

TRANSCRIPT

Framework of Interpretation Working Group Meeting

Costa Rica 15 March 2012

Attendees:

Martin Boyle, .uk
Keith Davidson, .nz (Chair)
Stephen Deehake, .as
Eberhard Lisse, .na
Cheryl Langdon-Orr, ALAC
Frank March, GAC
Patricio Poblete, .cl
Nigel Roberts, .gg
Bill Semich, .nu
Dotty Sparks de Blanc, .vi

ICANN Staff:

Bart Boswinkel, ccNSO
Kim Davies, IANA
Elise Garich, IANA
Kristina Nordström, ccNSO
Bernie Turcotte, ccNSO
Gabriella Schitteck, ccNSO

Adobe Room Attendees:

Jaap Akkerhuis, ICANN/ISO
Daniel Kalchev, .bg

Apologies:

Chris Disspain, .au
Suzanne Radell, GAC

Keith Davidson: Good afternoon, everybody. I'll call this meeting to order. It is a meeting of the FOI working here in ICANN Costa Rica. We are starting a little bit late but I think we probably won't need to occupy the entire time slot for this meeting.

I understand for a lot of participants that there are issues arising in the public forum during the course of this meeting, so I totally understand if people want to

come in and out of meeting and, Kristina, if we could make some notes of the parts that people are in attendance for.

We -- I think the first item will be to go around the table and have introductions for the record and can we start with Elise?

Elise Garich: Elise Garich, observer.

Cheryl Langton-Orr: Cheryl Langton-Orr, ALAC.

Eberhard Lisse: Eberhard Lisse, .na security.

Bill Semich: Bill Semich representing .nu TLD.

Keith Davidson: You'll have to speak closer than that in future.

Nigel Roberts: Nigel Roberts, .gg.je TLD.

Becky Burr: Becky Burr, non-com.

Bernie Turcotte: Bernie Turcotte, sports desk.

Kristina Nordstrom: Kristina Nordstrom, ccNSO, Secretariat.

Patricio Poblete: Patricio Poblete, .cl TLD.

Frank March: Frank March, GAC.

Kim Davies: Kim Davies, ICANN.

Dotty Sparks: Dotty Sparks, de Blanc, .vi. ccTLD.

Stephen Deehake: Stephen Deehake, .as ccTLD.

Martin Boyle: Martin Boyle, .uk.

Keith Davidson: You'll have to speak very close to the microphone.

Martin Boyle: Sorry, Martin Boyle. uk, ccTLD.

Keith Davidson: Thank you and online we have Jaap; you can hear us loud and clear, Jaap?

Jaap Akkerhuis: (Inaudible).

Keith Davidson: Oh, okay it's one way. Oh, Jaap says yes I can hear you, and other online participants? Are there any? If you are can you please come into the Adobe room and announce yourself. And apologies, I have an apology from Suzanne Sen (ph), who has other GAC commitments, and from Chris Disspain, who may make it but has some public forum commitments for ICANN Board. Any other apologies?

Kristina Nordström: From Daniel Kalchev.

Keith Davidson: He appears to be in the room on Adobe connect, but we'll take his apology in case he can't contribute.

Okay then with that I'll assume we've accepted the apologies and recorded those present. We have the approval of the agenda. I haven't seen on list to debate

the agenda in any form. Unless someone has compelling reasons to change, we will proceed in order.

Can we move to the approval of the meeting notes from the 23rd of February meeting and the document has been circulated twice? Bernie, do you want -- is there anything that you need to draw our attention to?

Bernie Turcotte: I don't believe so. It's one of those where I thought the discussions were interesting enough so I cut and paste large sections of the transcript of the call, but essentially what happened is we approved the documents for distribution as they were presented; and then there was a long discussion on RFC 1591 3.4, which was captured. That's about it.

Keith Davidson: Thank you. Does anyone have any specific issue with anything from those meeting notes that isn't otherwise covered on the agenda? Great, thank you.

Okay, moving ahead to item four on the agenda is the Cheers Report on the FOI meetings during ICANN Costa Rica. The working group outputs and discussion on the chapter one consent approval, the current status of the SIP chapter and the work that we're doing on revocation was covered in the CCNSO members meeting and sought a show of greenness.

For those non-ccTLD folks, we've started using a green, orange and red card system to indicate acceptance or otherwise of proposals and I can report that the ccTLD community unanimously held up green cards to support the adoption of the consent document.

On Tuesday we met with the ICANN Board and the CCNSO ICANN board meeting and our presentation again was specifically about the concept of having a chapter by chapter adoption by the ICANN Board of our work and the ICANN Board understood. They questioned but understood the driving factors to achieve that, so appeared to give their consent to take that as a process.

Then on Wednesday morning we met with the GAC and again presented a progress report on all items and requested the GAC to provide some form of interim approval so that we can submit the consent document to the ICANN Board with GAC and CCNSI approval. And we certainly that impression from the meeting that approval would be coming in the GAC communique. And Frank, would you like to comment further?

Frank March: Yes thank you, Keith. Basically I don't have that really in front of me but the communique has a notation that the GAC has accepted the concept report in principle but notes full consent is not available for the GAC until whole document, the whole report of the working group is prepared. So essentially from the tax point of view there's a bracket around the whole text, but for the moment the consent document has approval in principle. Thank you.

Keith Davidson: Excellent. We look for -- a question from Bill.

Bill Semich: Just a clarifying question, does that mean differently from the way it was proposed by Keith yesterday to the Board, but if we submit them as individual, in effect, chapters for the Board to consider, GAC will not have endorsed or looked at those individual chapters for the Board to review?

Keith Davidson: No I don't think it's substantially different, although there was an interim approval and, as always, the GAC has to opportunity to withdraw or resolve from an interim position and as further information comes along. So I think it's a rider that the GAC would always want to have in place. But the important point is that we

have this interim approval that we can take forward, so can I say thank you, Frank, for--?

Frank March:

Can I just add one thing to that, because it's relevant to Bill's point, that the 60-day time limit comment, for example, the concern in the GAC to which this group said well it's not a policy-making group so and that's not policy, so it would have to go through some policy development process in order to become real. And so taking that on board, what the GAC will expect to do is to revisit its principles as a result of the outcome of the report of this working group and may well make amends.

And that might well be written into the GAC principles as a process to follow. So there's no way the GAC can control the position on that until the whole document is there.

Keith Davidson:

Okay, but I think -- thank you, Frank, for your efforts to get their interim approval because it was a critical step in the process.

So, if there's no further questions on that point, we then took a resolution to the CCNSO council and its meeting yesterday afternoon and the CCNSO council has also given its stamp of approval, not interim approval, but final approval without any riders and so on. So the next stage will be for the -- for me to draft a letter for the CCNSO Chair to submit to the ICANN Board, which will include a cut and paste from the GAC communique indicating their support. So we could anticipate further discussion on that and ICANN Prague with the ICANN Board.

And that concludes the GS report and any further questions? Oh, and I guess obviously, most importantly, the working group itself is meeting today.

And okay, so we'll move to item five on the agenda and that was the issue of continued discussion around revocation in Section 3.4 and 3.5 of RFC 1591 and, Bernie, do you want to start the ball rolling?

Bernie Turcotte:

Yes, sir. I think the first thing we want to declare is that on the past stuff we have clarified that when we're talking -- we don't use the word re-delegation anymore; we use transfer. And when we talk about a transfer, we need the consent of the incumbent, period, and consent as per the document that has just been approved.

So we'll start at this baseline. And we're refining the terminology as we go along these various documents and so the consent part will be updated now that the document is approved. As the public consultation is completed on SIP, we will update the terminology relative to SIP. So eventually when we get to the chapter on terminology, it should just be cleaning up a few minor things because it should just be capturing the things that have been approved in the other reports.

Moving on to revocation, I believe where we are right now is essentially, at least my understanding, is that we're accepting the concept that there are two points where we can revoke the delegation/management of the ccTLD. There is what is presented in 3.4, which is the substantial misbehavior and IANA stepping, which we still have to clarify the terms, and there is what is in 3.5, which is operating the DNS. I believe the word is correctly.

So if we've got those two things, then I think basically what should happen next is that we should have a document, which is going to start writing down how we can start specifying some of the details around this. As has been pointed out by Bill, in the past this is not a binary thing to go to revocation.

Revocation is really nuclear last step in a process, which should be very clear similarly to consent and it really is about trying to correct behavior and work with the current manager. And really when we talk about revocation, it should only be a very last step once everything has been tried, including offering technical assistance, to make sure things can work.

So I think the work going forward, as we look at it, will be, as we do usually, start back into our usual track at this point in writing a paper and looking in those details and discussing them and seeing how we can define those things so it makes sense as per our common interpretation.

We, just as a reminder, we have not done a paper on revocation because we wanted to start just with the words of RFC 1591 to try and get some sort of understanding of where we were and I think we've reached that or I'm hoping we've reached that.

So then it's a question of let's get some words on paper; let's start circulating them and let's start doing our usual work on this so that we can generate a document, which will allow us to then say yes this is what we mean. So that's my understanding and I'm going to stop there at this point if there are questions, comments or disagreements.

Keith Davidson: Everyone is delighted, okay then continue.

Bernie Turcotte: Thank you, sir. All right so, oh Stephen has a comment.

Stephen Deehake: Did I misunderstand?

Keith Davidson: We recorded earlier an apology for Chris Disspain not being here and now record an apology for him being here. Okay, Bernie.

Bernie Turcotte: Thank you, sir. All right, so trying to lay these things out, I guess what I'm going to try and use today's session since we've managed to get everyone face-to-face is try to understand maybe people's positions and start to develop things a bit more as to what we should find in that document like the other documents, the said document and the consent document.

It's going to be in the same format, obviously, and will end with the section seven that has recommendations. And so it will be 7.1 will be the guidelines and procedures and 7.2 do 7.5 will be pretty much a cut and paste from the same one except, as Eberhard has pointed out, we will be using the term IANA contractor from now on when describing these points. That has been taken on board.

So I think on the lay of 7.1 number one to number six I think we all know what we'll be referring to. We'll be referring to sections 3.4 and 3.5 of RFC 1591 and doing the usual chat of those things and presenting the issues and laying them out. Where it actually gets interesting is, of course, is in seven where we'll look at the recommendations.

I think what's going to come around is some of the things we have to talk about, maybe the simpler one to a certain extent is 3.5 for technical competence of operating the DNS, which can lead to revocation.

I think, as we've said, maybe one of the things we'll look at doing in the paper is describing a general process, which should be used when an issue is brought, taken on board that could lead to that. So what are the notice periods, what are the advice periods, how should they be communicated and building on the work that we've done in part on the consent document is the way I see it.

I think Becky put in a fair amount of work about how we have to advise people of things and how we expect an answer and I think it would only make sense to try and be consistent with what we've defined so far when defining the notice provisions, especially when we're talking about revocation. And let's be clear, I use the word revocation but it's really the process that may lead to revocation as a shorthand. Really what we're talking about, as we've discussed earlier, is a process to resolve issues under those two things we've come to.

Under the technical competence item, if we go to -- I'm actually going to bring up RFC 1591. Do you have it or do you want me to email it you?

Unidentified Participant: Which one?

Bernie Turcotte: RFC 1591.

Unidentified Participant: Could you email it to her?

Bernie Turcotte: I can upload it? Will it take it in Word?

Unidentified Participant: No, not on PDF or-- Whatever you think it's usually about.

Bernie Turcotte: Well, I have an RFC out there as well.

Keith Davidson: While we're dealing with why don't you do that? While we're dealing with the technology, Nigel has a question, but also we -- can I ask the technical people in the room to activate the screen?

Oh, we've lost everybody's -- we only have participants now, we have no presenters.

So anyway Nigel has a question.

Nigel Roberts: Indeed. It comes with a point that I think that Bernie made just before the technical distractions and it relates to running the DNS with technical competence.

It's very clear that that's exactly what RFC 1591 t.1 meant because it was an exceptional registry back in 1994 that had a database driven registry system and RRP and EPP were not even a glimmer in anybody's eye at the time.

So, the literal interpretation of this is that the process that leads to potential revocation can be done only if you screw up the zone file. I suggested on one of the calls that in the light of toad's environment this could be interpreted and extended to mean running the registry system with technical competence.

And someone, I think it was Martin on the call, I can't remember if it was you, Martin. Somebody suggested, shot me down; maybe I haven't made myself particularly clear, I don't know. It's certainly a valid argument to say that what I'm suggesting is a policy creation moving on from the literal words of RFC 1591 and perhaps the correct thing would be to identify it and say we're not going to do this because that's new policy creation and not mere interpretation.

But I'd like us to actually deal with it one way or the other in context.

Keith Davidson: Okay, yes I think -- I mean yes it needs some greater context and I think this is going to be a challenge to us to interpret perhaps more broadly the growth of the narrow views that could have been expressed in 1994, pre the worldwide web. So I think we need to take the spirit of 1591 to the maximum extent that we

possible can without inventing policy along the way to try and encapsulate that to develop the color in it that we're required to.

Nigel Roberts: Thanks, Keith. I mean what I'm really saying is where we draw the line? I mean a lawyer would call this mischief or purpose of interpretation and different lawyers have different thresholds for tolerance of this. Either we say -- we look at the purpose of RFC 1591 and if it was written in today's context it would obviously include operating the registry with technical competence, as well as operating the zone with technical competence, or we say that we're just here to interpret. That's the lacuna that we need to address in the policy development process.

I'd like to see what other people feel about which of those.

Unidentified Participant: If I can read those, so section 3.5 of RFC 1591, "The designated manager must do a satisfactory job of operating the DNS service for the Domain. That is the actual management of the assigning of domain names, delegating sub domains and operating main servers must be done with technical competence. This includes keeping the central IR in the case of top-level domains or other higher domain manager, advise of the status of the domain, responding to requests in a timely manner and operating the database with accuracy, robustness and resilience.

There must be a primary and 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. In cases when there are persistent problems with the proper operation of a domain, the delegation may be revoked and possibly delegated to another designated manager."

Chris Disspain: So it strikes me that the key things here are operating the DNS service for the domain, the domain being ccTLD and the use of the word includes because that's not inclusive it's whatever I mean. They are examples. It's not supposed to be a closed list and it seems to me that it's not that hard to say that the satisfactory to operate in the DNS service and including the delegation of names clearly brings in the registry, VPP and whatever the hell it is you use in order to do that.

I don't think it's actually that much of a problem. I think it's included and I would struggle to mount an argument that you were just running the zone file and everything else failed, but the zone file itself was fine. I just don't see how you could say that that was outside of this.

Keith Davidson: I think and here and seeking to codify, as Bernie goes forward, obviously, if the feeling of the working group is shared with the sentiments being expressed, then I don't foresee any problems but Nigel and then Bill.

Nigel Roberts: I can't disagree with what Chris has just said because it basically and that's what I thought I said on the call and I must admit it was one of those calls at two o'clock in the morning so I don't really recall exactly why I was being shot down about it, but somebody shot me down.

I may have dreamed that, yes. Somebody shot me down and nobody else howled in protest so in some nature we've got it clear.

Keith Davidson: Okay, fair enough, Bill?

Bill Semich: I'm really not sure what your technical competence in running a registry as opposed to managing the DNS and making changes to the zone technically correctly and not fowling up. I'm not sure how the running of the registry, which is application, server, forms to fill in, database to store in an independent

database, which as nothing to do with the zone file. I'm not sure we can determine or find the language that will tell people how they should do this and how well they should do it as long as the zone file is correctly managed and as long as entries and changes can be made to it correctly apart from what may have been the existing system of software that was developed in order to do it either automatically or semi-automatically or whatever. The key thing is that the changes can be made.

Keith Davidson: I think I'm hearing different words saying the same thing in actual fact but, Martin, you had an observation?

Martin Boyle: Yes, just for the avoidance of all doubt, it was not I who opposed Nigel's comment because certainly a call at two o'clock in the morning, the last call at two o'clock in the morning I was not on it for very personal reasons. So but yes actually I must now agree with the overall line that Nigel outlined and that I think Chris put some flesh on so I'm still quite happy with going down that route. Thanks.

Keith Davidson: Thank you and, just for the record, we have an interloper in the room. Sir, could you please introduce yourself for the record?

Marty Drill: It's Mart Drills from .au. Thank you.

Keith Davidson: Welcome and, as we have very few observers, we'll accord speaking rights at the moment, so if you do have questions of clarification--

Unidentified Participant: You might want to run them past me first, Marty. Standard operating procedure.

Keith Davidson: Chris, did you actually have your hand up? No. Bernie.

Bernie Turcotte: Listening to what Bill was saying, I have to agree with Keith. I think we're talking about the same thing. I don't think it's a point of trying to drill down in the operations of the registry but it's finding the right words because what it says here is beyond simply publishing the zone file. I think we have to take into account the fact that a registrant has to be able to change the information and that's valid, okay.

So I think what we're trying to do is define that concept and if we're okay with that then I think we probably reached the point where we're okay with this one and staff needs to go away and put some words, which we can beat up on officially, because otherwise I think we'll be talking at cross purposes. Would that be okay, Bill?

Keith Davidson: No I do think that's right. We've reached the point where rather than conjecturing in this sense, we actually need some script and attack the script in an orderly fashion. So I think we have an idea of where this will go and it will probably take a significant amount of debate to finesse the precision of language. So I think we're authorizing Bernie to proceed to give us some script to then attack tech.

Okay, any further comments? Should we move further down? Well, shall we deal with the issues of the last sentence of our--

Unidentified Participant: (inaudible).

Keith Davidson: Yes. So we also then need to determine what persistent problems might mean and how often something happens to become persistent. And then the delegation may be revoked.

Exactly what is meant by the delegation being revoked and I'd welcome IANA's discussion on that point. Revoking a delegation, what would that mean to you? Would it be removal of an entry in the IANA database or is it the removal of the sponsoring organization's name from the database and so on?

And then, to continue down that line, be possibly delegated to another designated manager. Could IANA consider the situation ever arising that you would take down an entry in the IANA database that is actively serving names?

Unidentified Participant: Sure. I think my personal reading of that last sentence may be revoked and possible delegated. I think "may" and "possibly" are going together in parallel and not as two separate acts. So the question may not be that different for both classes. In other words, maybe revoked and possible re-delegated or may possibly be revoked and re-delegated.

Keith Davidson: Yes, one may not follow the other. So it's either/or of this and an either/or of that. However, I'd like to at least develop an understanding of what IANA may think that means currently and how you might procedurally deal with this if you were to have?

Unidentified Participant: Well, I do think it's entirely academic to that and I think this has never been exercised. You know, and I think you could be ready either way. I think it could be a revocation from the zone or it could be a revocation of the administrative delegation to a particular party.

But I think my opinion is particularly valuable on this because I'm not referring to previous incidents. I think if we ever got into a situation right now prior to clarification from this group that it would be a thoroughly well considered decision that went through a lot of iteration before how exactly it was implemented would be decided.

And then pertaining to your other question, has there ever been a delegation removed that was actively serving the domains, I mean that has happened in the case of retirement of domains but, you know, with consent. So but there have been active zones at the moment that were moved from design and did have delegations in them.

Keith Davidson: One assumes that there is an element of measure and caution that would accompany that removal?

Unidentified Participant: Yes, of course. I mean the date for example was telegraphed several years in advance so it was well understood. Okay Bill and then Nigel.

Bill Semich: My recollection is something similar to what you described may never have happened did happen in the case of Turkmenistan.tm when the designated manager was changed without consent and therefore the change wasn't actually made, but the designated manager no longer operated the registry. That's my recollection. So these names were basically in limbo allowed to continue to be served but no new registrations were permitted.

Nigel Roberts: Off the top of my head I don't remember the circumstances of that. I mean, you know, depending on your definition and I know we discussed this in the past hostile re-delegations could be considered revocations and re-delegations. I was thinking right along the lines of actual removal of functionality in working definition in my head.

Keith Davidson: Yes I mean, the issue that arises in my mind there is that the situation of a ccTLD manager who's doing something that's apparently not right, that a number of registrants who have done nothing wrong and IANA's duty of care to continue to

be able to serve the names and somehow take remedial action against the infringing ccTLD operator. That puts you in an appointed tension to not break the Internet.

Kim Davis: I mean it's worth noting that ICANN's mission and its bylaws is to preserve the secure and stable operation with DNS. So I think fundamentally taking action that will disadvantage third parties, a lot of them registrants in a particular domain, is something that would be avoided at pretty much all costs.

And then I would also note that there has been situations in countries where there's been a fairly -- again, it was before my time in ICANN but I know in the case with Libya there was some situation where emergency action needed to be taken and there was some temporary custodianship for a period. So I don't want that constructive for this but we need to peek through the history for that.

Keith Davidson: Thanks, Kim. Elise and then Nigel.

Elise Garich: Thank you. I'm Elise Garich. I just wanted to go back to I think Kim's first statement that one of the important things, I think, that we're hoping that this group will give to the IANA department is the guidance on how to work with this type of language or how to interpret it and have better criteria. So yes there may have been cases in the past and Kim's history is longer than mine because I've been at ICANN a shorter period of time than he and so if he doesn't remember some things, then I don't remember them either.

But I do think that what we really welcome is the working group's interpretation of how this should be and what some crisp criteria might be because as all of us are engaged in this activity, we're all interested in maintaining the stability and not disenfranchising anyone.

Keith Davidson: Absolutely, but I think in helping us to understand the degree of color and if we can apply, it's really important we understand what IANA is doing now or its interpretation to the best degree that it has now.

Elsie Garich: Well, in my short time at IANA all I can say is that I know that Kim has particularly drummed into my head that we try to let the local community, the Internet community, resolve any issues and that we don't try to take any action without the local community doing everything in their power to resolve things, but he can correct me if I've misstated that in any way.

Keith Davidson: Thank you, Elsie. I noticed we've got a new member in the room. Could you please just for the record introduce yourself?

Victor Abboud: I'm Victor Abboud from .ed.

Keith Davidson: Thank you, Victor. Now, Nigel.

Nigel Roberts: Finally, thank you, Keith. Without going into the first part of the two parts, I wanted to support and underline what Bill said recently about the two parts of this.

Let us for the sake of argument assume that we've got a circumstance where revocation takes place. That may be because of the abandonment or whatever. Abandonment is something that we looked at once upon a time.

What it's actually saying, in my view, is that the IANA need not re-delegate immediately or in fact at all. For example, I don't know perhaps the country is in civil war or something like that. There could be all sorts of circumstances whereby the IANA might not immediately -- in other words you have a competing

party turning up saying "Well you just revoked this. I'm the one and only applicant in the country. You must give it to me now."

It's basically saying you don't have to. You can do something else. I know you'll keep these done far running if you possibly can.

Unidentified Participant: As I say, I think Bill is entirely right. Those are two separate things here.

Keith Davidson: Yes I think we encountered examples of or instances during the delegations and re-delegations discussions where the ICANN Board had applied emergency or caretaker delegations, which obviously out of policy or are not consistent with unless you can find them to be in a revocation under this clause.

Nigel Roberts: That's right and there's one further that in RFC 1591 itself and certainly in the very early days when things had been getting more informally. John Postel (ph) certainly had a view that where there were two contending parties within a region he would consider giving part of the zone to each of them, let's say second level domains and therefore by definition the TLD was kept in the IANA hands until they got so annoyed with the situation that they made their peace and came to an agreement.

So the idea that the IANA could effectively run a ccTLD, it's not totally outrageous.

Keith Davidson: Okay thanks, Nigel, and, Martin?

Martin Boyle: Thanks, Keith. Just a little question, did that actually ever happen or is it just the super mythology of John Postel?

Nigel Roberts: Well, it's actually written into 1591 as well as.

Martin Boyle: It might be but it's actually whether it happened, so whether there was actually any--

Nigel Roberts: Well, it certainly caused got in the mythology, Martin, that's for sure but the records of the IANA might show something along those lines.

Unidentified Participant: I'm not sure I can point to an example of precisely what you described happening but I can definitely and I won't name names unless you really push me, but there is definitely at least one ccTLD where the admin contact was appointed to one organization where technical contact was appointed to another and they are not allies and that is a (inaudible) still delegated that way right now.

Keith Davidson: So, in answer to your question, Martin, yes and it still exists.

Martin Boyle: But are they operating different parts in the second levels really what my question is.

Keith Davidson: Okay, Kim then Elise.

Kim Davies: No. In fact, they're running the same zone with different contents on different name servers and it is a complete mess.

Keith Davidson: Suddenly, I'm interested to know who.

Unidentified Participant: That does seem like the worst of all possible worlds.

Keith Davidson: Elise?

Elise Garich: So my question and I don't know. I probably should ask Kim in private but for this anonymous zone that we're talking about, was it the IANA in some instance that set this up this way or did it -- was it something where there was a sponsoring organization or a manager at some time and it just evolved that way because I think the question was whether the IANA actually set it up that way?

Kim Davies: I couldn't say with authority. I suspect we don't have records sufficiently comprehensive from the time period to know. I mean it wasn't something ICANN set up so.

Keith Davidson: Okay, Bill?

Bill Semich: A couple of things come to mind while we talk about this. I recall ISI used to provide name service for .us, top level domain for those second and third level zones that didn't have managers. And when those managers went out of business would take over serving the zone and search for others to take that job off of them.

And the question comes as to whether, both in the light of that possibility so that if there were reputation there'd be a manager of last resort known as IANA or someone else. And also, just sort of loose guy thinking if IANA has given any thought to becoming the fail over system for ccTLDs?

Unidentified Participant: You make a good point that had escaped my memory. Historically US NUM operated by ISI, sorry, .us and .um operated by University of Southern California and at the time when ICANN took over IANA, .us went to new style but .um kind of just stuck around kind of forgotten. But ultimately USC wrote to ICANN, probably about five years ago now, and asked us to remove it from the root zone saying it was basically forgotten and they have no intent of running it any longer.

So I don't know if that's useful for this discussion. And then, coming to your question about whether IANA would consider being a registry of last resort, I mean I think we would do everything in our power not to be because I think it's more appropriate that some local actor in the country be the fall over proposition in the event of some kind of emergency. And again, Libya without knowing the specific details, but I know that ICANN works with local actors and a local solution was found to take over when on an expedited basis operation of the registry to ensure resolution continue.

But I mean I guess if there is no other solution, I mean again I come back to ICANN mandate if there's no other option I imagine ICANN would at least consider it. That could be rather have any consideration of that.

Keith Davidson: Yes, I think we're talking circumstances at the edge of probability in any case but, Nigel?

Nigel Roberts: That notwithstanding, certainly ICANN in eg TLD process has determined that having standby operators or whatever you want to call them. I'm sure was an approved term, which I don't know or have forgotten, is not a bad thing to have and I'm just wondering whether or not, and it's probably out with the group and rumor to this group but IANA might consider keeping a list of technical operators who might be able to assist if you had to step in and do that for you.

Unidentified Participant: It's a very good point. EBIRO is the term, EBIRO, emergency back in registry operator. Had to throw that in there. Maybe we could leverage that setup but, again, I think we're talking about situations that have proven to occur like twice in the last 20 years. So, you know, it could happen again, but I'm not sure I would invest a lot of time thinking through that particular situation.

Keith Davidson: Okay, a good discussion. Any further points or issues relating to the 3.5? You want to go to 3.4 do you?

Nigel Roberts: No I want to talk -- I want to hear people's thoughts about how we're going to get to Elise's point about understanding what persistent problems mean.

Unidentified Participant: Thank you, Nigel, I'll record that thought.

Elise Garich: And I apologies that I'm going to have to excuse myself and go to the public forum. It's mandated on my part. But Kim will keep it up. Thanks, Kim.

Keith Davidson: Okay, good point Bernie? So persistent problems, I mean persistent minor problem or a persistent problem towards by say denial of service attacks, is that something that could conceivably cause IANA concern to revoke or would it be or would say a country or a country code manager taking down the zone, the legion, the zone and it doesn't appear for several days in a row, is that up a system problem? So I'll allow Kim to respond, then Stephen.

Kim Davies: Well you know, as I said, we've never exercised this provision so I consider them consistent problems and certainly we've actually had that. I mean if one African country was lame for several weeks just a couple months ago and that means effectively that whole TLD was not functioning.

But we didn't exercise any revocation or attempt to revoke (ph). So I mean yes I consider them consistent problems but absent guidance we've not -- the way we've approached it is we've gone to our contacts in the country to understand the situation to try and educate the existing operator what's going on, trying to get remedies put in place and so on and so on.

Similarly, that has happened in other countries too, but also you know we've had natural disasters that have impacted system impressions with the same net effect, but I wouldn't consider that necessarily as grave, although you can make the argument that if you don't have a sufficiently diverse setup that natural disaster causes your zone to go off line, there's potentially being -- you haven't -- you don't have a sufficiently robust system in place.

But I mean none of this has elevated to the point where ICANN, and again I'm talking about my time there, where it's elevated to the point where ICANN has considered it needs to actually step in and take some kind of action beyond using networking to try and inform the people that need to be informed about what's happening and to give them whatever tools we can provide to help them rectify the situation.

Keith Davidson: Okay, here just again there is an empowerment to IANA to step in and what that stepping in might mean is something that we'll come to shortly, but -- and what might constitute the significant misbehavior to enable it stepping in. So we'll come to that but Stephen and then Bernie.

Stephen Deehake: Well it makes sense to perhaps to try to frame this in regards to classifying some of these incidences with severity levels. For example, if a master goes lame as opposed to one or more of the secondary is going, site is going lame, treat that as -- the mass as the whole. If the whole domain goes dark that's a step one I would say. That's really critical because the whole thing has gone dark, but if the master is still okay but for some reason the transfers to the slaves aren't happening and the slaves go lame should we think that is a problem of equal severity?

Keith Davidson: I like the way you're thinking and what's the proportion and scale of something being persistent and a problem though? And according that may depend on the size and shape of a ccTLD. A ccTLD with a hundred names and no commercial use probably isn't as important or as .uk or something going down.

So, you know, the question of size and shape and scale probably has some impact here and so perhaps our color and depth has to relate to the size of the -- or the impact of the problem on the Internet at the time.

Well, I've got Bernie, then Eberhard, then Martin and then Cheryl.

Bernie Turcotte: Listening to Kim, I think he's presented what we expected. I mean even if this had been clarified, there's probably none of these cases where it would have gone to a level where you would think about re-delegation. I mean if there is, and this is what we said starting up, I mean, the first function is to try and fix it and work the revocation aspect of any of this is always a last resort, a very last resort, when things have gone and there is no hope.

And I think we've talked about a few things in the past, such as, you know the manager being a single, a person and real person, and that person not being alive anymore and that can cause some problems and we need to look at those things. But this is the kind of thing that I'm to soak in so that when we build the text we'll find common ground and reduce the time of discussions. Thank you, sir.

Keith Davidson: Thank you, Eberhard.

Eberhard Lisse: I think you must -- Eberhard Lisse of .na -- I think we must separate two things, problems and misbehavior.

Problems can be important and not be important. It can be persistent or not persistent. Problem IANA will help to solve it out and if that fails eventually IANA will take measures to assure the stability of the Internet.

It's not the same as misbehavior. Misbehavior has the concept of what Nigel told me, we just look it up again, egregiousness or something. Egregiousness, something like -- English is my third language so I struggle a little.

But if you separate that, problems even if they're serious or persistent will be treated different from good, bad faith. That's I think should be helpful. If personally I feel that it's a small domain or large domain for the people using it, it might be as important for the 100 people making use of it. It might be as important then for the 10 million using the other but in the scheme of things, of course, if .uk goes off line we'll figure this out fairly quickly.

Yes and something will be done fairly quickly, but it's not those, it's the ones that have problems, which they can't solve themselves even when they want to. Like if Egypt gets told by its government you must shut this off, it's one thing. If there is a natural catastrophe in Africa or something and the guys just have no power, how to do that is a different thing. And I fully agree that as the last resort if the manager cannot handle it or cannot resolve the problem that somebody and IANA comes into mind as the last resort may step in to help to make an emergency plan until the situation can be resolved. That does not necessarily mean this is a re-delegation. This is assistance in whatever.

If there is bad faith, significantly substantial that's a separate issue and I mean I'm quite willing to concede that as far as I am concerned, even if I pre-date 1591 I'm quite willing to concede that.

Keith Davidson: Okay thank you and that's most useful. I think, Eberhard, I am taking what you're saying about misbehavior versus this what we have here is a paragraph or a sentence that states, "In the case where there are persistent problems with the proper operations the delegation may be revoked and possibly re-delegated" so that is one instance. It has nothing to do with misbehavior. This is we need to codify this piece. Then we'll come back and look at misbehavior and--

Eberhard Lisse: I understand. In the context this refers solely to the operation of the VNS but I am personally willing also to concede if there is problem with the operation of the Who Is Registry if registrations can't happen anymore for some other reason. I would not have a problem there for INR to step in and help but that's not the same as bad faith.

Keith Davidson: Of course. I think also you raised an interesting point that one of the bits of color and bits that we may be able to add is not about IANA procedures but perhaps saying that one thing that ccTLD manages should consider is the contingency plan to potentially achieve a re-delegation under certain circumstances where the ccTLD manager or the government aren't in a position because of emergency to - - and already have signed agreements in place. There may be a best practice process that we can recommend in that regard. Sorry I am holding up Martin but--

Martin Boyle: I would not call this a re-delegation. I would call this more like a name server change.

Keith Davidson: We'll deal with the waiting but I am talking in principle but just conceptually that the pre warning ccTLD managers that they may have some steps that they should be taking in the cold hard light of every day now before the disaster occurs, the unforeseen occurs. Martin?

Martin Boyle: Thanks, Keith. I must admit that I feel a little bit of nervousness about us embarking on an exercise that might have us trying to classify the severity of risks. It actually does seem to me to be A, not covered in any of the documents we have; B, likely to be controversial and C, probably take us quite a long time. But if I can actually just go back to the sort of persistence, persistent problems, I guess for me the concept of a persistent problem is where you are aware of the problem that you have an ability to respond to that problem and in this particular case I am separating out as you haven't got the ability because there's been a local catastrophe so you wouldn't actually be doing a re-delegation there. So you have the ability to do something with it and you don't.

And it's that fact that makes it the persistent problem because the problem isn't going to go away and I think certainly as far as I am concerned when I read that text, that is how I would interpret that concept of persistence to a problem.

Keith Davidson: Thanks for that and very useful. I've got Cheryl and then Bernie and then Eberhard.

Cheryl Langdon-Orr: Thank you, Cheryl Langdon-Orr, and I am risking starting a debate with Eberhard that I am willing to take that out of this context if we need to but I just wanted to share with you how I have always read this part of it and it is in line with what I am hearing. I read it as the persistency to me because they're talking about maybe revoked and delegated. That was -- this is not helping in a tornado.

This is something different in my mind and I was seeing it as an unwillingness and a dereliction, a failure to very much in the have had the remediation, have had the distance, have been approached at or there is simply an unwillingness to cooperate. I was at that level of what is persistence. The problem is persistence as a term is very easily interpreted in a number of ways and, depending on what

this group decides, I think we need to be very careful about how we create a glossary on this language because persistent can be an ongoing and therefore not even at your own fault issue. Thank you.

Keith Davidson: Excellent points and yes and also I think you're interpreting an instance where the manager is causing the persistent problems that I'd turn that around and say there are potential problems of say an in country denial of service attack that is constantly bombarding and taking down that DNS and the government has a restriction that all DNS servers must only be in that country. There's a forced situation of never being able to emerge out of a persistent problem that is not the fault of the ccTLD manager.

Cheryl Langdon-Orr: That would -- therefore I would like to add not only unwillingness, an inability into my list of.

Bernie Turcotte: Yes I am going back to Eberhard's point and I think this ends up being almost a subset of misbehavior because if this is about focusing on the technical operation for me, I mean the DNS has to run. I mean the simple thing I read in this is the DNS has to run. I mean you've taken a commitment to run the DNS. What does that mean? Your zone file works. People who have domains can make changes and you have a Who Is and, as far as Martin's worry to my mind, I mean we can keep it fairly simple. I mean something is working or not. I mean to a certain extent we can make that judgment and there are basis for looking at these things in various documents in ICANN. We don't have to invent them.

But I think it comes back more to intent, you know. If there is really no intent to fix the problem or an inability to fix the problem, which can be in both on the manager from outside sources, but it doesn't change the reality. The requirement is that the DNS work, so that's -- I am trying to just soak in these things for when I am going to get those things but what I am capturing from that is, I mean, there can be a natural disaster. There can be DNS attacks. There can be all those things but those things are not about going in, you know, killing a cc manager. It's about how can we help and doing everything in context and might provide some explanation and basis for doing what some of the things that have been done in the past, which were the right things to do but just really had no basis for being done. So yes that's it.

Keith Davidson: Excellent, I've got Eberhard, then Bill, then Becky.

Eberhard Lisse: I have always felt that persistent problems were problems that persisted and I am not making any qualification as to why. I am not -- there is nothing with intention or egregiousness or whatever. If there is a problem and the problem is serious and it persists and it can't be fixed I don't care what's the main intent here. If he is trying very hard or he is not trying at all or he is trying to rip somebody off, as long as it doesn't work and it persists not to work, I don't really concern why it doesn't work. As long as it doesn't work and can't or isn't fixed, that's a different - - and that helps us because we don't have to look at misbehavior.

If it doesn't work and we can't get it to fix and we're try and IANA tries, it's best to help and it can't get fixed, there will come a stage where IANA may have to step in and do something about it. That doesn't mean we have to take it away from the manager. We have to fix the problem. If there is bad faith, egregious misbehavior or substantial misbehavior, that's a total different quality of things and I think if we approach it from that we must fix the problem.

If the problem can't be fixed eventually we may have to do something, whether it's intent or not we just need to fix the problem and focus on the problem, that helps us a lot because we get away from having to give examples. And then it also helps us because misbehavior is fairly simple. That's bad faith, egregious,

whatever we come up with, somebody's intention is screwing the clients or whatever. Then we may have to do something about it too or I am willing to concede that at least.

Keith Davidson: Okay yes thanks, Eberhard. Bill?

Bill Semich: Bill Semich, so I bothered to look up persistent on my online Oxford English Dictionary and the first definition is "persisting and/or continuing firmly in some action, cause or pursuit, especially against opposition or remonstrance or in spite of failure" and I think that's a good one and I think the fact that a persistent problem might more gently be defined as it just ain't going to ever stop happening may put some managers at risk for things they're trying to fix and might make it easier to pull the trigger on something that could otherwise be fixed.

Keith Davidson: Excellent, thanks, Bill. I think noted and I think yes we need in the terminology paper, we need that sort of definition of persistent, for example, but we also need to codify some circumstance around what that is. Becky?

Becky Burr: I think in a typical contracting setting we would be able to read in some requirements of materiality and some exceptions for circumstances beyond the control of the operator, particularly to the extent that they are inter-- you know, they're sort of intermittent or not continuing or the like so we may be like beating this a little bit to death.

Keith Davidson: Thank you.

Unidentified Participant: I think we have beaten this to death.

Keith Davidson: Yes in fact no I think this has been a very useful session so far and I think Bernie has plenty of ammunition to now take away and attempt to capture what has been a very useful discussion and create a draft for us. Can we move to 3.4, which is significantly interested parties and the domain name and I've popped up there on the screen and Bernie has got it in the Adobe Room. And just have a look at this text and think about it and--

Bernie Turcotte: Can you make me present here? I can't move the thing. It died on me again.

Yes we come back to 3.4 and I will adjust the position of that. So the paragraph that we're looking at is "the IANA tries to have any contending parties reach agreement amongst themselves and generally takes no action to change things unless all contending parties agree. Only in cases where there -- the designated manager has substantially misbehaved would the IANA step in." So our two items that we've been looking at in here are substantially misbehaved and IANA stepping in. As a general framework, I think Eberhard and Nigel have been referring to a certain quality of egregiousness in the actions of the manager to qualify it as substantially misbehave so there is sort of intent yes and I hope you'll be taking that up.

And the second part has stepping in I think follows back on what we said when we started this discussion is that IANA will do everything it can to fix this, even if there is misbehavior on the part of a manager. Sometimes it's not a question of fixing a name server, it's a question of educating them and making them understand that there will be consequences to something and helping them, if there are issues driving this, to keep the notion similarly to what we were talking in 3.5 of a revocation as a last resort nuclear option, which is really at the end and utmost impossibility of doing anything else. So I'll throw it open to the floor, Mr. Chair.

Keith Davidson: Thanks, Bernie, and can I just make an observation that there are some aspects about things like stepping in that I think we can provide some color and depth on. For example, I would think the intent that I read and IANA stepping in is not IANA stepping in to -- with big boots on and stomping all over the place but remedially stepping in and seeking to sort out and so on, so just as an observation that there potentially are some connotations of understanding the pastels of 1091 language that stepping in might sound draconian but the action probably in that wasn't. Martin was--

Martin Boyle: I think you just said what I was intending to say. Stepping in can be then taking power on themselves and stepping in because they've seen a problem. Stepping in could also be because they've been invited to step in because they can't sort it out themselves mutually and happily and I think we just have to keep that in mind that this is mildly ambiguous.

Keith Davidson: Indeed and it may be a stretch to apply the consideration of pastels and tint rather than, you know, it may require a PDP because it's not at all clear what that actually could be interpreted to be but let's see how we go in terms of a common understanding as a group along the way. Nigel?

Nigel Roberts: Actually what I wanted to talk about and maybe raise the focus of the working group, actually what -- gosh, actually what I wanted to talk about and maybe raise the visibility of the group towards that is the opposite of substantial misbehavior, shall we say insubstantial misbehavior or trivial misbehavior? It's quite clearly if a certain event, whatever that event is, is triggered by substantial misbehavior, there must be a level of misbehavior, which does not trigger that, thereby underlining the fact that this is a -- I won't say a last resort but it's almost a last resort power. So, for example, I don't know what you could -- I don't know what kind of misbehavior would not be substantial and I don't think it's necessarily helpful to pick out examples and try and dry ice them in this way but clearly there is a threshold to be met and it's not insignificant before you classify it as substantial misbehavior. That's what it appears to me.

Keith Davidson: That's an interesting point and I guess 1591 is trying to explain some expected and anticipated behaviors from a ccTLD or from a TLD manager and so that's just it's, you know, you can't define -- you can't possibly define all the behaviors that are appropriate so I think substantial misbehavior may not mean that. It means misbehavior because we don't have a qualifier of what a trivial misbehavior might mean. Anyway, so I had Kim I think.

Kim Davies: So another dimension I just wanted to throw into the pot, we talk about stepping in involving IANA doing what it can to assist the situation etcetera, etcetera, etcetera. I think it'll be useful to understand what exactly is expected of IANA with respect to that because right now we have a lot of expertise throughout the entire ICANN organization to do outreach in different regions, to help. We have security experts that can help in certain circumstances and so forth but that's predicated on an ICANN as it's structured right now and in particularly in light of all the other discussions going on.

The pure IANA function may not have all the skills to go in and help assist to a registry to bring that registry back to life so if the classical -- I mean the IANA functions operator specifically needs to have that capacity inside the IANA in order to cater for an event like this. I think that needs to be captured rather than just simply assuming that they're instantly running IANA will have that at its disposal.

Keith Davidson: Yes and I think that's very reasonable and I anticipate that currently IANA is constantly stepping in where it has issues with the individual issues within the zone file and does that appropriately to the measure of what you're trying to fix

along the way so I don't think there's any question that IANA is on a daily basis stepping in but it's how we codify and develop the color and depth on that as an issue. And in under what circumstances you would consider as substantially substantial misbehavior that might invoke our -- this is an RFC 1591 stepping in as opposed to our daily requirement to ensure. Okay -- oh did you--?

Kim Davies: I kind of had something different to what I said. I just want to make sure I was clear. I am not talking about stepping in the negative sense but if there's an expectation that IANA steps in in a supporting role to help them get back on line, if there's that expectation I think it needs to be clear what that expectation is so the IANA is resourced to do that as well.

Keith Davidson: Yes, no thank you, Kim. Stephen?

Stephen Deehake: Rather than simply add additional resources to the IANA, to handle this potential contingency, why not go back to the idea of having ccTLD contacts for the IANA who can then turn around and appeal to other ccs to step in and help their fellow cc that's in trouble?

Keith Davidson: That's possible but it's outside the scope of what we're discussing here so I think we need to try and codify these instances. Eberhard?

Eberhard Lisse: I also think it's clearly out of the scope of this group but we have the technical working group. We have a lot of ccTLD managers who are willing to help you yourself and that is helping in the Asian/Pacific. We are helping and within Africa and so on. If somebody comes to ask we will always find somebody to go. But I am thinking fully well if we expect IANA to do something we must give IANA the - - we must make recommend that IANA gets the resources because we cannot ask them to do something for which they don't have the capacity. That would be unfair and only leads to frustration.

Keith Davidson: There are a good number of ccTLD managers who will willingly and gladly step forward to help out any other ccTLD manager with their problems and they do so on a regular basis. And but that is not part of the framework of interpretation and that will continue I hope on the basis that ccTLD community is the most cheering and caring community within ICANN. Bernie?

Bernie Turcotte: Two points. I take what you're saying, Kim, but I take it more, at least for myself, in the context of 3.5 where there is a technical problem. I see what we're talking about in 3.4 going back to Eberhard's point is someone is doing something willfully wrong, which is not a technical issue necessarily. It's something that is -- implies a certain element of willfulness to doing something wrong and it's trying to frame those things and work with people to explain why those things are wrong and what the end story will be, which is still a last resort but we try and work our way through this.

In talking about some of those things, Becky did have some points relative to the preamble in section three about what some of the obligations are and maybe she can talk to that.

Becky Burr: Right. If we go up to the -- I do what all lawyers do, which is I want to look into the text and find what the words mean from the text itself and I think at the beginning of the what we might call the chapeaux there it clearly sets out the obligations of the design-- even if you go up farther to the very beginning of that, the real section, it says, "the" -- no you were there, you were there.

"The delegated representative must have the ability to do an equitable, just, honest and competent job." So I start from the position that everything about that

ties into those four words and that the rest what comes down from it is an explification (ph) of those words.

Keith Davidson: Thank you, Becky. Did you have a comment?

Bernie Turcotte: No I find that interesting that maybe a path we'll try to go down to see if it works for us when trying to deal with those things and I'll certainly try to use the knowledge on my Vice Chair here in drafting some of these words for your consideration.

Keith Davidson: Excellent. Eberhard, was that an indication that you wanted the floor? Oh okay thank you. Any further comments? Any while we're here? Well, actually I want to raise something here. The last paragraph in the section says "the Internet DNS Names Review Board," which we all know and meet with on a daily basis, a committee established by the IANA "will act as the review panel for all cases in which the parties cannot reach agreement among themselves. The ID in these decisions will be binding." This appears to me to be a clear statement about re-delegation. It appears to me to be a non-existent group that IANA hasn't really established and may or may not be able to act. But anyway, what does it mean? Eberhard and then Kim.

Eberhard Lisse: I think we don't want to go there. No you cannot have a body establishing another body to judge its decisions and then have no recourse. It's not there and we shouldn't -- we perhaps should say it's good it's not there and we shouldn't go there.

Keith Davidson: So you're suggesting our interpretation might be that it is meaningless and 1994. Kim and Nigel.

Kim Davies: The truth is we just don't let them out of the office. No I mean I think I've had the discussion with Keith but and I don't know if I sent it to our list. I mean, this is written the age when IANA decisions were purely staff decisions. There was no review by other parties. You know, today we have a situation where effectively there's a staff review and only those requests that elevate through the gauntlet of staff assessment end up at the Board and then there's a Board that reviews them as well. So I mean I am not saying that the Board is necessarily the IDNB. The IDNB is considered to be this panel that reviews the tricky cases let's say and I think we have that in the ICANN Board so I just recognize that the situation is different now from 1994.

Keith Davidson: I've got Nigel, then Martin, then Eberhard.

Nigel Roberts: Well, I have a great deal of sympathy for Eberhard's position that we don't want to go there but the words are there and we have to make some comment on them. This, to my mind, is one of the most -- dare I use the word egregious again, one of the most obvious examples of the non-legal nature of this document. It's very, very clear that if it's a true review body it has to be independent and it clearly isn't here.

I don't think review by the Board is sufficient because the Board, the IANA function contract is ICANN so the ICANN so the ICANN Board cannot review its own decisions. All you're saying is the decision is made at a slightly higher level than purely John's got up one morning and decided he was going to do something. I think this is one of these points where we need to say this is a PDP area. I think we need an independent IDNB.

It's a shame that this has never established because perhaps it would have involved over the last 15 years into something with necessary quality of impartiality and independence from both the IANA and the contending parties.

And again, I still think that this is intended to take place at delegation time when there is more than one applicant for a TLD. I am not sure you can take a case to the IDNB once the TLD has been in operation for a while. And that's something that we might want to comment on. But, by and large, this is one of the more unfortunate parts of RFC 1591 in lots of ways.

Keith Davidson: Yes and this is kind of interesting because 1591 is about TLD delegations and re-delegations, not ccTLDs specifically, and ICANN is going through around now all delegations so it's applicability is probably more appropriately measurable to the GTLD community than the ccTLD community so--

Unidentified Participant: And I see nothing that has revoked RSC 1591 in respect of GTLDs.

Keith Davidson: That's probably a fair comment. I've got Martin, then Eberhard, then Patricia.

Martin Boyle: Yes thanks. I must admit I am actually surprised that you write an RFC for a function that you're performing yourself and you put in a review mechanism and you don't actually create the mechanism so I actually suspect that this was something more to do with the fact that here you've got one person running a process. But I do actually have a big question mark as to whether in fact the Board decision is actually the review process that is mentioned here because it is a two-step process.

The first step is the staff seeking to resolve the problem with the parties concerned. Come up with their reports and by itself that report would be ticked off but we know that then you have to go to the Board as the IANA function manager for them to say yes you have followed the right steps. So I am not actually quite sure that this body has never existed. It's just never particularly existed in name because the staff action is in itself a separate process that goes through what is mainly in here and then it is that review function for yes we are prepared to go forward and put this to the United States government.

Keith Davidson: Okay I hear for speaking order of Eberhard and Patricia, then Nigel, then Becky and then Bill and then -- and I think if we can make our points reasonably quickly and then wind up this topic, so who did I have? I had then Becky, then Bill so Eberhard?

Eberhard Lisse: I cannot live with an ICANN bond being this review board. It's not acceptable. It's not going to fly, especially even if it is only for applications for delegation, cannot have it, will not happen, cannot -- it's not happening. In particular, since it's binding, never mind that these things on broad level are only consent agenda, they don't even read it to just what it's -- their broad sort of staff decisions. That's not a review and never mind that the Board is not the intended candidate. I prefer much more if we say this has over the 20 years that it was written has become meaningless during the time it was written it has never been -- come into place it has never been needed and I don't see any need to go in there now and open another can of worms.

Keith Davidson: Thanks, Eberhard. Patricia?

Patricio Poblete: It seems to me that these paragraphs that describe the existence of this review body is what we would call in the Spanish Litera Muere (ph) for death math or this begs something that it is treated there but it didn't exist, never existed. It's by the fact that was never carried out in practice it became meaningless and I would identify it as such and not try to interpret that maybe the Board fills a role that's similar or maybe kind of. That doesn't -- that's not appropriate. It just identified it and it's not the only thing in the PRFC that it's meaningless today. You can -- it actually lists -- it provides the actual list of GTLDs that exist and there are many more now. If you were to stick to the letter of the RFC you should believe all

these whether or not these are here so there has to be a reality check and so not try to interpret it, just say that it doesn't apply.

Keith Davidson: A very good point, Patricio, and yes I've been searching for Internet for quite a while now and I had Nigel and Becky, then Bill.

Nigel Roberts: Well, actually I don't need to violently disagree with Martin now although I do. I would just mention in passing, however, that the -- I've heard this from Kim before we had a discussion off line a few weeks ago. The Board does not have the necessary quality of independence. The decision is ICANN's here, as the IANA function contractor if there is to be an administrative review. It has to be separate from the function contractor or at least separate in the same way that UDLP is independent in the case of GTLD dispute but we don't need to go there. I think Patricio has very, very cleverly and very, very exactly said what we need to say. We would say in England it has fallen into dissuade (ph).

Keith Davidson: Dissuade?

Nigel Roberts: Dissuade.

Keith Davidson: Becky, you know me-- (inaudible). Anyway I have--

Unidentified Participant: In other words, stolen from French by the English.

Nigel Roberts: And if you want to argue about the word, the word actually has a slightly technical meaning. It means a rule or a law that no longer is enforced and therefore cannot be enforced.

Keith Davidson: Yes okay look we're getting into detail. Let's not go there and I was trying to actually draw this to a conclusion with Bill as the last speaker but Kim has the floor so Bill first and then Kim and then I think we'll move on.

Becky Burr: I am just going to second what Patricio and Nigel said.

Bill Semich: I did want to make the -- you know, reconfirm the point that this particular paragraph relates to new assignments; it specifically says "only in cases in which parties cannot reach agreement among themselves." This is what they're trying to reach agreement among. It is quite appropriate that it might be applied to the new GTLD process in fact or to a new designated ccTLD manager, few of which are going to be happening.

But the reason that I brought this up on the list is I think we will be doing a disservice to ccTLD managers if we don't create, start talking about if it needs a PDP fine, an independent review panel, maybe not one that's binding but that one that is strongly enough recognized somewhat of the panel that looked at that XXX decision for these kinds of nuclear decisions to revoke and that's something I put on the table and I'll keep putting on the table and I think we do have to follow through on our commitment to create this FOI with the missing piece, which is independent, impartial review.

Keith Davidson: Indeed and that's the instance of our natural justice and all of those things and that's why I specifically wanted to bring this up today was your post on the list some time ago, which we didn't get to on the calls really or provoke this kind of thought so good point and I think where we're probably getting to is the idea that we should dismiss this and actually refer in our interpretation that this is meaningless drivel or whatever the word Nigel used earlier. And but taking on board the potential for something that is out of scope for this one group but one of our recommendations may be that a PDP be launched for a thing that looks like this as a review thing. So final speaker, Kim?

Kim Davies: Just three quick points came to my mind during the discussion; one, the Board has a process the IRP I think it's called that dot triple X about itself of, sorry. I would say that there is an escalation path above the Board and I am not saying that's the right approach but that does exist if you wanted to appeal a Board decision.

Secondly, I mean I think the text can't possibly be treated any way because it says it's binding and everything ICANN does is a recommendation to NTIA implementation so I think it seems to me no one is in a position to make it binding if you read the plain reading.

And then thirdly, just maybe it was joking comment but Nigel mentioned that the language in RFC 1591 hadn't been deprecated associated with GTLDs. I would make the observation that it has. RFC 1591 was a statement of current practice as of 1994. ICANN did publish a new document current practice as of 1999 and it's called ICP One. Now I know that's like fanning the flames but that's -- that was ICANN's methodology of -- sorry?

Unidentified Participant: (Inaudible).

Keith Davidson: No that would be out of scope for this group.

Kim Davies: So, you know, more seriously I think we have to recognize that RFC 1591 was a statement of current practice. It wasn't in the author's mind when it was published that this would be an enduring formal policy document and therefore events have taken over a lot of the sections. I think it comes back to Patricio's point that we need to accept that.

Keith Davidson: Well, now I think in the interests of moving on, because we're finished in this room at 3:30, okay no. Okay, Bernie?

Bernie Turcotte: Well, I have to disagree with the policy part because it clearly states it in RFC 1591 in the beginning right before three that this is the policy for managing TLDs.

Unidentified Participant: As of when it was published.

Keith Davidson: Right.

Unidentified Participant: But your comment to me--

Unidentified Participant: It wasn't meant as policy. It is -- it was at that time strictly stated as being policy.

Keith Davidson: We determined that the status of ICP one and news memo one had not met the threshold of any consultation and therefore was an opinion from somewhere at not -- maybe a guideline or an internal assistance of interpretation but it has no status as a policy document and I know you'll come back and tell me 1591 is exactly the same so, Eberhard.

Eberhard Lisse: For the sake of brevity, we don't need to really go in the point is whether we like 15, 51 or what it is at the time. We have all sort of voluntarily abided by it and I cannot unilaterally and we have never accepted unilaterality of ICP one and it's not a part of this -- if it's in the scope of this working group, so therefore I take it as a joke.

Unidentified Participant: I think the point is you can't take all the 1591 because it has a bunch of stuff that's wrong in it so once you recognize that it's not a 100% of the document

we're following, it needs to be in a decision process of removing the elements that are not applicable.

Unidentified Participant: I think we are really starting to diverge here a little bit. The scope of this working group is to interpret 1591 and maybe regard principles and I think we don't need to change the scope of practice unless we get instructions from counsel.

Keith Davidson: Well, we're actually re-litigating that we did in the delegation, re-delegation working group then and we may have a point of difference that remains that anyway, I think we need to continue so is there any further discussion about the over arching topic of revocation and where -- does anyone have any fresh thoughts or is there anything anyone wishes to add before we close that agenda item?

If not, can -- oh we need to move to item six on the agenda and this is the letter that was sent from the CTNSO Chair to the GAC regarding the consent document and what happened on the last call was that we agreed that we would draft the letter, send it to the list for approval and send it on to the GAC. Unfortunately we ran out of time and did not give you the opportunity to review and sent a letter to the GAC. And there's a copy of that letter circulated as called "GAC Commission and Response" letter that you've all had and what's more there's a little bit of an error in that draft because it appears to be coming from me to the Chair of the GAC and it was actually signed by the CTNSO Chair as the proper conduit and path for such communications.

So it did go. You didn't see it. I know at least one member of our group has had some issue with that, some of the wording within that, and all I can do is offer my apology for having not given the review that we promised to give you that these things happen. If we hadn't have done what we had done in the time, we wouldn't have had it on the agenda for our meeting here so I apologize but offer the explanation that I have.

Eberhard?

Eberhard Lisse: We can be lucky that we don't have the comment period that some other groups have.

Keith Davidson: Indeed, but yes I am quite happy. If -- yes I agree perhaps in hindsight the wording could have been improved and I am quite happy to have the modified wording redone to our records if we need to if it suits. Bill?

Bill Semich: Yes I think it would be good to include the modified version in whatever we post on line and perhaps Frank would be kind enough to also deliver what we think of as the modified version. It's not the letter content itself, it's the annex which I would suspect that's supposed to have come from us and not from the Chairman of the CCNSO.

Keith Davidson: I don't know that will serve any purpose because the letter has been and gone and that's now on file. I think it's more reading into the record of this group so that we don't confuse the wording in the future. We can't undo what we've done.

Bill Semich: I'm not sure we can't. There's no harm. I've often sent corrected letters to people.

Keith Davidson: Okay.

Bill Semich: Again, I'm not suggesting the letter be corrected, merely the annex and that wouldn't require anyone's signature.

Keith Davidson: Okay well, in that case I think we need to take Bill's amended suggestions and seek the consensus of the working group first as to whether that is the appropriate wording and then debate that and if it meets consensus we could follow the path or then the working group can make the decision of whether we send an amended letter or not. So I think I'll take that as an agenda item for the next meeting.

Unidentified Participant: Phone call.

Keith Davidson: Yes on the call. Eberhard, did you have a -- oh sorry. No? Any comments? Frank?

Frank March: Yes I have to say, Keith, that from a GAC point of view your original wording is much more acceptable than the proposed changes.

Keith Davidson: Indeed, well okay we will have a debate. I think we should and so we'll take it as an agenda item for after this call after this meeting.

Unidentified Participant: Thank you.

Keith Davidson: Any other comments? We'll move to item seven, any other business? Does anyone have any other business, any issues? I posted very late a schedule of meetings coming up to Prague so just the dates are March the 29th, April the 12th, May the 3rd, May the 17th, May the 24th and June the 7th. We tried to get a schedule of fortnightly but with my commitments I've got close to two weeks in Geneva in the middle of April so sort of pushing it out and then having a May 17, May 24 quite type time frame of just a week between the meeting.

But I think within that time frame it gives us the opportunity to review any input on the said document, finalize that. Hopefully we have chapter two going through the same process when we get to ICANN Prague and hopefully we also are at the stage of having open consultation on that revocation chapter by then as well so -- and I think that meeting schedule allows us to do that. Bernie?

Bernie Turcotte: One advantage also is that we're always scrambling around that period to finalize documents for the meeting so it can be very handy to have those two stuck together from the staff and logistics point of view relative to the physical meeting.

Keith Davidson: And I don't think in the broader sense of people's calendars that there's any other major events, global events, that are occurring that will cause any conflict so should enable us to get through our work in a timely and orderly fashion. If there's nothing else? Kim?

Kim Davies: Actually had a question I probably should have inserted it a bit earlier, you mentioned that in your dialogue with the Board earlier this week that the idea is to send it to the Board in pieces for acceptance. How do you see the implementation by IANA of these recommendations, assuming Board approval be done? Because obviously there's a piecemeal implementation approach as well; alternatively there's treated as one lump and obviously those two approaches result in well -- a piecemeal approach results in significant implementation challenges, I think, so it would be useful to know what the group's thinking is on that.

Keith Davidson: Well, I think that raises a very valid further discussion point and perhaps that's a discussion that you and I should take off line and see if we can propose a methodology by which we can refer to so I'll note that we'll have an agenda item of the implementation plan and that Kim and Keith will work on that and come back at a future meeting. Okay, Dotty, who has just joined the meeting.

Dotty Sparks: Why should that conversation be off line?

Unidentified Participant: Trying to save time.

Keith Davidson: If you want the -- if the working group wants to visit everything in the detail that we need to I am quite happy. This is not about secrecy or anything. It's just about getting work done, Dotty. And--

Dotty Sparks: Yes but in my point of view, that's a hot topic and not an off line topic, not that I'd like to stay and discuss it right now, but I do think it's a group issue.

Keith Davidson: Nigel?

Nigel Roberts: Well, to my mind it's anything but a hot topic. I think it's implementation detail. It's a matter for the IANA staff, the IANA management and the ICANN Board at large, although having said that, if we're going to the trouble of producing this thing in chapters, then it would be incredible to expect that they would not as soon as we produced shall we say added value to the currently unguided situation, that it would not be grasped upon and immediately used.

Keith Davidson: Exactly my point.

Unidentified Participant: Let me reflect upon it just for 30 seconds and I know this wasn't on the agenda so I won't belabor it but I think the implementation challenge we're going to have by doing it piecemeal is any event re-delegation takes something between three to 12 months to do so right now we have applications that were submitted six months ago so, given that if we're implementing piecemeal right, new policies every three months or six months or whatever the case, how do we accurately assess against that guidance when in the last time of each request it could have - - there could be multiple different pieces of guidance to put in consideration? So I think just thinking that through for me is one of the things I don't have my head fully around.

Keith Davidson: Look, I'm still of a mind that the feeling of the meeting is that Kim and I should have the conversation and report back. If it needs to be opened up we will open it up in due course and I am going to -- Dotty, I can see you're exasperated by what I am saying but we've had a--

Dotty Sparks: (inaudible).

Unidentified Participant: Microphone, microphone.

Dotty Sparks: I don't see how you could get the feeling of the meeting by announcing to the meeting that that's the way it's going to be. How could you get that feeling? Where did it come from?

Keith Davidson: We do have on line participants, Dotty, so you do need to use the microphone to make a point. If you want to propose a course of action, now is the time to propose it and I'll see whether the working group wishes to follow your proposal or not. Thank you. Bernie, did you have something to add?

Bernie Turcotte: Two things relative to Dotty's comment. I think what Keith was suggesting, at least my understanding of it, is to talk to Kim to sort of size up the issues before we bring it back here so we can have a structured discussion of it so it wasn't a question of trying to resolve the issue. He was trying to prep the issue so we can have a good discussion of it.

The second thing, to Kim's point, is that regardless whether you wait or whether you implement piecemeal, it will require change management. There will be transition issues and the topics are pretty blocky so in my mind anyways we'll have the discussion and we'll see but you're going to have to address the same points regardless. So I understand your concern and on the other side of the fence but also if I am trying to look at it globally, a little bit like Nigel was saying. I think we should really try to understand the things and, this being said, if there's a real good set of reasons that are presented to this group why certain parts can be put in right away I think we're here to try and make things reasonable but also I think we're trying. We're developing things that we think will make life a lot easier for everyone and therefore, if possible, we should try and use them.

Keith Davidson: I think now look I am going to have a final word from Eberhard unless this is compelling. I think we've had a particularly productivity afternoon and I think we're descending into a little bit of chaos at the end, which I'd rather not do so, Eberhard, a brief comment and then if we can wind up?

Eberhard Lisse: I'll try to be as compelling as possible. I think we could call this a prerogative of the Chair. I think there is nothing wrong with liaising with Kim and bringing it back to the meeting. So far we have -- this has been done in the past like we have always discussed these things on the telephone calls. We have never had any decisions on one telephone call so there is enough time to reflect about these things. I think you have my full confidence in doing that.

Keith Davidson: Well, I would have thought that for the term that the delegation, re-delegation and this working group have -- has been going, that there might have been some trust in me and as the Chair to not be unilaterally making decisions or doing back room deals. I think everything, every single decision, has been iterative. There's been two opportunities as a minimum to participate and so on.

Anyway look, I'd like to close the meeting and I'd like to close it on a very positive note and that was that the CTNSO council meeting yesterday there was a specific thank you in the resolution, the thank you to this working group for its hard work, its diligence and its progress. So I'd like to pass on my thanks to the individual members of the group for their participation and allowing us to achieve what we've achieved.

Thank you and, with that, I'll declare the meeting closed. Thank you.