

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference 26 January 2012

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Keith: Okay. I think we should probably make a start, and so, Christina, can you let us know the apologies received and who is on the call?

Kristina: Sure. From the CCNSO (ph) we have Hugo Akiri (ph), Martin Boyle (ph), Keith Davidson (ph), Chris Tespain (ph), Stephen Deerhakke (ph), Eberhard Lisse (ph), Kathryn Reynolds (ph), Nigel Roberts, Dotty Sparks Deblanc (ph). From the GAC (ph) we have Frank Marsh (ph) and Suzanne Radel (ph). From Lasos (ph) we have Cheryl Langdonore (ph) and Carlos Aguirre (ph). From staff support and special advisors we have Yef Akahurs (ph), Bart Folsinkel (ph), Kim Davies (ph), Christina Nordstrom (ph) and Bernie Tergood (ph). Apologies from Paulos Naranda (ph) and Bill Semek (ph).

Keith: Okay. Does that cover all apologies and everybody on the call, or on the Adobe room? Thank you, thank you Christina. It looks like we have a very good turnout for this call, so my urging on the list for, with great members to participate might have worked, and so let's hit the agenda at full speed. We have the meeting report from the 12th of January meeting. Bernie, I don't think there's anything specifically in that report that isn't otherwise on the agenda, except for one thing, and that was Bill Semek raised an issue which he raised by e-mail, which sort of relates to some of the topic of misbehavior, and so on, that we haven't really covered off on elsewhere. So, I think I might make that issue raised by Bill in his last e-mail to the list, a matter arising for the next meeting of the Sweden (ph) group and hopefully Bill will be on the call and be able to specifically address those concerns that he had, at that time.

So, other than that, Bernie, is there anything in terms of the meeting report that is of concern or not otherwise on the agenda?

Bernie: I don't think so. We, except for having accepted the significantly interested parties public consultation, the rest was fairly straight forward.

Keith: Okay. Does anyone have any issues or items they wish to raise relating to the meeting report? I see Eberhard has his hand raised? Eberhard?

Eberhard: I was basically absent, I only listened in for about five minutes when I was in the operating room, so I should be listed as apologies.

Keith: Oh, okay, noted. Thank you, Eberhard. Any other issues or items not otherwise covered on today's agenda that arose from last week? IF not, let's please move on and item three on our agenda is discussion on the GAC response on the consent topic, and I note Suzanne and Frank both on the call today. Firstly, Susan and Frank, our thanks to the GAC. We know and understand the GAC's fairly busy with some other topics at the moment, so thank you for prompting the GAC to respond.

I guess by – or in general, it seems there's a fairly sympathetic view from the GAC to what the framework of interpretation what the group's (ph) trying to do here. So, I'm just wondering, Frank or Suzanne, do you want to talk us through the couple of points that you raise in your submission, particularly the 60-day deadline, and give us your views as to why you thought these things were relevant to the consent document?

Frank: Hey Keith, I'll defer to Suzanne on this. Suzanne was more responsible for drafting the document than I was, so Suzanne, it's over to you.

Suzanne: Okay. Thank you, Frank, and thank you, Keith. It just struck us as we looked at the text, that if there were not a timeline, and maybe this is our ignorance, so bear with us. That absent a timeline, you could have an unintended consequence that either an inability or a

refusal to provide consent could sort of just simply cause a redell (ph) request to be null and void, and we were, we weren't entirely sure that that would be your intention. So, I – does the idea of a timeline cause discomfort?

Keith: I don't know. It's – that's the test.

Suzanne: (laughing)

Keith: And I see already Nigel and Eberhard both have their hands raised, so let's – let's find out. Nigel?

Nigel: First of all, can you hear me okay?

Keith: Yes.

Nigel: Okay. I'll make it fairly brief. I'm comfortable not with the proposed guideline. I think if we were debating policy, it would be a valid proposal, but I'm confused and concerned, but what we're just trying to is a very limited thing of trying to interpret the policy that we've got, and there's nothing in the policy that actually specifies the particular timeline. It's one, it's – it's a very good way to highlight the fact that the loner (ph) is operating without specific policies and in these sorts of areas, but I think it's outside our remit to specify something when we're just interpreting documents.

Keith: Okay, but you know, perhaps a suggestion that a 60-day period would be an appropriate period for a response or something like that? Yeah, that's not really inventing policy, it's just sort of trying to provide a time frame which would be acceptable. I think, would that satisfy you, Nigel?

Nigel: Well, no, it wouldn't raise the – it wouldn't satisfy the concern that – it's not a – and it's not about this one specific point, which in itself seems relatively harmless. But, it's the idea that in this group, that we can introduce new procedures or new policies. That's not really for us to do, we're here to interpret the meaning of the existing policy and where we find that there are lacuna (ph) and it's lacking, to say so, and maybe point out where policy or procedures need to be tightened up.

Keith: Okay, thanks Nigel. And, I notice on the chat, in Adobe, that Patricia Habute (ph) has just joined, so if we can make that in the attendees things, Christina. Now, Eberhard, you have your hand raised.

Eberhard: Yeah, as I said in my e-mail, I don't think there can be an automatic or any arbitrary deadline. I agree with Nigel that we also would be making policy, and I also quoted an extreme example. For example, if there is a coup in any one developing country without a proper democracy, then the incumbent manager is detained without warrant or whatever, and the sun and loft (ph) and new deputy undersecretary for paper clips (ph) puts in a new delegation request, the GAC suggestion could then trigger an automatic re-integration (ph) after 60 days. That's not a consented form, so I think you must be very careful how we do that, and I do not think we should make policy. That's for the PDP (ph).

Keith: Okay. Does that clarify for you, Suzanne, two real aspects here, one is that it may be a policy development specifically rather than an interpretation, and the other is that there may be instances where 60 days is too short a period in any case. So, would that help alleviate the GAC's concern in that regard?

Suzanne: If I could say, then I guess I have some questions back, if I may. I understood the document to be like the entire exercise here, to be attempting to interpret the existing

guidance, to sort of bring it up to date and to overcome all of the problems that were identified in the Dell-Redell (ph) working group analysis. This is, and you're tackling it serially, issue-by-issue, so as I read the document that you are proposing guidelines in a number of areas, and then you are asking the IENA (ph) functions operator to actually implement your guidelines in the form of new procedures, right?

And so, it just struck us that without some kind of a time frame, and you know, if you all think – so, let me tackle the first one – is this implementation or policy? Obviously, this is an FOI working group issue, so I need to largely defer to you all. It would be helpful to know if that view, that it's policy not implementation, is shared by all the members of the FOI working group. But, I guess to our minds it seemed more like an implementation aspect. If you have to obtain consent, which just seems completely logical, how do you avoid a situation where you can never obtain consent? Does the incumbent have the right to simply never respond? Or, what if you cannot find the incumbent? Let's say there is a coup, or a civil war, or whatever.

So, I guess I'm a little bit confused, Nigel and Eberhard, and my apologies if I'm missing things, but it just seems to me from our perspective we did not see that as policy, necessarily. We saw that as the FOI working group kind of refining what exists as a concept today in the underlying policy documents, but what is missing is any sense of well, how long could it take? Could it take?

Keith: Oh, okay. Well, I guess the issue – if I could be so bold as to try and summarize the working group's thinking on consent, they're either – the working group believes either there is consent or there isn't consent, and I guess if there is no response at any point then they – or no response is the equivalent of no consent. So, an absent CCTLD (ph) manager, for example, can't consent. So, a redelegation happens under a non-consenting process, rather than a consenting process.

So, yeah, putting a time line on it is sort of deeming consent to have happened, when it hasn't. I think that might be the fear, but I see I've got a number of people wishing to speak to the issue. So, there's Cheryl, Eberhard and Nigel. So, Cheryl, firstly?

Cheryl: Thank you, Cheryl (inaudible) know if the transcript record (inaudible).

Keith: Sorry Cheryl, you're breaking up.

Cheryl: It just strikes me, and I apologize for any background noise that might be happening, I'm in a fairly public place at the moment. The – the issues raised by the GAC is very valid, and I certainly see that bizarre ability for the type of language (inaudible) to exist somewhere, that they propose and it may be that the GAC needs (inaudible). I also see that in that sort of process that would happen in a more PDP-based issue rather than what we're doing in terms of interpretation, you'd be able to do the what-if and maybe language, which of course we don't have the mandate or the inclination to do in this work group.

But, I've (inaudible) reference to the very reasonable desire of the GAC to not have unintended consequences in this (inaudible) though worthwhile, so I just wanted to pat (ph) square bracket to come back to this and make sure it gets picked up somewhere (inaudible) opportunity. Thank you.

Keith: Okay, thanks, Cheryl. Eberhard?

Eberhard: I've got two things. Suzanne, it's not you, it's us. We are all, all members of this working group are on equal footing as far as we are concerned. Secondly, I can live with if we say on a certain, let's say, 60-90 day consent is not given, then it's utterly not consent.

Keith: Yes.

Eberhard: I cannot live with after 90 days or 60 days then it's automatic consent, but I can live with if it does apply at some stage then it's an unconsented one.

Keith: Excellent, thanks, thanks Eberhard. I think –

Suzanne: I'm – I'm sorry to break the queue, could I ask a question, then?

Keith: Sure.

Suzanne: Thank you. That is actually very helpful, and as you'll see on the second bullet that the GAC had under this, we just – and maybe this is where it all gets resolved Clarification that this issue will in fact be addressed in your subsequent paper on unconsented redelegation.

Keith: Yes, I think that's probably true. It probably will be. I mean, it certainly is on the agenda to be discussed and resolved, so. And, I noticed Martin's added a tick of agreement to that conceptually, and Nigel has his hand up. So, Nigel?

Nigel: Yeah, I think we're actually quite close on this. I could read, now that Eber—now I realize what Eberhard was saying. I could read this in two ways. Eberhard obviously read it one way and I obviously read it the other way. It's an unintended consequence and refusal to provide consent. Is it possible that you actually mean failure to provide consent rather than refusal? Because, if it's a refusal, then there's clearly no consent.

Suzanne: That's an excellent point, Nigel.

Nigel: Okay. Now, the second point is, that if that's the case, I'm in agreement with the thrust of what you're saying here, but I still have concerns that this working group shouldn't be setting things down. It is more procedure than policy. It might be a matter for the IANA (ph) contractor when looking at the – and I'm going to say the rules, which is going to be what we're interpreting, to say that you know, we pick a 60-day figure at the end of which we close the file. That might be reasonable, but I don't think it's for us to say that. That's my point, I'm not arguing over whether you should or shouldn't do something along these lines. I'm arguing over the fact that this working group's remit doesn't cover doing specifying time frames.

Keith: Okay, thanks Nigel, and Frank has his hand raised. Frank?

Frank: Yeah, thanks Keith. I just wanted to comment on a point that Eberhard made about the status of people speaking here. I mean obviously in this call we are all on the same status, same level, but in fact the paper we have is from the GAC, not from any individual.

Keith: Sure.

Frank: So, what Suzanne is pointing out is the GAC position, not her own personal position. I think that should be firmly understood, thanks.

Keith: Yeah, thank you Frank, and good point. This is the GAC's input, but I think it's – for the swift group to develop a clearer understanding of what the – what the GAC –

Frank: Oh absolutely, I'm not denying that in any sense at all, of course. And in fact, both Suzanne and I will be (inaudible) the GAC along those lines, at any point. It's fine.

Suzanne: If I could chime in, Frank is completely correct, and I think your point Nigel, whether we really meant to say failure than refusal, we will certainly carry that message back to confirm for all of you, and that may well be a useful amendment now that we have clarification on bullet number two that you will in fact address a refusal in the next paper.

Keith: Yeah. In a future paper, yep.

Suzanne: In a future paper, sorry, not the next one. My apologies, future.

Keith: Okay. I hope whosoever siren that is, that they're not in any disaster area. I hear – Nigel's hand up and I'm not sure whether he just failed –

Nigel: Just haven't put it down.

Keith: Okay, and then Martin, then Eberhard, so Martin?

Martin: Thanks Keith. I'd like to come in on the procedure, and the way in which one might confer a time limit over to IANA. I think the message I'm (inaudible) is that if somebody doesn't answer and there is no deadline, then essentially the whole process can end up being stalled because the person hasn't answered. And, there does need to be some opportunity to really saying to IANA or putting a recommendation in ourselves, that the move to it being an unconsented redelegation process would happen whether the incumbents answered (inaudible) or whether the incumbent just didn't bother to answer. And, in particular, if he doesn't answer, I think there is that sort of problem that the incumbent operator might be dead. He might have gone to live, gone to live somewhere else. There is no real reason to not (inaudible) saying that mess should (inaudible) an whether we recommend what might be reasonable. This is procedure, it is not policy, but indicating that a reasonable time scale should be set for a response.

Keith: Okay, thank you, Martin. And, Eberhard?

Eberhard: I have two things. With you, I meant, I didn't mean it's individual input and now it's GAC input. I meant that Frank and Suzanne are members of the framework interpretation group, so one shouldn't have a "you" and "us" consideration, here. Plus, I'm concerned everybody on this group while deliberating the e-mail of telephone conference is on the same footing. And then, I can live very well with if we say, if we point out that there is no deadline, and deadline maybe should be set or can be set and what, what should or could happen if the deadline isn't met. But, I don't think it's for us to decide deadlines. We are not allowed to make, we are not here to make policy.

Keith: I think I – I think deciding a timeline is definitely not an invention of policy, it's a procedural thing. A timeline is only ever going to be a procedure.

Unidentified Participant: Yeah, but it's not for us to set procedure, that's my point.

Keith: Yeah, but a suggestion from the waiting group (ph) to IANA that a period like 60 days may be appropriate, wouldn't be an invention of policy in my view, and maybe quite desirable from the perspective of saying, well you know, yes, you can't expect at 24-hour turnaround. You'd delay this indefinitely. So.

Nigel: Keith, if I may?

Keith: Yes, certainly, Nigel.

Eberhard: No! You're not on! That's why I asked for it.

Keith: Sorry.

Eberhard: My hand is up, really. This is going on my nerves. Everybody is talking in without having the floor.

Keith: Okay. Eberhard has his hand raised, so Eberhard first, then Nigel.

Eberhard: I wanted just to say it's quite irritating if people jump in without having the floor. Everybody who can say, wants to say something, can do so. I think either this group makes policy or it doesn't, but on previous occasions we were told we cannot make policy when some of us wanted to make some. I think we, I think we should be quite clear on this, and not do that. Not do it.

Keith: Okay, thank you, Eberhard. Nigel?

Nigel: (Static) (Echo) (Feedback)

Keith: That was interesting.

Nigel: That was very interesting.

Keith: Wow.

Unidentified Participant: What'd you pick, Nigel?

Nigel: Yeah, Eberhard has basically said what I was going to say, although I prefer to characterize this as writing detailed policy than procedure – than policy – detailed procedure, rather than policy, but either way we're not here to do that to the IANA contractor to do that. And, I'm concerned about the effect it has on the work of the working group when other things come up that people say that we should put in the report to recommend to IANA to do that's not policy or that's not – that's not interpretation, it's policy or procedure.

So, I'm not concerned too much about this particular point because of the beginning. I think the actual point is fairly harmless and probably in the right circumstances, beneficial. I'm concerned about the effect of the working group.

Keith: Okay, noted.

Suzanne: Keith, I –

Keith: Okay –

Suzanne: Keith, I'm sorry, and apologies to colleagues, I am not on the Adigo thing so I haven't put my hand up. So, I'm joining the queue, asking to be in the queue the old fashioned way.

Keith: And the floor is yours, Suzanne.

Suzanne: Thank you ever so much. I have to say I'm a bit confused. Because my understanding was that it was the intention of the FOI working group to provide the maximum amount of guidance possible to overcome all of the inconsistencies and subjective decision making that the del – re-del (ph) working group had uncovered. And so, I'm just a little bit baffled if a timeline cannot be sort of offered up as an implementation process point, well then, how does that leave – where does that leave the decision making as to how much time is an appropriate amount of time? I'm just a little bit confused. If this FOI working group

doesn't tackle this, where would it be tackled? How would it be addressed? I guess let's put it that way. Frank and I will want to understand that to be able to report back, and I'm confused on that point.

Keith: Yes, no, that's a fair point, thank you Suzanne. And I see Becky and Eberhard both have their hands raised, so firstly Becky.

Becky: Hi. I certainly understand the concern about in general about what happens if there's a failure to respond. To me, for putting aside that question of whether it's policy or interpretation and whether it's in or out of the scope of the working group, which I haven't really thought about, it just seems to me that there are a category of issues that we ought to keep on a list for sort of when we get all the way through just interpreting the document and can look at it as a – at the issue as a whole, would be things that we would sort of raise at that time. I mean, I think as Nigel said, there is some potential for – there is some potential for misuse of, absence of a deadline, but we actually sort of don't know how that would affect things until we get for example, through unconsented delegation.

So, I mean, I don't mean to dismiss or minimize the concern of the GAC, because I think it's a reasonable concern. I just wonder if what we ought to be saying is, "We hear you, that's an issue that is sort of premature right now given where we are," but it's an issue that we understand and acknowledge.

Keith: Okay. Thanks, Becky. And I have Eberhard and then Desiree. Eberhard?

Eberhard: Yes, I looked at the charter and the scope, based on and taking into account the findings of and issues identified by the DRDW. The working group is tasked to develop interpretations of the policy statements to resolve the issues identified by the DRD working group in a consistent and coherent manner. I do not think that allows us to tell the IANA function contractor what deadline it should set.

Keith: Thanks Eberhard. Desiree? Desiree? We can't hear you.

Eberhard: It's muted.

Keith: Okay, Desiree, I see you on chat, you said, "Sorry," so we'll wait for you to type that. And in the meantime, while you're typing, Desiree, Frank has his hand raised, so Frank?

Frank: Yes, just remembering time to move myself off mute. Just picking up on the point, I think, there is an issue around here. I think that the GAC position highlights the issue that a deadline would be, the lack of a deadline is a gap. I think 60-day is one which could be interpreted as setting specific policy and I can understand the concerns that Eberhard and others have on that. I think I would personally be very, very comfortable in reporting back to the GAC that the group has taken note of the need for a deadline and that this will be addressed, whether it's in this paper or another one. For my personal point of view I would have no concerns. And, I'd be very comfortable in reporting that back to the GAC. I'm not speaking out to see for Suzanne or anybody else on this, but that does seem to be this general exception, so there is a bit of a gap that could be addressed, and to see some contribution from the GAC and I think that's helpful, thanks.

Keith: Okay, thanks, Frank. And I still haven't seen the question appear from Desiree, so – and I note Nigel's sort of agreeing with Frank through comments, there. So, Bernie – with the – or do you have any observations, is there anything that should influence the actual consent document as drafted, or –

Bernie: Yes sir, one thing I think is relevant, I believe it was in the SIP (ph) documents in the original draft version, we had included several deadlines of this type. And I believe it was

around October or November when we looked at that document, and I think everyone in the working group at that point agreed that those were implementation issues and not really what we were going to deal with. So, when I read this, I come a little bit to the same conclusion. The thrust of the consent document is that the only consent is positive confirmed consent as we've presented it. What happens when we don't have that, as Becky and others have pointed out, we've got some work to finish.

So, I don't know if that helps, but that's definitely some of the decisions that were taken by the working group previously.

Keith: Okay, thanks, Bernie. I think we're getting close to understanding from Frank's last observation, a need, and will carry on with that. Any further discussion?

Suzanne: Could I just ask a question about, were there questions on any of the other points raised in the GAC submission?

Keith: There haven't been on the list, but this is the opportunity to look at that. I mean, certainly I think from my personal observations of the working group, things like the GAC's strong recommendation and the next point that the FOI working group guidelines be amended to include the requirement of the terminology on the IONA website be made consistent with the FOI working group terminology, definitely would all agree. We would, you know. I don't think there'll be any controversy in regards to those sorts of recommendations and the much useful to the working group.

Suzanne: Okay, and then the final point, and that may be one that is ignorance on my part, but this is a generally-agreed assumption that whatever is drafted in response to your guidelines will in fact be reviewed and cleared? Whether by the FOI working group or the full CCNSO, I don't know. I'm guessing the full CCNSO, yeah?

Keith: Yes, absolutely. The FOI working group on its own is not empowered to do anything more than report back to the CCNSO.

Suzanne: Right.

Keith: But the hope is that both the CCNSO and the GAC in entirety will agree with the final output, and then with some form of endorsement of both those constituent bodies refer to the ICAN (ph) board the final outputs for the ICAN board to implement, so. Yes, this working group is not empowered to do that on its own, and is accountable back to its constituent parts.

Suzanne: Thank you.

Keith: No problems. Okay, any further observations or questions for the GAC relating to the response? Did I see Desiree's question? I'm sorry, I've lost my Adobe Connect session with a blip of Internet. Did – did – did it appear on chat, did anyone see Desiree's question, and has it been answered?

Unidentified Participant: It did appear, if it helps.

Unidentified Participant: On chat.

Frank: I can read it. "GAC has raised an important policy question and I think we would need to acknowledge that deadline issue, but not get further, agree that PDP working group will address it. My question is, do we as a group respond to GAC or do Suzanne and Frank convey it, and are they happy with that process?" And I think I already commented on

that, that I personally would be very happy to take back to the GAC the sentiments that have been expressed, and the reason, and the outcome from the GAC comments.

Keith: Okay, and so Frank, if we could note that as the sort of formal conclusion that you will take that back to the GAC and come back to this group in due course?

Suzanne: Okay, I do apologize to everybody for chiming in. Frank, I may have misunderstood you. Is the message we are taking back that this issue of a deadline would be addressed in a PBP (ph)?

Frank: Yeah, I think so.

Suzanne: Oh, okay. I'm – I had missed that. I thought there was still quite a bit of discussion as to whether a deadline is a policy versus an implementation issue. So, I had understood Becky to say, well, why don't we put that sort of aside as an issue that we need to address. I hadn't realized that the group had already decided to go the route of a PDP.

Keith: Martin has his hand raised. Martin?

Martin: Yes, I didn't think we did either. I thought we said that we would look at this when we got to the unconsented redelegation process and see whether we could or whether we should be saying something about deadlines at that particular stage, and at least that we could flag some perhaps, some deadline with (inaudible) but not to go further than that. I didn't think we were saying that we must have a PDP just on a how long a deadline should be, because my own feeling is that did not, policy would actually be the process that IANA would go through in deciding when it was no longer worthwhile waiting any longer for somebody to reply who wasn't going to reply.

Keith: Yeah, I think the – yeah, the suggestion was that if necessary a PDP would be done, but probably that this would be resolved as we further our work. In any case, I think as my interpretation of where we're at. Stephen has his hand raised, Stephen? Stephen, you're still on mute.

Stephen: Sorry about that. My understanding echoes Frank's and your interpretation of where we are, and I suspect this won't be the only issue that either is going to be looked at later or may well be into a list of things that a PDP might need to be formed to address down the road, but I don't see that we need to do this now.

Keith: Okay. Okay, well I think, I think Becky's comment on the chat in the Adobe room is very relevant and probably the appropriate closure to this discussion point, and that is to note that it is a legitimate issue, and should be reviewed and unconsented redelegation when we get to that section including the question of whether establishing a deadline is within the working group's remand. So, with that, can we agree that that is the point that we will note as our future action point on this issue? Thank you. And, are there any other issues relating to the GAC's input from anyone? Any other aspect that people disagree with? Any other aspect that people agree with? Okay. Thank you.

Thank you again, Suzanne and Frank for corralling the GAC to supply the input and I think it's been most useful input, and we will continue to look at the specific issue raised or specific unresolved issue. Okay, can we move along on our agenda? The next item on our agenda is the public consultation process for the SEP (ph) consultation, and Bart, is this yours to report back on?

Bart: Hello, good evening. Yeah, it is. I'm preparing the public forum. The idea is to open up the public comment period on this one as of tomorrow or early next week. It will run until the end of March as a public comment and then the reply period will end around the end

of April. So, yeah, there's nothing more to report back on. So, the document itself has been approved and adopted by the FOI working group itself, so that's all.

Keith: Okay, thank you, Bart, so it's proceeding through the new consultation process, 21 days for consultation then, 21 days for review, so it will be open during, like in Costa Rica which is probably quite useful. And Eberhard has his hand raised, Eberhard? Eberhard? Eberhard, we're not hearing you.

Eberhard: Sorry. I just wanted to say that I want to document the removal but it has been done already.

Keith: Oh, okay. Thank you. Okay. Any further comments in terms of the consultation? I assume again the GAC will provide some feedback in due course, but probably after the public consultation period is closed, which will be after the Costa Rica (inaudible) meeting. I see the comments relating to the public consultation, thank you for that. Can we move on to revocation, item 5 on the agenda?

Thank you Bernie for posting the summary document of the e-mail discussion on misbehavior the other day and there's been some subsequent list discussion. Bernie, can you sort of give us a summary of where we're at with the revocation document?

Bernie: Yes sir, I'll just put up the document and I'll be with you in a sec. Da-da-da-da-da, there we go. Essentially, I think we've reached a point where we've got quite a number of people that consider the significantly misbehave clause applies to incumbents. We've got a few people that do not, and we've probably got a few people that are yet to be undecided. And, I don't think there's been much traffic on this since the beginning of the week. I haven't noticed any, at any rate.

Keith: Okay. I'm not really sure where that leaves us, Bernie. With a – I mean, to me, we've seemed to get quite close to some form of unanimity for the working group and then drifted apart again, and I really wouldn't like to go forward without a document that doesn't have at least a strong consensus of the working group. So.

Bernie: Well, I think we've been arguing a great deal about whether significantly misbehave applies to incumbents or not, and we're leaving aside the question pre-RFC 1591 or not. But, one thing that might be helpful as I think we've seen on the list is before trying to close off this topic, trying to understand with significantly misbehavior, misbehave means, and what IANA stepping in means because I think to a certain extent, we're arguing about a concept that's got very little details around it, given that we don't know what those terms mean. I mean, everyone may have their own definition of what they think it means, but the point is, it might be beneficial – I would think – to look into for the working group, to look into interpreting those statements because it might clarify some of the maybe unstated concerns that saying this applies or not.

Keith: Yeah. Well, I think that's what my last e-mail to the list on this topic was trying to get people's heads around. I mean, you're stepping in, sort of conjures up all sorts of connotations of meaning in my mind from sending an e-mail saying, "you've been bad, incumbent CCTLD manager, mend your ways," to re-delegation, and any other steps in between. So, I think having clarity around that might be quite useful and it's with fear of the debate before we try to resolve this as an issue. And I certainly invite that debate. So, any comments in terms of this process of what sort of misbehavior would constitute IANA stepping in and what IANA stepping in might mean? No? Kathryn, hand raised, Kathryn?

Kathryn: Hi Keith, thanks, yes it's Kathryn Reynolds. My – I had a thought about this, that – and I totally just putting this out there, if we want to understand what substantially or

misbehavior is under 1591, would it be of any use to look at what it really did mean? What it meant, and also what IANA has done as – what stepping in has meant in the past? What did IANA do in the past, and we could perhaps document that? What it has meant in the past for IANA to step in, and in what circumstances, and whether or not we agree that those are the right circumstances or the right – what should be stepping in going forward. It may answer that question.

Keith: I think Katherine, we probably did that as part of the process of the delegation-re-delegation working group, and IANA stepping in was a highly variable kind of process. So, yeah.

Kathryn: Okay yeah, I mean, I know. I've seen that in the – I've seen all of the ways, what stepping in meant, I just – I guess then what we have to do is look beyond that, then. But, what we're being asked to do and make sort of – it's make a – go beyond the sort of evidence that's already out there and put our own opinions around that, I guess that's what I understand we should be doing.

Keith: Okay. Look, I think that's something I think I might try and re-raise on the list, so maybe it's one of those items that might be, he said debated unless – and I think if we're no closer to achieving some sort of consensus over the next week or so on the list, perhaps it is the topic that we should put on our agenda for the Costa Rica face to face meeting and try and resolve it in the room. But, let's continue on list and see if we can get some further harmonization. Eberhard has his hand raised, so, Eberhard?

Eberhard: I think we shouldn't, I agree, we should maybe approach it from backwards. First, look at whether IANA ever has stepped in on the work conditions and what have they done, and then we can look at what substantial misbehavior would mean, what persistent problems mean, and then decide what we feel appropriate steps – what we think step-in means. Okay? I also want to mention that we must not speak of IANA, we must speak of the IANA function contractors, or function operators.

Keith: (Inaudible) I think IANA is kind of our accepted abbreviation for the IANA function but can we take it as read, when anyone mentions IANA, they mean the IANA function, and otherwise should specify the IANA contractor, etc. Martin and then Eberhard, Martin?

Martin: Thanks Keith. It's just a surreal question because I must admit I have a certain degree of problems trying to go over the rather large volume of correspondence. The – whether there is enough material now for somebody other than me to look through that and see whether they can put down the text or some form of text indicating where there are outstanding degree, uh, or outstanding disagreements. Because, it seems to me in a couple of places, that as you said yourself Keith, there seems to be some move to conversions. But then, sort of drifted off the front burner at various stages, and I just wonder whether, if we actually have perhaps before we get involved for the next round of e-mail slugging, something that actually said – okay, here really are the outstanding points. And then, start off by agreeing that yeah, we all agree that those are the outstanding points. And then, just sit down and address those one by one as we've done in other parts of (inaudible) this process.

Keith: Yep. Good idea, Martin. Now, Bernie, is that possible from your perspective to draw together those strings?

Bernie: Having produced the summary and having read these things in great detail, I don't think we're there yet. I think as I said earlier, we probably can do that once we've tackled having to look at what significant misbehavior means and what stepping in means. And, once we do that, then we'll probably have enough elements to create a list of things we can address individually, but right now where we are is strong number of people

agreeing, significant behavior applies to incumbent managers, we've got a few people that say it cannot, and we've got a few other people that seem to be sort of on the fence.

So, I – and I don't know if there's a number of list of issues under that, that we can address separately. I mean, the point is, either you think that significant misbehavior applies to incumbent managers, or not. So, I think what we were suggesting earlier is the thing that might make a difference to help us approach that in a more sectioned fashion as we've done in the past, is looking at what does, what would cause someone to be considered significantly misbehaved, and once we have that, also understand what it means for IANA to step in.

Because we have neither definition. These are just terms that are used once in RFC 1591 in section 3.4, and we're just – we certainly don't have a common understanding. We don't have anything we can write down as a list of positions defining these things, and I think that's really to my mind clearly the next step we have to go. Then, we'll be able to reassemble this with all the positions with the full understanding of that point, and try and resolve them or not.

Keith: Okay.

Dotty: Keith, can I, can I say something? I can't raise my hand. This is Dotty.

Keith: Dotty, I'll put you on the list, but there have been a number of people with their hands up for some time. So, I'll have Eberhard, Patricio, Nigel, then Dotty. So, Eberhard.

Eberhard: The session has moved past the issue that I wanted to make. I don't think we can think of IANA as the IANA function. The IANA function does not perform action, it doesn't make policies, okay? We must be clear about what we're talking about. If we speak about IANA and (inaudible) you speak about the IANA function operator. Under the new contract with the US Government, the IANA staff members are not allowed to participate in policy making. It must be far removed from this. So we should be very careful in our terminology.

Keith: Okay, thank you for the reminder, Eberhard, very kind. Patricio?

Patricio: Well, besides my comments with conceptual that the word used in the RSCs substantial, instead of significant, when they talk about misbehavior. I think before (inaudible) means on what it means for misbehavior to be substantial, we need to decide whether that particular phrase, that particular sentence, applies to misbehavior that could have happened at any time during the exercise of the functions of the designated manager, or only in the process of its being appointed initially. The phrase, the sentence, is in the middle of the section that Gary deals with that initial appointment, the designation. But, on the other hand, it seems to me that this document, important as it is, it's not particularly well-organized and I believe that sentence applies more generally to misbehavior that could have happened at any time, because otherwise there are things like section of number three, where there are a lot of requirements on the designated manager to be equitable to all groups, for instance, and there is no punishment in case that doesn't happen. What if that, what if the manager isn't fair to all the groups? I think that would be one thing that could trigger this IANA stepping in, that's in the next section.

Keith: Okay, thanks Patricio. Nigel?

Nigel: Okay, two things. I'm a bit confused by what Martin said about extensive correspondence. I got the impression from Keith on the e-mail that there'd been kind of a dearth of correspondence, and you were trying to whip us up to it. I also want to underline again what I said on the left with Patricio, is rightly banging on the chat room

about. It's not significant misbehavior, the phrase. It's "substantial." At the risk of self-referential here, it's got to be a misbehavior that is substantial.

Keith: Thank you Nigel, and noted, sorry. My – I was significantly and substantially misbehaving myself by using the wrong term. And, so noted. Going back to your fifth point Nigel, I think the mailing list discussion has been around the edges of the issues, I feel. It's not that there hasn't been any conversation, it's just not been actually taken the core of both what misbehavior might mean and what IANA (inaudible). I think Bernie was just emphasizing that as being something which should be more substantially concentrating on rather than peripheral issues. And Dotty, Dotty had a hand raised?

Dotty: Well, I was – Bernie basically said in so many words exactly what I was going to say, and I find it hard to wrap my arms around the phrase "substantial misbehavior." I mean, I'd prefer misconduct, but in order to declare whether there is misbehavior or misconduct, there has to be an articulated list of expectations or deliverables and I think that everything that we outline as a recommendation has to represent a measurable deliverable, and that should be the guideline that we follow because otherwise you're just going into vague terms that don't have any specific meanings.

Keith: Okay. Thank you, Dotty. So yeah, well, the question in my mind is that if we can't define then we have to disregard, so, I'm keen that we should exhaust the opportunity of seeking to define both what misbehavior and (inaudible) might mean. So, I think we're there. Let's revert to a bit, a bit through the list conversation and I'll try and stimulate some, further debate, on the basis of the recent responses to my last message to the list and see if I can tease out a bit, further conversation, and again I think if we're unable to resolve or get closer to resolution on this then it probably should form the core of our discussions in Costa Rica.

Any further comments, then? I see Nigel has his hand raised, is that because you didn't take it down or do you have a new point, Nigel? His hand has gone, so. Okay, any further discussion on this topic? So, we'll revert to further conversation on the list. Anything else in terms of the overall paper on revocation? As I said earlier, I thought Bill Semek raised some very valid points in an e-mail to the list, his last e-mail to the list, which was more than a week ago, and some of those aspects also need to be teased out going forward. But, since Bill isn't on the call, let's hold that and make that an agenda item for the next call. I'll try and address those issues raised by Bill on the list as well, and get some further conversation going on that.

Anything else on the topic of revocation from anyone? If not, can we move on the agenda to our any other business? There is one item of other business that I've been asked to raise, and it was from Kathryn Reynolds who asked me to remind everybody since there's a number of people on this call, that would all CCTLD managers please complete the finance working group survey on contributions to ICAN (ph) that was sent out in December? So, please, if you haven't responded to the finance working group survey, could you do so. And.

Kathryn: Keith?

Keith: Yes, Kathryn?

Kathryn: Oh, I just wanted to thank you for adding that in.

Keith: My pleasure, and I'm sure that we'll elucidate a huge number of responses because of the, obviously a lot of guilty consciences.

Kathryn: Oh, let's hope so.

Keith:

Okay, and our future meetings, we have two further teleconference meetings scheduled before Costa Rica, one on February the 9th and one on February the 23rd. So, we will talk again at 0500 UTC on February the 9th, and certainly we'll be engaged on the list. So, thank you all, if there's no other items of other business, I'll close the meeting and we'll talk again in I guess it's two weeks time. Thank you all.