

DRDWG Fourth Progress Report, December, 2010

(Update to the third progress report to include the report on the Re-delegation of ccTLDs where the Incumbent operator does not consent.)

Summary of Recommendations included in this report:

Recommendation 1: Retirement of ccTLDs

The DRDWG recommends the CCNSO Council undertake a PDP on the Retirement of ccTLDs.

Recommendation 2: Delegation of ccTLDs

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a "Framework of Interpretation" for the 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 delegations 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 a PDP on the delegation of ccTLDs.

Recommendation 3: Re-delegation of ccTLDs where the incumbent operator consents

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a "Framework of Interpretation" for the re-delegation of ccTLDs where the incumbent operator consents. 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 re-delegations 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 a PDP on the re-delegation of ccTLDs where the incumbent operator consents to the re-delegation.

Recommendation 4: Re-delegation of ccTLDs where the incumbent operator does not consent.

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a “Framework of Interpretation” for the re-delegation of ccTLDs where the incumbent operator does not consent. 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 re-delegations 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 a PDP on the re-delegation of ccTLDs where the incumbent operator does not consent to the re-delegation.

Section 1: Introduction

This is the fourth progress report on the activities of the ccNSO Delegation, Re-delegation and Retirement Working Group (DRDWG), since its establishment at the Seoul ICANN meeting.

Since the Cartagena ICANN meeting, the DRDWG has met once. Notes of these meetings can be found at: <http://ccNSO.icann.org/workinggroups/drdwg.htm>.

Section 2 of this report contains a summary of the progress to date. This includes an outline of the process so far, including a more detailed description of the activities of the DRDWG since September and finally, anticipated activities following the Cartagena ICANN meeting .

Since September 2010 the DRDWG conducted an in depth analysis to identify issues that, according to the DRDWG, need to be resolved in order to create a stable and predictable policy based framework for decision-making. As stated in the second progress report, the DRDWG intends to treat the delegation, re-delegation and retirement processes and practices in a unified, consolidated manner. However for reasons of efficiency and effectiveness, the in-depth analysis was conducted on a process by process basis, and will be reported on separately.

The issues and draft recommendation relating to the current retirement process and practices are included in section 3 of this report. A full report will be published separately for public comment.

The current delegation processes and practices are the subject of section 4, and a full report will also be published for public comment.

The issues and recommendations relating to the current process and practise relating to the re-delegation of a ccTLD with consent of the incumbent operator are included in section 5, and a full report will also be published for comment.

The issues and recommendations relating to the current process and practise relating to the re-delegation of a ccTLD without the consent of the incumbent operator are included in section 6, and a full report will also be published for comment.

Section 2: Progress to date

Purpose and Scope of the DRDWG

Purpose

The purpose of the DRDWG is to advise the ccNSO Council whether it should launch a policy development process to recommend changes to the current policy for delegation, re-

delegation and retirement of ccTLDs.

Scope

The DRDWG will consider the current policies and guidelines relating to delegation, re-delegation and retirement of ccTLDs, and report on any issues or matters of concern that it believes exist. It will also consider possible solutions to any issues or matters of concern.

The IANA functions contract between the US Government and ICANN, including any contract implementation issues or procedures relating to it, are considered outside the scope of this working group.

The DRDWG will recommend whether or not to launch a ccNSO Policy Development Process (PDP). If it does recommend a PDP, it shall be considered as a request for an issues report to the ccNSO Council as documented in Annex B, Section 1 of the ccNSO PDP.

If issues outside this scope become apparent to the DRDWG, the Chair will inform the ccNSO Council of the issue so that it can be taken into account and dealt with as the ccNSO Council believes appropriate.

Process

The DRDWG initially adopted a work plan that contemplated completion of its mandate by July 2011. As a result of the progress made since the Nairobi and Brussels ICANN meetings and a change in its working methods, the DRDWG now expects to deliver its final report at an earlier stage. As indicated in the second progress report, the activities of the DRDWG have been broken down into 3 major phases of activity:

- Phase 1: Identify relevant policies, guidelines, procedures and practices regarding delegation, re-delegation and retirement of ccTLDs;
- Phase 2: Analyze the documented processes against the relevant policies and guidelines identified in Phase 1 and define a methodology to identify and classify areas where the documented actions appear to be inconsistent with, or not addressed in, the policies and guidelines;
- Phase 3: Identify issues, if any, regarding each of the three phases and develop recommendations to resolve the issues identified. Submit a final report to the ccNSO council, including the recommendations.

As reported in its first progress report (<http://ccNSO.icann.org/workinggroups/report-drd-25feb10-en.pdf>):

- *The working group has not identified an authoritative policy document that reflects all relevant policy inputs; and,*
- *There is no publicly available documentation of the current practices or procedures.*

To understand the current policies and practices, as reported in the second progress report (<http://ccNSO.icann.org/workinggroups/drd-progress-report-14jun10-en.pdf>), the DRDWG performed an initial analysis of the following documents (“Policy Statements”):

- RFC 1591
- ICP-1
- GAC Principles 2000 and 2005

These Policies and Guidelines provided a baseline against which to evaluate the actual practices of IANA, and the decisions of the ICANN Board, as reflected in the following documentation (“Documentation”):

- All available IANA reports on ccTLD delegations, re-delegations and retirements
- All ICANN Board decisions affecting ccTLD delegations, re-delegations and retirements.

If the DRDWG noted a difference between the “Policy Statements” and the processes and outcomes reflected in the “Documentation”, and this suggested a change in policy had occurred, the DRDWG considered whether or not such a change was implemented in a manner consistent with the procedural requirements covered by the ICANN Bylaws.

On this basis, individual cases were identified that the DRDWG considered potentially relevant to its work. A summary of these cases were included in the second progress report and fully documented in the DRDWG analysis report of 14 June 2010 (<http://ccNSO.icann.org/workinggroups/drd-analysis-report-14jun10-en.pdf>).

Activities since September 2010 and Current Status

In September 2010 the DRDWG reconvened and undertook the following activities:

- Review of the results of its public consultation
- Publish a report on the public consultation (<http://forum.icann.org/lists/drd-analysis-report/pdfg9d7XHbtXU.pdf>)
- Develop a work plan for the current session of the DRDWG, based on the separate elements of Retirement, Delegation, Re-delegation with consent of the incumbent operator and Re-delegation without consent of the incumbent operator.

The complete reports on Retirements, Delegations and Re-delegation with, and without, consent of the incumbent operator, including the working group recommendations to the ccNSO Council, have been published.

These reports will be circulated and presented to the ccNSO community and other relevant groups for discussion and input prior to finalization.

The DRDWG will generate a draft Final Report on all the elements for a formal public

consultation during 2011. After this consultation has been completed the DRDWG will finalize its Report, and submit it for discussion and adoption to the ccNSO.

The Retirement, Delegation and Re-delegations Reports all follow the same methodology, based on the previous work and the public consultation document issued before the Brussels meeting:

- All relevant documentation relating to policies, guidelines and procedures for each given element (such as retirement) are identified and listed.
- All documentation of relevant cases for a given element (such as delegation), which were noted to be of interest to the DRDWG are identified and listed.
- Each element of documentation that is relevant is analysed for conformity and applicability
- A list of issues is generated from the analyses.
- A recommendation is generated based on the analyses and issues.

Next steps:

DRDWG will continue its work to:

- Assemble a draft final DRDWG report summarising all the individual final reports
- Undertake a public consultation on the draft DRDWG Final Report
- Publish a report on the results of the public consultation
- Develop a final DRDWG report
- Publish the final DRDWG report for delivery to the CCNSO Council

It is the intention of the DRDWG to complete this work to align with the San Francisco ICANN meeting.

Section 3. Issues and draft recommendations relating to the Retirement of ccTLDs

Issues

The DRDWG noted there are no effective policies or guidelines applicable to the retirement of ccTLDs, and that the procedures applied to the three indentified retirement cases appear diverse and inconsistent for such a critical activity.

For example, the ICANN Board decisions indicate considerable inconsistency between the retirement of .TP compared to .YU.

In reading the Board transcript relating to the 2007 .YU decision Peter Dengate Thrush (ICANN Director selected by the CCNSO) noted:

“that his reservation was associated with his belief that such policy decisions concerning delegation should rest with the ccNSO as specifically provided under the bylaws. He noted that he has raised this issue on a number of occasions

suggesting that this matter should be referred to the ccNSO but to no avail.” To which the Chair (Vint Cerf) replied “The Chair noted that these practices have been in existence prior to the formation of the ccNSO, and that if policy is required in this area that the ccNSO work on a policy proposal, that might be properly considered.”

The September 2009 Board minutes relating to extending the period for retiring the .YU ccTLD contain the following relevant text:

“Furthermore, whereas RNIDS has asked ICANN for better guidance for the future on how the process of retiring country-code top-level domains should be conducted, in the form of clear and transparent rules”

The issue of what happens if the manager is not in agreement with retiring a ccTLD that is no longer listed as an active ISO3166-1 code is not addressed. Application of the practices also seems inconsistent when considering the .SU and .TP cases, where these codes had been removed from the active ISO3166-1 list, for many years.

In considering the .YU derived practice, the choice of when to begin counting the 2 year decommissioning period was an area of disagreement.

In considering the .UM inferred practice, it is unclear what would have been ICANN’s position if the scenario would be similar to .YU, but that there had been some registrants in the .UM ccTLD.

Recommendations

Given:

- The removal of a ccTLD from the root is considered one of the most critical recommendations ICANN can make.
- ICANN is a policy based organization
- There is no policy on the retirement of ccTLDs
- The CCNSO is mandated to develop all policies applicable to ccTLD members of the ccNSO
- There is no public documentation outlining policies, guidelines or procedures in use by ICANN or IANA relating to the retirement of ccTLDs
- Current practices are significantly divergent or uneven in their application
- The minutes of the September 2007 ICANN meeting of the Board dealing with the .YU Retirement include the following texts:

“Peter Dengate Thrush explained that his reservation was associated with his belief that such policy decisions concerning delegation should rest with the ccNSO as specifically provided under the bylaws. He noted that he has raised this issue on a number of occasions suggesting that this matter should be referred to the ccNSO but to no avail.”

“The Chair noted that these practices have been in existence prior to the formation of the ccNSO, and that if policy is required in this area that the ccNSO work on a

policy proposal, that might be properly considered.”

- The September 2009 request by RNIDS (then manager of .YU) to the ICANN Board includes the following text:

“Furthermore, whereas RNIDS has asked ICANN for better guidance for the future on how the process of retiring country-code top-level domains should be conducted, in the form of clear and transparent rules.”

- The minutes of the September 2009 ICANN meeting of the Board dealing with the .YU Retirement include the following text:

“Whereas, the Board is aware that the ccNSO Council has established a working group to advise on whether to launch a policy development process to review the current policy on delegation, redelegation and retirement of country-code top-level domains,

Resolved (2009.09.30.16), that the ccNSO is asked to consider the RNIDS request on better supporting the process of retiring country-code top-level domains, and report back to the Board its findings.”

The DRDWG therefore recommends the CCNSO Council undertake a PDP on the Retirement of ccTLDs.

Section 4: Issues and draft recommendations relating to the Delegation of ccTLDs

Issues

1. The ICANN Board has not followed its correct procedures for developing formal rules that apply to the Delegation of ccTLDs resulting in inconsistencies on a case by case basis.
2. Lack of predictability in the application current policies, guidelines and procedures regarding the delegation of ccTLDs, based on the analysis of the publicly available documentation. The documentation confirms DRDWG noted significant variability in applying these rules to delegation decisions by the ICANN Board. Noted in particular are:
 - a. IANA access to ccTLD zone files. Currently this requirement is not applied. However under ICP-1, this is still a requirement.
 - b. Sponsorship Agreements. At the time (September 2000) the requirement for a Sponsorship Agreement was approved by the Board, without community consultation and support. Since 2005 this requirement is not being applied. There is no documentation explaining the decision to not require sponsorship agreements.
 - c. Government support and Local Internet Community support. In the documentation available, several cases identified ccTLDs being delegated without clear support from the Local Internet Community. On occasion it appears that only Government support is a requirement, and that Local Internet Community support is merely considered desirable. This is a

significant divergence from the accepted policies and guidelines, and reasons for departing from policy are not documented. The DRDWG noted the request by the ICANN Board to the ccNSO seeking clarification of what constitutes community support.

3. Applicability of ICP-1
 - a. ICP-1 is not supported by the ccTLD community and ICP-1 requires updating
 - b. Development of ICP-1 failed to meet all of policy development requirements at the time it was introduced
 - c. ICP-1 is not appropriate as a policy applicable for the delegation of IDN ccTLDs
4. There is no publicly documented process or procedure for updating IANA processes and procedures that apply to ccTLDs. Documentation has also demonstrated that there can be significant changes to these policies, guidelines and procedures, such as IANA dropping the requirement for Sponsorship Agreements, without any consultation with the ccTLDs.
5. IANA documentation on its processes and procedures for the delegation of ccTLDs could be improved to clearly define what constitutes Local Internet Community support.
6. Terminology. The description of the entity being delegated the ccTLD has evolved over time from “Designated Manager” to the current use of “Sponsoring Organisation”, without any input from the ccTLD community, which may possibly have been to align with accepted gTLD terminology. The term “Sponsoring Organisation” is inappropriate to many existing ccTLD Managers. This and any other titular issues, including role accounts, should be reviewed in order to ensure they properly reflect the situation.

Recommendations

The DRDWG has conducted research on the ICANN decisions relating to delegations and re-delegations of ccTLDs and believe the research highlights decisions made that contain elements of inconsistent application of policies, guidelines and procedures, and on occasions that ICANN decisions have been based on criteria not included in the relevant policies, guidelines and procedures. The decisions of the ICANN board should be logical and predictable.

Although elements of this report support a recommendation for the ccNSO to undertake a PDP, this WG notes the considerable time requirement to develop a PDP along with the urgent need to provide clarification of various issues and procedures within ICANN, and therefore for reasons of expediency, efficiency, effectiveness and flexibility, recommends a two-step process to the ccNSO Council.

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a “Framework of Interpretation” for the 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 delegations 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 a PDP on the delegation of ccTLDs.

Section 5: Issues and draft recommendations relating to Re-delegation of ccTLDs with consent of the Incumbent operator

Issues

1. *Fair and consistent application of bylaws applying to minutes of Board meetings.*
It is unacceptable that the minutes of ICANN Board meetings dealing with the re-delegation of ccTLDs do not meet the letter and the spirit of the bylaws regarding this.
2. *Failure to consistently follow established policy development processes and procedure.*
 - a. Prior to the creation of the CCNSO the ICANN Board has failed to follow its own processes and procedures for developing formal rules that apply to the Delegation of ccTLDs.
 - i. September 25, 2000 Board decision to require Sponsorship agreements with managers prior to approval of delegation requests.
 - ii. September 2001 decision to no longer allow individuals as delegees.
 - b. Following the creation of the CCNSO the ICANN Board has failed to follow its own processes and procedures, including the charter of the CCNSO, in developing implicit rules that apply to the Delegation of ccTLDs.
 - i. June 2005 – Approval of the .KZ re-delegation without requiring a Sponsorship Agreement implicitly removes this requirement going forward for delegations (not required for any of the delegations since this date).
 - ii. November 2009 – IANA Report on the Re-delegation of .CO states that the Board will now consider the security and stability of the Internet in making Delegation decisions and these considerations have been included in all IDN ccTLD delegations since.
3. *Lack of predictability in the application current rules and procedures to the delegation of ccTLDs*

The documentation confirms a high degree of variability in applying the rules applicable to re-delegation decisions by the ICANN Board:

- a. IANA access to ccTLD zone files
 - i. ICP1, which is over 10 years old and has never been updated, requires that IANA have access to the ccTLD zone file
 - ii. Currently this requirement is not being applied and has not been for a number of years. There is no public documentation explaining this decision by the Board or IANA.
 - iii. Unless this requirement is removed from ICP1 there is no guarantee it will not be re-instated without requiring any of the formalism of a PDP.

- b. Sponsorship agreements
 - i. Approved by the Board without community support
 - ii. Never included in ICP1
 - iii. Currently this requirement is not being applied and has not been for a number of years. There is no public documentation explaining this decision by the Board or IANA.
 - iv. Unless this Board decision is updated or removed there is no guarantee it will not be re-instated without requiring any of the formalism of a PDP.

- c. Government support and local internet community support
 - i. News Memo #1 and ICP1 significantly modified RFC1591 in this respect without any community support making government and local Internet community support a requirement for re-delegation.
 - ii. The IANA document "Understanding the Delegation and Re-delegation procedure (Annex F)" notes that local Internet community support is crucial for any delegation or re-delegation request.
 - iii. There are no rules, processes or procedures which allow this to be circumvented.
 - iv. The documentation has several cases of ccTLDs being re-delegated without clear support from the local Internet community. One could conclude that currently government support is required and that local Internet community support is desirable. This is a significant change which is not documented.
 - v. There is a request by the Board to the ccNSO to clarify what community support is.
 - vi. The current documentation and decisions for the re-delegation of ccTLDs seem to be inconsistent.

4. *Applicability of ICP-1*

- a. ICP1 is not generally supported by the ccTLD community and requires updating.

IANA has published its current practices relating to ccTLD re-delegations via a number of methods over time. In 1994, it published RFC 1591 as its statement of

current practice, and in 1997 this was updated with ccTLD Memo #1. In 1999, ICP1 was published as its statement of current practice.

RFC1591 or the principles it contained were accepted by a majority of ccTLDs active in ccTLD governance issues in 2001 and to this day (see WWTL.org and IATLD.org web archives). News Memo #1 nor ICP1 (which integrates News Memo #1) were never officially endorsed by any significant group of ccTLDs.

- b. The DRD WG analysis of RFC1591 vs ICP1 concluded that “This policy decision failed to meet all of the requirements for policy development in effect at the time. This supports the DRDWG classifying this as “Significantly Interesting” in its report titled “DETAILED ANALYSIS AND CLASSIFICATION OF POTENTIAL ISSUES”.
 - c. ICP1 unilaterally implemented a requirement for government support for the re-delegation of ccTLDs
 - d. ICP1 requires that IANA have access to the ccTLD zone file. Although this is no longer required in practice this rule is still in effect.
 - e. Since its publication ICP1 has never been updated although several key ICANN Board decisions since its publication clearly impact its scope.
 - f. ICP1 does not mention IDN ccTLDs
 - g. ICP1 should be updated in co-operation with the ccTLD community.
5. *There is no publicly documented process or procedure for updating IANA processes and procedures that apply to ccTLDs.*
- Documentation has also demonstrates that there can be significant changes to these, such as dropping the requirement for Sponsorship Agreements, without any consultation or notice.
- a. Public IANA reports are edited versions of the reports provided by IANA to the ICANN Board. This may be necessary for a variety of reasons but it is unacceptable that there is no published process or procedure, including approvals, of how this is done.
 - b. Public IANA reports are constantly changing both in format and in content without any public input or notice. Given they are the basis for Board decisions and are often the only source of information on delegations, re-delegations and retirements and given the nature of the organisation it seems unacceptable that these changes are brought without input or notice from-to the CCNSO for IANA

Reports dealing with ccTLDs.

- c. Public IANA reports are regularly used to communicate significant changes in practices and procedures which can significantly affect ccTLDs without any input or notice from-to this community. This is unacceptable.
 - d. In the past, IANA has had significant delays, sometimes up to a year, in posting the public IANA report for a given delegation or re-delegation. Although this is not currently the case there are no public commitments, processes, procedures or practices dealing with this. The CCNSO community finds it unacceptable that there is not a minimum timeframe after a Board decision which will guarantee the publication of the public IANA report.
 - e. IANA should publish the processes which are at issue in this section.
6. *Current manager approving a re-delegation request (consent)*
- a. RFC1591
(IANA) must receive communications from both the old organization and the new organization that assure the IANA that the transfer is mutually agreed.
 - b. ICP1
(IANA) must receive communications from both the old organization and the new organization that assure the IANA that the transfer is mutually agreed.
 - c. Understanding the Delegation and Re-delegation procedure.
Once IANA has completed its verification and analysis of the material supplied in the request it then requests, confirmation of the re-delegation from the current administrative and technical contacts (if applicable) as well as the newly proposed administrative and technical contacts.
 - d. Practice
Consent is usually achieved by the administrative and technical contacts replying to an email from IANA.
 - e. Issues
 - i. Interpretation of consent, by IANA's own admission, is highly variable depending on a number of factors including culture and the immediate physical security of the ccTLD manager.
 - ii. The practice is inadequate when considering the importance of a re-delegation.
7. *Significantly interested parties or community support*

a. Current documentation

i. RFC 1591

“Significantly interested parties in the domain should agree that the designated manager is the appropriate party.” (context: applies to the selection of a new manager).

ii. News Memo #1

“An additional factor has become very important since RFC 1591 was written: the desires of the government of the country. The IANA takes the desires of the government of the country very seriously, and will take them as a major consideration in any transition discussion.”

iii. ICP1

“The desires of the government of a country with regard to delegation of a ccTLD are taken very seriously. The IANA will make them a major consideration in any TLD delegation/transfer discussions. Significantly interested parties in the domain should agree that the proposed TLD manager is the appropriate party.”

iv. GAC Principles 2005

“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.”

v. Understanding the Delegation and Re-delegation procedure

“2. Documentation showing that the request serves the local interest

Crucial to the request are statements of support from the local Internet community. This documentation should provide information demonstrating that the request would be in the interests of the Internet community served by the ccTLD.

Good examples of this documentation include statements from national ISPs and ISP associations, Internet user groups, and Internet Society chapters showing support for the request. Other possibilities include statements from national consortia of electronic commerce providers or trademark and intellectual property holders. It would also be instructive to summarise the usage of Internet in the country, and an explanation on why the statements provided (and the organisations they are from) are representative of the community. If there is disagreement about how the ccTLD is run within the community, explain the circumstances and the

different points of view, and why your application is the most appropriate path to serve the Internet community's interests."

- b. Request from the Board (April 22 2010 meeting of the ICANN Board)
"Jonne Soininen expressed his support for Harald, Rita and Ram's comments and moving forward with the delegations. Jonne also requested that the Board agree that "what is community support" should be a matter for ccNSO policy development, so that the Board is not trying to define such policies on its own."

- c. Issues
 - i. There is no documentation on the evolution from "interested parties" to "community support" to "national ISPs and ISP associations, Internet user groups, and Internet Society chapters". This could be an issue when one considers the definition of interested party as "Entity who has a recognizable stake in the outcome of a matter, but may not be directly involved in it".

 - ii. There is no documentation on the verification and ranking of these "interested parties". How do we qualify a party as interested in a national ccTLD? Is there a scale for ranking the "interest"? Is there a scale for ranking importance - is an ISOC chapter with a dozen members considered on the same footing as a national ISP with several thousand employees and potentially millions of clients.

 - iii. There is no documentation on what constitutes a "statement of support" or requirements for ranking or validating these.

 - iv. IANA reports provide a variable amount of information, ranging from none to elaborate, regarding the community support information that has been provided for a given re-delegation request (problem of format and content of IANA reports.). This makes it very difficult to establish any comparisons between requests or to establish a baseline.

 - v. Examining all IANA Re-delegation reports with respect to the "community support" requirement reveals a great flexibility in interpretation. Some of this flexibility is obviously required by the very nature of these communities which include significant cultural differences. However several sections of this report present situations where there was no community support presented for the request, although there was

government support, which were recommended by IANA and accepted by the ICANN Board. These decisions indicate a shift from community **and** government support to government support being a must and community support being desirable. This inferred policy shift should be addressed as per the April 2010 Board request.

Recommendations

The DRDWG have conducted research on the ICANN decisions relating to delegations and re-delegations of ccTLDs and believe the research highlights decisions made that contain elements of inconsistent application of policies, guidelines and procedures, and on occasions that ICANN decisions have been based on criteria not included in the relevant policies, guidelines and procedures. The decisions of the ICANN board should be logical and predictable.

Although elements of this report support a recommendation for the ccNSO to undertake a PDP, this WG notes the considerable time requirement to develop a PDP along with the urgent need to provide clarification of various issues and procedures within ICANN, and therefore for reasons of expediency, efficiency, effectiveness and flexibility, recommends a two-step process to the ccNSO Council.

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a “Framework of Interpretation” for the 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 re-delegations 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 a PDP on the delegation of ccTLDs.

Section 6: Issues and draft recommendations relating to Re-delegation of ccTLDs where the Incumbent operator does not consent.

Issues

1. *Fair and consistent application of bylaws applying to minutes of Board meetings.*

It is unacceptable that the minutes of ICANN Board meetings dealing with the re-delegation of ccTLDs do not meet the letter and the spirit of the bylaws regarding this.

2. *Applicability of ICP-1*

- a. ICP1 is not generally supported by the ccTLD community and requires updating.

IANA has published its current practices relating to ccTLD re-delegations via a number of methods over time. In 1994, it published RFC 1591 as its statement of current practice, and in 1997 this was updated with ccTLD Memo #1. In 1999, ICP1 was published as its statement of current practice.

RFC1591 or the principles it contained were accepted by a majority of ccTLDs active in ccTLD governance issues in 2001 and to this day (see WWTL.org and IATLD.org web archives). News Memo #1 nor ICP1 (which integrates News Memo #1) were never officially endorsed by any significant group of ccTLDs.

- b. The DRD WG analysis of RFC1591 vs ICP1 concluded that “This policy decision failed to meet all of the requirements for policy development in effect at the time. This supports the DRDWG classifying this as “Significantly Interesting” in its report titled “DETAILED ANALYSIS AND CLASSIFICATION OF POTENTIAL ISSUES”.
- c. ICP1 unilaterally implemented a requirement for government support for the re-delegation of ccTLDs
- d. ICP1 requires that IANA have access to the ccTLD zone file. Although this is no longer required in practice this rule is still in effect.
- e. Since its publication ICP1 has never been updated although several key ICANN Board decisions since its publication clearly impact its scope.
- f. ICP1 does not mention IDN ccTLDs
- g. ICP1 should be updated in co-operation with the ccTLD community.
- h. ICANN - IANA’s continued use of ICP1 to evaluate contested re-delegations is problematic for many reasons:
 - i. Contrary to the statements in ICP1, it does contain significant changes in policy.
 - ii. Given ICP1 was never approved by the ICANN Board these changes in policy were never approved and were implemented contrary to the bylaws that were in effect at the time.
 - iii. ICP1 has not been updated since its publication and contains elements which are no longer valid, such as access to the zone file.
 - iv. ICP1 does not incorporate the guidance provided by the GAC Principles 2005 and IANA in its recent IANA Reports has stopped referring to the GAC Principles.

- v. Not providing any guidance or restrictions relative to decisions relative to contested re-delegations is problematic even if there is no documentation demonstrating that there have been issues with this.
- vi. Providing ICANN - IANA with the power to revoke a ccTLD for a breach of any policy in RFC1591, News Memo #1 and ICP1 without any process or procedures in a policy and process organisation such as ICANN is problematic even if there is no documentation demonstrating that there have been issues with this.

3. Inactive or retired manager or administrative contact that is not replaced

- a. IANA has no published rules or requirements defining what is an active ccTLD manager or administrative contact (active ccTLD manager is defined here as a manager with whom IANA is regularly in contact with (at least once per year)).
- b. IANA has no published rules or requirements defining how a ccTLD manager or administrative contact can retire without being replaced.
- c. What is the status of a ccTLD where the manager or administrative contact is not active or has retired without being replaced?

4. Failure to reply as an approval

- a. IANA has no published rules as to what constitutes a failure to reply to its emails and the practice seems highly variable depending on the circumstance. This allows IANA on occasion to set what seem to be arbitrary periods for a manager to reply to an IANA request.
- b. It is a significant issue that IANA classify a failure to reply from an active ccTLD manager as an acceptance to re-delegate a ccTLD.

5. There are no publicly documented IANA processes and procedures for un-consented and contested re-delegations

- a. Un-consented re-delegations are one of the most critical decisions ICANN can make.
- b. It is unclear what rules apply to legacy ccTLDs (where the current delegee was selected prior to ICANN being created) which do not have any formalised relationship with ICANN and are not members of the ccNSO. This should be clarified.
- c. By IANA not having a published process or procedure for dealing with un-consented re-delegations and the fact that IANA Reports on these re-delegations do not always present a clear picture of the situation is a significant issue.

6. Public IANA Reports are inconsistent

- a. Public IANA reports are inconsistent in clearly presenting if a re-delegation request is approved or not. Public IANA Reports need to clearly indicate if a re-

- delegation request was approved, by whom and how.
- b. In cases of un-approved re-delegations, which can be extremely serious situations, the reasons which justify carrying out this act are often not clearly presented in the context of applicable rules.
7. Application of GAC Principles 2005
- a. In 2005 IANA Reports under the Evaluation Section have the following text: "In acting on redelegation requests, the IANA currently follows the practices summarized in "Internet Domain Name System Structure and Delegation" (ICP-1, <http://www.icann.org/icp/icp-1.htm>). ICP-1 represents an update of the portions of RFC 1591 (<http://www.rfceditor.org/rfc/rfc1591.txt> which was issued in March 1994) dealing with ccTLDs, and reflects subsequent documents and evolution of the policies followed by the IANA through May 1999. Relevant guidance is also provided in the GAC Principles."
 - b. In the 2010 version of the IANA Reports we have no mention of the GAC Principles: "The evaluation of eligibility for country-code top-level domains, and of evaluating responsible trustees charged with operating them, is guided by a number of principles. The objective of the assessment is that the action enhances the secure and stable operation of the Internet's unique identifier systems. The evolution of the principles has been documented in "Domain Name System Structure and Delegation" (RFC 1591), "Internet Domain Name System Structure and Delegation" (ICP-1), and other informational memoranda."
 - c. RFC1591, News Memo #1 and ICP1 make no reference to the GAC Principles.
 - d. There is no other current published material mentioning using the GAC principles anywhere on the ICANN or IANA web sites.
 - e. IANA needs to include these considerations clearly in its documentation, processes and procedures.
8. IANA vs. applicable local legislation for a ccTLD
- a. IANA needs to clarify the impact of local (to the ccTLD) legislation in its evaluation of contested re-delegation requests.

Recommendations

The DRDWG have conducted research on the ICANN decisions relating to delegations and re-delegations of ccTLDs and believe the research highlights decisions made that contain elements of inconsistent application of policies, guidelines and procedures, and on occasions that ICANN decisions have been based on criteria not included in the relevant policies, guidelines and procedures. The decisions of the ICANN board should be logical and predictable.

Although elements of this report support a recommendation for the ccNSO to undertake a PDP, this WG notes the considerable time requirement to develop a PDP along with the

urgent need to provide clarification of various issues and procedures within ICANN, and therefore for reasons of expediency, efficiency, effectiveness and flexibility, recommends a two-step process to the ccNSO Council.

The DRDWG recommends that, as a first step, the ccNSO Council undertake the development of a “Framework of Interpretation” for the 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 re-delegations 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 a PDP on the delegation of ccTLDs.