

ICANN – CCNSO – FOIWG

Meeting Notes (draft) for 23 May 2013, 13:00 UTC

1. **Present / apologies (final attendees to be confirmed)**

ccNSO:

Martin Boyle, .uk
Becky Burr, .us (Vice Chair)
Keith Davidson, .nz (Chair)
Stephen Deerhake, .as
Dejan Djukic, .rs
Daniel Kalchev, .bg
Eberhard Lisse, .na
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi
Other Liaisons:
Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

Jaap Akkerhuis, ICANN / ISO
Bart Boswinkel, ICANN
Kim Davies IANA
Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Chris Disspain, .au
Suzanne Radell, GAC
Bill Semich, .nu

2. **Agenda – Approved**
3. **Meetings notes for 9 May 2013 – approved.**
4. **Analysis V5 (of misbehaviour and revocation)**

4.1. Section 5.3.2.2 – Agreed on first reading 9 May, Not agreed May 23

4.1.1. Original text - The FOIWG notes, however, that the concept of being “equitable to all groups” varies depending upon context, choices made by the local Internet community such as whether or not the domain is open or closed, applicable national law, etc. In addition, questions regarding the manager being equitable, just honest and competent and serving the local community are highly contextual. As a result, the [IANA Contractor] may refrain from acting and look to the local Internet community where it lacks the information and context needed to evaluate the more subjective aspects of these requirements.

4.1.2. NR, EL, PP and others concerns around stating that honesty or equality may vary. These are absolutes.

4.1.3. KDavidson, BT put square brackets around all text. BBurr to review for next meeting.

4.2. Section 5.3.3 – Agreed on first reading 9 May, Agreed May 23 - Final

4.2.1. Original text - Application in Selection of Designated Managers. The working group interprets RFC1591 to require the [IANA Contractor], in the manager selection process, be satisfied that the proposed manager possesses the necessary technical, administrative and operational skills, judged by the standard of the ordinarily competent ccTLD manager. This requires the prospective registry manager to demonstrate that he or she (or, if a legal person, ‘it’): (i) possesses the requisite skills to carry out the duties of a manager (skills test); and (ii) If designated, will have the means necessary to carry out those duties (including the ongoing responsibilities discussed above), upon receiving the appointment (executory preparedness test).

4.3. Section 5.3.4 – Agreed on first reading 9 May, Agreed May 23 - Final

4.3.1. Original text - Application to Designated Managers. Although one could read RFC 1591 to limit the authority of the [IANA Contractor] to “step in” during the process of selecting a designated manager, on

balance, the Working Group interprets Section 3.4 of RFC1591 to create: (i) an ongoing obligation on the designated manager to operate the ccTLD without substantial misbehaviour and (ii) a reserve power for the [IANA Contractor] to “step in” in the event that the designated manager does “substantially misbehave.”

4.4. Section 5.3.4.1.1 – Agreed on first reading 9 May, Agreed May 23 - Final

4.4.1. Original text - RFC 1591 identifies three formal mechanisms available to the [IANA Contractor]: Delegation, Transfer and Revocation. The FOIWG (as discussed above) interprets RFC 1591 to require the consent of an incumbent manager to any Transfer of a ccTLD. If one assumes that a ccTLD Manager that substantially misbehaves is unlikely to provide such consent, and the [IANA Contractor] informal efforts to address such misbehaviour are unavailing, the only formal mechanism that remains available to the [IANA Contractor] is Revocation. Accordingly, the working group interprets RFC 1591 to permit the [IANA Contractor] to revoke a cc TLD delegation in appropriate cases where the designated manager has substantially misbehaved.

4.5. Section 5.3.4.1.2 – Agreed on first reading 9 May, Agreed May 23 - Final

4.5.1. Original text - Given that the primary responsibility of the [IANA Contractor] is to preserve DNS/Internet stability and security, the FOIWG interprets “revocation” under RFC 1591 as a “last resort” option to be exercised in situations where a delegated manager has substantially misbehaved in a way that poses a threat to the stability and security of the DNS or where the manager fails to cure violations of the objective requirements described above after notice (e.g., no email availability).

4.6. Section 5.3.4.1.3 – Agreed on first reading 9 May, Not agreed May 23

4.6.1. Original text: The FOIWG notes, however, that the [IANA Contractor] will rarely be in a good position to evaluate the extent to which a designated manager is carrying out the necessary responsibilities of a ccTLD operator in a manner that is equitable, just, honest, or – except insofar as it compromises the stability and security of the DNS - a competent manner. Accordingly, the FOIWG interprets RFC 1591 to mean that revocation would *not* be an appropriate exercise of its right to “step in” unless the designated manager has substantially misbehaved in a manner that poses a risk to the stability or security of the DNS and/or the designated manager has refused to correct repeated problems with email connectivity, presence on the Internet, and/or maintenance. The FOIWG believes that it is not appropriate for the [IANA Contractor] to step in on issues where the actions of the delegated manager does not pose a threat to the stability or the security of the DNS and that such issues should be resolved locally.

4.6.2. KDavidson – BBurr and NRoberts to resolve minor editing issues for next meeting.

4.7. Section 5.3.5.1 – Agreed on first reading 9 May, Agreed May 23 - Final

4.7.1. Original text: Misbehaviour. The Working Group interprets “misbehaviour” in this context to refer to conduct involving the failure of a designated manager to (i) carry out the necessary responsibilities of that role, or (ii) carry out those responsibilities in the manner required by RFC 1591.

4.8. Section 5.3.5.2 – Agreed on first reading 9 May, Agreed May 23 - Final

4.8.1. Original text: “Substantial” Misbehaviour. The Working Group interprets substantial misbehavior to involve misbehavior as defined in 5.3.5.1 that is either egregious or persistent and may include performing the necessary responsibilities of a designated manager in a manner that imposes serious harm or has substantial adverse impact on the Internet community by posing a threat to the stability and security of the DNS.

4.9. Section 5.3.6.1 – Agreed on first reading 9 May, general agreement for the amended text (minor edits) May 23 - Final

4.9.1. Original text: The FOIWG also believes it is consistent with the intent of RFC1591 to state that revocation should be the last resort option for the [IANA Contractor]. The [IANA Contractor] should use all means at its disposal to assist the manager to resolve any issues considered to be significant misbehaviour by the manager. Revocation should only be considered if the [IANA Contractor] reasonably demonstrates that the manager is unable or unwilling in an appropriate time frame: (i) to resolve specified material failures to carry out its responsibilities under RFC 1591; and/or (ii) to carry out those responsibilities in the manner required by RFC 1591, in each case where the behaviour in question poses a threat to the global security and stability of the DNS.

4.9.2. NRoberts ii could cause an interpretation issue causing the manager to be in breach for carrying out the responsibilities in the manner required.

4.9.3. KDavidson – BT to create subclauses to avoid potential confusion.

4.9.4. Proposed Text: The FOIWG also believes it is consistent with the intent of RFC1591 to state that revocation should be the last resort option for the [IANA Contractor]. The [IANA Contractor] should use all means at its disposal to assist the manager to resolve any issues considered to be significant misbehaviour by the manager. Revocation should only be considered if the [IANA Contractor] reasonably demonstrates that the manager is unable or unwilling in an appropriate time frame to:

- (i) resolve specified material failures to carry out its responsibilities under RFC 1591; and/or
- (ii) carry out those responsibilities in the manner required by RFC 1591

and that the behaviour in question poses a threat to the global security and stability of the DNS.

4.10. Section 5.3.6.2 – Not Agreed May 9, May 23 general agreement on proposed text.

4.10.1. Original text: If the [IANA Contractor] revokes a delegation it should attempt, in collaboration with the concerned parties, to ensure the ccTLD will continue to resolve names until a suitable replacement is identified by significantly interested parties in the manner previously described.

4.10.2. General concern about the introduction of “concerned parties” – general agreement it should be Significantly Interested Parties.

4.10.3. PP – no need in this section to spell out how a replacement must be found. Simply put a period after identified. General agreement

4.10.4. Proposed text: If the [IANA Contractor] revokes a delegation it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement is identified.

4.11. Section 5.3.6.3 – 23 May Amended text Agreed.

4.11.1. Original text: The FOIWG believes it is consistent with RFC1591 and natural justice to allow a manager the right to appeal a notice of revocation by the [IANA Contractor] to an independent body.

4.11.2. Minor amendments

4.11.3. Amended text: The FOIWG believes it is consistent with RFC1591 and natural justice to recognize the manager has the right to appeal a notice of revocation by the [IANA Contractor] to an independent body.

4.12. Section 5.4.1 – Agreed on first reading 9 May, Agreed May 23 - Final

4.12.1. Original text: As discussed above, Revocation should only be considered if the [IANA Contractor] reasonably demonstrates that there are persistent problems with the operation of the domain, as defined in Section 5.2 above or the manager has engaged in “substantial

misbehaviour” as defined in Section 5.3 above, which persists, despite the efforts of the [IANA Contractor] using all means at its disposal to resolve such conduct.

4.13. Section 5.4.2 – Now removed by general agreement.

4.14. Section 5.4.3 – will become 5.4.2 - Agreed May 23

4.14.1. Text from 5.3.6.2: If the [IANA Contractor] revokes a delegation it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement is identified.

4.15. Section 5.4.4 – will become 5.4.3 - Agreed May 23

4.15.1. Text from 5.3.6.3: The FOIWG believes it is consistent with RFC1591 and natural justice to recognize the manager has the right to appeal a notice of revocation by the [IANA Contractor] to an independent body.

5. Other Business - none

6. Conclusion of the meetings – 14:00 UTC

7. Next meetings

7.1.1. 6 June 21:00 UTC

7.1.2. 20 June 13:00 UTC * (out of sequence on purpose)

7.1.3. 4 July 05:00 UTC * (out of sequence on purpose)