STEPHEN DEERHAKE: Okay. Thanks, Kim, for the agenda. Good morning, good afternoon, and good evening, everyone. For the record, I'm Stephen Deerhake, the chair of the ccNSO working group that's been tasked with developing a policy for the retirement of ccTLDs. And I want to thank everyone for joining today's teleconference. Looks like a bunch of you hopped on in the last moment but I'm glad you did.

For the record, this is the 21 April, 2021 edition of this ccNSO working group and we have convened today at 21:00 UTC. So again, I want to thank those of you who either stayed up really late or have gotten up really early for your participation. I know, for Europe, it's getting into the evening and for Irina, it's a little later for you. As always, of course, a big thanks to staff support, Joke and Bart, who are giving up the prime of their evening, and to Kimberly and Bernard as well. So timewise, just to frame things for everybody, it's prime evening for European and African colleagues, mid- to late afternoon here in the Americas, and early to morning for our colleagues in Oceania and Asia overall. So again, thank you.

Reminder, roll call will be taken in the usual manner. If you're on audio only, please let yourself be known to staff. I understand we have one apology.

So with regards to administrative matters, since we last met, the public comment period on our sister working group's initial report on retirement of ccTLDs closed on the 14th of April. And contrary to what I said last time, it did appear that we got two comments for this round as well. The first was from the Registries Stakeholder Group, which

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supports the efforts to bring the retirement policy forward on its own, in which they also thanked us for our "thoughtful efforts" in our endeavors. So I thank them for that.

The second was from the Business Constituency and it seems like it's basically a repeat of their comment from the first round of public comments. It basically expresses the concern that we have not addressed the issue of archiving a retired ccTLD—and I presume, by that, they mean WHOIS and zone file, etc.—as well as wondering why the policy does not include a periodic review of the ISO 3166 standard. I have no idea what they're talking about there. These concerns were addressed in response to the first round. But perhaps, Bart, you might want to weigh in on this briefly as the issues manager and keeper of the list.

BART BOSWINKEL: Yes. So what I will respond in the reply is these two questions have been addressed already and refer to the annex C, I believe, of your final paper. And that's it. And there is no [terms] to revisit this so we move ahead. There were no arguments whatsoever, other than repeating the same question. Eberhard, your hand is up.

EBERHARD LISSE: Getting milder in my old age. I would not say that these questions have been answered. I'd just answer them by referring to the point in the thing without embellishing that they have been answered. A polite—

BART BOSWINKEL: I'm very polite. I will say if you look at the submission, they refer to the previous submission as well and literally quoted their question. So I'll literally quote. This is what I've put into the … "The two specific comments that were raised before by the BC Data Preservation and mandate a periodic review of ISO 3166 were addressed by the ccPDP Retirement Working Group. See initial paper. At the time, the working group, after careful consideration, concluded that the proposed policy did not need to be amended." That's all. I think it's very—

EBERHARD LISSE: In any case, IANA function operator has a method. We have an IANA function operator to review the ISO on a regular basis.

BART BOSWINKEL: That's included in annex C, sections five and seven.

STEPHEN DEERHAKE: Bernard, I see your hand is up.

BERNARD TURCOTTE: Couldn't unmute. Just to add onto that as background information, when we had read those comments, I had spoken to Steve DelBianco, who heads up the business community. His first reaction was he had to put it in but he didn't quite understand the questions, either. And I guess the same persons had the same concerns, and weren't happy with it, and he did the same thing. But when I told him what our answers would be, he thought that was perfectly fine and reasonable.

STEPHEN DEERHAKE: Good. Thank you, Bernard, for that. Okay. So much for that. Thank you, Bart. Also, since our last call, the two community webinars were held in conjunction, I guess, with the IDN Working Group, ccPDP4. They were both well-attended. Some people even pitched up to both of them, which surprised me.

I thought they both went pretty well and I was wondering if any of you who attended one or both of them—and I see a few of you on the attendance list—had any thoughts about how they went, in particular what you think might work better in future webinars on our work and presenting our work to the community because I'm certain that these won't be our last webinars that we will be doing. So if anyone has any thoughts or suggestions, feel free to wiggle your hands. I see Allan's got his hand up. So, Allan, the floor is yours.

ALLAN MACGILLIVRAY: I would just make one comment. I found—not so much you, Stephen—but the other gentleman on IDNs simply read the words on the page. And I understand the dynamic but it can sometimes help the understanding if they at least paraphrase it a little bit or something like that. So I don't feel I learned a lot by having done it live or listed to the audio that I couldn't have got just from reading the deck. So even though, certainly, I could have asked a question if I had one, it's just more a question of presentation. Thanks.

STEPHEN DEERHAKE: Thank you, Allan. In his defense, he's a non-native speaker. And I've got to tell you, from my experience particularly working with the Asia Pacific community, it's really daunting for non-native speakers from that region to do what he did. Improvements can certainly be made but I also would argue we have to work with what we have to work with. And I'm not criticizing you for your remark just now. I'm just saying it's daunting.

I grew up in France, and did not know much French, and was subjected to four years of schooling there in French. And it had its unpleasant moments. So I appreciate him stepping up to the plate. And I don't mean to criticize you but I just want to put some context around why he read the slides, basically. I fully understand why he did on that score. But I'm not meaning to criticize you in any way. I just want to make that clear. I just want to explain to the group that's hard, unless you're non-native English speakers anyway, so you appreciate this. Eberhard?

EBERHARD LISSE: We discussed this during the prep meeting where he presented. He did not write the slides and it was felt that because it was the first community contact this working group had that a little bit more detail was supposed to be given. I mentioned during the prep meeting that I found it was overly long and he read the slides. He was a little bit shorter and he got better during the second meeting.

But the point is very clear. He is a Chinese speaker. English is not his first language. And it is very difficult for many Chinese, even if they speak better English, to make good presentations. It's just a totally different language. And I can only support Stephen, what he just said. He was

trying. In the prep meeting, he was even longer. So I told him, "I think it's a little bit long." But the reason why it is long is it was the first contact to the community so they wanted to put more facts on the table.

STEPHEN DEERHAKE:
Thank you, Eberhard. Any other comments from anyone regarding the webinars? Again, as I said, I thought they both went pretty well. I was surprised and pleased that some people joined both from this group. The first one was a little hard. I think it was like at 4:00 in the morning my time. So all right then. No further comments.

I'd like to go on and revisit a topic that we discussed during our last call, which was namely the proposal to abandon our call rotation schedule in favor of a fixed UTC time. And for those of you who were not on the last call, let me briefly recap the rationale for this proposal. As I discussed on our last call, I had Kimberly do a deep dive into our attendance records and she confirmed my gut instinct that it would make more sense, given the geographic distribution of those who are actively participating in the working group, to settle on a fixed call time.

And the proposal did not meet with objection. And the time I proposed was 18:00 UTC. I also made it clear, I believe, in response to a comment from Allan—concern from Allan, really—that we would be revisiting this, in our usual manner, another time before pouring the concrete.

So before we launch into the second discussion of this proposal, I do want to make you aware of a slight wrinkle. After our call, myself and staff learned that Sam Eisner from ICANN Legal apparently has a

standing meeting at 18:00 UTC on Wednesdays. And I should have checked with her beforehand. So I, as chair, take responsibility for this goof. My amended time is 19:00 UTC, which will work for Sam when we need her. And Irina, I realize this makes things an hour later for you in Moscow. But I think late evening is better for you on a regular basis than some of the other times you've seen.

I also note, from our last call, that Eberhard thought that this being a change in our rules of engagement, that it required a formal vote. Personally, I really do not think we need to spend another month at least going down that path before we get this settled. I think it's sufficient for the issues manager to make an addendum to the rules of engagement that the working group decided to settle on a different meeting rotation strategy, which will be a fixed-time strategy.

At this point, I think I'll throw the floor open for a brief discussion. I see Eberhard's got his hand up already. So the floor is yours.

EBERHARD LISSE: I remember, myself, as saying it's a change of the rules of engagement so we have to formally amend the rules. We haven't voted on the rules on the first attempt. We read it twice. If there is no objection, it goes through by consensus. But we have to amend the rules. That's what I'm saying. We don't have to have a vote.

STEPHEN DEERHAKE: Okay. I'm sorry I misquoted you. I agree with you that we do have to amend the rules of engagement. And if that can be done by the issues

manager with a note saying they were amended by consensus on behalf of the group—

BART BOSWINKEL: No problem at all.

STEPHEN DEERHAKE: - I would think that's sufficient. But I don't know. I will defer to the issues manager for a ruling on that point of order.

BART BOSWINKEL: I'll check the rules of engagement after the call—so tomorrow my time—and get back to you. And if necessary, I'll change them and update them.

EBERHARD LISSE: I have the source. If and when we do it, let me know and I'll do it in the source that I keep.

BART BOSWINKEL: Okay. Yep.

STEPHEN DEERHAKE: Okay. Great.

EBERHARD LISSE: If and when you want to put your language in.

BART BOSWINKEL: Thanks, Eberhard.

STEPHEN DEERHAKE: Okay. So at this point, I'll throw the floor open for discussion. If anybody who wasn't here last time, or was here last time and this time and has any concerns about going to a fixed 19:00 UTC meeting time, wave your hand. And I'm looking at 15 participants and no hands being waved. So I am going to assume there's no further debate on this and I'm going to then ask you, Kimberly, to take the temperature, so to speak. If you could put up the Zoom poll, that would be great. Surprise Zoom poll, guys.

EBERHARD LISSE: While we are waiting for the poll, I have looked up the rules. And section 4.13—sorry, not 14.3—4.13 says that we may amend and they will become effective. And it doesn't say whether it has to be voted upon.

STEPHEN DEERHAKE: Excellent. Thank you, Eberhard, for that. I think we'll give it another 30 seconds or so, Kimberly.

KIMBERLY CARLSON: Yeah. I'll stop it at one minute.

STEPHEN DEERHAKE: Okay.

EBERHARD LISSE: And if there is consensus … If there is significant opposition, then we must make sure that the poll was only filled by the members because that's what the rule is also saying.

STEPHEN DEERHAKE: We've got an 18% no so I would like to hear from that 18%. This is different from what we got last time.

BART BOSWINKEL: If you look in the chat, there is one. I think Jaap was one, a fixed call at the same time.

PATRICIO POBLETE: In my case, I'm not against the fixed time, only that this particular time, if it falls on a Wednesday, conflicts with a class I'm teaching. But I think a fixed time is a good idea in general.

STEPHEN DEERHAKE: Okay. So what I'm hearing is, number one—

EBERHARD LISSE: Doodle poll.

STEPHEN DEERHAKE: Jaap has a standing call. This is the Sam Eisner problem. And number to, Patricio is teaching. Is that correct?

PATRICIO POBLETE: Yeah, this semester.

STEPHEN DEERHAKE: Okay. I don't want to lose you. Would 18:00 or 20:00 work for both of you?

EBERHARD LISSE: For me, it would. And 17:00 would also work for me.

PATRICIO POBLETE: Yeah. One hour later would work for me.

STEPHEN DEERHAKE: And for you, Jaap, would that work as well? I know we're getting later into the evening, European time.

JAAP AKKERHUIS: 18:00 UTC will work for me. On the other hand, I'm not sure I need to be with every call. So maybe I might flip-flop between these two calls.

PATRICIO POBLETE: 20:00 UTC would be one hour earlier than now, right?

JAAP AKKERHUIS: Yes.

STEPHEN DEERHAKE: Yes. It would be.

EBERHARD LISSE: What will happen when the summertime changes in Europe?

STEPHEN DEERHAKE: We'll get to that in the autumn.

EBERHARD LISSE: No. We need to decide now. We need to keep that if summertime changes, we must revisit the issue.

STEPHEN DEERHAKE: Okay. We've got another poll going on 20:00. Thank you, Kim. I'd really like to sort this today and not put it out for a Doodle poll because we need to set the forthcoming meetings.

EBERHARD LISSE: What time would it be when the summertime changes in Europe?

STEPHEN DEERHAKE: They'll go back to UTC, won't they?

BART BOSWINKEL: It would be more convenient.

EBERHARD LISSE: So it's even better then? Okay. That's fine.

STEPHEN DEERHAKE: Yeah. It would be. [I think it is] for Irina.

EBERHARD LISSE: For me, it stays the same because we don't change summertime anymore. But if it's easier that in winter, that it goes one hour earlier, then it's fine.

STEPHEN DEERHAKE: It's even better. Yeah.

EBERHARD LISSE: Okay. Done.

STEPHEN DEERHAKE: Love that, consensus. Thank you, guys, so much. Wow.

BART BOSWINKEL: And please inform Samantha Eisner, please.

STEPHEN DEERHAKE: Yeah. It actually gives her an hour break between her standing call and us, which is probably good for her as well. Thank you, everyone. Thank you, Kimberly, for running those. I think this matter is settled. So I think, going forward, we know when we're going to meet.

Lastly, I wish to remind everyone of what I said on the last call, which was that it's likely, once me move into our topic-driven discussions, that the meetings will extend into our 30 minutes of allotted extra time, which we've rarely used up until now. But under no circumstances will we exceed 90 minutes. It all depends on how in-depth and vigorous the discussions are going.

Oh! And I almost forgot. I noticed that the list server came to life to today, which an exchange between Eberhard, and Peter, and Sean regarding RFC 1591, which I found interesting. It's not booked on today's agenda but depending on how things go, we might be able to squeeze in a brief discussion, just before AOB, later on in the call. If not, I certainly encourage it to continue and others to contribute. And based on what we see on the list, we'll certainly be trying to make some space for it on the agenda for the next meeting.

With regards to action items, I'm not aware of any. So, Bart, Kimberly, or Bernard, do you have any that I'm missing?

BART BOSWINKEL: The only one was that we would propose a clustering of the topics. So that's been completed and circulated. We'll touch upon it under the next item.

STEPHEN DEERHAKE: Yeah. You guys always burn me on one of these things. So enough of me. Want to move on to agenda items three and four, which will be addressed by Bart and Bernard, respectively, if my notes are in order. So, Bart, I'll turn the floor over to you.

BART BOSWINKEL: Thanks. Kim, could you do the overview document of all the clustering, etc.? Before I go into the clustering, can you scroll down to page three, I believe it is? Page four. Thanks. So just for those of you who were not attending the last call, what happened on the last call is that we touched upon the topics that have been identified over the previous calls. So that's prior to ICANN 70 and the meeting after ICANN 70 with Sam Eisner. So this is the summary of all the topics, as you can see. So there's topic one through 16. And I don't know if there are any concerns with this summary of the discussions to date. If so, please raise your hand. So that's page four and page five.

Can you scroll down one page, please, Kim? Wait. Go back. Yeah. So these are the 16 topics that you have identified to date. And there will be more, probably, when we start in more detail but just as a high-level thing. So I don't see any hands. Okay. So we'll keep this as the starting point.

Now, can you scroll back to page one, please? So based on this list of topics from the previous discussion and looking at it, this is an attempt to cluster and combine various topics, to the extent possible, in a topic cluster.

One is about the governance fundamentals and what relates to it. So that was clearly a first topic for discussion. And what I suggest is the timing of review of the decisions—that is, which decision is reviewed is clearly part of that discussion around the governance fundamentals. Complete re-hearing and administrative review is also maybe part of another cluster as well. But it's clearly around how Board decisions and PTI decisions should be reviewed and the limitations in the governance fundamentals. Also, the scope, binding and replacing previous decisions and handing them back to the previous decision maker. So that's also related and is scope still open? Binding decision of IANA or Board? So again, these were, I would say, the four or five topics that you would consider one cluster.

A second cluster is clearly around the relevant policy references. And that is what the discussion on-list clearly alludes to. So reference to delegation, transfer, or revocation and retirement? Yes. Process must be timeless. And can you scroll down, please, one page? And also, the reference to RFC 1591 as a source doc, as interpreted by the FOI and what does it mean for a review mechanism. So that is, again, I would say, a cluster to look into.

A third one is applicability of ccNSO policies. It's a bit outside—well, not outside. It's almost a bit of a standalone topic. A fourth one is the fundamental fairness. Some ccNSO members cannot go to court, etc. So

that was the topic that, at one point, Eberhard will provide some background material on because that was one of the action items, as soon as we get there. And then, the rules and procedures clearly is a major one, once we address some of the more fundamental questions issues. And again, if you look at it, it's a set of topics that you've already identified and how they interrelate.

Then, the next page, please, Kim. Choice of law, I would say, is also a bit of a separate, although it's related to the rules and procedures and fundamentals. And standing panel is one of the, I would say, questions that came up in the discussions with Sam Eisner. It was already included and discussed by you and captured in Bernie's spreadsheet.

So can you go back to page one, please, Kim? These are the clusters. So my first question is do you want to see any change? Or do you think some topics need to be standalone ones? We should not combine them or should be put in another topic cluster. So that's my first question. Any comments, questions from your end on this?

STEPHEN DEERHAKE: Don't be shy. We're trying to sort out how we're going to go forward and we need input. Bart, I'm taking lack of input as agreement.

BART BOSWINKEL: Yeah. Thanks. So the next one is—and that's important as well—is moving forward. I've put these topic clusters in a certain order. So starting with the corporate governance fundamentals, then go into the relevant policy references. Can you scroll down again, Kim, so people

can see it? Then, the applicability of ccNSO policies, fundamental fairness, and then rules and procedures. Do you agree with this order—definitely the first two ones—that we start with the first two ones. Can you scroll back, please, Kim, to page one. That's the governance, fundamentals, etc., and then go into the relevant policy references.

If you agree with this order, please, as you can see Peter and Eberhard, check your green mark. Yes. Okay. Thank you. Because what is important to understand, the way we've structured this, we want to have your buy-in on this process and method first.

STEPHEN DEERHAKE: Bart, if I may interrupt you.

BART BOSWINKEL: Yeah. Go ahead.

STEPHEN DEERHAKE: The green ticks seemed to go away. Can we ask if anybody's not happy with this approach, with this order?

BART BOSWINKEL: Then, check your red mark, please.

STEPHEN DEERHAKE: Red marks. I'm not seeing any red marks so we've covered that. Thank you very much, Bart.

BART BOSWINKEL: Thank you. Thanks, Stephen. So what we suggest to do … And Bernie will take this on. What I've done in preparation of that discussion is that I think what would be wise is that—because that's probably one of the more controversial ones is the corporate governance fundamentals that the working group looks into. What it wants to discuss with Sam Eisner, that we record this and then use that as a basis for our conversation next week.

Moving forward, we'll try to do this for every meeting. So first hour, depends on how much time it takes, with Sam Eisner. And if we haven't completed the discussion with Sam Eisner, we'll continue it the week after. So focus on a specific topic and then prep for the next meeting. Have a discussion internally—what you want to, on the topics you want to raise, discuss with Samantha so there are no surprises for you. And then, move along—so cover all these various topics. So that's the proposed method. Any questions around this point?

STEPHEN DEERHAKE: I'm not seeing any hands. Anybody?

BART BOSWINKEL: So if you agree with it, please check your green tick mark and if you disagree, the red mark. Okay.

STEPHEN DEERHAKE: Looks like I've got a lot of people on the fence.

BART BOSWINKEL: Thank you. So I think this concludes my bit of the conversation. And we do have an order and we'll share this with Samantha as well, afterwards, so she knows a bit how you want to proceed in your discussions with her or with ICANN legal. And I hope it works this way. If not, then we revisit the methodology again, of course. But okay. Back to you, Stephen. That was my contribution for today, at least for this point on agenda item four.

STEPHEN DEERHAKE: All right. Thank you, Bart. Appreciate that. Anybody, before we leave this, have any questions, comment, disagreements? Anything anybody would like to say? You're being a quiet group today. All right. I will assume not, in which case we will move on to … I would say then that we have a path forward, as outlined by Bart. So I will say we should move on to the governance topic preparation, item five. And I'm going to give the floor to Bernard to walk us through that. So, sir, the floor is yours.

BERNARD TURCOTTE: I'll unmute myself and I'll be ready to talk. We've just got a few slides to help us along. I hope everyone can hear me properly.

STEPHEN DEERHAKE: You sound great.

BERNARD TURCOTTE: All right. Great.

VANDA SCARTEZINI: Yes.

BERNARD TURCOTTE: Thank you, Vanda. All right. So governance topic for ccNSO PDP on Review Mechanisms. Let's see where we started from. Next slide, please. RFC 1591, we all know this by heart. It's the bible— "will act as a review panel for cases in which the parties cannot reach agreement amongst themselves. The IDNB's decisions will be binding."

In 2015, the ICANN Board adopted the ccNSO FOI Working Group recommendations, which included, "The FOI Working Group believes it is consistent with RFC 1591, section 3.4, and the duty to act fairly to recognize the manager has the right to appeal a notice of revocation by the IANA operator to an independent body." So this is just stating stuff that we know but I thought it was important to gather it up in one place. Next slide, please.

So indirectly, Bart touched on this. But as these are the things we've been considering, it must be binding, must include references to RFC1591 and the FOI, must decide on complete re-hearing versus an administrative review. Process and policy much be timeless. Process must be affordable for all ccTLDs. Process must have set, predefined

milestones and timelines, give the ccTLD. Once the ccTLD is delegated, it's considered impossible to undo this. Look at existing mechanisms to build on. The process must be clear as to who has standing to access the review mechanism. And the process should not be subject to local law.

So those are all things that we discussed and we agreed upon. And I hope that's still good. Are we all okay with this before I move on?

STEPHEN DEERHAKE: Anybody have a question about this or are we still all on the same playbook?

PATRICIO POBLETE: If I may say something.

BERNARD TURCOTTE: Yes, sir.

PATRICIO POBLETE: I would say "RFC 1591, as interpreted by FOI." I think that should be the original phrase.

BERNARD TURCOTTE: I believe we actually stated it that way in some document. So yes. Okay.

EBERHARD LISSE: I agree. We should put [this this way].

STEPHEN DEERHAKE: Patricio, are you referring to the second bullet item?

PATRICIO POBLETE: Yeah. Correct, in front of "and." I would substitute "and" by "as interpreted by."

STEPHEN DEERHAKE: Yes.

EBERHARD LISSE: Here, I don't think it's necessary because it's a table. But in the document, when we refer to RFC 1591, refer to "RFC 1591 as interpreted by—"

BERNARD TURCOTTE: "Interpreted by the FOI." Yes. Correct.

EBERHARD LISSE: But the bullet point, as it is here, I think, is correct.

STEPHEN DEERHAKE: Thank you, Patricio. Thank you, Eberhard. Bart, I see your hand is up, sir.

BART BOSWINKEL: Yeah. Patricio and all, please be reminded. This is a summary of a summary of a summary. This is the list that was used in the presentation on the webinar. And it's just to build the story around what needs to be included in the discussion with ICANN Legal around the governance fundamentals. So I'd say the starting point is, I think, the summary that I just presented to you because these headings are included there as well. Thanks.

STEPHEN DEERHAKE: Thank you, Bart. Bernard, carry on.

BERNARD TURCOTTE: Thank you. So as Bart has said, this is just between us right now to get us back in the mood. This is not for public consumption. Next slide, please.

All right. Now, as stated in our webinar update, in the presentation, ICANN Legal stated its position regarding the following corporate governance fundamentals. The ICANN Board is not able to defer decision making to other bodies. Fiduciary duties preclude this. ICANN is entrusted to perform the IANA functions, not an external tribunal. ICANN is not in the position to place decisions on IANA functions external to PTI/ICANN.

Sam also stated that this was as the result of the 2016 work to change the Bylaws, where there were legal opinions emitted to that. In the Sidley opinion that was circulated, of course there is the notion that the Board has core responsibilities which it cannot oversee. Our very own Eberhard has had a look at this and feels there is some wiggle room, to

put it colloquially. And of course, we will not be resolving this between ourselves. This is something that we have to talk about with ICANN Legal. And this is why we're bringing them in early so we are clear as to where we're going with this.

Before I leave this slide, any thoughts or questions? Stephen? Stephen, if you're speaking, we're not hearing you. Ah, okay. You just unmuted.

STEPHEN DEERHAKE: Simply as a point of order, I'm assuming you're referring to the Sidley, Adler, and Colvin memo of October 12th, 2015. And if that's the case, I'd like to give our second law firm, whom we also spent a money on, equal billing with Sidley. That's all.

BERNARD TURCOTTE: Yes, indeed. But the specific memo we were talking about was, I believe, the Sidley opinion. Anyways … Yes? Okay. Your hand's still up, Stephen.

STEPHEN DEERHAKE: Only because I haven't figured out where to go to reactions.

BERNARD TURCOTTE: Okay. No problem. Yes. Okay. Next slide, please. All right. Let's get into the meat of the topic. Discuss key governance issues and prepare questions for ICANN Legal is our objective, as stated by Bart earlier in our topic-driven thing. As a bit of background, I've stated some of these things but I thought it would be useful to go back to them.

EN

The biggest gun in the appeals mechanisms for ICANN is, of course, the ICANN IRP. And we are in the process of reforming that. Some reforms have been brought in. There are still a few that need to be completed. I've actually been working on that since 2016, believe it or not. So I've become quite familiar with this. Oversimplifying some of this for this group. When we think about this, I thought these points would be useful.

The ICANN IRP is now binding but the Board is not bound to accept the finding by the IRP panel. Not accepting this would leave it open to consequences. It's important to note that the only thing the panel can rule on—those making the ruling on an IRP—is if ICANN breached the Bylaws in making a decision or taking an action. They can only say, "Yes. You breached the Bylaws like this," or, "No. You didn't." They cannot suggest any action to correct a situation. The only thing they can do is say, "You breached the Bylaws." And it's up to the Board to figure out how to deal with this. Eberhard?

EBERHARD LISSE: In the .Africa case, didn't the panel there make instructive instructions?

BERNARD TURCOTTE: I believe it made suggestions but it cannot make formal recommendations. Patricio?

PATRICIO POBLETE: Yeah. Just yesterday, I heard something about this. Actually, I asked the question, if a panel have ever issued other instructions besides their

ruling on whether ICANN Board have breached the Bylaws or not. I said, "Have they other issued other instructions?" And the answer was, "All the time."

BERNARD TURCOTTE: Yes.

PATRICIO POBLETE: Now that, of course, puts the Board in a different situation because they shouldn't take instructions. But on the other hand, those instructions have been given.

BERNARD TURCOTTE: Yes. But technically, if you look at the rules, this is what they say. Allan?

ALLAN MACGILLIVRAY: Yes. Is it not the case that if ICANN acts outside of its Bylaws, that that's grounds for invoking the empowered community?

BERNARD TURCOTTE: Absolutely.

ALLAN MACGILLIVRAY: So I know we're going to get into a debate around the word "binding." So I think it would be useful to put that in somewhere, to say if they're found to have breached the Bylaws and do not remedy that, then the empowered community comes in and you can spill the Board and all

those consequences. So there certainly are significant ramifications to them completely ignoring a decision from an IRP panel, just to strengthen it. Thanks.

BERNARD TURCOTTE: Eberhard?

EBERHARD LISSE: Yeah. But IRP is not what we're talking about for us, nay?

BERNARD TURCOTTE: Not for the moment. Yes. That's correct.

EBERHARD LISSE: We have to write something else, which can be identical to IRP but it's not going to be the IRP in the sense that it triggers the empowered community automatically, just to make this point clear.

BERNARD TURCOTTE: Yes. Well, we don't know what it's going to be but I'm just trying to go through the IRP stuff right now. Patricio?

PATRICIO POBLETE: Yeah. I just hope we can come up with something that is simpler and less expensive because the IRP, as I said there, can take years and millions and millions of dollars.

BERNARD TURCOTTE: This is correct. Stephen?

STEPHEN DEERHAKE: Patricio, if we don't, we will have failed. So yes, this is our prime objective. Thank you.

BERNARD TURCOTTE: Eberhard?

EBERHARD LISSE: My view is if the system is expensive, that is going … I'm not saying it should be but that's going to be a point of trying—that IFO and ICANN will avoid misbehaving to trigger these things. And if we then put in some hurdles that the ccNSO manager has to pass before he can use it, then we would start approaching a reasonably fair system for both sides.

BERNARD TURCOTTE: Okay. Stephen?

STEPHEN DEERHAKE: Thank you. Eberhard, I think you need to get off that horse because when push comes to shove, ICANN, I'm convinced, will spend … And I don't expect Patricio to comment on this. But I think ICANN will spend whatever it takes. And they have hundreds of millions of dollars to do

what it takes if they feel they're threatened. So I really feel we need to abandon this "let's make it expensive" argument. Thank you.

BERNARD TURCOTTE: Well, the point is that, a, the costs are always … It's not ICANN that pays for everything, is probably a good point to make here. Eberhard?

EBERHARD LISSE: Stephen, the argument you're just bringing, I can't follow this. They have the money so we make it cheaper? Doesn't work for me. We'll figure it out in the end. But the idea should be that it is so that it's an actual deterrent, that it is actually meaningful, that it is actually something that IFO and ICANN will think twice before they do something which violates RFC 1591. That's my point. And to say they will do whatever it takes, they will do whatever it takes, within the corporate governance statutes.

BERNARD TURCOTTE: Yes. And as the examples so far we have seen with the IRP, as stated here, the IRP cases take years to resolve and are usually expensive undertakings, costing in the millions of dollars to both parties. And I think that's an important point. ICANN will never agree to pick up the costs of the other party. So if we are serious about making this affordable for everyone, we're going to have to keep that in mind.

All right. Good exchange any closing comments before we go to the next bullet here. Not seeing anything. Okay. So, guys and ladies—

BART BOSWINKEL: Bernie?

BERNARD TURCOTTE: Yes, Bart.

BART BOSWINKEL: Maybe a question is … This is more about the—maybe comes back at the last points about binding—that, in principle, there are other mechanisms. Is one of the mechanisms as well at people can take the result of, for example, the IRP and use it in court?

BERNARD TURCOTTE: Oh, of course. That is one of the elements which can be used. I think, as Eberhard is fond of saying, courts are always fond of you having exhausted all other mechanisms except the court and look at the results. Eberhard?

EBERHARD LISSE: And as the .Africa case shows, you cannot say something like, "a is equal to five" in the IRP and then later say, "a equals seven." The court has said you cannot use a totally opposite argument from what you brought up in the IRP later in court. So the courts tend to read the internal remedies and say, "You said that and that and now you say something totally different. That's not acceptable." So no court is bound by any IRP but courts like to be as narrow as possible. Therefore, they will first like to see if there is a meaningful internal remedy that much be exhausted.

And then, if it requires the additional proceeding, what was written there will be taken into consideration in any court proceedings.

BART BOSWINKEL: Let me go back to the point, Bernie, and to the group. So one of the questions for Sam next week would be, given her explanation and also looking at the Sidley document, how would whatever is the review mechanisms results … How can we make this effective? Put it that way, without using the word "binding," and if there are any avenues to make it effective. Would that be a question around—at least for the discussion around the Sidley and the role of the Board?

BERNARD TURCOTTE: Yes. But my point is, after talking with Sam, that's why I generated the questions that I've got below here. But Eberhard has his hand up.

EBERHARD LISSE: The RFC says "binding." Now, I'm not hung up on the words but we must achieve some very effective mechanism. Let's put it like this, to use that word.

BERNARD TURCOTTE: I think that's going to be part of our discussion. All right. Anybody else? Okay. I think one of the things is, yes. How do we make it effective? But immediately, then, we fall into some lawyer-type specifications because I think the reality is, if we look at the IRP, which is why I provided it for information, the reason ICANN Legal went there … And Sam can talk to

this much better than I can—no pun intended—is that the specifics of the IRP are very, very narrow. The only thing the panel is looking at is did ICANN breach its Bylaws?

Yes. They can give other opinions as they complete their things, as Patricio has been kind enough to share with us. But it's a very narrow thing and it's not an action thing. It's really, "You have a situation. Please fix it.

So when we get into that, it's really regarding what decisions, which were made by who, that we're looking to appeal. In the spreadsheet, we had looked at decisions and we had laid them out, that they were mostly PTI decisions. And is that really what we want or do we want to also take on a review mechanism relative to the Board decision? Those two are going to be lightyears apart.

We have to understand if we want to challenge this as it comes out of the IANA functions operator or do we want to challenge this when it hits the Board? And given that the step is much higher when were talking about the Board, one of the things we're going to have to decide is do we want to insert ourselves in the IFO processes, where it's going to be a lot easier, before it goes to the Board? So that's one question which we're going to have to think about ourselves. The other thing … Eberhard?

EBERHARD LISSE: And the RFC says the IDNB is an organ of IFO. So there is food for thought here.

BERNARD TURCOTTE:	Yes. I more than agree. But I'm saying the IRP, as construed, is aimed at the Board. In our case, we have to make that decision. Also, who would be responsible for making that finding? Let's be very clear. The IRP, stated in the example above, is composed of very senior legal professionals—former judges, etc.—as Eberhard is fond of saying. These are people with a lot of knowledge, experience, and respect when it comes to looking at these things.

Part of our issue, before we go too far down the binding this, is I think we will have to think about and understand who would be making those kinds of decisions because I think if we put ourselves in ICANN Legal's shoes, it's one thing if we say we're going to pick one CC manager to make that decision. And it's a completely other thing to say, "We're going to have former judges and the like having a look at a physical set of things." So we have to be specific about what we're asking in this case.

Also, I think what's going to be really important is what kind of timeline are considering as reasonable. If, as we said previously … Once the IANA function operator makes a, let's say, preliminary determination as to the result of a case, let's say, of a revocation, we could imagine that it's not a final decision. It's an initial decision. And then, there is a period whereby one of the parties that is eligible to ask for a review can make that review. And if they don't, then the time has passed because, obviously, once the IFO enacts that decision and it is in the root, we have said that it's very hard to go back on those things. Eberhard?

EBERHARD LISSE: And we must be careful that we put it not at the end of everything but that nobody can use two or three appeals on the same issues. Wait for it a little bit to progress and then appeal it again. We must make sure that any delegation or any transfer—any decision as a whole—can only be appealed once.

BERNARD TURCOTTE: Yeah. I believe that it's colloquially referred to as a single kick at the can.

EBERHARD LISSE: Yeah. We don't want anybody to be able to delay proceedings.

BERNARD TURCOTTE: Yes. That is reasonable. So we're going to have to be ready to discuss some of these issues. I think that Sam will come and meet us on May 5th. We'll have provided her the input of our discussions and we'll be ready to start a discussion with us. Obviously, as we have said in the past, we're not looking at settling that in one meeting or resolving that. But certainly, start the exchange. But some of these questions here, I think, are going to be really critical in helping our discussions with Sam, for her to understand where we're trying to go because there are a lot of limitations.

And I think Sam Eisner is … I've worked with her for a number of years in a variety of issues and she's a very serious person and she's very good. But the things we're talking about, we're a bit at a high level now and

we're going to have to drill down a bit to understand the details of what we're asking so that we get some … The value of the input we can get from ICANN Legal, I think, will be directly proportional to how specific we can be as to some of the things we're talking about.

Now, do we have to resolve all those things up front? There are interdependencies. As a mathematician, I understand that. But we can try and understand some of these things, the best we can at this point, and then start a conversation. And maybe that will help us get the next turn of the crank on these things. But I just want to set expectations, if you will, so that we get to having productive discussions.

I don't know if there are any questions, thoughts, or comments we've got here.

STEPHEN DEERHAKE: I'm not seeing any and I hate to put on my hat and—

BERNARD TURCOTTE: Bart's got his hand up.

STEPHEN DEERHAKE: Oh, Bart does. Go, Bart.

BART BOSWINKEL: Yeah. Maybe this is a question for the group. So you listened to Bernie and you listened to Sam. You saw the document. And I know there are lawyers on the call right now as well. And from your experience,

especially looking at the lawyers, what would you think are the most critical areas which will—how should I say?—set the direction of the next upcoming meetings? Could you identify one or two areas where you think is—we need to have an initial discussion first on this with Sam Eisner before we go down. Otherwise, that will definitely set the direction of travel on all the topics that Bernie raised. I hope this is clear. I see Nick.

STEPHEN DEERHAKE: Nick, go ahead.

NICK WENBAN SMITH: Yeah. Thanks. It's interesting. As we dig deeper into these alternative processes that already exist, like the IRP, because it would seem to me there is an important issue, which is that there be an effective review as a basic access to justice system. If it costs millions of pounds and takes years and years, then that's not good enough, in my opinion. So we need to have something because in general, we're not looking at the whole spectrum of ICANN Board decisions. We're looking at a very narrow set of, usually, IANA-focused delegation questions.

And you would have thought that we could have something more narrowly-focused, which is quicker, and cheaper, and more tailored to the specific requirements that we have got, rather than this Rolls Royce system for something which is important to us but it doesn't need to be full machinery that we have here for the IRP processes.

And I think there's an interesting point also around to what extent is this final and binding? Because if you're looking at an arbitration process, that would be final and binding and not open to be litigated by courts, unless there was some fatal flaw in the process. So I think it's interesting, looking at what the IRP is. But I'm not quite sure, having thought originally that the IRP, we could just basically lift and shift for us. And I'm not convinced that it would meet some basic criteria now around access to justice. That's it.

STEPHEN DEERHAKE: Thank you, Nick. I think our objective here is to come up with something that's not the IRP, based on the non-success of the IRP to date, other than its expense and enrichment of the legal profession. Bernard, I see your hand is up next so the floor is yours. We don't have Bernard.

BERNARD TURCOTTE: Sorry. I was on mute. I'll let Eberhard go first and then I'll come in.

STEPHEN DEERHAKE: Okay. Eberhard?

EBERHARD LISSE: Thank you. I just wanted to make a point, what Nick said. Arbitration is only binding when there is a contractual agreement. That can never be the case here because its not multilateral. It's unilateral. It's bilateral. If a ccTLD manager does not have an agreement specifying binding

arbitration, there is nothing that makes arbitration binding from a legal concept that you then forego litigation.

BERNARD TURCOTTE: Very good point.

BART BOSWINKEL: There are some subtleties around that.

BERNARD TURCOTTE: All right. The point I wanted to make, in addition to Nicks' point, one of the other realities that have been found with the IRP is that even with the ICANN Bylaws, which are written by lawyers, and reread by lawyers, and edited by lawyers, and endlessly checked before they're approved, there is a level of … How can I say this? Finding people to hear IRPs which are qualified because they understand the ICANN system is a bit of an issue, which is why we're trying to get a standing panel so people can be trained and understand some of these things before they get to a case, which will hopefully lead to shorter case times.

Now, in our case, I think we're in even deeper waters. It's one thing to have the ICANN Bylaws. In our stuff, we've got a bunch of IANA function operator rules. We have the FOI. We have a lot of history. In some sense, for some people, would think, "Oh, well. It's a lot simpler than the ICANN Bylaws."

I think, in another way, it could be a lot more complex. And we have to keep that in mind if we try go to for a very legalistic-type situation. It

may create some problems because some very serious legal people, when they look at what we have for rules, may find them a little difficult and may take time for them to get their heads around. So I think that's another point we have to keep in mind when we're going down these avenues. Thank you.

STEPHEN DEERHAKE: Thank you, Bernard. I see Bart's got his hand up. Yes, Bart.

BART BOSWINKEL: Yeah. So following this discussion—and maybe I'm pushing it too hard—but what would be you preferred starting point for having the discussion with Sam around the governance issues. So I think Nick took a first step and then we had some additional comments. Are there any additional points that you think these are the areas we want to discuss next week or in two weeks with Sam Eisner and ICANN Legal? I don't see any further comments or hands up.

STEPHEN DEERHAKE: I'm not either. I think then we should run with what Nick has proposed in his comments. Bernard, I see your hand is up.

BERNARD TURCOTTE: I think Nick's comments were great. Maybe one of the questions we can ask Sam Eisner, which I think might be a starting point for us, because I think we're a little bit in the situation where we've got the entire barn to shoot at and we're not sure which part we're going to pick on … Maybe

one of the questions that we can ask Sam is, given ICANN Legal's experience up to date with the various appeals processes that work, what are her thoughts, given all the things we've discussed and we're looking at? Trying to make it different than an IRP, what would be some of the things that she thinks would work for us?

And then, we can start from there, thinking about, "Does that work for us?" or, "That gives us some hints about things we want to discuss." Just a suggestion might be helpful.

BART BOSWINKEL: Maybe. And put this in the framework of something like … At the end of the day, if you think about it, when you talk about the stability and operationability of the DNS, that's a principal point that all that policy making is about. That also … How should I phrase it? It also implies that a procedure, whatever the procedure is, can't take too long and, for the same reason as Eberhard said, you need to have a limited timeframe where you can appeal and before you make changes. At the same time, the result needs to be available fairly quickly.

So that sets some limitations around it—why you, for example, can't go for a full-blown IRP, which takes years, and years, and years. So maybe that's a starting point as well. Thanks. Allan?

ALLAN MACGILLIVRAY: I just wanted to say I quite like Bernie's suggestion. I didn't think that Sam would entertain such an open-ended question as that, even though

I find her to be a very honorable and intelligent person. So I just wanted to second Bernie's suggestion.

If she's unwilling to approach this from more of a blank page approach, maybe a way to put the same question a little differently might something to the effect of if one wanted to make this IRP more accessible, cheaper, more timely, what modifications could be made to it to achieve that. So she may want to work with something a little more concrete. I throw that out as a suggestion, just of how to approach that discussion.

STEPHEN DEERHAKE: Bernie, do you want to comment on that? I know you guys are way into the IRP thing and I feel like we need to do the anti-IRP thing.

BERNARD TURCOTTE: Well, I think we're not having a discussion where we're going to settle anything. We're having a discussion about what kind of things would be possible. And no one's going to walk out of that meeting with a commitment to anything. I think if we start with that kind of ground rule, then, I think we continue in the spirit that was presented to ICANN Legal when we asked them to come and talk to us, that we want to make sure that whatever we come up with, in the end, is not going to hit a roadblock.

Because let me tell you. After five years of doing IRP restructuring, some people in the community were very—and this is documented. I'm not saying anything out of school here—had very hard positions on certain

things and thought they could get them through, and only learned that, no, that was not going to happen, which is why we're still at it five years later. We're finally getting around to some more understandings. But the more we talk with ICANN Legal up front and the more we get a common understanding, the more we know what we can and can't do and where we can push, I think the better the end result.

STEPHEN DEERHAKE: Agree. Eberhard, I see your hand is up.

EBERHARD LISSE: I don't' think we are talking about an IRP here. And we shouldn't basically go to ICANN and say, "Modify the existing IRP to fit for us." That, I don't think, is going to happen. Most certainly, I'm totally opposed to go to ICANN Legal or whoever and say, "What can you give us?" That's not a good way of negotiating because we give away positions. And we are talking about negotiation here.

We want a policy that is fair to ICANN and fair to the ccTLD manager. And we don't want a policy that is open to gaming the system by the ccTLD manager or easy for ICANN and IFO to just say, "Okay. We'll just wait for the appeal to pass and [inaudible]." But to just ask ICANN Legal, "What can we have?" I don't think that's the right away of approaching this.

STEPHEN DEERHAKE: Okay. Thank you, sir.

BART BOSWINKEL: Eberhard? Just how would you like to see it?

EBERHARD LISSE: Not that way.

BART BOSWINKEL: That's obvious.

EBERHARD LISSE: Yes. I haven't thought about this. I would like that we, perhaps, look at on a totally low level, or high level, or whatever, but not legal level. What type of a mechanism would non-lawyers like to see? For example, as an example, one could say, "ccTLD manager involved selects one ccTLD manager or whoever he wants and ICANN selects, obviously, somebody from ICANN Legal or somebody contractual," and then these two must agree on a third one. And if that can't happen, then we take one from a panel, or we have somebody from a panel, or something like this.

And then, we can look at whether this is going to be binding as long as you're a ccNSO member. Legally binding, that you can't sue, is obviously out. I would rather see a mediation step in between before we even go to an arbitration type thing.

Maybe we should approach it from coming up with up what would we like to see and then see what we can have—what ICANN Legal is going to say about it.

BART BOSWINKEL: So a bit like what Nick suggested. If you look at it, it needs to be effective, narrow-set, and narrowly-focused more to specific requirements, and accessible?

EBERHARD LISSE: Yes.

STEPHEN DEERHAKE: Thank you.

BART BOSWINKEL: As a starting point. Either use it as a starting point for negotiations or at least set the tone for the direction of travel. And then, come up with the refinements, whatever needed, in the discussions and how to make this work. Bernie?

BERNARD TURCOTTE: Yeah. I think, as I said earlier, this is very preliminary work. It's just trying to understand both parties' take on this and where we can go according to them. I wasn't suggesting that we agree to anything like this. One way or another, let's be realistic here. The Board will consider very seriously ICANN Legal's recommendation, if ever or whenever we propose a

policy. So that's why I'm saying for me, this is a very initial step and we're just trying to understand where their fences are. I'm not—

BART BOSWINKEL: Bernie?

STEPHEN DEERHAKE: I think we lost you.

BART BOSWINKEL: Yeah. We can't hear you. Something happened.

STEPHEN DEERHAKE: Maybe it started snowing. He's expecting 30 to 70 centimeters.

BERNARD TURCOTTE: - the approach from Nick.

BART BOSWINKEL: We missed part of what you said.

STEPHEN DEERHAKE: You need to back up about 30 seconds.

BERNARD TURCOTTE: Pardon me?

STEPHEN DEERHAKE: You need to back up about 30 seconds because you went mute on us.

BERNARD TURCOTTE: Oh, my. Okay. The internet connection went weird. I was just saying this is just an initial discussion, guys. And given that ICANN Legal's opinion on any policy proposal we put forward to the Board is going to weigh heavily, I think it's best to try and get a good understanding of the land, not make commitments either way. And I've said that for both parties. But the more we understand where each party's lines are, the better we're going to be able and the faster we're going to be able to come up to something. Thank you.

EBERHARD LISSE: And I would like to remind the members of this group that we are ccTLD managers. And the interests that we have to represent are the interests of the ccTLD managers, not necessarily of ICANN. Of course, within the multistakeholder community, we must recognize this but if in doubt, I don't care what ICANN Legal says, if it is fundamentally opposed to our interests.

STEPHEN DEERHAKE: Well, that always gives you the option the withdraw from the ccNSO.

EBERHARD LISSE:	Sorry. That's not the way of doing things. "Do it my way or the highway" is just not acceptable.
BART BOSWINKEL:	Bernie, you said one thing regarding Nick's approach, which we missed. That was the end of your first part. What was your …?
BERNARD TURCOTTE:	I said this being said, I believe approaching it via Nick's point as a starting point to a discussion was fine, also.
BART BOSWINKEL:	Yeah. Because that will … At least you have a starting point for a discussion. I think that's what I was looking for because otherwise you go around in circles again, as what we have been doing for some time. So we should start delving a little bit deeper in order to achieve something like—and check whether it's achievable anyway.
BERNARD TURCOTTE:	Yes. Exactly.
BART BOSWINKEL:	Yeah. And I think if we can go for that approach, then at least we have a fruitful conversation and it's worth everybody's time. That's my concern.

STEPHEN DEERHAKE: Thank you. And chair's prerogative here, I'm going to shut down this conversation because we only have six minutes left in extra time. I want to thank everybody for hanging in there. Thank you, Kimberly. You read my mind. I don't think we have time, really, to take up the Peter/Eberhard/Sean discussion. I think Patricio might have been in on that as well. I was watching that.

EBERHARD LISSE: He started it.

STEPHEN DEERHAKE: Ah, Patricio started it. Okay.

BART BOSWINKEL: Sorry, Stephen.

STEPHEN DEERHAKE: Yes, Bart.

BART BOSWINKEL: May I suggest that you continue that discussion because it is, as you may recall, one of the … I think it's the second topic cluster, anyway. And this is where you need to come up with these arguments you have around RFC 1591, etc. So please continue and then we can recap it and we'll put it, for the time being, on the parking lot, but at least that we revisit this and use it in a prep conversation, as we have right now, for the next topic discussion.

STEPHEN DEERHAKE: That was my suggestion, was to continue it on the list. And I really am appreciative that this has broken out. The list has been very lonely.

EBERHARD LISSE: Actually, I think we have finalized it because Patricio's point was about binding where to do come from and where to do we go to? And I'm not really hung up on where we're coming from. I agree with him that it makes more sense to widen this so it's not a big deal that it is narrowly-defined in RFC 1591. So I don't want to be understood to say that it only for revocation. I'm very happy with widening it, which is what he suggested. So from my side, it's fine.

STEPHEN DEERHAKE: Let's continue everything on the list. And if anybody else wants to contribute, please do so. We will try, depending on what we see on the list, schedule some time on the next call for it. With that, let me go on to any other business. Does anybody have any other business? And I'm not seeing a great waggle of hands. Please note, of course, if you do, you can always buzz me personally.

With that, let's take a look at our upcoming meetings. Item seven, you can see what dates they are. We now know that they're at 20:00 UTC. And again, I thank you for that. Lastly, I'd like to remind everyone that we will likely have Sam Eisner from ICANN Legal with us again on our next call, on the 5th of May.

And with that, I'm done. Want to thank all of you for attending today's call. Especially want to thank Bart, who's attending out of band, and of course, thanks to Kimberly for her usual Zoom magic and Bernard for his continuing contributions. And I think with that, Kimberly, I declare this meeting adjourned. And Kimberly may stop the recording. Stay safe, everyone, and we'll see you all next time. Thanks for attending. Have a great rest of your day, wherever you are in that time—

[END OF TRANSCRIPT]