake that role in implementation?

I'd love some thoughts or traffic or discussion. As I said, it doesn't necessarily have to take place now, but we will need to think about what our role is in implementation of our work and how we participate in that, whether this group itself has this role or whether it gives right to some form of other implementation review group. But one way another, we'll need to be thinking about our role in supervising or in some way interacting with that implementation process.

Any thoughts or comments at this early stage? Certainly [Lise] and I want to [inaudible] that thinking and happy to have any input at this point. Alan, go ahead. Greg, sorry. I saw you. Let me go ahead with you, Greg. You're first in the queue. I'll keep an eye on the Adobe.

GREG SHATAN: Thank you. First, I think the post-submission to NTIA time period needs to be broken down into two time periods. There's the [section] after it's submitted to NTIA, but while the NTIA is still – and other US agencies and bodies are dealing with things. Then there's our internal

work, in a way. It worked within the other communities as well as we settle things down. So I think with regard to being outward-facing toward the NTIA, there needs to be some at least residual existence of this body. We can't disappear before this has all been fully accepted by every player down the line and not just the ICG.

As to how we do things internally, you can look to some extent how things would map out in the GNSO as a potential model, which would be I have essentially an implementation review team which could resemble in large part this group, but which would have somewhat different tasks in relationship to staff who are being involved in implementation, although that assumes that when we're talking about implementation we're talking about ICANN-style implementation, which is a fair assumption that one that probably should be tested.

JONATHAN ROBINSON: Thanks, Greg. I'm not sure if James or Alan had their hand up next, so I'll go to James first because you're in the room, and then I'll come to you Alan.

JAMES GALVIN: No, [inaudible] first.

JONATHAN ROBINSON: Go ahead, Alan.

ALAN GREENBERG: Thank you. I was late. I was otherwise occupied and then I couldn't find the room. You may have covered the part of this before. I note certainly that SSAC asked at least one question that falls on what was DDF to answer, and they have a number of other issues they raised also. So certainly on the short term, we need to come up with answers to those, because likely NTIA and/or the ICG are going to ask the same questions, so we should be prepared.

We've never talked about the process after it goes to the NTIA. I'm presuming, should they have an explicit question they're not going to be shy to ask. So I think we have to be in a position to react quickly should there be any issues that are raised for clarification or what did we mean by or did we consider. One of the larger things they're looking at is alternatives. Did we really do all of our homework?

So I think we need to be poised to work quickly all the way through until it's a done deal and I don't think we can really dissolve until then. I don't presume we're going to be very active, but we really have to be ready to act and with the right players. There's no point in asking the group of 150 people a question that only three people might know the answer to. I think we all have to be essentially ready to play.

JONATHAN ROBINSON: That's a really good point and I think in terms of thinking of the mechanics of operation, I don't think we envisage any kind of – well, at the current time, we don't envisage a series of regular meetings as we have been running. But you're right. I think we accept that there will need to be – I'm not sure ad hoc is the right word either – but meetings

as necessary to pick up on work in terms of clarifying questions from the ICG as it happens dealing with any questions or issues raised by the chartering organizations and so on. So, point taken.

Alan, [inaudible]?

ALAN GREENBERG: What I would envision, the questions will come to the chairs, the chairs will send a message out to the whole group saying, "This question has come in. We think it's reasonable that the people who ran DTF, or [DTA] or whatever should answer it. If anyone else has an interest in getting involved, you're free to do so, and we'll bring any results back to the CWG." I think you're going to have to be the traffic cops, pointing things in the right direction and keeping the group alerted to what's going on, should they care.

JONATHAN ROBINSON: So we can't go on holiday quite yet.

ALAN GREENBERG: You can't both go on holiday the same day.

JONATHAN ROBINSON: Thanks, Alan. James?

JAME GALVIN: The phrase in Irish politics that seems to be always overused, it's a lot done and a lot more to do. Obviously I don't think we're anywhere near the end of the work of the overall group, but I don't think we should put it all on just yourselves and [Lise]. My suggestion would be that we do go along the route that Greg suggested of having an Implementation Review Team. I think that that possibly should be a sub-group of the overall CWG and it can do that traffic management function on a more regular basis as we hold off on the overall CWG calls. That way, that's more a group who want to actively track the implementation can then reach out to design teams in conjunction with yourselves and manage it from that point of view because there are some [inaudible] who would like to be very active on the monitoring and oversight of the implementation.

Also, one thing I think we've talked about and possibly [inaudible] a month ago as well is how we'll manage the ongoing existence of the CWG with regards to working with our legal counsel and [inaudible] interplay going forward while we're forming PTI and having any other work going forward with regards to rescoping their engagement with us.

[LISE FUHR]: Thank you, James. While implementation is going to be very important, we need the CWG to actually coordinate with the ICG which one of the groups are going to deal with is, so I think it's an issue we need to coordinate with them before deciding. Thank you.

JONATHAN ROBINSON: Thanks, [Lise]. This clearly, as we've flagged in the agenda, a watershed. There's clearly a possibility of various formats through which the implementation might be engaged with, but that's a good point. We need to be mindful of the ICG's role in all of this and talk with them about what their expectations are. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you, Jonathan. I note that the CCWG Accountability has a formal timeline where it shows several public consultations taking place during implementation. I wonder whether there would be such consultations during the implementation of the CWG.

JONATHAN ROBINSON: I think it goes back to that previous point that [Lise] made. We need to check in and close the loop with the ICG and make sure that this isn't something that they feel they've got covered, and if it is, then how this group interacts with the ICG.

I think the important point is that we start thinking about this in conjunction with the ICG. So it's useful to have these ideas start to come up and us being aware that – I guess the fundamental point much as this is a very significant and exciting watershed moment, it's not the end of the line. We'll need to continue to be engaged.

Alan, comment?

ALAN GREENBERG: It hadn't dawned on me before, but it did as we were talking here. Clearly, the baton has been moved to the ICG. It's their show now to do things like public comments or whatever.

However, we probably do have responsibility that when they come out with their consolidated report for us to do a review of it. Did they in fact change anything substantive that we care about? That we should probably should do on a somewhat more formal basis than just a couple of us reading it and submitting private thoughts. That may be something we want to put into our timeline.

JONATHAN ROBINSON: Thanks, Alan. Chuck?

CHUCK GOMES: Thanks. I'm following on really with what Alan is saying. As some of you know, the Policy & Implementation Working Group in the GNSO just finished its report, which was approved by the GNSO Council yesterday. Even though it is a GNSO product, the principle – one of the main principles that we recommended in there was that the policy development group – and this isn't so much policy I guess, but still the principle applies – stays involved through the implementation process. Not that it's doing the implementation, but there's an ongoing communication, an update to make sure that the intent of the recommendations were followed. I think that's what Alan is suggesting and I strongly advise that.

Now, I'm not suggesting that we overrule the ICG. I think your suggestion of working together the ICG in terms of how they want to handle it, but I would strongly encourage that there be some level of at least visibility to ensure that implementation goes according to the intent.

JONATHAN ROBINSON: Yeah. Thanks, Chuck. Noted as well. And just to that point and Alan's, this whole theme really, we certainly envisage at this point already a call with this group to discuss the compiled proposal, and then clearly as the different steps revolve. I'm reminded of this. There's a diagram I saw as a kid that had something like what the client wanted, what the architect designed, what the builder built. As we go through those steps, we've got to make sure that the picture remains the same.

Alan?

ALAN GREENBERG: Please don't use that analogy because I remember what those things look like.

JONATHAN ROBINSON: I'm suggesting that if we do work properly we won't be seeing—

ALAN GREENBERG: Well, the titles are fine, but not the images that went along with that joke, that cartoon.

JONATHAN ROBINSON: All right. So I think we've probably covered that sufficiently for now, unless anyone has anything else they'd like to add. I'm not seeing any other hands in the room or anything. We've got a sense that we're going to have to stay in touch. It's not exactly clear what the mechanics are going to be. There's going to have to be some discussion within the group, and indeed with the ICG, but we're clear that we're not all about to pack up our bags and go home as far as the work of this group is concerned.

On a related point under item four, we've got the response to the letter from the ICG on the trademark issue. I think it's become clear through the course over the last few days that there's a short-term issue and a medium-term issue. The short-term issue is to make it clear, as we have done on our list and now formally in response to the ICG, that our proposal is effectively silent on the trademark issue. That doesn't mean that we won't have to deal with it in some way or another, but I think in the very short term, our response to the ICG needs to clarify that, to calm that perspective. But we will need to do some further – as part of our further coordination, I think, to understand what the other groups are doing and plan to do. In a sense, that goes straight into item five.

And item five really is about future coordination. It's clear we're going to have a track of coordination work with the ICG. But arguably, we – I'm not sure I want to take it on board too much. Perhaps our communication with the other groups has perhaps not been as visible

as it would ideally have been. We have had contact with the various groups and we've had different meetings along the way, but certainly this trademark issue seems to be one area we'll need to continue to talk about with the other respondents to the [RFP].

And of course ongoing – as those bullets suggest under item four, we'll need to keep in touch with the accountability group as we've talked about both as chairs and as a group. There's a whole [inaudible] things like the public comment. Is there anything anyone would like to add, any suggestions on this issue of ongoing coordination? [Lise] and I are both very aware it, possibly more so as a result of this meeting. But I don't want to suggest in advance of the meeting either.

There is one other point on overall coordination. We had a discussion – an informal discussion – earlier in the meeting with senior ICANN staff. It goes to that overview of the program that Fadi put up in his opening remarks, and I think it sounds like ICANN in its role as, if you like, facilitator or coordinator will maintain a form of overview of the overall program. So I think we'll continue to feed in. [Lise] and I will feed into that group and to that sort of visual program management, if you like, any sense of where we are in timescales. Obviously, the substantial work that's going on in terms of any timing is outside of our group at the moment, but to the extent that we have any input, we'll provide it there as well.

Any other comments or questions in around coordination activities? Any suggestions as to what should or shouldn't be happening?

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Well, suffice it to say, we will keep a close contact with the various other groups – the respondents, the proposal, the ICG – and feed into that program management.

Chuck, go ahead.

CHUCK GOMES: I made a suggestion in the chat that I think it would be good for us to, at least at a high level, identify an action plan for the IP issue. I don't see it being a complicated issue to resolve, but it's very clear that it needs to be resolved and I think that action plan needs to involve coordination with the other two groups. I think it would be good before we're done today if we knew what the next steps were to bring the groups together, to identify the facts, and to reach a resolution.

Again, I don't see this as a difficult issue at all, but it's one that in the next few weeks I think it would be good if we did get it resolved. I think it would be good if that happened even before the ICG on the seventh [inaudible] on this if it's possible. Again, I don't think it's rocket science. I don't have the right expertise, nor do I have a strong opinion where the trademark should be held, but let's get it done quickly.

JONATHAN ROBINSON: Good suggestion. Let me make a stab at that. Clearly, first is respond to the ICG. Second is probably meet with the other proposing groups. Third is – and partly as a result of two – compile an agreed set of facts. We imagine four is then start to work with potential solutions, potential resolutions. Solutions/resolutions.

Greg?

GREG SHATAN: Thank you. I think that's a good action plan. A couple of things I would add is I think we need to – as Chuck indicated, we need to have someone with the right expertise and I think that needs to be an independent person. I think we need to ask our esteemed council which of their colleagues could help provide the appropriate independent legal guidance. While I do have the expertise and I'm clearly a participant, and therefore can't be a guide in the process that it will perceived as neutral as some, although my approach to this at this point is as neutral as possible.

Second, while this is not intended to start off any discussion of fact, and just in terms of there's other intellectual property involved in IANA. That's I think a completely separate issue or perhaps a non-issue. As far as the trademarks, we're really talking about the trademarks and the domain names that are associated with those same strings, like IANA.com, .org, .net or whatever others have been registered and the trademarks – there are at least three registered trademarks: Internet Assigned Numbers Authority, IANA and an IANA logo that includes the words Internet Assigned Numbers Authority beneath it. So all three of those trademarks need to be dealt with in this process, as well as all of the related domain names. That's the only fact I want to bring to light today because that's kind of a starting point.

After that, I think clearly there's been I think some very good groundwork laid at this meeting and around this meeting, some of it involving adult beverages that help to establish some additional connections and goodwill toward developing that common set of facts, which I think has to come really before any analysis.

I think also in that – I don't know if this needs to be a separate point in the plan, but we need to figure out what our community wants, and not just figure that out in coordination with the other communities. In other words, we have to have a position as the CWG or as the names community that we at least formulate. I would necessarily say we'd bring it to the table and say, "This is what we think," but at some point along the way, we have to know what we believe is the appropriate or an appropriate solution. It may end up unfortunately looking like that tire swing cartoon that Jonathan alluded to, but nonetheless, right now we have no position that's appropriate based on where we are. At some point we have to have a position. Thank you.

JONATHAN ROBINSON: Thanks, Greg. As you spoke, I worked with [Grace] to modify what we had said. So the action plan now is just dealing with the intellectual property including the trademark and domain name. In addition, under item four, I added that we would work on potential solutions and resolutions with professional assistance. And finally under five, that we would seek to formulate a CWG stewardship position if necessary.

So it's possible. I just want to not preclude the possibility that we remain silent on it. I don't think that's likely, but it gives us the opportunity to not – that's the action plan as it stands.

Then I notice that Andrew Sullivan asked how we might work with the other communities. Well, since this has come up via the RFP and our group responding to the RFP, I would think that our first port of call has got to be to deal with the IANA plan and CRISP team, since that's where their responses have been, where the naming and protocols communities responses have been generated. Then it will be up to those teams to engage their respective communities as appropriate.

So I've got a few other hands coming up in the Adobe Connect room, the first of which comes from Seun. Seun, go ahead.

SEUN OJEDEJI: Thank you very much. I'd just like to reiterate what the last statement of Greg, especially I think it's important that we get a high level view of this community about the trademarks before actually going into the details of legal analysis and so on and so forth.

There may actually be no need for spending so much resources on analyzing and breaking all these trademark issues down. Once we have the direction of high level, [non-legal] view of this group. I think we should take note of that. Thank you.

JONATHAN ROBINSON: Thanks, Seun. That's a point to bear in mind. It feels to me a little tick in the [inaudible] though. The danger is if we formulate a view without full knowledge at least of facts and potentially the issues we run the risk of perhaps formulating an ill-informed view. Let's think carefully how we go about this.

I've got another hand up next from Chuck.

CHUCK GOMES: Thanks. I agree with you, Jonathan. I think in terms of formulating a view, let's get the facts and the advice in front of us before we do that.

But with regard to getting the professional assistance, the independent legal advice, as Greg suggested, I would suggest that we very quickly reach out to both of the other communities and let them know that we're considering that and that we would welcome any input they have in terms of a request for that advice, so that we maybe don't lessen the chances of having to go back later and ask additional questions. So involving them in that.

Now, one of them already has their own, so they may not need it, but at least making the offer I think would be a good move and they may actually have some questions that they would like to add to the list that we come up with.

JONATHAN ROBINSON: Chuck, just to make sure – I happen to agree with you. I think we need to reach out immediately after this meeting, but just in terms of what

specifically you were saying, just to work to coordinate on compiling the facts and the background, just to make sure I understand that clearly.

CHUCK GOMES: Sure, Jonathan. I'm specifically referring to our seeking of professional advice on this, and I'm suggesting that we not do that totally independently of the other two groups, that we give them the opportunity if they so choose – they don't have to – to contribute to that. Then depending on what they decide, I think we'll have a more complete picture in terms of the professional advice that would be helpful.

JONATHAN ROBINSON: Okay, that's helpful and now clear. I've got a queue that's Andrew, James, Greg, and Sharon. I'll work through in that order unless any of you would like to defer to anyone else in the queue. Andrew?

ANDREW SULLIVAN: Speaking only for myself as usual, but I've had it impressed upon me that it's particularly important in this case. The thing that I was saying in the chat, the thing I'm slightly worried about here is actually – unusually, it's a procedural problem. That is the way at least the IETF works on this, we just have this mailing list and people have consensus and so on. We've already had consensus to clear it. So if we're going to open that, what we're going to do is we're going to reopen the document that the IETF has achieved consensus on, or

we're going to talk to the administrative organization inside the IETF which as the intellectual property.

These have very different formal properties, at least within that community. I'm a little nervous that we're talking about that community over there as though there's a clear plug that you're going to plug into.

I'd like to suggest that maybe a little bit of care and exactly how we want to do these things because they're two different problems. One is the technical matter – I mean technical in the broadest sense. The technical legal matter of how things can work given the way trademark law and other such things work.

The other one is what outcome people want to have. Those are very different problems, at least in the IETF's way of working. I'm reasonably confident that that's true for the RIRs as well. Maybe because of the way ICANN's worked its structure, the distinction there is maybe not as plain. I'd like to understand whether what we're trying to solve here is what is possible. I know how to find that out from the IETF and that's different from what is it that you want. It's a completely different group of people.

If you want to talk about what it is you want, you've got to go on this mailing list and have pretty much anyone in the world be able to take pot-shots at you. I just want people also to be prepared for that possibility.

What we've been doing so far is people are relaying messages back and forth between two lists and I think a lot of nuance is getting dropped in that. I think if we're going to have a completely cross-community discussion, we're going to all have to join one another's mailing lists and I don't think that we're going to have a happy cultural experience that way. Thanks.

JONATHAN ROBINSON: Andrew, I think I understand at least elements of the problem as you've described it there. I guess at the highest level, we would seek to reconcile the different responses to the ICG from the different communities. If we approach it like that – we'll have to think about the mechanics of it, because it's clear that you're right. There are some complicated mechanics of how these decisions get made or positions get arrived at. Then we'll have to think very carefully how we manage our way through that without over-complicating it.

I think I might let Sharon go up the queue a little and give her an opportunity to speak, and then we'll come back to others in the queue. Sharon, let's hear from you if you're willing to speak now.

[SHARON]:   Thanks, Jonathan. So going back to what Chuck was saying about getting legal advice, I don't think the legal advice is particularly complex here. That's the good news. But in order to help solve the issue, what we really need are the facts and we need to understand the goals.

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I think what we're hearing are recommendations and outcomes, and at least for CWG saying at this point no position. But we can't really solve for it unless we understand the rationale. Maybe I'm being overly optimistic here and I'm completely unencumbered by the facts, but it doesn't seem to be a terribly difficult problem to solve, certainly from a legal standpoint.

So I think if we can get that input from the other two communities as to what the goals are, then we can start framing out what we think might be hopefully a simple solution from a legal standpoint.

JONATHAN ROBINSON: Okay, that's helpful. My understanding of those goals would be not so much goals as to where, for example, the trademark resides, but what the ultimate goal is, what the desired setup is. Andrew, I think that's an old hand, so I'll go to James next.

JAMES GALVIN: I agree definitely that we need set out – [inaudible]. You don't necessarily just set out what your goal is. You also need to know what you have at the moment. I think it was yesterday or the day before I started trying to set out on the mailing list a couple of neutral facts on what the situation is at the moment and roughly where we want to go [now].

I believe Greg told me that I was incomplete on those. Maybe I'm looking at it slightly too [simply], but it's essentially a three-stage process. We set out the facts as they are at the moment. We set out

roughly what we would to be at the end. We then reach out to our independent legal counsel. They give us options, [I would hope] – A, B, C. We then bring A, B, C back ourselves, CRISP and IANA plan, and between the three communities we then agree on an option. And from that, then we can go back to the ICG and say that this is solved.

But I think it's important that we set out very clearly for the legal counsel so that it doesn't become an extended process where we are at the moment, a set of guidelines around where we want to go because I don't think we, on our side, because it's an inter-community issue, I don't think we should say, "We want the goal to be this singular item. We want it to be in this way." I think that we need to allow the legal counsel to come back with a number of options to us on how we can possibly proceed, and then from that point, we can then reach out to the other two communities and look at a common position between the three of us.

JONATHAN ROBINSON: Thanks, James. That seems like pretty clear thinking. That's helpful. Greg?

GREG SHATAN: Thanks. Not to start developing too much more detail on this plan, but I think we need to identify possibly a relatively small group in this group to help develop those facts. I think some of the facts are really in the best possession of the other two communities. So some of them have to do with how the other two communities use the mark and

what they might identify as fact around their use of the market and of the domain name and of the marks.

Also, in terms of fact development, I don't think we'll just be able to hand independent legal counsel a complete set of facts, have them go away. There's going to be an iterative process. Leave it to counsel's advice as to whether we bring in the appropriate independent legal counsel to help develop the kind of questions about what the facts are or whether give them a first draft of the facts and let them ask us questions. But there's going to be a back and forth process there in terms of facts because the counsel's going to want to know more about the facts than perhaps we necessarily put together.

The last thing we also need to identify are underlying concerns. Some of those may not be directly related to where the trademark is today but as to downstream concerns. There's been concerns, for instance, expressed about whether having a trademark in one place or another might impede or enhance separability or actual separation. At some point in the process, we can't ignore that. That may be in the part where we're developing our view, but on top of facts and goals, I think I would identify concerns as another sub-list that needs to be developed. Thank you.

JONATHAN ROBINSON: Thanks, Greg. Checking, keeping up with the chat as well. Let's hear from Alan and then I've got Nurani.

ALAN GREENBERG: Thank you very much. With hindsight, it's clearly unfortunate that once we realize that we have a shared resource that we all have to cooperate on, we couldn't have gotten together early in this discussion before people started laying out territory, but we didn't.

The end target in my mind is relatively simple. We need a trademark to reside somewhere with someone who has the will and the resources to defend it should it be used somewhere else improperly.

We have three communities using a single domain and we have to make sure that regardless of how we may stay together or separate in the future, they all have continued access to it with as minimal and preferably zero change.

All the communities could survive the domain name changing with various degrees of ugliness so much more than others. Preferably, we don't have to do that. There are technical solutions, so we just have to come up with something that everyone feels comfortable about.

The largest fear, as I've heard it, is that should we decide there is some level of severability between the three IANA functions, we won't like each other and won't play nice. Lawyers are very good at writing contracts and putting things in form so that we can try to cover those eventualities. It happens in business all the time.

I really think it's a matter of, as you said, state exactly what our end point is. I don't see a real difficulty in doing it. Andrew's position says they've already come to a formal decision. The rest of us haven't. It

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might be easier to work around that one and we don't have to reopen that thing. That may or may not be possible.

I don't see this as a difficult process to identify the end points. The negotiations may be difficult. I'd like to think not. Thank you.

JONATHAN ROBINSON: Yeah. I think it's a good point. We do have to be careful that we don't jump too far down the track. I think it's clear that we have to – and ideally should have – somehow improved our communication around this, but that's a challenge with the way to the point that some have made with the way in which communication goes to various forums and mechanisms.

But certainly the one thing we all seem to agree on is getting the facts straight up front will be very helpful. It may be that we can look at three different goals and then see if those three different goals from the three different communities all reconcile, which they may indeed to quite easily, but let's work through it a little systematically and make sure we take – we're not in a huge rush to sort this out. We now see that we need to do it a little carefully and that will help.

Nurani?

NURANI NIMPUNO: Thank you. Good morning. Nurani Nimpuno. I am vice chair of the CRISP Team, one of these other communities you're talking about. I just wanted to comment on the approach of trying to lay out the facts

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in a joint manner early in the process, and I find that very reasonable. If we can be of any help, or I'm sure if the IETF can be of any help in clarifying the issues around the IETF trust, we're very happy to do so.

I also just wanted to point out – and I'm sure you're all aware – that our communities operate on a consensus-based bottom-up process. While I won't comment on the cultural experience of getting the three communities together, I do want to point out that as we have reached a consensus decision in our community, when you talk about talking to the other communities, we're very happy to have formal and informal discussions with you.

But if this group were to come to a solution that is different than what's already on the table, then we would simply have to take that back to our community and start that bottom-up consensus-based process again. I'm not saying that that's not at all possible, but I'm just asking you to tread carefully and of course to talk to us. Thank you.

JONATHAN ROBINSON: Thanks, Nurani. That's clear and noted and I would hope understood. It seems to me like we've had a good discussion on this. Greg, your hand is still up. Did you want to make a final point?

GREG SHATAN: Yes, I think we need to separate this. Again, go back to what we said. We're separating this into two parts, which is generating comments [inaudible] fact. We don't know exactly what facts [inaudible]

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conclusions by the other communities were based on, but we need a comment set of facts.

That I think should be relatively easy with the other two communities. I don't think we need to be too formal about it and have similar groups from the other two communities just come and bring the facts together. We can come up with something that's generally agreed to be a neutral expression of all the relevant facts, or feel like all the relevant facts, and make sure they're accurate.

Then we can kind of take that back at that point. That becomes our work and not the work of three communities to determine what our position is and goals. Then I think at that point, we reengage in a different way and maybe with even slightly different aspects of the other two communities as I'm hearing. At that point, we're talking about decisions.

But the fact-gathering should just be just one big campfire with everyone hanging around and swapping IANA stories. That's where we need to start. I keep hearing people start trying to move away from facts to conclusions as to whether this is a shared resource. That is a conclusion based on unstated facts in the sense – in some ways, it's shared, but we don't know how exactly it's shard and there are different – do I share my car with the guy in the garage? Yeah, he drives it, but it's not sharing it.

So we need more facts to decide exactly what it is we're talking about. People are trying to leap over facts and they're not as simple as people think. They're not very difficult, but they do need to bet set out

carefully. Then we need to move through the process. This doesn't need to be long or complicated, but trying to hopscotch through it isn't going to do us any good.

We spent a couple weeks doing that on the list and that's why we need to go back to the first principle of a neutral common set of facts through a fact-gathering exercise. Thank you.

JONATHAN ROBINSON: Okay. So I think we've got that and that seems consistent view of the platform we need to build. My experience tells me that even facts might not necessarily be that easy to agree on, but we'll give it a good go. That is certainly a logical first starting point, so let's go with that plan.

I think I'm going to move us on now off this topic. We've had a good airing of the issues and a reasonable plan to start to work with. Is there anything else anyone would like to raise in and around the work of this group before we conclude today's meeting and hand over the facilities to the next group?

Looks like we're okay. Oh, I've got a comment. Chuck, go ahead.

CHUCK GOMES: Sorry about that. I was a little slow. I just want to acknowledge and thank [Sidley Austin], and in particular, Holly and Sharon who are here with us today because I think it was a real significant point for us when we started getting the independent legal advice. In my opinion, that

was really critical to being able to move forward. They came up to speed amazingly fast with very little time before the meeting in Istanbul.

I personally want to thank them for what they've contributed and as they continue to contribute because I think it was invaluable for us making the progress we have.

JONATHAN ROBINSON: Thanks, Chuck. I certainly echo that and I think it's clear that you can buy professional services and that the professional services being delivered in a professional and sensitive way [inaudible] roles been significant. We're all very pleased with the point we've got to today and we are no doubt here in part because of the quality of the advice we've received and the appropriate way in which it's been delivered. I'll echo that quite happily.

Alan?

ALAN GREENBERG: Well, in line with that, I'd like to thank the staff who allowed us to get to where we are today. Grace and Bernie and [Marika] and other people I'm probably forgetting. Chuck made a comment about buying services. We pay these people, but there's no way you can pay them for the level of dedication and effort that they put into this. I have a vague idea of how much was involved. I've done a few things like this, but not one of this magnitude and I am just eternally grateful and I think we're very lucky to have them. Thank you.

JONATHAN ROBINSON: Well, that's a very positive note to finish up this significant milestone or the group. Thank you, everyone: participants, members, professional advisors, staff, everyone who's helped get us to this point. It really is a great milestone to have the endorsement of the chartering organizations to such that we can submit our proposal to the ICG, which after all was a principle aim of the whole activity. So, great. Very good to be at this milestone with you all here in Buenos Aires. It sounds like our work is not yet fully complete, but this is a major point, so thank you very much.

[END OF TRANSCRIPTION]

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