

TRANSCRIPT

Framework of Interpretation Working Group Meeting Beijing

11 April 2013

Attendees:

Jaap Akkerhuis, ISO
Martin Boyle, .uk
Becky Burr, .us (Vice-Chair)
Keith Davidson, .nz (Chair)
Steven Deerhake, .as
Dejan Djukic, .rs
Daniel Kalchev, .bg
Cheryl Langdon-Orr, ALAC
Eberhard Lisse, .na
Desiree Miloshevic, .gi
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi
Cintra Sooknanan, ALAC

ICANN Staff:

Bart Boswinkel
Kim Davies
Gabiella Schitteck
Bernard Turcotte

Apologies:

Maureen Hilyard, ALAC
Frank March, GAC
Kristina Nordström, ICANN

Operator: This is the ccNSO Frame of Interpretation Working Group from 9:00 to 12:00.

Becky Burr: Good morning, everybody. We're going to start the meeting. We do know that some other people, Dottie for example, is on her way. Let's start first with the present and apologies. Gabriella, do you have apologies?

Gabriella Schitteck: I don't have apologies. Kristina might have, but she's ill, so apologies from Kristina.

Becky Burr: Okay, yes, we'll start with me. This is going to be difficult because our usual stalwart support is not here. Kristina is unwell. So we will get the information from Kristina about whether there were apologies received for the record. So if everybody would just, I guess we need to do this by passing around the microphone, state their name for the record.

Eberhard Lisse: Eberhard Lisse, .na.

Stephen Deerhake: Stephen Deerhake, .as.

Nigel Roberts: Nigel Roberts, .gg.

Kim Davies: Kim Davies, ICANN.

Martin Boyle: Martin Boyle, .uk.

Patricio Poblete: Patricio Poblete, .cl.

Ann Dickinson: Ann Dickinson, [linguist sinetica].

M.L. McGilvery: M.L. McGilvery, .ca.

Gabriella Schitteck: Gabriella Schitteck, ccNSO Secretariat.

Elizabeth Blay: Elizabeth Blay, ICANN.

Becky Burr: Okay. The agenda for today is we have some administrial and administrative tasks to take care of and then we hope to finalize the revocation topic which we have been discussing for many months now. Can I have a motion to approve the agenda?

Eberhard Lisse: Can I make another motion first?

Becky Burr: Why don't we finish this one and then I'll let you make your next motion? (inaudible cross talk). Oh, okay.

Eberhard Lisse: Can I amend the agenda please?

Becky Burr: Yes.

Eberhard Lisse: I have two issues. .ml, I want to say something about and I want to object to the meeting facilities and I will therefore move to terminate the meeting.

Becky Burr: Is there a second to -- first, let's take this in 2 parts. To add a discussion of .ml to the agenda, all in favor? Any opposed? Okay, we will add that to the agenda. Now we have a motion to terminate the meeting on the grounds that the facilities are not adequate. Do you want to add any further discussion on that?

Eberhard Lisse: We have -- I can elaborate a little bit more. We have had -- we never had a meeting where we cannot, where microphones are not acceptable. This meeting room is just not acceptable. We also have barely the minimum of a quorum. I don't think we should carry on like this. We have booked this meeting many months in advance and I am not in favor of carrying on.

Becky Burr: Any other comments, discussion, second?

Eberhard Lisse: We haven't really done votes on things like this before.

Unidentified Participant: No, can I first of all say something informally and then maybe Eberhard might want to revise or recast the motion or whatever it is and the timing of the manner in which it's being done. If we go a bit formal, which we never do, we always work by consensus and I'd like to see us continue to do that, then there will for me be very reluctantly a second because I'm expecting to do work here today and I'm very disappointed if I can't. But if you then get my second, which I say will be very reluctant, the rules of procedure say we must then debate that. So we can't have any discussion about .ml or anything that's come up in our informal work here, discussions with Martin or whatever, individual little bits and pieces that we would talk about on the call. We can't do any of that stuff. That motion has to be considered there and then, and if it succeeds, we proceed out of the room. So I'd invite Eberhard to defer discussion of his motion until a little bit later, let's say the second point on the agenda, after the first one that he's brought in which I think he says should be first on the agenda.

Bernie Turcotte: Would it be acceptable to Eberhard if we move his point to after we do the administration stuff and the .ml discussion?

Eberhard Lisse: The .ml discussion is not as important as making the point that this is not acceptable.

Becky Burr: I think what's being suggested here is that we go through the other parts of the meeting and then discuss your motion to terminate when we come to the substantive revocation discussion.

Eberhard Lisse: The point is we can't discuss something when we have inadequate facilities. So therefore I think that should have precedence and I think we should just stop here and go.

Unidentified Participant: Is there a second?

Eberhard Lisse: For the benefit of the tape, (inaudible) has just entered the room.

Becky Burr: Thank you. I -- any discussion? I guess we have to have a second first.

Nigel Roberts: I think, as I said, extremely reluctantly, because I think it needs to be heard and add I've come in to do 3 hours' worth of work today and I think 10 or 15 minutes ago we asked for microphones to be provided. We have remote participants and we need to be able to discuss around the committee table in our usual way. And you can't do that if you have to stop and pass the microphone around because it just inhibits the flow of discussion. [inaudible cross talk].

Eberhard Lisse: That's not the issue whether we have got one or we have got two. The issue is we cannot do the work in the proper way.

Nigel Roberts: And again, for the benefit of the tape, the room is not set up for a committee meeting as we requested months ago.

Unidentified Participant: Do you second?

Nigel Roberts: As I said, very reluctantly. Because I think we need to have this discussion debated and heard. I think there is administrivia that we should deal with first which I obviously disagree with Eberhard about the revising of the agenda. If you want to get technical -- the answer is yes on that.

Becky Burr: Any further discussion? You want to continue?

Unidentified Participant: No, I don't want to discuss that. Eberhard seems to have covered this particular point.

Becky Burr: So the question is then -- I don't feel the need to do this formally. We can do this totally informally if we feel that we do not have the facilities that are adequate to do this. And if we can't make them adequate, then I understand that. I do think that there is some stuff that we could efficiently discuss and get off the table. And I'm also wondering, if we just move the tables ourselves, we wouldn't have enough microphones --

Unidentified Participant: You should also speak into the microphone, Eberhard.

Unidentified Participant: Thanks, Gabriella. I understand the point. I was actually trying to say, how many of us from the committee are there and then look at what Becky said. How many microphones, if we change the table configuration, or have it changed, will work between a mike, between the two and between the roaming one. So can someone do that logistic? We've got 8 -- 9. And we've got 1, 2, 3, 4, 5 mikes, so I mean technically that's kind of doable especially with a second mike.

Eberhard Lisse: Three of us still have limited mobility. I don't want to harp about the same thing, but this is really not the right way of doing things.

Becky Burr: So I'm going to step down from my chairman's role for a moment. I hear you and I understand what you're saying. If we move the tables into a square or a horseshoe and then we put one microphone between every two people, and we get another one of these and we get another handheld, then we should have enough I would think. I know you want to make the point, but I think the other thing is, we have a lot of work we could do. Nigel?

Nigel Roberts: As I said before, I came here to do 3 hours' worth of work and I'm reluctant not to. I move, if we want to get formal about it, or if we can just do it for consensus, that we adjourn for half an hour and we request the support people to set up the room properly in a horseshoe and then we come back and we see what we can do about microphones and sharing them. It seems like with a roaming microphone and enough of these things, whether we take to the floor and the health and safety of us moving tables. We get the support people to do what they should have done in the first place and set it up properly.

Becky Burr: So we're going to take that as a friendly amendment. Is that acceptable?

Eberhard Lisse: Yes.

Becky Burr: Okay, that seems like -- yes, let's regroup at 9:45.

Unidentified Participant: If there was another room offered, which might happen if they don't want to be shuffling, can we make sure that staff puts a sign outside? Because we've got a number of public here and they need to know. We will be pinged and listed but I know there's people here that want to hear what we're doing so we need to be transparent.

Becky Burr: Okay. 30 minutes. Thank you.

Becky Burr: We are reconvening the FOI working group meeting. We have some additions to the attendees, so if you -- don't sit there, Keith. So people who have not checked in, I know Cheryl wasn't here when role was taken, Cheryl Langdon Orr. Daniel, Dotty -- anybody else not here when role was taken? Keith? Okay. So we will adjust the notes to reflect everybody who is here. Okay, Paulos as well. I'm sorry, I thought you were here earlier.

Unidentified Participant: Becky, just for the record, two apologies that I've received that may not have gone to the list. One was Frank March from the GAC who had to return home because his wife broke a leg, and the other was Maureen Hilyard, one of the observers today, because she's between two other meetings. Can we note those in the apologies?

Becky Burr: Yes, so noted. So when we last met, we were confirming the agenda. Everybody okay with the agenda, with the addition of a discussion of .ml? Okay, we have the meeting report for the 21st of March that was sent around to everybody. Any additions, revisions? Any objections to confirming them? Confirmed. Do we want to set a future meeting before we do that? So the future meetings are scheduled between now and Durbin for the 25th of April at 21:00 UTC --

Unidentified Participant: They're all Thursdays.

Becky Burr: Ah, that's good. (Inaudible).

Unidentified Participant: Can you please take the microphone, because the remote participants in the transcript is not going to reflect what's being said.

Becky Burr: Okay, even if you're making jokes, make it into the microphone. 9 May, 5:00 UTC; 23 May, 13:00 UTC; 6 June, 21:00 UTC; 20 June, 13:00 UTC, and 4 July, 5:00 UTC.

Unidentified Participant: Becky, just as a matter of record, you'll notice the last two are sort of reduced times to the normal rotation of 18 hours apart and that's specifically because Bernie and I had some issues with both of those dates and other travel arrangements. And I think on the basis of wanting to continue on the Thursdays, it was just a flip around. Nobody is going to be, hopefully, too disadvantaged.

Unidentified Participant: If you hadn't said, nobody would have noticed.

Unidentified Participant: My fear is that someone would have noticed much closer to the time and said we have to do them in the right order or I put them in my diary that way. So just to avoid any doubts around that and to make it totally clear.

Becky Burr: Okay, duly noted. We have an addition to the agenda item introduced by Eberhard, a discussion of .ml. I'm going to turn it over to you, Eberhard.

Eberhard Lisse: Okay. As we have said in the past, .ml underwent a delegation process and the previous administrator sent emails to me indicating that he was under duress. Be that as it may, it appears that the new administrator that is a government agency, told ICANN and others, me personally and others to their face, that they would repatriate it and adopt in country and it took about 7 minutes after the delegation and it was repatriated to the Netherlands/Sweden registry which is running under the same model as .pk which means free domain names and millions of them. So we are going to have another (inaudible) coming up. It seems to me that the voracity of the statements made by the Bosnian government to ICANN seems to be doubtful. That needs to be checked, but it's something that we have in the record. Whether we deal with it or not, we have record in the record in the past. But this is something we might want to look at because if this is all as bad as I think it is, then this would be a case of substantive misbehavior during the application process. I'm not saying it is, but there are some really suspicious stuff going on. So I thought I'd bring it up into the record. Whether we debate is not necessarily my issue, but I think it serves as an illustration of what our work is.

Becky Burr: Duly noted. Does anybody have anything to add on this?

Unidentified Participant: I think Eberhard raises a very valuable point. It's obviously out of scope for this working group, but I think it is an issue that should be highlighted to the ccNSO Council. And if I might be so bold, I might propose that a sub working group of Bernie, Becky, myself and Eberhard be formed to talk to the ccNSO Council and see if we can follow up with ICANN to actually -- not to undo anything, but just to understand how a process might go so wrong. So if the working group pays some tolerance for that, I'll talk to the ccNSO chair and see if we can get that in.

Becky Burr: Great. That seems like a good idea.

Eberhard Lisse: I would like to put one little caveat to how things can go so wrong. And that means cover "if" they have gone wrong. I'm not -- we don't really know. It smells fishy and it barks and it bites and it might be a fish dog, I don't know.

Becky Burr: A fish dog? Ok.

Unidentified Participant: Could you draw us a picture?

Becky Burr: Please, no. All righty. Yes, Nigel?

Nigel Roberts: The technical word for that would be a [cumeraj].

Becky Burr: Isn't that a lion?

Nigel Roberts: Yes.

Becky Burr: A lion dog, lion fish? Okay, now that we have had our study of Greek mythology, which is what the GAC is doing -- [laughter]. Sorry, I just couldn't help it.

Unidentified Participant: For the record, Becky, for the record, nicely done.

Becky Burr: Well everybody is awake now and we've done some furniture moving and we've climbed on windows and demonstrated the intrepidness of this group, we are going to further demonstrate our intrepidness by talking about revocation. And I am going to turn the microphone over to our intrepid leader.

Keith Davidson: Okay.

Unidentified Participant: The Adobe Room doesn't seem to be open?

Unidentified Participant: It's open, I'm in it. Me and staff are there, I'm not sure why nobody else is joining in.

Keith Davidson: Do we have any participants that are not here? Okay. I turned it off. While I was fixing something, I turned it off. I will fix it like this, hopefully. There we go. All right. At our last meeting, we had been working off of Becky's analysis document and have tried to cram in everyone's requirements. There were things about square bracketing various parts and adjusting various parts, but maybe one of the things that we can do, given that we are in a face to face mode at this point, is just go over that and make sure we're all on the same page. Would that be ok for everyone? All right.

Given there's no one in the Adobe Room, I'm not going to send this over to you, Gabrielle.

Kim Davies: Sorry. For those that are confused, because it's an ICANN meeting, it's not the usual address. It's the address of the function room we're in which is [ICANN.adobeconnect.com/pek46-function10](https://icann.adobeconnect.com/pek46-function10).

Unidentified Participant: Can you repeat that?

Kim Davies: ICANN.adobeconnect.com/pek46-function10.

Becky Burr: Thank you, Kim.

Keith Davidson: We're good? Do people need further instructions? Everything's okay? Anybody else having problems getting into the room? Need to get into it? Although nothing is being checked, that is correct. We've got it up on the screen here. If you want to, we can put it up in the room, but let's work on it from here. So catching up. So Becky had been working on rewriting this section 5. Formal actions by the IANA contractor. RFC1591 identifies three formal mechanisms available to the IANA contractor. Delegation, transfer and revocation. While other formal mechanisms may be available to the stakeholder community under national law, those mechanisms are not available to the IANA contractor as a practical matter.

Everyone is in the room, so you want me to send this over? Okay, I will do that now. I will get out of here -- go here.

Becky Burr: Martin and then Nigel.

Martin Boyle: We've had several discussions on this document so I thought we've incorporated quite a number of changes as we've gone along. While not in this paragraph as to what you just read --

Keith Davidson: I will get it up and no, we haven't (inaudible).

Becky Burr: For the moment, I believe that we are having a high level conceptual discussion, is that correct?

Keith Davidson: As far as I know.

Martin Boyle: That would be technically opposed to what the GAC is doing.

Becky Burr: Correct.

Martin Boyle: I note that everyone is amused, but I'm missing the joke point of all these GAC jokes.

(Inaudible cross talk)

Unidentified Participant: If I may, I think what Martin was asking was, there was language that he thought was to be marked up that isn't there. Do we have that redline version for today or will we have that coming?

Keith Davidson: We don't have that even from where we finished off last time, but with the meeting notes, we can go over that as we're going through it.

Unidentified Participant: Just to be clear, what we're doing is taking that substantive agreement and just doing a second run check and putting them into -- that's fine. We just all needed to be really clear on that.

Keith Davidson: Okay. Gabriella? There we go. All right.

Unidentified Participant: While Bernie is getting himself sorted out, I'd just like to express thanks to whoever became Mr. Shifter and moved tables and got things all set up as it should have been in the first place. (inaudible).

Bernie Turcotte: All right, you should be getting that. There are two files, the meeting notes in Word and version 3, Becky's text. Becky's text is (inaudible).

(Inaudible - cross talk). I will do that immediately. Done.

So as I told Gabrielle, you'll have two files which are the Word version of the meeting notes and the last version of Becky's document. So we can go through those hopefully simultaneously and --

All right, so we're back on the screen and hopefully we've got the same files everywhere. If we go down, yes there were inconsistencies. Section 5(1) from the last meeting, formal actions by square bracket, an exec will provide rationale on the list relative to all mechanisms may be available to the stakeholder community under national law. Those mechanisms are not available to IANA. Discussions by Eberhard, Nigel, Martin, Chris Dispain, Bill Semich around national law. There was no agreement as far as I know relative to what we were going to do with that. So if we go back, we've actually got that paragraph, I just cut and pasted because I knew we'd get back to it over here. I don't know if we want to talk some more about the issue around national law in this case. If I remember correctly, part of Bill's concern was as the operator for NewWay, it was a company registered in Massachusetts and he was unclear how national law would apply. Right? So any further comments or questions about restructuring section 5(1)?

Becky Burr: Yes, Nigel?

Nigel Roberts: I may be being very simplistic about this and I know Martin and Eberhard were going to try, with me, to work on some of this and it didn't quite happen for whatever reason. I'm being very simplistic about it. The national thing is important because the terminology is problematic. I mean national doesn't apply to us, it doesn't -- the UK doesn't have a national law right now. It's two completely different jurisdictions between the top half of Great Britain and the bottom half of Great Britain. Would not applicable be better? Or domestic?

Unidentified Participant: I think using applicable law would resolve a host of issues. Because then we don't have to ever decide. [Cross talk]. I do not believe that we were charged with interpreting the choice of law provisions of RFC1591. Does anybody object to a general replacement of national with applicable law in the applicable law phrase?

Unidentified Participant: Why not just leave it away altogether?

(Inaudible cross talk)

Unidentified Participant: My only concern is that as an implementer, that makes it even less clear to me. And I'm not sure that's helpful but that's my objection.

Unidentified Participant: A technical question -- we're not getting anything on Adobe connect, it just says upload in progress forever.

Bernie Turcotte: Did you convert it to PDF? On a Mac? It doesn't work on a Mac.

Becky Burr: Yes, Nigel?

Nigel Roberts: I'm not in sort of right here. We are, and Kim's point is well made, applicable domestic law.

Becky Burr: That's also fine. Better. Okay, Keith?

Keith Davidson: I quite like domestic law or jurisdictional law or --

Becky Burr: I think applicable domestic law is the right --

Keith Davidson: I'm liking that.

Unidentified Participant: I don't like that. It says it may not as a practical matter be pertaining to IANA. I think we really need to discuss this. I sent an email out to Martin and Martin tossed it to Nigel and sort of tossed it around, we haven't really figured out who should lead the charge here. But we need to sort this out I think because it's important and we cannot spend another 15 minutes debating on the wording if it was applicable to IANA or not. Instead we need to move forward in the scheme of things.

Becky Burr: Nigel?

Nigel Roberts: We can incorporate both at once. Can we use applicable domestic law there and also I would take away as (inaudible) suggests.

Becky Burr: Martin?

Martin Boyle: I thought the idea today was to come up with a final text. If we're prepared to leave alternatives in, then so be it. But certainly I'm reasonably happy with applicable domestic law because that's obviously then, and this addresses Kim's problem of interpretation, that the process of law can run through and can be tested until the final appeal. And then at that point, Kim has got a very clear identification of what is happening.

Becky Burr: Nigel and then Eberhard.

Nigel Roberts: For all the reasons that Martin has just said, and also because I came up with it, I agree. But the reason I also suggested to take away is I think there's some scope for sort of diving a little bit deeper. And if we can do that and then later incorporate (inaudible) or something, I wouldn't want to exclude that possibility. But I'm happy with applicable domestic law for now.

Eberhard Lisse: I can live with it, too, but I'm still of the opinion that it's for a practical, the only formal mechanism available to IANA and what was it -- as a practical matter mechanisms are not available to IANA -- it's just factually incorrect. I wasn't really looking at this last time, but this may be factually incorrect. The IANA contract, if it is actually dealing in a foreign country, it may be subject to that law as well. So we can't just say it's not available to them.

Becky Burr: The formal mechanism, the question of whether the IANA contractor could avail itself of national domestic law. For example, go to court in order to prevent some substantial misbehavior or to cause -- I think (inaudible). How about -- Keith?

Keith Davidson: I think it will be impossible to come up with a perfect term. For one thing in this instance, you'll never know for every ccTLD what the applicable domestic law will be. For example, we recently had a case in New Zealand where some people in 15 islands here committed criminal offenses. The UK claimed its laws applied, but immediately got rid of those laws and said, New Zealand, you prosecute as a colony. And we all assumed the responsibility for a criminal case. In (inaudible) New Zealand tried and prosecuted that

particular set of cases. So if you think about that for 15 islands, and if you think of Antarctica with no domestic law and so on, there will be instances where this will be an excellent assistance to Ken and the execution of IANA's duty later. But I think it's a 95% rule and it seems to me to be about as far as we could possibly go without losing a very clear and definitive understanding of what that might mean. So I strongly propose that we proceed on that basis unless there's a real and solid objection to it.

Becky Burr: Patricio?

Patricio Poblete: I'm getting more and more confused about what the goal of this whole sentence within parenthesis is. Before parenthesis I think it's very clear we are saying that IANA has three formal mechanisms available, delegation, transfer and (inaudible). And those are the ones that IANA is entitled to use. What comes next seems to be saying that there are other mechanisms under law and those are not available to IANA. So I don't understand why it is so important to isolate what (inaudible). And if we try to limit that, we might end up being wrong. In Chile, increasingly some important cases are being settled in the international court, (inaudible) human rights, in the Court of Human Rights, or wherever. So I don't think we can delimit that and I don't think it is so important that we do because those are outside the scope of what the IANA can do.

Becky Burr: Eberhard?

Eberhard Lisse: We just don't know whether they are available to IANA. We assume. We have no real input on this. I'm actually being advised that IANA has lots of opportunity to go to local courts to use local formal mechanisms. That was my advice that I have been taking.

Becky Burr: What if we just said may not be available to IANA contractor as a practical matter?

Patricio Poblete: Why not just delete that part from the document? I mean what is it contributing?

Becky Burr: Martin, did you want to speak to this point?

Bernie Turcotte: A note before -- I think the transcript people are going to have a hell of a time today, so when you start speaking, if you could just identify yourself, it would really make things a lot easier. Thank you. Keith?

Keith Davidson: Keith. I think Becky, if you use people's names, too, the transcription people will appreciate that better, if you at least use your Christian name before speaking.

Becky Burr: Martin?

Martin Boyle: Thanks, Martin Boyle. If I remember correctly, this particular text came in because we were looking and we are looking here at the RFC1591 text. And this paragraph simply said that outside RFC1591 there were other things that could take place. And that the RFC1591 process, which we are about to talk about, didn't imply national law coming into it. So I think that was the sort of difficulty of the discussion and the obvious skew of phrasing that comes here. But I think it probably is necessary text simply because otherwise this paragraph doesn't fit in with the revocation that is discussed under RFC1591.

Becky Burr: Thank you, Martin. Nigel?

Nigel Roberts: I think this is going to be a record. I'm agreeing with Martin here. Both governments and private access outside of the US I think have been saying for a number of years that subsidiarity is an important concept. The way this is put, the parenthesis are actually in the text and not a device. Again, I'm getting really down and dirty here, but I would just

simply remove the parentheses, remove the word while and insert the word may and add a suitable conjunction to make it grammatically correct and keep that in.

Becky Burr: Any other comments on that?

Unidentified Participant: I like it, too.

Becky Burr: Excellent.

Unidentified Participant: Let's actually (inaudible).

Unidentified Participant: Chris Dispain, for the benefit of the tape, has just entered the room. And as you are a member of the working group, why don't you sit down and join?

Becky Burr: Well I think it probably depends on what we're discussing, whether you're hovering or looming.

Unidentified Participant: Best of luck.

Bernie Turcotte: Other formal mechanisms may not be available -- may?

Becky Burr: May not -- may be available.

Bernie Turcotte: (Inaudible). May not be -- (inaudible cross talk).

Becky Burr: These mechanisms may not be available. (Inaudible cross talk).

Nigel Roberts: This is getting very subtle in English construction here, but may not is very strong. It's not what you think it is. I'm talking about may be available in the first sentence. The correct thing should be might rather than may.

Becky Burr: That's correct.

Unidentified Participant: For the record, the working group will accept may to mean might.

Bernie Turcotte: Instead of national law we have (inaudible). Under -- (off mike). Comma, those mechanisms might not be available to the IANA contractor as a practical matter. All right.

Becky Burr: Patricio?

Patricio Poblete: Can someone explain me quickly why domestic is important, the word domestic is -- I thought applicable was enough?

Becky Burr: Martin?

Martin Boyle: Because Antarctica doesn't have international law, the European Union for .eu does not have national law. But eventually there will be one local domestic, whatever law found that is applicable.

Becky Burr: The point here was to suggest that within the jurisdiction that the ccTLD is operating, there may be additional remedies under that law. And just to remind the reader about that. So the reference to domestic law is valuable in that instance because that's what we're talking about.

Chris Dispain: Yes, it is, but it's incredibly valuable. My name, for the record, thank you. I'm sorry, yes, I'll just say my name, Chris Dispain. Are we really recording this? I apologize. It strikes

me that domestic is great for Nigel and me and whatever, but it's not so great for other people, it's meaningless to some countries. So why don't we do that, why don't we say domestic/national, domestic and/or national. It probably should say and/or because it implies a connection. Domestic/national probably would because then you have (inaudible). I don't know how much it matters. I'm getting the impression (inaudible). It's going to depend on what we call our national law. If domestic law is meaningless in (inaudible), national law is not meaningless. That's my contribution so thank you for coming. I'm going to have to run to the GAC.

Nigel Roberts: The domestic is a term of art which contrasts the local -- countries with national law as opposed to international. So we're talking about -- we're not talking about remedies that might be available in international, we're talking about remedies available in a particular jurisdiction.

Unidentified Participant: There are some things under international law that the community might involve -- all we're trying to say is that IANA is not under the obligation or may not have access to whatever that law is, right?

Becky Burr: Eberhard?

Eberhard Lisse: The ccTLD's relationship is bilateral in nature which means IANA contractor -- the IANA function contract ends in 30 days. No other relationship exists. No international law that can apply. Because international law applies to treaty between countries, several countries must be recognized in parliament, and that means a third country would have to decide on what's relevant to a ccTLD in the different country. It cannot be -- not only from the technical, but from the legal theory, it cannot be. ccTLDs are only subject to their own national, domestic law, whatever is applicable to the territory (inaudible). And perhaps USO, but nothing else, not international law.

Nigel Roberts: I agree with where Eberhard is going with that. There is an argument that has not been explored and this is not the group to do it in, although it's directed to ICANN, but under ICANN's memorandum (inaudible) association, it has to comply with international standards applicable to international human rights and so on and so on. So this is not the (inaudible). The point of this particular piece of text was to address various statements made in the IANA contract. I think the government said in 1999 that the GAC, since things at the private actors are saying if somebody wants to come along and take the property of the ccTLD manager, such as the intellectual property in the database, they have to go through proper mechanisms which are for example finding a legal theory by which that property should be transferred. We don't need to get -- this is obviously a very sensitive piece of language that we have to get right, but we have some other work to do as well. I think this works 95% of the time. Let's have a takeaway and see if we can improve it, but let's address every -- let's triage this.

Becky Burr: Martin, you had a -- and then Keith. Would you like to ask if the gentleman from the UK will achieve his time?

Martin Boyle: I'll call him, of course. (Inaudible cross talk).

The point I wanted to make is that international law is incorporated into national law because you have got sub national (inaudible) very, very rare cases when that doesn't happen. And I find it a bit difficult to anticipate those who would be relevant to running ccTLD. I'd also, and I think there's probably only one exception to that, and that is Antarctica which is governed by an international treaty, and so it is directly under international law. I suppose really for me the key word is applicable. It's the law that is implied within the jurisdiction of -- that is appropriate for the operational registry. What you put in there as qualifying for domestic, whether it be domestic/national, which I'm

quite happy with, or even just leave out the domestic and national, I would prefer to see some reference to the nationality of the law, but I don't think -- I could just as well live without it.

Becky Burr: Keith and then we're going to call this.

Keith Davidson: I think getting back to Patricio's point, if you're looking at a live example, and I think the intent here is that IANA may resign from being engaged because an incumbent is exhausting their opportunities under the locally applicable laws. So this is to allow all of the remedies available. Not just a local court decision that just came down. This can go through the ultimate field of appeal processes which in New Zealand's case, 10 years ago, might have involved going to the privy council in the UK to ultimately determine what the role of (inaudible) was. I think if you think of it in those terms, to lay out an exhaustive piece to the law and then, if it's no longer able to be remedied under the IANA statements. I don't know if that helps, Patricio, or not.

Becky Burr: Eberhard and then Patricio and then we're going to move on.

Eberhard Lisse: Can we strike 4.2.1 and 4.2.2 now?

Becky Burr: Next topic we'll get there. Patricio, are you ok?

Patricio Poblete: Yes, I'm getting closer to understanding, but the point is, there are two different things there. One is recognize that there are some mechanisms available to the local community. That's a point itself. Perhaps we're doing it a disservice in writing or wording it to say something else. And then the second point is to say that the IANA contractor will not, as a practical matter, use those mechanisms.

Becky Burr: Might not.

Patricio Poblete: Might not. But since we are being prescriptive here, what we are saying that, those mechanisms that the IANA contractor will have available as a routine matter of the three that were listed. And this (inaudible) perhaps some exceptions or something. So if I parse it that way, separating those two points, I get closer to understanding it.

Becky Burr: Okay. Great. Moving on. Now, Eberhard.

Eberhard Lisse: Can we strike 4.2.1 and 4.2.2 please.

Bernie Turcotte: That is in my notes and they will be removed.

Eberhard Lisse: I was trying to make a point here. The point is, next topic.

Becky Burr: Okay.

Eberhard Lisse: And since you're using the micro recorder, don't forget to say early and often.

Cheryl Langdon Orr: It's Cheryl here. I do think Chris's intervention had suggested, and I did hear some agreement around the table, that the term should have been domestic/national. Domestic/national law. I'd like to see that there. An awful lot going on (inaudible cross talk). Well why didn't you object when Chris was making his intervention?

Unidentified Participant: That's not what I understood he was saying.

Cheryl Langdon Orr: Well what did you understand?

Unidentified Participant: Domestic applicable. He said (inaudible).

Unidentified Participant: He clearly said domestic/national.

Cheryl Langdon Orr: Are you okay with domestic or national?

Unidentified Participant: No, I don't want to see the word national here. Domestic law is the appropriate term which takes care of national law, territorial law, state law in Germany and so on.

Keith Davidson: Okay, I think Chris did make the suggestion that it was in mind of other frivolousness and we didn't really discuss it. But I think if we go back to the text that we've actually agreed, I don't think anyone is actually objecting to what we're seeing on the screen right now. If we can -- can we actually -- can we thumbs up on this text as being final text?

Becky Burr: Yes, Martin?

Martin Boyle: I think you need to specifically ask Patricio whether he's happy with that because it was Patricio's point that domestic law just didn't mean (inaudible) and that was why he wanted international law. It might be in UK law, but I don't know enough about Chilean law to be able to tell whether it works or not.

Nigel Roberts: Martin, it's nothing to do with UK law. It's a term of art to distinguish it from international law. Domestic law is law of a country, territory, state, whatever it is that happens to be applicable at the time and international law is not binding as you said earlier.

Patricio Poblete: For the record, I accept Nigel's explanation why domestic.

Becky Burr: Thank you very much. Now we're moving on. With agreed text.

Bernie Turcotte: All right. Our next note from section 5.1.4, unless the ccTLD manager engaged in substantial misbehavior or persistent problems in the operation of the ccTLD, consents to a transfer in the event informal efforts to address problems are unavailing, the only formal mechanism available to the IANA contractor to deal with intractable problems is revocation. And my summary of that was that after discussion by Eberhard, Nigel, Martin, Chris and Bill, the text was unclear and needed to be reformulated. There wasn't necessarily disagreement with what we were talking about, there was just (inaudible).

Becky Burr: Eberhard?

Eberhard Lisse: If I was opposed, I've changed my mind. I can live with this as is.

Becky Burr: Any objections? We are proceeding with agreed text? We are proceeding with agreed text.

Bernie Turcotte: Agreed. All right. Next one. 5.1.5. Below we first review RFC1591 section 3 paragraph 5 which deals I guess with revocation. With revocation for persistent problems with the proper operation of a domain. Next we review RFC1591 section 3 paragraph 4 which discusses revocation for substantial misbehavior. Nigel thought this was unclear and needed to be clarified. Over to you now.

Becky Burr: Nigel?

Nigel Roberts: There was some suggested text.

Bernie Turcotte: We shall look first at paragraph 6 section 3 of RFC1591 dealing with revocation for persistent problems, then we shall deal with paragraph 4 and Becky was to look at it. So let's clean that up.

Becky Burr: First we looked at address, or discuss I think. I'm okay with this. Is everybody okay with we shall look first at paragraph 6 section 3 of RFC1591 dealing with revocation for persistent problems, then we shall deal with paragraph 4? Thumbs up? Agreed text.

Cintra Sooknanan: Cintra is now Cheryl.

Becky Burr: Welcome Cintra, goodbye, Cheryl.

Bernie Turcotte: So shall we refer to her as -- ah, okay.

Unidentified Participant: Cheryl, with all due respect, my wife is not around.

Becky Burr: Delete the (inaudible) and mark it as agreed?

Unidentified Participant: We basically have agreed that 4.4.2 is the agreed text?

Unidentified Participant: That is correct.

Bernie Turcotte: There we go. 5.2 and 5.2.1 had no issues as they were written. 5.2.1.1, keeping the central IR in the case of top level domains or other higher level domain manager advise the status of the domain. Nigel suggested there should be a note somewhere in our document regarding the Central IR because it's not defined. We had generally agreed to that and we just haven't written it. Nigel?

Nigel Roberts: I think this is one of the terms that we need to do a bit of historical interpretation on. Maybe even reach out to people like John (inaudible) who wrote this. But I think in this case we construe central IR to be the IR.

Becky Burr: Eberhard?

Eberhard Lisse: I have read this always as the next higher level. And the other way around because RFC1591 also says if no other requirements, then basically keep the same principals applied to lower levels, especially (inaudible) means in this case (inaudible). So if I make a change I have to inform the IANA function contractor. If the contractor makes a change, they have to inform us. And if xyz.com makes a change, they have to inform (inaudible). That's how I understand the central registry to be basically the next higher level.

Nigel Roberts: Again, the historical note is that when this was written, the IR was one person. It was John Postell. And the Central IR meant the entity.

Becky Burr: I think -- is that what you're saying, Eberhard? I'm understanding -- this is a factual issue that I don't know the answer to.

Nigel Roberts: No, no, this is the background. When you construe it, it's very, very clear that Eberhard is correct. It means the next one up. Now when you're a TLD, the next one up is now the situation of who the next one up is slightly complicated because that next one up is now separated, functionally separated, into VeriSign running the actual root service, the ICANN under some color of contract being the coordinator of keeping the database of the actual registries or TLDs. And to some extent the US government. So it means keeping the people in that area (inaudible).

Becky Burr: I understand.

Nigel Roberts: So for multi purposes, this means the IANA, but it's important to explain why we say that. (Inaudible) would be helpful.

Becky Burr: Okay. Eberhard?

Eberhard Lisse: The point is we have never, or not since ICANN is in existence, we have never really communicated directly with the (inaudible) operators or the US government. We have always communicated with the IANA function contractor. So maybe we should say we take and interpret the registry top level to mean the IANA function contractor.

Unidentified Participant: We have to say why.

Eberhard Lisse: No, we don't. We just say that's how -- we don't have to explain, we just have to say what we interpret. If we agree, we don't have to say we agree why because of this and this. Simply we agree on this.

Becky Burr: Do you object to doing what you say and then dropping a footnote that says for historical purposes, x, y and z?

Eberhard Lisse: As a general rule, I never object to things that I agree with.

Becky Burr: Okay. So may I take it as approved that we are going to accept this language? We are going to say that we're going to drop a footnote that describes this historical background, Eberhard?

Eberhard Lisse: I accept whatever Bernie is going to put forth.

Becky Burr: Excellent. Thank you. Does anybody else want to see the footnote, the historical footnote? All right. Moving along.

Bernie Turcotte: Okay, section 5.2.22, the FOI working group interprets RFC1591 to require the IANA contractor to avoid actions that undermine the stability and security of the DNS and/or the continuing operation of the domain for the benefit of the local community. The notes are discussions by Nigel, Eberhard and Bill. Various issues -- sorry, many around local communities. And the note was Becky Burr to review. So it would probably be good if we have a discussion on that at this point, Madame Chair.

Becky Burr: Okay, let's have a discussion around the meaning of local community. Eberhard?

Eberhard Lisse: I was not really so much having issue with around local community, but the way the sentence is written. The continuing operation of the domain for the benefit of the local community. We're not operating the operation for the benefit of the local community in that narrow sense of it.

Becky Burr: Nigel and then --

Eberhard Lisse: Sorry, and so in particular, the IANA function contractor cannot just say we only, we do something only for the local community. The way this is written is not --

Nigel Roberts: Without referring to the exact quote, RFC1591 says local and global internet community. Not local community.

Becky Burr: I am very happy with local and global internet community. Any comments, dissent? Yes?

Eberhard Lisse: Dissent. The point is we need to interpret what does that mean. We don't -- to be really honest, we don't really know what does it mean. Local and global internet community. And this is going to be a big issue. So to now -- we are moving on, I know this, and that's good, but this is something, it's not going to be contentious but we really need to know what we're talking about. We can agree on something and carry on, but just to say we quote RFC and then we're happy with it, that's not right. What does it actually mean? We're operating it for the benefit of the local and global internet community.

Becky Burr: Patricio?

Patricio Poblete: Patricio Poblete here. I believe that the fact that it is operated for the benefit of the local and global community is a point that might need to be made, but not here. I think this has to do with the continuing operation of the domain, so I would recommend a full stop after domain and deleting the rest of it.

Becky Burr: Agreed? All right, agreed.

Bernie Turcotte: Just to be clear -- undermine the stability and security of the DNS, full stop? (inaudible).

Eberhard Lisse: The sentence will read the, the FOI working group interprets RFC to require the contractor to avoid actions that undermine the stability and security of the DNS and of the continuing operation of the domain, full stop. Like we have it now. That's agreed text.

Bernie Turcotte: All right.

Becky Burr: Martin?

Martin Boyle: Yes, I'm having a bit of difficulty here because I'm not quite sure why, when they're serving the local and global community appears quite clearly in RFC1591, we're turning around and saying we're going to remove it. It seems to me yes, we have had a discussion on what we mean by local community. I think we know what we mean by the global community. So I don't quite get the understanding as to why removal of the local community becomes important because we don't know what it means. We have already said what we think it means I think.

Becky Burr: Eberhard and then Nigel.

Eberhard Lisse: In this context we have -- I have no objection to having some language about local and global, but in the context that IANA must keep to operate the domain operation, it doesn't need the benefit of the local community, especially since we don't know what it is. In this particular context I think we can do away with this.

Becky Burr: Right. Nigel?

Nigel Roberts: Just to say the original objection that started this discussion was to the phrase local community. It's now moved on and Patricio has made a different suggestion that I happen to agree with. But that wasn't where this started. My objection was and remains to the term local community. I may have been happy with slightly different language where the proposal is removing in this context which I accept.

Becky Burr: Correct. This does not mean the phrase for the benefit of the local and global community is not important to be discussed in this context and interpreted. Just here we're talking about actions undermining the operations. Does that answer your question?

Nigel Roberts: Something that undermines the operations by itself I find a rather vague statement, rather vague concept. Whereas if you look at subparagraph 2 of RFC1591, Section 3, it is actually quite clear, the role of the manager is to operate the domain which is what this paragraph is all about. But it then qualifies that as being the duty to serve the, and actually it's the community in RFC1591. So I think -- I'm just struggling to know why we are deleting it from here when the deletion for me doesn't actually make any sense as to why.

Becky Burr: She who must be obeyed.

Cintra Sooknanan: Hi, Cintra Sooknanan. I tend to agree with the last statement. It goes beyond the technical duty, it's also a social responsibility. And to say that the working group interprets RFC1591 just as a strict mandate is frankly a misinterpretation.

Nigel Roberts: I'm with you, okay. The point is, I would have been happy to accept different wording here. That would have been my position. But Patricio has pointed out, even more correctly, which I haven't seen, this is OCOs in this context. In this part of what we're doing, we are talking about making the statement that IANA should not undermine the stability and security in the DNS and/or the continuing operations of the domain. The obligation of IANA is not to screw up the DNS for everybody. So putting in references to local community or as I would have accepted, local and global internet community, is actually OCOs. Patricio's point, as I understand it, which I've accepted, is that we can deal with exactly that point, but you're narrowing the obligation of the IANA here when the obligation of the IANA is much wider than that. So you're saying the IANA mustn't screw up the DNS for everybody, irrespective of whether the TLD manager has an obligation and it's only to serve sweet to the sweet shop on Friday or if it's to serve the global community and to give away free holidays.

Becky Burr: Okay, I thought that Daniel's hand was up first, but no? Okay.

Daniel Kalchev: I just wanted to make the point that although it is understandable that historically we have this terminology of what local community and global community is, it never did make any sense in the context of internet. Because anything you do on internet is by definition global. This is one point. Another point is that -- okay, I will involve ICANN a bit here because of the transfer, the idea of the existence of ICANN is to make sure that in particular the DNS system is universally accessible and functional. So it is in my opinion very dangerous to suggest that anything that relates to DNS may be treated differently for the local community and for the global community, whatever that means. It is open for interpretation what is local, what is global, and it -- I don't think it's ever appropriate to use this terminology anymore. When we talk about operation. Not about policy and things like that.

Patricio Poblete: Patricio Poblete. I think discussions about whether this is local or global or whether the manager has the duty to serve this or that community and the social responsibilities may all be relevant, but I insist, not in this paragraph. Because we have the point of the paragraph to say that the IANA may not undermine the continuing operation of the domain.

Becky Burr: Okay. I think we have agreement, but -- yes, Eberhard?

Eberhard Lisse: Again, the service aspect is for the authority, the local authority, the domain manager. He must serve the community. IANA is not referenced, the IANA contractor is not referenced in that. The point here is not that the local domain manager must not serve the local and global internet community. But IANA must under no circumstances undermine the stability of the DNS or the domain. That's the point we are making. It has

nothing to do with that the manager serves the local community. So we agree on that now?

Becky Burr: Yes, we now agree. Bernie?

Nigel Roberts: All I was looking for was an explanation and Patricio actually just supplied with me that explanation.

Bernie Turcotte: Okay, so we confirm the agreed part and might I suggest -- I saw Keith come in with some coffee. Maybe we can use this for our 5 minute break which was requested. So we will start -- and I am saying 5 minutes. All right, so we start at 11:00. Thank you.

Becky Burr: All right, we are ready to reassemble. Ready to roll.

Unidentified Participant: We are ready to rumble.

Becky Burr: Desiree, will you come up and sit with us? You can rumble, roll or rock or whatever. Mr. Davidson, Mr. Davies.

Bernie Turcotte: The KDs are a problem.

Becky Burr: And send Nigel in if you see him. We could reach consensus pretty quickly with this crowd.

Bernie Turcotte: All right, moving on. Section 52.23.

Becky Burr: One moment, could we just note for the record that Desiree Miloshevic has arrived.

Eberhard Lisse: But can you please speak into the microphone so that your condolences come on the record?

Desiree Miloshevic: Thank you, Eberhard. I apologize for joining this late in the conversation.

Bernie Turcotte: Thank you. No problem, Desiree. It's a pleasure to have you as usual. We are missing Nigel and we are missing Cheryl, but we will be starting anyways. All right, Section 52.23. The FOI working group notes that technical operation of TLDs has greatly evolved from the time of publication of RFC1591 along with the use of the internet. And although still a specialized field, this is standard knowledge for networking specialists and is supported by a large volume of easily accessible documentation and applications. There was a discussion and there was an agreement to leave it as is. I will assume that that is still the case unless someone makes the case otherwise. We have agreement. All right.

Eberhard Lisse: It's qualified as all the ones present.

Bernie Turcotte: It's always of the ones present. But as we say in French, those who are absent are obviously wrong.

Becky Burr: And we do have a quorum.

Eberhard Lisse: In Germany we have a saying, those who leave lose their spot in the row.

Bernie Turcotte: Okay, so that's been covered. Section 53.11, the requirement that there be a manager that supervises the domain names and operates the domain name system in that country. There was a long discussion around the ability of this text. Becky and Nigel were supposed to discuss it. Over to you, Ma'am.

Becky Burr: We failed to discuss it and Nigel is not here, so we can either agree to it -- since I didn't have a problem with the text. Eberhard?

Eberhard Lisse: The original text reads there be a designated manager for supervising that domain's name space. In the case of top level domains that a country uses a manager that supervises the domain, operates the domain name system in their country. So that's a clear quote. So I just want to make sure -- so we are saying, this is a quote. Can we mark this? In general, can we mark quotes a little bit that it's obvious they're quotes?

Bernie Turcotte: We have agreed to do that. We haven't done it yet.

Eberhard Lisse: Just to make sure. Fine. No problem.

Becky Burr: The question that Nigel raised was whether this text still makes sense.

Bernie Turcotte: You're channeling Nigel?

Becky Burr: No, I believe that's what he asked about.

Eberhard Lisse: But he then usually says we are not supposed to make policy, we are supposed to interpret. And since this is a plain quote, it's not really something I think that we can do. And as long as you don't have to live under Antarctica when you do it and as long as you live somewhere in the EU, if you do the EU, I really don't see what difference it makes.

Becky Burr: So what if we say -- obviously there are some -- actually I think the domain name system in that country doesn't mean it's in there necessarily. The quote -- yes, Martin?

Eberhard Lisse: But if you only quote it and not discuss it, why not just take it out? If it's just a quote and there is no discussion on interpretation of it, then we don't need to keep it in our revocation text.

Becky Burr: Martin?

Martin Boyle: I don't know whether we do discuss this or not later on in the text bearing in mind this is just sort of specifying the parameters in which we're working, but having started this discussion, I am reminded that we have problems in talking out the domain name system in that country. Because the designated manager is actually only supervising the top level domain in that country. And I thought that we had interpreted that in the past. And so there might be something of consistency of wording that we need to check back in which case if we're quoting, we would then need to apply law which is understood.

Becky Burr: Eberhard?

Eberhard Lisse: My point is, we are only quoting and then addressing with the quote. We don't supply nothing about it, we don't interpret it, we just quote the quote. We don't need to do that. It doesn't help us in any way, it just takes space on the paper. It doesn't produce any added value.

Becky Burr: Right. I think what Martin was saying, if I could channel Martin for a moment, was that we have agreed upon text about this phrase in someplace else. And what we need to do is copy it and paste it here.

Eberhard Lisse: But then we must quote it correctly and in country only refers to specific areas. Fine, I agree with what you said, but just put that in, then we must make the reference that it's for specific areas. Personally I think even if you use it as a ground rule, since it's a plain quote, you don't need to put it in here.

Becky Burr: Okay. Daniel?

Daniel Kalchev: I just wanted to say that I think it is not very good idea to remove the section completely because we reference to this concept that we have a manager in the country, we reference that concept later so we cannot just -- if we have already agreed text of interpretation of that point, we just need to put it here or put a reference in that way.

Bernie Turcotte: This is what we're saying, correct. Desiree?

Desiree Miloshevic: Yes, I would support that with what Martin has said. Probably we ought to compare the previous explanation and then maybe do a little bit more work on this if it's needed to either cross reference it or leave it.

Steven Deerhake: I think it's necessary to look not just at that isolated section, but the whole context. If you look at that, it makes no sense to delete it.

Becky Burr: Eberhard?

Eberhard Lisse: As it is now on the screen, in yellow and as agreed, that's not correct.

Becky Burr: We understand.

Eberhard Lisse: Then we must fix that so that we know we need to -- but this is a small thing, it's not really a point of contention. Nobody will die in a ditch on it.

Becky Burr: I hope nobody will die in a ditch on it. And we're going to add the reference. Okay. Next section. Oh no, I'm sorry, Steven?

Steven Deerhake: Do I understand correctly now we're kicking this one down the can, this can down the road?

Becky Burr: No, we are not kicking this down the can. We have interpreted this phrase in another section. We're going to go get that interpretation and copy and paste it here. So this is agreed.

Steven Deerhake: We are agreed then on this?

Becky Burr: Are we agreed on this? That that's the proper action?

Steven Deerhake: We're adding a reference and we're good to go? Okay.

Bernie Turcotte: We're adding a reference that we all agreed to

Eberhard Lisse: But just make sure, the quote as written there is also incorrect because it puts two sentences together and it omits that the particular thing is only relevant to cc. And we are not interpreting RFC1591, only for ccs.

Bernie Turcotte: All right, 5.3.22. The FOI working group notes, however, that the concept of being equitable to all groups, there is, depending upon context, choices made by the local internet community such as whether or not the domain is open or closed. Applicable national law which we may now have to adjust --

Becky Burr: Does somebody have --

Bernie Turcotte: In addition, questions regarding justice, honesty, competence, and serving the local community are highly contextual. As a result, the IANA contractor may refrain from acting and look to the local internet community where it lacks the information and context needed to evaluate the more subjective aspects of these requirements. Get rid of informs, yes. So we've got national law to fix as we've had a discussion about this earlier. I will simply mark it at this point and we need to get rid of the informs. Over to you.

Becky Burr: Any discussion? Nigel?

Nigel Roberts: From the last call, I object to the entirety of this. There was, as correctly put it in 10.1, a proposal that Eberhard and Martin and I proposed alternative text. Eberhard I think then Martin said it was up to me to propose text. My text is to replace this with nothing. And the reason for my proposal is this is offensive. Questions regarding justice, honesty, fundamental rights, are not highly contextual. Honesty is an absolute. You can't say that justice -- we're not talking about implementation now, we're talking about the concept of justice and honesty in countries where the rule of law applies. Not where it does not. And it's no good to say -- I'm not going to take a particular example of a country, although maybe Eberhard would and has done earlier, but it's no good saying the standards in this country are lower than the standards that we expect in the US or the United Kingdom. Honesty is not contextual.

Becky Burr: I think that what is contextual, sorry I'm stepping away from my role here, is that what the requirements of behavior that is just, equitable, honest, etc., varies from context to context. No, I mean what behavior is required to be just in a particular circumstance? I'm talking about relate. Do you make everybody have -- make it available to everybody? Make it available to only those people qualified? I'm not saying that justice means different things in different places, I'm saying it requires this in serving justice. You will have requirements different --

Nigel Roberts: I'm going to repeat again what I said in the telecomm discussion. There is a concept known as a margin of appreciation which is that different countries draw the balance between competing interests different. I think we're agreed on the intent behind this, but the language is not only wrong, it is dangerous. And to put this in, we must have a purpose. What is the purpose that we're putting this in here? Being equitable is something that we -- we don't need to interpret equitable. That's a standard word that people use in approaching this. We're interpreting the words, we're interpreting the intent in the purpose of RFC1591, not the word equitable.

Becky Burr: Eberhard?

Eberhard Lisse: So the main analogy -- this is ditch time here. Some of us, Patricio, Bernie and myself, come from countries where justice has different concepts than 15, 20, 30 years ago. This cannot remain as this. It cannot remain. This is where I really must draw the line. It's also unnecessary to reword it. If we were to take the in addition sentence out, in addition, questions regarding justice, honesty, competence in serving local community are highly contextual. If you just take that out, we already become much better in this. But justice is an absolute issue. Whether in Saudi Arabia, women are treated as slaves and it's just there, but it's not just in America, sorry, that's something, that's territory that we really cannot dwell on. Some of us feel very strongly about this and I will really have to put the foot down on this.

Becky Burr: Okay, I think we are all in agreement that the way this is phrased does not work. Martin, then Patricio and then Nigel.

Martin Boyle: Yes, I think the thing that troubles me about and why I think the contextual bit is important, is that we don't end up with things that are not relevant to the operation of the ccTLD. Like you're not applying particular laws in the countries, women turning up into the office. That is not something we were using or expecting IANA to then make a judgment on. So it has to then be referred back. And I think for me that is sort of a fundamental difficulty. I think it's important to keep this phraseology in because otherwise we're not reinventing the way in which we're trying to scope this thing. And we're giving ICANN or IANA a task that it cannot actually do anything about.

Patricio Poblete: I want to ask if anyone can explain to me in simple, plain language what the point of this paragraph is. And if we understand that, then we can see how to write it down. What's the purpose of it? What are we trying to say there?

Becky Burr: Okay, since I wrote it, badly, I will explain it. The point here is that I believe this group does not interpret RFC to require the delegated manager to make rulings on whether administration is just, fair or honest. And permits IANA to defer to the community for issues that arise in that context. And maybe it's on the basis of inadequate information. Nigel, I'm sorry I jumped in front of you in the queue.

Nigel Roberts: That was very helpful. I was originally going to make a proposal that we keep what's in there up until the BTC full stop and then delete the rest. But having now reread and listened to your explanation, the first sentence in the paragraph may be equally problematic. Because it says the concepts of being equitable varies. No, the concept does not vary. It's absolute. But the margin of appreciation -- I'm sorry to keep using these terms of art, but the margin of appreciation in different countries says that you draw the balance between let's say intellectual property and freedom of expression differently in the UK than you do in the United States for example.

Becky Burr: Yes. Daniel and then Eberhard.

Daniel Kalchev: I think Nigel touched on that, on the first sentence actually. And my problem with that is that if you are intending to be equitable to all groups, you cannot give any preference to the local internet community and local law. Because this may create a lot of distortion actually and in this case I will interpret the term contextual to mean what is easier to do at the moment. And as Eberhard earlier mentioned, we have observed a lot of things, behavior in our countries, and it may so happen if we put interpretation like this for everybody to refer to, we may be offering the possibility for situations where the ccTLD registries in this case will choose to behave in the way that they are bent to the local powers that be. Which is not the intent of equitable to all groups. So this was my point and I think we should really look at rewording this first paragraph.

Becky Burr: I think Eberhard, you were next? Then Patricio.

Eberhard Lisse: If we assume that the delegation of .ml was un-kosher, or non-halal or whatever we call it, this, our interpretation would condone that. I'm going to die in the ditch on this one. This is not going to go through like this. Cannot go through like this.

Becky Burr: I think we all agree, Eberhard. Patricio?

Patricio Poblete: I disagree with what Eberhard just said, not because of that I don't agree about the need to be equitable and all that, but we've got to deal with the manager being equitable and that is when an obligation that is stated in the RFC and we've already written that down in 5.3.2.1 which unfortunately we don't have on the screen. Because if we did, it would save a lot of discussion. So that's already stated. And what the next part says, in my interpretation in plain language, it is that it is not the job of IANA to judge if the manager is or not equitable and that we will leave that to the local community.

Becky Burr: That is exactly what we're saying. So how about the FOIG notes that the IANA manager is not in a good position to determine whether the delegated manager is fulfilling its obligations regarding equity, justice, honesty -- accordingly, this is left to the local community.

Nigel Roberts: I will die in the ditch for that one. You can note something from a matter of practicality, but I feel very strongly that ICANN should be making, informing every decision it makes, under commonly accepted international standards of human rights and fundamental freedoms.

Becky Burr: Yes. Daniel, did you have a comment?

Daniel Kalchev: I just wanted to second that in the way that it is not appropriate for our work group, just that we indemnify IANA of any responsibility to understand what's going on. I think it is better for us to make IANA aware whether the manager is equitable to all groups in Portugal. In this case I think it's core functional actually to make sure this is the case one way or another. But -- so this relates to my earlier point that because of this we should not leave this all up to the local community because the local communities just have undefined subjects of the global community.

Becky Burr: So let me try this one more time and then Martin. The IANA of course, in taking its actions, must always look to justice, equity, etc. However, the question of whether a manager is being just, equitable, etc., is not a judgment call. Whether the manager is doing that is not a call that IANA can make in my opinion. That -- and so they have to apply -- that's why we have all these references to applicable law. So this is not suggesting that we should ignore human rights violations. That's not what the suggestion is. The suggestion is that if there is a decision in country that the delegated manager is stealing, then it's probably the local community's decision to make. Nigel and then Eberhard.

Nigel Roberts: I agree with you up to a point, but I think it's setting ICANN up for a fall to expect ICANN to become the arbiter of human rights. And human rights, international legislation, is all sitting there and in fact it's the nation's states that is answerable to human rights. So I think we've got to be very, very careful that we are not putting IANA into a position where it is doing something that it cannot achieve. And that's where I go back to the earlier wording you suggested, Becky, that noting that IANA is usually not able or not in the position to judge is perhaps the sort of -- it allows both cases, but I think it would be a very, very difficult call for IANA to unilaterally say that it cannot accept something or that it will do something on the basis of its interpretation against sovereign interest. I think this goes back to when we are looking at this clause, we were running into quite significant problems because we kept on coming up with well how are we going to let IANA know that that is happening. And I think this goes back and links to the very first paragraph in this section which then goes -- sorry, in the text that we're looking at, which refers these things back to if something like that happens, you've got to show the basis in your local law, domestic law, for carrying out that action. Once you've done that, then IANA can go forward. And this seems to me to link back to that and say IANA can't make the decision, therefore you have to do that locally.

Becky Burr: So I think it was Nigel, Eberhard, then Daniel, then Nigel.

Eberhard Lisse: I cannot find any reference to sovereign interest in RFC1591. And if we say IANA can't make a choice, how can we stop looking at serious, substantial misbehavior, too? Sorry, it's not that easy. If a ccTLD manager or TLD manger substantially misbehaves in whatever way, IANA function contractor has the right to step in. We have agreed on that. And to say now that potential misbehavior yes, but all these things that are fundamental

to democracy are contextual, sorry, not acceptable to me. Not acceptable. Not quantifiable, not qualifiable, not acceptable to me.

Daniel Kalchev: Okay, just again to reiterate my earlier point that it is not appropriate for IANA to blindly accept any opinion of the local community, whoever that is. What is happening and what should be done, it is IANA who is responsible for the delegation to the manager of the management of that particular authority. So it is IANA who should be fully aware what is happening with that authority. And we at some point, we earlier discussed that the managers should keep IANA updated of any situations that are happening within their domain. Which includes the environment in which they are operating in our opinion. So it is, as I understand this, an additional task for IANA, but they are purely technical roles to delegate the parts of the registry. But I think it's important function of coordination and especially with the respect of keeping the DNS stable and secure.

Patricio Poblete: Thank you, all. Great. We should read 5.3.2.1 which I understand we've agreed to, right? It says that the designated manager should be equitable to all groups and we interpret that as obligating the manager to make his registration policy accessible and understandable. That's an obligation. And to apply these policies in an impartial manner, treating similarly situated would be registrants in the same manner, has to do with how your registration policy is and how you apply it. So very concrete thing. Given that we have agreed on that, the question that leads to the next paragraph, the one under discussion, is do we expect the IANA to be in the position to evaluate that and take action on that, yes or no, or sometimes. If the answer is sometimes, then we have two cases. If IANA is in the position to do that, okay, we agree that they should do it. In the cases when IANA is not, then what we are saying is, in those cases we will leave that to the local community. Is that the intent of this?

Becky Burr: That is absolutely the intent.

Patricio Poblete: If that is so, we should say much more simply without obvious considerations about whether these things are depending on context or not. Because that leads us to what Eberhard says which is I fully agree because we shouldn't say something are relevant when they are not. But we don't need to go into all that if the only thing we are trying to say is that sometimes the IANA may not be in a position, as Eberhard did, and in those cases we'll leave that to the local community.

Daniel Kalchev: Yes, but this again touches on what I just said. We don't want IANA to be in the position to blindly be forced to do things because they supposedly don't know. This is not good. It's not good for anybody. Not for IANA, not for the registry, not even for the local community because they may be acting on some very temporary issue that may just go away the next day and the damage may be huge considering what we just discussed on the previous point.

Becky Burr: So I actually think we agree with you on that, but we address that in another context and the ccNSO is in record on this requiring the country to use its legal powers to affect the change it wants, not to come to IANA and say affect this change. I'm sorry.

Cintra Sooknanan: Thank you. Cintra Sooknanan. I seem to be hearing that we don't only want to rely on the local community, but also global professional standards with regard to the information. Do we agree or disagree?

Unidentified Participant: Well I was going to address this in a slightly different way. I think the whole of 4.10 is completely problematic. I think as we've said before, we agreed on the intent, but what about wisdom of putting it in? I mean we understand what intent was, we understand there is no bad intent, we understand that maybe the language that we've chosen somehow opens the door to completely different possibilities and interpretations that are

very negative and that we don't want. So if we deleted all of this and replaced it with something, as Patricio said, in a very simpler, said very much more simply, what is it that we want to say? Now when we work out what it is that we want to say, the question I'm really going to ask is do we need to say it? So what is it we want to say? And then even if we then know that there is something that we wanted to say, do we need to say it? Because we know there are practical difficulties with IANA. We know that there is a lack of an independent IDNV. RFC1591 for example provides for an IDNV, but is silent on how it's to be constituted and so on. It's a big can of worms. So we can't interpret something that's not written down. We can't interpret something that is basically a complete lack of the policy. It's more a recommendation for BDP on these kind of areas. But I still get the feel that in some cases some of us are trying to write new policy. We're trying to interpret what we've got. And I just don't see what it is that's the trouble. First of all, I don't see what it's trying to say and then when it's kind of explained what we're trying to say, which is basically that you can't impose exactly the same registration standards on everybody. But, do we need to say it? Maybe we do, but in that case we must do it very carefully.

Becky Burr: Can I give a very concrete example. This is something that has actually happened. A country came to IANA and the commerce department and said there is pornography on this domain. Pornography is illegal in our country. IANA, do something about it. I want IANA to be able to say, in that circumstance, go apply your local law and use your due process and all that stuff and you take care of it, that's your problem, not IANA's. That's what I want to accomplish. That's all I want to accomplish. But I think this issue in my experience is the hardest issue. And so I think we need a very clear statement so that everybody's expectations are clear about this. Sorry, Eberhard?

Eberhard Lisse: Just want to apply what you are saying, professional standards versus local internet communities. One pertains to substantial misbehavior and one to consistent problems. Two totally separate issues. Therefore, we are now dealing only with substantial misbehavior. We know early on that there is a large volume of scholarly articles and knowhow and only for technical working groups. We know how to run these things and if you do these technically in competence, that's another issue as for example you have to deputy under governance secretary for paper clips signed into law, see the domain from somebody. And pretending to be government, forging documents to have two contending members on the GAC committee and things like this. And that's really difficult for IANA function contractor to deal with. I, on the other hand, do not want necessarily, in a rogue state, or where there is whatever going on like in the Central African Republic for the time being, which is civil war and whatever, to say no, it's the government of today, they can do whatever they want, sorry. Not the government, it's the domain manager who owns the property and taking it away involves all sorts of issues. So to just say we don't want IANA to act on some things is good in one way, but where civil order has disappeared already, it's just not right. On the face of it. Like North Korea, it's just not right that IANA must also have this authority. You can't do things like that. That's the problem we are having, that it's both ends of the spectrum where the IANA function contractor will get flak from whoever.

Becky Burr: Daniel?

Daniel Kalchev: I just wanted to reflect on what you just gave as an example, Becky. I fully agree that this has to be handled in a way like that. But my question is, what does this have to do with equitable to all groups?

Becky Burr: So what if a government came and said the delegated manager is discriminating against women?

Daniel Kalchev: Yes, but as Patricio I think said earlier, we already have an interpretation on equitable to all groups, which doesn't include anything like that.

Unidentified Participant: What if the government is discriminating against women and the operator doesn't want to do it?

Daniel Kalchev: So it's very tricky. But I fully agree with what you're saying, this should be acted upon in some way, but I don't see how it fits in this context.

Becky Burr: Martin, Patricio, Desiree.

Martin Boyle: I'm having severe concerns over the idea of IANA being turned into an international court. It doesn't seem to me that IANA is in the position to say this is a rogue state. The United Nations might say it, in which case then IANA can take its cue from that, but until you get here, I don't think IANA is in a position to do it. I don't think here, picking up a point that Nigel made, I don't think here we are writing policy. But we are actually trying to say who is in the position to make a decision. And our earlier discussion said, if you're going through that process, it is not the rogue minister's son, the son being rogue, not the minister, sorry. Who can then force the relegation because that is something appealable through the courts of law. And that goes ahead. Yeah, but I'm sorry, Eberhard, it becomes you're putting onto the IANA functions' manager a judgment that he does not have the capacity to make. And that's what this paragraph is all about.

Becky Burr: Patricio, then Desiree, then Nigel.

Patricio Poblete: People and the government always have the possibility of invoking national domestic law, whatever, and going through the courts and suing the manger for being, not being equitable or whatever. Whether we say that or not, we don't need to say that for that to be true. It is true nonetheless. So that's not the important part. The important part is to leave IANA a way out in case they feel that they are not able to evaluate something. So I was just reading in the chapter window of the Adobe room, one sentence that I feel captures that. It says that the FOIWG recognizes, however, that the IANA contractor may not always be able to evaluate compliance with this requirement.

Becky Burr: Desiree, Nigel, and then Eberhard.

Desiree Miloshevic: Yes, I think that there will always be managers looking for IANA to give them a hand if there have been misjudged beliefs labeled as misbehaving during some local activities. And there will be managers who would like the whole process automated and just act according to the national laws and not wanting IANA in any function. However, I think we are talking about evolving that function whichever way, shape and order down the line. And maybe the best thing to do here is to split this paragraph and try to say that there would be different cases in which IANA may have to step in. But as it stands this paragraph now is I think quite dangerous and leads to various interpretations. Can we break it down and come back after we have a more philosophical discussion.

Becky Burr: I think we're in radical agreement on that. Nigel?

Nigel Roberts: I've got some suggested text which I've taken from what you said the intent of this paragraph was. It reads quite differently from what Martin has been saying which is quite differently from any way we've been talking about. So we've actually got two things. One is the proposed language I've got here which I'll read shortly. And the other is this rather strange concept. The IANA is not just the arm of ICANN, a private organization. Whether you agree how this came about or not and what the fundamental legal background to it is, the IANA function contractor has an apparent contract for the way it does its job which is issued from the United States government. If the IANA function

contractor is to do something which is completely contrary to the accepted standards in the US Constitution for example, the US Commerce Department would appear to have a problem. So if the IANA suddenly decided, for example, it was going to take random decisions about who it would give TLDs to and start giving it to the brothers in law of the IANA staff who happened to live in a particular country, and taking it away from people, that would be problematic and the US government would have that problem because the US government and the whole point about rule of law is not that the law makes rules, it's that the government has to follow the law as well as the individual.

But going back to the intent of what you said, I've got something along the lines of, the requirement of equity, which is what -- this just refers to the RFC1591 text. The requirement of equity in RFC1591 is not to be interpreted as imposing a requirement for a uniform set of registration policies dictated by IANA. Recognizing the principle of subsidiarity, these are a matter for the ccTLD manager in consultation with its local internet community. It needs some work, but something along those lines.

Becky Burr: I'm okay with it so long as there is a clear statement that this is the responsibility of the local internet community applying under the rule of law. Eberhard and then Daniel and then Patricio.

Eberhard Lisse: I'm not really sure I can see that in the RFC1591 but that was not the point I was going to make. Martin, I don't care whether you think IANA can or cannot do this. If I as a ccTLD manager has to be equitable and equal and just, so does IANA. I don't care whether they have the capacity. But we cannot say we have to do it and they don't. Sorry. Not acceptable. I have lived under apartheid regime, I have lived under dictatorship, I have lived under curfew. I have been black like nobody's business. I am not going to vote for or assent something that is clearly not right. Not going to happen. Absolutely. It's the principal. I am not willing to deviate from it.

Daniel Kalchev: Okay, Daniel. I see a trend of interpretation here that I sort of disagree with and that is that my original interpretation of this RFC and the duties and responsibilities it puts on the manager is that the manager is supposed to be responsible and set the rules of their operation in consultation with their local and global community and whatever is applicable in the case. Not the other way around. It is not the work of the community that sets the rules. It is the manager who is responsible to set the rules and in order for them to be equitable to all groups of course, they have to consult the local community, the local laws, and everything correlated. So I think I see this in several places in our text, we are sometimes getting this backwards. And if we consider that the responsibility lies with the manager of let's say all these issues, then we really don't need to say that the local community has any say with IANA as such. They can express their concerns, they can make them visible and so on. And also on the same scale as Eberhard has already mentioned several times, it is IANA who should set the rules in an equitable manner to all the managers they employ as everyone else. So this is how this scale up is just works. It is the same with the TLD manager. They have to set the rules for the delegations they make and so on.

Becky Burr: Patricio?

Patricio Poblete: Thanks. I think we tend to miss the point of what we are trying to say in this particular section. We have already agreed that there is an obligation to operate equally and we agree with them made it very concrete what that means. And what this has to do is try to set a procedure for IANA to follow, particular when there is a complaint. I don't think IANA will act on its own on this, but rather they will receive complaints. This plan is not equitable to everybody and they will have to do something. If we delete this paragraph, that would impose on IANA an obligation to investigate and act on that always. And I understand this paragraph simply as leaving them the option of saying, sorry, we are

unable to regulate this and do nothing. And leave it to the courts or whoever, you can do whatever else you think, but we are unable to solve this for you, sorry.

Becky Burr: Eberhard?

Eberhard Lisse: I just want to point out for the record that as far as policy is concerned, RFC1591 does not mandate or require input of the local internet community. The only thing it requires that the policies are applied equitably. So that if you want to say it's a stupid policy but everybody has to abide by it, nobody can do anything about it. Just for the record. And it's better if policies are reasonable of course.

Becky Burr: How about something very simple along Patricio's line. IANA may decline to take action where it lacks sufficient -- no? Okay.

Nigel Roberts: What I'd just say with that is that it sounds to me like what we're getting into writing operational instructions or policy. We're not interpreting the rule here. I just think - I've sent Bernie the text I mentioned earlier. But if we say something that starts the requirement of equity is not to be interpreted as whatever, that works for me.

Becky Burr: We're not talking anymore about that paragraph as it's written. We're only talking about what's going in here.

Eberhard Lisse: Okay. Can I propose that we resume the original group but now under your leadership so that something gets done on it and we try to come up with some language?

Becky Burr: Daniel?

Daniel Kalchev: I just wanted to again say that we cannot -- okay, we cannot because it makes no sense, interpret any of these things to mean that IANA can be not responsible for the operation of DNS. So whatever we do, we cannot say that this is an excuse for ICANN to do nothing or do something wrong or things like that. It is ultimately responsible, I mean IANA, for anything that happens beyond that. So it is not helping that we say that there are circumstances where they can say, okay, we don't know what is happening, somebody else has to take care. Because there is nobody else who can take care of the DNS but IANA.

Becky Burr: We are coming to the end, in one minute, to the end of our time. It does not appear that we will accomplish our goal here today. I think we are going to have to take up Eberhard's suggestion on this and reconvene a working group and see if we can hammer something out.

Eberhard Lisse: My proposal was that we have a drafting group but sort of we bounced it around but nothing happened, so now Becky will push us a bit.

Becky Burr: So that drafting group is Martin, Nigel, Eberhard, Becky and we'll circulate it around to everybody to look at. So we have come to the end of this meeting and we actually have to vacate the room in the next 30 minutes. And we will reconvene at the next time, the 25th. Yes, Steven?

Steven Deerhake: I'd just like to express my appreciation for Gabriella filling in for Kristina and wish Kristina gets well soon.

Becky Burr: Excellent.

Bernie Turcotte: Not because we don't like Gabriella.

