

TRANSCRIPT

Framework of Interpretation Working Group Call

7 June 2012

Attendees:

ccNSO:

Ugo Akiri, .ng
Martin Boyle, .uk
Becky Burr, NomCom (Vice Chair)
Keith Davidson, .nz (Chair)
Stephen Deerhake, .as
Daniel Kalchev, .bg
Eberhard Lisse, .na
Patricio Poblete, .cl
Nigel Roberts, .gg
Bill Semich, .nu

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
Paulos Nyirenda, .mw
Dotty Sparks de Blanc, .vi

Keith Davidson: Okay, anyway I think we should make a start. It's five minutes after the hour here. And so I think hopefully some of our guest colleagues who will join the call in due course (inaudible) match and hope that (inaudible) join us because we do have an agenda item for them.

Anyway, on with the meeting. I have articulated the agenda for this meeting. I've received no requests for changes and so on. So unless there's any suggestions for the change, can we consider the agenda approved? And Kristina, can you give us the apologies and those present on the call?

Kristina Nordstrom: Sure. From the ccNSO we have Ugo Akiri, Becky Burr, Keith Davidson, Stephen Deerhake, Daniel Kalchev, Patricio Poblete, Nigel Roberts. And from liaisons we have Cheryl Langdon-Orr. From staff support and special advisors, we have Jaap Akkerhuis, Kim Davies, Kristina Nordstrom and Bernie Turcotte.

And apologies from Bart Boswinkel, Paulos Nyirenda and Dotty Sparks de Blanc. That's it.

Keith Davidson: Thank you, Kristina. Any further apologies received by anyone? Anyone on the call whose name wasn't called? If not, we'll consider that the apologies and list of those present.

Moving onto item 3 on the agenda, we had a slight amendment to the 17th of May meeting night, which was to delete the word revocation in 1591. So that was amended. And the meeting notes for the 24th of meeting were also circulated, not I think with anything that's of any surprise there. Does anyone have any comments about either of those meeting notes? If not, we'll consider those two meeting notes agreed and move onto item 4 on the agenda, revocation.

We've got a revised version of the revocation document, version 1.3. I see the redline version of that on screen, so Bernie, do you want to talk us through? I think initially talk us through the changes that we agreed to last week. And then we didn't make it all the way through the documents, so if we can pick up where you stopped and work our way through the rest of the document.

And I think unless we have the GAC folks arriving on the call at some stage, then we'll -- we can dedicate all of this meeting really to the topic of revocation and make as much progress as we can.

So, please, Bernie, take us through.

Bernard Turcotte: Thank you, sir. I guess we're getting the hang of this, so I actually put up red lining (inaudible). So I've tried to insert notes as we go along. And the first real part is the relevant procedures. We have the IANA stuff in there and so that was section 4 and that was removed, which of course forced the whole document to be renumbered.

So, as requested, section 4 -- sorry. That section, yes. That section was removed. And now analysis of IANA reports on re-delegation is section 4. There are no changes there and we move right onto section 5.

5.1 we're okay. 5.2, I will bring up my own copy and make sure, because there were some comments, so give me a second. Okay. Oh, I see, okay. The comments don't show up. All right, I'll work around those documents and take it through all. (Inaudible)

Keith Davidson: Bernie, we can hardly hear you and Martin has his hand raised. Sorry, Nigel has his hand raised, so Nigel.

Nigel Roberts: Well, while Bernie's looking at that, in looking at the last paragraph that's on the page in front of me, which is currently called 5.2.2.1.

Bernard Turcotte: It's my turn not to hear Nigel at all.

Nigel Roberts: Some people might think that that's not a bad thing.

Bernard Turcotte: I just need to know where you're at.

Nigel Roberts: Okay, if I speak up, can you hear me better?

Bernard Turcotte: Very well, thank you.

Nigel Roberts: Okay. I'm currently looking at the last paragraph on the page in front of me, which is 5.2.2.1. And I agree with what it says, although in one respect, I don't understand how you can have something more than revocation, which effectively is the ultimate intervention. And I've just --

Bernard Turcotte: I'm going to back us up to 5.2.1, if that's okay. I've got a few notes, which actually don't show up in the redline and I'm just going to read them to make sure we're all synced up, if that's okay with you.

Nigel Roberts: Okay, go ahead.

Bernard Turcotte: So, on 5.2.1.1, from 24 May meeting, Becky will review Nigel's proposed text to see if they can agree on the proposal to the group is what -- the note that was in the text. And we haven't gotten that, so that's essentially the way it was pretty much from the beginning. So that's section 5.2.1.1.

And Becky, are you going to have a chance to look at that before we get to Prague?

Becky Burr: Yes, indeed I am and that's why I asked you to send this to me in (inaudible).

Bernard Turcotte: Okay, great. Thank you. My next note was on 5.2.2.1, the proposed change in V1.2 was accepted, so the text that we see there is the new text and what's okay. The proposed text in V1.2 for 5.2.2.2 was accepted and that's the new text there. Same thing for 5.2.2.3 and 5.2.2.4 and 5.2.2.5. So they were all minor amendments, but they've all been made.

If we move on -- and you were in 5.2.2 I believe, Nigel. So, I'll take your comment now.

Nigel Roberts: I'm actually looking at again, the last paragraph that's in -- in its entirety on the current page, which is 5.2.2.1.

Bernard Turcotte: Yes.

Nigel Roberts: And I agree with -- you're moving it now. I agree with it, but I'm thinking about this that revocation is the ultimate sanction, if you like. It's the highest sanction. And I'm thinking about this and we're talking about the definition of stepping in because stepping in could be something short of revocation, such as we talked about the providing of practical assistance by the IANA's function to a struggling ccTLD.

But it could be revocation and something else, so it could be revocation plus stepping in to provide an emergency registry. And I don't that quite expresses that. I'm just wondering if we could put a gloss on this that potentially includes something along those lines?

Bernard Turcotte: If everyone is comfortable with that, that's fine. My original intention was simply to point out that step in should not be equivocated with revocation only.

Nigel Roberts: Then perhaps we want to express -- see, I have a philosophical problem with more than revocation, because revocation seems to be the last step, as it were.

Bernard Turcotte: Oh, okay, I understand your problem. I think I can work on that.

Nigel Roberts: Sure, I mean there we go.

Bernard Turcotte: Now I understand your concern, yes. Meaning something above revocation when using the word more. Okay.

Nigel Roberts: Yes, that's right.

Bernard Turcotte: Noted. Okay, so going back to this document, I read the notes that took up to 5.2.2.5, which as far as I'm concerned, I've included the changes that were requested. Is your hand still up, Nigel?

Nigel Roberts: I thought I just put it down.

Bernard Turcotte: On my screen it's still up.

Nigel Roberts: Is it down now?

Bernard Turcotte: You are down, Nigel, you are down. That is confirmed. Going onto section 5.2.3, Substantial Misbehavior, I'll read the notes since they don't show up. Oh, we have new proposed text for 5.2.3.1 and you have it up on the screen in redline. Actually blue line, but we all understand. The only requirement prescribed for the manager in RFC 1591 bracket beyond those in section 3.5, which will be dealt with in another section R. So does that -- I believe that was Nigel's concern? And does that handle that properly?

Keith Davidson: It seems to about fit the dog, whosever dog it is.

Bernard Turcotte: That's my dog, I must apologize for that. She hears Nigel too often and she gets cranky.

Nigel Roberts: In common with people.

Keith Davidson: So, Nigel, that was your -- you have the floor. Are you happy with that text as it stands?

Nigel Roberts: Yes.

Keith Davidson: The 5.2.3.1. Beautiful.

Bernard Turcotte: Okay, I will go back to the notes in section 5.2.3 and we're good for a little while. And we go all the way to 5.2.3.2.2 and I don't have any other notes before that point. So, I've expanded quoted text, given the recent discussions. So the (inaudible) there is a managers as supervisors of domain names and operate facility name system in that country. So I had originally cut that quote short. There were some comments relative to that. I have added the longer section of that quote from the original text. Is that okay now?

Nigel Roberts: Bernie, I still have a bit of a problem with this and operate the domain name system. I kind of think that's an obligation on a manager that doesn't actuate. The domain name system is more than operating the zone call for the ccTLD. It's operating the equivalent of a root server, the IP address allocations, the conversion to ITB Citron. And --

Bernard Turcotte: Sir, in this section is just a summary of the quoted text from RFC 1591 or a compaction. I don't think we're trying --

Nigel Roberts: Okay.

Bernard Turcotte: -- (inaudible) in this section. We actually try and beat it up in the next section, and I think there we can have discussions about it.

Nigel Roberts: Okay.

Bernard Turcotte: So, any other comments on section 5.2.3.2 and its sub point? Which is, as I've just stated, a repackaging of quoted text from RFC 1591. I don't hear anything and I don't see anything and I wouldn't expect too much from that. So let's move onto 5.2.3.3, where there's a discussion of points. I'll go back to my version here so I can look at the comments and read them out. So, 5.2.3.3.1, a designated manager for domain is that it be able to carry up necessary responsibilities have the ability to an equitable job on a components -- a competent job. And we're back to having to -- the working group having to provide an interpretation, what this means.

Under that, there are 5.2.3.1.1 and following the comment from our last call, I've tried a new approach. I don't know if it's going to work, but I've tried to sort of gather up what was presented and let's take advantage of it while we've got Nigel here and Becky, and see if it works or not.

So, under that you've got the text in front of you and 5.2.3.3.11 a designated manager for a domain is that it be able to carry out the necessary responsibilities.

Nigel Roberts: Should that not be a requirement or something like that?

Bernard Turcotte: Right. I'll correct that. Okay. Let me note that one. Except I misquoted 5.2.3.3.11. So under that 1.11, what are the necessary responsibilities? And 12, must be able to carry out as it applies to each necessary responsibility. So, those are not statements, they're just questions I guess we're going to have to answer or that's what I'm proposing to present in that point, so is it okay? So this is not something that's going to go with the final text, but rather is to help us focus our attention so we can deliver some input. Is that okay for everyone? 5.2.3.3.1.11 and 1.12.

Becky Burr: I'm looking.

Bernard Turcotte: Oh, Nigel gave me a tick. Thank you, Nigel. Becky?

Becky Burr: Yes.

Bernard Turcotte: Two ticks, Nigel and Becky. Those are two big ticks, right? Okay, moving onto 5.2.3.3.12 where we are at and have the ability to do an adequate -- an equitable just, honest and competent job. So, that's just a quote from the above text, so we move onto 5.2.3.3.1.21. Have the ability to do, useful in selecting the managers, does the expectation carry on to actually doing these things once selected, if I remember the conversation. And then I brought this up to 12.11, have the ability to applicable to a designated manager versus prospective manager. Meaning if the manager is a company that is bankrupt, are they able to do anything? Question mark again.

So, from what I remember of the conversation, there was something about there's an extension of an expectation. I remember there was some conversation between Nigel and Becky saying that it would seem that it should carry on and I'll put it out to Becky and Nigel to see if this is a good question to have under this.

Becky Burr: I guess my view is that -- yes, that it would seem that it should carryover. That it goes beyond selection.

Bernard Turcotte: Okay, so --

Nigel Roberts: Can I now say what my initial view is?

Bernard Turcotte: (Inaudible)

Nigel Roberts: My view is the words don't achieve what Becky thinks they achieve. And that's partly what the language that we are debating, or rather Becky's reviewing what I've written, is meant to address.

Bernard Turcotte: That is correct.

Nigel Roberts: Now, I realize that I'm in probably the minority on this, so I'm not going to die in a ditch over it. So the language that I've proposed to Becky really tends to cover that. All I would like that language to do is to address the facts that the tenses and the way this is written is all focused on the choice of manager. It says nothing, either for or against, the idea of there being an ongoing supervisory role of the honor of the performance of the manager. It simply says have the ability to do a just and honest and equitable role. So, the expectation is that the person when they start doing it is fair, just, honest and equitable.

Now there's two possible alternatives that flow from this. One is that having created a ccTLD, it is the local community, the local structure that then has complete and utter responsibility for it. And the IANA doesn't have the ability to step in again. That's the equivalent of a, if you like, a creation and a complete gift.

The other interpretation, which is the one I suspect is preferred by a majority of the group, is that there has to be a reserve prerogative power if in the case, for example, of abandonment. So short of actual revocation, if the ccTLD was abandoned, the IANA could perform a caretaker role.

I just think the language says one thing, but we all tend towards something that language doesn't quite address explicitly. And all I'm seeking to do is to cover that possibility and say that on balance, if you like, the group agreed what it agreed rather than to simply say the unanimous view of the group was X when I don't think it's as straightforward as that. I think Becky knows what I'm trying to say.

Becky Burr: Yes, and I mean I still come out in a different place because I just can't read this language without inferring that continuing obligation, but I do recognize that construction that Nigel is pointing out is possible.

Nigel Roberts: You just think I'm wrong.

Becky Burr: Well, I just -- I mean I -- (inaudible) the designated manager must be equitable to all groups in the domain that request no -- that request domain names. Which means that the same rules are applied to all requests and all requests are processed in a non-discriminatory fashion. I can't read that as a sort of something that's about the initial choice.

Nigel Roberts: I think that's also correct and I think that lots of things that you see are purely looking at it at the time of selection. And others do give that feel of an ongoing (inaudible). I don't think it's cut and dried and I'm not going to be dogmatic about it. I'd just like to express the fact that it's possible.

Becky Burr: Right. And I think we're okay on that.

Nigel Roberts: Yes.

Becky Burr: And it's definitely not one of -- it is not a model of crystal leaders (inaudible).

Bernard Turcotte: All right, thank you, Becky and Nigel. I see Martin has his hand up.

Martin Boyle: Thanks, Bernie. I actually have some difficulties with the interpretation that Nigel's putting onto it mainly because I actually find it completely and utterly illogical. So having (inaudible) to selection that you then do not decide, do not take as being a requirement for the operation. It just doesn't make sense to say well, okay, I'm going to choose somebody who can act fairly and justly and honestly. Well, we all can, but then if the person runs this as a criminal (inaudible), he's not being equitable, just or honest. He might be competent, but I think there would be quite a mismatch between expectations and actually what was being delivered. So I really cannot live with Nigel's interpretation.

Nigel Roberts: I don't think I'm saying that it's the interpretation that I'm insisting on. I think it's not as strong as that. I think Becky knows how I'm trying to express this.

Becky Burr: Yes, and I think that were we end up when Nigel and I sort of is on balance it is sensible to us knowing that was an ongoing responsibility.

Nigel Roberts: I think those were my words, you've stolen them.

Becky Burr: Yes, exactly. That's what we agree on.

Martin Boyle: I thought you were saying we will end up at a place that is agreeable and --

Becky Burr: And I think that we'll also maybe what Martin is suggesting, because I think we all do end up in the same place about what a sensible outcome is. Even if --

Bernard Turcotte: Our reasons for getting there are a little different.

Becky Burr: Grammatically.

Bernard Turcotte: Yes. Would that be okay, as long as the end result is okay for you, Nigel, although we have noticed that you don't agree with Nigel's interpretation?

Nigel Roberts: I think you meant Martin.

Bernard Turcotte: Martin, sorry, yes.

Martin Boyle: If we get to the reading of that as being a continued expectation that the person does an extra just on his (inaudible) job, then if Nigel insists on the particular reading grammatically, then I'm prepared to accept.

Bernard Turcotte: All right. I'll assume that by the time we finish getting the final text that we've got a general hope of being in agreement. That's how I'm going to take this at this point. Would that be okay with you, Mr. Chair?

Keith Davidson: Yes, fine. Thanks. Bernie.

Bernard Turcotte: All right. I did not hear you very well, but I'm going to carry on assuming you thought that was a great idea.

In the next section, which is 5.2.3.3.1.22, equitable and just to be considered together? And under that, we've got the Oxford Dictionary equitable equals fair and impartial. And the Oxford Dictionary just, based on behaving according to what is morally right and fair, well founded, justifiable. Is the equitable part of this covered by section 3.3 of RFC15.91, the designated manager must be equitable to all groups in the domains that request domain names.

So I was just trying to pull up the definition and come up with some of the questions that popped into my mind on that one when I was trying to look at

those things and I don't know, Becky or Nigel, if you've got comments on that. Or anyone else for that matter.

It doesn't look like it. Okay, so basically I'm saying we've got an equitable in this part and yet there is an equitable in another part. And are they related? And my question is are they related in the sense we're going to try and interpret it in this part? So, given there's no questions or comments, I'll take it that this question is okay and that we're going to have to decide that to see if it's useful in our interpretation of that.

Honest -- I'll get to you in a sec, Nigel. Is it about the previous point or is it about honest?

Nigel Roberts: It's about honest.

Bernard Turcotte: Okay, so I couldn't come up with too much about honest and I just put in versus criminal and illegal, question mark. And I'm looking for input ladies and gentlemen. Nigel?

Nigel Roberts: I think we're over interpreting here.

Bernard Turcotte: Okay.

Nigel Roberts: I think we don't need to even address the meaning of the word honest or how it relates. I think it's a bit of stylistic repetition. I think what the intent and the purpose and even the literal words of the expression is that one should be equitable in the sense of non-discrimination and non-arbitrariness and so on. The question of honesty is it's just all tied up with that. I don't think we need to -- it's obvious that we think that dishonesty contravenes the standards of being equitable and I don't think we need to look at that.

Bernard Turcotte: I have no problem with this. I'm just going through them series (inaudible) and I'd like for us to, as a group, to come to an understanding on those things.

Nigel Roberts: And I have no problem with you having no problem with it.

Bernard Turcotte: Thank you, no. But I'm just --

Nigel Roberts: Or in taking that approach, which is fine. But that's my (inaudible).

Bernard Turcotte: Yes, let's go through the approach and bring out the comments. And if we're all okay with that point of view, that's great. We don't have to go into honest anymore than that. Becky, do you have a comment on that?

Becky Burr: No, I'm okay with that.

Bernard Turcotte: Okay, so what I'm taking away, unless there are other comments on honest, is that really it doesn't need interpretation because it's sort of a qualifier as it applies to all the other things.

Keith Davidson: That sounds reasonable to me, Bernie.

Bernard Turcotte: Okay, so that would put 5.2.3.3.1.23 to bed. 5.2.3.3.1.24, competent, being able to meet the other requirements, including 3.5, question mark. What is doing a competent job mean? Because we've got the word that is very related to what we're going to be talking about in 3.5. Thoughts, comments? Nigel.

Nigel Roberts: I think we used a literal approach. It means not screwing up.

Bernard Turcotte: Okay. Any other comments, thoughts? So, I don't have anything else, so just for the record, Nigel's point is (inaudible).

Nigel Roberts: Martin has his hand raised.

Bernard Turcotte: Sorry, I didn't see that when I started speaking. Martin.

Martin Boyle: I think the other way that you can interpret the word competent is professional. In other words, doing a job in a proper and businesslike manner (inaudible) just necessarily stirring up. So somebody who is completely organized, doesn't manage to keep records might be able to technically keep the machine going. But I would question whether that is actually doing a competent job.

Nigel Roberts: Oh, I'd agree with Martin, but I defined what he's just said as screwing up.

Bernard Turcotte: This being --

Martin Boyle: Okay.

Bernard Turcotte: If I can just try this here, I don't think we're going to write not screw up in our documents and I sort of like what Martin said. Would that work for you, Nigel?

Nigel Roberts: If I could remember what it was, it probably would. It sounded good.

Bernard Turcotte: Proper and businesslike manner.

Nigel Roberts: It's more than that though, it's doing it in accordance with professional -- reasonably expected professional standards.

Martin Boyle: And in fact, professional was the word that I initially used and then qualified to try and explain what I meant by it.

Nigel Roberts: I could actually dig a little bit deeper into this, taking Martin's point. Then it's the standard of the reasonable registry operator.

Bernard Turcotte: All right. So what I'm hearing, Nigel, is that pursuant to Martin's point, you're going to take on to do a little digging and propose a text for honest -- sorry, for competent after my question in 5.2.3.3.1.2.41.

Nigel Roberts: Yes. Actually, if our medical friend was here, he would probably quote exactly what I'm thinking about. It's the belief though standard.

Bernard Turcotte: Yes, and Eberhard has some interesting and good words on these things because of his professional obligations. And I'm sure that you'll be able to contact him on that when you work on coming up with words?

Nigel Roberts: Actually I don't need to. I just need to get the case off the shelf. It's called the (inaudible) case.

Bernard Turcotte: Okay, so regardless where you get --

Nigel Roberts: So Martin's right, in other words.

Bernard Turcotte: Pardon me?

Nigel Roberts: Martin's right.

Bernard Turcotte: Oh, well, we've heard it here. Okay.

Nigel Roberts: Again.

Bernard Turcotte: Bernie doesn't need to be right, Bernie just needs some words. So.

Nigel Roberts: Bernie will get some words. I'll run it by --

Bernard Turcotte: Bernie will get some words, okay.

Nigel Roberts: I'll run them by Martin as well as if you want, but I know where to go get them. You'll get them later.

Bernard Turcotte: Okay, thank you. Is that okay for you, Martin?

Martin Boyle: Yes, that's fine with me.

Bernard Turcotte: Thank you, sir. All right, so that would cover competence. That takes us to section 5.2.3.3.2 and I will bring up the notes that I have on that before we get into it. Because I know I wrote some big notes on this. Or I should say lengthy notes.

All right, here's what is in the document, which doesn't show up on the screen. Unfortunately, but you have a copy of it. I believe it's there. Following the discussion on this, and this is about 5.2.3.3.2, we need to define exactly what operates domain name system means. Bill Semich maintains that this refers to more than just the ccTLD of the entire Internet DNS in a country or a territory. Becky and Nigel are proposing that the interpretation is operates the country's DNS system. So, that's what we had.

And then there were some definitions that I had in there and somehow the DNS actually slipped in there. It was not in the Oxford Dictionary. I apologize for that on the cut and paste. But we ended up agreeing to keep one to colon in section 4, which operate from the Oxford Dictionary of a person controls the functioning of bracket a machine process or system. And under 4 was no object of an organization be managed and run in a specified way, colon, neither company had operated within the terms of this charter.

So, that's where we are with 5.2.3.3.2, operates a country's DNS system.

Keith Davidson: Bernie, Martin has his hand up. Martin?

Bernard Turcotte: Yes, I was just getting there. Martin, over to you.

Martin Boyle: Thanks. I'm not sure about the second definition there. When we discussed last time we noted that there were two definitions, in which the object to the verb operates. You've used one of them, but the other one is one that doesn't take an object and therefore I don't think it's the one we specifically referred to. I haven't got the earlier document in front of me, so I can't actually check the -- what was the one -- what was the definition that we missed that was gotten missed that thought was actually relevant in this case?

Bernard Turcotte: I can dig it up, but according to my notes, those were the two. With object and without object. The first one was (inaudible).

Nigel Roberts: Okay, I'm going to take it -- excuse me. I'm going to duck out, guys. Sorry I have to run. I don't see we need the second object, the second definition there because it takes an object in the quoted text. But anyway, I'll see you guys next time.

Keith Davidson: All right, Nigel. Bye.

Nigel Roberts: Bye.

Keith Davidson: Bernie, I think both Martin and Nigel were indicating the worth object definition was appropriate and the no object was not appropriate, so I think that probably for the purposes of the definition of what we're trying to do here, just leaving one is probably appropriate.

Bernard Turcotte: Oh, if that's what being asked then I'm fine. As I said, I'm putting these (inaudible).

Becky Burr: Yes, that's what I understood.

Keith Davidson: Yes, and I think that we're worth getting to, so but I think Martin and Patricio were (inaudible), so perhaps we can cover it up with Martin first and then Patricio. Martin.

Martin Boyle: My apologies. I haven't lowered my hand.

Keith Davidson: Okay. Patricio.

Patricio Poblete: I agree that we only need the first meaning of object. (Inaudible) with the weak object meaning in the first of control the functioning of the DNS. But it seems to me that that's a (inaudible). Operator the domain name system in that country. Somehow it sets up too wide a goal.

I think that the intention was to say operate the domain name system for that ccTLD. Because the whole of the DNS in a country may be something very large and very much beyond the control of the ccTLD manager. I mean it includes the resolvers, to begin with. The operation of the resolvers. There's no way we can control that. And if there are other TLDs operating in the country, say now with all the new TLDs coming, those also are going to be outside the control of the ccTLD manager. So I really think that when saying in that country there was this notion that that really meant the ccTLD for that country or territory.

Keith Davidson: Patricio, I'm absolutely in agreement with you on this. I see Martin's got a tick as well. So I think at this point we're defining operate and in the issue about the domain name system and the country, requires the resolution that we broadly determine that to mean the operating the ccTLD. If we could attack wording on that basis, Bernie.

And Bernie, I think by consensus we can delete the no object definition of operate.

Bernard Turcotte: Yes, I've already taken that on and I can work on some wording as per the last part of the conversation.

Keith Davidson: Cool.

Bernard Turcotte: Thank you, Patricio. Anything else before we leave the scenic 5.2.3.3.2? I see nothing, I hear nothing. Shall I move on, Mr. Chair?

Keith Davidson: Yes, please.

Bernard Turcotte: All right. 5.2.3.3 has not changed and everyone has been okay with this up to now. And I will just continue, pass on to 5.2.3.3.4, where we've got a lot of new text. Now, I know there was a note with this so I will go there in my other document. 5.2.3.3.4, here we go. There is still no general agreement on the possible interpretation of this point. The new text generated by Becky and Nigel

and accepted at the 24 May meeting is the first paragraph in blue I believe. So let's go to that.

The key element with respect to a ccTLD that is not otherwise covered in other points is quote, the administrative contact must reside in the country involved, close quote. It establishes the clear intention from RFC 1591 that thereby local in country or territory associated with the ccTLD, close bracket, present. Did I get that right, Becky?

Becky Burr: Yes.

Bernard Turcotte: Okay. Are there questions and comments on that paragraph? Okay, I don't see anything else. I have some more notes. Ah yes, there was the Nigel point. Nigel Roberts made the point that we should have a clarification note that this may not strictly apply within the EU. Martin contested this point, there was no agreement. And as such, I have not included anything and I don't know if it still an ongoing discussion between the parties. I am uncertain if Becky had a point of view on this.

Becky Burr: I guess. I mean I'm not quite sure what the EU internal market rules may have some effect on whether those provisions are enforceable under the law of a particular country. But I don't know why it would affect what the IANA rules are.

Bernard Turcotte: Fair enough. Thank you, ma'am. Just wanted to give the other participants some reference to your usual wisdom in these matters. All right.

Becky Burr: In other words, I mean it definitely could be an issue about whether you could get an EU court to enforce it, but.

Bernard Turcotte: Understood.

Becky Burr: That could be right, but I don't believe that there was an internal market when 1591 was written.

Bernard Turcotte: That is correct. All right, so if there's nothing else on that paragraph, I'll move onto the next one.

The next few paragraphs, I tried a new approach to after our conversation last week. So this is not agreed to stuff. This is as per the request from the chair to come up with some new text to keep stimulating the issue. So maybe we can converge on this. And so I've taken us to this point.

Note, the current application of this policy by the IANA contractor lacks formalism, clarity and transparency. One of the only relevant reference documents from IANA understanding the ccTLD delegation, re-delegation procedure 2007 does not mention the AC residency requirement. Additionally, IANA admits to having unpublished guidelines and that's a question mark and maybe Kim can correct me on that, regarding the use of the roll accounts for administers to contact and validating their requirement court residency with those. But I believe that at our last meeting when Kim spoke up, he mentioned that they've got some internal procedures, but I could not find them on the web.

Although there is no policy requirement in RFC 1591 that the AC name be published, there is a general expectation the IANA contractor properly document and post key procedures relating to the application of policy. As such, the FOI working group would expect that the IANA contractor would publish its procedures regarding the application of this policy requirement and that this would clearly cover individuals, other legal entities and role accounts.

So, that's where I've taken this. I don't know if it's useful. It seems to bring together some of the points we were talking about at our last meeting and I'll be glad to take comments and questions.

Keith Davidson: And Martin has his hand raised, so Martin.

Martin Boyle: Thanks, Keith. Yes, I actually have a bit of a difficulty understanding the reasons to the notes of the second paragraph. The fact that IANA contractor doesn't have particularly -- or hasn't got any track record in enforcing something doesn't necessarily mean that that should be a guidance, our interpretation of the policy. And I'm actually wondering whether that bit there starts becoming essentially a misleading statement in getting us to the point where you then lead to a suggestion that it would then be up to IANA to define its guidelines and publish its guidelines, rather than here I think it's something which is primarily a policy statement that should be in a mischief contact (inaudible) in the country.

A second point I'd like to make though it associated with -- well, actually for quite a number ccTLDs, a small number, but certainly a number of them. Nobody actually lives inside the territory and enforcing a requirement that some administrative contact has to, might be pushing things just a little bit too far. So perhaps there just has to be a footnote of consideration that, in some cases, that would be impractical. But I think by and large my main concern is about that note and the implications of including it in the way you have.

Bernard Turcotte: Okay, Martin, can I -- I was trying to listen and write at the same time, so I may have missed part of it. What do you think it should say? If it's getting people to comment then, as far as I'm concerned, the text is doing its job. I'm not married to it, I just want to use it to get people's views. And I think I missed what your endgame on this one is.

Martin Boyle: My endgame is to avoid having a direction of movement that is associated with this becoming a process point rather than a policy issue. And therefore really, the note that is there, while it might be factually true, it would not be the only place where IANA has not been paying attention to the terms of RFC 1591. And therefore, one of the main reasons why it was (inaudible) that the FOI working (inaudible) needed to be (inaudible).

Keith Davidson: So, correct me if I'm wrong, Martin, and I think I understand where Bernie is coming from on this, but perhaps that whole note has to be struck out and potentially replaced with a comment around along the lines that IANA may not be able to -- or there may be circumstances in which the administration contact may not be able to reside in country or a note to that effect that as opposed to the, sort of the process-driven comment that currently stands.

So is that where you're going with this, Martin?

Martin Boyle: Yes, I think that meets my concern for both my points, that it avoids it being a process point, but it actually notes that there might be process reasons why you - - that the no local residence.

Keith Davidson: Thanks, Martin. Did that help, Bernie?

Bernard Turcotte: Well, as I said, I really don't have a problem with what's being said. So if it's comfortable for everyone, and I see Stephen concurred with it and Daniel, this is all very complicated. I believe the RFC 1591 was to put an AC under the country's jurisdiction, not really them being physically present there. Okay, so there. We've got another comment.

So, along those lines, I don't have a problem. My issue is the following, relative to where we started out with the DRD and where we are with the FOI working group. There was, I believe, a fundamental expectation that if there are policy statements that there should be published process points for them. And that's all I was trying to raise through that note. I was not intending for that note to be kept in the final document at all, but I just wanted to bring it up. And to my understanding at least, there should be some mention of that, because that is what the fundamental expectation is from this group as far as I understand it anyway. Not to try and force anything on the contractor or anything else. But if there is interpretation and guidelines, then certainly they have to be (inaudible) up.

- Keith Davidson: Okay, thanks, Bernie. Well, I think yes, let's work on a different set of words as a note there. And continue.
- Bernard Turcotte: Thank you, sir. All right, where are we next? I will go to my other document for -- other version of that document if you will wait for me for a sec. And that takes us to 5.2.3.3.5.2 and I will -- all right. So this is under section 5.2.3.3.5, the designated authorities are (inaudible).
- Martin Boyle: Before we get there --
- Bernard Turcotte: Yes, sir.
- Martin Boyle: Yes, sorry to interrupt, but you've just gone straight past a bit that's in the text you've marked with low highlights of the drafting notes. That seems to me to be a fairly substantial issue, linked to things we've discussed earlier. But I actually wondered whether there was consensus or not on that particular point.
- Bernard Turcotte: I was not trying to avoid it, I was going to reconsider it as part of what's been asked of the text right now. But given you bringing it up, I'll be glad to take --
- Martin Boyle: I'm fine that with, just as long as we don't forget it completely.
- Bernard Turcotte: Okay, but while we're on it, do you think that's a valid question or do you think that should be struck I guess is my point for you, Martin.
- Martin Boyle: I think it is a very valid question.
- Bernard Turcotte: All right. Thank you, sir. Are there any other comments on that? Okay, so thank you. There's been a bunch of great input on this and right now we've got Martin saying the question's a very good question. Probably we should consider it as part of our interpretation and we'll get back to it and see if it stands the test of time.
- So, are we good to move onto 5.2.3.3.5?
- Martin Boyle: Yes, please.
- Bernard Turcotte: Thank you, sir. So, as we were, this is the tricky one, the designated authorities or trustees for the delegated domain have a duty to serve the community. The designated manager is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community. Now, 5.2.3.3.5.1 was okay because that is what we agreed to in an earlier document. The term trustee, with the use of -- with the help of Becky, was defined and agreed to, so I don't think there's a lot of argument on 5.2.3.3.5.1.
- On 5.2, the manager, there was something that I drafted, just to try and get some traction on this. The manager must provide a mechanism to allow for registrants

and significantly interested parties to provide input. And that caused concern from the last time around. I have from the notes, based on the transcript, that this is -- Nigel considered this new policy and should be struck. Martin, how else can the manager understand how to serve the community if there is no communication mechanism with the community of the [adoring] customer? If maybe it could be phrased that as a common practice is. And Bill Semich, serving the community is not about the ccTLD, but rather about the DNS in general or the country or territory needs to spell out what this means.

So I took that on point 5.2, there was no consensus and that this is still open. Although Keith did have a suggestion of a common practice, which could be put in as a note, I guess. But I don't know if that would satisfy Bill and Nigel, given the points they have raised and given neither one of them are here. I don't think we can make a decision either way because they can't represent or talk to this. But are there other questions or comments on that point?

- Keith Davidson: Don't appear to be, Bernie, so I think let's tag this as a topic for Prague and hopefully both Bill and Nigel attend in Prague and we could give it some fairly solid time there.
- Bernard Turcotte: Yes, sir, noted. That will take us to 5.2.3.3.5.3. From the notes, Nigel and Becky agreed on have to include version of this text being a trustee may include other things. New text attempts to capture this consensus. So, I'm going to read it and we'll see if I've actually done a decent job of this by talking to Becky. One should interpret being a trustee for the global Internet community as having to include ensuring the security and stability of the ccTLD as part of the global Internet and working with the IANA contract manager to ensure this. Becky, does that get this as per your suggestion? Did I get this correctly according to your suggestion?
- Becky Burr: Yes. I mean yes, I just want to say ensuring the security and stability is the pure (inaudible) of the ccTLD. Yes, that's fine. That works.
- Bernard Turcotte: Thank you, ma'am. Are there other comments or questions on 5.2.3.3.5.3?
- Keith Davidson: Just an observation I think, Bernie. I'm struggling with the wording in that format. This doesn't appeal to me particularly. And I wonder why it was changed, why this was the choice of words, saying one should interpret. I would have thought how it was originally written was more appropriate.
- Bernard Turcotte: If I remember correctly, part of the discussion was around the fact that the way it was originally presented did not convey enough of the sense that it had to include this and more. And so we were, I guess Nigel and Becky came up with this wording or suggestions around this and I tried to interpret it to cover that, so.
- Keith Davidson: Okay, good. I'm not (inaudible). I think Martin has his hand raised, but just as a proposal, I think all of the whole section of 5.2.3.3.5 could be taken aside and might be a big discussion topic for Prague. But however, Martin may have a way around. Martin?
- Martin Boyle: No, I don't think I have a way around it at all, Keith. It's -- like you, I have problems with the wording, but I think for precisely opposite reasons in that the original comments that it may include other things whereas in fact the text, the way this is written here, makes it sound like it mightn't -- it might, but the minimum case is this and therefore, if you meet this then you've taken the box and that would be an end to it. So I actually feel a bit uncomfortable about the apparent limitation in wording in the way it appears here. But certainly I think Keith's point that's here is a big enough issue for us probably to be best done face-to-face is a good (inaudible).

Keith Davidson: Thanks, Martin. Yes, my own personal view on this aspect of 1591 is more that the comment of the designated manager being the trustee for both the country and the global Internet community is more the question of balance and balancing the obligation to the DNS globally and to satisfy in the local community. So it's more the issue of balance than a specific obligation to act one way or another.

Anyway, Bernie, I think can we take all of 5.2.3.3.5 as a discussion topic for Prague and see if we can deal with it in a slightly different way?

Bernard Turcotte: Absolutely.

Keith Davidson: Thank you.

Bernard Turcotte: As stated before, and I'll restate it again, this is just about getting people talking about these things.

Keith Davidson: And just noting Eberhard has joined the call.

Bernard Turcotte: Welcome, Eberhard.

Keith Davidson: And please continue, Bernie.

Bill Semich: Actually it's Bill.

Bernard Turcotte: Oh, Bill.

Keith Davidson: Bill's imitating Eberhard. Now I see.

Bill Semich: I won't even try a German swear.

Keith Davidson: Okay, please continue, Bernie.

Bernard Turcotte: 5.2.3.3.6 is where we are now. And I will go to my other document to read the note. And that's where we stopped last time. So this is exactly where we left off, so there are no more notes. From the meeting previous to the last one we had struck most of the stuff under 5.2.3.3.6, so that's what you see there. And the only thing that got left out of all of that was the bottom. It would seem reasonable to interpret this requirement in the current context as the manager must publish its -- so in effect, its registration policies on the Internet for anyone to consult minimally in all the official languages of the country or territory and apply these policies in an impartial manner is what we had ended up with several weeks ago. Eberhard, you've got your hand up. Is this Eberhard? No, went away on my screen. So --

Keith Davidson: The hand's raised again, so.

Bernard Turcotte: Okay.

Eberhard Lisse: Could you hear me?

Bernard Turcotte: Yes, I can now.

Eberhard Lisse: Okay. No, I just wanted to check my setup. Thank you.

Bernard Turcotte: All right. Seems to be working, Eberhard. Welcome. So we got Bill and Eberhard, excellent. Twofer.

So, as I was saying, that's all we kept out of that whole tranch of text from 5.2.3.3.6. Any questions, comments, updates? Okay, so we're okay, sir. I'll move onto 5.2.4.

Keith Davidson: Yes, please.

Bernard Turcotte: Okay. We're back to that, so our definitions for substantial, misbehavior and them together. The last time we actually went through this, which was in our original first complete pass of the document, we had agreed to bring down the structure of the definition. Considerable important size works, strongly built, important in material or social terms concerning the essentials of something. There was substantial agreement. And we had struck some part down there relative to 3.

Misbehavior, I believe we had kept. The action of misbehaving and bad behavior. And misbehave, the verb of a person, especially of a child does conducts oneself in an acceptable manner to all. Misbehavior was then considered the failure to meet some of the non-DNS requirements. That's old wording that has been corrected. I apologize for that. And then there was question about substantial misbehavior. There's been no real change to that text because there was no real agreement the last time. What I seem to remember is that there was certainly a bunch of disagreement about getting it this way and I'll be glad to take on some new text or ideas relative to this.

And Becky, would you have some thoughts for me on substantial misbehavior? I'm going to take advantage of it while I've got you on the line.

Becky Burr: So I think that a misbehavior goes back -- that misbehavior has to go back to the list of items at the top of that section in 1591. So the obligation that you have to read it back as the -- going back to the top of that of able to carry out the necessary responsibilities and the ability to do an equitable, just, honest and competent job. And so that the misbehavior is incompetence and an absence of all of those other things, including the stability and security of the ccTLD as part of the global Internet.

Bernard Turcotte: Okay, so the way -- what I'm getting from you for misbehavior, and not substantial misbehavior, but just misbehavior, is that it relates to all the points we've finished talking about, some of which we haven't finished agreeing on.

Becky Burr: Right.

Bernard Turcotte: Okay. So misbehavior would be a manager acting in a way that contravenes those points.

Becky Burr: Right. And I think that the construction that you have here about sort of the inability on or unwillingness to correct significant issues is right, is correct. And then of course, any sort of regular course of activity that does involve a failure to perform the DNS specific requirements.

Bernard Turcotte: And those get covered in 3.5 in very specific terms. Here we're trying to deal with almost the stuff -- the original approach we had was to try to deal with all the things that are not 3.5 in one chunk, which is the one we've been talking about and then try to deal with 3.5 as another chunk. But as Nigel pointed out I believe when we went through this the first time, failing to be responsible relative to your DNS responsibilities is certainly substantial misbehavior and that whole notion, which has to be correct in there. And as you say, I think the first part of 5.2.6.1 is probably correct and the second part needs to be adjusted. Is that the way you see that?

Becky Burr: Yes.

Bernard Turcotte: Okay. Any other comments or thoughts on that?

Martin Boyle: Just a minor comment, Bernie. I think 5.2.6.1, substantial misbehavior, inability or unwillingness. There may be instances where the ccTLD manager is or has the inability to correct something. For example, under a competent (inaudible) servicer takes may not be able to fix and nor would any other ccTLD manager. So it's more about the unwillingness than the inability I think. And I note Bill's agreeing with me on that point.

Bernard Turcotte: Yes, I have to note that Bill had brought up that specific point when we went through that originally.

Becky Burr: Excuse me. Could you give us an example? I mean I think I understand what you're talking about, but --

Keith Davidson: Well, okay. We operate the dot nz domain name space. We do it to the best of our ability and someone from Namibia decides to attack New Zealand and amounts a denial of service attack just against dot nz, which essentially brings the dot nz domain name down and renders it inoperable or un-resolvable. IANA could say, well you're misbehaving and you're showing an inability to remedy your misbehavior because the DNS isn't available. But the reason for that is (inaudible) of (inaudible).

Becky Burr: No, yes I agree this sort of goes back to something that I was flailing around with a little bit earlier where we were talking about ensuring the stability and security. I mean I think it's more like taking reasonable doubt to do that rather than having some flat out un-nuanced, un-caveated obligation because you're right, you could be running the best operation around and if there's a real bad guy out there who wants to take you down, it shouldn't be a cause for termination or revocation.

Keith Davidson: Yes, it's just that I think that clause loses anything by striking out the words inability or because that's the unwillingness to keep that. However Martin has his hand raised and may have a point of clarification on this too. Martin.

Martin Boyle: Thanks, Keith. I think the case of a common denial of service attack and you not being able to stay up, I find it difficult to classify that as being an example of substantial misbehavior on behalf of the operator. And I think -- but I would also have concerns, perhaps striking the word inability, in the meaning of the word as essentially being competence of the operator. And I suppose the example I might use is this. If every week the registry goes down and the manager fails to put in the investments necessary to make his system more reversed, then that might be where the failure to respond to a denial of service attack could be considered as being substantial misbehavior. It's happening regularly and the organization running it is unable to deal with it because they are refusing to put in the investment necessary that might be seen as being good practice in the industry.

So I would be a little bit nervous about just striking the word inability just because mere happenstance might come into play there.

Keith Davidson: Okay, perhaps using the word incompetence or unwillingness by the incumbent manager might seem more appropriate then. But yes, I see --

Martin Boyle: I'm more than happy with that.

Keith Davidson: Okay. Eberhard has his hand raised. So, Eberhard.

Eberhard Lisse: No, what Martin just said is not inability, it's clearly unwillingness. I think you're right, his inability or has to go out.

Keith Davidson: Okay.

Eberhard Lisse: For example, if you know the denial of service attack from Namibia to New Zealand originates from the location of the letter Z on the keypad, which is very close to the letter A. It's only the Germans where that is swapped with the Y don't know that. But if a small ccTLD is unable to do something, that doesn't mean they can be revoked. It must be if they are [unable] to do that.

Keith Davidson: Okay, thanks.

Eberhard Lisse: And able and don't have the resources, but then they must be helped. Let's say, for example, Southern Sudan comes up. They have no resources whatsoever. So they will do whatever they can within their means, and if something needs to be done, which they cannot do them, it needs assistance. You can't just re-delegate it because they are poor. You can't, that doesn't make sense.

Keith Davidson: Yes, okay. So, I see Bill has his hand raised. So, Bill.

Bill Semich: Yes, actually I (inaudible). It's really a complicated (inaudible). Use fair and equal judgment as to whether (inaudible) inability is misbehavior and some inability is circumstantial, for example. Island nations having their satellite system blown out by a tsunami. That is an inability.

On the other hand, we're looking at a section that we're saying it's the correct significance with respect to the non-DNS requirements. So there are other potential disabilities here that relate to fair and equal behavior, treatment, availability on the Internet, all of which can exist -- can stop existing for any number of reasons, starting with the government making certain rules related to unequal treatment.

For example, relatives of a ruling junta may want to control certain sections of the domain name system and charge more or limit access to the email system may be down, as I said for technical reasons that the administrator has no control over. For example, the shutdown of the Internet by the government. So I think because of the wide variation of potential definitions of the use of the word inability from everything from something bad to something purely innocent, clearly indicates we shouldn't use the word.

Bernard Turcotte: Yes, sir. If I can get in once there's a slot.

Keith Davidson: Yes, Bernie, the floor is yours.

Bernard Turcotte: Thank you. I think they're good comments and I'm -- this ambivalence about inability after listening to Bill has crystalized in my mind. What I was trying to communicate with inability is for things that are directly under the control of the manager. Obviously most of the examples that have been given are beyond the control of the manager. We've mentioned some things, which are denial of service attacks, acts of God with tsunamis and things like that. And this is not at all where I was going. I agree with Bill and Eberhard that trying to apply it in that way is wrong and doesn't make any sense. Yes, I agree.

However, I believe there unwilling -- my problem is unwillingness to my mind doesn't cover it all. So if we're talking about inability for things that are under the control of the manager, then that could be a basis for what we're talking about.

Second is, I've just got three things. The second thing is the non-DNS requirements, I don't know when Bill came on, but we're saying we're rewriting the second part of that document.

The third thing is in several of the cases when people were talking about this statement, they're making the jump to automatic revocation if there is substantial misbehavior. And I think as we have seen when we start talking about revocation, it's not a one-step process, i.e., there is substantial misbehavior, IANA doesn't have a choice but to revoke. That is certainly not the case and that is not what's written there.

So I think in fairness we have to consider that a finding of substantial misbehavior should not be squarely equated with immediate revocation because we've written it above and we're going to go through it again in the next section. There is a requirement from IANA if there is a finding of significant misbehavior to do everything in its power because as we have stated at the beginning of this section, revocation is a last resort option. Everything else must be considered done and tried before -- even if there is a finding of substantial misbehavior.

I've finished ranting now. Back over to you, sir.

Keith Davidson: Okay, thanks. I still have an issue with the word inability in that sense, because of its inability can convey either your own lack of capability or someone else making you unable to do something.

So, on that basis, I think there was a bit of consensus coming around that unwillingness on the phone isn't enough. But incompetence or unwillingness by the incumbent manager seemed to cover reasonably or circumstances. And that incompetence meaning specifically that you lack the competence yourself rather than having the inability.

Bernard Turcotte: I'm okay with incompetence, by the way.

Keith Davidson: Yes, Martin's got a tick to that just by the way. And Eberhard has his hand raised. Eberhard?

Eberhard Lisse: Okay, if we can add a little bit of an objective to incompetence, I would be also fine with that.

Keith Davidson: Okay.

Bernard Turcotte: As in significant?

Keith Davidson: Eberhard?

Eberhard Lisse: What -- the point is behaving. Is an act misbehaving? Is an act -- inability means you're not acting for whatever reason. Maybe you can't act, it's beyond your control. So the idea is that we make it clear that it's -- there must be an act on the part of the incumbent who basically tells us that we can (inaudible) ourselves. Yes, and we don't care. If he is unable to do so because somebody is standing with a gun to his head, that's not what we want.

Bernard Turcotte: Agreed, but the question, Eberhard, was from what we understood your earlier statement to be to add an adjective to incompetence, or at least that's what we understood your statement to be. And what I had proposed was to replace inability with significant incompetence.

Keith Davidson: Yes, I think that works. Let's try that and but let's revisit on our next discussion.

Bernard Turcotte: Okay.

Keith Davidson: Eberhard's agreeing with it.

Bernard Turcotte: Excellent, all right. Well, I didn't even think we could get to there.

Keith Davidson: Okay, so please continue, Bernie.

Bernard Turcotte: Thank you. 5.5.2.6.2, just as a follow-on to that and there will be no wording 5.2.6.1, an IANA contractor should develop and post the procedures for the term meaning it's the manager of a ccTLD is substantially misbehaving based on the work of the FOI working group. These procedures should be reviewed and approved by the ccNSO if they will be responsible for monitoring these.

Questions, thoughts and comments on 5.2.6.2. Okay, I don't see anything on my screen. Shall we carry on, sir?

Keith Davidson: Sorry, I was on mute. Yes, please.

Bernard Turcotte: Thank you. All right, no comments there. All right, process for revocations. It's 5.2.7. 5.2.7.1, the FOI working group believes it is consistent with the intent of RFC 1591 to state that revocation should be a last resort option for the IANA contractor. The IANA contractor should use all means at his disposal to assist the manager to resolve any substantial issues with non-DNS requirements -- again, that non-DNS language is going to go away -- with the requirements of RFC 1591.

Revocation should only be considered if the IANA contractor can reasonably demonstrate that the manager is incapable -- and again that comes back to the discussion we've just had, so yes, let's not do that -- is significantly incompetent or unwilling to resolve the clearly identified and documented issues in an appropriate timeframe. If the delegation is revoked, the IANA contractor should use all means at his disposal to ensure the ccTLD will continue to resolve, name and identify a suitable replacement.

And before anyone jumps up and says it, this is the original text and certainly on the last part, we'll continue to resolve names and identify a suitable replacement, I will step in for Nigel here who's absent, who had a big problem with that because he read that to mean that it is IANA that is identifying the replacement. That was not the intent of the text, so yes, that whole thing has got several edits coming to it now that we've gotten past 5.2.6, which would mean that the last part of this should use all means at its disposal to ensure the ccTLD would continue to resolve names I think was correct. And instead of and identify a suitable replacement, there has to be new language in there that clearly makes certain that we're not talking about IANA picking a new contractor.

So, those are my words on 5.2.7.1 with all those caveats. I don't know if people have got more comments or questions.

Keith Davidson: Bernie, I think people would -- I think we would generally have a level of support for the spirit of what's being said. So I think it's probably better at this stage to leave a redraft to you and then get to picking that redraft.

Bernard Turcotte: I think that's a really good idea too, because that paragraph will change considerably from the input we've gotten at this point.

Keith Davidson: But yes, and there's no hands up, so I think let's take that approach.

Bernard Turcotte: Excellent. 5.2.7.2, the FOI working group believes that it is consistent with RFC 1591 to allow a manager the right to appeal a notice of revocation by the IANA contractor to an independent body. This was, I believe, did not raise any flags the last time we went through this. Are there any questions or comments?

Keith Davidson: Just noting a tick from Bill Semich and no other comments.

Bernard Turcotte: Okay. Oh, Eberhard.

Eberhard Lisse: I'm wondering what kind of an independent body could there be and who will select it? Another can of worms.

Bernard Turcotte: Possibly. I think one of the things we've got here is to walk that line that we've identified several times before between interpreting the policy and getting into developing procedures. I think that given the general things that are going on within ICANN for a right to appeal to an independent body, if Nigel were here, he'd say there is probably a fair amount of commercial law to identify what this would mean.

But we don't have to listen to me because we happen to have someone that's pretty good at this stuff. So, Becky, would you have a comment on that relative to Eberhard's point?

Becky Burr: Well, I think that there is a question about sort of what court or what body you could get into right now, but I certainly would also agree that this is -- it's not overstepping our balance to say that it's consistent with 1591 to say that somebody should have that ability. And there are certainly many calls on ICANN to provide meaningful access to that kind of independent review.

But I mean I think right now, Eberhard, the notion would be what court has jurisdiction over a dispute between a cc operator and IANA.

Keith Davidson: Good point, Becky. And but I think also in the back of Bernie's mind and drafting that particular, what it takes is the RFC 1591 issue that says the Internet DNS names review board, a committee established by the IANA, will act as a review panel for cases in which the parties cannot reach agreement amongst themselves. And whether or not their concept of an appointed review panel is part of this. I don't know. But however, that would not be a binding decision as a court decision would be. So, Becky, what's your feelings on that?

Becky Burr: I think that the 1591 clearly does contemplate that there would be some place to appeal and review that. The fact that it hasn't been implemented doesn't take away from the original spirit there.

Keith Davidson: No, but I think the ICANN board essentially has taken over that role in the instance of any other viable alternative being available. So that's why the ICANN board considers issues relating to delegations and re-delegations to ccTLDs.

Now we have a --

Becky Burr: That's (inaudible). That's interesting. I mean maybe, but it would be hard to argue that IANA and ICANN board are independent of each other.

Keith Davidson: Correct, but the IANA contract does not impair the ICANN board to make decisions over delegations and re-delegations necessarily. But anyway, Eberhard has had his hand raised for some time, so Eberhard.

Eberhard Lisse: Everything is called reviewable, so that doesn't mean it. This DNS review board or whatever it's called never got established and it wouldn't be fitting into the landscape anymore because IANA would establish a board whose decision would be final. You can forget about that.

As I said, I think this language needs much more thought and much more revision. Of course it is quite clear that an appeal should be done and should be possible, but if you mention it, we must also say what this could mean. It is clearly not the ICANN board. I totally disagree with that the ICANN board has even a role to play with what is a separate issue.

Keith Davidson: Well, yes. I was just raising the question of the legitimacy of the ICANN board and the decisions that it makes now. But it is by default making the decisions and nobody's contesting them in any court. So it's given itself the authority and it's acting. And so far no one's been able to find a methodology around that.

However, I think we're getting a little bit away from this topic and that's -- Eberhard, nonetheless, your hand is raised, so do you have something to add?

Eberhard Lisse: The fact that nobody has so far contested it means nothing. We do know how three ccTLDs in particular have been handled against the wishes of the incumbent and whether that incumbent was able or willing, as we discussed substantially now, to do something about it doesn't make it right. So, we're getting really a little bit away from the things we should do here, but we should not really try to venture into very dangerous territory.

Keith Davidson: Sure. Anyway, I think that brings us back on topic. I'm not -- I don't know if there was any strenuous objection to this idea of right of appeal to an independent body. And so Bernie, please continue.

Bernard Turcotte: Yes, I did not take it as an objection. I took it as there were concerns to make sure we understand what that means properly. And I think I can take that on to see if we can do something with that.

Keith Davidson: Cool.

Bernard Turcotte: For 5.2.7.3, the IANA contractor should develop and post the procedures necessary for the revocation of the delegation of the ccTLD based on the work of the FOI working group. These procedures should be reviewed and approved by the ccNSO, as it will be responsible for monitoring these.

So that shows the standard follow-on, which we've used in the previous point also. And I'll be glad to take comments or questions.

Keith Davidson: Doesn't appear to be any, Bernie.

Bernard Turcotte: I think we've done incredibly well, sir. I'm wondering if from the point of view of the revocation document we shouldn't stop it here, because after this point we're getting into a whole new section, which is 3.5. And there's only 15 minutes left, so.

Keith Davidson: Bernie, I wonder if we could carry on for another 10 minutes? There is no one from IANA -- sorry, no one from GAC on the call and so the main topic ahead on the agenda to cover require the GAC's discussion. And with Bart not on the call to discuss them -- the document set, we don't have any other agenda items really to cover today. So I think if we could perhaps just have a quick look through the rest for the next 10 minutes it would be good use of our time.

Bernard Turcotte: Yes, sir. 5.3, revocation for business and problems with the proper operation of the domain, brackets, the ccTLD. Quoting 5.3.1, in cases where there are persistent problems with the proper operation of the domain, the delegations may be revoked and possibly delegated to another designated manager, end quote. I don't think there should be any problems with that as it's lifted directly from RFC 1591.

5.3.2, persistent problems with the proper operation of the ccTLD. What does that mean? 5.3.2.1, the technical operation of the ccTLD has greatly evolved from the time of publication of RFC 1591, along with the use of the Internet. And also still a specialized field is standard knowledge for the networking specialists and is supported by a large volume of easily accessible documentation and application.

In addition to this, and there's some text that was struck there, there are a number of service providers which specialize in performing these services under contract for ccTLD managers. So, basically just an introduction to persistent problems with the proper operation of the domain that this is no longer magic, but just rather a common operation, although albeit a very specialized one.

Questions and comments on that? 5.3.2.1.

Okay, 5.3.2.2, the IANA contractor has not published his expectations as far as what constitutes a manager doing a satisfactory job of operating the DNS service for the domain. Or what should be considered to be persistent problems with the proper operation of the domain.

So basically again, just the facts. I've scoured this stuff; I don't think Kim has an argument with that. It's just not there.

Questions, thoughts or comments. Martin.

Martin Boyle: There was a comment on that particular paragraph that you might want to read to people.

Bernard Turcotte: Ah, okay. I forgot to go back to my document. Thank you, Martin. (Inaudible) Okay, ah, thank you. Yes, Bill suggested the addition of consistency with relevant RFCs, which was strongly discouraged by Jaap Akkerhuis. So, that was a comment that came over the comment that came with 5.3.2.2 and now I remember that discussion. Thank you very much, Martin.

So Bill was talking about has -- I guess the source of his concern was that the expectation as far as what constitutes doing a satisfactory job, he wanted to tie that back to something as opposed to just leave it hanging like that. And he has suggested the RFCs are specialists in this area. Jaap sort of came back and said he thought that wasn't a very good idea. So I see a hand up. Bill?

Bill Semich: Yes, I don't disagree with Jaap's concerns. I share them in fact. And I think what we need to do is look at this and consider what we are doing here is trying to develop policy. And by not at least specifying something, some basis for this developed -- the document that IANA is developing, it could be anything.

And so, I mean if we want to do a PDP that would be fine. If we want to talk about using any reference to current best practices documents or something. I think we need to do something to put a circle around this and not just allow the creation of any group of various and assorted requirements or whatever. Maybe we want to refer to the ability in whatever it is group there or I don't know. I know it's difficult tying this to something that already exists that may change. On the other hand, by not tying it to something, this will definitely -- this has a definite probability of becoming anything down the road.

Bernard Turcotte: I think I understand your concern. I think Jaap's concern was right, so maybe what we were -- the circle we were trying to draw around it with the RFC is not a satisfactory idea. But I think there are other ways of looking at this and I will take

on to come up with some new text for Prague that we can beat up on if that's okay with you, Mr. Chair.

Keith Davidson: That would be fantastic. Thanks, Bernie. Please continue.

Bernard Turcotte: 5.3.2.3, IANA should develop documentation as to what constitutes a manager doing a satisfactory job of operating DNS service for the domain. Or what should be considered to be persistent problems with the proper operation of a domain and undertake a public consultation of it.

So basically I guess it was starting to get to Bill's point and I'll be reconsidering that text along with 5.3.2.2. This documentation can then be used as a reference point when considering DNS related issues with managers of the ccTLDs.

5.3.2.2, 5.3.2.3 and 5.3.2.4 as far as I'm concerned are all part of the package and will be undergoing some major surgery before we get to Prague, if that's okay with everyone.

Keith Davidson: Excellent. Thanks, Bernie.

Bernard Turcotte: Okay. 5.3.3.3, definition of revocation. Ah yes. Okay, let me see if we've got some notes here as we're changing sections. A new top level is -- 5.3.3.1, as noted in section 3 of our RFC 1591, quote, a new top level domain is usually created and its management delegated to a designated manager all at once. 5.3.3.2, there's a note here. It was agreed that this point needed some work. And Becky would look at it. So, 5.3.3.2 currently reads, this would seem to clearly indicate a separation between creation and insertion of a ccTLD in the root and the granting of management responsibilities to a designated manager by the IANA contract manager.

So, the thing that we ended up with the last time we went around this text was that 5.3.3.2 was not acceptable as it was and that Becky would have a look at it. And can we add that to your list, Becky?

Becky Burr: Yes, please. Yes, add it to my list.

Bernard Turcotte: So I don't think there's a -- it's worthy of discussion. I have not touched that text and I believe Becky will be in a much better position to come up with something that people can chew on and will make more sense because of the sensitivities around this. Is that okay for everyone?

Keith Davidson: It seems to be.

Bernard Turcotte: Okay.

Keith Davidson: At least I note a couple of ticks, yes.

Bernard Turcotte: And really the sub points depend on that, so I don't see the point of charging into 3.3, 3.4 or 3.5 because they're dependent on what we're going to do in 3.2. So, I'm going to leave those at this point. Is that okay, sir?

Keith Davidson: Yes, thanks.

Bernard Turcotte: 5.5.3.4, process to revoke a delegation. Here we'll find some very similar text, but a little different, because it's adapted to section 3.5 of RFC 1591. The FOI working group also believes -- so 5.3.4.1, sorry. The FOI working group also believes the intent of RFC 1591 is that revocation should be a last resort option for the IANA contractor. The IANA contractor should use all means at his disposal to assist the manager to resolve any persistent issues with the operation

of the ccTLDs. So there we've got the language adapted to the statements that are found in 3.5.

Revocation should only be considered if the IANA contractor can reasonably demonstrate that the manager is incapable or unwilling -- and incapable and/or unwilling harks back to our previous discussion on the use of incapable and I understand that and will note that -- to resolve the clearly identifying documented issues in an appropriate timeframe. If the delegation is revoked, the IANA contractor should use all means at its disposal to ensure the ccTLD will continue to resolve. And procedures are followed to identify a suitable replacement. I believe I have suggested that to answer Nigel's concern, which we discussed in the previous incarnation of that language.

Again, because of the changes we've discussed in the earlier sections, there'll probably be significant surgery to this point. Again, we've got the right to appeal subject to (inaudible).

Sir, given everything is going to go under major surgery at this point, I believe we've sort of reached the end where we can be very productive versus the text that's there. And we've got four minutes left anyway, so I would say I think we can call it a day here.

Keith Davidson: Excellent. Thank you, Bernie. A very timely point to come to the end of the document. Okay, I think we have reached the logical end of the document and the call. So I'll just ask if there's any other business. If not, then please remember and have in your diary our next meeting face-to-face in Prague at 13:00 to 16:00 local time in Prague, which is 11:00 to 14:00 UTC. So with that, I'll declare the meeting closed and thank you all for your -- oh, I see Eberhard has his hand raised. So, a last item, Eberhard?

Eberhard Lisse: Just Kristina, can you send out the invitation as you usually do via the calendar system?

Kristina Nordstrom: For the face-to-face meeting?

Eberhard Lisse: Yes.

Kristina Nordstrom: We usually don't do that for face-to-face meetings because it's -- so many things change at the last second and we can't update any changes as we go along. And it just becomes complicated.

Eberhard Lisse: Okay.

Keith Davidson: Okay. So thank you all for your participation. I think we made substantial progress and we've identified some areas that we can concentrate our efforts on in Prague. And so look forward to seeing as many of you as possible in the room on the first day in Prague. Thank you, all.

Eberhard Lisse: Thank you.

Becky Burr: Thanks, bye.

Bernard Turcotte: Excellent, thank you, everyone. Bye.

Patricio Poblete: Bye-bye.

Kristina Nordstrom: Bye.