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Council of European National Top-Level Domain Registries

Report on
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Contents

Executive Summary

The **Empowered Community** held its first meeting ever. This may sound like yet another irrelevant procedural step, but this process is a key accountability mechanism that was put in place following the IANA transition. Slight improvements possible, but overall a successful test of the model.

The **Public Technical Identifiers (PTI) updates** showed that everything is on track. SLEs are consistently met and the Root Zone Management System (RZMS) enhancements are being rolled out in Q3.

The **Strategic and Operational Plan (SOP) Working Group** still has a long list of comments and suggestions for improvements on the ICANN strategic and operational plan FY18, but notes consistent improvement over the years.

After a lengthy debate, **the ccNSO decided to participate in the Abu Dhabi meeting**, despite strong concerns about participants' personal safety.

The cross-community **General Data Protection Regulation (GDPR)** session revealed that gTLDs and accredited registrars (and ICANN itself) have still a long way to go until full GDPR compliance. The ICANN contractual relationship adds an extra layer of complexity for gTLDs. ccTLDs have plenty of compliance experience that others could learn from.

A surprisingly unanimous call across all SOs and ACs led to a commitment from the ICANN CEO to support a coordination effort across the **different groups to jointly decide on priorities**. This should help fighting volunteer burn-out and prevent the organic growth of parallel policy development processes across the community.

The cross-community working group on the **protection of geographic names** at the top level failed to come to an agreement on anything except for the continued protection of 2-letter codes. However, this leads to a problem for the WG on the next rounds of new gTLDs (Subsequent Procedures PDP WG), which now has to untangle and solve this difficult discussion. A strawman proposal failed to bring stakeholders closer together and even a session that was seeking agreement on which format to use to discuss the issues (GNSO PDP versus cross-community WG) did not come to any conclusions. The water between the SOs/ACs seems to be very deep and clouded in mistrust. The Board decision to remove a previously agreed-upon protection mechanism for 2-letter country codes at the second level certainly widen the gap.

Country codes and names remain the GAC's major source of unhappiness. The ICANN Board's blanket authorisation of 2-letter country codes at second level is just as controversial as any intention to release 3-letter codes or country names at the top level.

The GDPR continued dominating several discussions. Rather than a regionally contained issue, it will put ICANN under immediate pressure to get its act together and provide guidance and viable solutions if it doesn't want contracted parties to be squeezed between a rock and a hard place.

ccNSO report

All presentations from the ccNSO will be posted shortly here: https://ccnso.icann.org/meetings/johannesburg59

Empowered community forum

This was the first ever community forum to exercise ICANN's community oversight over a fundamental bylaw change. This particular change is completely uncontroversial, but it is a good test for the format. This change allows the Board Governance Committee to create a new task force to avoid spending most of its time on reconsideration requests (those are high workload affairs with strict deadlines, so it made it too hard for that committee to plan and execute the other 9 roles they have). The Empowered Community has a dedicated website to provide an overview of activities and background documentation. Within 21 days, at least 3 SOs/ACs need to approve and not more than one should reject. One important improvement for the future is that the planning of the meeting itself needs to be prioritised to allow for meaningful debates and to allow everyone to participate.

Relevance to CENTR members

It is not expected that this will need to be used on a regular basis, but it is reassuring to know that this accountability mechanism works as designed.

CCWG on Auction Proceeds

This group has been tasked to develop mechanisms that will be used to allocate new gTLD auction proceeds. This group will not allocate funds. The group is finalising their charter and will then start developing the mechanisms. The last step will be to check the potential of the mechanisms and make sure they are in line with the charter. The report is expected to be out for public comment by the end of the year. Everything is on track.

Relevance to CENTR members

The ICANN auction proceed funds will be allocated in the interest of the whole DNS industry. ccTLDs can contribute their experience with regards to social corporate responsibility and community investment programmes.

PTI-related updates

Customer Standing Committee (CSC)

The CSC provides monthly reports to the community on Public Technical Identifiers (PTI) metrics and Service Levels. Everything is on track. If exceptionally SLEs are not met, CSC discusses it with PTI and so far, have been happy with the explanation. As the operations unfold, some of these SLEs might need a reality check. In addition to the regular monthly reporting, the CSC organises the annual PTI customer survey. Poor participation in the annual survey is worrying; there are strong calls to provide feedback and input. The remedial action procedure is the next big project on the table for the CSC. This deals with structural problems. A first process draft will be presented in Abu Dhabi.

Root Zone Evolution Review Committee (RZERC) update

This committee reviews proposed architectural changes to the content of the DNS root zone. It was formed as a result of the IANA transition. It is formed by 9 committee members, all equally empowered, who work with consensus-based decision making. So far, there is no pending architectural change to deal with. Currently, RZERC is still in bootstrapping phase. There is currently no hierarchy of opinions, so it is unclear what would happen in case an RZERC opinion to the Board conflicts with an SSAC report. The group will look into clarifying this issue.

KSK Rollover update

The Root Zone DNSSEC Key Signing Key is the top most cryptographic key in the DNSSEC hierarchy. The KSK should be changed periodically (like a password). But an important reason for this rollover is to test the ability to change the key should there be a need. Full key rollover takes about 2 years. All resolver operators are strongly encouraged to sign up to the KSK-rollover mailing list, do the tests and spread the word. ICANN has already sent a letter to regulators and governments around the world, alerting them to the upcoming rollover and asking to spread the word nationally and regionally. This letter seems to

be quite technical and has already triggered concerns from some recipients. Be ready to answer your government's questions!

PTI update

The Root Zone Management System (RZMS) enhancement (revocation and root server change requests are not supported by automated RZMS workflow) is progressing. Current estimate to deploy enhancements is in Q3 2017. At the same time, PTI is updating the terminology. PTI is starting to gather input for its 2019 budget.

Relevance to CENTR members

On two levels, these are reassuring updates: (1) on an operational level, it is good to get confirmation that SLEs are met; (2) on a procedural level, the involvement of ccTLD representatives and the reporting mechanisms work as planned.

PDP on ccTLD retirement and review mechanisms

The public comment period will close on 10 July; there are no comments so far, which seems to show sufficiently diverse input during the drafting stages of the charter. GAC members are invited to participate in the working group, which is still open to additional participants. The first session covered definitions under ISO 3166 standard and the role of the maintenance agency. The second part of the work is an overview of how PTI treats retirements (currently not guided by existing policy).

The working group held its second meeting in Johannesburg. It discussed its rules of engagement and timeline. Publication of the interim report is expected by November 2017, in time for the Abu Dhabi ICANN meeting. The group also enjoyed two excellent educational presentations.

1. ISO 3166

Jaap Akkerhuis gave a very interesting overview of the Maintenance Agency's (MA) role, the purpose of 3166, the process to add or change the list and the very specific (and changing nature) of country codes. He gave excellent examples: this is an obligatory reading for everyone who wants to refer to ISO 3166 lists and for pub quiz regulars.

2. Background on implementation of ccTLD eligibility lifecycle

Kim Davies made a presentation on the lifecycle of a country code with an overview of all retirement procedures since the inception of ICANN.

Relevance to CENTR members

This is crucial work for the ccTLD community. So far, retirement of ccTLDs has been done without the guidance of consistent and agreed-upon policy. This group is drafting that long-overdue policy.

The Strategic and Operational Planning Committee (SOP Committee)

This is the group within the ccNSO that reviews and comments on behalf of the ccNSO on ICANN's operational planning and budget. In its update, it listed the following issues with the current FY18 plan as main concerns:

- Plan and supporting documents need to be more accessible
- Plan needs better flow
- Plan needs more consistency between different parts
- There are no clear timelines
- Estimates for legacy and new gTLDs are not in line with industry expectations
- Saturation of the market can lead to instability
- Staff growth has been exponential
- Staff costs seems very high
- KPIs need major work and refinement
- Indicators and indexes still under development

While there have been consistent improvements over the last few years, this list of crucial areas for improvement shows there is still a long way to go.

Relevance to CENTR members

In particular, CENTR members that financially contribute to ICANN (a whopping $1,6 Million USD in total from CENTR ccTLD members) might feel reassured that the money is spent wisely.

Other news from the ccNSO

After long discussions, the ccNSO decided to go ahead with the ccNSO meeting in Abu Dhabi. As signalled before, the ccTLD community is seriously concerned with the lack of attention of the ICANN meeting team for the safety of all ICANN participants.

In the traditional session with the ICANN Board members, ccNSO members listed the following issues as the four biggest challenges for ICANN:

1. Implement the new Bylaws

2. Handling the changing market – financial discipline (less income for ICANN)

3. Volunteer burn-out (too many parallel processes)

4. The changing nature of the GAC (from advisory role to interest representation)

Unfortunately, there was no time to discuss this further. It would be very interesting, for instance, to understand why there is no session on the changing market conditions during this ICANN meeting, if this is truly considered one of the major challenges. Maybe that is one issue that the new prioritisation efforts could resolve (see the section on cross-community issues for more details).

During a session on the voluntary ccTLD contributions, the ICANN finance team set out the invoicing process:

1. A general email is sent to all ccTLDs asking for a confirmation that they want to pay a voluntary contribution. In this phase, many emails bounced, but the ICANN accounting department has improved the accuracy of their contact lists.

2. The ccTLD sends an email to accounting@ icann.org with a request for an invoice and a specification of the amount it wants to contribute.

3. ICANN sends an invoice and publishes (upon payment) the list of contributions.

Appointments:

- Nigel Robert (.gg and .je) as chair and Eberhard Lisse (.na) as vice-chair of the PDP WG retirement of ccTLDs.
- Stephen Deerhake (.as) and Pablo Rodriguez (.pr) as ccNSO appointed members to the CWG Auction Proceeds.
- Jacques Latour as the Chair of TLD-OPS Steering Committee

GAC report

Link to the GAC ICANN59 Communiqué: https://go.icann.org/2toFfEP

GAC session on 2-character country codes at second level

The GAC is still unhappy with the blanket authorisation for the use of 2-character country codes at the second level that came along with the Board Resolution last December. The GAC, however, appreciated the personal effort of the ICANN CEO (who met with them on 17/18 May 2017) and they welcome his "intention to create a task force to resolve concerns".

Background: 2-character country codes at the second level refer solely to ISO 3166-1 alpha 2 codes. So far, these were reserved in new gTLDs (as per the new gTLD Registry Agreement, Specification 5, Section 2) and in some legacy gTLDs (as per the Base New gTLD Agreement, concerning, for example .jobs, .cat). They could only be released if there was agreement with related governments and/or country code managers. This was also referred to as the "Authorization Process for Release of Two-Character ASCII Labels". This (old) process is now retired, through an ICANN Board resolution in December 2016. The resolution authorises the release of all 2-character labels at the second-level in New gTLDs provided that New gTLD registry operators implement Measures to Avoid Confusion with Corresponding Country-Codes. These include that the registry operator:

- on a voluntary basis, implements a 30-day exclusive availability pre-registration period to applicable country-code managers or governments;
- includes in its registration policy a provision that the registrant in question does not misrepresent or falsely implies to be affiliated with a government or country-code manager; and
- conducts a post-registration complaint investigation if a government agency or ccTLD operator reports confusion with the corresponding country code.

Session summary: India said that the "mitigation measures proposed are totally inadequate". Brazil considered the process (which led to the ICANN Board resolution) "a breach of trust". Both France and Russia concurred that they were happy with the mechanism until the Board changed it. It was not clear to Iran "what confusion mean[s]". It was also not ok that "responsibility is shifted from ICANN to the membership". The UK did not have "a problem with substance, but with process", which constituted a "serious issue", in fact, "a failure" and "deficiency of the multi-stakeholder mechanisms". It therefore needed "urgent correction". Germany, a government that has "no problem in using the country code", understood frustrations with the process, but otherwise kept quiet. The ICANN representative was busy (re)stating that "provisions to mitigate confusion with the country code are fully part of the contract between the registry and ICANN" (see background). If a country perceives confusion and cannot resolve the issue, "they can come to ICANN compliance and they will investigate and take action" – as with any other safeguard or abuse mechanism.

Interestingly, during the GAC-ICANN Board session, Göran Marby hinted at the fact that his idea of a "task force" might have been misunderstood. What he had in mind was "a group to work with the Chair and a couple of countries to see if we can figure out a way for the info flow to work better so we can avoid being too late" – something that sounds rather less formal than what some GAC members understood it to be.

Relevance to ccTLDs

High. Views within the GAC about the role and degree of involvement of government into the day-to-day business of "its" (or a ccTLD) registry vary considerably. This is also true with regards to what a country code "is" or "represents", to whom it "belongs" and how it is (already) used on the market. Consequently, the GAC's view about the need (or absence of need) for notification or prior authorisation differs as well. It is therefore important that ccTLDs and governments keep up or intensify their dialogue in order to understand each other's expectations and the market situation.

GAC Public Safety Working Group (PSWG)

The PSWG spent considerable time discussing the impact of the GDPR on WHOIS (in the future) and conflicts of the (current) WHOIS with local laws.

Impact of GDPR on WHOIS

Becky Burr is trying to convene a small group from across the community (including the GAC) to look at how existing contracts can be interpreted and construed in a way that allows for contracted parties not to violate the GDPR, while preserving "as much of the WHOIS as possible for the time being". The PSWG contributes by identifying purposes for which public safety agencies (including law enforcement) might need to access WHOIS data.

Despite data protection and privacy rules from other regions, which could ultimately have an impact on ICANN, the Board, according to Cathrin Bauer-Bulst (European Commission) currently focuses on the GDPR "because of the immediate need to comply with it". In her view, "we would also be doing better on compliance with other legislation once we start looking at complying with the GDPR". The challenge will be to interpret or construe existing contracts in a way to allow contracted parties not to violate the GDPR, while preserving "as much of the WHOIS as possible for the time being".

WHOIS conflicts with local laws

A recent case where WHOIS data is in conflict with legal data protection laws, .amsterdam, was presented. The registry has stopped providing data because of Dutch law and they are trying to obtain a waiver from ICANN. The PSWG informed members of the existing process in place for contracted parties that feel ICANN policy conflicts with their local privacy law. Practically, a judgment or decision against a party from the data protection authority (DPA) was needed in order to claim a waiver. Many considered this cumbersome. ICANN opened a public comment period (until 7 July 2017) to review the effectiveness of the recently revised "Procedure for handling WHOIS conflicts with Privacy Law". A so-called "alternative trigger" mechanism allows contracted parties to request an exception from contractual WHOIS obligations if they can provide a written statement from a governmental agency testifying to a violation

of privacy laws. This means that a contracted party would present a "hypothetical situation" to its local DPA and then obtain advice from it whether or not this would be in conformity with the law. With this in hand, they could ask ICANN for a waiver.

At the request of the ICANN Board, the GAC consulted various DPAs, the Council of Europe, Europol, Interpol, and the European Commission's data protection unit. Their opinions differ, but raise common concerns about the idea that DPAs could give "advance opinions on all cases that might hypothetically come up" and that might be considered legally binding. Rather, DPAs would like to be flexible enough to revisit their opinion in light of new information at a later point in time.

Relevance to ccTLDs

The GAC and (within the context of the PSWG) law enforcement are very aware of the potential impact of the GDPR on WHOIS – both at ICANN and at European level. Of major interest is the access of law enforcement agencies (LEAs) to personal data that is currently (and might no longer) be accessible in the public WHOIS. Therefore, finding efficient ways of cooperating with registries (identifying the legal basis of the request, verification of the requestor, etc.) will be of utmost importance.

GAC WG on Human Rights & International Law (HRIL)

The ICANN community is still trying to come to a shared understanding of the ICANN's Human Rights -related Bylaws. The HRIL closely follows developments with regards to the proposed framework of interpretation (FoI) for terms, such as ICANN's "mission", "core values", "respecting", "internationally recognised", "human rights", "as required by applicable law", etc.

Session summary: ICANN staff explained that ICANN currently refers to but does not limit itself to the Universal Declaration of Human Rights, the conventions of elimination of all forms of discrimination, of rights of persons with disabilities, etc. However, it was noted in the discussions that "none of these instruments has a direct application to ICANN because they only create obligations for

states", which then embed into their legislation and subsequently need to comply. Such standards could hence only "inform ICANN to understand what the standards should be". The FoI also restates that the "core value" "shall not be interpreted to create an obligation for ICANN to go outside of its mission or beyond obligations found in applicable law and does not obligate ICANN to enforce human rights obligations or human rights obligations of other parties against other parties. So far, three GAC members commented on the FoI, including the UK, Switzerland and Brazil.

UK: There should be a link to the UN guiding principles for business and human rights (pillar 1 pertaining to state responsibility, the second to corporate). ICANN should be seen as "essentially a private sector-led organisation", despite its unique character in terms of multistakeholderism. **Switzerland** also supports "a strong alignment with the UN guiding principles". **Brazil** is concerned that human rights, rather than being fostered, might be hindered "in some aspects". Otherwise, they are in line with Peru. The major concern is that the FoI might "eventually freeze the content of the core value, as it might be applicable to ICANN businesses. Particularly, in this area where it's in constant evolution".

Relevance to ccTLDs

The interpretation of ICANN bylaws will be of impact to any organisation involved in or bound by ICANN policy. It is important that the concepts used in the Bylaws are not overburdened and, above all, do not give rise to the assumption that ICANN is involved in the enforcement of human rights, which could just as well extend to intellectual property.

GAC WG on Under-served Regions

The WG discussed its FAQ document (not the latest version) on the "delegation and transfers [sic] of ccTLDs".

Session summary: The WG is convinced that the "transfer" of a ccTLD is equivalent to a "re-delegation". Kim Davies (ICANN) made sure that at least "revocation" was not added to this list of perceived "synonyms".

A question asked by Pakistan triggered a debate: "What is common and best fit model (for selecting a new operator [ccTLD manager]) for the ccTLD to be re-delegated?" Would this mean that some GAC are in search of a model that allows for the easiest way possible to redelegate a ccTLD? Pakistan provided a rather insufficient clarification, i.e. that different models existed, "different ways of achieving it, with different actors or stakeholders involved". To his knowledge, there were "issues related to [countries that require] that ccTLD operators maybe should operate from within the country or should be from the government for that matter". Kim Davies clarified that PTI does "not prescribe any models", even though they were "often asked to recommend" one. Egypt concluded that the "key thing is that there is no single model that would facilitate the re-delegation and that this varies from one country to another". Rwanda was particularly interested to know if there was any "legislation or ICANN guideline that prohibits governments or a public institution to be a manager of a ccTLD as long as it's done in the interest of the internet community or internet users". Kim Davies pointed out that this happens in many countries. However, "in terms of process, there is an expectation that the manager does have some day-to-day operational responsibility". The FAQ was not endorsed by the GAC at ICANN59. The GAC will continue to collaborate with the ccNSO and PTI to finalise it.

Relevance to ccTLDs

High. It is very important that ccTLDs foster the constructive exchange with the WG in order to make sure that the FAQ provides accurate answers, informs about different (business) models in different countries, the prevalence of local law for ccTLDs and the importance of ccTLDs' own policies. There will certainly be a public comment period to which ccTLDs are highly encouraged to respond. However, interaction and input at an early stage might clear up misunderstandings and increase acceptance early on.

Update of CCWG Work Stream 2 to the GAC

The Accountability Work Stream 2 (WS2) covers issues such as jurisdiction, human rights, transparency, diversity, etc. (see WS2 dashboard) – each with their dedicated sub-teams and public comment periods. The issue of jurisdiction was of most interest to the GAC. Thomas RIckert reported on progress.

A questionnaire (20 responses received until May) highlighted the following issues:

- OFAC, the Office of Foreign Assets Control (an office of the US Treasury enforcing economic sanction programmes), prevents ICANN and contracting parties from contracting with certain listed parties, countries, entities or individuals (for example terrorists, narcotics traffickers), including residents of sanctioned countries. The US has an absolute right to determine which countries are being sanctioned under OFAC. The sub-team is considering if ICANN should request a general exemption.
- Geographic and other reserved indicators (.wine) (not discussed further)
- Privacy concerns (not discussed further)

After the sub-team on jurisdiction ended in deadlock, the Co-Chairs decided to give them some procedural guidance to deal with re-occurring ("disruptive") requests within the team to a) relocate ICANN to some other country in the world, b) grant total immunity to ICANN (for example, like the Red Cross), which, however, would require a different form of incorporation. Also, immunity would counter newly obtained community powers to hold ICANN accountable. A "vast majority of individuals and groups" were not in favour of further discussing these two issues. The guidance suggested to work on concepts based on the existing set-up of ICANN, i.e. it being a non-for-profit organisation, incorporated in California, and subject to Californian law. Partial immunity might still be a solution – provided that it achieves consensus support.

Russia, China, Iran and Brazil were not entirely happy with this approach. **Russia**: Jurisdiction had already been shifted from "wave 1" to "wave 2" and should not again not be considered. The OFAC risk would be a "risk for stability of internet users worldwide". The immunity mechanism could help avoid this problem in the future. Lawyers should be involved in a detailed analysis. **China**: Jurisdiction is related to the legitimacy of ICANN as an international institution. "International political agreement or consultation should not be affected by local law or jurisdiction", i.e. when ICANN is faced with a lawsuit. According to **Iran**, "jurisdiction is not in good shape". The representative did not agree with the interpretation of "majority" and "minority" [see above]. Either "ICANN is multistakeholder-inclusive, or it is not". Also, OFAC was not designed for the DNS – but extended to it. **Brazil** agreed with the Co-Chairs' recommendation not to re-discuss relocation of ICANN. However, dispute settlement mechanisms should be addressed, as they would allow for some comfort of governments that operate within ICANN, as "National interests would not be automatically addressed by US court but [instead] guided by agreed rules".

Thomas Rickert cautioned the GAC about "filibustering the process". Stretching it out longer in order to "get one's will in the end" would not work because "if we don't get consensus on improvements, we might end up getting nothing". He noted that there will be a process to avoid that individual sub-team recommendations are rejected or untied in the very last phase (which will be to sort out inconsistencies), i.e. when chartering organisations give input. Concerns should be addressed during the public comment on sub-team recommendations. He urged the GAC to "try to work under California Law".

Relevance to ccTLDs

It is important that work on ICANN's accountability is not disrupted, held up or even put at risk by extreme ideas of individuals or individual countries. ccTLDs involved in the sub-teams should help move the process forward and ensure a smooth implementation of accountability mechanisms. It will be pivotal that ccTLDs contribute to the respective public comments and support the work done on accountability.

Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT) – GAC update

The CCT-RT's first Draft Report cautiously suggests a positive effect of the introduction of new gTLDs on competition and consumer trust, but also a need for improved data collection (see ICANN blog post) in order to measure the effectiveness and level of success of the New gTLD Programme. The draft was open for public comment until 19 May. The GAC's comments were generally positive.

Since the draft's publication, there were two additions: a DNS Abuse Study Intermediate Report and a Parking Paper. The DNS abuse study shows that abuse is shifting from the legacy to the new gTLD space and certain types of abuses are higher in the new gTLD space, but the overall rates of abuse didn't increase (final report available by end of July). As for parked domains, the data shows that the ratio of parked domains is around 20% higher in new gTLDs than in legacy gTLDs, but implications are unclear (further analysis would be required to see if there is a correlation between the level of parked domains and renewal rates). The second draft will be subject to public comment. The final report will feed into Subsequent Procedures PDP.

Relevance to ccTLDs

This exercise shows that there is a strong interest from the industry to focus on data collection and analysis. Considering that the work of the CCT-RT will serve as a basis for shaping the next application round(s) of new gTLDs, the studies conducted give an overview of the state of the gTLD space, which can be just as useful and relevant to ccTLDs. Expect ICANN to keep probing the market for data in the coming years, including from ccTLDs.

Cross-community topics

The yearly ICANN Policy Forum provides room for discussions across the different communities. The most relevant discussions were on the impact of the GDPR on the DNS industry, the process of the Registry Data services (RDS) working group, the protection of geographic names in future new gTLD rounds and the prioritisation of workload across the ICANN Community.

The Impact of the GDPR on the DNS industry

The ambition of this session was to have awareness-raising exercise to find clear shared understanding of what the ICANN community needs to deal with, looking for the nexus between GDPR and ICANN.

The impact of the GDPR will be felt by anyone who processes personal data from a European individual. As such, this is a matter for the whole DNS industry which stretches well beyond Europe's borders.

The session started with an excellent overview by Cathrin Bauer-Bulst from the European Commission's DG HOME. Highly recommended if you need a primer on the topic.

Some key points:

- The general data protection regulation sets out the general data protection framework in the EU. It replaces the Data Protection Directive 95/46/EC. It harmonises and simplifies the framework, introduces one set of personal data protection rules and one interlocutor and one interpretation. It removes the prior notification obligations under the previous directive. Fundamental right to data protection is the key principle of the GDPR.
- Personal data: any information relating to an identified or identifiable natural person
- Processing: any operation or set of operations which is performed on personal data
- Geographic scope: establishment in the EU OR processing activities related to the offering of goods and services to data subjects in the EU or monitoring their behaviour within the EU

- Principles of personal data processing
  - Lawfulness, fairness and transparency (for example, contractual needs)
  - Purpose limitation
  - Data minimisation
  - Accuracy
  - Storage limitation
  - Accuracy
- The European Data Protection Board (EDPB) replaces the Article 29 WG.

What does this mean for the DNS industry?

There are over 60 data elements that are potentially personal data (registrant data, transaction data, business data, board members, shareholders, etc.), as well as plenty of processing (escrow, retention, publication, etc.).

Proportionality test: Personal data processing has a lawful basis if the processing is necessary to achieve the legitimate interest of the data processor, except when overridden by the privacy interests of the data subject.

The legitimate interest test is a practical way to check if you can process the personal data:

- FIRST, start with personal data elements collected to run DNS
- SECOND, list who, what, why
- THIRD, balance against privacy interests of data subject
- FINALLY, identify appropriate safeguards

In applying these principles on processes, focus on user stories but make it as granular as possible. So, for instance: purpose needs to be described in detail. A who/what/why matrix will help to ensure that all necessary requirements are checked.

What is ICANN doing?

- Looking at implications on ICANN as an organisation (community engagement, travel support, etc.)
- Dialogue with contracted parties on current situation
- Understand implications of current situation (not future RDS)
    - Understand what data elements need to be stored
    - Engage with small group help inform on purposes to gather comprehensive list

Comments from the room:

- Keysystems: ccTLDs have already developed solutions in their existing WHOIS policies, learn from them rather than reinvent the wheel
- Thomas Rickert, eco: consent can be withdrawn at any time (without stating a reason) (Thomas Rickert). Preferable way: where do you have a legit purpose to collect and process data – needs to assess every data element through its lifecycle (for example also blocking; resellers; ICANN, escrow) – passing on and making available must all be legit
- Tucows: will there be uniform interpretation of the GDPR if it first goes through national courts?
- Consistency mechanism of the EDPB, coordination among DPAs, with one leading DPA
- ICANN working on offering assistance and guidance to facilitate the process to GDPR but everyone needs to start looking into their own processes now!

This session made clear that there is much more work to be done in the gTLD space compared to the reasonably prepared ccTLD space. ICANN contractual rules have added a level of complexity that will be hard to untangle in time to meet the deadline.

Relevance to ccTLDs

It will be interesting to see how ICANN will adapt current WHOIS obligations and future RDS plans. The work and discussions in the GNSO might also be interesting as they might come up with solutions and best practices that could be applied in a ccTLD environment. RARs might be thrilled if policy reviews (triggered by the GDPR) lead to some harmonisation across all registries.

Cross-Community Discussion on Next Generation gTLD RDS Policy Requirements

The cross-community session (slides) only discussed draft proposals for phase 1 (see below) and "the minimum public data set" (i.e. "thin data") and sought support from the audience.

Background: WHOIS policy reform, in its latest disguise called "gTLD registration data and directory services" (RDS), includes issues such as purpose, accuracy, availability, anonymity, cost, policing, intellectual property protection, security and malicious use and abuse (see GNSO summary). The ICANN Board launched a PDP on the issue, the responsible WG structured their work into 3 different phases tackling the questions 1) if and why a next gen RDS is needed, 2) what does the next gen RDS need to do, 3) how should the next gen RDS implement policy.

Phase 1 looks at identifying and defining fundamental requirements. This includes:

- users/purposes, i.e. the overarching purpose of collecting, maintaining, providing access to gTLD registration data
- whether the "minimum public data set" (MPDS) should be accessible for any purpose or only specific ones
- accuracy
- data elements, i.e. which gTLD registration data elements should be part of the MPDS
- privacy, i.e. if existing gTLD RDS policies sufficiently address compliance with applicable data protection, privacy, free speech laws and purpose
- access, i.e. whether the MPDS should be entirely public or whether access should be controlled.

If the conclusion was that no next Gen RDS was needed, they would discuss whether the current WHOIS policy framework needs to be changed to address the requirements.

Session summary: Rather than a "discussion", the session seemed more like an expanded version of a regular working group meeting. It might have been disappointing for some in the audience who were hoping to see advancement and direction with what seems to have evolved into a "personal data" time bomb with regards to the GDPR. WG members

presented progress on a set of questions they had worked on and tested support of draft solutions by means of having the audience wave green or red cards (an estimated 2/3 chose not to take such a card). At times, the "discussion" turned into a ping-pong between the chair Chuck Gomes and Steve Crocker, who was busy rectifying technical issues.

> ### Relevance to ccTLDs
>
> European ccTLDs (and their respective WHOIS) will be impacted by the GDPR, which will also impact the current WHOIS of ICANN contracted parties, as well as any "future WHOIS" or RDS. It is therefore important to follow these developments, both for compliance reasons (geoTLDs) and benchmarking (data protection standards in WHOIS).

Protection of geographic names in future new gTLD rounds

There will be a new Policy Development Process for future new gTLDs. This policy will only deal with the top level. One of the major questions is how to deal with the protection of geographic names in future rounds. After three years of discussions, the cross-community working group dedicated to this topic could only agree that 2-letter codes will be reserved for (future) ccTLDs. Since there are a lot of open questions on geographic restrictions, these need to be resolved prior to future gTLD rounds. The GNSO believes this debate should be within their scope, but there is a strong call from the wider community for a cross-community group to move this forward. The ccNSO needs to decide on how it wants to engage in this process.

Here are the respective views on the protection of geographic names on the top level:

GNSO:

- Previous rounds too restricted
- "VW" should be available
- All 3-letter codes should be available
- No legal protection for country names
- Trademarks have stronger legal rights than geographic names

GAC:

- Wants even more restrictions

- Emphasis on early warning procedure
- Potential infinite list of restricted names
- Some GAC members think the current Applicant Guidebook strikes the right balance

CENTR:

- 2012 restrictions were reasonable and proportionate
- Support 2-letter restriction
- Cross-community agreement is an essential requirement to make changes to existing rules (for example, non-objection process)
- Potential to damage ICANN and cause delays to subsequent rounds

Current protections:

- All 2-letter codes blocked
- 3-letter codes on ISO 3166 alpha 3 list blocked
- Country names (and translations) blocked
- Capital cities, cities, subnational places: only with government consent

Temperature in the ccNSO room: all ccTLDs want to protect 2-letter codes as ccTLDs. A majority of ccNSO members (but not overwhelmingly) still voted for protection of 3-letter codes and for the continued protection of country and territory names.

During discussions with the GAC, the following observations were made:

- One suggestion that was made to allow us to move forward is to have a 5th track in the subsequent rounds PDP WG to deal with this issue, but it might be difficult for non-GNSO participants to have a strong voice (this being a GNSO PDP). GAC Switzerland was not enthusiastic about this being a GNSO process. This should be discussed on a cross-community basis as peers. The Applicant Guidebook (AGB) protections were the result of a long stakeholder discussion and worked well. The same can be said about the non-objection process, although the process didn't work so well for geo names not covered by the AGB.
- GAC Chair on 3-letter codes: not fundamentally opposed to use them, but there should be consensus on how they will be used. The same probably can be said about country and territory names.

- GAC Chair reminded of Nairobi advice (18 August 2009): strings that are meaningful abbreviations of a country name should not be allowed in gTLDs.
- Is the strawman proposal a good step forward? It might be a good basis, but some of the suggestions are a bit naive (for example, the use of a country name as long as it is not used to refer to that country can't be checked/corrected/sanctioned)

The issue of geographic names also came up during GAC discussions on new gTLD policies: Peru reiterated that it was important to not only take into account the global public interest but also the country's interest – which might not be in line. When a country code "is decided in the ISO and the country also sits in the ISO to make the ISO 3166 list, then back home it is already considered an asset". This asset, however, is "then used by other countries abroad", also for other domains "which are not suitable for a country", for example Indonesia.pornographic.

A strawman proposal was drafted by the co-chairs of the PDP subsequent rounds group and was presented during a cross-community session. It is intended to promote conversation and pave the way for a compromise solution that reflect the number of proposals the chairs received so far.

Unchanged elements compared with the current AGB:

- 2-letter codes not allowed
- Country and territory names on ISO list: not allowed
- Capital and city names: support or non-objection
- City names in geographic capacity: support or non-objection
- UNESCO regions: support or non-objections from 60% of affected governments

Changed elements compared with the current AGB:

- Applications for all 3-character strings allowed (including ISO 3166 list)
  - Unless intended for geographic purposes
  - If string is in repository of geographic names, then RGN (see definition below) provisions apply
- Applications for string that exactly matches a sub-national place name on ISO 3166-2 list allowed
  - Unless used in geographic meaning then

AGB provisions apply
  - If string is in repository of geographic names, then RGN provisions apply

Repository of Geographical Names (RGN)

- Any government can add a term as long as there is a basis to protect it under government's existing law
- Applicants would consult RGN prior to applying
- If there is an exact match + applicants intend to
  - Use geographic meaning: must get letter of non-objection/consent
  - Not use geographic meaning: must get letter of non-objection/consent OR submit a Geo Public Interest Commitment (PIC), a statement that commits to not creating confusion with geo meaning, enforceable through Registry Agreement
  - Includes arbitration mechanisms to address concerns if government believes Geo-PIC is inadequate. If no agreement is possible, the government cannot veto the delegation

After presenting the strawman proposal, a heated discussion followed were there were clear demarcation lines between the different interests.

The GAC chair reminded participants that there is plenty of advice that underlines the need to protect country and territory names. This needs to be recognised.

Many recognised that the concepts of "context" and "purpose" were a strength of the strawman proposal.

Weaknesses:

- What problem are we trying to solve?
- Still some issues with arbitration mechanisms
- Starts with a narrative that is not shared
- Proposal starts from a very specific direction
- Doesn't start from what worked in 2012
- Creates legal uncertainty
- Takes away the burden from the applicant and puts it on the communities
- TLDs are unique, so we need all interests to be represented
- Proposal doesn't account for applicant's freedom of expression rights
- Why is the GNSO dealing with 3-letter country

codes? Country codes are the business of the ccNSO

- We heard all of this before and we had a solution in 2012, so why are we discussing this again?
- The "context" -based approach doesn't make sense as it is dependent on the use of the second level domain.

Relevance to ccTLDs

The most important aspect is to avoid confusion at the top level. In addition, the 2-letter space should be kept available for future countries and their ccTLDs. For further details, please refer to the CENTR position.

Who sets ICANN's priorities?

Is essence, this session came to the inevitable conclusion that the maximum workload capacity of the multistakeholder model is defined by the stakeholder group with the least resources. And since those stakeholders all have their own interests and priorities, some sort of coordination will be needed if we want to avoid that volunteer fatigue undermines the success of the model. This coordination could be done by the leadership of the SOs/ACs with or without the support from the Board. Some SOs have already a prioritization process in place while others (in particular ACs) have to follow whatever others have prioritised. This session could be the start of a healthy and much needed cross-community coordination and the ICANN CEO made a commitment to work out a proposal in this respect.

Relevance to ccTLDs

A better prioritisation of issues will make ICANN participation more manageable for the ccTLD community. Volunteers are currently spread too thin.

ICANN60 will be held from 28 October to 3 November 2017 in Abu Dhabi.

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.

To keep up-to-date with CENTR activities and reports, follow us on Twitter, Facebook or LinkedIn