R3H Consultancy BV

Nederland

Re: country code Policy Development Proces

Ootmarsum, 27 June 2005,

Dear mr Ali Drissa Badiel,

First of all, let me welcome you and congratulate you as the appointed Representative of the Regional Organization in Africa.

As you know, based on the input received from CENTR the ccNSO Council has resolved that a ccNSO Policy Development Process (PDP) be initiated to consider changes to:
* ICANN Bylaws Article IX (Country-Code Names Supporting Organization);
* Annex B to the ICANN Bylaws (ccNSO Policy-Development Process); and
* Annex C to the ICANN Bylaws (the Scope of the ccNSO)
to encourage ccTLD managers to become members of the ccNSO.

Further, the ccNSO Council has resolved to request designated Regional Organizations to appoint a Representative. According to Annex B of the ICANN bylaws the representative is requested to solicit the Region's views on the issue(s) and to submit a Regional statement on the matters outlined in paragraphs A to L of Section 3.2 of the Issues Report .

In order to assist the Issue Manager to seek input from the Regions, and to assist the Issue manager in other ways the ccNSO Council has appointed from its members a subcommittee. For the African Region the member is mr Paulos Nyirenda.

Given the relatively short period to submit comments Paulos is willing to assist you in getting comments and input from the ccTLD managers in Africa for submission. You can contact him for that matter.

The matters on which input and comment(s) from ccTLD managers in your region are sought are:

 Article IX:

 A -- No binding policy for non-members of the ccNSO.

 Under the conditions enumerated in Article IX section 4.10 a ccNSO policies shall apply to members of the ccNSO by virtue of their membership. Is this language sufficiently clear?

It's necessary to specify clearly that the ccNSO policies should NOT INFLUENCE non-members of the ccNSO relationships with the ICANN and its related organizations.

Concerning the laws applicable to the ccTLDs: are there other laws, apart from national laws? If not, specify clearly 'national laws'.

B -- IANA Services

At article IX section 4.3 it is stated that ccTLD's mangers receipt of IANA services is independent of membership of that ccTLD manager in the ccNSO.

Is this language sufficiently clear?

Membership should not influence relationship with IANA: i.e. ccNSO members and non-members of the ccNSO should get the same level of service from IANA and other ICANN related organizations.

C -- Amendment of the by-law.

Under the current bylaws there is a provision (Article IX section 6) that deals with changes to Annex B and Annex C of the bylaws.

Should the ICANN Board only be able to change or amend Article IX, Annex B and Annex C after consultation and the consent of the members of the ccNSO?

Those changes and amendments should be able only through a PDP. If not, is there a better way for the ccNSO members to do so?

D -- Setting binding policies

Under the current bylaws (Article IX section 4,10) a member of the ccNSO shall be bound by an ICANN policy if, and to only to the extent that this policy (a) has been developed through the ccPDP and b) has been recommended as such by the ccNSO to the Board, and (c) is adopted by the Board as a policy.

It necessary to specify clearly 'ICANN policies relative to ccTLDs' to avoid confusion, because all the ICANN policies may not concern ccTLDs.

Should a policy only be binding on members if and only to the extent the policy is on an issue that is within Scope and has been developed through the ccPDP and is adopted by the Board?

It may be necessary to have an exception to that rule, since there may exist some ICANN policies that can interest ccNSO members although they are beyond scope.

E -- Can the ccNSO potentially set binding policies on its members on activities not defined in Article IX section 1 but authorised by its members? If so, is this an issue? If not, should the ccNSO be able to do so?

For me, some activities not defined in Article IX section 1 can be of a great interest for the ccNSO and therefore require a consensus among its members; for instance, this can be determined by a vote of at least 2/3 of the members of the ccNSO council.

F -- Changes to ccPDP and Scope

The use of the word "initially" in Article IX section 6 implies the scope for setting binding policies (and the ccPDP) will change over time. Should the ccNSO be able to change the Scope and the ccPDP over time? Should the ccNSO be able to change Article IX over time?

Article IX, the scope and all other bylaws are not static and therefore may change from time to time. In my mind, it is necessary to define a period of time to revise them. This can be for instance 1 year (or another period of time decided by the ccNSO council). Exceptionally, if a bylaw requires an urgent amendment, the ccNSO council can for instance make a decision by a vote of at least 2/3 of its members.

G -- Applicable law exemption

Where a policy developed through a ccPDP conflicts with the law applicable to the ccTLD manager, the policy does not apply to the manager. The law applicable shall always remain paramount.

Here, it is necessary for me to specify clearly what kind of law is applicable to the ccTLD (is it the national law of the ccTLD or another law?).

Should a process be inserted into Article IX section 4.10 that sets out how a decision should be made as to whether a ccNSO policy does conflict with the national law of a ccNSO member?

I find necessary to insert that process into Article IX section 4.10; in others, that process should clearly specify that the plaintiff member should give evidence that the ccNSO decision conflicts with his national law to avoid any trickery.

ccPDP (Annex B)

H -- Initiating a ccPDP

Under the current bylaws the ccNSO Council can initiate a ccPDP on matters which are within Scope and outside of Scope (Annex B section 2.b) Should it only be possible for the Council to initiate a ccPDP on matters that are within the Scope of the ccNSO?

This may be done if the ccNSO council demonstrates the need to initiate a ccPDP on matters which are beyond scope; the decision can for instance be made by a vote of 2/3 of the ccNSO council members.

I -- Membership quorum voting on PDP recommendations

According to the current bylaws (Annex B section 13) a vote of the members is valid without a quorum. Should a vote of ccNSO members only be valid if at least 50% of the members have lodged a vote irrespective of the round of voting?

For me, 50% seems to low since the same rate of voters can disagree with the decision to make. So, in my mind, to make good decisions, a vote of 2/3 of the members may be acceptable.

J -- Rejection of PDP recommendations by the ICANN Board

Under the current bylaws the Board can reject a recommendation of the ccNSO in case the Board determines by a vote of more than 66% of the Board that such policy is not in the best interest of the ICANN community or of ICANN (Annex B section 15).

Should the ICANN Board only be able to reject a Recommendation or Supplemental Recommendation as the case may be in exceptional circumstances?

The vote is certainly the suitable way to reject (or accept) a recommendation and the percentage of 66% (2/3 of the voters) is acceptable. However, it will be better for the board to make the proof that the recommendation it is rejecting is not in the best interest of the ICANN community.

K -- Ability of Board to set binding policies on issues not within scope.

Under the current bylaws an issue outside of scope can be considered in a PDP. In case the final recommendation to resolve the issue is a Supplemental Recommendation (Annex B section 15) and the issue is within scope according to General Counsel pursuant to Annex B section 2, the Board may not set a policy and the status quo remains.

If the Council will remain able to initiate a ccPDP outside of Scope, is the ICANN Board able to set its own policy, if the issue is not within scope pursuant to the opinion of the General Counsel and in case the Supplemental Recommendation is rejected by the Board? If so, should this remain the case? If not, should this be introduced?

If the ccNSO is allowed to initiate a ccPDP outside scope, the Board should not be able to reject its policy without making the proof that it has good reasons to do that. After this proof is given, this has to be decided by a vote of at least 66% (2/3) of the board members like in issue number K.

Scope of the ccNSO (Annex C)

L -- Should the Scope of the ccNSO be redefined?

Taking into account the changes proposed throughout the different articles amended above, it may be necessary for the ccNSO council to review the scope of the ccNSO since it will probably be affected by the changes proposed.

Specifically comment(s) and input is sought from your members on:

      a   Whether the matters raised are of concern to your individual member(s) and its stakeholders generally and for what reason;

      b   If so, which methods of resolving the matter(s) are proposed;

      c   Support for the alternative solutions throughout your membership; and

      d   The feasibility, effectiveness and proportionality of the solutions proposed.

At this stage and pursuant to the time line contained in the Issue Report it would be most helpful if you could make a submission before 5pm UTC on 16 July 2005, at which time the submission period will close.

You can submit your comments at the www.ccNSO.ICANN.org, email them to me personally (ccNSO@R3H.nl) or to Paulos, in which case either I or Paulos will submit them.

When submitting comments please use the relevant headings A-l and a-d as above and be as specific as possible.

Thank you for your cooperation and kind regards,

Bart Boswinkel
(interim) Issue Manager