

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference

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Becky Burr: Can you do a little roll call?

Kristina Nordström: Sure. From ccNSO we have Ugo Akiri, Becky Burr, Chris Disspain, Stephen Deerhake, Eberhard Lisse. Nigel Roberts. From GAC we have Frank March. From Liaisons, Cheryl Langdon Orr. And from Staff Support and Special Advisors we have Jaap Akkerhuis, Bart Boswinkel, Kim Davies, this is Kristina Nordström, and Bernard Turcotte. Apologies from Martin Boyle, Dotty Sparks de Blanc, Patricio Poblete, Paulos Nyirenda, Bill Semich, and Keith Davidson. That's it.

Stephen Deerhake: On behalf of Dotty I would say she has a hurricane coming her way so she's kind of battening down the hatches.

Becky Burr: Okay. That's a good excuse. In terms of the agenda, which was previously sent around, any additions, changes, comments?

Speaker: None, Becky. Tell Chris to put down the glass of wine and ask him what he's talking about?

Becky Burr: Chris, sorry? We didn't hear that?

Speaker: Isn't he in Oslo? It's 6 a.m. there.

Becky Burr: Yes. Really. It's too early to be drinking wine. But okay. We'll take that as a confirmation of the agenda. We have the meeting report. From August 9 which is up on the screen. Any additions, changes, comments? I will take that as an approval. Alright. Bernie, I'm going to let you take us into the discussion of revocation which Nigel and I -- it will be a continuation of a conversation that Nigel and I have been having.

Bernard Turcotte: I'll take it off mute and it will probably work a lot better. Keith did manage to get a document out to the list. Did everyone get that?

Speaker: Yes.

Bernard Turcotte: Okay. So maybe instead of plowing through the document, I'll actually try to get a PDF version of that up. Kristina? Can you make me a presenter, please? And we can work off of that.

Kristina Nordström: This is Bernie talking, right?

Bernard Turcotte: Yes.

Kristina Nordström: You already are a presenter.

Bernard Turcotte: Okay. I couldn't see that on my interface. Apologies.

Becky Burr: Is someone breathing heavily?

Speaker: That would be the heavy breather.

Speaker: I was here for the entire meeting, not just the first hour. And I'm not the heavy breather. Thank you.

Speaker: You disappoint me.

Becky Burr: Stephen? Is Stephen here?

Stephen Deerhake: I see Stephen's there. Yes. This is me. Asking for a question from the minutes of last meeting that show I was there for the entire meeting instead of the first hour.

Speaker: Well, you say that. But how do we know?

Stephen Deerhake: Because I was there.

Speaker: Prove it.

Becky Burr: I'm willing to take Stephen's word for it.

Speaker: I think we should do that.

Stephen Deerhake: I don't know. That might be a critical mistake. Who knows?

Becky Burr: I'll go with it.

Stephen Deerhake: I was actually planning to leave after the first hour but it was so entertaining I had to stay around for the second.

Bernard Turcotte: Almost there, guys.

Eberhard Lisse: In the meantime, can anybody hear me?

Speaker: Yes, Eberhard. I can hear you.

Eberhard Lisse: Okay. Because I've updated my access to mountain lion and Adobe Connect doesn't anymore properly.

Stephen Deerhake: I'm using my daughter's iPhone. Go figure that.

Eberhard Lisse: There's some advantage to mountain lion, no?

Speaker: We have a very, very bad echo.

Becky Burr: Yes. It just started.

Stephen Deerhake: It's only about five times.

Eberhard Lisse: Echo from whom?

Speaker: That's an extremely good question, Eberhard.

Becky Burr: It's a good question although it seemed to start once you started talking, Eberhard.

Speaker: I'm going to mute myself.

Speaker: I thought it was mine but then I hung up and dialed back in.

Eberhard Lisse: I'm using the --

Speaker: The -- that you come around on the Adobe Connect at this point for the --

Stephen Deerhake: Echo, echo, echo.

Becky Burr: Can everyone who is not talking, everybody but Bernie mute for a second just so we can figure out what's going on?

Kristina Nordström: Becky, I think it might be that somebody doesn't have their computer speakers muted if they're also on the phone.

Becky Burr: Okay. Anyone who has their computer speakers on -- oh, good. Whatever happened, it just ended.

Bernard Turcotte: Okay. In Adobe Connect you've got the little speakers on top of the interface window. You can turn it off. We've got the text here for those --

Speaker: Let's carry on. It's 1:20 in the morning my time. I want to go to sleep.

Bernard Turcotte: Okay. We're carrying on.

Speaker: It's your same time, so you understand my dilemma.

Bernard Turcotte: I certainly do. This is the text that Keith sent out earlier or late yesterday at this point and we've agreed to have a look at it to speed up on substantial misbehaviors since Nigel and Becky could not agree to a definition offline.

Becky Burr: Although we had a full and frank discussion.

Speaker: As a point of record it would've been nice to have seen some of this disagreement in the run up to this meeting I guess.

Becky Burr: Nigel's on I know. I had originally proposed a definition of substantial misbehavior that keyed off of the material and repeated failure to perform tasks that are identified as their responsibilities or repeated and material failure to perform those tasks in an honest and equitable manner. I think Nigel and I agree that the standards should be something more than this sort of inadvertent incompetence and there should be an assumption that somebody just got it wrong and give them an opportunity to correct it. I guess that questions really if you see that substantial misbehavior definition that (inaudible) I think that question is a three part here. One is the repeated and material -- I think Nigel had deliberate failure or unwillingness to support, repeated material failure to perform responsibilities in a manner that's equitable, just, and then you have a question about whether competency --

Speaker: You're breaking up to the point that I can't hear you.

Becky Burr: Sorry. Can you hear me now?

Bernard Turcotte: That's better. And the heavy breather is definitively on the line. If you're not talking, can you please mute?

Becky Burr: And the third would be the deliberate and-or bad faith operation of the ccTLD in a manner that causes substantial harm or material adverse effects and then there's a question of whether it's the relevant or effective or local internet committee. So, Nigel? Do you want to express your concerns about this?

Nigel Roberts: Okay. Let's see if we can get to the heart of this. I think Becky and I are a hair's breadth apart on this. And I think the reason for this is the way -- we're probably going about it in the wrong way. The thing is that we should be saying first of all, what is the single misbehavior, which we'll come back to and define in a second. And substantial misbehavior is misbehavior that, if you pardon the secular argument, is more than incidental, it is actually substantial. Now, then what is misbehavior? A lot of what we've been talking about and what we've put down here is misbehavior but it's a bit like the old English judges' example of what pornography is. They said something along the lines of I can't define it but I know it when I see it. What we're trying to do is to say in our interpretation, again, what

we're trying to legislate in saying if we were writing RFC591 today, instead of putting substantial misbehavior we'd put clauses in that if they do this, this, and this, we won't accept it. That's not what happened, of course. John and John put substantial misbehavior. I think that what we should be perhaps doing is just to use the word include -- as in substantial misbehavior may include misbehavior that's more than incidental, it is substantial and may include examples that we're talking about. If we try and just say this is it, we might even miss out on some things that really would be substantial misbehavior. One example I used to Becky was if the ccTLD manager was convicted of murder or manslaughter or something. That's pretty much substantial misbehavior but is it connected to the management of the ccTLD? Depends who he killed.

- Speaker: His incarceration for 30 years in jail thus making him unable to manage the ccTLD might be relevant.
- Eberhard Lisse: Depends if he's in jail, yes? That depends on who put him in jail?
- Bernard Turcotte: You're very faint, Eberhard. Very faint.
- Eberhard Lisse: Sorry.
- Speaker: Becky, I think actually just to write that one of the -- as Nigel says it's a hair's breadth apart. I think that while committing murder is not a great thing, for our purposes the relevant issue is that if he's in jail for 30 years he can't perform the function.
- Eberhard Lisse: This is not acceptable. It depends who puts him into jail.
- Nigel Roberts: Eberhard, he can either perform the function or he can't.
- Eberhard Lisse: Sorry. It's not acceptable. There are democracies that have a rule of law in their country that are not going to condone this.
- Nigel Roberts: How do you deal with this?
- Eberhard Lisse: I don't know yet. But you cannot say, for example, government X is putting somebody into jail for 30 years or coming to his house with a Kalashnikov and the guy can phone IANA and say -- Please, take me off the list? Not happening.
- Speaker: Just putting aside the question of whether he's put in jail or not, because I agree with Eberhard that whether somebody's put in jail or convicted of a crime or whatever, it's very hard for ICANN to be in a position to evaluate that. If the ccTLD is not ccTLD operating, isn't that a failure to carry out the necessary responsibilities?
- Eberhard Lisse: Location, in the first place. I'm saying it's not a problem because you can behave easily. I don't like where this is going. You're delving really very, very far from what is written. Now substantial misbehavior must have an element of bad faith. Now we're saying if somebody is unavailable that's substantial misbehavior? I don't like where this is going.
- Frank March: It's Frank here. Perhaps I can understand Eberhard's point of view here but the issue is the function of can the job be performed or not. In theory, inadvertently, for one reason or the other such as being locked up for 30 years makes performing the function impossible I would agree that it doesn't come as a definition of substantial misbehavior. It's substantially being unable to perform the function, surely. I don't know if that helps the argument, but taking misbehavior out in those circumstances that seems to be appropriate.

Becky Burr: I think Nigel has his hand up.

Nigel Roberts: Nigel does. I think I'm going to do my usual reminder here. And thanks to Frank. That's very helpful intervention. If we were writing new policy we would be doing certain things perhaps. But our job here is to interpret the existing words and the existing words use the word misbehavior and I was trying a couple pretty ancient I think definitions of the word misbehavior. It's connected to malfeasance or misfeasance. The misbehavior in the context of an office which is effectively what the ccTLD manager is, it's an office of some kind, we've got this expression trustee for the country or territory in 1591. Without going down the road of trying to look at whether or not the word trustee has a legal effect or not, it is some kind of an office so it's misbehavior in that office. Somebody who works in your local DMV and merely does his job badly is not committing misfeasance. They're just doing what's expected of somebody in the DMV. Somebody who takes bribes to give out information about the registration of cards in contravention of privacy rules is committing misfeasance or malfeasance. There's got to be an element of misfeasance or malfeasance in the definition of the word misbehavior. We might say there are circumstances where we want it to be different if we were writing this policy from scratch. We might even identify circumstances whereby the ccNSO might through DDP produce a new policy. But we must simply interpret the words and not say what we think they should be, whether we want them to be tighter or looser.

Becky Burr: Other comments on that? I guess I just don't know. I understand what Nigel is saying but to me misbehavior has to sort of key on what the expected behaviors are. We spent a significant amount of time discussing what certain necessary responsibilities are and requirements for the way in which those responsibilities are supposed to be carried out. So, if somebody is with the best of intention simply never has the name servers up, that seems to me to be problematic in terms of the sort of basic requirements of what you need to be and what we all agree 1591 says you need to be doing to but ccTLD managers.

Chris Disspain: Can I ask, just for a second, can we go back and look at what the consequences are? If I have substantially misbehaved, what happens?

Becky Burr: I believe IANA steps in.

Chris Disspain: And if I substantially misbehave, is there any context provided about that at all? If I substantially misbehave by upsetting your Christian values?

Becky Burr: That's exactly -- I think we have said -- I think the ccTLD operator needs to operate the name servers, do all of the things that are sort of specific things we've said and needs to do them in a competent, just, and honest way. IANA steps in if there's substantial misbehavior. And stepping in means doing everything you can to resolve the problem first before you do anything more drastic.

Chris Disspain: That's what happens if I substantially misbehave and I think I can see an argument for saying there has to be a causal link between the substantial misbehavior and my ability to do the job. But there are other ways that IANA can intervene surely. Is it not correct that if I murder somebody and I get locked up, can they not intervene from a technical point of view if I can't be found or if I can't be contacted or if the ccTLD itself is not being managed. Aren't there a different set of criteria under different sections of the RFC that they can use?

Becky Burr: Eberhard? You have your hand up. Anybody else want to take a response to Chris's question? Eberhard, then Nigel.

Eberhard Lisse: Substantial misbehavior in the RFC document is separate from revocation. And we have agreed initially over my better judgment that we might put a link in there because it's easy to behave, yes? Now that means we have said technically -- you keep things running and so on. If government of country X puts somebody in jail and says -- He's misbehaving, redelegate to my son-in-law's cousin because he needs the job. Sorry. This is not going to happen. Substantial misbehavior is different from misbehavior. I think there must be an element of bad faith or malfeasance in there. That's very important. We're not going to put -- the language we're putting in may lead to revocation to ccTLD and if that happens I want to be sure I can live with it.

Nigel Roberts: Again, I come back to the possibility that we discussed when we came across this clause in the first place, that the substantial misbehavior applies to the process of appointment of a ccTLD manager. And as I think it's very possible -- I won't say it any stronger than that, from the context of the word. Let's look at the word and jump off to -- he didn't want to be bugged or bothered. He didn't want somebody coming along one or two years after he appointed a ccTLD manager and say -- I'm the better potential candidate. So, the intent of the section that includes the words substantial misbehavior would appear to me to be saying once I appoint a ccTLD manager, don't bother me. Now, it would say, if somebody misrepresents the situation during the appointment of the ccTLD manager, that's substantial misbehavior during the appointment process. That's grounds for overturning the thing and going back and having to issue and reselect. I don't think the context of substantial misbehavior is about revocation because there's a separate section on revocation. Having said that, we've dealt with that by saying -- it could mean one thing or the other. Unless we have a real case in front of us and we are a judge in the relevant court -- it may be California or somewhere else -- we can't look at this and say exactly what it means because we don't have a real case in front of us. We only have hypotheticals that we put forward. So long as we use the words might include when we define this stuff we can put almost what we like and I'm relatively happy. If we turn around and say substantial misbehavior is and give a long list, we are policy making. It might mean all of that but it might mean something else as well or it might not mean some of what we write and then somebody takes our words in ICANN, follows them, and then we get sued for having written something wrong. I think we need to be very careful about this. This is the heart of the whole process. We need to be very careful. We need to get it absolutely right, no matter how long it takes.

Chris Disspain: Nigel, I agree with you but the challenge of the argument you've just built which is perfectly valid, sounds perfectly valid is in itself built on your interpretation of what you think John meant. And let's be clear about this. In the event of ICANN redelegating or attempting to redelegate based on the misbehavior or substantial misbehavior of a ccTLD manager, in many cases that is likely to end up in court and if it does end up in court, it doesn't matter what you thought John meant. What matters is how the court interprets the words.

Eberhard Lisse: Exactly.

Nigel Roberts: Exactly.

Chris Disspain: I know that's kind of what you just said. My strong suggestion would be that the more we try and define them to suit ourselves, the less likely we are to be on safe ground. We're much better to make obvious statements about what it doesn't mean than try and make positive statements about what it does mean.

Nigel Roberts: I agree. To say it doesn't mean if you're locked up for murder of somebody unconnected with the ccTLD, that is not substantial misbehavior in the context of RFC1591. I'm very comfortable with that statement.

Chris Disspain: Yes. But you're suggesting there if I murder somebody who is connected with the ccTLD that that is substantial misbehavior. It depends on who they are. And what do you mean by connected? And there's a whole raft of problems that arise the moment you go this deep.

Nigel Roberts: I totally agree with that. We are probably probing too deep because as soon as we do this, we either go -- we're either over defining or under defining and maybe in different parts -- what are we doing? Are we defining one or defining another?

Chris Disspain: I'm wondering if it's appropriate for me to assume chairing the meeting given that this is Becky's specialist topic and I think Becky probably wants to debate the topic rather than having to chair. And I think just to highlight the point before we continue with the discussion, there are standards of behavior exemplified in the RFC1591 that you can only assume -- I think Nigel's right to the extent that we cannot create policy but if the behavior established in 1591 is abandoned, you don't maintain the DNS, et cetera, then there is a judgmental call over whether that is substantial misbehavior or not. But there are clear guidelines of what behavior is accepted so misbehavior must be failing to comply with that, surely.

Nigel Roberts: That's not misbehavior.

Chris Disspain: It leads me to believe that it is. Anyway, I'll resolve from entering the debate and merely chairing and hand over to Becky who has her hand raised.

Becky Burr: Thank you. I completely agree that we should avoid policy making. That why I kind of exactly where Keith was suggesting which is we've debated and I think agreed on what standard of behavior is required by 1591. And that you can only look at misbehavior in that context. So, I don't want IANA to define whether somebody who's murdered is related to the ccTLD or not or even whether the court was right in determining that somebody was guilty of murder. I want IANA only to refer to the functions we've agreed are to be performed.

Nigel Roberts: Let me give you an example from a slightly different context. In a case where for example the ccTLD manager might be in the position that you posit the IANA to be in and the first part that you might be in the position that you posit the ccTLD manager. That's where we're talking about a registrar's relationship with the registry. Supposing you have a registrar who is fully accredited and appointed in the normal way and that registrar decides it's going to try to enumerate the entire .GG zone for its own purposes, whatever they may be and sets out and tries to either by hammering the DNS or hammering the WHOIS to grab the entire zone. Now, that's misbehavior and the registry will step in. That's an example of misbehavior. It has the necessary elements of bad behavior. Misbehavior is bad behavior. It's not simply failing to do your job. That's incompetent. Somebody's snoring.

Chris Disspain: You have that effect on most of us, Nigel. Oh, dear.

Eberhard Lisse: Can we permit this? Can we take a roll call so we find out by exclusion?

Nigel Roberts: It may be Stephen I think.

Eberhard Lisse: Can somebody mute him? Can the operator mute him?

Bernard Turcotte: Kristina's looking into it.

Chris Disspain: Thank you, Nigel, for not putting us all to sleep. Does anybody else have any comments? I can see where Nigel's coming from on this. I can't fully agree or

subscribe but it's up for further debate. Frank? Did you have your hand raised earlier?

Frank March: Yes. I decided that probably it's relevant that this issue of malfeasance or misbehavior there are all sorts of reasons why a registrar may fail to perform the job which wouldn't amount to being malfeasance but which would nevertheless cause severe problems for the registry and in other words malfeasance or misbehavior, substantial misbehavior may not in fact be the only reason you would want to suspend a particular operator from managing the ccTLD. But I think we've moved away from it. We're trying to define what substantial misbehavior is and not deal with what the consequences of that might be. So, that's why I put my hand up.

Eberhard Lisse: I just looked up the definition of misbehavior and the dictionary says bad behavior or behavior which offends other people. Okay? I don't have a problem with IANA stepping in if the incumbent problems and assist. I have a problem with location. I don't think the interpretation of the others can justify this. And I'm not opposed to revocation if somebody behaves properly. We must define very carefully under which conditions IANA can step in. The IANA functions can step in to revoke. It is very easy to provide a reasonable technical service to the DNS and so on, but some incumbent countries where the rule of law is not degreed you must be very careful to omit that. That's what I'm trying to say.

Chris Disspain: Okay. So, if we moved the wording around, what it means by IANA stepping in and the revocation is the last of the last resort when all else fails, does that change the approach at all when we take a look?

Eberhard Lisse: We need an element of bad faith involved in this in our information.

Becky Burr: I think we do have or at least it's my impression that we had agreed maybe not on the exact words but on the context that revocation was the last step. It's not to be undertaken lightly and only to be undertaken if the manager was unwilling or unable to correct a serious problem. So, I guess I understand the concern that Nigel is talking about. To me, the proposal to have some kind of abstract concept of misbehavior that is not directly tied to the expected behavior set out in 1591 seems to me to be giving much more latitude to IANA than I would expect we would want. So, I'm -- I think I am coming at the same concern that Nigel and Eberhard are describe but I come out in a different way which is misbehavior can only be defined in terms of what the expected standard of behavior is and one -- you could have a sentence to people or whatever the dictionary definition is but I don't think we want IANA to say -- Well, some manager is behaving in a way that offends people so we're going to revoke.

Nigel Roberts: Becky, is it not the case that there is a separate section on revocation and that this substantial misbehavior part is detached from that? So, if the ccTLD manager fails to do the honest, just, and competent job, there is a root there and that the substantial misbehavior is in a different part of the document?

Becky Burr: I'm pulling up 1591.

Nigel Roberts: I'm confused. That's what I

Bernard Turcotte: Nigel, the only two sections we're talking about at this point are 3.4 and 3.5. The only place where the word revocation appears is in section 3.5 and I think as Becky pointed out earlier we agreed that under 3.4 substantial misbehavior that although it was maybe not a perfect agreement but there was an agreement that substantial misbehavior if we could define it properly is the last resort under that heading of IANA stepping in did include the possibility of revocation. There is no section on revocation. There is a section where substantial misbehavior is

mentioned, 3.4, and there is section 3.5 where we have the notion that the delegation may be revoked if you're not operating the technical aspects of the domain properly.

Nigel Roberts: Thanks, Bernie. That's very helpful. I think what we've done is we've gotten a little bit away from looking at the actual document that we're interpreting and we've gone to effectively eating on our own document in circles. Let me read 3.4 out loud, that Bernie's just highlighted. This is clearly about the appointment of the ccTLD manager.

Significantly interested parties in the domain should agree that the designated manager is the appropriate party. The IANA tries to have any contending parties reach agreement among themselves and generally takes no action to change things unless all the contending parties agree. Only in cases where the designated manager has substantially misbehaved would the IANA step in.

It's very tempting to look at the choice of the words substantially misbehaved which is a verb in the past tense rather than the words substantial misbehavior which is what we've been interpreting because that's in our documents. And then it continues to talk about interested parties to have some voice, et cetera, and then what to do if there are contending parties where the ccTLD could be delegated in part to one applicant to another. I'm beginning to firm up on my view that this substantial misbehavior is in the appointment process. And as Chris quite rightly said, we are not that judge with that case in front of us. A judge could quite easily make the other call. That's my view of 3.4.

Then 3.5 --

Chris Disspain: Nigel, can I just pull you in before you move on? My brain can only hold so much information at one time. If that's correct, if that were correct, under what basis would you say it might be possible for ICANN to step in?

Nigel Roberts: First of all, to step in in 3.4 is stepping in in the case where ICANN or IANA has chosen a ccTLD manager and effectively within a reasonable time thereafter somebody complains that there was misbehavior during the application process. In 3.5 however there's a continuing obligation. 3.5 is the continuing obligation that the designated manager must do a satisfactory job of operating the DNS service for the domain. Really, that's where Becky -- it's under this heading that I agree with what Becky says about 3.4 if you see what I mean.

Chris Disspain: So, you're effectively sidelining substantial misbehavior to a point where it's only relevant at the beginning of this process and saying that IANA can step in in the circumstances set out in 3.5?

Nigel Roberts: No. I'm struggling because I don't believe it is obvious what 3.4 means. It could mean what we've been taking -- or we should say what the majority has been taking it to mean in that the only intervention for revocation is substantial misbehavior. Obviously I can live with that personally. If you look at it from my personal point of view, I could be quite happy to live with that because I'm not going to misbehave let alone substantially misbehave. I'm merely trying to interpret the words that are down here. I'm actually having some difficulty in this because they are not as precise and consistent as one would wish. I mean, there are two alternative interpretations of this.

Chris Disspain: Of course. That's another issue. I think us pouring over policy of what was not necessarily carefully considered wording in every instance may be wasteful in our interest but I'm tending to agree with Nigel. I think item four, the misbehaved statement comes in the middle of deciding the designated manager and the next paragraph states -- However it is also appropriate for interested parties to have

some voice in selecting the designated manager. Which is indicating to me that the misbehavior or the conflict of misbehavior can only occur as part of the delegation process, not subsequent to. However, item five and 1591 say both the designated manager must do a satisfactory job of operating the DNS and finally in cases where there are persistent problems with the proper operation of the domain, the delegation may be revoked or delegated to another manager. I think those two things do kind of lead you to think that misbehavior is only predelegation or during delegation. Eberhard's had his hand up for some time and then back to Nigel.

Eberhard Lisse: This is my position and has been my position all along. I have said however because it is easy to behave properly I'm willing to -- I'm not going to die in a ditch on this one as we said. But what Bernard is exactly what I'm saying. If we can define misbehavior properly I don't have a problem. If we can't define it properly then I have a problem because we're connecting two things that I don't agree are connected. For practical purposes, if we can define it in a good way, I'm not going to -- but my position has been all along misbehavior is from the text. I was concerned misbehavior was during the delegation process. Revocation is persistent problems with the operations. Okay? That's an issue where I conceded that no further services are required. If you're unable to perform your duty for a long period of time for whatever reason, something needs to be done and in any case ICANN should be very careful what they do if the incumbent for example is in a non-democratic country has been locked out. They won't really say we give you to the jail, right? We must be very careful and I urge caution in what we're doing here.

Chris Disspain: Sure. I think the issue that arises here is the concept of persistent problems and then the revocation and redelegation kind of are much more severe processes than if somebody is experiencing difficulties or is not fully delivering the DNS appropriately and IANA's stepping in to cure that ill. I think there should be no prevention of that. Back to Nigel?

Nigel Roberts: I think we're actually beginning to achieve synthesis here. The interesting effect as I'm sure Chris is well aware, the interesting fact of where we're going is we have an objective task under 3.5 for revocation and unless of course there's suitable procedures or safeguards which is probably something that the ccNSO could develop and assist IANA with. What we lose altogether, misbehavior whether it's substantial or otherwise and however we define it, has been an excuse for revocation which removes altogether the subjective nature of what I used to call Saddam Hussein's brother-in-law but I think history's overtaken me on that one. But I'm going continue to using. It's the Saddam Hussein brother-in-law syndrome where somebody comes along with the Kalashnikov and says this guy is substantially misbehaving because he's supporting the opposition. We've locked him up therefore he substantially misbehaved. IANA, hand over the key. The removal of that altogether because substantial misbehavior is no longer an element and the element is simply persistent failure to operate the DNS properly.

Chris Disspain: Okay. Where is that getting us then? Becky? What's your feeling in view of this discussion?

Becky Burr: I guess I'm confused. I guess that I thought we had agreed that there was an ongoing responsibility to perform the necessary responsibility in a competent, fair, and just and honest manner. Maybe we need to step back and just sort of take a pulse on where we came out on that and where everybody's feeling is.

Chris Disspain: Becky, can you clarify why is what we might be saying now not -- why is that problematic with what you've just said, that we're relying on substantial misbehavior to get that particular piece in?

Becky Burr: No. I think that the question is in the entire document context, the question is -- we talked about stepping in with revocation as a last step and the IANA manager is supposed to do everything to help resolve problems with the operation, et cetera, et cetera. So, if revocation is a sort of last step measuring in stepping in, I don't know how we can limit that, we can limit substantial misbehavior. Because it's only in the case of substantial misbehavior will IANA step in or something like that.

Bernard Turcotte: I'm sorry. Maybe I've missed something here. How can you link -- if you're going to say substantial misbehavior is only relevant at the time of delegation which I think is in essence what Nigel is saying -- then it can't be linked to revocation. It doesn't make any sense.

Becky Burr: I agree. But I thought we'd reached a different point in this discussion.

Bernard Turcotte: If revocation is only relevant in respect to clause 3.4, then Nigel's argument falls because revocation cannot be linked to substantial misbehavior if substantial misbehavior is only of relevance before the delegation.

Nigel Roberts: No. Revocation is not part of -- let's have a look at 1591 again. It states significantly interested parties in the domain should agree that the designated manager is the appropriate party. IANA tries to have containing parties reach agreement on the bill. Blah, blah, blah. Only in cases where the designated manager has substantially misbehaved would IANA step in. However, it is also appropriate for interested parties to have some voice in selecting the designated manager. I think the first and last sentences of that particular part of section four are about selecting the delegates for the first time and the misbehavior therefore can only apply to that delegation process. When you look to item five of 1591, the designated manager must do a satisfactory job of operating the DNS service for the domain. In cases where there are persistent problems with the operation of the domain, the delegation may be revoked and possibly delegated to another manager. The revocation and delegation are only associated with doing an unsatisfactory job or persistent problems arising which have nothing to do with the misbehavior.

Chris Disspain: Okay. I think Nigel's point is pretty clear. I think Nigel has the same as Becky.

Nigel Roberts: Yes. Somethings were said here, the process interpretation of these sections I think is worth considering at this stage. RFC1591 3.4 says it is appropriate for interested parties to have some voice in selecting the manager. Well, sometimes the new ccTLD delegated by ICANN, months, years, I don't the evidence that ICANN is going to actually survey the local internet community to get that input. Perhaps there might be some takeaways in future applications for new ccTLDs where there happens.

Chris Disspain: Can we park that, Nigel? It's only going to take us down another rabbit hole right now.

Nigel Roberts: I don't want to discuss it. I want to park it. But I guess you can have that as a takeaway?

Chris Disspain: I think we've had that discussion in the past anyway, Nigel, as part of the delegations with work. I'll do some reading and point that out as an aside.

Nigel Roberts: I think that's a good job. I just wanted to mention it in passing.

Chris Disspain: Noted. Becky?

Becky Burr: I think we're parsing a little too finely here in a way that's going to lead us back into some problems. Only in the case of substantial misbehavior by the designated manager. Doesn't a designation mean that IANA has agreed? I understand that this goes back and forth but it seems to me that when you talk about a designated manager, that means not just somebody that the local internet community has nominated but that if there's a nomination in the delegation. So, to me, in order to have a designated manager you have to have gotten past the initial selection process.

Chris Disspain: That's a good point.

Nigel Roberts: I think we already solved that.

Becky Burr: That's exactly right. That's why I'm saying substantial misbehavior can't be only about the selection.

Nigel Roberts: Once you've made a selection you can't step in.

Chris Disspain: You can't be designated unless you're nominated.

Eberhard Lisse: That's wrong. Designated means this is the one we think should do it so we appoint him. Designated doesn't mean appointed. It doesn't mean selected or elected or in control. It means designated. President elect. It doesn't mean he's selected. A designated manager, the local internet community agrees on somebody, I would consider him already designated whether ICANN contracts him or not. But if he's appointed, it's different. If he's incumbent, it's different.

Chris Disspain: If I could just respond to Eberhard for a second, let me get this wrong, let me try. If what you're saying is correct then what you're saying is that clause deals with only the very short period of time between when a person or an organization has been chosen or designated as a manager and appointed as the manager. To me, if that's what you're saying, that doesn't pass the smell test. Why would you put a whole piece in about substantial misbehavior to simply deal with a period of time that amounts to days between designation and appointment?

Eberhard Lisse: You put it too narrow. If a person is held and is the only one, he's automatically in the organization as a the designated manager. This is actually from the context applied to the selection process. I'm not going to die in a ditch on this one. If we decide substantial misbehavior, it's not a problem for me and then we don't need to get into the final context that I'm now going to because this is getting semantically difficult for non-English speakers. It's important. I'm not trying to go away on this but we may be able to solve this by defining substantial misbehavior.

Chris Disspain: Okay. The entire sentence needs to be read and the IANA tries to have any continuing parties reach agreement among themselves and generally takes no action to change them unless all continuing parties agree. Only in cases where the designated manager has substantially misbehaved would the IANA step in. That indicates to me the reverse of Nigel's thinking where Nigel was convincing me to think and that's this is a dispute over the delegation of an existing manager, that IANA would refer back and say you're contesting amongst yourselves, go sort it out amongst yourselves and only where there's been substantial misbehavior would IANA get more involved than that. Ugo has his hand raised and then maybe we could go to Kim? I think Kim's on the call? If Kim has any views as to whether or not this has ever been an issue? But firstly, Ugo. You must be on mute. We can't hear you. Ugo? We can't hear you. Sorry, Ugo. If you want to type your comment or question? Kim? Has any of this part of our RFC1591 caused your or IANA to your knowledge any concerns? We've love Kim. He's snoring perhaps? Okay. Kim? We're not hearing you. Okay. I've got

Ugo saying on the chat -- Designated manager means the specified manager which I think is consistent. Thanks, Ugo. Nigel? You have your hand raised?

Nigel Roberts: I did but I put it down because you moved on.

Chris Disspain: Your hand is still up. Okay. I'm not sure where this leaves us. Nigel?

Nigel Roberts: I think where it leaves us is probably where we should've been at the start. Revocation, this section five, that's a pretty objective text which generally caused problems to what Becky had been putting forward and in regards to substantial misbehavior. What we could do is simply go back to my original proposal to say misbehavior is misbehavior and substantial misbehavior is misbehavior that's more than just minor.

Chris Disspain: Can we determine the opposite of behavior, the behavior required by 1591 and say that if you don't comply with it that it is misbehavior?

Nigel Roberts: That's not misbehavior in my English. It's something that's effectively a crime or breach of duty. It's not merely failure to behave.

Chris Disspain: Nigel, you can't seriously think that John sat down and used that word specifically with that definition surely.

Nigel Roberts: No. But if you take the plain language meaning of it, Chris, misbehavior is a child not -- I was thinking of a very scatological example but you know what I'm trying to say. Somebody behaving badly. It's not just somebody not doing what's expected.

Chris Disspain: Let's approach this from another angle then. The designated manager must do a satisfactory job of operating the DNS server. There have been suggestions of what satisfactory might mean. If there is a failure to comply, is that unsatisfactory?

Nigel Roberts: Is that rhetorical or personally?

Chris Disspain: I'm asking you personally, Nigel.

Nigel Roberts: I would have to -- it's pretty early in the morning here. I'd have to give it a little bit more thought but essentially what I'm saying is section five is fairly objective text. If the manager does not do a satisfactory job then the revocation proceedings which is not just IANA saying as of tomorrow we're switching off but a proceeding that has more procedural framework to it could commence.

Chris Disspain: Okay. And as a last resort.

Nigel Roberts: Yes, as a last resort. Yes.

Chris Disspain: Actually it's the first resort in five. That's the issue I have that there is no -- section five says you must do a satisfactory job and where there are persistent problems, however minor or niggling they are, where there are persistent problems, the delegation may be revoked and possibly redelegated. This is not last resort. I'm kind of inclined to think that defining the behavior or what might not be appropriate behavior is actually providing color and depth rather than saying whenever there are persistent problems you must redelegated which is essentially --

Nigel Roberts: That doesn't mean it's transgressive.

Chris Disspain: It kind of is.

Nigel Roberts: Probably it's more than just minor.

Eberhard Lisse: It doesn't say that. It doesn't say small, niggling problems. It doesn't say may. It says if you don't do it, you're gone. I really urge that we start becoming a little more serious about this issue. It's important. Some of us feel very strongly about this, particularly two people who are not here on this call.

Chris Disspain: I'm just trying to feel out where the real issues are here because I think we're stuck in a bit of a groove here and I want everybody's opinion on the table. I want understanding of where you're coming from. I see Becky has her hand raised and Nigel and Eberhard.

Eberhard Lisse: I don't have my hand raised, I don't know why it says that.

Becky Burr: I guess I think my comments have been overtaken by events.

Chris Disspain: Okay. I'm still not sure where this leaves us.

Bernard Turcotte: I think we have more work to do on this. I'm not sure -- Becky and Nigel can bat the ball between them for days and weeks and months and that's great for them. Perhaps not actually great for them. I'm wondering if it's possible for us to do a short analysis paper on this.

Chris Disspain: I think that's where I'm heading towards, that we need more work and if we can't resolve on teleconference this should become the focal point of Toronto. It's not quite up to me. These issues are easier to deal with in person.

Bernard Turcotte: The problem is on telephone calls you get lost. We need to go through if we say this then the consequences are this and this and this. If we say that then the consequences are blah, blah, blah. And we're not able to do that in conversation on the phone. It needs a white board and colored pens and a lot of chat.

Chris Disspain: I have a feeling we've gone as far as we can go tonight. And so I think -- Becky's indicating on the chat that she agrees we need further analysis. Is anything dissenting from the view that we should analyze this further? Nigel's agreeing. That's noteworthy in itself. Let's park the issue of substantial misbehavior and, Bernie, what else do we have on the agenda tonight? We have 30 minutes left on the call. Is there anything else we can deal with?

Nigel Roberts: It's Nigel. I'm just thinking that everything's been so intense and we've spent 1.5 hours of two hours, unless there's something very small we can easily dispose of, something uncontroversial, perhaps we can leave everything else to clarification.

Chris Disspain: I tend to agree with that if the rest of the group are in agreement. We've probably gone as far as we can. Bernie? What's your thought? Is there anything simple and straight forward we could deal with or will we get into further substantive debates that require more than 30 minutes?

Bernard Turcotte: I would tend to agree with Nigel. I think we've used up a lot of time. I don't know that there's anything else on the agenda. We can regroup and start working on some of those things later.

Chris Disspain: I see Eberhard's agreeing. So, I think we'll all proceed down that path. Let's terminate the call tonight and continue in two weeks time on our next call. I'm not hearing anything to the contrary so we'll proceed down that path. Thank you, all, for your participation and contribution tonight and we'll talk again in two weeks' time.

Becky Burr: Good night, everybody.

Chris Disspain: Thank you, all.

Nigel Roberts: Bye-bye.

Eberhard Lisse: Bye-bye.