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JONATHAN ROBINSON:

Okay. So welcome, everyone, to our call on the IANA IPR. We set this call up on the back of our joint collaboration, I guess, between the different operating communities to try and make sure that we had asked all the right questions and done the appropriate due diligence on the proposed solution of using the IETF trust to host the IANA IPR. So that's the background.

And I think Greg suggested in our mailing group an agenda, which you see on the right, dealing with the Q&A on the IETF Trust, which was the primary purpose and initial motivation for having this meeting. And thereafter, to time permitting, get into more on the mechanics and process going forward, including any status or process of dealing with the updated agreement.

So I think that's where we are. And there has been some quite helpful discussion on e-mail between, first of all, the crafting of the various questions and issues, which you see in a list in front of you, and should likely have seen beforehand. And then I think Andrew, and possibly with some help from others, crafting some answers, at least initial attempts to answer those various questions. And then [inaudible] have helpfully compiled those the table which you see in front of you.

So it seems to me that to deal with item 1 of the agenda, we need to walk through the table and really highlight, to the extent to that answers provided to date need to be either supplemented or corrected or clarified in some way, we deal with them. To the extent that they are self-evident and stand alone satisfactorily, I suggest we don't dwell on them.

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So with that in mind, my suggestion to you is that we take a walk through the set of questions and look for ongoing concerns or open issues, and deal with them on a case-by-case basis. You should have scrolling and magnification rights individually, so there should be nothing to stop you getting the document to the right size and location.

Any comments or questions on either the agenda or that approach to item 1?

Okay, well I suggest we then get moving through the different areas. And Josh, Greg, others, you've obviously had a chance to see the answers provided. And, of course, others who might want to supplement those answers, please come in, as I suggested we go through them.

So 1A is, "What's the relationship between the IETF Trust and the IETF?" And there's a pretty comprehensive set of answers or phrases describing that. Are there any additional questions or concerns arising as a result of that? And obviously, in particular, with respect to the prospective housing of the IANA IPR within the IETF Trust.

Josh, go ahead.

JOSH HOFHEIMER:

Thanks, Jonathan. And I just want to say in the beginning thank you to Andrew and whomever else participated in compiling these responses. They're very helpful and informative.

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Just for my own clarification, the way I count, is it correct that there are eight voting members of the trust and one non-voting member? That's the IETF Administrative Director.

UNIDENTIFIED MALE: No, Ray is a trustee as well. He's a full trustee. There are no non-voting members of the trust. Ray is a non-voting member of the IOC. And this is sometimes a wrinkle that catches people up.

JOSH HOFHEIMER: So how many then? Is it nine members of the trust? Nine trustees? That's the way I counted it.

UNIDENTIFIED MALE: Yeah.

JOSH HOFHEIMER: I had counted six that were specified, two that were appointed by the NomCom, and then Ray, the Administrative Director.

UNIDENTIFIED MALE: Yeah, that's right. Sorry, I was talking on muted microphone. That's correct.

JOSH HOFHEIMER: No worries. Okay. And generally, how are decisions made at the trust? Is it by majority of the trustees? Or is it consensus?

UNIDENTIFIED MALE: So formally, we take votes. But we strive for consensus, so we tend to chew things over pretty heavily. But formally, it's a vote, and they're recorded.

JOSH HOFHEIMER: And is it just majority vote?

UNIDENTIFIED MALE: And I should say, obviously, any of the other trustees should jump in and correct me if I step on anything here, because I do that all the time. Yeah, it's majority vote.

UNIDENTIFIED MALE: One nuance. It has to be a majority of the sitting trustees, not just the trustees [that have made it].

UNIDENTIFIED MALE: Oh, that's right. Yes, thank you.

JOSH HOFHEIMER: Okay.

JONATHAN ROBINSON: I'm going to just sort of nudge us through the document.

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UNIDENTIFIED MALE: I'm just taking a note.

JONATHAN ROBINSON: If you could just let me know when you're done with 1A, for example, then we can just move on. And I'm happy for you, frankly, to lead through number 1A, B, C, if that would be most efficient, Josh. So, please, go ahead if you like, and I can just manage the queue to the extent that others want to chime in.

UNIDENTIFIED MALE: Is that everyone, or just me?

UNIDENTIFIED MALE: No, it's everyone. I suspect somebody put us on hold and has hold music.

UNIDENTIFIED MALE: Please don't do that, whoever put us on hold.

UNIDENTIFIED MALE: That might be Lise. I think she'll come back in.

JONATHAN ROBINSON: All right. So we've got a hand up from Greg, and then a hand up from Jorge. So, Greg, go ahead.

GREG SHATAN: Thanks. Since the trustees and IAOC members are essentially a mirror image, how does the trust maintain independence from the IETF org, or doesn't it?

UNIDENTIFIED MALE: Well, it's never come up. Since the interests are so closely aligned, we don't... I don't actually know what it would mean for there to be a kind of issue there. Remember that the trust doesn't take instruction from the IETF. But of course, the recall procedures directly could remove any NomCom-appointed IOC member and could remove the IETF Chair. And the IEB Chair could be removed by the IEB at any time. So there are at least four people who could be removed at literally any moment. And then there are other mechanisms for the other members. So there is accountability to the IETF and to the community, but it's somewhat indirect.

And when I say, "at any moment," I guess I should say it's at any moment, but there is a fair amount of procedure to do it. The recall petition or the recall mechanism at the IETF is a little bit complicated, and we've never actually exercised it all the way through.

JORGE CONTRERAS: I just wanted to intervene and give some more color to that response. Also, because we haven't really done this, we just leapt right into this call, I really want to understand what is happening on this call. This is a recorded call. We just had two questions on fairly technical legal

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matters from members of large law firms directed to my client. And I guess I'm just curious. Most of the answers to these questions are contained in the Trust Agreement. Certainly, the responses to the [Sidley] questions are. And I'm just curious, what is it that these questions are directed at? I do not expect these responses to be embedded in any kind of agreement or representation of warranty by the trust or by IETF.

And I guess I'm also curious who Sidley Austin and McCarter & English are representing on this call. Or is it people who are from these firms appearing in their individual capacities? I'm, of course, the attorney for the trust, and I'm happy to answer any questions in that capacity. But when we have outside attorneys on the line, I guess it's always helpful to understand who's being represented.

JONATHAN ROBINSON:

Okay, Jorge. Let me try and level set. It's a good point, and if we didn't all come in with similar expectations, let's make sure we are clear. And maybe others can help me if I step out of line here, but I will try and set where we are.

We did a whole lot of work to try and identify, first of all, for a variety of reasons, where the IANA IPR might best be located. We then – and had a variety of discussions between the three different operating communities as part of the work on the IANA transition. We eventually settled on the fact that, for a variety of reasons that are too much to go into now, that the IETF Trust be the most likely vehicle, and the most

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appropriate vehicle, to house the IANA IPR, subject to fully understanding and doing, in effect, a form of due diligence on that.

And when that work started to be done on behalf of the naming community, who are being assisted by Sidley Austin from a legal perspective, when that work started to be done, it became apparent, readily apparent, that the best way of getting to the root of understanding any issues in and around the ultimate suitability or any impediments or concerns with the IETF Trust, that was best handled by a direct Q&A between those more knowledgeable about the IETF Trust – that is to say, the trustees. And that's the genesis of this call. It's meant to be a relatively informal, but not entirely informal, opportunity to ask those questions and get to better know and understand that.

As for recording, it's common practice amongst us for the way in which we work, in order to be transparent. And that's the purpose of it. It's not in any sense to put anyone in a position that might compromise them.

So I've tried to answer that briefly, but thoroughly. Can we just clear the queue and ask if anyone else would like to come in on that point, just the level set? And if others are satisfied that that satisfactorily sets out where we are right now, and, Jorge, if you have further points or questions, having heard that, please come back in now.

GREG SHATAN:

I'd like to be in the queue.



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JONATHAN ROBINSON: Greg, you are in the queue, so why don't you just go ahead right away then?

GREG SHATAN: Okay. Jorge, first, nice to meet you. Second, I'm a member of the GNSO, and more particularly, the Intellectual Property Constituency. Have been since 2007. I'm currently the President of the Intellectual Property Constituency. I'm also the appointed member of the Cross-Community Working Group on the IANA Stewardship Transition, representing the Commercial Stakeholder Group of the GNSO. And I'm here in that capacity and not in any capacity related to McCarter & English or any client of McCarter & English. So I hope that helps level set why I'm here.

And I would also underline that the intent primarily, of this portion, at least, is really educational. But that also, to some extent, involves understanding positions, as well as facts. So I think the sense that I got of your question was a little bit of your neck hairs bristling, and I think that's not really the way I would hope you would take it. Thanks.

JORGE CONTRERAS: Thank you very much. That's helpful. We haven't met. And you see a lot of e-mails coming with a lot of law firm names at the bottom and start to wonder what's going on. So that's really helpful. I don't mean to be bristling. I also didn't want this to turn into a deposition of Andrew on matters that are primarily legal matters.

So I can actually – and again, if there are other people who wanted to talk about the level setting, I will let them speak. But I can also address

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that IAOC/IETF trustee question, or give an additional gloss to that beyond Andrew's response.

RAY PELLETIER: I did have a question, if I could?

JONATHAN ROBINSON: Is that Ray?

RAY PELLETIER: Yes, it is. My question had to do with, I thought I heard it said, in the interest of transparency, the session is being recorded, which leads me to ask, is it intended that this recording is going to be made public?

JONATHAN ROBINSON: That's a really good question, Ray. I think it's so common – well, first of all, we've got – "we" being from the perspective of the names community – invited IETF trustees and/or representatives to come onto the call to help us to understand their position. We asked ICANN to facilitate the mechanics of the call. And in fact, to be fair – and I apologize for my part in this – we didn't really A) level set at the beginning, which I hope I've done now, although it was assumed that we had a common understanding. And that's probably in error. And second, that we would be comfortable with the call being recorded. It's a very difficult position. Certainly, personally, I haven't asked that the call be recorded, but neither have I asked it not be recorded.

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So I guess if we're really at that level, we should...

UNIDENTIFIED MALE: But the question is a very simple one. Do you expect to publish, make the recording public? It's not a question of whether it's being recorded.

JONATHAN ROBINSON: Yeah. And I guess it's on me making it public. I wasn't... We have generally – the group who have been working on the IANA IPR, the cross-operational community group, have had an open mailing list. Maybe someone else can help me out to the extent that mailing list is public or not. For what it's worth, I'm not wedded to making it public. This is really about doing the due diligence to try and work out suitability and/or issues associated with the IETF.

UNIDENTIFIED MALE: Again, I don't think Ray was being confrontational. He was asking a factual question. Do you normally make such recordings public?

JONATHAN ROBINSON: In a very general sense, yes. But the reason I'm fumbling in any sense is this isn't precedent. We aren't usually meeting in this group or form, and it's not up to me, per se, to decide. But Andrew indicates in the chat, he has no concern with making the recording public. And in general, we would not hesitate to do so.

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UNIDENTIFIED MALE: The answer is, why not?

JONATHAN ROBINSON: Yes, exactly.

UNIDENTIFIED MALE: Move on.

JONATHAN ROBINSON: Thank you. So with that in mind, if anyone who speaks could A) fall in the queue, and B) identify yourself at the time you speak, if you haven't already been identified.

Jorge, looks like you're next in the queue.

JORGE CONTRERAS: Okay. Well, thank you. And again, sorry to sidetrack us a little bit there. But certainly, that was helpful for me. I do appreciate it. And happy to meet and work with everybody.

So the question – now I've forgotten who asked the question, but it was about the relationship between the IETF Trust and IETF, and how separation is maintained when the IAOC members are one and the same, the trustees. And I point out a couple of different things. First, as all the lawyers on this call know, trustees of a Virginia trust have an independent fiduciary duty that's an individual duty to operate and serve the trust, independent of any employment or other relationship that they might have. And if they feel they can't fulfill that fiduciary

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duty, then they should step down as trustees or not be trustees. And it's certainly not mandatory that an IAOC member serve as a trustee. That just makes them an eligible person. Each trustee signs and agreement, agreeing to uphold his or her fiduciary duties and the duties of trustee. So it's an independent role for the individual.

The other thing I would point out is that the IAOC is not the IETF, per se. In fact, the IAOC is not the governing body of the IETF. There are lots of acronyms here, so I apologize to those who are not familiar with them. But on the standards development and process side, the IESG is the governing body of the IETF. It's much larger than the IAOC. There are some IESG members who are trustees, but that's a much smaller number. There's also a group called the IAB, which Andrew is of course intimately familiar with, as the Chair, that also operates in a governance capacity at IETF.

The IAOC is an administrative committee for the IETF. It is not necessarily a policy-making committee at IETF. And I can let Ray and others, and Scott, discuss in much more detail what the IAOC does at an operational level. But as far as standard policy, intellectual property policy, the IAOC, that's not really their realm of responsibility. The intellectual property policies, which Scott and I have been involved with for getting on a couple of decades, the ultimate authority there is both the IETF community and the IESG, not the IAOC.

So even though there is an identity of membership between the IAOC and the trust, there's not an identity of governance-level control of the two organizations. So I hope that doesn't just confuse things more, but I think it's important.

JONATHAN ROBINSON: Thanks, Jorge. I'm not sure. I get all of it, but I think it's helpful if it's clarified. Bear in mind that the overarching objective is to try and understand these issues with respect to the suitability of the IETF Trust as a holder of the IANA IPR and any implications that might have for the naming community, so that it can be explained back to the naming community whether the vehicle is indeed suitable or not. And if so, how that decision has been made or what the issues are.

Greg, why don't you come in next?

GREG SHATAN: Thanks. Just a follow-up question. When you mention the fiduciary duty of the trustees, who is that fiduciary duty owed to?

JORGE CONTRERAS: And, Andrew, I'm happy to answer these questions. You please feel free to jump in at any time, but this is kind of a legalistic question. Under Virginia law, and the laws of most US states, fiduciary duty of the trustee is owed to the beneficiary of the trust. In this case, the beneficiary of the IETF Trust is the IETF community, which is defined in the Trust Agreement. And so the trustees' fiduciary duty runs to the community, the IETF community, which is fairly broadly defined.

GREG SHATAN: So that would be the IETF as a whole?

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JORGE CONTRERAS: Correct.

ANDREW SULLIVAN: So if I can just put a tiny, little bit on that, to be perfectly clear, yes, it's the IETF as a whole. But the IETF doesn't actually have membership. So that translates, actually, into anybody who could participate in the IETF, like everybody in the universe, as long as they can join a mailing list.

JORGE CONTRERAS: But not to them in their personal capacity, as Joe Blow from Cincinnati joins IETF. You don't owe a fiduciary duty to him in his automobile purchase. It's only to the extent that these people are involved in Internet-related activities.

GREG SHATAN: So it really is to the IETF as a functioning unit, putting aside its – whether it's a legal person or not.

JORGE CONTRERAS: That's fair.

JONATHAN ROBINSON: Okay. Greg, is there follow on that?

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GREG SHATAN: I'm good, thanks.

JONATHAN ROBINSON: Okay, thank you. So I think I'll pass back to Josh, really, who's to lead through the questions, because that's most logical, since they were derived from Sidley, in discussion with names community reps in this area.

So, Josh, if you're willing to do so, why don't you lead us through other elements of the questions, to the extent that they haven't been satisfactorily answered or embellished by Andrew's or others' answers?

JOSH HOFHEIMER: That's fine, Jonathan. And just to reiterate what Jonathan said, George, Sidley was engaged to represent the CWG as part of the stewardship transition. So we are acting as outside counsel to the CWG in its efforts here. These questions came about through some joint internal conversations and the like.

I actually, from this discussion, think the answer on 1B and C, unless somebody else has a follow-up question, I didn't have anything else on 1B and C.

JONATHAN ROBINSON: So happy, Josh, in the interest of time, to move on, because others can make themselves [inaudible] by raising their hand in the Adobe room.



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JOSH HOFHEIMER: Right. I was just pausing for a second. So on 1B, I guess just the question that we had, we were trying to understand if it's clear, the distinction... Does the ISOC... From what you said, it's the contractual body, or it becomes the home for when there's a contractual or legal need for an entity. But you did say there's no formal relationship between the ISOC and the trust. Is there any sort of oversight role or relationship formally between the ISOC and the IETF, as well?

JORGE CONTRERAS: Well [crosstalk] –

JOSH HOFHEIMER: Or is that one just for –

JORGE CONTRERAS: No, I can take a first stab at that. I just want to back up for a second. There is a formal contractual relationship between ISOC and the trust, an administrative services relationship. ISOC, for those who don't know, is a Columbia non-profit corporation that conducts a number of non-profit, educational advocacy activities related to the Internet, Internet standardization being one of them. The ISOC provides office space. It provides employee support and whatnot to the IETF Trust, which doesn't actually have any employees or any administrative capacity. And there's an administrative services agreement between them. To that effect, Ray and others can speak to in more detail.

With respect to ISOC and IETF, legally, IETF is an organized activity of ISOC. And IETF is not a separately incorporated body of any kind. It

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operates under the auspices of ISOC. IETF meetings, for example, the hotels and whatnot are contracted through ISOC. Airfare, travel reimbursement for people, all of that is contracted through ISOC. So there is an administrative relationship between ISOC in both IETF and the IETF Trust.

UNIDENTIFIED MALE: Does ISOC have the power to direct or cause any direction or activity of IETF or IETF Trust? Or does ISOC only take direction from IETF Trust?

JORGE CONTRERAS: So the trust and IETF are very different. The IETF Trust is an independent legal entity. And trusts have no pure incorporation. A trust has no corporate affiliates, really. It just has the nine trustees with a fiduciary duty to operate and steward the trust assets in the best interest of the beneficiary. There is no oversight role that any entity – whether it's IETF or ISOC – has over the trust.

I'm not sure it matters to you that much, but I think the relationship is more nuanced between IETF and ISOC, since IETF is really an activity of ISOC.

UNIDENTIFIED MALE: Let me frame it kind of in a parenthetical term. Might there be a situation where ISOC could sign an agreement or could enter into some sort of contractual relationship on behalf of the IETF trust without the IETF Trust directing it to do so?

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UNIDENTIFIED MALE: No.

JORGE CONTRERAS: No, that would be impossible. The trust is a separate legal entity. Only the trustees enter into agreements on behalf of the trust, and they have a voting procedure and whatnot. You can't have a rogue trustee. It has to be a majority vote of the trustees.

UNIDENTIFIED MALE: Okay. All right. No, I see. So it's when they – the ISOC can act as the stand-in legal body for IETF as an activity, but it doesn't act as a stand-in legal body for the IETF Trust. The IETF Trust would sign its own agreements and the like, by the trustees or some delegation of the trustees. Got it. That's correct, right?

JORGE CONTRERAS: Usually one trustee is – yes, usually one trustee who's designated to sign, often the Chair.

UNIDENTIFIED MALE: Okay. And the ISOC doesn't initiate the execution of documents. It only does so at the request of the IAOC?

JORGE CONTRERAS: That's on the IETF side.

UNIDENTIFIED MALE: Right, okay.

JOSH HOFHEIMER: I didn't have any other questions on 1. Unless anybody else does, maybe we can move on to 2. I'll pause for a second.

No hands are up. On number 2, I think we did answer that.

Sorry, Greg, you did have a question.

JONATHAN ROBINSON: Greg has a hand up.

GREG SHATAN: Yeah, I was probably about to say the same thing you are. I think the answer goes back to when we determined who the fiduciary duty of the trustees is. I assume that's the same community is that to which the trust itself is accountable, which would be the IETF community?

UNIDENTIFIED MALE: You did mention, Jorge or Andrew – somebody did – that it's a lengthy recall mechanism, but there's a general recall mechanism for the IETF trustees. Is that something that's captured in the Trust Agreement or captured in the IETF organizing many documents?

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UNIDENTIFIED MALE: For some of the trustees.

JORGE CONTRERAS: It's not a recall mechanism for trustees. It sort of can end up being that. It's a recall mechanism for IAOC members. Remember, IAOC is a committee of IETF. Under the Trust Agreement, all the Trust Agreement says is the IAOC members are eligible to be trustees. So if someone is recalled as an IAOC member, by definition they are no longer eligible to be a trustee. But that [inaudible] recall process takes place on the IETF side for the IAOC.

UNIDENTIFIED MALE: Maybe if you're familiar with it, you could give just a brief explanation of what the recall process would look like on the IAOC side. And also, if you could explain who can initiate that recall. Can it be initiated by or requested by any member of the community? Or how does that... How does somebody even trigger a review in consideration and potential recall?

UNIDENTIFIED MALE: Well, first of all, as I've said a couple of times it's only some members. The positional ones, such as the ISOC CEO, there is no recall mechanism through the IETF for that.

JORGE CONTRERAS: But for the ones where there is a mechanism, Andrew, you had gone through that. Do you just want to recap this process?

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ANDREW SULLIVAN: Yeah. So the point that I was trying to make is that the trustees, because of the eligibility rules, there are – different people appoint them. And so there are different ways can be removed. So if somebody really did go completely bonkers, it would be possible to make them step down, depending on the source.

JORGE CONTRERAS: So I the question is just curious what the actual procedure is for recalling an IAOC member, how it's initiated.

ANDREW SULLIVAN: So this depends entirely on who appointed them. So the NomCom appointees, it works like any other NomCom appointee. You've got to have so many people – I can't remember off the top of my head, but it's some number of people who are NomCom eligible. So that means they need to have attended three IETF meetings of the past five, basically. And they sign, asking to initiate this. And then there's a long procedure. I can send you the RFC. Probably easier to send you the RFC so you can peruse it than to go through the details on here. But that's the recall mechanism for that.

The same thing would be true of people who are on the IAOC by virtue of their appointment to another position. So there's the IESG Chair is on the IAOC because he's IESG Chair, which is IETF Chair. So that's also NomCom appointed. In the case of the IAB Chair, actually the IAB Chair is selected by the IAB. So it's even easier to remove the IAB Chair. You

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just convince the rest of the IAB to remove him or her, and then the IAB Chair is gone. In the case of the ISOC-appointed ones, you'd have to follow their rules.

UNIDENTIFIED MALE: A little bit more on the NomCom process, 10 or 20 – I forget what it is – people have to sign the recall proposal, which then causes a committee to be formed, a NomCom-like committee. Volunteers from the community, selection process, and then they go through the long process of deliberation to actually pull somebody from their role. It would take a very long time. It's never been done. It's not clear that it's actually feasible to do so.

UNIDENTIFIED MALE: Yeah, that was going to be the next question. Has there ever been a situation in which it was necessary to remove somebody?

ANDREW SULLIVAN: This is the point that I was dancing around a little bit, but I might as well just state it. We have had occasions where people have not been performing the way they should. And essentially what happens, because it's a little embarrassing to be recalled, is that you tell people, "Well, we've got almost all the signatures right here. Are you sure you want us to continue with this?" And people figure out pretty quickly, "Oh, I see," and they typically resign under those circumstances. It's happened very rarely. But, in fact, the procedure has been initiated. It's just never worked its way all the way through yet. And I think that's because

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people are sensitive to the fact that they're working in a community. And if there is that kind of interest, it becomes pretty obvious pretty quickly to people that you've got a problem.

The other thing that I would note is that NomCom appointees are a maximum of two years. So the NomCom, of course, can make a decision later. The IEB Chair is actually appointed once a year. The appointments from other bodies are typically two years, but they make their own rules.

JARI ARKKO: Sorry to interrupt. I joined a couple of minutes ago [inaudible].

UNIDENTIFIED MALE: Any other questions about the process by which a trustee could be removed?

JOSH HOFHEIMER: Okay. I think we've gone through number 3, unless anyone else has something that they – and number 4 was answered as well, unless somebody has something they wanted to add or otherwise. Just please raise your hand so I don't skip over you.

Okay. And we haven't had the chance to review on number 5. We haven't had the chance to take a look at any of that litigation. This caption, the link...



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UNIDENTIFIED MALE: We can summarize it. The vast bulk of it is subpoenas regarding RFCs or Internet drafts for patent cases.

JORGE CONTRERAS: Yeah. Just to break this into categories, the IETF Trust has never been involved in litigation. I think that's accurate, and I've been counsel to the trust since it was formed in 2005. IETF is different. I think that was Russ who just mentioned we have two categories of litigation. The largest is simply third-party subpoenas for document authentication. We get a lot of those constantly. But they're non-confrontational. We're only a third-party deponent or third-party document producer. We don't view these as particularly confrontational or controversial. All of those requests and responses are posted up on the website. And then there's litigation –

JOSH HOFHEIMER: Yeah, we were focused on – yeah, that's not the issue. The question was really focused on whether as a plaintiff or defendant, the trust or the IETF has been involved.

JORGE CONTRERAS: The trust never, on either side. For IETF, so the first category is a third-party subpoenas, we talked about. There is litigation in which the IETF has been sued as a defendant, but in our view, it's all be spurious. There have been copyright suits in the past that have been dismissed. We're involved in litigation right now. Again, we think it's completely spurious. It was dismissed in federal court in California. It's been refiled in district

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court. This is by an individual who is claiming billions of dollars of damages from IETF, but also 12 different companies and the United States Department of Justice, and so forth. The pleadings are online. We have every confidence that this litigation will be dismissed in our favor, just on motions, as soon as that's possible. But again, it's first starting to wend its way through California state court at this point. And again, unrelated to this.

UNIDENTIFIED MALE: Has the trust ever taken any action to enforce the IP that it's stewarding? To enforce claims of infringement or misappropriation by a third party?

JORGE CONTRERAS: Well, it depends on what you mean by "actions." Certainly, we have written letters and we've approached potential infringers. We have not initiated – we've never been in a situation where we had to initiate formal legal action, because we've always been able to work out an arrangement or a cease-and-desist letter was enough to stop the use of the marks and logos. Most of these uses have been what we would consider to be uninformed, good faith uses. Internet enthusiasts who decide they'd like to combine the IETF logo with their own [meeting] symbol or group name. And we've asked them to stop, and they generally have. And then we license the mark for t-shirts, in conferences, and other allied activities. Sometimes those have gotten ahead of us and we've had to send a letter requiring a license, and those have been fairly friendly.

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Again, we do police the marks, plural. We do police them, and we do send out letters when there's an unauthorized use. And luckily, we have not been in a situation where we've had to bring a formal legal action against anyone using the name.

UNIDENTIFIED MALE:           Okay, thank you.

JOSH HOFHEIMER:           I didn't have any other questions on 5. And I think the responses on 6 are informative, as well. Let me just pause and see if anybody else has any questions on 5 and 6.

Okay. So moving on to the other guiding principles questions that we wanted to ask some questions about and have a bit of a discussion, this is not pointed specifically at sections or language in the agreement, but is... Obviously, some of these things are touched upon in numerous places in the two documents. There may be some responses that come out of this discussion.

The first question, or couple of questions, are about how the trust – we understand you confirmed that the trust has not requested compensation for the work that it would be doing with respect to managing and licensing the IANA IPR. I've often seen it that the licensee in a situation like this would pay for, or would reimburse the trust, expenses that it incurs. Is that something that would be sought here as well? It certainly would make some sense. I just want to try to confirm how these things are otherwise going to be covered, how these

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expenses – just the fact of prosecuting or maintaining the marks and the domain names.

JORGE CONTRERAS:

Let me just make a couple of introductory comments, and others can jump in. Our understanding is that the portfolio is not huge. And we still are waiting to conduct a bit more due diligence on the registrations themselves. But from what we've been given to understand, the marks are not registered in 160 countries, with a lot of variance. The registrations are a fairly small group. So I don't think the maintenance expense is going to be particularly large. And our intention was to absorb the maintenance expense in our internal operating budget. But if it turns out that we're wrong and the mark is registered in 160 different jurisdictions, we may need to revisit that in the license agreement.

UNIDENTIFIED MALE:

And that may be true. And it seems like – maybe this is more administrative than anything. It doesn't seem like this would be a major issue one way or the other if reimbursement were requested. ICANN is paying these costs now, to whatever extent – however small or large they are.

But perhaps a more interesting question would be, the way it was proposed is that in the first instance, the IETF Trust would make a decision whether to enforce for the IP against an infringer, or to defend against a claim of infringement. And obviously, if that involves George's firm and outside counsel and the like, then those expenses can get more significant. Is that something that the IETF, if it wants to be the party

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enforcing, would also be the party paying for it? Is that the plan or what the trust was anticipating in this relationship? Or would the trust still expect the licensee to pay those costs? I'm just trying to understand what it might look like for enforcement and defense actions, which could be costlier.

JORGE CONTRERAS:

Understood. So certainly, all contributions are welcome at any time. But what we have proposed, in the likeness of creating a draft, is that enforcement would be at the trust's discretion and at the trust's expense. That the licensees can participate at their expense for their own counsel, if they wish, but that both the discretion and the cost would be on the trust side. We did not seek to have the licensee pay for or fund the enforcement.

UNIDENTIFIED MALE:

Sometimes though, certainly –

JARI ARKKO:

Maybe just if I can say something, just brief up level in this discussion. Proposed agreements are [inaudible] and can they explain why that might be the case, is that we view that as part of that bigger picture. And in that bigger picture, we don't necessarily expect this to be huge difference to what we're doing right now. Of course, we can't predict the future. Maybe all are attacked by some other outside forces who force all of us to spend money on defense or other activities. But this is really...

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We believe we can handle this. And of course, the IETF as a whole is funded by a large set of parties. My employer is one. ISOC is another one. We've taken support from many, many parties, including the [RIRs] and so forth. So...

UNIDENTIFIED MALE: We lost whoever was speaking there.

UNIDENTIFIED MALE: Jari?

JONATHAN ROBINSON: Okay, Josh, I'll take advantage of the gap just to remind us that it's five minutes to the top of the hour. I think since we're all on the call, we may want to run over just by a couple of minutes, but I'm sure others have made commitments beyond this. So to the extent we could get through this and get a satisfactory set of answers as we can or discussion on it would be great.

JOSH HOFHEIMER: Yeah, anyway –

JARI ARKKO: I was muted by somebody, not by myself. But I was also done, I think. So frankly, explained the big picture. Thank you.

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JOSH HOFHEIMER:

I guess what the real questions are – and it's sort of specifics about how we stated it, but being cognizant of time – it seems to me that we got through two questions that were focused on and asked in some different ways. One is whether or not, or a discussion of whether or not, the trust should have a unilateral authority within its role and responsibility as steward of this IP, the IANA IP, for the community. Whether it should have unilateral authority to make a finding or to determine that the licensee has breached this agreement, and potentially even terminate the license as a result. That's one.

And then the second question, which is kind of the flipside of the same coin, though it's not really addressed right now but we wanted people to be thinking about, is what happens if the trust breaches this license agreement, in the unlikely event. But the trust breaches the agreement or in some way takes action counter to its rights and obligations under this agreement with respect to stewarding that IP. And there needs to be... Is there a method to hold the trust accountable vis-à-vis this stewardship role, and potentially even remove the trust from this stewardship role, should the need arise?

Let me go back to that first question for a minute from our perspective, and then I'll – Andrew, I know, has his hand up. From the perspective of CWG, our feeling is that although the trust obviously is the owner of intellectual property from legal purposes, we believe it can delegate its authority to police, to the community, through the community agreement. And it could, by contract, agree that it wouldn't terminate this license unless and until the operational communities found that the IP had been infringed upon or used in a way that was outside the authority of the license, or there was some other material breach.

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I think from the perspective of the community, the trust really should be the steward, the administrative steward. In the same way that ISOC lends its legal entity to activities of the IETF, the trust would lend its legal entity to activities of the community with respect to stewarding this intellectual property.

Let me pause and see how people feel about that.

JORGE CONTRERAS:

I just want to make sure we're all on the same page here, because what you described, I think, is the spirit of we're all, at least in some degree, on board with in this relationship. And this is what we've tried to describe in what we're calling the community agreement. This is an agreement – and I know we're obviously out of time and not negotiating the agreement at this point. But we've tried to lay out a group process for arriving at decisions relating to the marks. We have asked the communities to monitor the licensees' use of the mark in their respective domains. There are consultative procedures built in there.

And this is unusual. This is something that isn't typical in a trademark licensing arrangement. It's something that we built out specifically for this set of arrangements. And we hope that they satisfy the needs that you're talking about. Undoubtedly, there will be things that we need to talk about specifically in those agreements. But this might actually be a good segue to figure out what our next steps are and what the next discussion is, because I can point to specific sections in this community agreement, but obviously not in the 30 seconds that we have remaining.



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JOSH HOFHEIMER: Yeah, so we do intend to get [inaudible] of the documents back to you all in the next day or so, on that point. But I did want to stick with the substance for a minute. I know Andrew had his hand up.

Andrew, are you on mute?

ANDREW SULLIVAN: Yeah, thanks. So I was. So everything... First of all, let me just insert here a reference to everything that Jorge said. And then secondly, I want to remind everybody, as well, how we got here, because some of the tone of some of these questions across as though the IETF Trust is somehow trying to get hold of something that it really values.

And I just want everybody to remember that we agreed to do this because we were the only viable option people had, given the time that we had. This is, from our point of view, a pain in the neck, at least from my point of view. I [inaudible] rest of the trustees. And if I had my way, we wouldn't have done it this way. But we don't actually have time to do anything else, and we can't change the trust. We cannot. We do not have time to do it.

So I want us to be really practical about what we're faced with here. Either you take the trust as it is currently constituted and accept the informal roles that the trust can do under its own volition, without changing the trust agreement and without going back to the IETF community. An appeals procedure, by the way, for any of those kinds of changes – assuming we could get them done, because there's a

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question of one of the [inaudible] and they'd let us do it – assuming we could get it done, the appeals procedure for that takes us well past October. So there's no way that we can actually change this. And I just want everybody to understand that, because I'm nervous that people seem to still have on the table a set of options which are not there anymore. Either we go ahead with something very like what we're got, or we're doomed.

JONATHAN ROBINSON:

Andrew, I'll just come in here a moment. I think that's precisely why the questions are as they are. It's not for the reason that you surmised there, but rather the opposite. It's recognizing that there the trust has limitations by definition, and part of those limitations are that it cannot be readily modified, certainly not in the time scale. And therefore, we need to understand properly the limits and, to the extent that it's relevant, accommodate those in the agreement.

So I think that the spirit is in the right direction. Given the time, I'll stop there. And I know Greg was also waiting to come in. And I'd like, Josh, perhaps even you can sum up where we are with the other agreements so I don't need to come in again, because I think others need to know where we are with dealing with the various other agreements that go and make up this picture.

JOSH HOFHEIMER:

I can do that. Greg, did you have something to say?

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GREG SHATAN:

Just briefly, two things. One, having been part of the group that, along with Andrew and Jari and Alan and others, sat around the table and dealt with this. And I apologize for leaving out those who were also there. The community agreement is the intended vehicle by which to solve the issues that might, in a different universe, be solved by looking at the Trust Agreement and recognizing that's a vehicle that has its own limitations and its own advantages. So allay the fears there, but yet we're still trying to make sure we understand where we're at, in terms of the balance between community trust, etc.

One particular item though that I wanted clarification on was the answer to question 6A, where we stated, "The community agreement should include oversight of the IETF Trust by the operational communities so the IETF Trust is accountable to those communities." And the answer begins, "I don't believe this is possible, because I think it would require modifications to the Trust Agreement. That cannot be undertaken as a practical matter."

So I just don't understand. I looked at the Trust Agreement. I'm no trust lawyer, but I don't see that this would require modification to the trust agreement. And I'm hopefully that that is not the case. Again, looking at somewhat walk a tightrope here, but trying to understand why the idea that it would be accountable – that oversight and accountability by the community, through the community agreement, would somehow violate the Trust Agreement.

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JORGE CONTRERAS: Well, there's certainly accountability through the community agreement. If the trust breaches the agreement, there are any number of legal remedies available. Breach of contract, that's where you're putting a contract in place and not just doing this on a good-faith basis. There's a contract there so that it can be enforced. This gets to the second question that Josh or whoever was asking about keeping the trust honest and making sure the trust does what it promises to do. Again, that's why we're putting in agreements in place.

UNIDENTIFIED MALE: Okay, and I think that's helpful. And certainly, part of it is accountability for the management and stewardship of the IPR. But I'm pretty sure that that's covered in the community agreement, and it sounds like the accountability for those activities shouldn't be an issue. So that's good by me. Thanks.

JOSH HOFHEIMER: And, Andrew, I do appreciate, if the questions sound like we're worried about the trust trying to grab something, that's not the intent. But this hopefully will all go well and will be a long-term relationship. And we're just a little bit trying to guard against the unknown and guard against future events that may be outside, beyond our control, if things change. But certainly, there isn't any belief that something untoward is happening or is in the works.

I think that what has been said here and discussions of the intent, I think we may have some beliefs on some changes that could be made to help emphasize the point that the trust is acting, in a sense, as a steward of

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this IP for the community. I think that would help. We have some ideas about how we can clarify that a little bit. And we can send those back for review. And if they're not controversial, then they can be adopted pretty quickly, and the documents could be ready to go.

Given the timeframe, there may be a couple of changes need to be made based on this conversation. But we do have draft markups that CWG has reviewed. I think we need to get sign-off on those. And Jonathan, I think we'd be in a position to be able to turn those back to the trust within the next day or so, depending on people's timelines and ability to take a look at the final versions.

JONATHAN ROBINSON:

Thanks, Josh. I'm mindful of Alissa and, I think, Andrew's point about the timeline in the chat. I'm not 100% sure of what the sequences of things is. There's a CWG meeting on Thursday. So, yes, I think that the point is we're aware of the urgency and will turn things around as quickly as we reasonably can in order to – and the purpose of this call was to best inform those markups of the document. So I think that it's been useful in that way.

Josh, are you satisfied that you've got what you, and we, needed out of the call at this point?

JOSH HOFHEIMER:

Yes, I am. I am, Jonathan. Thank you.

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JONATHAN ROBINSON: Okay, great. Thank you. Alissa, your hand is up. Would you like to come in at this stage?

ALISSA COOPER: Yes, thank you, Jonathan. I think it would be useful to identify the next call for this group, assuming that there are changes that get proposed. And then the trust has time to look at them, and other communities as well. And I think it's very important to set down what the next marker is for coming to conclusion on the text so that it can go out to public comment. So I wouldn't want to leave this call without some understanding of when the next marker is that this group is going to come back together to try to finalize the text of the agreement.

JONATHAN ROBINSON: Thanks, Alissa. I'm going to say, I hadn't necessarily expected that this group would get together on a regular basis. It may be that that's one of the outcomes of this call, is we need to get together again. The proposal for this call was that it was a one-off to inform the documents. And we've been working generally on e-mail and sharing those. But I'm not averse at all to scheduling another call in, say... I'm not sure what timeframe we need. Perhaps a week from now, at least as a placeholder. And as Josh said a moment ago, we expect to see turnarounds of returns of the documents – the community agreement and the others – in relatively short order. So perhaps that makes sense, to schedule another call. Yeah, thank you.

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ALISSA COOPER: It can always be canceled. But I guess what I'm wondering is if edits are suggested that the trust isn't comfortable with or feels a need for further discussion before the document can be finalized, then if not scheduling a call, then I'd just like to know what the process is for finalizing the documents and what the dates are for that.

JONATHAN ROBINSON: Okay. Be honest with you, I think it would be a good idea in any event. So if you can capture it, we'll put a Doodle for a call a week from now, in any event, as a placeholder. And, Greg, it looks like you'd like to respond.

GREG SHATAN: Thanks. Just briefly thinking through next steps, I think that we should be able to turn the documents back by tomorrow, I'm thinking. I don't think they need to be seen by the full CWG, except as if they're following our list, because it may take weeks for people to muddle their way through the changes that we have made. And I think that we're much better off – and that's just not possible. I think we've tried, as representatives of that group, to represent the interests and understandings that we're working with. So that seems simple enough to me. And with hope that if we have a call in a week's time, that if all goes according to plan, we send out our revised drafts tomorrow and other communities review those, and particularly the IETF Trust as the major formal party to the agreement – and let's not forget that ICANN is a party to the license agreement and may have a few thoughts of its own – we should be able to – maybe there will even be another turn of

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the document after our turn, I would hope, even before the call next week. And I'm hopeful that while our changes are relatively heavy, that most of them will be seen as being quite straightforward and consistent with what's going on. First drafts are never final drafts. And we tried to stay, I think, with the spirit overall of where we're going.

So that's where I would hope to see a turn tomorrow, followed hopefully by another turn, and then a discussion of any remaining open items in a week, plus hopefully a fairly active mail list through the week, which is at least as important as a call. Thanks.

JONATHAN ROBINSON:

Okay, thanks, Greg. So I think we will target getting a turn on these documents out very shortly and use that. And, as you said, hopefully those come back again with any further comment such that by the time we talk, as proposed, in a week's time, we are getting quite significantly down the road, which allays some of the concerns about the timing.

Ray, let's give the [inaudible], given I think we really should try and wrap the call.

RAY PELLETIER:

Yeah, I just want to underscore something you just alluded to, and that is that there are other parties to this. The trust anticipates signing one agreement, which has three other parties to it. And that proposal by the names community have to be [bought] off by the IETF and the RIR community. And so this isn't one on one on one on one. We're



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developing a consensus document. So we have to include those roundtrips within the operational communities.

JONATHAN ROBINSON: Yeah. And, Ray, could or should we be doing anything different to ensure that we do that?

RAY PELLETIER: Well, I would say that, as I understand it, this IPR list contains all those communities. But the first responses, in my humble opinion, shouldn't come back from the trust with regard to [your] suggestions, but the IETF and the RIR respond to those.

JONATHAN ROBINSON: Okay, that's a good point. Thank you. Yeah, Alan indicates that. So, Alan, in terms of the RIR [making] comments on the draft agreement [inaudible]. My one concern here is that we don't end up with multiple parallel comments on different documents. We need to sequence this somehow. So that's something that has to be mindful of, in terms of expecting that we work on certain iterations of the document, rather than working too much in parallel and then find one or two [inaudible] together. That's just a practical point.

ALAN BARRETT: Right. Okay, Jonathan. Would you like the RIRs to wait until the CWG has comment? And how long to expect to take before you are able to provide the next draft?

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JONATHAN ROBINSON: My understanding is we will provide with the original draft of the various agreements. And Greg or Josh, you might want to just elaborate on exactly what those are. And we expect to turn around commented or [inaudible] those documents very shortly, within probably 48 hours from now, if not less. Is that correct, Josh or Greg?

UNIDENTIFIED MALE: That's correct. Sorry, I was on mute. Hopefully, we can get it out today if things aren't too rough. Today maybe, California time. Yeah, that's possible as well.

JONATHAN ROBINSON: Okay, so very shortly, Alan.

ALAN BARRETT: Okay. I see some comments in the – sorry. I see some comments in the chat saying that we can deal with it in parallel. I think we'll just post when we're ready, and you post when you're ready. And somebody will get the job of combining the two sets of comments.

JORGE CONTRERAS: Well, since the combining probably is heading this way toward the trust, I would suggest, even if we do get two separate [sets] of comments from the RIRs and from the CWG, I would at least suggest that the next

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call or discussion be unified. We can't negotiate the same agreement on two different fronts.

JONATHAN ROBINSON: There is a hand up. I think it is an old hand from Alan. So we'll go to Alissa and then Greg.

ALISSA COOPER: I think it's reasonable, as the comments come in, for the trust to take a look at them, think about how they feel about them, and if it's possible, to produce a unified version by the time of the next call that we think has broad agreement. Then that's great. And if not, then still having a unified version with open comments or whatever. Hopefully, will be possible. Hard to predict before anybody sees the comments. Not that I'm signing up other people for work, but I am signing up other people for work. I think it makes sense for the trust to take that role this week.

JORGE CONTRERAS: I think the trust has to take that role, but we have to be sensitive in setting up a next call, number one, that people should be on the call to respond to both sets of responses. Because we'll produce one response document. It's sounds from Greg like the CWG comments are going to be heavy, which makes me a little bit nervous. And we have no idea what the RIR comments are going to be, other than the people promise these within a day or two.

The trust will need time to review them. And then we'll have to call a meeting. We'll have to discuss them internally and then turn around a

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new draft and appropriate responses to two sets of comments. And doing all of that –

UNIDENTIFIED MALE: Plus, the IETF has to join in.

JORGE CONTRERAS: Yes. Doing all of this in a week would be pretty extraordinary. But that's assuming we got those markups today. It's Tuesday. It sounds like we're probably going to be receiving comments on Thursday. I don't think that a call – and then without sending a responsive draft two minutes before a call, I think we probably are having this call a later next week, as opposed to Tuesday of next week. And we definitely should be sure to include anybody from RIR who is going to be able to discuss or defend their comments on that call.

UNIDENTIFIED MALE: [inaudible] did just say we thought we'd get the documents out today or tomorrow. And we're going to strive to get them out today. So no later than Thursday. It may be necessary to push the call, but just to clarify.

JORGE CONTRERAS: [crosstalk] 48 hours.

JONATHAN ROBINSON: Yeah, I said that originally, and I was corrected and it was brought forward to either later today California time, at least, or tomorrow. So

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that's from the CWG. So let's provisionally schedule the call for next week. We'll probably put out a Doodle. That makes sense to get the time right for this day next week so that we can have best-as-possible participation. And we can share the comments on list and see what progress we can make in the meantime.

Okay, I think we really have to bring it to close now. We have a reasonable plan for going forward on a tight schedule. Let's hope that we can work with that and make it work. It sounds like we should be receiving CWG comments very shortly. And it may even be that that allows the RIR to take account of some of that when they produce their work. If not, we need to seek to bring them together and deal with them next week, Tuesday if possible. And if not, we push the call out or deal with what we need to later in the week.

Thanks, everyone. I hope that was satisfactory and achieved and achieved most of what it needed to, and we're all conscious of the time to try and get this resolved. So we'll talk on the list and to speak in a week's time.

**[END OF TRANSCRIPTION]**