STEPHEN DEERHAKE: Thank you, everybody. Good morning, good afternoon, and good evening. For the record, I'm Stephen Deerhake, the Chair of this working group on review mechanisms. I want to thank everybody for joining today's teleconference. For the record, this is the 20th of January, 2021 edition of the working group tasked with developing ICANN policy with respect to establishing a review mechanism for ccTLDs. That was mentioned in RFC 1519, Section 3.4. We have convened this meeting today at 21:00 UTC.

I do want to thank those of you who have either stayed up late—really late—or have gotten up really earlier for your participation on today's call. Timewise, it's really great for us here in the Americas. It's mid-evening for those near the meridian, early in the day on the 21st of January, for those of you in the AP region. I think you all for participating. Of course, I also wish to thank Joke, Kimberly, Bart, and Bernard for their work today with our call. So thank you all again for participating.

I have to admit I'm a bit giddy today. I presume you're all aware that we had a change of government. Frankly, I feel like a hostage who stepped off a plane after four years in captivity.

With respect to administrative announcements, as you know from previous calls, we reached out to ICANN Legal, as we are going to need their participation as we get into the details of wording on a national review mechanism policy.

As you also know, the ccNSO excluded itself from the various review mechanisms embodied in the post-transition ICANN bylaws, which is why we actually need ICANN Legal to be involved with what we're doing here.

So, as a result, our work is going to touch on both Board authority with respect to ccTLDs in the ICANN bylaws. As I've mentioned in previous calls, the time for engaging with ICANN Legal is near. They are aware of where we are and what we are doing. For your information, we will be scheduling an initial engagement with ICANN Legal during our next teleconference on the 4th of February, which, for those near the meridian, is unfortunate because it will be at 04:00 UTC. I recognize that's an ugly time. It's going to be an important meeting. So I'll let you guys decide what you want to do about getting up for that.

EBERHARD LISSE: Somehow, I can't raise my hand, but be careful with the dates. The dates in the e-mail invitation were incorrect.

STEPHEN DEERHAKE: We are aware of that.

EBERHARD LISSE: You just said the 4th of February when it's actually the 3rd.

STEPHEN DEERHAKE: It's the 3rd. I apologize. Yes. Thank you, sir. Duly noted.

So I would describe this upcoming conversation with ICANN Legal as more of a meet and greet at this point in time. They are aware of what we've been doing, but now that we're homing in on text and stuff, they're taking our work more seriously. I think that's probably the way to describe it.

But going forward, there will be more ICANN Legal participation, at least on the basis of occasional consultation. I'm just saying we can't blindside then with our final word product. We need to get their input going forward.

That's it for that. Okay.

With regards to retirement policy, the Retirement Working Group, our sister working group, has met since we last met. We're in the verge of a final review and submission of that work product to the issues manager, who will, in turn, submit it to the ccNSO Council for approval. Then, assuming the council agrees to the work product, it will be submitted to the ccNSO community for its approval. Assuming approval from the community, we then kick it up to the ICANN Board.

Action items. That's it. I have none. I do not believe any carried over from our last teleconference, but, Bart, if you want, or Kimberly—

BART BOSWINKEL: Nope. We don't.

STEPHEN DEERHAKE: I didn't think so. Good. Okay. So we're going to do something a little different today. I alerted you on the list yesterday if it actually got posted. As I mentioned previously, I'm not sure it did because ICANN's e-mail servers actually don't like my e-mail anymore. But that's another issue. Today's goal—we're going to do a walkthrough of the original drafting document for the working group, which is now exactly three years old, which is kind of frightening in its own right.

BART BOSWINKEL: Four. It's even worse, Stephen.

STEPHEN DEERHAKE: Wait. Oh, my God. It's Tuesday. Yes, right. It's four. You're right. It's 2021. Four years old. Oh, lord. Okay. To do that, we're going to try out some new technology as a temporary replacement for our lovely flipcharts and Kimberly's large bag of markers that we have used in our face-to-face meetings.

So, at this point, what we're going to do is do some breakout groups using this Google technology, which I'm only marginally familiar with, called—what is it?—JamDocs? Is that right? We're going to break out participants on our call—we have 21 of you; well, somewhat less because of staff—and divide us up into separate breakout groups, like we did in our face-to-face meetings. Pretend there's a flipchart in the corner of the room, but it's a virtual flipchart. You can create Post-It notes, basically. I guess that's the best way to describe the analogy. Thank you, Kimberly. You can scribble on these Post-It notes.

On the left-hand side, you'll see this menu bar of goodies. The one you really want to focus on is the sticky note. That gets posted, and you can cut and drag it into the three columns that we have defined here: "must include," "may include," and "do not include." That's how the discussions—"nice to include"—will proceed for about 20 minutes or so. Then we will do what we have done previously in our face-to-face meetings and get back together as a group as a whole and discuss what the various groups had done and try to come to some "where do we go from here" moment. So that's how we plan to proceed.

I presume that you all got and reintroduced yourselves to the initial issues document. Bart, I think, at this point, I have nothing else to say going into this exercise. I don't think I left out anything. So, Bart, I think I'm going to turn it over to you. Carry on. Thank you, sir.

BART BOSWINKEL: Thank you, Stephen. If you recall from two weeks ago, we finished the spreadsheet with all the decisions and conditions around it, and it was time to start focusing on the process itself—the review process—and how should it look like. I think that's what Stephen alluded to with "started drafting," etc.

But before—I think Eberhard raised this point at one point—we should start looking the process itself and start drafting, probably it's a good idea, as we did when we started with the Retirement Working Group— that was the experience with the flipchart—to think about the requirements you have as a working group around the process. Using the flipchart analogy, come up with what you think must be included in

a review process, a mechanism, what you think is nice to include, and what you think should not be included. So these are the basic questions. And please focus on the review process itself. So that's what the areas are about.

Before we go there—Stephen alluded to it—the drafting team that built the charters of the two groups—the Retirement Working Group and the Review Mechanism Working Group—at the time—so that was prior to 2007; so in January 2007 it was concluded—came up with almost a scope document, scoping the work of the work of this working group. Part of it is included in the charter itself, so that is important and in the issue report. But this is more detailed, and that's what we circulated.

Kim, can you go to that document, please? The reason is it has a section on—I believe it's Section … yes. It starts with Page 2: Issues to be explored. And then scope of the review mechanism. That's what we already addressed. Can you enlarge it a little bit, please? Is that possible? Or scroll down.

STEPHEN DEERHAKE: Can you get that on one page? Yeah. Fine. Oh—there we go.

BART BOSWINKEL: So this is the issues to be explored, and this is what we already have.

Can you go to the next page, please? Again, you have already some questions which have been discussed in the work leading up to the spreadsheet, but you also see some others—for example, what would

be the review decisions, which decisions should be subject to review, etc. So that's already been discussed and recorded.

But now it's time to start focusing effectively on the rules and structure of such a review mechanism. So what type of requirements do you want to see with respect to the rules? Should there be a standing panel? How should the selection be run, etc. The structure of a panel. What type of decision should be taken? Effectively, should they be able to overturn a Board final decision and replace it with their own, or should they, say, a panel do a due diligence check and revert it back to the original decision maker? Something like this. These are, I would say, the requirements around the process itself.

Can you go to Page 1 please, Kim? No, go to—sorry—Jamboard. What we've done as a starter for and to assist you is we've preloaded some of the sticky notes with some of the points raised in that issue paper. It's up to you as a small group to decide (and focus on the process) whether it should be a requirement or must be included in the process itself. It would be "nice to include" "or we should not include it" in the process. As Stephen said, we'll go back to the plenary.

As Stephen also said, look, this is a bit of an experiment, but the reason for introducing it now is, first of all, is that you start thinking of the review process, etc., and also start thinking about requirements you want to include and also as questions for upcoming meeting with ICANN Legal. I wouldn't be surprised if, after the first initial conversation, the working group would go back to the drawing board and check which requirements they really want to see included in such a process. So this is a little bit the way we've evolved the retirement process as well.

So let me stop here. Are there any questions around the scope of this exercise and the goal and the method?

I don't see anything. I don't see any hands up. So what will happen is we'll break up the group into three groups—

EBERHARD LISSE: Allan raised his hand.

BART BOSWINKEL: Sorry? Who did? Sorry—

EBERHARD LISSE: Allan.

BART BOSWINKEL: Go ahead, Allan.

ALLAN MACGILLIVREY: Thanks, Bart. I'm just looking at that screen, and I'm looking at the "must include," "nice to include," and "do not include" [inaudible] in the process. You mean the formal appeal process or in the eventual policy?

BART BOSWINKEL: No, not in the eventual policy. This is just part of it. We've developed already part of that policy. This is about the review process itself, the

appeal process. How do you want to see it structured, effectively. That's where we get to now.

ALLAN MACGILLIVREY: All right. So I'm looking at that screen. I'm seeing framework of interpretation. One of the questions we'll ask is, do we want the framework of interpretation to be included as a reference in the final policy process? Or "nice to include" or "do not include."

BART BOSWINKEL: "Do not include" because I think a better one is "should the review mechanism"—that's a better example—"be applicable to all ccTLDs?" Should they able to [use it]?

ALLAN MACGILLIVREY: Yeah. That's an easy one. I'm trying to get my head around the more difficult ones to understand if—

BART BOSWINKEL: For example, something around the panelists, etc. You don't have to use these sticky notes. We can easily delete them or change them— whatever you want. So you're not limited. It's just to start thinking about it.

ALLAN MACGILLIVREY: Okay. All right.

BART BOSWINKEL: Anybody else before we break up?

STEPHEN DEERHAKE: Point of order. Can I ask Peter Kock to elaborate on his "maybe 'consider' rather than 'include'" comment in the chat?

PETER KOCH: Thanks, Stephen. I was struggling with the headlines as well. I think my confusion has been solved. The suggestion was, instead of thinking of "must include," "must consider," or something, the solution seems to be somewhere between the first and the latter.

STEPHEN DEERHAKE: So your comment is to relabel the columns to—

PETER KOCH: No, no. Don't bother with the mechanics or the appearance—

STEPHEN DEERHAKE: We won't know, but if that's how the working group wants to think about this, I'm fully supportive of that. Now that I understand where you're coming from on that, with the "include" versus "consider," we can implicitly—well, explicitly as a group now—say that the group titles are "must consider." Does that work for you? Does that work for the group? And does that work for staff? Does that work for you, Bart?

BART BOSWINKEL: Of course it works for me. You can also interpret it as "must include for further discussion."

STEPHEN DEERHAKE: Right. Exactly.

BART BOSWINKEL: So that's the same thing. And ["]do not include any further discussion.["] So don't bother about it—

EBERHARD LISSE: I agree with Peter that … First of all, maybe the wording is not right. Second of all, we shouldn't bother about the mechanics. I'm thinking of the headlines to mean "must have," "nice to have," "will not have"— something like this. Whether "include," "consider," or, "have," it doesn't matter. But the point is clear: the ones that are mandatory, the ones that are optional, and the ones that are out, basically.

BART BOSWINKEL: Yeah.

STEPHEN DEERHAKE: Yeah. This is an exercise with import because we really want to take what we derived from here on this call forward. But I think we're now all in agreement that it's not, if you put it in the "must include," it's in

concrete, it's not in concrete. It's just something we think out to be there at the end of the day. I think that's probably the way to address this. So I agree with you, Peter. I agree with you, Eberhard. Thank you for both of your contributions.

BART BOSWINKEL: And put it this way. You can't build anything on sticky notes. That was the experience with the flipcharts as well—this is just shorthand for something that needs further discussion anyway. But it's a way of prioritizing what needs to be addressed at one point.

STEPHEN DEERHAKE: Yes.

BART BOSWINKEL: And what you don't have to bother about anymore. That's another way of looking at it.

STEPHEN DEERHAKE: Yes.

BART BOSWINKEL: So I think there is general agreement to that.

May I suggest that we break out? That makes it easier. Everybody is able to speak and think about it. Stephen will be one of the moderators, Bernie will be one of the moderators, and I'll be one of the moderators.

Joke and Susie will assist, and Kim and Claudia will assist as well with handling the sticky notes. So that's easy. Maybe in the future we'll be able to do it all at once because this is a tool for group work so—there's Nenad as well.

So my suggestion is, as this is the first time we do this, we do this for 20 minutes because we already are half-an-hour into the call. We do this for 20 minutes and then get back to the main room. The moderators will explain what the different groups have done. Then let's call it a day and see what the result is and if it's worth pursuing.

Okay. Any more questions?

STEPHEN DEERHAKE: I just want to say that we've got to figure out how to use this stuff because we're not going to see each other for a while, and this, when we got together in person, was really useful—to do the flipcharts and the sticky notes—and this is a virtual equivalent. So let's give it a shot. I can't say I know how to run it well, either, but we're going to go for it.

BART BOSWINKEL: Here we go.

STEPHEN DEERHAKE: So we'll see you in 20 minutes.

BART BOSWINKEL: Kim, do I need to do anything?

KIMBERLY CARLSON: Nope. You're all set. Everybody who stayed in the room is in Group 1 with you.

BART BOSWINKEL: Okay. And you will be able to use … Who's assisting … Okay. Welcome. Yeah, you'll be doing this, I can see. So the intention is that, as you can see, we got a set of prerequisites. I would say something like RFC 1519, with respect to the process mechanism, doesn't make, really, sense at this stage—nor do the ICANN bylaws of the 1st of October, 2016—to make it easier.

So is there somebody who has a sense of what you want to see included in the process itself in the review process, either around the panel or around something like, should we discuss in the future and very explicitly whether the mechanism is open and applicable to all ccTLDs or just to ccNSO members, etc.? Anybody? Any basic ideas around what should be included in the process or what you don't want to see included in the process?

ALLAN MACGILLIIVREY: Bart, it's Allan. I have my hand up. I don't know if we're using hands or not.

BART BOSWINKEL: Now I see it. Sorry. I wasn't focusing.

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ALLAN MACGILLIIVREY: That's okay. I'm still trying to get a feel for the process, but just on your placing of the ICANN bylaws in the "do not include," I personally would have put them in "nice to include" from the point of view that we may end up with a requirement that certain processes be exhausted before something else happens, and those might be articulated in that. So I just thought I would make that point [and move that back there].

BART BOSWINKEL: Fair point.

ALLAN MACGILLIIVREY: And let me start things out and say I think that the review mechanism should be applicable to all ccTLDs. Just to get the discussion started.

BART BOSWINKEL: Maybe change that if you could, Kim. Change to "be applicable to all ccTLDs." Strike the question mark. That's all.

Anybody else?

I see, Peter, your hand is up.

PETER KOCH: Thanks, Bart. Let me lower it first. I'm not sure I got the framework right. I would have had the constitutional parts, like 1519, the bylaws, and the FOI, on the must include side to start with. But …

BART BOSWINKEL: Can you allude to why you wanted to include it there? So we're talking about the process itself.

PETER KOCH: So my understanding was that the outcome needs to be compatible with those constitutional documents. But then maybe I still read the question in the wrong way.

BART BOSWINKEL: No, you don't. It means compatible with constitutional documents. Okay, yeah.

Anybody else on this point? You can speak up anyway. It's a small group.

KIM DAVIES: It's Kim here.

BART BOSWINKEL: Go ahead, Kim.

KIM DAVIES: From my perspective, I would be striving to try and make this document as timeless as possible. On that basis, whilst I wouldn't necessary not include references to documents like RFC 1519 or framework of interpretation, I wouldn't want to word it in such a way that there is an

absolutely dependency upon them such that, if future ccNSO policies are developed, they're not automatically out of scope by virtue of the fact that this document has a very strong linkage to these prior documents.

So, if these were to be included, I would encourage language that refers more generally to the prevailing policies, for example, and then we could itemize some of the ones from the past. But in the fullness of time, I'm sure the ccNSO will devise subsequent policy guidance that would be subject to this review mechanism. I'm not sure if that's helpful, but—

BART BOSWINKEL: Yeah. Maybe if you would reframe to something like you got these documents and their successor documents and also make it timeless. I think that's a good one. Say, in a way, you have to reference the constitutional documents, but at the same time, these constitutional documents may change, and hence you need to link it, not to … What's the word? I'm getting tired. My English is giving up. But something like this.

So, Kim, if you would put in two sticky notes. Say there needs to be a link—or in one sticky note—with the constitutional documents, but it needs to be done … Use a word like "should be flexible." And maybe the process around … So that's one.

Then you move constitutional documents to "must include" or "be referenced"—yeah, "must include." You can tie them together. So the

ICANN bylaws RFC 1519 and framework of interpretation—attach them to each other.

Is this a fair way of capturing that part of the discussion?

My final point—maybe one more—is a very important requirement: that the policy should be timeless in the sense of not dependent on these external documents. Is that a fair summary? Anybody?

PETER KOCK: Fine for me, says Peter.

STEPHEN DEERHAKE: And for me as well.

BART BOSWINKEL: Kim, is that what you had in mind as well?

KIM DAVIES: Yeah, I think so.

BART BOSWINKEL: So, Kim, if you could add—Kimberly—one more sticky note saying, "Process and policy itself needs to be timeless"?

Allan is that an old or a new hand?

Now, maybe, with respect to the rules and structure of the mechanisms—this is more around the panelists—do you expect in the future something like a standing panel or a pool of panelists? Any expectation or something like what is happening with the IRP right now? Or you have no opinion yet? Anybody?

ALLAN MACGILLIVREY: All right. Well, I'll speak. It's Allan again. As I've said before, to the extent that we can build on other mechanism, we should at least look to those initially just because it improves understanding of the process, which therefore makes it more accessible.

BART BOSWINKEL: So that's at last "must include in further discussion."

ALLAN MACGILLIVREY: Yeah, in further discussion. Whether, again, it does is a second question.

BART BOSWINKEL: So maybe, Kim, could you move rules or structure of the mechanism? "Look at existing one." Maybe it's easier to create a new sticky.

KIMBERLY CARLSON: Where do you want this one?

BART BOSWINKEL: "Must include."

KIMBERLY CARLSON: Okay.

BART BOSWINKEL: But add something like—

KIMBERLY CARLSON: Do you want that edited or a new sticky?

BART BOSWINKEL: Put a new sticky over it. That makes it easier.

KIMBERLY CARLSON: Okay.

BART BOSWINKEL: Something like what Allan said: "Look at existing mechanisms as a starter." That captures it, doesn't it, Allan?

ALLAM MACGILLIVREY: Yes.

BART BOSWINKEL: And try to build on it.

And are you looking only at ICANN mechanisms or other mechanisms as well, Allan?

ALLAN MACGILLLIVREY: I don't want to go too broad too quickly. I think we should look at the ICANN mechanism because I know there was a lot of homework done behind it. So let's just leave that for the time being because, if we make it broader, then we could go on a wild goose chase prematurely.

BART BOSWINKEL: Okay. Fair point. But I just wanted to check. Anybody else on this particular point?

Maybe Nick? Your experience with …

NICK WENBAN-SMITH: Hi. Sorry. I joined a bit late. I was another Zoom call so I missed the first part of this. I suppose, in a complaint or dispute process, obviously it needs to be self-contained in the sense that those of us who weren't around when RFC 1519 was written or intimately involved with the framework of interpretation need to look at this cold and still have a full, clear understanding of it. So I understand it's nice to refer back to those things, but I wouldn't want this to be as a document which then links to a series of other long documents which themselves have been subject to a lot of history and you needed to have been there to understand it. It needs to be understandable to people new to the community coming in and trying to use this rather than assuming a lot of history and understanding. So I think that's the point, if that's useful.

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BART BOSWINKEL: Yeah. Thanks. Maybe that's a nice one: "Ensure it's self-contained."

NICK WENBAN-SMITH: The test you would use is, would a judge who's intelligent but doesn't know the history of it be able to pick this up as one document and understand exactly what it is that they need to do without having to refer to the various ICANN bylaws or previous policy [inaudible]?

BART BOSWINKEL: Yeah. And it alludes a little bit to the point that I think Kim Davies just made—If you look at the current documents, constitutional documents, like the ICANN bylaws, RFC 1519, and the framework of interpretation, this process or procedure should not be too tied to it or to other policies because they may change over time as well.

NICK WENBAN-SMITH: Yeah. Agreed.

BART BOSWINKEL: Okay.

KIMBERLY CARLSON: Bart, did you want to keep this sticky note on self-contained?

BART BOSWINKEL: Yes, please.

KIMBERLY CARLSON: Okay.

BART BOSWINKEL: And put it in around the … yeah.

Maybe a little more about details. This is more a question that was raised in the paper that we circulated. This is just, how do you see the end result? What should the end result should be like? Should it be just a due diligence check or should it be something like replacing the decision of the original decision? So should it refer back to the decisionmaker—so more or less a due diligence check?—or should it be something else? Should it really replace? So should it be a kind of appeal or just a due diligence review? Any views on that? I hope this is clear enough as a question.

So Nenad says, "A real appeal." So the outcome should replace the original decision.

NICK WENBAN-SMITH: Bart? Sorry. It's Nick.

BART BOSWINKEL: Yeah, go ahead.

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NICK WENBAN-SMITH:	It would be a bit too long to write this in the chat, but as I understand your question, is it essentially a review for administrative correctness or is a de novo, look at everything, drains up?
BART BOSWINKEL:	Yeah, that's a true appeal, isn't it?
NICK WENBAN-SMITH:	Yeah, I think that must be right. I agree with Nenad on that.
BART BOSWINKEL:	So it should be a true appeal.
NICK WENBAN-SMITH:	Yeah.
BART BOSWINKEL:	Because the outcome and everything else makes it different.
NICK WENBAN-SMITH:	And I think, in terms of appeals, you could have some appeals which are on process and "has the judge got the law rules?" and then other appeals are where they can say, "Actually, we're going to look entirely on the factual basis. If we find new facts, then we can introduce them at this stage." Sometimes in an appeals stage that's not permitted. So the rules around that … I would have thought it's just complete rehearing of the whole issue from the beginning rather than a selective part just on

certain elements, and no new factual information be permitted is sometimes what you see. I think it's a clearer process of, "Look, the review can cover every element of the first decision."

BART BOSWINKEL: That's a very nice way of putting it, Nick. Kim, could you put it in as a rehearing from the facts? That's the way you expressed it, isn't it, Nick?

NICK WENBAN-SMITH: Yeah. I don't know what it is in English, but in Latin, it's like de novo.

BART BOSWINKEL: Yeah. But reviewing.

NICK WENBAN-SMITH: Yeah. Complete rehearing as opposed to being limited to finding a different outcome based on the same facts. Because then you get into rules about, well, is it a new fact that's allowed to be admitted at the review stage? All that kind of stuff. [inaudible]

BART BOSWINKEL: Yeah. Kim, could you capture this as a complete rehearing? And then versus … What's the other term you used?

NICK WENBAN-SMITH: Like an administrative review [inaudible]

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BART BOSWINKEL: [inaudible]. Due diligence check.

KIMBERLY CARLSON: Sorry. I didn't hear the last part. Complete rehearing versus …

NICK WENBAN-SMITH: Administrative review.

KIMBERLY CARLSON: Okay, thanks.

NICK WENBAN-SMITH: So it's like a distinction between "everything is open" versus "we're only going to look at whether the right procedure was followed, not really anything else."

BART BOSWINKEL: And that's definitely something of "must include."

                                   I think we—

PETER KOCH: I like the versus because that needs more discussion. I was struggling around the case where inaction is appealed against or is subject to the review process. And then the worst outcome would be that the inaction

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for the reason of the significantly interested parties not getting together then would be overturned by the panel, which is what 1519 envisioned as per the shared document. But I doubt that would be the desired outcome. Anyway …

BART BOSWINKEL: Okay. Thanks. Anybody else? What do you think is definitely worthy of further discussion and/or something that we must include in the review process itself? I think, for panel selection, etc., it's too early to discuss this. Anybody else?

ALLAN MACGILLIVREY: It goes without saying we have to have something on the scope of the review mechanism. So I don't know where we are. For me, that was understood.

BART BOSWINKEL: I'm just looking at the time. That's all. This is a preliminary … But, yeah, scope of the review mechanism. I think scope of the review mechanism, if I recall from the discussion at the time by the drafting group, is exactly around what type of decisions are made. Is it an appeal or just an administrative review of what happened? Maybe that's the scope of the mechanism. So that's the scope of the review mechanism. As I think Nick alluded to, it will have quite an impact on what will happen and on the type of people you want, etc. That's what I would say. So maybe that's already the scope.

I don't know, Allan—do you have anything else in mind?

ALLAN MACGILLIVREY: No. I'm comfortable leaving it here. We don't have much time. I know we're trialing this process. I don't see it as the end of it, so [inaudible]

BART BOSWINKEL: No, definitely not. Before we go back, do you think, without the headings, etc., we need to learn it … It is worth using this for future types of discussion in this way? Any immediate thoughts from your end? If you think it doesn't work, fine. Then we'll try to find something else. But any immediate feedback?

None? Yeah, go ahead.

ALLAN MACGILLIVREY: Well, I mean—I seem to be talking too much today—I actually believe in this as a process—having breakout groups—because I think you get more participation and therefore you get more buy-in. So I think that we should use this mechanism in the future.

That being said, this is, I think, too broad to accomplish an awful lot, but I'd certainly be willing to try it again. So that's what I'd [say].

BART BOSWINKEL: The basic idea is starting to get away from the spreadsheet and, in a way, start prepping for the next set of meetings. That was the reason for starting using this as well.

Anybody else on that point? Otherwise, I think we need to close the rooms, Kim.

KIMBERLY CARLSON: Okay. It looks like Bernie's room is getting ready to wrap up, so I'll let Stephen know we're wrapping up the rooms.

BART BOSWINKEL: So I'll do the reporting back to the full group. If you want to chime in, please feel free to do so. That's the whole purpose of this exercise. You're not shy to do it during face-to-face meetings, so don't be shy to do it now.

I see Bernie's group is back.

BERNARD TURCOTTE: Bernie's group is back.

VANDA SCARTEZINI: We are back.

BART BOSWINKEL: Yeah, you are back. Good.

KIMBERLY CARLSON: Okay. I think everybody is back now. Welcome.

STEPHEN DEERHAKE: All right.

BART BOSWINKEL: So I'll kick off. Group 2 and 3, if you have any questions, please raise your hand and say if you have any questions for Group 1. Then we'll see if we need further discussion on this.

We started off again to refine again "must include," "nice to include," and "do not include." We ended up with "definitely warrants further discussion," etc. As you can see, the sticky notes on the right we didn't discuss. We didn't have the time at this stage.

So let me allude to what the group thought should be included in for further discussion. There should be, one way or the other, a relationship with the constitutional documents, like RFC 1519, the framework of interpretation, and other policy documents probably, like the retirement. At the same time, it was noted that this link should not be too tight, as policies may change over time. As we may have seen, 1519 was not changed, but it was interpreted through the framework of interpretation. There was this new policy around the retirement, etc. So that's around the linkage with the constitutional documentation.

"Nice to include" was ICANN bylaws. It was more a matter of reviewing if other mechanisms than the review mechanism for the decisions pertaining to the delegation, etc., are effective and available. So that linkage should be maintained as well.

EN

What was, I think, a very strong point to that that needs to be ensured as a requirement is that the future review mechanism should be self-contained. New people to this, in five- or ten-years' time, should be able to understand the process and understand the requirements, etc., on the basis of looking at the documentation of the procedure and the policy itself and should not be referred to all the side documents, like RFC 1519, the bylaws, etc. So it should be self-contained—the rules and structure of the review mechanism.

What's definitely necessary for further discussion is whether the process should be a complete rehearing—so people should be able to provide new facts, etc.—and that the panelists or whomever is adjudicating should be able to hear the full story again after the appeal has been launched. So that's one model versus the other model as making it more of an administrative review—just a due diligence check, where the facts are given, etc., based on the previous discussion. It's more checking whether the correct steps were taken. So that's the administrative approach—whether the steps have been taken.

I think that captures … Oh, yeah, and the final one is that the group should first start looking at the existing processes within the ICANN framework, specifically to the IRP, and check whether the policy could build on what is included in the IRP.

I hope I captured it. Anybody else from Group 1 want to chime in?

STEPHEN DEERHAKE: Not hearing any. Chair's prerogative: Just want to let people know we are going to go for extra time. I hope it's no more than 20 minutes.

EN

BART BOSWINKEL: I see Eberhard. You have a comment? Your hand is up.

EBERHARD LISSE: I've posted this in the chat. I like this idea of, in addition to RFC and the anti-retirement policy, also looking at whether ICANN has abided by its own bylaws. But this is subordinate obviously to if 1591 was violated, then you don't even have to look at the bylaws anymore. In other words, they cannot say the bylaws are complied with but RFC was violated and the bylaws are complied with so it's fine. I think this is actually helpful to put this in. Unfortunately, the ccNSO part of the bylaws is not that much. As we all know, you can leave the ccNSO [inaudible].

BART BOSWINKEL: Yeah. And also [say] it should be applicable to all ccTLD or available to all ccTLDs. I'll put it that way. I think that's the best way to frame it— independent whether you're a member or non-member.

So that was with respect to Group 1. Group 2, go ahead. Bernie?

BERNARD TURCOTTE: All right. We had a quick additional to "do not include." Eberhard made a strong case that any mechanism should not be subject to local law. I think there was a little bit of discussion around that. Then we moved on from that. Otherwise, it would just be unworkable.

After that, we went into "applicable to all ccTLDs,[" "]Must respect RFC 1519 and the framework of interpretation," and worked around those things for a little while and then got into some details about—I'll get to you in a second, Eberhard—how that would look like if something happens, like revocation. Eberhard?

BART BOSWINKEL: Eberhard, you're on mute.

EBERHARD LISSE: Okay. I was waiting for Bernard to finish because he mentioned me. The point about local law is that every ccTLD manager is subject to local law, but PTI and ICANN have strenuously objected in the past to become subject to 253 different local laws. So it's not workable in that sense.

I also don't believe that the arbitration panel should, in each case, decide which local law it will apply to. They have processes to do this.

Otherwise, my view of this is that we are very close to what Group 1 said, basically.

BERNARD TURCOTTE: Yes, I think so. Any other comments from Group 2?

All right. I'm going to close with the fact that, for Eberhard, it was very clear that it was an international panel similar to what ICANN currently uses for its IRP.

Stephen, back to you.

EN

BART BOSWINKEL: So back to Group 3. Stephen?

STEPHEN DEERHAKE: Group 3 [inaudible].

BART BOSWINKEL: There you are.

STEPHEN DEERHAKE: We went down the left-hand column and then down the right-hand column. So, we can see, we have a "must include RFC 1519 and the framework of interpretation," because everything builds out of the FOI.

With regards to [who is] standing with a review mechanism, we're not quite clear on that, as you can see from our comments that Joke made. We did not get to, what are the grounds [in] the ICANN bylaws? So we'll discuss that.

"Nice to include" is [inaudible] processes, scope of the mechanism. And then we had an overlap between "nice to include" and "do not include" with the CCWG Accountability and then [CCT] stewardship stuff. We're trying to do it. We have been trying to do it for some years now, but my group felt it wasn't something that we absolutely have to adhere to.

Then, with regards to the review mechanism applicability to all ccTLDs, we said, no, we don't need to include that and, if they're not ccNSO

members, do they get the protection or not? I guess that's the result there.

So that's where I am with that. That's where my Group 3 was with that. If anybody in Group 3 feels I misinterpreted what we discussed, please feel free to speak up. I will not be offended.

[So back to you, Bart].

BART BOSWINKEL: I see Joke in the chat saying your green notes are the points, and the yellow notes are the explanation.

STEPHEN DEERHAKE: Yes.

BART BOSWINKEL: Okay. Thanks.

STEPHEN DEERHAKE: You did a great job of notetaking, so thanks.

BART BOSWINKEL: Okay. Thank you. I see your hand is up, Eberhard.

EBERHARD LISSE: If we should change "should the review mechanism be applicable to all ccTLDs," to "available to all ccTLDs," would that move from "do not include" to "must include"? The point here is that the review mechanism is not applicable to ccTLDs; it's applicable to decisions of the IANA function operator. RFC does not say it's limited. So, if we were to use the words "should the mechanism be available," we discussed this in our group. If a non-member uses this mechanism, he's not bound by it, especially if he loses. But the IANA function operator will be bound by it if he wins. And a ccNSO manager would be bound unless he leaves. So would changing the words "applicable" to "available" change your opinion on it?

BART BOSWINKEL: Anybody from Group 3?

STEPHEN DEERHAKE: Anybody want to address that? Sean, do you want to address that? Anybody want to address that?

SEAN COPELAND: Sorry, Eberhard. When we were looking at this, my thoughts on this were … I understand your wording, and your wording actually does make sense but reinforced how my thought pattern is. If a ccTLD that's not part of the ccNSO is going through this route or is having an issue, my thought is they're going to end up in court, wherever they are, and a judge is going to look around for some sort of precedence or procedure that exists. And this is going to get pointed out to them regardless. My

experience in court has always been that, if there's some sort of precedence or procedure that a judge can use, he's going to go to it anyways. As soon as that happens, that is going to fold in any non-ccNSO party to this.

EBERHARD LISSE: So you're supporting basically what I'm saying. The additional argument in the .africa case is … In the court case, the court said, "You cannot change your arguments totally from what you present in a quasi-judicial proceeding. You cannot go in the quasi-judicial proceedings IRP, say A, and then when you go to court say, "A was wrong. We got for B." So, in other words, I'm quite right. I think we have mentioned this in the past. If you go to an independent review, you have to basically make sure that all your arguments that you later want to rely on in court must be presented. So I agree with what you are saying, Sean.

SEAN COPELAND: Okay.

BART BOSWINKEL: Thanks. Anybody else? Questions or points from Group 3?

So this will be captured, and we'll get back to this and probably write it up one way or the other. Maybe I'll even include in one of those mind maps that we use in the retirement. But [inaudible]. Thanks for participating.

First of all, a question—I asked it for Group 1—maybe for Group 2 and 3 is, well, do you think it's a nice way of kicking off these types of discussions? Any immediate feedback?

Go ahead, Eberhard.

EBERHARD LISSE: Yes, I think it's a very good idea. We should maybe not have staff run this. For example, I recall in Panama this was done very well, Nick Wenban Smith was in my group, and he paraphrased this very nicely. But I think, if we don't have a whiteboard, this is a quite reasonable way of doing it. And we don't have to maybe start with so many green stickers. In other words, [for] the ones that must be included [,] the obvious ones are there, but then we basically brainstorm and put out own things on.

But what I liked about it was that we're basically, in all three groups, on the stickers that we discussed, more or less on the same wavelength.

BART BOSWINKEL: Yeah. Thank you. Anybody else?

Eberhard, is that an old or a new hand?

STEPHEN DEERHAKE: Am I seeing any more hands? I see one from Maarten.

EN

BART BOSWINKEL: Maarten, go ahead. Maarten Simon.

MAARTEN SIMON: Well, I think it's a useful method to work with. The only thing is it took me some time because the question we are dealing with was extremely broad.

BART BOSWINKEL: Yeah, I know. But that's how we did it—

MAARTEN SIMON: Yeah, but it makes it really complicated to really get your head around in just 20 minutes to think, "Okay, this is what I would like to say here."

BART BOSWINKEL: I agree. This is the first time we did it this way, anyway, and with this group.

STEPHEN DEERHAKE: Actually, in a way, it was kind of intentional because the working group leadership felt we need to introduce this technology to the working group. We need to get familiar with it because it's going to be a while before we actually can be together and fiddle on whiteboards and put up Post-It notes and use Kim's big bag of pens. So it's a start.

And I think it went pretty well, actually. I would love to hear what anybody else has to say about it. But I think this exercise went pretty well, and we actually get some useful output from it.

VANDA SCARTEZINI: Yeah, I believe it's good. It's interesting. Of course, if we can do it by ourselves and stick to what we are thinking, that is more quick, more interactive, and everybody can participate more because there is not much time for people to wait for the other, to explain, etc. So if we stick first and discuss later, it could be better.

BART BOSWINKEL: Thanks for the feedback.

STEPHEN DEERHAKE: I appreciate it.

BART BOSWINKEL: Eberhard, again, I see your hand is up.

EBERHARD LISSE: This is probably not—a breakout on a one hour meeting is probably not the cleverest idea, no matter what system you take. But if we are looking at face-to-face or a replacement of face-to-face, these are three- to four-hour meetings, whether they are by Zoom or by face-to-face. For that, this is [cool.] And even if we do face-to-face, it may just

be an idea to use the Jamboard instead of the flipchart because then it's already captured.

BART BOSWINKEL: Yeah. Thanks.

EBERHARD LISSE: But, for short meetings, to go into breakouts that take a third or half of the time? Personally, I don't like it. I like the idea of doing it like this, but we need to have longer meetings for it. In a short meeting, that doesn't really work for me.

BART BOSWINKEL: Yeah, or split it up in two sessions, as we did in the face-to-face, because looking at a Zoom room for three hours is probably too much.

STEPHEN DEERHAKE: It's awful. Trust me. My daughter tells me that.

BART BOSWINKEL: Yeah. So, Stephen, thanks for allowing me to ask this question. Back to you, I think. Back to the agenda.

STEPHEN DEERHAKE: Thank you, Bart. I am happy with how that turned out. I hope other members of the working group who participated in the various sessions were reasonably pleased with it.

So, with that, because we're in extra time—15 minutes or so—any other business?

I'm not seeing a big waggle of hands, so I'm assuming not.

You can see the next meetings down there. We want to clarify that the meeting on the 3rd is the correct date. Kimberly, can you …

BART BOSWINKEL: Yes, it is.

KIMBERLY CARLSON: The dates on the screen are correct.

STEPHEN DEERHAKE: Thank you. Because I'm the one—

BART BOSWINKEL: It's on a Wednesday.

STEPHEN DEERHAKE: So you see our calls. We expect to have a bit of an interaction with ICANN Legal on that meeting. I know it's a horrible time for those of you near the meridian. As I mentioned in my introductory notes, it's kind of a meet-and-greet. We'd love many of you wanting to get up really early to participate to get up and do so. You see the other upcoming meeting dates.

But I think this was a useful meeting today, and I really want to thank everybody for participating. I think we noodled our way forward a little bit. It's kind of shocking that the charter document is now four years old. This explains why it's the butt of ICANN Board jokes as to the pace of ccTLD policy development as opposed to the GNSO, but there you go. We do it right. That's the way I would say it.

With that, I think we—

EBERHARD LISSE: Hang on, hang on, hang on.

STEPHEN DEERHAKE: Hold on. Eberhard has got his hand raised.

EBERHARD LISSE: First of all, I'm sick and tired of this reference to Board jokes. That happened once, 2,000 years ago, and the policy was split into two and done each after each other. So I really don't want to hear this anymore.

Secondly, with regards to ICANN Legal, can we ask them to be prepared for questions with regards to what framework their panel uses? Because that was a question that came up. Maybe we tell them before and they could explain to us how their IRP arbitration panel works. If they need to go to some norms, what norms would they take? and [those kind of questions] so that we already get some information that came up during our discussion today.

STEPHEN DEERHAKE: Okay. To answer your first question, my joke is the joke on the joke. So excuse that one.

With regards to ICANN Legal, given that the ccNSO carved itself out of all the review mechanisms that were incorporated into the bylaws that resulted in the carveout in, what, 2016, I believe, they will be involved. The fact that we are looking, as I mentioned in my introductory remarks, at bylaw changes—

BERNARD TURCOTTE: Stephen, I probably have an answer for Eberhard, if you want.

STEPHEN DEERHAKE: Thank you. Thank you for saving me.

BERNARD TURCOTTE: Eberhard, two things. As you may know, I had mentioned earlier that the IRP is in the process of being changed. I believe Samantha Eisner, who is #2 counsel at ICANN, would be joining the meeting on the 3rd. I think she is leading a lot of the work on the review of the IRP and would be ready to answer those kinds of questions that you would have in a very practical way.

EBERHARD LISSE: I'm just saying you were in our group. This issue came up. So I would be interested to hear how existing processes deal with this.

BERNARD TURCOTTE: Yeah. And I think she would be a great person to go into that. I think that's the point of starting the discussion with them.

STEPHEN DEERHAKE: I would encourage you, Eberhard, to get up early then.

BART BOSWINKEL: If there's nothing else, can we close?

STEPHEN DEERHAKE: With that, if there's nothing else, I'm done through AOB. I'm done through next meetings. Going once, going twice … I adjourn this meeting. Thank you, Kimberly and Joke, Bart and Bernard. You can cease the recording, Kimberly. I wish everybody well. We'll see you in a couple weeks.

VANDA SCARTEZINI: Enjoy your new country.

STEPHEN DEERHAKE: Oh, my gosh. No kidding.

[END OF TRANSCRIPTION]