

Recommendation for Interpretation

Report

on

Revocation

ccNSO Framework of Interpretation Working Group (FOIWG)

October 2014

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Executive Summary

The Framework of Interpretation Working Group (FOIWG) is presenting its **Recommendation for Interpretation Report** on the third and final major topic it has addressed: “Revocation”, defined as redelegations undertaken without the consent of the ccTLD manager (unconsented redelegation).

The Final Report of the Delegation Redelegation and Retirement Working Group (DRDWG) identified the following issues pertaining to “Unconsented Redelegations”:

No procedure for re-delegation of a ccTLD without the consent of the incumbent operator. RFC1591 nor ICP1 discuss the re-delegation of a ccTLD without the consent of the incumbent operator. Instead both of these documents discuss the revocation of a delegation by IANA, for cause, followed by a re-delegation to a new operator. This is somewhat confusing given that in these types of situations the revocation has never caused a ccTLD to be removed from the root prior to being delegated to a new operator – thus trying to ensure continued resolution of the domains registered in the relevant ccTLD. This further illustrates some of the issues surrounding the re-delegation of ccTLDs without the consent of the incumbent operator.

The FOIWG identified the applicable policies and procedure statements and reviewed past cases of re-delegations undertaken without the consent of the incumbent operator. Based on this analysis the FOIWG examined issues arising in the context of the applicable policies and procedures and developed draft interpretation.

Based on this analysis the WG developed draft recommendations, which were included in the FOIWG Interim report on Revocation. The Interim report was published for public consultation from 28 October to 20 December 2013¹. After careful consideration of the comments, the FOIWG is of the view that the analyses and recommendations contained in the Interim Report on Revocation do not need to change. However, to ensure consistency across the different reports, in particular after FOIWG agreed on the final text of the Framework of Interpretation contained in its Final Report, editorial changes were made to match the Final Report.

Further, after careful analysis the WG noted there is no reference to the term re-delegation in RFC1591 and that there is no policy basis for an unconsented re-delegation. The FOIWG recommends that the use of the term re-delegation be dropped and be replaced by the more accurate terms of Transfer and Revocation.

In accordance with its Charter, the Recommendation for Interpretation_on Revocation will be included in the Final Report of the FOIWG, which will be conveyed to the Chairs of the ccNSO and the GAC to seek endorsement and /or support from both the ccNSO

1 A complete description of the public consultation process is included in the Final section E of the report

and GAC for the recommendations contained in the Final Report.

The recommendations in this Report on Revocation in summary are:

IANA should undertake the steps necessary to implement the following interpretations (summary – please consult full recommendations for details):

1. Note: RFC1591 only identifies three mechanisms available to the IANA Operator to assign or modify the management responsibility for a ccTLD:

- Delegation (section 3 of RFC1591)
- Transfer (section 3.6 of RFC191) and
- Revocation (section 3.5 of RFC191).

Other mechanisms may be available to the stakeholder community under applicable domestic law; however, those mechanisms might not be practicably available to the IANA Operator.

2. The FOIWG interprets Delegation (section 3 of RFC1591) to mean the process by which the IANA Operator initially assigns management responsibility or assigns previously assigned responsibility (after a revocation) for the management of a ccTLD.

2.1. Note: In the case of a delegation section 3.4 of RFC1591 requires that Significantly Interested Parties should agree that the designated manager is the appropriate party and that other Stakeholders have some voice in selecting the manager.

3. The FOIWG interprets the term Transfer (section 3.6 of RFC1591) to refer to the process by which the IANA Operator transfers responsibility from an incumbent manager to a new manager with the consent of both parties.

3.1. The FOIWG interprets section 3.6 of RFC1591 to require that the IANA Operator only seek consent for a Transfer request from the incumbent manager and the proposed manager. The IANA Operator should not seek consent from the Administrative or Technical contacts.

3.2. Note: The term “*redelegation*” and “*unconsented redelegation*” are in common use by ICANN, and the IANA Operator and the stakeholder community when describing the reassignment of a ccTLD manager. Given there is no reference to the term “*redelegation*” in RFC1591 and that there is no policy basis for an “*unconsented redelegation*” the FOIWG recommends that the term “*redelegation*” be replaced with the term “Transfer” and that the term “*unconsented redelegation*” be replaced with “Revocation followed by a Delegation”.

3.3. Note: In the case of a Transfer (section 3.6 of RFC1591) requires that Stakeholder input should be considered and taken into account by the IANA Operator.

4. The FOIWG interprets the term Revocation (section 3.5 of RFC1591) to refer to the process by which the IANA Operator rescinds responsibility for management of a ccTLD from an incumbent manager.

4.1. Note: Section 3.5 of RFC1591 explicitly contemplates Revocation in appropriate cases involving “persistent problems with the proper operation of a domain.”

4.2. The FOIWG interprets RFC1591 to permit the IANA Operator to revoke a ccTLD delegation in appropriate circumstances where the manager has substantially misbehaved (section 3.4 of RFC1591).

4.2.1. Note: RFC1591 identifies three mechanisms available to the IANA Operator to assign or modify the management responsibility for a ccTLD: Delegation, Transfer and Revocation. The FOIWG interprets RFC1591 to require the consent of an incumbent manager to any Transfer of responsibilities. If a ccTLD manager engaged in substantial misbehaviour is unwilling to consent, and the IANA Operator’s informal efforts to address such misbehaviour are unavailing, Revocation is the only formal mechanism that remains available to the IANA Operator. Accordingly, the FOIWG interprets RFC1591 to permit the IANA Operator to revoke a cc TLD delegation in appropriate cases where the manager has substantially misbehaved.

4.3. The FOIWG interprets “misbehaviour” (section 3.4 of RFC1591) in this context to refer to conduct involving the failure of a manager to (i) carry out the necessary responsibilities of that role, or (ii) carry out those responsibilities in the manner required by RFC1591.

4.4. The FOIWG interprets substantial misbehaviour (section 3.4 of RFC1591) to involve misbehaviour (as defined above) that is either egregious or persistent and may include performing the necessary responsibilities of a manager in a manner that imposes serious harm or has a substantial adverse impact on the Internet community by posing a threat to the stability and security of the DNS.

4.5. The FOIWG interprets RFC1591 to limit the IANA Operator’s authority to step-in to situations where substantial misbehaviour by the ccTLD manager (a) poses a risk to the security and stability of the DNS or (b) involves the manager's failure, after notice and a reasonable opportunity to cure, to perform the objective requirements (i.e., to be on the Internet, maintain IP and email connectivity, identify a technical contact and to identify an in-country administrative contact).

4.6. The FOIWG interprets RFC1591 to mean that the IANA Operator should not step in regarding issues of equity, justice, honesty, or – except insofar as it compromises the stability and security of the DNS – competency, and that such issues would be better resolved locally.

4.7. The FOIWG interprets the intent of RFC1591 to provide Revocation as the last resort option for the IANA Operator. The IANA Operator should use all means at its disposal to assist the manager to change conduct considered to be substantial misbehaviour by the manager. Revocation should only be considered if the IANA Operator reasonably demonstrates that the manager is unable or unwilling in an appropriate time frame to:

- resolve specified material failures to carry out its responsibilities under RFC1591; and/or
- carry out those responsibilities in the manner required by RFC1591

4.8. Note: The FOIWG believes it is consistent with RFC1591 (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.

4.9. Note: The FOIWG believes it is consistent with RFC1591 that If the IANA Operator revokes a delegation it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement can take over.

5. The FOIWG interprets the requirement that there be an administrative and technical contact for each domain including, for ccTLDs, an administrative contact residing in the country (section 3.1 of RFC1591) to mean, as a general rule, that the manager must confirm, and the IANA Operator must be able to validate, that the administrative contact resides in the country or territory associated with the ccTLD. This establishes a clear intention from RFC1591 that there be local (in the country or territory associated with the ccTLD) presence.

5.1. Note: The FOIWG recognizes that there may be extenuating circumstances where it is impractical or impossible for the administrative contact to reside in the country or territory. ccTLDs that represent territories without permanent population will, by definition, not be able to meet the requirement.

5.2. Note: The requirement for an in-country administrative contact did not appear before 1994 when it was first introduced by RFC1591. Therefore this requirement may not be expected of ccTLDs established or last transferred before the publication of RFC1591.

6. The FOIWG interprets the requirement that the manager serves as a “*trustee*” for the delegated domain, “*with a duty to serve the nation, in the case of a country code, and the global Internet community*” (section 3.2 of RFC1591) to require the Manager to (i) provide mechanisms to allow for registrants and significantly interested parties to provide input regarding registration policies to the manager and (ii) to preserve the security and stability of the ccTLD, and (iii) to work with the IANA Operator to preserve the stability and security of the global DNS/Internet.

7. The FOIWG interprets the requirement that the manager be “*equitable*” to all groups in the domain (section 3.3 of RFC1591) as obligating the manager to make its registration policies accessible and understandable to prospective applicants, and to apply these policies in an impartial manner, treating similarly situated would-be registrants in the same manner.

8. The FOIWG interprets RFC1591 to require the IANA Operator, in the manager selection process, be satisfied that the proposed manager possesses the necessary technical, administrative and operational skills, judged by the standard of the ordinarily competent ccTLD manager (section 3.5 of RFC1591). This requires the prospective manager to demonstrate that he or she (or, if a legal person, ‘it’): (i) possesses the requisite skills to carry out the duties of a manager (skills test); and (ii) If designated, will have the means necessary to carry out those duties (including the ongoing responsibilities discussed above), upon receiving the appointment (executory preparedness test).

8.1. Note: Application to Incumbent Managers. It could arguably be asserted that RFC1591 could limit the IANA Operator’s authority to “step in” to the process of selecting a manager, on balance, the FOIWG interprets section 3.4 of RFC1591 to create: (i) an ongoing obligation on the manager to operate the ccTLD without substantial misbehaviour and (ii) a reserve power for the IANA Operator to “step in” in the event that the manager does “substantially misbehave.”

9. The FOIWG interprets RFC1591 to require the IANA Operator to avoid actions that undermine the stability and security of the DNS and/or the continuing operation of the ccTLD (section 3 of RFC1591)

A. Introduction

In March 2011 the charter of the ccNSO Framework of Interpretation Working Group (FOIWG) was adopted by the ccNSO Council. According to its charter the FOIWG is to develop and propose a "Framework of Interpretation" for the delegation and re-delegation of ccTLDs. This framework should provide a clear guide to IANA and the ICANN Board on interpretations of the Policy Statements, which are defined in the charter of the WG as the following documents:

- RFC1591
- GAC Principles 2005

The scope of the FOIWG also clearly specifies that:

- Any proposal to amend, update or change the Policy Statements is outside the scope of the FOIWG.
- The IANA functions contract between the US Government and ICANN, including any contract implementation issues or procedures relating to it, are outside the scope of the FOIWG.

The FOIWG identified the following topics which will be considered individually and in the order presented:

- Obtaining and documenting consent for delegation and re-delegation requests
- Obtaining and documenting support for delegation and re-delegation requests from Significantly Interested Parties (sometimes referred to as Local Internet Community or LIC).
- Developing recommendations for un-consented re-delegations
- Developing a comprehensive glossary of the terms used for the delegation and re-delegation of ccTLDs.
- Developing recommendations for IANA reports on delegation and re-delegation.

B. Approach

As a first step the FOI WG identified the applicable policies and procedure statements and analysed all past cases of re-delegations with regard to consent. Based on this analysis the WG identified the issues in the context of the applicable policies and procedures. These issues were further analysed including an identification of the issues arising out of this analysis.

Note regarding the use of the word redelegation:

The term “redelegation” and “unconsented redelegation” are in common use by ICANN, the IANA Operator and the stakeholder community when describing the reassignment of a ccTLD manager. Given there is no reference to the term “redelegation” in RFC1591 and that there is no policy basis for an “unconsented redelegation” the FOI WG recommends that the use of the term “redelegation” be dropped in favour of the term Transfer and that the use of the term “unconsented redelegation” also be dropped in favour of Revocation followed by a Delegation.

As such the FOI WG reports, including this document, represent a transition from the use of the expressions redelegation and unconsented redelegation to the more accurate terms of Transfer and Revocation. Because this is a transition the reader should expect to see both sets of terms used.

For more information on this topic please consult the FOI WG Glossary of the Terminology Related to the Administration of ccTLDs.

C. Identification of Issues and Analysis

1. Background and Introduction

1.1. The Final Report of the DRDWG identified the following issues regarding re-delegation of ccTLDs without the consent of the incumbent operator:

No procedure for re-delegation of a ccTLD without the consent of the incumbent operator. RFC1591 nor ICP1 discuss the re-delegation of a ccTLD without the consent of the incumbent operator. Instead both of these documents discuss the revocation of a delegation by IANA, for cause, followed by a re-delegation to a new operator. This is somewhat confusing given that in these types of situations the revocation has never caused a ccTLD to be removed from the root prior to being delegated to a new operator – thus trying to ensure continued resolution of the domains registered in the relevant ccTLD. This further illustrates some of the issues surrounding the re-delegation of ccTLDs without the consent of the incumbent operator. (B3)

2. Objectives

- 2.1. Identify applicable policies and procedure statements.
- 2.2. Analyze all past cases of re-delegations vs. consent and identify issues vs applicable policies and procedures.
- 2.3. Identify and analyse any issues arising.
- 2.4. Develop recommendations and guidelines as appropriate.

3. Applicable Policy Statements

3.1. RFC1591

- 3.1.1. RFC1591 provides that: “Significantly interested parties in the domain should agree that the designated manager is the appropriate party.” It further states that “the IANA tries to have any contending parties reach agreement among themselves, and generally takes no action to change things unless all the contending parties agree; only in cases where the designated manager has substantially misbehaved would the IANA step in.” Finally, it provides that “it is also appropriate for interested parties to have some voice in selecting the designated manager.” §3 ¶4
- 3.1.2. RFC1591 provides that: “The designated manager must do a satisfactory job of operating the DNS service for the domain.” It goes on to state “the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping the central IR (in the case of top-level domains) or other higher-level domain manager advised of the status of the

domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.” And “ §3 ¶15

And “There must be a primary and a secondary nameserver that have IP connectivity to the Internet and can be easily checked for operational status and database accuracy by the IR and the IANA. Id.”

And “In cases when there are persistent problems with the proper operation of a domain, the delegation may be revoked, and possibly delegated to another designated manager. Id.”

3.2. GAC Principles 2005

3.2.1. The FOIWG also reviewed the GAC Principles Relating to Delegations and Re-Delegations. Principle 7.1 of that document provides:

Delegation and re-delegation is a national issue and should be resolved nationally and in accordance with national laws, taking into account the views of all local stakeholders and the rights of the existing ccTLD Registry. Once a final formal decision has been reached, ICANN should act promptly to initiate the process of delegation or re-delegation in line with authoritative instructions showing the basis for the decision.

The GAC Principle include the following guidelines in § 7.2:

- Where the Registry operating the country code TLD does not have a formal communication with its national government and its core functions are operated under a different jurisdiction, any action to re-delegate needs to take account of the legal framework in the country where the Registry is based. In the event of a re-delegation, registrants in the ccTLD should be afforded continued name resolution or, if necessary, a mutually agreed period in which to transfer to another TLD.
- In the case of a disputed re-delegation request where the relevant country code TLD Registry is based in another country and where there is not a contract specifying which national law should apply, the government and ccTLD should seek to find a mutually acceptable solution. Where there is evidence that local stakeholders and the Internet community support the government proposal for redelegation, but where there is no legal basis for imposing the redelegation, ICANN may contribute to identifying alternative solutions to resolve the problem.
- It is strongly recommended that, in the case of new delegations or re-delegations, particularly where a Registry is based out of country, national governments and Registry managers should agree on the legal framework and specific contract conditions to be used to judge any subsequent disputes or re-delegation requests.”

4. Relevant Procedures

4.1. None

5. Analysis of IANA Reports on re-delegations

The FOIWG noted that IANA reports on re-delegations do not always reflect or document the IANA Operator's receipt of the consent of the incumbent manager (or AC and TC) for the transfer. Where such documentation is lacking, the IANA reports almost never explain this deficiency, making it difficult to obtain a clear understanding of the incidence of re-delegations without the consent of the incumbent manager. Additionally, the minutes of ICANN Board meetings in connection with such re-delegations rarely document the presence or absence of the incumbent manager's consent. There are, however, a number of relevant cases presented in the ccNSO's DRDWG working group final report on un-consented re-delegations, which can be found at <http://ccnso.icann.org/workinggroups/drdwg-re-delegation-without-consent-21dec10-en.pdf>.

6. Issues arising from the analysis of IANA reports on re-delegation.

6.1. There is no policy basis for unconsented redelegations.

7. Detailed work of the FOIWG Interpreting RFC1591

7.1. RFC1591 identifies three mechanisms available to the IANA Operator to assign or modify the management responsibility for a ccTLD: Delegation, Transfer and Revocation. Other mechanisms may be available to the stakeholder community under applicable domestic law; however, those mechanisms might not be available to the IANA Operator as a practical matter.

7.1.1. The FOIWG interprets Delegation to mean the process by which the IANA Operator initially assigns management responsibility or assigns previously assigned responsibility for the management of a ccTLD.

7.1.2. The FOIWG interprets RFC1591 to require the consent of an incumbent manager to a Transfer. Accordingly, the FOIWG interprets the term "Transfer" to refer to the process by which the IANA Operator transfers responsibility from an incumbent manager to a new manager with the consent of both parties.

7.1.3. The FOIWG interprets the term "Revocation" to refer to the process by which the IANA Operator rescinds responsibility for management of a ccTLD from an incumbent manager.

7.1.4. Where the IANA Operator's informal efforts to stop a "substantial misbehaviour" by a ccTLD manager or rectify "persistent problems in the operation of a ccTLD" are unavailing, unless the manager consents to a Transfer, Revocation is the only formal mechanism available to the IANA Operator to deal

with intractable problems.

7.1.5. Below we first consider ¶ 5 § 3 of RFC1591 dealing with revocation for persistent problems; then considers ¶ 4 of § 3 dealing with substantial misbehaviour.

7.2. Revocation for Persistent Problems with the Proper Operation of a Domain.

7.2.1. RFC1591 (§ 3 ¶ 5) requires the manager to operate the domain, which involves “assigning domain names, delegating subdomains, and operating nameservers,” with “technical competence,” including:

- Keeping the central IR (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain; (RFC1591 defines central IR as “INTERNIC.NET”).
- Responding to requests in a timely manner;
- Operating the database with accuracy, robustness, and resilience; and
- Maintaining a primary and a secondary nameserver that have IP connectivity to the Internet and can be easily checked for operational status and database accuracy by the IR and the IANA Operator.

7.2.2. That same provision of RFC1591 explicitly contemplates Revocation in appropriate cases involving “persistent problems with the proper operation of a domain.”

7.2.3. The IANA Operator has not publicly identified the standards it will use to evaluate compliance with the requirements set out in RFC1591 (§ 3 ¶ 5) in order to evaluate whether or not (a) a manager is “doing a satisfactory job of operating the DNS service for the domain (ccTLD)” or (b) there are “persistent problems with the proper operation of a domain”.

7.2.3.1. The FOIWG notes that technical operation of TLDs has greatly evolved from the time of publication of RFC1591, along with the use of the Internet, and although still a specialized field, this is standard knowledge for networking specialists and is supported by a large volume of easily accessible documentation and applications.

7.2.3.2. With respect to any standards that may be published by the IANA Operator, the FOIWG reiterates that it interprets RFC1591 to require the IANA Operator to avoid actions that undermine the stability and security of the DNS and/or the continuing operation of the domain.

7.3. Substantial Misbehaviour

7.3.1. In addition to the operational requirements identified above, RFC1591 (§ 3 ¶ 1) identifies “key requirements” and “necessary responsibilities” of managers, including:

- The requirement, in the case of “top-level domains that are country codes” that there be a manager that supervises the domain names and operates the domain name system in that country; and
- The requirement that the manager be “on the Internet,” with IP connectivity to the nameservers and email connectivity to the manager and its staff; and
- The requirement that there be an admin and technical contact for each domain including, for ccTLDs, an admin contact residing in the country.

7.3.1.1. The FOIWG interprets this requirement to mean, as a general rule, that the manager must confirm, and the IANA Operator must be able to validate, that the administrative contact resides in the country or territory associated with the ccTLD. This establishes a clear intention from RFC1591 that there be local (in the country or territory associated with the ccTLD) presence.

7.3.1.1.1. The FOIWG recognizes that there may be extenuating circumstances where it is impractical or even impossible for the administrative contact to reside in the country or territory. ccTLDs that represent territories without permanent population will, by definition, not be able to meet the requirement.

7.3.1.1.2. The requirement for an in-country administrative contact did not appear before 1994 when it was first introduced by RFC1591. Therefore this requirement may not be expected of ccTLDs established or last transferred before the publication of that RFC.

7.3.2. The manager serves as a trustee for the delegated domain, with a duty to serve the nation, in the case of a country code, and the global Internet community. RFC1591 (§ 3 ¶2)

7.3.2.1. As noted in the FOIWG Report on Consent: “In RFC1591, the term “trustee” is used to describe the manager’s duty to serve the community, and not to describe the specific legal relationship of the manager to the delegated domain.”

7.3.2.2. Rather, the FOIWG interprets this to require the manager to (i) provide mechanisms to allow for registrants and significantly interested parties to provide input regarding registration policies to the manager and (ii) to preserve the security and stability of the ccTLD, and (iii) to work with the IANA Operator to preserve the stability and security of the global DNS/Internet.

7.3.3. RFC1591 requires that the manager have the ability to carry out the necessary responsibilities described above in an equitable, just, honest, and competent manner. (§ 3)

7.3.3.1. The FOIWG interprets the requirement that the manager be equitable to all groups in the domain as obligating the manager to make its registration policies accessible and understandable to prospective applicants, and to apply these policies in an impartial manner, treating similarly situated would-be registrants in the same manner.

7.3.4. RFC1591 also gives the IANA Operator the ability to “step in” in the event of “substantial misbehaviour”. (§ 3)

7.3.4.1. The FOIWG interprets RFC1591 to limit the IANA Operator’s authority to step-in to situations where substantial misbehaviour by the ccTLD manager (a) poses a risk to the security and stability of the DNS or (b) involves the manager's failure, after notice and a reasonable opportunity to cure, to perform the objective requirements (i.e., to be on the Internet, maintain IP and email connectivity, identify a technical contact and to identify an in-country administrative contact).

7.3.4.2. The IANA Operator and the ccTLD manager should advise each other how they wish to be given notice. Such notice should be at least what is acceptable between parties in international private law, at a minimum including the use of registered/recorded delivery mail. For the avoidance of doubt, failure or refusal to respond to any notice may not be taken as consent. However, failure or refusal may be a relevant factor when considering other obligations of the ccTLD manager (for example, substantial misbehaviour).

7.3.4.3. Application in Selection of ccTLD Managers. The FOIWG interprets RFC1591 to require the IANA Operator, in the manager selection process,

be satisfied that the proposed manager possesses the necessary technical, administrative and operational skills, judged by the standard of the ordinarily competent ccTLD manager. This requires the prospective manager to demonstrate that he or she (or, if a legal person, 'it'): (i) possesses the requisite skills to carry out the duties of a manager (skills test); and (ii) If designated, will have the means necessary to carry out those duties (including the ongoing responsibilities discussed above), upon receiving the appointment (executory preparedness test).

7.3.4.4. Application to Incumbent Managers. Although one could read RFC1591 to limit the IANA Operator's authority to "step in" to the process of selecting a manager, on balance, the FOIWG interprets § 3.4 of RFC1591 to create: (i) an ongoing obligation on the manager to operate the ccTLD without substantial misbehaviour and (ii) a reserve power for the IANA Operator to "step in" in the event that the manager does "substantially misbehave."

7.3.5. Does "step(ping) in" include the possibility of revocation?

7.3.5.1. RFC1591 identifies three mechanisms available to the IANA Operator: Delegation, Transfer and Revocation. The FOIWG (as discussed above) interprets RFC1591 to require the consent of an incumbent manager to any Transfer of responsibilities. If a ccTLD manager engaged in substantial misbehaviour is unwilling to consent, and the IANA Operator's informal efforts to address such misbehaviour are unavailing, Revocation is the only formal mechanism that remains available to the IANA Operator. Accordingly, the FOIWG interprets RFC1591 to permit the IANA Operator to revoke a cc TLD delegation in appropriate cases where the manager has substantially misbehaved.

7.3.5.2. Given that the primary responsibility of the IANA Operator is to preserve DNS/Internet stability and security, the FOIWG interprets "revocation" under RFC1591 as the "last resort" option to be exercised in situations where a manager has substantially misbehaved in a way that poses a threat to the stability and security of the DNS or where the manager fails to cure violations of the objective requirements described above after notice (e.g., no email availability).

7.3.5.3. The FOIWG notes, however, that the IANA Operator will rarely be in a good position to evaluate the extent to which a manager is carrying out the necessary responsibilities of a ccTLD operator in a manner that is equitable, just, honest, or – except insofar as it compromises the stability and security of the DNS - a competent manner. Accordingly, the FOIWG interprets RFC1591 to mean that the IANA Operator should not step in

regarding issues of equity, justice, honesty, or – except insofar as it compromises the stability and security of the DNS – competency, and that such issues would be better resolved locally.

7.3.6. Defining substantial misbehaviour

7.3.6.1. Misbehaviour. The FOIWG interprets “misbehaviour” in this context to refer to conduct involving the failure of a manager to (i) carry out the necessary responsibilities of that role, or (ii) carry out those responsibilities in the manner required by RFC1591.

7.3.6.2. “Substantial” Misbehaviour. The FOIWG interprets substantial misbehaviour to involve misbehaviour (as defined above) that is either egregious or persistent and may include performing the necessary responsibilities of a manager in a manner that imposes serious harm or has a substantial adverse impact on the Internet community by posing a threat to the stability and security of the DNS.

7.3.7. Process for revocation in cases of substantial misbehaviour

7.3.7.1. The FOIWG interprets the intent of RFC1591 to provide Revocation as the last resort option for the IANA Operator. The IANA Operator should use all means at its disposal to assist the manager to change conduct considered to be substantial misbehaviour by the manager. Revocation should only be considered if the IANA Operator reasonably demonstrates that the manager is unable or unwilling in an appropriate time frame to:

- resolve specified material failures to carry out its responsibilities under RFC1591; and/or
- carry out those responsibilities in the manner required by RFC1591

7.3.7.2. The FOIWG believes it is consistent with RFC1591 that If the IANA Operator revokes a delegation it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement can take over.

7.3.7.3. The FOIWG believes it is consistent with RFC1591 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.

7.3.7.4. As discussed above, Revocation should only be considered if the IANA Operator reasonably demonstrates that there are persistent

problems with the operation of the domain, as defined in § 7.2 above or the manager has engaged in “substantial misbehaviour” as defined in § 7.3.6 above, that persists, despite the efforts of the IANA Operator using all means at its disposal to fix the problems or modify the behaviour.

D. Recommendations

IANA undertake the steps necessary to implement the following interpretations:

FOIWG interpretation of RFC1591

1. Note: RFC1591 only identifies three mechanisms available to the IANA Operator to assign or modify the management responsibility for a ccTLD:

- Delegation (section 3 of RFC1591)
- Transfer (section 3.6 of RFC191) and
- Revocation (section 3.5 of RFC191).

Other mechanisms may be available to the stakeholder community under applicable domestic law; however, those mechanisms might not be available to the IANA Operator as a practical matter.

2. The FOIWG interprets Delegation (section 3 of RFC1591) to mean the process by which the IANA Operator initially assigns management responsibility or assigns previously assigned responsibility (after a revocation) for the management of a ccTLD.

2.1. Note: In the case of a delegation section 3.4 of RFC1591 requires that Significantly Interested Parties should agree that the designated manager is the appropriate party and that other Stakeholders have some voice in selecting the manager.

3. The FOIWG interprets the term Transfer (section 3.6 of RFC1591) to refer to the process by which the IANA Operator transfers responsibility from an incumbent manager to a new manager with the consent of both parties.

3.1. The FOIWG interprets section 3.6 of RFC1591 to require that the IANA Operator should only seek consent for a Transfer request from the incumbent manager and the proposed manager. The IANA Operator should not seek consent from the Administrative or Technical contacts.

3.2. Note: The term "*redelegation*" and "*unconsented redelegation*" are in common use by ICANN, the IANA Operator and the stakeholder community when describing the reassignment of a ccTLD manager. Given there is no reference to the term "*redelegation*" in RFC1591 and that there is no policy basis for an "*unconsented redelegation*" the FOIWG recommends that the use of the term "*redelegation*" be dropped in favour of the term Transfer and that the use of the term "*unconsented redelegation*" also be dropped in favour of Revocation followed by a Delegation.

3.3. Note: In the case of a Transfer (section 3.6 of RFC1591) requires that Stakeholder input should be considered and taken into account by the IANA Operator.

4. The FOIWG interprets the term Revocation (section 3.5 of RFC1591) to refer to the process by which the IANA Operator rescinds responsibility for management of a ccTLD from an incumbent manager.

4.1. Note: Section 3.5 of RFC1591 explicitly contemplates Revocation in appropriate cases involving “persistent problems with the proper operation of a domain.”

4.2. The FOIWG interprets RFC1591 to permit the IANA Operator to revoke a cc TLD delegation in appropriate cases where the manager has substantially misbehaved (section 3.4 of RFC1591).

4.2.1. Note: RFC1591 identifies three mechanisms available to the IANA Operator to assign or modify the management responsibility for a ccTLD: Delegation, Transfer and Revocation. The FOIWG (as discussed above) interprets RFC1591 to require the consent of an incumbent manager to any Transfer of responsibilities. If a ccTLD manager engaged in substantial misbehaviour is unwilling to consent, and the IANA Operator’s informal efforts to address such misbehaviour are unavailing, Revocation is the only formal mechanism that remains available to the IANA Operator. Accordingly, the FOIWG interprets RFC1591 to permit the IANA Operator to revoke a cc TLD delegation in appropriate cases where the manager has substantially misbehaved.

4.3. The FOIWG interprets “misbehaviour” (section 3.4 of RFC1591) in this context to refer to conduct involving the failure of a manager to (i) carry out the necessary responsibilities of that role, or (ii) carry out those responsibilities in the manner required by RFC1591.

4.4. The FOIWG interprets substantial misbehaviour (section 3.4 of RFC1591) to involve misbehaviour (as defined above) that is either egregious or persistent and may include performing the necessary responsibilities of a manager in a manner that imposes serious harm or has a substantial adverse impact on the Internet community by posing a threat to the stability and security of the DNS.

4.5. The FOIWG interprets RFC1591 to limit the IANA Operator’s authority to step-in to situations where substantial misbehaviour by the ccTLD manager (a) poses a risk to the security and stability of the DNS or (b) involves the manager's failure, after notice and a reasonable opportunity to cure, to perform the objective requirements (i.e., to be on the Internet, maintain IP and email connectivity, identify a technical contact and to identify an in-country administrative contact).

4.6. The FOIWG interprets RFC1591 to mean that the IANA Operator should not step

in regarding issues of equity, justice, honesty, or – except insofar as it compromises the stability and security of the DNS – competency, and that such issues would be better resolved locally.

4.7. The FOIWG interprets the intent of RFC1591 to provide Revocation as the last resort option for the IANA Operator. The IANA Operator should use all means at its disposal to assist the manager to change conduct considered to be substantial misbehaviour by the manager. Revocation should only be considered if the IANA Operator reasonably demonstrates that the manager is unable or unwilling in an appropriate time frame to:

- resolve specified material failures to carry out its responsibilities under RFC1591; and/or
- carry out those responsibilities in the manner required by RFC1591

4.8. Note: The FOIWG believes it is consistent with RFC1591 (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.

4.9. Note: The FOIWG believes it is consistent with RFC1591 that If the IANA Operator revokes a delegation it should attempt, in collaboration with the significantly interested parties, to ensure the ccTLD will continue to resolve names until a suitable replacement can take over.

5. The FOIWG interprets the requirement that there be an admin and technical contact for each domain including, for ccTLDs, an admin contact residing in the country (section 3.1 of RFC1591) to mean, as a general rule, that the manager must confirm, and the IANA Operator must be able to validate, that the administrative contact resides in the country or territory associated with the ccTLD. This establishes a clear intention from RFC1591 that there be local (in the country or territory associated with the ccTLD) presence.

5.1. Note: The FOIWG recognizes that there may be extenuating circumstances where it is impractical or even impossible for the administrative contact to reside in the country or territory. ccTLDs that represent territories without permanent population will, by definition, not be able to meet the requirement.

5.2. Note: The requirement for an in-country administrative contact did not appear before 1994 when it was first introduced by RFC1591. Therefore this requirement may not be expected of ccTLDs established or last transferred before the publication of that RFC.

6. The FOIWG interprets the requirement that the manager serves as a “*trustee*” for the

delegated domain, “with a duty to serve the nation, in the case of a country code, and the global Internet community” (section 3.2 of RFC1591) to require the Manager to (i) provide mechanisms to allow for registrants and significantly interested parties to provide input regarding registration policies to the manager and (ii) to preserve the security and stability of the ccTLD, and (iii) to work with the IANA Operator to preserve the stability and security of the global DNS/Internet.

7. The FOIWG interprets the requirement that the manager be “*equitable*” to all groups in the domain (section 3.3 of RFC1591) as obligating the manager to make its registration policies accessible and understandable to prospective applicants, and to apply these policies in an impartial manner, treating similarly situated would-be registrants in the same manner.

8. The FOIWG interprets RFC1591 to require the IANA Operator, in the manager selection process, be satisfied that the proposed manager possesses the necessary technical, administrative and operational skills, judged by the standard of the ordinarily competent ccTLD manager (section 3.5 of RFC1591). This requires the prospective manager to demonstrate that he or she (or, if a legal person, ‘it’): (i) possesses the requisite skills to carry out the duties of a manager (skills test); and (ii) If designated, will have the means necessary to carry out those duties (including the ongoing responsibilities discussed above), upon receiving the appointment (executory preparedness test).

8.1. Note: Application to Incumbent Managers. Although one could read RFC1591 to limit the IANA Operator’s authority to “step in” to the process of selecting a manager, on balance, the FOIWG interprets section 3.4 of RFC1591 to create: (i) an ongoing obligation on the manager to operate the ccTLD without substantial misbehaviour and (ii) a reserve power for the IANA Operator to “step in” in the event that the manager does “substantially misbehave.”

9. The FOIWG interprets RFC1591 to require the IANA Operator to avoid actions that undermine the stability and security of the DNS and/or the continuing operation of the ccTLD (section 3 of RFC1591)

E. Background and Process

The FOIWG was created by the ccNSO Council following the recommendations of the Delegation and Re-delegation Working Group (DRDWG):

Recommendation 2: Delegation and re-delegation of ccTLDs

The DRDWG recommends that, as a first step, the ccNSO Council undertakes the development of a "Framework of Interpretation" for the delegation and re-delegation of ccTLDs. This framework should provide a clear guide to IANA and the ICANN Board on interpretations of the current policies, guidelines and procedures relating to the delegation and re-delegation of ccTLDs.

The results of the use of such a Framework of Interpretation should be formally monitored and evaluated by the ccNSO Council after a pre-determined period. If the results of this evaluation indicate that the Framework of Interpretation failed to provide logical and predictable outcomes in ICANN decision making, the ccNSO Council should then launch PDPs on the delegation and re-delegation of ccTLDs.

"The charter of the FOIWG was adopted by the ccNSO Council at its meeting on 16 March 2011 and Keith Davidson of .NZ (former Chair of the DRDWG) was appointed as chair". In June 2011 the charter was updated to reflect the participation of the Governmental Advisory Committee (GAC). The charter and the list of participants of the FOIWG can be found at <http://ccnso.icann.org/workinggroups/foiwg.htm>.

The objective of the FOIWG is to develop and propose a "Framework of Interpretation" for the delegation and re-delegation of ccTLDs. This framework should provide a clear guide to IANA functions manager and the ICANN Board on interpretation of the current Policy Statements.

The scope of the FOIWG also clearly specifies that:

- Any proposal to amend, update or change the Policy Statements is outside the scope of the FOIWG.
- The IANA functions contract between the US Government and ICANN, including any contract implementation issues or procedures relating to it, are outside the scope of the FOIWG.

As part of its work plan the FOIWG agreed that the only appropriate documented policies, guidelines and procedures it would consider for interpretation are RFC1591 and the GAC Principles 2005². The FOIWG also considered other relevant

² According to DRDWG and charter of the FOIWG the Policy Statements includes ICP-1 and GAC 2000 Principles as well. As the GAC 2005 Principles replaced the GAC 2000 set, they are not considered by the FOIWG.

documentation such as IANA Reports on Delegation and Re-delegation or IANA process documentation to assist in determining if interpretation for a specific topic is required to address the concerns raised by the DRDWG in its final report.

The FOIWG identified the following topics, which will be considered individually and in the order presented:

- Obtaining and documenting consent for delegation and re-delegation requests
- Obtaining and documenting support for delegation and re-delegation requests from Significantly Interested Parties (sometimes referred to as Local Internet Community or LIC).
- Developing recommendations for un-consented re-delegations
- Developing a comprehensive glossary of the terms used for the delegation and re-delegation of ccTLDs.
- Developing recommendations for IANA reports on delegation and re-delegation.

Per its charter, the FOIWG published its initial interpretations of current policy and guidelines related to "Revocation" for public comment on 28 October 2013³. After closure of this public comment period on 31 January 2014, the FOIWG has reviewed and analysed the comments received. The summary of comments and the analyses have been published on 12 February⁴. During the public comment period the FOIWG also informed the community on its progress and sought feed-back at public

With regard to ICP-1 the DRDWG noted that, in 1994, IANA published RFC1591 as its statement of current practice, in 1997 this was updated with ccTLD News Memo #1 and in 1999, ICP1 was published as its statement of current practice. Contrary to the statements contained in its header, ICP1 does contain significant changes in policies. These changes were never approved by resolution of the ICANN Board. The DRDWG analysis of RFC1591 versus ICP1 concluded that "This policy decision (implementing ICP1) failed to meet all of the requirements for policy development in effect at the time.

Further, in 2001 a majority of ccTLDs active in ccTLD management accepted RFC1591 and the principles it contained as appropriate policies, and these ccTLDs continue their support for these principles today (see www.wwtld.org and www.iatld.org web archives). Neither News Memo #1 nor ICP1 (which integrates News Memo #1) were ever officially endorsed by any significant group of ccTLDs.

As the DRDWG excluded ICP-1, the FOIWG in accordance with its charter excluded ICP-1 as well.

³ <https://www.icann.org/public-comments/foi-interim-2013-10-28-en>

⁴ <http://forum.icann.org/lists/comments-foi-interim-28oct13/msg00002.html>

meetings⁵

Based on the analysis of the feed-back received the interim interpretations were not adjusted. However, to ensure consistency across the different reports, in particular after FOIWG agreed on the final text of the Framework of Interpretation contained in its Final Report, editorial changes were made to match the Final Report.

In accordance with the charter of the FOIWG, the interpretations and recommendations contained in this report will be included in the Final Report of the WG, which will be submitted to the ccNSO and GAC to seek their endorsement or support.

⁵ The FOI WG held session with the ccTLD community and GAC at the ICANN 48 in Buenos Aires (17-21 November 2013).

Annex A – Classification of “consent” for re-delegation requests

System for classification of consent

1.1 Given the documentation of consent by either the incumbent Manager, AC or TC varies in IANA reports on re-delegations it is necessary to define a system for the classification of consent from these parties to support a meaningful analysis. The classification system developed for this is based on the following definitions:

- 1.1. Documented – The IANA report includes some reference as to how the contact provided consent.
- 1.2. Inferred – Although there is no reporting of consent there is some information in the IANA Report which could imply consent of the contact.
- 1.3. Not Addressed – there is no mention of consent in the IANA Report.
- 1.4. Noted – IANA simply notes or states that the contact has provided consent without any additional documentation from the contact to support the statement.
- 1.5. Refused – The IANA Report documents the contact refusing to consent to the re-delegation.

2.1 Cases of re-delegation

- 2.1. From 2000 to January 2011 there are 50 cases of Re-delegations documented by IANA Reports.

3.1 Classification of consent

- 3.1. Classification of consent by contacts

FOIWG - Consent -			
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Analysis of consent by Contacts			
	Manager	AC	TC
Documented	22%	12%	4%
Inferred	10%	6%	6%
Not Addressed	24%	38%	42%
Noted	40%	40%	46%
Refused	4%	4%	2%

3.2. Classification of consent for requests

- 3.2.1. Given the variety of responses documented by IANA in reports on re-delegation it is necessary to develop a classification scheme for requests, vs. contacts.
- 3.2.2. RFC1591 essentially states that the incumbent manager must communicate its consent for the re-delegation to IANA.
- 3.2.3. IANA Procedures on re-delegation essentially state that the AC and TC have to communicate their consent for the re-delegation to IANA.
- 3.2.4. In trying to work with both of these it is necessary to order these. As such it is proposed that RFC1591 be overriding in all cases.
- 3.2.5. Classification based on consent by the Manager.
 - 3.2.5.1. Manager consent is classified as Documented implies consent for the request should be classified as Documented (regardless of the classification of the AC or TC).
 - 3.2.5.2. Manager consent is classified as Noted implies consent for the request should be classified as Noted (regardless of the classification of the AC or TC).
 - 3.2.5.3. Manager consent is classified as Refused implies consent for the request should be classified as Refused (regardless of the classification of the AC or TC).
 - 3.2.5.4. Manager consent is classified as Inferred-Questionable. The request should be classified as the best of Inferred-Questionable or the result of the classification of consent by the AC and TC as this would be an indication of consent (the FOIWG will have to

decide on the validity of consent in these cases).

3.2.5.5. Manager consent is classified as Not Addressed. The request should be classified as the result of the classification of consent by the AC and TC (as described in the next section).

3.2.6. Classification of consent by the AC and TC

3.2.6.1. Given the IANA procedure requires the consent of both contacts (AC and TC) and that these are not always classified identically it is necessary to develop a scheme to account for this to produce a unique result.

3.2.6.2. Given there are 5 categories and two contacts there are 25 possibilities.

3.2.6.3. Overall it is proposed, given consent is required by both, that the result of the classification of consent of both contacts be the weakest result of either.

3.2.6.4. Classification of the 25 possibilities

AC	TC	Result
D	D	D
D	N	N
D	R	R
D	IQ	IQ
D	NA	NA
N	D	N
N	N	N
N	R	R
N	IQ	IQ
N	NA	NA
R	D	R
R	N	R
R	R	R

R	IQ	R
R	NA	R
IQ	D	IQ
IQ	N	IQ
IQ	R	R
IQ	IQ	IQ
IQ	NA	NA
NA	D	NA
NA	N	NA
NA	R	R
NA	IQ	NA
NA	NA	NA

3.2.7. Results of using this classification scheme

Consent for request	clear	?	Total	%
Documented	9	2	11	22%
Inferred-questionable	5	0	5	10%
Not Addressed	9	0	9	18%
Noted	21	2	23	46%
Refused	2	0	2	4%

The Full results at detailed level are:

FOIWG - Classification of Consent for Requests - sorted by result							
Re-delegation	Date	Manager	AC	TC	AC + TC		Consent for
		Consent	Consent	Consent	Consent		Request
.PN	200002	D	D	R	R		D
.JP	200202	D	D	D	D		D
.MW	200208	D	D	N	N		D
.SD	200211	D	D	D	D		D
.FK	200508	D	N	N	N		D
.FO	200508	D	D	N	N		D
.YU	200709	D	IQ	NA	NA		D
.NG	200904	D	NA	NA	NA		D

.SY	201101	D		NA	NA	NA	D
.DM	200707	D?		NA	N	NA	D?
.AE	200801	D?		NA	NA	NA	D?
.BM	200710	IQ		NA	NA	NA	IQ
.BB	200711	IQ		NA	NA	NA	IQ
.BY	200902	IQ		IQ	IQ	IQ	IQ
.CV	200908	IQ		NA	NA	NA	IQ
.CA	200012	I-Q		I-Q	I-Q	IQ	I-Q
.LA	200212	N		N	N	N	N
.TW	200305	NA		N	N	N	N
.PW	200306	N		N	N	N	N
.HT	200401	NA		N	N	N	N
.NG	200404	N		N	N	N	N
.TF	200405	NA		N	N	N	N
.PS	200406	NA		N	N	N	N
.ES	200409	NA		N	N	N	N
.KZ	200508	NA		N	N	N	N
.ZA	200508	NA		N	N?	N	N
.CX	200601	NA		N	N	N	N
.TK	200601	NA		N	N	N	N
.MA	200607	NA		N	N	N	N
.GW	200704	NA		N	N	N	N
.KN	200804	N		NA	NA	NA	N
.MS	200808	N		N	IQ	IQ	N
.CO	200912	N		NA	NA	NA	N
.TZ	201004	N		NA	NA	NA	N
.QA	201010	N		NA	NA	NA	N
.BF	201101	N		NA	NA	NA	N
.CD	201101	N		NA	NA	NA	N
.AF	200301	N?		N?	N	N	N?
.GS	200510	N??		N	N	N	N??
.BI	200111	NA?		D	NA?	NA	NA
.UZ	200304	NA		NA	NA	NA	NA
.KY	200306	NA		NA	NA	NA	NA
.TJ	200306	NA		N	NA	NA	NA
.MD	200310	NA		NA	NA	NA	NA
.LY	200409	NA		NA	NA	NA	NA
.IQ	200507	NA		NA	NA	NA	NA
.GD	200607	NA		NA	N	NA	NA
.SO	200902	NA		NA	NA	NA	NA
.AU	200012	R		R	NA	R	R
.KE	200212	R		R	NA	R	R

FOIWG - Classification of Consent for Requests - sorted by ccTLD							
Re- delegation	Date	Manager	AC	TC	AC + TC		Consent for
		Consent	Consent	Consent	Consent		Request
.AE	200801	D?	NA	NA	NA		D?
.AF	200301	N?	N?	N	N		N?
.AU	200012	R	R	NA	R		R
.BB	200711	IQ	NA	NA	NA		IQ
.BF	201101	N	NA	NA	NA		N
.BI	200111	NA?	D	NA?	NA		NA
.BM	200710	IQ	NA	NA	NA		IQ
.BY	200902	IQ	IQ	IQ	IQ		IQ
.CA	200012	I-Q	I-Q	I-Q	IQ		I-Q
.CD	201101	N	NA	NA	NA		N
.CO	200912	N	NA	NA	NA		N
.CV	200908	IQ	NA	NA	NA		IQ
.CX	200601	NA	N	N	N		N
.DM	200707	D?	NA	N	NA		D?
.ES	200409	NA	N	N	N		N
.FK	200508	D	N	N	N		D
.FO	200508	D	D	N	N		D
.GD	200607	NA	NA	N	NA		NA
.GS	200510	N??	N	N	N		N??
.GW	200704	NA	N	N	N		N
.HT	200401	NA	N	N	N		N
.IQ	200507	NA	NA	NA	NA		NA
.JP	200202	D	D	D	D		D
.KE	200212	R	R	NA	R		R
.KN	200804	N	NA	NA	NA		N
.KY	200306	NA	NA	NA	NA		NA
.KZ	200508	NA	N	N	N		N
.LA	200212	N	N	N	N		N
.LY	200409	NA	NA	NA	NA		NA
.MA	200607	NA	N	N	N		N
.MD	200310	NA	NA	NA	NA		NA
.MS	200808	N	N	IQ	IQ		N
.MW	200208	D	D	N	N		D

.NG	200404	N		N	N	N	N
.NG	200904	D		NA	NA	NA	D
.PN	200002	D		D	R	R	D
.PS	200406	NA		N	N	N	N
.PW	200306	N		N	N	N	N
.QA	201010	N		NA	NA	NA	N
.SD	200211	D		D	D	D	D
.SO	200902	NA		NA	NA	NA	NA
.SY	201101	D		NA	NA	NA	D
.TF	200405	NA		N	N	N	N
.TJ	200306	NA		N	NA	NA	NA
.TK	200601	NA		N	N	N	N
.TW	200305	NA		N	N	N	N
.TZ	201004	N		NA	NA	NA	N
.UZ	200304	NA		NA	NA	NA	NA
.YU	200709	D		IQ	NA	NA	D
.ZA	200508	NA		N	N?	N	N

Consent for request	clear	?	Total	%
Documented	9	2	11	22%
Inferred-questionable	5	0	5	10%
Not Addressed	9	0	9	18%
Noted	21	2	23	46%
Refused	2	0	2	4%