
STEPHEN DEERHAKE:

Okay. I want to thank everybody for being here. I apologize for being a little late in getting the show on the road. So, again, Good morning, good afternoon, and good evening to everyone. For the record, I'm Stephen Deerhake and I want to thank everyone for joining today's teleconference.

For the record, this is the 4th November 2020 edition of the ccNSO PDP Working Group is tasked with developing ICANN policy with respect to establishing a review mechanism as mentioned in RFC 1591.

We convene this call today at 0400 UTC, continuing to adhere to our adopted meeting schedule.

So, I want to thank those of you who have either stayed up really late or gotten up really early for your participation on today's call. I want to especially thank Kimberly and Bernard and Bart for work on today's call. I especially want to thank Bart because he's up at a God-awful hour, [inaudible].

Again, thank everyone for participating. It may be I'm a little distracted today because we are having an election here and we're in the midst of starting to see returns. But I shut all that down which is hence the delay. I had to make that all go away before we started this.

Staff will be taking attendance in the usual manner, so if there's anyone on audio only, let yourself be known so that you can be properly recorded as being in attendance.

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.

Our vice chair will not be with us today as he is traveling down to Cape Town, so he's not with us.

I want to wish everybody a welcome back. It's been a month at least—or almost a month, I think. I think we last met on the 7th of October. And I do hope that you and staff are recovered from a couple of intense Zoom-themed weeks regarding ICANN69.

So, regards to administrative matters, I'd like to bring up the idea of shifting the meeting schedule a bit time-wise due to our falling back in a big part of the northern hemisphere to wintertime.

The idea is to adjust it a bit so that when it's 0400 UTC it's 0500 UTC or even an hour later. This makes it less onerous on those working group members who live near the meridian. But it may perhaps be more onerous on our colleagues in Asian Oceana.

This is not a decision we have to make today but I'd like to take it to the list if we don't make it today. Based on who's here ... Peter shows up. We don't have much European participation but it's something I'd like your thoughts on.

With regards to that, I'll throw the floor open and please don't be shy about expressing any viewpoints that you might have on this proposal.

So, if anybody wants to put up their hand, feel free to do so and you can have the floor and give some input onto this proposal.

BART BOSWINKEL:

Stephen?

STEPHEN DEERHAKE: Yes, sir.

BART BOSWINKEL: If you look at the attendance, there are more Europeans than just one. But I think it's rather thin because—

STEPHEN DEERHAKE: I see two. And I see Irina as well.

BART BOSWINKEL: Yeah, and Svetlana.

STEPHEN DEERHAKE: And Svetlana as well.

BART BOSWINKEL: And [inaudible]. You've got four. Even that aside, you've got eight attendees, so it's rather thin to make such a decision. So just take it to the list.

STEPHEN DEERHAKE: Well, that's kind of what I said. We're not making decisions tonight, but yeah. I mean, it is really thin. Even for North America, it's thin. Okay, let me just take that straight to the list and we can discuss it and we'll discuss the TBA in the next meeting portion of it.

Okay. So, let's cancel that proposal to discuss since nobody wants to. And the only other item I wish to mention is that, as we also discussed previously, work is underway to carve out the retirement policy document developed by our sister working group so that it could be presented to the ccNSO Council and the membership, independent of our work here, to push it along ahead of us.

And for those of you who did attend the Retirement Working Group session at ICANN69, you got the gory details of that process and what it entails. And for those of you who did not attend, I suggest if you're interested in this, to pull up the presentation that [Mark] did on the topic. I won't go into it here at the moment.

But I just want to inform everyone that work is underway to make this happen and it is a bit complicated process. And that's it for me for administrative matters.

I do not have any action items. I do not believe there were any carried over from our last teleconference. But Bart, if you wish to correct me—or Bernard—feel free to do so.

BERNARD TURCOTTE:

Yeah. We did have the requirement. Did I update the results of our spreadsheet with the results of our discussion from last time, which [inaudible].

STEPHEN DEERHAKE: I wasn't taking that as a formal action item. I guess it was and I apologize for not recognizing that, because yes, you did do that. I should have noted that.

Well, that's it then for action items. Kimberly, Bernard, if you're ready to roll; Kimberly, if you're ready to put up slides. Oh no. Well, I don't know. Bernard, what do you want to do? Do you want to do a recap orally or do you want your first slide deck set up or--?

BERNARD TURCOTTE: Why don't we just put up the spreadsheet and then I'll talk to that as part of the recap and then we'll go into the details afterwards.

STEPHEN DEERHAKE: Okay. So, Kimberly, if you can do that, that would be wonderful. Thank you. Can you make it smaller font? Because I can't read this, so it must go smaller now. I don't know what we do with this.

BERNARD TURCOTTE: Yeah. I know. So, people will remember where we left this off. Last time, we had our table of the various elements that we could look at for being appealed and these included two points on delegation of a new ccTLD, two points on a transfer, two points on retirement, one on revocation, and one possibly on the failure to accept a proposed idea on the ccTLD string. But of course that will depend on that PDP.

So, we had walked through that and then we realized that, on retirement, we had forgotten that we had included in the retirement

document that if a reserved code changed status and the IFO was asking for it to be retired, that it could be appealed. So we had included that at our last meeting. Everyone agreed to that.

After that, we walked through the tables and various situations and we came to the conclusion that on a new delegation the applicant could appeal if there was a negative request, a negative finding, from the IFO. Or in the case where there was more than one applicant, the losing applicant. But that was it. There was no third party that could come from unknown sources to appeal a new delegation. You had to have been part of the application process. So, I've updated that and you see that in yellow on the table.

Under transfer, of course on the standard transfer, the applicants can appeal if it was rejected. And we had originally a line—the second line there—that said if the transfer was accepted, maybe there was a third party that could appeal and we came to the conclusion that, no, that would not work. So the only appeal on a transfer would be from those that are applying, i.e. the current manager and the proposed new manager. So, that was that.

And on the other points, since it was the current ccTLD manager, those concerned or the applicant in the case of an IDN ccTLD, there was no question. So, basically, we resolved what could have been a tricky situation of defining standing, as the lawyers call it. So, who can appeal a decision from the IFO? So that's where we are today.

So before I go any further, I'll be glad to take any questions if there are any.

STEPHEN DEERHAKE: Do we have any questions from anyone? Bernard, I'm not seeing any.

BERNARD TURCOTTE: All right. Excellent. So then, if there are no questions on standing, which is the legal term for who could apply for this, we can start working on some of the details that go along with this, because as we mentioned in the previous meeting, these appeal things are all about the details. Details of timing, details of process. And we have to be certain that we understand those things properly.

So, if we just look at the delegation of a new ccTLD where we've got in yellow the losing applicant, which is to appeal, we're going to have to make sure that when someone applies for a new ccTLD, that there is some sort of formal notification that is posted somewhere on the IFO site and that there is a minimum period in which someone can try to apply, and if they don't then there would probably be a cutoff. I see a hand from Peter.

STEPHEN DEERHAKE: Thank you, Peter.

PETER KOCH: Yes, thank you. And apologies for being delayed here. I was just wondering, the ccPDP 4 is still in the making and applications for IDN ccTLDs appear to me a bit more complicated. There's an issue of confusing similarity on the table.

So, under the assumption that anybody who is affected by a decision—substantially affected—should be able to appeal. I wonder how firm we can deal with the IDN ccTLDs at the moment or whether we would have to expect to update the table based on the results of ccPDP 4 anyway.

BERNARD TURCOTTE:

Well, I think when I went through it and I mentioned originally, this is a placeholder. You're quite right, Peter. We don't understand what's going to go on. But I think if we follow through the logic of the other cases, it would just be the applicant if he was denied his string. But that is really a placeholder. We've got to wait and see what happens. But we want to make sure that we've at least considered and have a hook available, should there be one. Does that answer your question?

PETER KOCH:

Yeah, I think so. I would agree. I think the point I'm trying to raise is that the effects of an application—not so much a refused one but maybe more a granted one—might be different from what we have today.

I mean, if you have today—for example, if you have a ccTLD that is “confusingly similar” even though we don't have that concept for ASCII TLDs, how would that situation look like if we are in IDN space and somebody gets a delegation and some other country or some other registry feels confusingly similar or something like that?

I would assume that there are only more cases than less, so if I understand you correctly, having a hook here is probably the right way to go. Thank you.

BERNARD TURCOTTE: All right. Great. Bart?

BART BOSWINKEL: Just to add, and for clarity for those who are not involved in the IDN world, the IDN PDP is about string selection, so it's mimicking what the ISO 3166 is doing. The rules for delegation, transfer, revocation, and retirement as developed under this PDP do apply. It's a little bit similar as what the Retirement Working Group has done with respect to, say, the trigger event of [full] IDN ccTLDs.

Having a placeholder is fine, up to the extent, say, if there is—if an IDN ccTLDs is transferred or the delegation for whatever reason, there should be a reason for reviewing, etc.

Then this review mechanism applies because, in that sense, IDN ccTLDs are the same as ccTLDs, once [inaudible] going to the delegation transfer and revocation and retirement process.

But, say, whether the ... I would say the string selection is part and parcel of the review mechanism. I think it's good to have a placeholder but you could have it both ways. Thanks.

BERNARD TURCOTTE: Yes, I absolutely agree, which is why it's there at the bottom. We will decide what we want to do with it later, but better to have it there and understand that we might want to think about it than not. So that's why that's there.

All right, moving on. I think as we look into the conditions here, timing is I would say probably the second-most important question. Are there deadlines? And I think, from our last call, there was general agreement that unwinding a delegation was not a reasonable way forward. Meaning if the delegation has gone ahead and been inserted into the root and then have a process where there's an appeal which could reverse that, that would affect the security and stability of the Internet, cause all sorts of other problems and is just not a reasonable way forward.

So, if we have general agreement still on that point, that would mean that there would have to be timing considerations relative to appeals. So, as such, we're going to have to start going through that and thinking about it.

The timing is also, may not be monolithic. And by that, what I mean is there is a legal term that is called totalling, meaning that the timing may be affected by other processes, and by that I mean if we make it a requirement that an aggrieved party has to go through another process, such as mediation, before entering into an appeal—a full-blown appeals mechanism—then one has to consider the time that is going to be required to do something like that and not punish the people who follow the procedure, and then as they're following the procedure say, "Oops, sorry, you missed the deadline so you can't appeal the decision." I think that's rather self-evident.

So, although we will have ... It's a bit of a chicken-and-egg thing, we should walk our way through and understand some of the timing considerations.

At a larger level, what I will remind people is that—again, because I’m working on the IoT which is reviewing ICANN’s IRP mechanism, I get a little bit of a higher view of this, and one of the things that is important to keep in mind is we don’t know what the mechanics of the appeal mechanism will be. When we finish doing all our homework here, that’s phase one.

And once we’ve done that, we can work with the lawyers as to what our options could be for an appeals mechanism or appeals mechanisms. There may be more than one choice. It may be part of this mediation thing is included in there—or not.

But the point is it’s not obvious that we need a full-blown mechanism such as the ICANN IRP to deal with these situations. Maybe it will be, maybe it won’t be. But if we can lay out exactly the details of what we’re thinking in the context Hello?

BART BOSWINKEL: Yeah. We can hear you.

BERNARD TURCOTTE: My audio fell off, so apologies for that. So, as I was saying, if we can lay out all this groundwork, it then provides a lot of information and then we can then get some help in considering what our options for actual mechanics of an appeal that we want to set in place. Do we want to use an international system? What kind of people do we have to use for this?

And part of the considerations in here are things like the new IRP. The changes to the ICANN IRP system is that ICANN noticed that in this penultimate appeals mechanism they have, that just getting some very good legal people as arbitrars in these disputes was not necessarily ideal because we, from the ICANN point of view for those cases, we live in a very specialized universe and I think our own universe here with ccTLDs is possibly even more specialized in some ways. So, we're going to have to be certain that those things are kept in mind.

So that's the idea of preparing these things and working through them, giving as much information as we can about what we're looking for, what kind of timings we're talking about, trigger conditions. And then saying, okay, here's our phase one; this is what we're trying to do; these are the things we've thought about; let's start working on what could be our appeals mechanisms. Does that make sense to everyone? I must be riveting.

STEPHEN DEERHAKE: Thoughts on this from anyone? We do have a small group tonight. But we do have Peter who I'm sure has a thought. I'm not directly calling on Peter but ...

BERNARD TURCOTTE: Doesn't look like it. All right.

STEPHEN DEERHAKE: Empty house tonight.

BERNARD TURCOTTE:

They're riveted. That's what they are. They're riveted. All right. So, what is the basis for making the decision and what are the timings or our next thing?

So, if we look at our third column on the table we've got in front of us is the decision that's being contested. Now, as we discussed on a previous call, we're probably going to have to ask for some changes here because depending on ... Well, originally we were thinking that there could be third parties involved, so notice would be important. That's an interesting thing that we've basically removed third parties. So that helps us in that point.

However, as I was saying on the delegation of a new ccTLD, if we want to limit it to those who have applied—and this is not theoretical. We will remember the example of Western Sahara. That was two governments trying to obtain that delegation. So, that situation can happen.

But if we're putting in a review mechanism now for the losing party only, that means that if someone is thinking about contesting that for someone who has applied, then there is probably a requirement to have a notice that a delegation request has been made and that there may be a window in which anybody else can apply for that same ccTLD. Otherwise, what can happen is that you are running through the process for allocating this new ccTLD, you're at the end of the process, things are working well, and then all of a sudden someone comes up and applies just days before the IFO is to make a decision and everything starts slowing down.

So, given how long these delegation applications take on quite a regular basis, from what our friends in the IFO was telling us, it may be wise—but that is for this group to decide—to say, well, the IFO should post a notice that they have received an application for the delegation of a new ccTLD and there may be a window for anybody else to apply so that the IFO actually looks at the same documentation at the same time.

And if you have not applied during that window after which the IFO has advised that there is a delegation request, then you can't come in and make a request after that window. It doesn't work.

It may cause some grief. I understand that but that's why we're going to work on that. So that is definitely a thing that we're going to have to consider.

On a transfer, we've said that there is a confirmation or a rejection from the IFO and then it gets approved by the Board. If it gets approved, both parties that have applied are happy, so hopefully there's no reason to appeal there. If the transfer is rejected, that is where there is a requirement. But the two parties have applied so we're not creating that DOS potential. But that appears to me to look like a significant deviation.

STEPHEN DEERHAKE:

Okay. Thank you for that, Bernard. We have a hand up from Peter, so Peter, go ahead, sir.

PETER KOCH: Yeah. Thanks, Stephen. Just because Bernard already read the remark I put into the chat window, that ... What looks like an administrative issue here, like closing the window after some time, that I think will have significant impact on the interpretation of 1591. So I believe it's worth looking at because there is a denial of service potential in there. But would be really significant, even though it looks like—how you say that? Like a point of order only. It's a bit more.

BERNARD TURCOTTE: No, it's a two-edged sword which is why I'm highlighting it. Then we have to consider the impact of there is as much a denial of service possibility if someone understands that the only applicant is about to be granted something and then they come in and put in an application at that point. So the denial of service can be in that vein, where you are preventing the original applicant from getting the delegation—preventing is not the right word. But you're certainly going to delay it significantly if you put in an application at the last minute. But that's why it's there. That's part of the things we've got to talk about. Allan?

ALLAN MACGILLVRAY: I think, Bernie, I thought I would raise my hand just to let you know I am listening attentively to what you're saying. Frankly, I agree with everything you're saying. But I wonder if we choose how to characterize the publication of the potential of a delegation—I don't know how to characterize this. But given that the processes are somewhat lengthy these days, there may be a way to have the IFO make a notice some point early in the process, not to the effect of we're about to delegate

but maybe more of: “We have an application that we’re looking at. Does anyone else have any interest?”

So, if it’s done early enough in the process, maybe there would not be this denial of service. So, if we choose at the right point of intervention, it might not exactly look like an ex-post appeal, but nevertheless, it may achieve what we’re trying to do is some measure of redress for other parties. So let’s not be bound maybe with an ex-post redress mechanism.

But just back to my general point. You’re absolutely right. We certainly can’t put the yolk back in the egg after it’s been delegated in the root. There you go. There’s a mixed metaphor. So, I think carry on. Thanks.

BERNARD TURCOTTE:

All right. Thank you, Allan. All right. I actually stopped at the transfer thing because the audio dropped off again. Sorry about that. So, we were saying for transfer, there’s not a question of notice because both applicants are involved in a process.

If we go to retirement as the current ccTLD manager, all the timings are built in to the retirement process, so I don’t think we’ve got any kind of an issue about starting a clock regarding when someone can apply on a revocation.

I’m not sure we’ve worked out the timing very well or the process. That is one that I’m going to have to look at a bit more unless someone here has a lot more information. But I don’t think we have a very detailed process about how that works. We certainly worked out the conditions

for what would cause a revocation, but the detailed process for how that would actually work out, maybe that is a point that we can at least note that that needs to be done so that the timing considerations are clear—and on the IDN ccTLD, that’s just as I say a [period].

So, on the decision to be contested, I think there’s only the losing party on a new delegation and working out something on the timing going in, exactly what that’s going to look like, who knows? But definitely that is one that we’re going to have to figure out.

Does that seem to make sense for everyone on timing going in?

Okay, I’m not seeing any hands or screaming.

The second part of the timing is around—oh, Stephen, please.

STEPHEN DEERHAKE:

I think so. I’m just wondering how deep in the weeds we’re going to have to get with the IDN issue. And I don’t have an answer to that. I’m just putting that question out there now, not as my role as chair, but just as a participant scratching my head. And I’m wondering if you have any thoughts on that, Bernard, since you’re involved in not cross-constituency but cross PDPs, I guess is the best way to describe that. So, any thoughts you have on that would be appreciated. Thank you.

BERNARD TURCOTTE:

Just from the timing perspective we were talking about, I don’t see it as being an issue because similarly, to most of the rest, there’s one clear applicant for the string. So, if that gets rejected, then there is a

question. But that appeals, if we decide to go there, is a sticky wicket, as the English would call it.

And the reason for that, as was mentioned, the confusing similarity. Folks, let me tell you, Bart and I know a whole lot about confusing similarity. What happens is I think going to be analogous, at least in some ways, to the string evaluation panels for new gTLDs. And what's creeping up in the appeals mechanisms on the IRP is that they are starting to consider—they don't know if they're going to do it or how they're going to do it. But are you appealing the decision or are you getting into what a panel or a whatever is the system that decides that?

I don't want to go into a lot of details about that here because that's a long and painful discussion but I'm just flagging it, that once we get into these things, sometimes we can get a lot more than we bargained for.

STEPHEN DEERHAKE: Thank you.

BERNARD TURCOTTE: Sorry, Stephen?

STEPHEN DEERHAKE: I said thank you.

BERNARD TURCOTTE: All right. So, that gives us one thing that we're going to have to work out on the timing going in. The timing after the decision, you'll remember we talked about that and we are now at the fifth column.

BART BOSWINKEL: Bernie?

BERNARD TURCOTTE: Yes, sir?

BART BOSWINKEL: It's just to ... I think what we need to ... In context of this working group, we need to be careful of is that, say, progress is stopped because of the issues around the PDP. Would it be helpful—but it's something to discuss maybe on the next call as a question. Would it be helpful if we do a similar exercise as we've done with the retirement, that this working group notes there are potential issues with IDN PDP and goes back? Because it's not addressed in the issue report because, say, of the separation of the two processes. But at least goes back to the council and flagged this as a potential issue and think about what needs to be addressed or is suggested to be addressed by PDP 4. Because that's easy to change.

So, this group doesn't get hung up too much about what's in the PDP 4 process because there are few people who are involved. But it's a lot of speculation—put it that way—and I think we need to be very careful about it.

BERNARD TURCOTTE: You're absolutely right. As I said, I'm more looking for ... My idea was to have the hook in there and at least [have us] to talk about it. I think, as the master issue manager, you are providing us with probably the ideal thing, so we should come up with a consideration of this issue without trying to resolve it so that we can pass on the issues to that working group so they can consider it. Is that what you're suggesting, Bart?

BART BOSWINKEL: Yes.

BERNARD TURCOTTE: Yeah. I think that makes perfect sense. So, yeah, actually, I'm not sure if I would do that at the next meeting, though. I think I would like to work our way through so that we get a sense of what our phase one work here does and where we're trying to land, and possibly as the sort of the tail end of phase one, sort of say, "Okay, now that we understand that," here's a note to council that there may be some issues. But then I understand there may be a timing issue. So, I think I'll leave that up to you.

BART BOSWINKEL: Maybe what we could do is at least run maybe a parallel issue, [inaudible] issue that needs to be identified. And this goes back to some of the other stuff you just mentioned, maybe also start including a parallel list of stress testing.

BERNARD TURCOTTE: Yes, good point.

BART BOSWINKEL: Because over this discussion we already at least do ... I've listened to it and that's the good thing of being away for a couple of weeks is some of the issues that have been raised, you could also identify as a kind of stress test at the end. Say, once you design the process and have a clear idea, like the [DDoS] or denial of service, etc., it's almost a stress test.

BERNARD TURCOTTE: No, I think it would be absolutely a stress test. Great point. Okay. So, our second point on timing issues is there is an announcement of a decision. Usually, because we have said that it is not reasonable to think that we're going to unwind a delegation that has gone into the root, then we're probably going to have to work out some sort of timing considerations. By that, I mean the following.

We will have to announce that the decision has been made to grant the delegation. Once this announcement is made, then that starts a clock ticking whereby a party that can appeal can actually make that appeal.

So, right now, what we've got is, as I said in column five, I put in a standard 30 days as a placeholder. Is it 30 days? Is it 60 days? Is it 90 days? I don't know but we're going to have to talk about it, because in that time period, whatever we select, that will be the time that someone can file an appeal.

If you don't file an appeal during that period, given the decision has been taken, then the ccTLD will be delegated and, as we have said, we can't unwind that so you cannot appeal past that point. So that's why we need it in a delegation type situation.

In some of the other situations, it may be a little different if we look at the retirement, failure to grant an extension. Basically, the process is ongoing. Is it critical that it be 30 or 60 days? Given the overall timing of the retirement is dictated in our process, probably less. But there is value in keeping things the same all the way through. So, one of the things we're going to have to figure out. Is it this 30 days?

And we have to keep in mind the following thing. On this timer to apply for an appeal, if someone does appeal, basically that means you're putting the delegation into the root on ice until that is resolved, right? Because as we have said, you can't unwind a delegation that has been made into the root. So, before it goes into the root as a change or as a new ccTLD, if there is an appeal that is made, then you're going to have to wait and make sure that the decision is taken and then you have a clear path to go to entering something in the root.

We're going to have to be very clear about that. I think it makes sense if we start from the fundamental premise that you cannot unwind a delegation that has been put into the root. So, if that is our driving principle, then it makes sense that there is a limited period, whatever that is, in which a party can apply for a review or an appeal. And if they do apply for an appeal and it is a situation that is about the delegation of a new ccTLD, then that will have to cause a delay into entering it into the root until the process is complete.

Now, given the timeframes—

BART BOSWINKEL: Bernie, you're dropping off again.

BERNARD TURCOTTE: Yeah, I dropped off. Sorry.

BART BOSWINKEL: You're audio wasn't working.

BERNARD TURCOTTE: Sorry. Given the timeframes we were talking about for delegation of new ccTLDs, several additional months to sort this out if there is an appeal is maybe not a huge thing.

However, let's not forget, depending on the appeals mechanism or mechanisms we choose, that they can drag out. ICANN has been in a few where they say ... I think the objective is 3-6 months to get things resolved and I don't think there has been one IRP case that actually has met that. They're all in a 12+ month line. So that is another thing we're going to have to keep in mind.

On other cases, where if we just take the transfer that is refused, then the parties appeal, that's not waiting. That's not changing anything. The timing ... You're not blocking a delegation for that.

On retirement, there is the question of if you're appealing a decision to remove an exceptionally reserved because there has been a change in status, there we're going to have to be careful. But given that our minimum is five years, I think we're okay. That's not a problem. A decision would be reached before that if the appeal is successful. Then the process would just cancel out.

If there is an appeal on retirement for an extension, you may not want to drag that out very, very long. Again, our timeframes, given this is negotiated, that the beginning should allow it. But if it got rejected, we want to be careful on that.

On a revocation, you can appeal it. I can imagine that if we ever have a revocation, there will be an automatic appeal in one of those things. And given we don't have the conditions, what the mechanics of a revocation actually imply, that one is a little tricky on what are we going to hold off onto? So, just making sure the mechanics work out well. So if someone appeals a revocation, obviously the revocation won't have to go on ice until such time as the appeal is done.

So, that's my big speech on timing. Does anyone have any questions? I hear a chair cracking. Bart?

BART BOSWINKEL:

just out of ... For clarification. Did you discuss redress, the type of redress that you can get from an appeals mechanism? Because the way you explain it, at least if I understand it correctly, it is more turning back the decision that was made. But I could imagine a different kind of redress as well.

BERNARD TURCOTTE: I haven't considered that really. If we look at the case—

BART BOSWINKEL: Let me give you an example.

BERNARD TURCOTTE: Yeah, that would be good, Bart.

BART BOSWINKEL: For example, delegation. Say, if you would turn back the decision to delegate, would that mean that, say—and you're taking the example and knowing the implications of removing from the root. You could imagine that, say, with the delegation, it is a new CC so it becomes a new ccTLD. At one point it will be entered into the root and you have some ccTLDs that have been entered into the root and not used.

So, from that perspective, there's no issue. The decision is about has it been delegated to the right party, yes or no? If that's the question, you go into the redress mechanism would be a transfer.

BERNARD TURCOTTE: I think we can have that as a stress test. I'm not certain ... It wouldn't be a transfer as such if you think about it because we have agreed that a transfer is between two willing parties, which is why in the example you give, which is why I have stated that if ... We have to have timing periods before it actually goes into the root. If there is an appeal by a

valid party that is made during that period, then it will not be entered into the root until it is resolved so there is nothing to unwind.

So, I'm not sure that there are other decisions or requirements that can be made. I think if we walk through all our cases, the delegation is not made.

BART BOSWINKEL: We don't need to go into details.

BERNARD TURCOTTE: No, no.

BART BOSWINKEL: It's more that, say, at one point it's—and I recall from the issue report as well. Say, the redress itself is something to consider. What can you ask for if you go to an appeals mechanism? You appeal the decision but what does it imply?

BERNARD TURCOTTE: Ah yes, okay. In my mind, I think it's going to be very clear. You're asking to roll back the decision before, and in the cases where it implies a delegation, before the delegation is made. I don't see any other mechanisms of redress. We can't exactly say, "We'll give you another ccTLD. Sorry." But yes, something definitely to consider. That is interesting.

Just as a side note on that, the only thing an IRP panel can do—and it is binding now since the transition—is say ICANN has made a decision, or failed to make a decision, which is ... Has made a decision which is not in accord with the bylaws or has failed to make a decision as is required by the bylaws. That's the only thing. Basically, the panel of an IRP can only say, "ICANN, you didn't follow the bylaws."

So, we have to be very clear here. This is not a court where damages can be awarded. You don't want to go near this thing. If damages is what we're talking about, that's what the courts are for and that is worked out over there. That's about it.

So, definitely, here we go. I think I've kept everyone up long enough. I'll be glad to take more questions on the list. If not, we will continue to walk through our mechanisms and I'll identify the questions and start building a parallel list for stress test because definitely we're going to need that. Good point. Is that okay if I hand it back to you, Stephen?

STEPHEN DEERHAKE: Of course it would help if I unmute. Thank you, Bernard. I appreciate that. Question to participants. We're going to extra time. We still have item six on the list and my question to you is whether we should—

BERNARD TURCOTTE: We actually—

STEPHEN DEERHAKE: Well, we got through most. Yeah.

BERNARD TURCOTTE: We got through part of what I needed to do on item six.

STEPHEN DEERHAKE: Okay, so you're happy with that. So, given that we're in extra time, then let me go straight to any other business? Is there any other business?

I don't see any hands, so I'm assuming not.

Okay. With regards to the next meetings, as you will recall from the top of this meeting, I mentioned we were giving some thought to a slight adjustment of times. And the idea is to push everything off up an hour. And let me find my proposal on that.

So, our current rotation is 0400, 1200 and 2000 UTC. And the proposal is 0500, 1300, 2100 or 600, 1400, or 2200 UTC. In other words, push it forward an hour or two hours.

And further, the proposal is to put a Doodle poll out to the members via the list to see what the viewpoint of the working group membership is on this idea. So, that's where we're going to go with that.

So, with regards to the next meetings, under 8.1 through 8.3, the dates are correct. The times will be sorted out as a result of the Doodle poll that we will put out on the list if that's okay with everybody.

So, it's a question basically of moving the meeting either one hour forward due to the seasonal change or two hours forward. We'd very much like to hear from our colleagues in Asia-Pacific on this. I'm not

quite sure how it affects them because I haven't done the math on the time zone change for them on that.

So, those meeting dates hold. It's a question of exactly what time they will be held. So we'll get this sorted out.

With that, I believe adjournment is in order. But before we do adjourn, I do wish to also thank Joke for her work on this teleconference. I would have thanked her earlier, but when I scrolled through the attendee list, I just did not see her name. So, Joke, I apologize to you for that. I thank you so much for getting up very early to provide your brilliant note taking as always.

Okay, that's it from me. I wish to thank everyone for participating. Again, Bernard, Bart, Kimberly, and Joke for their support and contributions to this teleconference and Bernard for his studious work on this rather complex issue that we're trying to noodle through. I think we're making progress.

Lastly, I want to implore everyone to stay safe as the virus again seems to be reasserting itself. And with that, I wish to declare this meeting adjourned. I want to thank everyone again. Kimberly, you can stop the recording, and as always, thank you for your technical support. Goodbye, everybody. Stay well, stay safe. Thank you. See you.

[END OF TRANSCRIPTION]