



Note: This Paper was prepared by Miriam Sapiro of Summit Strategies International, LLC in May 2002 for the Center for Democracy and Technology (CDT). CDT updated it in June 2002 to reflect the “ccTLD Redelelegation Step-by-Step Overview” published by IANA.

Redelelegation of Country Code Top Level Domains

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Introduction

Countries and territories around the world are assigned a unique country code top-level domain name (ccTLD). For each ccTLD, there is a designated manager. In a number of cases, the ccTLD manager is a for-profit entity located outside of the country to which the domain name relates. In these cases, it may be desirable to redelegate management of the ccTLD to a local entity, to bring the management of the ccTLD inside the territory of the country involved and to make the administration of the domain name more responsive to the public interest. This paper outlines a strategy for achieving such a re delegation in cases where the local Internet community deems it desirable.

Analysis

Delegation and re delegation of the management of ccTLDs is controlled by the Internet Assigned Numbers Authority (IANA). The IANA function is performed by the Internet Corporation for Assigned Names and Numbers (ICANN) under a contract with the U.S. Government. Performance of the IANA function includes receiving delegation and re delegation requests concerning ccTLDs, thoroughly investigating the circumstances surrounding such requests, and resolving them.

In acting on re delegation requests, IANA follows the policies and practices summarized in “Internet Domain Name System Structure and Delegation” (ICP-1) and a document known as RFC 1591. Since May 1999, IANA has approved a number of requests for re delegation of ccTLDs after careful investigation and after concluding that there was widespread support in the local Internet community.

Several conclusions can be drawn about ICANN’s approach to re delegation requests: (i) A request should include a detailed description of the proposed registry policies and the technical competency of the new manager. (ii) ICANN appears to disfavor delegations to government agencies, preferring delegations to non-profit entities that represent all interested parties. (iii) ICANN is reluctant to choose among competing re delegation requests, preferring to be presented with a proposal that represents consensus within the government and the broader Internet

community in the country. **The approach most likely to succeed is one based on the creation, with government support, of a private, non-profit entity that would operate the domain space in the interest of the affected nation's Internet community.**

Criteria for Redelegation

As noted in RFC 1591 and restated in ICP-1, “[t]he designated manager is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community.” Further, “[c]oncerns about ‘rights’ and ‘ownership’ of domains are inappropriate. It is appropriate to be concerned about ‘responsibilities’ and ‘service’ to the community.”

In considering redelegation of a ccTLD, IANA considers the following factors:

- IANA seeks input from persons significantly affected by the transfer, particularly those within the nation that the ccTLD has been established to benefit.
- ICP-1 makes clear that “[t]he desires of the government of a country with regard to delegation of a ccTLD are taken very seriously. The IANA will make them a major consideration in any TLD delegation/transfer discussions.”
- IANA strongly prefers to resolve redelegation issues with the consent of all parties, including the incumbent manager. Under RFC-1591, “[s]ignificantly 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 things unless all the contending parties agree; only in cases where the designated manager has substantially mis-behaved would the IANA step in.” (Note: IANA does not appear to have ever used this power to revoke a ccTLD and redelegate it to another manager solely because of misconduct or recurring problems in the proper operation of the domain. However, the case of Pitcairn (.pn) involved an involuntary redelegation in part predicated on the manager's failure to properly consult with the local community. Failure to be responsive to the local Internet community is a recognized form of misconduct.)
- On the technical side, there must be a primary and at least one secondary nameserver that have IP [Internet Protocol] connectivity to the Internet and can be easily checked for operational status and database accuracy by the IANA.
- There must be an administrative contact and a technical contact for each domain. The administrative contact must reside in the country involved.
- RFC 1591 and ICP-1 further provide that “[t]he designated manager must be equitable to all groups in the domain that request domain names.” This means that the manager must apply the same rules to all requests and must treat academic, commercial, and other users on an equal basis. No bias shall be shown regarding requests that may come from customers of some other business related to the manager – there should be no preferential service for customers of a particular data network provider. There can be no requirement that a particular mail system (or other application), protocol or product be used.

- RFC 1591 also requires that “[t]he designated manager must do a satisfactory job of operating the DNS service for the domain That is, 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.”

IANA has redelegated ccTLDs without the full consent of the incumbent manager in at least two cases: .pn and .au. In the case of the Pitcairn Islands, IANA engaged in extensive correspondence with the incumbent manager over two years in an unsuccessful effort to reach a consensual solution. Noting the fundamental principle that a ccTLD be operated for the benefit of the Internet community in the country or territory, IANA finally approved the redelegation in February 2000. It was influenced by the strong support of all (50) residents of Pitcairn Island (including the local Administrative Contact), the local government, and the UK Government, as well as the fact that the existing delegation had not resulted in the introduction of reliable Internet connectivity or similar benefits to the territory.

In the case of Australia, IANA concluded in August 2001 that the non-profit entity being created (“auDA”) was based on principles of private sector self-regulation of the type that have allowed the Internet to flourish, with the Government playing a supportive but non-intervening role. It also found auDA well suited to be inclusive of, and accountable to, the Australian Internet community and to operate through open, transparent, and inclusive processes. It therefore decided that it was time to move responsibility for the ccTLD from a single person to a private sector self-regulatory regime.

IANA now essentially requires redelegations to be based on three written agreements, known as the triangular arrangement: (1) an agreement between the private, non-profit entity and the government; (2) a communication between the government and ICANN expressing the support of the government as a whole; and (3) an agreement between ICANN and the new manager. Key parts of each agreement were derived from the “Principles for the Delegation and Administration of Country Code Top Level Domains” (the “GAC Principles”) developed by ICANN’s Governmental Advisory Committee (GAC) in February 2000. See the Appendix to this memo for links to models for each of the three communications.

A Step-by-Step Strategy for ccTLD Redelegation

It must be recognized that redelegation may not happen quickly, particularly if the incumbent manager does not consent. In June 2002, IANA published the ccTLD Redelegation Step-by-Step Overview, <http://www.iana.org/cctld/redelegation-overview-19jun02.htm>, which offers crucial guidance. In addition, there are several factors and actions that should be considered by a country seeking redelegation. These include:

1. Assess the situation involving the current manager. Is the current manager willing to agree to redelegate the ccTLD to a private sector, non-profit entity? If it is not willing to agree

to redelegate, what were the circumstances surrounding the initial delegation? Did the government have a say in the selection? If the delegation occurred under a former governmental system, did the new government have an opportunity to review the earlier decision? How competently is the incumbent managing the TLD? Does it maintain a functioning Whois service, allowing individuals to determine availability of a particular name? Is its dispute resolution policy readily available to potential registrants? Is its website accessible in all local languages? Are the policies and procedures for use of the ccTLD available for public inspection? If the current manager can be shown to be failing its responsibilities, involuntary redelegation can more easily be accomplished. However, since it can be very difficult to reconstruct the registry database without the cooperation of the current manager, securing the cooperation of that manager is highly desirable.

2. Develop, in consultation with the government, a private sector, non-profit entity, similar to auDA, which will agree:

- To operate as a fully self-funding and not-for-profit organization;
- To operate the ccTLD for the purpose of fostering development of the national Internet community, as well as the global Internet community;
- To be inclusive of and accountable to all members of the Internet community in the country;
- To adopt open, transparent and consultative processes;
- To not acquire any property rights in the ccTLD itself;
- To enhance benefits to Internet users by promoting competition, fair trading, and consumer protection and providing access to technical support;
- To establish dispute resolution mechanisms that take into account intellectual property, consumer protection and other internationally accepted laws; and
- To abide by ICANN's policies.

3. The government should formally endorse this non-profit entity after negotiating an agreement, which incorporates the terms described in Step 2. As part of this agreement, the government would pledge that non-profit manager will:

- Operate completely independently of the government;
- Be led by the private sector and include representatives of the academic, business, NGO and Internet user communities;
- Be not-for-profit;
- Be self-funded; and
- Not be subject to any discriminatory or arbitrary practices, policies or procedures by the Government.

4. The non-profit and the government should formally request IANA to redelegate the ccTLD. The request should include the new entity's charter, the reasons why the ccTLD should be redelegated, a description of the new entity's technical expertise, and the formal endorsement from the government. IANA will want to know how will the proposed delegee function? How will it interact with the local Internet community? How have the views of the local Internet community been accounted for? What policies does the proposed delegee envisage for the management of the ccTLD? **The government should inform ICANN of its endorsement of the new non-profit as the new ccTLD manager,** its support for redelegation,

and its views on the extent to which the incumbent is failing to address the needs of the local Internet community. It must be clear that the government is speaking with one voice.

5. IANA is likely to urge the government and the non-profit entity to try again to resolve the redelegation issue with the incumbent manager, and offer its assistance in doing so. **The proposed non-profit manager and the government should make another effort to obtain the incumbent's consent to the redelegation and report back to IANA.** If the matter cannot be resolved at this stage, IANA is likely to consult with the incumbent, the local Internet community, the leadership of the proposed non-profit manager and the government.

6. The government and the proposed non-profit manager should each indicate their willingness to enter into formal, legally binding agreements with ICANN, known as the "triangular arrangement." (See Appendix for more detail and links to models.)

The government and the new delegee must agree that the new arrangement will conform to Clause 9 of the Principles for the Delegation and Administration of Country Code Top Level Domains (the "GAC Principles") developed by ICANN's Governmental Advisory Committee (GAC), which include:

- A commitment by the delegee to operate the ccTLD in the interest of the relevant local community and the global Internet community.
- A recognition by the delegee that the management and administration of the ccTLD are subject to the ultimate authority of the relevant government or public authority, and must conform with relevant domestic laws and regulations, and international law and international conventions.
- Confirmation that the ccTLD is operated in trust in the public interest and that the delegee does not acquire property rights to the ccTLD itself.
- Conditions for the efficient and effective resolution of disputes arising from domain name registration.
- The delegee's commitment to abide by ICANN policies..

The government should be prepared to make a communication to ICANN in which it agrees to:

- Recognize ICANN as the appropriate international entity to oversee technical coordination of the Internet in a way that preserves it as an effective and convenient mechanism for global communication;
- Acknowledge respect for the public policy objectives of: transparency and non-discrimination; respect for personal privacy; greater choice, lower prices, better service, and better consumer protection for Internet users; and
- Ensure that the new non-profit operates in conformity with these public policy objectives and international law.

The proposed non-profit manager should be prepared to enter into a ccTLD "Sponsorship Agreement" with ICANN in which it agrees to:

- Operate the ccTLD in a stable and secure manner that ensures the safety and integrity of the registry's database;
- Ensure backup servers;
- Abide by all relevant ICANN-developed policies;
- Ensure that the contact information for registrants is accurate, up-to-date and publicly accessible; and
- Contribute to ICANN funding on an equitable basis.

7. Finally, **the parties should be patient.** IANA is most likely to respond promptly when those local entities proposing redelegation submit a comprehensive proposal describing the nature of the local Internet community, and documenting support from its key stakeholders (most notably ISPs and academic institutions). The more IANA has to do independently to investigate and document the situation, the longer the process could take.

Conclusion

Except in countries lacking Internet, IANA prefers that the manager of a ccTLD be located in the country of the ccTLD, and not abroad, in order to be more responsive to the public interest and subject to national laws. In weighing requests for redelegation, IANA is most likely to act if three conditions are present:

- The redelegation would be to a non-governmental, non-profit entity that broadly represents the national Internet community;
- There is broad and documented support for the new entity across the government and the national Internet community.
- The new entity is backed by a sound technical plan for the registry.

IANA has also considered it important that a new manager (1) embody the principle of private sector self-regulation, with the government playing a supportive but non-intervening role; (2) operate through open, transparent and inclusive processes; and (3) clearly benefit the local Internet community. In two cases, IANA has approved redelegation over the objection of the incumbent manager where there was widespread local support behind a single strategy.

Key Reference Documents

ccTLD Redelegation Step-by-Step Overview, published by IANA, June 19, 2002
<http://www.iana.org/cctld/redelegation-overview-19jun02.htm>

ICP-1: Internet Domain Name System Structure and Delegation (ccTLD Administration and Delegation) (May 1999) <http://www.icann.org/icp/icp-1.htm>

Domain Name System Structure and Delegation, RFC 1591 (March 1994)
<ftp://ftp.isi.edu/in-notes/rfc1591.txt>

Key resources about ccTLDs, including policies and guidelines of the Internet Corporation on Assigned Names and Numbers (ICANN), are collected at <http://www.icann.org/cctlds/>.

See especially, Principles for Delegation and Administration of ccTLDs Presented by Governmental Advisory Committee (“GAC Principles”) (23 February 2000) <http://www.icann.org/committees/gac/gac-cctldprinciples-23feb00.htm>

Appendix – The Triangular Arrangement

Outlined below are the three types of communications involved in a triangular arrangement based on the GAC principles. A successful redelegation will be based on these three communications. For examples of triangular arrangements, look at those for the .au and .jp ccTLDs, which can be found at the bottom of the web page <http://www.icann.org/cctlds/>. To make matters even easier, IANA can provide model communications, so that governments can fill in the necessary details (e.g., appropriate government contact, proposed sponsoring organization information, etc.)

The three types of “communications” involved in a triangular agreement are:

1) A communication between the delegee and the government.

This would be a letter from the government to the president or general manager of the proposed delegee. The best model for this is probably the letter of the Australia government, found at <http://www.iana.org/cctld/au/alston-to-watson-31dec00.htm>. It is not strictly necessary, but it may be best for the proposed delegee to send a confirmatory response, along the lines of the letter from the proposed .au delegee to the Australian government, found at <http://www.iana.org/cctld/au/disspain-to-alston-18jun01.htm>. The key is that the letter must address the points outlined in Clause 9 of the GAC principles, which are found at <http://www.icann.org/committees/gac/gac-cctldprinciples-23feb00.htm>. Perhaps the best way to do this would be to incorporate the points of Clause 9 into the charter for the proposed delegee. Most important is that it be clear how the provisions of clause 9 will be complied with.

2) Communication between the government and ICANN:

The second element needed is a communication from the government to ICANN in which the government states that the proposed new delegee is its choice as the manager of the ccTLD. IANA often recommends the letter used in the case of Japan, which can be found at: <http://www.iana.org/cctld/jp/sakamoto-to-lynn-30jan02.htm>. Another model for some purposes may be the two letters sent by the Australia government, found at <http://www.iana.org/cctld/au/alston-to-lynn-04jul01.htm> and <http://www.iana.org/cctld/au/alston-to-lynn-16aug01.htm>, the language of which could be combined into one letter.

3) Communication between ICANN and the delegee:

The third element is the agreement between the ccTLD sponsoring (or "trustee") organization and ICANN. The agreements signed for the .au ccTLD <http://www.icann.org/cctlds/au/> and the .jp cctld <http://www.icann.org/cctlds/jp/> are good models. They, in turn, are based on the model found here: <http://www.icann.org/cctlds/model-tscsa-31jan02.htm> .