

Meeting Notes (approved) for 6 September 2012, 14:00:00 UTC

1. **Present / apologies**

**ccNSO:**

Ugo Akiri, .ng

Martin Boyle, .uk

Becky Burr, .us (Vice Chair)

Keith Davidson, .nz (Chair)

Chris Disspain, .au

Stephen Deerhake, .as

Dejan Djukic, .rs

Paulos Nyirenda, .mw

Patricio Poblete, .cl

Nigel Roberts, .gg

Bill Semich, .nu

Dotty Sparks de Blanc, .vi

**Other Liaisons:**

Cheryl Langdon Orr, ALAC

## **Staff Support and Special Advisors:**

Jaap Akkerhuis, ICANN / ISO

Kim Davies IANA

Kristina Nordström, ICANN

Bernard Turcotte, ICANN

## **Apologies:**

Bart Boswinkel, ICANN

Eberhard Lisse, .na

## **2. Agenda – Approved**

## **3. Meeting notes for 23 August 2012 – Approved.**

## **4. Revocation**

### **4.1. Discussion of proposed text by BBurr posted by KDavidson on 5 September 2012:**

In order to know what 'substantial misbehavior might be, we need to look

at the definition, first, of, 'misbehavior'. The Working Group

interprets “misbehavior” in this context to refer to conduct involving the failure of a designated manager to carry out, or the manner in which the designated manager carries out the necessary responsibilities of that role. In this way, it is used in a manner that roughly equates to misconduct in public office. Under that standard, by analogy, a TLD manager who:

(a) wilfully neglects to carry out the duties of a TLD manager and/or, in carrying out those duties, wilfully engages in misconduct

(b) to such a degree as to amount to an abuse of the trust placed in him by virtue of his/her/its designation

(c) without reasonable excuse or justification.

has ‘misbehaved’.

It follows that “substantial misbehavior” would involve misbehavior (as defined above) that is either egregious or persistent.

‘Substantial misbehavior’ would therefore appear to include:

(a) the knowing, repeated, material failure to perform the necessary

responsibilities of a designated manager in a manner that is equitable,  
just, and/or honest; or

(b) performing the necessary responsibilities of a designated manager in  
a manner that imposes serious harm or has a substantial adverse effect  
on the local or global Internet community. In this context, “serious  
harm” and “substantial adverse effect” should be evaluated in the  
context of the IANA contractor’s continued focus on DNS security and  
stability, as described above in Section 5.2.1.3.

4.2. PP comment relative to how “manner” is used – BBurr agreed to correct:

4.2.1. BBurr - *So, I think if we said the failure of the designated manager to carry out the necessary responsibilities, or the failure of the designated manner to carry out the necessary responsibilities in the manner required by 1591, which is to say fair, equitable, honest and -- I can't remember what the third word was. Does that make sense?*

4.3. MB question regarding not including incompetence in this definition.

4.3.1. BBurr – This is covered in RFC 1591 section 3.5 and as such there is no need to cover it under this section.

4.3.2. MB - *residual concern in my mind that you can be just incompetent in the way that you are doing some of your duties as a ccTLD manager without actually doing it wilfully because you are competent.*

4.3.3. MB will read the text in detail before agreeing to this or pursuing it.

4.4. NR - it's (a)(i) qualified by (b) and (a)(ii) qualified by (b), not just (a)(ii) qualified by (b) or (a). BBurr agreed.

4.5. MB – Two points:

4.5.1. *(c), without reasonable excuse or justification, we've got somebody who is wilfully neglecting, wilfully engaging in misconduct, in what way is it going to be reasonably excused or justification for a willful act?*

4.5.2. *under the second (a), and there it says the knowing repeated (inaudible) or failure to perform the necessary responsibility of a designated manager. This then overlaps with my concern about the incompetence, the unknowing, and the refusal to be told. So, I am just sort of raising a question for sort of an explanation of what the word "knowing," or why have we put the word "knowing" in that particular slot?*

4.5.3. BBurr and NR – We need to complete the text for section 3.5 so MB can decide if it handles his concerns.

4.5.4. MB - *obviously in the case of wilful neglect and going through the process of substantial misbehaviour, that there does need to be some option for appealing against it. It's just that the term of actually having a reasonable excuse to wilfully neglect or wilfully engage in misconduct is something that does give me a little bit of cause for concern that we should be putting this into a document that is going to be in the public domain. So, that really was my concern on that word.*

4.5.5. NR – will find the legal reference and forward to MB.

4.6. The Chair noted that this concluded the discussion of this text for this call. A new complete version of the revocation document will be produced for the next meeting of the wg.

## 5. Responses to the GAC on Consent and SIP

5.1. The Chair advised that this will be on the agenda for the next call.

5.2. The Chair will contact MB to discuss these issues prior to the next call.

6. **Other Business**

6.1. The face to face meeting in Toronto will be on Thursday 18 October 2012 in the afternoon.

6.2. We will produce a draft progress report for review by the group for the next meeting.

6.3. On the agenda in Toronto will be a discussion of the day of the week for future face to face meetings of the FOIWG at ICANN meetings.

7. **Next meetings**

7.1. 20 September @ 21:00 UTC

7.2. 4 October @ 5:00 UTC

7.3. 18 October F2F in Toronto

8. **Conclusion of the meetings**

8.1. About 14:45 UTC