

Framework of Interpretation Working Group (FOIWG)

Revocation

Public Consultation

Final

Executive Summary

The Framework of Interpretation Working Group (FOIWG) is seeking public comment on its initial recommendations on the topic of “Revocation”, defined as redelegations undertaken without the consent of the ccTLD manager.

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 interpretations summarized below.¹

- RFC 1591 identifies three mechanisms available to the IANA Operator: Delegation, Transfer and Revocation.
- Under RFC 1591, a Transfer requires the consent of the incumbent ccTLD manager.
- “Revocation” refers to the process by which the IANA Operator rescinds responsibility for management of a ccTLD from a manager.
- The FOIWG interprets RFC 1591 to limit Revocation to cases where the IANA Operator reasonably demonstrates that there are persistent problems with the operation of the domain, or the manager continues to engage in “substantial misbehaviour”, despite the efforts of the IANA Operator using all means at its disposal to resolve such conduct.
- If a manager is engaged in “substantial misbehaviour” or there are “persistent problems in the operation of a ccTLD” and the ccTLD manager is unwilling or unable to rectify the problems to the reasonable satisfaction of the IANA Operator and/or stop the offending conduct, the IANA Operator may propose a Transfer.

¹ The complete set of recommendations and interpretations relating to the topic of unconsented re-delegation are included in § 4 of this report.

- If the manager does not consent to a proposed Transfer, the only mechanism available to the IANA Operator to deal with ultimately intractable problems is Revocation.
- 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.
- The FOIWG believes it is consistent general principles of fairness and with RFC1591 to afford an affected manager the opportunity to appeal a notice of revocation issued by the IANA Operator, to an independent body.

The FOIWG seeks community feedback on the following questions:

1. Is the approach used by the FOIWG satisfactory?
2. Do the issues identified by the FOIWG for this topic capture the major problems associated with the topic? If not what is missing?
3. Is the proposed interpretation of the relevant sections of RFC 1591 effective and supported?
4. Are the proposed recommendations effective in addressing the concerns raised in the final report of the DRDWG regarding this topic?

You are requested to submit your comments, if any, by [insert date] at [email address].

A. Introduction and Objective

Under the charter of the ccNSO Framework of Interpretation Working Group (FOIWG) adopted by the ccNSO Council, the FOIWG is tasked with developing a proposed "Framework of Interpretation" for the delegation and re-delegation of ccTLDs under RFC 1591. The goal is to provide clear and implementable guidance to the IANA Operator and the ICANN Board by interpreting specified documents, including RFC 1591 and the GAC Principles 2005.

The scope of the FOIWG also clearly specifies that:

- Any proposal to amend, update or change the RFC 1591 is outside the scope of the FOIWG's mandate.
- The IANA functions contract between the US Government and ICANN, including any contract implementation issues or procedures relating to it, is outside the scope of the FOIWG.

In its final report, the FOIWG will reflect the following workstreams:

1. Obtaining and documenting consent for delegation and re-delegation requests;
2. Obtaining and documenting support for delegation and re-delegation requests from Significantly Interested Parties (sometimes referred to as Local Internet Community or LIC).;
3. Recommending a framework for interpreting RFC 1591 in connection with Revocation;
4. Developing a comprehensive glossary of the terms used for the delegation and re-delegation of ccTLDs; and
5. Developing recommendations for IANA reports on delegation and re-delegation.

This document contains the FOIWG's draft recommendations with respect to task #3 above.

B. Identification of Issues and Analysis

1 Background and Introduction

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 Applicable Policy Statements and Guidelines

2.1 RFC 1591

2.1.1 RFC 1591 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

2.1.1.1 This raises the several questions. Under RFC 1591:

- What constitutes substantial mis-behaviour?
- What does it mean for the IANA Operator to “step in”?
- Does § 3.4 apply to the initial selection of a ccTLD manager only, or does it also apply to previously delegated ccTLDs?

2.1.2 RFC 1591 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.” §3 ¶5

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.

2.1.2.1 This raises the several questions. Under RFC 1591:

- What constitutes “doing a satisfactory job of operating the DNS for the domain”?
- What constitutes “persistent problems with the operation of a domain”?
- Under what circumstances would it be appropriate for the IANA Operator to rescind responsibility for management of a ccTLD without the manager’s consent (a “Revocation”)?

2.2 GAC Principles 2005.

2.2.1 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.”*

2.2.2 Issues Considered by the FOIWG:

- Are the GAC Principles and accompanying guidelines consistent with RFC 1591?
- Do they provide an aid to the FOIWG’s interpretation of that document?

3 The FOIWG's 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>.

4 Analysis and Interpretation

4.1 RFC 1591 identifies three mechanisms available to the IANA Operator: 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.

4.1.1 The FOIWG interprets Delegation to mean the process by which the IANA Operator initially assigns management responsibility or transfers previously assigned responsibility for the management of a ccTLD.²

4.1.2 The FOIWG interprets RFC 1591 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.

4.1.3 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.

4.1.4 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.

4.1.5 Below we first consider ¶ 5 § 3 of RFC 1591 dealing with revocation for persistent problems; then considers ¶ 4 of § 3 dealing with substantial misbehaviour.

² Because RFC 1591 was only introduced in 1994 these definitions may not apply to (country-code) Top Level Domains established or last re-delegated before the publication of that RFC.

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

4.2.1 RFC 1591 (§ 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; (RFC 1591 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.

4.2.2 That same provision of RFC 1591 explicitly contemplates Revocation in appropriate cases involving “persistent problems with the proper operation of a domain.”

4.2.3 The IANA Operator has not publicly identified the standards it will use to evaluate compliance with the requirements set out in RFC 1591 (§ 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”.

4.2.3.1 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.

4.2.3.2 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.

4.3 Substantial Misbehaviour

4.3.1 In addition to the operational requirements identified above, RFC 1591 (§ 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.

4.3.1.1 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.

4.3.1.1.1 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.

4.3.1.1.2 The requirement for an in-country administrative contact did not appear before 1994 when it was first introduced by RFC 1591. Therefore this requirement may not be expected of ccTLDs established or last transferred before the publication of that RFC.

4.3.2 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. RFC 1591 (§ 3 ¶12)

4.3.2.1 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.”*

4.3.2.2 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 operational policy to

the manager” (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.

4.3.3 RFC 1591 requires that the manager have the ability to carry out the necessary responsibilities described above in an equitable, just, honest, and competent manner. (§ 3)

4.3.3.1 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.

4.3.4 RFC 1591 also gives the IANA Operator the ability to “step in” in the event of “substantial misbehaviour”. (§ 3)

4.3.4.1 The FOIWG interprets RFC 1591 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).

4.3.4.2 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).

4.3.4.3 *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).

4.3.4.4 *Application to Incumbent Managers.* Although one could read RFC 1591 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."

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

4.3.5.1 RFC 1591 identifies three mechanisms available to the IANA Operator: Delegation, Transfer and Revocation. The FOIWG (as discussed above) interprets RFC 1591 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 RFC 1591 to permit the IANA Operator to revoke a cc TLD delegation in appropriate cases where the manager has substantially misbehaved.

4.3.5.2 Given that the primary responsibility of the IANA Operator is to preserve DNS/Internet stability and security, the FOIWG interprets "revocation" under RFC 1591 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).

4.3.5.3 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 RFC 1591 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.

4.3.6 Defining substantial misbehaviour

- 4.3.6.1 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 RFC 1591.
- 4.3.6.2 “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.

4.3.7 Process for revocation in cases of substantial misbehaviour

- 4.3.7.1 The FOIWG interprets the intent of RFC 1591 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 RFC 1591; and/or
 - carry out those responsibilities in the manner required by RFC 1591
- 4.3.7.2 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.
- 4.3.7.3 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.
- 4.3.7.4 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 § 4.2

above or the manager has engaged in “substantial misbehaviour” as defined in § 4.3.6 above, that persists, despite the efforts of the IANA Operator using all means at its disposal to fix the problems or modify the behaviour.

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/foiwb.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 RFC 1591 and the GAC

Principles 2005 3. The FOIWG also considers other relevant 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.

The FOIWG developed its initial recommendations on the Interpretation of the existing policy and guidelines in the context of delegation and re-delegation requests in December

³ 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.

With regard to ICP-1 the DRDWG noted that, in 1994, IANA published RFC 1591 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.

2011. Per its charter, these guidelines are published as Interim report for Interpretation to seek input and feed-back of the ICANN community.

After closure of the public comment period the FOIWG shall review and analyse the comments received and may, at its reasonable discretion, add appropriate comments in preparation of a Final Report on this topic. According to its charter the FOIWG shall not be obligated to include all comments made during the comment period, nor is the FOIWG obligated to include all comments submitted by any one individual or organisation.

The Final Report will be added to the Final report of the WG, which, once completed, will be submitted to the ccNSO and GAC to seek their support.