LACTLD Board comments: "Draft Transition Proposal by the Cross Community Working Group on Naming Related Functions"

Dec. 22, 2014

LACTLD is the Regional ccTLD Organization of Latin America and the Caribbean. Its mission is to promote the development of its members[1] through information exchange and cooperation.

LACTLD would like to thank the CWG members for the incredible amount of work and effort that has been incorporated into the process.

LACTLD is basing its comments on the CWG Draft proposal based on the following sources:

1) ccTLD input into the IANA survey and in particular considering the specifications of the LAC ccTLD registry responses: http://ianaso.org;
2) The document "Draft of Principles and Criteria that Should Underpin Decisions on the Transition of NTIA Stewardship";
3) Direct comments from its membership[2] in list discussions and webinars organized by the organization to receive feedback on the proposal, especially a webinar organized on Dec. 19.
4) Feedback and exchanges with sister organizations AfTLD, APTLD and CENTR.

Comments:

1) Emphasis on the distinctive nature of ccTLD and gTLD registries.

While technically ccTLDs and gTLD have the same value in the root and rely in the same way on IANA services, it must be clearly underscored that whilst gTLD policy making is derived from ICANN processes, the policy authority of a ccTLD comes from its local (national) Internet community and legal environment. In addition, many ccTLDs are not even part of the ICANN structure nor are they affiliated to the ccNSO. For a large proportion of ccTLDs, the only point of contact with ICANN is the usage of the IANA services. Many ccTLD formally pre-exist the IANA as an organization (created in 1988), not to mention that practically all ccTLDs pre-exist ICANN as an organization (created in 1998). In addition, ccTLDs are also subject to a wide variety of regulation (domestic and international) which goes beyond ICANN. The Tunis Agenda explicitly recognizes that countries

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[1] For further information regarding LACTLD's institutional mission, history, members and governance structure: http://www.lactld.org/en/about-us/
[2] Received in LACTLD email lists and in the webinars organized by the organization, in particular on the latest conducted on 19 December.

should not be involved in the decisions affecting their country code[3]. ccTLDs are also subject to different kinds of national regulation, be it of a taxing nature or a critical infrastructure agreement, or a contract with national authorities[4] to mention but a few.

This characterization of the nature of ccTLDs serves to highlight the very distinct way in which each of the registries is shaped by domestic and international forces, as well as distinct accountability mechanisms.

2) ccTLD delegation and transfer issues

ccTLDs and gTLDs policy authorities' need to be clearly differentiated for both type of registries since, among other issues, this has a direct impact on delegation and re-delegation procedures. While the current draft transition proposal of the CWG on naming related functions has addressed these differences adequately in Sections A and B1 and B2, the proposal detailed in B3 does not reflect the different nature of ccTLD and gTLD registries.

A ccTLD delegation/re-delegation (and revocation, to use the terminology of the FOIWG final report, Oct. 2014[5]), is derived from its local (national) Internet community, as per RFC 1591[6] and is considered by the GAC principles and guidelines (2005)[7] as a national issue.

None of the new bodies in the proposal Contract Co., MRT, CSC or IAP would be in a position to decide on a matter of ccTLD delegation/re-delegation, but should only abide to check that the due process has been followed. Independent legal expertise for the IANA to work on these issues if necessary should be incorporated as stated in the current CWG proposal.

In line with strengthening the policy derivations from RFC 1591, we support auDA's proposal in its point 5 to consolidate the ccTLD Review Body and strengthen the recommendations from the final report of the FOIWG.

Lastly we would like to reaffirm that, RFC 1591 is the single most important source of reference and guidelines for ccTLD delegation and transfer.

3) Emphasis on the commitments expressed on lightweight structures and non-duplication of ICANN's structures

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[3] Par. 63. Tunis Agenda: *Countries should not be involved in decisions regarding another country's country-code Top-Level Domain (ccTLD). Their legitimate interests, as expressed and defined by each country, in diverse ways, regarding decisions affecting their ccTLDs, need to be respected, upheld and addressed via a flexible and improved framework and mechanisms.* http://www.itu.int/wsis/docs2/tunis/off/6rev1.html

[4] For further information regarding the different sources of national legislation to which a ccTLD may be subject, a summary of the report produced by the four Regional Organizations for the ccNSO meeting in Los Angeles is available at: http://ccnso.icann.org/meetings/los-angeles51/presentations.htm

[5] http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf

[6] RFC 1591 available at: https://tools.ietf.org/html/rfc1591

[7] Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005). Available at: https://archive.icann.org/en/committees/gac/gac-cctld-principles.htm

Although this is expressed at the beginning of the proposal in B.3, in light of discussions in the CWG list and the progress made on RFP3, there are increasing concerns due to the complexity of the arrangements and political nature of the representation of the corresponding SO/ACs. While we support the NTIA transition over the stewardship of the IANA functions as an opportunity to promote transparency, accountability and the participation of a wider range of stakeholders in the process, we believe that this participation should be encouraged into the policy making process rather than into these bodies that should be highly competent, knowledgeable and that should abide to pre-defined policies and guidelines approved by the community. We also believe that increased participation into the process should not be incorporated at the cost of efficiency and reliability of the IANA services.

4) CSC and MRT objectives and composition

The participation of representatives in the CSC and the MRT should address the specific concerns related with the security, stability and resiliency of the IANA functions and should strictly abide to these principles and clerical process that attach objectivity and neutrality to operational concerns, of relevance to the international Internet community in general. The CSC should be a technically competent, neutral body concerned with operational performance.

Recent discussions on the lists and some of the strawman proposals on the MRT to have an overarching, duplicative mechanism of representation of already existing SOs / ACs in this body are not considered to be *per se* conducive to an accountable and transparent oversight body of the IANA functions. On the contrary, we believe that an increasingly politicized and large MRT might backlash the main objectives it intends to accomplish. If it becomes so complex that only deep insiders who are able to politically maneuver – with the necessary linguistic and cultural skills, then the MRT is not accomplishing its mission and it will not be a seen as a reliable, trustworthy, comprehensible nor legitimate structure to the global community. The MRT functions and its structure should be kept in its minimal form.

5) The Independent Appeals Panel

The existence of such a body is of importance to ccTLDs in general as expressed in the ccTLD IANA survey results. Such a mechanism would provide safeguards in case of failure of service delivery, or position abuse. The IAP should nevertheless be able to address the concerns and needs of an international community, including cultural and linguistic differences in its pool of panelists. The necessary safeguards should be incorporated so that any registry operator / party could be able to access these services, regardless of their financial capability to face the usual costs of international arbitration fees.

6) IANA separability

The principle of separability is considered an essential safeguard for accountability purposes in the discussion within the CWG. Functional separability would be desirable, but most importantly the availability of the mechanism of triggering a retender of the IANA functions, as a safeguard on IANA performance.

7) Fees

The mention of fees in the description of the MRT's functions should be excluded from the current proposal in line with CENTR's comments in their document (CENTR, Dec. 22, 2014: 4). We believe that the inclusion of a discussion around the issue of fees is out of scope, and is an intrinsic aspect of the policy making of the ccTLD community with its specific features underscored in point 1 of this document and in Section A of the CWG draft document.

8) Overall accountability

We firmly adhere to the expression of the CWG draft in p.61: that the transition must not take place until the requisite accountability mechanisms have been identified by the CCWG Accountability; that accountability mechanisms and other improvements that the community determines are necessary pre-transition have been put in place; and that agreements and other guarantees are in place to ensure timely implementation of mechanisms that the CCWG Accountability decides may be implemented post transition.