

DOCUMENT FOR ccTLD WORKSHOP

Source: Nominet UK
Title: Comment on ICANN's ccNSO

Nominet UK submits the following comments to Annex A of the Preliminary Recommendations on ccNSO Membership presented to ICANN by the ccNSO Assistance Group (<http://www.icann.org/committees/evol-reform/ccnsoag-report-10dec02.htm>).

DISCUSSION OF POLICY COMMENTS PREVIOUSLY MADE

The present comments are made in the light of our previous comments on the structure and scope of the proposed ccNSO. These are re-stated as:

- A. Nominet does not believe that the ccNSO should develop policy which is binding on ccTLDs - "binding" implies some means of enforcement or penalty if the ccTLD fails to comply - a power not appropriate for ICANN to wield against the national interests of a ccTLD and its Local Internet Community, this latter being the appropriate mechanism to define ccTLD policies and ensure that they are complied with.
- B. In this and previous ERC documents, the nature of what is, and what is not, "policy" is ill-defined:
1. for some, this means "operational procedures" for dealing with IANA for routine changes such as name server address and other contact information, which clearly have to be defined in order for the system to work;
 2. for others, it means "technical standards", which obviously have to be complied with in order for the DNS to function;
 3. another group considers policy to cover "change of Manager", especially where the Manager and the relevant country are in dispute over the change;
 4. yet another group considers policy to cover: the use of data (whois), accuracy of data, charges made, registry-registrar structure, wait lists, registrant requested changes of registrar etc.

Nominet asserts that the first two categories are operational issues, which, whilst important, are not policy to be developed by the ccNSO (see further discussion at the end of this submission). The

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third category is politically sensitive and fruitful discussions are taking place between the ccTLDs and GAC to resolve the issues. It is the fourth category which is most problematic for ccTLDs. ccTLDs derive such policies from their local law and internet communities.

C. Nominet notes that the ERC has produced a framework matrix covering some of the above, but it is still not clear that the ccNSO intends to limit its scope appropriately. Currently, the terms of this proposal are sufficiently broad that it could bind organizations to any decision, in an unconstrained area, for an unquantified amount of time, and at unquantified and unlimited potential cost to the ccTLD manager.

COMMENTS ON THE PRESENT DOCUMENT

1. Entitlement to membership: membership of the ccNSO shall be ccTLD registries as represented by their Managers or such other persons as they shall appoint in writing to represent them.

Since the majority of ccTLD managers are not "natural persons", but rather corporations, associations or some other form of legal entity, the ccNSO members should be these legal entities. It is entirely up to the legal entity to decide - without appointment in writing - as to who makes statements on its behalf. Directors of UK Companies are able to make statements and bind the company. Other legal entities will have appropriate rules or bylaws defining this concept appropriately.

2. ccNSO Membership Fee: the ccNSO may establish a membership fee to assist in covering the costs of operating the ccNSO.

This is not unreasonable, but Nominet UK has concerns about the limitations on ICANN increasing arbitrarily the fees and about control mechanisms to ensure that the money is spent accountably and appropriately, without cross-subsidy to/from other parts of ICANN. Perhaps these are meant to be agreed under the vaguely defined "policies".

Nominet requests that IANA operational costs must be clearly distinguished from policy-making or forum support costs.

3. Policy: Policies that

- a. have been developed through the ccNSO policy-development process; and Nominet UK has already expressed views that this PDP is too heavy for what is essentially consensus policy-making.
- b. have been recommended as such by the ccNSO to the Board of ICANN; and
- c. are adopted by the Board of ICANN as policies; Nominet UK would not accept that the ICANN Board has a role in defining policies binding on ccTLDs - although clearly if they were to bind IANA to certain courses of action, it would be appropriate for the board to agree.

shall be binding upon ccTLD registries who are members of the ccNSO provided that such policies shall not conflict with the law applicable to the ccTLD Registry which shall, at all times, remain paramount.

It is not just that the local law remains paramount, but also the policies, concerns and decisions made by the Local Internet Community which are over-arching to ccTLDs.

Nominet notes that, in any case, a commitment to be bound as members of a body such as the ccNSO, with the proposals in their current form, might represent a breach of its memorandum and

articles, and possibly UK company law. Specifically, directors committing a company to be bound by externally made decisions without time, financial or authority limits could be deemed to be a breach of their 'fiduciary duty' to act "bona fide" in the interests of the company, as UK company law demands. Nominet believes that the same issue may arise for other ccTLDs, and may thus result in an ineffective and unrepresentative ccNSO.

Definitions

"ccTLD registry" means a Country Code Top Level Domain registry being a registry of domain names having two characters as defined by RFC 1591.

"ccTLD registry manager" or "Manager" means the person or organization responsible for managing the ccTLD registry, as evidenced by their entry in the IANA database. In the event of a dispute as to the identity of the Manager, this needs to be resolved before the ccTLD registry can become a member of the ccNSO.

CLOSING REMARKS

Nominet recognizes that continued interoperability of the DNS, and operational procedures for ccTLD record modification are of great importance. However, these do not appear to be policy issues as defined in the ccNSO discussions.

Nominet UK believes that the proposals for a ccTLD Forum within the wider ICANN structure can be made to work - and would have its support - provided it is approached from the perspective of non-binding consensus making; with a target of doing the minimum possible to effect the business needs of the ccTLDs and the IANA function, which they need; and that the ICANN Board approaches its role from the attitude of service (ref RFC 1591) to its community rather than as a controller, regulator or as a world-wide internet governance authority.

NOTES ON POLICY CATEGORIES

Clearly, the first category (operational procedures) is important for the system to work properly. However, the requirement to abide by such operating procedures has to apply not just to members of the proposed ccNSO but also, if they are to be effective, to all ccTLDs, including those who choose not to enter into a contract with ICANN. It is not reasonable for IANA to refuse to update server addresses, for example, if they are unable (for whatever reason) to enter into agreements with ICANN.

The second category (technical standards) is also vital for the continued interoperability of the DNS, but is problematic in the context of a ccNSO. Technical standards should be developed on a global basis, covering all registries and not merely ccTLD registries, as clearly the same technical standards need to apply to gTLDs and, indeed, to the root server operators and ISPs hosting lower level domains. It is thus clearly out of place for the ccNSO to develop binding technical standards without reference to this wider community. Technical standards continue to be successfully developed by the IETF. To the extent that ICANN needs to ensure registry operators (and root server operators) follow IETF standards, it should incorporate such terms as above.
