

---

STEPHEN DEERHAKE:

As you can see, we have a relatively simple agenda this evening, but I want to thank everybody. Good morning, good afternoon, and good evening.

For the record, I'm Stephen Deerhake, the chair of the ccNSO Working Group which is tasked with developing a policy for the review mechanism of ccTLDs. So, I wanted to thank you for today's teleconference and participation.

This is the 3<sup>rd</sup> of February 2021 edition of the ccNSO PDP Working Group tasked with developing ICANN policy with respect to developing a review mechanism for ccTLD retirements ... Well, overall, as mentioned in RFC 1591 I believe it's section 3.54. And we've convened this meeting today at 05:00 UTC.

I do want to thank those of you have either stayed up either late or gotten up really early for your participation on today's call. And I'd like to point out, for a change, it's prime time for our Asia-Pacific colleagues. Really early, early morning for those near the meridian. As best I can tell, the ugly middle of the night for our colleagues in South America depending on whether they're on the east or west side of the continent. I thank all of you for either spending your afternoon with us, getting up really early, or getting up in the middle of the night to be with us.

And, of course, I wish to thank Joke, Kimberly, Bart, and Bernard for their brilliant work as staff with our call today. I also wish to thank Bart and Joke for being up very early their time to participate in this call.

---

*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.*

---

I also wish to thank Kimberly for staying up out of [bed] and providing her usual magic that makes all the Zoom stuff happen. So, thanks, again, for everyone participating on today's call.

Moving on to administrative matters, since our last teleconference, our sister working group essentially finalized the work product, the Final Report on the Retirement of ccTLDs. I'm pleased to say that it is going out for a final, final—hopefully final, final—review of the text to the working group mailing list with a closure day for [errata] coming up soon because that's basically all we're down to at that point.

Our working group will then likely do a final cleanup from a formatting standpoint to have a final document to push forward. And if I understand it correctly, and I'll leave it to Bart to correct me when I'm finished babbling, it's then my turn as chairperson of the Retirement Working Group to formally submit this document to the Working Group Issues Manager who will in turn submit it to the ccNSO Council for discussion and decision, and hopefully approval. And given that, they will in turn submit it to the ccNSO community for their debate and approve.

And assuming all that goes to plan, then the policy document will be forwarded by the Council to the ICANN Board for their hopeful approval and adoption. And that will bring an end to that, which will be nice.

And Bart, that's my understanding of how things are supposed to move forward.

---

BART BOSWINKEL: You missed one step [inaudible].

STEPHEN DEERHAKE: How badly did I miss it? That was my next question. How badly did I misrepresent that, and can you correct me, please, sir? So, please, go ahead and do that.

BART BOSWINKEL: The only step you missed is ... So once I receive it from you, I'll open a Public Comment period because we need to separate part one and part two.

STEPHEN DEERHAKE: Oh, God. I forgot the Public Comment period. Okay. Thank you, sir. Okay. Any other thing I screwed up there, Bart? Or are we good?

BART BOSWINKEL: I just said you missed one step.

STEPHEN DEERHAKE: Okay. That's good. I only did one? Thank you.

BART BOSWINKEL: For the next call, when it's done, you know.

---

STEPHEN DEERHAKE: One more call before it's done with the retirement group?

BART BOSWINKEL: No. I was kidding. I was pulling your leg.

STEPHEN DEERHAKE: Okay. Thank you.

BART BOSWINKEL: The next call, when it's done ... So, this working group meets the next time. The other one doesn't meet. But next time when it's done, then you know how it works.

STEPHEN DEERHAKE: Okay. Thank you. Anyway, I just wanted to enlighten the Review Mechanisms Working Group where we were with that because we are essentially done with that work product. It's a matter of errata and formatting and figuring out where it goes next in the ICANN Org. So, thank you for that, Bart.

With regards to the agenda, as you can see it's pretty simple tonight. Our focus this morning is [to] begin an engagement with ICANN legal as we move forward now that we have an agreed to framework—an informal framework at least—of what we were thinking about with regards to the actual policy document to be developed.

And as you know from our last call, we reached out to ICANN legal for participation [inaudible] deliberations. Frankly, this participation and

---

consultation is a requirement for our work to succeed because the resultant work product will require exchanges in ICANN bylaws probably over several areas. And there's no way we, as a working group within an SO, can suggest such changes without buy-in from ICANN Org and, most specifically, ICANN legal.

So, this morning I'm very pleased to announce that, as I mentioned in our last meeting, we would have a rep from ICANN legal today. And our rep today is our special guest, Samantha Eisner, from ICANN legal. I presume some or most of you know here. I've known her for several years on an informal basis. I'm really, really happy to have her with us this morning because we're keeping her up in the prime time of her evening, and I thank her for staying out of [bed] and for being with us. As a note to the group, we'll be having more discussions with ICANN legal as we [proceed] with our work.

My feeling tonight with regards to the group is our primary goal tonight, or this morning, is both a meet and greet with Samantha in ICANN legal overall and a start of the conversation that we will be engaging with them over the coming months—note that's months, not years—as we consider our policy goals and our impact on ICANN.

And it's my understanding that Samantha has reviewed the spreadsheet Bernard has prepared and which we have been discussing for several meetings now, and thus she should be familiar in the direction we're going in.

And so, I look forward to her thoughts regarding where we might be going and what possible concerns, more importantly, that ICANN legal

---

might have in the direction that we're thinking of going in. I'm not looking, of course, for definitive answers on this call, but we need to start the dialogue.

So, whatever we decide here as a working group, it's going to present challenges to both ICANN and PTI because our decisions, policy wise will impact them both. And it starts a further reason for consultation with ICANN legal sooner rather than later, I think, as we forge our way forward with likely bylaw changes resulting from our policy [inaudible] efforts.

And so with that, I want to thank Samantha for being here in her prime evening time and to participate in our initial discussion with her and ICANN legal as a result. I do have some questions for her in mind, as I hope you do as well because I hope you've been thinking about this since our last meeting when I gave you the heads up.

So as chair, Samantha, I wish to formally thank you for agreeing to be here with us this morning. And I'm going to turn the floor over now to Bernard to moderate our exchange. And with that, sir, the floor is over to you.

And Samantha, if you have any comments you wish to make before I turn the floor over to Bernard, I turn the floor over to you in the event that that's the case.

SAM EISNER:

Thanks, Stephen. And again, this is Sam Eisner from ICANN legal. I'm a Deputy General Counsel with the legal department. I've worked closely

---

in all parts of the department, and I've worked in our Accountability Mechanisms team. And then I also was very active in the CCWG on Accountability where we reviewed the accountability mechanisms and came up with those updates. I have also continued to support the implementation oversight for the Independent Review Process.

So, I'm familiar with a lot of the concepts. I've also worked, across the time that I've been with ICANN, on CC matters. I'm also, hopefully, familiar and comfortable with the concepts that we'll be discussing today. And I also serve as one of the chief legal liaisons to PTI, so I have a good relationship with that team as well.

So, I'm looking forward to the discussion today, and I'm grateful to be here. I'm grateful that you guys have reached a point where you're bringing us in. I think, in our figure conversations, you'll see not only me but probably other members of the legal team as well so that we can help really analyze how new mechanisms might fit into the structure, what makes sense, what might have heavy resources with little return, or what might be really easy wins with a lot of return with low resources. Those are all possibilities.

So, I look forward to the discussion here today. I do have some questions I have for you, but I'm open to however you'd like the discussion to flow. So, with that, I guess we'll turn it over to Bernard and we'll see how the conversation goes today.

STEPHEN DEERHAKE:

Thank you, Samantha. I appreciate your appearance here and your intro. Bernard?

BERNARD TURCOTTE: Yes, sir?

STEPHEN DEERHAKE: How do you want to go forward, sir? It's up to you.

BERNARD TURCOTTE: Well, Sam has been kind enough to prepare a couple of slides to introduce things.

STEPHEN DEERHAKE: Excellent.

BERNARD TURCOTTE: So, maybe we can bring those up and I'll hand it over to Sam. And I'll manage the queue from that point on.

STEPHEN DEERHAKE: Perfect. Thank you, sir.

BERNARD TURCOTTE: Sam, over to you.

SAM EISNER: Thank you. So, really, the intention of the slides is really to make sure we were at a level setting, starting at the same page, and that we, from

---



---

the legal side, were understanding the status of where you are and where we can step in and help. I think getting on the same page is really, really important. So, I hope we can have an open conversation not just today, but as we continue through this process.

So, as I read through the framework, I recalled—because there are places that I wasn't sure where the other mechanisms column came in or out—I know we, or members of the legal team, have come and presented a little bit to this group a few months ago regarding the existing accountability processes. And I know we talked about the IRP and the reconsideration process.

And I know everyone on this call is familiar with the fact that we have, within the bylaws, exclusions for both the Independent Review Process and the reconsideration process as it relates to disputes relating to Country Code Top-Level Domain delegation and redelegations being the subject of either of those accountability mechanisms.

Of course, one of the outcomes of this conversation and this policy process that you're in could be that we remove that exclusion to some extent or to the full extent. But that is the existing process that we have now.

And then, also, within the Independent Review Process, there are two other defined disputes that are allowed under the IRP today. The first is that claims that ICANN, the Board, individual directors, officers, and staff have not enforced ICANN's contractual right with respect to the IANA Naming Function Contract. So, that's the contract that ICANN has with PTI to really oversee that work that PTI does.

---

And then on the other side, we have that disputes regarding claims regarding PTI service complaints by direct customers of the IANA Naming Functions that are not resolved through mediation are also allowed to be disputes. And many of the item on your list, particularly not on the column D where there's "anyone," those would be items of direct service that already exist.

So, I thought it was important that we made sure we're on the same page. I know this is not news for you guys on this.

So then, if we can go to the next page. I know that the language that's in the bylaws, just to reflect, doesn't reflect the language that comes out of the framework of interpretation. So, while we would currently use the wording of transfers instead of redelegation, [those are] the words that are currently in the bylaws. That, of course, is something we can look at in the future as we have bylaws changes that come to reflect the current status of the nomenclature we use around CC operations out of PTI.

So, as I understand the status of the working group effort, and looking at the framework, there's been a lot of work done to identify the different types of areas of dispute and potential issues for review that the team sees as [right] to go into the new mechanism types. And, again, it doesn't identify the path for review, which we appreciate.

I think that it makes sense for developing a mechanism where ICANN has responsibilities to participate and either defend or support the actions that it took. It makes sense to include ICANN in the design of those mechanisms to make sure that it's fair across the system.

---

And that I'm here and you'll see my team here. And I know that Kim's on the call. And I think, even from reading this, there will be places where I'll be leaning on Kim and his colleagues out of PTI for legal and other SME inputs to identify what those proper mechanism could be for review.

So, that's what I understood from the goals of the conversation to be, but I wanted to start off here saying what are the other rules that you have? What can we make sure that, from the ICANN Org site, we're going to help get this to a good resolution? And where are the places that you think you need the most help?

So, I don't know if you want to entertain that or if I should just move on. I have one more slide because I didn't want this to be a presentation-laden discussion.

STEPHEN DEERHAKE:

Let's hold that question in abeyance, but let's come back to it. But carry on with your next slide. Thank you.

SAM EISNER:

Great. So, here are some of the first questions that jumped out at me as I was reviewing the framework. I see noted in that column G, Other Mechanism, that many of the places identify the PTI Internal Escalation Process. And so, I think one of the things that will be important to discuss as we go through each one of these ...

I don't anticipate that we'll spend time on today's call going through each of the different subjects that you've identified, or each of the

---

different issues. But I think this will be a continual question that we'll come back to. Which is, if those PTI escalation mechanisms are available, how much more is needed to build? Because I think that will be an important part of a rationale to support changes, particularly those that might become resource-intensive for the ICANN community.

I think another place where clarity might be helpful is how much of a right of challenge does this working group wish to provide to third parties? So, there are a few places in that "Who Can Apply" that it says "anyone." And does "anyone" truly mean anyone? Is there some sort of tether to the process?

And if "anyone" means anyone, will we then have to go through the process of identifying what would give anyone standing? What types of harm or what basis would they have to have to claim that they were appropriately using these mechanisms to challenge the action?

And it also goes to, across these different ones—particularly as we're looking to how they're like the PTI escalation mechanisms or how the PTI escalation mechanisms might be able to be used—there's the converse of, if the PTI escalation mechanism is not the appropriate place for some of these challenges, what is the standard that we're supposed to be using with them? Is it a bylaws violation? Is it a process violation? Just thinking back to how we have that bifurcated type of dispute within ICANN. We have the reconsideration for process issues. We have the IRP for bylaw violations.

---

And particularly as we get to process violations, I think it then returns back to the question of making sure that there's an understanding as to why the PTI escalation mechanism itself isn't the appropriate one.

So, I think that these are all things that, as I was reading the framework through a couple of times to prepare for the meeting, these are the types of questions that jumped out at me and might be a lot of how you hear the ICANN legal participants framing the conversation back to really make sure that we're getting to the heart of the issues that the group is trying to solve and to design for.

So, this is really the end of my prepared portion, and I hope that we're able to move into more of a conversation now. And, Stephen, I hear that you had questions for me as well, which I'm happy to either answer or take back so we can continue the conversations.

STEPHEN DEERHAKE:

Well, I turned this portion over to Bernard. Bernard, if you [can handle] the floor.

BERNARD TURCOTTE:

Thank you. I'll handle the queue. But I actually put myself in the queue. But Sam, when you were mentioning "anyone," you'll look at it and we were unclear whether reconsideration or not applied. And from your first text slide, it seems that reconsideration does not apply for the types of things we're doing. So, if it does not, then the "anyone" category goes away across the Board.

---

SAM EISNER: So, a question back on that, Bart. To what extent does this framework represent the current state versus the desired state? I think that was one of the things that made it a bit challenging for me to read.

BERNARD TURCOTTE: Okay. Can I ask you to expand a little bit on that by what you mean? Well, maybe I'll just say we tried to take each one of the processes that affect ccTLDs right now and identify areas in those processes where we think there should be a review mechanism applied.

SAM EISNER: Okay.

BERNARD TURCOTTE: So, all the processes that are there are current processes except for the retirement tagged one. That will become active once the Retirement PDP is concluded and the policy is accepted. So, that one is pending, as is the IDN one because the IDN group is just starting to get going. But all the rest of it [are] active things.

I see we have a hand from Eberhard.

EBERHARD LISSE: Okay. Morning. The RFC 1591 says, and I quote, "The Internet DNS Names Review Board (IDNB), a committee established by the IANA, will act as a review panel for cases in which the parties cannot reach agreement among themselves."

---

So, that's what we're dealing with. That does not mean the committee, this board, is part of the IFO. We are establishing it. But I personally think escalating inside IFO is okay, but it must be independent. The review must be independent from the IFO because we're dealing with something that emanates from 1591 and we are not dealing with something that emanates from ICANN.

BERNARD TURCOTTE:

I think, just to add to that a bit, Sam, part of the concern here on just the internal side of the PTI mechanisms is PTI is making the decision and then doing its own review. So, I think people feel it's a little weighted, and we're looking for something that is neutral. So as Eberhard has said and we've discussed that, yes, it's good to use the processes that are there as much as we can, but at the end of the day there has to be a process which a neutral third party can look at this.

Next hand is ... Eberhard, is your hand still up? No.

Stephen.

STEPHEN DEERHAKE:

If we can go to the next slide, Kimberly. Okay, hold on. I'm having issues with my new Zoom version.

Question for Sam is how do we try to reconcile, even if that's possible—and that's a question for you guys to go back and consider—all the review mechanisms which all ccTLDs were carved out of in 2016, as you know. What's your gut take on what you guys would like because it's

---

not going to be an IRP ... And we certainly don't want to burden the Board with "review mechanism blah, blah," whatever it is.

So, any thoughts [you give us] on that would be appreciated. And I also appreciate it if you cannot.

SAM EISNER:

Thanks. It definitely is something I have to take back and talk about bit more with the team about. There's a spectrum of this. Right? So, the balance of independence and process and what does it mean to come to those decisions? And what will the outcome of those decisions mean?

So, I think one of the challenges in going back to the letter of, say, 1591 that is talking about the establishment of an IDN Domain Names Review Board. It doesn't take into account all of the policy steps that have happened between the time that 1591 was put in place and what we have today and some of the realities of the corporate structure around that.

So, there are places where PTI is empowered to do the work that it has according to process. And what does it mean when we have contractual obligations and bylaws obligations put into place that hold PTI to those standards? And then we have community-developed escalation mechanisms as well that hold PTI to those processes. And then how do we successfully build a different layer on that? And that really comes into play in terms of how independent that layer would be and the types of outcomes from that layer.



---

Would that outcome require reversal of decision? And if that's one of the outcomes, how do we make sure that we build that appropriately into the governance structure that exists today? So, there are a lot of different questions that we have to walk through in order to make sure that we're setting up the right process.

And so, I really do have to commend this group in the fact that you didn't start with the mechanism that you hoped to see and you're building everything to it. because that actually becomes a lot harder to solve than identifying the things you want the mechanism to address, so let's build the mechanism to fit.

So, we do have a lot of opportunity, I think, to do it. And depending on the goals of the group, including the levels of independence of that structure or that mechanism and the outcomes, that will help guide us to what that mechanism could look like and the feasibility of the mechanism and assessing the different resource needs for that mechanism against issues of how it will be used.

So, I think that's a really long way of saying I need to take this back, but I wanted to give you some ideas of the kinds of things that we need to look at in terms of taking it back. So even when I take it back, we're not going to be able to come back to you with an answer because we're lawyers. We come back to you with questions. That's what we do. I'm saying that a bit jokingly, though those of my colleagues on the call here know [inaudible].

STEPHEN DEERHAKE: They know you're not.

SAM EISNER: But I think we don't know enough yet about those ultimate, bigger, over-arching goals to really define what that process could look like.

STEPHEN DEERHAKE: Okay. If I could take my prerogative as chair. At the end of the day, Sam, what we're trying to do is to incorporate a review mechanism into the ICANN bylaws, which is not there now because we diligently carved ourselves out of any such review mechanisms that were being developed back in 2015 for the 2016 bylaw adoption. And this is where we need your help and cooperation to learn your redline limits, I guess, as to what we come up with.

SAM EISNER: Agreed. And I think we also need to understand the redlines from this group. And I think we just ... I don't have enough information today to come back with a clear identification of what ICANN Org's redlines would be. I think [inaudible].

STEPHEN DEERHAKE: No. I don't expect you to. But this is a meet and greet. This is the discussion we should be having at this point, not demanding an answer today by any means.

SAM EISNER: Exactly.

BERNARD TURCOTTE:           Okay. Stephen, are you done?

STEPHEN DEERHAKE:           I'm done. I'm done if Samantha's done.

BERNARD TURCOTTE:           Okay. Since we have no hand, I have hand, maybe providing a bit more background for Samantha on some of this stuff. When we looked at the PTI stuff, really they have, as we said, an internal review mechanism to see if someone's unhappy with a decision they're making. But it really is a light touch and completely internal. And as we mentioned, one of our objectives is the ultimate process, at any rate, we're looking for some independence.

The other thing which is very clear from the table, or we thought it was clear from the table, is, yes, if PTI is announcing a decision, the point of a review mechanism is that that decision should be able to be reversed for just cause. So, that's clearly what we're going after.

And since most of the significant issues we're talking about center around the delegation or transfer, mostly, of ccTLD to a party or to a new party, we also understand that you can't unwind that once that's done. You can't go around having PTI saying, "Okay. We're going to delegate this ccTLD to party X."

We have a review mechanism in place which goes through, and three or six months later comes to the conclusion that that should not have been

---

delegated to party X, but to party Y who was eligible for this. So, we also understand that if a decision is contested, that delegation should probably be put on hold until the issue is resolved.

And this will be familiar with you. Yes, we're putting a ... As you saw in the spreadsheet [in] our initial discussions where we can't have this lying around for months. So, after a decision is announced, we're saying there's a 30-day sunset period in which anyone who is eligible to lodge a request can do so. And if they don't, after that it's just too late.

So, I think, hopefully, that helps structure that a bit for you. Does that make sense for you, Sam?

I'll get to you in a second, Eberhard.

SAM EISNER: Yes, thanks.

BERNARD TURCOTTE: Okay, great. Eberhard, over to you.

EBERHARD LISSE: Okay. Basically, I see two different [issues] [revocation] where there are existing rights, as it were, are involved. Then transfers or delegations where different parties who do not have existing rights, as it were, compete with each other or against each other.

A revocation can, under the framework of interpretation, only be done if there is substantial misconduct and for nothing else, not whether

---

government wants it [and] whatnot. And there is an element of mistrust because there is a history.

I wouldn't call it bad blood. Nothing has happened in the last 5-10 years to cause bad blood, but 20 years ago when I was doing my specialization in Germany in the early 2000s, there were serious decisions made that were totally out of order. Name server changes were prevented because the incumbent [manager] didn't want to enter in an agreement with ICANN and things like this.

So, I'm not saying that there is bad blood, but there is a history and the revocation is the issue where existing rights of ccTLD managers are involved if not even rights pre-existing ICANN's formation or even pre-existing RFC 1591. So, I feel that should be handled differently from the competing issues where two parties want to be transferred or two parties want to be delegated on the recipient side and they can't agree who is the one that should actually get it.

BERNARD TURCOTTE: Thank you, Eberhard. Are you done? Yes.

All right, Stephen.

STEPHEN DEERHAKE: As chair, I'm just really requesting all the other members on this call to speak up and contribute to this conversation because it's getting really two-sided and I'd like to really hear from the likes of other members on the call including those who are up late and up early. And don't make me call on you in the Socratic method. That's my threat from the chair.

BERNARD TURCOTTE:

Well, while people ramp up their courage to ask questions, maybe I can follow up a bit from Eberhard's statement. Eberhard mentioned two classes. We actually, with the retirement policy when it will come in, we have a third class where one of the reviews that are there for the retired process is whether PTI grants an extension to the retirement period or not which is ... It's a bit of a different beast. I've got a green tick from Eberhard. One cherishes those. He doesn't hand them out easily.

The second thing which is probably ... I see your hand, Nigel. I'll get to you in a sec.

The second thing which we have been discussing in this group is possibly different levels because, as Eberhard has pointed out over time after we had discussed things like the IRP and I've brought in some of my information from working on that area of things, is that it doesn't really make sense to have a single process that is very expensive for small ccTLDs. They just do not have the resources to pour into an almost court-like fight with lawyers and depositions and all of that.

So, one of the considerations I think we have to keep in mind is that at least a part of the mechanism or one of the mechanisms we're look for is a very effective, at least cost-effective means for getting an independent understanding of these things.

Nigel.

---

NIGEL ROBERTS:

Good morning and thanks. Standing outside in the dark here looking towards the harbor. It's drizzling. I didn't really want to say too much. I was conscious of what Stephen said about threatening to call on people, and I thought perhaps he might put me on the spotlight, so I thought I'd volunteer before anything else.

I just wanted to try and clarify the focus on this. And I'm really glad that we're having this conversation both from the perspective of a community member and being on the Board at least until the end of the year almost.

I think what we need to be very clear on is that we are looking fill the lacunae in the carve-out. The carve-out is on matters relating to delegation and change of manager of Country Code Top-Level Domains. And at the moment, there is no mechanism between mild e-mail complaint to the IANA if a ccTLD manager or other persons affected by decision of the IANA has a problem and full-blown court action which may or may not be an appropriate forum because courts have very, very specific rules. They need some kind of legal [theory] on which to hold the [controversy] before them.

So, just to put that in context, but happy to discuss further, now that I've had some, should we say, coalface experience about seeing how the other accountability mechanisms are working in practice. Thanks.

STEPHEN DEERHAKE:

Thank you, Nigel.

---

BERNARD TURCOTTE: Thanks, Nigel. All right. Do we have any other brave souls?

STEPHEN DEERHAKE: Shall I start calling on them?

BERNARD TURCOTTE: Nigel, your hand is still up.

NIGEL ROBERTS: Yeah. Well, I'm outside. The iPad's inside. I'm just walking [inaudible].

BERNARD TURCOTTE: Okay.

STEPHEN DEERHAKE: Peter, you're lurking there. And you never lurk, so ...

PETER KOCH: Time for a new approach today.

STEPHEN DEERHAKE: Thank you for stepping up, for providing some commentary. I appreciate it.



---

PETER KOCH: No, sorry. Nothing really comes to mind. The only thing, and since you forced me, going back to that board envisioned in 1591 which has hardly served as a model, but only recently in the working group discussion. And maybe we need to think about how far we really want to mimic that in the review mechanisms output. And I have no idea which direction to go at the moment. Sorry.

STEPHEN DEERHAKE: Peter, that's a very good observation. I like to have that recorded. I have a follow up question for you. How far should—because when ... The carve-out ended up being ICANN 3.0 in October 2016 which took us out of, basically, everything review-wise. Where's your sweet spot with that if you can disclose it or think about it further and disclose it in a further correspondence and/or meeting?

PETER KOCH: Yeah. So, I need to think about that a bit.

STEPHEN DEERHAKE: Okay, that's fine. I appreciate that. And I do semi-apologize to you for putting the question to you, but you've been very active in the past. You were really quiet tonight and we've got Sam on board. So, as much more information as we can pry out of ICANN legal in this opportunity, I will take. And that's what I'm hunting for.

BERNARD TURCOTTE: We have a hand from Eberhard and Sam.

STEPHEN DEERHAKE:           Okay. Who's is first? Eberhard?

BERNARD TURCOTTE:         Eberhard.

EBERHARD LISSE:            I can defer to Sam if she has got an answer to Peter's comment.

SAM EISNER:                 No. That wasn't the topic I was coming in on.

EBERHARD LISSE:            Okay. My point is, Bernard is right that the retirement is a different piece, but it's because it doesn't involve a decision by PTI. It involves the process because the trigger is not appealable. It involved the process, so it didn't come to the forefront of my mind.

By the way, I just thought about this. We can very well name our Board or whatever mechanism we have. We can very well name this—hang on, what's the exact term again? We can remain at the Internet DNS Names Review Board, IDNB, so the outcome of [inaudible] has exactly the name that is envisioned in the RFC 1591. And who establishes it is another issue.

But as I said, I also want to follow up a little bit on what Bernard said. We don't need to have a mechanism really that has a cheaper option

---

that can be used for smaller ccTLDs. I'm only concerned with the revocation. And the cost involved, because it's a decision that may affect existing rights, should not be borne by the ccTLD manager.

And this is an extremely rare event, so it's not the big deal. The other things, competing delegation [inaudible] are a different issue.

STEPHEN DEERHAKE: Okay. Thank you. Bernard, I leave it back to you.

BERNARD TURCOTTE: Thank you. Well, let's go to Sam.

STEPHEN DEERHAKE: Oh, we've got Sam. Right. Yes, Sam, go ahead.

SAM EISNER: Thank you. So, I have to say listening to the conversation today has been really helpful because I think I'm starting to get a much better understanding of what is trying to happen here which is not the development of multiple mechanisms to address these different issues, but really the idea that there should be some place ...

If I get the goal a little bit more, there should be some place that's not the PTI staff and not the ICANN Board where someone who wishes to challenge a PTI act—as the ones that are defined in the chart, right?—someone who wishes to challenge that act within a certain time frame has the ability to raise that challenge.

---

And so, it's more of its own mechanism as whole that has different lines of things it would hear. Again, I don't know the answers and I know you're not expecting me to have the answers today.

STEPHEN DEERHAKE: Oh, no.

SAM EISNER: But if that's a fair summary of where the work is or what the goal is of this group, I think that's really helpful thing for me to take back and really discuss with my team because then we can look a little bit more pointedly at how we do this, and that we're not trying to build multiple mechanisms for multiple potential issues but we're trying to look at one mechanism that can solve those issues.

STEPHEN DEERHAKE: Yes.

SAM EISNER: And there might be differences among the issues, to Eberhard's point, that the cross-bearing might be different based on what the issue is. But I think that there will be some principles we'll have to come back to. We'll have to analyze it from a resource side, but also discuss with the group. Are there different principles about who should bear the cost in different situations? And what are the precursors for being able to bring these appeals if there are other opportunities to step into the process, etc.?

---

I feel like this is ... A really huge achievement for me coming to this call is I feel like I'm walking out of here—and I know we're not done yet—with the understanding of, a little bit more clearly, what you're trying to achieve. And that's going to make the rest of the conversation, I think, a lot smoother.

BERNARD TURCOTTE:

Thanks, Sam. I just wanted to add something to your summary point. I think one of the things that this group is looking for is that that mechanism will have the authority to make binding decisions.

All right. I see Allan's hand. Allan.

ALLAN MACGILLIVRAY:

Thank you, Bernie. Well, I thought I would ask Sam a question since this is more about giving her things to think about and to go back to the team. And I just was wondering if she might, well maybe now, but more likely later, kind of opine on the comment that Bernie made earlier than many see the existing IRP as being not very accessible to the ccTLD community because it's cumbersome and will likely be expensive.

And, certainly, I understand that argument. But I just wonder if a new mechanism that is untried could, at the end of the day, be maybe even less accessible because it's so novel. So that, I think, will be one of the challenges we may face going forward. So, if you have any comments now, that's great. But I think it's more to put that in your head that might, at the end of the day, the IRP ends up being, with all its troubles, better than something brand new that's not tried? Thanks.

BERNARD TURCOTTE: Sam?

SAM EISNER: Thanks, Allan. It's a really good point. We have to make sure, I think, in whatever is built ... Because even if the idea is to make the IRP more accessible to ccTLD managers, it also is building new tests for claims and other rules around it. And we'd have to go through the same effort, be it in the IRP or in a new mechanism in order to do that.

And so, I think you also need to step back and say, how much structure is needed? What does this really have to look like? What resources do we need? What knowledge and expertise do we need available all the time versus on an on-demand basis? Those are all questions that will have to be answered. But I think that some of the issues around accessibility ...

It's something that we worry about. I think we worry about, with the IRPs, as Bernie and I work closely on the IoT right now where we bring the substantive procedures for those, you worry about making things too challenging and too difficult, making things look too much like litigation. I think, as we talk more through this process about what you envision these challenges to look like, maybe they don't need to look like litigation.

Maybe they don't need to look like arbitration in order to still allow for a fair hearing of the issues to a group that's empowered to either make a binding recommendation or some sort of advisory recommendation

---

[based on] governance issues that we could walk through depending on how binding these things are.

But I think there's a lot of opportunity to be creative and simple. I think we also have to remember that we're coming ... In the CC world, particularly, we shouldn't be coming at it with the base assumption that English will be accessible as a working language to everyone who might have a challenge. And so, that also lends towards either extreme sophistication in the process or really focusing on simplicity and accessibility. So, I think those will be some goals that we'll have to keep in mind, too.

STEPHEN DEERHAKE: Thank you, Sam.

BERNARD TURCOTTE: All right. I think that's [inaudible].

STEPHEN DEERHAKE: [Sam's] hand is up, which I assume is an old hand.

BERNARD TURCOTTE: Yeah. I do not see any more hands, Stephen.

STEPHEN DEERHAKE: [I don't] either.

---

BERNARD TURCOTTE: So, I'll hand it back to you then.

STEPHEN DEERHAKE: Thank you, Sir. Sam, if you have any more questions immediately for your consideration within ICANN legal for the group, please ask them. If you want [inaudible].

SAM EISNER: I don't have any other questions at this time. I know that we will have more. I think it would be helpful to understand the cadence with which we want to work together. I think we have a fair amount of internal work that we'll have to do to continually prepare and support this group which we're happy to do, but we have to also account for that in terms of ... I don't know within a ramp up to icann701 how much time there is, but I know we also want to start dedicating time for this quickly.

So, I'd like to hear from you how you're hoping to work with us, what that cadence is, if we'll be working at times by e-mail. Those sorts of questions that maybe we don't need to decide today, but I think our working methods will be a really important thing to set down.

STEPHEN DEERHAKE: No, obviously not. But your participation this morning has been really, really great. Thank you very much. I know it's nighttime your night, but I try to refer to the time zone of the meeting when it's being held.

Yeah, wow. Thank you. Yes, and future cooperation, of course, is paramount. And that will be arranged. I think we got off to a good start



---

with this morning's meeting. I don't know how you feel about it, Sam, but you can reserve that comment and take it back to your team.

But, yes, we're going to need further engagement both with you and other members of your team as we try to noodle through this because it's not [IRFT], it's not reconciliation, and it's not ... We carved ourselves out of all of that, and now we've got to figure out where we can insert ourselves. That's really what it's coming down to, and that's our mission here.

We're getting up to the top of the hour. We are at the top of the hour. So, listen. I wish to thank you, Samantha, for your participation this morning and for opening the cooperation window that ICANN legal has given us as we move forward with our work.

BART BOSWINKEL: Stephen, you still have two hands up [inaudible].

STEPHEN DEERHAKE: I still have two hands up.

BERNARD TURCOTTE: Yeah. Eberhard and I.

STEPHEN DEERHAKE: Eberhard. Okay. Bernard or Eberhard. You can fight over which one's which.

BERNARD TURCOTTE: Eberhard always goes first.

STEPHEN DEERHAKE: Okay. Trying to close it. But, yes, go ahead, Doctor.

EBERHARD LISSE: Not always. Just because when I'm first. I just wanted to make a small comment about language. I don't think we will require translation services. From my side, I don't think so because I have always thought that if a ccTLD manager doesn't have English enough to understand the technology, to read technical documents, then they will find it difficult to get things working and do things. So, I don't think language is going to be a major issue. I'm not requiring to insert a translation process into our thinking. I do not foresee a situation where a ccTLD manager [inaudible] speak enough English to get a ccTLD rolling, but I don't [inaudible] to complain about it.

STEPHEN DEERHAKE: All right. Did I have a mini-stroke or did I miss where that was discussed? But go ahead. Thank you, Eberhard.

Bernard?

BERNARD TURCOTTE: Sam probably needs some practical guidelines. Shall we try and set a time for getting together again? Would one month seem reasonable, or

---

---

can you do it in two weeks, Sam? I think the ball is partially back in your court, and you have said you're busy. So, let's try to come up with a time where you will have had time to look at this and maybe come up with some more questions.

SAM EISNER: One month is definitely reasonable. We're happy to join at any regular cadence for check-ins. I don't know that we have to wait for everything to be done in order to check in. I think there might also be questions that come up or clarifications that might come out of this team here, so those should also come forward. But I'd expect [inaudible].

STEPHEN DEERHAKE: [inaudible] can we do an inter-meeting communication link, or should we get you out of bed at really bad times?

SAM EISNER: I mean, isn't that what ICANN is?

STEPHEN DEERHAKE: Yeah. Well, no, you're doing well. It's 9 p.m. your time.

BERNARD TURCOTTE: Yeah. Our next one will probably not be so good for you.

STEPHEN DEERHAKE: Right.

BERNARD TURCOTTE: So, I heard one month is reasonable. Does that make sense for you, Stephen? We can put a hard schedule for that, and if there's anything else that comes up in the meantime, we can go to the list or we can have our regular meeting in two weeks. And if there's—

STEPHEN DEERHAKE: One month is a good time in L.A., apparently.

BERNARD TURCOTTE: Pardon me?

STEPHEN DEERHAKE: One month apparently, according to Kimberly, is a good time. The 4<sup>th</sup> of March is a good time in L.A.

BERNARD TURCOTTE: There we go. So, that's my proposal. How does that sound?

STEPHEN DEERHAKE: Sam, can we have you back for that or whatever appropriate staff member you feel should be there?

SAM EISNER: Yes, of course. That should work well.

STEPHEN DEERHAKE:           Okay, thank you.

BERNARD TURCOTTE:           Stephen, we may ask Kimberly to get Sam on our list so we don't have to think about a special invite each time. Would that be okay?

STEPHEN DEERHAKE:           Yeah. I agree. Samantha, is that appropriate for you? Can we add you to our mailing list?

SAM EISNER:                    Yes. That's fine, thank you.

STEPHEN DEERHAKE:           Not a lot of activity there, unfortunately, but you'll at least get invites for the meetings.

BERNARD TURCOTTE:           All right. Sounds like we have a plan, so we can have our regular meeting in two week, go over the slides Sam has presented. And in the meeting after that which will be a month from that on March 4<sup>th</sup>, Sam will come back with her thoughts on where they have gotten. Does that make sense for everyone?

---

STEPHEN DEERHAKE: I agree. Does everybody agree with that? I see Bernard's hand is up. I don't see any other wagging anything. And the 4<sup>th</sup> is still pre-ICANN70. Correct?

EBERHARD LISSE: I have no idea.

SAM EISNER: Yes.

STEPHEN DEERHAKE: Okay, thank you.

EBERHARD LISSE: ICANN is on the 22<sup>nd</sup>.

STEPHEN DEERHAKE: Yeah.

EBERHARD LISSE: That week at 22-24<sup>th</sup>.

STEPHEN DEERHAKE: My February into March stuff is confused because [if I'm] on an airplane, I don't know whether I'm at APTLD or ICANN. So, it's kind of confusing.

---

Again, I wish to thank Samantha for her participation. And I thank you, and I thank J.J. for letting you come and present to us. And if you have any comments, criticisms, feel free to express them to me on the e-mail. I believe you have my e-mail address. But, again, I thank you so, so much for being here tonight. I think it was really, really useful.

With regards to AOB, I don't have any. Anybody else? I'm not seeing any hand wrangling. Okay.

What are we doing next? 18<sup>th</sup> of February. Let's talk about that. 13:00 UTC which is great for everybody in Europe. It's not going to be a sweet spot for our colleagues in the Asia-Pacific.

And then we have a meeting scheduled now with ICANN legal again. Let me make a note to that for the 4<sup>th</sup> of March. I thought it was our ICANN 70 meeting, but apparently not. As I just announced, the whole late February into March timeframe just runs into ... If I don't have a long airplane ride, I know where I am. I don't know which meeting I'm at, basically. I suspect that some of you are suffering some similar issues.

I think that's okay for me on all this with regards to doing an adjournment. I really wish to thank Samantha for agreeing to join us this morning. I fully expect some considerable further participation from ICANN legal's progress on deliberations with respect to the reconsideration policy. We are going to need their help.

Basically, at the end of the day, it's our responsibility to develop it, but it's also our responsibility as a working group tasked with this responsibility to seek ICANN's opinion on what we're proposing so our

---

work is not in vain because we are, at the end of the day, going to be proposing changes to bylaws and some probably semi-significant changes in how PTI is doing what they're doing, etc. So, we have important work here.

So, I wish to thank everyone for participating and, again, Bart, Bernard, and Kimberly, and Joke for their support and contributions to this teleconference.

I hope to see everyone virtually, I guess, on the next call. And physically [soonest] when that becomes possible which I think, hopefully, might be Seattle.

And again, before adjourning, I just want to thank everyone for their continued participation in this working group. And I encourage you all to participate. I was really pleased to see the turnout this morning UTC time with the membership. So, thank you, everyone. Wish you and those dear to you all well, and please continue to collectively stay safe.

And Kimberly, you can stop the recording. As always, thank you for your outstanding technical report. And this is a wrap. Thank you. Good night, everybody. Good morning, good evening. Stay safe.

[SAM EISNER]: Good night.

**[END OF TRANSCRIPTION]**