

TRANSCRIPT

Framework of Interpretation Working Group Telephone Conference

21 February 2013

Attendees:

ccNSO:

Ugo Akiri, .ng
Martin Boyle, .uk
Becky Burr, NomCom (Vice Chair)
Keith Davidson, .nz (Chair)
Chris Disspain, .au
Daniel Kalchev, .bg
Eberhard Lisse, .na
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi

Liaisons:

Maureen Hilyard, ALAC
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:

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

Apologies:

Desiree Milosevic, .gi
Stephen Deerhake, .as

Keith Davidson: Okay, everyone, I think it's two minutes past the hour, so we should probably make a start. And, Kristina, can you give us a list of those present and apologies?

Kristina Nordstrom: Sure. From the ccNSO, we have Martin Boyle, Becky Burr, Keith Davidson, Chris Disspain, Eberhard Lisse, Paulos Nyirenda, Patricio Poblete, Nigel Roberts, and Dotty Sparks de Blanc.

Bernard Turcotte: Good morning, Kristina.

Kristina Nordstrom: Good morning, Bernie.

From liaisons, we have Maureen Hilyard, and Cheryl Langdon-Orr, I think, has connected. Has she? Or she will in a minute.

Chris Disspain: You don't have Cheryl yet. She's sitting right next to me and, currently, is not connected, Kristina.

Kristina Nordstrom: Okay. We're working on it. From staff support, we have Jaap Akkerhuis, Bart Boswinkel, Kim Davies, Kristina Nordstrom, and Bernie Turcotte.

And apologies from Desiree Milosevic and Stephen Deerhake.

That's all.

Keith Davidson: Okay. Has anyone else received any further apologies? If not, I think we can confirm the agenda, unless anyone's got any objections. It was on the list for a few days, and nobody raised anything on list. So we'll proceed on that basis. Can we have confirmation of the meeting notes from the 29th of November, showing how long ago it has been since we met. But those meeting notes have been circulated, I think, three times to the list. So does anyone have any issues that aren't otherwise covered on the agenda? If not, can we-- I thought, agenda-wise, we might move to the new document that Becky and others have been working on (inaudible).

Bernie, do you want to take us through the analysis document and see how we go on a piece-by-piece approach to it?

Bernard Turcotte: Yes, sir. All right. Let's get that document up. Now I'm (inaudible).

Unidentified Participant: I'm sorry. That (inaudible) is not working now.

Cheryl Langdon-Orr: Hi there. Am I in? Yes, I seem to be in the call. Yea!

Bernard Turcotte: All right. My speaker was off for a few minutes when I started the call. I missed the introduction to this document.

I think, following our last few meetings and discussions around the text, there was obviously some problem for some people understanding how we were proceeding. And Becky had had a desire for a long time to restructure the text

because, to her lawyer's mind, it didn't work properly, as opposed to my engineering type mind, which I had to agree with. I mean, the origin of the document was our standard divide-and-conquer approach and was never meant to be final text. It was meant to be an aid in us understanding the sub-elements, so we could get to something.

Becky Burr: My problem was actually that I didn't have a long enough attention span.

Bernard Turcotte: Basically, after some work over the last few weeks, Becky was kind enough to actually take it on and rewrite it.

So, as far as I'm concerned, the overall thrust of the document or meaning of the interpretations we're presenting has not really changed. And it's really about how to present it and make it more sensible for everyone. So let's go to it.

Any other comments before I start going through this, Becky?

Becky Burr: No.

Bernard Turcotte: Anybody else?

Keith Davidson: I think Nigel has commented in the chat that 5.1.1 and 5.1.2 should be in the present tense. So we'll note that when we get to it.

Bernard Turcotte: Right. Okay.

So, revocation, our favorite topic of discussion for the last eight months. We start by formal actions by IANA contractor, section 5.1. RFC-1591 identifies three formal mechanisms available to the IANA contractor - delegation, transfer, and revocation. The FOI working group has interpreted delegation to mean, and we haven't done that yet.

The FOI working group interpreted RFC-1591 to require the consent of an incumbent manager to any transfer of the ccTLD. We have done, published, et cetera.

5.1.3. The working group interprets the term revocation to refer to the process by which the IANA contract manager rescinds responsibility for management of the ccTLD from an incumbent.

5.1.4. One assumes the ccTLD manager engaged in substantial misbehavior or persistent problems in the operation of a ccTLD is unlikely to consent to the transfer. In the event, informal efforts to address problems are unavailing, the only formal mechanism available to the IANA contractor to deal with intractable problems is revocation.

So that's our section 5.1 that restates all the things we had in that original section 5 dealing with revocation. Are there questions, comments?

We have Nigel's-- (inaudible).

Martin Boyle: Me or Nigel?

Keith Davidson: Martin.

Martin Boyle: Okay. Just a little question. Firstly, the title has changed. I'm not particularly (inaudible). It's just that it might be a little bit more comfortable to know where this section's going to.

Secondly, I'm assuming that this section 5 replaces all the existing section 5, up to and including section 5.3.

And, then, on this formal actions by IANA contractor, the 5.1, I'm left a little bit unsure as to exactly what 5.1.4 really means because the only formal mechanism available to the IANA contractor-- The informal paper that we discussed at an earlier meeting covered separately the role of the GAC principles. And what I'm hearing, I think, is that the IANA contractor is being separated-- essentially, the condition in RFC-1591 is being separated completely in 5.1, which almost, then, implies that 5.4, which is something we haven't discussed yet, isn't included in this analysis.

Becky Burr: Bernie, do you want me to take a shot at that?

Keith Davidson: Becky, yes, please.

Becky Burr: I think that the title is something that can be fixed. But I do think that you're right. It's to replace section (inaudible) through 5.3. I don't think that there's additional, formal role-- I mean, this sort of formal-- this concept of a formal role was something that was in our last version. It didn't really talk about it in that way. It said, basically, RFC-1591 mentioned these three things. And so all that was meant to do was capture that. While there are lots of other-- and we get to that later-- stepping in trying to work with all of that (inaudible) formal role, RFC-1591 creates these three distinct operations.

I have to confess I didn't go back to the GAC principles, but I don't recall an additional function or authority being referenced there.

Keith Davidson: Thanks, Becky. Did that answer your question, Martin? And Nigel now has his hand raised. So, Nigel?

Nigel Roberts: Hello. Thanks. I missed what you said because (inaudible) saying your line has been un-muted. So I didn't know you called on me. Was that correct? You called on me?

Keith Davidson: I did. You had your hand raised.

Nigel Roberts: Yes. That was very quick. Thanks. Good timing.

From reading the discussion in the chat, I think we do have an issue that we need to-- about the introduction of the word IANA contractor, because that is a modern term, and, as Kim rightly said in the chat, it makes the document not interpret the original document but ties it to the current position, which might not be the position in five years' time. And it certainly appears to import the NTIA contract into the interpretation of something which, quite frankly, in 1994, was not-- it was not in view. I'd really like to make this more general and more objective. I understand Eberhard has an objection to the use of the term IANA to mean (unintelligible) or ICANN or whatever. And I don't know if there's a way to finesse that. But I do know, in (unintelligible) four named individuals that IANA would be fine just seeing those four individuals on the basis-- in 1996 of that case.

So can we try and do something that's helpful? We know what we're talking about. We don't want to be distracted by the fact, whether we call it-- somebody objects to the use of the word IANA or somebody else objects to the word IANA contractor. Can we sort of take this out altogether and say "formal action" and that's it? RFC-1591 identifies three formal mechanisms that are available - delegation, transfer, and revocation-- and try and finesse this in the English?

Keith Davidson: I think Eberhard's suggesting why not use the text from the contract.

Nigel Roberts: I object to that.

Keith Davidson: I assume that means the NTIA contract.

Nigel Roberts: I totally object to that because the contract did not exist in 1994.

Keith Davidson: Okay. I can understand the issue.

Chris Disspain: Keith, it's Chris, and I'm not on adobe. I'm in the middle of a-- sitting outside a function here in Sydney. So I apologize if there's any noise.

I'd just say I understand Nigel's point. I understand Eberhard's point. I understand Martin's point. I recommend that what we do is that we put definitional issues, and I would put that, whether we use the term IANA or IANA contractor or whatever it is, into the definitional issues, what is meant by IANA in RFC-1591 and so on aside to deal with when we get to the definition section of this report, which I believe we've put back to the end, and try and concentrate on the actual stuff that we're saying rather than worrying ourselves right now about the term. So, in UN terms, what we would do is put square brackets around the term IANA contractor and just get back to it when we need to.

Keith Davidson: Okay. I think that was exactly what I was going to suggest. And I think it is quite important to try and deal with the spirit of what's in front of us rather than getting hung up on individual words and phrases. So I think we could take that approach and come back and redefine later. I think we all have a fairly clear understanding of what we mean by the term in the current context as well.

And Eberhard has his hand raised. Eberhard?

Eberhard Lisse: Thank you. Can you hear me?

Keith Davidson: Yes.

Eberhard Lisse: Okay. We didn't bring this up, so I don't think, for me, it's a big issue. When we were talking-- it's distracting from the main effort. We must just find a way of how we call it and do this (technical difficulties) at the moment (inaudible).

With regards to what Martin was saying, he doesn't understand what 5.1.4 means. I understand it to mean that it assumes that the ccTLD manager engaged in substantial misbehavior or persistent problems will probably not consent to a voluntary transfer if they have not responded-- and it could lead to assistance to fix the problem. That's what it means, and I understand it quite well actually.

Keith Davidson: Okay. Thanks, Eberhard. Hopefully, Martin's deriving some clarification as well.

Okay. There are no further questions. So, Martin, did you derive some satisfaction from the discussion?

Martin Boyle: Not desperately. I think there's a hanging question there because we haven't got through to considering 5.4. And the overview paper, which starts off by referring to national law, in my mind, would apply an additional formal mechanism and not just sort of the limited one that is there at the moment. But I'm not sure I know what it is.

Keith Davidson: Okay. Shall we continue in the interim? Thanks. Bernie.

Bernard Turcotte: Thank you, sir. We'll move on to 5.2. And, just as a slight reference to Martin, we haven't rewritten the entire revocation document. We were just (inaudible) this subsection. I'm sure we all have objections on other things.

Revocation for persistent problems with the proper operation of the domain.

5.2.1. RFC-1591 requires the designated manager to operate the domain, which involves assigning domain names, delegating sub-domains, and operating name servers with technical competence, including keeping the central IR, in the case of top-level domain, or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, operating the database with accuracy, robustness, and reliance, and maintaining a primary and a secondary name server that have IP connectivity to the internet and can be easily checked for operational status and database accuracy by the IR and IANA.

So that's section 5.2.1. We'll take questions if there are any. But this is, basically, a distillation of what is actually in section [5--3.5] of RFC-1591, just restated for practical purposes. Any questions?

Keith Davidson: Martin?

Martin Boyle: Just a simple question that this specifically refers to section 3.5 of RFC-1591, and it seems to me that it would be useful to make that reference.

Secondly, we're putting 3.5 discussion before we do 3.4 discussion. I've got no problems with that. But it's because that refers to (inaudible). I think we probably need to make clear reference to that which is-- where it is in RFC-1591.

Keith Davidson: Thanks, Martin. Eberhard?

Eberhard Lisse: For the purposes of (unintelligible), can we maybe put quotes of whatever documents, including RFC, into quotation marks?

Keith Davidson: (Inaudible) from RFC-1591 that quite goes into italics or inverted commas.

(Multiple Speakers)

Eberhard Lisse: It's not exactly a direct quote. It makes it just easier to read because, in 5.2.1, it said-- there are some quotes (inaudible) including-- in the paragraph, there is no quotes. To make it sure-- if it's a direct quote, we don't have to argue about what it means or what it says because we know it's a direct quote, and that's the way it's written. It just makes it more clear, if I'm not mistaken.

Keith Davidson: Okay.

Bernard Turcotte: Both good suggestions, and we can do that. That's not a problem.

Keith Davidson: Okay. There doesn't appear to be any-- oh, sorry. Patricio has his hand raised. Patricio?

Patricio Poblete: I know we're just quoting from RFC-1591, but I'm not sure I understand how the database accuracy requirement is currently interpreted and if it is checked at all by IANA. Perhaps this is a question for Kim. How is that currently interpreted?

Keith Davidson: Kim, would you care to respond? Kim, we heard one word from you, and then you disappeared. I'm not sure whether the word was no.

Eberhard Lisse: I interpret it to mean yes.

Keith Davidson: Thanks, Eberhard.

Eberhard Lisse: Probably disconnected.

Keith Davidson: Nigel, please.

Nigel Roberts: Okay. In RFC-1591, the database means the zone file. We must be very careful, even though it's only 20 years, not to reinterpret archaic terms in a modern light. We may at some point in the rest of it make recommendations of something that might happen going forward. But it's very clear, because I was there, that operating the database meant operating the zone file database with the NS records inserted, because registries did not use databases until around the mid '90s to generate the zone files. They just went in and edited them by hand.

Keith Davidson: Okay.

Patricio Poblete: But, just to clarify, I understand that the term database was not used in a technical meaning (inaudible) of databases or anything of that sort, just the contents of the zone file. My doubt is how can that be checked at all for accuracy by IANA without access to the zone file?

Nigel Roberts: Patricio, if I may, the answer to that question is 5.2.1.1. It was an obligation on the manager to tell the IANA what it was doing as far as I can tell. I don't want to go into the (inaudible) section and interpret the words central IR, but I believe central IR meant the [internet] as it was, as run by, in my time, network solutions and, before that, SRI. The central IR was supposed to receive occasional updates. There's a guy called Duane Stone (ph) at network solutions that we dealt with back in the day. Lots of people probably remember him. I don't think it means IANA is supposed to be checking that gov.gg has the right name servers or the right (inaudible).

Chris Disspain: Keith, it's Chris. I'd like a turn when you have a second. Thanks.

Keith Davidson: Yes, sure. Chris, go ahead.

Chris Disspain: Well, I take Patricio's point valid, and so is Nigel's. But here's the risk. If we take a static view of what the words meant 20 years ago, then we leave ourselves open to having a court interpret it in modern times. It would be much better, in my view, for us to interpret it in the times that we exist now. So, obviously, it means the following, whatever that may be. We can talk about that later. But to take a purely static view of what it was 20 years ago isn't in our best interests because it

will leave it open to others who don't understand this stuff to make the interpretation. It behooves us, I think, to make that interpretation.

Keith Davidson: I think the question is on the table. Kim's just stated in the chat that he's on a poor internet connection, so audio isn't reliable.

And, while it's not exactly on topic, it's not exactly off topic too. So, I think, can we hold the question and ask Kim to give us the answer on the next call and then carry on?

I think Nigel has his hand raised again. Or did you just not put your hand down, Nigel?

Nigel Roberts: No. As I said in the chat, I want to come back on what Chris just said. I agree with Chris. I think this is right. But we have to be explicit about what we're doing. We can't just use the word database and make it to mean the post-(unintelligible) relational database that we-- that registries currently use because, maybe in, again, five or ten years' time, there will be a different way of doing things. I think what we have to do, explicitly, and we do have the benefit of people who've been around for longer than I have and know what this stuff means-- to explicitly write what it means and then say it might be reasonable in the modern context to take the following approach. But I don't believe we can go back in time and redefine. It's a question of doing the literal interpretation thing and then saying that the purpose of interpretation in the modern standard would be this. I don't want to try and pull the wool over anybody's eyes.

Keith Davidson: Fair enough. Let's work on that in our glossary document at the appropriate time. Eberhard?

Eberhard Lisse: I agree with Chris. The framework of interpretation means we interpret what it means to us. We don't really need to interpret what it meant 2000 years ago. The reason for this group is to determine what it means now. What it means in 20 years' time? They will make another interpretation call if necessary.

You may also want to read Kim's things into the record. He's answered your question.

Keith Davidson: Okay. Thanks, Eberhard. Patricio?

Patricio Poblete: There was a reply that came on the chat window. Basically, what it says is what I supposed the answer was going to be. Basically, that requirement of database accuracy is not checked in practice. So I think it's become obsolete as a requirement.

Keith Davidson: Okay. So, Nigel, did you re-raise your hand, or is it still--?

Nigel Roberts: I haven't put it down from re-raising yet. But the requirement's not become obsolete. We have to continue to run the thing with accuracy (inaudible). The fact is IANA does not do proactive checks. It's just something we would be judged by if we were accused of any form of negligence or misbehavior, I suppose.

Keith Davidson: Okay. I think we've achieved some clarity then. No further questions? Paulos raises the valid point in the chat that RFC-1591 does not refer to registries. But I guess we're using the word registry and ccTLD operator rather seamlessly.

Anyway, if there's no-- Eberhard has his hand raise. Eberhard?

Eberhard Lisse: RFC-1591-- registry is used in a different context. It's used for the simple (ph) registry and for the regional registries, more like the (technical difficulties). It's not referring to a domain registrar. So I can't have that.

Keith Davidson: Okay. No further questions? Bernie, can we move on?

Bernard Turcotte: Yes, sir. There we go.

Section 5.2.2. RFC-1591 clearly contemplates revocation in appropriate cases involving persistent problems with the proper operation of the domain (inaudible).

5.2.2.1. The IANA contractor has not publicly stated the standards by which it will evaluate whether or not (a) a manager is doing a satisfactory job of operating the DNS service for the domain, ccTLD, or (b) there are persistent problems with the proper operation of the domain.

5.2.2.2. The FOI working group believes it is consistent with the intent of RFC-1591 to avoid actions that undermine the stability and security of the DNS and/or continuing operation of the domain for the benefit of the local community.

5.2.2.3. The FOI working group notes that technical operation of TLDs has greatly evolved from the time of publication of RFC-1591. Along with the use of the internet and although still a specialized field, this is standard knowledge for networking specialists and is supported by a large volume of easily accessible documentation and applications. In addition, there are a number of service providers that specialize in performing these services under contract for ccTLD managers.

5.2.2.4. The working group suggests that the ccNSO could provide implementation guidance in these areas by documenting current standards and generally accepted practices for DNS operations that have developed over time. Following appropriate consultation, such guidance could then be used as a reference point for reviewing DNS-related performance issues for a ccTLD manager.

Over to you, sir.

Keith Davidson: Nigel?

Nigel Roberts: Okay. I'm just going to comment about .2. Can we scroll back up a little bit, please?

This is probably pedantry, but I think I need to put a hook (ph) down for it. 5.2 reads: The working group believes it's consistent with the intent of 1591 (inaudible)-- point that we're making. My reaction in reading that is - so what? That doesn't help. That's nothing. I would turn around and say the working group believes RFC-1591 requires somebody to avoid action, et cetera. Consistent with the intent doesn't mean anything. It just means you could do it if you felt like it. RFC-1591 mandates that we don't do (technical difficulties).

Keith Davidson: Would it help if it said the FOI working group interprets the intent of RFC-1591 to avoid...?

Nigel Roberts: Well, if you then put-- you then have to put the words - to imply an obligation to. Yes. Exactly.

Keith Davidson: Okay. So noted (inaudible). I think Becky's just indicated in the chat that she agrees with just interpret. I don't think I'm hearing any objections to that. No further questions?

Chris Disspain: Keith, it's Chris. It just raises a point. I don't have the clauses in front of me. But I wonder whether the last paragraph, which is-- where it's suggesting to the ccNSOs that they should consider doing some things, actually belongs in this report or whether it shouldn't perhaps just be a separate suggestion. I'm not sure that it's-- we should be making recommendations about what the cc's should do in this document. I think it's a fine thing to do. I think the ccNSOs should do it. And, in fact, Eberhard knows full well that we've talked about this for some time and talked about the possibility of creating such a document. But I wonder whether we should actually be putting it in this document or whether we shouldn't just deal with it separately.

Keith Davidson: Nigel agreeing strongly with Chris. And Eberhard has his hand raised. Eberhard?

Eberhard Lisse: That goes into the direction of best practices and things which we have always avoided. And the technical working group is going to eventually provide such a document. I think it leads us down an unnecessary and dangerous path, so I think we should scrap that out of this report altogether.

Keith Davidson: Well, I'm not seeing a lot of people in agreement with that; nor am I seeing people objecting to that, Eberhard. Eberhard?

Eberhard Lisse: Just for the record, I formally object.

Keith Davidson: Formally object? Can you be precise in what you're objecting to?

Eberhard Lisse: That I formally object against inclusion of paragraph 5.2.2.4 in any document that the working group produces.

Keith Davidson: Okay. Square brackets around the whole of 5.2.2.4. Further discussion. First, Martin, then Nigel. So, Martin?

Martin Boyle: Just on that particular point, I think what is coming out is a certain degree of lack of clarity as to exactly what we're meaning in the previous sections. Therefore, I would certainly not see any problems of the ccNSO initiating additional work. That it's not included in this report I have no views about, other than I think we need to know how we might go about suggesting to the ccNSOs-- they just need to start thinking about it.

And then I've got a separate point on the previous section, 5.2.2.3, the last sentence. I have no recollection of seeing this sentence in before. I certainly can't see what the fact that there are a number of service providers specializing in performing these services under contract adds to the section. I've got no particular objection. It just seems to me to be an unnecessary sentence and might imply that we're suggesting a particular direction for moving forward that I don't think we've agreed to. Thanks.

Keith Davidson: Okay. I think that's not unreasonable. I thought the wording of 5.2.2.4 had already been previously agreed by the group. And that's just restated here. I'm a little surprised at the objections. But I understand it.

Anyway, Nigel, the floor is yours.

Nigel Roberts: Okay. Well, I'm going to agree with everybody. First of all, Chris, I agree totally. Secondly, Martin. I agree with both of his points. And I'm making the proposal that we delete the last sentence of .3 and the entire section of .4 as a result.

Keith Davidson: Okay. I think there is a way forward, painted by Nigel, suggested by Martin originally. Does anyone have any objection to the deletion of the last sentence of 5.2.2.3 and all of 5.2.2.4? I see Martin and Nigel both have their hands raised. I'm not sure whether that's because they've forgotten to take them down. Okay. Martin, your hand is still raised, so the floor is yours.

Martin Boyle: Thanks, Keith. Yes, I have raised it again. As I tried to say, 5.2.2.4-- I wouldn't be unhappy to see it go, apart from the fact that, like you, I thought we had agreed to this text before. And the sentiment involved needs to be captured in some other way if this paragraph is being deleted so that the ccNSO itself decides whether this is work that should go ahead. Thank you.

Keith Davidson: Okay. So I think, then, the challenge is for Bernie and Becky to maybe try and work on some alternate wording or sort of an offline discussion point to raise at the ccNSO level.

Okay. I see Eberhard and Nigel both have their hands raised. So, Eberhard?

Eberhard Lisse: I am unaware of having ever agreed to this. I'm not even aware of that we have discussed it in my presence. But I haven't been able to make all the meetings. But this is not part of what we're doing. This is not an interpretation. I don't really want to have a vote on this (inaudible). So we should just take it out, like Becky suggests.

Keith Davidson: I think we're all agreeing it's gone. It's just Martin's raised that the issues raised in here are actually quite valuable. They just have no place in this document. And so I think we shouldn't lose sight of capturing the issues and discussing them with the ccNSO in due course, even though it needn't necessarily be part of the formal record of this group.

So, thanks, Eberhard. Nigel?

Eberhard Lisse: This is exactly what I'm thinking. It's a good thing-- we will and we should have an idea of what's on the market, what's going on, but not for this group.

Keith Davidson: Okay. Thanks, Eberhard. Nigel? Yes, Nigel, you do have the floor. But we can't hear you. Nigel, you're on mute.

Nigel Roberts: Has my line been un-muted?

Keith Davidson: You are un-muted now.

Nigel Roberts: Fine. I don't know what's happening. I'm pressing star, seven.

I want to be as concise as possible because it seemed we came to an agreement and consensus on this about two seconds after Chris put it before us. But let me just go back to the general point of the things I said in the chat about five minutes ago.

The test to whether we should have a paragraph in this document or not is going to be long enough as it is. Does it interpret anything? Does it add value? If it's something that we've come across validly as a result of our work that we should be reporting back on, then, by all means, let us do so by means of reporting back (inaudible) but not in the formal document (inaudible).

Keith Davidson: We're in [violent] agreement I think. And Daniel's (inaudible), just indicating in the chat that it opens all kinds of cans but doesn't interpret anything. So I think we're in violent agreement here. And so let's remove the text but not the intent to raise a discussion point with the ccNSOs.

Chris Disspain: Keith, it's Chris. There's nothing to stop us, if we choose to do so, to sending a note to the council saying that there's a side issue. Obviously, as a working group, we have-- we believe this is something the ccNSO should be doing. We can send a separate (inaudible)-- be discussing-- I'm sorry-- should be discussing. We can send a separate text about that. It doesn't have to be in the report. That's the key I think.

Keith Davidson: Excellent. Nigel, you have your hand up again? No. Your hand is down. So no other comments?

So can we, please, move on, Bernie?

Bernard Turcotte: Yes, sir. Moving on to our favorite section, 5.3, substantial misbehavior.

5.3.1. In addition to the operational requirements identified above, RFC-1591 identifies key requirements and necessary responsibilities of designated managers, including the requirement that there be a manager that supervises domain names and operates the domain name system in that country; the requirement that the manager be on the internet with IP connectivity to the name servers and e-mail connectivity to the designated manager and its staff; the requirement that there be an admin and technical contact for each domain, including for ccTLDs, and (inaudible) contact residing in the country.

The FOI working group interprets this requirement to mean that the manager must confirm that and the IANA contractor must be able to validate that the administrative contact resides in the country or territory associated with the ccTLD. This establishes a clear intention from RFC-1591 that there be local in the country or territory associated with the ccTLD present. The FOI working group recognizes that there may be extenuating circumstances where it is impractical or even impossible for the administrative contact to reside in the country or territory or where the operator has a contract that eliminates this requirement.

Questions? Comments on 5.3.1, up and including [5.3.1.3.1]?

Keith Davidson: Fantastic. Everyone's in agreement. Or, at least, there's no hands raised.

Bernard Turcotte: (Inaudible). [5.3.1.4.] The designated manager serves as a trustee for the delegated domain with a duty to serve the nation in the case of a country code

and the global internet community; *i.e.*, it is not in italics and perfectly noted as quoted as Eberhard raised in the previous section. And, yes, we will do this.

[5.3.1.4.1.] As noted in the FOI working group on consent, in RFC-1591, quote-- in RFC-1591, the term "trustee" is used to describe the manager's duty to serve the community and not to describe the specific legal relationship of the manager to the delegated domain. Rather, the FOI working group interprets this to require the manager to (1) provide mechanisms to allow for registrars and significantly interested parties to provide input to the manager and (2) preserving the purity and stability of the ccTLD and working with the IANA contract manager to preserve the stability and security of the global DNS internet.

And, please, let's not have the argument about the IANA contract manager use at this point.

[5.3.1.4.] Questions? Comments?

We'll move on.

Keith Davidson: No. The only comment was Eberhard asking if the document could be made moveable. I don't know whether Kristina does that or not. If not, could you, please, Kristina?

There are no other questions, Bernie, so, please, move on.

Bernard Turcotte: 5.3.2. RFC-1591 requires that the designated manager have the ability to carry out the necessary responsibilities described above in an equitable, thus, honest and competent manner and gives IANA the ability to step in in the event of significant misbehavior. The FOI working group interprets the requirement that the designated manager be equitable to all groups in the domain and is obligating the manager to make its registration policies accessible and understandable to prospective applicants and to apply these policies in an impartial manner, treating similarly situated, would-be registrants in the same manner.

The FOI working group acknowledges that the IANA contractor may lack the information and context needed to evaluate the more subjective aspects of these requirements.

5.3.2. Nigel has his hand up.

Keith Davidson: Nigel?

Nigel Roberts: Okay. My substantive point is 5.3.2.2-- what's the purpose, and what's it interpreting?

My non-substantive question is that the comma after "and" in the previous section should go.

Becky Burr: I think-- sorry. 5.3.2.2, I think, is sort of-- captures the notion that-- that's in more detail later on, about who takes responsibility for sort of what (technical difficulties) requirements here and whether the IANA contractor actually is in a good position to sort of legislate on what equity-- equitable behavior is. I think, as you see later, what I've done is capture what I think we agreed on. There are some things that should be decided. And some of these softer things should be

decided in country. And the focus of the IANA contractor or whatever we call it is the technical stability and security aspects of this.

Nigel Roberts: Becky, I don't object to it at all. I'm just a little unclear as to its purpose and meaning. Maybe there's some improvement available there. I don't-- I'm not objecting to it.

While I've got the floor, if I could just pick up on Daniel's comment in the chat, equitable is in the original document. And it's got to be judged with a margin of appreciation on individual countries. Nobody's suggesting that Bulgaria has to make things available in Chinese script.

Keith Davidson: Terrific. (Inaudible). Thanks, Nigel and Daniel, for that point. Martin?

Martin Boyle: Thanks, Keith. The point that Nigel just made-- I actually do think that this is quite an important statement, whether it belongs in 5.3.2.2 or elsewhere because I think what-- where I get to as I start thinking this section through-- there's a whole lot of activity that is associated with serving the local community. And that is not necessarily-- almost certainly not information that is directly and easily accessible by the IANA contract.

And so, while 5.3.2.2. might need to come out from here, although, I think, it actually logically does belong here, I think that implication needs to be picked up, at least somewhere in this document.

The other point is on the preceding sub-paragraph, the .1. And that talks about "equitable" to all groups. And, therefore, it just takes one of the four characteristics that are referred to in that part of RFC-1591. It doesn't say anything about just honest or the competent manner. And that leaves me with the question mark. Well, why? Why are we just picking on the equitability, which, obviously, does have serious concerns to the local internet community? So, do the other qualifiers. Thanks.

Keith Davidson: Thanks, Martin. Nigel, is your hand still raised, or do you have a new point? No. Your hand's gone down.

Okay. Can we--? I don't know if there's a way in which we can answer Martin's point there. Any response? Becky?

Becky Burr: Well, I think that we did have earlier a discussion about this sort of equitable-- and this is basically either the same language or a restatement of the same language. But I think the fact that we don't talk about what just and honest mean is exactly the point I'm trying to make in 5.3.2.2., which is it's going to very hard for the IANA contractor to make those judgments.

Keith Davidson: Yes.

Becky Burr: I mean, I don't have an objection to taking out 5.3.2.1. That was really something that we had discussed previously. And, obviously, equitable to all (inaudible) has a wide variety of meanings because, clearly, a ccTLD can be closed or open, or there are a million different varieties, which we all accept as perfectly (inaudible).

Even though 5.3.2.2. isn't an interpretation, I think it's an important observation that informs our interpretation later on. That's the way I would describe what's going on there.

Keith Davidson: Okay. Well, in that case, it [is] an interpretation. I mean, adding color and depth to the understanding of the (inaudible)--

I think Nigel's agreeing. I'm not sure whether--

Nigel Roberts: (Inaudible) hand up.

Keith Davidson: Okay. Well, please, continue, Nigel.

Nigel Roberts: Okay. Let me just clear everything down, and I don't forget. Right. Now I don't have anything up.

I'm extremely comfortable with what's in 5.3.2.1. I don't object to 5.3.2.2, except I found it hard to understand in context and so on. And, even now I understand the purpose of it, I still don't see that it achieves the purpose that we're trying to (inaudible), which I don't disagree with.

Perhaps, again, if there was some rephrasing possible to say something like the working group notes that [IANA] may not be able to evaluate more subjective aspects, full stop-- something like that is possible. It's much more positive. We're making an observation. And an observation is not an interpretation, but it may be valuable as an aid to interpretation.

Keith Davidson: Okay. Thanks, Nigel. Eberhard?

Eberhard Lisse: I may have been distracted for a second. So I may have to apologize. But did Becky already explain what she actually wants to say with this paragraph? (Technical difficulties). But maybe Becky can answer (inaudible) why she put this in. If she did already, I apologize. I will listen to the recording.

Keith Davidson: I think Becky did give us the point, and it was previously language that was-- that had been (inaudible). Anyway, Becky, do you want to respond?

Eberhard Lisse: Previously included is not-- I don't understand (inaudible) as a reason. (technical difficulties) previously discussed. I just want to know again why. I like it. I'm not opposed to it in any way. But it may be helpful for our purposes if Becky just explains again why she put it in and what she wants to (inaudible).

Becky Burr: Okay. Two reasons. One, it was language that we had discussed. But, more importantly, I think, it was (inaudible) when we looked at this, we thought "equitable" is a-- that's a really hard thing for the IANA function contractor to pass judgment on, given their information. So, it has to-- if it means anything, it has to be something sort of more simplistic from the perspective of the role for the IANA contract. And we didn't include descriptions of just and honest, I think, precisely because those are really going to be subjective and contextual and all that kind of stuff. And it's not-- probably, the IANA contractor is not going to be in the best position to do it.

As I said, I don't have a problem with taking 5.3.2.1 out, but I think it was something that we all felt was a reasonable interpretation of that requirement. And we didn't come up with a reasonable interpretation of "just and honest."

Keith Davidson: Okay. I think Nigel is coming up with some more alternative text in the chat room. But, Nigel, I don't know-- I can't scroll back for some reason just at the moment.

So can you read your alternate suggestion? You'll need to un-mute in order to do that.

Nigel Roberts: Sorry, Keith. I'm just trying to scroll back and un-mute at the same time. Am I un-muted?

Keith Davidson: Yes, you are.

Nigel Roberts: Thank you. The working group notes that [IANA] may not be in a position to evaluate the more subjective aspects of this, and you may or may not choose to add in due to lack of information and context.

Keith Davidson: Okay. That sounds like a bit more clarity with the same intent to me. Without having to agree on the fly, Becky, any reaction?

Becky Burr: Yeah. I think I'm fine.

Keith Davidson: Okay. Any objections? Okay. I think we'll substitute some alternate text, Bernie. Oh, Martin has his hand raised now.

Martin Boyle: Just a little point. I noticed this same idea about IANA's difficulty to value the extent of carrying out the duties also appears in [5.3.4.1.3]. So just an aside. I'm quite happy to leave the text here then.

Keith Davidson: Thanks, Martin. Okay. I think we can continue, Bernie.

Bernard Turcotte: Thank you, sir. I believe we are at 5.3.3. Application and selection of designated managers. The working group interprets RFC-1591 to require IANA contractor in the manager selection process to ensure that the proposed manager professes the necessary technical, administrative, and operational skills judged by the standard of the ordinary, competent TLD manager. It requires the perspective registry manager to demonstrate that he or she or [a legal person] if (1) possesses the requisite skills to carry out the duties of a manager skills test (ph) and (2) if designated, will have means necessary to carry out those duties [including the ongoing responsibilities discussed above] upon receiving the appointment (inaudible) preparedness test.

5.3.3. Comments? Questions?

Keith Davidson: There don't appear to be any questions or comments. I'm a little bit uncertain about the English when it says that he or she or a legal person-- I would have thought not a legal person--

Becky Burr: I absolutely do think that the delegation can be to corporations, for example.

Keith Davidson: Yeah. But isn't there-- it's not a legal person.

Unidentified Participant: No. That's wrong, Keith.\

(Multiple Speakers)

Becky Burr: Sorry. A legal person is a corporation.

Keith Davidson: Yes.

Becky Burr: -- or something that's not (inaudible).

(Multiple Speakers)

Keith Davidson: I understand. It's just my dumb reading of it. Okay. Nigel has his hand raised. Nigel?

Nigel Roberts: I'm waiting for Bernie to give me (inaudible) on 5.3.4.

Keith Davidson: Okay. Well, there's no further comments on 5.3.3, so let's move on, Bernie.

Bernard Turcotte: 5.3.4. Applications to designated managers, although one could read RFC-1591 to limit the authority of the IANA contractor to step in during the process of selecting a designated manager, on balance, the (inaudible) section 3.4 of RFC-1591 to create (1) an ongoing obligation on the designated manager to operate the ccTLD without substantial misbehavior and (2) reserve power for the IANA contractor to step in in the event of substantial misbehavior.

We'll stop it here and take questions.

Keith Davidson: Okay. Nigel, (inaudible). Nigel?

Nigel Roberts: Okay. Well, without going into this one, (inaudible). I'm extremely pleased with the formulation of this, which captures the point I want to make and, then, shows the way the working group feels. I'm very, very happy with it.

(Inaudible) English and the quotes and so on. Please, bear in mind-- and I'm just checking on this hypothesis for a second-- but, please, bear in mind that the expression of substantial misbehavior does not appear anywhere in RFC-1591. That may come as a surprise to people. Certainly, it came as a surprise to me. But that expression does not appear. It says "substantially misbehave." So, putting quotes around "substantially misbehavior" makes it look like it's a term of art that's been defined in 1591, when it's not. It's something we've nounced (ph) from the verb.

Let me go back to adobe connect. I don't know where that's gone now.

The other thing is, to do something without substantial misbehavior sounds clumsy to me. It would be much better plain English, and, as you know, there are certain (inaudible) in that regard at the moment. Without substantially misbehaving or something like that-- just put plain English, and leave out the quote.

Keith Davidson: Noted. Becky and Bernie?

Becky Burr: That's fine by me. I was attempting to respect as much as possible language that we had gone over. But I, like Nigel, would love to simplify some of these things.

Keith Davidson: Okay. I'm not seeing any objections.

Nigel Roberts: Can I just read what I think it should read now and see if you agree to this? Starting from the word ccTLD on the second to last line in the paragraph, operate the ccTLD without substantially misbehaving and reserve power for the [IANA contractor] to step in in the event of such substantial misbehavior occurring-- or something (inaudible).

Keith Davidson: Okay. I think Bernie will have caught that along the way. Good. Okay. And I'm not seeing any objections or any other points. So can we move on, please, Bernie?

Bernard Turcotte: Yes, sir. This would take us to 5.3.4.1. Does stepping in include the possibility of revocation?

5.3.4.1.1. RFC-1591 identifies three formal mechanisms of available to the IANA contractor - delegation, transfer, and revocation. The FOI working group, as discussed above, interprets RFC-1591 to require the consent of an incumbent manager to any transfer of a ccTLD. If one assumes that a ccTLD manager engaged in substantial misbehavior is unlikely to provide such consent and the IANA contractor's informal efforts to address such misbehavior are unavailing, the only formal mechanism that remains available to the IANA contractor is revocation. Accordingly, the working group interprets RFC-1591 to permit IANA to revoke a ccTLD delegation in appropriate cases involving substantial misbehavior.

We will take questions at this point.

Keith Davidson: Okay. I see Nigel has his hand raised already. Nigel?

Nigel Roberts: Thank you. It was left over, but I was typing something. I didn't think it was important to raise my hand. But never mind.

Engaged in substantial misbehavior just grates on me a little bit. Why don't we just use plain English and say - who is substantially misbehaving?

Keith Davidson: I can't see any reason why not.

Nigel Roberts: And I'm not going to make the point again. Can we just say that that sort of review can be done when we do a pass through of the document? That point that I've just made works throughout.

Keith Davidson: Becky and Bernie have indicated their agreement with that. Thanks, Nigel. Martin?

Martin Boyle: Perhaps a slightly pedantic point. But section 3.4 of RFC-1591 puts the substantial misbehavior in the past tense, not in the present. So, in fact, correctly, it should be - who has substantially misbehaved.

Keith Davidson: I think Nigel had raised that as a point and offered the wording that changed it to substantially misbehaved. So 3.4-- I think wait until we see version two of the wording, Martin, and it may be all right.

If there's no other points, can we continue, Bernie?

Bernard Turcotte: Yes, sir. 5.3.4.1.2. Given the primary responsibility of the IANA contractor is to preserve DNS internet stability and security, the FOI working group also believes it is consistent with the purpose of RFC-1591 to interpret revocation as a last resort option to be exercised in situations where the substantial misbehavior poses a threat to the stability and security of the DNS internet or where the manager fails to cure violations of the objective requirements described above after (inaudible). Example, no e-mail availability.

Questions? Comments?

Keith Davidson: I'm not seeing any. I guess that there's a question that arises from all of these points inasmuch as how Kim might interpret the actual implementation of these issues and with the work of (inaudible) the analysis here. Given that Kim's on a bad line, if we could just note that we would like some comments from Kim on our next call in that regard-- And I see Nigel has his hand raised. Nigel?

Nigel Roberts: I'm going to agree with that. I'm not entirely sure about 1.2. I don't object to it. I don't agree with it. I'm just a bit mildly confused by it. I'd be very interested to have Kim's input. So can we say that we take no action on this paragraph until a meeting where Kim has an opportunity to respond and we've had an opportunity to consider his thoughts on it?

Keith Davidson: I think this is reading (ph) one anyway.

Nigel Roberts: I can see he's going to write a list. That's great.

Keith Davidson: And we're not going to make any decision on the basis of a single call anyway, reviewing (inaudible). Eberhard has his hand raised. Eberhard?

Eberhard Lisse: With regards to Nigel not understanding, was he not involved in drafting this?

Keith Davidson: I don't know about this exact clause.

Nigel Roberts: 1.2 is not one that's familiar to me for some reason.

Keith Davidson: Anyway, Kim's offered to respond on the list. Thank you, Kim. It would be appreciated. Nigel, is your hand still up or re-raised? Thank you. There are no other questions or comments. Can we move on, please, Bernie?

Bernard Turcotte: Yes, sir. 5.3.4.1.3. the FOI working group notes, however, that IANA will rarely be in a good position to evaluate the extent to which a designated manager is carrying out the necessary responsibilities of the ccTLD operator in a manner that is equitable, just, honest, or accepted insofar as it compromises the stability and security of the DNS/internet, a competent manner. Accordingly, the FOI working group interprets RFC-1591 to mean that revocation would not be an appropriate exercise of its right to step in unless the designated manager's misbehavior poses a risk to the stability or security of the DNS/internet and/or the designated manager has refused to correct problems with e-mail connectivity, presence on the internet, and/or maintenance.

Questions?

Keith Davidson: A number of hands are going up. Firstly, Martin, the floor is yours.

Martin Boyle: Thanks, Keith. Yeah. This picks up on a comment I made earlier on that previous section about the difficulty of evaluation. I think where I'm sort of left a little bit in doubt is that what we're doing in this is separating that which is globally facing from that which is nationally facing in the local internet community. This has obviously been something that has been sort of too difficult to do anything with in that this process has never been applied as far as I'm aware. And, if it were, I would actually question whether it could be applied without local support or local requests.

And, generally, I would ask a question. How on Earth would IANA do this? You take-- it decides that .UK is performing-- is substantial misbehavior. It could then

come along and subdue this. How would it do that without the approval of the UK government, without the approval of significant, interested parties in the UK? And that, I think, has always been my problem with this section as to where does responsibility lie? And I am conscious of that, having reread 1591, there is no reference in 1591 to the IANA stepping in, to IANA actually having a responsibility to step in in consultation with the local internet community.

Now, I'm also conscious that, in the overview of revocation paper that came out in November, which we all agreed was quite a significantly important paper, there was, quite clearly, the comment that, for this local issue question, it needs to be done through national law. And so it seems to me that perhaps this text here just needs to be bolstered in some way that makes it clear that this is something that, by itself, IANA can't do for the local environment, but that-- and then use the words that came in the overview of revocation paper. Or, as I said before, an alternative might be to (inaudible) the overview of revocation paper into some sort of explanatory background document to this. I think inserting it here might be an easier option. Thanks.

Keith Davidson: Okay. Thanks, Martin. And I think Kim's posted a bit of clarification on the chat. It's not ever been done as a standalone act as far as Kim knows. He can't remember the state of definition as to whether a hostile re-delegation involves revocation. But it is considered to, arguably (inaudible) but not been explicitly called a revocation. So I'm not sure.

There are a number of hands up. But I think Becky's third on the list but probably has a response to Martin's points. So we'll promote Becky up the list to respond now.

Becky Burr: Yeah. Just on Martin's point, I'm not entirely certain that I understood the point. I do obviously-- it would be unusual for IANA to do something without consultation. I feel pretty strongly that IANA has to have the right to (inaudible) delegation if stability and security of the internet is seriously at risk, whether or not (inaudible) or whether or not it has agreement of the relevant country. I think the reason that I formulated it in this way is to really clarify that this is limited to stability and security. And, obviously, in the ordinary course, IANA would consult. But I, at least, think it would be a mistake to require consultation in serious stability and security risk situations.

Keith Davidson: Okay. Thanks, Becky. Back to the speaking order. Patricio was next on the list. Patricio, then Nigel.

Patricio Poblete: About this difficulty for IANA to evaluate this kind of misbehavior, I understand that it probably never happened at IANA on its own. It begin (ph) to inquire about the equitability or justice or honesty on part of the manager. But what might happen in practice, and it probably has happened, is that IANA receives a complaint from people in the community, for instance, that raise the point that the manager is not behaving in the way that it should. And I wonder whether this paragraph would mean that those complaints would be dismissed by saying - we're unable to evaluate them - or if there should be a procedure for investigating them.

Keith Davidson: Again, that's probably straying closer to whether we're interpreting 1591 or inventing policy. So I think we've got to walk quite carefully down that line. But point well made, Patricio. Becky, is your hand still up for another point?

Becky Burr: No. I failed to take it down.

Keith Davidson: Okay. Nigel?

Nigel Roberts: Yes. (Inaudible). I was listening to the lady telling me I was off mute. Okay.

One thing-- I'm quite happy and comfortable with the way-- the approach on this. But there's one question that it raises here with me to do with e-mail connectivity. It's clear that we've rightly identified the obligation in RFC-1591 that a ccTLD manager must be on the internet and must have e-mail connectivity to the world. That was not so much of a no-brainer or an obvious thing back in-- 25 years ago as it is today.

But, with some countries and some problematic situations, this is exactly what arises. And I think, again-- I think it is part of interpretation that we need to dig a little bit deeper and, basically, to look at what happens when there's an apparent failure of e-mail. For example, you send an e-mail to the registry manager, and you don't get a response. That manager may be in a country that's involved in a civil war right then. It's not appropriate to revoke and simply re-delegate just on the basis of even two or three e-mails not responded to. I think there must be something where there's an obligation on the IANA contractor to take all reasonable steps, and that doesn't involve parachuting to avoid them-- but to take all reasonable steps to make contact with the apparently uncommunicative manager.

Becky Burr: Keith, this is Becky. I think that is exactly what the intent is. And, clearly, it would be inappropriate to revoke after you don't get a response to an e-mail. But I think that you have to read the entire text together. And that's where the all reasonable, a last resort, et.

Nigel Roberts: Okay. Brilliant.

Keith Davidson: Okay. We've got clarity. I see Martin has his hand raised. Martin?

Martin Boyle: Thanks, Keith. I'm not sure whether I heard Becky in her first intervention correctly. But it sounded to me like she said it would be a mistake to require consultation in the case of there being security or stability issues.

Now, I think one of the problems I'm feeling here is that there is an actual sovereignty issue. And IANA (inaudible) deciding that there is security and stability issues without going to consultation would trouble me greatly because this gets us straight into the sort of discussions we've fairly recently had through the ITU. So did I just miss or fail to here the not in there?

And I think, through the reading of 5.3.4.1.3, I would go back to the point I made earlier that we really do need to seriously consider the national sovereignty implications if we just say that IANA might be able to go ahead and do this, which is why I think my feeling is that we should try and capture the fact that there is working with the local internet community as part of this process and that the sort of difficulty of how does the local internet community deal with something-- that there needs to be some reference, as was in the overview of revocation paper. Thank you.

Keith Davidson: Thanks, Martin. Before I hand over to Becky to respond, I think Kim will-- I think Kim's guidance in this regard will be helpful when we get Kim on the call at a better time. Becky?

Becky Burr: I think that, in the ordinary course, the IANA would consult. I do think that they're-
- you can conceive of situations where there is a very clear, immediate danger, threat and the need for IANA to act. And I would certainly think that, where a particular ccTLD is absolutely in danger in the stability of the internet, the interest of the global internet community would override the sovereignty interest. That's obviously a very extreme situation. But I have to say putting in a requirement for IANA to consult in even emergency cases involving very serious threats (inaudible)-- I just don't think that that's the right way to put it.

Keith Davidson: Okay. Thanks, Becky. And Nigel has his hand up, and then Martin again. Nigel, if I could, could I-- thanks. Nigel's taken his hand down. So, Martin?

Martin Boyle: Just taking that last point of Becky's, certainly, I think I just need to understand a little bit better what the real risk might be.

And, secondly, I would note that, in the previous paragraph, we were talking about revocation in this particular case as being a last resort. So that actually, in its own right, does imply that other approaches have been tried and tested. And part of that approach, I think, really should be to try and work with the local community. Eventually, it's the community that's going to be most heavily impacted by withdrawal of the services addressed to them. Thanks.

Bernard Turcotte: Thanks. I think Keith had to step away for a moment, so I'll fill in instead of letting us have some dead air.

Good point, Martin. However, we will note that some of the points in the past, just from a factual basis-- some of the ccTLDs, where there was concern about substantial misbehavior or, actually, almost no registration in them. So sometimes the impact on the community is actually very light because there have been few registrations. But that's only a minor detail. I understand that.

Are there any other questions or comments on 5.3.4.1.3?

Keith Davidson: There doesn't appear to be any, Bernie.

Bernard Turcotte: And Keith is back. I will hand it back to him.

Keith Davidson: Well, back to you, Bernie, to carry on.

Bernard Turcotte: Thank you, sir. 5.3.5, getting to the actual meat of the beast at this point. Defining substantial misbehavior.

5.3.5.1. Misbehavior. The working group interprets misbehavior in this context to refer to (inaudible) involving the failure of a designated manager to (1) carry out the necessary responsibilities of that role or (2) carry out those responsibilities in a manner required by RFC-1591.

I'll carry on to substantial misbehavior in 5.3.5.2 before taking on questions.

Substantial misbehavior. The working group interprets this to involve misbehavior as defined above that is either egregious or persistent and would appear to include performing the necessary responsibilities of a designated manager in a manner that imposes serious harm or has a substantial adverse effect on the local or global internet community. In this context, serious harm and substantial adverse effect should be evaluated in the context of the IANA contractor's

continued focus on DNS security and stability as described in the previous section.

Questions? Comments?

Keith Davidson: I'm not seeing any questions. I think this is a restatement of formally, realistically (ph) agreed definitional work. If there aren't any questions, please, carry on, Bernie.

Bernard Turcotte: Thank you, sir. The process for revocation in cases of substantial misbehavior, 5.3.6.

5.3.6.1. The FOI working group also believes it is consistent with the intent of RFC-1591 to state that revocation should be the last resort option for the IANA contractor. The IANA contractor should use all means at his disposal to assist the manager to resolve any issues considered to be significant misbehavior by the manager. Revocation should only be considered if the IANA contractor reasonably demonstrates that the manager is unable or unwilling in an appropriate timeframe to (a) resolve specified material failures to carry out its responsibilities under RFC-1591 and/or (b) to carry out those responsibilities in a manner required by RFC-1591. If the substantial misbehavior undermines the stability and/or security of the internet and/or a willful refusal to cure a breach of one of the objective aspects of the necessary responsibilities of the delegation is revoked, the IANA contractor should use all means at its disposal to ensure the ccTLD will continue to resolve (inaudible) and that a suitable replacement is identified by significantly interested parties in a manner previously described on an expedited basis.

5.3.6.3. The FOI working group believes that it is consistent with RFC-1591 to allow a manager the right to appeal notice of revocation by the IANA contractor to an independent body. Section 3.4 of RFC-1591 states the internet DNS names review board (IDNB), a committee established by the IANA, will act as a review panel for cases which the parties cannot reach agreement amongst themselves. The INDB's (ph) decisions will be binding. Although the INDB does not exist, the text clearly establishes the intent of allowing the right to appeal decisions. The working group suggests that the ccNSO undertaking consultation with the GAC and interested stakeholders to identify through further discussion possible procedures to be followed in connection with any proposed revocation of the delegation of a ccTLD based on the work of the FOI working group. These procedures should be reviewed and approved by the ccNSO as they will be responsible for monitoring (inaudible).

End of section 5.3.6. Over to you, sir.

Keith Davidson: Are there any questions for Bernie or Becky at this stage? It looks like we have-- Sorry. Martin raised his hand. Martin?

Martin Boyle: I don't think I'm into violently disagreeing with anybody. It's just I would notice that it seems that, in 5.3.5.2, we talk about, essentially, the substantial misbehavior simply being that which is related to DNS security and stability. And then, subsequently, we, in 5.3.6.2, go back into including the objective aspects of the necessary responsibilities of the delegation. I think that probably needs some internal coherence. Thank you.

Keith Davidson: Thanks, Martin. I think Becky's typing a response on the chat at the moment. She's saying, yes, the objective aspects (inaudible) stability and security. Does that answer the question fully, Martin?

Martin Boyle: Well, I guess the wording needs to be aligned or something.

Keith Davidson: Yes. Okay. Noted. If there's no other questions or comments, carry on, Bernie. I think we're into the last 20 minutes of this call, and we're on to the last short piece of the document. So I'd like to see if we could make it through. But I see, already, Martin and Nigel have their hands raised. So, firstly, Martin.

Martin Boyle: The other point that I had was on 5.3.6.3.2. The IDNB does not exist, but the intent of allowing right to appeal decisions-- But, in fact, I've got a question, really, about-- Has there ever been a formal process for appealing decisions? We're saying that it was, presumably, the intent to do it. But, if it was the intent and we never set up the process for doing it, there might be some sort of question about how good our intent really was.

Keith Davidson: I think you raise a very valid point, Martin. I don't think we know the answer. But it's a question we should pose to Kim to test his knowledge. So we'll put the question to Kim in due course. I mean, there's never been a statement by the ICANN board that there has been a revocation, per se. But it would be interesting to have further information.

Kim's actually saying on the chat - only implicitly. ICANN has an ombudsman for the reconsideration process, et cetera.

I guess the point on that, though, too, is that the ICANN board is the decision maker and the appeals body, unless you go via an ombudsman methodology. But that doesn't necessarily reverse the ICANN board's decision. I've always taken the context here to mean that there should be an appeal court or an alternate to the initial decision-maker of IANA.

Anyway, I think that probably does deserve a bit more work.

I see, firstly, we have Nigel, then Martin again. Nigel?

Nigel Roberts: Actually, again, I agree with Martin. And my point was around 5.whatever it was. 5.3.2. We've got to be careful that we don't spend the rest of this time (inaudible) going around in circles on this. It deserves attention all of its own. And maybe the outcome of the working group is to identify that the ccNSO needs to attend to this area.

I'm going to make a couple of points though. And, again, (inaudible) future. The IDNB does not exist. I'm sorry. I disagree with that. It does exist. It's in RFC-1591 (inaudible) exists. It has never convened and is very unlikely to convene. And it's a matter of speculation as to what John Fostell (ph) would have convened had he ever convened one. But my expectation is that it was probably going to be something like the matter of internal review within the Freedom of Information Act in England. In other words, you have a decision-maker who makes a decision. If you're not happy with the decision, you ask for an internal appeal. And the internal appeal would maybe be made by a senior official in the same organization.

That kind of (inaudible) is what ICANN has under reconsideration. But it's also very clear that natural justice demands that there be a right of appeal to an independent and impartial tribunal. So there's work that the ccNSO can usefully do in the area of possible revocation proceedings. Interpreting RFC-1591 doesn't get us there. I think what we need to say is just replace the text "does not exist" by "has never been convened." And I'm happy with that.

Keith Davidson: Okay. (Inaudible) we'll have any objections. Becky's saying that it's okay. So back to--

Chris Disspain: Keith, it's Chris. Sorry. I understand Nigel's point, but it's problematic, I think. By suggesting that it's never been convened, then you are implying that there is already a method for convening it, and I don't believe there is. What I think we should be doing is suggesting that the ccNSO should-- or the ccTLDs, generally, if you don't like the ccNSO, should grasp the responsibility for saying what it should be and how it should be convened, which I suspect we can really only do if we say it doesn't exist as of now. Otherwise, you have to say who will convene it, and that is currently not, as far as I know, said anywhere. I'd prefer us not to be making the fine point that it does exist but hasn't yet been convened because I don't think that's a benefit to us.

Keith Davidson: Okay. Look, I think Becky's indicating on the chat that she thinks it can be finessed. Can we leave this to one side at the moment?

Chris Disspain: Yes. I think we can.

Keith Davidson: I think-- noting that there is an issue. Let's park it for the meantime, since we have section 5.4 to finish the document and only, really, ten minutes left to do that. I'd like to get a reading of the document, noting that we still have some issues (inaudible). So, Bernie, can we move on to 5.4?

Bernard Turcotte: Yes, sir. The process to revoke a delegation, 5.4. As discussed above, revocation should only be considered if the IANA contractor reasonably demonstrates that the manager has engaged in substantial misbehavior as defined in section 5.2.4, which persists despite the efforts of the IANA contractor using all means at its disposal to resolve such conduct. If the substantial misbehavior undermines the stability or security of the DNS internet or a willful refusal to cure the objective key requirements and necessary responsibilities of designated managers, the revocation may be appropriate. If the delegation is revoked, the IANA (technical difficulties) all means at its disposal to ensure the ccTLD will continue to resolve names (ph) and that a suitable replacement is identified by significantly interested parties in the manner previously described on an expedited basis.

The FOI working group believes that it is consistent with RFC-1591 to allow managers the right to appeal a notice of revocation by the IANA contractor through an independent body.

And, lastly, the working group suggests that the ccNSO undertake in consultation with the GAC and other interested stakeholders to identify for further discussion possible procedures to be followed in connection with any proposed revocation of the delegation of a ccTLD based on the work of the FOI working group.

Over to you, sir.

Keith Davidson: Okay. Thanks, Bernie. And Becky has her hand raised. Becky?

Becky Burr: I just wanted to say, as I'm looking at this, the-- I don't think that this section should be (inaudible) from 5.3 because it-- I don't think it should be a separate 5.4. It should be a process to revoke a delegation for substantial misbehavior. It's just a note because Nigel, I know, is going to (inaudible).

Keith Davidson: Okay. Well, so far, Nigel hasn't. Martin has his hand raised. Martin? Martin, you must be still on mute.

Martin Boyle: Hello?

Keith Davidson: That's better.

Martin Boyle: Right. Okay. Obviously, it's slow coming off mute.

One very small point in 5.4.1 because a-- defined in section 5.4, which I don't think actually exists above. So that's obviously just a cut and paste mistake.

More importantly, (technical difficulties), if there is and I've missed it (technical difficulties).

Keith Davidson: Yes. You're right. There's no 5.2.4.

Martin Boyle: Now, I don't know whether it is appropriate here. I actually think it is-- that, in 5.4.1 and 5.4.2, I think there should be some reference to the views or working with the local internet community, taking into account that there might be crisis reasons for working more quickly than-- and, if possible. But, certainly, I would expect this to be done in conjunction with the local internet community, bearing in mind that the delegation is supposed to be serving that local internet community. Thank you.

Keith Davidson: Okay. Thanks, Martin. And I see Becky's already indicating on the chat that she's agreeing with you and is okay with it. So I think some clarity could be gained around it.

Okay. There's no other questions. Oh, sorry. Martin.

Martin Boyle: Yes. It suddenly occurred to me the point that Becky made that this one process to revoke the delegation just refers to the substantial misbehavior. We're saying that that process would be different from a process for revocation for persistent problems for the proper operation of the domain under 3.5 because it wouldn't seem to me necessarily logical. But that's probably because I don't understand Becky's reason for separating those two.

Becky Burr: You could have a separate process to revoke a delegation, but 5.4.1, when we talk about substantial misbehavior, we also have the persistent problem discussion (inaudible). I just need to clarify that this is not overturning what we talked about in 5.2.

Keith Davidson: Okay. Well, it occurs to me after the discussion tonight that we actually have a document that probably is more capable of being agreed to than our former text. And I stand to be corrected. If anyone wants to object to that supposition, please, indicate your objection. But I think we might have a way forward without having

anything agreed tonight. I think we probably can continue to finesse this to the point that we will have all parties (inaudible). And that is my hope of course.

Did someone just say something? I don't understand that word. But, anyway-- So, look, thank you, all, for trying so hard. And I think we have made some very useful progress and perhaps got a bit of a breakthrough here. So, Bernie and Becky, we've got quite a bit of work ahead of us to do some redrafting and get some clarification.

Kim, I think we've got a number of questions for you to respond to on the list.

Next meeting is scheduled for the 7th of March at UTC 1900. So I think, with that in mind, two weeks away, we have two more meetings, the 7th of March and the 25th of March, before going to Beijing. So I'd really like to see if we could during those two meetings get through this whole topic of revocation and substantial misbehavior.

Thank you, all, for your participation. Unless there's anything else, I think the time has come to draw the meeting to a conclusion. Nothing else? Thank you, all. Good day or a good night or a good morning to you, wherever you are. Thanks for your contribution and valuable input into this. Thank you.

Becky Burr: Thanks, everybody.

Nigel Roberts: Thank you.

Martin Boyle: Goodbye.

Patricio Poblete: Thank you. Bye.