DRDWG Progress Report June 3rd, 2010

Section 1. Progress to date

This is the second progress report on the activities of the ccNSO Delegation, Re-delegation and Retirement Working Group (DRDWG), since establishment at the Seoul ICANN meeting.

Since the Nairobi ICANN meeting the working group met regularly (10 meetings by telephone conferences). Notes of these meetings can be found at: http://ccnso.icann.org/workinggroups/drdwg.htm.

Purpose and Scope of the working group

1.   Purpose

The purpose of the working group is to advise the ccNSO Council whether it should launch a policy development process to recommend changes to the current policy for delegation, re-delegation and retirement of ccTLDs.

2.   Scope

The working group will consider the current policies and guidelines relating to delegation, re-delegation and retirement of ccTLDs and report on any issues or matters of concern that it believes exist with these policies. It will also consider possible solutions to any issues or matters of concern.

The IANA functions contract between the US Government and ICANN, including any contract implementation issues or procedures relating to it, are considered outside the scope of this working group.

The working group will recommend whether or not to launch a country code policy development process. If it does recommend a policy development process, it shall be considered as a request for an issues report to the ccNSO Council as documented in Annex B Section 1 of the Country-Code Policy Development Process.

If issues outside this scope become apparent to the working group, the chair will inform the ccNSO Council of the issue so that it can be taken into account and dealt with more appropriately.

Process

The working group initially adopted a work plan that contemplated completion of its mandate by July 2011. As a result of the progress made since the Nairobi meeting and a change in its working methods the DRDWG now expects to deliver its final report at an earlier stage. Initially the working group was of the opinion that the three processes,

delegation, re-delegation and retirement of ccTLDs should be treated separately. The working group has since concluded that the issues can be treated in a consolidated manner.

The activities of the working group are now broken down into 3 major phases:

Phase 1: Identify relevant policies, guidelines, procedures and practices regarding delegation, re-delegation and retirement of ccTLDs;

Phase 2: Analyze the documented processes against the relevant policies and guidelines identified in the previous Phase and define a methodology to identify and classify areas where the documented actions appear to be inconsistent with or not addressed in the policies and guidelines; and

Phase 3: Publish a final report to the ccNSO council, including recommendations.

Current Status

As reported in its previous progress report (http://ccnso.icann.org/workinggroups/report-drd-25feb10-en.pdf):

- *The working group has not identified an authoritative policy document that reflects all relevant policy inputs; and,*

- *There is no publicly available documentation of the current practices or procedures.*

In an attempt to understand the current policies and practices the working group performed an initial analysis of the following documents ("Policy Statements"):

- RFC 1591 (and earlier RFCs that are directly relevant)
- ICP-1
- GAC Principles 2000 and 2005

These Policy Statements provided a baseline against which to evaluate the actual practices of IANA and the decisions of the ICANN Board, as reflected in the following documentation ("Documentation"):

- All IANA reports on ccTLD delegations, redelegations and retirements
- All ICANN Board decisions affecting delegations, redelegations and retirements.
Finally, where the differences between the "Policy Statements" and the processes and outcomes reflected in the "Documentation" suggest a change in policy, the working group considered whether or not such changes were implemented in a manner consistent with the procedural requirements of the ICANN Bylaws.

On the basis of the initial analysis of the "Documentation", 16 cases were identified

that the WG considered potentially relevant to its work. The WG conducted further analysis on these 16 cases, using the formal classification methodology described in section 2 of this report.

The objective of the methodology was to classify cases as:

- <u>Possibly Interesting</u>. Cases were classified as potentially interesting where the Documentation is generally consistent with Policy Statements, and provide little or no support for the DRDWG recommending to the ccNSO Council that it should undertake a PDP in this area.
- <u>Interesting</u>. Cases were classified as Interesting where the Documentation appears to be inconsistent in some respects with the Policy Statements. These differences represent issues which could support the DRDWG recommending to the ccNSO Council that it should undertake a PDP in this area.
- <u>Significantly Interesting</u>. Cases were classified as Significantly Interesting where the Documentation appears to deviate significantly from applicable Policy Statements, or where the Policy Statements do not appear to contemplate the actions taken by IANA and/or the ICANN Board. These differences would support the DRDWG recommending to the ccNSO Council that it should undertake a PDP in this area.

Using this classification method, 3 of 16 instances of delegations, redelegations or retirements are classified as Potentially Interesting, 4 out of 16 as Interesting and 9 out of 16 as Significantly Interesting. The summary of the cases and their classification is provided in section 3 of the report.

Activities in Brussels

The DRDWG will undertake the following activities at the Brussels ICANN meeting:

- Working Group Meetings – there will be 2 working group meetings in Brussels.
- Update to the GAC on progress made
- Presentation of the DRDWG Progress Report to the ccNSO.

In addition, community input will be sought through a public comment period on the methodology and classification of cases document (closure 1 September 2010)

Next steps after Brussels

After the Brussels meeting the DRDWG will continue its work:

- After closure of the public comment period, the working group will review the methodology used, taking into account the comments received and if needed, revisit the classification of cases; and

- The working group will draft a final report including its recommendations for discussion at the upcoming ICANN meeting

Section 2. Classification Method

Understanding the current policies and practices framework

In order to understand the current policies and practices the working group performed an initial analysis based on:

(1) The following documents that, taken together, are generally considered the key policy statements relating to delegation, redelegation, and retirement of ccTLDs ("Policy Statements"):

- RFC1591
- ICP1
- GAC Principles 2000 and 2005

(2) The documentation reflecting actions taken by IANA and/or the ICANN Board with respect to delegation and redelegation of ccTLDs (the "Documentation"):

- All IANA reports on ccTLD delegations, redelegations and retirements
- All ICANN Board decisions affecting delegations, redelegations and retirements.

(3) The working group considered the Policy Statements and Documentation in the context of ICANN's processes for policy development in light of the ICANN Bylaws.

By comparing the Policy Statements to the Documentation, and taking into account the ICANN Bylaws related to policy development, the working group identified 16 cases as potentially relevant to the work of the DRDWG and that merited an in depth analysis.

Classifying issues

Issue classification should be kept simple. The goal was to identify areas where there appeared to be a gap between the Policy Statements and the Documentation. Therefore the working group agreed upon the following classes:

- Significantly Interesting (would strongly support recommendation of a PDP)
- Interesting (could support the recommendation of a PDP)
- Possibly Interesting (would probably not support a recommendation for a PDP)

The 16 cases mostly fall into two main categories:

- Cases related to policy development (implicit or explicit)
- Cases related to the application of policy.

Combing the two characteristics, Issues can be qualified as falling into one of six classes:

	Significantly interesting	Interesting	Possibly interesting
Issue related to policy	Significantly departs from the Policy Statements.	Departs from the Policy Statements in some ways	Complies with the requirements set out in the Policy Statements in most or all ways.
Application of policy	Significantly departs from the requirements set out in the Policy Statements	Fails to meet some requirements set out in the Policy Statements	Meets most or all requirements set out in the Policy Statements

In examining the cases the working group considered the following simple decision tree to assist them in classifying the issues:

FIRST:

- Do the difference between the Policy Statements and the Documentation ("Issues") suggest a change in policy applicable to the delegation, redelegation or retirement of ISO 3166-1 ccTLDs?

  The following questions can be used to determine this:

- This differences identified involve an explicit or implicit Board decision that concerns the delegation, redelegation or retirement of a ccTLD (s).
- The core elements of the approach reflected in the Documentation appear to be inconsistent with or not addressed by an existing Policy Statement.
- The differences identified relate to something that could be applied broadly, i.e., involve an approach that is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making?

If the answer to all 3 is yes, the working group considered the differences to be a change in policy.

If the answer is yes to the first 2 questions, then the working group determined that the differences probably reflected a change in policy.

Other combinations probably do not policy changes.

NEXT:

If the working group determined that the gap between the Policy Statements and the Documentation in any particular case did reflect, or probably reflected a change of policy, the working group considered whether or not the change was undertaken in accordance with the applicable procedural requirements for policy changes,(The rules for policy changes during the different phases of the evolution of ICANN are listed in Annex A).

- If the change was undertaken in accordance with most or all of these rules for policy development, then the DRDWG classified it a Potentially Interesting.
- If the change was undertaken in a way that was inconsistent with some aspect of the applicable rules to policy development, then the DRDWG classified it as Interesting.
- If the change was undertaken in a manner that departed from the applicable rules for policy development in one or more significant ways, then the DRDWG classified it as Significantly Interesting.

Where the working group identified no change of policy, it considered whether or not the Documentation reflected an implementation of policy. The following questions were used to determine this:

- This issue is an explicit or implicit Board decision that concerns the delegation, redelegation or retirement of a ccTLD (s).
- The core elements of this case appear to be covered by an existing policy.

If the answer to both is yes, the issue being considered is an application of policy.

- If all of the critical elements of the issue being considered appear to be clearly and directly supported by the applicable Policy Statement, then the DRDWG classified it a Potentially Interesting.
- If some critical elements of the issue being considered were not clearly and directly supported by the applicable Policy Statements, then the DRDWG classified it as Interesting.

- If most or all of the critical elements of the issue being considered appear to be not clearly and directly supported by the applicable Policy Statements, then the DRDWG classified it as Significantly Interesting.

<u>Absence of Policy</u>

In an organisation such as ICANN, where the Board of Directors makes a decision that can be cited in the future, such decisions should be viewed as affecting policy, even if under the circumstances, the decision only applies to a single ccTLD (failing the policy definition test in the policy section) because this decision sets a precedent. Evaluators should refer to the policy section to evaluate these issues.

A more detailed explanation of the classification methodology can be found in the document "ICANN-CCNSO-DRDWG - DETAILED ANALYSIS AND CLASSIFICATION OF POTENTIAL ISSUES".

Section 3: Summary of cases analysed

This summarizes the classifications reflected in document ICANN-CCNSO-DRDWG - DETAILED ANALYSIS AND CLASSIFICATION OF POTENTIAL ISSUES, which contains the complete analysis of these cases.

Possibly Interesting

- September 10th, 2001 – .AU Redelegation

  - The .AU redeligation was the first redelegation requiring a sponsorship agreement. The analysis identifies the relevant policies and examines how they were applied.

- September 10th, 2001 – Redelegation without admin. Contact support

  - The .AU redelegation was used to examine redelegation without administrative contact support as this was the first instance of this under ICANN. The analysis identifies the relevant policies and examines how they were applied.

- March 21st, 2005 – .EU Delegation

  - The .EU delegation was the first delegation of an ISO 3166 Reserved List element as a ccTLD since ICANN's creation. The analysis identifies the relevant policies and examines how they were applied.

Interesting

- September 25th, 2000 – Sponsorship Agreements Decision

  - In September of 2000, the ICANN Board issued its first policy statement applicable to ccTLDs since ICP1. This raises issues about how the policy requiring sponsorship agreements or MOUs for delegation or redelegation of ccTLDs was developed and approved.

- September 10th, 2001 – Not allowing individuals as delegees for ccTLDs

  - Analysis of the .AU redelegation under the regime of sponsorship agreements which no longer allowed individuals to be the recipients of ccTLD delegations. The analysis classifies this as an implicit policy decision and examines how it the manner in which it was considered diverged from the procedural requirements for policy development set out in the ICANN Bylaws.

- July 18th, 2006 – .GD Redelegation

  - The .GD redelegation appears to be one of the first redelegations where the applicant did not provide direct evidence of local internet community support. The analysis identifies the relevant Policy Statements and examines how they were applied.

- November 20th, 2007 – .BB Redelegation

  - The .BB redelegation appears to be one of the first redelegations where the applicant did not meet the technical requirements. The analysis identifies the relevant Policy Statements and examines how they were applied.

Significantly Interesting

- May 1999 ICP1

  - ICP-1 appears to be ICANN's first implicit policy statement concerning the redelegation and/or revocation of ccTLDs by ICANN. The analysis classifies this as an implicit policy decision and examines the degree to which its adoption was inconsistent with the various procedural requirements for policy development.

- September 25th, 2000 - ISO 3166 Reserved List Decision

  - The Board's decision in this instance appears to be the first policy statement by the ICANN Board applicable to ccTLDs since ICP1. This decision reflects what appears to be Board-developed policy for delegating ISO 3166-1 Reserved List entries as ccTLDs. Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the decision was made in light of ICANN's requirements for policy development.

- November 19th, 2001 – .US Redelegation

    o The redelegation of .US in 2001 appears to be the first "emergency" redelegation by ICANN. Until this action, the Policy Statements do no include "emergency redelegations." Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development. .

- June 9th, 2004 – .LY Redelegation

    o The redelegation of .LY in 2004 appears to be the first "provisional" redelegation of a ccTLD by ICANN. Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development.

- July 28th, 2005 – .KZ Redelegation

    o The redelegation of .KZ appears to be the first redelegation where ICANN did not require a sponsorship agreement since the inception of the policy requiring this in September 2000 (other than the emergency redelegation in the case of .US). Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development.

- January 16th, 2007 – .UM Undelegation

    o First removal from the root of an active ISO3166-1 code by ICANN. Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development.

- September 11th, 2007 – .YU Redelegation

    o First "temporary caretaker" redelegation of a ccTLD by ICANN. Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development.

- September 11th, 2007 – .YU Retirement (revocation)

    o First decision by ICANN on the retirement of a ccTLD and the conditions for implementing this. Accordingly, the working group classified this as an implicit policy decision, and examined the process

by which the redelegation decision was made in light of ICANN's requirements for policy development.

- January 23rd, 2008 – .AE Redelegation

    o Further case of redelegation without local internet community support. Minutes record the strong concerns of an ICANN Director with respect to this. Accordingly, the working group classified this as an implicit policy decision, and examined the process by which the redelegation decision was made in light of ICANN's requirements for policy development.