ICANN – CCNSO – FOIWG

Meeting Notes (draft) for 9 May 2013, 05:00 UTC

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

ccNSO:

Martin Boyle, .uk
Keith Davidson, .nz (Chair)
Chris Disspain, .au
Stephen Deerhake, .as
Daniel Kalchev, .bg
Eberhard Lisse, .na
Nigel Roberts, .gg

Other Liaisons:

Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

Bart Boswinkel, ICANN
Kim Davies IANA
Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Paulos Nyirenda, .mw
Patricio Poblete, .cl
Suzanne Radell, GAC
Bill Semich, .nu
Dotty Sparks de Blanc, .vi

2. **Agenda – Approved**

3. **Meetings notes for 11 April 2013 (Beijing) – approved.**

    3.1.   Note: Transcript refers to March 21 and 25 but document distributed was for the 11 April 2013 meeting. The 21 March 2013 meeting notes were approved at the Beijing meeting.

4. **Analysis (of misbehaviour and revocation)**

    4.1.   Section 5.3.2.2 – Agreed.

        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 justice, honesty, competence 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 informs.**

        4.1.2.   KDavidson – issue around the last word 'informs' – remove.

        4.1.3.   EL and others – 'justice' does not appear in RFC1591. Use standard wording from RFC1591 – generally agreed.

        4.1.4.   Proposed 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**, honesty, competence 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** informs**.**

    4.2.   Section 5.3.3 – Agreed.

        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, to ensure that the proposed manager possesses the necessary technical, administrative and operational skills, judged by the standard of the ordinarily competent TLD 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).

4.2.2.   EL concern if 'ensure' is used correctly in this context. KDavidson agrees – suggestion to use 'be satisfied' – generally agreed.

4.2.3.   KDavidson – issue around the use of **ordinarily competent TLD manager** vs ccTLD manager. Long discussion ensued. Agreement to change to ccTLD manager and a note, somewhere in the document, to the effect that RFC1591 was written for TLDs but that our remit is only to interpret it for ccTLDs.

4.2.4.   Proposed text - Application in Selection of Designated Managers. The working group interprets RFC1591 to require the [IANA Contractor], in the manager selection process, ~~to ensure~~ 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.

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: (1) 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."**

4.3.2.   Edit regarding numbering – BT to fix.

4.3.3.   EL Please ensure **[IANA Contractor]** is the same everywhere to facilitate search and replace when it will be necessary. BT will do.

4.3.4.   Proposed 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.

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's] 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 [IANA Contractor] to revoke a cc TLD delegation in appropriate cases where the designated manager has substantially misbehaved.**

4.4.2.   Edits for BT

4.4.3.   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.

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/Internet or where the manager fails to cure violations of the objective requirements described above after notice (e.g., no email availability).**

4.5.2.   Issue wrt the use of **DNS/Internet** – general agreement to only use DNS.

4.5.3.   EL – normalize IANA Contractor.

4.5.4.   Proposed 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/~~Internet~~ 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.

4.6.1.   Original text: **The FOIWG notes, however, that [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/Internet - 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/Internet and/or the designated manager has refused to correct repeated problems with email connectivity, presence on the Internet, and/or maintenance. Accordingly, under RFC 1591 to would be appropriate for the [IANA Contractor] to defer to the local community when the actions of the delegated manager do not pose a stability/security threat.**

4.6.2.   Note DNS/Internet to be corrected as per previous comments.

4.6.3.   Last sentence causing significant concern for several participants. KDavison proposed "It is not appropriate for the IANA contractor to step in on issues where the actions of the delegated manager does not prose a threat to the statility or the security of the DNS and this should be reolved locally."

4.6.3.1.   CD fix by adding"FOIWG believes that it is not ….".General agreement.

4.6.4.   Proposed 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/~~Internet~~ - 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/~~Internet~~ and/or

the designated manager has refused to correct repeated problems with email connectivity, presence on the Internet, and/or maintenance. ~~Accordingly, under RFC 1591 to would be appropriate for the [IANA Contractor] to defer to the local community when the actions of the delegated manager do not pose a stability/security threat.~~ 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.

4.7.   Section 5.3.5.1 – Agreed.

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 (1) carry out the necessary responsibilities of that role, or (2) carry out those responsibilities in the manner required by RFC 1591.**

4.7.2.   EL –make numbering scheme consistent between points. Agreed.

4.7.3.   Proposed 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 but may require editing.

4.8.1.   Original text: **"Substantial" Misbehaviour. The Working Group interprets this to involve misbehaviour (as defined above) that is either egregious or persistent and would appear to include 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 by posing a global threat to the stability and security of the DNS/Internet. 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 in the previous Section.**

4.8.2.   Note DNS/Internet to be corrected as per previous comments.

4.8.3.   Issues around the wording **is either egregious or persistent and would appear to include 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 by posing a global threat to the stability and security of the DNS/Internet.**

4.8.3.1. **is either egregious or persistent and** ~~**would appear to**~~ may **include** – generally agreed.

4.8.3.2. EL – sentence is too long.

4.8.3.3. DK – issue around using "local or global internet community" – seems inappropriate. KDavidson agrees.

4.8.3.4. KDavidson proposed text: The Working Group can interpret substantial misbehavior to involve misbehaviour to 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. Generally agreed.

4.8.3.5. BT and NR to look at shortening or splitting for clarity.

4.8.4.   Proposed text: 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.

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: (a) to resolve specified material failures to carry out its responsibilities under RFC 1591; and/or (b) 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/Internet.**

4.9.2.   MB fix DNS/Internet.

4.9.3.   Note – numbering scheme should be normalised.

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: (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/~~Internet~~.

4.10.   Section 5.3.6.2 – Not Agreed.

4.10.1. Original text**: If the Substantial Misbehavior undermines the stability and/or security of the Internet and/or a wilful refusal to cure a breach of one of the objective aspects of the "necessary responsibilities" of the delegation is revoked the [IANA Contractor] should use all means at its disposal to ensure the ccTLD will continue to resolve names and that a suitable replacement is identified by significantly interested parties in the manner previously described on an expedited basis.**

4.10.2. Significant issues around the use of "all means at its disposal".

4.10.3. KDavidson suggestion to take out "is revoked" and insert in second line.

4.10.4. This text is not agreed and will have to be reconsidered by the WG.

4.10.5. BT proposed 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.

4.11.   Section 5.3.6.3 - Not Agreed.

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

4.11.2. NR proposal: Not only does RFC1591 appear to say there should be an appeal, but natural justice requires it as well. BB and BT to edit.

4.11.3. Proposed 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.

4.12.   Section 5.4.1 – Agreed

4.13.   Section 5.4.2 – Not Agreed

4.13.1. Original text: If the substantial misbehaviour undermines the stability and/or security of the DNS/Internet or a wilful refusal to cure one of the objective "key requirements" and "necessary responsibilities" of designated managers, revocation may be appropriate.

4.13.2. This should be edited by BB and BT

4.14. Section 5.4.3 – Not Agreed.

4.15. Section 5.4.4 – Agreed.

5. **Other Business - none**

6. **Conclusion of the meetings – 07:00 UTC**

7. **Next meetings**

7.1.1. 23 May   13:00 UTC

7.1.2.   6 June   21:00 UTC

7.1.3.   20 June   13:00 UTC * (out of sequence on purpose)

7.1.4.   4 July   05:00 UTC * (out of sequence on purpose)