

## TRANSCRIPT

### Framework of Interpretation Working Group Telephone Conference *9 May 2013*

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Kristina Nordström: Okay, so on the call from the ccNSO we have Martin Boyle, Keith Davidson, Chris Disspain, Stephen Deerhake, Daniel Kalchev, Eberhard Lisse. From Liaisons we have Maureen Hilyard and Cheryl Langdon-Orr. From Staff Reports and Special Advisors we have Bart Boswinkel, Kim Davies, Kristina Nordstrom and Bernie Turcotte. And we have apologies from (inaudible), Paulos Nyirenda, Dotty Sparks de Blanc and Bill Semich.

Keith Davidson: Okay, I think that means that we're quorate. Not that we actually a number to be quorate but I think there's sufficient on the call to warrant proceeding and I realize this is the inconvenient time to, the Americas in particular, but let's see what progress we can make and see where we can get to tonight.

So can we move to confirmation of the agenda? I didn't see anything on the list there suggesting any changes. Anyone here going to suggest changes or additional alterations? No, if not, we'll move to the confirmation of the meeting from the 21st of March. Before we do that, can I just enter my apologies for missing the last meeting, the mess that I made of that, my sincere apologies but, as I understand it, we were not really quorate anyway.

Unidentified Participant: We were chairless, let's put it that way.

Unidentified Participant: Hang on.

Unidentified Participant: Well no. We stepped into the breach.

Unidentified Participant: True.

Eberhard Lisse: So we were headless.

Keith Davidson: Anyway, so confirmation of the meeting reports of 25th March and Bernie made a couple of adjustments which I pointed out on the list. Does anyone have any issues or problems or is there anything missing? Anything incorrect? If not, we'll accept the meeting report and move into the revocation topic and the analysis document if we can have that up, please. I don't know if it's Bernie or Kristina who's doing that. And Bernie, do you want to take us on from where we left off?

Bernie Turcotte: Yes sir. Right, let's see. I don't know if (inaudible). Excuse me while I get my head screwed on. Alright, (inaudible) this time of the morning. Okay, we had left at section 5.3.2.2 on the concept of being equitable to all groups and the general discussion around what that meant.

Keith Davidson: Not actually seeing the document, Bernie.

Bernie Turcotte: Pardon me?

Keith Davidson: I'm not seeing the document. Does everybody else? I've gone back to seeing --

Bernie Turcotte: I'll be bringing that up in a sec. Adding to section 5.3.2.2 on the document. Is that better?

Unidentified Participant: Yes, thank you.

Bernie Turcotte: And 5.3.2.2. This is where we stopped in Beijing. So, why don't we read the text as we usually do and see where we go from here? FOI Working Group notes, however, that the concept of being equitable to all groups varies depending on context. Choices made by the local Internet community such as whether or not the domain is open or closed, (inaudible) national law et cetera. In addition questions regarding justice, honesty, competence, 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' importance. Over to you, sir.

Keith Davidson: And I think that to evaluate the more subjective aspects of these requirements, full stop, I think informs is a spare word.

Unidentified Participant: I agree, Keith. You're right. It's a spare word.

Keith Davidson: Let's keep it on one side and we might slot it in somewhere else.

Unidentified Participant: You never know when you're going to need a spare word.

Unidentified Participant: Especially one that's informed, okay.

Keith Davidson: Indeed. Okay. Any questions. Any discussion after deletion of the word and is there any debate, any dispute? I'm not seeing any hands up. Okay, let's consider it accepted text. Here we go, Eberhard.

Eberhard Lisse: I'm not pushing the right button. There can be no question that justice cannot be contextual. Justice is absolute.

Keith Davidson: Okay, yes, although it can be contextual as well as absolute.

Eberhard Lisse: Sorry. In this -- in the context we're discussing it, it is absolute.

Unidentified Participant: Should that have read jurisdiction?

Eberhard Lisse: That I can live with.

Keith Davidson: Where did the word justice come from there, I guess, is the question?

Unidentified Participant: We could just live without it and the rest are just exemplary, not a complete listing.

Unidentified Participant: I don't recall where it came from but it's a small j justice and it's meant to think, I mean, not justice in the sense of court justice but justice in the sense of acting justfully. Sitting with honesty, competence and serving the local community. It's an unusual word to use because it-- equitably is probably a better word.

Keith Davidson: Put on the chat the ability to do an equitable, just, honest and competent job.

Unidentified Participant: That works.

Keith Davidson: So regarding--

Eberhard Lisse: The word justice is not right.

Unidentified Participant: But just is alright.

Unidentified Participant: Yes. A just, honest and competent job--

Unidentified Participant: Equitable job.

Keith Davidson: Why don't we add the word equitable and just-- equitable, just, honest and competent?

Unidentified Participant: That's fine.

Eberhard Lisse: Change it in a way that the word justice doesn't appear.

Unidentified Participant: Yes, that's what we're saying now.

Eberhard Lisse: Bernie, make a note.

Bernie Turcotte: Bernie has made a note.

Eberhard Lisse: Excellent.

Unidentified Participant: That's the scraping noise you could here.

Keith Davidson: Okay, thanks Eberhard. So using the words from 1591 does the job there. No other comments? (inaudible) ticked as we've agreed to amend. Lovely. Can move onto 5.3.3, thanks Bernie?

Bernie Turcotte: 5.3.3 Application and Selection of Designated Managers. A working group interprets RSC1591 to require the IANA contractor in the manager's selection process to ensure the proposed manager possesses the necessary technical, administrative and operational skills judged by the standard of the ordinary competency of the manager. This requires the prospective registry manager to demonstrate that he or she or the legal person (inaudible) possesses the requisite skills to carry out the duty of a manager, (inaudible) and two eyes if designated will have the means necessary to carry out those duties including the ongoing responsibilities upon receiving the appointment (inaudible) preparing the S5.3.3. Over to you, sir.

Keith Davidson: Eberhard, do you still have your hand raised from the last time?

Eberhard Lisse: No, I lost track a little. I'm wondering whether the (inaudible) contractor should ensure or should satisfy himself. Ensure means it may become excess in this. Do you understand what I'm trying to say?

Keith Davidson: I understand. To ensure--

Eberhard Lisse: I'm not sure whether that's the meaning of the word ensure in plain English but I just want to avoid an issue.

Keith Davidson: Well, would you be happy with to be satisfied there?

Unidentified Participant: Yes, I see what you mean.

Keith Davidson: So to be satisfied is satisfactory? Excellent. Can I just ask that we change to the middle sentence to the standard of the ordinarily competent ccTLD manager because I think there will be a different level of competent for TLD managers going forward than there will be for ccTLD managers?

Unidentified Participant: I agree.

Keith Davidson: Let's not try and make ourselves too alike to other TLDs that are not cc.

Eberhard Lisse: Sorry.

Unidentified Participant: Can you rewind that?

Eberhard Lisse: We are not discussing only ccTLDs.

Unidentified Participant: Yes we are.

Eberhard Lisse: Or are we-- if our amended thing we only discuss the policy documents in so far as they relate to ccTLDs or we only discuss the policy documents.

Unidentified Participant: ccTLD.

Keith Davidson: No, we're talking about ccTLDs only and the selection of a designated manager is for anything other than a ccTLD, is not made according to these rules. It's a completely different set of rules. So my fear is that, if you have a standard or ordinarily competent TLD manager, there will be two sets of standards applicable. So if we say ordinarily competent ccTLD manager, that's limiting us to what's like us. Eberhard.

Eberhard Lisse: We have in the past -- we need to go through all the documents because we have many occurrences and occasionally we have referred to TLD manager.

Keith Davidson: Yes I think--

Eberhard Lisse: And as far as RSC is written, we should maybe write that it is clear from the context we are only interpreting RSC as far as ccTLDs are concerned. Should we then be consistent and make these changes in every document everywhere?

Keith Davidson: I've been looking for that consistency. I might have missed the odd occasion but, if we have, we should revisit the end but know that the framework is only applicable to ccTLDs. Nigel has his hand raised so Nigel.

Nigel Roberts: Good morning.

Unidentified Participant: Good morning, Nigel.

Keith Davidson: Noting that Nigel has joined the call.

Nigel Roberts: Good morning.

Eberhard Lisse: For the record, we note that he has woken up.

Nigel Roberts: No, for the record, you can note that I've been woken up.

Chris Disspain: He is capable of being on this call and being asleep, Eberhard, to be fair. Two things at once.

Unidentified Participant: Chris, I'm the master napper here.

Eberhard Lisse: Ron is not on the call so we don't have to worry about snoring.

Unidentified Participant: Oh, I can do that too.

Unidentified Participant: Ron has children. Let's get back to it, thank you.

Keith Davidson: Okay, so Nigel, you had your hand raised.

Nigel Roberts: Indeed. I'm a bit concerned that we seem to be revisiting some stuff that we've done and I thought was settled but seeing as I came in only halfway through it I'm not sure what's going on here but I'm concerned that we are trying to redefine things that are defined in the document. Our job here is to interpret the document. That's our prime directive.

Unidentified Participant: Someone's having a coughing fit in the background that makes it difficult to hear you but what, specifically, do you think we're redefining here?

Nigel Roberts: Well first of all, RSC1591 definitely applies to TLDs in general. We should be approaching it from a perspective that we are all ccTLD managers but we must not be making statements that this does not apply to other TLDs. It is a matter for another place as they would say to determine whether or not RSC1591 is applicable in the light of so much further policy development in the other place.

Unidentified Participant: We're not competent to opine on what 1591 may or not mean to gTLD managers.

Nigel Roberts: Nor are we competent --

Unidentified Participant: Hang on. I'm not saying that. I'm saying simply that our reference is to the ccTLD manager because it is only in respect to ccTLD managers that we are providing this guidance. As far as we're aware, we've not anywhere said that 1591 only applies to ccTLD managers. What we've said -- what we are saying, rather, is that this guidance is in respect to ccTLD managers. The fact that the exact wording in 1591, we're not seeking to put these words in quotation marks with our interpretation of the words.

Nigel Roberts: I think we're violently agreeing again, then.

Keith Davidson: I think we are in violent agreement. Eberhard, you have your hand raised.

Eberhard Lisse: I also violently agree. The point is we can easily rectify it by writing that though these documents apply to every TLD, we are only briefed in interpreting how they relate to ccTLDs. That makes it clear throughout whatever we write. This is how the guidance we provide to the Board, how they should deal with ccTLDs with delegations on revocation.

Keith Davidson: Well, I think all our documents are pre-cursed by some carolling of is this applicable to ccTLDs only. But anyway, let's all violently agree to the change competent ccTLD manager. It doesn't exclude, omit or invalidate any other sort of TLD managers but it does express the competence, specifically, as it applies to ccTLDs which I like.

Unidentified Participant: Keith, sorry to interrupt you. Just wanted to check Kristina's see Martin's note.

Keith Davidson: Yes, Martin's seeking a callout, if possible.

Unidentified Participant: Looks like she's working on it. I agree with that interpretation, by the way.

Nigel Roberts: Hang on. What change is this that we're proposing?

Keith Davidson: Just where the middle sentence says "judged by the standard of the ordinarily competent TLD manager" and my proposal is that we change it to the standard of the ordinary competence ccTLD manager. Exactly.

Nigel Roberts: I don't disagree with that but we did spend a lot of time on that very thing -- hang on, let me finish -- we did spend a lot of time on this on a previous call so we need a footnote to explain this at this point because this is the most important reference we have to TLD manager in the entire document.

Unidentified Participant: I'm sorry, Nigel, I'm completely lost as to why this is so important. This is simply us defining what we think applies in this particular case and, given that we are only providing guidance in respect to ccTLDs, what possible consequence is there from putting ccTLD manager in there? I don't understand.

Nigel Roberts: Okay, don't forget, I just came into this halfway through so I don't understand the driving point of this. But it's exactly the point that Keith made earlier on is that we are effectively saying that this document only applies to ccTLD managers and

we're interpreting it that way. And that has the following effect that somebody else can turn around and say well, your policy making. You said this is the standard that must apply to ccTLD managers and, as somebody else said, the different standard applies to other TLD managers. If we point out we're only interpreting this as a point of view from the point of view of a TLD manager but that the words in the document don't specifically say ccTLD manager, that's fine. But we (inaudible) here.

Eberhard Lisse: Go and have a coffee.

Keith Davidson: Yes, I think you're seeing this the wrong way round, Nigel, in actual fact.

Nigel Roberts: It's entirely possible.

Keith Davidson: There's a statement for an IANA contractor too when selecting the manager, to be satisfied that that manager is judged to have the necessary technical, administrative and operational skills compared to other ccTLD managers. My point for saying that is there is now a separate set of competencies that IANA measures other TLD managers by and you're seeing that in action now that the level of technical requirement on a new gTLD manager is very, very, very different to the ordinary competence of the ccTLD manager.

Unidentified Participant: Correct. You've got to include things like you must do DNS checks.

Keith Davidson: The level of providing evidence to IANA of what you're capable of and so on is very very different. So what we want to avoid here is any opportunity for confusion because we are interpreting, by stating ordinarily competent ccTLD manager, we are excluding the possibility of that new delegate being compared to a gTLD manager.

Nigel Roberts: Then I'm persuaded.

Keith Davidson: Thank you. Heather, so are you taking your hand down and Eberhard has just raised his hand. So Eberhard.

Eberhard Lisse: This particular paragraph would also have prevented the dot.nl re-delegation to be honest and ICANN lists it very nicely.

Keith Davidson: Thank you. So Nigel has still got his hand up. Nigel, or is it just that you're forgetting to put it down?

Nigel Roberts: It's that I'm in the kitchen trying to make some coffee to wake me up and I'm nowhere near a place where I can put it down.

Keith Davidson: (Inaudible) wording then, I assume.

Eberhard Lisse: I can put it down for him.

Unidentified Participant: (Inaudible) leave Nigel's hand alone. You leave Nigel's hand alone.

Unidentified Participant: He can hardly make his coffee for him.

Keith Davidson: I've removed it for him. It's now down. Can we move on? So I think is there anything else in 5.3.3 Stephen? Stephen, you're muted.

Unidentified Participant: Did you say he was muted?

Stephen Deerhake: My hand is still up?

Keith Davidson: Yes, now we can hear you.

Stephen Deerhake: My hand is up inadvertently.

Keith Davidson: Okay, I'll put it down for you. There you go. 5.3.4 in that case. Bernie.

Bernie Turcotte: Yes sir. Application to Designated Managers. Although one could read RSC1591, 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 RSC1591 to create one, an ongoing obligation on the designated manager to operate the ccTLD without substantial misbehavior and, two, a reserve power for the IANA contractor to step in in the event that the designated manager does substantially misbehave. Given the nature where we're at, I think we'll stop it at this one and see how we do. Over to you.

Keith Davidson: Okay. Eberhard is indicating a green tick so he's obviously satisfied and will remain mute for the rest of the debate. Does anyone have any other discussion on 5.3.4?

Unidentified Participant: Throwing something of a long bow there, Keith, I think.

Keith Davidson: Eberhard is now giving me a red.

Unidentified Participant: Now look what you've done, Keith.

Keith Davidson: Lining up the sights on the --

Unidentified Participant: I just have one tiny point which is that -- just as we're correcting things as we go, it's you've got an Arabic one and a Roman two, Bernie, so you need to replace the one in the two brackets with an I so that it's Roman one rather than Arabic.

Keith Davidson: I'm sure he will replace the ii with a 2.

Unidentified Participant: We could do that but I think that breaks Bernie's somewhat archaic system.

Keith Davidson: Noted for Bernie. Any other questions, comments. Eberhard.

Eberhard Lisse: While we are picking some nits, the second of both occurrences of IANA contractor has in the following word two missed space in between. Maybe this is such is the place -- because if you then generally change IANA contractor to whatever we come up with in the end, then it will connect these two words together so I would undo this now.

Unidentified Participant: Are we all typesetters this morning?

Keith Davidson: Proofreaders at least. Excellent. Noted and no comments of substance so it appears to me that we have agreement and I'm assuming that Martin's back on the call having had his callout by now.

Martin Boyle: Yes, I am.

Keith Davidson: Good. So no problems in this regard. So can we move to 5.3.4.1?

Bernie Turcotte: Yes sir. Does stepping in include the possibility of revocation? 5.3.4.1.1 RSC1591 identifies three formal mechanisms available --

Keith Davidson: You need to scroll. We can't see it.

Unidentified Participant: Everyone's got their own scroll control --

Keith Davidson: Are we now controlling our own scrolling? Sorry, I apologize.

Unidentified Participant: Scroll away.

Keith Davidson: I apologize. I withdraw my scrolling comment.

Bernie Turcotte: Okay, 5.3.4.1.1 RSC1591 identifies the three formal mechanisms available to the IANA contractor. Delegation transfer and revocation. The FOI Working Group, as discussed above, interprets RSC1591 to require consent of an incumbent manager to any transfer of the ccTLD. If one assumes that a ccTLD manager has substantially misbehaved, he is unlikely to provide (inaudible) and the IANA contractor's informal efforts to address such misbehaviors are unavailing. The only formal mechanism that remains available to the IANA contractor is revocation. Accordingly, the working group interprets RSC1591 to permit the IANA contractor, slight spelling error there, to revoke a ccTLD delegation in appropriate cases where the designated manager has substantially misbehaved. Over to you, sir.

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

Eberhard Lisse: In an effort to rectify, have failed or language to that effect,

Keith Davidson: So you're saying in the very last line, accordingly the working group interprets 1591 to submit IANA contractor to revoke a ccTLD delegation in appropriate cases where the designated manager has substantially misbehaved and other efforts have failed or something.

Eberhard Lisse: We've got -- Bernie and Becky will come up as language the point is to make it clear. If somebody substantially misbehaves, that's not a death sentence on the first instance. If you tell them, wait a minute, you can't do that and then it's just sorry, we are never going to do it again and rectify it, that it should be the way out, I think..

Keith Davidson: So that's not addressed --

Bernie Turcotte: It's Bernie. Yes, we go into that in excruciating detail when we talk about that revocation implies. Now we can put a pointer into that here. I understand that was a concern. But really this was not meant to bypass the notion of the whole discussion on revocation itself.

Eberhard Lisse: Make a point and then we're clear.

Keith Davidson: Yes, I think it's well documented in the first paragraph and the IANA contractor s informally to address such misbehavior unavailing the only formal mechanism that remains. So I think it's there, Eberhard.

Unidentified Participant: There's no downside to having a pointer or link there.

Keith Davidson: Martin.

Martin Boyle: Yes I would actually note that it is picked up in the next paragraph, well, where the manager fails to cure violations and objective requirements blah blah so under 5.3.4.1.2.

Keith Davidson: So Eberhard.

Eberhard Lisse: Okay.

Keith Davidson: Any other comment to 1.1. If not, let's agree and move 1.2. Thanks, Bernie.

Eberhard Lisse: Keith, I was not getting ahead of myself. That's why I didn't see it.

Keith Davidson: Okay. And you want a scrollable document every time. I don't know.

Bernie Turcotte: 5.3.4.1.2 Given the primary responsibility of the IANA contractor to preserve DNS Internet stability and security, the FOI Working Group interprets revocation under RSC1591 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. Over to you sir.

Keith Davidson: So any questions? I don't know where the word Internet -- the DNS/Internet came from but I'd be inclined to want to delete /Internet and just --

Unidentified Participant: I agree. Just DNS. There's no such thing as Internet stability.

Eberhard Lisse: As we can see this week in Syria.

Unidentified Participant: Exactly.

Keith Davidson: However, I wouldn't die in ditch over that but I think we're only responsible for the DNS or by adding the word Internet is sort of indicating a responsibility for the pipes and everything else. I think Nigel is violently agreeing with me. Nobody's disagreed so can we consider that a friendly amendment and carry on? Any other questions or comments? Right.

Eberhard Lisse: Again, this issue with the space of the IANA contractor and this and the next (inaudible) so maybe, (inaudible) place on the whole document on it.

Keith Davidson: Yes, remember this is a working document rather than specifically text.

Eberhard Lisse: Yes, but we all know the copy and paste function.

Keith Davidson: Yes, and I'll say it again, the contractor will. So we've got acceptable text for 1.2. Move onto 1.3.

Bernie Turcotte: Yes sir. 5.3.4.1.3. The FOI Working Group notes, however, that the IANA contractor will rarely be in a good position to evaluate (inaudible) to which a designated manager is carrying out the necessary responsibilities of a ccTLD operator in a manner that is equitable, just, honest, or except so far as it compromises the ability and security of the DNS, a (inaudible) center. Accordingly, the FOI Working Group interprets RSC1591 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 or security of the DNS and/or the designated manager has refused to correct repeated problems with email connectivity, presence on the Internet and/or maintenance. Accordingly, under RSC1591 it would be appropriate for the IANA contractor to defer to the local community when actions of the delegated manager do not pose a stability security threat. Now, quite a bit of adjustment there and I've picked out a few of the grammatical. We don't have to point them out. I found them too. So over to you, sir, 5.3.4.1.3.

Keith Davidson: Okay, thanks. Nigel is indicating a red cross. I don't know if he needs medical aid or he wants to indicate displeasure with --

Unidentified Participant: Which bit?

Keith Davidson: Nigel, the floor is yours. Nigel, you're on mute. Nigel, we still can't hear you.

Nigel Roberts: Hello.

Unidentified Participant: Now we can.

Nigel Roberts: I've got a lady saying that code is not recognized every time I press something so forgive me. I'm a bit puzzled about which bit of RSC1591 contains this requirement -- defer to the local community -- there are real problems in defining what the local community is and how to deal with it. I think I know what the intent is and I think the intent is harmless but I think the language is problematic.

Keith Davidson: Okay, so what's your proposal here, Nigel? Is it to delete the entire last sentence?

Nigel Roberts: At this point I'm merely making a comment in passing while the caffeine works on my system.

Eberhard Lisse: I like the notion of deleting the sentence.

Chris Disspain: Can I ask, it's Keith -- sorry Keith, it's Chris. I am Chris. You are Keith. I realize now (inaudible) but can I just ask that, I'm not sure, I certainly can't remember how we got to this and what it was we were trying to achieve and I wondered if, perhaps, somebody could explain to me.

Keith Davidson: I think I can explain that. I think there's actually two aspects to this particular clause that might be better to be dealt with secretly. One is the concept of we rule-step and what revocation might mean in those circumstances and that seems to me to not be a point of conjecture. The conjecture here is, you know, this idea that if you don't have a misbehavior that fits under this criteria, that the IANA manager would leave it to the local Internet community to decide the cure. So unless it's actually a threat to the security and stability -- so I think deleting the last sentence or bringing it out into its own set of statements and discussing it separately would be more appropriate than leaving it out. Anyway, I think there's a couple of speakers, there's Martin and Eberhard with their hands up so firstly, Martin.

Martin Doyle: Thanks, Keith. Yes, I must admit, I think that this came in because we agree that IANA itself can't judge on quite a number of things that are relevant to serving the local community. But I had in my mind that we had a separate document where we went through and we looked at what the local community was and what interested and significantly interested parties were. Certainly, I would be reluctant to see us dropping the reference because all we're doing otherwise is saying we are only going to look at issues where it is the security and the stability of the Internet, or rather of the DNS, that we are looking at and, in this particular case, so if you follow that logic, there is no other way for there to be some response at IANA's ends when people say these people are not providing the service that RSC1591 says that they should provide. Thanks.

Keith Davidson: Martin -- Eberhard.

Eberhard Lisse: I am starting to feel very strongly about this. This elevates the local Internet community into a position that I cannot find in RSC1591. Certainly not in the case of nominate, certainly not in the case of .na, has the local Internet community any input in how I run my business and what I do. Because it did not exist -- RSC1591 was written after the delegation. Never mind, even in the RSC, it doesn't say that the local Internet community is the decider or the owner or whatever you call it. It must be done on behalf or entrust for the local community.

It is fully designed. It's not that we can now say all 240-something ccTLD's are sort of owned -- are for the local Internet community to take it and to give it away.

Keith Davidson: I think that's what the clause is speaking to actually say but I wonder if it's phrased a little bit wrongly and is something along the lines that, under RSC1591, it would not be appropriate for the IANA contract to decide on actions where the actions of the delegated manager do not (inaudible) security and security or something like that.

Nigel Roberts: Am I on the list?

Keith Davidson: You are, Nigel. You are up now.

Nigel Roberts: Thank you. Let me just try and get this together. Actually, I said earlier that I think the intent of this is harmless. I think it does add a little bit of value. I wouldn't die in a ditch if it was stripped out. But I think the value that it's trying to add, and it wasn't one of mine so I'm not murdering one of my own children here, is that it refers to, by analogy, the margin of appreciation. What it's basically attempting to say is, as I understand it-- I may be wrong, is that IANA is not in a position to judge according to local standards the behavior of the ccTLD manager, particularly in countries that are not native English speaking, not Anglo Saxon common law influenced et cetera, et cetera. That's my implication. It's not part of the document.

Now on the other hand, what Eberhard's saying is extremely valid. The way it is written, it appears to be that it is writing policy, it's calling something an interpreter, it's a clever trick, actually, that judges are not immune to on occasions but it's writing something and saying I'm doing interpretation when in fact it's being creative and creating -- the way the language is used -- a new policy that basically appears to give more power to the local community when RSC1591 didn't actually do that. So what we're talking about is the IANA's -- we're merely making a note about the IANA's practical ability to act as judge and jury in some, as we've seen, with at least one TLD and maybe two or three that Eberhard has mentioned on occasions as examples in complex situations that sometimes involve life or death. So I'm comfortable as it is written but I agree with the -- the intent of it was not to do what the language appears to do is perhaps the best way I would put it and we either need to do some more work on it or we need to take it out. If it's important to do more work on it, I'll volunteer. If not, let's take it out.

Keith Davidson: Okay, thanks Nigel. I have Eberhard's hand -- Eberhard.

Eberhard Lisse: Yes, as I said, I'm again for taking it out. I like what you said. The point is if it's not serious, IANA can tell the local Internet community to sort it out among yourselves. But if it's not giving status in any way -- a formal status to the local Internet community and IANA has to defer to, the IANA contractor does not, as far as I understand it, have to defer to 249 different legal systems. I would really prefer IANA to be bound by (inaudible) law. I would really love that. Yes? And many ccTLD manager would but some would not and I think this becomes so complicated that it's also not what we want to say. What we mean is, if it's not serious, IANA will not bother. Sort it out among yourselves, children. But how to write it. And for the time being this must come out, I think.

Keith Davidson: Okay, but I think Martin's point is RSC1591 does indicate that the local Internet community do have the law that they must be taken into account when choosing the manager and this is still about choosing the manager and misbehavior. Anyway, I see --

Unidentified Participant: Me, I think.

Keith Davidson: Yes, I don't know how Nigel managed to jump.

Unidentified Participant: He does that. He's very clever.

Keith Davidson: He did. Anyway, go ahead.

Unidentified Participant: It strikes me here that the issue here is the use of the term -- the two words local community. Isn't what we actually mean will be sorted out locally? Isn't what we actually mean will be sorted out in territory? You know, that stuff that IANA where it says we're not going to get involved in this. You guys go home and sort it out amongst yourselves. Isn't that actually what we mean?

Eberhard Lisse: Exactly what I said. But Keith, you are wrong. We are not talking during the selection process if this paragraph applies to the designated manager.

Keith Davidson: That's right. Can we try this other in? As a complete replacement for the sentence, could we try it is not -- gosh, let's try that -- it is not appropriate for the IANA contractor to step in on issues where the actions of the delegated managers do not pose a threat to the stability or the security of the DNS and this should be resolved locally.

Unidentified Participant: That makes perfect sense to me.

Keith Davidson: I'll post it in the chat so you can have a second look at it. Not that I like editing on the fly to that degree but -- so Eberhard's indicating tick. Nigel's indicating across. So I'm in his sights again so, Nigel, why do you disagree?

Nigel Roberts: I'm looking at what's written in the chat and, again, I'm going to say what I said earlier on the intent is benign. The execution is problematic. When you start out by writing the phrase, is not appropriate, that's not appropriate. And the reason that's not appropriate is that, as policymaking, you are giving directions to IANA here. You are in fact giving operational instructions. It would be much better if you want to put this in and I'm not convinced that there is a need for this sentence and I think we ought to be looking at a decision unless somebody who wrote this sentence can put up a convincing reason why it should be in and this applies throughout the document, then a sentence or paragraph should not be in the document. That notwithstanding it's not appropriate is policymaking. You could be making a comment and say it is not -- it would not be expected and this would be expected to be resolved locally, by all means. Again, I'm not disputing the point behind it but I really don't like this giving instructions. It sounds like we're dealing with (inaudible) here.

Keith Davidson: Well, I think it's merely providing a point where the limitation of what you can and can't do is quite clear as an interpretation I would have thought. But anyway, I see one hand up and Chris is --

Chris Disspain: So a couple of things. I don't agree that it's policymaking and I don't agree but, having said that, you can easily fix it by simply saying the FOIWG believes that it is not appropriate so that will fix that quite simply and straight forwardly. In respect to actually putting something in, I think we should put it in because I actually think that it's important that we make statements whenever we can in this document that remind everybody that the vast majority of these problems should in fact be sorted out in country or in territory. And I think it does no harm at all, in fact, I think it does a significant amount of good to mention that.

Keith Davidson: Lovely and I see a whole heap of ticks appearing -- two, four, five ticks appearing on Chris's comments there including Martin's. This was quite an important point that Martin had labored for some time so I think, if he's generally satisfied,

Eberhard satisfied, so it's appearing to me like Nigel might be the only slightly -- no, Nigel's indicating happiness. Eberhard has his hand raised, however.

Eberhard Lisse: Not that I have it raised, I just wanted to have agreement. Okay, so now it's lowered. My laptop is getting the better of me.

Keith Davidson: So I think we have some happiness then. We're reasonably comfortable, everybody. Yes, let's move on. Nigel's indicating a cross again. I don't know why. Not a tick.

Unidentified Participant: Nigel can either do a tick or cross but can't get rid of it.

Keith Davidson: I can certainly put his hand down but I can't play with the tick or the cross. Nigel.

Nigel Roberts: Martin, Chris is exactly correct. That's exactly what's going on. I'm using Adobe Connect on the iPad and that's exactly what seems to be happening.

Unidentified Participant: It's taken over. You've lost control, Nigel. Scary.

Keith Davidson: So we're all happy, then?

Unidentified Participant: Are we agreeing with Daniel's point in the chat case? Removing the last sentence?

Keith Davidson: Removing the last sentence. I thought we had agreement on the replacement.

Unidentified Participant: We do. We have agreement on the replacement.

Unidentified Participant: That's what I thought.

Unidentified Participant: Yes, we're not removing the last sentence. There was a significant amount of --

Unidentified Participant: (Inaudible) the replacement.

Unidentified Participant: Just make the changes.

Unidentified Participant: Yes.

Keith Davidson: Okay, so noted for Bernie and, if there's no other comment, we'll move onto 5.3.5. Bernie.

Bernie Turcotte: Sure. 5.3.5 Defining Substantial Misbehavior. 5.3.5.1 Misbehavior -- the Working Group interprets misbehavior in this context. To refer to conduct involving the failure of a designated manager to one, have the necessary responsibilities of that role or, two, carry out those responsibilities in a manner required by RSC1591.

5.3.5.2 Substantial Misbehavior. The working group interprets this to involve misbehavior as defined above that is either egregious or persistent but would appear to include 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 posing a global threat to the stability and security of the DNS. In this context, there is harm and substantial adverse effect to be evaluated in the context of the IANA contractor's DNS security and stability as described in the previous section.

Eberhard Lisse: Nigel, stop pottering in the background.

Nigel Roberts: I was cooking.

- Keith Davidson: Could I remind all those who are not talking to please mute and two people had their hands raised. Eberhard's and Chris so Eberhard.
- Eberhard Lisse: I note that the numeration, 1 and 2 is inconsistent. On the one -- previously 1 and Roman 2. We should maybe be consistent throughout the document.
- Keith Davidson: Touche, Eberhard. Touche. Thank you. Well spotted and -- have two I's. Chris.
- Chris Disspain: I'm fine with this but I just want to make -- the opening foray -- a couple of lines can be read in two ways. I just want to make sure that we're clear. The Working Group interprets this to involve misbehavior that is either egregious or persistent and will appear to include performing the necessary responsibilities. Do we mean that the behavior must appear to include or do we mean that egregious or persistent behavior appears to include?
- Unidentified Participant: Say the second part again, Chris.
- Chris Disspain: Well, what I think we mean is that egregious or persistent appears to include performing the necessary responsibilities of the designated manager in a manner that -- I think that's what we mean. It could be read to say that the behavior must appear to include.
- Unidentified Participant: I see what you mean.
- Keith Davidson: I think delete the word would. Yes, and just say is either egregious or persistent and --
- Chris Disspain: No, I don't think deleting the word "would" does it. My understanding is this is an example of behavior. Is that correct?
- Unidentified Participant: That's my understanding.
- Unidentified Participant: Bernie?
- Bernie Turcotte: Sorry, yes.
- Unidentified Participant: It's an example, right?
- Bernie Turcotte: Yes.
- Chris Disspain: So the key things are, the first step is that it's got to involve misbehavior, sorry, substantial misbehavior's got to be misbehavior that is either egregious or persistent. And that includes performing the necessary responsibilities of the designated manager in a manner that imposes serious harm. Or does it have to include that?
- Unidentified Participant: I think it's can, not have to.
- Nigel Roberts: The word is may.
- Bernie Turcotte: Becky had re-written this one I think --
- Chris Disspain: Nigel is right. It's "and may include". So it should say is either egregious or persistent and may include performing the necessary responsibilities.
- Bernie Turcotte: Yes, I believe that would be --
- Chris Disspain: That solves the issue. Thank you very much.

Unidentified Participant: You're welcome.

Keith Davidson: That would satisfy me as well. So two more hands raise. Eberhard and Daniel. So Eberhard.

Eberhard Lisse: This sentence is very long. It can probably be helped by splitting it up into two sentences.

Unidentified Participant: Eberhard, I'm fine with that as long as we use Roman I and Roman II to --

Eberhard Lisse: But for example, by posing a -- the point is sure, we can numerate it but the longer the sentence is, the more difficult it becomes to understand. And if you take it into two sentences, you can also make clear, this is also what we mean and this is what we mean. But this is just a note that we can look at whether we can make it easier to understand.

Keith Davidson: Okay. Thanks Eberhard. Daniel.

Daniel Kalchev: Okay, I feel that we give the numerating the local and the global Internet community and I think we should probably stop that because the community, just one, and the place where we can make any divisions between local and global is in the profit-making aspect or (inaudible) related to this -- I think it will make our document much more visible and less confusing.

Keith Davidson: Good points well made. And I think it's certainly, where we have the words, effect on the local or global Internet community, certainly we could just delete or local or global and have "on the Internet community" and that, to me, would be much tidier because it's got to be impacting one or the other or both of those things -- meaningless words to me. Anyway, I see Chris has his hand re-raised, so Chris.

Chris Disspain: Only to -- maybe I just misunderstood, Keith, but it seems to me that I could take action and have a substantial adverse effect on the local Internet community and no affect whatsoever on the global Internet community. And it's equally possible that I could take action that had an effect on the global Internet community and not on my community. And it says here by posing a global threat to the stability and security -- so I'm perplexed by that, I think. So if you take out local or global, it would say has a substantial adverse effect on the Internet community by posing a global threat to the stability and security of the DNS.

Unidentified Participant: Wouldn't it just be a threat to the stability and security of the DNS?

Chris Disspain: Well, that's why I'm asking the question. I'm unclear as to why you need to use global there. Are we intending that it must--?

Eberhard Lisse: That can also be a local threat. You are right.

Unidentified Participant: I mean I could behave in a way that affects the Internet community and poses a threat to the stability and security of the DNS just in Australia. That doesn't make my behavior -- my behavior could still be substantial misbehavior.

Eberhard Lisse: Syria, Egypt.

Unidentified Participant: That's correct. That's exactly what I'm getting at, Eberhard.

Nigel Roberts: In fact -- unless somebody else has got their hand up.

Keith Davidson: No Nigel, you were next on the list and then Daniel after you, Nigel.

Nigel Roberts: In fact Eberhard anticipated one of the two words I was going to use and it wasn't or. The issue is that we don't want to be prescriptive. We want to interpret and give useful guidance but we mustn't try and legislate for all possibilities or exclude possibilities that, in some cases, we fear.

The difficulty I've got here is that I think the reason we started out is -- you've just got to look at some of the history of where the language comes from and we've got, as you do in a creative process, we've got different people pushing and pulling in different directions and then we think we're settled and then a few weeks later somebody comes up and we pull it another way. And some of us have forgotten why the other people wanted it. And so local or global, if you want to be pedantic about this global always includes local.

There's been a push in this document to try and highlight the role of the Internet community in the running of a ccTLD. In some cases it does not appear to be a - - it appears to me to be a little bit more than a mere interpretation of RSC1591 and we're trying to address that strategic issue on a tactical level by saying whether local or global should be here or not here. If you say local or global, it's a bit harmless because global includes local but it's highlighting the fact that it's both a thing that affects local or global. You can't, on the one hand, say you must defer to the local community as I think Martin was saying a little bit earlier. And then on the other hand turn around and say, when the local community misbehaves by internationally accepted standards, such as by -- like Egypt did by using the DNS to try and cut off the Internet during times of revolution -- you can't have your cake and eat it. So we need to steer a path through this that does not provoke either side of the debate while, at the same time, still being useful without stripping out the entire intent of our work. It's a difficult path to steer.

Keith Davidson: Okay, thanks Nigel. Daniel.

Daniel Kalchev: Okay, so my point here to remove this sort of clarification -- I still cannot see any way for anybody to substantially or not misbehave locally, of the local community, that does not also affect the global Internet community. There is simply not in (inaudible) with Internet any more. It simply may have been the case maybe 20 years ago but today I don't believe you can do anything that will impact only the global community. So this was my point, why not just remove this clarification in all cases that are more or less operational or (inaudible) or anything like that. Maybe leave it for the policy part although, as we see, it is complicated there too. So it will just --

Unidentified Participant: I would agree, Daniel.

Daniel Kalchev: And reduce the confusion.

Keith Davidson: Yes, thanks Daniel. I don't think anyone's going to disagree with you there. So I've proposed an alternate wording in the chat that the Working Group can interpret substantial misbehavior to involve misbehavior to 5.3.5.1 that is either egregious or persistent and may include forming the necessary responsibilities of a designated manager in a manner that imposes serious harm or has substantial adverse impact on the Internet community by posing a threat to the stability and security of the DNS. I think that seemed to me to encapsulate the different views and I see ticks from Martin and from Daniel and from Maureen and from Chris, and Nigel has his hand raised, so Nigel. Nigel, come in. You're muted.

Nigel Roberts: Hello, you can see my agree button having gone down to that. But if you were to add the word --

Eberhard Lisse: No we don't.

Nigel Roberts: Well, I pushed it. What do you mean by that? Does my agree button appear now?

Unidentified Participant: Yes.

Nigel Roberts: So now you're satisfied. Let's carry on with what I was saying. I think you can insert the two words "situations where" to break it up and make a situation where Chris was mentioning earlier you could connect parts of the sentence to another part. I find the sentence is a little cumbersome and it may include situations where the designated manager is performing, et cetera.

Keith Davidson: Okay. Well look, I think it is a very long sentence and therefore doesn't -- I'm not very happy with it. I think we've got a clarification of the intent. Perhaps we could leave it to Bernie and Nigel to break it under two sentences or even more that clarifies that even further. Would that be a reasonable way forward?

Unidentified Participant: Fine with me.

Keith Davidson: Everyone's agreeing. Okay, can d we do that, please? Any other discussion on 5.3.5.2? If not, can we move along please to -- the dog agrees now, I note.

Cheryl Langdon Orr: Alright I will, if you prefer, hang up and get them to dial me back in again. If this is a problem. I'll hold the phone to my head.

Unidentified Participant: No, it's perfectly alright, Cheryl.

Unidentified Participant: As long as the dog is in constant agreement with us, there's no problem.

Cheryl Langdon Orr: Trust me. You don't want me to yell at it..

Keith Davidson: 5.3.6, thanks Bernie.

Bernie Turcotte: Thank you, sir. Process for Revocation in Cases of Substantial Misbehavior. 5.3.6.1 FOI Working Group also believes that is consistent with the intent of RSC1591 to state that revocation should be the last resort option for the IANA contractor. The IANA contractor should use all means at his disposal to assist the managers to resolve any issues considered to be significant misbehavior by the manager. Revocation should only be considered if the IANA contractor reasonably demonstrates that the manager is unable or unwilling in an appropriate timeframe to A, to resolve (inaudible) materials and (inaudible) to carry out these responsibilities under RSC1591 and/or, B, to carry out those responsibilities in the manner required by RSC1591 in each case where the behavior in question poses a threat to the global security and stability of the DNS Internet. Over to you, sir.

Keith Davidson: Any questions or comments? I see nothing. No debate whatsoever. Violent agreement reigns. Please continue, Bernie.

Nigel is saying cumbersome but yes, I'm not taking that as being a reasonable (inaudible).

Bernie Turcotte: Okay, I will have to note this as a red letter day in my diary. 5.3.6.2.

Keith Davidson: Just -- and Martin does point out that DNS not DNS/Internet.

Bernie Turcotte: Yes that's noted from earlier and it will be corrected. 5.3.6.2 if the substantial misbehavior undermines the stability and/or security of the Internet and/or a willful refusal to cure a breach of one of the objective aspects of the necessary

responsibilities of the delegation is revoked, the IANA contractor should use all means at his disposal to ensure the ccTLD will continue to resolve names and that a suitable replacement is identified by significantly interested parties in the manner previously described on an expedited basis vis a vis 62. Over to you, sir.

Keith Davidson: Okay, any questions, any comments? Any disagreement? I see Chris indicating agreement, Stephen raising his hand. Stephen. Stephen, are you with us?

Stephen Deerhake: That would be helpful.

Keith Davidson: It certainly does help. Stephen, you came and went.

Stephen Deerhake: I'm here. Looking at this, might be the time of day for me. Substantial misbehavior undermines the ability and/or the willful refusal to cure a breach of one of the objective aspects of one of the necessary responsibilities and you -- I'm a native speaker. I'm lost in this sentence.

Keith Davidson: Well, we'll write that off to the time of day.

Stephen Deerhake: That may well be.

Keith Davidson: And I'm not sure that the language that you speak is native English either, Stephen.

Chris Disspain: Actually, Keith, it's Chris. Actually, on a second or third reading, just checking for a second, if the substantial misbehavior undermines the significance and/or security of the Internet, that's fine. And/or a willful refusal to cure a breach of one of the objective aspects of the necessary responsibilities of the delegation is revoked.

Keith Davidson: Okay.

Unidentified Participant: That's not fine.

Unidentified Participant: Willful refusal to cure a breach is not is revoked. You're not revoking a willful refusal.

Unidentified Participant: That's right. Got off the rails here.

Keith Davidson: That's right. If I'm following you now, unless slipping to my comments, Stephen.

Unidentified Participant: You put substantial misbehavior undermines the stability, willful refusal to cure the breach of the delegation. It's not -- the word is not revoked. It's the wrong word and I don't know what the right word is. Can we just highlight that, Bernie, and maybe we can think about what the right word is? The intent is perfectly clear. It's a fine paragraph.

Stephen Deerhake: There's a word missing. It needs a little wordsmithing there in that clause.

Unidentified Participant: Yes, we need to fix that.

Unidentified Participant: I agree.

Keith Davidson: Square brackets around that. Okay, thanks Stephen. And Martin has his hand raised. No Martin's hand went down.

Martin Doyle: Well, I was just going to say that I'm not sure the word is revoked unnecessary in that sentence and in fact where the confusion is coming from because we're actually talking here about the fact that there are problems, that there are issues

and, before moving on to the revocation, the IANA contract should use all means at its disposal to ensure blah blah. So like Stephen, I read that three or four times and couldn't make head nor tail of it.

Keith Davidson: Bernie, just to solve it really quickly, Bernie, if you take out "is revoked" and if you insert it in the second line "and/or there is a willful refusal" then that gives you the sense of the sentence but we'll have a look at it when it's been re-drafted. Okay.

Bernie Turcotte: Will do.

Keith Davidson: Do you have enough to go on there, Bernie, for re-editing it?

Bernie Turcotte: Yes sir.

Keith Davidson: Okay. If there's no other comments, can we move on to 5.3.6.3?

Bernie Turcotte: 5.3.6.3 the FOI Working Group believes that it is consistent with RSC1591 to allow a manager the right to appeal a notice of revocation by the IANA contractor through an independent body. 5.3.6.3.1. Section 3.4 of RSC1591 states the Internet/DNS Names Review Board, INDB, a committee established by the IANA, will act as a review panel for cases in which the parties cannot reach agreement amongst themselves. INDB's decisions will be binding purely a quote from RSC1591.

5.3.6.3.2 the (inaudible) the intent of allowing the right to appeal a decision. Over to you sir.

Keith Davidson: Okay, Nigel and Eberhard both have their hands raised. Nigel.

Nigel Roberts: Just a comment in passing on without proposing a change here. I'm sure Eberhard's got some comments of his own. There was some discussion on previous calls, bless you sir, there was some discussion on previous calls about the IDNB not being an independent body because it's appointed by the IANA and so on. Reading it again first thing in the morning when, perhaps, my brain's not functioning or perhaps it's functioning in a different way. I'm not so sure that that is actually a valid objection because you can appoint an independent body and the great example of this is Nominet appointing experts on its DRS or the UDRP wifo in dot.com. So the IANA could appoint independent bodies as long as everybody agreed they're independent. I actually that John Postel's wording is not as bad as we originally thought.

Keith Davidson: Okay. Thanks Nigel. Eberhard.

Eberhard Lisse: The point is there is no IDNB and there has never been one. I doubt that there ever will be one. In particular it's not clear whether the IANA contractor could appoint such a board, never mind that its decisions cannot be binding. It is absolutely impossible to create a body that makes binding decisions. This is very dangerous territory. The point is that the view -- we want to make that there is some form of appeal can be, should be made, but the question is in the detail where too, ICANN Board is not independent. ICANN Board is a decision maker in the end and it's the Board of the function contractor -- it's the entity, a part of which is the function contractor. So I don't really know where we're going. The idea is to say that there should have been some form of appeal or that there can be some form of appeal but that's why the court systems are there.

Keith Davidson: Okay thanks Eberhard. Well, (inaudible) is to say that, I mean, 5.3.6.3.2 is -- says it all. The (inaudible) clearly establishes the intent of allowing the right of the appeal and setting that as a court of natural justice pretty much anywhere and is zero right of appeal under the current delegation rules know the decision

that's verified by the ICANN Board and there is no vehicle for appeal. So I guess we could be a bit stronger in our opinion in 5.3.6.3.2 by saying natural justice dictates that the IANA contractor should enable an appeals process or some such thing. Anyway, I have Nigel and Bart with their hands raised. So Nigel.

- Nigel Roberts: Working backwards, it's not the IANA contractor that would enable the appeals process because then it wouldn't be independent. Going one back from that, it can't be the ICANN board because RSC1591 was written before ICANN was even a twinkle in John Postel's eye or (inaudible) magazine, his eyes so and that's definitely not independent. But going one stage further back from that, the text that we are interpreting is in my interpretation which we've agreed we won't, by majority vote that you won't accept. But the IDNB and all this business about it being binding, is relating to the fact it owned all this substantial misbehavior -- all this stuff only applied during the process of application for a TLD. So we're trying to interpret something here that was designed for a different purpose, let's just take it to the absolute minimum and say not only does RSC1591 appear to say there should be an appeal, but natural justice requires it as well and you can phrase that however you like.
- Keith Davidson: Okay thanks, Nigel. Yes, okay. Eberhard.
- Eberhard Lisse: Nigel's comments take care of mine.
- Keith Davidson: Okay, thanks Eberhard. Okay I'm not sure whether exactly it leaves us on -- I don't think anyone's disputing the actual output of the intent of allowing a right of appeal. Eberhard.
- Eberhard Lisse: Take Nigel's last sentence. He said the working group notes that (inaudible) made the reference to the IDNB implying right of appeal but natural justice, of course, and then phrase it -- maybe have Becky write the words.
- Keith Davidson: Bernie is indicating happy as well. Bernie, do you have enough run -- work on the revision? Bernie?
- Bernie Turcotte: Are you there?
- Keith Davidson: Yes.
- Bernie Turcotte: Yes sir. I have enough.
- Keith Davidson: Okay thanks. Eberhard, so I'm assuming your hand is just not down.
- Eberhard Lisse: It will come down just now.
- Keith Davidson: Thank you. And no other comments. Can we move to 5.4? Thank you Bernie.
- Bernie Turcotte: Yes sir. Process to revoke a delegation. 5.4.1 as discussed above revocation should only be considered if the IANA contractor reasonably demonstrates that there are persistent problems with the operation of the domain as defined in section 5.2 above or the manager has engaged in substantial misbehavior as defined in section 5.3 above which persists despite the efforts of the IANA contractor using all means at his disposal to resolve such conduct. Probably should try it at this point, sir.
- Keith Davidson: Okay, thanks Bernie. Any questions or comments? Strange amount of silence. Okay last part, Bernie. Any dispute? We're going to accept it. Going once. Twice. Sold. Thank you. Thank you, Bernie. Point two.

- Bernie Turcotte: 5.4.2 if the substantial misbehavior undermines the stability or security of the DNS or a willful refusal to cure one of the objective key requirements and necessary responsibilities of designated managers, revocation may be appropriate.
- Unidentified Participant: It's not English.
- Bernie Turcotte: Pardon me.
- Unidentified Participant: It's not English. If the substantial behavior undermines the stability and/or security of the DNS or there is a willful refusal to cure one of the objective key requirements necessary (inaudible) responsibility to designate managers, revocation may be appropriate. I like the way that my tongue went to designated marriages rather than managers and I (inaudible) understand why. You have to put those areas in, Bernie, or it doesn't make sense.
- Bernie Turcotte: I will be glad to take that up with Becky. This was one of hers.
- Keith Davidson: Sure. But just make a note of it and then it will -- I think it's appearing to me to be a friendly amendment. I see Nigel in agreement with it. No other dispute so, thanks Bernie, any other comments? (Inaudible) 's indicating a happy vote, a green tick. Okay 5.4.3, thanks Bernie.
- Bernie Turcotte: 5.4.3 if the delegation is revoked the IANA contractor should use all means at his disposal to ensure the ccTLD will continue to resolve names and that a suitable replacement is identified by significantly interested parties in the manner previously described on an expedited basis.
- Keith Davidson: Okay, any questions or comments in that regard? I hear two simultaneously. Eberhard and Nigel, so Eberhard.
- Eberhard Lisse: How is the contractor going to achieve this? If I hide my database and I don't give it to him, there's nothing they can do. They can try to reconstruct this but how is this going to work?
- Keith Davidson: Well, that's assuming that those names and there's nothing to prevent IANA from actually undoing the revocation without the zone file as well.
- Eberhard Lisse: They don't have my zone file.
- Keith Davidson: No, I'm saying that they --
- Eberhard Lisse: The process is if you're writing something, you should write what it means. If you say you should use all means at its disposal to ensure a continued resolution, that's basically a quote from the text but what does it mean? I don't see what it means yet.
- Keith Davidson: Okay.
- Bernie Turcotte: If I can be of assistance here.
- Keith Davidson: Yes, thanks Bernie.
- Bernie Turcotte: I believe we were talking in certain cases where we do have in our history the point where a ccTLD is failing and there is nothing that can be done and, basically, the manager would be happy to hand over the data so that something could be done to preserve the ccTLD while a re-delegation is being carried out. So along the lines of what Keith was saying, it's not a requirement that it be done but it's a note that, of course, if we're taking the ccTLD is being revoked, if the

delegation is being revoked, one of the prime concerns if you are thinking about security and stability is that if you can maintain some form of resolution, then you should.

Nigel Roberts: Am I on the list?

Keith Davidson: You are indeed. I have Nigel then Chris, then Nigel.

Nigel Roberts: Bernie's point is good and I think it's lost in the language to some extent because everybody's reading this with a view to -- when I say hostile re-delegation, I mean one whereby -- well, you can't have hostile re-delegations really if you take our document properly. But one where there is a dispute or an argument. The situation Bernie's just painted is just one maybe in a state or a country that is itself failing. If the government of the country is failing, such as there are certain states out there with no functioning government whatsoever and no functioning civil society, then it's quite likely that if there's an in-country ccTLD manager, that could be failing as well particularly if it is part of that same government or society.

So that -- I would like to see somewhere in this document and I don't think we've addressed this or we've talked about it, a reference to RSC1591. Nothing in RSC1591 and nothing in this document overrides the property rights that a ccTLD may have built up in, for example, the software and processes it has developed during its time as ccTLD manager and database rights in its list of registrant or AKA customer. There's nothing in law or in RSC1591 that can compel any ccTLD manager. I don't look at ourselves as an example, I take big guys like DNIC, AFNIC, Nominet, their major asset of that organization is their database of registrants or customers. IANA doesn't own that. The particular ccTLD manager concerned. So if you ever get to the stage where legitimately you can revoke the domain, a discussion or an argument has to take place in an appropriate forum, probably a court somewhere on what context that database is or is not handed over. I mean, the same thing happens when the government of the UK decides that a railway is no longer going to run -- a railway company is no longer going to run the railway. That has to be sorted. Nothing that we interpret here is going to legislate for that. You might design to do it differently where we're sitting down now and designing a system and we almost certainly would but we've just got to interpret the documents that are before us.

Keith Davidson: So we have three people on the list. Chris, then Martin then (inaudible).

Chris Disspain: I wanted to talk about the clause but, before that, I wanted to address what Nigel just said. There is nothing in 1591 therefore about this and therefore there's nothing to interpret. Any statements in this document to do with the concept of property, ownership of databases et cetera is, in fact, stepping outside of interpreting 1591 and is attempting to set policy or guideline on matters that are not covered within it.

I think we need to go back to the beginning of this -- of this clause and remember what we're talking about here. So we're talking about a situation where revocation has occurred and all we're saying in 5.4.3 is if the delegation is revoked, the IANA contractor should use all means at its disposal to ensure the ccTLD will continue to resolve (inaudible). In other words it is a statement that says they should use all means at their disposal. But it's a permission to them and that's all it is. You can't define what it is. You can't say in a clause like this they should feel free to sue, they should feel free to do whatever. It's simply saying you are expected to do your job properly and that means that you'll use all means at your disposal to see that (inaudible) continue to resolve. And equally, you use all means at your disposal to find a suitable replacement. I don't really understand in the context of 5.4, ie the process to revoke delegation, why this cause should be problematic.

- Keith Davidson: Thanks Chris. Martin.
- Martin Doyle: Thanks. I think Chris has just said everything I wanted to say because, yes, this is the IANA contractor having a responsibility to use all the means at its disposal. I think it's fairly easy to see and to understand, not giving IANA a specific task to do because there is not necessarily any task that we can identify. So yes, I think I'd just agree with Chris now.
- Keith Davidson: And I note that Nigel's also putting up a green tick of agreement. And Eberhard is the only person who has ongoing unhappiness with it, so Eberhard.
- Eberhard Lisse: I have not indicated unhappiness. I have indicated that I wanted to contribute to the building of this group by furthering the deliberations. RSC1591 was stated in '94 after the delegation of certain domain names so we cannot use what's written in there to apply to the existing things willy nilly. Even -- and what Nigel says is very important because some of us could settle or divest ourselves off not only the database of registrant, but also the database of the names, the domain names. Non-profits like -- Nominet, for example of some other non-profits cannot do this because, by law, and I noticed for effect in the UK, a non-profit cannot even hand its assets over to the government or to a profit. It must only be handed over to another non-profit that works in a similar area for tax reasons. So this is an important point. What it means -- all means at their disposal. We have never agreed that IANA can have its own transfer rights. We have never agreed to it and we don't allow it. They have always insisted on it because of the very good probability that it could be used as one of the means of IANA contractor disposal. If you look at the way, for example, dot.nl was re-delegated, in a turbulent it was then 7 seconds after it was repatriated, it was repatriated to the Netherlands. This gives me really concerns about what we are interpreting here and what the end result of our interpretations are and how they are being used. I'm not happy with the way certain things have happened in the recent past but my primary -- I don't manage dt.nl so it's not my problem -- but this is serious. What we are doing here has serious impact and I take this very, very seriously and, even if we mention things that could then later be -- that are (inaudible) that could later be misinterpreted, we're here to interpret these things.
- Keith Davidson: Fair enough. Thanks Eberhard. Nigel.
- Nigel Roberts: Well, seeing as I've abstained from picking nits and left it to others today, stylistic matter if you could just take a note. 5.4.3 and throughout the document, you say if the delegation is revoked. I'd much prefer you to put "if a delegation is revoked" and make similar stylistic changes throughout the document if that's a helpful suggestion.
- Bernie Turcotte: I think you already made that and we agreed to it. It just hasn't gone into this cycle. Okay. Good.
- Keith Davidson: Okay, I think, Nigel. Not sure where that leaves us. Bernie, do you have enough to work on an editing of this that might set up right?
- Bernie Turcotte: I really go back to my example. I understand Eberhard's point. This is not about challenging intellectual property rights at all.
- Keith Davidson: No, there's no mention of --
- Bernie Turcotte: There's rather a transition strategy in a situation where something happens. So no I don't think I have enough and no, I don't think we've actually squared the circle on that one. I see some hands up so I'll let people speak on that.

- Keith Davidson: Okay, I was just conscious of our time and realizing we've got 20 minutes to go and it will be really nice if we can get a read of 5.4.4 being the last piece of the document. So three speakers and we'll draw a line under them. Chris, you had your hand up but you've taken it down.
- Chris Disspain: Let me wait and see what Nigel and L say first and then I'll --
- Keith Davidson: Okay Nigel.
- Nigel Roberts: Okay this is an apocryphal story about an IT-related contract and a differing interpretation on different sides of the Atlantic but I think it's relevant 5.4.3 at this point. And it goes back to an early meeting of the first DNSO council when I was a ccTLD member of that and a rather comical event which was only penetrated by Esther Dyson being bilingual in English and American. But let me concentrate on the statement here. First of all, what's the authority for RSC1591 saying that the IANA contractor should use all means at its disposal? That's my first question. The second question is all means at its disposal including the United States nuclear weapons? I know that's reductio ad absurdum. I would not like to see all means at its disposal used. I should like to see the word endeavor in there somewhere.
- Keith Davidson: Okay --
- Unidentified Participant: Can I ask -- I'd just to ask, sorry, Keith, I know we're short of time and I know you want to get this done but I don't understand -- I don't understand what your problem is with the way it currently is, Nigel?
- Nigel Roberts: Well, all means at its disposal -- let's forget the way. L's point for a second. Eberhard's point.
- Chris Disspain: So stop, stop, stop. You're concerned with the term all means at its disposal. So if it said should use its best endeavors, you'd be happy with that.
- Nigel Roberts: No. No, this is my point which I'm about to come to. It's the word best endeavors or all means at its disposal that's problematic. And the example by way of analogy is this is that, allegedly there was an apocryphal contract somewhere which said the contractor, in the event of a failure of the computer system, shall use best endeavors. Now to one side of the contract, best endeavors meant they will just do whatever they can with the resources available. And to another side, they argued you have to go to extremes to make it work. And the jurisdiction of the contract -- the words were interpreted one way or the other.
- Chris Disspain: Why are you applying contractual law to a (inaudible).
- Nigel Roberts: What we're -- look, let's put it very bluntly here. What we are saying is, if I understand this correctly, 5.4.3.2 there is somewhere in RSC1591 says that if there's a revocation, IANA contractor must use every single possible resource available to ensure that something continues. That's not I think the intent here. I think the intent of what we are trying to say is, again, it's another expression of good hope here. Not a strict interpretation of words. And I think the expression of good hope is that IANA should endeavor to assist by offering services, for example, as registry of last resort providing name servers, facilitating volunteers to offer name servers et cetera, et cetera. I think that's what the intent of this sentence is but when you read it's a direction to IANA that you must do extremes to keep this zone far running.
- Chris Disspain: Well I don't read it that way but I'm --

- Eberhard Lisse: I like the proposal from Nigel and, as I like to do once in a while, I have put up RSC1591 and I cannot find any reference therein about the IANA contractor having to do that. It would be helpful if it could be pointed out to me where this sentence comes from. But what Nigel -- what we are meaning and I think the way Nigel is writing it, this maybe helps Bernie for the wordsmithing, is that IANA should assist in any way it can in resolving by way of, for example, by measuring such as facilitating, acting as registry of last resort, facilitating systems, facilitating name server, facilitating database assistance for other ccTLD managers or something like that.
- Chris Disspain: Bernie, can you take that and see if you can turn it into something understandable?
- Keith Davidson: I'm just thinking, Eberhard, that there's nothing in RSC1591 that indicates what the IANA contractor should do after a revocation other than saying that the delegation may be revoked and it would possibly be delegated to another designated manager. Nothing more or less. So there's no mention about continuing server names or what happens to them or anything else. And so this is pure interpretation and it's one way of interpreting.
- Eberhard Lisse: You are interpreting what is not written there so we can take 5.4.3 out totally.
- Keith Davidson: You could but --
- Eberhard Lisse: You just said it's not written in the RSC so you can't interpret it. The point that we want to make is that in case of a revocation, IANA -- let me just think about it - - probably it follows if there is a revocation, if there is a revocation, then it follows basically now that I'm thinking more about it, it's just logical to say if IANA has finally come to the decision after all avenues have been exhausted and it must be revoked, then it is probably natural for IANA to try to ensure that the domain -- the ccTLD is still working. However, this does not include the respect for intellectual property. Since none of this is in RSC1591 we could sort of write this in the way that my concern is being appreciated and we be done with it.
- Keith Davidson: Okay. Let's see if Bernie can make something.
- Bernie Turcotte: I'll give it a try with Becky.
- Keith Davidson: Shall we leave it there?
- Eberhard Lisse: And I'm quite willing to work to assist but we can have it looked at three times or something.
- Keith Davidson: Okay. Can we move on to 5.4.4. and just see --
- Unidentified Participant: Surely there's not going to be any objection to that?
- Keith Davidson: I wouldn't have thought so considering we've covered this often in 5.3.3.2 but let's just read it and see. So Bernie.
- Bernie Turcotte: The FOI Working Group believes that it is consistent with RSC1591 to allow managers the right to appeal a notice of revocation by the IANA contract through an independent body.
- Keith Davidson: Okay, any discussion, any debate, any disagreement?
- Eberhard Lisse: What body?

Unidentified Participant: That's a matter for policy development, Eberhard. It would be for the ccNSO to launch a policy development process if they chose to do so.

Eberhard Lisse: Should we not make a footnote and write that and so that we are clear on it?

Keith Davidson: You can do but I think what we're clearly trying to put a demarcation on is that the independent body is not the ICANN board.

Nigel Roberts: Damn it, I was so looking forward to it as well.

Keith Davidson: So there's no dispute in terms of the ticks. Okay. Well I think it's been a pretty useful session and it's given Bernie a bit of work to do. And I think our next meeting is 23rd May at 1300 UTC. So unless there's any more business, if somebody had something to say.

Nigel Roberts: Just I was going to say congratulations on finally getting to the last full stop in this document.

Keith Davidson: Well, okay, I think let's make a point that the 23rd of May will be the final, final reading and anything that remains in dispute will just be deleted I think so let's do our best to actually get it across the line properly next (inaudible).

Chris Disspain: Well done, everybody.

Unidentified Participant: Here here.

Keith Davidson: Thank you very much for your participation.

Bernie Turcotte: Good night everyone.

Unidentified Participant: Good night, Bernard.

Unidentified Participant: Good night everybody.

Unidentified Participant: Sleep well, Bernie.

Unidentified Participant: Bye.

Unidentified Participant: Bye Stephen.

Unidentified Participant: Bye.