
STEPHEN DEERHAKE: Good morning, good afternoon, good evening to one and all. I want to thank everybody for joining today's teleconference.

For the record, this is the 20 May 2020 edition of the ccNSO PDP working group tasked with developing ICANN policy with respect to establishing a review mechanism for ccTLDs as mentioned in RFC1591 Section 3.4.

We've convened this meeting today at 12:00 UTC adhering to our recently adopted meeting time for rotation schedule. And I want to thank those of you who are either up early, stayed up late, and are otherwise inconvenienced by the timing of this call. I also want to especially thank Kimberly who's working her usual Zoom magic at a very late hour for her, as well as [Joke] for her usual fine documenting of what we discussed.

So staff will be taking attendance, I believe, in the usual manner, so if there's anyone on audio only, identify yourselves so you're properly recorded as being present. I don't expect that we'll be taking up the entire hour on this call.

With administrative announcements, I don't have any. Unless the vice chair has any, I think we're good to go there, unless, Kimberly, you're looking up something I've forgotten.

KIMBERLY CARLSON: None from the secretariat.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

STEPHEN DEERHAKE: Thank you. Okay, we're good to go then.

EBERHARD LISSE: Nothing from me either.

STEPHEN DEERHAKE: Okay. Thank you, Mr. Vice Chair. So I do want to point out that today, we have neither Bart nor Bernard with us. Bart chose to prioritize his daughter's wedding which is taking place today over our call. When he informed me of this, I thought it was rather shocking. I just could not believe his misplaced priorities.

I'm kidding, of course. I can only offer my congratulations to Bart, his wife and his daughter on this event, and I encourage you guys to do so as well. And then there's the matter of Bernard who's also not with us. He's mopping the floor of the ATRT3 working group. If you don't know what that is, consider yourself lucky. If you do, you know what I'm referring to. So I wish him well today on that. They actually are doing important bylaws-mandated work, but nonetheless, Bernard has my sympathies there.

As we settle down into our movement forward on review mechanisms, we're lining up a couple of presentations to complete a review of "what's out there" in the ICANN sphere regarding review mechanisms. And to that extent, we've asked the IANA to provide us with a review of their processes with regards to identifying which of them might be subject to a review mechanism.

I'm happy to say they're working on it. I do not see them on the call, however. But we will hopefully have something from them for a future call.

I also hope to have Becky Burr from the ICANN board and Sam Eisner from ICANN Org Legal available to walk us through the reconsideration [inaudible] engagement process, appeals processes during a future call as well so that we will have then a comprehensive overview of the various appeals processes that are currently in place within the ICANN sphere.

And with those two presentations, I think that will complete our journey to the various appeals mechanism currently in effect within the ICANN sphere. We of course need to chart our own course with regards to the needs of ccTLDs with respect to an appeals mechanism. So Kimberly, if you can put up the proposed way forward with regards to [inaudible] methodology for identifying decisions, that would be great. Thank you.

As those of you who carried over from the retirement working group know, I try not to interject myself in the actual debates of the working group. Rather, I try to orchestrate the debate amongst the working group members.

Given, however, that I have neither Bart nor Bernard with us today, I'll take the lead on doing a first walkthrough on a proposed way forward. What we have here is a proposed path towards getting us to our goal with definitive policy of what's subject to our developing review mechanism.

It's kind of a collective mindset. If we agree that this describes the discussion framework we will be using going forward, then we can initiate substantive discussions using this as our framework to do that.

So Kimberly, if you can skip down a little bit to line five. And seven. Next page, I guess. There we go. Yeah. So basically, I want to refer members of this group who were not part of the retirement working group to review the retirement working group's work. I also want to refer those of you who are on the retirement working group to review our work as well, actually. Don't hesitate to dive back into the work that we did, or further dive back into the framework of interpretation working group or if you really want to go for a deep dive into the delegation-redelegation working group's work as well, it's actually, I think, rather handy to refresh your memories on some of that stuff.

We've got, it looks like, that the IANA staff is going to come back to us and present in the near future. So that's a good thing to see on lines eight through ten. Any questions, comments on step 1.1 step 1, lines 5 through 10? This is not a formal read through, this is simply what we're trying to get ourselves organized for in terms of a structure to use to form the discussion going forward.

Seeing no hands, step two, lines 11 through 35 are a serious question being addressed there, which is, are we in scope for the PDP or are we in scope with regards to the bylaws, etc.? And that's what this outlines. Kimberly, if you can scoot one more page up, that'll be great. Bingo. Thank you.

So what this section really does is it outlines our constraints and what we need to be conscious of as we continue our deliberations going forward. I'll let you guys read it. If there's any questions or comments, by all means get your hands up and we will address them. I'm not seeing any. Kimberly, if you can advance to lines 36 and beyond, that would be great.

So this section really, 1.3 step 3, 36 through 50, is kind of the meat of our forthcoming discussions. I'll give you guys a little time to read it yourselves, and if you have any comments, feel free to get your hands up. Naela, thank you for getting up so early. You are up really early.

And I don't see a big wagging of hands, so Kimberly, if you can advance then to the next page, which will be lines 51 through, I think, 92, this is important background material and you need to be pretty grounded in it for the discussions you're going to be having going forward. It's a nice layout of the various documents. And if you're not familiar with them, I would strongly encourage you to become familiar with them. I'll leave that up for a couple minutes as well. I see Patricio has his hand up. Patricio, the floor is yours, sir. Good morning.

PATRICIO POBLETE:

Going back to the previous slide, I think there is an assumption that perhaps should be made explicit, and it is who has a standing to ask for a review. I believe we are assuming that it is the effect of the ccTLD manager. That perhaps should be made explicit. I'm saying this because of the following: in the past, I have seen IANA receiving requests for

what's called redelegation from third parties, and to which IANA could analyze and then perhaps dismiss.

Would that third party have standing to ask for review of that decision even though they're not the incumbent ccTLD manager?

STEPHEN DEERHAKE:

Patricio, as always, you ask a very good question. And [Joke,] I hope you're making a note of that in your notes, which I'm sure you will, to look at that further. I don't have a view on that at the moment, but I see Eberhard's got his hand up, so I'll let him have the floor and see what he has to say about it.

EBERHARD LISSE:

Thank you. Patricio, that's very simple. Anybody can, as far as I'm concerned, review decisions that affect him and any entity can review decisions—if I apply for something, I can review. If a third party applies to something, a third party can review. But the problem is when a third party wants to review decision made about me for example, or I want to review a decision made about a third party, that's the problem.

I have no problem with anybody having recourse to decisions that affect him or her, or the entity on which behalf you're speaking. We need to titrate what decisions are reviewable and then we basically need to titrate whether third parties can review decisions concerning another party.

STEPHEN DEERHAKE: Thank you, Eberhard. Patricio, does that give you some clarification? Or anybody else have any thoughts on this at this point in time? It's an important question. Patricio, the floor is yours again, sir.

PATRICIO POBLETE: I understand what Eberhard's saying, but that assumes that in every decision, there is only one party affected, and that may not be true. Going back to my example, if some group of people who think they have a better right or they would do a better job of managing .cl for instance were to complain to IANA [IFO] because of my mismanagement of this ccTLD, and the IANA would analyze that complaint and decide that it was without any reasonable grounds and just dismiss it, they would perhaps say, well, that's a decision that affects me, so I have the right to ask for review. Because in that case, there are two parties involved, the complainant and I who's the current manager. So whatever Eberhard is saying is that either of those two parties would have a standing?

STEPHEN DEERHAKE: I believe that's what they're saying. I see that Allan's got his hand up, so I'll let Allan go, and then we'll come back to Eberhard and see what he has to say as well. But that was my understanding.

ALLAN MACGILLIVRAY: Thank you, Stephen. I just wanted to say that this is a broad question that I think we're going to have to deal with specifically in our final document. Regardless of what the outcome is on the specific case that

Patricio has posed, I think we have to articulate a logic why or why not that would not be satisfactory.

Personally, I agree with Patricio, but as I say, we're going to have to deal with this in some detail about who has standing. So I thought your original answer, Stephen, was right. In other words, I think we have to table this question and think about it, and come back to have a more considered discussion. Thanks.

STEPHEN DEERHAKE:

Thank you for that. Yeah, this is not something we're going to hash out this morning, let's put it that way. But it's a critical question with regards to who's got standing in the review process. We'll get there. I have no doubt we'll get there. Eberhard, the floor is yours, sir.

EBERHARD LISSE:

My point was if somebody applies for a substantial misconduct, and IANA function operator says there was no substantial misconduct, no revocation and transfer, of course, the applicant can apply for review as far as I'm concerned. Even though I agree with Allan that we should go through this in more detail.

However, if also because it affects—if somebody applies for substantial misconduct and succeeds, then of course, the affected party is an incumbent ccTLD manager and can apply. But I am not sure how this is going to happen when you're for example for a delegation, new country name comes up, new delegation has to be done, one party gets it, another party wants to have it. We need to probably carefully select

what cases are reviewable, and then in the stress testing phase, construct exhaustive scenarios. What happens if this happens? Who can review? And so on.

The problem is I agree with what Patricio is noting. I also agree with what Alan is saying. We should review this in more detail. But the decision is not so much in the global sense. If you apply for a misconduct revocation and it gets denied, the denial is the decision that gets reviewed. It's not that there is a second party involved, the ccTLD manager is not involved in the decision. The question is whether ICANN, rather than if a review succeeds, what then the ccTLD manager can do.

STEPHEN DEERHAKE:

Okay. We've got some stuff to chew on for future calls, certainly, with regards to applicability. And I'm seeing a whole lot of scenarios in my head for stress testing when we get to that point.

Any other comments from the group at this point with respect to 36 through 50? If not, can you advance, Kimberly, to the next page, please? Thank you. Again, as I said, with regards to 51 through 67, this is background material. I encourage those of you who are new to this working group who were not involved in the actual retirement working group to get yourself up to speed on RFC 1591 and the framework of interpretation with regards to section 3.4 of 1591 and the [IDNB] comments in the FOI working group final report.

Kim, if you can advance. Sweet. And again, this is additional background material that you should be familiar with. There's actually some interesting stuff in the CWG stewardship and the CCWG accountability

stuff. And during the whole transition, CCs made it very clear that we were carving ourselves out of the accountability mechanisms that were being constructed in those cross working groups leading up to the transition to our current bylaws from I guess October 2016 now that CCs would be exempted and we would come up with something. Hence this is why we're meeting.

Kimberly, if you could advance it another page, that would be sweet. And this is the final [aside] on that with regards to the fact that the CCs specifically carved ourselves out of the accountability mechanisms that were built into the various parts of the bylaws that were adopted as part of the transition. So we're not covered by any of that stuff, but it behooves us to look at that stuff and see what's in place and see if there's something that might be useful that we can adopt so to speak as part of what we come up with or not. So I just want to encourage everybody to get familiar with the reference material that's in that section that we've just looked at.

And Kimberly, if you can advance one more page. So the thought here is at the end of the day, we will be able to build a tableau of decisions and what they are, who takes the decision, where the oversight lays and what subject to review or not. So, as we work further into the details of what we begin to flesh out as a review mechanism, we'll be able to fill this out.

So what was just presented here is basically a structure to kind of frame the thought/discussion process going forward. And I would be most curious to see if there are comments on this proposed framework for having our discussion going forward. Are there suggestions from anyone

for changes? Any issues anyone has with it? And we can review this again briefly in our next call, obviously.

Given that, if anybody has any questions or comments on this proposed framework going forward, I would love to hear them. I'm seeing a dearth of hands. So I'm assuming not. And that is in sum total what I had planned to propose today for people to start thinking about, and now you have references to source material that I definitely encourage both new and old people, group members to go back and refresh their memories on, especially the framework of interpretation and especially RFC1519, and do those in conjunction with each other.

And that is the sum total of what I wanted to do with you guys today. So barring any comments from the group, Kimberly, I think we can put up the agenda again, then we can move on to further steps on the agenda. So, thank you.

I don't have any outstanding action items, I may be mistaken and there might be some, so I will appeal to our secretariat and ask if there's anything outstanding. Kimberly, is there anything I've missed here?

KIMBERLY CARLSON: Nothing outstanding.

STEPHEN DEERHAKE: That's always good to know. That being the case, is there Any Other Business that any member would like to raise at this point? I don't see a big waggle of hands. I will ask the membership if they're happy with our meeting rotation that we agreed to. I'm happy with it for the next

couple of meetings, and then I'll probably be less happy with it, but that's the way things go with our rotation.

So I don't see anybody commenting on that either. Moving on to our next meetings, we are scheduled for early June at 20:00 UTC, which is a bit of an inconvenience for those near the meridian, less so for those near the anti-meridian. And then we get into the middle of June with an awful meeting time, and that, I believe, is going to be basically what would have been our face-to-face meeting in Kuala Lumpur. At least it's around that time. Kimberly, can you refresh my memory as to what our virtual ICANN Kuala Lumpur meeting is?

KIMBERLY CARLSON:

Yeah, this group will not meet as part of ICANN 68. And as the usual rotation happens, it will not fall on ICANN 68 week. So we're lucky there.

STEPHEN DEERHAKE:

Okay. I thought that was the case, I just wanted to make certain. And then we've got one scheduled for July. And I think, hopefully on the first meeting in June, we'll have IANA presentation and possibly also Becky and Sam's presentation. That may get bumped back to the 17th, but I hope to get them both in on the 3rd and then if we can do that, then on the 17th, we can start jumping into the deep end of the pool so to speak with regards to review mechanism particulars.

And that's where we're going to be. I hope you can join us for these upcoming meetings. And I believe that is about it for me. Anybody have anything they would like to say at this point? If so, wag your hands.

I'm seeing no raised hands, I'm seeing no wiggling coffee cups or bingo, so I think we're good to go. That being the case, if nobody has anything else they would like to say at this point, I'm going to bring this one to a close. We've reviewed the mindset of how we think we want to structure our thinking going forward. We'll take another look at it at our next meeting, and I hope at our next meeting as well, we'll have at least one, if not two, presentations on the remaining are review mechanisms that are currently in place, and then we can start our deep dive into our work.

Not seeing any hands, I think that's it, and I believe at this point then, I will call this meeting to a close and ask Kimberly to cease the recording. Thank you all for attending. Really appreciate it. Be safe in this crazy time. So thank you. Have a great day, everyone.

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