

# TRANSCRIPT

## Framework of Interpretation Working Group Call

*1 November 2012*

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Kristina Nordström: From the ccNSO we have Martin Boyle, Keith Davidson, Chris Disspain, Stephen Deerhake, Dejan Djukic, Patricio Poblete, Nigel Roberts, Dotty Sparks de Blanc, and from liaisons we have Cheryl Langdon Orr and Cintra Sooknanan. From staff support and special advisors we have Jaap Akkerhuis, Bart Boswinkel, Kristina Nordström, and Bernie Turcotte, and an apology from Eberhard Lisse for joining late. And that's it.

Keith Davidson: Thank you. Did someone just join?

Kristina Nordström: That was Paulos.

Keith Davidson: Okay. That seems to be a fairly inclusive list. Anyone on the call whose name wasn't mentioned? Any apologies received by anyone else? If not, can we tend to item two on the agenda, confirmation of the agenda? I haven't heard any requests for any changes. Everything is in order. Thank you. Let's move to item three on the agenda, the confirmation of the meeting report for 18 October. It's there on screen. I think it's scrollable for everybody. I don't see any issues that aren't otherwise covered on the agenda. Does anyone have any issues? Is there anything from those notes that isn't otherwise covered? Thank you. We'll move on to item four. Revocation 4.2 and thanks for circulating the new draft, Bernie. I guess perhaps the best way to progress through this is have a look at some of the new text before we revisit the revised text. I know Nigel and Becky are still working on some pieces of those revisions. So, perhaps if we turn to the new text first and see if we can progress through as much of that as possible. Over to you, Bernie?

Bernie Turcotte: Thank you, sir. Yes. The new text will be in section 5.3 of the document. 6.5.3. After going through it after our meeting in Toronto it seemed we could tease some more out of section 3.5 of RFC1591 because we were really only on the last part of that where in cases of persistent problems with the proper operation of the domain the delegation may be revoked. So, I included all of the text because after looking at it, I thought it might be relevant. So, section 5.3.1 is a paragraph by paragraph copy of section 3.5 of RFC1591. We'll go through it quickly to make sure we all remember it.

The designated manager must do a satisfactory job of operating the DNS service for the domain. That means the actual management of the assigning go domain names, delegating subdomains, and operating name services must be done with technical competence. This includes keeping the central IR in the cases of level domain management or other higher level domain managers advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience. There must be a primary and a secondary name service that have IT connectivity to the internet and can be easily checked for operational status and database accuracy by the IR and the IANA. In cases when there are persistence problems with the proper operation of the domain, the delegation may be revoked and possibly delegated to another designated manager. So, that's the whole text. And basically what we've done in section 5.3.2 is take a stab at looking at how all of that can fit together to provide some sort of guidance relative to getting to the last paragraph.

So, trying to do a full dissection of this, 5.3.2.1. Satisfactory job of operating the DNS service for the domain and proper operation of a domain are interpreted as being equivalent. There's a note under there in 5.3.2.11. A designated manager that has persistent problems with the proper operation of the domain is not doing a satisfactory job of operating the DNS -- we'll see that we catch up those interpretations. So, basically, satisfactory job operating the DNS service and proper operation of the domain are considered the same and therefore if you have persistent problems with the proper operation of the domain, you're not doing a satisfactory job. Are we all okay up to 5.3.2.11? I see Martin?

Martin Boyle: What you've done here is limit the definition of 3.5 as we move down to be only 3.5. I actually think there is perhaps reason to see a difference between the satisfactory job of operating the DNS service and the proper operation of the domain which I would then see as something that would also include the subsection three, the designated manager must be equitable to all groups that request domain names. That's certainly my interpretation of it. Just sort of turning around and saying this is only the sort of technical operations that seems to me to be limiting where in our interpretation of some of the other sections we have tended to see the whole text as going across and covering several of these subsections. So, I'd like a comment from you about how you think that actually works. Thanks.

Keith Davidson: Before Bernie responds, let's get Nigel's point too.

Nigel Roberts: A couple of things. I feel that what Martin's saying is what I was saying on a previous occasion and was shot down by Martin. So, I'm a bit confused about this. Let's take the approach that we need to take. We can only interpret the actual words. We can't put any extra in there. It's a bit of a shame Becky's not on the call at the moment because we need to apply the rules of interpretation, not just put what we think should be in. It's clear from the context of this that this is relating to the technical operation of the DNS. That's not to say that there aren't other circumstances in other sections whereby you could say the ccTLD manager was not doing the job they were supposed to be doing. But from the point of view of persistent problems with the domain, that expression, it's clearly relating to the DNS and I've been persuaded of that in the past and I see no reason to change that.

Bernie Turcotte: Relative to Martin's point, I have to side with Nigel, having read this thing backwards and forwards. And secondly, I think under substantial misbehavior we actually cover the points you're talking about. I don't see really the advantage of dragging it into this section of the advantage of killing ourselves, arguing about it at this point. We will go back over sections of 5.2. I am fairly confident that we will go over the exact points that Martin is making as being substantial misbehavior. But trying to stretch the interpretation of 3.5 of RFC1591 to cover all of it? Personally I don't see it.

Keith Davidson: I think reminding the group that just anything other than the words allow would be to be creating policy, not just interpreting it. We must be careful in that regard.

Martin Boyle: I certainly see the separation of substantial misbehavior from bearing in mind we've had a big discussion on there. I think my concern is that we're actually talking about two separate processes. We've got a separate process that comes out under four and to that which then comes out under five and I'm not -- I don't feel convinced that what we've got in doing a satisfactory job of operating the DNS service for the domain can just be limited to the technical aspects of operating the domain. I'm feeling a little bit unhappy that what we're doing is just putting a fence around this and saying -- Okay, it's just a matter of the operating and the primary name services and a certain number of other things rather than it actually being -- and we go back to that word in the first line where it's operating the DNS service rather than just the DNS for the domain.

Nigel Roberts: There is some support for Martin's position but we're going back to a principle that I thought we'd disposed of on a much earlier call. That's what I call the living instrument doctrine of interpretation of this. Without boring you too much where this comes from there are two ways of looking at this document, RFC1591. One is that you take the words that are in there and you attempt to interpret them and explain them as best we can and when we identify that a document written in 1994 requires updating, we point out and recommend where a PDP is required. That's one approach. The other approach is the living instrument approach which is used for example in the European convention of human rights which says that the words of the principle document are to be interpreted in the light of modern social standards -- in other words you are effectively rewriting it on the fly by judicial decision.

I originally, I think it may have been in the delegation and redelegation working group, put forward the very view that Marin is putting forward that proper operation of the domain in today's world must be judged by the standards of today's DNS industry or internet. So, for example, you could criticize a ccTLD manager who did not escrow or did not have six or seven name services that this RFC1591 requires only two. And so on and so on. And I think we had this discussion. I'm feeling that I must be mistaken when I think it was Martin who argued against it back then but certainly others did and I think Bernie was one too. And on the balance of things I'm now persuaded that we should not be trying to have a creative interpretation of the policy documents but to do our best to try and interpret the documents as they are written, conscious of the fact that the time they were written, most if not all ccTLD managers edited their own files by hand. I don't know if Bernie aggress with that or not.

Bernie Turcotte: It's probably true. That's probably likely it would've been considered quite satisfactory to update his own file once a week. What might've been proper once is hardly likely to be proper now.

Chris Disspain: Nigel, forgive me. I was listening to what you were saying and trying to get into the Adobe room at the same time. Are you saying that we should be treating it as a living document or we shouldn't?

Nigel Roberts: My point was at an earlier stage I put forward the suggestion that we might use this method of living instrument and it was howled down. So, I wound my neck in and took the more comfortable and familiar route of little interpretation.

Chris Disspain: I think I agree with you simply because the problem with treating it as a living document which I acknowledge and accept the concept, the problem of us doing that is who treats it as a living document. I'm not sure we actually can do so. I think it's used normally in terms of traditionally treating it as a living document rather than a bunch of ccTLD managers getting together and treating it as such so I think I agree with you on that.

Keith Davidson: My fear is we would be allowing an extension of interpretation to apply anywhere for anyone who felt they could get into something more broadly. Perhaps we'll be better to try and stick with a very tight interpretation in this instance. But that's obviously finding some difficulty with it. Anyway, back to Bernie. No. Martin just raised his hand. And I'm note before handing over to the Martin that Nigel is giving a tick of endorsement.

Martin Boyle: I can't click yes because I'm on my mobile but yes.

Keith Davidson: I'll note your tick.

Martin Boyle: I'm not trying to widen the scope here. I'm staying neutral on the point of living document or non-living documents. What I'm putting my hand up about, I think really comes down to the use of the word service in RFC1591 which seems to me and then later on in the text where you talk about propagation of the domain, that seems to be not just a reference to 3.5 of RFC1591 but in fact to the whole of section three in RFC1591. And what we're actually looking at here is under four and five there are separate mechanisms that are identified, the one of IANA stepping in and here under revocation and possible delegation under five, and so I'm just questioning if what we're doing here is being rather more restrictive than the words of RFC1591 section 3.5 gives us reasonable cause to be. I'm not grading the technical answers I've had so far on that.

Keith Davidson: I think we're not gathering any momentum for a common position here. I think you seem to be a little bit on your own. Bernie, can we move on to 3.5 excerpt and see if we can get some more general agreement with the endpoints?

Bernie Turcotte: Moving on to 5.3.2.2, that is the actual management of the assigning of domain names, delegating domains, and operating name services must be done with technical competence and operating the database with accuracy, robustness, and resilience are interpreted as being equivalent. So, basically trying to sort of line up those two parts of the text. And then when we go into trying to analyze this in 5.3.2.21. This is interpreted to mean that the designated manager must have a process or system that allows qualified potential registrants to easily and effectively register domain names and registrant modify domain names as per the policies. Failure to provide such a method or system is interpreted as a problem with the proper operation of the domain. Under the next one, this is indicative to me that the designated manager must make a valid and accurate zone file accessible to the average internet user at all times. Failure to do so is interpreted as a problem with operation of the domain. 5.3.2.2. I see no hands. I hear no comment.

I personally felt that 5.3.2.1 touched on what Martin was talked about in as far as we can go under section 3.5. I see Jaap has a comment. And he always has some interesting references. Over to Jaap.

Jaap Akkerhuis: What it says in 5.3.2.2 is something that a lot of current ccTLD operators and managers don't allow. I know most ccTLD operators don't allow the file accessible to the average internet user at all times. Is that a new policy?

Bernie Turcotte: I was trying to be clear it must be accessible for resolving domain names. Maybe we need to clarify what the intent is here but it's not a question of a user zone file or have access to the core zone file. I'm talking more about the process of resolving requests.

Keith Davidson: Good point there, Jaap. There's some need for further drafting there to clarify.

Bernie Turcotte: Let's not forget this is our first reading and as per usual on our first reading for new text, especially new text that Bernie has written, we can beat the crap out of it. That's fine. No problem. As usual, what I'm aiming for is the general concept and comments like Jaap's are very useful for making sure we zoom in exactly on what we're trying to say. But definitely not trying to create new policies, just trying to clarify that the zone file has to be available for resolving domain names for the standard mechanism. Are we okay on 5.3.2.2 or do we have other comments?

Keith Davidson: Nigel has a comment.

Nigel Roberts: If we rephrase 2.2.2 to clarify what's meant in the words that it's available on the root, not that it's available for access, I'm happy.

Keith Davidson: I think that point's already been noted by Bernie. No other comments, carry on, Bernie.

Bernie Turcotte: We'll move on to 5.3.2.3. This includes keeping the central IR in case of top level domains or other higher level domain manager advised of the status of the domain, responding to requests in a timely manner. Interpreted as a component of doing a satisfactory job, requires responding to the IANA contractor request in a timely manner. So, basically we're teasing out that specific chunk which is noted here in saying this is a requirement for doing a satisfactory job, probably a key component that you respond to IANA requests in a timely manner. We'll be glad to take questions. I see Nigel up there.

Nigel Roberts: I'm having some concerns about 5.2.3.2.3 and I'm conscious of the fact that both Becky and Eberhard are not on the call. I can see some potential problems with the reinterpretation of our interpretation here. I think the actual text of RFC1591 which reads the italicized bit in 5.2.3.2.3 is somewhat difficult to understand what it means. It's opaque. What I think the intent of it is is the ccTLD manager must keep the IANA informed of the fact that the domain is running and who the contacts are and so on and so on. Responding to requests in a timely manner, however, is all dependent on whether you want to misquote Bill Clinton on this, that all depends on what the definition of is is. In this case it depends

on the definition of what requests is. I've got some concerns about this and I don't agree with the proposed text but I don't have a proposed alternative at this time.

Bernie Turcotte: Nigel, are you saying we're not talking about IANA requests but requests to the zone file?

Nigel Roberts: It's a possible -- I'm saying I don't know. What I'm saying is there have been incidents of the IANA taking what appear to be precipitous action on just not getting a reply to an email. I'm being very, very worried that what you've written or what we've written here as an interpretation could be reinterpreted. The answer is I don't know what this phrase means. I'm not sure the author knew what it meant but -- I don't like what you've written.

Bernie Turcotte: Fair enough. I can see the point because on the tail end of that original quote what we've got, just to go over it again for everyone is not removing it from the paragraph where it's found is in 5.3.1.2. And that is the actual management of assigning of domain names, delegating subdomains and operating name servers must be done with technical competence. This includes keeping the central IR in the case of top level domains or other higher level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy and robustness. Fair enough actually. I can see both of those and I think this is one of those we're going to have to walk our way through to get to some common understand of that but I agree that we can actually take that one way or another or maybe even both. Noted. Are there any other questions?

Nigel Roberts: Just to follow-up on that, reading the language that's used and putting myself back into 1996 the central IR doesn't mean the IR now. It means error or right which adds a complication to the mix here.

Bernie Turcotte: Agreed. And there's more that we're going to have to slog through. But I think at the end of I get the feeling that if we can actually tease out what is meant here, we'll be better off for understanding other things because as a section it's not very long and has very clear implications and may allow us to remove some ambiguity for those that are going to have to use the results of our work. That was 5.3.2.3. Any other comments?

Keith Davidson: We'll note that needs further work and trying to remove the ambiguity might be quite a challenge.

Bernie Turcotte: Moving on to 5.3.2.4, there must be a primary and a secondary name server that has IP connectivity to the internet and can be easily checked for operational status and database accuracy by the IR,. I think we're clear that we are talking about the IANA in this case. What have we come up with on this one? Failure to have a primary and secondary name server that have IP connectivity to the internet is interpreted as a problem with the proper operation of the domain. I don't think this one is going to stretch anyone's brain too far. I'm hoping that's okay.

5.3.2.4.2. Easily checked database accuracy by the IR and IANA. That's going to create all sorts of concern. That database should be interpreted as the IANA's own file for the domain.

5.3.2.4.2.2, accuracy of the database is interpreted to mean a faithful representation of the DNS information associated with the domain names registered in the ccTLD. There's a note here, the term faithful is used in the Oxford Dictionary definition of accurate. That's where that comes from. Failure to have an accurate zone file is interpreted as a problem with the proper operation of the domain and working off this section in 5.3.2.4.2.4, failure to allow the IANA contractor to easily check the accuracy of the zone is interpreted as -- whoa. Someone switched my screen. Sorry.

Keith Davidson: Kristina set scrolling to enable Chris to see the text.

Chris Disspain: I'm sorry. I'm being a pain in the neck here. I apologize.

Cheryl Langdon Orr: It's all about you, Chris. It's okay.

Chris Disspain: It's all about me. You are correct.

Bernie Turcotte: 5.3.2.4.2.4, failure to allow the IANA contractor to easily check the accuracy of the zone file is interpreted as a problem with the proper operation of the domain names.

Chris Disspain: I see nothing but X up there.

Bernie Turcotte: And I see Martin coming up. As I said, I knew we would be getting into this. Before we get into the discussion, since I have the floor, I will use this to say I was only trying to interpret the words in 5.3.2.4 and that we're not talking about a method or what actually happens to do this. I'll turn it over to you, sir, for the debate.

Keith Davidson: That's interest, Adobe connect, when you've got the red cross you can't actually see the hand raised as well. But Nigel's hand is actually raised. Anyway, we have a speaking order. Martin, Nigel. Martin firstly.

Martin Boyle: Thanks, Keith. First a fairly trivial comment. I'm not sure I particularly find it useful in 2.1. to substitute the word faithful and then explain that faithful is just a synonym for accurate. Why don't we just say it's interpreted to mean an accurate representation of the information associated with the domain names? I know it looks very circular but that's what we're actually doing, we're trying to make sure there's an accurate representation of that information. The main reason I raised my hand is on 2.4. I've got no idea how the IANA contractor would be able to take the domain file and then systematically check the accuracy of the zone file but certainly I don't think we as an operator would even vaguely agree with the idea of providing IANA with our zone file, something we actually do keep very carefully guarded. So, it seems to me what we're doing is taking terminology about the importance of maintaining the zone file and ensuring it's accurate and then somehow -- easily check for operational status and database accuracy to then give a role for providing the database for that without there necessarily being any obvious, clear reason as to why that should be done but I actually go back to my initial statement. I've got no idea how at all IANA would take a zone file of 10 million names or more and work through to just define whether it was

accurate or not. Because inevitably there will be inaccuracies in the zone file database.

Keith Davidson: My guess is they would do a measurement of the number of live and dead names. That's all they could do. But I fully agree that most ccTLD operators would not be particularly happy to hand over the zone file to IANA for such a purpose. Nigel got a green tick. That leads me to believe Nigel and Martin are probably in quite strong agreement. Nigel, you're next on the list. Please, go ahead.

Nigel Roberts: I won't go into too much detail as to why I agree with Martin. It's probably for different reasons but it doesn't really matter. Nominee, back in the day was one of the major ccTLD managers that actually resisted ICANN's parental demands to have our zone files and even our customer databases which is the logical conclusion, the only way you can check for accuracy of the zone file is to have the customer database including what the zone file is supposed to have in it as well. I'm in agreement with Martin on this but I'll be honest with you, Bernie. I think I've got a problem with the whole approach of this. I think we're over interpreting and it's leading us down paths -- this is the second time in 10 or 15 minutes that it's led us down a path here. I don't think we should be trying to get a list of problems with the proper operation of the domain which is what seems to be coming out of the current document. If there's a problem with the operation of the domain is a matter of fact on the case concerned. I don't think we should be providing a menu of possible examples, even if they're nonexclusive. I just don't like the -- the database should be interpreting the DNS file for the domain. That's probably true, actually, but I just don't like the style and the way we're approaching this. The accuracy of the database, I would say that should be given its plain meaning. If there's a problem with accuracy there will be a complaint about problems with accuracy and it can be examined at the time. I think we're -- the approach itself is wrong. It should be more high level, more strategic rather than tactical. But having said that, I think trying to get the IANA contractor to exercise a supervisory jurisdiction over how we run our zone files is probably something that I don't think is included in RFC1591 and it's certainly something that none of us think would be if it was.

Keith Davidson: Strangely, I think it was actually in the introduction to RFC1591 that was preceded by common practice between 1993 and the creation of ICANN but that's sort of a separate story. Should we move on? Steven has his hand raised, then Chris.

Stephen Deerhake: I just want to echo what Nigel has said. I think we're going down a path here that really is not a necessary path for us to take. That's all.

Chris Disspain: I just want to say I agree with Nigel but I disagree. I agree and disagree with Nigel. I agree the concept of creating a list of issues that could be defined as breaking the rules is not a good idea but on the other hand not doing anything can be equally dangerous. I wouldn't want to be faced with a situation where a significant but nonetheless minor upsurge of complaints in Australia was able to be interpreted as a problem which leads me towards in some way defining what the problems might be but on the other hand I accept what Nigel says. I think it's a very, very

delicate line we need to be very careful. But I do think we need to face something. I'm just not entirely sure what it is.

Keith Davidson: I'm noting that Nigel is indicating a tick of agreement with Chris. Back to Bernie.

Bernie Turcotte: Just to be clear with everyone. We've been working together long enough that I think we can be fairly comfortable with the fact that if it doesn't survive, it doesn't survive. But for us as a group, having worked through the exercise I think will be useful. At a minimum what I wanted to show is that we've got that there and we've gone fairly deep in interpretation of some areas and the reasons that were brought up by Chris was exactly what I was concerned about. I'm trying to get us to a position where if we get asked about things like this we will have some sort of intelligent response to how we're dealing with this. I fully understood when I wrote this that I'll get the hackles of the ccTLDs up. But again, I'm repeating -- and I think Keith is correct. Originally, regardless of how Nigel tries to talk around it, I think originally this was the intent. But what it means and how one can do this, that's a whole other issue and yet I understand the concern and as a group we'll just have to decide how to deal with it. But I'm just trying to position this so it doesn't pop up as a surprised there on the line. I see Chris has his hand up.

Chris Disspain: It occurs to me that maybe one way to look at it -- and I have no idea if this would work, but we could pursue it and see what happens, one way to look at it is rather than considering a list of specific things that might happen we should consider the results of anything that might happen and settle perhaps on a series of results that we think might lead to the conclusion rather than events because you can have an event the result of which could be minor and the result of which could be major. So, maybe if we do want to go some way down this path we should consider looking at the results.

Bernie Turcotte: I think when I close off this section this is exactly the approach I was trying to take. So, thank you for that, Chris. I see Nigel has his hand up?

Nigel Roberts: I'd like to make another comment on the assumption that we're still commenting on the text as it is. I think there's a pretty widespread feeling that at least the approach is perhaps not the most precise but I want to pick on a particular thing and I don't want to pick on any one but all of these together. I'll give you an example. An uncontroversial example. In 5.3.2.4.1 failure to have primary and secondary name servers that have IP connectivity to the internet is interpreted as a problem with the proper operation of the domain. Now, no it isn't. It isn't interpreted as a problem with the proper operation of the domain. It's an example of a problem with the proper operation of the domain. But it's not an interpretation. And I think we need to be very precise in how we use the words. We are the interpretation working group. We're construing and adding color to the meanings of words and phrases. But it's not interpreted that way. It either is or it isn't. And I think it probably is, picking an uncontroversial one. I want to be very cautious about when we use the word interpreted we use it in a sense where we are interpreting a word or phrase.

- Cheryl Langdon Orr: I just want to cut in behind Nigel on this. As I've been reading these subsections, I've always -- dare I use the word -- interpreted them as examples and as material for us to have greater focus on why and what is being said. To that end, I think to say something along the lines of not having IP connectivity to the interpret is a problem with the proper operation of the domain, the fact that we could consider 5.3.2.5.1 perfectly well.
- Keith Davidson: Bernie's got that point quite solidly. If nothing else, can we move on?
- Bernie Turcotte: You will note that in -- all points noted, thank you very much to everyone. You'll note the strategy going back a little back in 5.3.4.1 regardless of adjusting the interpreted text, these things are noted as a problem with the proper operation of the domain. They are not interpreted or listed as a persistent problem, but rather just a problem. So, in 5.3.2.5, the first thing we do is really talking about the definition of persistence. I went to the Oxford Dictionary and the thing that seemed relevant -- I'm sure Nigel will correct me on this -- continuing to exist or occur over a long period. Persistent rain will effect many areas. Persistent reports of human rights abuses by the military. We are talking about in 3.5 of RFC1591 persistent problems of the types that we've got. So, I see Jaap's got his hand up?
- Jaap Akkerhuis: I want to point out the term secondary and primary name servers is complete irrelevant in this discussion.
- Keith Davidson: I think that's right except that RFC1591 specifically raises the idea that it's the primary and secondary name servers and doesn't refer to authoritative or qualified domain names.
- Jaap Akkerhuis: Secondary and primary only refers to when you're dealing with how you feed the name server information.
- Keith Davidson: I guess the point there for Bernie is maybe that we need to interpret that primary and secondary name servers are redundant and can be replaced by authoritative?
- Bernie Turcotte: Noted.
- Keith Davidson: Thanks, Bernie. We have a speaking order of Chris, then Nigel.
- Chris Disspain: This may be completely and utterly off beam but it just occurred to me so I thought I'd say it as an illustration of the danger of using really specific examples. It occurs to me that there may be ccTLDs that don't have primary and secondary name servers that have IP connectivity because they don't want to in the sense that they -- North Korea springs to mind as a delegated ccTLD that may be behaving in a way that is totally outside all the examples that we've given but I don't think anyone's suggesting that would be cause for some sort of redelegation. But I could be completely off beam here. I don't know if that's even relevant. But I thought I'd mention it because it struck me.
- Keith Davidson: That's an interesting point. I see others are in agreement with you. Noted and on to Nigel.

Nigel Roberts: Just a postscript to Jaap's intervention from a technical rather than a legal or policy perspective, the terms primary and secondary are out of date even in the context of how you feed a name server, the expression we should be using now a days is master and slave. But I think the reason the original wording uses the expressions primary and secondary what it basically means is two or more. So, let's not get too hung up on the expressions primary and secondary here. What it just means is a minimum of two which actually by today's standards is far too few but we're looking at a 1994 document again.

Keith Davidson: Nigel's taking us into 50 Shades Of Grey now.

Cheryl Langdon Orr: Really? Are you sure about that?

Keith Davidson: He's talking about masters and slaves.

Nigel Roberts: I don't feel that needs any interpretation, frankly. It's your life.

Keith Davidson: Whipping along with some progress --

Cheryl Langdon Orr: Very nice, Keith. And at this hour of the night. From you? I'm impressed.

Bernie Turcotte: I'll have to recover for a minute from that witty repartee. In answer to Chris, the North Koreans actually do have working deep net servers. Where does this take us? We were going down possibly our rabbit hole. But still we'll finish it up. The definition of persistence, we had continuing to exist or occur over long periods, persistent range, blah, blah, blah. Are we all okay with using the Oxford Dictionary definition of persistence regardless of all the other things we've mentioned about general approach? Okay.

The list of problems. Yes, I understand everything that's been said. Maybe we'll scrap this approach. I still think it was valid for us to go through it to understand it. This is basically a repeat of the things that are listed up there just to cram everything into one place. So, I'm not going to go over 5.3.2.5.2 because really we're just talking about the things we had above. I think the thing that may be of interest is 5.3.2.5.3. What we've done is cobbled something together to try and define what persistent problems would be. Ongoing or repeated problems as defined above which when considered as a whole imposed serious harm or has a substantial adverse effect on the local or global internet community, in this context, serious harm and substantial adverse effects should be valued in the context of the IANA contractor's continued focus on DNS security and stability as described in the previous section.

So, trying tot bring it back, I knew we were able to get a lot of comments that we got and that's fair but at the end of the day when I'm trying to tie this back together I think I had in mind some of the comments that Chris was making, that some superfluous interpretation for minor infractions is not what I'm talking about. I tried to use the focus we had in 5.2 which was to say that we're talking serious harm or substantial adverse effect. Over to Nigel.

Nigel Roberts: Thanks. I know, Martin, from our face to face meeting, has got comments about this particular 5.3.2.5.3. And I'm not going to go into those areas because I think it's up to him to do that. But one part of it leaps out at me as being -- jarring I think is the word. That's the introduction of the IANA contractor here or the IANA. I'm not going to quibble over which term we use. We shouldn't be looking at what the IANA's focus is or the IANA contractor or ICANN or RIPE or ERIN or Uncle Tom Copley. We're trying to interpret this document and clearly we're trying to put some color on serious harm and substantial adverse effect but of course those are our own words. I also have some reservations about this. I know the purpose of this and I think it's relatively harmless might help us a little but I'm a little uncomfortable with this phrasing as well.

Keith Davidson: I think this is seeking to draw the conclusion of IANA stepping in and I think also probably the unwritten aspect of our work is we know that ICANN has an overarching obligation in its bylaws to the ongoing security and stability of the networks. Mentioning that in this regard isn't frightening me necessarily to the same degree as you.

Nigel Roberts: No, I'm not frightened by this at all. I just think it's slightly off frequency. I just want to point out some problems. I would define those as problems that are persistent.

Keith Davidson: I think Bernie's noting that.

Bernie Turcotte: If I could have a word, two things. Firstly, this was based on 5.2.6, trying to keep to the same word but however I will note I believe we had agreed we got to review 5.2.6. So, that involves Nigel and Becky so I didn't want to stray too far from the words, kept to the same structure, tried to adapt it to what we're doing here. That's my general comment on this for the moment.

Keith Davidson: So, recognizing it's potentially transient anyway. Martin has his hand raised.

Martin Boyle: Keeping in mind what Nigel said about me having problems with this, actually I don't particularly have great problems with this. I agree with his point about the IANA role coming in but if we have the scope limited as people seem to want, for section 3.5 of RFC1591 and for this section, then that actually does put this very clearly into context. I think the only bit that does give me slightly cause for concern is the last paragraph of 3.5 doesn't actually specifically make mention to the IANA contractor. I think we're implying it does. But if I were to pick up on Chris' comment about North Korea earlier, is the IANA contractor working with both the delegation and North Korea? My guess is no. And therefore they're specifically linked into IANA in this. There's another reason why perhaps that's actually inappropriate. Thanks.

Keith Davidson: Thanks, Martin. Back to Bernie I think.

Bernie Turcotte: All great comments. Thank you for that. As with our first cut, I think this has been soundly and solidly beat into some sort of submission and we'll have obviously a major rewrite if the approach survives. So, we're done with the new text. We move on to 5.3.3 with the definition revocation. I

don't think we should go into it. Nigel has provided some new text. As I was editing it I ran into a few bumps and wanted to go over them with Becky and have not had a chance. Nigel, I haven't forgotten about that good contribution. When I was trying to adapt it I came up with a couple questions and thought I should check them with Becky before bugging you with them and we will do that I guess over the next couple of weeks. I don't really see the point of spending time on 5.3. It's also the same text that we find in 5.2.4. And we know we've got to rewrite some parts of that.

Keith Davidson: Nigel has his hand raised and is ticking agreement as well. Nigel's removing his hand now, just indicating general agreement. Is there anything in the document that anyone else would like to cover at this stage or shall we consider the first reading of the new text of 5.3 as far as we can go tonight?

Bernie Turcotte: I think we've done the core of what we need. There's a few new words in 5.3.4 but at this point we probably want to get 5.3.3 done. So I would say we will probably leave 5.3. alone at this point and I will note as per our face to face meeting in Toronto under 5.4 GAC principles the instructions were to square bracket it. I have a comment. Text does not agree, needs further work. I think we've got some of the stuff we're developing in this area to clarify some of the points did not make it in this version. We'll probably finish elaborating some stuff on this with Becky and probably try to get some input from a few people including Martin to make sure we're getting this set up properly so we can address the issues in the right context. So, that concludes section 5.3 and 5.4 and we've got about 45 minutes. So, let's keep on going.

At this point one of the things that we could do would take to if we're comfortable with that, to the definition of substantial misbehavior which I think Martin has some points on. Is that agreeable to the chair?

Keith Davidson: That's fine.

Martin Boyle: Can we have it up on the screen, please?

Keith Davidson: Kristina will have to --

Bernie Turcotte: Let's reference 5.2.4. Defining substantial misbehavior. So, basically just as a quick recap, we have general agreement. Martin I believe has some concerns. So, we are back on to 5.2.4 to see where we stand exactly.

Martin Boyle: Thanks, Kristina.

Keith Davidson: It appears to be in the right place and now scrollable. Thank you, Kristina.

Bernie Turcotte: We'll take a serious look at them and see how far we can get on this. The approach on this was the break it down. We tried to deal with misbehavior first. The working group interpret misbehavior -- and I'm in 5.2.4.1.1 right now. The working group interprets misbehavior in this context to refer to conduct involving the failure of the designated manager to carry out the necessary responsibilities of that role or carry out those responsibilities in the manner required by RFC1591. And that's all the stuff above. In this way, it's used in a manner that roughly equates to misconduct in public

office. Under that standard, by analogy, the TLD manager would have appeared to have misbehaved if -- and now we're into 5.2.4.1.1.1 -- willfully neglects to carry out the duties of a TLD manager and-or in carrying out those duties willfully engages in misconduct to such a degree and without reasonable excuse or justification as to amount to an abuse of the trust placed in him by virtue of his or her designation. 5.2.4.1.

Martin Boyle: I haven't read through all three references that Nigel provided at the last meeting but I have picked out the first of the prosecution reference on this comment of public office. I went to one of our lawyers here to ask him about this because I have a great deal of unease to references to misconduct in public office. None of the accepted roles in the misconduct in public office from the prosecution service are even vaguely similar to those of a ccTLD manager which is why I have concerns. And frankly, he was very alarmed at the introduction of this as a concept. I don't think we necessarily need to through away some of the thinking that was done on the text that was based on what misconduct might actually be but I would be grateful if in this way it was used in a manner that roughly equates it to misconduct in public office could be removed from the text.

The other area that I've got concern is in the next section, 1.1.1. It says nowhere that anybody wants to respond to me on the misconduct in public office concern first. I see Chris has got his hand up. I'll side to him.

Chris Disspain: I agree. I don't think it's necessary. I don't think we need to give anybody any hints or anchors that will enable them to go to a definition when we're providing our own text. So, I have no issue whatsoever in taking that out. I think what's important is what we say it means, not what we think it might be roughly equating to.

Keith Davidson: Thanks, Chris. Let's move on to Nigel who has his hand raised, finding the way around the issue that we originally have by suggesting we include this public office reference. Nigel?

Nigel Roberts: I think this is going to require a little bit of discussion perhaps between the three of us but I don't think it's impossible. I think it's difficult without referring to the analog that was used to put any of this stuff in and we're back where we started. However, what we're looking for here is a definition of misbehavior and we have gone around the circle with this any number of times where we need to show there is an element of willfulness and an element of conducting oneself. The fact that the words public office are used here for many ccTLD managers -- and I don't believe Nominee is one of them -- but for many other ccTLD managers, including ourselves, is problematic because we are not a public office. We don't have a public purpose, some of us. Some of us are private companies. Nominee I know recently changed to include public purpose. But that's perhaps an exception among ccTLD managers that are in the private sector. I don't have a problem removing the words public office to be honest if providing we leave the reasoning that we've taken from looking at the offense of misconduct in public office. I'm not saying you are in a public office. I'm saying this is analogous to misbehavior is not simply failing to do something. It is willfully doing something bad and that's important. It's possible we could say in this way it is misconduct and carry on without using the words public office because I'm very conscious that if

there are I would say alert words that both people, there's usually a way around using them. As long as we don't rip out where all this reasoning is coming from because that just eviscerates the whole work of the last month or two.

Chris Disspain: I sort of agree. I think -- I'll try and keep it as simple as I can. By making a reference to a third-party definition, we run the risk of people referring to that third-party definition rather than to our definition. What we seem to be attempting to do is to use a reference to a misconduct in public office definition to bolster our own definition. I think our own definition should stand alone and I think by referring to a definition of misconduct in public office we sacrifice ourselves to that strategic over time to the definition of misconduct in public office to be different in different arenas and creating arguments that could be in my arena misconduct in public office is X and your arena it's Y. I think our definition 5.2.4.1.1.1 as we're talking about are not clear currently whether it's right. But I think our definition in that section needs to stand alone as a definition within the context of that which we are talking about therefore any reference to another definition --

Keith Davidson: Thank you for that feedback there. Nigel, Martin and -- are all in agreement with the green text. While you were speaking this. Nigel -- before handing over I'm inclined to think that what we're saying is we're also trying to drop the word roughly as the sentence might read in this way it's used in a manner that equates to misconduct. Then maybe a footnote about misconduct in public office as a reference point?

Chris Disspain: I think some examples of misconduct would be useful in their footnotes, specifically find those examples and perhaps including misconduct in public office with a reference to the territory about which we're talking.

Nigel Roberts: I'm quite happy with Martin and particularly Chris' approach in this. I think it's easy to get hung up with including these words in the definition. In my original submission it was by way of explanation as to where the reasoning has come from, where the particularly words have come from. I'm more than happy to remove the explicit reference. However, there's one admission in our own definition that I think needs to be there that isn't. It's by the word failure on the second sentence. I think the word willful has to be there. In that event if we go along the lines of saying the working group interprets misbehavior in this context to conduct involving the willful failure of the designated manager to carry out the designated role or be blah, blah, blah in this way it would be misconduct. You don't have to shilly-shally around it and give examples.

Keith Davidson: That sounds not unreasonable. Martin?

Martin Boyle: As I indicated at the face to face meeting I do actually have a certain number of problems certainly in 1.1.1 and part of that, as I've worked through it, is associated with some willfully -- an awful lot of my problem is actually associated with exactly what we mean by willfully. For example, if the ccTLD manager is in prison, does he willfully neglect to carry out the duties of the ccTLD manager? So, in that case, isn't he actually misbehaving operationally without actually willfully neglecting to carry out the duties of the ccTLD manager?

Stephen Deerhake: No. He's not. We've discussed this. Unless he's in prison for a computer misuse act offense relating to the DNS, no, he's not.

Chris Disspain: Keith, can I intervene?

Keith Davidson: Yes, please. I think this was a topic of quite intense debate during delegation and redelegation. But, Chris, please.

Chris Disspain: It strikes me that it's irrelevant. The point is not that the ccTLD manager is in prison. The point is what is happening with the ccTLD. And I could not willfully neglect carrying out the duties of the ccTLD manager simply because I have a team around me who in fact better than I could carries out the duties of the ccTLD manager and the fact that I happen to be temporarily ensconced at Her Majesty's pleasure really is neither here nor there. It comes back to the results again. Given that we are dealing with in some cases a ccTLD manager who is a person, Nigel being a perfect example of that.

Nigel Roberts: Actually the ccTLD manager here is not me but that's another matter.

Chris Disspain: You know what I mean, Nigel. It's not about that. It's about the fact that the ccTLD itself is not operating properly. I take Martin's point. I understand. But the mere fact that the ccTLD manager is in prison is not in itself a demonstration of willful neglect because the ccTLD itself may be carrying on perfectly wonderfully.

Keith Davidson: Chris is describing Nigel as a perfect example of a person. I'm not sure we'd all agree with that. Martin?

Martin Boyle: Yes. I think Chris caught my concern correctly. It is in fact the neglecting to carry out the duties of the ccTLD manager and that might be willful but it might actually be because you haven't got the resources, you haven't put in the investment necessary to do this, not willfully but just because you haven't got it. For whatever reason, I think Chris' suggestion that we're looking at this as a result from the vantage of what is actually happening might be the way to me. And similarly I also raised without reasonable excuse or justification. That would be, for example, the classic one of the ccTLD manager saying I actually don't have the resources to do this and yes if we go through the explanation of misconduct in public office, the fact that you haven't allocated the resources to do something is not an excuse for your failure to act in a seemly manner. So, just those sort of two bits and certainly I do have a bit of a problem without reasonable excuse or justification in that. Okay. I'm hard up. I'm broke. I haven't got the resources to put into it. That's a reasonable excuse. But actually for failing to offer operate, failure to provide the expected services of a ccTLD manager, that just isn't cause. Thanks.

Keith Davidson: I think it's important to recognize this is about the actually exhibition of misbehavior as opposed to inability due to other circumstances to correct an issue with the DNS. But anyway, thanks. Can we carry on, please?

Bernie Turcotte: Thank you, sir. Yes. Maybe this is the core of one of Martin's issues with this text is his last few statements that maybe in effect he's going beyond what we're trying to do with substantial misbehavior but we shall see.

Moving on to 5.2.4.2, substantial misbehavior. Substantial misbehavior would involve misbehavior as defined above that is either egregious or persistent and would appear to include 5.2.4.2.1, the knowing, repeated material failure to perform the necessary responsibilities of a designated manager in a manner that is equitable, just, and-or honest or 5.2.4.2.2, performing the necessary responsibilities of a designated manager in a manner that imposes serious harm or has a substantial adverse effect on the local or global internet community. In this context there is harm and substantial adverse effect should be evaluated in the context of the IANA contractor's continued focus on DNS security and stability as described in the previous section.

- Chris Disspain: A couple of points and a question. Bernie, my question is do you mean -- by would appear to include -- would you mean that to be exclusive or inclusive. Do you mean these are the only things it has to include or do you mean these are some of the things that you have to include? My question is about the word appear.
- Bernie Turcotte: I understand. I'll take a stab at this based on my conversations with Becky but I believe it is some and not all.
- Chris Disspain: But that's not what you said so we need to work on that because we're either trying to get some examples or we're giving a closed case and we need to be very clear about which one of those we are doing. It raises a question -- the whole thing rather raises a question around responsibility. If I'm the ccTLD manager and I'm more than willing and happy to do all the stuff I'm supposed to do but I'm being prevented from doing so by my government, where does that leave me for this particular issue?
- Keith Davidson: I think that if you're being prevented than you're not necessarily misbehaving.
- Bernie Turcotte: That's correct. It goes back up to 1.1.1.
- Nigel Roberts: Two things. Chris has already had his answer to that. I'll just underline it. First of all, appear to include means we know the following two things are substantial misbehavior but there might be other things which are misbehavior which would be regarding as being so substantial as to fall within the definition. It is non-exclusive. Secondly, if you're prevented by your government from carrying out the responsibilities or let's take it even one stage further and this is an interesting one so thank you for raising this one, Chris. What if your government requires you to behave in a way that we would regard as substantial misbehavior? It's an interesting one and I think at some point IANA or ICANN may wish to refuse an otherwise perfectly valid instruction if there is no consent. In other words it's been done with a machine gun up someone's ear. We don't need to deal with that in this section.
- Chris Disspain: I agree with that but we need to remember or keep in mind at all times there is a higher purpose here and the higher purpose is not to keep the ccTLD with the incumbent manager. The higher purpose is to have the ccTLD operating within the broad brush security, stability blah, blah, blah interoperable internet, et cetera, et cetera. There must be a point that's

reached eventually where one says despite the fact that you, the ccTLD manager, are doing the best you can under the circumstances, love you a lot, but -- the higher purpose takes control.

Keith Davidson: Certainly a potential that interpretative of the framework might reach -- anyway, Martin has his hand raised.

Martin Boyle: Thanks. Yes. As I've got a footnote, it occurred to me on this section I thought I'd best come in here and identify the bit that I think is still giving me a bit of concern here and that's in 5.2.4.2.1 which is the knowing repeated material failure. When I went through Nigel's documents, I found in one of the sections a reference to the willful -- it goes back to my concern of the word willful where it makes a reference to reckless indifference to whether it is wrong or not. Now reckless indifference as to whether it is wrong or not is not knowing, is it? If you're indifferent, you're not interested in knowing. I wonder whether the start of 5.2.4.2.1 should be the knowing or repeated material failure thereby saying if somebody is just indifferent he's just carrying on misbehaving, then that is qualified by this clause. The other point is that there is this sort of -- it's an either-or here. And therefore that first section does cover RFC1591 5.3. I'm reasonably happy with the remaining text.

Nigel Roberts: With respect, Martin, I think you're entirely wrong here. The reason why you're wrong is you've missed the word include. You're approaching this as if those two sections are the definition of substantial misbehavior. They're not. They're the examples of two things that we know to be substantial misbehavior. What you said about reckless indifference would also be substantial misbehavior in certain circumstances. It all hinges on the fact of the case. There might be something which is so egregious that one single instance of it would be so bad as to reach the threshold of substantial misbehavior. We're not trying here to put a completely comprehensive definition of substantial misbehavior. What we're saying is substantial misbehavior is misbehavior that is substantial and it would include the following, there might be others.

Martin Boyle: I'm not convinced I was disagreeing with you, Nigel. Yes, I see them as being examples, however, knowing repeated, reckless indifference and repeated or reckless indifference not repeated -- they all seem to me to form subsets of 5.2.4.1.

Nigel Roberts: Do we want to add reckless indifference as another example?

Martin Boyle: No. That's not what I'm saying. What I'm saying is it should be the knowing or repeated material failure which then allows for that wider scope of interpretation whereas knowing and repeated seems to me to be rather limited.

Nigel Roberts: It doesn't say knowing and repeated. It says knowing, repeated.

Keith Davidson: That's Martin's point, in fact. How about an amendment of that? Knowing and-or repeated material failure?

Nigel Roberts: At this point I diverge totally because that is not misbehavior let alone substantial misbehavior. That comes under persistent problems.

Martin Boyle: Wait a minute, Nigel. I have no doubt you're right because you usually are but explain to me why that's the case.

Nigel Roberts: Go to the very top of this. Forget the actual words for a second. There are two sections under which revocation is possible in RFC1591. One of them we termed substantial misbehavior. And one of them we termed problems with the domain. We're dealing with one of those at the moment and we've continually had problems with trying to separate. We've talked about substantial misbehavior and we've talked about persistent problems when we're talking about substantial misbehavior. Substantial misbehavior is fairly narrow. It is -- to come back to my original submission, it's analogous to misconduct in public office. It's the ccTLD manager turning around and taking something out of the domain because it's one of its competitors. It's misbehavior.

Martin Boyle: Why does it have to be repeated?

Nigel Roberts: Substantial is either very big misbehavior or lots of little ones. It doesn't have to be repeated.

Martin Boyle: But that's what it says right here. It says the knowing, repeated material failure.

Nigel Roberts: That's one example. The point is if you want another example that is not repeated, it has to be egregious.

Martin Boyle: What you're suggesting I think is that a knowing, material failure to perform the necessarily responsibilities of a designated manager, blah, blah, blah is not enough? It's knowing, egregious.

Nigel Roberts: That's right.

Martin Boyle: You're saying that if you knowingly fail to act as a good and wonderful ccTLD manager, unless it can be defined as egregious then it's not enough?

Nigel Roberts: I think that's right. The point is we don't want to get too close to this because unless you have an actual case in front of you, you can't say which side of the line it falls. But a knowing failure for example and there are big ccTLDs that have done this all the time. There are records I could produce -- I'm not going to name ccTLDs -- where that ccTLDs registered the same domain to two different people simultaneously. They didn't know it but they didn't do it egregiously. It was one incident in five million or whatever.

Martin Boyle: What are you suggesting is the definition of egregious?

Nigel Roberts: So bad as to be obviously substantial misbehavior.

Martin Boyle: With all due respect, Nigel, if you knowingly do something that is a failure to perform the necessary representatives, how can you argue to say there's a distinction between knowingly doing it and knowingly doing it egregiously?

Nigel Roberts: I almost don't think if it's so egregious that it has to be knowing. The point is when we went through this in a previous call or face to face, if you're a ccTLD manager and somebody complains that you should transfer this domain name to another person and you think it's a reasonable thing to do so you do it but you're wrong to do it, you did it knowingly and you weren't equitable and you were found to do it wrong.

Martin Boyle: Maybe we need to take this offline. It seems to me that your -- the distinction you're making isn't real. If you can give me a real example of something that I knowingly do to be a material failure to perform the necessary responsibilities that I can argue is not egregious and you can give me an example of something I knowingly do that is egregious, then I'll move to your side of the fence but I don't see how you can. It's either a failure to perform my responsibilities or it isn't.

Nigel Roberts: We're not talking about a failure to --

Martin Boyle: No. It's knowingly. Let me put it another way. I don't want to hijack this call. Can I do something that's egregious that's not knowing?

Nigel Roberts: Yes. I think you can.

Martin Boyle: Then we definitely need to do this offline.

Nigel Roberts: Egregious just means big. It's enormous. It's in your face.

Keith Davidson: I think I'm going to draw a line under this given the time and given the nature of the issue. I think we hit this around a couple times with Martin, Nigel, Eberhard, and Becky all having weighed in. I'm not sure you were on all those calls but it's probably worth debating with all of us on the call. Let's agree to disagree in the interim and come back to it. Bernie, given that we have eight minutes to go and there are a couple other items on the agenda, do you feel we've gotten as far as we can with revocation 4.2?

Bernie Turcotte: Indeed.

Keith Davidson: Can we move on to item five on the agenda which is the GAC response to Lisa and this is just simply adding a paragraph to the letter that Martin suggested we do when we were in Toronto, the second reading of that. It was merely to add a paragraph to say I would be grateful for your views as to whether this adequately responds to the GAC's concerns. So, unless there's any debate on the topic I think I'm happy to incorporate that into our letter and give a last chance to object or modify. I'll consider the second letter agreed to the text and I'll send that letter very shortly. Okay. We'll move on to any other business. Our next meeting is scheduled for 15 November, two weeks times, at 1900 UTC. Is there any other business? Any other topics anyone has? Anything else at all? Last chance. I'll declare the meeting concluded. Thank you all for your participation. It's been quite a productive meeting I think. Thank you. Good night.

