

Draft Message to the Board relating to resolution 07.89

During its meeting in Los Angeles the Board passed a resolution relating to a fast-track for IDN ccTLDs. While the GSNO, in general, agrees that there is a need for a fast-track for allocation of a limited number of IDN TLD representing territories designated in the ISO 3166-1 list with a special need, the GNSO council has several concerns.

This note contains a question for the Board in terms of the interpretation of resolution 07.89 and contains an explanation of GNSO council concerns regarding the subject of the resolution; specifically the issue of the assignment of responsibility in developing a methodology for designating names from general TLD space as IDN ccTLDs.

Question of Interpretation

Resolution 07.89 on the creation of a WG for developing a methodology for fast track allocation of IDN ccTLDs reads as follows:

Resolved (07.89), the Board respectfully invites the Chairs of the ccNSO, GNSO, GAC, ALAC, and SSAC to set-up the IDNC Working Group and appoint members to this group as soon as possible and, when established, requests the IDNC Working Group to commence its work, in accordance with the Charter adopted by the ccNSO Council . The ICANN Board directs staff to provide the necessary support to the IDNC Working Group, and requests that the IDN Working Group provide a status report on its progress by the conclusion of the ICANN meeting in New Delhi in February 2008.

As originally interpreted by the GNSO council, this resolution called for the chairs of the Supporting Organizations and Advisory Committees to work together to set-up a working group with balanced participation to develop a methodology for the fast-track creation of a limited number of IDN TLDs representing territories designated in the ISO 3166-1 list. As the GNSO council has indicated in prior conversations, the council, in principle, supported the idea of creating a limited number of such non controversial IDN TLDs. The GNSO council continues to support the goal of the fast-track in principle, especially if it is done in such a way that facilitates the balanced participation from the entire ICANN names community.

While the Board's resolution seems to support such a process, the specifics of the charter worked out by the ccNSO seem to run counter to such a presupposition. Specifically, <http://www.ccnso.icann.org/workinggroups/idnc-charter.htm> contains the following:

C. Membership of the IDN Working Group

The IDN Committee will have the following members:

Members of the GAC including its chair;

Members of the ccNSO including its chair;

Two (2) members of the GNSO;

Two (2) members ALAC;

One (1) representative of technical community;

One (1) member of the SSAC: and

Two (2) ICANN staff members.

Allowing for such disproportionate membership seems to contradict any assumption of parity among the supporting organizations and advisory groups in this effort. The charter also leaves very little room for the chairs to work together to establish a group as everything is being determined by the ccNSO and GAC chairs in respect to a charter the details of which appear to have been specifically approved by the Board.

The GNSO question for the Board involves this contradiction. Is this working group

supposed to be a community-wide working group that allows for balanced participation by all involved stakeholders, or is it supposed to be a joint ccNSO and GAC working group that allows for some lesser degree of participation by others in the community? If it is the former, how should the conditions be remedied? If the latter, how will the scope of the working group be better defined to mitigate against actions taken or proposed by the working group that should have involved a broader process with more balanced participation from the ICANN names community as a whole. This question is of critical importance to the GNSO council as will be discussed below.¹

Statement of concern

While the GNSO is still working on finalizing a position statement regarding the allocation of IDN ccTLDs from general IDN TLD space (not categorized as a gTLD or ccTLD) based on Board resolution 07.56, the council felt it was important to submit these concerns to the Board without further delay. [This statement has consensus approval in the GNSO council] and covers the concerns the council has with the currently approved charter for the IDNC WG.

Basis for allocating TLDs to the GTLD and ccTLD name spaces

The definition of a ccTLD is tightly coupled to the list of two character codes as defined by ISO 3166-1. From the time of the schism of the DNSO into the GNSO and the ccNSO, the remit of the ccNSO has been limited to the ccTLDs defined by this list while the GNSO's remit was defined as the rest of name space under ICANN's stewardship.

The ccNSO's remit was recognized in the GNSO by the creation of a reserved names category that reserved all 2 character names at either the first or second level. In the Reserved Names working group of the GNSO during the New gTLD PDP process, it was recognized, based on advice from the GNSO's open IDN working group and from other comments, that reserving 2 character IDN names for a similar ccTLD based reservation would not be an appropriate solution for IDN ccTLDs. The GNSO recognized that it could not define a reserved name category for IDN ccTLD and recommended an objection process in which both the ccNSO and GAC, as well as national authorities, had standing² to object to the allocation of any name they felt was inappropriate for gTLD allocation. These objections were then to be adjudicated by an external panel of objective experts. This objections process was recommended in lieu of defining a specific list and until such time as ICANN resolved the issue of an appropriate list for IDN ccTLDs.

This decision by the GNSO was a recognition of the fact that defining a set of names available for IDN ccTLD allocation was not a task that the GNSO could take on by itself. It was, however, not an abdication of responsibility for participation in decisions regarding the distribution of the general IDN TLD name space (or the categorization and apportionment of such namespace to become the remit of the ccNSO), and should not be taken as such an abdication.

Currently there is a concern that the perceptions of some in the community may have changed regarding the distribution of responsibility for TLD definition or categorization. Among most in the GNSO, the assumption is still that all TLDs, except for .mil, .edu, and the ISO3166-1 defined ccTLDs remain within the remit of the GNSO. While it is understandable that there be an apportionment of part of the IDN TLD name space to the ccNSO for designation as IDN ccTLDs, it is assumed that such an apportionment is an ICANN wide decision that needs to be made in an open process that includes balanced participation from all supporting organizations in making the recommendations for how the IDN name space may be partitioned. The conclusions of such a process should also be permit, and may also require, a redefinition of the ccNSO and GNSO remits as they are currently defined.

1 The ccNSO and GAC chairs have been generous in allowing the GNSO Council chair as well as two alternate representatives to 'lurk' on the the IDNC WG email list. This, however, neither answers the council questions nor its concerns, though it is greatly appreciated.

2 It should noted that the recommends also included the recommendation that the staff make provision for informing the GAC of any name it felt might fall into this category.

As mentioned above, the GNSO recognized in the development of the new gTLD policies that there could be names that may be inappropriate to be defined as a gTLD and hence recommended the objection process. To go any further in dividing the name space requires an ICANN community wide decision on how the name space should be categorized. Just as it would have been inappropriate for the GNSO to define which names would be apportioned into the remit of the ccNSO, it would be equally inappropriate for the ccNSO alone, or even for the ccNSO and GAC together, to decide on the apportionment of such names away from the general names space. This is not a decision for the GAC or for either a GNSO PDP or a ccNSO PDP alone, but is a decision for a wider, yet to be defined, community process.

It is assumed that the process mentioned above will be lengthy and involved given the many interests that need to be balanced. This is the reason why a fast-track for a method of apportioning a limited number of IDN TLDs representing the territories designated by the ISO 3166-1 list to the ccNSO makes good sense. However, until such time as the apportionment of the IDN TLD name space for the ccNSO's remit has been decided, the methods by which this will be done cannot be fairly decided by a ccNSO and GAC led WG that does not recognize the GNSO as equal participants. Until such time as the ICANN community at large has decided on the proper apportionment of the IDN TLD name space for the ccNSO's remit, any fast-track method must be developed with balanced participation from the GNSO, along with the ccNSO and GAC.

Questions and concerns over the scope of the IDNC

The stated intent of the IDNC charter is to define a method whereby a limited number of non controversial IDN ccTLDs could be identified and delegated to cover special needs of several international applications. There are, however several questions that remain open in the mandate of this group. Some of these which are of concern to the GNSO include:

- How is non controversial defined? Which population of stakeholders is to be included in the poll of those who consider the allocation non-controversial? Does the controversial nature of the allocation include only the names or names that are allocated, or does it include the nature of the TLD and the contractual conditions, or lack thereof, involved in those allocations?
- It is unclear who the intended registries of the to be defined IDN ccTLDs are. Are these the traditional ccTLD registries as defined by RFC 1591? Are these the IDNs associated with language and cultural communities as envisioned by the IDN WG? Or are these new IDN ccTLDs critical national resources that come under some form of national administration?
- While the scope on the IDNC WG is spoken of as limited, there is a concern that the charter of the group does not limit the number of IDN ccTLDs the method is supposed to support. That is, while there is a presumption on the part of some of 1 IDN ccTLD in 1 script per ISOC 3166-1 code, there is also a widespread sensitivity to the political impossibility of such a solution for some countries. Given the potential wide scope of such issues that may need to be resolved by the IDNC WG, one cannot view the scope of the IDNC as narrow, unless the participants are committed to keeping it narrow.
- While the charter states clearly that it intends to create a method that imposes no presumptions or precedents on any future ccNSO PDP on ccTLDs, the very fact that the issue is being defined as primarily a ccNSO and GAC responsibility, constitutes a very significant presumption and precondition. There is concern in the GNSO council about any presumption that a part of general name space can be apportioned as ccTLD space without full participation by the GNSO. This is not to be confused with the allocation of IDN ccTLDs once the name space is defined, and policies relating to allocated IDN ccTLDs, which of course remain solely within the remit of the ccNSO.
- The charter is meant to satisfy a special need, yet that special need is not explicitly defined and constitutes a very large question that the participants in the group will need to evaluate.

- While the charter is intended to insure that no ccTLD delegation will be for a TLD that could be considered "gTLDs", it is unclear how this can be done.

The need for adequate GNSO representation on the IDNC WG

Given the explanations above concerning the open status of questions concerning the redefinition of name space and the many difficult questions that need to be resolved by the IDNC in a way that serves the interests of all ICANN stakeholders, it is essential that the GNSO have full and equal representation and participation in the IDNC WG.

Perhaps, if all of the issues were well understood and the GNSO had developed a single policy position on IDN ccTLDs in all of its details, it might be possible to send a few seasoned representatives that could represent the GNSO. However, the issues as currently presented are still far too complex and varied to have a unified GNSO position on all of the detailed issues. So while the council can agree on the importance of the subject of IDN TLD name distribution and can agree on the need for full GNSO participation, the council cannot hope to come to a supporting organization wide position on all the issues in the time necessary for the IDNC. It is thus important that the various stakeholder groups that exist within the GNSO be able to participate and be counted in the creation of the IDNC WG consensus.

Finally, at a time when the GNSO is being restructured to be more open and to operate on a consensus basis, it is hard to understand how such a watershed issue as the first apportionment of an IDN TLD into ccNSO's remit can be defined by a WG with a skewed and unbalanced participation matrix.

GNSO request

The GNSO council respectfully requests that the Board insure that any decisions made by the IDNC WG for fast-track allocation of IDN ccTLDs not set precedents or preconditions affecting the future apportionment of general name space to IDN ccTLDs. As discussed above, this needs to be done by the ICANN names community in a balanced and representative way.

The GNSO council also respectfully requests that the Board review resolution 07.89 and consider the need for a balanced representation of all stakeholders in the decision concerning methods for allocating an initial set of fast-track IDN ccTLDs.

We urgently request that the board clarify and if necessary reconsider its decision with regard to the IDNC charter at its earliest possible convenience. The GNSO council also respectfully requests that a reply to this request be returned to the council at the Board's earliest convenience.

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