STEPHEN DEERHAKE:	Good morning, good afternoon, good evening. I want to thank everyone for joining today's teleconference, our second since our face-to-face meeting in Marrakech. For the record, this is the, I guess, 1st of August 2019 edition of the ccNSO PDP Working Group tasked with developing ICANN policy with respect to the retirement of ccTLDs [in] the root zone. We convened at some god-awful hour my time locally, so thanks to our Secretariat for being up late and being up earlier.
	With that, let's jump into administrative announcements. Do I have any? Let's see here. With regards to the schedule that we kicked about last time and put on the list, we did decide to go ahead with both August meetings, which is this one, the 1st of August, at 05:00 UTC, and the 15th of August meeting, which will be six hours from 05:00 UTC. We will go ahead with the full schedule of meetings running up to our next face-to-face in Montreal. So I want to get that out of the way. I understand that people are on holiday, but we will muddle through as required. That is it from me with regards to administrative items.
	Action items. Bart will be covering that in his presentation. I think, at this point, I am free, unless I'm seeing any hands or Bart's wiggling –no. There's no wiggling that I can see. Anybody wiggling? Nobody is wiggling. So let us move on to Item 3A specifically.
BART BOSWINKEL:	I'm ready, Stephen.

STEPHEN DEERHAKE: I will turn the floor over to Bart.

BART BOSWINKEL: Thank you, Stephen.

STEPHEN DEERHAKE: Thank you.

BART BOSWINKEL: Can you put on the table, please? The first one.

STEPHEN DEERHAKE: Now I'm going to mute because [inaudible]

BART BOSWINKEL: You better go mute [then]. There you are. Just to explain – some of you were not present on the last call – we ran through the breakout sessions on decision-making oversight and, subject to review, what you've done in Marrakech. Could you scroll down, please? Scroll down again because this is … So what I've done based on the conversation last time, as I said I would – let me first explain what happened – is I've listed the decisions that you looked at. Then you got the Groups 1, 2, 3, and 4. There were four groups. Each of these groups made a presentation. We used the presentation and flip charts. What I've done for this week is I've combined them in Column 5, which is called Columns. It's more the consolidated.

What I've done is, if there is a consensus view on the entity that should take a decision or do oversight or a decision whether it's subject to review, entered this like an X. If there is a discrepancy or if there is no clear direction or there is one or two groups or even three groups who do not list it as such, I've entered a question mark. I think that's more subject for discussion by you and whether you want it included as such, and, if so, who should take, for example, the decision.

Take, for example, Number 5: Decision [of] administrative transfer. One could argue that, following existing – needs to be excluded from the basic process because it's not based on the comments from Kim Davies. It's not always part of a procedure. The question is whether it should be included and, if so, what it really [means]. The group hasn't discussed it but it came up, so I've included it. There is no shared view on this one. I wouldn't say consensus, but there's no shared view. Hence the question mark. And also because it transfers. Some have entered oversight by the ICANN Board, others just IFO. Two groups haven't entered anything, so there is also a clear question mark.

With respect to subject to review, again, you can see clearly there are two groups who say the decision should be subject to review. Two haven't entered anything. That could be due to the lack of time or anything else.

My suggestion is to run through each of these decisions and check where the group is at. I could even make a suggestion. My question to you is, is this a helpful overview and a consolidation of the decision in Marrakech, of the discussions in Marrakech?

Stephen, any comments?

STEPHEN DEERHAKE: Can I elicit any comments from—

BART BOSWINKEL: I see – Kim, could you enlarge it a little bit?

STEPHEN DEERHAKE: I don't see any hands waving, but I would certainly like to elicit some comments on what Bart has presented here. If Nick or Alan or have any comments on this, is Bart on the mark? Is Bart off the mark? Can we get some feedback? It would be appreciated. Thank you.

NICK WENBAN-SMITH I haven't gone through all of the notes and verified that everything is put in the right place, but looking at is a helpful …

STEPHEN DEERHAKE: Thank you, Nick.

NICK WENBAN-SMITH: … of where everybody seemed to be placing their [cards] in terms of who's doing what and what the oversight – and should there be some review and, if so, by whom. So I think that's quite a nice thing on one page to summarize whatever [inaudible]. It wasn't in class multi-stakeholder fashion. It wasn't the clearest, probably most coherent set

of following to go along with that. I think this is quite helpful in terms of trying to pick our way through what should happen next.

BART BOSWINKEL: Thank you, Nick. To be clear, this is just capturing, as we said in Marrakech at the end of the session, what you discussed. The goal is that we try to insert, if you agree, some of these. First of all, it was very clear from the discussions that the decisions or how they are decisions need to be rephrased. That is a next step and will be included in the procedures document. So it's very clearly where and how the decisions fit in. You can already see this in the workflow document that Bernie has produced. So that's one.

The second thing is – that's why it's so important for us: to understand where the group thinks the review needs to kick in. Not so much the review process itself but this is where people think the next phase or where this process ends (the retirement process) and then we head into the retirement of the review of the decisions for the next group. But at least you dovetail the two a little bit. So there's definitely more follow up, but this is a start point of where we can start inserting in the procedures document, in the process document.

Eberhard?

EBERHARD LISSE: I don't understand everything, especially the numbers that marked in light blue – 1, 2, 3, 4 columns. I don't want to go into this now but we can do this offline. That will—

BART BOSWINKEL: It's very simple. The 1,2,3—

EBERHARD LISSE: No, I don't want to discuss it now because it's a bit complicated. Let's discuss this online and see whether we can get it in a way that it's easier to understand and better to read.

BART BOSWINKEL: Yeah. I can tell you now because it's relevant. It's Group 1, 2, 3, and 4. In the previous … The groups that did the breakout groups in Marrakech.

EBERHARD LISSE: Oh, okay. That should have been—

BART BOSWINKEL: It was included in the previous version, but—

STEPHEN DEERHAKE: Eberhard, it was discussed on the last call, which you were not on, which explained all that.

EBERHARD LISSE: Okay.

BART BOSWINKEL: Apologies. Otherwise, I couldn't fit it on one page, which is already—

EBERHARD LISSE: Okay. That's why I was asking. We could have maybe taken it offline. Anyway, thanks.

BART BOSWINKEL: This is relevant for you, so please, if you go back and think about which group you were in in Marrakech, you can speak to it if you want to.

Eberhard, is that an old or a new hand?

EBERHARD LISSE: Old. I will review it just now.

BART BOSWINKEL: Okay. Thank you.

STEPHEN DEERHAKE: All right. I note in the chat a comment from Jaap. Nick says yes. Allan says it's a reasonable summary of the discussion. Brent thinks this is an awful quick read. I return it back to you, Bart, to continue.

BART BOSWINKEL: Thank you. I don't with this background whether you want to do it right now, but I think what we need to know – my suggestion for the group – is just to run through especially the line items where you see question

marks because there is clearly not a shared view on, for example, oversight, where the decision to send out a [notice every] time on whether it should be subject to oversight of the ICANN Board. Group 2 clearly states as such, but the others didn't. You can see decision notification – no retirement in place, etc. – as well.

So my next question is, do you want to have a discussion right now, or do you want to defer it to the next meeting? Now you understand this. Look at it. I will not change it. You can think it through and maybe fill it in and get back to this on the next meeting so we can complete it and have a shared view, which we then can insert in the documentation.

STEPHEN DEERHAKE: As the prerogative of the Chair, I think we probably should initiate a discussion on this, given who's on the call now, knowing that we're going to have different participants on the 15th of August call. I think we really need to try to push all this forward. Not that any final decisions are being made on either this call or the next call, but just to solicit from who's on this call and who will be on the next call running in September when people are finally back from holiday and we can get back down to serious business.

Given that, I look forward to if anybody has got comments on this particular call. I'm looking.

BART BOSWINKEL: May I suggest, to start to make it easier for everybody --can you scroll down, Kim? Wrong page – that we, which I think is an interesting one,

start with #7 and discussion because everybody can see this very clearly. Probably that's the most critical part of the whole procedure that was designed: whether or not IFO and/or the ICANN Board agrees to the retirement plan. If you look at it, Group 2 and 3 clearly say that the decision to agree – or disagree, for that matter – is an IFO decision. The other groups did imply it, more or less, but they didn't make it explicit.

So a first question, I think, for everybody is, should the initial decision – just click on yes or no – to agree or disagree to the retirement plan be with the IFO? I think this is … I see Allan click yes. Others—

STEPHEN DEERHAKE: Allan [inaudible] agrees. Let's see. Eberhard agrees. Nenad agrees.

BART BOSWINKEL: Others?

STEPHEN DEERHAKE: Nick agrees. Sean [inaudible].

BART BOSWINKEL: So, in principle, I would say …

STEPHEN DEERHAKE: [inaudible] has agreed.

EN

BART BOSWINKEL: Eberhard, your hand is up?

EBERHARD LISSE: I noticed yesterday during a Zoom where I was the host that it has a poll option. Should we, in the meantime – maybe on our next prep meeting – experiment with this to see how it works and then use it? It may well be that this poll can then be recorded or saved somewhere so that we can do things. We ask the question. We record the [inaudible], so to say.

BART BOSWINKEL: Yeah. No problem at all in doing so. So I would say, based on this one – you can remove your clicks – that there is a … Is anybody objecting that IFO takes this decision? Let's put it that way. If you object, please enter a yes.

STEPHEN DEERHAKE: I don't see any yet. Let's see.

BART BOSWINKEL: It's very clear that some people – Eberhard has a no, so he does not object that IFO takes that decision. That's my interpretation. So that's very clear. Decision 7 is clearly a decision of IFO.

The next one is oversight. Should there be oversight by an entity? In particular – it was suggested by one group; again, it's Group 2 – by the ICANN Board of directors. So oversight. Oversight is interpreted is a due diligence check, as you can see at the end of the [inaudible].

Again, I see one click. Please, if you agree there should be oversight …

STEPHEN DEERHAKE: Bart, are we looking for green clicks or oversight?

BART BOSWINKEL: Yeah.

STEPHEN DEERHAKE: Okay. So we got Allan—

BART BOSWINKEL: And the decision to agree to the retirement plan.

STEPHEN DEERHAKE: Okay.

BART BOSWINKEL: I see Eberhard is opposed and Nenad as well.

STEPHEN DEERHAKE: Ah, okay. Can we elicit some comments from those who are opposed?

EN

BART BOSWINKEL: Maybe also why you're in favor. Allan? Maybe, Allan, we'll start with you on why you think the ICANN Board should oversee that decision in the sense of the due diligence. And Eberhard's hand is up as well.

STEPHEN DEERHAKE: Yeah, we've got Nick and Eberhard's hand up as well.

ALLAN MACGILLIVRAY: So do you want me to … I mean, I'm happy to chat – sure. I'm just following the parallel we have now for delegations and transfers. We'll have a discussion later about compressing the decisions, but I see this as the most important decision. It's something that has the possibility of being contentious. Therefore, I think that there should be some due diligence review before it's finalized. But I'm certainly open to listening to the arguments of others. Thank you.

BART BOSWINKEL: Thanks. That's what I … yeah. Nick, your hand was up first.

NICK WENBAN-SMITH: I didn't say yes or no because I don't think I've got a clear opinion on the oversight in general yet. I suppose I wish to talk a little bit about [inaudible] interaction between IFO and ICANN because IFO is supposed to be semi-independent but I can understand things like the final decision to allow a new ccTLD into the root and various significant changes like that. But this sort of operational stuff would seem to be

within the remit of IFO [inaudible] necessarily seem appropriate to have a full check in place of the ICANN Board.

I'm a bit worried, I suppose, about overengineering some of these processes because, if we're going to have a [inaudible] anyway … because, if you think about it in practice, either the plan is a sensible one – IFO agrees it is and everybody is happy, in which case it's a sort of formality to go through the ICANN Board process and in fact might be unhelpful if they don't agree what other people have done that are a bit closer to it … I'm not quite sure what they can usefully do, but if there's going to be a review process – I imagine the situation is that the retiring manager [is of ten] years and IFO says, "No, your plan is rubbish. We don't agree with it and you've [barely got five]," then we're into what I would call the dispute [inaudible] or the proper review process, in which chase this whole ICANN Board process is unnecessary and is just going to [inaudible] some of the time potentially.

So I think it all depends on whether there's effectively a proper review in the event of disagreement. That's really where, as you say, it could be contentious. I agree with Allan. I could well be contentious, but whether the ICANN Board is the place to oversee the contention is something I'm not convinced about at the moment. As long as there's a meaningful process that an unhappy manager who's been refused ten years can get some sort of satisfaction from, then I think that's probably the more important thing to think about.

BART BOSWINKEL: Thanks, Nick.

STEPHEN DEERHAKE: Thank you, Nick.

BART BOSWINKEL: Eberhard?

EBERHARD LISSE: I don't think you can review discretion. You can appeal discretion. So I agree: we should not …

BART BOSWINKEL: Eberhard, you dropped off.

STEPHEN DEERHAKE: No Eberhard.

EBERHARD LISSE: My Internet connection is unstable, it says. It is better now?

BART BOSWINKEL: Yes, it is.

STEPHEN DEERHAKE: Yeah.

EBERHARD LISSE: I don't think we should have a step – ccTLD manager, IFO, ICANN, ccTLD manager, IFO, ICANN – for every step of the way. I agree fully with Nick. The operational stuff, especially discretion, cannot really be reviewed on every step of the way. The ICANN Board should review [if] the name gets removed from the root in the beginning. The trigger is there. And in the end, all the i's have been crossed and the t's have been dotted. I know that is the wrong metaphor. But the individual step, especially the one that amounts to discretion, is appealable. They're not reviewable by the – it becomes too detailed. Then we don't need IFO to do that.

BART BOSWINKEL: Thank you.

STEPHEN DEERHAKE: I see [Nenad]. I apologize for mispronouncing your name.

[NENAD ORLIC]:   Do you hear me?

BART BOSWINKEL: Yes, we do.

[NENAD ORLIC]:   Well, I'm close to the line that we heard from Eberhard because, in the wording that we put out in the policy, for a retirement plan that does not include a discussion of the period, you do not have obligatory points

for the plan, and it's totally arbitrary. The discretion of IFO – is it good or not? Because there is nothing to check how … sorry. Just …

BART BOSWINKEL: Nenad?

NENAD ORLIC: Sorry. My kids went into my room and started to be loud [inaudible]

STEPHEN DEERHAKE: We heard them. That's fine. No problem.

NENAD ORLIC: So the point is, it's totally arbitrary and you cannot say if they broke some rule or some requirement or they decided very well in the retirement that there is no obligatory requirement for the plan. You have that situation. So that's why I think that oversight and checking of if the decision is valid is very hard to do. That's it.

STEPHEN DEERHAKE: Thank you for that.

BART BOSWINKEL: Any other views?

STEPHEN DEERHAKE: That will be taken. If you can lower your hand, that would be appreciated. The only other view I see is we got a checkmark here. If I'm looking at the interpreting …

BART BOSWINKEL: Getting back to your arguments, Nick – I do appreciate them; don't get me wrong – being a bit of a devil's advocate, the way it has been included (the oversight by the ICANN Board and the way it's defined) … can you scroll down again, Kim? No, scroll down one more page. So let's say the way that was shared by Kim Davies on previous [inaudible] about a year ago. Since 2012, the ICANN Board does not take a – that's my interpretation – substantive decision anymore. What they do is a kind of checking-the-box oversight role. It's more a due diligence check. So it's really crossing the t's, etc., and dotting the i's whether IFO did this. So it's, in my view, more a sanity check than anything else, just to make sure that nobody made a mistake. So there is no substantive recourse and no substantive decision-making done by the ICANN Board.

If you take it from that perspective – Kim, can you go back? Scroll up again, Kim, to Decision 7. If that's the role of the oversight is defined as and it's a little bit like Allan said, would that change your view? Especially with respect to the decision to agree or disagree with respect to the retirement plan?

NICK WENBAN-SMITH: Sorry. [inaudible]. Maybe, but I think what you're saying, Bart, if I heard right, is that, effectively, everything the IRO functions operator does is subject to general oversight by the ICANN Board. [inaudible].

BART BOSWINKEL: That's why I'm focusing on 7. Maybe Naela and/or Kim, if he's on the call, can allude to it. Not every step and not every decision by IFO or activity is there is general oversight [on], but in some cases, especially if you go back to the retirement of ccTLDs, there are certain steps in the procedure where the IFO (or IANA staff in the past) went back to the ICANN Board more or less as part of the procedure of the process and then only after they agreed that a decision was to be moved forward that they moved forward. It's a kind of milestone in the process. This will be one of the milestones because I think everybody agrees this is a critical part. [inaudible].

NICK WENBAN-SMITH: Given that, effectively, the decision to [inaudible] the retirement plan, it's subject to the – I tried to put it into the [stuff] earlier that it needs to be a reasonable decision and then everything needs to be done in good faith and all that stuff. But are we saying then that, effectively, the ICANN Board will check the homework of IFO on this and that then, if there's a disagreement, it would be subject to review? I just worry about compromising on the independence or the [inaudible] or the opportunities have a proper review of this decision if effectively the ICANN Board signs off on it. I prefer to keep the ICANN Board out of this. This is an IFO-specific thing.

I agree, obviously in general, that IFO is subject to ICANN Board oversight in the way that you just alluded to. But I don't think it's worthwhile. I think it's prejudicial to the review process if you start to

bring the ICANN Board in at this stage specifically for this. Obviously, if IFO has gone totally off the reservation, then that's the nature of the oversight. I think the ICANN Board is there. But for specific, quite detailed decisions where, in order to do this the ICANN Board will have to proper look at the requirement plan, [they] have to look at the process that IFO went through, look at the reasons they gave to refuse the plan, and say, "Yes, we agree with that being reasonable." That seems to be essentially either duplication or without the checks and balances or without the independent [inaudible] in terms of the review process [inaudible] the ICANN Board itself is going to be reviewing the process if somebody is unhappy with this, in which case [we] can't do it because we've already used them essentially in the intermediate stage of the oversight.

So that's my line of thinking: I don't really see what it adds, to be frank.

BART BOSWINKEL: Thanks, Nick. Naela?

STEPHEN DEERHAKE: Naela, yes.

NAELA SARRAS: Thanks. Maybe perhaps I can add, Nick, if this we draw a parallel to the current process that we do now with ccTLD transfers and delegations, that, when we present to the Board the materials, they then check for us. As Bart said, it's a milestone in the process and it's really towards

the end. We don't send anything to the Board until we've done all of our homework and all of the checking.

Then what we present them with – we never present them any of the materials that we use to actually process the request and any of the materials that we reviewed to support the decision that are sent to them. What we send is a report that details "This is the" – for example, in the ccTLD delegation transfer – "guidance we followed" – as you can imagine, it now talks about RFC 5091 and the FOI report – "and this is how we reviewed it and these are our findings," and we allude to the supporting documentation that was presented to help support all our findings. Then we say, "Based on all of this, we recommend that this is how we proceed."

So I imagine this retirement process to be similar to that in that we will do all of our due diligence. You're absolutely right: this is an operational matter. We have all the documentation in our hands to review and make a decision, and they're doing the final milestone decision to say, "Yes, the IANA function operator did do … This is eligible for retirement per the policy that was given to IANA, and this is what they've done to follow all the processes. We support their assessment." Something like that.

They do not anymore – because of this guidance that Kim gave to the group from 2012, I can't think of a case where they pushed back or said "We question you're reasoning." It's not that at all. It's more, if you will, an endorsement that IANA has done all of their homework before taking such a monumental decision for a ccTLD, whether it's delegation or transfer or retirement or whatever.

NICK WENBAN-SMITH: Thank you. That's super helpful. I understand that process, but is that because there aren't really any other checks? There isn't an independent review process for that decision, other than the ICANN Board oversight, in which case it is an important step, as you say, for something [inaudible] like making changes in the root. Here, where we envisage a [inaudible] independent review, where there's a disagreement by IFO and the retiring manager, isn't that the different process? So we're not talking about exactly the same thing. There's another stage yet to come, potentially.

I agree. If there won't be any other challenge to whether or not IFO had made a reasonable decision in relation to the time extension request, say, then this would be appropriate as a minimum. But since we're talking about a review process in addition to it, that's really what I'm not sure about because it doesn't seem to logically flow. Or rather it would [inaudible] for the next ICANN Board process to do that thing and then you kick in the review process. This is just going to take [inaudible] ICANN Board meetings. It's going to take extra months. In the meantime, the five years is ticking away and no one really has certainty as to what the definitive end point of the ccTLD is going to be. As soon as we get there, the better.

So if IFO could make the decision and then, if the other party is not happy there's an opportunity to go to some sort of independent repeal/review mechanism, isn't that what we should be focusing on? Because this is just going to waste more time and actually may not really get us to a definitive endpoint any quicker. That's all I mean.

Probably it's all fairly academic and may not come into place. I just worry about overengineering and putting in possibly artificial stage, which take up time, and processes, which are fairly time-sensitive. I don't really see the [inaudible]. I'll shut up now because I think [inaudible]

BART BOSWINKEL: Thanks, Nick. Kim, can you scroll down, please?

STEPHEN DEERHAKE: Bart, I've got a hand up.

BART BOSWINKEL: I know, but just one sanity check with Naela. If you look – you still have your hand up as well, Naela – Decision #12 – is that what you're referring to?

NAELA SARRAS: Indeed.

BART BOSWINKEL: That is, the final decision because it's so impactful that the Board and everybody … because this is out of the process of the policy itself but is very clearly a decision taken right now. Like with delegation, this is the un-delegation or the retirement or the removal, where there is a role of the Board.

NAELA SARRAS: You're right indeed. This is exactly the decision I was—

BART BOSWINKEL: [inaudible]

NAELA SARRAS: You're right. I do think [inaudible] 12 of these, but I guess now that I recall [inaudible]. So I'm in total agreement with that now. Now I'm probably [in agreement] with Nick was saying. I wasn't advocating for adding time during. I think he's right. I think that's an operational [decision].

BART BOSWINKEL: Thank you.

NAELA SARRAS: [inaudible]. Thank you, Nick, for pushing that point, and Bart for clarifying.

BART BOSWINKEL: Stephen, your hand is up. Sorry, Stephen. Go ahead.

STEPHEN DEERHAKE: Thank you, Bart. Looks like I had a – there we go. I just want to point out to Nick, if he's willing to sign up for a second enlistment, that we will

be looking at the whole question of the appeals mechanism in Phase 2 of this working group. We are aware of your concerns and we will try to address them after we get the retirement sorted. Thank you.

Bart, the floor is yours. Allan has had his hand up as well.

BART BOSWINKEL: Allan, go ahead.

ALLAN MACGILLIVRAY: Thank you. Maybe I spoke too quickly, but maybe I'll reiterate where I am. There's a couple of reasons. One I think, as Bart has pointed out with Naela, is that the current practice is for the significant decision. I prefer the term "ex ante review" so it's clear that this is a process review that is undertaken before a [national] decision is taken.

In the case where it involves an agreement to a retirement plan, I think it's worth remembering that where both parties agree – that is to say the incumbent manager as well as the IFO – on the plan I think it's going to be a relatively speeding ex ante review by the ICANN Board. So I don't see it has delaying anything because everyone is in agreement.

I think the issue arises where there is no agreement between incumbent manager and the IFO. In these situations, I think there is therefore a heightened possibility of the incumbent manager seeking to use the x post mechanism, which we have yet to develop, to deal with the situation. So I feel that having an ex ante review in this situation actually speeds things up because it provides greater clarify on everything. It makes the incumbent manager understand that all that has been done

has likely been done. So that's really the way I see it. I see it as saving time in situations where it's contentious.

Finally, this is the way it's done currently for delegations. I know consistency is a sign of a small mind, but that is a factor that I included in my decision. Thank you.

BART BOSWINKEL: Thank you. Maybe one more question and then I'll go back to Eberhard. Then we have to close this part. The question for you, Allan, is, would you consider this part of where you see the oversight role and your ex ante role is a kind of step in an escalation procedure process?

ALLAN MACGILLIVRAY: No because it would be done in every case, just as now. Every case, if they're in that #7, would go to the Board before. Even where everyone agrees, it still goes to the Board. This is the way the table has been constructed. If you want to change it to say that there would only be ex ante where there's lack of agreement on a plan, that—

BART BOSWINKEL: Then it becomes ex post.

ALLAN MACGILLIVRAY: Well, no. Maybe that could satisfy some people as saying we'd only have the ICANN board do its process review where there's no agreement on the retirement plan.

BART BOSWINKEL: Okay. Eberhard, go ahead.

EBERHARD LISSE: We don't need the process review doing the process. If they just say, "Okay. You followed the Board [inaudible]. A decision was made by the IFO. If you don't like it, appeal," it doesn't help us. We should not burden and it will not speak up the process. If they look up into the substance, it will take an enormous of time – at least one or two Board meetings; that's three months – just to read all the documents required and to bring this up to a minute. I don't think this is helpful at all.

In the edge cases, the rare cases, that they don't agree, then they go to appeal anyway, no matter what the Board says. It doesn't help us at all. My view is that the Board should review of decide "There is a trigger. This thing needs to be removed and retired. At the end, the process was followed." If the ccTLD manager doesn't like it, they have got ample opportunity to appeal within the ICANN process.

From what I understand in the courts, courts like internal remedies to be exhausted before going to court to solve disputes. So, if we have a reasonable appeal mechanism and that was followed, they can still go to court if they're not a "ccNSO member" any longer. But as long as the mechanism that we propose is reasonable and it was followed, I don't really see courts deviating much from that.

I don't think we should burden the process with, every five minutes, having to turn to the ICANN Board to ask, "Have we followed the process?" That's not helpful.

BART BOSWINKEL: Thank you, Eberhard. My suggestion is – thanks, everybody for the discussion and for your views; Stephen, getting back to you – that we revisit this one in the next call and, based on the notes and the chat, start playing around with the table and simplify it. That's one. And secondly, we try to capture a bit of the sentiment and see where the group is heading with this because I think this—

STEPHEN DEERHAKE: I agree completely with you, Bart, on both of those points. Let's throw it back up on the meeting on the 15th with a different group of characters in different time zones.

BART BOSWINKEL: But also in [inaudible]

STEPHEN DEERHAKE: [inaudible] with a session on the list beforehand to get them up to speed. This, I think, has been rather fruitful. I'm happy about that. Thank you, Bart, very much, for your presentation.

BART BOSWINKEL: Thank you.

STEPHEN DEERHAKE: I think we can call this one to a close.

BART BOSWINKEL: Yeah, for the time being.

STEPHEN DEERHAKE: For the time being. If that's the case, Kim, we're going to go to the next item on the agenda, which – do you want to put the agenda up or go straight to Bernard?

BART BOSWINKEL: Let's go to exception reserve. I think we hardly have time to have a full … Let me just explain what I've done. This is circulated. Please, this will be on the next call. Then we go to Bernie, to his flow document. That's my suggestion, Stephen.

So what I've done is, up to date – there is some e-mail exchanges which you will see included, including e-mail from Peter Koch. So this is just a list. Based on the discussion to date, I came up – the staff summary is just me in this case – with a summary and proposal of the arguments used.

At the next meeting, we'll revisit this one, but now you understand the background to what I've included, including the definition or Section 7.54 from the ISO 3166 standard itself with exception reserve code

elements for [inaudible]. So that's the starting point, and then we'll move into steps dealing with the exception reserve.

No comments asked this time. Take a look at your [legend]. If you want to comment online, please do so. I've circulated yesterday, as Kimberly indicated. So that's all with respect to this part from my end, Stephen.

STEPHEN DEERHAKE: Thank you, Bart. I recommend everyone take a long hard look at this and be prepared to comment on our next call on this because we'll be bringing—

BART BOSWINKEL: Or continue discussion online.

STEPHEN DEERHAKE: Yeah. Definitely on the chat. I believe that's it for you, Bart.

BART BOSWINKEL: Yes. Maybe one more point. Before I forget, I saw a question from Nenad in the e-mails on the retirement of IDN ccTLDs. Maybe you recall, Nenad, that the suggestion some time ago was that it would revisited as the starting point of the overall policy on IDN ccTLDs itself. There is another working group, the IDN Preliminary Review Team – forget about it – that will suggest to the Council to include it in the review of the policy because it's so specific with respect to IDN ccTLDs and what causes the removal of an IDN ccTLD – so what causes the trigger event –

and that it will be dealt with. That's the suggestion under the IDN ccTLD policy review and new PDP.

Nenad, go ahead.

NENAD ORLIC: Sorry. I don't remember that. I'm not aware of the existence of such a group, so that might be my mistake. But nevertheless, I think that the current wording or lack of it regarding the IDN ccTLDs should be corrected.

Let's say we'll put the job of declaring the right to [appoint] to another working group and so on. Then we should say in this policy that it will dealt with by the other policy or regarding including a process that is stated in another policy. This way, we're developing the document that should point to how we retire a domain and you're not providing any directions for it. I think we should not just ignore it and say it's a problem of another group and so on. If it's a problem of another group, if they are developing another policy, then we should at least point to that policy.

BART BOSWINKEL: Yes, you're completely right. Probably the next version of the process document will include this. But it's also a [bit of a] situation in flux because the ccNSO Council still needs to agree fully with this approach. Let me update you post-22nd of August because then the ccNSO Council will look at this.

STEPHEN DEERHAKE: Thank you, Bart, for that clarification, and thank you, Nenad, for expressing your concern on that. It is something we're scratching our heads about and we don't have a definitive answer yet as to whether this is something this group should take up or we should kick it over to the IDN group as a whole, if I have addressed that correctly, Bart. Thank you.

BART BOSWINKEL: Yeah. Nenad?

NENAD ORLIC: Just to point that we are currently doing the job that should have been done a long time ago. There was no retirement policy before this policy. Who knows when the next one, when we finish this job, will be changed and/or replaced? So we will need to require the document that will be a longstanding one. We will try to take into account all the situations and all the types of top-level domains. We'll see in a future time that a number of IDN ccTLDs will grow, and that is the main reason why we should not ignore this and just say, "It's too much to deal with." I don't think it is. I do not know why you think it's such a complicated thing – to find a trigger event for IDN ccTLDs – but okay. That's maybe again something I missed or something that is out of my scope, but I don't think it's that hard. Just to say that.

BART BOSWINKEL: Thank you, Nenad.

STEPHEN DEERHAKE: Thank you, sir. Duly noted. I will personally get back to you on that. Bart, I think we got a hand up from Eberhard, so let's deal with him. But I want to push along here, so, Eberhard, make it short.

EBERHARD LISSE: Okay. I don't speak Arabic. I have no idea what would happen if a country like Egypt changed its name, triggering a retirement of the current .eg to something else. But if the name remained the same or similar in Arabic, not requiring a change in the IDN, there is no obvious trigger event for an IDN retirement, and it's not for non-native or non-speakers of that particular language – or rather, script – to be able to make decisions. If we have a group that properly writes down a policy for IDNs, they can do a complete one and write the retirement right in there. That was [also] our problem.

I fully agree that we should make a reference that we point out why it's not easy for us to do this and why we defer it to the group that deals with this.

BART BOSWINKEL: [inaudible]. I'd like to close – thank you, Nenad. One more and then we close this topic.

STEPHEN DEERHAKE: Yeah. Let's close this one down.

BART BOSWINKEL: Go ahead, Nenad. Apologies for raising this.

NENAD ORLIC: Sorry, I'm not understanding [why] language should not be an issue regarding the policy on ccTLDs. Sorry, I cannot accept that is an argument. Somebody may say, "I do not understand English," but that shouldn't have to do anything with the policies on TLDs. That's just saying someone will just say, "Oh, on this, ICANN is all English-based/American-based." Please don't put that argument too much publicly. Thank you.

BART BOSWINKEL: Thank you, Nenad. Let's close this.

NENAD ORLIC: That's not my intention at all, and I apologize as Chair if you think that's what's going on here. That is not our intent. Thank you.

BART BOSWINKEL: [inaudible]?

EBERHARD LISSE: Sorry. I need to follow this up. Nobody said anything about English. I said something about languages of IDN script. So you either didn't understand or you didn't want to understand.

STEPHEN DEERHAKE:	Okay, Eberhard, I want to cut this conversation off and I want to turn it over to Bernard for his revised flowchart at this point. Kimberly, if you can put that up – thank you very much. You read my mind. Bernard, the floor is yours, sir.
BERNIE TURCOTTE:	Thank you. I guess I'm batting cleanup here.
STEPHEN DEERHAKE:	You are.
BERNIE TURCOTTE:	I'll do a quick run through for those who—
STEPHEN DEERHAKE:	Late innings [inaudible]
BERNIE TURCOTTE:	Pardon me?
STEPHEN DEERHAKE:	Late innings, but—

BERNIE TURCOTTE:	Yeah, late innings. I'll try to get through this quickly. For those who haven't seen this before, I'll do a quick run through. While I'm doing it, I will also point out the changes for those who saw it last time.

Moving right along, we start with the ISO 3166 retirement of a code point. On the top left-hand corner – the roundish blue thing – we move into the IFO validating if there is a functional manager. If there a functional manager, you skip ahead to the IFO sending the initial notice of retirement. If not, it's that special transfer policy we talked about that can come into effect. If there's a new manager, then we go to sending the initial notice of retirement.

In the block that talks about the special transfer policy, I've added a note because Kim quite correctly pointed out the last time around that this special transfer process actually can apply anywhere in this retirement process if the manager disappears. That's quite correct, but we have a formal step that says you can't send the initial notice of retirement unless there is a functional manager.

So this completes the first line. Then we go into the green diamond on the right-hand side, the second line. Basically, it's about the ccTLD producing a draft retirement plan. If we go left, meaning it does not produce a draft retirement plan within 12 months – you'll remember this was our basic discussion, that a ccTLD wishes to produces a retirement plan should do so within 12 months – there is a possibility of asking for a 12-month extension for a total of 24 months.

Then, obviously, if they're requesting an extension for an additional 12 months, the IFO has to make a decision. If they decide to reject the

EN

extension, then the IFO sends the notice of a default five-year retirement, which is the default position all the way through, if you will remember. You'll see that orange block on the left-hand side. Everything feeds into that.

If the IFO accepts the 12-month extension, then the ccTLD has a chance to produce a retirement plan. If it doesn't produce it within the next 12 months, we go back to the default five years. If it does produce it, then the IFO has to decide to accept it or not. if it does not accept it, it goes back to the default five years. If it does accept it, it loops around to the orange block completely on the right-hand side. You'll see that that follows the initial possibility/decision of the ccTLD producing a retirement plan within 12 months.

If you go down from that, which means the ccTLD did produce a retirement plan within 12 months, then we have again the IFO accepting it or not. if it produced it within 12 months and the IFO doesn't accept it, then obviously there's a loop back to say they can try again. Obviously this is an iterative process. If there is an agreement for a retirement plan, then the IFO sends a notice that there is a retirement plan with X years for the retirement.

From the last version of this, I had inserted the name of a custom retirement plan. I've taken that out, as people correctly pointed out that we just have retirement plans. Also, you notice that I've included, normalized, the initial notice of retirement (INR) so we can reference to that because it's important from a … Sorry. I dropped off there for sec.

If we have a retirement plan, then the next decision point, which is the green diamond right below it, is, is there a breach of that retirement plan? If it's a yes, then we're going to left into that blue block, which means there's a remediation process to try and resolve the situation. Then there's the decision [of] if the remediation is successful or not. If it's successful, it's back to the standard process and the Board confirmation, which was the discussion we had earlier today, and removal from the root. If the remediation is not successful, then we had inserted, for those who weren't there last time, the blocks in red as things we need to confirm as having been added from our last version of the procedure. So, if the remediation is not successful, we're saying we're going to go back to the ICANN Board because we're going to be changing the date of the retirement and making sure that everything is correct. But that is up for discussion. So either the Board agrees or not.

This leftmost red diamond asks a little bit of a cryptic question: was notice of retirement sent more than four years ago? The point of that is the following. If there is a breach and there is not remediation possible, the policy we're building states that you get a default five years.

Well, if the breach occurs on a retirement plan that had seven years and the breach occurs five years into that seven years, do you just remove the ccTLD the next day? It doesn't make sense. So we've inserted a point here that says that, regardless, you either get the default five years and, if that's gone by, then you need to provide the ccTLD manager with at least one year's notice so they can use the various appeals mechanisms that they can get. If that's the case, we calculate a new date and the IFO sends a notice of retirement with that new date.

Then we're in the bottom complete line of this that goes back to the Board confirmation and removal from the root.

That's the fastest I can go through that, Steven.

STEPHEN DEERHAKE: Thank you, Bernard. I think you did a great job on running through that. Looks good. I'm looking for hands. Any questions?

I think we're going to go through this once again in the meeting on the 15th, given the summer holiday schedule in the northern hemisphere and the time zone issues. I don't see any questions or comment, scrolling through the list.

Thank you, Bernard. Kimberly, if you could – thank you. You read my mind. Any other business? I do not have any? Does anybody else have any?

Not seeing anybody waving their hands up and done and hearing silence, I will assume there's not. Therefore, I would like to notify you that out next meeting will indeed be on the 15th of August at 11:00 UTC, which is, again, early for me but not as onerous as – well, actually it is onerous. Let's not even go there for Kimberly and myself.

We're good to go. I want to thank ICANN staff for being [out of band] and being available for this call, which was out of ours for both the European and the U.S.-based staff. I think them for that. I think that's it. I will call this meeting to a close. I want to thank everyone for participating. We'll see you in two weeks' time and we'll see you on the mailing list before that, I hope. Thank you. Good morning, good night,

good evening, wherever you are. Thank you. We're done. Kim, you can kill the recording.

BART BOSWINKEL: Bye-bye, all

STEPHEN DEERHAKE: Bye, all.

[END OF TRANSCRIPTION]