



**Council of European National
Top-Level Domain Registries**

Report on

ICANN60

Abu Dhabi

28 October - 3 November 2017

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Executive Summary

ccNSO highlights

- Work on country and territory names at the top level was a key topic for ccTLDs at ICANN60. It is being dealt now via Work Track 5 (WT5) of the GNSO Subsequent Procedures PDP and has Annebeth Lange (.no) as its co-lead from the ccTLD community. WT5 had its first meeting in Abu Dhabi which was well attended and had a positive start. Its leadership went to great lengths to ensure the ccTLDs' views were a key part of the policy process, despite ccTLDs being a minority voice.
- In the lead-up to an evaluation of the ccNSO finance working group in 2018, this topic saw plenty of debate, particularly in relation to the gap between what ccTLDs have been contributing to ICANN and what the WG had committed to achieve.
- The retirement of ccTLDs (to become binding policy) is underway and although considered uncontroversial, is important work to ensure mechanisms are in place to deal with the decommission of a ccTLD.
- The ccNSO review has been deferred to 2018 with the intention of performing a self-evaluation.
- The two ccNSO candidates (Pierre Ouedraogo and Nigel Roberts) responded to numerous questions from the ccNSO community in an extended session, which is worth a listen (see below).
- ccNSO appointee Chris Disspain became ICANN Board Vice-Chair.

GAC highlights

- The GAC has a new leadership team, including the new Chair, Manal Ismail (Egypt).
- The GAC repeated their dissatisfaction at how ICANN handled 2-character codes at the second level.
- The .amazon case is a prime example of where the issue of geographic names at the top level could lead to – the debate was fuelled with emotions and irrationality.
- Discussions on DNS abuse mitigation have entered a dangerous path towards including content as “indicator of abuse”.
- The GDPR keeps tormenting law enforcement and consumer protection agencies: it might (and likely will) put an end to unrestricted access to personal data on WHOIS. In the meantime, Göran Marby announced that ICANN will propose three models for compliance – based on what he learned from ccTLDs.
- The FAQ document on ccTLDs was adopted by the Underserved Regions WG and will be a “living” document.

ccNSO Report

Country and territory names at the top level: Overview

Background: Citing complexity and divergence of views with respect to the use of names of country and territories as TLDs in all forms (2-letter, 3-letter code and full and short names), the cross-community WG on this topic closed several months ago and was unable to deliver a common position. The topic has since moved into Work Track 5 (WT5) of the Subsequent Procedures PDP (a GNSO PDP) and the ccNSO have designated Annebeth Lange (.no) as a co-leader in the group. Other leaders in WT5 are Christopher Wilkinson (ALAC), Olga Cavalli (GAC) and Martin Sutton (GNSO).

The topic has also gained traction among ccTLDs around the world via the regional ccTLD organisations: CENTR has posted its [position](#), which aligns with APTLD's [position](#). AfTLD noted they would issue an aligned statement very shortly and LACTLD is expected to do the same after its November member meeting.

Nick Wenban-Smith (.uk) and Annebeth Lange (.no) are engaged in the process of WT5 (see below) and encourage as many ccTLDs to be involved as possible. In terms of other groups in the ICANN environment who have a stake in the work, it was noted that the GAC generally want more restrictions (e.g. every country should be able to send ICANN a list of all names to protect) and that the GNSO believe anything beyond 2 letters (i.e. alpha-3 codes) should be made available (unless a good reason is given to restrict its use).

[Overview slides and ccNSO presentation audio](#)

Country and territory names at the top level: Work Track 5 (WT5)

The meeting was very well attended with inputs from many perspectives, geographic regions and representatives from SOs and ACs.

Since it was the first meeting of the new WT5, the co-chairs of the Subsequent Procedures PDP Working Group (Jeff Neuman and Cheryl Langdon-Orr) spent some time giving an overview of how the WT5

had been formed, the long history of geographic names as TLDs, and the closing of the previous cross-community WG without achieving much progress. They emphasised that under the GNSO policy development processes, achieving consensus had a specific meaning, and provided assurances that a strongly held minority view amongst ccTLDs participating in WT5 would not result in a contrary position being a consensus policy recommendation.

The newly-appointed co-chairs of WT5 (Annebeth Lange, ccNSO; Christopher Wilkinson, ALAC; Martin Sutton, GNSO; and Olga Cavalli, GAC) then took over the session and discussed the goals, scope and success factors for the WT5, framing the terms of reference and next steps. The participants provided significant input, which staff will collate in order to create an initial draft of the Terms of Reference for the group. All resources will be available on the [wiki page for WT5](#).

Over 80 individuals have already volunteered to participate in WT5, including 11 volunteers from ccTLDs, and many more have signed up to observe. The call for participation is open until 20 November. This is an area of high importance to the CENTR community, as shown by the APTLD, CENTR and AfTLD statements (LACTLD will be discussing a similar position in their GA in November). Any individual who is interested in this area is encouraged to sign up and Ann-Cathrin Marcussen has offered to help assist in coordination of inputs as the meetings progress to ensure the work load is shared.

Other related points:

- Why is this work relevant? Because other than an agreement to keep protection on all 2-letter combinations (in ASCII), the policy on all other geographic names and 3-letter codes is not based on GNSO policy. The scope of the CCWG was also considered by many to be too limited.
- WT5 will have its own work schedule (unlike WT 1-4, which will already produce initial reports in early 2018)
- Key deliverable is to reach consensus policy and implementation guidelines for geographic names at the top level in the new gTLD program
- It will be up to the co-leaders to determine if

consensus has been achieved in WT5

- The group may be open to bring external experts to help with the work where needed (some budget is available and needs GNSO Council approval).

Links and contacts:

[Call for volunteers](#) (including observer on mailing list)

[Presentation slides and audio](#)

If you would like to get involved but not take part in the working group, it is recommended to contact either Ann-Cathrin (.no) or CENTR to help get your voice across.

Relevance to CENTR members

It is important the members take an interest in this topic as ccTLD presence in WT5 is a minority and its work has potential to create impacts in many countries. Aligned statements have been made from APTLD, CENTR and AfTLD, with LACTLD expected to follow at its members meeting in November 2017.

Retirement of ccTLDs policy development

The work of this group is aimed to address situations when ccTLDs need to be decommissioned. Although this work is not considered controversial, it is important to ensure a clear policy exists. The output of the work will be binding policy in the ccNSO and aims at protecting all interested parties, including existing ccTLD manager and registrants. The group has strong ccTLD representation, although no participation from any GAC member. Selected points from the working group meeting:

- It was agreed that the ISO's [Online Browsing Platform](#) is a mechanism to provide authoritative changes to the 2-letter code elements. However, phrases/definitions used on the platform cannot be considered authoritative.
- Change in code element that would initiate a retirement: there was agreement that an initiating event (from an IANA perspective) would be a

change to the 2-letter code by the authoritative standard (via the online browsing platform or liaison with Jaap Akkerhuis)

- ccTLDs .ac, .eu, .su, .uk are considered exceptional, do not represent their “official” code elements and as such are to be put aside in the context of retirement until work has been completed on all other ccTLDs.

[Audio \(WG\)](#)

ccTLD financial contribution to ICANN

Roelof Meijer (.nl), Byron Holland (.ca) and Xavier Calvez (ICANN) led an interesting presentation and discussion on ccTLD financial contributions to ICANN. This topic came from earlier work done in the Finance Working Group.

Background: The Finance WG came up with voluntary fee band models for ccTLD contributions to ICANN (based on domains under management) as well as a target value ccTLDs combined should contribute to ICANN.

The Finance WG are approaching their scheduled evaluation in 2018 and recent data has suggested that there is a large gap between what the ccTLD community within the ccNSO had committed to contribute (\$3.5 million USD) and actual contributions made (\$1.7 - \$1.9 million USD).

Key issues from members related to:

- Invoicing issues (ccTLDs don't actually receive the invoice and need to chase ICANN)
- Some ccTLD managers find it difficult to convince their Board of any fee increase
- Smaller ccTLDs may not be aware of the work or ICANN in general (suggest work with ROs)

Although the session intended to discuss and understand the reason for the gap in overall ccTLD contributions, several in the room quickly deviated to the topic of fee bands as well as the perceived “value/benefit” of ICANN, and even its budget as a whole (e.g. fees from gTLDs). The presenters of the session often reminded the community that fee bands are only voluntary and that contributions can be made in small steps when fees are increasing.

Relevance to CENTR members

The relevance to CENTR members is perhaps not considered quite as high as to certain other regions where financial commitments to ICANN are reported to be low – an issue identified by the group who is working to understand the reasons why. See [CENTRstats](#) for figures on ccTLD contributions to ICANN.

ISO 3166 (Maintenance Agency perspective)

Jaap Akkerhuis (NLnet Labs) presented on the relationship between ISO 3166 and RFC 1591 along with their purposes and scope. The presentation highlighted the work and nuance of the country and territory names (WT5) group, as well as the retirement of ccTLDs PDP.

[Slides](#) and [audio](#)

Customer Standing Committee (CSC) review team

Martin Boyle updated the ccNSO on a limited review of the CSC charter. The role of the CSC is aimed at ensuring the success of the delivery of the IANA service for its customers.

The group is currently consulting ccTLD and gTLD operators and aim at producing a draft report by December 2017 – any amendments will need ccNSO and GNSO approval. So far, the group has heard the scope of the CSC needs to remain very narrow and focused on the registry requirements.

Root zone evolution review committee (RZERC)

Peter Koch (.de) gave an update on RZERC activities, which was designed to assume succession of the small role the NTIA had in oversight and larger changes (e.g. DNSSEC in the root zone or other large changes). The committee is in early planning phase (charter, voting, members, etc.) and no major architectural changes were proposed which invoked the RZERC so far.

IANA names function update

Kim Davies gave an update the on this topic. Selected highlights:

- Newly supported: 3 new DNSSEC algorithms and 2 new digest types.
- From August 2017, implementation of 3 new automated workflows (changes to authorities of the root servers, deleting TLDs and process of escalating a change request in case of emergencies).
- Finalising the implementation of the Framework of Interpretation (Fol). Key terminology was to deprecate the term “sponsoring organisation” and use “ccTLD manager”. In ccTLD only documents, this change has been made. Another change was the deprecation of the term “redelegation” in favour of “transfer”. Another outcome of the Fol was that the IANA operator should not seek consent from admin/tech contacts in relation to transfer requests – this is being done now in a manual way (to be automatized via creation of different contact types in the management console).
- Annual customer survey ongoing (ccTLDs should have received invites from third party)

See more details in [audio and slides](#)

PTI update

Lise Fuhr gave the update on PTI noting that there is a search for new PTI CEO (Elise will be leaving), with the aim of having someone to start at the beginning of 2018. The PTI is continuing to look into the roles and responsibilities between the ICANN Board, ICANN CEO and the PTI Board.

[Slides](#)

TLD-Ops update

Jacques Latour (.ca) updated on the TLD-Ops – a community for all ccTLDs to help ccTLD operators to find other ccTLD contacts when help is needed (security incidents). There are currently 245 contacts in the list from 192 different ccTLDs. Selected points:

- Since the last ICANN meeting, there were no new alerts/incidents
- 3 new members (Namibia, Lesotho and Greenland)

- List is now updated to allow secondary emails (help track personal emails as a security contact)
- Call to missing ccTLDs (see list in [slides](#)) to contact the group (most missing are from the Latin America and Africa regions)
- At ICANN60, the group met and shared experiences from ccTLDs that had DDoS attacks

[Slides](#)

Auction Proceeds

Ching Chaio (NomCom) updated on the cross-community group on new gTLD auction proceeds generated from new gTLD auction proceeds (currently at \$233 million USD). Ching noted that the group's aim is to help with the procedural elements and mechanism to deal with the auction proceeds, and not to discuss or decide how the funds should be used. Selected points:

- The group is currently working on a list of possible mechanisms on how the fund is to be dealt with. Key question is if ICANN should oversee the evaluation of proposals or rather delegate/coordinate with another entity (e.g. foundation created for that purpose).
- The group's aim is to have a report ready for ICANN61
- It was noted that there may be a *possibility* that ICANN use some of the funds to replenish a deficit in the ICANN reserve fund.

[Slides](#)

ccTLD news session

Jörg Schweiger (.de) presented on DENIC's project called Domain ID – a single sign-on solution aimed at tackling (by use of domains) the issue of managing multiple passwords. The project is built on existing standards and is a federated model so that other registries and registrars can participate. [\(slides\)](#)

Other presentations made in the ccTLD update session included:

- Experience for .jo and .اندروال (.alurdun) with respect to IDNs [\(slides\)](#)
- SaudiNIC updates on the Saudi TLDs [\(slides\)](#)
- Afnic: helping small entrepreneurs to evaluate and improve their online presence [\(slides\)](#)
- The panacea to growing a strong .ng ccTLD brand

[\(slides\)](#)

- 1 million milestone for .ir [\(slides\)](#)

Empowered Community update

The Empowered Community is the mechanism through which ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs) can organize under California law to legally enforce community powers. The community powers and rules that govern the Empowered Community are defined in the ICANN. Selected points from a related session:

- Working on rejection* and approval action guidelines noting challenges in the tight timeframes.
- Rejection action manager will be appointed to ensure rejection actions received from community members are processed.
- Potential rejection actions: Draft PTI and IANA FY2019 operating plans/budget as well as draft ICANN FY19 budget.

**rejection actions: Things the ICANN Board does that the Empowered Community has to take the initiative to block; otherwise what the Board decides goes into effect*

Other points from the ccNSO

Selected highlights from the Council meeting, as well as other administrative and review work:

- Extensive Q&A with the two ccNSO candidates for ICANN Board – generating many interesting questions and responses [\(audio\)](#)
- The Strategic and Operational Planning working group to become a standing committee. They are working on a comment to the ICANN reserve fund proposal. They also highlighted new [accountability indicators](#) on the ICANN platform. The SOP will submit feedback on these indicators to help refinement, noting they are supportive of the platform.
- Participation ccNSO in ICANN Specific Review RDS: ccNSO intends to look at the pool of candidates in order to make endorsements.
- Lengthy discussion on the process of screening candidates for the ICANN Board. Council will review other SO/AC procedures and develop their own for screening candidates for Board positions.
- Updated guidelines to travel funding criteria to be

test for ICANN61 ([slides](#))

- Travel support: discussion on travel budget in ccNSO/GNSO session with a GNSO councillor stating travel expenditure in general is out of control. The ccNSO is happy to work with the GNSO on this topic, noting that their councillors only get travel funding for around one third of meetings they attend.
- ccNSO publicly thanked Steve Crocker for his service to the community

Discussion on ccNSO meeting strategy

A meeting strategy review team gave an update on their work based around the following key questions: the goals and formats of ICANN meetings (and how the ccNSO fits in), the need for or lack of a ccNSO meeting at every meeting and how best to encourage sharing of ideas and developing relationships.

Generally, there is good support for this type of review and some discussion already took place on how, when and for how long the ccNSO should meet at ICANN meetings. A few suggestions were to reconsider the 2-day main ccNSO meetings, noting topics are sometimes thin, as well as a suggestion for having two parallel tracks.

[Slides](#)

GAC Report

[ICANN60 Abu Dhabi GAC Communiqué](#)

Preliminaries

The GAC has a new leadership team. The new Chair, Manal Ismail (Egypt), received 59 votes – 9 more than Olga Cavalli (Argentina). The 5 vice-chairs are Guo Feng (China, 2nd term), Ghislain de Salins (France, 2nd term), Milagros Castanon (Peru, 2nd term), Chérif Diallo (Senegal, 1st term), Pär Brumark (Niue, 1st term). With outgoing vice-Chair Mark Carvell (UK), the GAC leadership “loses” one European member.

The GAC keeps fighting against the high workload they experience due to the growing number of PDPs and requests for their involvement. At the same time, the need for capacity-building within the GAC grows, as 50 newcomers joined the Committee. In this context, the discussion about the lack of finance for an independent secretariat of the GAC seemed absurd. The Chair said that even though financing might be complicated – it was a question of political will rather than a bureaucratic hurdle.

GAC Communiqué: The GAC advised the Board (which is quite a strong signal) to produce easily understandable executive summaries for all relevant issues, processes and activities so that non-expert stakeholders can also meaningfully participate.

Relevance to ccTLDs

Without a secretariat providing the GAC with factual information about processes and rules of procedure, the GAC’s work risks fragmenting and relying on fewer active GAC members that could take a more predominant role and promote a biased view on issues.

Country and territory names / codes at second level; geographic names

2-character (country) codes at the second level

The GAC asked that the mandate of the “task force proposed by the ICANN President” to resolve the issue be clarified. Note that the last Communiqué does not refer to a “task force” but “necessary actions

for satisfactory resolution”. Correspondingly, the “task force” is now part of ICANN’s efforts to improve information flows.

Discussion within the GAC: The GAC repeated that they would not repeat what had previously been said – and then went on with it anyway. Clarifications by the ICANN Board so far were “insufficient”; the GAC are faced with a “fait accompli” (Brazil). A major change to the rules was implemented “without any consultation with the GAC” (Argentina) at the end of 2016, demonstrating a lack of “transparency, communication and due process” and of “respect for government” (France). The issue should be discussed with the whole GAC and not “in a bilateral way” (Argentina, Portugal, Russia, etc.). Interestingly, as was confirmed by ICANN, 25 governments had in fact made use of such bilateral meetings.

Meeting with ICANN Board: Göran Marby reiterated that he might have been “misunderstood”: rather than creating a formal task force, he meant to intensify the (bilateral) exchange on the issue with individual GAC members who wished to do so. He stressed that “decisions are already made”, but offered to reach out to individual members and to the new leadership about it. However, there would be “no new steps”. He pointed out that many of the GAC had “CCs” that had delegated 2-letter codes, including country codes. ICANN had talked to some of them and “we haven’t seen any abuse coming out of that”.

GAC Communiqué: The GAC expects further efforts by ICANN to address “with priority” concerns on the issue and to improve its communication with the GAC.

Relevance to ccTLDs

Most European ccTLDs (87% as per a recent CENTR study) already allow for the use of 2-letter codes at the second level. The use of “their” country code in new gTLDs is beyond their influence. However, under current rules, a system exists whereby some countries require to be notified if “their” country code is being used at second level. The ICANN Board’s move was bold, but reflects the trend that registrations are increasingly opened up and that no abuse has been associated with

it. The GAC, however, feels stripped off its powers (notification requirement). Yet, the fight seems to be about process rather than substance. The real battle ground will be the use of geographic names at the top level.

Subsequent Procedures PDP Work Track 5 (WT5)

The GAC WG has a narrower focus than WT5 focusing solely on geographic names at the top level. This results in a dilemma for the WG, as it tries to define its role in the process and if it should change its terms of reference (ToR) in order to participate effectively in WT5. Olga Cavalli (Argentina) has been proposed as co-lead, but wants 4-5 other GAC members to join and help cover this complex issue, which includes, e.g., “intellectual property, national and sovereignty interests” [sic]. Iran and the US confirmed that they will participate actively in WT5.

The GAC, as did the ccNSO, have defined conditions to their participation in WT5, including:

- ToR for WT5 to be agreed by *all* participating SOs/ACs – GAC will discuss this with its full membership
- Final recommendations from WT5 to be agreed by *all* participating SOs/ACs before being submitted to PDP plenary – for the GAC, this means discussion, positioning and consensus.
- GAC retains its advisory role to ICANN Board with regards to geographic names – it will take account of, but *not be bound by*, outcomes of the PDP.

The last point emphasises the GAC’s concern that their advice may become “subordinate to PDP involvement” (Iran). The GAC WG seemed to like the ccNSO’s approach stating that, if there is no consensus on changes, the rules from before (i.e. from the Applicant Guidebook) should remain intact.

Relevance to ccTLDs

The GAC feels connected with the ccNSO on this issue. A regular exchange – bilaterally with the relevant GAC members and the GAC as a whole – could be fruitful.

The case of .amazon

The ICANN Board issued a [resolution on Amazon’s \(the company\) application \(29 October 2017\)](#) for the top-level domain .amazon. In timely fashion, it coincided with the GAC’s meeting with representatives of Amazon.com. It takes account of the Independent Review Panel’s (IRP) recommendation that the Board “promptly re-evaluate Amazon’s application”, upon which the Board tasked the Board Accountability Mechanisms Committee (BAMC) to review the panel’s recommendation. The BAMC then recommended that the Board ask the GAC: a) for any information relating to “merits-based public policy reasons” for not proceeding with the application of Amazon.com, and b) for any new or additional information regarding the GAC’s advice on the issue. The ICANN Board clarified to the GAC that it has not “decided to accept the IRP’s panel recommendation to re-evaluate” (Chris Disspain). However, the GAC, if it wishes to do so, now has an opportunity to provide more information.

In a [letter](#) to the Board, Amazon.com reiterated its position and commitment to finding a solution with concerned governments for using .amazon in a way that would respect “the people, culture, history and ecology of the Amazonia region”. A compromise solution with three components was presented to the GAC: 1) culturally sensitive names at the second level would be blocked (e.g. rainforest.amazon); 2) the list could be expanded upon regular consultations with relevant governments; 3) Amazon.com would support local applicants for local names of the region, e.g. .amazonia, .amazonica, .amazonas, for example through technical support (back-end registry operations) or drafting and reviewing the applications. The solution would be integrated into the registry contract with ICANN by means of a public interest commitment (PIC). Such a PIC would be legally binding and enforceable by ICANN.

Within the GAC, eight countries of the “Amazon region”, led by Brazil, strongly oppose the Board “reviewing its decision”. Meanwhile, several GAC members are very afraid of setting a precedent (e.g., Iran, Russia, France, Argentina, Portugal) in asking the GAC to revise its (previous) advice. Others have pointed out that the GAC might want to consider the issue under “new circumstances” (i.e. the above-mentioned proposal by Amazon.com).

GAC Communiqué: The GAC will further consider how to react to the Board’s request. However, they “converged on the interest of providing additional information” and see a “need to find a mutually acceptable solution”.

Relevance to ccTLDs

The forthcoming discussions on the issue are likely to become ever more politicised. Negotiating rational solutions in the spirit of mutual trust that the outcome could be of benefit to both parties will be more difficult. It is a good sign, however, that the GAC remains open to finding a solution.

The .amazon discussion illustrates the high degree of emotionality and irrationality ([see records](#)) that is connected with this issue. Peru felt highly offended by Amazon.com allegedly accusing the GAC’s former colleague of “lying”. She continued by saying that “we are the owners of the Amazonian region; we have the right to give you permission to use .amazon, not the other way around”. Amazon.com would not know what social conflict in Latin America is like and she wondered if they could deal with the consequences thereof. At the core of the .amazon issue “is the survival of governments in this pseudo-multistakeholder space”. Also, “non-Amazon” countries chimed in: China pointed to the many babies that were born alongside the river and were hence deeply connected to it. Ukraine stressed the importance of Amazon for Eurasia also (the “mythical warriors”). Some GAC members went so far as to claim primary rights over the geographic name to people living in the vicinity of geographic features (India).

Data protection and privacy

Discussions in GAC plenary and PSWG

Cathrin Bauer-Bulst (European Commission) reminded the GAC that the continued availability of WHOIS and the impact of privacy laws (specifically the GDPR) on law enforcement, cybersecurity and consumer protection, are of “major significance for the GAC *as a whole*” (i.e. not just European GAC or the PSWG). Whereas the GDPR is a regional law, other regional laws exist that work towards the same aim. There is no such thing as a “regional internet” and

likewise no “regional WHOIS”. The GDPR provides for tools “to run a system as it is”. The “threat” is not (non) accessibility of WHOIS, but the lack of a coordinated process and “insular solutions”: registries and registrars could draw their own conclusions as to whether they need to be compliant, rather than seeking a community approach. The GAC was also reminded that the pilot programme for a new RDAP protocol with layered access had started and that the GAC was asked to test it and comment on which types of access they would need.

Three case examples were presented, where the consultation of the WHOIS was “the first – the first! – step” in the process. The **Canadian Royal Mounted Police** uses WHOIS data to fight child sexual abuse and while the WHOIS “is not always valid”, it “enables to track valid e-mail identification and other hints”. **Europol** uses WHOIS information to identify a contact point for a domain name and to gather investigative leads related to the owner/purchaser of the domain. While “WHOIS is not a silver bullet”, it helps with crime attribution, establishing patterns or identifying individuals. “If you remove the WHOIS, then most of the cyber investigations will be hindered severely”. The **FTC** uses WHOIS information for investigating privacy violations. “We do that to *protect* privacy”, she said, as privacy interests are not only related to how law enforcement agencies combat crime, but also to how your private information is used “to rip you off”. She added that WHOIS was also being used by “the public”, e.g. to verify the legitimacy of a website (e.g. a pharmacy) or the company itself, if no contact data was provided on its website.

Discussion:

- The US stressed that timely access to WHOIS was required (without court orders for single cases). A global solution in the ICANN context would be welcome but would make it harder for the US to access registrars of .com. Also, it would conflict with free trade agreements that explicitly state that registration information of domain names be public.
- The FTC underlined that timely access “in particular from another jurisdiction” was required.
- Pakistan sees challenges not only in terms of accessibility but also accuracy.
- Iran was worried about potential restrictions for particular countries to access WHOIS.

Comments by Göran Marby on the GDPR during GAC-ICANN Board Meeting

ICANN, with regards to the GDPR, is “on a road to discovery”. It started from the premise “we have a problem” and not “that ICANN is some sort of data controller and I have to admit we’re not going to say we are”. ICANN came up with user cases and sought help from the external law firm Hamilton (which did start from the assumption that ICANN is a data controller). The issue is “about legal, not about policy. All policy is made by the community”. Nevertheless, in order to avoid that ICANN contracted parties have to follow a different set of rules than ICANN.org, ICANN will present three models as to how it could be compliant. He also referred to the “CC landscape including special cases”, where there seemed to be “different opinions about if you should have a two-tier model and who should access it”.

Summary of cross-community session on the GDPR and its impact on ICANN

Participants agreed that a solution is in order to avoid that contracted parties find themselves between an ICANN breach notice and sanctions from DPAs under the GDPR. Nick Wenban-Smith (Nominet) pointed out that the GDPR provides for solutions and is “not a sort of Armageddon”. It was unclear, however, to what extent the recent Dutch DPA’s statement was binding for other EU countries. Becky Burr explained that the GDPR’s scope was not so different from laws in other countries, e.g. if you tried to advertise to Canadian consumers. Several participants pointed to the fact that there is a wide range of existing data protection laws that are similar to the European model. The GDPR would therefore be a “pretty good bar to work off because it does set a high standard” (Kevin Kreuser). Göran Marby announced that ICANN will propose three models for compliance. They reflect “how CCs are actually handling this”. The Community would be able to comment on the models. Last week, the Board announced that the implementation of Thick WHOIS is to be postponed for 180 days.

GAC Communiqué: In its Advice to the Board, the GAC refers to their WHOIS Principles from 2007. The GAC asks the Board to use its best efforts to create a system for compliance with GDPR that abides by these principles. The GAC also submits two questions to the ICANN Board’s external counsel.

Relevance to ccTLDs

ccTLDs must comply with the GDPR, irrespective of actions at ICANN level. It is important to understand the points of view and needs of governments and law enforcement when ccTLDs define terms and processes to comply with the GDPR. Already today, personal data on WHOIS is not public in all EU countries. Multi-layered access systems could be one option. It is important to note that the GDPR does not refer to WHOIS data of legal persons (unless it can identify an individual). Also, in the EU, companies are already obliged to publish contact data on their websites, so the WHOIS is not the only source of information. Nevertheless, it is important to follow discussions at ICANN, e.g. about WHOIS access requests from other jurisdictions. Within the EU, cooperation between law enforcement agencies will be facilitated through [Europol’s SIRIUS](#); more global solutions might follow.

It will be a challenge to meet the GAC’s expectation to keep the WHOIS “quickly accessible” not only to consumer protection and law enforcement agencies (which was expected and might allow for a layered access model), but also to the public.

ICANN, while being reluctant to deal with the GDPR at first (i.e. to allow regional impact on global policy), has now sped-up the process. External legal advice has laid out a pragmatic and workable approach to the issue. As pointed out by some speakers, the GDPR does provide for ways to legitimately process personal data, and does take into account the public (safety) interest. Public or unrestricted access to WHOIS, however, will no longer be possible. It might be a good exercise for ICANN to go over the immense mass of data that is being collected and decide whether it serves a (legitimate) purpose and whether making it available publicly is indeed necessary.

Abuse

Abuse Reporting for Fact-Based Policy Making and Effective Mitigation

The cross-community session initiated by the GAC's public safety working group (PSWG) on abuse reporting aimed at making sure that ICANN has "reliable public actionable abuse data" ([see slides](#)). The session focused on three questions reflecting the work of the PSWG: how to identify DNS abuse in a reliable way, how to create effective and transparent abuse reporting, and how to use it – for preventive measures by registrars and registries, in contractual compliance and policy-making. The threats addressed (as per the GAC Beijing Communiqué) include: phishing, botnet demand and control, and malware distribution – and "also [arguably controversially include spam](#)", as an indicator of abuse. Two abuse-related projects, DAAR (domain abuse activity reporting system) and CCT (competition, consumer, trust and consumer choice) within ICANN were presented. The subsequent discussion addressed issues, such as "the obvious abuser", "indicators of likely abuse" (including content), "effective and transparent abuse reporting" and other "preventive approaches" (touching upon liability, proactive measures as "competitive advantage", etc.). Details on the session were shared on the CENTR WG L&R and WG Security mailing lists.

GAC Session on DNS Abuse

The GAC continues working on [principles](#) for DNS Abuse reporting (on which there is currently no agreement). Included in the scope, and not mentioned above, are trusted feeds (e.g. for child sexual exploitation materials). The principles are categorised in: identification (which sources), reporting (naming & shaming) and actual use (defining thresholds and criteria for action). They also include a reference to "illegal content". The US pointed out that this is outside the remit of ICANN and wondered how this was going to be addressed in the DNS context and how the DNS was to be used as a mechanism to stop the dissemination of child abuse material (which is used as prime example by the PSWG). A sketchy explanation followed that this should be looked at under the notion of "creating transparency", which might help "people who are part of this community to make informed choices"

(European Commission). India even sees ICANN take on a supervisory role when it comes to monitoring.

Relevance to ccTLDs

The GAC (PSWG) and some actors within ICANN want to see a clear move towards registries and registrars taking more responsibilities when it comes to abuse mitigation ("actionable data", "monitoring", "proactive models", etc.). "False positives" are considered collateral damage, rather than cause for concern about liability. The GAC is effectively trying to expand ICANN's remit to also cover illegal content, which it tries to hide under layers of interpretation of the public interest and governments' (or rather DNS players') responsibility towards children.

The discussions within the ICANN space will not have a direct (policy or "actionable" impact) on ccTLDs. However, there are clear indications that governments, law enforcement, IP industry, etc. expect internet actors to take a proactive role to not only protect their networks, devices but also users (and children) from abuse. This can range from monitoring activity on their networks, reporting data, to taking action based on content, or preventative action based on their own judgment. The liability question has been deliberately put on the backburner.

IANA Transition and beyond

Jurisdiction

The GAC discussed the [draft recommendations](#) (October 2017) of the CCWG on Accountability Workstream 2 Jurisdiction Subgroup, which will be submitted to the CCWG Plenary for approval. A key question discussed by the subgroup was: "What is the influence of ICANN's existing jurisdiction(s) relating to resolution of disputes (i.e., governing law and venue) on the actual operation of ICANN's policies and accountability mechanisms?". Recommendations pertain to, e.g., OFAC Sanctions, i.e. government sanctions issued by the US government's Office of Foreign Asset Control (OFAC). This is a troubling issue, e.g., for registrars and registries from sanctioned countries that seek accreditation with or approval from ICANN. The draft also outlines solutions to the (current) absence of choice of law and choice of venue provisions.

Options reflected include the “menu approach” (choose governing law before executing contract), “California approach” (California and US law are governing law), “carve out approach” (some parts are dealt with under uniform (e.g. Californian) law, others by the law of the registry’s jurisdiction), “bespoke approach” (the governing law is that of the registry operator), and “status quo approach” (no governing clause in the RAA).

The GAC members participating or interested in the subgroup expressed their concerns as to the predominantly American participation in it (Portugal), the impact on countries affected by sanctions (Iran), the impact of US-imposed trade sanctions outside UN-agreed sanctions (Russia), or the impact of full independence of ICANN from the US courts on how ICANN concludes contracts (France). Brazil was worried that a “bad precedent” would be set, where governments would work in an environment where a single government has a larger influence or where its jurisdiction would apply (“among governments, there should be equal participation”). France, Russia and Portugal supported Brazil on the suggestion to work more on partial immunity as an option to move forward. Brazil supports the “carve out” approach, whereby ICANN’s headquarters would remain in the US and be subject to Californian law for its main “day-to-day operations”, but “particular roles to be agreed by the Community” would be “carved out”.

CCWG-Accountability

The CCWG-Accountability met for a face to face meeting on Friday (27 October). The significant agenda items included an update from the implementation oversight team of the new IRP; a review of the work of the subgroups across the nine areas of its work; agreement on final readings and subsequent publication on recommendations on ICANN transparency and Jurisdiction issues, and an extended discussion on jurisdiction matters.

This last gave those participants with different views to the consensus of the subgroup the chance to have their thoughts on the record and documented as part of the ongoing community consideration of jurisdiction matters. Keep an eye out for the public consultations to come – on jurisdiction, ombudsman improvements, diversity in the ICANN system and staff accountability. March 2018 will see an integrated public comment on the whole of the CCWG’s work but as a chance to iron out inconsistencies, not to debate substantive proposals – that’s what these earlier consultations are for.

[Co-Chairs Statement from CCWG-Accountability Meeting in Abu Dhabi](#)

ICANN61 will be held on 10-15 March 2018 in San Juan, Puerto Rico.



CENTR is the association of European country code top-level domain (ccTLD) registries, such as .de for Germany or .si for Slovenia. CENTR currently counts 54 full and 9 associate members – together, they are responsible for over 80% of all registered domain names worldwide. The objectives of CENTR are to promote and participate in the development of high standards and best practices among ccTLD registries.

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