

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference *4 July 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
Eberhard Lisse, .na
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi

Other Liaisons:

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:

Patricio Poblete, .cl
Frank March, GAC
Bill Semich, .nu

Keith Davidson: Hi, everyone. I think it's three minutes past the hour. So, there's always likely to be of one or two stragglers who will join late. But anyway I think it appears that we do have enough to start our call and I think we should make a start and we'll catch up with any late comers as they come on the call. Kristina, can you run us through who's present and the apologies?

Kristina Nordström: Sure. From the ccNSO we have Martin Boyle, Ugo Akiri, Chris Disspain, Eberhard Lisse, Nigel Roberts, Dotty Sparks de Blanc, and from staff support and special advisors we have Jaap Akkerhuis, Bart Boswinkel, Kim Davies, Kristina Nordström, and Bernard Turcotte. Apologies I've received from Patricio Poblete and Bill Semich. And I'm trying to get a hold of Cheryl.

Keith Davidson: Okay. And I have apologies here from Stephen Deerhake, from Bill Semich, and from Frank March. Just noting that Bill is coming but -- document seems as acceptable as it seems now that he wants to review the file and have a look at anything that changes today. If we could just send it. Any further apologies?

Becky Burr: Becky has joined.

Keith Davidson: Hi, Becky. Anyone else on the call who's name was not mentioned? Okay. We have -- from the 20th -- oh, I forgot to mention the agenda. Sorry, all. Is there anything that should be added or deleted or changed on the agenda? Everyone happy?

Eberhard Lisse: Can we make it scrollable, please?

Kristina Nordström: It is scrollable.

Eberhard Lisse: Sorry.

Keith Davidson: So, confirmation of the meeting report of June 20. Is there any comment in terms of what's been circulated? We have the meeting report.

Bernard Turcotte: We forgot to put in the apology for Kim Davies. I will correct it in the next version.

Keith Davidson: Thanks, Bernie. No other amendments to the June 20 report? Okay. Moving on to revocation. Hopefully with some luck we'll be able to get through the revocation analysis today. I'm very hopeful that we will. Bernie, do you want to step us through where we're at and what needs to be resolved?

Bernard Turcotte: Yes, sir. Just having a bit of a problem getting the document up.

Keith Davidson: While you're loading the document I'll note that Stephen just came on to the call. Stephen, we just noted your apology but I see you're in Adobe Connect.

Bernard Turcotte: And we have the document up. Right. So, let me rearrange things a bit here. Sorry if I'm not at full speed, folks. I wish I could say it's jet lag but it's morning lag. Okay. There we go. Alright. So, the version that was distributed by Keith was version nine from June 27. We've been talking with Eberhard on some possible changes. We'll get to that. Moving on, hopefully the red line will show in this version. Doesn't look like it. Alright. That's unfortunate. Let me pull up my version so I can get to the red line.

Alright. Taking us to section 5322 on this version of the document. So, we had some minor changes in 5322. It involves the manager's failure -- I'll do it from the beginning. FOI working group believes it is inappropriate for the IANA contractor to step in unless substantial misbehavior by the ccTLD manager A) poses a risk to the security and stability of the DNS or B) involves the manager's failure after notice and -- a meaningful was added -- opportunity to cure to perform the

objective requirements, i.e. to be on the internet, maintain IP and email connectivity, identify technical contacts, and to find the country administrator contacts.

So, we've added a meaningful and removed subject previously discussed from objections. And hopefully we're okay with 5322. Is that generally the feeling? I see Al and Nigel have their hands up. Keith? Over to you.

Keith Davidson: Thanks, Bernie. Firstly to Eberhard.

Eberhard Lisse: I don't think this is the latest version that's on the text because my -- the thing you sent to me, my proposed text is not in here.

Bernard Turcotte: On 53221 and 53222, no it's not. That's correct. I was going to get to that. But on the section -- the master section, 5322 I thought that had been fairly steady all the way through.

Eberhard Lisse: It's just difficult for me to compare the original text and this but it looks like it.

Keith Davidson: Nigel?

Nigel Roberts: This is just a plea really. The subject of previously discussed exceptions, it's not really helpful to say that without saying what they are or having that text close by. I wouldn't know where to look from that phrase to find out what they were.

Bernard Turcotte: Nigel, that's not supposed to be there. I'm going to share my screen and bring up the Word version that actually went around. I think that's going to be a lot simpler. For some reason the PDF is not showing properly again. Give me a second and I will do that, share my screen desktop. Okay. Are you managing to see that now?

Eberhard Lisse: Make it full screen on your text so it becomes bigger?

Bernard Turcotte: There we go. Does that help? I can increase the resolution too.

Eberhard Lisse: Perfect.

Bernard Turcotte: I'm working blind now because of course I've lost the Adobe Connect while we're doing this. 5322, you've got the changes there that were presented, a meaningful opportunity to secure and perform objective requirements and we've removed subjective previously discussed exceptions and text to make sure we've got the second part -- so, we're only talking about 5322 here and I'm finally awake enough to be on the right part. Not the subsections. 5322. Are we okay with that? Sounds like we're okay. Okay.

I would suggest that we --

Jaap Akkerhuis: Martin has his hand up.

Bernard Turcotte: Keith? I'm counting on you on guiding me through this.

Keith Davidson: Sorry. I'm waiting for Martin who's got his hand raised. Sorry. I was on mute too. Martin?

Martin Boyle: Good to see we're applying good discipline on this, isn't it? The use of the words a meaningful opportunity. I'm not quite sure I understand what meaningful would be in this particular case, particularly if the objective requirements include being on the internet and maintaining IP and email connectivity. So, the person is not on the internet and is not maintaining email connectivity. What do we see as

being meaningful? What might we see as being meaningful as an attempt for IANA to contact the person? Registered mail?

Eberhard Lisse: We're talking about opportunity to cure, not notification. It's a different thing. Notice is one thing and opportunity to cure is another. And here we're talking about meaningful opportunity to cure -- it's a separate issue. It just means that you can't just say -- You need to fix it by tomorrow or else. If I can't fix it by tomorrow, I need two weeks, then they must -- you understand what I'm trying to say. That's what is meant.

Keith Davidson: Thanks, Eberhard. I don't think that was actually Martin's point though. Martin? Further clarification of what your objection is, please?

Martin Boyle: It's not an objection. It's a request for clarification. It doesn't seem to me to make sense. Somebody has a reasonable idea of how long reasonable would be in identifying a country administrative contact or somebody should actually be able to maintain internet protocol. I don't actually understand what meaningful is but if other people can identify how they'd interpret that, that's actually what I want to hear, thanks.

Keith Davidson: Nigel? Your hand up is not showing but your screen tick is showing. Please, go ahead anyway, Nigel.

Nigel Roberts: Okay. Thanks, Keith. First of all in my understanding of British English and civil service speak, a request for clarification means an objection. But we'll pass on from that. I don't know where the word meaningful came from. I don't think it's unhelpful. To my mind it means more the meaning perfunctory. In other words there has been some suggestion in the past and there was one occasion that I was peripherally involved in whereby the IANA sent out an email which said unless we receive an answer to this email within 24 hours we will do X, Y, and Zed. That's -- to paraphrase a common phrase of Eberhard's, that's not going to happen anymore. I think that's what's meant broadband I don't remember the discussion whereby this came from. But I don't object to it.

Keith Davidson: Would the word reasonable -- reasonable opportunity to cure be more -- I mean, reasonable is quite often used in law.

Nigel Roberts: I don't object to that either. I think they're both helpful.

Keith Davidson: Would reasonable help appease Martin's concern over the use of the word meaningful?

Martin Boyle: I don't know. Because in spite of initial comments, the question was actually meant in a spirit of inquiry, not of challenge. What I'm actually working on is that meaningful could be quite different for some people than for others. Reasonable actually might be slightly better, just due to the nature of the English words. But at the moment you've got something that meaningful or reasonable could stretch out for years if the manager said -- Actually I've got to go and do a full recruitment process in country and that's going to take me a year to go and interview everybody on the island. And something as subjective as meaningful just leaves me sort of wondering -- what does it mean?

Keith Davidson: Sure. I understand. Do you think you could, Martin, do you think you could identify the term meaningful or reasonable or would you have a preference between meaningful or reasonable?

Martin Boyle: I don't have any preferences. I suppose reasonable sounds more reasonable than meaningful which actually sounds fairly meaningless to me. But as I said, what's actually giving me concern is having some feel as to what the word

meaningful -- what a meaningful opportunity actually is in this case. People could turn around and say -- Actually we see meaningful as being this or that there is some requirement on the ccTLD manager to identify how quickly he will be able to remedy the deficit which I suppose would be the other way round in dealing with something which is at the start subjective.

Keith Davidson: I'm happy for the layers in the group to correct me if I'm wrong but I think there's quite a common law understanding of what reasonable and unreasonable might mean in the law and they could be quite usefully contested in any jurisdiction of law if this calls to be tested under certain circumstances. My personal preference would probably be for reasonable over meaningful. However, let's go back to the list. I see Eberhard and Nigel with their hands raised. Firstly, Eberhard.

Eberhard Lisse: I think reasonable is as meaningful as meaningful but I can live with both. So, if we can agree to agree on reasonable today then we can move forward.

Nigel Roberts: I think meaningful is more meaningful than reasonable and it's quite reasonable to put it in but I can live with both.

Keith Davidson: Becky, any objections from a legal perspective? Is there a preference for meaningful or reasonable do you think?

Becky Burr: No. Either works for me.

Keith Davidson: Okay. Could we again agree to the slightly less meaningful use of the word reasonable and change it to a reasonable opportunity to cure? Okay. I think we have consensus there. There are no objections. Can we move on, Bernie, to 5.2. -- it's just disappeared. The next point. Thank you, Bernie. Bernie? You're still on mute, Bernie.

Bernard Turcotte: Here we go. I should be back. I've corrected that to a reasonable opportunity to cure and we've removed that. Given the next two points have a lot of discussion and the few other changes I think should be fairly easy, I would propose to do those first and then come back to this so we can work on those after, if that's okay with you, Mr. Chair?

Keith Davidson: It's fine.

Eberhard Lisse: Sorry, the version on the screen, the text is not the latest.

Bernard Turcotte: No, that's correct, Eberhard. Alright. Next big change was a simplification to 53413. It should be up on your screen now. The FOI working group notes however the contractor will rarely be in a good position to evaluate the extent to which the designated manager is carrying out the necessarily responsibilities of the 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 working group interprets IRC1591 to mean that the IANA contractor should not step in regarding issues of the manager being equitable, just, honest, or acceptance as far as it compromises the stability and security of the DNS in a competent manner, that such issues would be better resolved locally. Now, I think Bill has gone through this and has said he is okay. Over to the floor. Really, I don't think we've changed anything. For some reason given the process we went through it got very Byzantine and we just re-compacted the thing. Even with the repetition we have I think it's a lot clearer. Over to you, Mr. Chair.

Keith Davidson: I see a couple of hands up. Firstly, Eberhard.

Eberhard Lisse: Just a small missing one. In the black text, basically it says responsibility of the operator in a manner that is equitable, just, honest, or -- and then it leaves off a competent manner. I would like to replace a competent manner by just competent.

Bernard Turcotte: I have no issue with that but this text was hammered out with Becky, maybe Becky can speak to that.

Becky Burr: I'm okay with that change.

Keith Davidson: Any objections to the change proposed by Eberhard to change a competent manner to competent. Looks okay to me. No objections I think. Nigel has his hand raised but I think that's for another point. Nigel?

Nigel Roberts: Two things. First of all I think this is a great example of how we can bring clarity from the murk. It's much more simple and clear in its meaning than it was in previous iterations. So, congratulations on that. Secondly, I'm not entirely clear how we reached the interpretation from the source material. I'm not convinced that the policy can be interpreted in this way but thirdly, as I think deferring things to the local side of things is not necessarily a bad thing, I'm not going to take issue with this if everybody else is happy to put this one in. I'll agree to it. I'm not convinced you can actually interpret 1591 in this way. But it's a nice sentiment.

Keith Davidson: Thanks, Nigel. I've taken from that you'll agree if everyone else agrees. I see Eberhard has his hand raised. Eberhard?

Eberhard Lisse: I just noticed that a competent manner appears again in the same context and should also be changed by the objections of competent.

Keith Davidson: I see Bernie's already correcting that along the way. I'm reading it myself and it seems to make sense. Anyone else have any comments? Any objections to that amendment? If not, we'll note Nigel's ascertain and move on on the basis of that agreed change and we'll begin next meeting just to verify.

Dotty Sparks de Blanc: Can you hear me?

Keith Davidson: Yes. I can.

Dotty Sparks de Blanc: You can? This is Dotty. I've been speaking into this phone forever and no one could hear me. I have a concern that has been lingering along and it's possibly been addressed but I don't think so. That is how many languages is this document going to be translated into? And what do we think is going to be the survival of mischief and substantial misbehavior in all the languages that it will be translated into? Because those are legacy words that were spoken in a far different environment than we have now. Has anybody considered what this is going to be, what translation will do to this?

Keith Davidson: That's an interesting point. I'm not sure there will be any formal translation under ccNSO rules. But it's an interesting point in terms of whether it should or should not be. I'm not sure if Eberhard's looking to address that point or not.

Eberhard Lisse: Yes. I just plain don't care what languages it gets translated. I've seen one and it's always been in English, the documents from IANA. IANA functions have always been in English. No matter how many translations, this is the document the IANA function contractor will be held to. The translations are of no consequence to our charter.

Keith Davidson: Just noting though -- thanks, Eberhard for your point of view regarding that -- but I think it's worth noting that people like Patricio who has been participating fairly

continuously on the way through has been looking at aspects of how things might translate into Spanish so there's clarity for Spanish speakers and so on. So, I think, Dotty, there's been some attempt to make sure we're using plain enough English that it can be translatable without too much concern. So, hopefully --

Dotty Sparks de Blanc: I think it would be useful to have somebody. The other thing is with this move to internationalization I don't think everything's going to stay in English only.

Keith Davidson: Sure. But I think using plain English, it translates and reduces the amount of ambiguity. It will be translatable without too many problems into most language. Anyway, sticking to the speaking order, I see Nigel and Eberhard have their hands raised.

Nigel Roberts: Just a procedural point. I understand Dotty's point. The fact is that the working group language is English and we're interpreting an English document and doing the best we can. Eberhard's quite forceful point should be regarded as being slightly more forceful coming from someone whose native language is not English or even bureaucracy. But I'd really rather like to make sure we get on to the two things we've skipped over. I think there's going to be considerable discussion on the two paragraphs we've skipped over. I can, when it gets into the translation area, it's going to have exactly the same problem that governments do and the United Nations. They're going to have to employ not just people who are bilingual, they're going to have to employ professional translators whose native language is the language in which they are translating to and have higher order skills in that language to be able to understand the English translated, the equivalent subtleties in Spanish or whatever.

Keith Davidson: Thanks, Nigel. Let's leave that matter to the side. Bernie, can we continue?

Bernard Turcotte: Yes, sir. So, I'm taking it that with a competent manner change, that we're all okay with 52413, noting Dotty's concern about translation. Then I think that's it. Those were the changes. The other set of changes.

So, back to 53221. As Eberhard pointed out, we see some other text. I didn't include it because we didn't finalize it. We'll go through what's here with what was distributed and then we'll talk about Eberhard's concerns. He did spend quite a bit of time over the past weekend on this. The issues were around the fact that we wanted to address this issue of subject to previously discussed exceptions regarding in country administrative contacts if needed. Nigel had raised that. It was a bit of a throwaway suggestion to include that and define it. So, one of the points was trying to define that. The other point was trying to define what notice as we have here meant because as Eberhard pointed out, there were some issues in the past with redelegation. There was some discussion with Chris that this was different but he felt quite strongly that there needed to be some clarification. We wrote up 53221 and 53222 and sent it over to Eberhard for comment. He came back with some other text and we'll start talking about that.

The original 53221, the requirements for an in country administrator, one, does not apply to delegations made prior to the publication of IRC1591 or, two, the ccTLD corresponding to a country that has no permanent population. In addition, IANA deems if the ccTLD has been contacted to be in country if that contact is subject to the same local law as the ccTLD's relevant country or territory. So, basically you can -- Mr. Chair, we can let Eberhard address his concerns and I'll go digging up the text that he proposed.

Nigel Roberts: Can we see the new text as well as the old text?

Bernard Turcotte: I'll go hunting for that and put it up in a minute.

Nigel Roberts: I've got some serious concerns with the text that's in front of me but I don't want to waste time talking about text that's been replaced or potentially has been replaced.

Bernard Turcotte: Let me see if I can come up with a version --

Eberhard Lisse: You emailed it to me. Why don't you go into your email box and pull the PDF you sent to me?

Bernard Turcotte: I think I've got it here, Eberhard. I'm hoping this will be it. I believe this is the text you're talking about under 53221?

Eberhard Lisse: Yes.

Bernard Turcotte: I had it in the two documents which is why I wanted to read what was sent to everyone. This is what Eberhard came back with in 53221. The requirement for an in country administrator did not appear before 1994. It was first introduced by IRC1591. Therefore this requirement may not be expected of country code top level domains created before the implementation of IRC1591. ccTLDs that represent territories without permanent population will by definition not be able to meet the requirement. This is the second version. Then we started to have some discussions with Eberhard around the meaning of created. Some people felt that if we used created, that when the country code was the root and therefore most of the ISO3166 codes that are currently in use could be interpreted to mean they're not covered by this. Let's be clear here. We're talking about the administrative contact in country requirement. Over to you, Mr. Chair.

Keith Davidson: Thanks, Bernie. I see -- Indeed I have some very specific problems with the word created but anyway firstly I see Nigel has his hand raised, then Eberhard. Over to Nigel.

Nigel Roberts: At this point for some reason Adobe Connect has disappeared on me. It's now saying Connecting, trying alternative server. Is anybody else having problems? No? Okay. Let me see. It might come back on. No. It's not. Okay. Let me see if I can do these two from memory then because it just vanished from my sight as I was about to start. Does somebody see the expression the RFC in the first two paragraphs?

Keith Davidson: Sorry. Nigel, maybe it would be better if we gave you an opportunity to reboot or refile it up?

Nigel Roberts: No. It's easy because these are two extremely quick ones. The expression the RFC in the first of the two paragraphs should be that RFC.

Bernard Turcotte: It doesn't say -- Okay. The publication of that RFC.

Nigel Roberts: Just for clarity. And the -- I'll come back to this. I've forgotten that one.

Bernard Turcotte: I've changed it, Nigel.

Nigel Roberts: I'll come back to the second one.

Keith Davidson: Thanks. Eberhard and Chris?

Eberhard Lisse: Okay. I'd also suggested that we replace the word created by established because that's the word that's also used in that RFC. I'm quite happy with that. I would also be willing to accept if we say established or redelegated. In other words that would take out the ones where -- that would take out your concern.

Keith Davidson: It partly would. Let's carry on listening to the debate. Chris?

Chris Disspain: I was only trying to contribute to the fall of the word created. Eberhard's suggestion of established works as does existed before. Either of those two would work. Or is established in the second version you had, Eberhard? I might have missed it.

Nigel Roberts: Eberhard had established I think as a suggestion which you've got in there, I think, Bernie.

Keith Davidson: I think if you got rid of the first created, established -- question mark -- or. It would read country code top level domain established or redelegated before the publication of that RFC. That I think seems reasonably satisfactory and addresses all the concerns that have been raised.

Chris Disspain: I agree.

Keith Davidson: You'd be happy with that, Chris. I see Nigel and Eberhard have their hands raised. Chris has his hands raised to give agreement. Nigel?

Nigel Roberts: Firstly I'm happy with 53221. And that's now got the thing in front of me so I can make the quibbling call on 2 when convenient.

Keith Davidson: Thanks. Eberhard?

Eberhard Lisse: Again I can live with established or redelegated to take your concern out of it and since I proposed the language obviously agree whenever it comes up.

Keith Davidson: I think Nigel's still got his hand up for the next bit?

Bernard Turcotte: There's a question from Kim in the chat.

Chris Disspain: That's what I was bringing up, that's why I raised my hand.

Keith Davidson: Okay. Thank you.

Chris Disspain: We addressed that.

Keith Davidson: Kim is saying there's no sponsoring organization in RFC1591. The concept was introduced later.

Chris Disspain: No. That doesn't exist.

Kim Davies: My question was does that section mean any TLDs that existed before 941, that requirement applied in perpetuity or any manager prior to that must meet the requirements?

Chris Disspain: The manager, I believe.

Eberhard Lisse: Yes. That's why I put in redelegated because that takes the creation or existing out of it. For example .PR, .MA were created and established before 941 and have the same managers. So, that would apply. Some others were established -- .PE was established before .AU was established before but change managers afterwards so that does not apply. Never mind --

Nigel Roberts: What you're typing in is changing the meaning totally.

Eberhard Lisse: I don't want the word manager in there.

Keith Davidson: Let's disregard that. That's Bernie working away in the background. Back to Kim's point, does that answer your question fully, Kim?

Kim Davies: I think so. The wording reflects that.

Chris Disspain: I think it pretty much does, Kim. It's very clear. It says established or redelegated before the publication of. That makes it fairly clear.

Kim Davies: It may be established or redelegated prior but it doesn't make clear whether that exemption stays with the domain or it's just limited to that particular manager.

Chris Disspain: That point I do take. Keith, I'll shut up and start working on something quietly, some words here, and get back to you.

Keith Davidson: Thanks, Chris. I understand Kim's point. I think the issue for me here for example would be that Dotty was delegated initially in 1988. The current organization was redelegated in 1995 and the current organization fully subscribes to RFC1591 being the guiding principles for the operation of the ccTLD. So, even though it was created or established before RFC1591, Dotty has changed. The redelegation answers that question for me. Whether we could introduce greater clarity to the text or not given how close we are to agreement on it and the relative ambiguity of it, we should maybe test that a little bit more. But I see we have a number of hands up now. Nigel, Martin, and Eberhard. Firstly, Nigel.

Nigel Roberts: First of all I agree with what's in front of me. If we start talking about sponsoring organizations, this will not finish in two meetings.

Bernard Turcotte: We're not talking about sponsoring organizations.

Nigel Roberts: I heard sponsoring organization mentioned by Kim. If we --

Bernard Turcotte: Kim wrote that down for me. Take that off the table.

Nigel Roberts: I like what I see. I think any attempt to refocus it is going to actually take a lot more time and we'll end up with something slightly grotty in front of us.

Martin Boyle: Thanks. On the redelegation proposition we put in, would it be easier to say last redelegated because it might have been redelegated before the publication of RFC1591 and then re-redelegated afterwards. So, it just seems to me it's not quite as clear as it should be.

Keith Davidson: Thank you, Martin. I think that would help clarify Kim's issue. It certainly helps me. So, the suggestion is we add the word last before the word redelegated. Can we discuss that as a possible variant to the text. I see Eberhard and Stephen. I see Chris agreeing to it. Over to Eberhard.

Eberhard Lisse: Martin's proposal works for me. Because that captures what I wanted to say. We could also put it in a non-negative way, say the requirement may only be expected of ccTLD levels established or redelegated after the redelegation. But putting last in there captures it exactly. We can use that. Actually it's a little bit better. We have redelegated after the creation. It makes sense because if you redelegated while RFC1591 is in force it automatically means you're bound by it. It makes sense. I'm for last.

Keith Davidson: Excellent. Thanks, Eberhard.

Stephen Deerhake: I concur. I'm endorsing the text as I'm watching it being scribbled out in front of me.

Keith Davidson: Excellent. Nigel? Last comment on this I think?

Nigel Roberts: I have a mild preference for what was presented in front of me before the addition of the last but so long as this is the last change to this text I concur.

Keith Davidson: The last last. Okay. I think we have consensus over 53221 as it stands now. Is there any objection? Eberhard is ticking. Chris has an agreeing tick. I'll propose that is consensus. Bernie, we have agreed to the text here. Can we move on to point two?

Bernard Turcotte: Thank you. 5322. We'll go through Eberhard's version because I think Becky and I after going through it thought we were okay with this. The IANA contractor and just to put it in context, we're trying to rest what the context of notice in 5322 meaning after notice. So, we have the IANA function contractor and the ccTLD manager should advise how they wish to be given notice. Where no prior mechanism has been established, such notice should be at least what is acceptable between party and international private law at a minimum, including the use of registered recorded delivery mail. For the refusal or failure of notice to respond to such a notice may not be taken as consent. However, such failure or refusal will be a factor when considering other such obligations of the ccTLD manager, for example misbehavior. Quote, bracket, full stop. Over to you, Mr. Chair.

Keith Davidson: I see Eberhard has his hand raised. So does Nigel. Nigel had his hand raised first.

Nigel Roberts: Again, my connection to the Adobe room has bounced. It's just coming back. I had two challenges or objections to things in here. The first is the word notice is misspelled. If we can correct that, please? My other objection is the phrase failure of refusal. Can we replace that with failure or refusal please? Sorry, those are big objections, I know.

Eberhard Lisse: I was going to object to my own misspellings because it's my original text as well. I have looked in fact at the recent new registrar agreement, they have got a notice provision in there that is more or less reasonable. My plan eventually is to amend my exchange of notice saying a similar exchange there so that we have that -- I think it's at least for the ones who are communicative and that I can -- the function can reach, that will solve that problem. It will not solve the problem for the ones that are disappearing in front of you. But then we must go through the motions a little bit harder than in the past. When in the past nothing happens then at least we can consider it a relevant factor.

Nigel Roberts: Will it solve the problem for those who are over communicative?

Eberhard Lisse: (laughter) It depends on how we define notice.

Keith Davidson: Excellent. Okay. Any further comments? Any further discussion? Martin?

Martin Boyle: I'm feeling a little bit concerned about this wording we keep removing, how it is in place, quite a significant opportunity for a ccTLD manager who is being asked to put something right what is happening around them. I recognize the use of the word in the first part about it being essentially normally effected terminology. The second part, the failure or refusal to respond, not being taken as consent, that seems to me to need everything and a complete -- I'm not sure how in that particular case the manager would be able to take things forward. I'd like some clarification on that, please.

Keith Davidson: That's a good point. Chris?

Chris Disspain: I may have misread it but I thought it effectively splits into two. So, the IANA function contractors and the ccTLD managers should advise each other how they wish to be given notice. Where no prior mechanism has been established it should be at least this. Then for the avoidance of doubt, failure or refusal to respond to such a notice I thought only applied where such notice had been agreed. There's a huge echo here I'm getting. But I'm quite pleased with it.

Keith Davidson: I think Nigel is -- thank you.

Chris Disspain: So, I think Martin has a point. I'm not saying it can't be answered. But the avoidance of doubt as opposed to any notice, even notice by agreed -- there it goes again. Then Martin has a point that needs to be sorted out.

Martin Boyle: Chris, can you clarify that?

Chris Disspain: It seems to me the first sentence is very clear. It says I agree with IANA.

Martin Boyle: It's not very clear where you're going for the avoidance of doubt.

Chris Disspain: The question is does the avoidance of doubt sentence apply to both of the proceeding sentences? Or just the second sentence? If it applies to the sentence the IANA function contractor and the ccTLD manager should advise each other how they wish to be given notice, then it means that I tell you -- we tell each other how we should give notice and then when I'm given that notice my refusal, my non-response is not -- is outside. Martin's point is valid on that basis.

Keith Davidson: Under those circumstances would it be better to have the first sentence as points to and take the rest of the wording and put it in point three?

Chris Disspain: It depends on Eberhard's intention, Keith. If Eberhard intends to the avoidance of doubt sentence to apply to both circumstances then we need to deal with it in a different way.

Keith Davidson: Okay. Let's go to Eberhard.

Nigel Roberts: Can I get my point in before you do that? First of all, Chris is right in spotting the ambiguity.

Eberhard Lisse: My hand was up for a long while.

Nigel Roberts: So was mine.

Keith Davidson: Sorry, Eberhard. Nigel was first on the list. It's not a competition. We'll all get a chance to get in our points.

Stephen Deerhake: Chair's prerogative.

Keith Davidson: Please continue, Nigel.

Nigel Roberts: First of all, Chris is right to point out some ambiguity in this. But it's irrelevant because failure or refusal to respond to any notice can never be taken as consent by definition. This is nothing to do with this drafting or anything. It's a general principle. If I don't respond to something, that's not consent. It might be misbehavior. It might be rudeness. It might be anything. But it can never be consent in any circumstances, in any part of the world.

Keith Davidson: Thanks, Nigel. Eberhard? Hello? You're on mute, Eberhard.

Eberhard Lisse: There's this button on the microphone that goes off every once in awhile or if I start shouting too much. That's exactly the point. If the manager says I refuse to reply, I refuse to do what you say, it cannot be consent. If you send me a registered letter and I don't reply, it means I don't reply. It doesn't mean I agree with what you're saying. The IANA function has in the past told ccTLDs if you don't respond by a certain date it will be taken as consent. In the AU redelegation, in the Canadian redelegation they both stated the previous manager became uncommunicative and therefore it was taken as consent and that's the issue I have with this. It doesn't matter. If there is no consent it goes in the uncontested redelegation methods.

Bernard Turcotte: I think that's valid.

Eberhard Lisse: And if there's a substantial misbehavior consent doesn't matter. If failure to communicate exists, it's a further factor that can be taken into consideration in the proceedings.

Keith Davidson: Where does that leave us? I've gotten lost in where we are in terms of is the text okay where it is? Or are there objections? Can someone help me clarify what's still wrong? Chris and Nigel have their hands raised.

Chris Disspain: Keith, I agree with Eberhard's interpretation. Martin's point is unanswered -- sorry, I'll rephrase that. The question now is if Martin's point is valid, if a manager simply does not respond -- intentionally does not respond then what happens? His concern was that seems to disappear into a hold. I think that's where I disagree with Martin. It doesn't. I think what happens is that a failure to respond means that you are now dealing with misbehavior and a failure to continually respond is heading towards substantial misbehavior. I think you deal with it that way. And so I'm prepared to accept that what we're talking about here, the wording we have here works.

Keith Davidson: Next, Nigel.

Nigel Roberts: Firstly, I agree with everything that Chris has just said and secondly, if you are looking for some assistance in the matter I think simply substituting the word such with the word any fixes the apparent ambiguity.

Keith Davidson: There's the suggestion to substitute the word such with the word any. Stephen?

Stephen Deerhake: I was endorsing Chris's discussion and I'm doubly endorsing Nigel's discussion because I think that wraps it up quite nicely.

Keith Davidson: I'd be interested in hearing back from Martin his feeling as it stands now. If you're there, Martin?

Martin Boyle: Yes. I'm still here. I'm still reading and rereading the text. I think I understand.

Stephen Deerhake: I think you're there. I think you've gotten what you want.

Martin Boyle: I think I understand the points that have been made and that would seem to address my concerns. But I think I would like to have the opportunity of rereading later as I am -- respond to my concerns. I suppose really what I am actually concerned about is that if a ccTLD manager from the start refuses to have any communication with IANA, then that leads to a problem but then as Chris has just pointed out, as Eberhard has just pointed out, that would still allow the IANA to turn around and say -- okay, in spite of the fact that you're not communicating, you're in a point of misbehavior and therefore we go ahead with forced resignation from IANA. The implication of that I'm not sure I properly understand yet.

Keith Davidson: Thanks, Martin. We're certainly going to have a second reading. We're not going sign off on this tonight.

Stephen Deerhake: Can we go back and try to narrow Martin's concerns?

Keith Davidson: I have a speaking list. Let's make our way through and see if we can get any --

Bernard Turcotte: Keith? The scribe's privilege here. Are we talking about one any? The first any? Or the second any? For Nigel.

Eberhard Lisse: I think we should talk about both.

Bernard Turcotte: That's why I put both in. But I want to make sure it's comfortable for everyone. So, we would replace all such by any?

Nigel Roberts: Yes.

Bernard Turcotte: Thank you, sir.

Keith Davidson: Nigel is not objecting.

Nigel Roberts: But you have to take the a out. It's not any a notice. It's any notice. The a has to come out.

Keith Davidson: I'd really appreciate one speaker at once in an orderly fashion. Because it's very difficult to hear. Once you start talking it cuts out anyone else's voice from me being able to hear them. I only get half words coming through. Eberhard has his hand raised. Eberhard?

Eberhard Lisse: I think we should take the second any out and just leave failure of refusal because it makes more sense. But I'm happy with what Martin is saying. The RFC clearly states the manager has to inform the next higher authority about what's happen, keep them apprised of the situation if I'm not mistaken. I can look it up. If somebody says to IANA go and do an initial check on yourself, that's misconduct if they refuse -- if they fail consistently to communicate and fail to reply to a proper served notice, that's misconduct. Okay? It will not apply to ccTLDs who enter into -- who informs ICANN how they want to have it done. Because that implies they want to be given notice. They will respond and if they don't they refuse to do it --but these are separate issues. It's not consent and like Chris said they should be dealt with as separate issues. I have no problems with what Martin is saying that consistent failure to communicate is misconduct and should be acted on accordingly. But that doesn't mean if somebody has email issue or internal strife issues. Clashes abound. Yesterday in Egypt, a new government. That can't be held against them in any way as consent.

Keith Davidson: Fair enough. I think that's covered in the consent document anyway. Stephen?

Stephen Deerhake: Can we engage Martin again to get him to finesse what his issue is with this because it would be nice to wrap up 53222.

Keith Davidson: I think we have. Martin, that's the point of saying he has accepted the text but wants to reserve for a second reading with the way it stands now. Please correct me if I'm wrong, Martin?

Stephen Deerhake: Where does that leave us? Do we reread again in Durbin?

Keith Davidson: Because this is virtually new working tonight I think it has to go through another reading.

Eberhard Lisse: I agree with that.

Keith Davidson: We appear to have achieved consensus as we stand right now and we give everyone the opportunity to review it, any improvements to the text obviously would be useful. I think that's as far as we can go with that at this point.

Stephen Deerhake: Cheers, Keith. That's good for me.

Keith Davidson: Thanks, Stephen. So, Stephen has taken his hand down. Eberhard and Nigel both have their hands raised.

Eberhard Lisse: Martin, can you -- if you have wording that improves on this send it to the mailing list before Durbin so we can get it done in Durbin. It's like a second or third draft but maybe we can put a little bit of fine tuning on it as long as the meaning is what -- the actual wording I don't have an issue with.

Nigel Roberts: I was going to say something entirely similar. Let's take this one paragraph and see what we can work on. I don't mind doing it on the wider list. Let's get something we're all happy with. I know Martin's happy now but he wants something quite rightly to take the time to digest over the next week or so. If there's anything that comes up, let's not do anything until we meet face to face. Let's go to Durbin with something cooked, not half-cooked.

Keith Davidson: I'm prepared to take your directions on that. I'll put the challenge to Martin. Martin, if I'm rereading in the cold light of day in the next couple of days, if you're still unsatisfied in any way with the text, could you please post to the list your unhappiness and any suggested changes and let's try and see if we can go into Durbin with full resources. Martin?

Martin Boyle: That's fine but I would appreciate having a copy of the text as it now stands in writing. I don't know how I missed it but both the 53221 and 53222 paragraphs as they were presented on the screen to us today were entirely new to me. I hadn't seen the earlier drafts. So, whether I just missed an email from Eberhard or not I don't know. I have no copy of this material electronically or on paper. I would appreciate having a copy and one that I can share around with colleagues here as well.

Keith Davidson: Sure, Martin. Just noting this came about as text that Eberhard had put out with Bernie. It wasn't actually on the list prior to tonight. You haven't missed anything. It just wasn't -- it was late. And certainly I'll commit Bernie to circulate the latest agreed document to the list immediately after the meeting. So, yes. Chris has his hand raised.

Chris Disspain: I'm sorry to do this. I need clarity on this and I'm not clear. I'm comfortable with the sentences and the words. I get it. But unless I misheard Eberhard, what he said and I agree with him, is that where you have agreed on how you're going to get notice with the IANA function contractor, the avoidance of that sentence does not apply to you because you've already agreed that notice should be by camel or whatever it may be. I don't think that's clear from the current paragraph of 53222.

Keith Davidson: I'll go back to my suggestion earlier. I think if we broke it and started with the where there's no prior mechanism sentence to point three, I think that brings the clarity to -- that would satisfy everyone. However, I see Eberhard and Nigel have their hands raised.

Eberhard Lisse: My point is that failure of refusal to respond cannot mean consent. It can mean misconduct but it cannot mean consent. We have discussed the consent like

Becky said in the consent and redelegation document. Non-refusal is not consent. That's what we discussed and I just wanted to restate this here. Because you're right in a way. How does the pre-agreed mechanism help us? It would take doubt out of most ccTLDs that are communicated because we know we have a certain way and that's the way it is and no problem. It gives more security. But still, if you don't reply it doesn't mean you accept it or consent to it.

Nigel Roberts: I can see why Chris is belaboring this to a little extent, just trying to explain what I said a little bit more. For the avoidance of doubt -- the sentence that starts with the avoidance of doubt is stand alone in my view. It applies to everything. If you have notice, then it's clear when somebody's refusing. But the point is that refusal is never consent. It might be something equally bad or equally leads to a change in manager such as substantial misbehavior but it's a basic principle. Simply not answering cannot be taken as consent. It can only be taken as a lack of answering.

Eberhard Lisse: Thanks, Nigel. Stephen now has his hand raised and Eberhard.

Stephen Deerhake: I concur with what Nigel said and also previous comments. I really think we need to endeavor to get this put away prior to Durbin. I encourage Martin to take it back to his management if he feels he needs to do so and get some endorsement on this language. Because I think this is where we need to be.

Keith Davidson: I think Martin's undertaken to do that.

Stephen Deerhake: I'm just impressing upon him that we need to do this and all of us. We need to nail this one down on the list. We're not going to get it nailed down tonight but we need to get it nailed down before Durbin so we have this one done before Durbin if at all possible.

Keith Davidson: I think we're chasing Chris's point rather than Martin's point for the record.

Martin Boyle: I'm comfortable with how it is now. I've said that in the chat room.

Keith Davidson: Eberhard?

Eberhard Lisse: I just wanted to point out that Chris now agrees with the paragraphs. But also we need to put this to bed. In other words I would like to have this final in Durbin so we can say in Durbin it's done. So, if there's changes to the language we need to discuss this beforehand. I don't want to put pressure but I'd like to point out we have two weeks and we ought to be able to come up with something we can achieve consensus on on the list so Durbin we meet for a final time and are done.

Keith Davidson: Yes. We've been on this particular topic for more than six months. Nobody would like to get over this hurdle more than me.

Eberhard Lisse: Kim mentioned in the chat room whether it was expected that notice protocol needs to be mutually agreed between the ccTLD manager and the function contractor. Basically there's an issue that's been wrangled with. I personally think that if the function contractor should not be in a position to tell the ccTLD what should be acceptable to the ccTLD because the situation may be different the other way around. As far as I'm concerned, that's why we put the guideline in as long as it's reasonable. If I say I want it done in a certain way, maybe for example it must be done on paper with black ink, signed, blue ink is legally not valid. Just as an example. That's an issue we might need to put in there. I don't want one factor to be able to hold the other side sort of up in a way if I don't agree with the way I have to give notice to you as long as it's reasonable. Therefore I think 253 ccTLD managers are reasonable people. Most of them at least. So, nobody is

going to make a big drama about such a protocol. I for one will go by something that is extremely similar to what's in the registrar agreement because it makes good sense.

Keith Davidson: Thanks, Eberhard. Kim?

Kim Davies: Yes. I think my concern is might all agree that the managers are reasonable people but we might give notice that a particular ccTLD manager thinks it's appropriate and reasonable that IANA must hand deliver notice to them in person by some mechanisms for example which we would not be able to do. So, in the absence of a definition of what's reasonable, it seems to me that the IANA functions shouldn't need to widely accept anything you can imagine they could tell us for the mechanism to receive notice.

Keith Davidson: That could be difficult to lean to speak in smoke signals and so on.

Eberhard Lisse: This can be solved. If we take out where no prior mechanism has been established and uppercase the S in such notice then we say we have a minimum standard that both parties should agree upon.

Keith Davidson: Okay. I think Chris is indicating some agreement with that.

Eberhard Lisse: Kim's point is valid but we can solve it by defining a minimum standard.

Keith Davidson: Thanks, Eberhard. I think we -- Bernie's noted that and taken to circulate this text immediately after the meeting to the list. So, let's take this one to the list and see if we can nail it on the list. I think we're just a hair's breadth away from final consensus. Let's look at it in the cold, hard light of day and deal with it on the list. Bernie? Do we have more text to debate tonight?

Bernard Turcotte: No, sir.

Keith Davidson: Okay. Are there any other comments in terms of the revocation document then?

Stephen Deerhake: Should we not try to nail this tonight and get it done with?

Keith Davidson: There are a lot of people not on the call tonight. I'd like to give everyone the opportunity to comment.

Stephen Deerhake: I defer to the Chair on that.

Keith Davidson: As soon as Bernie has posted to the list I will follow-up, urging people to try to agree so we can go to Durbin.

Stephen Deerhake: It would be lovely to have this nailed down on the list.

Keith Davidson: On page two, this is only the analysis page of revocation. We still need to go back to the revocation chapter and deal with it once we've agreed. So, we're not over the revocation topic entirely at this stage either or by Durbin. But I think if we can get this nailed down --

Stephen Deerhake: I'm pushing because we're so close.

Keith Davidson: Nobody wants it more than I do. I think everyone on the call understands. Let's deal with it on the list. I'm sure everyone on this call is committed to doing this. Can we move ahead on the agenda? We have some -- any other business? We have to provide a progress report for Durbin. Unfortunately we didn't get our draft for this call but I think we'll get a draft from Bernie by tonight? Over the next short while we'll put it out on the list for comment. I think it's essentially a chair report

on the progress of the group and it's really binary. I always appreciate the opportunity for this working group to make comment on it. We'll get it to the list before we finalize it for Durbin if that's okay with everyone. I'll take silence as assent.

We do need to discuss the GAC engagement for Durbin. I'm fairly keen that at a very minimum Becky and Bernie, Bart and myself should meet with Suzanne and Frank in Durbin quite formally to kind of nail down that we can see we're coming to a conclusion on revocation and we need to get the GAC engaged in this group. So, I'm not sure what more we can do. Certainly I've been putting it to the ccNSO council and the joint GAC ccNSO position which would be discussing any progress we've made. I see one hand raised. Nigel?

Nigel Roberts: First of all, I very much encourage that engagement and the group you've proposed to put forward. Secondly I'd comment in passing that the lack of GAC engagement of the past several months I think can only be taken as consent to our approach and way forward. I think the GAC have had a lot of problems -- maybe not problems but work to do with new ccTLD staff and I think the relevant people, obviously they're on the group, part of the group, are keeping a watching eye on at least the scribe's work and the outcomes of this. They do pop up from time to time. So, this detail, they must be reasonable aware of what we're doing.

Chris Disspain: Wouldn't that be like no response is consent, Nigel?

Nigel Roberts: There's a point to it. Yes. Silence cannot be consent. That's my point. The engagement that the chairman proposes has to be done. We can't let them drift away and not participate at all. Please, I welcome that.

Keith Davidson: Thanks, Nigel. Stephen?

Stephen Deerhake: Keith, do you have any sense from Frank as to what his feelings are here going on? He's not actually participating but he's obviously lurking.

Keith Davidson: I think Frank did put in an apology for today's call which is a good sign that he's ready to engage but I think we've been stuck on a topic that may have been not of the highest interest to the GAC until we get some text that's agreed. I think having gotten very close to this point he's probably ready to reengage. Taking Nigel's point, they've been somewhat distracted with the new gTLD process and have decided to make that their sole mission and endeavor over recent months. To the extent we didn't here GAC at the ICANN meetings, I think the relationship suffers when we don't meet in all sorts of ways, not just the framework of the interpretation working group. But I think Durbin will be a good opportunity to reestablish that relationship and continue along. I think if we have got through our work there will be a greater willingness for Frank and Suzanne to reengage. I'm confident there are good reasons and we've been stuck and there hasn't been much reason to connect but now the time has come where we should.

Stephen Deerhake: Except when we come to agreement on principle points and they suddenly barf at us. What do we say in response? You guys should've been there. But you're not there, haven't been there. And now you're objecting to it. What do we do about that?

Keith Davidson: Of course there's always the chance the GAC or someone in the GAC will object to something you've spent many hours debating along the way too. That's just the multi stakeholder model of inaction, isn't it?

Nigel Roberts: I'm confident we've done our work so well there will be little to object to.

Keith Davidson: I'd like to think so too.

Stephen Deerhake: Let's hope. Thank you, Keith.

Keith Davidson: Thank you, Stephen. Any other comments in terms of GAC involvement? If not, I don't think there's any hands up at the moment. My Connect is playing up a little bit here but I see no hands raised. Anyway, okay, moving on. The other item of any other business was to work on the meeting program from Durbin to Buenos Aires. I'll continue working on a schedule recognizing that there will be changes to the planetary times by November with some people moving into summertime and some people moving out of summertime. So, I'll build a schedule of course for us to discuss and agree on in Durbin. And if there's anything else? Any other comments? Any other business from anyone else? If not, thank you, all, for your participation. I think we've made great progress tonight. We're just a hair's breadth away from nailing this. Thank you for your participation and contribution. We'll see you in Durbin. Bye, everyone.