

Report of Public Comments

Title:	ccNSO FOI WG's Interim Report on "Revocation"		
Publication Date:			
Prepared By:	Bart Boswinkel		
Comment Period:		Important Information Links	
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Section I: General Overview and Next Steps			
<p>The ccNSO Framework of Interpretation Working Group (FOIWG) Interim report on "Revocation" includes its initial interpretations of current policy and guidelines related to "Revocation", which is defined as re-delegations undertaken without the consent of the ccTLD manager. "Revocation" refers to the process by which the IANA Operator rescinds responsibility for management of a ccTLD from a manager.</p> <p>The WG will closely review all submitted comments to determine, at its reasonable discretion, whether the Interim report needs to be modified. According to its charter the WG is not obligated to include every comments made during the comment period, nor is it obligated to include every comments submitted by any one individual or organization in its deliberations.</p> <p>The Working Group expects to formally publish its Final Report prior to the ICANN meeting in London (June 2014).</p>			
Section II: Contributors			
<i>Two substantial comments were received</i>			
<u>Organizations and Groups:</u>			
Name	Submitted by	Initials	
At-Large Advisory Committee	At-Large support staff	ALAC	
<u>Individuals:</u>			
Name	Affiliation (if provided)	Initials	
Andrew Eggleton	University of New Hampshire School of Law	AE	
Section III: Summary of Comments			

General disclaimer: In this section a broad and comprehensive summary of the comments is provided. It is not intended to include every specific aspect or stated position by each contributor. If the reader is interested in specific aspects of any of the summarized comments or the full context, she or he is advised to read the specific contributions, which can be found through the link referenced above (View comments submitted)

General comments

ALAC (1): The point is raised that it is unclear from the Interim Report whether GAC principles and accompanying guidelines are factored in or not in the work of the FOI WG (inconclusive language in the Interim report).

With regard to this point ALAC advises as a good practice that the IANA Operator consult with the local government before taking action to revoke any ccTLD operator

ALAC (2): to strengthen the interpretation work suggestions are made to:

- Specify further the appeals mechanism in case of revocation as suggested in section 4.3.7.3 of the Interim Report
- Request the IAAN to maintain accurate and informative reports on cases of re-delegations and to record receipts of consent of ccTLD managers in cases consented re-delegations to distinguish them from revocations

Comments relating to questions asked:

Is the approach used by the working group satisfactory?

ALAC: affirmative

AE: Efficiency of accountability is really the working group's approach to help move an issue forward when difficulties arise with a ccTLD manager, in particular to resolve issues around revocation and holding managers more accountable for misuse.

Do the issues identified by the working group for this topic capture the major problems associated with the topic? If not what is missing?

ALAC: Approach is satisfactory. Concern raised is whether or not the IANA Operator is empowered to act in cases where there is a request for revocation from a local government, which is backed by local law, but where there are no "operational problems" and no "substantial misbehavior" on the part of the incumbent ccTLD. Clarification requested.

AE: One issue that may be addressed elsewhere but didn't seem to be in the final is – what actions are available towards a manager who appeals a finding of substantial misuse in bad faith? If a manager could just keep appealing actions against his interest, which would really just counteract all the modes or efficient accountability created by the FOIWG.

Is the proposed interpretation of the relevant sections of RFC 1591 effective and supported?

ALAC: Affirmative

AE: Notes that the interpretation of RFC 1591, section 3.2 the FOIWG seems to have taken, although relatively broad, is still incredibly attainable, and is also definitely actionable. Further, the interpretation of this section in RFC 1591 provides for more constructive guidelines on what a manager must do. Most importantly, is the interpretation of the “step in” authority of the IANA operator and the accessibility of revocation. However, the authority given to IANA operators, through RFC 1591, seems to be broader than interpreted by the WG.

Regarding the limited authority to “step in” as foreseen by the WG. AE notes that:

- The WG interpretation could be skewed towards a narrow interpretation that limits the IANA operators authority, thus setting back the accountability of the ccTLD manager;
- The threshold for “stepping in” is set very high. However an alternative approach is also possible: “low-threshold, but define how the IANA Operator advises the manager, and how the Operator is expected to be giving the manager notice etc.
- The actual ability of the IANA operator to evaluate the manager has been limited by the interpretation of the WG. The IANA operator will almost never have a chance to actually evaluate, and, if that’s the case, when there is a chance to evaluate, what is there to go off to evaluate? Where is the base line?

Are the proposed recommendations effective in addressing the concerns raised in the final report of the DRDWG regarding this topic?

ALAC: Affirmative

AE: The FOIWG seems to want a lot of the issues with the managers settled, or at least first dealt with, locally. However, according to AE there is hardly any communication between the IANA operator and the parties locally, including the ccTLD manager, at an early stage when issues arise. If adequate communication was set up initially, the ability to actually evaluate the manager and issues would be spotted as they came apparent. As a result fixing and resolving issues will be more efficient.

If the IANA operator is to be as efficient as possible, especially with holding a manager accountable for misuse (see comment AE first questions), AE proposes an alternative approach and interpretation of “stepping in”. Assume there are different categories of wrongdoings (misbehavior) that can be done by a manager with associated thresholds. Depending on the threshold reached, different modes of “stepping in” would then be triggered ranging from just evaluating the manager throughout the time of management, to keeping tabs on the manager and ultimately to trigger the “step in” or revocation as proposed by the WG.

Section IV: Analysis of Comments

This section is intended to provide an analysis and evaluation of the comments received.

The FOIWG has reviewed and analyzed the comments, and notes the general agreement with the draft recommendations.

With regard to the specific points and questions raised, the WG notes the following with regard to the

general points raised:

ALAC: Are the GAC principles and accompanying guidelines factored in or not in the work of the FOI WG? The WG notes this is valid point, and of ongoing discussions.

ALAC: specification of appeals mechanism. The WG at an early stage of its work decided this is an implementation/operational detail, and therefore out of scope of its mandate.

ALAC: Request the IANA to maintain accurate and informative reports. The members of the WG note this point is related to the last work item of the WG and will be partly addressed then. The WG also notes that it is partly an implementation/operational matter and therefore out of scope of its mandate.

Specific comments relating to questions asked:

Is the approach used by the working group satisfactory?

The WG notes comments were affirmative. As to the qualification of the WGs approach by AE: this has been noted.

Do the issues identified by the working group for this topic capture the major problems associated with the topic? If not what is missing?

As to the point raised by ALAC whether the IANA is empowered to act or not in cases where there is a request for revocation from a local government, which is backed by local law, the WG notes there is no statement in RFC 1591 regarding this point, therefore it is considered out of scope of the mandate of the WG. The WG also notes and refers to the statement the ccNSO has made with regard to this topic in its submission on the NTIA Further Notice of Inquiry on the IANA Functions, page 5 (see: <http://ccnso.icann.org/node/26039>).

As to the point raised under this heading by AE, the WG refers to the analysis above on comment of ALAC regarding the specification of the appeal mechanism

Is the proposed interpretation of the relevant sections of RFC 1591 effective and supported?

As to the points raised by AE under this question, the WG notes that it refers to the establishment of formal criteria. In the view of the WG this is an implementation/operational matter, which is out of scope of the mandate of the FOI WG.

Are the proposed recommendations effective in addressing the concerns raised in the final report of the DRDWG regarding this topic?

As to the first two point raised by AE under this question, the WG notes that governments are sovereign, and hence subsidiarity applies, and further that the ccTLD manager has an obligation to work with the local community.

With regard to the third and last point raised, the WG notes this is a mater of implementation/operation and hence out of scope of the mandate of the FOI WG.

