

FOIWG

Recommendation for Interpretation Report

On

Significantly Interested Parties (SIP) –

**Definition and consideration in the delegation
and transfer of ccTLDs.**

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 second topic it has addressed: Significantly Interested Parties – Definition and consideration in the delegation and transfer of ccTLDs.

The Final Report of the Delegation Redelegation and Retirement Working Group (DRDWG) identified the following issues pertaining to topic of “Interested Parties”¹:

“An analysis of all approved delegation and redelegation requests published by ICANN indicates a significant degree of inconsistency in applying the “Interested Parties” requirement. This includes the approval of a number delegation and redelegation requests which have no documentation indicating any support by Interested Parties.”

As a first step the FOI WG identified the applicable policies and procedure statements and analysed all past cases of delegations and redelegations with regard to “Interested Parties”. Based on this extensive analysis the WG identified issues pertaining to the interpretation and in the context of the applicable policies and procedures.

Based on this analysis the WG developed draft recommendations, which were included in the FOIWG Interim report on defining Significantly Interested Parties. The Interim report was published for public consultation from 12 October until 1 December 2011². The FOIWG received a direct communication from the Governmental Advisory Committee (GAC) in September 2012. After careful consideration of the comments, the FOIWG is of the view that the analyses and recommendations contained in the Interim Report SIP 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.

In accordance with its Charter, the Recommendation for Interpretation Report on Significantly Interested Parties (SIP) –Definition and consideration in the delegation and transfer of ccTLDs will be included in the Final Report of the FOIWG. This Final Report will be conveyed to the Chairs of the ccNSO and the GAC to seek endorsement and /or support from both the ccNSO and GAC for the recommendations contained in the Final Report.

The recommendations in this Report on Significantly Interested Parties (SIP) –Definition and consideration in the delegation and transfer of ccTLDs in summary are:

1 <http://ccnso.icann.org/workinggroups/final-drd-report-02may11-en.pdf>

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

- IANA should undertake the steps necessary to implement the following interpretations of policies:
 - The FOIWG interprets Significantly Interested Parties (section 3.4 of RFC1591) to include, but not be limited to: a) the government or territorial authority for the country or territory associated with the ccTLD and b) any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation of the ccTLD(s) including the incumbent manager. To be considered a Significantly Interested Party, any party other than the manager or the government or territorial authority for the country or territory associated with the ccTLD must demonstrate that it is has a direct, material and legitimate interest in the operation of the ccTLD(s).
 - The FOIWG interprets the requirement for approval from Significantly Interested Parties (section 3.4 of RFC1591) to require applicants to provide documentation of support by stakeholders and for the IANA Operator to evaluate and document this input for delegations and transfers.
 - Note: This interpretation should not be taken as implying the elimination or replacement of any of the requirements relating to Consent of the proposed and incumbent Managers (where applicable).
 - Note: IANA reports on Delegations and Transfers should reflect consistent application of these FOIWG interpretations and should include the detailed results of the IANA Operator’s evaluation of Stakeholder input regarding the requested action.
 - The FOIWG defines Stakeholders in the context of the administration of ccTLDs to encompass Significantly Interested Parties, “interested parties” and “other parties” referenced in RFC1591.
 - The FOIWG interprets the requirement for “interested parties” to have “some voice” (section 3.4 of RFC1591) to require applicants to provide documentation of support by Stakeholders and for the IANA Operator to evaluate and document this input for Delegations.
 - The FOIWG interprets the requirement for “concerned” or “affected” parties in Transfers to communicate with the IANA Operator (section 3.6 of RFC1591) to require applicants to provide documentation of support by Stakeholders and for the IANA Operator to evaluate and document this input for Transfers.

- Note: IANA reports on Delegations or Transfers should reflect consistent application of these FOIWG interpretations and should include the detailed results of the IANA Operator's evaluation of Stakeholder input regarding the requested action.

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

B. Approach

As a first step the FOI WG identified the applicable policies and procedure statements and analysed all past cases of redelegations with regard to “Interested Parties”. 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. Based on the analyses the working group developed recommendations and interpretations as appropriate.

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 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.

As such the FOIWG 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 FOIWG report on Revocation as well as the FOIWG Glossary of the Terminology Related to the Administration of ccTLDs.

C. Identification of Issues and Analysis

1. Background and Introduction

1.1. The The Final Report of the DRDWG identified the following issues with this topic:

1.1.1 An analysis of all approved delegation and redelegation requests published by ICANN indicates a significant degree of inconsistency in applying the “Interested Parties” requirement. This includes the approval of a number delegation and redelegation requests which have no documentation indicating any support by Interested Parties.

2. Objectives

2.1. Identify applicable polices and procedure statements.

2.2. Analyze all past cases of redelegations 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. Section 3.4 “Significantly interested parties in the domain should agree that the designated manager is the appropriate party.

The IANA tries to have any contending parties reach agreement among themselves, and generally takes no action to change thing unless all the contending parties agree; only in cases where the designated manager has substantially mis-behaved would the IANA step in.

However, it is also appropriate for interested parties to have some voice in selecting the designated manager.”

3.1.2. Section 3.6 “It is also very helpful for the IANA to receive communications from other parties that may be concerned or affected by the transfer.”

3.2. GAC Principles 2005

3.2.1. “7.1. Principle - Delegation and redelegation 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....”

4. Relevant Procedures

Note – these procedures are only presented for information on current practices and are not considered as applicable policy statements for the FOIWG.

4.1. “Understanding the ccTLD Delegation and Redelegation Procedure” from the IANA website (<http://www.iana.org/domains/root/delegation-guide/>). The following sections are relevant to the topic of consent:

4.1.1. “Those parties served by the ccTLD are asked to show that they support the request and that it meets the interests and needs of the local Internet community.”

4.1.2. From the section titled Submitting the “Request “information showing the change serves the local interest in the country”

4.1.3. “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.”

4.1.4. *“Government contact In this short section, the applicant should provide documentation indicating that any appropriate government officials have been informed about the request. A statement of support from the relevant government department or agency is effective in meeting this requirement.”*

5. Analysis of IANA Reports on redelegations

5.1. Classification of support - Given the documentation of support by either Interested Parties or government varies in IANA reports on redelegations 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:

5.1.1. D Documented – The IANA report includes some reference as to how the party provided support.

5.1.2. Implied – Although there is no reporting of support there is some information in the IANA Report which could imply support of the party.

5.1.3. Not Addressed – there is no mention of support in the IANA Report.

5.1.4. Noted – IANA simply notes or states that the parties or government support the request without any additional documentation.

5.1.5. Classification of support

5.2. Cases of redelegation - From 2000 to January 2011 there are 50 cases of Redelegations documented by IANA Reports.

FOIWG – SIP support - Analysis		
	Government	Others
Documented	70%	22%
Implied	2%	6%
Not Addressed	0%	32%
Noted	28%	40%

5.3. Analysis of results of support by SIP for a request

5.3.1. 32% of redelegations are approved without IANA documenting any support from non-government SIPs.

5.3.2. For IANA reports where no information is given on support from non-governmental SIPs, information is rarely provided explaining or commenting on this absence.

6. Issues arising from the analysis of IANA reports on redelegation.

6.1. The number of terms used can lead to confusion. ICANN and IANA should use a single term when referring to SIP.

6.1.1 RFC1591 refers to SIP and Parties that may be concerned or affected

6.1.2 The GAC Principles 2005 refer to the Stakeholders.

6.1.3 IANA procedures refer to the LIC.

- 6.2 There is no documentation as to who can be considered a SIP.
 - 6.2.1 The examples provided in the IANA procedures do not provide a definition of SIP.
- 6.3 Relevant government or territorial authority roles in delegation and redelegation should be clarified.
- 6.4 Having the applicant for a delegation or redelegation providing the documentation of SIP support allows for a conflict of interest on its part and could limit the SIP input.
- 6.5 There is no documentation as to how SIP input for a request will be evaluated.
- 6.6 There is no requirement for IANA reports to clearly document and explain SIP support for a request.
 - 6.6.1 There is no policy or procedure requirement that IANA publish IANA reports on delegations and redelegations.
 - 6.6.2 IANA has published these reports for all delegations and redelegations since 2000.
 - 6.6.3 Publishing these reports is consistent with the ICANN bylaw requirement for accountability and transparency.
 - 6.6.4 These reports are, in most cases, the only publicly available documentation of delegations and redelegations beyond the ICANN Board minutes which often contain very limited information.
 - 6.6.5 There is now an expectation, at least from the ccTLD community, that IANA publish these reports for all delegations and redelegations.

D. Recommendations

IANA should undertake the steps necessary to implement the following interpretations of policies:

1. The FOIWG interprets Significantly Interested Parties (section 3.4 of RFC1591) to include, but not be limited to: a) the government or territorial authority for the country or territory associated with the ccTLD and b) any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation of the ccTLD(s) including the incumbent manager. To be considered a Significantly Interested Party, any party other than the manager or the government or territorial authority for the country or territory associated with the ccTLD must demonstrate that it has a direct, material and legitimate interest in the operation of the ccTLD(s).

1.1. The FOIWG interprets the requirement for approval from Significantly Interested Parties (section 3.4 of RFC1591) to require applicants to provide documentation of support by stakeholders and for the IANA Operator to evaluate and document this input for delegations and transfers.

1.2. Note: This interpretation should not be taken as implying the elimination or replacement of any of the requirements relating to Consent of the proposed and incumbent Managers (where applicable).

1.3. Note: IANA reports on Delegations and Transfers should reflect consistent application of these FOIWG interpretations and should include the detailed results of the IANA Operator's evaluation of Stakeholder input regarding the requested action.

2. The FOIWG defines Stakeholders in the context of the administration of ccTLDs to encompass Significantly Interested Parties, "interested parties" and "other parties" referenced in RFC1591.

2.1. The FOIWG interprets the requirement for "interested parties" to have "some voice" (section 3.4 of RFC1591) to require applicants to provide documentation of support by Stakeholders and for the IANA Operator to evaluate and document this input for Delegations.

2.2. The FOIWG interprets the requirement for "concerned" or "affected" parties in Transfers to communicate with the IANA Operator (section 3.6 of RFC1591) to require applicants to provide documentation of support by Stakeholders and for the IANA Operator to evaluate and document this input for Transfers.

2.3. Note: IANA reports on Delegations or Transfers should reflect consistent application of these FOIWG interpretations and should include the detailed results of the IANA Operator's evaluation of Stakeholder input regarding the

requested action.

E. Background and Process

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

Recommendation 2: Delegation and redelegation 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 redelegation 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 redelegation 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 redelegation of ccTLDs.

The charter of the FOIWG was adopted by the ccNSO Council at its meeting on 16 March 2011 and appointed as its chair Keith Davidson of .NZ (former Chair of the DRDWG). 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 working group 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 redelegation of ccTLDs. This framework should provide a clear guide to IANA 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 and procedures it would consider for interpretation are RFC1591 and the GAC Principles 2005 ³. The FOIWG may consider other relevant documentation such

3 According to DRDWG and charter of the FOIWG the Policy Statements

as IANA Reports on Delegation and Redelegation or IANA process documentation to assist it 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 redelegation requests
- Obtaining and documenting support for delegation and redelegation requests from Significantly Interested Parties (sometimes referred to as Local Internet Community or LIC).
- Developing recommendations for un-consented redelegations
- Developing a comprehensive glossary of the terms used for the delegation and redelegation of ccTLDs.
- Developing recommendations for IANA reports on delegation and redelegation.

The FOIWG produced its initial guidelines on obtaining and documenting consent for delegation and redelegation requests in September 2011. Per its charter, the guidelines were published as Interim Report and input and feed-back from the ICANN community was sought regarding the proposed guidelines and the methodology used.

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 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.

The FOIWG conducted a public comment consultation (from 12 October until 1 December 2011) and did not receive any comments⁴.

During the ICANN Dakar meeting (23 until 28 October 2011), the FOIWG presented its findings and recommendations at the ccNSO meeting and the ccNSO- GAC meeting and no substantive comments were made.

On 31 January 2012 the FOIWG received comments from the GAC on its Interim Report⁵.

After careful consideration of the GAC comments received, the FOIWG decided that the issues raised by the GAC in its letter should not be addressed in the FOIWG recommendations on obtaining and documenting consent, but will be provided for in subsequent sets of recommendations and the Final Report of the FOIWG⁶. The analyses and recommendations of the FOIWG in the Interim Report on obtaining and documenting consent have therefore not been changed. 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 its Charter, the Final Report on obtaining and documenting consent for delegation and redelegation requests is conveyed to the Chairs of the ccNSO and the GAC to seek endorsement of both the ccNSO and GAC for the recommendations contained in the Report.

In the event the recommendations contained in this report are endorsed by both the ccNSO and GAC, the recommendations will be submitted to the ICANN Board of Directors, together with the written confirmations of the Chair of the ccNSO and the GNSO.

In the event the ccNSO or GAC does not support the recommendations, the FOIWG, at its discretion, will reconsider the recommendations and submit a re-drafted set of supplemental recommendations.

4 <http://forum.icann.org/lists/foiwg-interim-report/>

5 <http://ccnso.icann.org/workinggroups/draft-gac-comments-foiwg-interim-report-on-consent-31jan12-en.pdf>

6 The FOIWG response is published at: <http://ccnso.icann.org/workinggroups/foiwg.htm>