TRANSCRIPT

Framework of Interpretation Working Group Call

4 October 2012

Attendees:

ccNSO:
Becky Burr, NomCom (Vice Chair)
Keith Davidson, .nz (Chair)
Chris Disspain, .au
Desiree Miloshevic, .gi
Eberhard Lisse, .na
Nigel Roberts, .gg
Bill Semich, .nu
Dotty Sparks de Blanc, .vi

Other Liaisons:
Cheryl Langdon Orr, ALAC

Staff Support and Special Advisors:
Bart Boswinkel, ICANN
Kim Davies IANA
Kristina Nordström, ICANN
Bernard Turcotte, ICANN

Apologies:

Martin Boyle, .uk
Patricio Poblete, .cl
Dejan Djukic, .rs
Jaap Akkerhuis, ICANN / ISO

Keith Davidson:	It's four minutes past the hour so we should probably make a start to the meeting. Let's firstly have roll call and apologies, Kristina?
Kristina Nordström:	Sure. From the ccNSO we have Becky Burr, Keith Davidson, Chris Disspain, Desiree Miloshevic, Eberhard Lisse, Nigel Roberts, Bill Semich, and Dotty Sparks de Blanc. From Staff Support and Special Advisors we have Bart Boswinkel -- he's listening in on Adobe only -- and we have Kim Davies, Kristina Nordström, and Bernard Turcotte. Apologies from Martin Boyle, Patricio Poblete, Dejan Djukic, and Jaap Akkerhuis. And we're still trying to reach Cheryl.

Keith Davidson:	I think Cheryl's on the road today. No one else on the call? Everyone's name was called? Any further apologies? If not, can we move on? Chris, I think you're leaving early?
Chris Disspain:	I've got some time. I'm probably free for another 45 minutes or so, maybe slightly more. We're okay.
Keith Davidson:	In that case, should we deal with the issue that Eberhard's raised on the list and give us five minutes now. There may be some people late to join -- would that be an idea? Get that out of the way?
Eberhard Lisse:	Fine by me.
Keith Davidson:	If everyone's okay with that, we'll do that. Eberhard, did you have something specifically you wanted to raise or discuss? I see you have your hand raised anyway. Please, go ahead.
Eberhard Lisse:	It has come to my attention that .ML for Mali was about to be redelegated. It was on the consent agenda of today's ICANN board meeting and eventually I couldn't find out any information. Nobody knew anything about it. So, I emailed the contact and he told me that it was not consented and so the more information I got from him, the more I got the impression that it's a misunderstanding, probably because of language issues from both sides. So, I raised this issue with Mr. Crocker on the Board and the Board's email addresses, the secretary and so on, plus also the two ccTLD members, and suggested it should at least be taken off the consent agenda and debated and because the admin told me he's coming to Toronto and I thought maybe it's an opportunity to meet IANA in person and straighten out any misunderstanding there may have been. There are some local issues apparently and he does not agree with what is being stated with regard to the local internet community. But it's not a matter of detail. I wanted to raise it because of the issues it places on our work with regards to informed consent and all means at our disposal. I think we were very fortunate to catch this in time and get some opportunity to avoid a misunderstanding here. I just wanted to place this on the record. We don't need to go into the details of the case but it's just an issue of this informed consent and this diligence issue here.
Keith Davidson:	Noted. I see. Kim is on the call and it would be terribly unfair to ask Kim to comment in any way and he probably wouldn't anyway since it'll be in the hands of the Board. Chris -- I don't know. Do you have any comments from a Board perspective or from a personal perspective?
Chris Disspain:	Not particularly aside from to say that at the first sign of any issue it was taken of the agenda which was the correct thing to do, I think. I literally have no more information than Eberhard has. The key I think is that the right thing was done since it was taken off the agenda and the next steps are to figure out what the hell is going on and what happened. It is convenient and useful that he's coming to Toronto. I think we just have to sit back and wait and see what happens. Obviously you guys will be -- how do I say his name, Eberhard?
Eberhard Lisse:	Alioune Traore.
Chris Disspain:	Alioune. I think most of us know Alioune anyway, don't we? I certainly do. It will be interesting to see how it resolves itself. Yes. As I said, I think the right thing happened. At the moment there's nothing more to say.
Keith Davidson:	Okay. I guess in the strictest sense this is out of order for this work group to be discussing individual cases of delegation and redelegation. So, I take on board Eberhard's comments that are potentially a looming example of what consent

might or might not comprise. I think that's what we're teaching, Eberhard. Anything else before we move on?

Eberhard Lisse: No. I just wanted to have this on the record.

Keith Davidson: It certainly is on the record now. Unless anyone here has any other comments regarding this I think we should move back to our agenda proper and I think we've confirmed the agenda as it is with item two. So, we'll move on to item three, the confirmation of the meeting report for the September 20. Did someone just join?

Cheryl Langdon Orr: Just Cheryl. I had a devil's job and I still can't get into the Adobe Connect. So, you'll just have to put up with me dialing in for some reason.

Keith Davidson: Okay. Welcome, Cheryl. Okay. So, the meeting with the Board, September 20, was there anything arising from that report that wasn't otherwise on the agenda? If not, then you'll see item four on the agenda, the progress report is now published. The link is there on the agenda, on the screen, the final published report. I did apply some chair's discretion to some editing for consistency with previous reports that I didn't think warranted coming back to the working group but in order to make the publishing deadline I went ahead. Hopefully everyone's in agreement. But if you have any disagreements, please let me know. And if we can move on then to the substantive part of today's agenda. That's the topic of transportation systems and we have document 4.1. Bernie? I think you want to take us through the changes that we've been working on?

Bernard Turcotte: Yes, sir. Let's just get to the right version.

Eberhard Lisse: I hope you get to the right version.

Bernard Turcotte: Well, after the issues last time, I'm fairly confident what we've got up there is the good version.

Eberhard Lisse: Can we make it movable, always, please? Thank you.

Bernard Turcotte: Just on that topic, while we're here, we ran some tests with Kristina. I think we've identified the issue that we had and we did further tests and made everything was okay. I'm fairly confident that what we've got in front of us is actually a very nice version that is correct, has the editing marks in it, has the colors, and has the comments. So, we're moving quite well. So, this is version 4.1 which is again a major cleanup from 4.0. And I'll take us right down into the five since there's no change. We've got that comment there. The only change up to this point is the version number and the date of the document.

5223, the FOI working group is consistent with the purpose of RFC1591 to interpret the phrase "stepping in" to mean dynamic contractor would, one, continue to be focused on IANA security and stability, and two, continue to deploy all means at its disposal in resolving the issues with the incumbent manager. I believe we ended up being in the long discussion with Martin about some of the issues around these. There's a separate document which we can go to to understand how this interpretation came about. But given Martin's not here, I don't think we're going to fork off into that separate discussion at this point or at least that's what I would propose.

Does anyone else have any other issues with 5223? I'm not hearing anything or seeing anything on my screen so I'll just keep going which will take us to 5233-11. On balance, the working group believe that RFC1591 should be read to impose an ongoing responsibility on the ccTLD managers to carry out the necessarily responsibilities and do an equitable, just, honest, and competent job.

	Note, the existence of this ongoing responsibility with respect to a specific ccTLD will determine whether or not RFC1591 formed the basis for that ccTLD's delegation and if not the terms and conditions applicable to that delegation. So, this was accepted at our last meeting. So, unless there is another point of view or question, this will be second time we go through it and it will be considered final.
Eberhard Lisse:	The terms and conditions applicable at that delegation, does that include the concept of if any?
Bernard Turcotte:	We'll have to ask Becky. Becky, if you're talking, we're not hearing you.
Becky Burr:	Sorry. I was on mute in a complicated way. More complicated than I could figure out, apparently. The question is -- I'm sorry. I'm a little bit lost on where we are here. Because when you're not in control of the scrolling, that completely does me in.
Bernard Turcotte:	5233-11.
Becky Burr:	Okay.
Keith Davidson:	I didn't quite catch Eberhard's point anyway. Eberhard, what was that again?
Eberhard Lisse:	Let's say there were no terms and conditions applicable at a delegation, like in the case of .NA, for example. Is that included here?
Becky Burr:	Yes. Because in the absence of terms and conditions would be considered -- the point here was merely to say we're not adjusting that all delegations are subject to these rules, merely that delegations that were under 1591, this applies to and with respect to anything else, you have to look at the facts and the totality of all the information available.
Eberhard Lisse:	I don't want you to change it at this late stage if it's included. It's not an important issue for me because you know my opinion already and I'm quite settled in that. But I think if you say that it's included, then it's even better.
Becky Burr:	I think the point here was to make it clear that the interpretation here is limited to delegations governed by 1591.
Bernard Turcotte:	There's the use of the word turn where it says will turn on whether or not -- should it be depend on? Would that be a better -- ?
Becky Burr:	That would be fine if that's more comfortable for other people. This could be just getting that. For me it's turn on or depend on are essentially equivalent statements. If people are more comfortable with depend on that's totally fine.
Keith Davidson:	I think there seems to be a general consensus to accept it in its current form. Let's proceed with accepting it in its current form. Unless I hear any further objective? Okay. Bernie, can we move on?
Bernard Turcotte:	Yes, sir. 5233-61. It would seem reasonable to interpret this requirements in the current context as obligating the manager to make its restoration policies accessible and understandable to prospective applicants and to apply these policies in an impartial manner, creating similarly situated with the registrar in the same manner, accepted September 20 and basically, again, unless there are any final comments, this will seal the deal as it were. Eberhard?
Eberhard Lisse:	Just a small little thing to participating. It is now so nicely in blue. If one loses track of where we talk, just go through and look for the next comment marked in blue then you'll find exactly where we're talking.

Keith Davidson:	Thanks. Any comments on the text itself?
Chris Disspain:	No.
Keith Davidson:	Anyone else? Because I think this is the second reading so it will become final text. Okay. Done. Thank you. Carry on, Bernie.
Bernard Turcotte:	Thank you, sir. Just a little bit lower, 5241, misbehavior. We cleaned up that cut and paste transfer error from last week. So, the first part was okay though. 5241. One, the working group interprets misbehavior in this context to refer to conduct involving the failure of a designated manager to, one, carry out the necessarily responsibilities of that role, or two, carry out those responsibilities in the manner required by RFC1591. In this way it is used in a manner that roughly equates to misconduct in public office. Under that standard, a ccTLD manager would appear to have misbehaved if he willfully neglects to carry out the duties of a ccTLD manager or in carrying out those duties willfully engages in misconduct to such a degree and without reasonable excuse or justification as to amount to an abuse of that trust placed in him by virtue of his, her, its designation. So, this text was accept September 20. This is the second reading. Any last comments?
Keith Davidson:	Bill has a comment and Eberhard's indicated acceptance. Bill?
Bill Semich:	I wasn't on that call so I didn't get a chance to say what I'm going to now. In some ways there's a bit of a conflict between the language of 1.1 and 1.1.1. At least the way I'm reading it. Because first we're saying we interpret misbehavior as involving the failure of a designated manager to carry out the necessarily responsibilities. And then we're saying it would appear to have misbehaved if it willfully neglects to carry out the duties. So, the introductory paragraph really doesn't address the issues of willful neglect as opposed to just the word failure which could happen for any number of reasons. I'm wondering, maybe Becky, you can tell me how you square that circle?
Keith Davidson:	Sorry, I was just going to say I think 1.1 was an attempt to define misbehavior whereas 1.1.1 attempts to define that specifically as it applies. Anyway, Becky?
Becky Burr:	First of all, I'd have to go back and look at this whole thing. I think we'll have to do a full read at the end of this to make sure everything's consistent. I think it's very clear based on our discussion that with respect to these kinds of issues there is an element, there is a willfulness, an intent element that's being interpreted and imported into this. So, if there are other places where we need to fix that, we'll probably just have to go back after we work through all of this. I think the current view of the current consensus of the group is with respect to the I-34 as opposed to just the failure -- persistent problems with the operation, there's an intentionality and willfulness requirement.
Bill Semich:	As long as there's some way to -- maybe another word needs to be added in there? Maybe willful? I don't know. Even just involving the failure. It's a very kind of almost soft way of describing what we're trying to describe as willful neglect. I'm suggesting that maybe those few words could be toughened up a bit.
Keith Davidson:	Thanks, Bill. I see that Nigel and Eberhard both have their hands raised. Nigel firstly.
Nigel Roberts:	Two things. One's substantive and one's rather repetitive and you've heard it all before. The first one is that I obviously agree with a lot of this because Becky and I came to some considerable consensus on this. The thing to remember about this is it's not the definition of everything. We can't put the definition. We can only say we believe the definition includes what we're putting down. Secondly, I

noticed that misbehavior is persistently misspelled yet again. Can we please do a global search and replace here?

Becky Burr: I definitely cannot spell misbehavior correctly in accordance with any alphabet outside of the United States. I abdicate all responsibility for that.

Nigel Roberts: It was not the lack or inclusion of a u which is matter of cultural difference. It's the matter of an extra s.

Becky Burr: Oh, yes. I did notice that in some places and tried to pick it up.

Eberhard Lisse: Now that we've sorted out the alphabet, I think the way this is written is quite acceptable to me because it gives an introduction into misbehavior and then it explains sort of a -- it's a standard and then it explains exactly what it means in our context. So, I don't think we need to put willful in there in the first thing again. I think we should take it as is. I think we have got white consent on this.

Keith Davidson: I wonder, Bill, when we move on to the next section of substantial misbehavior, after we've read that section if we can come back and see whether you still have an issue with the terminology, the way it is? Because it's actually the substantial misbehavior that we're probably more concerned about. I see Bill's indicating we'll do that. Nigel, I'm assuming your hand is just not taken down? Or do you want the floor? Thank you. So, back to Bernie unless anyone has any other comments relating to the misbehavior section. Should we move on to 5.2.4.2?

Bernard Turcotte: Substantial misbehavior would involve misbehavior as defined above that is either egregious or persistent and would appear to include 5221, the knowing, repeated material failure to perform the necessary -- the designated manager in a manner that is equitable, just, and honest or, two, performing the necessary responsibilities of a designated manager in a manner that imposes a serious harm or has a substantial adverse effect on the local or global internet community. In this context this is harm and substantial adverse effects should be evaluated in the consent of the IANA contractors continued focus on DNS security and stability as described in the previous section. September 20, accepted with corrections to the file conversion process. This would also be second reading. Over to you.

Keith Davidson: Any questions or comments? There doesn't appear to be? Nigel?

Nigel Roberts: This actually I'm referring just a couple of lines earlier since nobody else is commenting on this one. 5.2.4.1.1 where we talk about trust placed in him. Now, I'm aware that in legal sense him is interpreted to include her. There's even special laws about that. But it doesn't quite read right to me, particularly as most ccTLD managers are organizations. I'm just wondering if we could go through whenever we're looking at this instead of looking at -- should we say -- I'm having problems. I'm getting and echo. We can do a gender neutral read and then place in the manager or something like that throughout the document. If you just state that as a passing comment, please?

Keith Davidson: I think that would be very handy. I don't like the it here. I find it distracting to the rest of the text as well. I think as Nigel said, we'll come back. Let's agree on the principles of the document and then come back and --

Bernard Turcotte: I don't know for the rest of the people but for me you were very choppy there. The second point, as Becky said earlier, there's a lot of corrections to accepted text and we started batting around as we move further into the document and I think Becky and Bart and I have basically accepted the concept that until we finish a first pass of the document and have text accepted everywhere that we shouldn't do that revision which touches upon something that Bill was talking

about. Otherwise, we'll be wordsmithing this thing till the end of days. So, basically we're going to save that sanity edit and reconstruction for the end because technically if it's done properly it should not change the meaning of any of the text but should normalize everything and make it easier to read. I don't know if that's any kind of help.

Keith Davidson: Thanks, Bernie. I see Nigel's indicating strong agreement with that. But Eberhard has his hand raised. Eberhard? We can't hear you.

Bernard Turcotte: The chat says he's logged off and will log back in.

Keith Davidson: It might just be he has his hand raised. I'll put his hand down. Eberhard? Did you have your hand raised specifically? I see you're back on. Do you have any further comment?

Eberhard Lisse: No. I'm happy with this.

Keith Davidson: Okay. Moving along then, Bernie. I guess that concludes 5.2.4.2. So, I think we now refer back to Bill and whether he feels more comfortable now with the misbehavior section having now dealt with this section. Any comments, Bill?

Bill Semich: As long as 5.2.4.1.1. is merely an introduction to 5.2.4.2 I'm fine.

Keith Davidson: I think that's the way to read it. Thanks, Bill. Bernie, should we move on?

Bernard Turcotte: Yes, sir. Alright. Now, I've inserted a little chunk of text here, 5.2.5 is not new. It was previously in the following section which deals with persistent problems and on the recent cleanup it didn't seem logical to have the definition of revocation in the next session but not here. So, what I've done is I've simply done a cut and paste from the following section into this section for consistency's sake. That's the text. This is not new text. This is text we have gone over but we have not agreed. This is imported from 5.3 for consistency. 5.2.1 as noted in section three of RFC1591, a new top level domain is usually designated and its management delegated to a designated manager all at once. I don't think anyone will have a problem with that given it's a quote from RFC1591. 5.2.5.2 -- while these activities may occur more or less simultaneously in the case of a new ccTLD, this language reflects the distinction between one, creation and insertion of the ccTLD into the root, and two, delegation of responsibility for the management of the ccTLD to the designated manager. And since this is technically unapproved text, we'll take it one chunk at a time. So, 5.2.5.2, and I see Nigel is at the ready?

Nigel Roberts: Again, I suppose you would say this is wordsmithing but at the same time I think it changes the meaning drastically. I kind of don't like the use of the expression ccTLD. I think RFC1591 does not only apply to ccTLD but all TLDs and I think we should be interpreting the existing document, even if it's fallen into abeyance in gTLDs which are generally regulated by contracts and use the word TLD.

Keith Davidson: It's worth discussing. I guess one of the constraints of our work is that we can only consider aspects of policy and interpretation that apply to ccTLDs and we shouldn't be seeking to apply 1591 any more broadly than that I think according to our scope but not withstanding that we should acknowledge that 1591 was written for TLDs, not just ccTLDs.

Nigel Roberts: Yes, Keith. Notwithstanding that, although I see your point and you're right in terms of what our scope is. The fact is if you regard 1591 as being something like a policy or law that perhaps some of us or all of us have to follow, we are interpreting the plain words of what's written there and it applies to us as it appears to apply to others. It's not for us to say how it applies to others but I think it's for us to say when we interpret the words, the words say TLD managers and

	not just ccTLD managers. I think if we just say ccTLD managers we're putting a gloss on it that doesn't exist.
Keith Davidson:	I think the issue is that the ICANN rules for the delegation of gTLDs and the operation of gTLDs is ultimately RFC1591 is subdued by series of other contracts and policies that are being dealt within the GNSO and so on. But anyway, I think let's hear other people's opinions. I see there must be some other opinions because Bill and --
Chris Disspain:	I have an opinion, Keith. It's Chris. When you have a minute.
Keith Davidson:	Bill, Eberhard, then Chris.
Bill Semich:	I just wanted to point that in fact in 5.2.4 we do use the phrase TLD and not ccTLD manager. If nothing else, we need to be consistent, whatever that decision is.
Eberhard Lisse:	I think we should write TLD but we can put a footnote in somewhere pointing out that we are only talking about ccTLDs here. But it's actually correct, if we talk about RFC1591, we cannot really use the word ccTLD because it's not written there and I don't want to -- it's not a big issue. We can solve this easily. But it makes better consistency of reading if we use the same terminology throughout.
Keith Davidson:	That seems like a reasonable way forward on the face of it.
Chris Disspain:	I just want to be intensely practical about this. I would be uncomfortable if we allowed for even the scintilla of a possibility that others could look at our work and say I interpret this as meaning it applies to gTLDs too. And therefore the work is deficient because the gTLDs weren't involved. I don't much care what words we use but I want us to be absolutely, abundantly clear that what we're talking about here is ccTLDs and only ccTLDs.
Keith Davidson:	Okay. I see Nigel is agreeing with you, Chris. Just noting that Kim has mentioned in the chat that RFC1591 refers to IANA. This document refers to IANA contractors. I think we have some substantial debate about IANA, the IANA function and the IANA contracts as being specific and reference to IANA was going to be used. I see Nigel has his hand raised.
Nigel Roberts:	Actually, I think we're all in agreement on this. I think Eberhard's suggestion of an explanatory -- it don't need to be in the footnote, but an explanatory note somewhere saying that our work as per what Chris has probably done and expanded is only relating to the application of RFC1591 as it applies to ccTLDs. But it's like the Magna Carta which has been repealed, all but one section and so on in terms of gTLDs. This was written for gTLDs and we can say in the explanatory note it's not for us to determine how it may or may or not apply in the current circumstances to gTLDs and we didn't consider any of this but we started from the original document which was intended to apply to all and we're looking at how it applies currently to gTLDs or something along those lines.
Keith Davidson:	It looks like we have a way forward. Can we move on?
Chris Disspain:	Are you asking for my permission? If so, yes.
Keith Davidson:	No. I was expecting Bernie to take over. No, Becky.
Becky Burr:	Nigel has provided permission.
Eberhard Lisse:	Can I provide permission too?

Keith Davidson:	No. Not tonight.
Becky Burr:	Anytime.
Eberhard Lisse:	I remain confused.
Keith Davidson:	I think to help you around your confusion, we'll add a note.
Eberhard Lisse:	No -- carry on. It's just in fun.
Bernard Turcotte:	Okay. 5.2.5.3. The working group interprets the terms delegation as a reference to the IANA contractors identification or recognition of a person or entity to serve as the designated manager. Comments? Questions?
Keith Davidson:	There doesn't appear to be any.
Bernard Turcotte:	5.2.5.4, revocation could then be defined as the IANA contract manager rescinding the responsibility for the management of the ccTLD from an incumbent manager. Questions? Comments?
Nigel Roberts:	I'd like us to be shall we say a little bit careful about 5.2.5.4. The word rescind carries with it all sorts of massive implications and I would like to be very careful that we don't imply that all of a sudden ICANN itself as overweening power over all ccTLDs. I'm not going to go any further into it than that right now because clearly 5.2.5.4 does express what we want it to express but I'd like to say that we should apply a little bit of subtly to it.
Keith Davidson:	Thanks, Nigel. Bill?
Bill Semich:	I have a couple of issues with 5.3. and 5.4. I'm tending a little bit towards Kim's comment about IANA. Here we're talking about two entities actually -- the IANA contractor and the IANA contract manager which could be thought of as two different entities. Certainly we're using two different ways of describing it. With all due respect, I'm not sure we should walk away from just referring to IANA as a function carried out by ICANN as opposed to ICANN as the contractor. I'm not sure if it's IANA who's identifying or recognizing the person. It seems to be. I don't think -- maybe the Board does? But the actual recognition I believe goes from IANA to DoC. I'm not sure if it's IANA or ICANN who actually revokes or rescinds or redelegates or if it's IANA itself. It's worth chatting about for at least three or four minutes if anyone has any more understanding of it? Maybe Kim? Than I do?
Keith Davidson:	I see a number of hands raised. Maybe we'll deal with those and then see if Kim has a comment?
Chris Disspain:	I have some input on that as well, Keith, when you have a second.
Keith Davidson:	Okay. So, we've got Nigel, Becky, Chris, and Eberhard.
Nigel Roberts:	Actually, I'd like to give way to Chris.
Chris Disspain:	All I was going to say is that it seems to me that we need to remember that the USJ is currently and has been for some time working to encapsulate what it refers to as the IANA function and therefore it is feasible that the IANA function which includes everything we're talking about could end up being elsewhere. Just as an example of that, could end up being for example run by ccTLDs. So, for that reason if for no other, it seems to me that it's unwise to introduce anything that could be interrupted as meaning that ICANN would be able to do something even if it didn't have the IANA function.

Keith Davidson:	Noted. We'll return to the original hands up of Nigel, then Becky, then Eberhard. So, Nigel?
Nigel Roberts:	I'm not going to try to draft this on the fly but I'm going to make a suggestion as to how it could be recast in a slightly different way. Revocation might be interpreted -- I think we have to say interpreted, not defined, being extremely pedantic about the word defined here -- interpreted as meaning the IANA and you can argue about exactly what words you insert for that placeholder as the IANA ceasing to recognize the ccTLD manager as being responsible for the management of the ccTLD concern.
Keith Davidson:	Noted. I see Bill is adding a tick to Nigel's interpretation. Becky?
Becky Burr:	I just think it's another one of the areas where once we get to the end of the first draft, there's going need to be -- we're going to need to go through this and impose some consistent references with respect to the way we talk about the IANA functions and ICANN arrangements. I agree with a lot of the comments that have been made but I think it's something we're going to have to deal with in a total going through this section and making it consistent from beginning to end.
Keith Davidson:	Thanks, Becky. Eberhard?
Eberhard Lisse:	I agree. IANA as a function is not IANA as the entity performing the function because the IANA function will remain but the entity performing the function can change and that difference needs to be captured somehow, somewhere. How, I don't really mind. But just saying the IANA is not -- because there is current development that we cannot pass by, the US government has issued a contract and ICANN has gotten the contract for the time being. We cannot go around that, I think. Becky's suggestion is very helpful.
Keith Davidson:	Noted. Kim? Did you have any comments before we move on?
Kim Davies:	Sure. Why not? I guess my comment on the chat room, I wasn't really trying to litigate the discussion of whether to use the IANA contractor term or not. It's just when you were discussing the RFC1591 terminology, it just struck one term where this document does diverge from the terms used in RFC1591. I guess on the term IANA contractor, the thought I expressed to this group several months ago was that the mechanism by which the IANA functions are overseen, whether it's a contract or some other instrument, it seems to me to be entirely ordinal to the issues being discussed in this document. So, I never really understood why it needs to be explicitly called out that it's a contractor as opposed to some other relationship. So, to me, I think the IANA term is well understood. It can be defined as what exactly it means in the beginning of the document but my preference would not be to refer to it as a contractor, but that's just my opinion.
Keith Davidson:	Thanks, Kim. We've stumbled on the path that it's more over the IANA function and the people associated with undertaking IANA activity that's been confused. Eberhard has his hand raised.
Eberhard Lisse:	The word contractor is not the issue. We can work and find a word that is suitable here but the point is it's a function and it's the entity operating the function. Under what authority or what relationship is a separate issue. But these things are separate because the function can move but the function remains as far as to be undertaken. It just can move from one operator to another, like Chris said. So, whether we call it the contractor or what we call it, we can come up with a definition eventually.

Keith Davidson:	I think we've had a fair bit of input. I think Bernie and Becky probably have enough here to do a bit of finessing going forward. Can we move on with the proviso that we'll apply a bit of editing to 5.2.5.3 and .4? Carry on, Bernie.
Bernard Turcotte:	Yes, sir. We're at 5.2.5.5. I believe. Because delegation and revocation only deal with conferring and rescinding responsibilities for management of the ccTLD and the comments in mind are, yes, understood to apply here too. From and to a manager, there is not requirement or expectation that the ccTLD be taken out of the root is a delegation is revoked. The primary responsibility of IANA, the IANA contract manager, again, if the discussion we've had carries over to the security and the stability of the internet dictates that it undertakes all means at its disposal to keep the domain functioning. Comments?
Nigel Roberts:	I'm going to put my ticky hat on there. I think that sentence, although I know exactly what you mean and I agree with it, is internally in itself inconsistent. If a delegation is revoked, the ccTLD has been taken out of the root. You need to use a different word than delegation here.
Keith Davidson:	That conjures up a couple of thoughts about what possible wording we could use.
Bernard Turcotte:	I see where you're going with that, Keith. Recognition?
Keith Davidson:	It would probably need to be extensively more descriptive than that. I don't think you could come up with a single word unless it's delegation because I think we know what we mean by that. However, let's tease that out a bit.
Bill Semich:	To Nigel's point, delegation is not revoked, it's the manager's responsibility that is revoked. There are designated managers assigned to manage the ccTLD is rescinded or revoked or whatever. But I agree, Nigel, the delegation isn't revoked. It's management assignments that are revoked.
Keith Davidson:	Thanks. Nigel?
Nigel Roberts:	Now, you're looking at it from a different perspective. I don't like the use of the word delegation. We've run through this year in, year out in the context of dealing with responsibility. It's a technical term of art which has been interpreted rather more widely and when you say something is delegation, you, by implication give a superior authority which in the case of some ccTLDs being outside the country causes philosophical problems. I think it has to be a little bit of a longer phrase. It's something like there's no expectation that the TLD be taken out of the root if the manager is recognized or something like that?
Keith Davidson:	I think again we probably can note the need for some wordsmithing here. I'm not sure we can find a way around it now. Just dwelling for a moment on the intent of what's trying to be expressed here, I think everyone is in reasonable agreement with the intent. It's just a question of finessing words. Bernie? Do you have enough to keep you busy in redrafting?
Bernard Turcotte:	Yes, sir. As I said, this is not accepted text. This is the first time we're reading up on it officially. So, great input and ideas and I think I can come up with text that Becky can beat into some reasonable shape and we can give it another try.
Keith Davidson:	Nigel is indicating a tick of agreement with that. Can we move on, Bernie?
Bernard Turcotte:	Yes, sir. Thank you for those inputs on 2.5 given it was just brought in. 5.2.6 is where we are now, originally called process for revocation, I'm looking at making this as an overall document. It became clear that we had to call the procession for revocation in cases of substantial misbehavior so I've changed the title. I don't

	think that's going to cause a lot of concern given this is what we're talking about in this section. Are there any comments on changing the title of 2.6? I don't see anything, so we'll move on.
Keith Davidson:	Actually, just before you move on, Bernie, apparently my sound is breaking up a little bit. I might go off the call and call back in. In the interim, Becky can assume the chair and I'll be back in a minute. Cheers.
Becky Burr:	I'm assuming the chair. Bernie, you're in charge.
Eberhard Lisse:	And you've got everybody's permission.
Bernard Turcotte:	So noted. 5.2.6.1. The FOI works for both of the leads. It is consistent with the intent of RFC1591, just states that revocation should be the last resort option for the IANA contractor. The IANA contractor should use all means at his disposal to assist the managers to resolve any issues considered to be significant misbehavior by the manager. There's a note here, a September issue raised by Martin regarding how the working group arrived at this interpretation and the need to provide further interpretation for next meeting. That's a separate document we're not reading up on right now.

Continuing on with 5.2.6.1, as discussed above, revocation should only be considered if the IANA contractor reasonably demonstrates that the manager has engaged in substantial misbehavior as defined in section 5.2.4 above which persists despite the efforts of the IANA contractor using all means at his disposal to resolve such conduct. We'll stop it here and take questions and comments on 5.2.6.1.

I have a tick from Nigel. I may fall off my chair. Bill? |
Nigel Roberts:	Don't fall off your chair. That was just left there from last time.
Bernard Turcotte:	Thank you for that, Nigel.
Becky Burr:	That is a total bummer, Nigel.
Bernard Turcotte:	Bill, if you're speaking, we're not hearing you.
Bill Semich:	I'm speaking.
Keith Davidson:	You're speaking now and we can hear you and it's Keith and I'm back.
Bill Semich:	What happens I think is when I'm pushing mute off, someone is saying -- Bill, you have the floor. And I don't hear that. I have a question maybe for Becky or Kim. In contract law, a phrase like -- All means at its disposal can be very damning to the institute that agrees to do it in terms of getting itself into bankruptcy in fact. Becky, what are your thoughts on this phrase?
Becky Burr:	We have language in other places that basically shows you don't have to do stupid things. You don't have to do things that are not commercially practical and we try to provide -- I think that's in the separate document -- that we need to consider that essentially because this doesn't mean you have to stand on your head and do three cartwheels and exhaust all theoretically remedies. By all means possible, all means at your disposal, construction is something we'd talked about earlier and I think you're right. There is a way of interpreting it to be nearly impossible to parse but in the separate document we've tried to tie that back to some commercially practical gold standard.
Bill Semich:	Okay.

Keith Davidson:	Thanks, Becky and Bill.
Bernard Turcotte:	If I could just get in for a second. Nigel, this may help the explanation and for Bill. The second half of 5.2.6.1 and all of 5.2.6.1.1 are all new text and the reason it's completely new text, per the bubble at the end of 5.2.6.1.1 is I was rereading 5.2.6.1, the original text we had in there. It actually referred to the old definition of substantial misbehavior which no longer made any type of sense. When I ran it by Becky, she was good enough to take it on and readjust some text. So, really this is our first cut at this to make this with the definition of substantial misbehavior that we came up with earlier. So, we're trying to position this for everyone. Over to you, sir.
Keith Davidson:	Thanks, Bernie. Nigel has his hand raised. Nigel?
Nigel Roberts:	First of all, I'd like to state that I improve of the intent behind 5.2.6.1 and 5.2.6.2. I think it's going to take a couple of iterations to get it just exactly as precise as our members are going to want it to be but I like it. I'd also say I think it could do with a little bit more focus in determining the interpretations that we're putting on the existing policy and the working group expressing probably unanimous opinion regarding certain things surrounding that policy. So, I think for example, 5.2.6.1 -- it is consistent with the intent of RFC1591 to state revocation is a last resort option but it's nowhere in the plain words of the document. And I think it's worth pointing out that we just use words like to record its opinion or its unanimous opinion or something along those lines. I'm not going to try to propose on the fly but I will give myself a rod for my own back and volunteer to work with Bernie and Becky or whoever and see if we can't tighten this up a little bit?
Keith Davidson:	Thanks for the offer, Nigel. I think perhaps some reworking between the three of you if you're able and I think Martin had some real issues with this proposal too.
Nigel Roberts:	With all due respect, Martin's fast asleep in the next room.
Keith Davidson:	Is he snoring?
Eberhard Lisse:	If he was snoring he would be on the call.
Keith Davidson:	Anyway, I think this will be probably be significantly recovered during -- when we're in Toronto. But I think if Bernie, Becky, and Nigel are able to do anything between now and Toronto that might tighten the text a bit that would be useful but if not let's examine it to its fullest extent at Toronto. Thanks, Nigel. Bernie?
Bernard Turcotte:	With all the applicable comments, again, Becky and I have gone through and developed a couple pages around the all means and the last resort and I think it will be fun to take time to go through that document and see how we can merge that into this document. But I felt it was significant enough new material that I didn't want to just slice it in here and open it up. That's why we've got a second document which we can look at separately and once we get through that document which is just an expansion or further explanation of how we come to the interpretation of those terms which is what Nigel was talking about earlier. Then we can see in the master rewrite for consistency how those things fit in and we can adjust. So, 5.2.6.1.1. If the delegation is revoked, the IANA contractor should use all means at its disposal to ensure the ccTLD will continue to resolve until a suitable replacement is identified by significantly interested parties in the manner previously described on a next available basis. Thoughts? Over to you, sir.

Keith Davidson:	I think the all means at its disposal that needs some further discussion perhaps. Other than that, Nigel has his hand raised.
Nigel Roberts:	Again, I'm going to offer to do this off list because this is going to take about 10 or 15 minutes to actually express in writing. I think there's scope here for insertion of a couple more paragraphs effectively saying what we are not considering which is the development since RFC1591 was written about things like -- I mean, RFC1591 itself, I'm talking about the whole set of paragraphs here in blue taken as a whole. RFC1591 explicitly states it's not appropriate to be concerned with rights rather than responsibilities. Unfortunately for John Postale's original words, there are certain rights that we don't want to be considering and I think it's worthwhile explicitly stating that such as the database ownership rights that have accrued since somebody became a TLD manager. I think RFC1591 doesn't deal with those and I think we shouldn't be dealing with them except to say that we're not dealing with them.
Keith Davidson:	That's probably a fair comment in that regard. Yes, I think this will be something we will probably benefit from face to face time in Toronto and discussing it in more detail but let's see. I think before you volunteer for too much drafting, before I forget, Nigel. Let's have a fuller discussion in Toronto.
Nigel Roberts:	That suits me.
Keith Davidson:	Okay. There may be need for drafting afterwards as well. Okay. Can we move on, Bernie?
Bernard Turcotte:	5.2.6.2 is the right to appeal and we've got under that 5.2.6.2.1 is 5.2.6.2.2. The bubble says 25 September, new text for V4.0 by BT to map out thinking for the interpretation. So, here I did stray a bit and allow myself to add some sense which is in 5.2.6.2.2. But let's take it, 5.2.6.2.1, section 3.4 of RFC1591 states the IDNB names review board, a 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 decision will be binding. That's just a quote. Although if the IDNB does not exist, the text clearly establishes the intent of allowing the right to appeal decisions. So, we're just trying to give some background for the interpretation of 5.2.6.2 allowing to appeal. Over to you, Sir.
Keith Davidson:	I think, Bernie, Eberhard and Nigel both have their hands raised.
Eberhard Lisse:	I don't think that really helps us much. If we were to say we recommend the IDNB that would be an IANA -- the original document says the committee established by the IANA, you cannot appeal the function to sort of -- you cannot repeal a decision by a body to the body itself. I'm not really sure how this has to be. Also, I'm not supposed to make policy or recommend policy. I think we need to think more -- we need to reflect a little bit more on this. Though I must say the current situation that we mentioned earlier with the .ML redelegation is probably helpful if there's some other method to independently have a look at things to make sure that nothing untoward happens or something. I don't know. That puts us into totally new territory and I think we're not really supposed to go there.
Keith Davidson:	I beg to differ in actual fact. I think the issue here is that what Bernie is trying to work us through here is that RFC1591 has a process of right to appeal a decision and that's not unreasonable even though this thing that was set up or could've been set up to hear the appeal is not in existence. There should be a vehicle for an appeal on a decision. Anyway I think we have Nigel, then Eberhard, then Becky.
Nigel Roberts:	Don't fall off your chair, Keith, but I'm going to prefer your take on this. I'm would actually say that technically what Bernie's written is technically incorrect when he

says the IDNB does not exist. The IDNB does exist. It's created by the acceptance of RFC1591 15 years ago. It's just never be convened. And of course it was all in John Postale's head how it would ever be convened and I suspect it would've been a panel of the great and the good in the internet as it was known in 1994. I think it's perfectly right that we look at this principle which is clearly established that there must be a right to an independent appeal although it doesn't imply RFC1591 is independent. And perhaps that really is a subject for a good half an hour discussion face to face.

Keith Davidson: I think it is a substantive discussion and I think Becky will probably have some quite strong opinion on that as well. Becky has her hand raised.

Becky Burr: I actually strongly agree with you and Nigel. I think this is at least venturing into policy making. I think the fact is that RFC1591 clearly contemplates some kind of an appeal procedure. I understand Eberhard's concern that there could be some weird setup thing that we don't understand but by countering that with the notion that we understand that ICANN can only operate within certain rules regarding policy development. I think it's really not a stretch at all to say that RFC1591 contemplates that there would be some appeal mechanism in these kinds of circumstances.

Keith Davidson: Thanks, Becky. I think it was also apparent during our work on the delegations and redelegations that there was an absence of any review process in the ICANN Board decision making process on that. Not to say that there's a review process or appeal process that happens behind the scenes. But there's nothing apparent or published. It seems natural to suggest that the right of appeal is natural justice and should be permitted. In this case where there's an absence or potential absence of international courts to whom you could take a case, it's probably worthwhile examining that ccTLD managers should have an ongoing right of appeal. Eberhard has his hand raised and then Bill.

Eberhard Lisse: The problem here is in the decisions will be binding. I cannot and will not accept that a body, for example the IANA function contractor, is then establishing a body that reviews itself and its decisions are binding. That's exactly opposite to what we want to achieve.

Keith Davidson: Okay.

Eberhard Lisse: Understand what I'm saying. I actually thought when I was thinking about the .ML thing it would've been really good or it could be really good if some form of independent non-binding review mechanism was in place and outside council and whatever second opinion -- have a look. Have all these things been done? Maybe there's a misunderstanding. So, I suggest somebody outside. I'm with you in that an internal appeal mechanism should be there but it cannot be binding. It cannot stop litigation. It cannot stop these things. You're totally wrong with regards to the absence of international court. International courts have absolutely no role to play here. This is a bilateral issue between two entities in different countries for which the venue for jurisdiction is relatively clear.

Keith Davidson: That's absolutely what I'm saying. There is no international court so therefore an appeal process is built in as part of the policies at the ccNSO is much more appropriate because there's no place to go.

Eberhard Lisse: It's clear where you go. The place to go is absolutely clear. It's the district in California is the place to go. That's no problem. The other way around, recently there have been very interesting decisions with regard to establishing venues in countries as far as ICANN is concerned. I read some articles earlier on the ICANN website. The venue, if the dispute between ICANN and a TLD manager is

absolutely clear. It's either one of two places, either in California or in the country. Absolutely no argument about that.

Keith Davidson: But regarding the aspect of the decisions being binding, that's purely the quote from RFC1591. I think Bernie's take on this is not to take on whether the decision will be binding or not. It's merely that there should be a right to an appeal. Can we move along a bit? I can see that this will be quite a topic for further discussion as well but I see Bill and Nigel with hands raised.

Bill Semich: I just want to say the quote from RFC1591 I think is only there as a statement of intent. Certainly it's not relevant in the case where the decision has been made since it's talking about cases where the parties cannot reach agreement as opposed to cases of revocation. So, as I believe Becky mentioned as well as this earlier comment on 5.2.6.2, it's merely cited as an indication that the RFC1591 does recognize that this should be the opportunity for an independent appeal. I wouldn't go so far as to say this particular language tells us what we need to do. It's merely a statement of intent on the part of the drafters of RFC1591 at that time. Now of course is a different time. Unless we're going to create a whole situation where parties cannot reach agreement which is not relevant to what we're talking about here where IANA is implementing a revocation, I don't see any particular application for this part of the RFC except as it's used here as an indication of the RFC's intent to provide an appeal opportunity.

Keith Davidson: I think we have Nigel and Eberhard?

Nigel Roberts: First of all, it's clear to me, as Bill has just pointed out, that 5.2.6.2.1 is there as a quote from RFC1591 to establish a context of the point that our document is making. It's not something that we are saying. Secondly, as a quote to provide context, I think the inclusion of the final sentence which is the one Eberhard complains of, is distracting because we're not dealing with the binding or otherwise of IDNB's decisions in the following paragraphs. So, I would suggest for that reason you leave it out. I think this is a subject for our face to face because the whole aspect of providing an appeal process in the IANA process before it goes outside to any court proceedings is pretty crucial. It's a matter of natural justice and the intent is clearly there. But I think we've got to be very, very careful here that we do not try and in good faith interpret this and then provide a hook on which something completely inimical in any country can be hung. So, I suggest as a quote for context, simply leave out that last sentence about the IDNB's decision being binding until we've met face to face and we discover how we're going to deal with it.

Keith Davidson: I think, Nigel, your point is most valuable and we should in fact extract that final sentence that the IDNB's decisions will be binding. Let's extract that from there and put it all by itself after 5.2.6.2.2 and let's deal with it as a separate issue. Whether we need to -- whether we could strike it out altogether or whether we need to be concerned about that at all. But you're right. It has no bearing on the aspect of the right to appeal. So, let's get it out of there. There are further speakers who may have different opinions. Eberhard and Bill?

Eberhard Lisse: I just read RFC1591 again. The IDNB is mentioned in the context of contending parties. It's not mentioned in the context of actions by IANA. So, I don't think we can use this in this context. Back to the drawing board.

Keith Davidson: Bill?

Bill Semich: Taking those comments in consideration, but not specifically, I have an issue with the timing and process of an appeal because it's not just the appeal. It's the knowledge. We've sort of neglected in this whole document and here I am coming late to the party and mentioning something we might have wanted to talk

about months ago. That is, at what point does the ccTLD manager learn that there's a redelegation effort underway? And not only that, that IANA has revoked its delegation? Does the manager learn it at the Board meeting which is happening with Molly right now? Or does the manager learn it with sufficient time to appeal the decision before ICANN votes on it? Or what is the timing and the process? Should we somehow provide for that in this document? It's not a red herring I guess but it is a concept we hadn't thought about and it strikes me in the context of this particular section where we're talking about where the parties can't reach agreement which really means there's someone charging -- making charges against the manager and the manager is referring them and he's refusing to redelegate and blah, blah, blah. I think we should at least put some thought to that before we put this document down.

Keith Davidson: Thanks, Bill. I guess it's worth noting that most if not all redelegations, the existing manager has agreed or has -- let's not say agreed. Has handed over the file which tends to indicate that at the end of the day there's some form of consent. I know Eberhard will argue that that could be consent with a gun to the head or so on but by and large you can assume that consent has occurred or that a process has been went through which IANA finds a way to achieve the redelegation without stealing the database. There is that to be taken into account. Anyway, I see both Eberhard and Nigel and Bernie have their hands raised.

Nigel Roberts: Can I impose?

Eberhard Lisse: No.

Nigel Roberts: I just wanted to say good bye.

Keith Davidson: You're going to bed?

Becky Burr: We need you to say -- Yes, Governor Romney, you can impose.

Bernard Turcotte: Good night, Nigel.

Nigel Roberts: Bye.

Keith Davidson: Good night, Nigel. Enjoy the meeting. So, we have Bernie, then Eberhard.

Bernard Turcotte: To Bill's point on the process and the timing and the various things, we've butted up against this several times. It's just that we haven't done this in awhile because this document is taking a little longer. But every time we get there and then we start going down this rabbit hole, we come up with the same answer. Let's not forget that we consider that not policy developing but going way further than interpretation and start to define process and procedure. Basically everywhere else we said we won't do that. There may be concerns. There may be issues. IANA should maybe develop these in a certain way and the ccNSO is there to watch over those things. But I think every time we've tried to get into due process and procedure we come out the other end saying -- No. That's not what we're here to do. We're here to say there should be a process. It should make sense. Maybe we'll have a note that if something doesn't exist, someone should look at it. But that's about it.

Eberhard Lisse: Keith, I have asked whether I could go into detail and he hasn't come back so I won't do that. But let it suffice to say that there are some issues. That was about you saying what the ccTLD manager is doing. There are some issues. I wouldn't let it stand like that. When he gives me permission to go into details, then we can talk about it, maybe off list or something?

Keith Davidson:	I'd be happy to meet with him and discuss that, the interesting academic aspects, in Toronto. Thanks. Let's move on. Bernie?
Bernard Turcotte:	5.2.6.3, we've read this before and didn't get any kind of consensus on this. The working group suggests that the ccNSO undertake in consultation with the GAC and interested stakeholders to identify from further discussion possible procedures to be followed in connection with any proposed revocation of the delegation of a ccTLD based on the work of the FOI working group. These procedures should be reviewed and approved by the ccNSO as it will be responsible for monitoring these. So, to the statement I made a little earlier here, we're clearly defining some avenue for doing this.
Keith Davidson:	Any questions? Bill has his hand raised.
Bill Semich:	I'm not sure why we have to single out any particular interested party. I would suggest we just say the working group suggests the ccNSO undertake in consultation with interested stakeholders or all interested stakeholders to identify, et cetera, et cetera.
Keith Davidson:	Okay. That sounds reasonable to me. Any other comments? Bernie, don't hold back.
Bernard Turcotte:	I don't think there's any significant issue around that. We were just trying to recognize the fact that we're undertaking this work collaboratively with ccNSO and GAC. So, I guess that was just there for some positive stroking. I don't think it's critical as such.
Keith Davidson:	If there are no other comments, should we move on?
Bernard Turcotte:	Basically the track I've taken is we never really agreed on anything in 5.2.6.3 where we start dealing with revocation or systems problems of the proper operation of a domain, meaning although we're only shifting gears from 5.2. to 5.3 this is the entire new section. Basically everything we've done in 5.2 has been about substantial misbehavior. With 5.2.6.3 we draw a line there and move on to 5.3. So, I'm just trying to make that clear for everyone. We're really significantly changing gears here. The bear to deal with was substantial misbehavior and we all knew it was going to be a tougher slog. Not that it was going to be a cake walk to go through persistence problems but hopefully it will be a little easier than what we did with substantial misbehavior. So, we're going to take it -- Eberhard, you have your hand up?
Eberhard Lisse:	Can we let this stand over for the next meeting? We're very few people. I also have to leave and it's probably better that we discuss this on the list first and then do it at the next meeting because it's so new and not previously visited.
Bernard Turcotte:	I have no issue with that given we're losing people and it's new text. Over to the chair.
Keith Davidson:	I see people indicating agreement with that. It has been quite a tough 1.5 hours on this call. Perhaps it's time to leave it. I think a lot of this is in some ways better handled face to face as we get to Toronto. Unless anyone has any objection, I would suggest we leave this topic here.
Cheryl Langdon Orr:	I'm happy with that.
Keith Davidson:	Sounds like everyone is in agreement. Bernie?
Bernard Turcotte:	I think we're done here.

Keith Davidson: Moving on the agenda then, we have other outstanding items, the response to the GAC on a couple of things. Becky has been doing some drafting work. I'll have something circulated in time for Toronto on this end. We'll hold that over. Our next meeting is on October 18, Thursday at 1:00 P.M. Toronto time face to face. Harvard C is the room. I think with that, unless there's anything else, I'll bring the meeting to an end. Nothing else from anyone? Everyone's happy? There's no snoring this week.

Bernard Turcotte: Thank you, everyone. I think this was really good.

Cheryl Langdon Orr: Thanks, everyone. See you in Toronto.

Keith Davidson: Bye.