

TRANSCRIPT

ccNSO Framework of Interpretation Working Group

23 May 2013

ccNSO:

Martin Boyle, .uk
Becky Burr, .us (Vice Chair)
Keith Davidson, .nz (Chair)
Stephen Deerhake, .as
Dejan Djukic, .rs
Daniel Kalchev, .bg
Eberhard Lisse, .na
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi

Other Liaisons:

Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

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

Apologies:

Chris Disspain, .au
Suzanne Radell, GAC
Bill Semich, .nu

Keith Davidson: Okay, this is the meeting of the Framework and Interpretation Working Group and, Kristina, can we have the list of both present and the apologies received?

Kristina Nordstrom: Sure. From CCNSO we have Martin Boyle, Becky Burr, Keith Davidson, Stephen Deerhake, Aaron Jutich, Daniel Kalchev, Eberhard Lisse, Patricio Poblete, Nigel Roberts, Dottie Sparks de Blanc. And from Liaisons we have Maureen Hilyard and Cheryl Langdon-Orr. From Staff Support and Special Advisors we have Jaap Akkerhuis, Bart Boswinkel, Kristina Nordstrom and Bernie Turcotte. And apologies from Bill Semich, Cassandra Bell, possibly Chris Disspain and from Eberhard Lisse for the second hour of this call.

Keith Davidson: Thank you.

Eberhard Lisse: (Inaudible) cancelled so I've got half an hour more today.

Keith Davidson: Excellent. Okay no one else on the call whose name wasn't mentioned. Okay.

Kristina Nordstrom: Keith, can I just-- Becky, your line is making a bit of noise.

Becky Burr: Okay, I will mute it.

Kristina Nordstrom: Okay, great.

Keith Davidson: Thank you. We'll accept the apologies and note those present. Confirmation of the agenda, I haven't seen any dissent from the proposed agenda I've put around do does anyone have any comments? Is there anything that needs changing? If not, we'll stay with the agenda as circulated and move onto item three on the agenda, Confirmation of the Meeting Report of 21 March or 9 May as it should be. I don't know why my mind got stuck on 21 March but the later agenda is 9 May and that's the report that's up in front of you now. Any comments? Any corrections? If not, should we move on to the substantive issue for tonight and the topic of revocation? I really would like us to finalize the analysis document tonight so that we can revert to incorporating it into the main document and make some real progress before Durban. So with that in mind, can I remind all participants tonight, can we tackle things that are at a significant level rather than getting down into the weeds and see if we can approach this very strategically rather than at any great degree of detail? So with that, Bernie can I hand over to you and you walk us through the changes-- the agreed changes and unresolved issues that we still have? Thank you, Bernie.

Bernie Turcotte: Yes sir. Can everyone here me?

Keith Davidson: I can hear you fine.

Bernie Turcotte: Excellent. Alright so as far as I can tell, the tracked changes did work in the EDS document we've got in front of us, so we'll go from that if I can get to a size that I can actually read without my glasses.

Alright, I believe our first change is in 5.3.2.2 and I'll pull up on a separate screen here versus our meeting notes. Meetings, notes, 05-09. Alright, so 5.3.2.2 the change in front of you was agreed unless-- and we'll read it one more time as per our habit. I see Nigel has his hand up, sir; do you want to deal with that?

Keith Davidson: Yes, go ahead, Nigel.

Nigel Roberts: Okay, just waiting for the mute to reappear. I'm really puzzled about this clause. I thought we'd agreed to delete the whole lot of it. I do not believe that the concept of being equitable varies in context. Equitable (inaudible) pretty much standard. You can't say somebody can be less honest or more honest in some circumstances or less fair or more fair in some circumstance. I am really unhappy about the whole of this clause. So simply removing the word "justice, dishonesty and competence" and replacing it with the manager being equitable doesn't it address my problem.

Keith Davidson: Okay, thanks Nigel. Martin.

Martin Boyle: Thanks, chair. I don't actually have a problem with this. In fact I do find it as being quite important to set equitability, honesty and competence into the framework of what the job is rather than having something that could then be quite subjective about what I do in my private life. So I actually find this clause,

sub-paragraph as written quite helpful in that it does address wording in RSC1591 but it does include putting it into context.

- Keith Davidson: Thanks, Martin. Okay, well it seems like we've got a dollar each way there. Martin, could I ask you when you're speaking, could you maybe move the microphone a little further away from your mouth. Just we're getting a lot of subterranean sounds coming through as well. I don't know if it's a different microphone than you usually use but you're sound quality was not great work.
- Martin Boyle: Sorry about that, Keith. What's happening is I'm getting-- I'm using a headpiece and it's not the one I normally use and I'm on Adobe which is what I don't normally use so I'll try and speak softly.
- Keith Davidson: Okay. Thank you for that. Okay, I don't know how we can deal with this. I don't know-- Cheryl. In the hope that Cheryl has a compromise for us.
- Cheryl Langdon-Orr: Not sure I'm going to have a compromise but the way I read it, it's making it very clear that these are matters which may be variable when the matter of context is looked at. I mean, it's just saying, in addition, questions regarding the managers'-- well, I don't like the sentence, I must say. I like what it says. I don't like the sentence. So the manager being equitable, just, honest and competent and serving the local Internet community are highly contextual. I don't disagree with that sentence. I think it's a very important sentence to be there. I would suggest, probably, we should be saying something like questions regarding the manager conducting operations in an equitable, just, honest and competent manner and serving the local Internet community might be better language but we're not getting into the weeds. So at the high level, I guess I'm coming down on it is a useful sentence. Thank you.
- Keith Davidson: Okay. Thank you, Cheryl. Does anyone else have any comments? I see Nigel with his hand raised. Nigel.
- Nigel Roberts: Well, maybe that's something that's useful as intended but what is written is extremely dangerous. I'm looking here at the Journal of World Investment and Trade, an article called Fair and Equitable Treatment in Arbitration and it says here that fair and equitable treatment is currently the most important stand in disputes. Now obviously that's not re-delegations disputes, it's investment disputes. Equitability is not a moveable feast.
- I think I know what Martin's trying to say here when he wrote this and I don't disagree with the concept that-- in fact I fully support the concept that many things are local such that in some circumstances it may be appropriate to publish certain things. In others it may be appropriate not to publish certain things and that depends on the cultural and legal context in the country concerned. I mean, there's an example locally here in the UK. It's kind of regarded as being very bad to publish reverse directories in the telephone system. Here we've done it for years and the data protection commissioner agrees with it as it being local customer practice. So the concept of a margin of appreciation is not a bad one. There's nothing wrong with that. But when you come round and say what is fair and equitable treatment differs from country-to-country, what you're actually saying is that it's alright for the rule of law to apply in London or Washington but fair and equitable treatment might mean Saddam Hussein sticking a machine gun at your face. And I can't accept this. Fair and acceptable treatment is not a variable feast and we can't be saying that.
- Keith Davidson: I guess the issue here is whether Saddam Hussein pokes a machine gun in everyone's face, then that would probably be more equitable but I think it is a (inaudible) that Martin had directly from RSC1591 which has the ability to do an equitable, just, honest and competent job so I had to argue.

Nigel Roberts: Yes, so that's not a variable feast.

Cheryl Langdon-Orr: Cheryl here. I don't see that it's saying that it's a variable feast, Nigel, so please help me understand why the context-- saying that it's highly contextual means it will be, by definition, variable.

Nigel Roberts: No, what it's saying here-- it says here the Working Group notes that the concept of being equitable to all groups varies depending upon context. No it does not. The concept of being equitable is an absolute concept of just, honesty and fairness, and I cannot accept a document that says anything different.

Keith Davidson: Thanks, Nigel. Eberhard.

Eberhard Lisse: As I said last time, justice is absolute. I concur with Nigel; I cannot accept it as is. The point is look at the recent dot NL delegation. The government official lies to ICANN, repatriates the domain from inside the country and outside the country, by lying to ICANN. And then this is then being called equitable, just and honest. It is not acceptable. Like Nigel says, these are absolute. They are not varied depending on context. They are absolute.

Keith Davidson: Okay. It seems to me we've been around this debate often enough. I'm wondering if we note the exception in a footnote that Nigel and Eberhard have and then I don't think I've heard any dissent from anyone else.

Nigel Roberts: Keith, this means I will vote against this thing. You cannot have a statement saying that honesty varies from country-to-country which is what the words here say. It's not the intent. I accept it's not the intent. But that's what the words say.

Cheryl Langdon-Orr: Cheryl here. I did suggest in the chat, if Becky wrote this language and we all understand what the intent is, it would be very good to hear Becky speak to this and perhaps there are words that would be more acceptable to everybody. But certainly, I mean, I can't imagine us, for example, in the Heard and McDonald Islands having much luck getting a local Internet community to be treated equitably. I'm sure the local RSPCA would have issues because there's only wildlife there. You know what I mean? We've got to find not the edges of the bell curve here but something that will work for the middle of the bell curve. Thank you.

Keith Davidson: Yes, and I think Antarctica has a policy of only entertaining registrations from people who were born and still reside in the Antarctic and since no person has yet been born on the Antarctic, nobody qualifies for a name so you could argue that's equitable but it's a different sort of equitable to elsewhere and, while that's a silly example, it's nonetheless an example.

Okay, Patricio has his hand raised and again, Nigel and Eberhard have just not reduced their hands or removed their hands. Anyway, Patricio first.

Patricio Poblete: Thanks Keith, Patricio here. I understand the aim of having this paragraph is to say that the IANA may not be able to assess whether some behavior is equitable or honest or just and that perhaps, if it's in the local community where such issues are best discussed, (inaudible) or whatever. If our aim is that, if I'm not mistaken, then perhaps we could try to say that without the initial part that I can very well understand why this is very arguable that it is true or not. I tend to side with Nigel and Eberhard that these concepts tend to be universal. On the other hand assessing whether there is something missed, honest or just or equitable or maybe best done in the local community.

Keith Davidson: Okay, thanks Patricio.

Becky Burr: Keith, it's Becky.

Unidentified Participant: Yeah.

Becky Burr: I'm sorry, I was on mute driving and my phone was (inaudible) and I didn't want to get into an accident. I did not mean to suggest that there were-- that equitability and all of those things were a moving or a movable feast or a moving target. What I mean by that was what it depends on, sort of, what the requirements that the community has established with respect to operations of the ccTLD, for example. So you'd have to be born in Antarctica. And I'm just, to Eberhard's point, but that reference is to administering the operation of the ccTLD in a fair, equitable and just way. It's not about, sort of, what the country does. So I think that we are in agreement. We're not talking about a, sort of, fluffy notion that it's okay to oppress people in some cultures and not in others. I do think Cheryl's right, what we're talking about is, sort of, equitable treatment with respect to the operation of the domain by the domain manager and that there must be some-- and I also think that Patricio's point is also what I was trying to get at which is that there will be (inaudible) that are, sort of, readily available to people on the ground but not readily available to IANA. So those are all of the concepts. I don't think that I heard disagreement with both concepts, it's the statement of the concept that seems to be troubling people.

Keith Davidson: Okay, I noticed Martin agreeing with you there, Becky. I also see Bernie saying the comments are good and let's re-write. Stephen saying also on the chat can we snip out the first sentence. I think before we continue, both Nigel and Eberhard have their hands raised so Nigel has his hand raised and Eberhard. Nigel first.

Nigel Roberts: Am I still on mute, first of all.

Keith Davidson: No, we can hear.

Nigel Roberts: Okay, that's excellent. This is where we were on the last call I seem to recall. I'm with Becky here. I know what's intended. It's clear to me that's not what's intended but that's not what is written and that's not what will be taken from these words by somebody in the future.

Becky Burr: Right, so we need to rewrite.

Nigel Roberts: So we need to rewrite. Let me just make my position clear here. Any words which inadvertently regard honest or equitability, and by that I mean equity in the sense of being fair, in fairness, the old Lord Chancellor concepts, that that is anything other than an absolute. That it varies. I cannot accept, and this will taint the whole document because it will allow somebody to say in the future, that IANA should not intervene in a clear breach of fundamental rights. So that's-- I'm on the side of Martin. I'm on the side of Martin in the fact that the principle of subsidiarity applies, that local communities are best judged to decide how to run ccTLD. That is not what (inaudible) context here. Being equitable to all groups in the domain does not mean that you must treat everybody the same as the way dot.com treats the world, that there is international law the concept of margin of appreciation that different cultures have different ways of approaching things. That is not a problem. In fact we should be saying that so Martin's right to want to see this in here. But if we do it in such a way that later can be either deliberately or unintentionally misinterpreted to suggest that because a ccTLD manager is in country and it knows best and the concepts of honesty are different in different countries, well, I'm sorry, but that's not acceptable and we need to find a form of words that approaches this with the result that we all want.

Keith Davidson: I think the issue I have, Nigel, where we're hitting is that if you stress the equitable nature of equitable, you'll end up with disputes over people will say, well, in New Zealand, they have a set price per registrar regardless of the number of names the registrar has. We've got to introduce that everywhere because that's equitable. And wherever there's a price differential for large registrars that's not equitable and therefore they must change. So we shouldn't be making the extreme opposite a part of the possibility of the framework for the future.

Nigel Roberts: Keith, that's not what it means. Equitability in this context means that you mustn't treat your brother-in-law more favorably than another applicant for a domain name.

Keith Davidson: Sure.

Nigel Roberts: That's what it means.

Keith Davidson: I know. That's the intent but it's how it would be read that worries me. Anyway, we have Eberhard and I think then we need to move on so, Eberhard.

Eberhard Lisse: Okay. Because we are rewriting it because we don't have to deal with the importance of this any longer, but I must say this is not going to be footnoted. And by the way, it's not the Internet-- the local Internet community that runs a TLD, it's the manager. Okay, ccTLDs are, by nature, unilateral not even bilateral unless they have an agreement with ICANN. How I run my ccTLD is not subject to approval of the local Internet community. Only indicates that it is-- how I run my ccTLD is only subject to what we decide here is gross mis-- substantial misbehavior of persistent problems. It is not subject to the Internet community. I do not recognize the Internet community having any impact on dot.NL and have not recognized ICANN as having any impact on dotNL because it was created before ICANN even existed. Okay. So we must be very careful how we phrase this. We are not going to make policy; we are interpreting what RSC1591 says.

Keith Davidson: Okay, and me, on the converse of that, I would argue that here in New Zealand, we regard ourselves as purely the custodian of dotNZ for the duration of the period that the local Internet community continues to support us. And when they cease supporting us, should they do that, we would probably agree to a re-delegation because we haven't done our job and (inaudible) consulting and so on. So I think that's just the highlight of the different models in any case.

Eberhard Lisse: Yes, that's exactly what I'm saying. And that can decide how they see their relationship with the local Internet community and ICANN any way they want. So can we. So can Nigel. So can any other ccTLD manager. We're only looking at substantial misbehavior and we are only looking at persistent problems, specifically, where the local Internet community has an input. If in Antarctica, you must be born in Antarctica, or in country X you must stand on your head when you apply for them, as long as everybody has to do this, policies don't really have to be reasonable, they only have to be equitable.

Keith Davidson: Okay. Anyway, points well made, I guess. So let's go back to the drafting table and, Becky, do you think you have enough to work on this to come up with some-

Becky Burr: Yes, I do.

Keith Davidson: Okay. Nigel.

Nigel Roberts: One final point. I thought we had simply decided at the last meeting that it would not do any harm to remove the point two because the point one says it all but

that's possibly an option Becky might consider, perhaps if I can give some input bilaterally and we can discuss this and come back without being faced with things that don't appear to have changed very much at least next time.

Keith Davidson: I think let's put a square bracket around the entire sentence and be prepared to strike it if we have to. I think it does add something if we can get it right but I think, as we're finding out, it's quite a delicate balance here. Martin has a further point and then I think we must move on. So Martin.

Martin Boyle: Thanks, Keith. It was actually just in response to Nigel's last point. Sub point two is actually different to sub point one. Sub point two picks up on all the things as the incompetence which are picked up in RSC1591. Sub point one only picks up equitability to all groups though, essentially, the way I'm reading this paragraph, the sub-clause two, is that these particular issues are not issues that ICANN's going to be able to make a decision on. The decision has to be made locally in whatever way it is deemed to be relevant but I'm quite happy to see Becky have another go at bashing away at this text. Thanks.

Keith Davidson: Thanks, Martin. I think let's lay the necessary (inaudible) and move on. And Becky, can we give you the action point in the sense of a redraft and, Bernie, if we can put a square bracket around the sentence? And while I would really like to-- I would really dislike seeing it disappear in its entirety if that's what we're faced with, we'll proceed on that basis.

Okay, can we move on then, please? Nigel, is your hand still up? Or did you just forget to take it down. That's gone. Thank you. So please continue, Bernie.

Bernie Turcotte: Thank you, sir. 5.3.3.3 Replace to ensure and add a cc as per the request. I'm not going to read the whole thing. It seems fairly straight forward. Comments. Questions. This was noted as agreed.

Keith Davidson: There doesn't appear to be any questions around it so I'll take silence as consent and affirmation that that's now accepted text. There's still no comments so we'll do that. Thank you. Please proceed, Bernie.

Bernie Turcotte: 5.3.4 really some minor edits taking out Internet as you can see in the tracked changes and the big changes at the bottom on 5.3.4.1.3 we should probably go through that. So let's just block it off and look at everything up until 5.3.4.1.2. They were minor changes and let's get that done. So the numbering system has been changed as per the note. The IANA contractor reference has been adjusted to be standardized and some minor grammatical corrections up until 5.3.4.1.2. Are there any comments?

Nigel Roberts: All good.

Keith Davidson: Nigel's saying all good. No other comments. Nothing in the chat. Nobody's taking the floor. Again, we have agreed text. Thanks, Bernie. Please continue while we're on a roll.

Bernie Turcotte: Okay, 5.3.4.1.3 where we have some changes. And what we've got here-- we'll read it since it's a bit of a change. The FOI Working Group notes, however, that the IANA contractor will rarely be in a good position to evaluate the extent to which a designated manager is carrying out the necessary responsibilities of a ccTLD operator in a manner that is equitable, just, honest or accepted so far as it compromises the stability and security of the DNS in a competent manner. Accordingly, the FOI Working Group interprets RSC1591 to mean that revocation should 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 the (inaudible) activity, presence on the Internet and/or maintenance. The new text. So basically all of this were minor adjustments and it was okay. The part we were unhappy with was, accordingly, under RSC1591 blah, blah, blah which is struck out. The FOI Working Group believes that it is not appropriate for the IANA contractor to step in on issues where the actions of the delegated manager do not pose a threat to the stability or security of the DNS and as such issues should be resolved locally. Over to you, sir.

Keith Davidson: Thanks Bernie and I think we had pretty solid agreement on this, Nigel. Nigel has his hand raised. Nigel. Nigel, we're not hearing you. And Cheryl and Eberhard are agreeing.

Nigel Roberts: Hello.

Keith Davidson: There you go.

Nigel Roberts: This is kind of interesting. As a ccTLD manager myself that could potentially be affected as we all could by any widening or narrowing of IANA's role to step in, clearly, I have to say it would not be in our personal interest to widen the ability to step in. But I'm reading this again and I'm thinking that this does not interpret RSC1591. What it does it says what some members of this group would like it to say. I don't think RSC1591 does say what 5.3.4.1.3 says. Again, I can see where it's coming from. I can see what we're trying to say and what we're trying to say is probably correct. But it does not say that simply because it would be impractical or difficult for IANA to intervene or step in, that therefore RSC1591 is construed to say that it would not be appropriate for them to step in. What you're actually saying here is this is a practical matter, not what the legislation says, ie IANA may step in where there's substantial misbehavior. What you're interpreting it to say which is does not say is that IANA can only step in where there is substantial misbehavior and that substantial misbehavior poses a risk to the stability or security of the DNS. That's not what the words say. The words say they can step in for substantial misbehavior.

Cheryl Langdon-Orr: Cheryl taking a deep breath there. I guess I read 5.3.4.1.3 with the knowledge of what we've already, I trust, going to accept in 5.3.5.2 which is defining substantial misbehavior and I guess that's why I did my great big sigh. Sorry.

Keith Davidson: Okay, thanks Cheryl.

Nigel Roberts: I don't think the two are, Cheryl, I don't think the two are inconsistent and I've been concerned about this throughout. It's an approach problem. From time to time we confuse interpretation with preparatory words mistaking what we would hope to be or even policy making. The words don't say that. The words say substantial misbehavior. We don't define what substantial misbehavior is explicitly because we can't. We can't cater for all situations. It's almost like the old 1960s definition of pornography. I can't define it but I know it when I see it as one judge said.

Becky Burr: That was not pornography, that was obscenity.

Nigel Roberts: Well done.

Keith Davidson: Quite a difference I think you'll find.

Cheryl Langdon-Orr: Usually. But (inaudible) saying egregious or persistent activities may include performing the necessary responsibilities of a designated manager in a manner that impacts serious harm or has a substantial adverse impact on the Internet community by posing a threat to its stability and security. So we are (inaudible),

so we are saying that. And because we're saying that, that I guess influences my reading of the new text in 5.3.4.1.3. Sorry, it was Cheryl jumping in. I apologize. Martin, you had your hand up and I should not have jumped in.

Keith Davidson: Thank you, Cheryl. So now back to Martin.

Martin Boyle: Well, I think actually, Cheryl, said everything I wanted to say. This is something that develops from 5.3.2.2 that nobody can expect the IANA operator judge things that it can't judge and when we've been through this discussion before, we've come up on the security and the stability part of this discussion. And we-- essentially, I think, what Nigel is saying does throw into quite serious question the whole of the what do we mean by serious misbehavior and it almost puts us back to square one. But if that's what where we want to go, then fine. It's just that I do feel very much that, along with Cheryl, that this (inaudible) exactly why 5.3.2.2. was a necessary clause. Thanks.

Keith Davidson: Okay, thanks Martin. Most useful I think and I'm really struggling with this one because I think we've been round and round the mulberry bush so many times on this that I'm quite dizzy on it. And Nigel, I think I'm detecting little bits of inconsistency with the previous positions you've taken on it as well. I'm wondering, given nobody else is indicating any objection, whether you're registering a real objection or whether you think the text could be improved further. Nigel.

Nigel Roberts: Keith, no I think by saying you're detecting inconsistency, you are recognizing my point. The issue is here that the implication of the red line text at the bottom of 5.3.4.1.3 is that there are-- let's take it step-by-step. We have defined substantial misbehavior. I'm not going to rehearse or revisit that. We've defined it somewhere else. Even if we haven't, we're going to. So we've a got a definition of substantial misbehavior here. Then what you're saying here is that that substantial misbehavior has to affect the DNS--stability and security of the DNS otherwise it's not substantial. That's what I think where we're going with this. If that's so then all the red line stuff is completely otiose because it's implying that IANA has a discretionary power to intervene when the misbehavior's not substantial and we've already defined it to say that it hasn't. So that's my issue here. The issue here is that it's implying that IANA can take discretionary interventions and we're saying here that they shouldn't. So the fact is I believe that the policy says they can't anyway.

Keith Davidson: Okay. Is there anyone who's going to assert some strong agreement or alignment with Nigel's position here?

Nigel Roberts: I mean, having said this, Keith, I'm not going to object to what's being said here. What I'm saying is that by saying it and the way that we're saying it, we're weakening the point that we're making in the substantial misbehavior section.

Keith Davidson: Okay. Look, can we go to the fine mind of Becky and just ask Becky if she sees any inconsistency with the 1591 statement here.

Becky Burr: Well, I mean, I don't think that-- I mean if all we're doing is saying that what 1591, certainly then we might as well just publish 1591 and go home. So I don't have Nigel's, sort of, fundamental issue with acknowledging that the practical realities have a role to play in what 1591 means. Having said that, I have to go back and look at the text. I understand the argument that Nigel is making and, if we have in fact defined the substantial misbehavior to mean only problems that affect the stability and security of the Internet, then and it's only to substantial misbehavior, then I understand what he's saying, then I need to go back and look at this in context because the last time I looked at it, we hadn't really-- we hadn't crossed the line that Nigel's concerned about.

But having said that, I hear Nigel saying two things. One is sort of a saying what we wish it said as opposed to what it says versus interpreting it in a way that is not necessary given what we've already done. And so I would agree that the second point might be a problem but I don't think, in this case, that recognizing practical reality puts us out of the stroke of interpretation.

Nigel Roberts: Just one final-- I agree with all of that, Becky, and the last thing I was saying was not that we can't say these things but we have to identify our behavior when we say them. We don't say it's interpretation when it's in fact not. We say we were making an observation in reality this IANA will have insufficient information to make such judgments. But we don't say that that therefore means that the interpretation is X. That's all I'm saying to that point. Nothing more than that.

Keith Davidson: Would you prefer the wording of the last sentence to ready the FOI Working Group interprets that it is not appropriate.

Becky Burr: No, I think what he's saying is notes or as a matter of practical reality we acknowledge the following.

Keith Davidson: Okay.

Nigel Roberts: Exactly.

Keith Davidson: Okay. Are you a long way away-- how far away from accepting it are you, Nigel? Could you live with it?

Nigel Roberts: I think we're millimeters way. But I think Becky knows where I'm coming from and I'm sure that we can dispose of this in 10 or 15 minutes together.

Keith Davidson: Okay, look let's do that and, I mean, again, we're dangerously close to putting square brackets around yet another thing which is an interpretation or is interpretative and surely that's our job so I don't really want to be deleting that provides unclear color and depth to the policy. So let's try and if we can take that action point forward, Nigel and Becky, to see if they can come up with some compromised text over the next week.

Okay, any discussion or any other issues to raise on 5.3.4.1.3. If not, Eberhard's indicating some agreement so shall we move on and 5.3.5.2, thanks, Bernie. Bernie, not hearing you. You're on mute.

Bernie Turcotte: No I'm just typing. Be back with you in a sec. Let me keep track of things. Alright. I am back on this point. Okay, now we are heading into sub 5.3.5 which is the title 5.3.5.1 was a question of numbering that has been corrected. I do not think we need to spend a lot of time on it. 5.3.5.2 is the part where we have to work on it. So let's go through it since we actually re-wrote the whole thing-- well, we adjusted the whole thing and ended up wiping it out was simpler. 5.3.5.2 The Working Group interpret-- okay, 5.3.5.2 Substantial Misbehaviors. The Working Group interprets substantial misbehavior to involve misbehavior as defined in 5.3.5.1 that is either egregious or persistent and may include performing 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. Over to you, sir.

Keith Davidson: Okay, thanks Bernie. And I'm just noting in the chat that Nigel was (inaudible) 5.3.1.2 needs repeated negatives to start. I don't know quite what that means but he says editing the document might (inaudible) a bit.

Okay, I think we've been round the track several times on this particular interpretation of substantial misbehavior and I'm not seeing any hands up. And so I'm pretty hopeful we could not consider this resolved as final text. I'm not seeing anything in the chat and I'm not seeing any hands being raised. So Cheryl's indicating clapping so we'll take the applause as acceptance of text and move on thanks, Bernie.

Bernie Turcotte: Thank you, sir. That would take us to 5.3.6 which is entitled Process for Revocation in cases of Substantial Misbehavior. 5.3.6.1 was just renumbering and removing the Internet. I don't think there are many issues and this was agreed on our last call. 5.3.6.2, we did not agree on text-- I could not get a hold of Becky to work on this so I struck out on my own. This is not something that has been approved by anyone. It's just, hopefully, something to try and get us moving. I will read it and then we can start beating up on it.

If the IANA contractor revokes the delegation it should attempt, in collaboration with the concerned parties, to surely the ccTLD will continue to resolve names until a suitable replacement is identified by significantly interested parties in the manner previously described. Over to you, sir.

Keith Davidson: Okay, Nigel has his hand raised and it might have been from the earlier point but, anyway, Nigel.

Nigel Roberts: Okay, thank you. I can dispose of this very quickly, actually. If you read 5.3.5.1 absolutely pedantically, two says that if you carry out the responsibilities in the manner required by RSC1591, that would be misbehavior. I'm sure that's not what we want to say. So we should repeat the words "the failure of" or "failing to" after the Roman II.

Keith Davidson: Yes, I see exactly what you mean. Have you caught that, Bernie? I think that's just a simple word change. I didn't quite catch what that was.

Unidentified Participant: I actually don't think that's right, Nigel. Failure comes before so it would modify both Roman i and little Roman ii.

Nigel Roberts: For the avoidance of doubt, because yes, you're right, it can be construed that way but reading it, it looks odd, so if you put one and two on separate lines and then put the appropriate colons and indentation, yes, you can make it look that way without changing it. But if you're running it altogether, I prefer to be a little otiose and stick the extra words in.

Keith Davidson: I think rather than sticking the words in, I'd prefer to go to sub clause I, sub clause II, and indented sub clauses then we don't need to debate the wording.

Unidentified Participant: Yes, I'm good with that.

Nigel Roberts: I'll buy that.

Unidentified Participant: That works.

Keith Davidson: Thank you. So noted, Bernie, and Cheryl has her hand raised too.

Cheryl Langdon-Orr: Thank you. I was actually on 5.3.6.2 that was Bernie's proposed text. If we've dealt with the other, I'll move to that.

Keith Davidson: I think we have. I'm not seeing any other--

Cheryl Langdon-Orr: Here I am assuming that we will come to some form of agreement on words that are fairly similar to this but I wanted to do a little bit of wordsmithing specifically

on these words just in case they're the ones that are accepted. So this is my minor modification of Bernie's proposed text. If the IANA contractor revokes a delegation, it should attempt, in collaboration with the significantly interested party, to ensure the ccTLD will continue to resolve names until a suitable replacement is identified by those parties in the manner previously described. I'm just a little concerned that we've got "significantly interested parties" and "concerned parties" and really what we should be dealing with is just "significantly interested parties." But maybe I'm wrong. Thank you.

Keith Davidson: No, I think that to me, Martin, indicating agreement and that to me was very much the thrust of the debate but you could be a "concerned part" but it is over to the "significantly interested parties."

Cheryl Langdon-Orr: Certainly my memory of it.

Keith Davidson: To have their say. So I think I'm seeing agreement from Becky and Martin and Eberhard has his hand raised so Eberhard.

Eberhard Lisse: I don't remember what my previous position was but do you really need to identify by significant interested parties? Could we not just identify them as previously described? But this is not for me-- I'm going to agree with whatever the outcome is because its only revocation and once revocation is done, it doesn't really matter much to me anymore.

Keith Davidson: Okay, thanks Eberhard. Patricio.

Patricio Poblete: I just wanted to call your attention to what I just wrote on the chat window box. I believe that we should make it shorter and not try to say here how the appointment of the new manager is done. That's a matter for a different section of the document.

Eberhard Lisse: This is what I was saying or what I meant so we agree.

Cheryl Langdon-Orr: Sorry, Cheryl here. I didn't read this is as specifically about new appointments but rather to maintain service to the DNS wherever possible during revocation.

Keith Davidson: Yes, until a suitable replacement is identified. You could probably put full stop there.

Cheryl Langdon-Orr: That could work, yes.

Patricio Poblete: That's exactly my point.

Cheryl Langdon-Orr: Okay, sorry Pablo.

Keith Davidson: Okay, so can we think about the wording being if the IANA contractor revokes a delegation, it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement is identified.

So it seems to be comfortable. I see Martin agreeing. I see Cheryl agreeing. Patricio still has his hand up because he forgot to take it down or do you want the floor again. Patricio? No, his hand's down. And I'm seeing a lot of ticks, Maureen, Martin and Eberhard so I think we can proceed on the basis of that being fairly agreed and we'll give that another read next week or next meeting. Thank you.

Okay, well done, Bernie, for a bit of rough text, we probably have way forward. So Bernie, can we move onto 5.3.6.3?

Bernie Turcotte: I posted my reasoning for why I used "concerned parties" instead of "significantly interested parties" because we defined and work with significantly interested parties in a specific manner. And in this case, as we have seen in our history, although the manager can get revoked, the manager will want the ccTLD to go on and will work with IANA to try and do something. So I'm just trying to make sure that, to me, one of the most important points is that "the parties" actually covers the manager that is being revoked. And if we feel that significantly interested parties, although we've defined it in our previous work does cover that, then I'm perfectly happy. I'm just exposing the point I was trying to make there.

Keith Davidson: Thanks, Bernie but I don't believe you could regard the incumbent manager or the outgoing manager as being anything other than a significantly interested party, at least until the point that the re-delegation was made and his own (inaudible) handed over. So in any case, I take your point, Bernie, that maybe that was excluded in the earlier definition.

Okay I see Nigel with his hand raised, so Nigel.

Nigel Roberts: Okay, this is just a simple stylistic point. We're on 5.3.6.3 which reads the FOIWG believes it is inconsistent with RSC1591 and natural justice to allow a manager a right to appeal emergency revocation by IANA to an independent body. Totally in agreement with that. I'm just unhappy with the word "allow". Again, a discretionary thing.

Bernie Turcotte: Nigel. Can we finish 5.3.6.2 before, please?

Nigel Roberts: I thought we already had done.

Keith Davidson: I thought we had too, actually but Bernie had then raised the issue of "concerned parties" as opposed to "significantly interested parties."

Nigel Roberts: Yes, I just took Bernie's point as being a point of clarification after we'd all agreed it.

Bernie Turcotte: Okay, so we're happy replacing "concerned parties" with "significantly interested parties" in the shortened version of this?

Keith Davidson: Yes.

Nigel Roberts: I'm easy either way with you, Bernie, but I mean with Cheryl as well.

Bernie Turcotte: Okay, I'm happy. We're done. We can move on to 5.6.3 and since you've read it, over to you, sir.

Nigel Roberts: Well, as I say, I'd just like to have a different word than "allow" in here. You would say that the manager has or something like that but "allow" sounds like we're granting a boon or a (inaudible).

Patricio Poblete: To recognize the manager's right to appeal.

Keith Davidson: I like that.

Nigel Roberts: Yes, I like that.

Cheryl Langdon-Orr: That works.

Keith Davidson: Recognize the manager's right to appeal.

Nigel Roberts: Or the manager has.

Keith Davidson: To recognize the manager has the right to appeal. I like that even better. Okay, any dissent.

Cheryl Langdon-Orr: All good.

Keith Davidson: Looking good to me. Thank you. Okay, and then we struck out 5.3.6.3.1 and 5.3.6.3.2 because it's all now inclusive. So can we move on further down the document, please, Bernie?

Bernie Turcotte: Yes sir. Moving onto section 5.4 Process to Revoke a Delegation. 5.4.1 no changes. 5.4.2 let me pull up the notes. Not agreed. Okay, this should be edited by Bernie and Becky. No proposed text. So this is essentially where we stopped last time. So maybe we can just read this and see if we can get some input. 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 its disposal to resolve such conduct.

5.4.2 if the substantial misbehavior undermines the stability and/or security of the DNS or a willful refusal to ensure one of the objective (inaudible) and necessary responsibilities, the designated manager's revocation may be appropriate. Over to you, sir.

Keith Davidson: Where did that text just come from? It's not what I'm seeing on the screen.

Unidentified Participant: Yes, I have the same problem.

Cheryl Langdon-Orr: I'm seeing it struck out.

Bernie Turcotte: I'm at section 5.4 Process to Revoke a Delegation on the screen, not on my own text and 5.4.1 is as discussed above and 5.4.2 is mostly struck out.

Cheryl Langdon-Orr: Correct.

Nigel Roberts: 5.4.2 just has two words in it for me.

Cheryl Langdon-Orr: This and the. Correct.

Keith Davidson: And they should be struck out as well. What I have is 5.4--

Bernie Turcotte: They should have been struck out but they actually caused a huge formatting problem which is why I left them there. So 5.4.2 is essentially struck out and I've thrown in some words in 5.4.3 but, well, it probably makes sense to go through it at this point. So again, this is just words I've thrown together. If the IANA contractor revokes a delegation, it should attempt, in collaboration with the concerned party, it's about the same sentence we just finished working on and, yes, it is on purpose. Over to you, sir.

Keith Davidson: Okay, let's see. I'm not quite sure. I'm a little bit confused why we're repeating but I see and Nigel and Martin with hands raised so, Nigel.

Nigel Roberts: Well, yes, that's exactly my point. My point's about 5.4.4 as well but this just strikes me as something we've said in a different place earlier above that I'm just confused why we're reiterating ourselves.

Keith Davidson: Okay thanks. Martin.

Martin Boyle: Thanks chair. Yes, I have the same problem. The only thing I can see that is different between 5.3.6 and 5.4 where, essentially, the same things are just repeated is that 5.3.6 is a process for revocation in case of substantial misbehavior whereas we're now on process to revoke a delegation. So I wonder, really, whether if we translated 5.3.6.2 and 5.3.6.3 which is wording we'd agreed to make it more universally applicable by putting it in section 5.4 to replace the existing 5.4.3 and 5.4.4 and that would seem to me to cure the problem and have the advantage of shortening the text.

Keith Davidson: Seems sensible to me. Thanks, Martin. Any other questions or comments? Nigel, I see your hand up again or did you just forget to take it down?

Bernie Turcotte: Sir, I have a note. I'm not disagreeing with anything that's being said. I was just trying to keep to the format of the original document and I think Martin's suggestion actually seems very sensible to me.

Keith Davidson: I'm not seeing any disagreement or dissent so I think we'll proceed down that path. Thanks, Bernie, and I think that brings us to the end-- so Nigel was making a point about 5.4.4.2 and, again, that's just reiterating the manager's right of appeal. So unless anyone has any further discussion on the document, I think we have enough to proceed with. And so Bernie's just noted in the chat agreeing with Martin's suggestion to bring in the text from, 5.3 into 5.4.

Okay, that leaves us, I think, two items to resolve. That's 5.3.2.2 which Becky will work on some alternate wording on and 5.3.4.1.3 which Becky and Nigel agreed to work on and then there's a couple of little bits that Bernie was going to tidy up for a second reading. So I think by and large we have made substantial progress on this and let's make all effort to approve this on our next meeting on 6th June. If we could get this done for our next meeting on 6th June, that would give us two further meetings to re-read the substantive document rather than analysis so that might allow us the opportunity to get the revocation topic completed by Durban which I would really, really like to do. It seems like we've been an awful long time on the topic and going quite circular and things. So if we can keep attacking it at a high level and see if we can topple that next week on our next call, that would be fantastic.

So with that in mind, any other business other than the next meeting, 6th of June at 2100? If not, well, we've made pretty good time in just over an hour on this call and so you can have 50 minutes of your life back. For me, being 2:10 am, I think that means that I can have an extra whiskey.

Cheryl Langdon-Orr: I might go and pour myself one.

Keith Davidson: Okay, no one got anything else to raise? Thank you all very much for your participation and thank you for your spirit of cooperation and thank you for the progress. Talk to you all again on the 6th of June.

Cheryl Langdon-Orr: Thanks everybody.

Unidentified Participant: Bye everybody.

Unidentified Participant: Bye.