

TRANSCRIPT

Framework of Interpretation Working Group

29 November 2012

Attendees:

ccNSO:

Keith Davidson, .nz (Chair)
Chris Disspain, .au
Nigel Roberts, .gg
Dotty Sparks de Blanc, .vi
Bill Semich, .nu

Other Liaisons:

Cheryl Langdon Orr, ALAC
Maureen Hilyard, ALAC
Cintra Sooknanan, ALAC

GAC:

Frank March

Staff Support and Special Advisors:

Bart Boswinkel, ICANN
Kim Davies IANA
Kristina Nordström, ICANN
Bernard Turcotte, ICANN
Gabriella Schitteck, ICANN

Apologies:

Jaap Akkerhuis,, ISO/ICANN
Martin Boyle, .uk
Stephen Deerhake,, .as
Paulos Nyirenda, .mw
Patricio Poblete, .cl
Suzanne Radell, GAC

Keith Davidson: Okay, everybody, I think it's three minutes past the hour, so we should probably make a start. And perhaps we've got all the people who will be on the call already on.

So, can we have, firstly, a list of who's present and apologies?

Kristina Nordstrom: Sure. Okay. From the ccNSO, we have Keith Davidson, Chris Disspain, Nigel Roberts, Bill Semich.

From liaisons, we have Cheryl Langdon Orr, Maureen Hilyard, and Cintra Sooknanan.

From the GAC, we have Frank March.

From staff support and special advisors, we have Bart Boswinkel, Kim Davies, Kristina Nordstrom, Bernie Turcotte, and Gabriella Schitteck.

And we have apologies from Patricio Poblete, Jaap Akkerhuis, Stephen Deerhake, Martin Boyle, and maybe Paulos Nyirenda. He will try to join (inaudible).

Keith Davidson: Okay. Were there any other apologies? Is there anyone on the call whose name wasn't mentioned? If not, can we move along and move to the meeting report from the meeting of two weeks ago?

Kristina Nordstrom: Keith, I'm sorry. Can I just remind everybody to state their name before they speak, for the transcript? It's easier for the vendors.

Keith Davidson: Okay. And I'll try and remember to call them on that if they don't.

Kristina Nordstrom: Okay. Great.

Keith Davidson: Thank you. And my apologies. I'm struggling on a hotel phone today. So I don't have hands free, and I probably will have to stay off mute just to participate.

Okay. Moving on. Confirmation of the agenda. Nobody's made any comments on the list for any changes. And I think we can work our way through without too many problems, unless anyone has anything to add or change.

If not, can we move on to the confirmation of the meeting of the 15th of November? I think they have been circulated for several days now, and I see nothing on the list. But does anyone have any comments with regard to the meeting report on any topic other than items that will come up on the agenda today?

Was that a comment?

Cheryl Langdon Orr: It was me saying no. Sorry.

Keith Davidson: Excellent. Okay. Moving on then to the big topic of the day, revocation. And I wonder, Bernie. It might be perhaps interesting to start with the Becky and Bernie paper rather than the revocation document and actually deal with, perhaps, a slightly higher-level view of revocation and see if this might help us when we get back to the detail. And, firstly, thanks, Becky and Bernie, for doing this extra piece of work.

And, Bernie, do you want to step us through it?

Bernard Turcotte:

Yes, sir. I'll be glad to do that for you. Give me a second. I'm making sure everyone has got it up on their screen. There we go. And back to this. All right.

So, after our last few meetings, I think we ended up going through a lot of considerations, and there was a lot of rehashing of considerations. And Becky and I felt that it was worthwhile setting a few things down from what we understand where we are now. And so this will not be part of any formal document. This is a background document strictly for us. So I don't necessarily think we should spend a lot of time arguing about specific words. If there are questions, great. But it's more of an informational document for us at this point to understand why we're drafting some things the way we are. And, hopefully, it will make sense and be of use. So what we've got here is basically the basics.

The working group charter requires us to interpret RFC-1591 using the RFC itself and the GAC principles of 2005 as reference points.

We had a look at the GAC principles. And I'm not going to read that whole, entire paragraph there. But, basically, what it comes down to is the last line, which says-- and this is Becky's interpretation-- In this regard, the GAC principles are a statement of law requiring no interpretation. It says, if there's a law, there's a law. And, you know, people have to apply it as per the mechanisms they have for applying the law.

And I think this whole thing we will get back to because we haven't gotten to this section in the revocation document yet. But it was interesting to sort of get that out of the way up front in our consideration.

The next point is point three of the Becky and Bernie document. Next, we need to look at it under RFC-1591. We are talking about revocation. We all agree that section 3.5 of RFC-1591 says that a delegation can be revoked for persistent problems with the proper operation of the domain. Our task, then, is to determine the meaning of proper operation of the domain under 1591.

And, basically, we struggled a little bit. The work we had done in revocation 4.2 raised a lot of concerns with folks. So we had another go at it and, basically, went the kiss (ph) approach.

After distilling the whole thing, what we came up with is really-- section 3.5 is about three things. There must not be persistent problems with resolving DNS requests or the outward-facing internet operation of a ccTLD. There must not be persistent problems with registering names or modifying server information as per published policy and procedures for doing so; so, basically, user-facing. And there must not be persistent problems with responding to IANA requests in a timely manner.

And, basically, bottom line, that's what it says. And, hopefully, we'll translate that into something the working group can accept in the revocation document. But, right now, that's what we're thinking is a kiss view of this.

And I think the words from Becky at the end of that are very useful. Taken together, this suggests a standard to be applied by IANA under 3.5, persistent problems authority. While it is not (ph) a requirement that the domain has to work, IANA has to be able to talk to the manager. This requirement is absolute,

not conditioned on intent, knowledge, willfulness, negligence, et cetera. If the problem persists after IANA advises you that the domain isn't working and offers assistance to fix the problem, it can begin revocation procedures.

Given the absence of any good faith defense and the nature of the remedy, revocation, it is hard to make the case that the requirement that the domain has to work includes the other obligations laid out elsewhere in RFC-1591. In any case, there is no need to do so, given the group's interpretation of substantial misbehavior under section 3.4.

So, basically, we're trying to just put a fence around 3.5 in RFC-1591 because, as Becky points out, there really is no good faith dissent (ph). Basically, it says it's got to work. It doesn't work. You were told, were offered help. And, if it still doesn't work, basically, we can begin revocation. So it really makes sense to put a rather tight fence around that because it is so absolute.

But then we move on to section 3.4 of RFC-1591 and our interpretation of substantial misbehavior, which is not clearly defined and, therefore, requires the FOI working group interpretation. In 4.1 of the document we're looking at right now, (unintelligible). We go through the logic we've gone through before. And it still holds that, if IANA is going to step in, the only thing it can mean is it can lead to revocation.

Under 4.2, the roles and responsibilities of the ccTLD manager are enumerated in the preamble to section 3 of RFC-1591. They fall into two categories - core operational requirements and requirements related to honesty, service, fairness, et cetera. The section then goes on to lay out two distinct standards - substantial misbehavior and persistent problems in the operation-- excuse me-- of the domain.

In this case, because the core operational obligations are covered by 3.5, it makes sense and is consistent with the principles of statutory construction and that 3.4 should apply to the other obligations and responsibilities described in the preamble of section 3. Not making this distinction and applying 3.4 and 3.5 to all of the obligations violates statutory construction rule by reading 3.4 as having no purpose whatsoever because 3.5 would swallow it completely.

Assuming, as we do, 3.4 has meaning and purpose in RFC-1591, then we look at the responsibilities and obligations not covered in 3.5. As the result is the six requirements listed below. And these are the standard ones that we've gone through and agreed that are listed and are the responsibilities. And there's nothing new there, so I'm not going to go through them in great detail.

Keith Davidson: Okay. But, at this point, I see Nigel has his hand raised.

Nigel Roberts: I'm just getting in line.

Bernard Turcotte: You've been getting your hand up, Nigel?

Keith Davidson: Would everyone form an orderly queue behind Nigel, please? Sorry, Bernie, please continue.

Bernard Turcotte: Okay. And then Becky goes on to describe this as: The obligations relating to honesty, fairness, equity, and duty to serve the community are rather subjective. At the same time, the consequences of substantial misbehavior are rather

drastic, revocation. The combination of hard-to-apply standards and serious consequences means that any revocation under substantial misbehavior standard carries potential legal risk for IANA/ICANN. Our interpretation must be practical and implementable. And, in this case, it makes sense to interpret the scope of this authority cautiously and to look to widely accepted norms that can inform ICANN of this authority.

The closest analogy we found, and it's a pretty good one, is the standard applied in the context of abuse of power, official misconduct. Laws prohibiting official misconduct generally include an intent/willfulness requirement. And, because the elements of this offense are reasonably well developed in law, it comes with statutory and common law precedence that might provide useful guidance for ICANN.

So we then move on to our interpretation of section 3.35. The above does not mean that there are gaping holes in IANA/ICANN's authority and does not strip the local community of its rights. Indeed, we think the interpretation adequately addresses many of Martin Boyle's concerns regarding a manager that is incompetent, that's using his authority for personal gain, failing to put in the necessary investments, or is simply absent.

And we go through the examples here. And I don't want to bore people, but, basically, Becky has done a really good job of going through this.

So, in conclusion, we continue to believe the working group's interpretation of section 3.4 and 3.5 of RFC-1591 is correct, consistent with statutory construction principle, and has the practical and important virtue of being something that ICANN and IANA can actually implement. We do not think it is inconsistent in any way with the central tenet (ph) of the GAC principle that, as a rule, a ccTLD operator should be accountable to the local community and that the sovereign is a representative of that interest. We also think that applying the persistent problem test to all the obligations and responsibilities identified in RFC-1591 is dangerous and unworkable. That approach would require IANA and ICANN to make legal conclusions that it is not and cannot be qualified to make. It would (ph) force IANA/ICANN to take on a role reserved for government enforcement of applicable law and subject IANA/ICANN to significant liability.

So, as I said, I don't really want to argue about this. It's not going to be published. But this is a bit of a snapshot from Becky and I relative to what we use as a framework to draft statements in a revocation document.

Over to you, Keith.

Keith Davidson: Okay. Thanks, Bernie. Nigel?

Nigel Roberts: Thanks. First of all, I'll just make sure you can hear me okay.

Keith Davidson: Yep.

Nigel Roberts: Okay. I'm very conscious of the fact that I'm not going to try and rewrite this paper. I've got three points or three things I want to talk about.

First of all is-- when did this paper go out?

Keith Davidson: It went out with the agenda the other day.

Nigel Roberts: I don't know why, but I've not seen it before. Probably my fault.

Keith Davidson: Okay.

Nigel Roberts: So I'm a little bit behind because, in doing this, I have read it very quickly. I mean, I'm glad we're not arguing over the exact wording of it because I would want to defer this to another call. However, I think we can probably manage to go on using this. That's fine. I think, despite the fact I'm half asleep and not really with it-- I was slightly under the weather about five or six hours ago-- we can carry on and make progress with it.

It is a very good document. I love that. I don't agree with everything in it. I think 95% is about right. But it's extremely good, and it's exactly the approach that I've been trying in my rather feeble way to argue for for the past few weeks and months. So congratulations to both of you on this. It's absolutely brilliant.

That doesn't mean I agree with every little dot and comma in it, but I think it's something that we can really make progress and get over some of the stumbling blocks and going around in circles that we've had for the last couple of meetings.

Now, there's two things. I'm going to talk about two things in this document, although I'm not proposing this document to be rewritten at this point, although, actually, I think it's so good that we might want to do that and put it up there as a background document which informed our discussions because revocation, again, is one of the most important things.

The first point-- let me get down to this-- is the interpretation that it is a condition, as lawyers use the term, that something borrowed (inaudible). But, it's a condition, as lawyers use the term, in 3.5 that the ccTLD manager has to respond to IANA in a timely manner. I think there's a red line here. I don't think it says that. And, again, I'm going to try and use my experience of being around running a ccTLD manager only two years after this was written, although I didn't see this before it was delegated to us. It's something I came across some months or a year or so later. Responding to requests means responding to requests for domain names. It does not mean responding to e-mails saying, from ICANN - We know you're in jail, but we're sending you an e-mail to see if you respond; and, if you don't, we're going to re-delegate your domain. So that's the first thing. I think there's a misinterpretation of the expression "responding to requests." So that's the first one I wanted to make about this document.

Do you want to talk about that before I make the second point, because I've spoken for long enough now.

Keith Davidson: I think no. Let's gather your pieces together, Nigel.

Nigel Roberts: Okay. The second point is easy to make as well, and it's interesting. It goes back to what I've been saying all along about-- if I said there are two limbs under which the IANA can step in/and/or revoke a domain, that's the substantial misbehavior and the persistent problems limbs. I agree very much with-- let me find this in the Bernie and-- I think it's in section 4 of the Bernie and Becky document. Let me see.

Bernard Turcotte: It's in 4, Nigel.

Nigel Roberts: Yes. 4.2. Not making this distinction and applying 3.4 and 3.5 to all of the obligations violates statutory construction rules by reading 3.4 as having no purpose whatsoever because 3.5 would swallow it completely. Exactly the point I've been making. And I think this is a compelling argument for reading that the substantial misbehavior test in 3.4 is intended to apply to the process of applying for a ccTLD and the immediate aftermath because, otherwise, it would have no purpose because 3.5 would swallow it completely. I see no problem with this because it does not say that the substantial misbehavior is not a reason for revoking a domain because there's a more objective test in 3.5 - are there problems with the domain-- persistent problems with the domain?

So I'd like-- even though I'm perhaps somewhat of a minority on this, I think this particular part of the document-- I'll call it the background document or the assisting document-- might get some more support that takes it from being a 40% view to a 55% or 60% view. In many ways, it really doesn't matter whether I'm in the minority on this or not, so long as the discussion was captured within the end document. But I think that's--

There is two points with the Bernie and Becky document.

Keith Davidson: Okay. Thank you, Nigel. And, look, I think, in terms of this document, this is a first read of it. And so it will remain on our agenda for at least one more meeting. And I think--

Nigel Roberts: I was hoping we could deal with it right now in five seconds.

Keith Davidson: Well, but I think the important issue here is this is trying to achieve a background understanding that might help our friend Martin come to grips with what I think we as a group have sought to determine and also clarifying some of the suggestions you've made along the way too, Martin-- Nigel, and also to try and assure our GAC colleagues that we're not trying to usurp their authority over sovereign right and so on. So it's a multipurpose document.

I don't know that we'll ever publish it, so fine-tooth combing it is not the issue. But having it in useful standing so, if in doubt about a part of the interpretation of revocation later, you can refer back to this document and say - Yeah, now I remember why we did that. So I think understanding that intent is probably quite important. But thanks for the discussion. And, oh, I see you've re-raised your hand, Nigel.

Nigel Roberts: I just conjured that somebody else might want to speak, first of all. I'll just make it very quick. I think this is so good that, if we can tweak it a tiny little bit, although we won't put it as part of our report, we should perhaps find it in the background. The concept on the continent or, rather-- but not in common-law parts of the world, whereby, if anybody is looking at what the meaning of a (unintelligible) European directive or law is, they can also look at what, unfortunately, is a French word for this - travaux-- I can't even say it at this time in the morning - preparatory works. And I think this is so good that we should put a little bit of effort into tweaking it ever so slightly in the event that it ever becomes useful to anybody in the future. It doesn't have to be part of the formal report, but, if we can just capture the two points I've made in this document in some way, then it's that good that we can-- obviously, everything's public that we do-- provide access to it along with the report.

Keith Davidson: Okay. Well, look, I think Bernie's probably got enough feedback from you--

Bernard Turcotte: We'll do our usual thing, Nigel. I'll chat with Becky, and we'll exchange versions. And we'll see if we can add a few notes in there that would--

Nigel Roberts: Yeah. That would be cool. I mean, I don't want to bat this backwards and forwards. And I think it's pretty standalone. And I agree with 95% of it.

Bernard Turcotte: Excellent.

Keith Davidson: Okay. Does anyone else have any comments? If not, Frank, could I specifically ask you if you had the opportunity to run through this with Suzanne and actually make some comments on our next call or on the list, as well, given that it's not a document that is likely to-- well, it may end up being published but, at this stage, as a non-publishable document, whether you agree in principle and whether it will help in your understanding of revocation?

Frank March: Yeah. I've got no problem with that, Keith. I actually think-- I agree with Nigel. It's a pretty good document. I can't see any reason to disagree with (unintelligible), to be honest. So, yeah. Somebody who's of a more critical mind than mine might perhaps see some problems with it. So (unintelligible) to Suzanne getting a reaction to it, it's not a bad idea at all.

Keith Davidson: And, in fact, if she's in Dubai, we might be able to make that--

Frank March: No. I'm afraid she's not going to be in Dubai.

Keith Davidson: Okay. Never mind. Thanks, Bernie.

Frank March: Going back onto mute.

Keith Davidson: Thanks for that, Frank. So, Bernie, we'll do some more work and then--

Bernard Turcotte: All right. So our next document will be revocation 4.3.1 (ph) after my minor blunder this weekend. And, as noted, the only changes versus 4.2 is section 5.2.4 and section 5.3.2 (ph). So let's go right down to 5.2.4. Almost there. Here we go. All right. So hopefully I got it right this time.

So we're back to defining substantial misbehavior. 5.2.4.1 is misbehavior and was slightly amended at our last meeting. It seemed to be okay, but we'll go over it one more time.

The working group interprets misbehavior in this context to refer to conduct involving the failure of a designated manager to, one, carry out the necessary responsibilities of that role, or the failure of a designated manager to, two, carry out those responsibilities in the manner required by RFC-1591. A TLD manager would then appear to have misbehaved if it willfully neglects to carry out the duties of a TLD manager and/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 trust placed in him or it by virtue of his/her/its duties as a ccTLD manager.

Keith Davidson: Nigel?

Nigel Roberts: It takes a second for my phone to tell me that it's un-muted itself. I take it I can be heard.

Keith Davidson: Yep. You can now.

Nigel Roberts: Good. I appreciate the attempt to restore the meaning of the interpretation. Like Martin, I'm getting fed up with this word "willfully," particularly in 1.1.1, but for different reasons. It's just stylistic reasons, not for reasons of meaning. This is something we can do by e-mail, offline, if that's acceptable. But 5.2.4.1.1-- however many 1s-- I think we could remove one of the "willfully's" and replace it by an "or" or something like that. But I'm not going to do it on the fly at 3:00 in the morning or 3:30.

Bernard Turcotte: I think what we said, Nigel, is we all agreed this needs a cleaning up.

Nigel Roberts: Sure. That's an in-passing point. The main point is that, when I was objecting to you directly a couple of days ago, Bernie, it wasn't from that-- it wasn't missing (ph) from that section that I was complaining about. It was the first sentence in the parent paragraph. So the bit between the word "the" and the first full stop before a TLD manager would benefit (ph) of misbehave-- that is not really the correct interpretation of misbehavior. And this again, I think, is one of the issues that Martin and I have not agreed upon. I don't believe you can redefine the word "misbehavior" to suit ourselves. I believe you, at the starting point, have to be the dictionary and the way not just courts but official bodies have interpreted the word "misbehavior" in regard to an office holder.

And I'm not actually that confident that that sentence, the first sentence in the superior paragraph, really does capture this. Misbehavior is not the failure of the designated manager to carry out the role. That's, in a way, what 3.5 is all about. That's persistent problems. So there's always a limb in RFC-1591 to find a route to revocation through what's defined in 5.2.4.1-- the superior paragraph. But I don't believe that's the interpretation of the expression "misbehavior" or, even, "substantial misbehavior." It's behaving badly by the standard of what you should be doing. That's what misbehavior is. And we're not capturing it.

Keith Davidson: Okay, Nigel. I thought that this was the text that you had previously, actually, agreed and consented to. So I'm not sure. Is this a change of heart or--?

Nigel Roberts: It's not a change of heart. I just think, originally, we had intentional failure or willful failure. That was the point where I think willfulness should have been. And that sort of did capture it, as far as I was concerned. I think there might be a better way of doing it. But I'm not going to do a Martin and drill down too much and get too hung up about it, so long as the overall meaning is coming out here. The way this is written, it simply is just a rehash of what persistent problems is or a thing of persistent failure.

But misbehavior is something different. Misbehavior is the good stuff that you put in the background document about using the-- inequitably doing something for personal gain. In other words-- I don't know. I can't think of a good example at this point in time. But the key to it is it's the word "equitably" in RFC-1591 - doing something inequitably. That's misbehavior.

Keith Davidson: Okay. Thanks, Nigel. Let's hear from some others. I sort of thought that we might have got past this point. But let's hear from some others. And I see Bill and Chris have their hands raised. So, Bill, firstly, and then Chris second.

Bill Semich: I missed the last call, so maybe this got by me and there's a simple answer. But I'm a little concerned about 5.2.4.1.1(1) as to what exactly we mean when we say

the necessary responsibilities of that role. I don't know that we have anything to refer back to. And so we're sort of opening a can of worms here. Bernie, can you fill me in? Or is this just the phrase that we put in there, and we'll leave it to someone else to figure out (ph)?

Bernard Turcotte: All the things we identified as the six points, which we talked about in the previous document--

Bill Semich: In the working paper (inaudible)?

Bernard Turcotte: -- and are listed in section 5.2.3 above.

Bill Semich: The necessary (inaudible).

Bernard Turcotte: We go through the document, and we actually see things more clearly.

Bill Semich: So somewhere in this document these necessary responsibilities are spelled out?

Bernard Turcotte: Sure. Yep.

Bill Semich: I think it would be helpful to point that out in this section, referring back to whatever or capitalizing it or the way they do in agreements, you know, where they put capitals on things that have specified meaning.

Bernard Turcotte: Good call. We'll note that.

Bill Semich: Okay. Thank you.

Keith Davidson: Okay. Thanks, Bill. Chris?

Chris Disspain: Hi, Keith. Thanks. Can you hear me?

Keith Davidson: Yes.

Chris Disspain: I just want to-- I wanted to try and-- on to Nigel's point, if I could. A couple of things. The reference to defining misbehavior as courts have done in respect to the behavior or misbehavior of an "officer," which I think is the term Nigel used, is fine. But it doesn't apply in this case. There is no recognized legal entity that is an officer or has (ph) a ccTLD manager. Officer with a capital "O" has various different legal meanings, but it doesn't in this case. We have no choice but to define what we believe to be the requirements of being a manager and, then, what we say is misbehavior.

The second point is that I think it's inappropriate to use the term "willfully" in respect to misbehavior but completely appropriate to use the term "willfully" in respect to substantial misbehavior. And that, I think, is the way that it's intended to be read in this particular sense. Sorry. I'll rephrase that. You've got to have "willfully" used in respect to the misbehavior because-- willful neglect, rather, in respect to the misbehavior because, if you don't have willful neglect, then a mistake can be deemed to be misbehavior. And the whole point about the use of the term "willfully" is that it takes out the possibility of a mistake. It becomes substantial if it's repeated.

So, at the risk of taking us down a dark alley, I wonder if, Nigel, I could ask you to explain to me again why you think the use of the term "willfully" in the sub-paragraph isn't appropriate but would be in the main paragraph.

Nigel Roberts: For the reasons you just stated, Chris. Let me walk you through it, and I think you might with me.

I'm not suggesting removing "willfully" from the subordinate paragraph in intent or meaning at all. I'm suggesting removing two of them and replacing them by one and for stylistic reasons. That was the point I made to Bernie. And I think that's sort of noted for future-- okay.

So, going to the superior paragraph, what you need to do is to isolate the first sentence. And, when you isolate the first sentence, without any indication of intention, you then produce a sentence saying the working group interprets misbehavior to mean the thing of the two things that you don't think it means.

Chris Disspain: I'm sorry. I don't understand.

Nigel Roberts: All right. The first sentence defines misbehavior as merely failing-- as mere mistake. And I don't think it is.

Chris Disspain: No, it doesn't. It says that it interprets misbehavior as conduct involving failure to carry out the responsibilities. Hold on a second. Let me-- Nigel, let me have a look at this in a little bit of silence for a while, and I'll get back to it. Let's move on to something else.

Nigel Roberts: I'm happy and content with that.

Keith Davidson: Okay. Could I remind speakers, particularly if you're entering into a two-way conversation, to introduce yourself for the record, so the transcribers have a clue? And, for the record, that was Nigel Roberts and Chris Disspain debating.

Nigel, are you happy then? Or did you have another point (inaudible)?

If not, I'll put hands down. And, Bernie, can we move on?

Bernard Turcotte: Yes, sir. So then we move on to substantial misbehavior. Substantial misbehavior would involve misbehavior as defined above that is either egregious or persistent and would be 5.2.4.2.1 (ph), the knowing, repeated, material failure to perform the necessary responsibilities of the designated manager in a manner that is equitable, just, and/or honest-- Yes, there's a "T" missing-- or, sub-section 2, performing the necessary responsibilities of the designated manager in a manner that imposes serious harm or has substantial adverse effect on the local or global internet community.

In this context-- whoa, someone's playing with the text (ph)-- serious harm, substantial adverse effect should be evaluated in the context of the IANA contractor's continued focus on DNS security, stability and described in the previous section.

So questions, thoughts, comments?

Keith Davidson: Everyone's either gone to sleep or are in stunned silence and acceptance. So let's assume the latter.

Bernard Turcotte: Shall we carry on here?

Keith Davidson: Yes. Please, continue.

Bernard Turcotte: All right. So I guess we'll move on to section 5.3, which is the other change, leaving section 5.2 for the moment, since the next big chunk of the changes to this version are there.

Section 5.3 deals with section 3.5-- sorry for all those that are dyslexic-- for persistent problems with the proper operation of the domain. And then we've got all of section 3.5 of RFC-1591 listed. And, basically, what we do then is based on the background document we looked at earlier.

So persistent problem. Oxford Dictionary: adjective. Continuing to exist or occur over a prolonged period. Persistent rain will affect many areas. Persistent reports of human rights abuses by the military. And then the working group interprets persistent as being modulated by the severity of the problem. A ccTLD being down for a one-month period continuously should be considered a persistent problem. A manager failing to reply to an IANA request within one month as a unique event is not a persistent problem.

So we'll take a break here and go to Nigel. Caller number one, you're on.

Keith Davidson: And it appears you might be still muted, Nigel.

Nigel Roberts: Your line has been un-muted. I don't have a problem with what you're trying to say in 5.3.2.1.2, fortunately. But I do have a problem in understanding the-- and I think other people will as well. Persistent means happening a lot. It means more than once, many times. The first sentence is kind of-- this modulated business. I'm having problems with it, just the same way I have problems with sponsoring organization, because I don't understand the definition of it. And I think perhaps there's a better way of putting it.

Bernard Turcotte: This is my mathematician's brain, and I'm certain there is a better way to put it. But this is brand-new text. And, as usual, it's the general concept we're trying to get across here.

Keith Davidson: I think the point that Bernie's trying to make with persistent is, if you have persistent rain, it doesn't mean that there are several showers of rain. It means it doesn't stop raining. So the problem has become persistent by time, not by repetition. It's a continuum of rain.

Nigel Roberts: Yes, I understand. But I'm not sure that RFC-1591 actually says this. I don't think the interpretation actually says this. So what he's actually saying is that, if there are persistent problems with the domain-- it doesn't say it's modulated by the severity of the problem. I think you've got to test-- you've got to go-- the problem has to be important enough. But, once you got over the important problem, you can either have one very big problem or lots and lots and lots and lots of medium-sized problems. Small ones would be under the *de minimis* rule anyway.

Bernard Turcotte: I'm not arguing that.

Nigel Roberts: Okay. Then I really didn't understand what you're trying to say in the first sentence. And would it hurt if you removed the first sentence or, at least, said something about the problem should be big enough to be bothered about?

Bernard Turcotte: We can work on something like that.

Nigel Roberts: Okay. Cool.

Bernard Turcotte: Just trying to make the difference that small things don't count. But, like Keith was saying, my point for persistence-- the distinction we're trying to make is persistence can be a number of occurrences of an issue over a period or a continuous occurrence of one issue over a longer, single period.

Keith Davidson: And I think the examples work quite well to explain. Anyway, I think, noted, Nigel, that some (unintelligible) would be useful. And can we move on?

Bernard Turcotte: Okay. We'll move on then, sir.

Keith Davidson: Yes, please.

Bernard Turcotte: Okay. So then, having looked at this under the heading of-- And just be clear. We were just looking at trying to identify persistence in the previous section. The problem-- you'll recognize this. It's been reworked to sort of fit in the context of our document. But it's the three points we made. We already have the point from Nigel that he doesn't believe the responding to IANA requests is the way we're interpreting that. And we haven't finished arguing about that. So I don't know where we'll fall on that.

But, right now, from the initial point, what we've got or what we're proposing is the working group interprets the problem in section 3.5 of RFC-1591 as referring to three specific situations: failure to consistently and correctly resolve the (unintelligible) for sub-domains from the internet, failure to consistently and correctly offer services for registering domain names or modifying server information for a domain name as per published policy/procedures for doing this by the manager, and failure to respond to IANA requests in a timely manner. So, basically, these three points have just been translated over to this segment of the document.

Questions? Comments?

Keith Davidson: There's a hand up from Nigel and then a hand up from Kim. So, Nigel, please.

Nigel Roberts: I don't think that-- something-- funny way of putting it. I don't think that there's nothing that can be said about the breakdown of communications between the IANA and the designated manager. I think that does fall under one of the requirements here. But I don't think the one that we're using to-- that the authority for it is the right one.

Keith Davidson: Okay.

Nigel Roberts: Does that make more sense? Bernie, if you want to, we can talk about this offline. I think we can keep some of what you're trying to say but find-- I say a different part of the paragraph is providing the authority for it.

Keith Davidson: Okay. Thank you, Nigel. And I think Bernie will take you up on that offer. And Kim?

Kim Davies: I just raised my hand so there will be more voices on the call. I think Nigel really captured the point I think I was going to make, which is that I think a breakdown

in the communication between the parent and the child in the DNS is a problem, just as expected registrant within a TLD stopped responding to any inquiries from the registry. That would become an issue over time. So I don't consider it a binary opposition. But some language that recognizes that the TLD manager needs to have a relationship with the IANA to properly operate the domain, I think, is important.

Keith Davidson: Yep. I think-- As we've discussed in the past, I think that is an essential part of the expectation of the framework so that there will be an ongoing relationship to between IANA and the ccTLD operator. But point well made. Thanks, Kim.

Bill has his hand raised. Bill?

Bill Semich: Yeah. I'm sort of tending towards Nigel's point of view in terms of responding to requests. I think those are DNS requests, actually, if you read the RFC with a magnifying glass. But that doesn't change the fact that the need for internet connectivity as RFC-1591 requires and the requirement to keep the central internet registry advised of the status of the domain are important requirements on the manager. It's possible that the way this has been phrased isn't as solicitous as we would like. But perhaps, with a little re-crafting, it could be fixed.

Bernard Turcotte: More than welcome, as usual. You know, guys.

Keith Davidson: Okay. Well, I think there was a suggestion from Nigel that he'll work with Bernie. If we can have a look on the next call at a revision of text, and, if we haven't progressed too much, set up a small drafting group to rework on that, if that's all right with everybody.

Okay. I think, with no further questions, please, continue, Bernie.

Bernard Turcotte: Thank you, sir. The next point is 5.3.2.3. This has not been rewritten. It's basically the original one of glowing, persistent, and problem together. Ongoing or repeated problems as defined above, which, when considered as a whole, impose serious harm or have substantial adverse effect on the global or-- on the local or global internet community-- sorry-- fading here a bit, guys-- in the context-- In this context, serious harm and substantial adverse effect should be evaluated in the context of the IANA contractor's continued focus on DNS security and stability as described in the previous section.

So, basically, we've just tried to keep it in sync with the language we were using in the previous section when talking about substantial misbehavior and ensuring that we're not talking about little things. Maybe-- I think it's Nigel who put it best a few meetings ago. A bunch of little things can add up to be a serious problem if there's enough of them. Or it can be a big thing. But we're not talking about a single occurrence of a small thing being considered a persistent problem under this area.

So questions, thoughts, comments?

Keith Davidson: There don't appear to be any forthcoming questions or comments. Please, continue.

Bernard Turcotte: You can't tell, but I'm very excited at this point.

Keith Davidson: Well, I think we can now.

Cheryl Langdon Orr: Thanks for sharing, Bernie.

Bernard Turcotte: Ah, you know, Cheryl, always looking to share with you.

All right. Well, at this point, what I-- I don't have anything new. I mean, basically, I think we had Chris that was reading over section 5.2.4 and was going to discuss with Nigel. We've got the communications issue with IANA. And we've gone over our thinking of the document. And all the rest of the stuff, basically, we've gone over, and we can argue about again.

But, in light of what we've done, I'd like to-- and the information we've gotten over the other meetings actually not waste people's time because I think we got some new information, and I'd like to redraft some of these sections and not put everyone through this one more time, if that's okay with you, sir.

Keith Davidson: That's fine by me.

Bernard Turcotte: All right. So we're done with the revocation document for today as far as I'm concerned.

Keith Davidson: Okay. Does anyone else have any inputs to the revocation document as it is? Nigel?

Nigel Roberts: I'd just like to express what a delight it's been to do this at 3:00 in the morning. No. What I mean is that it's just gone so effectively and so well today. Thanks to Bernie and Becky and to everybody else who's been involved in that.

Keith Davidson: Thanks, Nigel. And, yes, I think Becky and--

Bernard Turcotte: All right then. Over to you, sir.

Keith Davidson: Thanks, Bernie. Look, I think we have made substantial progress. But, of course, we don't have Martin on the call, and he has been constantly concerned at the way the text has been moving. I think we've made some progress behind the scenes during the week as well. And so let's hope, firstly, that we can have a full group on the next call, which might be difficult, given that a number of us are in Dubai and may be very distracted the week after next on the end outcomes of wicket (ph). But let's hope we can have a call with a meaningful number on it and see if we can't wrap up some of this stuff.

Nigel, is your hand re-raised? Do you have a further point? No. The hand's gone down.

Dotty Sparks de Blanc: Keith, this is Dotty. I just want to say that I am here, even though I haven't said anything.

Keith Davidson: Oh, thanks, Dotty. We'll note (inaudible).

Dotty Sparks de Blanc: I got in a bit late.

Keith Davidson: We'll note that for the record. But I didn't hear the beep of anyone additional coming in. So sorry to have ignored you.

Dotty Sparks de Blanc: Well, it did. It beeped.

Keith Davidson: Welcome. Okay. Any other comments regarding revocation? If not, can we then look at our next meeting, 13th of December at UTC 1100? So two weeks from today, plus (unintelligible). And we'll talk to you all then. Thank you, all, for your participation. And, unless there's anything else from anyone, I'll call the meeting to a conclusion and thank you all for your participation. Thank you.

Bernard Turcotte: Thank you.

Unidentified Participant: Thanks, Keith.

Unidentified Participant: Thanks, all.

Unidentified Participant: Bye, everybody.

Unidentified Participant: Sweet dreams.

Unidentified Participant: Bye.