

EC paper on ICANN: Country-code Top Level Domains

EUROPEAN COMMISSION

ICANN – informal background paper

Country-code Top Level Domains

1. General description of the issue

The treatment by ICANN of ccTLDs has always been a sensitive political issue, as third countries naturally consider the operation of such key Internet resources to be a matter of national sovereignty. This was reflected in the Tunis Agenda of the World Summit on the Information Society which stated that:

"Countries should not be involved in decisions regarding another country's country-code Top-Level Domain (ccTLD). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and addressed via a flexible and improved framework and mechanisms".

There have however regularly been problems in the way that ICANN – under the powers granted to it by the IANA contract – deals with request from third countries for the delegation or redelegation of ccTLDs and also problems with requests by the operators (registries) of such resources for the updating of information held in the "authoritative root zone file". These include:

- requirements imposed by ICANN on third country governments requesting a redelegation of a ccTLD to demonstrate the agreement of the current operator (even when legislation exists to provide a legal basis for the request by the relevant government)
- requirements imposed in relation to applications for IDN variants of existing ccTLDs related to demonstration of "community support", "meaningfulness" and "confusability". While few governments would dispute the need for ICANN to exercise due diligence in relation to the introduction of any new TLD, requirements such as "meaningfulness" are not imposed on gTLD applicants. Moreover, ICANN have chosen to challenge bona fide requests supported by internationally recognised and relevant public authorities, thereby challenging the sovereign rights that such bodies have in relation to their ccTLDs.
- Unexplained delays in updating root zone file data upon request by ccTLD operators. Proposals to automate such updating (and enable the operators to make such changes directly themselves) have been made for several years by

ccTLD registries but ICANN has been slow to respond.

In the future, similar concerns may also arise for gTLDs which refer to geographical areas which are not, strictly speaking, country-code Top-Level Domains but for which nonetheless a responsible public authority with governance responsibilities for a defined territory known by that name has been clearly identified (e.g. federated states or autonomous regions in a federal polity, cities with a distinct city government).

2. Possible initiatives

Current rules concerning ccTLD must be modified. The IANA contractor's role in facilitating such request from the responsible public authority and the operators of ccTLD registries must be restricted to addressing technical concerns related the security and stability of the global Internet. To the greatest degree possible, decisions about ccTLDs (including what strings are utilised, who operates the registry and what policies the registry should follow besides those set out by ICANN) should be made by the responsible public authority and the local Internet community concerned and not by the IANA contractor.

Consideration should be given to applying the same principles to geographic gTLD which have a clearly identified relevant public authority.

3. Possible implementation

The draft statement of work included in the recent Notice of Inquiry includes a provision that:

"the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves".

This is useful in relation to situations where explicit national legislation exists in relation to the operation of the relevant ccTLD; however, there are many cases where such explicit legislative provisions do not yet exist. Nonetheless, the principle of competence of the relevant public authorities still needs to be respected. This provision therefore need to be made more explicit and comprehensive, e.g.:

"The Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves. In addition, in relation to country-code Top Level Domains, the contractor shall fully respect the relevant public authority in relation to the delegation, redelegation and operation of the ccTLD [or the geographic gTLD] that operates within its jurisdiction".

4. Timeline for implementation of these modifications

Additional provisions in the IANA contract: to be introduced by the USG in the next contract (start date to be confirmed, sometime between 30th September 2011 and 28th February 2012).