

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference

6 June 2013

Attendees:

ccNSO:

Ugo Akiri, .ng
Martin Boyle, .uk
Becky Burr, .us (Vice Chair)
Keith Davidson, .nz (Chair)
Chris Disspain, .au
Stephen Deerhake, .as
Daniel Kalchev, .bg
Desiree Miloshevic, .gi
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Bill Semich, .nu

GAC:

Frank March

Other Liaisons:

Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Jaap Akkerhuis, ISO
Bart Boswinkel, ICANN
Kim Davies, ICANN
Eberhard Lisse, .na

Keith Davidson: Welcome, everybody, to the FOI Working Group, sorry about the late start. The technology looks a bit to test us today, as well as the content so let's make a start and can we have a list of those present and the apologies received please, Kristina?

Kristina Nordstrom: Yes from the ccNSO we have Martin Boyle, Becky Burr, Keith Davidson, Chris Disspain, Desiree Miloshevic, Paulos Nyirenda, Patricio Poblete, Bill Semich, Dotty -- oh do we have Dotty? We don't have Dotty, right? That was a mistake.

From the GAC we have Frank March. From Liaisons we have Maureen Hilyard and Cheryl Langdon Orr. And from Staff Support and Special Advisors we have Kristina Nordstrom and Bernard Turcotte.

From Apologies we have apologies we have received from Jaap Akkerhuis, Bart Boswinkel, Kim Davies and Eberhard Lisse.

Keith Davidson: Thanks, Kristina. Any further apologies that anyone hears? Anyone on the call whose name wasn't mentioned? If not, can we move on to confirmation of the agenda? I've circulated the agenda several days ago and received no suggested changes so unless anyone has any issues, we'll continue.

Okay the first item of business for the meeting is the meeting report of 21 May, which is in front of us on the screen now and that was also circulated over the last weekend. Are there any issues with the meeting report? No discussion? If not, can we then move into the topic of revocation? I think we have a document that's been discussed quite substantially on line.

That's quite good to -- in some ways to see good and useful online debate and I think, as a result of that, there is a suggested change of text from Nigel/Becky, which might be -- I'm not sure whether we're better to deal with the draft that we have in front of us and entertain amendments to that or look at the Nigel/Becky text or look at the Bill Semich suggested text. Just also, for the record before we get into the substance of the meeting, Eberhard has made his position quite clear on the list. He's apologized and for not being on the call but has stated quite a firm position, so we'll keep that in mind on the way through the discussion.

Forgive me too. I have a fairly bad head cold at the moment so I'll try and keep going for the meeting but if my voice fades I'll trust on Becky to take over chairing the meeting should that happen. Anyway initially let's head over to Bernie and we'll start working on the amendment to the analysis document as we go. Just incidentally, Bernie, I noticed that analysis version five. Is that where you're intending to start from?

Bernard Turcotte: Well, this is -- can you hear me because I am not seeing the screen?

Kristina Nordstrom: Yes. Yes we can hear you.

Bernard Turcotte: Okay. All right so I am working a little blind here. Probably best to go through the notes in detail and piece the things together. Maybe what I would suggest, given how we're working, we'll go through the stuff that's agreed, get that out of the way and then come back to the things we have to deal with. Is that okay with everyone?

Unidentified Participant: Yes.

Keith Davidson: I'm not seeing any disagreement. Yes, please proceed there, thanks Bernie.

Bernard Turcotte: Okay so 4.1 in the notes document we did not have agreement so we'll skip that. 4.2, which refers to section 533, agreed on 9 May, agreed on May 23, so we will consider that as final. Section 534 agreed on May 9, agreed on May 23 will also be considered final. Might as well read them if they're final. Application to designated managers, although one could read RFC 1591 to limit the authority of the IANA contractor to step in during the process of selecting a designated manager. On balance the working group interprets support of RFC 1591 to create a 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 there's a new manager does substantially misbehave.

On to section 44 of the notes report, which deals with section 534 11, agreed on May 9th, agreed on May 23 and final, so this on, Mechanisms which says that basically revocation has to be the only thing left for IANA, given what it can do.

section -- item 4.5 dealing with section 53 412, agreed on May, 9 May, agreed on May 23 is final and this one deals with revocation being a last resort option, to be exercised in situations where a delegated (inaudible) substantially misbehaved in a way that poses a threat to the security and stability of the DNS or whether the manager fails to cure violations of the objected requirements described above.

Section -- item 46, section 53 413 was not agreed. That one, we won't go through that right now. Item 47, section 53 51, agreed, agreed it is final. Section 53 2, final also; section 53 61 there were minor edits and so we have new text which, as far as I am concerned, should be final also, given our last meeting.

Section -- item 410 dealing with section 5362 not agreed on May 9, May 23 general agreement on proposed text, so we will have to go through that one again today to get a second reading on that one.

Item 411, section 53 63 (ph), 23 May amended text agreed. Again, that one will have to go through and get a second approval. Item 412, section 541 agreed on May 9, agreed on May 23rd and is considered final. Section 542, now removed, section 543 will become 542 agreed on May 23 and we'll just give those one final reading to read them into the record. So that's our proposal for how to deal with things today. Is that okay with everyone? We will start again from the top and not deal with the ones where we have said they are final. Is that okay with you, sir?

Keith Davidson: I'm not seeing any disagreement, built in agreement, chair open agreement so let's proceed.

Bernard Turcotte: Okay there was some new text so we're back to section 4.1 of the notes document. There was some new text proposed by Becky in version six of the document that was circulated earlier this week. That did not seem to generate the support we were hoping for and therefore, that's 5322, okay. Let me try and get things organized. We've got some other texts, which I am just going to paste in here, so we all look at the same thing. So I am modifying the notes, not the ones that would still be on record, just for the purposes of this meeting because we're having problems uploading text.

All right, okay and it's so different we'll keep it different. So right now the -- I believe Bill was okay with this compromise and Nigel was okay with this compromise but since I wasn't in the middle of those discussions, maybe I can ask Becky to speak to that and maybe Bill.

Becky Burr: Okay just -- I think that we had some pretty interesting and lively debates about this and I think we were all in the same place but having trouble figuring out a

way to say it clearly so what this basically says is there are a lot of things that have to be taken into consideration in order to determine whether the behavior of a cc Manager meets the mushy subjective fairness line SC service and confidence with respect to stuff. That's not part of the core, the technical aspects of the IANA relationship and any kind of (inaudible) of that requires information that the IANA contractor will often lack and notes, for example, that being equitable doesn't mean that everybody has to do the same thing all the time, just by way of example.

And goes on to say where the IANA contractor lacks information and context about alleged substantial misbehavior involving the more subjective aspects of the necessary requirements, and that substantial misbehavior does not pose a risk with stability versus security of the DNS, it would be -- would not be reasonable to expect the IANA contractor to step in because it doesn't have that information and in those cases it makes sense for the IANA contractor to refrain and expect that significantly interested parties acting in accordance with the rule of law would resolve that without the IANA stepping in on provision.

So we've tried to guess. Drew does this notion of context with respect to fairness on (inaudible) service but really talk about server, the availability of facts and where the facts are not available and clear to IANA, it makes no sense to have IANA doing anything and rather the rule of law should be invoked to resolve those by the relevant parties.

Bernard Turcotte: Okay and, Bill, you replied to this on the list. Do you have anything to say? Well, I don't know if we have Bill but I am not hearing him. Sir, should I just go through the text once so we've gone through it officially and then see if there are questions?

Keith Davidson: I think that would be quite useful.

Bill Semich: Hello it's Bill, hello.

Keith Davidson: Oh, Bill, thank you.

Kristina Nordstrom: There you go.

Bill Semich: Yeah I got double muted here somehow. I'm comfortable with the language. I'm not sure I would stand up and salute Becky's complete dissertation but I am 80% there, so I am, as I said, I'm comfortably with the language and have no objection.

Becky Burr: And I don't require any saluting.

Bernard Turcotte: That's not what you told me the other day.

Unidentified Participants: (inaudible). The reading, sir.

Keith Davidson: I'm going to go back to the mute.

Bernard Turcotte: Go back to the mute, Bill.

Bill Semich: All right so we have 5322, (inaudible), 5322, the FOI Working Group notes, however, that many considerations much be taken into account in evaluating performance with respect to the more subjective aspects of the necessary requirements, fairness, honesty, service and/or competence with respect to tasks outside IANA's core technical remit. Requiring information that the IANA contract and lack; for example, the requirement that a TLD Manager be equitable to all

parties requesting domain names should not be interpreted as requiring TLD Managers to operate identical policies.

Where the IANA contractor lacks information and context of that alleged substantial misbehavior involving the more subjective aspects of the necessary requirements and the alleges substantial misbehavior does not pose a risk to the stability or security of the DNS, it would not be reasonable to expect the IANA contractor to step in contractor to step in. In such cases the IANA contractor may refrain from acting and look to significantly interested parties acting in accordance with the rule of law for resolution.

We've heard from Becky and Bill. This is our proposed text, over to you, sir.

Keith Davidson: Oh any questions? It seems to me to be a tick full of double negatives but notwithstanding that if we have agreement between Nigel, Bill and Becky, it seems to be substantially useful. I see Chris is agreeing with the text as it is. Is there any dissent? I show also--

Patricio Poblete: Keith, on this important issue.

Keith Davidson: Yes, Patricio?

Patricio Poblete: Yes I somehow got dropped out of the available connect session so I am unable to write my answer there but anyway the text to me seems a bit confusing in the terms that we are supposed to provide clear directions for the IANA to follow and for the ccTLD Managers to know so they can know what the rules of the game are and here I believe that there is intermixing of these directions with the rationale for the directions. Perhaps we're unable to separate them better but at least we should have ourselves a clear understanding of what the directions are.

If I for the moment say that I accept whatever rationale we are having, what are the directions? What's the IANA supposed to do? basically it comes down to the basically that IANA not stepping in in this case and waiting for whatever the significant interested, significantly interested, parties do. Is that what we're trying to say?

Keith Davidson: No I don't think so. I think -- but this again needs to be read in context with the rest of the document so this is more the stipulation of what you're not allowed to do and I think what you are allowed to do comes later in the document but let's -- yes let's see. I'm sort of with you too, Patricio. I have a little bit of uncertainty about this text and probably need to read it again to gain some more comfort with it but does anyone else have any opinion?

No, well let's note Patricio's comments and maybe come back to this later so, Bernie, in the interim can we continue -- oh Martin is the (inaudible), so Martin? Martin, you must be still on mute. Ah there you are.

Martin Boyle: Yes it's a rubbish line. Can you hear me all right?

Keith Davidson: Yes, yes. You're coming on loud and clear.

Martin Boyle: Yes the wording is a bit convoluted. I'd certainly agree with Patricio on that but it's the fact that that might be the price we have to pay identifying a mid part. Overall I think it does strike a certain balance between the different views and like you, Keith, I think I'd need a little bit more time to think through but on the face of it it looks to me like a text that could fly.

But I do have on one comment and one question is that it seems to have moved away from the wording in RFC 1591 in particular where we talk about equisys

(ph) and that becomes fair and I accept that there are synonyms so I am not really worried but we're in the process where we've lost the just where in fact she says "and have the ability to do an equitable, just, honest and competent job" and it just occurred -- occurs to me that somebody might be scratching their heads but when we are no longer around, may but wonder why we deviated like (inaudible). Is about the last clause of the paragraph "and look to significantly interested parties acting in accordance with the rule of law for resolution." That part to me is sort of rather odd English. I think it's the same question as Patricio asked that it's not clear to me what the IANA contractor's role is going to be here. He turns around and says, "Look I really can't judge. I've got accusations coming in but I can't tell which is right." You have to go and sort it out in whatever manner suits you but it has to be within the rule of law." Now that's roughly where it would -- it's got to go through a court and a court of appeals procedure. Now, am I (inaudible)?

Keith Davidson: Yeah well put, Martin, and on to Patricio I think and then back to Chris and Becky for -- sorry to Bernie and Becky for the comments of Patricio. Patricio, you're probably on mute?

Patricio Poblete: Back off.

Keith Davidson: Ah there you are.

Patricio Poblete: Sorry here, I was typing on the chat window.

Keith Davidson: Oh okay I see so your comment on the chat window is "is it true that -- or not, that all these weird, many weird, finally come down to the IANA contract may refrain from it and I'm not sure if that would be the case but--

Patricio Poblete: I might -- I would ask, I don't if Kim is on the call but if I were the IANA contractor and I were faced with a situation where it is plain that that ccTLD Manager is not being fair or honest or whatever, what would -- what is the IANA supposed to do in this case then? The contractor would come to this very paragraph, read it carefully to decide what to do and I am not sure that there would be a clear answer to that question. What should the IANA contractor do in this case?

Keith Davidson: Okay yes and Kim could specifically put in an apology saying that this is one of the odd meetings where he is completely out of time zone somewhere off in the world so just couldn't make this call. So you've some interesting points that could be worth raising with IANA specifically to gauge their response. But in the interim, Becky, do you have anything to add in terms of a response to Martin and Patricio?

Becky Burr: Well, I'm actually having a little trouble understanding -- I'm actually having a little trouble understanding what they're concerned about. Could you just repeat the example for me, Keith, that they were talking about what they wouldn't know how to deal with because to me, you know, that's what we're trying to say here is essentially that decisions and evaluation should be made by qualified bodies with the relevant facts and in a case where ICANN -- where IANA doesn't have relevant facts and the alleged behavior is not closely associated with ICANN's, you know, with the sort of operational stability and security rules, those decisions should be made by appropriate parties acting under standards established by the relevant rule of law.

And it's just really I mean to the extent that it's not an entirely satisfactory outcome, I imagine we could come up with a whole bunch of examples of where sort of (inaudible) examples of where that would be. On the other hand, I think that the far more dangerous position for IANA to be in is to be in a situation

where it's asked to make decisions about allegations with respect to which it simply is not in a position to -- to not actually -- it doesn't have the facts.

Keith Davidson: Then thanks, Becky. I think that helps me anyway and I'm having some greater comfort with the text but that contextualizing is missing from the text, if you know what I mean. Anyway, okay I don't know quite -- I don't think either Patricio or Martin are dismissing the text as being unsatisfactory. It's maybe how to make it more satisfactory but I see both Patricio and Martin with their hands raised. I'm not sure whether Patricio has re-raised his hand or just forgot to take it down but anyway, firstly, Patricio.

Patricio Poblete: Sorry, could you repeat the question please? I -- my connection, my phone connection isn't all that good at the moment. Can you repeat it please?

Keith Davidson: Really I was just asking if following Becky's clarification do you still have any specific issues with the text or are you more happy with it?

Patricio Poblete: Hard for me to say. If this is the best that we can do, then so be it but if I were the IANA I would expect something easier to understand as to what to do exactly in this kind of a situation. One has to dig among these sentences to try to find directions for the IANA but perhaps we cannot do anything better if we want to get an agreement within everybody in the group.

Keith Davidson: Okay thanks, Patricio.

Becky Burr: I--

Keith Davidson: Oh, Becky.

Becky Burr: I would be happy to say that the IANA contractor should refrain from acting where it doesn't have the facts. To me that seems that that's clear and where it's not going to be an issue to have the facts but I -- it seemed to me that there were some sensitivities about that.

Patricio Poblete: Yes if I may.

Keith Davidson: Sure.

Patricio Poblete: If we go -- I agree that there are really in most cases the IANA will refrain from acting because, not only because of what we say here, but also because of lack of information. You can have conflicting, people saying conflicting things, and it may hard to assess who's saying the truth and who is not and if we expect the IANA to pass judgment in some cases, perhaps then one would have to say something about the procedure that IANA would follow, things like for instance listening to all the parties involved, have -- make sure that they have an opportunity to present their case, something in the sense of there should be a fair procedure for determining this.

We haven't done much in that way and we probably won't so in that sense the safest thing for the IANA to do is refrain from acting.

Keith Davidson: Oh okay yes I follow that, Patricio. Martin?

Martin Boyle: Yes thanks. I actually liked part of what Patricio said when he came up with where there are conflicting views and I just wondered whether what he has done is put the finger on one of those sort of concerns that you saw people making allegations, people making counter allegations. It's in another country. It's impossible for IANA to carry out a proper investigation. It hasn't got the powers that would normally be available to the active entry and therefore the fact that

there's conflicting views, I wonder whether that is something that we could put in that would give the text a little bit more substance but I am just suggesting that without wanting to knock the text over at all because I am conscious there's a fairly difficult balance.

There is -- and as people were talking, the other thing that has actually occurred to me was that there is the case where IANA might believe that the TLD Manager is not doing a credible or an honest or just or any of the other adjectives. I suppose there is then that is whether IANA might feel motivated to do something, even those with conflicting views within the country and so that's where I think having something in a fact of conflicting views might be useful because yes I think that I found Becky's explanation very helpful and besides helped me understand where the text is coming from. So I am feeling reasonably comfortable subject to sort of a fact getting re things. Thanks.

Keith Davidson: Thanks, Martin. Well, I think what I can take from that is that Patricio and Martin have both got some reservations that the text is a little crude but no actual violent objection to the principle contained within the text so I think maybe we could all look to this particular text and see if -- maybe it's one course that we could take on line and see if we can improve over the coming two weeks, so if we leave it as square bracketed text at this stage but let's keep working on it and I think if all else fails, that then that's probably has to become the accepted text but let's see if we can improve it over -- you know, before the next call.

So, with that, I don't think we'll assign a drafting group to try and do that but if Patricio and Martin, myself and others can have a look through and maybe suggest a slight tweaking or tinkering with it that might improve it that could be very useful so could we proceed down that track and continue? Thanks, Bernie?

Bernard Turcotte: Yes, sir. All right moving on, 53 is section 42 referring to 533 final, section 534 final 53 411 final, 53 412 final; 53 413 is our next one. I believe there was some text from Becky. I don't know what the status of that was. Is there -- maybe we should just bring up the text Becky proposed on that? Becky, is that what we should do?

Becky Burr: Yes, yes that's what we should do.

Bernard Turcotte: Okay I will (inaudible) endeavor to do this right now then. Okay now we were at 53 413. Here we go; it's up on the screen. I'll go through it. As discussed in section 5322 above, the FOI Working Group notes 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 security of the DNS, a competent manner.

Taking into consideration the primary responsibility of the IANA contractor with respect to the stability and security, the FOI Working Group interprets RFC 1591 to mean that revocation would not be and 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, has refused to comply with the requirement listed under 531 above and/or has refused to correct objective repeated problems with email connectivity, presence on the Internet and/or maintenance . Rather such issues should be resolved locally under the applicable rule of law. Over to you, sir.

Keith Davidson: Thanks, Bernie, and I think this is really just a restating with different words the RFC 1591 requirements but are there any questions? I see Bill has his hand raised, so, Bill?

Bill Semich: Yes I am not certain that the last sentence reflects RFC 59 since there's no mention of local applicable rule of law.

Becky Burr: Actually that should be -- that language should be changed to read to carry out the last sentence of that, the re-worked text that Nigel and I agreed on, which is look to the -- you know, should look to the significantly interested parties acting in accordance with the rule of law.

Bill Semich: Yes my problem with that is that if you read this it's in a somewhat different context from the previous one and what it's really doing is, as Patricio mentioned, aggregating IANA's responsibility for anything but making decisions based on the technical side and sort of ignoring the other responsibilities that IANA has to assume under our RFC 59, which is -- 1591, which is in fact to make decisions about things like this. Yes agreed perhaps with input from applicable law and interested parties, but at the same time it is IANA's decision and I think held probably there's a lot of situations where IANA might decide otherwise in some countries.

Becky Burr: Well, let me just try this a different way. I mean what we're saying here is I'm not sure it does come up in a -- in such a sub-- a different way. What we're talking about is the sort of in those cases where it's (inaudible) does subjective things that we think IANA is unlikely to be in a position to have the facts about and so what we're saying is in those cases revocation is not an appropriate response and whatever the alleged misbehavior is, the complaints about that belong in a different venue, not in IANA as the adjudicator here.

Now, presumably if they don't step in on as (inaudible) that in 5234, then this is -- to me it seems like we could just use the 5224 language here and say there wouldn't be -- I don't have it right in front of me because we're scrolling around here, but you know, it wouldn't state they can defer from asking and -- I mean it essentially just repeats a language and insert the word including revocation, stepping in including through revocation and they would be saying the same thing.

And what we're saying is basically in those places that it's stupid for IANA to act if they don't know what's going on and the stability and security of the DNS is not at risk, it seems self evident that revocation wouldn't be appropriate.

Bill Semich: Yes I still see it as an -- sort of an abrogation of its responsibilities if we put this in here for IANA to say, "Gee, I don't know. Is he competent? Is he equitable? You know, just, honest, I have no idea" and not give IANA the opportunity to say, "Let's look at the input and make a decision" as opposed to "I have no idea; somebody else decide" like--

Becky Burr: Well, I mean I didn't -- I mean I think that those, the question of why, how you would want to set IANA up to be judge and jury of stuff which is going to require enormous fact finding where there's going to be a he said, she said and this is going on and that's going on kind of thing, I mean I think that there's been a lot of attempts to use -- to sort of impose on IANA to do things that properly belong in the courts and my interest in this frankly is to enable IANA to feel clear about things. This is not my job.

Bill Semich: I would feel better if we we're requiring IANA to make this sort of decision to step away and let someone else decide, requiring them to make a judgment on that and make a judgment call if that's required instead of just saying they don't have to do it.

Becky Burr: Okay I should probably be quiet but let me just say it's we have said in the other one that if they don't have the facts it's not appropriate so all we're saying here is if they don't have the facts, it's a fact for revocation is not appropriate. The moment you say IANA has to decide whether it has the facts or not, you put IANA in the position of having to entertain all kinds of situations that it is not in a position to evaluate and I think then we've solved no problems.

Bill Semich: So it is a conundrum; the fact is RFC 1591 does require it to make these decisions. Okay I'll shut up.

Keith Davidson: Okay well I think it's requiring IANA to make the decision where it's empowering IANA to make that decision and try to draw a line between what it would be up to or not. However, I have Chris with his hand raised so, Chris?

Chris Disspain: Sorry yes, well I was only -- I may be redundant now but I was confused as to why previous paragraphs, which basically said the same thing and this (inaudible) so give something context that I'm (inaudible).

Keith Davidson: Okay.

Kristina Nordstrom: It's really hard to hear.

Keith Davidson: I think we got that--

Unidentified Participant: Don't worry about his (inaudible).

Keith Davidson: Okay so I haven't heard any dispute necessarily over anything except really the last sentence, which might be subject to some improvement but does anyone have anything else to raise? It's staff's, Bernie, do you have enough to work on this text or should we leave it as it is and would it be considered the acceptable compromise text as it is?

Bernard Turcotte: I'll -- I don't think there's a lot to be gained from doing a lot more with it at this point. I'll be talking to Becky after the call and we'll see what we can do here.

Keith Davidson: Yes my feeling is that it seems acceptable but it's not as concise or useful as it could be but if there's no strenuous objection, then we could probably live with it. Okay can we carry on then please, Bernie?

Bernard Turcotte: Thank you, sir. I will put down this page and go back to the notes, so we have just finished going through the new text for section 53 413. Section 5351 is final, 5352 final, 5361 final, 5362 we got agreement not on May 9th but on May 23rd on the proposed text. Let's go through that and see if we can get a second agreement 5362.

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. This was generally accepted at our last meeting. Are -- is there any discussion? Over to you, sir.

Keith Davidson: Caught making myself a cup of coffee. Okay, Bernie, questions or comments? If not, then I think we can--

Chris Disspain: Keith, it's Chris, can you hear me?

Keith Davidson: Yes, Chris.

Chris Disspain: Just to say that unless I've -- unless I missed it, the text that Bernie read out is not actually the identical text what's on the screen.

Keith Davidson: Oh.

Chris Disspain: Bernie, you said revoke. If the IANA contractor revokes the delegation it should attempt -- I think you said in collaboration with significantly interested parties and the text that I've got in front of me says with the concerned parties. I don't know which one--

Bernard Turcotte: And I am reading from 4-10-4, which is the modified text, so your reading 4-10-1, which was the original text.

Chris Disspain: Thank you very much. I now understand how the numbering works.

Bernard Turcotte: You're welcome.

Keith Davidson: Okay Bill has his hand raised, so Bill?

Bill Semich: Well, I'm sorry I made the same error. I was going to ask what previous described meant.

Keith Davidson: Okay so now I'll take.

Bill Semich: Apologies.

Keith Davidson: No problem. So now back to the actual 4-10-40, is there any discussion or dispute or disagreement? Can we regard it as accepted text? I am seeing Chris giving that agreement tick, no dissent so--

Cheryl Langdon: Trying to get to some (inaudible).

Keith Davidson: So, Cheryl?

Cheryl Langdon: I'm just -- I was doing the coffee thing just like you were but I am back to the computer now.

Keith Davidson: Okay showing agreement as well. Okay so it looks like we have agreement there, Bernie, so please continue while I continue to make my coffee.

Bernard Turcotte: All right thank you, sir. Section 411 dealing with section 5363 of the text, we have some minor amendments, which were agreed on our last meeting. We probably should go through it to finalize it. I am going to read from section 411-3 at this point, which is the amended text. "The FOI Working Group believes it is consistent with RFC 1591 and natural justice. (Inaudible) the Manager has the right to appeal a notice of revocation by the IANA contractor to an independent body, full stop. Over to you, sir.

Keith Davidson: Gosh we need strong -- more text in order to be able to conclude our coffee making activities.

Bernard Turcotte: I pend on that, sir.

Cheryl Langdon: It's good to see the (inaudible) in priorities isn't it?

Keith Davidson: Well, this early in the morning isn't it?

Cheryl Langdon: Not when I came in--

Keith Davidson: Okay look I am seeing Bill agreeing with the text. I am seeing Maureen agreeing with the text. I am not hearing anyone having any objection to it.

Patricio Poblete: Just a point of clarification please?

Keith Davidson: Sure, Patricio.

Patricio Poblete: Yes for the lawyers on lines and I am sure there are quite a few of, this mention of natural justice, is that a technical term, meaning something that everybody understands the same? I ask because it's -- as it happens right now in (inaudible) through the main newspaper there is a debate that's been going on for a couple of weeks between experts taking sides so whether there is such a thing as natural justice or not. With by--

Bernard Turcotte: Does that involve Nigel?

Patricio Poblete: Yes aren't we taking sides in some unknown debate or something.

Keith Davidson: Not especially. I think it's an accepted common law principal of natural justice but I'll hand over to expert lawyers like Becky to confirm that or otherwise. Becky?

Becky Burr: Could you ask that again? I'm sorry, Patricio, I was not making comments, coffee, but I was momentarily distracted.

Keith Davidson: No that, the term of natural justice, Becky, and whether it's an actual term of art or does it have common law meaning or is it some obscurity we've allowed ourselves to be persuaded to use somewhere along the line?

Becky Burr: Where do we use natural justice?

Unidentified Participant: In many things.

Becky Burr: If you need natural justice it wasn't me.

Keith Davidson: For 11-3 isn't it, Bernie, that--?

Bernard Turcotte: Yes it was originally in the -- it was originally in version five of the document but there was some discussion around the use of "to allow a Manager" and then it was restructured from "to allow a Manager" to "to recognize the manager has the right " but no one said anything about natural justice on our previous call. But of course this came from Nigel yes.

Unidentified Participant: (inaudible).

Keith Davidson: Yes sorry can we go back to Becky firstly and then after Becky--?

Becky Burr: Sorry I -- it could have been Nigel in which case I am sure it means something bright, clear but I mean it just came simply there.

Keith Davidson: Okay back to Patricio.

Patricio Poblete: Yeah would it lose anything if we replaced natural gas here but a word like furnace?

Becky Burr: I'm fine with that.

Keith Davidson: IANA.

Becky Burr: Yes we should probably ask Nigel.

Keith Davidson: Yes can we just put a square bracket around the words "Natural Justice" and refer back to Nigel, Bernie, and see if it is a term of art where I'm fairly comfortable that that's a clause that we use in New Zealand quite regularly in law in court to -- so I have a strong feeling that is a common law principle. Anyway, other than that I see Patricio and Chris have their hands raised. Patricio first?

Patricio Poblete: Yes I forgot to lower my hand.

Keith Davidson: Oh okay thank you. Chris?

Chris Disspain: Thank you. You are right it is a term that's used in Westminster jurisdictions, common law jurisdictions. It's not necessarily defined specifically. It's a general terms that's used to -- as a citizen I have a right to X because it's natural justice. Frankly, I think it's redundant in this clause. What we're trying to say here is that under RFC 1591 there should be a right to appeal. Language doesn't matter. It's the job, whether it's because of natural justice or not so I am not entirely sure what use this -- that the use of those words is that I have no doubt that Nigel will perhaps provide us with some explanation.

Keith Davidson: Okay. Well, Bernie, I think you have enough on that to go back to Nigel and see whether we could drop the term or whether it's really critical to things. Okay.

Bernard Turcotte: Yes, sir?

Keith Davidson: Moving along I don't see any other people seeking the floor so, Bernie, can we move on?

Bernard Turcotte: Yes, sir. Item 412, dealing with section 541 is final. 542 was removed. 543 now becomes 542, was agreed on May 23rd so it needs to be re-read. If the IANA contractor revokes a delegation, it should attempt in collaboration of the significantly interested parties to ensure the ccTLD will continue (inaudible) until a suitable replacement is found. Yes it is exactly the same text from 5362, as is quoted there. If it was a agreeable previously, unless people have suddenly discovered new reasons to comment or object to this, we will take it as okay. Over to you, sir.

Keith Davidson: I see Chris is agreeing with the text. I'm not seeing anyone disputing the text. Martin is indicating agreements so, on the basis of no objection, let's consider it finally agreed.

Bernard Turcotte: Okay. Item 415 dealing with section 544, which was agreed to copy from section 5363, which we've just dealt with, I imagine -- oh and that wasn't -- I copied the wrong one too. I just noticed that. So basically what the text should read is this. I will correct that in the final notes and we should get that right there. Okay so it should read the same thing and we I imagine will have the same problem. Over to you, sir.

Keith Davidson: Yes thanks. We'll keep the spreckets (ph) right there. Chris is indicating agreement and Martin has the same grades so firstly to Martin.

Martin Boyle: Thanks, Keith. Not wanting to sort of throw this thing up to the air too much, but just a simple question on this natural justice, this is a text that's supposed to be being read by people all over the world, certainly got to be understood by the IANA function contractor, who is going by definition got to be based in the (inaudible). Is this that will be understood by somebody in the US because it isn't then I think that would predispose me to want to have it, have this wording removed if it is just as a peculiar London law term of art.

Keith Davidson: Okay. Yes good point, Martin, thank you. Look I think Patricio has just pointed out on the chat, the Wikipedia term "natural justice" is often retained as a general concept in jurisdictions such as Australia and the United Kingdom. It has largely been replaced and extended by the more general "duty to act fairly" and actually I think rather than using a term of art you could use a term of art that also has a plain English meaning, which should be translatable so maybe substituting "natural justice" with "duty to act fairly" gives us exactly what we need here and so I wonder if we could consider that as being the likely amendment that--

Martin Boyle: Sure.

Keith Davidson: Yep.

Martin Boyle: I am almost thinking that we pulled natural justice out of the air as I'll take Nigel's place here for a second. It doesn't show up anywhere in RFC 1591. We are saying that, as it is our remit to interpret RFC 1591 to say that we recognize that the Manager has the right to appeal notice of revocation to an independent body. I am not sure qualifying it really buys us a lot and obviously has caused confusion for people. I'd almost be thinking better to simply remove it.

Keith Davidson: Okay, well I think you have sufficient information, Bernie, to (inaudible).

Bernard Turcotte: I will talk with Nigel about it but--

Keith Davidson: I think you could take it to Nigel that there is significant or there is some discomfort with the word "natural justice" and if he's determined to have a phrase there, perhaps the suggested "duty to act fairly" might be a more appropriate universal term, so I think we'll leave you to walk down that path, Bernie. Perhaps the best conflict ones would be to drop it altogether if you're able to do that.

Bernard Turcotte: Yes, sir.

Keith Davidson: Okay.

Bernard Turcotte: Yes, sir, and we are done.

Keith Davidson: That's it? That's the last of them. If there -- I thought there was one more but--

Bernard Turcotte: Nope.

Keith Davidson: Okay well I think that brings us to the end of the revocation topic unless anyone has anything to raise at this point. If not, we'll finish our meeting 48 minutes early. Our next meeting is scheduled for the 20th of June in two weeks time at thirteen hundred UTC, so unless anyone has anything more, we'll note that next meeting and close this meeting.

So I thank you all for your attendance and participation. Thank you all and we'll see you in two weeks time.

Unidentified Participant: Thanks.

Unidentified Participant: Bye, guys.

Martin Boyle: Thank you.

Unidentified Participant: Bye, thanks a lot.

Unidentified Participant: Thanks.

Unidentified Participant: Bye, everyone.