**Public Comment on ccNSO FoI WG’s Interim Report on “Revocation”**

This comment’s approach will be to provide feedback to questions directly posed to the community using information provided in documents by the FOIWG to assist with the issue of ccTLD revocation. Each feedback question will be answered individually, with the focus on the last question, regarding recommendations.

*Is the approach used by the working group satisfactory?*

The working group’s underlying sentiment in its approach seems to be summed up in the opening sentences of paragraph 3, “The FOIWG’s Analysis of IANA Reports on re-delegations,” of the FOIWG Revocation Public Consultation Final. This part of the report shows that a reason the working group is essential, and that there is a need to establish a framework of interpretation is that IANA’s reporting lacks documentation of critical information regarding the consent of the incumbent manager. From here, the approach by the working group seems to be pinpointing and documenting issues to help move an issue forward when difficulties arise with a ccTLD manager. Efficiency of accountability, then, is really the working group’s approach, at least it seems so to this commenter. As the working group was not created to change policy, but rather to interpret, those interpretations seem to be, and should be, aimed at more efficient means of resolving issues of revocation, and holding managers more accountable for misuse. As the main issue regarding ccTLDs and revocation and its alternatives, the approach of efficient accountability seems the correct route for the working group to be taking.

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

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, mainly to throw a wrench in the process and delay the possible revocation? It seems as 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. Although, considering all the factors of a manager’s actions could include appealing these actions, including when it looks in bad faith, thereby adding to a claim of substantial misuse. This issue seems like it could just be taken care of with the FOIWG’s interpretation of RFC 1591 explained in 4.3.7.1 of the FOIWG Revocation Public Consultation Final, but it seems like something that could throw in a kink earlier in the game and would just slow down the conclusion of the issue.

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

The first important interpretation the working group made was concerning the requirements of RFC 1591(§3 ¶1). A more strict interpretation seems to be the angle the working group has taken, which will serve the ultimate interest best. Those requirements of a manager could be read to be incredibly broad, and limit a lot of accountability, but a more narrow interpretation, like the one the FOIWG seems to have taken, is relatively broad, is still incredibly attainable, but is also definitely actionable.

Further, the interpretation of RFC 1591 (§3 ¶2) provides for more constructive guidelines on what a manager must do. The interpretation seems to again narrowly interpret, and also mentions a requirement to work with the IANA operator, which will really assist in creating accountability in the future.

Finally, and most importantly, is the interpretation of the “step in” authority of the IANA operator and the accessibility of revocation. The second part of the authority given to IANA operators listed in RFC 1591 “or (b) involves the manager’s failure, after notice and a reasonable opportunity to cure, to perform the objective requirements” seems broader than the working group is interpreting it. Coming to an interpretation where the focus is on revocation as the last resort, the interpretation might be getting skewed more towards a narrow interpretation that limits the IANA operator’s authority, and thus sets back the accountability of the manager. And maybe it isn’t so much that the scope of the interpretation is narrow, but maybe that the threshold seems incredibly high, which is sort of on par with how the working group seems to be conducting itself – diplomatically. But, it also seems like the IANA operator can start off with a high-bar expectation, meaning a low threshold of “step(ping) in” by how it advises the manager on how the operator expects the manager to be given notice, etc. Further to this point of limiting the IANA operator’s authority, is the actual ability to evaluate the manager. It seems from the FOIWG Revocation Public Consultation Final §4.3.5.3 that 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? A recommendation for this will be discussed below.

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

There are only a few further recommendations this commenter has to offer, not necessarily in lieu of or as changes of recommendations already addressed. The first was mentioned in the last section of this comment. The FOIWG seems to want a lot of the issues with the managers settled, or at least first dealt with, locally. It doesn’t seem, however, as though there is communication set up between the IANA operator and the parties locally, whomever those may be. If the IANA operator is going to be able to evaluate the manager once the claim gets brought to the IANA operator, at this point, seems like it will be very far down the road and like there will be a lot to fix and recover from. If there was more communication set up initially, like the required notice given would be set up between the IANA operator and the manager, between the IANA operator and the local body, there would me much more to evaluate on, and issues would be spotted as the came to a head, and much less bailing would be required.

Finally is a recommendation concerning the revocation process. This recommendation is made as a point to think of while interpreting the guidelines, as the working group cannot change policy. The recommendation is a rubric-style approach to a manager’s misbehavior. As the RFC has already stated, there are two levels of misbehavior: misbehavior and substantial misbehavior. If an IANA operator is to be as efficient as possible, especially with the accountability it can hold a manager to, it seems like it would be best to have an objective way to define between misbehavior and substantial misbehavior. Say there are different categories of wrongdoings that can be done by a manager, and there are certain thresholds that, once arrived at, can trigger the IANA operator stepping in, rather than just broad claims of eventual authority. This rubric idea was thought of to help with either just the evaluation of the manager through the time of management, to help the IANA operator keep tabs on that manager, or to trigger the “step in” or revocation. Clearly, to be used as a tool the preparation would be must less difficult than if to be used as a trigger for revocation, but it seems the rules may be interpreted in some areas to make a recommendation like this practical.

Thank you for your consideration,

Andrew Eggleton

3L – Universityof New Hampshire School of LAW

Concord, NH