

# TRANSCRIPT

## Framework of Interpretation Working Group

*18 October 2012*

### **ccNSO:**

Martin Boyle, .uk  
Becky Burr, NomCom (Vice Chair)  
Keith Davidson, .nz (Chair)  
Stephen Deerhake, .as  
Daniel Kalchev, .bg  
Eberhard Lisse, .na  
Desiree Miloshevic, .gi  
Paulos Nyirenda, .mw  
Patricio Poblete, .cl  
Nigel Roberts, .gg  
Bill Semich, .nu

### **GAC:**

Frank March

### **Other Liaisons:**

Cheryl Langdon Orr, ALAC

### **Staff Support and Special Advisors:**

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

### **Apologies:**

Dotty Sparks de Blanc, .vi  
Paulos Nyirenda, .mw (for early departure)

Keith Davidson: Okay. Welcome, everybody. This is the framework of interpretation working group, and we're now in session. (Inaudible). And my name's Keith Davidson. I'm the chair of the session. And I think it's reasonably appropriate under the circumstances that we'll go around the room and introduce ourselves if we could, starting with Martin.

Martin Boyle: Was that because you saw that I'd just taken a bite of sandwich?

Keith Davidson: That's why.

Martin Boyle: I thought it was. It's Martin Boyle from .uk.

Patricio Poblete: Patricio Poblete from .cl.

Kristina Nordström: Kristina Nordström, ccNSO secretariat.

Bernie Turcotte: Bernie Turcotte, secretariat.

Kim Davies: Kim Davies from ICANN.

Nigel Roberts: Nigel Roberts from .gg.

Becky Burr: Becky Burr, .us.

Stephen Deerhake: Stephen Deerhake, .as.

Eberhard Lisse: Eberhard Lisse, .na.

Paulos Nyirenda: Paulos Nyirenda, .mw.

Keith Davidson: And, noted, Gabby's (ph) presence. Eberhard?

Eberhard Lisse: I just wanted to mention that, last time, I was upset about participants of this meeting eating during a meeting, and I would appreciate it if we couldn't do it during this meeting either.

Keith Davidson: I don't think a chair can rule on such a request, so I'll leave it to the discretion of the parties.

Can we-- We have some apologies also. Kristina?

Kristina Nordström: We have an apology from Dotty Sparks de Blanc, and Paulos Nyirenda has apologized for leaving early.

Keith Davidson: Okay. And I'm sure, while were here at Toronto, there will be various working group members coming and going during the session. The public forum is on, so we understand that. Just in time to introduce yourself onto the record.

Daniel Kalchev: Daniel Kalchev, .bg.

Keith Davidson: Okay. Thank you. And is there anyone on the line who is not in the room? Okay.

Okay. So we'll accept the apologies and record those present.

And can we move to the next item on the agenda? And could we get the agenda in the notes, do you think, Kristina? The first item is confirmation of this agenda. It was out, circulated, and I didn't see any requests for input or changes to the agenda. So we'll consider the agenda approved and move on to the meeting notes of the 4th of October meeting, which have been (technical difficulties)-- been in your hands for a few days. I don't think there's any matters arising from the meeting notes that isn't otherwise on the agenda. (Unintelligible).

Martin?

Martin Boyle: Thanks, Keith. Can I just ask for a bit of clarification. In section 6 on revocation, 6.1 is approved. The others are approved final. Could you let me know if there is actually a differentiation you're making there or if it's just accidental?

Keith Davidson: I think the differentiation is that the approved final has been through at least two meetings and been agreed at two meetings. So it's been, at that point, considered final because we've always had this principle of, if you've been through two readings and there's no further change, we can consider it final. And final, rather than approved final, is that it is up for final adoption today at its second reading. Does that make sense?

Martin Boyle: So approved means that it's only been through one reading.

Keith Davidson: Yeah.

Martin Boyle: Okay. Can I, then, just put my hand up on the 6.3-- no, 6.4, where, in fact, I have put my hand up at an earlier meeting. And I have record that Nigel had promised me a text about a legal decision that would set my concerns at rest on the inclusion of reasonable excuse.

Keith Davidson: Okay. I seem to recall that, and I don't think anything that we do is beyond re-litigation and reasonable circumstances. Nigel, do you have--?

Nigel Roberts: Thanks for the reminder. If you give me a few minutes, I'll see if I can dig out the relevant case. It was a question, if I remember correctly, on how (unintelligible) public office was defined. Is that correct, Martin?

Martin Boyle: Could you say that again? I didn't hear it.

Nigel Roberts: I said I believe what you're looking for or what I agreed to dig out was the case on how misconduct in public office was defined, which we used as an analogy for this.

Martin Boyle: No. I think, certainly, my recollection of the discussion was that you were going to clarify-- this was on 524111-- the level of what reasonable excuse might be because I did actually have a concern on reasonable excuse as to whether reasonable excuse could include something like not having sufficient resources to be able to correct the serious misbehavior. And you said that there was case law that helped put that into place.

Nigel Roberts: I think we just said the same thing in different words. I'll dig it out.

Martin Boyle: Thank you.

Keith Davidson: And so that's you passing the information on to Martin? Or are we actually revisiting the text as part of--

Nigel Roberts: I think that's up to you, Mr. Chairman. When I've come up with it, we'll see if there's anything that requires any further decision or debate. I'll dig out what I was referring to and let you know as soon as I've got it, which won't be that long, I don't suspect.

Keith Davidson: Okay. Thank you. And, I guess, for the transcript and the record, we probably should be using our names as we start to speak, so everyone can be reminded. I'm prepared to entertain a re-litigation if it's an issue of significance. We can reread through and re-discuss.

Martin Boyle: Certainly, this particular clause, I would like to have the explanation, and then I'll make up my mind whether I think that this is a problem. As I said, I would be rather concerned if it were something like - Well, I haven't got the resources to be able to put this right - as being simply a justification for, well, okay, you can carry on doing what you're doing badly.

Keith Davidson: We'll note-- reserve a place for you to come back.

Do you have a comment?

Daniel Kalchev: Just-- it's not a big issue in any way, but (unintelligible) initial background information, I struck upon a sentence (ph) that says, instead of both of us recommend-- discuss the revocation of a delegation by IANA forward by re-delegation for new operator. I think we may have discussed that in the past, but it will be more precise to say that it is following by delegation to a new operator because we are actually discussing the re-delegation as it becomes part of (unintelligible) definition.

Keith Davidson: At this stage, we're only addressing the meeting report of the 4th of October meeting. So this will come up when we get to the revocation document.

Eberhard and then Nigel. Eberhard?

Eberhard Lisse: I just want to put on the record that, if Martin wants to redo this for the umpteenth time, then I will consider that I have fundamental objections against misbehavior being used in the re-delegation context at all.

Keith Davidson: Well, is this relevant to the meeting notes?

Eberhard Lisse: It is relevant to his own contribution.

Keith Davidson: Okay. Nigel?

Nigel Roberts: Well, a brief search of Google has not yet revealed the particular case I had in mind. But I have, as we're in Canada, found perhaps a slightly more important case, which is in the Supreme Court of Canada, where it's also defined. So I'll share that one with you now, at Martin's request, and continue to find the English case which I originally referred to on the call.

And the case that I found is quite recent. It's 2006. It is *Boulanger against the Queen*. And it states: The offense of breach of trust by a public officer is established where the Crown proves beyond a reasonable doubt that: (a) the accused is an official; (2) the accused was acting in connection with the duties of his or her office; (3) the accused breached the standards of responsibility and conduct demanded of him or her by nature of that office; and (4) the accused's conduct represented a serious and marked departure from the standard expected of an individual in the accused's position of trust; and (5) the accused acted with the intention to use his or her public office for purpose other than the public good - for example, a dishonest, partial, corrupt, or oppressive purpose.

I've also found the attorney general of Hong Kong, who defines in Attorney General's Reference No. 3 of 2003, that a public officer acting as such willful neglect to perform his duty and/or willfully misconducts himself to such a degree as to amount to an abuse of the trust in the officeholder without reasonable excuse or justification.

So we are not tilling fresh ground here. These are well understood concepts that have been used to prosecute or dispossess officeholders for decades or centuries. If we want to try and re-litigate what reasonable excuse means in this context, then I'm sure we'll be here for weeks and months. And I'll quite happily do that.

Martin Boyle: But I don't think that's where we want to go.

Keith Davidson: I'm not sure if it will be the most productive use of their time, but could I ask you, Nigel, to perhaps post the links? Are they common Google search-- Could you post the links to the working group?

And, Martin, do you want to have a review, if we have time to come back to it today after you've had a read, at your discretion, we'll do that. If not and you'd like to reserve and think about it, we can do it on the next calls. Will that suit?

Martin Boyle: Yes. Certainly. I'm not sure whether I'm going to be able to come to a conclusion today because, as I say, I actually did have a concern on that reasonable excuse and what we actually might mean in this particular case as reasonable excuse. But, really, the main purpose of me putting up my hand in the context of the meeting report was that I didn't see that, given the fact that I hadn't had a response to something that I'd asked for earlier-- that that could have been approved final but that it could only have been approved and at the meeting that I was not at. Thank you.

Keith Davidson: Bernie?

Bernard Turcotte: That probably-- I'll take the blame for that. But the way I understood it is the words weren't necessarily unapproved. There just needed to be some more information on it. And, on the following meeting, where you weren't, people went through it, and everyone accepted it. So, if you will, to a certain extent, this is a reflection of what happened at the last meeting as meeting notes are supposed to be.

Now, whether-- if we want to argue about final or not, I don't think that we have such a level of procedures that we get jammed up. So I'll amend the notes to put approved, and we'll finalize at our next meeting.

Keith Davidson: Okay. So I think the action point arising from that is that we'll have an agenda item for the next meeting. And that should give you ample time for a review, Martin. And I'm just noting for the record that Frank March and Bill Semich have joined the table.

Unidentified Participant: (Inaudible).

Keith Davidson: Yes. Yes. So we'll leave it there.

Anything else from the meeting report?

If not, can we move on and consider the meeting report, as amended, accepted and move on to the next item on the agenda, which is the topic of revocation.

Take it away, Bernie.

Bernard Turcotte: Thank you, sir. So, to remind ourselves, I'll leave the meeting notes up for a minute. Basically, we got (technical difficulties) section 5.2.6, which is the end of the 5.2s, which covers substantial misbehavior, and we stopped there.

At this point, we really have two choices. We can carry on into section 5.3 of revocation 4.1, or we can look at the separate document relating to all means and-- what was the other part-- anyways. So I don't know which one is best at this point. Last resort (ph).

Keith Davidson: Just, before we move on, I noticed there's a number of people that merged into the room behind me as observers. Bernie, can we lighten (ph) up the presentation on the screen, so the observers have some idea of what we might be addressing along the way?

Bernard Turcotte: I don't do projection. Kristina, do you think you can handle it because I don't have the drivers under Linux. I'd have to reboot. It's going to take ten minutes.

Unidentified Participant: Just move the (inaudible).

Unidentified Participant: Keith, is the (unintelligible) functional?

Keith Davidson: Yes.

Bernard Turcotte: Not in the regular one.

(Multiple Speakers)

Keith Davidson: Look (unintelligible) group list. The link's just been posted there. Or, if you go to the ICANN agenda, it's on the ICANN agenda for this session.

Unidentified Participant: Frank, it's on your e-mail-- on the last e-mail that was sent about ten minutes ago.

Frank March: I can't access e-mail at the moment.

Keith Davidson: Can you access the agenda?

Martin Boyle: Well, that was also e-mailed, wasn't it?

Keith Davidson: I mean, can you access the Website?

Frank March: I'll try. Where is the Website?

Keith Davidson: I'm not sure that that's helpful in terms of--

Unidentified Participant: I'm sorry?

Unidentified Participant: I was trying to get full screen displayed, and you have to-- the document on the whole screen-- on the full screen. But, on the top-- Adobe.

Keith Davidson: For the sake of this, I can probably do that. So I'll just (technical difficulties) carry on, Bernie.

Bernard Turcotte: As I was saying, Mr. Chair, we've got a choice at this point to either keep going through 4.1, starting in section 5.3, where we're dealing with RFC 1591, section 3.5. Or we can go into the all means at its disposal and last resort, the short paper that Becky and I worked on to answer some of the questions.

Unidentified Participant: (Inaudible).

Bernard Turcotte: Well, then, I would propose that maybe we give a stab at the short paper--

Keith Davidson: Okay.

Bernard Turcotte: -- and see how that goes.

Keith Davidson: I don't know that I have the short paper.

Bernard Turcotte: It was e-mailed as part of the material for the previous meeting, so everyone was sure to have it.

Unidentified Participant: Pardon me? Have we modified it?

Unidentified Participant: No.

(Multiple Speakers)

Bernard Turcotte: Well, I've got it on the Adobe here.

Keith Davidson: That was the one call tracing--

Bernard Turcotte: Yeah.

Unidentified Participant: There we go.

Bernard Turcotte: I'm sorry if it's not in standard format. Basically, this was a bit of a scratchpad document. We were trying to clear up some ideas. And, if we can get through this, we'll take the parts that survive and look to integrating them into the revocation document. But, because there was a significant amount of new text around ideas that were already in the revocation document, we didn't want to just throw it into the revocation document. So this is the history of how this came up.

So the terms "last resort" and "all means at its disposal" are used in many areas of the FOI working group's revocation document. An example of this is 5251. The

FOI working group also believes it's consistent with the intent of RFC 1591 to state (ph): Revocation should be the last-resort option for the IANA contractor. The IANA contractor should use all means at its disposal to assist the manager to resolve any important issues with respect to the designated manager's meeting, the applicable requirements of RFC 1591.

So we've got both those items there, which we used in several areas and decided to have a go at it and take a look at how the genesis of that came about and can be supported. Given these terms are not used directly in RFC 1591, this document will explain how the FOI working group arrived at these interpretations.

Last resort. Revocation is only mentioned once in RFC 1591; specifically, in section 3.5. In cases where there are persistent problems with the proper operation of a domain, the delegation may be revoked and possibly delegated to another designated manager. It may be revoked for cases when there are persistent problems with the proper operation or the domain is consistent with the notion that IANA would work with the ccTLD manager to eliminate such problems prior to revocation. And that revocation should be the last resort in cases where remediation efforts are ineffective.

No definition of revocation. There is no detail beyond what is in section 3.5 of RFC 1591 as to what revocation would imply. One could argue that, if revocation was meant to be used for the regular administration of ccTLDs, that it would have been described in greater detail, similar to section 3.6, which is devoted to transfers. One can then infer that revocation was not meant for the regular administration of the ccTLDs and should be the last resort.

Are we doing okay so far?

Keith Davidson: I'm not seeing any hands.

Unidentified Participant: Can we make the documents always moveable? It's easier for us.

Bernard Turcotte: Kristina?

Keith Davidson: Please continue. Any other questions?

Martin Boyle: If I remember correctly, when we first started talking about revocation, revocation was the first step of a two-step process that was re-delegation and that we'd stop using the phraseology re-delegation in favor of doing the revocation and the delegation, whereas this seems almost to me to be saying that, well, actually, re-delegation on that basis wouldn't exist as anything that happened regularly because revocation is a very rare, rare event. So I'm struggling a little bit to see the fairly tight definition of revocation that's coming in here if it is not part of the re-delegation or other contested re-delegation process.

Bernard Turcotte: I'm not sure that that's accurate, but Becky would like to--

Becky Burr: So, I think that revocation was the first step in a change of manager without the consent of the current operator. So it is limited to the-- without the consent. And I think that's-- this does not cover consented-to re-delegations.

Martin Boyle: Yeah. I'm aware that it doesn't cover the consented. It's the un-consented. And I think there have been quite a number of cases where there have been un-consented re-delegations or, certainly, contested re-delegations. And, therefore,

that's why I'm finding it a little bit difficult to understand this quite narrow interpretation of the word.

Becky Burr: I think we need to look back at the actual survey that we did for the delegation and re-delegation working group because I think that, actually, in most cases, it was, at least, obscure as to whether there was consent or not. And so the revocation-- the term revocation has never been used. Is that correct? So we don't have any-- We don't really have any-- The term revocation was never used, and the absence of documentation with respect to consent is pretty pervasive. So it's very hard to tell what-- what events, what reports involve what we would characterize as a revocation and then a delegation.

Keith Davidson: Nigel?

Nigel Roberts: A couple of things. First of all, administrative (ph), which I mention only in passing-- we can return to discuss it afterwards. I have sent to the list three e-mails, one of which is the Supreme Court of Canada case I referred to earlier, one of which is the Hong Kong thing I referred to earlier, and the final thing is the one I was referring to in the call, which is the Crown prosecution's guidelines on how to prosecute misconduct in a public office, which includes a section on reasonable excuse or justification, which I think should satisfy us all (ph). If we need to go and revisit that and what, hypothetically, it might mean in a hypothetical case, we could do that. We'll return to that afterwards.

And, on the current point, revocation means revocation of the appointment as designated manager. It doesn't mean revocation of the domain. It doesn't mean taking out the domain from the root, revoking the appointment.

And, secondly, revocation clearly implies without consent because, if a change of manager is consented to, the existing manager has, in a philosophical sense, revoked his own appointment, or the word we would use is resigned his appointment. So revocation doesn't-- as a word will not come into play here. So revocation is the withdrawal of a appointment of ccTLD managership in the absence of a resignation of that office, or so it seems.

Keith Davidson: Thanks, Nigel. Bernie. Then Patricio.

Bernard Turcotte: I think we-- just because we've been at this for a little while, we forget our history here a bit. I mean, we did start with re-delegation and un-consented re-delegation. We did consent as our first paper. Okay? And, within that, we looked at the words in 3.6 of RFC 1591, which is for transfers. And, to avoid confusion, at that time, we agreed that we wouldn't talk about un-consented re-delegation because it was muddling up the whole thing. So we have transfers which require consent as we have defined it. And, if it's not a transfer, then it's a two-step process, as we all agree. And we agreed that the first part of that process would be a revocation. And this is what we're addressing here, or, at least, that's my understanding of how we got to this point.

Keith Davidson: You're saying it's a revocation and a subsequent delegation (inaudible) re-delegation.

Patricio.

Patricio Poblete: In the taxonomy (ph) that we have defined, I agree that we have, on the one hand, the consented transfers, and we understand those as a resignation or a

consent of the transfer plus the subsequent delegation. So we're left with un-consented resignations (ph), which, as we are reminded, we decided to treat as a two-step process; first, revocation and, then, the subsequent delegation. Therefore, they're always linked. So all un-consented re-delegations begin with a revocation. I think we should agree on that unless somebody has another class of situations that wouldn't fall into there. But I don't see them.

So, in that sense, it is synonymous. If we have identified before un-consented revocations, then we have seen revocations even if that word was not used. We're here interpreting. We're not just reading things literally. And, in that sense, if we read our former work we did identify two or maybe three cases where there were re-delegations, and consent was not provided. So, in that sense, I cannot agree with the statement a little bit down in the document that says that there are no cases of revocations. I think we have seen them, and they are documented.

Keith Davidson: Okay. Thanks, Patricio. Becky.

Becky Burr: I actually think that the document is sort of meant to describe what you're saying. What it says is IANA never officially revoked. But I think that means they didn't use that word. There are a couple of cases, a few cases, where one could consider that revocation had been applied without being labeled as such. So I think we're in agreement on that point. But we just needed to clarify it.

Patricio Poblete: If I may? Yes. But I think, in that case, 1.3.1 is incomplete as it stands because anybody not familiar with all our history reading that would understand that there have been no revocations, while we have identified un-consented re-delegations. So we have identified revocations.

Bernard Turcotte: I think I have a solution to your quandary. If we make 1.3.1 and 1.3.2 one point, flowing into each other, then would that answer your concern? Okay. Thank you.

Keith Davidson: Yes. Looking back at delegations and re-delegations working group, I think there was the instance of United States (unintelligible) that was un-delegated. I think we argued at the time that that could have been a revocation, but the terminology used in the ICANN decision was that it was being un-delegated, which is a whole different category again that's not referred to in any of the policies or guidelines.

It sounds like that might be disputed.

And welcome, Cheryl Langdon Orr. That's okay.

And I noticed there are a number of other observers coming into the room. And so, if observers do have a specific question, we might ask you to hold right to the end because the working group has quite a bit of work to get through. It's reasonably technical. But, if you have some questions, gather them up, and we'll try and get ten minutes at the end.

And just, by the way, in terms of housekeeping, I think we'll take a break at about halftime, as well, because this will be quite an intense afternoon for three hours.

So, have we got agreement? Are we all moving forward together? We're happy?

Okay. Please, continue then. Nigel.

Nigel Roberts: Could we check, please, the three e-mails I've sent have reached at least you and the secretariat, if not everybody?

Unidentified Participant: And I'm happy.

Keith Davidson: It's in my inbox.

Martin Boyle: Do you really want to read my inbox?

Keith Davidson: Okay. Can we continue, Bernie?

Bernard Turcotte: Davidson's higher up the list though. You get the (unintelligible) and the other ones. We'll get them eventually.

Anyways, so, we were, I guess, on 1.3. We've agreed with Patricio's comment that 1.3.1 and 1.3.2 should be linked together. So IANA's history with re-delegations. IANA has never officially revoked the delegation of a ccTLD. Of the 50-plus re-delegations IANA has performed since 2000 to the end of 2011, there have only been a few cases where one could consider that a revocation has been applied without being labeled as such. This is consistent with the interpretation that revocation is the last-resort approach.

Are we okay with 1.3?

Martin Boyle: I think that's a fine example of inductive reasoning.

Bernard Turcotte: Thank you. The mathematician in me thanks you.

1.4. Revocation versus stability. RFC 1591, in general, and section 3.2 of RFC 1591, in particular, can be interpreted to imply a requirement for the manager to ensure security and stability of the ccTLD for the local and global internet community. It would only be reasonable to interpret this responsibility as being symmetrical or reciprocal. And that is meant to refer to IANA; *i.e.*, IANA has also that responsibility, given (inaudible).

Martin Boyle: Thank you. This goes back, I think, then, to an earlier point that I'd raised about the interpretation of the only requirements on the manager as being to ensure security and stability of the ccTLD for the local and global internet community, whereas, when I look at RFC 1591, I find some quite significant other obligations on the ccTLD manager. And, therefore, again, I think I have to reserve my position on this. I've raised it in the past, and it is a very serious problem I've got that we should be narrowing down this definition in such a way. Thank you.

Keith Davidson: Thanks, Martin. Nigel?

Nigel Roberts: I'm a little bit puzzled because I'm reading 1.4.1, which is up there on the screen. And I can't, to my mind, see anything in there that admits to the construction that Martin's placing on it. It does not say that it's exclusive. It says to imply a requirement. That doesn't say it's the only requirement. It doesn't say it's the only obligation. I'm a bit puzzled here.

Keith Davidson: Does that clarify, Martin? Do you want to--?

Martin Boyle: Well, yes. But, if we're doing an interpretation, I don't think we should just be choosing one example. I think we should be looking quite specifically at the

obligations one expects a ccTLD manager should be following. And that goes back, then, to the commitment to being whatever is honest and fair in one's dealings in management of that piece of the infrastructure. And that bit is just getting dropped out, as it had been from the earlier one, which is where I originally put my hand up as having a difficulty with this clause. Thank you.

Nigel Roberts: Again, help me out here. I think what you're saying is that there's nothing wrong with this clause, per se, but it's not detailed enough on other things that might potentially be substantial misbehavior.

I think, if we go to the third e-mail that I sent out, which is very detailed, that we can use a lot of what's in the Crown prosecution services' guidance and apply it by analogy. I don't see that this is written the way you seem to take it, as being exclusive and the only thing that would be substantial misbehavior or, even, misbehavior in the office of a ccTLD manager. I think we can't be prescriptive. We can't-- I mean, the courts have not managed to do it for the office of constable and coroner and all the rest of them to say exclusively what misbehavior is. They've approached each case on its facts.

Keith Davidson: Thanks, Nigel. Bernie, and then I hear Bill.

Bernard Turcotte: Okay. We've gone again into a discussion of substantial misbehavior. This paragraph doesn't deal with substantial misbehavior. Okay?

Now, so, Martin, the issues you brought up relative to substantial misbehavior have been recorded. Yes. We understand that. We're not talking about substantial misbehavior here. We're trying to walk through the history of last resort and our use of that. And it happens to also be used in substantial misbehavior. And we will see it again in section 5.3, where there are technical problems. But, technically, this text is not about substantial misbehavior.

So, in the context of defining last resort, I see it exactly as Nigel has presented it. It is not exclusive. It's just meant to make a point for our discussion.

Keith Davidson: Okay. My next speaker was Bill. Okay. And, just before-- Sorry to interrupt in the heat of the debate, but I can't-- because I'm projecting, I can no longer see the Adobe Connect room. So, if someone-- Can I ask someone to volunteer to keep an eye on the room? And, if there are a hand up or something that comes up, can you, please, interrupt? And you have the right to interrupt, as Eberhard is offering to do? Thank you.

Eberhard Lisse: I can see at least five or six of the people in the room having access. So we will all pay attention to it.

Keith Davidson: Okay. But, yes. Feel free to interrupt on behalf of other people.

Martin, back to you.

Martin Boyle: As I say, I think my concern is that we are, by choosing a specific example, not doing justice to the process that we're going to be going through. And the main problem is probably going back to the earlier debate that we've had I don't see as being resolved yet of what we really mean by substantial misbehavior and the specific link under substantial misbehavior to the security and stability point, when, in fact, I don't think RFC 1591 gives us grounds to have that limitation. Thank you.

Keith Davidson: Okay. Bill? And, Eberhard, your microphone is on.

Bill Semich: I share Nigel's point of view. I'm confused about your concerns, Martin. I read this as a logical justification for requiring IANA to take over the management of the delegation in the event there's a revocation, nothing more. And I don't think-- I mean, we could put in everything that the manager is required to do - fair and equal, honest and just - and require that IANA do that as well. I don't think it would be harmful. It just might be confusing.

The key justification here, I think, in Bernie's logic, is that, since the manager is responsible for the stability and so on, it's mutual with IANA. IANA is also a manager, and it's responsible for the stability. And, therefore-- You understand this. I'm just walking through it. And, therefore, IANA should be obliged to take over the delegation in the interim. That's the only purpose of this section, as I read it.

Keith Davidson: Eberhard?

Eberhard Lisse: Personally, I'm starting to get annoyed. At least, we have discussed this *ad nauseum*. I propose strictly that I think we should not discuss it today again. We should ask Martin to really review all the previous transcripts because it's discussed numerous times. And then maybe he can address all his issues.

Martin Boyle: Yes. Over the past few weeks, I have gone over all the transcripts since the Prague meeting. And my concerns have just not been responded to, which is why I'm raising them again now. Perhaps my problem would be resolved by-- when we relook at the earlier section, which I flagged as being of concern. So that is the 6.1 of last meeting's discussion.

But, as I raised at the time, and I know I'm in the minority on this-- but I raised at the time that I do have concerns of linking substantial misbehavior to security and stability.

Now, if we can get that right, then this one ceases to become of such a concern to me. But what it seems to me is that that earlier, very restrictive definition-- I don't think the logic of the structure of RFC 1591 allows. And thereby sits my problem. Thank you.

Keith Davidson: Nigel?

Nigel Roberts: All right. I apologize, as I'm very conscious of Bernie's point that this text is not about substantial misbehavior, and that, I think, is the root of Martin's concern. Martin's concern is about the inclusion of the security and stability clause in the consideration of what misbehavior and, therefore, then substantial misbehavior is. I think it's not that appropriate to discuss it here in this part of the document. And I don't think we will ever get to an end if we start a discussion of substantial misbehavior.

I think, as I say, if you look at e-mail three, substantial misbehavior in the public office context is something that's exercised the courts for several centuries, and they're still saying new things about it. And one of the things that they do say is that the definition has an element of circularity in it and that the definition is, to some extent, a living instrument. I think, perhaps, we'll find in the 21st century new ways of committing the offense of misconduct in public office, which is the thing we're using as analog in this case.

But, if we want to go back and revisit substantial misbehavior, we will-- I will defer to the chairman on how and when that's done. But this doesn't appear to be the document for it.

I think we could do with more clarity on the security and stability issue. I think Martin's got a point here. But I think we're losing part of the point that might be there in all the confusion.

Keith Davidson: Okay. I've got Becky, then Patricio.

Becky Burr: Actually, I'm going to (unintelligible). So I'm going to try and articulate what I think is being said in a way that I understand it, so, then, maybe it will be clearer for the rest of us who are confused about everything.

The stability and security thing is being used in this document in the context of why we get to the last resort because-- as opposed to substantial misbehavior. And I think that we've defined substantial misbehavior in a way that is sort of outside of the stability and security. We've defined it pretty clearly, and I think we can go back to that.

But the reason stability and security comes up here is because we're talking about-- why are we saying sort of last resort and that there's an-- that this is really an extraordinary remedy and that the IANA manager should use-- should try to work it out. The reason we're using the stability and security here is because, at least, I think that's the root of why this is a sort of extraordinary remedy, because any revocation, any re-delegation is going to raise issues about who owns the database underneath it and all those kinds of things which create issues about whether the people who are registered and who are using domains in that TLD and (unintelligible) are going to be able to continue using them.

So I actually think-- I'm just saying exactly what other people have said but in a slightly different way, which is that the stability and security is not linked to substantial misbehavior here. It's linked to the concept of why we think revocation is an extraordinary measure and that efforts should be made to resolve the substantial misbehavior.

Does that help, because I think that's-- I think--

Keith Davidson: Thanks, Becky.

I've got Patricio. Did you want to respond initially? Can I pass to Martin and then come back to Patricio? Okay. Patricio first.

Patricio Poblete: I think Martin's wrong in his interpretation. But I can understand why he's worried in the sense that, if we mentioned here security and stability in connection with the ccTLD manager, somebody might misread this and believe that this is-- those are the only obligations that the manager has, which, of course, is not true. But it could be misread in that way.

I think that all this section is-- has as a goal to argue that the IANA has an obligation towards security and stability. And, therefore, the IANA could only use revocation as a last resort. If that's the goal, then 1.4.1 can be deleted without any loss because it begins by arguing that the ccTLD manager has that obligation, which, of course, it has, but it's irrelevant because that's-- the

manager is not the focus. The focus here is IANA. I would propose that we delete 1.4.1.

Keith Davidson: Martin.

Unidentified Participant: That would work.

Keith Davidson: Martin, please.

Martin Boyle: Yeah. Actually-- Thank you, Patricio, for that intervention. I think that probably is going in the right direction.

Picking up on what Becky said, I was not trying to argue the fact that revocation is not an exceptional case. It is a very serious step, and it's a step that you're having to go through. My concern is what are the conditions, when I look at 3.5 of 1591, the definition-- the description of what you're supposed to be doing is very much larger and, therefore, still underpins my concern that, by putting an example in that narrows it down, somebody who is now only reading the interpretation of it will go away with a particular idea in mind.

But Patricio's solution, I think, seems to me to be right. Thank you.

Keith Davidson: Bernie, and then (inaudible).

Bernard Turcotte: Clarification here. Just to be clear, when we introduced this scratchpad paper, this will never go beyond this group. It's just to clarify the ideas. And, once we agree which ideas are good in here, it will be reintegrated in the revocation document in the proper place. So it will not remove or suppose or present anything else or beyond what we are defining in our revocation document. This will not even be an annex. This is a scratchpad, so we can get to a point as a group to understand how we support that "last resort" and "all means" option so that we can integrate it properly into the document.

Nigel Roberts: Swiftly, Martin, does that clarify it for you, the status of the document? As you are concerned that this may be read by a future IANA person or leading to an interpretation by another person because, as Bernie says, it's a working group document that never emerges outside of the working group, it's never going to be subject to that sort of scrutiny.

Martin Boyle: Well, yes, it does, and no, it doesn't. If it's a scratchpad for us to be working on, then I would expect it to be complete for us as we're going through our own deliberations. And I must admit I still suspect that, when we come to revisiting the original section, we will cut and paste from the scratchpad. And, therefore, if we haven't given this proper consideration and made sure that the right elements are in the scratchpad, then we're likely to end up with an incomplete framework of interpretation sitting there at the end. So that's the only real reason for being complete to serve as a background and support for what we're doing. Thank you.

Keith Davidson: Okay. I think we're seeking here to establish some principles, not establish a cut-and-paste document. And it's been a difficult set of principles to get our head around. I think, perhaps, the issue here, Martin, is that, during your summer and the number of calls that you missed, we'd probably visited this quite iteratively. And the rest of the working group were getting to a position of comfort. My concern now is that this is leaving you uniquely out of sync with the group on this topic.

And my additional fear there is that the rest of the working group appears to be in moderate consensus, and, as always, I would like this group to achieve unanimity rather than merely consensus. So I'm giving a degree of latitude here in the hope that we can catch you up and make you feel comfortable with what we have. So can we work away on this just a little more? And then we're going to have to move on.

I've got Nigel, who was earlier, then Patricio, then Stephen.

Nigel Roberts:

Well, I think what Bernie just said about the status of what we're doing here is very helpful. It's very easy to lose sight of that. And I must admit, with the detailed dissection and backwards and forwards that Martin's been doing, I've allowed myself to want to respond to it and respond to it as if it's going to be a gold-plated, treaty document.

That notwithstanding, I think it's useful, as Keith says, just to carry it on a little bit more along those roads but always bearing that in mind.

I think Patricio is on the right track. He usually is. I think he's wrong in the way he's doing it because, if you delete the first bit of it, and, again, do bear in mind that I'm considering this as if it was going to be published an international treaty rather than just a working document for us. If you delete the first bit of it that talks about the obligation on the one side, it becomes a nonsense to then subsequently go on and talk about your reciprocal obligation.

I'm going to offer one suggestion, and then I'm going to shut up. Instead of deleting the entire paragraph, we delete one word. That's the word "imply." And we replace it with the word "include," which clearly would highlight Martin's concern that this is not the definition of substantial misbehavior. It's something that one of the obligations of a ccTLD manager is. And, therefore, we can then examine what that means.

Does that help?

Keith Davidson:

It does. And, for me, I think we are talking about issues of principle, and there are some really strong measures of principle in 1.4.1. And so deleting it may be the point of last resort, but it will change the entire read. So, reluctantly--

Patricio?

Patricio Poblete:

My proposal was to delete 1.4.1, which, of course, also removes the reference to reciprocal and symmetrical so there would be no inconsistency and that we should begin with what's now 1.4.2, removing the word "likewise."

Keith Davidson:

"Likewise" does appear to be maybe a little superfluous anyway. I mean, I think--

But I'll go to Stephen, (inaudible), Bernie.

Bernard Turcotte:

I think we've got a good feeling for the room. I'll simply put down a note that Martin has an issue with this point, and we'll just carry on at this point.

Keith Davidson:

Okay.

Bernard Turcotte:

And we'll note Patricio's suggestion.

Keith Davidson: Okay. Thank you. And, please--

Cheryl Langdon Orr: (Unintelligible). Sorry. Cheryl. Sorry. It's Cheryl. I'm sorry to intervene. It is Cheryl, for the record. I was very comfortable with the movement from "imply"-- stop it, you bad New Zealander-- from "imply" to "include" though. I'm all for that change of language. So just reassure me that that's in the note. Would you?

Keith Davidson: Is there any objection to "include?" That's an objection over here? Okay. Okay. Go ahead.

Eberhard Lisse: In the past, we have always done well when we broke this out. And why don't Martin and Becky or somebody-- and Bernie form a little sub-task group and come up with something that everybody can live on-- live with. And then we'll get consensus.

Keith Davidson: Okay. I think that's a good idea. But I think where Martin's been leading me has been not about being able to finesse the text. But do you think, Martin, in the circumstances between the three of you - Becky and Bernie and yourself - you could come up with some compromised text?

Martin Boyle: I don't see any reason why we shouldn't because I am busily looking at what RFC 1591 says and making sure that we end up with the text that does reflect that which is in RFC 1591. The word "include" instead of "imply," I think, would be quite a good step in that direction and would, I think, at first glance, meet my immediate concerns. But I'm quite happy to sit down with Becky and be told about the legal finesses of all of this, of which I am a complete ignoramus.

Keith Davidson: Okay. Square bracket on imply/include. And square bracket on 1.4.1 in its entirety. And take it away drafting group and do something with it.

Now, can we move on, please, Bernie?

Bernard Turcotte: Yes, sir. And, just again, a reminder. It's very unlikely any of this text will be cut and pasted into anything. It's just to develop the ideas that will go into our revocation document, and we were just trying to be thorough.

Okay. 1.4.2. Section 3.5 of RFC 1591 is likewise consistent with the interpretation of stability and security should be the IANA function contractor's primary focus.

1.4.3 the ICANN mission statement is clearly inspired by this and reads the mission of the Internet Corporation for Assigned Names and Numbers is to coordinate at the overall level the global internet system's unique identifiers and, in particular, to ensure the stable and secure operation of the internet's unique identifier systems.

1.4.3.2, a note regarding IANA's focus on security and stability with respect to ccTLDs. Section 3 of RFC 1591 begins with the following-- that should be text. The Internet Assigned Numbers Authority, IANA, is responsible for the overall coordination and management of the domain name system and, especially, the delegation of portions of the name space called top-level domains. This was published prior to ICANN existing.

1.4.3.22 (ph). We have confirmed the interpretation of section 3.2 and 3.5 of RFC 1591 can be interpreted to be consistent with the interpretation that stability and security should be the IANA function contractor's primary focus. Previous points.

1.4.3.23. It's obvious that the ICANN mission requirement to ensure the stable and secure operation of the internet's unique identifier system must apply to IANA, which would require IANA to focus on security and stability of DNS, of which ccTLDs (inaudible). As such, the implication of ICANN in DNS administration and the merging of IANA activities into ICANN has no effect in diminishing this focus.

So questions? Comments?

Okay. We're almost there, folks.

Keith Davidson: I see Martin with his hand raised. Firstly, can I point an accusatory finger at Kim and ask you how this fits with your understanding of the IANA rules? While you're thinking about that, Martin has his hand raised.

Martin Boyle: Well, your question is actually quite appropriate because I was holding up my hand because there are obligations from the IANA contract that is let to ICANN but wouldn't necessarily need to be let to ICANN and that then has its own set of obligations on their IANA function contractor in the way it performs its duties, of which the security and stability. So that, I thought, the particular interpretation here, and I know I put my hand up-- I was probably wrong to say that we shouldn't have been looking at the IANA contract document, the statement of work, but I think, in this case, perhaps we do need just to spend a little bit of time thinking about the obligations from there.

And then the other point really is a repetition of the earlier discussion in 1.4.3.22, which is then, again, very firmly putting this down to security and stability, which is one of the issues at stake. But 3.2, 3.3, 3.4, 3.5 actually give a considerably larger obligation on the operator. I don't want to reopen that discussion, but I would flag that its germane to the earlier discussion. Thank you.

Keith Davidson: Is there anything there that causes any concern, Kim?

Kim Davies: Not that I can think of at all. It sounds reasonable, and we all know, obviously, the devil's in the detail. But, as broad principle, I have no comment.

Keith Davidson: Okay. Cool. Eberhard, then Nigel.

Eberhard Lisse: I just want to mention that, since I was the one who brought this up earlier, I think it's really important that we must look at the impact the contract has on our work. I said this about six months ago. And I don't remember who told me off, but--

Unidentified Participant: Me.

Eberhard Lisse: I remember exactly who told me off, but I didn't want to say it so loudly. But I think this is something important. We need to really-- we cannot really put up another part which conflicts, for example, with the contract. Although we are not interpreting the contract, we must say this and this is the issues that we're seeing that conflict with the contract.

Keith Davidson: But the contract refers to the framework as being work in progress. And so, providing what we're doing isn't creating policy and is interpreting policy, then it's unlikely to be excluded because of any contractual detail. But I see that as a point for afterwards, what we want (inaudible) framework, and how it marries with the contract can be resolved later on.

Anyway, we have Nigel.

Nigel Roberts: A little bit repetitive again. Bearing in mind what Bernie said about the status of this document being a scratchpad and not a text that we are negotiating, I'm just going to make an overall comment that I really dislike the last sentence in 1.4.3.2.3, which talks about merging IANA with ICANN. I think I know what's meant here, and I'm not going to pursue it any further. It just gives me a shiver down my spine.

Keith Davidson: Again, I think it's a question of this is an internal document, and this is about principles. We understand, if it's a public document, then that's probably inappropriate.

I'll note for the record Desiree Miloshevic has joined the meeting.

And Eberhard?

Eberhard Lisse: Just for the record, (unintelligible) is also on the Adobe Connect. I can see her there. She hasn't answered my request whether she can (inaudible).

Can we, please, in the future get the terminology consistent? It's either IANA as a function or IANA contractor. We have had the discussion before. Try to get the language consistent. Then it's easier to avoid this confusion.

Keith Davidson: Bernie.

Bernard Turcotte: Thank you, Nigel. Yes. As I said, I'll take in all the input because there's no dying the ditch (ph) over these words. They're just everything we could throw in there to sort of get an idea for supporting the notion. So we'll be cleaning this up and discussing it.

Nigel Roberts: It was just a passing comment, Bernie. I'm not trying to rewrite this.

Bernard Turcotte: Okay. 1.4.4. The first core value of ICANN reads: (1) preserving and enhancing the operational stability, reliability, security of the global interoperability of the internet.

1.4.5. Revocation would certainly challenge the stability of the ccTLD operation and could impact the global interoperability of the internet unless the manager has made it unstable or insecure by substantially misbehaving or otherwise not properly operating the domain.

Keith Davidson: And Nigel.

Nigel Roberts: Again, agree with what you're trying to say here, but I think it's logically incorrect because, if the manager is substantially misbehaving and the IANA intervenes, that could make additional instability and insecurity. I know where you're going. I'm not going to quibble.

Keith Davidson: Thank you, Nigel.

Bernard Turcotte: Which takes us to 1.4.6. The whole point of this is this supports the notion that revocation be used as the last resort, given any other interpretation would put IANA in conflict with the overarching tenets of both RFC 1591, as well as the mission statement and first core value of ICANN.

Yeah. And, really, it's all about that. I mean, all of section 1.4 could be collapsed to that. We were just trying to give you a window into the thinking.

Keith Davidson: So, if you agree with everything in that statement, you got to that belief because of everything else--

Bernard Turcotte: Yes.

Keith Davidson: -- that we'll now exclude because we all universally accept that as the final principle.

Patricio?

Patricio Poblete: Yeah. I think we can all agree with the conclusion. And I'm happy to hear that the whole of this text will not find its way as is into (unintelligible). If it were, we'll need to examine the statement much more carefully. Having been a mathematician in a former life, I believe some of the implied symbols are going the wrong way.

Keith Davidson: Fair enough. Okay. So we're there at the actual statement of the document. And I'm not hearing any dispute over the intent or the actual wording of 1.4.6. Everyone's comfortable? Excellent.

Please, proceed, Bernie.

Bernard Turcotte: Okay. Which takes us to section 2, all means at its disposal. If revocation is the last resort option, it would imply that all else has failed.

2.1.1. The Oxford Dictionary entry for last resort - before anything else is attempted or when all else has failed.

2.2. It would seem logical that the conclusion that all else has failed requires that one has tried everything else.

2.3. One should consider all means at its disposal and everything else as being logically equivalent.

2.4. This would not, however, require the contractor to use means that are not reasonably at its disposal and, as such, should not be interpreted as unreasonably constraining the IANA functions and contractor's ability to act to preserve the stability and security. The fact that IANA has never officially revoked a ccTLD re-delegation suggests that it has interpreted RFC 1591 to impose an obligation to resolve issues whenever possible without revocation. IANA document, understanding the ccTLD delegation and re-delegation procedure of 2007-- the section titled Requesting Confirmation from Contacts contains the statement. IANA's experience also suggests that each delegation and re-delegation request presents unique challenges. IANA and ICANN are able to assist countries and ccTLDs in meeting these challenges.

Eberhard Lisse: Can I place on record that Jaap was snoring?

Keith Davidson: Can you fingerprint a snore so that we can identify the snorers on the midnight calls?

Eberhard Lisse: I can provide visual evidence under oath.

Bernard Turcotte: We're almost there, guys.

Keith Davidson: Bringing us back to order. Bernie.

Bernard Turcotte: 2.6.2. If ICANN and IANA are able to assist ccTLDs with delegations and re-delegations, it would seem reasonable that they assist ccTLDs in resolving issues which could lead to the last resort option of revocation.

We were just trying to walk our way through, again, to get to this last point of saying there is a basis in here for going to the-- this point.

Keith Davidson: Just before-- Could I again ask Kim for his views on this as a principle of acceptability to IANA? And, while you're reading it, I'll hand over to Nigel.

Nigel Roberts: Again, bearing in mind this is an internal discussion (unintelligible), we're not drafting, 2.6.2 doesn't quite say it the way I would say it. I would actually-- this doesn't imply that there's a moral obligation on IANA to do this. It simply says it could if it feels like it (ph). I would say it would seem reasonable that they should be required to or something like that. Again, I'm not going to legislate the words here. But make it-- it is more of a moral obligation. IANA actually should do this.

Keith Davidson: So you're suggesting it might read-- may seem necessary that they assist the ccTLDs.

Bernard Turcotte: That's more Becky's remit, and she seems to be nodding.

Keith Davidson: Okay. Kim?

Kim Davies: So, in practice, what this means is we try and facilitate people talking to one another in the countries as sort of a neutral third party. I guess my initial reaction is, if we're compelled to in some way, then what's the (unintelligible) of saying ICANN (inaudible) to do it, because I think, in reality, there's a limit to what we can do. But some actors in the country might feel we should be doing much more. We often try not to get deeply involved in local disputes, for example. So the language-- it's compelling ICANN or IANA or what have you to do something, I think, needs to be clearly defined what that is and what that is not to avoid us being (unintelligible) saying ICANN must step into the country and get very heavily involved.

Keith Davidson: Okay. So we probably should take an action point that, when we get to the implementation discussions, that we be more cohesive in our wording as it might apply specifically.

Becky looks anxious.

Becky Burr: Actually, I'm not anxious. I just-- I think that, as we've talked about it this week, we have had some discussions about the awkwardness of using what might feel like legal terms in an area where what we're really talking about are sort of the

moral imperative. And I think that there is a useful sort of top-to-bottom review to bring all of that in line and to make sure everything lines up. We didn't undertake to do it for this meeting, but I think it's something that we're all in agreement on (inaudible).

Keith Davidson: Okay. Thanks, Becky. Patricio, then Bernie.

Patricio Poblete: When I first read this, I felt somewhat uneasy with the phrase "all means at its disposal." With the amount of money ICANN has in the bank, that's a lot of means. I would feel more comfortable with something like "all relevant and reasonable means at its disposal."

Keith Davidson: Okay. Let's argue about the final text. Bernie?

Bernard Turcotte: Just to bring back what Becky said, I think the "all means at its disposal" is evolving since the time this document was proposed. And we're hearing various comments like the one Patricio is making. So that will, in my mind, get adjusted. That is not even a question. So it won't be that text you're getting up there. But, again, this is an idea and supporting the idea. And we may adjust the thing as we do the major review of the document. Let's not forget it's been a really tough slog on this document. Okay? And the approach we're taking on the revocation document is we're going to finish it on one good, clean pass-- get all our ideas lined up and then Becky and I will go through it and do a serious edit to adjust the things, adjust the terminologies, not change the ideas or things we've agreed to hopefully but make sure it's much more consistent and readable for everyone. But we're still in the slog phase of going through this I think.

Becky Burr: Yeah. And, just to be clear, this was sort of-- In one of our recent calls, you, Martin, I think, asked sort of where does this "all means at its disposal" come from. I mean, it's not written in ink, and it is an interpretation. So we were trying to put the sort of analysis behind the interpretation, which I think has led us to understand that we do need to adjust this holistically. But I actually really do think there's a lot of consensus in the room about where we're going, and that needs to be done.

Keith Davidson: Now (unintelligible) text. Okay. I think we're at the end of this piece. Okay. So final comments. Bill?

Bill Semich: Yeah. Just a quick observation. I'm still a little confused by the mixing and matching of IANA and ICANN and IANA blah, blah, blah-- contractor or whatever.

Keith Davidson: Remain confused. That's okay. The final text will be different. So thanks, Bill.

Desiree?

Desiree Miloshevic: Yes. Sorry for joining the discussion late-- at this late stage. But maybe you have mentioned-- Will there be a further definition of what the revocation would mean in this case - withdrawal, annulment? Or is there a definition of it?

Bernard Turcotte: (Inaudible) scratchpad. This is just a few ideas that we're going (inaudible) in the revocation document. (Inaudible).

Keith Davidson: You're paying the price for coming in late.

Okay. I propose that we take a ten-minute break, unless anyone has any final comments on this document. We'll take a ten-minute break and then come back to the 4.1 version of revocation.

Eberhard?

Eberhard Lisse: Can we take a 12-minute break?

Keith Davidson: Certainly. So back at 25 minutes to 3:00. Thank you, all. We're in recess.

Okay. Now that we're back into some semblance of order, we can reconvene. And it's back to the revocation document, revocation 4.1. And, Bernie, where are we at on that document? Let's continue.

Bernard Turcotte: We closed off section 5.2 last time, which was dealing with the substantial misbehavior clause that we've been (unintelligible).

5.3 starts us on the section 3.5 of RFC 1591 dealing with persistent problems. There are still several sections of 5.2 which are not agreed to. There's Martin's questions, and there's 5.2.5 and 5.2.6, which, as a whole, have not been accepted, as reflected in the meeting notes from last time.

Nigel was kind enough to work with us to get some new wording for 5.2.5. That will be in the next version. I've got that. Becky and me will be-- Becky and I will be working on adjustments to 5.2.6 for version 4.2.

But, as is our tradition, before we start changing documents, we like to take a full pass at it. And so this would mean that we give our really first good reading of 5.3, which deals with section 3.5 of RFC 1591. That's where we are.

Keith Davidson: Nigel?

Nigel Roberts: Just so we all understand ourselves, the previous document was a scratchpad document that we shouldn't really fight too hard over. And this is a real document, so we should fight a lot more over this than we did over the previous one.

Bernard Turcotte: Correct.

Keith Davidson: Indeed. In the blue corner--

Bernard Turcotte: Although I will note that what we're going through right now, 5.3, as far as I'm concerned, is a first reading. So, as is usual, and I think we've gotten comfortable enough with each other over the years, as it were-- this is just the first cut at the text. And let's have a go at it to see how we can structure this so it's sensible for everyone.

Keith Davidson: Kristina, can you make it scrollable, please? And continue, Bernie.

Bernard Turcotte: Thank you, sir.

All right. So I don't think we'll have too many problems with 5.3.1, or, at least, I'd be surprised, given it's the direct quote from RFC 1591. 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.

We're good?

5.3.2. Persistent problems with the proper operation of the domain, ccTLD. So we're going to try and look at what this could mean.

Technical operations of ccTLDs 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 it's supported by a large volume of easily accessible documentation applications. In addition, there are a number of service providers that specialize in performing these services under contract for ccTLD managers.

So we're trying to set the stage for today, and, you know, this text may or may not survive into the last version. Who knows?

5.3.22 (ph). 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 or (b) there are persistent problems with the proper operations of a domain.

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.

5.3.22 (ph).

Keith Davidson: Nigel has a point to raise. Nigel?

Nigel Roberts: I think it's possibly helpful if you can take a breath once in a while. We don't over stress Bernie.

I think it's actually quite helpful just to mention as we go through this where we're going with this, what the point of this is. And I think, perhaps, Martin's-- (unintelligible) Martin a bit.

Substantial misbehavior, as we were talking about earlier, is not the only thing that could potentially cause revocation. Persistent problems and not doing a satisfactory job are, perhaps, probably the more common that we might expect revocation to be used for. I think substantial misbehavior under the standard that we've looked at is pretty exceptional.

Bernard Turcotte: A last resort.

Nigel Roberts: (Unintelligible) case here-- If there are persistent problems, that's basically that you've screwed up the DNS and not fixed it.

Becky Burr: I think that's exactly right. There could be a concern as we're going through this that it's really narrow and it's going to tie people's hands. But it's just important to keep in mind that there are two standards here - substantial misbehavior and persistent problems. And they're separate.

Keith Davidson: Okay. Continuing, Bernie.

Bernard Turcotte: Thank you, sir.

5.3.23 (ph). Following appropriate consultation, such guidance could then be used as a reference point for reviewing DNS-related performance issues for a ccTLD manager.

Keith Davidson: All right. Carrying on. Bill?

Bill Semich: I know I'm trying to maybe expand the scope by just asking this question, and I probably should bite my tongue.

But the proper operation of the domain, doing a satisfactory-- of the operation of domain service-- operation of a domain-- I want to be sure that we are circling around the concept of the DNS and not getting into how do you run the registry, what's your process for accepting or processing registrations, and so on. That's all.

Keith Davidson: I didn't think we were straying from the straight and narrow of the DNS.

Bernard Turcotte: Not to my mind anyways. This is DNS related. We're using the words that have been there.

Bill Semich: As I said, my concern is the more general phrase "proper operation of the domain."

Keith Davidson: Nigel?

Nigel Roberts: It might have been that this is-- it might even have been the previous working group, Bill. But this was actually addressed. I made a suggestion and a quite bold suggestion, I thought, that this document was a living instrument and that the RFC 1591 (inaudible) and that the expressions such as "operation of the domain" might mean-- although, back in the day, people-- you know, you edited (unintelligible) by hand and used the text (inaudible). So the idea of a registry system was kind of just not in the cards when this was written. -- and that, nowadays, you would probably expect-- you could come along and raise (ph) for a domain and modify a domain and delete a domain with a reasonable amount of technical efficiency, and you didn't have to wait six weeks for your name server changes to propagate and things like this. That probably would be within the standard of what is expected of a registry operator.

I think it was Martin that shot me down on that one. That's my recollection of it anyway. I think it was you that shot me down on it for whatever reason.

I think we've been working on the assumption this only relates to DNS. If we are going to go down this other road, I think it gets into where we're going to be into policy, and it gets into just a lot of-- a big piece of work. I don't think it's the wrong thing to go down that road, but that's where that leads.

Keith Davidson: Okay. Thanks, Nigel. Martin?

Martin Boyle: Yes. I think I did shoot you down last time, and I think I'm still feeling nervous this time in that--

Unidentified Participant: (Inaudible).

Martin Boyle: Oh, do you? Oh, good. Good.

But, certainly, the way I would interpret "operating the DNS" in this case is very much in the context of RFC 1591's section 3 and the different obligations put on the operator of a part of the DNS structure. So there could be, I suppose, things like refusal to ensure or do reasonable verification of contact details, for example, not doing a fair and just and equitable job, for example. And I think the wording here I'm reasonably happy with but, on the interpretation of it being a larger one and not just running-- straight running a domain service. Thanks.

Keith Davidson: Nigel?

Nigel Roberts: I think you did actually persuade me because I think what we were talking about was not the widest angle where we take all the possible reasons for revocation and put them in a bundle. But we were talking about persistent problems with the operation of the domain. And I think, on balance, it is more likely than not that that referred to the technical DNS, domains not resolving, and things like that. Operation of a domain did not include registration systems back in the day when it was written. There are other parts of the satisfactory job that might potentially be interpreted in that other way. But I remain shot down. It's DNS narrow (ph) at this point in time.

Keith Davidson: Martin?

Martin Boyle: I'm not actually sure we're saying the same thing. We might be, but it doesn't seem necessary to me that we are in that I would go back and say that this is relevant to that wider issue of running a ccTLD that isn't just the name servers. I don't want to go into what sort of registry function you should provide, but, then, that's where some of the good practice that is available in the community helps you make that judgment. But, certainly, the concept of doing, and we've gone through this discussion and, I thought, came to quite a reasonable conclusion on it, the fair, just, and honest job, because, if somebody is not running that fair and honest job, which isn't anything to do with running the name servers or anything like that, it is actually-- are you providing the service for the local community, which is fundamental to this particular section. Thanks.

Nigel Roberts: Remarkably, we are (unintelligible) on this one because the issue is that the persistent problems doesn't relate-- that relates to the DNS. It's not being honest and not being fair and not being equitable. Thanks very much.

Keith Davidson: Okay. (Unintelligible). At least we agree with each other, but I notice the two of you enjoy using considerably more words than that.

So, with you in dangerous stages of agreement there, can we, please, move on? Bernie?

Bernard Turcotte: Thank you, sir.

Carrying on to 5.3.3, definition of revocation. Now, we did not-- This was the text that was copied up into 5.2.5. We did not have agreement last time. Nigel, as I stated, has quite kindly rewritten it. Becky has gone over it. There will be some minor edits, but I think we've got some text that everyone will be happy with in the next section.

Unidentified Participant: (Inaudible).

Bernard Turcotte: Not right now. No. It will be in the next version. So I'm not going to bother going through 5.3.3 at this point because I don't think it would be useful.

-- which would take us to 5.3.4, process to revoke a delegation.

5.3.4.1 (ph). The FOI working group also believes the intent of RFC 1591 is that revocation should be the last resort option for the IANA contractor. The IANA contractor should use all means at its disposal (subject to us reworking this, as we talked earlier) to assist the manager to resolve any persistent issues with respect to the designated manager's operation of the ccTLD. Revocation should only be considered if the IANA contractor reasonably demonstrates that the manager is unable or unwilling in an appropriate timeframe (a) to resolve specified, material failures to carry out its responsibilities under RFC 1591 and/or (b) to carry out those responsibilities in the manner required by RFC 1591. If the delegation is revoked, the IANA contractor should use all means at its disposal to ensure the ccTLD will continue to resolve names and that a suitable replacement is identified in the manner described elsewhere on an expedited basis.

Full stop 5.3.4.

Keith Davidson: Are there questions or comments?

Gosh! Perfect. Continue, Bernie.

Bernard Turcotte: Thank you, sir.

5.3.4.2 (ph). The FOI working group believes that it is consistent with RFC 1591 to allow a manager the right to appeal a notice of revocation by the IANA contractor to an independent body.

Now, the last time, we had a bit of a debate on trying to show the genesis of this. And it's going to take me a second because the network has just bounced me again. And I'm back. So 5.3.4. There we go. Apologies for the delay, but I was kicked out of the Adobe room.

So the general idea is there is a right to appeal, of course.

Under 5.3.4.2.11 (ph). Section 3.4 of RFC 1591 states: The internet DNS names review board (unintelligible) committee established by the IANA will act as a review panel for cases in which the parties cannot reach agreement amongst themselves. The IDNB's decisions will be binding.

The last time, we agreed to strike the last sentence before (ph) we get anywhere, so there are corrections coming to this text. And it wasn't an expectation that the IDNB would be the panel. This was simply to show the intent that there is recourse for appeals to certain decisions.

Keith Davidson: Eberhard?

Eberhard Lisse: In this context, this means parties not agreeing among themselves; it does not mean appeal against a decision of IANA, which cannot be because you cannot appeal a decision to a committee established by the same institution, the IANA contractor.

Keith Davidson: It's not to say that wasn't the intent.

But, Nigel?

Nigel Roberts: Excuse me. Well, it can have been the intent. But the way you would look at it is-- let's say you go into a shop or something like that and have an argument with the person selling you the thing that they're selling you. So he calls over his manager. It's still the shop. It's just one level up in the hierarchy. It clearly does not exclude independent review in the sense of going to a court or maybe even by way of a policy development process, which is what we're not doing here, establishing the ability to go to arbitration or something that's outside of the IANA contractor or so on. So I don't think-- again, this is not only one thing. This is not the only potential avenue you could have. What it's basically saying here is-- This was dealing with establishment of ccTLD managers. That's the important thing.

Where two parties applied from country in the dawn of the internet to say I would like to be it-- I'd like to be (unintelligible) monitor, the IANA would encourage them to get together and, basically, work together for the development of the internet in that country. Only if they would never agree, and, in some countries, different parts of the country have different backgrounds and would never, ever agree, would the IANA (unintelligible) make a decision. And what John sometimes did, and I think he did it once, was say, okay, we're not going to delegate the domain to you. You can have A.xx, and you can have B.xx. And, of course, that never would work. So they'd come back and try and get together. That was the general principle.

So it's a review panel that does not meet the article 6 (unintelligible) independent review. But it is nonetheless. (Unintelligible) you guys don't agree, we'll decide who it's going to be. And it might be neither of you.

Keith Davidson: However, the point here is that it was the idea and concept for an independent body of review, that's all. Nothing more how it was comprised or how it worked.

Nigel Roberts: (Unintelligible) the words RFC 1591 implicitly recognized the principles of natural justice.

Keith Davidson: Yep.

Eberhard Lisse: Keith, I disagree. It's not an independent body. It's a committee established by the IANA as it says. I've got this thing in front of me. Paragraph 4 of RFC 1591-- it's about the contending parties, and it only refers to if the parties don't sort it out among yourselves. You'll find somebody to do it for you. It does not mean a decision by the IANA contractor can be appealed. This is two different things, and it's not an independent party. So I do not follow the statement that you're making that it's-- that we could interpret it to mean that it is an independent body to appeal. Any decision by anybody can be appealed through the courts or through whatever method. We are not trying to create a new institution. We are just saying to interpret what the RFC says, and it doesn't say what you're saying.

Keith Davidson: Okay. I'll put a question mark around the independence. But, anyway, we're talking about a matter of principle here. We're not seeking to draw a conclusion in that vein. And I think, if we can continue, we'll get to the real point of this particular clause, which is slightly different. So, Bernie, can we continue?

Bernard Turcotte: 5.3.4.3. The working group suggests that the ccNSO undertake, in consultation with the GAC (and we had the comment from Bill on that last time) and other interested stakeholders, to identify for further discussion possible procedures to

be followed in connection with any proposed revocation for the delegation of a ccTLD based on the work of the FOI working group.

Keith Davidson: So there's no assertion there of-- you know, the rest of 5.3 is about setting the stage (inaudible) statement. So, if we're comfortable with 5.3.4.3, we could perhaps move on.

Nigel?

Nigel Roberts: Just to go back over Eberhard's point, I think it's worth taking offline to tease it out because he's actually right. And I'm now beginning to see the point that he's making. So he's been ahead of, I think, all of us at this point.

What the previous document seems to say is not the IDN (unintelligible) review board, and we know, in practice, it was just John himself. It acted (ph) an appeal board, a review board in that sense. It just means the original decision is I'm not going to make a decision until you guys agree, and I will make the decision for you. So, effectively, it's a decision (unintelligible). It's not an appeal of any kind.

I still think we can tease something out of this that leads us in the same direction. I think Eberhard's sort of right here. Perhaps by cutting it down a bit and slicing it up, we might get somewhere.

Keith Davidson: So suggestion of a better draft and work for Eberhard, Nigel, Becky, and Bernie. Thank you.

Moving right along. Bill. Sorry.

Bill Semich: I have raised my concerns about this section, as you pointed out. I would be comfortable with language that said: in consultation with interested stakeholders, including the GAC.

Martin Boyle: Sorry. Can I ask for clarification what was said in conjunction with what stakeholders, including the GAC?

Bill Semich: The language that's here already.

Martin Boyle: Okay.

Keith Davidson: Becky?

Becky Burr: Bill, I hear you, but I actually think that's what this says: the GAC and other interested stakeholders. And I crafted that very carefully to avoid having a collision about this. I mean, what you just said is exactly what I intended that to mean, the GAC and other interested stakeholders. I think that says the GAC is an interested stakeholder. It does call them out in particular. I don't think that elevates it to a different status, but it does-- I think it might be a reasonable-- I mean, because we have had some expressions of concern about that in the past-- So I just thought-- from the GAC. So I just thought that this was a construction that might be easier for everybody to feel comfortable with. I don't know if I'm really supposed to admit that.

Bill Semich: I'll defer to your observation and concerns.

Keith Davidson: Well, then, you don't need my comment. You get it anyway. I strongly support Becky's point on this. I think, Bill, it was a distinction without a difference. And, if this one happens to be more palatable to public consumption, then we'll-- (unintelligible). I don't mind.

Eberhard?

Eberhard Lisse: The concern is quite clear. GAC can provide advice to the board, which may or may not be binding, but policy for the ccTLDs is made by the ccNSO. And I have no problems with the GAC being a stakeholder. The governments are stakeholders. So I don't have a problem with to consult with the GAC. But the advice will not be binding.

Keith Davidson: Sounds like we're in violent (ph) agreement, and Bill's happy. So can we move on?

Bernard Turcotte: Yes, but we're at the end of the document.

Keith Davidson: We can still move on. Martin?

Martin Boyle: My version of the document has got a 5.4 and 5.4.1.

Eberhard Lisse: So does the screen, but it's a very short paragraph.

Keith Davidson: We should read it nonetheless. The GAC principles do not directly deal with revocation. So that's a note, I guess. Martin?

Martin Boyle: And, yes, you're entirely right. It doesn't deal with revocation. But it does deal with re-delegation, which includes revocation as part of that process. And, therefore, I don't think it is appropriate just to say that (unintelligible). I think it is appropriate to say that, while it doesn't deal directly with revocation, it does deal with re-delegation. And I think, then, we do need to consider the terms in the GAC principles. Thank you.

Keith Davidson: I think the terms of the GAC principles that relate to re-delegation are included in the re-delegation. This is revocation on its own. Does that help, Martin?

Martin Boyle: No. I'm not sure it does because the re-delegation is the two parts, the revocation followed by the delegation. The delegation? Yeah, that's fine. There are certain principles that need to be followed under (unintelligible) of the manager. But then there are also considerations about the sovereign state's rights. And, here, I think there could be things like national law that introduce perhaps a nationalization of the registry. And, therefore, I do think we need to start thinking very carefully about this.

And perhaps this is a subject where, when we get to Beijing, that we could usefully sit down in a workshop with the GAC to try and identify what they think are the issues of national sovereignty that they refer to in the GAC principles. Yeah. I think this is actually fundamental. And, if we do not pay attention to what the GAC is saying here, I think we are going to just run into the GAC turning around and saying - No, this is not appropriate. And we'll be back to square one.

So I'm very, very concerned about just dismissing the GAC principles in one simple line. Thank you.

Keith Davidson: Okay. I understood the GAC were members of this working group to participate.

Yes, Bill. I've got a speaking list here, but I'm responding first because I am the Chair.

I thought the GAC were involved in this working group to very much contribute and participate on that basis and be here and be discussing it. If they're not bothered to turn up, I don't think we can take the action of setting up another working group with the GAC at which they won't appear.

You're raising a set of issues that I'm a little bit concerned about.

However, I have a long speaking order here. I've got Nigel, Becky, Bernie, Stephen, Bill, and Elle (ph).

Eberhard Lisse: Just a short interjection. I just want to state for the record that Frank, the GAC representative, is currently not present in the room. He has left since the break, and he has not returned since the break.

Keith Davidson: Noted. And so back to the speaking order. Nigel, please. Thank you.

Nigel Roberts: Well, this ran off with a bit of a gallop since I put my hand up. But Becky whispered something in my ear which I thought was a great idea. I think it's the wisdom of Solomon Patricio here. I think we would just delete that (unintelligible). If it causes a problem, we just delete that sentence.

But, then, hearing Martin's intervention, I realized that perhaps there is, again, a very much minority view here. I think, again, it comes from a fundamental misunderstanding of this document and what we're doing. We are not talking about the right of the government to pass primary legislation in its country which may or may not affect the rights and obligations of a company or person within its territory. That is sovereignty. That is under whatever procedures pass for the rule of law in that country. In the western democracies, they're usually pretty good.

We are talking here about revocation for cause for either substantial misbehavior, misfeasance in public office, or for, basically, screwing up the operation of the DNS. We are not talking about other things that may, in addition, be possible in an individual territory.

If we go back to the metaphor that the earliest discussions we had in the ccTLD community ten years ago about this stuff, where we talked about-- forgive me if the reference is dated here. But the principle still applies. We talked about the Saddam Hussein brother-in-law, whereby the army turn up at the office of the ccTLD manager, point a machine gun, and say - You get on the phone to IANA now and transfer the delegation. That's the rule of law in that particular country.

Unidentified Participant: Or not.

Nigel Roberts: Or not.

Keith Davidson: Okay. Thank you, Nigel. I've got Becky, then Bernie.

Becky Burr: I actually do, Martin, think that the proper place for the sovereignty issues does come up in the delegation-- the re-delegation subject that involves consent because the fact is that the sovereignty, the power of the sovereign to pass a

law, to nationalize something, whatever-- the ultimate result of that is going to be the sovereign exercising its authority to, essentially, compel an agreement.

And so you can't put IANA or ICANN or whoever we're talking about here in a situation where it has to decide whether a law has been passed, whether somebody's had all of their due process rights, any of those other things. We talked about this, I think, in-- a great deal. But I do think that this revocation for cause issue-- I mean, it certainly is true that the government could have strong views about this and bring those things to the fore in a revocation for cause. But the sovereignty, it seems to me, can only meaningfully be dealt with in the delegation/re-delegation context. Otherwise, you are asking IANA to step in and decide whether a law-- whether the government that comes and says we passed this law now re-delegate, whether they're right or not, whether the law applies, whether it-- you know. I just don't see how you can move sovereignty into this piece.

Keith Davidson: Okay. Thanks. And noting for the record that Kim Davies has left the meeting.

And Bernie was next. Bernie?

Bernard Turcotte: Thank you, sir. I will actually argue with Martin on the fact that the GAC principles deal with revocation. I don't agree.

They deal with reassigning the ccTLD through sovereign right through-- we've heard various versions here, as Becky aptly commented on these things. But simply revoking the ccTLD? Not from what I could read through the GAC principles.

And the second half is--

And, please, understand, I'm not saying that we're above sovereign right. I'm just saying they don't deal with revocation as such.

The second part is that, pretty much as Becky has put it, we do not wish to-- this working group cannot, and I don't think ICANN can put itself in a position to be above the law, whatever law that is and however it applies. We are here in the lower leagues. We're talking about things that we can interpret relative to rules that have been handed down for technical reasons and operations and proper running of domains the way we understand them. We're not here to consider laws or give advice about how laws should be considered.

So the governments have all the rights they want to give themselves through the laws. We don't argue that. Sovereignty is sovereignty. End of story. It doesn't even enter here, which is all I was trying to say. It is so obvious in its own realm. This is not, as far as I can understand it, part of our remit here to discuss sovereignty.

Keith Davidson: Perhaps it's the issue of the placement of this particular clause. Maybe it should be quoted earlier.

Anyway, I've got Stephen, then Eberhard.

Stephen Deerhake: Bernie echoed my thoughts regarding GAC principles with respect to revocation. It, to me, does not apply. And, given that this particular document is revocation only, I really fail to see why we need to go down the path that Martin has

suggested with regards to this section. I think we either leave it as is or just strike it.

Keith Davidson: Okay. Bill?

Bill Semich: I think, if we strike it, I would point to the-- We just discussed 5.3.4.3 or whichever one it is, in which the GAC is going to be involved in discussing these issues anyway related to revocation. So we are, in fact, specifically-- I'm loathe to admit actively involving GAC in this process of coming up with procedures for revocation. And I think that covers it well.

Keith Davidson: Okay. Thanks, Bill. Eberhard?

Eberhard Lisse: If in doubt, I usually refer to the source document. I've got it in front of me. And I must say it does not deal with GAC principles. And I've got a 2005 version. It did not deal directly with revocation. We can maybe quote the principle in the document, but it really doesn't deal directly with it. It says: Delegation and re-delegation is a national issue. It should be resolved nationally and in accordance with national laws, taking into account the views of all local stakeholders and the rights of the existing (unintelligible) registry. Once the final form of decision has been reached, ICANN should act promptly in line with authority.

The point is, mainly, what legislation or what legislative framework is at work. It deals with, if the core functions are outside of the country, the national legislation should be taken-- given a place.

So I agree with Bernie. It does not deal with it directly. But, if you can find a way to clarify this or leave it out totally, that's not a problem. But he's right. It does not deal with revocation (inaudible).

Keith Davidson: I think there are several sort of lines that coincide here. One is that-- remember when we sort of stumbled across the word "revocation" in 1591? It appears once or twice in the document. And we determined that it wasn't a re-delegation per se. It was what might have been half of a re-delegation or might not have. But, because of the connotations of the substantial misbehavior and other aspects, that revocation stood alone and apart. And, in reading the GAC principles, they talk about their delegation and re-delegation and do not refer to revocation. So I'm inclined to think that that is the literal quote that we should use in the section that applies to revocation. Acknowledging the GAC principles for the re-delegation section is different and should be inclusive.

So I think Nigel wanted to add something. And then I think Martin wanted a final comment.

Nigel Roberts: The question is not whether or not this paragraph is the literal truth, which I believe it is. I'm persuaded what I hear. And, when I read it, it is the literal truth.

The question is whether this is helpful. And I think striking it-- again, I'm using Patricio's ax, I think we might call this, or Patricio's razor. If we strike it out, will we lose anything? Probably not.

Martin is touching on, again, probably in the wrong place-- but it's the right thing to do sometimes. Martin is touching on something here which is actually, deep down, so fundamental and to the great unanswered questions of the relationship between ccTLD managers, the IANA, and the U.S. government, which is whether

or not a delegation is a matter of international private law or there's some public law function here. And we really have not got the scope, remit to go down that path at this point in time.

There's definitely a different divergence and view between some ccTLD managers and their governments, between some governments and other governments on this point. It's not-- We're not going to solve world peace in this meeting. Certainly, we ought to be sensitive that, when this comes up, that it is (unintelligible) go down very easily. We've been so productive in these two working groups that we should be very cautious as to when we press on this course.

Keith Davidson: And I think-- I guess it doesn't matter which way you slice and dice RFC 1591, the GAC principles, or, in fact, their framework of interpretation. That is an attempt at (unintelligible). And, more, it is an attempt to provide some guidance and no more. And national sovereignty will always be the place of resolution.

Nigel Roberts: Yeah. The question is, in some cases, which national sovereignty. It might be U.S. government sovereignty and not--

Keith Davidson: It's a separate-- We're not going to get that (ph).

But, Martin?

Martin Boyle: Thank you, Chair. Yeah. I hear what people are saying. I would pick out the statement of work and see 2.9.2.C - delegation and re-delegation of a country code top-level domain. No mention of the word revocation. But the re-delegation is going to involve a revocation at some state. And then it says: The contractor should apply existing policy frameworks in processing requests related to the delegation/re-delegation of the ccTLD such as RFC 1591, the GAC principles, and any further clarification these policies (unintelligible) affected parties. If we walk away from this, we're leaving a gap.

Now, it might be, and I'm perfectly prepared to be convinced that it belongs in a separate place-- after all, if the government has passed a law and the law-abiding citizen turned around and said - Yeah, okay, I obviously have to consent to the re-delegation, it becomes a consented re-delegation. However, I think this document, because of the nature of this document, ought to, in that case, make it clear that addressing the national sovereignty issue-- in other words, take into account the GAC principles-- is covered in another part of the document and identifying such.

And, really, the main reason I'm raising this is that we do need to think how the GAC is going to respond to a document that sits on its desk that either says nothing about the GAC principles in this, a really important area for many GAC members, or dismisses the document in one gentle and flowing, not even (unintelligible).

So I think we do need to think very, very carefully about how we're going to move this one forward. And I feel very uncomfortable. It seems to me that we are actually asking to come to blows with the GAC on this one because it is such a significant element to the GAC. And we have heard them say it. Thank you.

Keith Davidson: Eberhard, then Nigel.

Eberhard Lisse: I just want to state for the record that the GAC representative for U.S. hasn't been seen or heard from for many, many months. And Frank Marsh is still not in the room. I have absolutely no problems with two representatives of the GAC being on the board irregularly and infrequently taking part. And then later this should be taken in consideration that all the work that's been (unintelligible). Sorry. That's not acceptable. Either they take part, or they don't. I really don't care. We interpret existing policy. We interpret the GAC advice. We submit it to counsel if GAC doesn't like it. We interpret this the way we want. GAC cannot make policy for the ccNSO. I must say I'm really starting to come to a point where I'm getting fed up with this. They're never there. They never participate. And then we have to be in preemptive obedience, or we're afraid the GAC doesn't-- is not going to like it. Their representatives-- and I'm being a bit epic about it. But, if there is no misunderstanding in the transcript-- and we can e-mail it directly to Frank's private e-mail address if we have to, to make sure that he knows about it.

Keith Davidson: I think we're getting a little bit consumed about some things. I think Martin, on the one hand, is rightly pointing out that we do want cooperation with the GAC, and there's no problems with that. And it's not Martin's fault that the GAC are not here. So I think trying to hold Martin accountable for that is a little beyond scope.

Eberhard Lisse: But I'm not doing that. I'm holding Frank March and (unintelligible) accountable for never being here.

Keith Davidson: Because I'll take the Chair's prerogative on this and actually raise the issue with the GAC Chair and the ccNSO Chair and ask if we could return to a situation where there is participation. And I think that's appropriate.

Can we move on?

Nigel Roberts: Indeed we can move on after I've said what I want to say about this.

Keith Davidson: Okay. I'll lay out the latitude.

Nigel Roberts: I'm actually grateful to Martin for bringing this up, but perhaps this is not the right way because he's provoked Eberhard out of his box.

Eberhard Lisse: No, he hasn't. Frank March has.

Nigel Roberts: Please, don't distract because I've some latitude from Keith on this. And I think Keith has preemptively gone down the road of what I was about to suggest.

But the thing is this is not a ccNSO working group. This is a joint working group. And, at the end of the day, we should not be presenting things to the GAC for the approval or consideration or otherwise. We will be formally presenting the output of a joint working group. That's not, apparently, what's going on. And I would not express things in the vehemence that Eberhard uses. But, nonetheless, I think, formally, it's time that this working group express concern that it is not working in the way that was anticipated. I do not want at the end of this to come to a situation whereby every opportunity has been given for every stakeholder in this community to have input into this, and we turn around and it turns out to be seen by one side or the other as one-sided.

So I think Martin's right here. But I think what's happening is it's being expressed in a way that seems to be showing internal divisions. It's very clear that, for some people, Martin is being seen as the representative of the GAC because of his

previous incarnation. That's not what we're about here. What we're about here is finding a way forward where we can all work together to get the right answer, not the ccNSO take on this, which the GAC might or might not disagree. This is a joint working group.

Mr. Chair, I'll take your offer to express concern, but, perhaps, in slightly more strong terms than you might otherwise have done with slightly vehemence than Eberhard used today.

Keith Davidson: Yeah. I won't say anything. Cheryl?

Cheryl Langdon Orr: Thank you. Cheryl, for the transcript record. This bit of this document bothered me but not for the reasons you've all been talking. It's like (unintelligible) sentence. It just doesn't do anything for me. It serves no purpose being there. And, if it's going to be there, it needs to serve a purpose. It's not doing that. And I think we might be able to find a way forward if we try and make Cheryl happy, not the GAC, and we somehow appropriately, reference or otherwise something that actually works into, well-- I mean, that just doesn't mean anything to me. It feels like that's come from the working document, and it was one of those primers to keep us focused on task. So there might be opportunity there.

Keith Davidson: Okay. Look, I propose that we move forward by square bracketing this particular clause and encouraging the GAC to be reengaged and ask them for their opinions on whether they think it's an appropriate statement on this particular section on revocation or not. And, if they feel strongly, we will strike it. And, if they don't feel strongly or if they think it's appropriate, it remains.

Cheryl Langdon Orr: (Unintelligible). And, if something needs to remain, engage in a drafting of what needs to remain.

Keith Davidson: Thank you. So I think we have an action point there, and I think I will note in my discussions that perhaps issues relating to delegations and re-delegations for ccTLDs are of not the most prime importance to At Large. We have an At Large rep who attends all the calls at all the times of the day and night. And so, if the GAC were so concerned, perhaps they would make the effort as well. And I'm saying that deliberately to read this into the record.

So I take your strong feelings, and I will take them forward.

Martin?

Martin Boyle: Martin Boyle, for the record. I'm not going to keep saying that.

But I would like for the record to react quite strongly to Nigel's suggestion that I am taking the role of representative of the GAC.

No. I want to make clear that I am here. I am representing .uk. And my concern is that we get to an end of the document in such a way that it is going to be possible to get consensus across communities and we don't do that by being rude or ignoring-- rude to the GAC or ignoring the GAC documents. I am aware that the GAC do take their GAC principles very seriously. And Frank, at the last meeting face to face, in Prague, did say very, very clearly that the GAC see the GAC principles as policy. And I think we have to recognize that.

Keith Davidson: I'm not going to open that for debate. And, you know, I think, Martin-- thank you that you do remind us that you did sit in the GAC room, and you do know their processes. And you are trying to (unintelligible) us to how we must interact with the GAC.

I think it will be counterproductive to continue this discussion at the moment. We have a proposed way forward, and that's just square bracket and me to enter discussions. Can we move on?

Nigel Roberts: We can move on, but, for the record, Martin, I did not say what you said I said.

Keith Davidson: Okay, look.

Nigel Roberts: What I said-- it was perceived by some others in the room--

(Multiple Speakers)

Keith Davidson: I am moving this conversation on. It is now closed.

And I am proposing that we move to the next topic on the agenda. (laughter in the room).

Unidentified Participant: For the record, Frank March entered the room.

Keith Davidson: And we have moved on. So, returning to our agenda, we now move to the next item. And that is the GAC response on (unintelligible). Have we got that document?

Unidentified Participant: (Inaudible).

Keith Davidson: Oh, okay. (Inaudible) read on screen. You don't have it? It was circulated with my--

Unidentified Participant: Is that the one?

Keith Davidson: Sorry? Okay. For the record, we're just struggling to get the draft FOI working group response to GAC on the Adobe Connect room. But that is the proposed document that's been on the list.

And so can I--? Without reading it, can I ask-- Does anyone have any issues or comments, or can we proceed to sending the letter back to the GAC?

Bill's indicating a thumb's up. Eberhard has his microphone on. Stephen's indicating thumb's up. So everyone is happy with the letter?

Martin, that's not a thumb up. It's a request for the floor. The floor is yours.

Martin Boyle: Thanks. I don't actually have anything particularly of substance in the letter. It seems to me to cover all the points.

It's just I think it would be nice to put a final paragraph that goes something along the lines of: I would be grateful for your views as to whether this adequately responds to the GAC's concerns.

Keith Davidson: Oh, that would be-- nicely put. Could you e-mail those words, and we'll incorporate them.

Okay.

Eberhard Lisse: You have a way with words, Martin.

Keith Davidson: Okay. Any other comments? So we can proceed with the letter to the GAC.

We have the future meetings schedule. Do we need to put that on screen? I think everyone's seen it and read it and devoured it and already noted all those dates in their diaries.

Stephen?

Stephen Semich: I would just like to point out that you should use the local time translations that were given in that document as guidance only. The U.S. ones do not take advantage or do not account for the U.S. going back to winter time.

Keith Davidson: Oh. Really? I did it all through dateandtime.com.

Stephen Semich: For that Los Angeles timing, you did not put in-- you didn't check it for each meeting because we go off a week different from you guys.

Keith Davidson: Eberhard?

Eberhard Lisse: I might make a proposal that we always submit the times in UTC.

Cheryl Langdon Orr: Here, here.

Eberhard Lisse: It's easy for everybody to check out his own time. If I get this thing from Kristina, it goes automatically in my calendar with the right time anyway. But, if I get this with UTC, I can look exactly what the time is. There is no-- We'll normalize this. There is only one area of confusion and not 25. So submit it in UTC.

Keith Davidson: Oh, the proposed schedule up there is only in UTC. And I used an example at the bottom of what that sort of looked like. So it's obviously fallen out for a week or two. So I think Stephen's just taking advantage of being provocative from the edges (ph). That is the schedule.

Stephen?

Stephen Semich: Actually, I didn't check any of the other ones except Los Angeles, and I just did that on a fluke. I wasn't trying to be provocative. But I myself goofed by an hour and come in late.

Keith Davidson: But that is the proposed schedule with the UTC times. So, if everyone's checked it in their home time, it's a little bit different to what it has been. And it seems reasonably appropriate.

Yes, Nigel?

Nigel Roberts: Just a little postscript. I know everybody knows this, and, certainly, the Google calendar and iPhones and everything you'll be able to use knows this. But, just for the record, in case anybody gets confused, Greenwich Mean Time and UTC

are the same thing. The U.K. is not always on Greenwich Mean Time. So you do not judge this by what the time is in the U.K. You judge it by what the atomic clock says. It never changes. UTC never changes.

Keith Davidson: UTC is an alternative use of Greenwich Mean Time because it's not geo located.

Nigel Roberts: The problem with that is that Microsoft and people like that seem to think Greenwich time is a time in the U.K. when it's not--

Keith Davidson: Yes.

Nigel Roberts: It just, coincidentally, half the year, happens to be.

Keith Davidson: Yeah. Okay. So that's the proposal. I'm not hearing any exceptions. I'll note Stephen will miss one meeting by an hour. And, other than that, are we happy? Okay. That will become the schedule.

Just a forewarning. I think ICANN in its new scheduling of its meetings and deleting the board meeting on Friday and having the public forum today in the afternoon-- I think the final decision on that-- on cementing (ph) there on the new format will be made in Beijing. So, when we know that, I think, if it is going to remain how it is, we should look at rescheduling this meeting because many of us want to go to the public forums. I want to attend the public forums. Sunday is TIC (ph) day, as well, now. Isn't it? So, you know, Thursday mornings would be logical. But let's not get into the debate now. Let's just have a forewarning that we need to think about it. And perhaps I'll start some dialogue with (unintelligible) and see if we can look at potential rooms and so on. Is that reasonable?

Eberhard?

Eberhard Lisse: Yeah. I would also suggest that we should keep Thursday mornings. It might just move it forward up to mornings--

Keith Davidson: Yeah.

Eberhard Lisse: -- that we keep that in mind. And, if it can be done, we can get a room and everything organized. We should keep that in mind when we find out what the ICANN board is doing.

Keith Davidson: Yeah. So I think, probably, for Beijing, we're committed to the afternoon of Thursday. But--

Okay. Just noting I'll enter into some dialogue with the secretariat. Thank you.

Unidentified Participant: (Inaudible).

Keith Davidson: Okay. Thank you. Okay. And I'm not-- I think we've talked about it a couple of times, and nobody had any particular objection to Thursday morning. So we'll work on that.

Okay. Is there anything else? Any other business from anyone? Everyone's delightfully happy?

I'll give you an extra 17 minutes back to close the early. Thank you, all, for your participation and attendance. I think we have made, again, some pretty solid

progress today over a really difficult topic. So thank you, all, for your forbearance and enabling us to make this progress.

Thank you, and I declare the meeting closed.