

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference *21 March 2013*

Attendees:

ccNSO

Ugo Akiri, .ng
Martin Boyle, .uk
Becky Burr, .us (Vice Chair)
Chris Disspain, .au
Stephen Deerhake, .as
Dejan Djukic, .rs
Daniel Kalchev, .bg
Desiree Miloshevic, .gi
Eberhard Lisse, .na
Patricio Poblete, .cl
Nigel Roberts, .gg
Bill Semich, .nu

Liaisons

Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors

Jaap Akkerhuis, ICANN / ISO
Bart Boswinkel, ICANN
Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Keith Davidson, .nz (Chair)

Kristina Nordstrom: From the ccNSO we have Martin Boyle, Becky Burr, Chris Disspain, Dejan Djukic, Daniel Kalchev, Eberhard Lisse, Patricio Poblete, Nigel Roberts, and Bill Semich. From Liaisons we have Cheryl Langdon-Orr. From staff support and special advisors we have Jaap Akkerhuis, Bart Boswinkel, Kristina Nordstrom, and Bernie Turcotte. And apologies from Patricio Poblete for lateness, and possible apologies from Desiree Miloshevic.

Becky Burr: Possible apologies, okay. I am still getting the Adobe room up. I'm sorry, I was a little slow on this. I imagine that the next thing on the agenda is reviewing the minutes from our last call, is that correct?

Kristina Nordstrom: Yes.

Becky Burr: Does anybody have comments or corrections on this? Hearing none, shall we assume they are approved? We'll treat them as approved. Great. Great. Okay. Okay, so confirming the agenda for today, we're going to talk about the revocation provision, and hopefully we will be close out on it this morning. I think we should move right into that. Bernie, I'm going to hand it over to you to drive the presentation.

Bernard Turcotte: Yes, ma'am, thank you. All right. Following our last meeting, we had a number of changes. I believe we've got them up on the screen. They were, for the most part, of an editing nature. Let's go, starting at 5, Revocation, 5.1. Actions by the IANA contractor, RFC 1591 identifies three formal mechanisms available for contractor -- delegation, transfer, revocation, so we've removed formal. This analysis does not modify or challenge national sovereignty over a delegated manager subject to legal and other considerations beyond the remit of the FOI working group.

Accordingly, other formal mechanisms that are not available to the IANA contractor may be available to the stakeholder community under national law. Oh, this is a bit of a bigger change and we'll entertain comments and questions at this point.

Becky Burr: Any comments or questions?

Eberhard Lisse: What national sovereignty? There is no such national sovereignty.

Becky Burr: Well, the notion was that with respect to ccTLDs that are operating in country, the, you know, the laws, development and applicable laws of that jurisdiction might provide some additional rights and mechanisms for resolving disputes that are not really IANA's, they're not within IANA's purview.

Eberhard Lisse: Yeah, but that doesn't --

Becky Burr: Okay, go ahead.

Eberhard Lisse: You were not finished.

Becky Burr: No, no, I am. It's just the law of the place where you are, which is always the case. But they are going to be -- there may be opportunities.

Eberhard Lisse: Yeah, but it doesn't say in the RFC, from what I understand.

Becky Burr: Correct. This is -- the RFC, this is just noting a fact. I mean, it's a fact of life. It's a fact of law. It is not an interpretation of RFC 1591. It was viewed as important

to acknowledge that 1591 is about what IANA can do, it's not the extent of what somebody -- it's not the full extent of to whom a ccTLD manager may be answerable.

Eberhard Lisse: Good, and put it like this. Make a footnote in this regard. RFC 1591 does not say anything about national sovereignty, about the ccTLD or the domain manager, nothing. Not a single word.

Becky Burr: Nigel, your hand is up? Nigel, are you on mute?

Nigel Roberts: I started typing before you started the -- again, I trust you can hear me now?

Eberhard Lisse: Yes.

Nigel Roberts: Good morning, good afternoon or good evening, or good middle of the night, wherever you are. I understand the point of putting this in here. It's helpful in a number of ways. I think the phraseology is, however, causing us problems here, and I think the choice of the word "sovereignty" itself is problematic, even though I know where you're going here. And I don't think there is any -- how shall I put it -- malign intent or whatever. But I think there is some unintentional problems here, particularly given that the term "sovereignty" can be interpreted in at least four different ways. Are we not talking about jurisdiction in this sentence?

Becky Burr: Well, we are talking about jurisdiction, but in this case the notion would be that the jurisdiction in the ordinary course is concurrent with the country associated with the ccTLD. I guess here's my --

Nigel Roberts: I mean, we all know --

Becky Burr: My take on this is I understand the notation that -- I mean, and I think we can note that this is just an observation, it is not an interpretation of 1591, it's an observation of the actual state of the world, and take it from there.

Nigel Roberts: You see, here's where I would have a problem with this new phraseology, and it's specifically that word "sovereignty" rather than "national sovereignty." The word "sovereignty", when you come from a country where, because of thousands of years of historical development, much of the power, if you like, is still in a nonstatutory form and things are not written down. And sovereignty refers to the ancient powers of the queen to use the prerogative, which is now done by the government. But I'm uncomfortable with this. I think we're talking about jurisdiction and not sovereignty.

Becky Burr: Well, how about if we said -- I mean, does not modify or challenge --

Nigel Roberts: Applicable jurisdiction or applicable law, or something along those lines.

Becky Burr: But it also doesn't challenge sovereignty. Could I ask, Martin, since the choice of words here is -- you're the source. Can I ask you to participate in this conversation?

Martin Boyle: Certainly. I'm not sure I've got any particular preference over specific reference to jurisdiction or answerability or applicability of national law.

Becky Burr: Okay.

Martin Boyle: I'm not sure I really properly understand Nigel's objection to national sovereignty in this particular case. Because at the end of the sentence we specifically make reference to subject to legal and other considerations beyond the remit of the working group.

I would pick up on Eberhard's point yet this is not covered in RFC 1591, but I would have significant problems if we did not note somewhere in our document that RFC 1591 is not the only document that might have an impact on (inaudible) resource that might have an impact on the delegation or the redelegation process. And therefore, putting it in here would seem to me to be quite appropriate. Because what we're saying is that in what follows, all we are doing is looking at RFC 1591.

Becky Burr: Okay. So, as I understand the proposal is that we would modify the phrase here to say, "-- does not challenge national jurisdiction over a delegated manager," and then somewhere basically drop a footnote that says RFC 1591 doesn't talk about these issues; this is an observation. I'm going to ask, since we're talking about text that I changed, could I ask Chris if you would chair during this part of the conversation.

Chris Disspain: Sure.

Becky Burr: Great.

Chris Disspain: Let me get the Adobe room in front of me.

Becky Burr: In the meanwhile, Bill Semich has got his hand up, and then El.

Chris Disspain: Yeah, I can see Bill and El. So, Bill, go for it. You're on mute, Bill.

Bill Semich: I had to unmute, sorry. I have a lot of concern with this section. I'm okay with what starts after, "Accordingly," and if it would be helpful to expand what starts after "Accordingly," that would be helpful. But, for example, national sovereignty over a delegated manager implies there's a lot of implications to that phrase which may not necessarily be true in reality.

Nations associated with ccTLDs in many cases do not have any sovereignty over delegated manager. For example, IUSN is a US company and that's a delegated manager. The nation of Niue does not have any national sovereignty over IUSN.

So, I'm concerned about the language that was chosen. I would be more comfortable with something like, you know, the analysis has no relation to any relevant national or international law with respect to a delegated manager, rather than throwing the national sovereignty -- what would you call it -- red herring.

Becky Burr: I believe that we've already agreed that this should be changed to jurisdiction.

Chris Disspain: Becky, I think we can agree that it's jurisdiction, but I think Bill's point, and it's an interesting question. Do we mean national jurisdiction over the manager?

Becky Burr: Well, I am perfectly happy to just say national jurisdiction, because I think that's just nothing more than an observation about things that are beyond the remit of the working group. So, it doesn't challenge principles of national sovereignty, or national jurisdiction.

Chris Disspain: National jurisdiction, period.

Becky Burr: Period.

Chris Disspain: Eberhard?

Eberhard Lisse: Thank you. I'm a little bit concerned that the speaking order becomes increasingly ad hoc. Secondly, I do not have any answer to my question where is this referred to in any of our policy documents. This is new. I do not really recall having discussed this. It uses language that I don't understand. It confuses me and it has nothing to do with what we're doing. I'm not -- this is not going to be easy to keep it. Jurisdiction, we're not talking about jurisdiction. We're talking about how to interpret existing documents. So, why do we have things that don't concern us?

Chris Disspain: Becky, do you want to respond to that?

Becky Burr: I think that there was some concern here that the document could be interpreted as providing very, very, very narrow remedies for a local community that was not being properly served by the ccTLD manager. And our point in putting this in was that RFC 1591 is not the only thing -- it's the only thing that matters for IANA, but it is not the only thing that matters more generally.

Chris Disspain: Yes, all right. EI's hand is still up and I'll get to you in a second, EI. Nigel's hand is up. It seems to me that aren't we making a statement, aren't we attempting to make a statement here that in effect says that there are issues outside of our ICANN's [remit] that are national jurisdiction issues and may even, as Bill has said, the international jurisdiction issues to which we're -- all we're saying is we are -- this analysis doesn't attempt to analyze those; is that right?

Becky Burr: Correct.

Chris Disspain: They exist and this doesn't attempt to analyze them. Okay, Nigel, you were first and then EI.

Nigel Roberts: Thanks. I've already made my point about the word "sovereignty," to try and assist Martin.

Chris Disspain: We've established that. Nigel, you've disappeared.

Nigel Roberts: Am I there?

Chris Disspain: No, are you are now.

Nigel Roberts: Hello? I've already mentioned why I find the actual word "sovereignty" problematic, because sovereignty means more than jurisdiction. In its ultimate it means the ability to put an army on a piece of land and repel boarders, b-o-a-r. And, also, there are problematic issues, for example, in that the Channel Islands does not have sovereignty. The United Kingdom has sovereignty. So, it's a problematic word. It has far too many and too broad a meaning. So, having made the point and I think it's been accepted that we don't want the word "sovereignty" used. Let's go back to the actual phraseology.

I am uncomfortable with the approach of the sentence as well. Let's just assume we're going to substitute the word "jurisdiction." This analysis does not modify or challenge. Well, this is -- why would it? You can't. You simply cannot modify or challenge the law. ICANN is not a legislature, so the suggestion that ICANN could

potentially do that just by -- I mean, I'm very flattered that somebody out there thinks that we might be able to do that, whether it's inside or outside the ICANN process, but it's just not possible.

Chris Disspain: Nigel, Nigel, Nigel, hold on a minute. That's drawing a very long bow to suggest that saying it doesn't do something implies that it could, is not really -- I mean, in drafting terms, that's nonsense. You often make statements of clarity.

Nigel Roberts: Chris, that's not what I'm getting at. I'm getting at the word, using the words, this analogy does not modify or challenge. I'd much prefer to have much more objective and neutral language, which says our efforts to interpret such-and-such do not address possible questions of local jurisdiction in the country or territory concerned. I'm very happy with that.

Chris Disspain: Got it. Got it.

Nigel Roberts: The implication that we could modify or challenge.

Chris Disspain: I get it. I get it. Can I make a suggestion? I'll come to you in a second, Eberhard. Let me make a suggestion, which is that we've got a couple of people saying they're not entirely sure why we've got this clause here in the first place. We've got a couple of people talking about how you would modify the clause to make it acceptable. My suggestion would be that we square bracket it, work on it, and provide an explanation on the list in an attempt to explain to those who may not understand why we need it, why we think we do, and come up with some new wording. That would be my suggestion for moving on. But, Eberhard, your hand is still up.

Eberhard Lisse: Yeah, I was thinking, first of all, I don't -- somebody is breathing into the microphone so much that I cannot really hear anything anymore. Secondly, I don't understand the word "delegated manager." That word has to be worked on. Then we are supposed to interpret, rather than make policy. And the question that Nigel just raised had something that we need to look at is whether there is indeed national jurisdiction, or sovereignty, or something. And even if does it concern us or does it concern us whether or whether not. So, I think this is a big thing, a big can of worms that we should go look at in more detail, but like this we can't have it.

Chris Disspain: Thanks, Eberhard, no problem. Bill, your hand was up next, and Nigel, then I'm going to suggest that Becky, it's Becky that we look to the way forward. Bill?

Bill Semich: Can you hear me? Am I off mute?

Chris Disspain: You are off mute.

Bill Semich: Okay, good. Something comes to mind from RFC 1591, and that's the manner in which the drafts, Jon and whoever else, Jon Klensin, [Demas Dobelstein], dealt with the idea of what is a country and what is not, and merely stepped away, They said the IANA is not in the business of deciding what is and what is not a country. And I think language like that sort [neutral], the FOIG has taken a stand on what a legal jurisdiction is over (inaudible) manager some sort of neutralizing comment would be acceptable to me.

Chris Disspain: Thanks, Bill. Nigel, last word?

Nigel Roberts: Well, (inaudible) quite appropriate. I'm in accordance with Chris and your proposal to exclude this with square brackets, or however you want to do it and come back to it afterwards, but that in itself means that we cannot do what we planned today, which is to finalize this document.

Chris Disspain: Well, we can --

Nigel Roberts: Are we all in accordance with that way forward?

Chris Disspain: Well, we can move on and discuss the rest of the document, and if we -- if all we're dealing with is 5.1.1, then, yes, obviously we can't finalize it if we've got 5.1.1 hanging, but I wouldn't have thought it would take that long to sort it out. But I take your point.

Nigel Roberts: Okay, then, great.

Chris Disspain: I just don't think that's going to be of benefit to spend any more time bouncing a ball backward and forwards. I completely understand all the points that have been made, and I think we can probably come up with some wording that works for those who are concerned about the wording, and provide an explanation to those who are concerned about the reason for it being there in the first place. Becky, are you comfortable with that?

Becky Burr: Yes, absolutely. I mean, if 5.1.1 is the only thing that remains open, then perhaps we can finalize subject to resolving that. But I actually think that there's a pretty easy way to resolve this issue, because I also understand (inaudible).

Chris Disspain: Okay. All right. Well, in that case, can we move on, Bernie, please? Do I get to hand the chair back to you, Becky?

Becky Burr: You may, sir.

Chris Disspain: Thank you. Over to you.

Becky Burr: All right? Bernie? Nigel (inaudible) --

Bernard Turcotte: Can you hear me?

Becky Burr: I can hear you.

Bernard Turcotte: 5.1.2 Basically, as per suggestions last week and instead of "as interprets" and that is open [because] we will finish that, square brackets at the end.

5.1.3 The FOI working group interprets RFC 1591 require the consent of an incumbent manager to any transfer of a ccTLD. We've agreed to that, I don't think there is going to be a big problem. The correction was heard with discussions last week.

5.1.4 Has not changed. The working group interprets the term "revocation" to refer to the process by which the IANA contract manager rescinds responsibility for management of the ccTLD from an incumbent manager. I'm sorry, is there a question? No, not hearing anything.

5.1.5 Unless a ccTLD manager engaged in substantial misbehavior or persistent problem in the operation of a ccTLD, intent to transfer in the event informal efforts to address problems are unavailing, the only formal mechanism available

to the IANA contractor to deal with intractable problems is revocation. There have been a few changes here, so we will take questions. Over to you, Madam Chair.

- Becky Burr: Nigel? Nigel, you're muted.
- Nigel Roberts: It just takes a couple of seconds to switch mute off. I'm with you now.
- Becky Burr: All righty. Your hand is raised.
- Nigel Roberts: I'm confused by 5.1.5. I think by striking out and deleting we've ended up with some grammatical issues here, so I'd like to go through that in a bit more detail, if we can.
- Becky Burr: Okay. So, the first clause now reads, "Unless a ccTLD manager engaged in substantial misbehavior or persistent problems in the operation of a ccTLD consents to a transfer --. So, we have that if one assumes and is unlikely to, but here I think we just decided to make it straightforward. So, if they don't consent to a transfer and IANA's efforts to address the problem don't work, then revocation is the only formal mechanism available.
- Nigel Roberts: Okay. We agreed on where we're going here. Let's just try and get the words right, if that's all right. Can I make a suggestion?
- Becky Burr: Yes.
- Nigel Roberts: "Unless a ccTLD manager has" -- engaged or engaged, it doesn't really matter -- has engaged is probably better "-- has engaged in substantial misbehavior," or insert the words "there are," or "there have been." There have been is probably better --
- Becky Burr: Okay.
- Nigel Roberts: "-- persistent problems in the operation of a ccTLD," then we need some conjoining words here. Something like "or consents to a --." I'm getting --
- Becky Burr: I understand.
- Bernard Turcotte: Nigel, that's changing, that's changing the whole context of the sentence, Nigel. If you look at it -- and that may not be a problem, but let's be really clear. The way it's currently worded is, "Unless a manager who is engaged or who has engaged in," and you can put those words in.
- Nigel Roberts: Both in at the same time, yes, I agree.
- Bernard Turcotte: Yeah. So, "Unless the ccTLD manager --" so, just ignore persistent problems for a moment. "Unless the ccTLD manager has engaged -- who has engaged in substantial misbehavior consents to a transfer --"
- Nigel Roberts: Okay. Now, I understand.
- Bernard Turcotte: " -- then the only formal mechanism is revocation." If you want to keep it simple, Becky, what we could do is actually split it into two subparagraphs, the first one dealing with substantial misbehavior, the second one saying effectively the same thing but dealing with persistent problems.

Becky Burr: Yes, that makes sense to me and I understand exactly Nigel is saying.

Bernard Turcotte: Yeah, okay, cool.

Becky Burr: Okay. Other comments? El, and then Bill Semich, and I actually don't know whose hand went up in what order.

Eberhard Lisse: Let me start, perhaps. I think I agree with what you're getting at, but we -- it's difficult to understand, and I personally don't think a ccTLD manager engaged in and has engaged, but it has an ongoing process, we can't get him to behave himself, that kind of thing. So, but basically, somebody who is misbehaving, we tried everything, he doesn't want to consent, then the final option is revocation. That's what it's supposed to mean, isn't it?

Becky Burr: Correct.

Eberhard Lisse: We must assign some language that makes it easier to understand, I think.

Becky Burr: I agree.

Eberhard Lisse: This language is a little bit complicated.

Becky Burr: I agree. I think we agree to split it into two sentences. Bill?

Bill Semich: Yeah, actually, El sort of took the thunder out of my comment, but I have some concerns about saying, "Unless a ccTLD manager engaged in substantial misbehavior --." I think we need to say something more to the effect of "has been shown to," and refer to previous sections that talk about substantial misbehavior and evidentiary, or whatever it is we're doing to determine that it's gotten to that stage.

I think what you're trying to accomplish here is that you want to make sure that we've provided for the manager who has been shown to substantially be misbehaving the opportunity to consent to a transfer. And if he or she doesn't consent to the transfer, then revocation happens, but I don't think it's happening in the language that we've got here.

Becky Burr: Okay, I understand your point. Any other comments? Nigel, your hand is up again.

Nigel Roberts: I'm just getting ready for the next paragraph.

Becky Burr: Okay. So, I think we will put this paragraph in square brackets and move to the next. Bernie?

Bernard Turcotte: Thank you, ma'am. 5.1.6. Below we first review RFC 1591.6, the three paragraphs -- oh, music. Lovely.

Becky Burr: Well, we'll have a musical interlude here.

Kristina Nordstrom: The operator is trying to locate it, but we haven't yet.

Becky Burr: Okay, our romantic interlude music is over. Nigel?

Nigel Roberts: Thank you. 5.1.6. I've just got some minor suggested amendments to it to help the text flow. I think the language could be made much simpler English. "Below

we first review," would you give me five minutes and I'll come up with some suggested text? But there are some words missing in it as well, which deals revocation and things like that. Give me a couple of minutes, I'll come up with something.

- Becky Burr: Sure. Nigel, the point of this is just to preface and surface the fact that we are actually dealing with the paragraph in reverse order, from (inaudible) to us.
- Nigel Roberts: That I haven't spotted actual, so I'll see if I can come up with something on the fly, and if we're going to talk about what we're doing in 5.2, then perhaps this paragraph should move into 5.2.
- Becky Burr: No, I mean, it talks about what we're doing in the rest of 5.2 and then 5.3, but okay.
- Nigel Roberts: Then we should promote this to 5.2 and the rest of 5.3. I'll come up with some words in a couple of minutes.
- Becky Burr: Okay, excellent. Any other --
- Nigel Roberts: We can move on from there otherwise.
- Becky Burr: Any other comments on this? Okay. Bernie, do you want to move us into 5.2?
- Bernard Turcotte: Yes, ma'am. 5.2. "Revocation for persistent problems with the proper operation of a domain." We haven't really changed things here for several weeks. There was a comment made from El the last time he was on that the quote in 5.2.1.1 to 5.2.1.4 should be adjusted if there are going to be real quotes, and once we get a little further down the line with this document, probably in the next version, we'll have that fixed up. We did not have a chance to do that this week. So, 5.2.1, if there are any other comments, we'll be glad to take them at this point. Nigel, you have your hand up.
- Becky Burr: I hear no other --
- Bernard Turcotte: Oh, okay. So, it sounds like we're okay here.
- Becky Burr: Moving right along.
- Bernard Turcotte: 5.2.2. "RFC 1591 clearly contemplates revocation in appropriate cases involving persistent problems with the proper operation of a domain as described above."

5.2.2.1. "The IANA contractor has not publicly stated the standards by which it will evaluate whether or not (a) a manager is doing a satisfactory job of operating the DNS service for the domain [ccTLD] or (b) there are 'persistent problems' with the proper operation of the domain." This is quoting verbatim certain chunks from RFC 1591. I don't think we've ever had questions or issues with 5.2.2.1. Are there any at this time? All right, I'm not seeing -- oh, Nigel?
- Nigel Roberts: Yeah, just to let you know, I've posted a proposed standalone 5.2, or 5.1.6, or 5.3, whatever you want to call it in the chat room, and would appreciate feedback.
- Bernard Turcotte: All right. Since we haven't gone too far from that, Madam Chair, do you want to go back to that, since we've actually got real text posted, and we can maybe put that one to bed?

Becky Burr: Yes. And I think Patricio has suggested some text for 5.1. Okay, so in Nigel -- in the chat room, in 5. -- whether it's 5.2 or 5.3, the following: "We shall look first at paragraph 6, Section 3 of RFC 1591 dealing with revocation for persistent problems, then we shall deal with paragraph 4." And I think that is an absolutely accurate statement of what we do. So, any views on that? I certainly am comfortable with the rewrite. I'm going to take silence for consent.

Okay. And then if we could look at the language that Patricio has also suggested in the chat for 5.1. "Revocation is the only formal mechanism available to the IANA contractor when a ccTLD engages in substantial misbehavior or there are persistent problems of the operation of the ccTLD and informal efforts have not resolved the problem," but, you know, "-- and manager does not consent to a transfer." And I guess we just need to add the concept back up of, "-- and informal efforts have not resolved the situation." Something along those lines work for people? Eberhard notes that consent should be with a little "c" and we'll make that correction. Okay. I'm going to take -- oh, Bill Semich has raised his hand. Bill?

Bill Semich: I have -- I understand that this section is merely explanatory and not whatever you would call it, adjudicatory, prosecutory, or something that actually says what must be done. It's merely an explanation of how things work. But I am concerned, again, that here we're describing revocation. We're describing a manager engaged in substantial misbehavior without any (inaudible). By that, I mean --

Becky Burr: Okay, has been shown -- yeah, that works. Okay, at some point I'll try to get this rewritten and back in the chat and we'll come back to that. Eberhard, do you have a comment on this? Eberhard?

Eberhard Lisse: Can you hear me now?

Becky Burr: Yes.

Eberhard Lisse: I'm getting a bit confused. It's difficult to understand. A talk text comes in to help people all the time. This is taking a little bit of an unordered form and I'm saying it's a bit difficult for me to follow.

Becky Burr: Okay. That is a reasonable point and I think what we're going to do now is just move in order. We've accepted Nigel's proposed substitute language for 5.1.6. We have gone through parts of 5.2. Bernie, why don't you carry on?

Bernard Turcotte: Thank you, ma'am. So, we were at 5.2.2.1, and I don't know if there are comments or questions relative to 5.2.2.1. Let's see, El has his hand up.

Eberhard Lisse: Sorry, I haven't got it down.

Bernard Turcotte: Thank you, sir. Nigel?

Nigel Roberts: A question: Do we deal anywhere in the document with the interpretation of the expression "central IR" in this part of 1591?

Bernard Turcotte: Not to my knowledge.

Nigel Roberts: I thought note at the very least would be worth putting in.

Bernard Turcotte: Okay.

Nigel Roberts: Even to only say we don't know what it means.

Bernard Turcotte: May actually be a valid point. Thank you, Nigel. Any other questions or comments? Your hand is still up, Nigel. I will assume you just haven't put it down. Thank you, sir. Moving on to 5.2.2.

"FOI working group interprets RFC 1591 to require the IANA contractor to avoid actions that undermine the stability and security of the DNS and/or the continuing operation of the domain for the benefit of the local community." Minor changes, but we'll take comments on 5.2.2.2, if there are any. Going once, going twice. Nigel?

Becky Burr: And then Bill.

Nigel Roberts: I understand that we changed the word "believed it is consistent with the intent of to interpret," probably based on a comment of mine in previous -- a general comment that applied to more than one paragraph. But this is a bold assertion. It says we interpret RFC 1591. Which bit of RFC 1591 do we interpret and how do we get the (inaudible)?

Becky Burr: I believe that we have said in several places that stability and security is sort of the prime directive here.

Nigel Roberts: My point is that this is policy making. We're not policy making. This is a bold assertion.

Eberhard Lisse: Don't interrupt, Nigel.

Nigel Roberts: Take your own medicine, Eberhard.

Becky Burr: I was comfortable with belief it's consistent with the intent of RFC 1591. This indeed was a change I think that you did suggest in maybe a more general way. I am happy to go back to the previous language.

Nigel Roberts: Well, I could suggest where something of this nature might derive. I think this derives from the obligation to avoid persistent problems with a domain. I think that's the only place that such a statement can be -- no, obviously it's motherhood and apple pie. ccTLD managers should not undermine the stability of the security of the DNS.

Becky Burr: I mean, do you have -- I agree, it's motherhood and apple pie. So, if we went back to the preceding language. I mean, I am a little concerned that -- well, I'd have to look at the persistent problems, but I'm not sure it helps us to tie it to the persistent problem issue.

Nigel Roberts: May I interrupt? I also see the word "IANA contractor" here.

Becky Burr: It's in square brackets.

Nigel Roberts: So, I see it's a contractor that we're trying to bind here, not the ccTLD manager. So, you can ignore everything I've said because it was based on a fundamental misunderstanding.

Becky Burr: Okay, good. Then you're fine with it?

Nigel Roberts: Well, I'm not fine with it because I don't believe there is any obligation in RFC 1591 on the IANA contractor in this regard, unless you can show it to me. I think perhaps we could just use the word "should" and make it a really broad sweep motherhood and apple pie statement. But I know I'm being a bit rigorous about the word "interpretation" throughout the whole of this working group, but I think that's our job. I think we must use the test that are we interpreting something? If so, what are we interpreting and what is our interpretation, rather than making any other statements, even if they're true.

Becky Burr: I'm sorry, I'm just thinking about the concept here is a concept that comes up that is sort of the focus of the IANA contractor should be on stability and security. We've talked about it in other sections and I believe we talked about it again later on. Let me just -- Bill, if he has a comment on this specific point, and then EI?

Bill Semich: I guess I'll start with a bold concept that maybe we don't need this section, or why do we have it, and then I'll make comments after that.

Becky Burr: Why don't you go ahead and make the comments.

Bill Semich: Well, it seems to me that this is a negative, and I'm wondering why we've chosen negative rather than positive. I know it's IANA's [remiss] to maintain the stability and security of the DNS, and that's a positive requirement. To say to avoid actions that undermine the stability and security makes no requirement on IANA, the IANA contractor, to actually take actions that maintain the stability and security, I'm just a little confused. Because, as I said, the intent of this section and then the structure of the language, and I think those ideas are related.

Becky Burr: Eberhard?

Eberhard Lisse: I have posted a quote from Alex [Semen] chat room which clearly states that if this recurs, if so, whatever is expected from us we can expect from IANA contractors. So, I personally think we should leave it as it is.

Becky Burr: Bill, do you have your hand up again? Nigel has his hand up now.

Nigel Roberts: Okay. I'm trying to start from the beginning again, because the hot button for me was the word "interpret." The FOIG interprets RFC 1591. Well, it doesn't and it can't. Eberhard, I don't think your point about recursion works here, because recursion is downwards. So, that doesn't seem to work. If you want to put the word, the FOIG thinks IANA -- the mandate of IANA is such that it should support the stability, etc., etc. Again, motherhood and apple pie. I agree with the intent of the statement, but I don't think it's part of the interpretation. So, let's put some motherhood and apple pie in there and move on.

Becky Burr: Okay. I do -- this concept has been in this document, I think, since the very first draft, and you see below in 5.3.4.1.2 it says, "Given that the primary responsibility of the IANA contractor --," I think we can give it some motherhood and apple pie. And I think that it is an important concept because it grounds all of the further actions and focus of the IANA contractor here.

So, I'm -- again, I think that if we went back to the original language, believed it is consistent with the intent of RFC 1591, then does that do it for you? And I'm taking into account Bill's concerns about the fact that it's in the negative. Bill, I'm not hearing Nigel, so --

Bill Semich: Nigel, are you done? I guess so. I'm still trying to grapple with the purpose of this section. I'm going to make a couple of assumptions and see how they fly. One of them is the IANA can't come in and pull away the allegation and leave the community without any domain name until it finds a new manager. Is that what we're kind of trying to get at, or exactly what's going on here?

Becky Burr: It's more -- it is more to focus the entire way that the group has read this. It's to focus IANA on misbehavior and persistent problems that pose a threat to the stability and security of the DNS. And then to understand that all of these other sort of softer requirements that are contextual take a back seat to this prime directive from the perspective of the IANA contractor. That's what the purpose of this is, and it says it is invoked in several other places, and it is the way that we focus the primary focus of the IANA contractor on the really concrete operational issues.

So, it does have a specific purpose and it does ground the concept that we follow later on about keeping IANA out of the sort of mushier debates.

Bill Semich: I guess my interest would be to make sure this runs both ways insofar as if there is substantial misbehaviors, action has to be taken. But precipitous action that will damage the continuing operation of the domain for the benefit of the local community has to be avoided. That's my only issue.

Becky Burr: Say that one more time?

Bill Semich: I'm assuming that this is in here because we're supposed to say that, you know -- it's important for us to say that if IANA sees things happening that mess up the DNS or damage the operation of the domain for the benefit of the local community, it does have to take action in order to continue to support those concepts.

But, on the other hand, I guess what I'm saying is if IANA takes action precipitously, as one might define what has been happening in the past, in such a way that continuing operation of the domain for the benefit of the local community is harmed, and that could in fact apply to some of the redelegations for Yugoslavia or other countries that have changed their structure, the IANA has to avoid taking those kinds of actions.

I'm not trying to specify what should or shouldn't be constrained, restrained or otherwise controlled; I'm just saying that in my view this section can and should relate to both IANA being proactive to maintain stability and so on, but also not being precipitous in such a way that in the reference to maintain stability they've screwed up the local domain name.

Becky Burr: Okay.

Bill Semich: That's all I'm going to say.

Becky Burr: Okay, that's fine. This section is on revocation, but I understand your -- the concept your raising here. Okay, anybody else have comments on that section? Bernie, do you want to move us on to 5.2.2.3?

Bernard Turcotte: Yes, ma'am. 5.2.2.3., mostly a deletion. At the end of the paragraph, we'll go with, "The FOI working group notes that technical operations of TLDs has greatly evolved from the time of publication of RFC 1591 wholly use of the Internet and all the still specialized field. This is standard knowledge for networking

specialists and is supported by a large volume of these elite (inaudible) documentation and applications." We'll stop. Questions, comments?

Becky Burr: Hearing none.

Bernard Turcotte: All right. That will include Section 5.2. Bill?

Bill Semich: I guess I wonder why we're talking about TLDs as opposed to DNS? I mean, if we get too much into TLDs, then we start looking at registry code and EPP, and all those other kinds of things.

Bernard Turcotte: I believe that was a comment from Eberhard at some point that noted that RFC 1591 was applicable in many cases to both ccTLD and gTLDs, and I see EI has his hand up, so maybe we can hand it over to him. Eberhard?

Eberhard Lisse: That's correct, but doesn't answer Bill's question, whether it's ccTLD or gTLD is not the issue. But it's not just operating the name service, it's all registering domain names. If somebody -- if you try to register domain names and they don't answer, or they just don't do it, then it -- or it doesn't work, they put the wrong names in, whatever, it's not only just putting the zone size properly. So, I think we should leave it as is.

Bernard Turcotte: Okay. Nigel?

Nigel Roberts: I found Bill and then just lastly Eberhard to be quite unintelligible. I don't know if there is something going wrong with the bridge.

Bernard Turcotte: They were fine for me, so maybe your connection. Can you hear me, Nigel?

Nigel Roberts: I can hear you perfectly, it was Eberhard and Bill that I had a problem with.

Bernard Turcotte: Okay. I could hear them both fairly well, although Bill is distant, but they were clear. So, let's carry on. If there's continued problems, type away in the chat that you're having those and we'll have a look. Is that okay?

Nigel Roberts: Yeah, sure.

Bernard Turcotte: Thank you. All right. So, we've got a proposal from Eberhard that we leave it as is, I believe, and would that be okay with you, Bill? Thank you, Bill. I see a green checkmark. Nigel, I see your hand up again. Do you have a comment? Okay, it's gone away. So, I believe we've dealt with Section 5.2, and we'll move on to Section 5.3.

Substantial misbehavior, which is certainly one of our most discussed sections in this working group's life, and we are back into it. 5.3.1. In addition to the operational requirements identified above, RFC 1591 identifies key requirements and necessary responsibilities of designated managers, including

5.3.1.1. The requirement that there be a manager that supervises the domain names and operates a domain name system in that country.

5.3.1.2. The requirement that the manager be on the Internet with IP connectivity to name servers and e-mail connectivity to the designated manager and its staff.

5.3.1.3. The requirement that there be an admin and technical contact for each domain, including for ccTLDs, and admin contact residing in the country. There is a sub-clause to 5.3.1.3., which is 5.3.1.3.1.

The FOI working group interprets this requirement to mean that the manager must confirm that the IANA contractor must be able to validate that the administrative contact resides in the country or territory associated with the ccTLD. This establishes a clear intention from RFC 1591 that there be local in country or territory associate with the ccTLD presence.

The FOI working group recognizes that there may be extenuating circumstances where it is impractical or even impossible for the administrative contact to reside in the country or territory, or where the operator has a contract that eliminates this requirement.

5.3.1.4. The designated manager serves a trustee for the delegated domain with a duty (inaudible) to serve the nation in the case of a country code and the global Internet community.

We've taken on quite a bit here. Let's stop at 5.3.1.3 and see if there are questions, because I know Nigel has a point. Nigel?

Becky Burr: Nigel, you still haven't switched. Nigel?

Nigel Roberts: Hello. Hello, testing, 1, 2, 3.

Becky Burr: Yes, we hear you now.

Nigel Roberts: I'm really interested to know where the clauses in RFC 1591 were -- that allows for extenuating circumstances to wave the in-country requirement, or where having a contract can override 1591?

Becky Burr: Well, in-country requirements are largely jurisdictional and we can all channel Jon to say he doesn't want to decide what a country is, etc. And there are contracts that adopt different applicable law or don't require -- you know, don't have the same kinds of requirements, and it's just to acknowledge that those older agreements are out there and we're not purporting to challenge them.

Nigel Roberts: I think this is wrong. We may be able to recognize what you're suggesting in a different way, but the requirement of RFC 1591, to have an admin contact that resides in the country or territory -- not an operator, but an admin contact -- is pretty absolute. And the reason for that is to enable somebody in the local community to proceed according to local law. If you can't serve something on the admin contact because they're out of country, then the thing is entirely detached from the country or territory that the two-letter code represents.

I think we're confusing something here. I mean, there are situations whereby the operator is out of country, such as in the case of .nu, the operator is out of country, but the admin contact resides in the country or territory represented by the code.

You and I know we have historical reasons for how the IANA have insisted on this in the past, upon the resignation of the admin contact and there be none other findable.

Becky Burr: I do not -- I don't feel the need to insist on this last phrase. Does anybody else -- I see El's hand is up. I don't know it's response to this specifically, but --

Eberhard Lisse: It is.

Becky Burr: Okay, I will --

Eberhard Lisse: Antarctica cannot be, doesn't have to be in country. If outlying minor islands, .um is delegated, doesn't have to be in country. .eu is an issue because it is not one country. So, there are things that fit quite well, and if the manager has a contract with the admin contact -- let's say the Australian government has an agreement with ICANN, and the manager has an agreement. And then an agreement is -- okay, the administrative contact sits maybe in New Zealand for the next two years and everybody has a contract and it specifies that he can be served, and everything, I think it is not as absolute as Nigel wants it to be. I can live with that.

Becky Burr: Right. And that's what this phrase was intended to reflect.

Nigel Roberts: Okay. And I have a vague recollection we went down this and I don't want to dwell and rehash this, but there's a couple of issues here. First of all, and this goes back all the way to Jon, you can channel him, if you like, use your expression. But in the circumstances where there was no indigenous population whatsoever, such as minor outlying islands or southern territories, and so on, the IANA's policy was to accept an admin contact in the mother country, the sovereign, to be precise.

So, secondly, the operator has nothing to do with the admin contact. So, if the operator has a contract that eliminates this requirement, we're talking effectively that somebody can construct a contract which overrides ccTLD policy. And it's the latter part that I have more of a problem with than the former part. El's quite right, there are circumstances where you can't have, for practical reasons, an admin contact in Guano Island, but the second part after the "or" is problematic for me.

Becky Burr: El?

Unidentified Participant: Hello? El, I just want to put a little context where this came from, probably. If I remember correctly, at one point when we were dealing with this, Kim (inaudible) brought in the notion that this is subject to looser interpretation by IANA depending on conditions. And just to keep it simple, I think that's where it started, and we were trying to reflect that notion. I'm not saying we've done it perfectly; I'm just sort of putting in some of the context. Over to you, ma'am. Hello? Am I alive?

Becky Burr: Hello? Bill?

Bill Semich: Yes. Can you hear me?

Becky Burr: Yes, barely.

Bill Semich: All right. Is that better?

Becky Burr: Yes.

Bill Semich: So, Nigel, sorry to say, I really do disagree with you. There is nothing in RFC 1591 that actually defines what an admin contact's role is. It says it has to be in

the country. Could be there in order to have a direct connection with the users and give feedback to the manager. But we've kind of lost this concept is manager is the entity that is being delegated or redelegated, not the admin contact. I don't think we should read between the lines and try and figure out, gee, why should an admin contact live in the country? Legal reasons, for social reasons, for culture reasons, for community relations? It's not defined anywhere.

In addition, the admin contact and the tech contact having to sign off, they're both employees of the manager, in theory, certainly in the case of IUSN they are. And they're having to sign off as merely an artifact of (inaudible) of RFC 1591, and right now they're having to sign off as merely under instructions of their employer, the manager.

And, finally, in the case of IUSN, .nu, the manager is a US corporation. They're incorporated in Delaware, not in Niue. And so any national law in Niue relating to manager is irrelevant, in fact. And there are other entities similar to the IUSN structure that are the same kind of situation.

So, how we read this is far more complicated than just a simplistic kind of single concept of, well, if there has to be an admin contact in the country, that means that national law applies to that TLD. Not necessarily. It depends on the structure of the existing delegated manager.

I do notice in the RFC there is a sort of small phrase at the end of page 4, "The applying party may not be able to represent or serve the whole country. The latter case sometimes arises when a party outside a country is trying to be helpful in getting networking started in a country. This is sometimes called a 'proxy' DNS service." I know that's a little bit of a stretch, but it does imply that Jon was certainly aware that there were an awful lot of African TLDs getting managed by one person in somewhere Northwestern US.

And then, finally, sad to say, I'm going to refer to the GAC principles, which themselves recognize the fact that there will be out of country managers.

Becky Burr:

So, I think that I'm going to ask Nigel if we can take this offline. My sense is that the room is generally comfortable with this and feels like it reflects the circumstances we actually find ourselves in. So, let's talk about it offline, Nigel. Bernie, do you want to go on? Bernie is not there. He is just off for a moment, so I will carry on.

5.3.1.4. The designated manager serves as a trustee for the delegated domain with a duty to serve. We talked about that.

5.3.1.4.1 rehearses the conversation that we had about what the term "trustee" means in this context.

5.3.2. RFC 1591 requires that the designated manager have the ability to carry out the necessary responsibilities described above in an equitable, just, honest and competent manner, and gives IANA the ability to step in in the event of significant misbehavior.

5.3.2.1. The FOIG interprets the requirement of the designated manager to be equitable to all groups in the domain, obligating the manager to make its registration policies accessible and understandable to prospective applicants and to apply these policies in an impartial manner, treating similarly situated, would-be registrants in the same manner.

5.3.2.2. The working group notes, however, that the concept of being equitable to all groups varies depending on contact choices made by the local Internet community, such as whether or not the domain is open or closed, applicable law, etc. In addition, questions regarding justice, honesty and serving the local community are highly contextual. As a result, the IANA contractor may refrain from acting and look to the local Internet community where it lacks the information and context needed to evaluate the more subjective aspects of these requirements -- these requirements, there should be a period after these requirements.

And I think that's in the very first sentence. The issue is not that the concept is being equitable to all groups (inaudible), depending upon context, is that the meaning of being equitable to all groups will vary depending on context, etc.

Okay, comments? I know we probably have some on that. I see Nigel's hand up.

Nigel Roberts: Okay. I think there is some work to be done on this, although I see and agree with the intent of putting it in. And to put something like this in is right to do so in a multicultural, multinational context. And I'm actually pleased to see this being considered rather than just look at it from a California or even Los Angeles point of view.

I've got some problems with the way it's done. Maybe then we can take this offline and produce a better text that I suspect is a bit shorter, too. But probably by accident we've made some implications here. We've said here that things like honesty vary. No, I'm sorry, honesty does not vary. So, I think we need to have some wordsmithing on this. I think what we're driving at here is what's known in international law as the margin of appreciation, but I think we can do something about this offline.

Becky Burr: Okay. Eberhard?

Eberhard Lisse: I just want to place on record that national law doesn't belong in this working group. Any interpretation is not part of any of the policy documents that we have to look at. Sorry. Didn't want to agree with myself.

Becky Burr: Nigel, is your hand up again?

Nigel Roberts: It's up, but it's because I'm being neglectful again.

Becky Burr: Okay. Martin?

Martin Boyle: Thank you. I'd like to just pick up on a couple of points. I'd also, quickly scanning the documents, I can't see where national sovereignty appears in this text, picking up on Eberhard's point.

If I can go back to 5.3.1.4.1. There is a specific reference under i, provide mechanisms to allow for registrants and significant interested parties to provide input to the manager. But it doesn't say any indications to what that [influence] the manager should be about. And I think that needs to be qualified to avoid there being unnecessary input or (inaudible).

Becky Burr: I'm losing you, Martin.

Martin Boyle: Sorry, is that better? Something that actually prevents frivolous input as something that should be -- that the registry should be required to offer the facility to put in. And on a slight trivial point, after "manager" there is closed quotes that doesn't have open quotes to start, so I think it needs to be deleted.

Under 5.3.2.1, we talk about equitable tool groups. RFC 1591 makes specific reference to just, honest and competent as well as equitable, and that does get picked up in 5.3.2.2, except that the "competent" word is dropped. So, I'm happy with 5.3.2.2. I accept that just, honest and competent only needs to appear once, so, long as it did in 5.3.2.2, then that's fine. But the word "competent" I think does need to go in.

And then I would disagree with Nigel's comment unless I'm missing where he's making it, and that's honesty being an absolute term. Yeah, I'm sure he's right, but in fact the words here are about context of honesty, so I think it is questions regarding just dishonesty in certainly the local community, and it's in the context of the local community. So, that needs to be looked at in the course, as we've agreed before. IANA is badly fitted (inaudible). Thank you.

Becky Burr: Thank you, Martin. Eberhard?

Eberhard Lisse: Okay. I did not use the word "national sovereignty" [affect] national law. 5.3.2.2, fourth line from above, first and second words from the left. I don't really think we should specify too much what input is, because it's already defined in our document. I agree it makes sense to think about it. We don't want to put a burden on the manager to have to prove in excruciating detail that every single private first class who had a grievance was accommodated in writing and with several appeal levels no matter how frivolous it is. But I don't think we need to put this here.

I also fully agree with you that honesty and competence and openness and access to official records are highly contextual and varies from county to country. Therefore, it's very important that we are very careful what and how we arrive [at this]. I fully agree with you.

Becky Burr: Eberhard, does that mean that you are comfortable with the way that it is written now?

Eberhard Lisse: We need to redo this. I like where you're going with this, but the actual wording needs some finesse, I think.

Becky Burr: Okay. So, I think that we are going to come back as a group with a revised version of this in short order. Any other comments? Nigel, your hand is up?

Nigel Roberts: Hello?

Becky Burr: Hello.

Nigel Roberts: Did you call me?

Becky Burr: I said your hand is up.

Nigel Roberts: Yes, it is. I put it back up. I was taking the mute off, so I didn't hear you say it. It seems to me that Martin and Eberhard and I, when you distill it through, are actually in violent agreement to that. I see major problems with the wordsmithing

of it, and I see the possibility of it being either accidentally or intentionally misinterpreted in the future to say something quite different from what we intend.

I'm unhappy with it as it is, but I'm happy with the idea of a paragraph referring to a margin of appreciation for the context, if you like, of -- equitable doesn't change. But obviously it doesn't mean you can force a ccTLD manager to open its registration to individuals when it has a rule which, consistently applied, applies to all people in its territory that says that you can only be a company. So, that's I don't think the intent here. I think the intent is laudable, but I think the execution is problematic.

Becky Burr: So, what I would like to suggest, Nigel, is that you take a rewrite shot and that we get you and Martin involved in reflecting your violent agreement in words.

Nigel Roberts: I'm happy with that.

Becky Burr: Okay. Eberhard?

Eberhard Lisse: I'm also happy with it, which is shown by my green tick mark.

Becky Burr: Excellent, okay. All right. Moving along.

Eberhard Lisse: But, but, you said Martin, not -- wordsmithing between Nigel and Martin. I'm quite willing to make a threesome out of it.

Becky Burr: Okay, you can make a threesome out of it.

Eberhard Lisse: If necessary. I'm not volunteering violently.

Becky Burr: Okay. Well, I'm not excluding anybody violently, so I will leave that to -- I mean, in the end, all of us will be involved, but for the moment --

Eberhard Lisse: Sure, sure. No problem. I'm quite willing to have a go.

Becky Burr: Okay. Moving along. Bernie?

Bernard Turcotte: 5.3.3. Application and selection of designated managers. The working group interprets RFC 1591 to require IANA contractor in the manager selection process to ensure that the proposed manager [has] the necessary technical, administrative and operational skills judged by the standard of the ordinarily competent TLD manager. This requires the prospective registry manager to demonstrate that he or she [or if a legal person, it] (1) possesses the requisite skills to carry out the duties of a manager, skills test, and (2) if designated, will have the means necessary to carry out those duties including the ongoing responsibilities discussed above, upon receiving the appointment, [executory] preparedness test.

I see EI has his hand up, so I'll hand it over to you.

Eberhard Lisse: Oh, I'm sorry, I didn't take it down quick enough.

Bernard Turcotte: Okay. 5.3.3. Any other questions, comments?

Being none, 5.3.4. Applications to designated managers. Although one could read RFC 1591 to limit the authority of the IANA contractor to step in during the process of selecting a designated manager, on balance, the working group

interprets Section 3.4 of RFC 1591 to create (1) an ongoing obligation on the designated manager to operate the ccTLD without substantial misbehavior; and (2) a reserve power for the IANA contractor to step in in the event that the designated manager does substantially misbehave.

There is a 5.3.4.1 we will do before taking comments. RFC 1591 identifies three formal mechanisms available to the IANA contractor: delegation, transfer and revocation. The FOI working group, as discussed above, interprets RFC 1591 to require the consent of an incumbent manager to any transfer of a ccTLD. If one assumes that a ccTLD manager substantially misbehaves -- substantial misbehavior -- sorry, misbehaves, is unlikely to provide such consent, and the IANA contractor's informal efforts to address such misbehavior are unavailing, the only formal mechanism that remains available to the IANA contractor's revocation. Accordingly, the working group interprets RFC 1591 to permit -- whoa, whoa. Am I still being heard? My interface went away.

Becky Burr: We can hear you, but, yes, the interface has done something weird.

Bernard Turcotte: Okay. So, minor instability on --

Eberhard Lisse: It has misunder-improved itself.

Bernard Turcotte: Let me see if I can find the document again.

Eberhard Lisse: There you go.

Bernard Turcotte: Thank you.

Eberhard Lisse: What number was it?

Bernard Turcotte: We were under 5.3.3 --

Eberhard Lisse: 5.3.4.1, yeah.

Bernard Turcotte: 5.3.4.1, yes. And we were under 5.3.4.1.1, I believe. -- to remain available to the IANA contractor's revocation. Accordingly, the working group interprets RFC 1591 to permit IANA to revoke a ccTLD delegation in appropriate cases where the designated manager has substantially misbehaved.

We've got a few other points under here, so I'll take it here, if there are any questions and comments. 5.3.4.1 and 5.3.4.1.1. Okay, I'm not seeing anything.

5.3.4.1.2. Given that the primary responsibility of the IANA contractor is to preserve DNS Internet stability and security, the FOI working group interprets revocation under RFC 1591 as a last resort option to be exercised in situations where a delegated manager has substantially misbehaved in a way that poses a threat to the stability and security of the DNS Internet, or where the manager fails to cure violations of the objective requirements described above after notice. We have a comment. Over to you, Nigel.

Becky Burr: Nigel?

Nigel Roberts: Yeah, okay. It would appear, and this may be intentional, that the examples given are the only examples. Is that our intention?

Eberhard Lisse: Are we only talking about substantial misbehavior and persistent problems, so what else can there be?

Nigel Roberts: No, I'm talking about substantial misbehavior, necessarily includes by posing a threat to the stability, so that is the test.

Eberhard Lisse: Yeah, yeah, I think we have discussed this before. If somebody steals the petty cash, it's also substantial misbehavior for some other, but doesn't -- not in this context. So, the context must be a gregarious conduct that affects the DNS (inaudible), so I think that is quite acceptable to me.

Nigel Roberts: I didn't say it was unacceptable, I said is that our intention? I'm just making sure we're explicitly all in agreement on what we're doing, and I'm happy to concur with that viewpoint.

Eberhard Lisse: We are violently in agreement.

Becky Burr: Well, I'm not going to stand in the way of violent agreement.

Eberhard Lisse: Excellent.

Becky Burr: Bernie? I see no other comments.

Bernard Turcotte: Okay. So, that will take us to 5.3.4.1.3. The FOI working group notes, however, that IANA will rarely be in a good position to evaluate the extent to which a designated manager is carrying out the necessary responsibilities of the ccTLD operator in a manner that is equitable, just, honest or accepted insofar as it compromises the stability and security of the DNS Internet [in] a competent manner.

Accordingly, the FOI working group interprets RFC 1591 to mean that revocation would not be an appropriate exercise of its right to step in unless the designated manager has substantially misbehaved in a manner that poses a risk to the stability of security of the DNS Internet and/or the designated manager has refused to correct repeated problems with e-mail connectivity, presence on the Internet, and/or maintenance.

Accordingly, under RFC 1591, it would be -- well, we've got to adjust that -- it would be appropriate for the IANA contractor to look to the local community when the actions of the designated -- delegated manager do not pose a stability security threat. We have comments. Over to you, ma'am.

Becky Burr: Okay. We have Nigel and then Bill.

Nigel Roberts: Well, I'm happy to defer to Bill and come in second, if people feel I'm just being a bit too quick off the mark. But it's a quick one for me.

Becky Burr: Then you're on, so do it.

Nigel Roberts: Okay. This extra wording under 5.3.4.1.3, again, I don't see in RFC 1591 the language that we're interpreting to produce that result. We are making broad policy statements here, and I think it's devaluing the interpretation exercise.

Becky Burr: Which are the extra words?

Nigel Roberts: I've got it starts "accordingly" and ends in "threat." Assuming you've corrected the manger bit.

Becky Burr: Bill, I'm going to go to you and then come back to this comment, if you're on this topic.

Bill Semich: I'm on a similar topic. Certainly, I'd be happy with Nigel's proposal to just remove it. On the other hand, is it possible that with some words missing, for example, to look to the Internet community, not the local community, we might be able to fit it under the language that's in the RFC.

Nigel Roberts: Well, if I could just correct something Bill said. I don't recall hearing saying I proposed removing it. I'm just highlighting a problem I see with it.

Bill Semich: Okay. Well, the simple solution is to remove it. Another proposal is to at least try and make it consistent with the language of the RFC, in which there is an obligation both to the global Internet community and the local Internet community. And that's an "and" not an "or."

And so just limiting it to the local community -- for example, if the local community has minimal use of the domain name, and I believe a dozen names are registered in Niue under .nu, but there is a quarter of a million outside of the local community who could complain there is no e-mail connectivity. And that would be more relevant complaints from the people outside of the local community.

Becky Burr: Well, I think we could say relevant community. We've used that term before.

Bill Semich: Yeah, although relevant community could be the ITU.

Nigel Roberts: I still fail to see what we're interpreting here.

Bill Semich: Yeah. Well, that's where I am, too. I leave it to you, Becky.

Becky Burr: Well, I don't think this is a hard call on what we're interpreting here. We're saying if we interpret the point of -- sort of the prime directive of IANA is to preserve stability and security, there are these contextual issues that make IANA weighing in in cases not involving the stability and security difficult.

Accordingly, IANA -- it would be appropriate for IANA to defer in situations where the misbehavior doesn't pose a stability or security threat. I think that's just -- you know, those things all follow from the discussion that we've had about what the primary purpose is and the difficulty of interpretation.

Nigel Roberts: Becky, (inaudible).

Becky Burr: Yes? I mean, just leave it. I don't mean defer -- I don't mean (inaudible) --

Nigel Roberts: No, no, no. Don't back away. I'm totally with you on this point, but that's not how I read this. I read this in a quite different manner. I read that the IANA should go marching into the local community and start doing things in the local community -

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Becky Burr: Okay, that's absolutely --

Nigel Roberts: -- that it perceives as a problem.

Becky Burr: Okay, this is a good clarification, because that is not what is intended here. I do mean if the local community's problems (inaudible).

Nigel Roberts: In other words (inaudible) --

Becky Burr: (Inaudible)

Nigel Roberts: -- 1591 that we can interpret whereby Jon wrote something like the IANA generally takes no action to change things unless.

Becky Burr: Correct. That's exactly -- so, if you want to take a shot at this language as well, but I think that's what we're going for --

Nigel Roberts: I'd rather somebody else have a go at this. I've been doing too much.

Becky Burr: Okay. I see Martin's hand, and then after we get done with this one section, we need to go to the progress report, because we have only a little bit of time left. Martin?

Martin Boyle: Thanks, Becky. Yeah, I think certainly those last three lines in red do need to be in the text in some form or other, but I think the way that your exchange with Nigel has just gone is probably quite a satisfactory way of dealing with it.

The reason I think it does need to be there is that just immediately above we have very much limited the text to the posting a risk of stability and security of the DNS, which is obviously something that IANA by itself can make a judgment and assessment on.

But when it comes to wider issues that are included in 3.3.3 of RFC 1591, that is something where the local community, the relevant community, the Internet community and their views and opinions need to be taken into account. It's something that's to get picked up before in the fact that an awful lot of these issues are actually not judgeable by somebody from the outside. Thanks.

Becky Burr: Okay. So, I guess I will take a shot at that, but I appreciate the clarification on the reading and I think it's another case of violent agreement not properly reflected in [words].

Okay, let's turn to the progress report in the remaining time that we have. Bernie, do you want to -- that was circulated, right? Here we go, okay.

Bernard Turcotte: Yes, it was.

Becky Burr: Great. Will you walk us through it?

Bernard Turcotte: We've got -- yeah, it's very, very close to the one we had in Toronto, given we haven't really (inaudible) publicly. So, we'll just go through it quickly.

Introduction and background is the standard stuff from all the progress reports, so I'm not going to go through that. That's been approved many a time. There has been no change.

Progress in Toronto. On the topic of obtaining documenting consent. The FOI working group has completed its work on this topic, which will be integrated into the final report to the ccNSO in GAC on the topic of obtaining and documenting

support for a delegation and redelegation request from significantly interested parties. The working group will return to this topic after completing its work.

On the topic of revocation -- (inaudible) correction there -- on the topic of revocation and unconsented redelegation, the members of the FOI working group have made considerable progress on analyzing the issues and developing draft recommendations pertaining to the revocation of the ccTLD delegation and unconsented redelegation. The FOI working group will continue its discussions at its Beijing face-to-face meeting. It anticipates publishing its interim report on this topic before the ICANN Durban meeting, which is the summer meeting. I see I've got Bill with his hand up. Bill?

Bill Semich: I'm going to go back to my bugbear. I can't move the page, so I'm just going to recall what was at the beginning, unless you can move it up for me.

Bernard Turcotte: Which one are you talking about?

Bill Semich: Page 1.

Bernard Turcotte: Page 1.

Bill Semich: Yeah, the opening paragraph. I would be more comfortable if -- let's see. The scope of the FOIWG also clearly specifies that any proposed [proposal] to amend updated change to policy statements is outside of the scope of the FOIG, I would prefer that said policy statements and guidelines.

Bernard Turcotte: Okay, that's interesting because we haven't really touched this text in several meetings.

Bill Semich: I've raised this issue all the way back to Toronto and occasionally it creeps in and occasionally it doesn't.

Bernard Turcotte: Yeah, okay. I'll go back and have a look at that and I'll get back to you directly on that, is that okay?

Bill Semich: It did find its way into the original paragraph, where it now says interpretations of the policies and guidelines, but it didn't work its way into the following.

Bernard Turcotte: Yes. Okay. I will discuss that and get back to you in the following days.

Bill Semich: Okay, thank you.

Bernard Turcotte: Okay. Anything else on the initial section? No, okay. So, we've made it to the topic of revocation. In continuing our discussions at the Durban meeting on the topic of IANA reports on delegation and redelegations, the FOI will start its work on the terminology and recommendations for IANA report on delegation and redelegation once its interim report on the topic of revocation and unconsented redelegations is complete. The FOI working group met six times by telephone conference since the face-to-face Toronto meeting. Keith Davidson.

So, what I know from this point is I've got the point we just talked about with Bill, and we've got the section under -- a small grammatical mistake on the topic of obtaining documents in support for delegation and redelegation request [from 6]. Are there any other comments or questions? Okay, so we'll work at fixing those two issues, and thank you very much. We are at 8:53, so I'll hand it over to Becky.

Becky Burr: Yeah. So, Kristina, our meeting in -- our next meeting is in Beijing on Thursday, is that the right day?

Kristina Nordstrom: Yes. It's from 9:00 to 5:00, local time in Beijing, in room [function] 11.

Becky Burr: Hopefully, we will be able to have redrafts of this section circulated well before then and perhaps we can finally put this section to bed early in the process. Do we have any other business? Bernie, I can't see hands at this moment.

Bernard Turcotte: Sorry. I don't believe there is anything significant that we have to deal with at this point. Look forward to seeing the members in Beijing, and thank you, everyone.

Becky Burr: Thanks everybody.

Bernard Turcotte: Bye, everyone. Have a good day, or night, whatever.