

FOIWG



ICANN Costa Rica
March 2012

Presentation outline



- Scope of Framework Of Interpretation
- Process
- Topics for interpretation
- Activities since ICANN Dakar
- Consent
- Significantly Interested Parties (SIP)
- Revocation
- WG Meeting at ICANN Dakar

Scope of FOIWG



- Applicable policies and guidelines:
 - RFC 1591 and GAC-Principles 2005
- Framework of interpretation will add “colour and depth” to existing policies and guidelines
- Out of scope:
 - Changing applicable policies or guidelines
 - The IANA Functions contract, including contract implementation issues or procedures

Process for topics



- WG prepares draft set of interpretations for a specific topic in an Interim Report (Example: Consent report).
- WG undertakes a public consultation of the draft set of interpretations.
- WG reviews comments and input from the public consultation.
- WG prepares a Final Report of interpretation for a topic.

Process for topics



- GAC and ccNSO support for Final Report – Support from both communities wanted
- Submission of Report to ICANN Board by ccNSO includes:
 - Confirmation of support by GAC and ccNSO
 - Report with recommendations

Topics for interpretation



- Consent for delegation and re-delegation requests (final recommendations published)
- Significantly Interested Parties (SIP) (public consultation on draft recommendations)
- Revocation or un-consented re-delegation (in progress)
- Comprehensive glossary (in progress)
- Recommendations for IANA reports on delegation and re-delegation (FOIWG will begin work on this topic after other topics have been completed)

Activities since ICANN Dakar



- WG met by teleconference 7 times since Dakar
- Published a progress report on activities since Dakar
- Published a public consultation on Significantly Interested Parties (SIP).
- Published its final report on Consent.
- Is currently working on the topic of Revocation.

Status on Consent



- No comments received from public consultation on Consent.
- GAC comments supported the recommendations and suggested some improvements which will be handled in the upcoming work of the FOIWG.
- The FOIWG has transmitted its final report on Consent to the GAC and ccNSO for approval.
- The final report on consent can be found at:
www.ccnsso.icann.org/workinggroups/foiwig.htm

Consent Recommendations



- IANA undertakes the steps necessary to implement the following guidelines:
 - IANA should only seek consent for a re-delegation request from the incumbent manager and the proposed manager. IANA should not seek consent from the Administrative or Technical contacts

Consent Recommendations



- The communication from IANA requesting a party's consent should clearly state (a) what the party is being asked to agree to and (b) what steps IANA will or may take in response to the party's (i) affirmative consent, (ii) affirmative refusal to consent, or (iii) failure to respond to the communication requesting consent. It should also advise the Manager to seek legal advice prior to granting consent. The requirement to secure informed consent does not obligate ICANN/IANA to ensure that the party from whom consent is sought is informed about consequences not within ICANN/IANA's control.

Consent Recommendations



- For further clarity of what a party is being asked to agree to in a re-delegation, IANA should clearly indicate that it will undertake all steps necessary to transfer the incumbent manager's role as "*trustee*" for the ccTLD (as the term is used in RFC1591) to the proposed manager, including, without limitation, changing the entry in the IANA database.

Consent Recommendations



- Note: In RFC1591, the term “trustee” is used to describe the manager’s duty to serve the community, and not to describe the specific legal relationship of the manager to the delegated domain.

Consent Recommendations



- For further clarity of what steps IANA will or may take in response to the party's affirmative consent IANA should include the following:
 - IANA will undertake all necessary verifications to ensure that the request meets IANA's requirements (these should be clearly described).
 - IANA will seek approval for the request from the ICANN Board if it meets its requirements.
 - IANA will seek approval from the USG-DOC

Consent Recommendations



- IANA needs to establish and publish a procedure by which it will request a party's consent, the information that will be provided by IANA in connection with such a request, and the manner in which it will receive and document the party's response to such a request. The process used by IANA should create a formal record reflecting who provided the consent or other response, the status of the person providing the consent or response, and should demonstrate that a party's consent to a re-delegation is clear, informed, unambiguous, affirmatively expressed, and freely given, as each of those terms are defined.

Consent Recommendations



- IANA should adopt the following criteria when evaluating the consent of an incumbent or proposed manager for a re-delegation request or from a proposed manager for a delegation request:
 - Consent must be specific, informed, unambiguous, affirmatively communicated, and freely given.

Consent Recommendations



- For further clarity consent, by definition, must be voluntary. In practice, however, IANA will rarely be in a position to determine whether or not a party's consent is voluntary. IANA itself must be perfectly neutral and should not attempt to compel, threaten, or persuade the party it is asking to approve a request. Consent may be deemed by IANA in its reasonable discretion to be freely given if it is specific, informed, unambiguous, affirmatively communicated and acquired by IANA without threat or coercion.

Consent Recommendations



- IANA reports on re-delegations should, in order to be effective in communicating relevant information, be consistent and should include the following information:
 - Identification of the incumbent manager
 - Identification of the proposed manager
 - Clear confirmation that IANA obtained consent (consistent with FOIWG guidelines).
 - Documentation which supports that the consent that was provided meets the FOIWG guidelines.

Consent Recommendations



- IANA should report to the GAC and ccNSO at each ICANN meeting on the plan and progress to date in implementing these recommended guidelines.

Consent Recommendations



- Should ICANN-IANA choose not to comply with the FOIWG recommended guidelines for any specific re-delegation, it should provide the rationale for doing so in a public report.

Consent Recommendations



- Any changes to the FOIWG recommended guidelines should be the subject of a formal public consultation as per ICANN standard procedures.

Status on SIP



- “Significantly Interested Parties” or SIP
- FOIWG completed its work on an initial set of recommendations in January 2012.
- The public consultation on these initial recommendations is open until 30 March 2012.

SIP Initial Recommendations



IANA should undertake the steps necessary to implement the following interpretations of policies:

SIP Initial Recommendations



- Definition of Significantly Interested Parties- Significantly Interested Parties include, but are not limited to: a) the government or territorial authority for the country or territory associated with the ccTLD and b) any other individuals, organizations, companies, associations, educational institutions or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation of the ccTLD(s) including the incumbent manager.

SIP Initial Recommendations



- This interpretation should not be taken as implying the elimination or replacement of any of the requirements relating to consent of the proposed and current managers (where applicable).
- To be considered a Significantly Interested Party, any party other than the government or territorial authority for the country or territory associated with the ccTLD must demonstrate that it has a direct, material, legitimate and demonstrable interest in the operation of the ccTLD(s).

SIP Initial Recommendations



- Applicants should be encouraged to provide documentation of the support of stakeholders for the delegation, re-delegation, or revocation request(s), but IANA should also provide an opportunity for Stakeholders to comment on the request via a public process:

SIP Initial Recommendations



- These requirements do not modify or eliminate the rights, if any, of a delegated manager existing prior to the adoption of RFC 1591.
- “Stakeholders” is used here to encompass Significantly Interested Parties, “interested parties” and “other parties” referenced in RFC 1591.

SIP Initial Recommendations



- Classification of input – IANA should develop, publish, and document its compliance with procedures for consideration of input from Stakeholders, taking into account the nature of the commenting party's interest in the delegation, transfer (uncontested re-delegation), revocation, and operation of the ccTLD and the relevance, substance and weight of such input. This classification should be based on these FOIWG interpretation of Significantly Interested Parties. This classification must also take into account that:

SIP Initial Recommendations



- In the case of a delegation, Significantly Interested Parties should agree that the designated manager is the appropriate party and that other Stakeholders have some voice in selecting the manager.
- In the case of a transfer, Stakeholder input should be considered and taken into account.

SIP Initial Recommendations cnt'd



7.1.3 IANA reports on delegations, transfers and revocations should reflect consistent application of these FOIWG recommended guidelines and should include the detailed results of IANA's evaluation of Stakeholder input regarding the requested action.

SIP Initial Recommendations



7.2 The IANA functions manager is requested to inform the GAC and ccNSO at each ICANN meeting on the plan and progress to date in implementing these FOIWG recommended guidelines.

SIP Initial Recommendations



7.3 Should the IANA functions manager choose not to comply with these FOIWG recommended guidelines in connection with any specific delegation, transfer, or revocation, it should provide the rationale for doing so in a public report.

SIP Initial Recommendations



7.4 Any changes to these FOIWG recommended guidelines should be the subject of a formal public consultation as per ICANN standard procedures.

FOIWG meeting in San José



- 13:00 to 15:30 Thursday March 15th – location to be confirmed.
- Main focus of this meeting is Revocation topic
- As always, observers are welcome

Links / Thanks



www.ccnso.icann.org/workinggroups/foiwg.htm

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