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Comments on Supporting the DNS Industry in Underserved Regions

Thank you for this opportunity, to provide input regarding ICANN's efforts to promote the domain name industry, in regions that have typically been underserved. I am commenting on behalf of the Centre for Internet and Society (CIS), Bangalore, India.

Domain names and the DNS are used in virtually every aspect of the Internet, and without the DNS, the Internet as we know it, would not exist. The DNS root zone has economic value and ICANN's contract with Verisign delineates the selling of domain names via only ICANN accredited registrars. By the indirect virtue of its control of the root, ICANN has the power and capacity to influence the decisions of entities involved in the management and operations of the DNS, including registrars.

Too far, too many?

We acknowledge some of the efforts for improvements, in particular with reference to barriers to participation in DNS-related business in regions such as Africa and the Middle East, including the creation of a fellowship program, and increased availability of translated materials. However, despite these efforts, the gaps in the distribution of the DNS registrars and registries across the world has become an issue of heightened concern.

This is particularly true, in light of the distribution of registrars and given that, of the 1124 ICANN-accredited registrars, North America has a total of 765 registrars. US and Canada together, have more than double the number of registrars than the rest of the world taken collectively. To put things further into perspective, of the total number of registrars 725 are from the United States alone, and 7 from the 54 countries of Africa.

A barrier to ICANN's capacity building initiatives has been the lack of trust, given the general view that, ICANN focuses on policies that favour entrenched incumbents from richer countries. Without adequate representation from poorer countries, and adequate representation from the rest of the world's Internet population, there is no hope of changing these policies or establishing trust. The entire region of Latin America and the Caribbean, comprising of a population of 542.4 million internet users¹ in 2012, has only 22 registrars spread across a total of 10 countries. In Europe, covering a population of 518.5 million internet users², are 158 registrars and 94 of those are spread across Germany, UK, France, Spain and Netherlands. The figures paint the most dismal picture with respect to South Asia,

¹ Internet Users and Population stats 2012. See <http://www.internetworldstats.com/stats2.htm>

² Internet Users and Population stats 2012. See <http://www.internetworldstats.com/stats4.htm>

in particular India, where just 16 registrars cater to the population of internet users that is expected to reach 243 million by June 2014³.

While we welcome ICANN's research and outreach initiatives with regard to the DNS ecosystem in underserved regions, without the crucial first step of clarifying the metrics that constitute an underserved region, these efforts might not bear their intended impact. ICANN cannot hope to identify strategies towards bridging the gaps that exist in the DNS ecosystem, without going beyond the current ICANN community, which, while nominally being 'multistakeholder' and open to all, grossly under-represents those parts of the world that aren't North America and Western Europe.

The lack of registries in the developing world is another significant issue that needs to be highlighted and addressed. The top 5 gTLD registries are in the USA and it is important that users and the community feels that the fees being collected are equivalent compensation for the services they provide. As registries operate in captive markets that is allocated by ICANN, we invite ICANN to improve its financial accountability, by enabling its stakeholders to assess the finances collected on these registrations.

Multistakeholderism—community and consensus

As an organization that holds itself a champion of the bottom-up policy development process, and, as a private corporation fulfilling a public interest function, ICANN, is in a unique position to establish new norms of managing common resources. In theory and under ICANN's extensive governance rules, the board is a legislative body that is only supposed to approve the consensus decisions of the community and the staff wield executive control. However in reality, both board and the staff have been criticised for decisions that are not backed by the community.

The formal negotiations between ICANN and Registrar Stakeholder Group Negotiating Team (Registrar NT) over the new Registrar Accreditation Agreement (RAA), is an example of processes that have a multistakeholder approach but fail on values of deliberation and pluralistic decision making.⁴ ICANN staff insisted on including a "proposed Revocation (or "blow up") Clause that would have given them the ability to unilaterally terminate all registrar accreditations" and another proposal seeking to provide ICANN Board ability to unilaterally amend the RAA (identical to proposal inserted in the gTLD registry agreement - a clause met with strong opposition not only from the Registry Stakeholder Group but from the broader ICANN community).

Both proposals undermine the multistakeholder approach of the ICANN governance framework, as they seek more authority for the Board, rather than the community or protections for registrars and more importantly, registrants. The proposed amendments to the RAA were not issues raised by Law Enforcement, GAC or the GNSO but by the ICANN

³ Times of India IAMA Report <http://timesofindia.indiatimes.com/tech/tech-news/India-to-have-243-million-internet-users-by-June-2014-IAMA/articleshow/29563698.cms>

⁴ Mar/07/2013 - Registrar Stakeholder Group Negotiating Team (Registrar NT) Statement Regarding ICANN RAA Negotiations. Please see: <http://www.icannregistrars.org/calendar/announcements.php>

staff and received considerable pushback from the Registrar Stakeholder Group Negotiating Team (Registrar NT). The bottom-up policy making process at ICANN has also been questioned with reference to the ruling on vertical integration between registries and registrars, where the community could not even approach consensus.⁵ Concerns have also been raised about the extent of the power granted to special advisory bodies handpicked by the ICANN president, the inadequacy of existing accountability mechanisms for providing a meaningful and external check on Board decisions and the lack of representation of underserved regions on these special bodies. ICANN must evolve its accountability mechanisms, to go beyond the opportunity to provide comments on proposed policy, and extend to a role for stakeholders in decision making, which is presently a privilege reserved for staff rather than bottom-up consensus.

ICANN was created as a consensus based organisation that would enable the Internet, its stakeholders and beneficiaries to move forward in the most streamlined, cohesive manner.⁶ Through its management of the DNS, ICANN is undertaking public governance duties, and it is crucial that it upholds the democratic values entrenched in the multistakeholder framework. Bottom up policy making extends beyond passive participation and has an impact on the direction of the policy. Presently, while anyone can comment on policy issues, only a few have a say in which comments are integrated towards outcomes and action. We would like to stress not just improving and introducing checks and balances within the ICANN ecosystem, but also, integrating accountability and transparency practices at all levels of decision making.

Bridging the gap

We welcome the Africa Strategy working group and the public community process that was initiated by ICANN towards building domain name business industry in Africa, and, we are sure there will be lessons that will be applicable to many other underserved regions. In the context of this report CIS, wants to examine the existing criteria of the accreditation process. As ICANN's role evolves and its revenues grow across the DNS and the larger Internet landscape, it is important in our view, that ICANN review and evolve its processes for accreditation and see if they are as relevant today, as they were when launched.

The relationship between ICANN and every accredited registrar is governed by the individual RAA, which set out the obligations of both parties, and, we recommend simplifying and improving them. The RAA language is complex, technical and not relevant to all regions and presently, there are no online forms for the accreditation process. While ICANN's language will be English, the present framing has an American bias—we recommend—creating an online application process and simplifying the language keeping it contextual to the region. It would also be helpful, if ICANN invested in introducing some amount of standardization

⁵ Kevin Murphy, Who runs the internet? An ICANN 49 primer. See: <http://domainincite.com/16177-who-runs-the-internet-an-icann-49-primer>

⁶ Stephen Ryan, Governing Cyberspace: ICANN, a Controversial Internet Standards Body <http://www.fed-soc.org/publications/detail/governing-cyberspace-icann-a-controversial-internet-standards-body>

across forms, this would reduce the barrier of time and effort it takes to go through complex legal documents and contribute to the growth of DNS business.

The existing accreditation process for registrars requires applicants to procure US\$70,000 or more for the ICANN accreditation to become effective. The applicants are also required to obtain and maintain for the length of accreditation process, a commercial general liability insurance with a policy limit of US\$500,000 or more. The working capital and the insurance are quite high and create a barrier to entrance of underserved regions in the DNS ecosystem.

With lack of appropriate mechanisms registrars resort to using US companies for insurance, creating more foreign currency pressures on themselves. ICANN should, and must, increase efforts towards helping registrars find suitable insurance providers and scaling down the working capital. Solutions may lie in exploring variable fee structures adjusted against profits, and derived after considering factors such as cost of managing domain names and sub-domain names, expansion needs, ICANN obligations and services, financial capacities of LDCs and financial help pledged to disadvantaged groups or countries.

Presently, the start-up capital required is too high for developing countries, and this is reflected in the number of registries in these areas. Any efforts to improve the DNS ecosystem in underserved regions, must tackle this by scaling down the capital in proportion to the requirements of the region.

Another potential issue that ICANN should consider is users get sub-domain names from local registrars located in their own country, they are usually taxed on the transaction, however, online registration through US registrars spares users from paying taxes in their country.⁷ This could create a reverse incentive for registering domain sub-names online from US registrars. ICANN should also push forward on efforts to ensure that registrars are sustainable by providing incentives for registering in underserved regions and help towards maintain critical mass for the registrants. The Business Constituency (BC)—the voice of commercial Internet users within ICANN, could play a role in this and ICANN should endeavour to either, expand the BC function or create a separate constituency for the representation of underserved regions.

⁷ Open Root-Financing LDCs in the WSIS process. See: <http://www.open-root.eu/about-open-root/news/financing-ldcs-in-the-wsis-process>