

CCWG Accountability Webinar Transcription Tuesday 23 August 2016 at 22:00 UTC

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The audio is also available on page : <http://gnso.icann.org/calendar/#aug>

Nathalie Peregrine: Thank you very much, (James). And the recordings have been started.

Good morning, good afternoon, good evening, everybody. And welcome to the CCWG Accountability webinar on the 23rd of August, 2016.

I would like to remind you all to please remember to mute your microphones and your telephones as all lines will be kept open. This will help avoid disturbance.

There will be a question and answer session at the end of the presentation and you may also type your questions in the chat; they will be read out at the end of the presentation.

And with this I'll hand it over to James Bladel. Thank you ever so much. Over to you, James.

James Bladel: Thank you, Nathalie, and thank you to ICANN staff for putting together this webinar at the request of the GNSO Council and for Xavier and Thomas for taking the time to attend and for all attendees, I hope you've come prepared with questions.

Just – this is a continuation of a conversation that began immediately before and at the most recent ICANN meeting in Helsinki where we were examining some proposals from – that originated with the Board and with executive staff on how the CCWG leadership and members could engage to control some of the costs associated with the work surrounding the IANA transition and the work that had been concluded, but also and more importantly perhaps as we transition into Work Stream 2.

And just to provide a high level timeline, all of the SOs and ACs are being asked to examine, review this – these proposals and to weigh in. From the GNSO perspective, we are tentatively – while we're still working out the agenda for our next meeting, we are tentatively looking at tabling this topic as a discussion item for the meeting on the 1st of September with the possibility that we will have a motion prepared, the review, and/or adopt these proposals on our – at our subsequent meeting, which will be on the 29th of September.

That's our schedule roughly. But in the interim we wanted to give folks and opportunity to review these proposals and most importantly ask questions of Xavier and Thomas.

So with that, if you don't mind, Xavier, if you'd like to take it away from here and present the materials and then we can move to Thomas and then circle back for Q&A.

Xavier Calvez: Thank you, James. Can you hear me well?

James Bladel: Yes. Thank you.

Xavier Calvez: Thank you very much and thank you very much for everyone to take the time to attend this call and the purpose of course is to provide you with the information that is necessary for you to have a good understanding of the topic that we're going to cover for your future review of it and vote as James has indicated.

To put things a bit back into context, the Work Stream 1 of the overall IANA stewardship transition has happened over the past two, let's say year and a half, along with the CWG work on the stewardship transition with a lot of work, a lot of hours, a lot of meetings as well as the need to use external resources to help develop the proposals.

This has happened with an extreme amount of involvement of community members, of staff, including the members as well, a lot of work with a very high stake in making this happen on time. This has allowed the organization as a whole and the community to learn to work through this type of exercises and discussion in lessons learned, lessons have been learned from that exercise.

And as we look forward into the next stage and more specifically in relation to the WS 2 work, which is the continuation of that past few months of transition work. We want to learn to use the lessons learned to be able to put the tools in place to have a transparent and accountable way of managing the overall community work on this specific topic.

And in that respect, enable the community-led work to be both responsible and also of course accountable for the work that happens and amend those – the elements that support that responsibility and accountability there is the management of resources and therefore, of a budget.

So we have worked with the Board, generally speaking and more specifically the Board Finance Committee and the co-chairs of both of the CWG and the CCWG to try to develop an approach that enables the community to assume that responsibility and the accountability for their resources in the most practical and realistic session.

And we have therefore developed relatively straightforward approach which is summarized in the document that we are looking at now. Whereas, we had

tried to segregate – identify and segregate the expenses and resources that the – that could be put and made available to the CCWG cochairs in this case, to be able to manage the project and put in place the resources that are required to produce the desired outcome from the WS 2.

So we have worked with Mathieu and Thomas and Leon to try to sort out what are the resources that we all think are required and what are those resources that we think among the overall resources, what are the resources that the CCWG cochair can take on the responsibility of putting in place and managing as well the cost of.

So in that respect we have sorted out that the travel for ICANN meetings or for CCWG meetings, which is suggested to happen at ICANN meetings, and the supported travelers cost associated with attendees to the CCWG face to face meeting at ICANN meetings would be part of the costs managed by the CCWG, the cochairs, as well as the need for external advice, legal mainly the type of advice that has been used in the past and that that expense, that cost, would be something that would also be managed by the CCWG and the cochairs.

In contrast, the ICANN staff support, for example, is a resource the continues to be managed by the ICANN staff with obviously the understanding that the ICANN staff support is there to help the work of the CCWG as a whole and each of the work streams within WS 2 and that the staff will of course continue to do everything possible to ensure that the work of the community, each work stream is as efficient and effective as possible.

So the – there is a budget ownership that's been defined for all expenses and professional services with estimated amounts of budgets associated to it. You can see this in the bold frame that is appearing in the top of the page in Adobe. And the responsibility for budget, what does it mean?

It basically means that there is (unintelligible) of resources assigned to either travel or professional services in this case in that it is in the authority of the CCWG cochairs to determine whether those resources are being used or if these resources can be traded up for other type of resources, for example, if we needed more money for legal advice, can maybe a meeting can – or done differently so that we save money on one hand so that it can be reallocated for a different purpose. That's in an authority and a responsibility that the budget owner can take.

The budget ownership also includes the activity of monitoring the expenses as well as planning for the future expenses on the basis of the – work that is estimated to be done. And if that plan for future expenses lead to the need for more resources because it is determined that there's more authority than was originally planned or there is just more complex topics to deal with that require therefore more advice, for example, that the duty of the budget owner is also to formulate a request for additional resources if need be, document and explain and justify that request.

And then, sorry, forward it onto the chartering organizations for their validation of that request. And if the chartering organizations would validate that request then that request would be then made to the Board to approve additional resources on the basis of the justification provided.

The budget ownership is therefore the responsibility for the resources that are engaged, sorry, and comes along of course with accountability to the community for those resources.

Along that budget ownership another mechanism is part of the process suggested is to ensure that timely reporting of the costs incurred for the entire project is made available publicly so that everyone has the timely visibility on what the costs of the project are, and of course the CCWG cochairs need to have a very timely understanding of what the costs are of the resources that

have been put in place. But also that these costs can be shared and reported publicly for transparency purposes. So that's one thing.

And in that respect, the PCST, the project cost support team, that has been put in place at the Marrakesh meeting to help document and explain the costs that have been happening throughout FY'16 is being offered as a support to the budget owners that the CCWG cochairs would be to help providing that information on the timely basis, providing analysis and providing the support to forecast also the costs on the basis of the future activities that would be carried out. So the PCST is there to help that reporting, that analysis, that communication in support of the budget owners.

In addition to the budget ownership and the PCST, there is also a suggested approach to – and I'm moving on to the Item 3 in the Adobe room – to create or reinstate, to be more precise, the legal committee which purposes to help manage the need for legal advice, the evaluation of that need, and the management of that – the resources to – obtain that legal advice where required.

The legal committee is suggested to include a representative of ICANN Legal staff, which is Sam Eisner that many of you know, and several community members who have a certain amount of experience also in using external legal advice, or managing it.

I think Bernie will provide us with the names of the members but that includes Greg Shatan, it could include I think Robin Gross as part of it as well, a number of the members of the CCWG who had been part of the previous version of that legal committee and would offer the approach of receiving – identifying and receiving requests for external advice, valuating those requests, defining what the best approach is to obtain the advice that is needed, and ensure that this legal advice is obtained most effectively and in the most cost efficient fashion.

And the fourth item that you can see here in the little document that was put together for this purpose, is the analysis and reporting that the PCST is providing, which I spoke about earlier.

Let me stop there. I want to offer to Thomas to add anything to what I just said and then maybe we can see if there's any questions. Thomas, do you want to add anything or do you – are you good?

Thomas Rickert: Thanks very much, Xavier. I'd just like to say a few words particularly in response to Jeff's point in the chat. Jeff has raised his point that – or point of disappointment that funding is not available for other PDP work and that sort of the CCWG or transition-related work is privileged.

I do agree that there is sort of a special role for this project and that it has absorbed a lot of energy from the whole community. And, Jeff, I think you've been one of those who warned very early after the US government made its announcement in front of the GNSO Council that you would want the Council and the GNSO to focus on its mission and not the fully distracted by the accountability work.

Nonetheless, that happened to a certain extent but I sincerely hope that you agree that the transition, A, was a very important and still is a very important project and that, B, the work on the transition has really allowed for the community to move to the next level and that includes the collaboration between the community staff and the Board.

We have worked extensively with the BFC, with staff, with the other cochairs to come up with predictions of what the budget should look like and other than in Work Stream 1 where we sort of had to request from staff when we needed funds and we only had limited possibilities to (sign) up on requests we extended to Council but we didn't really have cost control because we didn't have a budget and there was nothing – an alternative that we could use in terms of tools to control costs.

We now really have entered into a new phase and hopefully what we see with the CCWG today can serve as a role model for other policy-related work that is conducted by the community.

When we started preparing for Hyderabad I had a chat with Bernie and I said, Bernie, it would be just awesome to fly business in order to arrive there, be relaxed and be able to chair the meeting. And I was just – I was saying this more or less joking because I knew that CCWG members would only be funded economy class. And he said, well, you can fly business, it's your budget. You own it.

And I think that said quite something. And while I certainly did not use that authority over the budget to book myself into business, I think this is something that we have never seen before, that the community was giving funds to spend certainly within certain boundaries, but to associate this budget power with responsibility and accountability mechanisms for these expenses to allow for more transparency to track progress with the project against budget.

I guess this is an excellent opportunity for us as we move on. And so certainly the burden is now on us as CCWG cochairs, to show that this works and that this is efficient and that this really helps the community to become more efficient in its policy work not only on the CCWG but also in other areas of policy but such a model can actually be deployed in other areas of ICANN's community work.

So I hope that this helps shed a little bit of light on where we are and why I think that this is particularly important not only for us but also for the rest of the community. And we have to operationalize it, we have to make sure that we spend money wisely, that we track progress wisely so that we show that the responsibility that we are given that the, you know, paid back on us basically.

I know that Bernie has prepared some slides so unless Xavier wants to continue I suggest that we move on to Bernie who knows all about the niceties of the newly established cost control mechanisms.

Bernard Turcotte: Thank you, Thomas. Can you hear me?

Thomas Rickert: You can be heard all right.

Xavier Calvez: Yes.

Bernard Turcotte: Thank you. All right, given we're running a little late, I'll be brief here so we can leave time for questions. Next slide please. I don't seem to have slide control here. All right, Work Stream 2, just a quick reminder, is composed of nine topics. You've got eight here but one was added when we went through all the details at the end.

Next slide please. And these are the numbers. I think that you did a good job and we won't spend a lot of time on those. Next slide please. All right, now Xavier mentioned the legal committee. Originally in Work Stream 1 the legal committee was established and had rules of operations. We were overtaken by events and timing. And once we were discussing how to reestablish budget control for Work Stream 2 the legal committee was reinstated pretty much as it was.

Its role, as it states here, is to filter, analyze and refine and approve requests for legal service and to determine which firm is best suited to respond. So basically the committee meets once a month based on subgroup requests, so those nine subgroups that compose the work for Work Stream 2 can submit requests and then these are discussed, presented and with the support of the CCSC, the legal committee track legal expenses with clear distinction between what is related to its scope just as any other legal costs.

An important point here is that the legal committee ensures that requests is a legal issue and not a policy issue. I mean, this is what ICANN is about is to resolve policy issues. We don't want to send policy issues out to external legal counsel; we want to solve legal issues, we want to solve legal issues that are required, the expertise from external legal counsel and want to ensure that we ask that external legal counsel specifically what we want them to answer.

The composition, based on the Work Stream 1 legal sub team, is Leon Sanchez, which is one of the three CCWG Accountability cochairs; Samantha Eisner as mentioned by Xavier earlier; Athina Fragkouli, Robin Gross, David McAuley, Sabine Meyer, Ed Morris and Greg Shatan.

Next slide please. Again, the numbers recapping was Xavier was talking about, what is actually under the control of the CCWG cochairs. Next slide please.

All right, now meat of the thing is here. The guidelines for the legal committee. If ICANN Legal already has an answer available to the question it can be shared immediately to avoid extra costs. I think Xavier mentioned earlier, and Thomas also, with Work Stream 2 we've started in a new phase of work. As Samantha Eisner put it in Work Stream 1, you know, she thought it was absolutely understandable that the CCWG Accountability had its lawyers work very closely with them. ICANN, on this side, worked with ICANN Legal and their external lawyers. And those parties got together to resolve some issues.

We're beyond that now, and we're working in a much more I would say collaborative fashion. And I think this is a clear example of that that ICANN Legal will be at the table. And if they have answers to questions that are coming out of the CCWG Accountability, well we'll just get them there.

The committee may direct the requests at ICANN Legal or external law firm based on a case by case assessment. So basically they will look to take into account costs, delays, respective skills as well as potential requirements for independent advice. So really the idea is to be effective and efficient with using external legal advice. The committee is encouraged to use ICANN Legal as much as possible in order to manage costs effectively.

Sidley Adler will coordinate to decide which firm is best suited to address requests or decide to the CCWG independent counsel. If the CCWG requests advice from Jones Day, then Jones Day should disclose to ICANN that they will be working on this for the CCWG.

Hiring of other firms for specific expertise would be subject to the CCWG Accountability and ICANN Legal prior approval similar to the process that was used in Work Stream 1.

So once everything has gone through this process, the legal committee has determined it needs to hire external legal counsel, it forwards the request with the relevant details including the estimated costs and a report from the CCSC on the financial impact of possibly hiring this external legal service to the cochairs for approval given they are the budget owners.

The cochairs will consider the request and the financial impact as soon as possible and provide a formal response to the legal committee which will be documented on the CCWG Accountability Work Stream 2 wiki if approved. And then request that the legal committee take on the handing out of the assignments to the external legal service provider.

So that's it for me. And I guess we'll turn it back over to James to handle the question period. Thank you.

James Bladel: Thank you and I was actually – before throwing open the queue I just wanted to see if David wanted to handle the Q&A session or I'm happy to do so as

well. As you can see we're kind of managing this ad hoc. But it looks like we have a fairly significant queue so why don't I just go ahead and jump in with Paul McGrady. Hi, Paul. Go ahead, you have the floor.

Paul McGrady: Thanks, James. Paul McGrady here. So I have a question about the dollar amount set aside in relationship to Work Stream 1 and what topics then will be viable topics in Work Stream 2. And specifically in relationship to jurisdiction. I am on the jurisdiction team and there does seem to appear to be some I don't know how widespread but some appetite to reopen the issue of the formation of ICANN's – the jurisdiction of ICANN's formation.

And a very helpful staff paper came out today which talked about that issue and, you know, they mentioned \$5 million spent in Work Stream 1 and all of that Work Stream 1 work hinges upon California corporate status. I mean, you can't have a California empowered community if you're not a California entity.

So at \$1.4 million across all the teams. If we, you know, if it took \$5 million for one to explore, you know, 180 other countries as possible homes for ICANN I don't think that can be done at \$1.4 million. Should we be reading into the amount that's been set aside as the cochairs indication that at least you guys don't have a stomach for reopening up ICANN's formation jurisdiction and redoing Work Stream 1? Thanks.

James Bladel: Thanks, Paul. Someone from staff want to address that?

Xavier Calvez: I can start, James, if you would like. This is Xavier Calvez. And I will let then Thomas go on because I see he has also raised his hand. And I can't speak specifically about jurisdiction, but I just wanted to point out that the concept behind the envelope that – that just should clarify '17, is certainly including, a month other things, that the work will not be redone, that's already been done during WS 1. This is of course ignoring very specific cases where, to Paul's point, there may be some cases that need to be reopened, in quotes.

And I don't know specifically about jurisdiction. I just wanted to point out to the principle that's been assumed for the purpose of the assessment of the budget that what has been worked on and decided during WS 1 would not necessarily be reopened during WS 2.

If such needs to be the case, this will be an element that is in turn the information that the cochairs will use to understand what are the requirements and then what they will lead to. I'll stop here and let Thomas elaborate further.

Thomas Rickert: Thanks very much, Xavier. And thanks for the question, Paul. I guess it would be very unwise to try to redo all the work that we've done in Work Stream 1. The report that we put out, the recommendations that we've put out, includes several topics that we should work on.

As you know, the jurisdiction topic is multifaceted. And there are participants and probably members, I haven't done that test, in the jurisdiction sub team that would want to reassess the place of incorporation for ICANN, i.e. the legal system that should be applicable for ICANN.

But if you look at the genesis of our recommendations, all the additional materials that we've published with our Work Stream 1 recommendations it's quite obvious that our group came to the decision that it would be a moot exercise to go through all jurisdictions worldwide and see what jurisdiction might be the most beneficial for ICANN.

Actually, that would be a waste of time and energy and it would not be feasible. So that, to put it in a nutshell, the intention of our report was to create an accountability architecture to see whether all the accountability features that we've been asking for can be delivered under California law and certainly that would be extended to Work Stream 2 with us to see whether

there are any topics or any features that we would like to have that can't be delivered under California law.

To my knowledge, none of such issues have occurred or have surfaced so far. Meaning that together with the community and the lawyers that we've deployed, we could operationalize all features that we needed to enhance ICANN's accountability.

And therefore, in my view, in my reading and having followed every discussion both on the calls as well as in face to face meetings, as on the list, the intention was to do more of a gap analysis to spot weaknesses or deficiencies of California as a place of incorporation but in the absence of such issues coming up I think there should (unintelligible) any issues with it. And this is sort of why the legal budget that has been estimated for the whole exercise is not designed to do a global review of legal systems.

We have other aspects, other facets of the jurisdiction topic that should be focused on. And I guess that we need to keep this historical development of the report in mind as well as the limited time that we set ourselves for delivering on the Work Stream 2 recommendations and in terms of resources, money and time it would not be possible to do a global review of legal systems. I hope that sufficiently answers the question.

James Bladel: Thank you, Xavier and Thomas. And I think it was the last statement there, Thomas, was the clarity that I think Paul and some others were looking for given the constraints of the budget and the timeline of just how deep a jurisdiction review or analysis could go.

Is the very patient Phil Corwin. Phil.

Phil Corwin: Thank you, James. I'm very patient. I have two questions relating to the legal – independent legal advice budget. I wonder if staff could display the original document that we started with when this session started? Thank you.

And I wonder if we could start with Page 1 of this. Thank you. Okay. Let me say that I'm all in favor of, you know, efficient budgeting and accountable use of resources and not wasting money in any way. And I certainly believe that the cost of independent legal advice for Work Stream 2 should be substantially less than that of Work Stream 1. For example, there'll be no need for any outside counsel to be involved with drafting and vetting complex new documents like new provisions of bylaws or articles of incorporation.

Having said that, I'm concerned that the notion that 10% of the Work Stream 1 budget will be sufficient for Work Stream 2. May be extremely optimistic. And I would point out that Work Stream 2 issues are not less important than Work Stream 1, they are simply issues that did not have to be resolved prior to the transition but they're still very important issues for accountability improvements, and that certain of the Work Stream 2 issues such as staff accountability, and disclosure policies, which may expose staff communications, may be particular issues where the community feels that it wants to rely on outside legal advice to be sure it's fully objective.

So my first question is, what happens if midway through Work Stream 1 we've, even with the most tight controls by the legal committee, we're exhausting the \$1.4 million and we're not done? Are we simply bereft of independent legal advice the remainder of Work Stream 2? Or is there a way to readdress that budget shortfall?

And I wonder if anyone could address that question? And then I'll get to my second question.

James Bladel: Thanks, Phil. I see hands from both Thomas and Xavier. Whichever of you gentlemen would like to go first to tackle Phil's question.

Xavier Calvez: I think Thomas had his hand first so I'll let him go first and then I'll add.

Thomas Rickert: I think it would be best for Bernie to maybe briefly speak, or Xavier speak to the process that we have in place for asking for additional funds.

((Crosstalk))

Xavier Calvez: Sure. Sure, I'll do that. And apologies if we haven't had a chance, Phil, to listen to the earlier part of the call because we mentioned that earlier. In the budget responsibility it includes basically the duty of assessing what the needs of resources are to achieve the desired goal and as it relates to any subjects within WS 2, the PCST and the cochairs together will work to understand what costs have been incurred, what is the remaining work or trying to estimate that remaining work and come up with potential forecast of costs for the remaining work.

This may lead to identify that there's a shortfall for whatever reason. And that then there's a process to explain the potential shortfall, form later requests for additional funds that will then be reviewed by the chartering organizations and upon their recommendation to be submitted to the Board for approval with the right rationale and justification to be able to say there's more money needed to get this done.

And that's what the process would be. So yes, if there is a shortfall there's a mechanism to allow for additional resources. This request simply needs to be formulated, provided with the adequate rationale and submitted for approval in – so that transparently everyone can have the opportunity to weigh on it.

Phil Corwin: Okay. Well thank you for that explanation. I'm a bit concerned that the Board has the final word particularly when I think that the 10% of Work Stream 1 projection may be insufficient, but we'll just deal with that down the road.

Now I wonder if we could just get to Page 3 of this document. I have one quick question on that.

Thomas Rickert: This is Thomas. Before we move to that I would like to offer an additional thought as an answer because certainly I see the (unintelligible) between the budget for Work Stream 1 and the budget for Work Stream 2. And I would ask everyone not to perceive as this finger pointing and it is not - because it's not meant to be but Work Stream 1 was quite an iterative process.

You will remember that we had quite an exchange with the Board where the Board saw issues with the legal models that the group came up with. So that we had to redo our work moving from the membership to, you know, through another iteration to the final model that we came up with. And each of those interaction costs, I would say easily, high six digit figures in terms of dollars.

So I think that now we've really entered into new phase. I think that the very fundamental questions that we were facing have been worked on and completed. So I do hope that we will not face any situation where we have to detour and do double work, that duplicates or triples the legal fees associated with it.

Phil Corwin: Okay. Yes, thank you for that. Let me assure you I was not pointing fingers at anyone or anything here. And I've stated up front that I thought that the legal costs for Work Stream 2 should be substantially less than for Work Stream 1. If it was 1/3 or even 1/4 maybe 20%, I'd say that's probably realistic. I just think 10% is really tight.

Let me – quick question on Page 3, I don't want to monopolize things here. The legal committee, just quick question, it's going to make the decisions on whether outside advice is needed. It includes an ICANN Legal department representative. This may not be decided yet but I just wanted to ask how the legal committee will make its decisions. And I would express the view that the view of the ICANN Legal representative should have less weight than the view of the community members in making those decisions. So that's my question and statement. And I'll get out of the queue once it's answered. Thank you.

James Bladel: Any takers on...

Phil Corwin: Any response?

James Bladel: ...that question? Thomas? Xavier? Bernard? Bernard has his hand up. Go ahead, Bernard.

Bernard Turcotte: Thank you. If you actually go into the details of the legal committee from the original model, I believe that the ICANN representative is there for advice but not a full voting member. So the – as Thomas has said, excuse me, we've gotten into new territory here with Work Stream 2 and I believe that the (unintelligible) will adjust itself accordingly. But possibly Greg will have more to say on that when he takes the mic. Thank you.

Phil Corwin: Okay. Thank you very much.

James Bladel: Okay thank you, Bernard. Thank you, Phil. And next up is David McAuley. David, your question.

David McAuley: Thank you, James. I actually have two questions. One is really a comment slash question for Bernie on the legal team coordination and what it – what it is, Bernie, I think on some – coordinating with Sidley I think there are some questions that the legal team is going to face, and I'm on the legal team and have a pretty high regard for the other members on it. I think we've done – I think we gel and I think we know what we're doing.

I think there's certain things where we won't need Sidley to coordinate; we can send directly to the firm involved. And I'll use one quick example. I thought of a question today on the IRP implementation team. It's an esoteric question that deals with the retroactivity – the law regarding retroactivity of bylaws in California. That question would clearly go right to Adler. And so I

think that that coordination bullet should allow for flexibility on the legal team in clear cases.

The second thing is I have a question for Xavier, and it's really a question on how do either the cochairs or the rapporteurs, or even the teams keep track of what is being spent, how much gas is in the tank, and can you also comment, Xavier, on what's the lag time on getting bills from the law firms? In other words, if an expense is incurred today, when would you see that bill that could affect our watchfulness on this? So thank you very much.

Xavier Calvez: Thank you for both very good questions on the practical implementation of this. So some of those details need to be worked out, but in principle, what I'm hoping to be able to do is identify the requests and be able to track with the legal firms the work on those requests with the – basically a very simple tracking mechanism where we would have a request identified by code or letter or number and then have the firms track their time and their work according to those cases created and identified with the number or letter or code and having those sorted in that fashion as well.

The billing of legal firms is – the timing of the bills being provided varies fairly drastically across the firms. Adler has been relatively diligent. Sidley has been usually much later. But what we're trying to do is get around the problem rather than trying to resolve a problem that's really in the hands of the legal firm.

And we're trying to get around it by not necessarily trying to obtain the bills from the firms but obtain a more timely information on the hours spent by the firms because they track that on a fairly regular basis and it is apparently less cumbersome exercise for them to aggregate the hours together and share that information with us than produce the bills.

So bottom line, we're hoping to be able to get more timely within maybe a couple or three weeks from the end of the month the hours spent by the firms

so that we can have as timely as possible tracking of the costs and therefore know how much has been effectively consumed and be able to react quickly to that. So that's our intent. It's not a perfect exercise, it's not a daily monitoring but this is as timely as we're trying to be able to get it done. I'm hoping that helps in answer your question.

James Bladel: Thank you, Xavier. And I saw that Bernie had his hand up. Bernie, did you want to respond as well?

Bernard Turcotte: Yes, just to tag on to what Xavier was saying. Part of the issue was how we were assigning work in Work Stream 1. I think in the presentation we just gave, the notion is that Work Stream 2 outside legal firms will be asked, and it's very clear in the mandate of the legal committee, very clear and specific questions. So I think that will play also in helping us manage and understand when we're getting the costs in. Thank you.

James Bladel: Okay thank you, gentlemen, appreciate that response. Next in the queue is Jeff Neuman. Jeff, go ahead, you're up.

Jeff Neuman: Yes, thanks. This is Jeff Neuman. Thank you, Xavier, for the presentation. You know, I guess my question – I put it in the chat but I definitely – my fear is having Sidley – I agree with David what he just said is that there's clear cases where they know there's another firm that's specialized, they should be able to go directly. I understand the tracking aspect that Xavier, you mentioned.

But my fear is you're paying a lot of money for essentially project management. And if they don't bill you for that, that's great, then I'll withdraw that. But from that I've generally the history I've seen with firms is that they bill you for all of that kind of stuff. But I guess one of my questions is how – and again I remember the whole RFP for Work Stream 1 with the selection of the law firms, and I remember reading each of the proposals fairly closely.

What I don't remember is the negotiations that took place to drive down the fees as they were originally proposed in the proposal whether ICANN staff did that. And I'm not saying we should have another RFP for Work Stream 2 but I do think the work is sufficiently of a different nature where perhaps a renegotiation of fees should be entered into as the caliber of work may not be as, in some areas, as esoteric as it was for Work Stream 1.

So my question to Xavier is, generally with law firms, do you renegotiate with them every year or every two years in this case? Is that something that you all will look into or the legal committee will look into to try to reduce their fees? I'm sure after the amount of work that we've given them, they may consider that.

And then the second thing I do want to just disagree with what Phil Corwin said about the Board. He's concerned that the Board is in a position to approve all requests for extra funding. I actually think that it's right that the Board should have to approve all requests for additional funding as they have fiduciary duties to the corporation to make sure its funds are being used and that it can carry out its business, so I just want to offer my support that additional funding, again, because I'm very concerned that ICANN actually does the substantive work it's supposed to do, I do agree that the Board should maintain that authority to approve any additional funding requests.
Thanks.

James Bladel: Thanks, Jeff. Xavier, go ahead.

Xavier Calvez: Thank you, James. And thank you, Jeff, for both the question and the comment. So regarding legal firms, I'm now speaking out of memory and I will need to recheck because I'm not sure of what I'm going to say. But I think that we need to look into the contract with the legal firms and namely Sidley and Adler, because I'm suspecting that the engagement letter that we had for them and the contract that we had with them was with the scope of WS 1.

And I don't remember now if we can fit into that same contract the work of WS 2.

So from that perspective we would have another opportunity to look at the work. What you're providing as an insight to the nature of the work, and therefore the nature of the resources, that would provide that work, I don't have visibility on that.

But I think that I would expect the legal committee who has – which includes the experts, I would say, and lawyers in people who have the experience of sourcing legal advice, to be able to direct also or be able to formulate what they think the requirements are associated with the questions so that the answers are provided in the most cost efficient fashion by the firms, knowing that it's difficult for the legal committee to really choose who the firms should be putting in charge of responding to the questions because at the end of the day they want to ensure they had the right answer to the right question.

So I think that this is choosing the resources has an impact on the rates. We had managed to negotiate discounts for – with the firms on their rates on the basis of the fact that we're a nonprofit, in some, and I definitely think that we should further renegotiate the rates as much as we can.

I think insights on the nature of the work would be very helpful in doing so and I think this is a good point for us to follow up on to see how we try to renegotiate with the firms the type of work, the type of support in the rates that they apply and avoid the project management type of costs that you're pointing out to as a risk, which I think has occurred in – during WS 1.

But part of the point that Bernie was making earlier on having very specific defined and pointed questions should help mitigate the risk of the firms having to do a lot of project management because basically the legal committee would kind of do a little bit of that project management work ahead

of asking the questions. So I'll stop there and see if there's any reaction from Jeff or others.

James Bladel: Thank you, Xavier. And actually we have about four minutes remaining in our time and two questions remaining in the queue. So if we could ask both questions and responses to be mindful of the clock that would be great. We won't have to cut anyone off. Next up is Ed, go ahead.

Ed Morris: Thanks, James. Jeff, very briefly, I'm on the legal – was on the legal executive as well in WS 1. I've seen the initial contract and I don't often compliment ICANN but the rates I saw were substantially less than I would expect so I would reiterate what Xavier said, they did negotiate a discount and did a good job in my estimation.

Quick question for Thomas, have we budgeted enough for staff? I'm sitting here with my wonderful CET sub team ready to get going and I'm still waiting for a staff report that's about three weeks overdue. And I know we lost Grace, the greatest employee in the history of ICANN. But do we have enough staff members budgeted to work on WS 2? Thanks.

Thomas Rickert: Thanks very much, Ed, for the question. I think we do. We have discussed with the CCWG at length the way we would like to conduct Work Stream 2. So there's less involvement from staff in the course of this work. The sub team are really responsible for the heavy lifting and the drafting of the documents.

Certainly the departure of Grace was not very timely for this initial phase where we have been waiting and some groups are still waiting for the staff report. I do expect that problem to, you know, to disappear once the staff reports are out.

I defer to Bernie to add to that if he likes.

James Bladel: Great. Thank you, Thomas. Bernie, Xavier, any other comments? If not we can – Xavier, go ahead.

Xavier Calvez: I'll add quickly – very quickly I'll just add that not trying to make commitments for – on the behalf of Theresa and (Sun), but the bottom line is the staff will try to make sure of course that the right amount of support is provided and enough support is provided and there's a very good relationship with the cochairs, and the staff, in the entire membership of the CCWG, but that collaboration should lead to be able to identify any shortcomings or shortfall of resources where they happen and try to plan and anticipate for those.

And we all have the same objective to make this work so at the end of the day we'll make sure to be providing the support that (unintelligible) and have the most effective approach there. Thank you.

James Bladel: Okay thank you, Xavier. We'll give the last word to Greg. Greg, go ahead.

Greg Shatan: Thanks. I have about half an hour of things to say in response to things that were already said but I think I'll say them. Within the legal committee, and I think that, you know, clearly being good consumers and guardians of the community's and ICANN's budget is important to us. And I'm confident, frankly, that it is to the firms we're working with as well and that the learning curve they've already gone on is going to make things more efficient.

You know, two specific things and then I have a very quick question. Is that one we'll talk to Sidley and Adler and get feedback from them and based on Work Stream 1 on how we can keep the budget or spend as low as possible. And I know from various chats I've had that they have ideas, not all of which we followed, some of which we didn't even necessarily hear, plenary, I want to make sure that the legal team at least hears what they have to say about why they thought the budget – why they thought the legal spend was high at times. You know, with a nearly \$2 billion gross revenue they don't need to make an extra dollar off of us to keep the wolves away from the door.

Secondly, I think it's important the legal team – legal committee see the bills that are coming in. You can't really manage lawyers without seeing the bills. It's the main way of seeing who's doing what and how much time it's taking and bills are quite descriptive.

And as far as, you know, I won't get into the issue of renegotiating and law firm rates, and all that. The question I had was back I think on the Page 2 of the budget slides. It was the chart. And the question was whether the \$1.4 million that's budgeted is that covering Sidley and Adler and potentially if we find that neither Sidley nor Adler has the resources we need, you know, third firm that is being brought in or is there something more that's covered in that \$1.4 million there in the second – in the column under budget and dollar tripe zeroes? And specifically is that covering...

Xavier Calvez: I can take that...

((Crosstalk))

Greg Shatan: ...ICANN's fees as well?

Xavier Calvez: Greg, thank you for the question. And quickly to try to answer, we are assuming, by lack of perfect knowledge but I think it will be for the legal committee to determine where to source the best possible advice, the most competent firm or the firm that has more advanced knowledge on it. But we are assuming that any of the three firms could be used whether it's Jones Day or Sidley or Adler.

And honestly the committee would say, we don't think we have any of those firms having the knowledge that we need, we need to find another one, that would be for the committee to define. So the \$1.4 million is I would say agnostic to which firm or firms is being used, it's simply to all manner of costs to cover for legal advice.

Greg Shatan: But it's not – it's only covering advice that is requested by the CCWG, it's not covering advice that we requested by the ICANN staff or Board relating to work in this work stream.

Xavier Calvez: Correct.

Greg Shatan: Okay, thank you.

James Bladel: Okay thank you. And we're a few minutes over but I really wanted to say, you know, express some gratitude to David, to Xavier, to Thomas and Bernie and the other members of staff for setting aside some time. Thank you to everyone who was able to attend this call. And for very lively Q&A exchange, I thought that was very, very helpful.

Just a note, again, that this will be an item for discussion at the GNSO Council meeting on the 1st of September. So if you are a councilor or if you have another question or point to make please work through your ExComm and your councilors to get that on the table and include in our discussion on the 1st of September.

And also we could certainly make arrangements to feed additional questions to Xavier and Thomas in the interim between now and that meeting if you have some specific items or follow up questions that weren't covered during the session today.

But otherwise, thank you, again, for setting this up and I thought it was very useful and will be a good supporting resource for our conversation later next week.

So with that I think we can probably stop the recording and close the call. Nathalie, if you don't mind?

Nathalie Peregrine: Thanks very much, James. (Mary), can you please stop the recording?

Thank you, everyone, for joining. This now concludes the call.

END