

Final Report

Country Code Policy Development Process (1)

on matters pertaining to Article IX, Annex B and Annex C of the ICANN Bylaws.

Ootmarsum, Netherlands

7 October 2005

Bart Boswinkel
Issue Manager

Contents

Executive Summary	3
Summary of Proposals for Stand alone Issues	5
Summary of Proposals for Interrelated Issues	10
Introduction	14
Background	14
Process	15
Final Report	18
Indication of impact of recommendations	19
Feasibility of proposals	19
Stand alone Issues	20
A- No binding policy for non-Members of the ccNSO	20
B - IANA Services	23
C—Amendment of Article IX	25
E—Binding policies outside ccPDP	28
F—Changes to ccPDP and Scope	31
G—Applicable law exemption	33
I—Membership quorum voting on PDP	36
J—Rejection of PDP recommendations by the ICANN Board	38
Interrelated Issues	42
D—Setting binding policies	43
H—Initiating a ccPDP	50
K—Ability of ICANN Board to set binding policies on issues not within Scope	51
L—Should the Scope of the ccNSO be redefined?	53
Annex A	54
Email exchange between Chairs of the ccNSO and the Chair of the GAC	54

Executive Summary

The ccNSO council has initiated a country-code Policy Development Process to consider recommending to the Board of ICANN changes to:

1. Article IX of the ICANN By Laws (<http://www.icann.org/general/bylaws.htm#IX>);
2. The ccNSO Policy Development Process (<http://www.icann.org/general/bylaws.htm#AnnexB>); and
3. The Scope of the ccNSO (<http://www.icann.org/general/bylaws.htm#AnnexC>).

to encourage ccTLD managers to join the ccNSO.

There is no indication whether ccTLD managers who are not (yet) member of the ccNSO will join the ccNSO as a result of this ccPDP. However, the recommendations as submitted to the Council should be considered on their own merits i.e. as an improvement and clarification of the current bylaw on the ccNSO and the ccPDP in the interest of the members, Council and other stakeholders and to be recommended as such to the members.

On 7 June 2005, the Issues Report was published defining the scope of this particular ccPDP, including and supported by the opinion of ICANN's General Counsel that all matters raised are within ICANN's mission statement and within the Scope of the ccNSO. Comments and input were sought on the matters as defined in the Issues Report, in particular:

- a. whether the matters raised in the Issues Report are of concern to ccNSO members, and the ccTLD community and its stakeholders generally;
- b. if they are, methods of resolving the issues;
- c. support for the alternative solutions throughout the relevant constituencies; and
- d. the feasibility, effectiveness and proportionality of the solutions proposed.

At the conclusion of the public comment period an Initial Report was produced and published on 16 August 2005. The publication of the Initial Report formally concluded Comment Period 1 and initiated Comment Period 2. The purpose of the Initial Report was to provide a basis to discuss tentative resolutions for the matters (A-L) raised in the Issue Report. Comments and input of ccNSO members and other stakeholders was sought, in particular, on:

- a. whether the analysis of the comments and input is exhaustive;
- b. are there alternatives for resolving the matters raised which have been overlooked?; and
- c. where a recommendation has been made, is it the most appropriate?

In preparation for the Luxemburg public hearing (12 July 2005) a distinction was introduced between stand alone and interrelated matters. Stand alone issues are those matters raised in the Issue Report which in itself or its resolution is not dependant on the resolution of another matter raised. Interrelated Issues are those matters raised which in itself or its resolution depends upon or is conditional upon another matter or its resolution. In the Initial Report this distinction was used and is used again in the Final Report.

The Publication of the Final Report will formally end Comment Period 2 for all matters raised with the exception of *Issue G—Applicable law exemption*. On 4 October 2005, the Issue Manager extended Comment Period 2 for this issue until Tuesday 18 October 2005, 12 AM pacific time to provide the GAC the opportunity to consider the issue. If the recommendation on this Issue is adopted by the Council, Comment Period 2 will be extended for a period to be determined by the ccNSO Council at a later date.

Proposed changes to the Article IX or Annex B of the bylaws, if any, are indicated as follows:

~~Deletions;~~

Additions.

Summary STANDALONE ISSUES

A—NO BINDING POLICY FOR NON-MEMBERS OF THE ccNSO

Issue

Under the conditions enumerated in Article IX section 4.10 a ccNSO policy shall apply to members of the ccNSO by virtue of their membership. Is this language sufficiently clear?

Proposal

Amendment to Article IX section 4.2 of the bylaws to clarify the impact of a members' resignation from the ccNSO

Proposed wording for Article IX section 4.2

Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. **Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#).** In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

B—IANA SERVICES

Issue

At article IX section 4.3 it is stated that a ccTLD manager's receipt of IANA services is independent of membership of that ccTLD manager in the ccNSO Is this language sufficiently clear?

Proposal

Amendment to the language of Article IX section 4.3

Proposed wording Article IX Section 4.3

Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. ~~Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.~~ **Any individual relationship a**

ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.

C—AMENDMENT OF ARTICLE IX

Issue

Under the current bylaws there is a provision (Article IX section 6) that deals with changes to Annex B and Annex C of the bylaws.

Should the ICANN Board only be able to change or amend Article IX, Annex B and Annex C after consultation and the consent of the members of the ccNSO?

Proposal

Change of Section 6 by adding an additional paragraph

Proposed wording Article IX Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

3. Any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP as stated in Annex C to these bylaws, and shall be subject to approval by the Board.

Further, the last full sentence of Annex B Section 2(e) should be amended to read:

In all events, consideration of revisions **to Article IX of the bylaws,** to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

E—BINDING POLICIES OUTSIDE ccPDP

Issue

Can the ccNSO potentially set binding policies on its members on activities not defined in Article IX section 1 but authorised by its members? If so, is this an issue? If not, should the ccNSO be able to do so?

Proposal

Amendment of Article IX section 1 final paragraph.

Proposed wording Article IX Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorised by its members. Adherence to the results of these activities will be voluntary and such activities may include:

seeking to develop best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

F—CHANGES TO ccPDP AND SCOPE

Issue

The use of the word “initially” in Article IX Section 6 implies the scope for setting binding policies (and the ccPDP) will change over time. Should the ccNSO be able to change the Scope and the ccPDP over time? Should the ccNSO be able to change Article IX over time?

Proposal

Remove the word “initially” from Article IX Section 6(a) and section 6(b)

Proposed wording Article IX Section 6

1. The scope of the ccNSO's policy-development role shall ~~initially~~ be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall ~~initially~~ be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

G—APPLICABLE LAW EXEMPTION

Issue

Where a policy developed through a ccPDP conflicts with the law applicable to the ccTLD manager, the policy does not apply to the manager. The law applicable shall always remain paramount.

Should a process be inserted into Article IX section 4.10 that sets out how a decision should be

made as to whether a ccNSO policy does conflict with the national law of a ccNSO member?

Proposal

There is no amendment of the relevant section of the bylaw proposed at this stage.

It is suggested that the ccNSO defer a recommendation on this particular issue to take into account the outcome of dialogue between the ccNSO and the GAC on this matter. The ccNSO Council is advised to extend Comment Period 2 on this particular issue until a mutually acceptable conclusion is reached. This will then be included as an addendum to the Final Report as the recommendation to resolve this particular issue.

I—MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

Issue

According to the current bylaws (Annex B Section 13) a vote of the members is valid without a quorum. Should a vote of ccNSO members only be valid if at least 50% of the members have lodged a vote irrespective of the round of voting?

Proposal

Change of Annex B Section 13: introduction of a quorum of 50 % for a second round of voting. No more than two rounds of voting.

Proposed wording for Annex B Section 13 Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a **final**, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed ~~irrespective of whether~~ **if at least** 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

J—REJECTION OF PDP RECOMMENDATIONS BY THE ICANN BOARD

Issue

Under the current bylaws the Board can reject a recommendation of the ccNSO where the Board determines by a vote of more than 66% that such policy is not in the best interest of the ICANN community or of ICANN (Annex B section 15).

Should the ICANN Board only be able to reject a Recommendation or Supplemental Recommendation as the case may be in 'exceptional circumstances'?

Proposal

Amendment of Annex B Section 15(2c) as suggested (to introduce a breach of fiduciary duties of a director to the company as criterion for rejection).

Proposed wording Annex B section 15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that ~~such policy is not in the best interest of the ICANN community or of ICANN~~ **that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.**

Summary INTERRELATED ISSUES

D—SETTING BINDING POLICIES

Issue

Under the current bylaws (Article IX Section 4.10) a member of the ccNSO shall be bound by an ICANN policy if, and only to the extent that this policy (a) has been developed through the ccPDP and (b) has been recommended as such by the ccNSO to the Board, and (c) is adopted by the Board as a policy.

Should a policy only be binding on members if and only to the extent the policy is on an issue that is within Scope and has been developed through the ccPDP and is adopted by the Board?

Proposal

Part 1. Amendment of Article IX Section 4.10 to reflect that a policy only applies by the virtue of being member of the ccNSO if and only to extent that the policy has been:

- a. The issue the policy addresses is within scope of the ccNSO (Annex C);
- b. Has been developed by use of the ccPDP (Annex B);
- c. Has been recommended as such by the ccNSO; and
- d. Is adopted by the Board.

Part 2. Amendment of Annex B section 3 b to reflect that a policy cannot be developed which is not within scope. For that matter the last sentence of this section should be deleted.

Part 3. Amendment of Annex B section 2 to reflect that in the event General Counsel is initially of the opinion the issue is outside of scope a reconciliation process may be initiated between General Counsel and the Council by the Issue Manger. Further section 2 should reflect the vote of the Council in the event the disagreement on whether the issue is within scope remains.

Part 4. Amendment of Article IX and Annex B to reflect part 1, 2 and 3 of the changes (if needed).

Suggested wording relevant parts of the bylaws

Part 1: Article IX section 4.10

Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies

- (a) Only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C;**
- (b) Have been developed through the ccPDP as described in [Section 6 of this Article](#), and
- (c) Have been recommended as such by the ccNSO to the Board, and
- (d) Are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLD's.

Part 2 : Annex B Section 3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is

not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favour of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and ccNSO Scope. ~~In the event that the Issue Report states it is not properly within the scope of the ICANN mission statement or the ccNSO Scope, then a vote of twelve or more Council members in favor of initiating the PDP shall be required to initiate the PDP.~~

Part 3: Amendment of Annex B section 2 Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue; and
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:
 - 1) The issue is within the scope of ICANN's mission statement;
 - 2) Analysis of the relevant factors according to [Article IX, Section 6\(2\)](#) and [Annex C](#) affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN policy;
- 4) 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.

In all events, consideration of revisions to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to Article IX, Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside scope then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manger accordingly. The Issue Manager shall then proceed with a recommendation whether or not to the Council shall move to initiate the PDP including both the opinion and analysis of General Counsel and the Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

Part 4

Amendment of language in Annex B Ssection 15.5.

5. In the event ~~circumstances where~~
- ~~(i) If the Board determines not to accept a ccNSO Supplemental Recommendation, and~~
 - ~~(ii) The opinion of the General Counsel pursuant to Item 2.e. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,~~

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

H—INITIATING A ccPDP

Issue

Under the current bylaws the ccNSO Council can initiate a ccPDP on matters, which are within Scope and outside of Scope (Annex B section 3.b).

Should it only be possible for the Council to initiate a ccPDP on matters that are within the Scope of the ccNSO?

Proposal

This matter is resolved as part of the resolution of Issue D part 3

K—ABILITY OF BOARD TO SET BINDING POLICIES ON ISSUES NOT WITHIN SCOPE.

Issue

Under the current bylaws an issue outside of scope can be considered in a PDP. In a case where the final recommendation to resolve the issue is a Supplemental Recommendation (Annex B section 15) and the issue is within scope according to General Counsel pursuant to Annex B section 2, the Board may not set a policy and the status quo remains.

If the Council will remain able to initiate a ccPDP outside of Scope, is the ICANN Board able to set its own policy, if the issue is not within scope pursuant to the opinion of the General Counsel and in case the Supplemental Recommendation is rejected by the Board? If so, should this remain the case? If not, should this be introduced?

Proposal

Assuming the proposal for issue D part 4 is accepted, no further change of bylaws is suggested.

L—SHOULD THE SCOPE OF THE CCNSO BE REDEFINED?

Issue

Should the scope of the ccNSO be redefined?

Proposal

As part of this ccPDP there is no proposal to change Annex C of the bylaws. The ccNSO Council is however advised to address concerns with the current scope of the ccNSO at a later stage and in a separate process.

Final Report

1. Introduction

1.1 Background

At the ICANN meeting in Mar del Plata, ICANN's Vice President Policy Development Support (Mr. Paul Verhoef) relayed a letter from CENTR, on behalf of its ccTLDs community, to the ccNSO Council and requested the Council to consider CENTR's letter. The letter identified a number of issues in relation to the ccNSO bylaws that are said to stand in the way of a number of CENTR members joining the ccNSO.

Having considered the letter, the ccNSO Council resolved to investigate whether a ccPDP (ccNSO Policy Development Process), as described in Annex B of the ICANN bylaws, is a viable route to address the expressed concerns. In accordance with Resolution of the Council at that meeting the Chair of the ccNSO Council sent out a call on 11th April 2005 to the members and non-members of the ccNSO to determine if :

- a) there was consensus in the ccTLD community for the Council to request an Issues Report as the first step in initiating a ccPDP; and
- b) there are other issues, besides those raised in the CENTR paper, that ought to be considered in this context.

The Council received positive feedback from the community to conduct a ccPDP. There was no feedback against the initiation of a ccPDP nor any suggesting limitation to or broadening of Issues.

The Council considered the matter at its next meeting on 28 April 2005, and resolved to call for an Issue Report on whether a Policy Development Process should be launched to consider recommending to the Board of ICANN changes to;

1. Article IX of the ICANN By Laws (<http://www.icann.org/general/bylaws.htm#IX>);
2. The ccNSO Policy Development Process (<http://www.icann.org/general/bylaws.htm#AnnexB>); and
3. The Scope of the ccNSO (<http://www.icann.org/general/bylaws.htm#AnnexC>).

At the same meeting Bart Boswinkel was appointed as interim Issue Manager.

To seek further input the community was invited by the Chair of the ccNSO and the Issue Manager to submit comments. On the basis of the comments and input received the Issue Manager recommended the Council to move to initiate a PDP to resolve the issues. This was supported by the opinion of the ICANN General Counsel that all issues raised are properly within the scope of the ICANN policy process and within the scope of the ccNSO. This opinion of General Counsel was included in the Issues Report.

Based on the Issues report and in accordance with the ICANN bylaws the ccNSO Council resolved by email voting on 6th June 2005 that:

“6.01 a ccNSO Policy Development Process (PDP) be initiated to consider changes to ICANN Bylaws Article IX (Country-Code Names Supporting Organization), Annex B (ccNSO Policy-Development Process) and Annex C (the Scope of the ccNSO) to address the matters outlined in paragraphs A to M of Section 3.2 of the Issues Report prepared by Bart Boswinkel.

6.02 the PDP referred to in resolution 6.01 be run without a task force.

6.03 the timetable for the said PDP set out in the Issues Report be endorsed.

6.04 Bart Boswinkel continue as interim Issue Manager and that the current Council sub-committee (Members: Eva Frölich (Europe), Hiro Hotta (Asia Pacific), Paulos Nyirenda (Africa) and Patricio Poblete (Latin America) Kim von Arx (.ca and North America) and Chris Disspain (Chair) continue to assist the interim Issue Manager.”

In accordance with ICANN Bylaws Annex B section (8) the Chair of the ccNSO requested the Chair of the Governmental Advisory Committee (GAC) to formally offer an opinion or advice on the matters raised in the Issues Report. This opinion or advice, if any, should be submitted before the Council takes a vote on the Recommendations in October 2005.

The ccNSO Chair requested the designated Regional Organizations to appoint a Regional Representative. Where a Regional Representative for a Region was not designated the elected Council members for that Geographical Region were requested to seek a representative. The (acting) Representatives are: Kim von Arx (.ca, North American Region), Patricio Poblete (Latin American Region), Ali Drissa BADIEL (African Region), Jordan Carter (Asian Pacific Region) and Giovanni Seppia (European Region).

In accordance with Annex B of the bylaws the Regional Representatives have been requested to submit a Regional statement in Comment Period 1 on the matters outlined in paragraphs A to L of Section 3.2 of the Issues Report.

In conjunction with the publication of the Issues Report on 7 June 2005 comments and input were sought on the matters as defined in the Issues Report, in particular:

- a. whether the matters raised in the Issues Report are of concern to ccNSO members, and the ccTLD community and its stakeholders generally;
- b. if they are, methods of resolving the issues;
- c. support for the alternative solutions throughout the relevant constituencies; and
- d. the feasibility, effectiveness and proportionality of the solutions proposed.

Each of the Regional Representatives solicited the views of the ccTLD managers in their Geographical Region which has been documented in their respective Regional Statements. A public hearing was conducted by the ccNSO on the 12 July in conjunction with the ICANN meeting in Luxemburg. The minutes of this meeting have been submitted.

At the conclusion of the public comment period the Issue Manager produced an Initial Report which, in accordance with ICANN bylaws, had to contain the following information:

- a Comment Report (Annex B section 6) which in this case is a review of the comments and input received on the Issue Report;
- all Regional Statements; and
- other (relevant) information.

The publication of the Initial Report on 16 August 2005 formally concluded Comment period 1.

1.2 Process

Comment Period 2 (16 August to 7 October 2005)

The Initial Report was published on the ICANN website on 16 August. With its publication Comment Period 2 formally commenced. In conjunction with the publication comments and input of ccNSO members and other stakeholders was sought, in particular:

- a. whether the analysis of the comments and input is exhaustive;

- b. are there alternatives for resolving the matters which have been overlooked?;
- c. where a recommendation has been made, is it the most appropriate?

On 2 September 2005 the Issue Manager sent out a reminder to the ccTLD-discuss, ccNSO members and ccNSO Council email lists requesting comment and input on the Initial Report. This reminder was then forwarded to other relevant email lists.

On 7 September 2005, the Issue Manger extended the second comment period by one week to GMT 12:00 Wednesday 14 September 2005.

At the end of comment period 2, the Issue Manager reviewed the comments received and has, at his reasonable discretion, added appropriate comments to the Initial Report, to prepare the "Final Report". The Final Report was submitted to the Chair of the ccNSO Council on 7 October 2005, which concludes Comment Period 2 for all issues except *Issue G—applicable law exemption*. Given the discussions taking place in other fora, the Issue Manager has deferred a recommendation on this particular matter. The Chair of the ccNSO has contacted the Chair of the GAC to enter into dialogue on this matter. The relevant email exchange is attached to this report in Annex A. On 4 October 2005, the Issue Manager sent a note to the relevant lists advising of this deferral.

Council Recommendations (7- 21 October)

Upon receipt of the Final Report the ccNSO Council's Chair shall:

- 1. distribute the Final Report to all Council members;
- 2. call for a Council meeting within the time designated in the PDP Time Line to consider the Final Report and work towards achieving a recommendation to present to the Board. The Council will make a recommendation to the Members of the ccNSO based on the proposals in the Final Report;
- 3. the Council meeting to vote on the proposals will be held on 18 October 2005; and
- 4. formally send the GAC Chair an invitation for the GAC to offer opinion or advice.

The Council is deemed to have made a recommendation on the issue (a "Council Recommendation") if 14 or more of the Council members support a recommendation. The view of the Council shall be conveyed to the Members as the Council's Recommendation. All viewpoints expressed by Council members during the Council deliberations on the recommendations must be included in the Members Report. The Members Report must contain the following:

- a. a clear statement of the Council's recommendation;
- b. the Final Report submitted to the Council; and
- c. a copy of the minutes of the Council's deliberation on the policy issue, including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

Before the Issue Manager submits the Members Report to the Members it has to be approved by the Council (Annex B Section 12). According to the PDP Timeline this is now scheduled for October 21.

Members Vote (tentatively 22 October – 18 November 2005)

In the event the Council adopts the Members Report, the Issue Manager shall, on 22 October 2005, submit the Members Report to the ccNSO members.

Following the submission of the Members Report the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over at least a period of 21 days tentatively 22 October to 12 November.

In the event the Members vote is in favor of the Council Recommendation i.e. more than 66 % of the members have voted in favour of the Council Recommendation and 50% or more of the ccNSO members have lodged a vote in the first round, the recommendation shall then be conveyed to the Board as the ccNSO Recommendation.

In the event fewer than 50% of the ccNSO members at the time of voting have lodged a vote, a second round of voting needs to be held. This second round of voting may only be conducted after a notice period of at least 30 days.

The ccNSO Recommendation will be incorporated into a Board Report by the Issue Manager, which has to be approved by the Council. The Board report must contain the at least the following (Annex B section 14):

- a. a clear statement of the ccNSO recommendation;
- b. the Final Report submitted to the Council; and
- c. the Members' Report.

ICANN Board Vote (tentatively 18 November - to be determined)

In accordance with Annex B section 13 the Issue Manager shall within seven days incorporate the ccNSO Recommendation into a report to be approved by the Council and then submitted to the Board (the "Board Report"). Tentatively that Report will be submitted on 18 November 2005. The Board Report must contain at least the following:

- a. a clear statement of the ccNSO recommendation;
- b. the Final Report submitted to the Council; and
- c. the Members' Report.

The Board shall then meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager. Due to the nature of the ccNSO Recommendations i.e. possible changes of ICANN bylaw IX and Annex B to the bylaws, the Board has to take into consideration Article III and Article XIX of the bylaws and its own procedures. At the time of writing of this Report there is no indication when the Board will take a vote on the recommended changes of Article IX and Annex B to the bylaws and which of the Board potential procedures will be followed.

1.3 Final Report

According to the ICANN bylaws Annex B Section 9(b), the Issue Manager is required to produce a Final Report to be submitted to the Chair of the ccNSO within the time designated in the PDP Time Line and which contains the following information:

- a. the Initial Report;
- b. comments which are considered, in the Issue Manager's reasonable discretion, appropriate;
- c. a review of the appropriate comments received (Annex B Section 9(b)).

The purpose of the Final Report is to provide a basis for the Council to make a recommendation on the issue (a "Council Recommendation") as identified by the Council and further elaborated on in the Initial and Issue Reports.

In preparing the Final Report input and comments received from DENIC, Nominet and UNINETT Norid were considered.

It should be noted that a statement on the feasibility of a proposal should have formed part of the initial analysis of the methods for resolving the matter in the Initial Report. This is an indication of whether the proposals for changes to the bylaws would be acceptable to the ICANN Board. Due to circumstances beyond the Issue Manager's control it was not possible to include this in the Initial Report. A statement on the feasibility of the proposed resolutions is therefore included in the Final Report

In the Final Report the distinction between standalone and interrelated matters as introduced in the Initial Report is again used. Standalone Issues are those matters raised in the Issue Report which in itself or for its resolution is not dependant on the resolution of another matter raised. Interrelated Issues are those matters raised which in itself or its resolution depends upon or is conditional upon another matter or its resolution.

In the following sections of this Report, per matter raised, the following order will be used to present the information:

- a) Relevant section of Article IX, Annex B or annex C of the bylaws;
- b) Statement of the issue as raised in the Issues Report;
- c) Consolidated overview Comment Period 1
- d) Analyses Comment Period 1
- e) Methods to resolve the issues, if any;
- f) Proposal to resolve the matter, if any.
- g) Consolidated comments Comment Period 2 if deemed appropriate, if any
- h) Review of comments received in Comment Period 2, if any
- i) Proposal to resolve the matter

Proposed changes to the Article IX or Annex B of the bylaws, if any, are indicated as follows:

~~Deletions;~~
Additions.

1.4 Indication of impact of the recommendations

ccTLD managers have not joined the ccNSO for a variety of reasons, including, but not limited to:

- perceived problems with aspects of the Bylaws;
- inability or unwillingness to put in resources to participate;
- lack of interest in the ccNSO and the work of the ccNSO; or
- opposition to globally structured (self-)regulation and ICANN in particular.

This ccPDP was initiated by the ccNSO Council to consider changes to:

1. ICANN Bylaws Article IX (Country-Code Names Supporting Organization);
2. Annex B to the ICANN Bylaws (ccNSO Policy-Development Process); and
3. Annex C to the ICANN Bylaws (the Scope of the ccNSO)

to encourage ccTLD managers to become members of the ccNSO.

Given the various reasons why ccTLD managers have not joined the ccNSO, it was clear from the start of this process that this ccPDP may encourage a subset of these ccTLD managers to join the ccNSO. At this stage it is not possible to give an indication on whether these ccTLD managers will join if the recommendations are adopted by the Board.

In the course of the process it became clear that some members of the ccNSO consider some of the current recommendations to be improvements, while at the same time other members do not object to the proposed changes. Therefore the Final Report, and in particular the recommendations, is submitted to the Council to be considered on its own merits i.e. as an improvement and clarification of the current bylaws on the ccNSO and the ccPDP in the interest of the members, Council and other stakeholders and to be recommended as such to the members.

1.5 Feasibility

In accordance with Annex B Section 2(g) the Issue Report did raise the matter on the likelihood of adoption of the recommendation by the Board.. As was stated in the Issue Report (June 2005) it was unclear whether or not suggested changes to the bylaws would be acceptable. Although, substantive discussions on the matters raised have now taken place, it is still not clear if the ICANN Board is likely to adopt the recommendation of this ccPDP. However, with regard to the recommendation on the amendment of Article IX (Issue C), there are strong indications that the proposed change is not feasible.

STANDALONE ISSUES

A—NO BINDING POLICY FOR NON-MEMBERS OF THE ccNSO.

Relevant bylaw

Article IX Section 4.2

....The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section,.....

Article IX Section 4.10

Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies

- (a) have been developed through the ccPDP as described in [Section 6 of this Article](#), and
- (b) have been recommended as such by the ccNSO to the Board, and
- (c) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

Issue

Under the conditions enumerated in Article IX section 4.10 a ccNSO policy shall apply to members of the ccNSO by virtue of their membership. Is this language sufficiently clear?

Summary of comments received Comment Period 1

The matter raised deals with two situations:

1. Does a policy developed in accordance with section 4.10 apply to a ccTLD manager who has not made an application to become a member and thereby agreed to abide by policies which apply by virtue of membership; and
2. Does a policy developed in accordance with section 4.10 apply to a ccTLD manager after resignation as a member.

With regard to the first situation it is clear from the discussions and input received that this not an issue. The bylaw language is clear.

However, the second situation is perceived to be more complex, in particular the issue of whether or not a ccTLD manager is bound by policy after their resignation.

Methods for resolving

Solution 1. Resignation form

Neither the ccNSO Council nor ICANN has dealt with the resignation of a ccNSO member either in clarifying the mechanism and form of notification or in practice. Therefore one possible solution is to clarify the applicability of policies in the notice of resignation.

Solution 2. Amendment of bylaws with statement

Amendment of section 4.2 of the bylaws by introducing a statement to the effect that joining or leaving the ccNSO would not change the status of a ccTLD manager.

Solution 3 Amendment/ addition to the bylaws with regard to impact of resignation

In the current bylaws the consequences of joining the ccNSO are set out (section 4.2). In the same way the consequences of resignation could also be set out in a separate paragraph.

Analysis of resolutions

In order to address the issue one should distinguish between the applicability of policies developed during a ccTLD manager’s membership and those policies developed after the manager has resigned.

A policy developed after a manager resigns can not apply to that manager.

However, the issue of whether a ccTLD manager is, following resignation, bound by policies developed during their membership of the ccNSO is not clear. The ICANN bylaws do not constitute a bilateral legal relation, rather they provide the mechanism by which a ccTLD manager can join the ccNSO i.e. by a unilateral application. Further, in the opinion of ICANN’s General Counsel, membership of the ccNSO does not create a contractual relationship between a ccTLD manager and ICANN and *“thus there are no doctrines or other aspects of California or US law that will impose any associated burden.”*

Changing the bylaws by the introduction of a statement to the effect that joining or leaving the ccNSO would not change the status of a ccTLD manager (solution 2) does not resolve the issue. From a practical point of view it is a reiteration of the statement of section 4.3. Secondly, from a principle point of view, the proposed statement does not resolve the underlying concern. The bylaws govern the participation of a ccTLD manager in ICANN. A change in the political or legal status of a ccTLD manager as a result of a policy does not only concern ICANN and the members of the ccNSO but also other stakeholders like the Local Internet Communities of the ccTLD manager and its Government.

Solution 3 Amendment of the bylaws by setting out general aspects of resignation.

Under the current bylaws the core aspects of joining the ccNSO are set out, in combination with the method of joining (application form). Although ICANN is not a membership organization, in section 4.2 it is stated that a member of the ccNSO can resign by sending a written notice at any time. From a logical point of view the core effect of resignation could be set out as well. This could be combined with providing a template for resignation (solution 1) in a similar way as is done with regard to the application for membership.

Tentative Proposal

Solution 3 Amendment/addition to the bylaws with regard to impact of resignation

Proposal

Amendment to Article IX section 4.2 of the bylaws to clarify the impact of resignation as a member of the ccNSO

Suggested language for Article IX section 4.2

Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. **Upon resignation the ccTLD manager ceases to agree to (a) adhere to rules of the ccNSO, including membership rules, (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of this Section, and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of this Article](#).** In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the ICANN Secretary, who shall notify the ccNSO Council of receipt of any such applications and notices.

B—IANA SERVICES

Relevant bylaw

Section 4.3

Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.

Issue

At article IX section 4.3 it is stated that a ccTLD manager's receipt of IANA services is independent of membership of that ccTLD manager in the ccNSO. Is this language sufficiently clear?

Summary of comments received in Comment Period 1

Among ccTLD managers there is a general understanding that, in principle, the issue is not contentious. The principle underlying the current bylaw language is accepted by members and non-members of the ccNSO who participated in the process. It was felt that the wording could be changed to better express the underlying principle.

As to the comment that this issue should be viewed in the broader context of IANA services in general and accountability frameworks is valid, however, it is outside the scope of this particular ccPDP.

Methods for resolving the issue

Solution 1

No change of bylaw language

Solution 2

Change of wording in section 4.3 to reflect that the receipt of IANA services is not in any way conditional upon the relationship between ICANN/IANA and a ccTLD manager or membership of the ccNSO the following amendment of the section 4.3. is suggested:

Current language: Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.

Suggested language: Membership in the ccNSO is not in any way contingent on any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.

Analysis of resolutions

The solution proposed seeks to clarify the wording.

Tentative Proposal

Solution 2 Change of wording in section 4.3. Suggested language: Membership in the ccNSO is not in any way contingent on any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.

Comments received Comment period 2

DENIC, Nominet & UNINETT Norid Collective Response

The established principle that receipt of IANA services should in no way be contingent on ccNSO membership is welcomed and supported. To clarify this, alternative wording was proposed.

“A ccTLD manager’s receipt of IANA services is entirely independent of any individual relationship the ccTLD manager has with ICANN or membership of the ccTLD manager in the ccNSO.”

Review of comments received

Article IX of the bylaws and its annexes relate to the ccNSO and its membership. With regard to this particular matter the issue was if the established principle that receipt of IANA services is independent of membership of the ccNSO was sufficiently clear in the bylaws. From the input received it became clear that the wording could be improved. However, the wording as proposed by DENIC, Nominet and UNINETT Norid, is not just an attempt to clarify the wording but the established principle itself is changed, which is outside the scope of this ccPDP. In particular if and to what extent the receipt of IANA services is not in any way contingent upon any individual relationship the ccTLD manager has with ICANN, is a matter that depends on and is decided through a bilateral arrangement between the ccTLD manager concerned and ICANN and is not the subject of this ccPDP.

Proposal

Amendment of language of Article IX section 4.3

Proposed wording Article IX Section 4.3

Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of this Article](#) shall be a condition for access to or registration in the IANA database. ~~Membership in the ccNSO is independent of any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services.~~ **Any individual relationship a ccTLD manager has with ICANN or the ccTLD manager's receipt of IANA services is not in any way contingent upon membership in the ccNSO.**

C—AMENDMENT OF ARTICLE IX.

Relevant bylaw

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Issue

Under the current bylaws there is a provision (Article IX section 6) that deals with changes to Annex B and Annex C of the bylaws.

Should the ICANN Board only be able to change or amend Article IX, Annex B and Annex C after consultation and the consent of the members of the ccNSO?

Summary of comments received in Comment Period 1

Even though Article IX section 6 does not state that possible changes to Article IX can only occur through a ccPDP, such changes are clearly considered to be within the Scope of a ccPDP (see Issue Report section 4, Opinion ICANN's General Counsel).

The core of this issue is the current ability of the Board to change parts of the ICANN bylaws which relate to the ccNSO without the explicit ability of the ccNSO and its members to influence the process and consent to the changes.

2 distinct possible situations have been raised;

1. ensuring a change of Article IX can only occur through a ccPDP. This situation is within scope of this ccPDP; and
2. ensuring that all amendments, changes or additions to the ICANN bylaws which may be relevant to or have an impact on the ccNSO and/or its members can only occur with some form of consent from ccNSO members. This situation is outside scope of this ccPDP. As stated in the Issues Report it is advised that this matter will be put on the agenda outside this ccPDP.

Methods for resolving the issue

Solution 1

No change actual wording of section 6

Solution 2

Change of section 6 by adding an additional paragraph: any change of this Article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Analysis of resolutions

In considering the suggested solutions one needs to take into account the following arguments:

1. The ccNSO is the organization under the ICANN umbrella that deals with ccTLD issues (see Clarification General Counsel, Question 1). The ccPDP is an open and transparent process designed to deal with ccTLD policy issues. A change to the process itself or the scope for setting policies, both part of the bylaws, can only be made by using the ccPDP. It is only consistent to use the same mechanism for modifying the bylaws on the ccNSO itself.
2. As Article IX relates to the ccNSO and its members, a modification of this Article should for that reason involve the ccNSO and its members.
3. As to the consent of 66% of the ccNSO members this will be achieved if for all modifications of article IX , Annex B and Annex C because the ccPDP is used (Annex B section 13).

Tentative Proposal

Change of section 6 by adding an additional paragraph: any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid Response

The tentative proposal would constitute an improvement. However, in the view of DENIC, Nominet and UNINETT Norid, it needs only to be ensured that changes can only be made with the consent of the ccNSO. It should not be necessary to use the ccPDP for amendments to the bylaws. Further the view is reiterated that not only changes of Article IX of the bylaws and its Annexes should be subject to the explicit consent of a supermajority of the ccNSO members, but all parts of the ICANN bylaws related to the ccTLDs or ccNSO.

To ensure this, a change of Article XIX, the article in the ICANN bylaws on Amendments of the Bylaws is proposed.

Review of Comments received

The scope of this particular ccPDP is limited to possible changes of Article IX, Annex B and Annex C of the bylaws which could be recommended to the Board for adoption. The resolution of this issue on changes of the ccNSO related bylaws – the change of Article XIX - is outside the scope of this ccPDP. Therefore it can not be proposed.

Proposal

Change of section 6 by adding an additional paragraph

Proposed wording Article IX Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the

Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

3. Any change of this article IX shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP as stated in Annex C to these bylaws, and shall be subject to approval by the Board.

Further, Annex B section 2 e last full sentence needs to be changed. It should read:

In all events, consideration of revisions **to Article IX of the bylaws**, to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO.

E—BINDING POLICIES OUTSIDE CCPDP

Relevant bylaw

Article IX Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

In addition to the above core responsibilities, the ccNSO may also engage in other activities authorized by its members, including: seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

Article IX Section 4.2

The application shall include the ccTLD manager's recognition of the role of the ccNSO within the ICANN structure as well as the ccTLD manager's agreement, for the duration of its membership in the ccNSO, (a) to adhere to rules of the ccNSO, including membership rules.....

Issue

Can the ccNSO potentially set binding policies on its members on activities not defined in Article IX section 1 but authorised by its members? If so, is this an issue? If not, should the ccNSO be able to do so?

Summary of comments received in Comment Period 1

The concern is that the ccNSO may engage in other activities to set binding policies outside the mechanism stated in section 4.10.

Methods for resolving the matter

Solution 1

No change

Solution 2

Define clearly what the ccNSO can do.

Solution 3

Clarify that binding policies can only be developed through the mechanism stated in section 4.10.

Analysis of resolutions

It should be noted that policies can only bind members by virtue of their membership if the policy has been developed through a ccPDP, was recommended as such by the ccNSO and adopted by the Board.

It is not clear from the comments and the discussion on this issue if and to what extent the issue raised actually is an issue. Accordingly further input and explanation is sought in the second round of comments.

Tentative Proposal

Seek further input in comment Period 2.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid Response

In the view of DENIC, Nominet and UNINETT Norid there is an issue as the bylaws do not rule out the possibility that the ccNSO may include among its activities the development of binding policies outside the scope of the ccNSO and without using the ccPDP. These policies would be based on self-imposed membership rules of the ccNSO to which members of the ccNSO should adhere (Article IX, Section 4.2). According to DENIC, Nominet and UNINETT Norid this matter could be resolved by adding a clause in Article IX Section 1 that explicitly excludes the development of binding policies from the other activities.

Review of Comment

According to all comments and inputs received in the course of this policy development process policies that apply by virtue of membership can and should only be developed through the cc policy development process and be adopted by the Board as such. In order to avoid further confusion and to clarify the intention it is recommended to amend the relevant section (1) of Article IX of the bylaw.

Proposal

Amendment of Article IX section 1 final paragraph.

Proposed wording Article IX Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO), which shall be responsible for:

1. developing and recommending to the Board global policies relating to country-code top-level domains;
2. Nurturing consensus across the ccNSO's community, including the name-related activities of ccTLDs; and
3. Coordinating with other ICANN Supporting Organizations, committees, and constituencies under ICANN.

~~In addition to the above core responsibilities, the ccNSO may also engage in other activities authorized by its members, including:~~ **Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and**

4.11 of this Article. However, the ccNSO may also engage in other activities authorised by its members. Adherence to the results of these activities will be voluntary and such activities may include: seeking to develop best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers, and enhancing operational and technical cooperation among ccTLD managers.

F—CHANGES TO ccPDP AND SCOPE

Relevant bylaw

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

1. The scope of the ccNSO's policy-development role shall initially be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.
2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall initially be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

Issue

The use of the word “initially” in Article IX section 6 implies the scope for setting binding policies (and the ccPDP) will change over time. Should the ccNSO be able to change the Scope and the ccPDP over time? Should the ccNSO be able to change Article IX over time?

Summary of comments received Comment Period 1

The core of the concern is the use of the word “initially” in section 6. Based on the comments received there is no objections to the mechanism in section 6 to change the scope of the ccNSO (Annex C) or the policy development process (Annex B).

Methods for resolving the matter

Solution 1

No change of the bylaw language

Solution 2

Remove the word “initially” from section 6.a and section 6.b.

Analysis of resolutions

The discussion regarding this matter focuses on the use of the word “initially”. The principle that the ccPDP and scope of the ccNSO can be adjusted is accepted by all who participated in the discussion so far.

The use of the word “initially” is perceived to indicate a necessary change of the ccPDP and scope of the ccNSO (Annex C) over time. The particular concern is that the scope will be broadened.

The question is whether it is necessary to indicate the scope of the ccNSO at time of incorporation (similar to “initial capital” of a company in first annual account)?

Proposal

Remove the word “initially” from section 6.a and section 6.b.

Proposed wording Article IX section 6

1. The scope of the ccNSO's policy-development role shall ~~initially~~ be as stated in [Annex C to these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

2. In developing global policies within the scope of the ccNSO and recommending them to the Board, the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall ~~initially~~ be as stated in [Annex B to these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP, and shall be subject to approval by the Board.

G—APPLICABLE LAW EXEMPTION

Relevant bylaw

Section 4.10

Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies (a) have been developed through the ccPDP as described in [Section 6 of this Article](#), and (b) have been recommended as such by the ccNSO to the Board, and (c) are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLDs.

Issue

Where a policy developed through a ccPDP conflicts with the law applicable to the ccTLD manager, the policy does not apply to the manager. The law applicable shall always remain paramount.

Should a process be inserted into Article IX section 4.10 that sets out how a decision should be made as to whether a ccNSO policy does conflict with the national law of a ccNSO member?

Summary of comments received Comment Period 1

The overarching principle that (national) law is paramount over a policy is undisputed. The issue raised concerns the lack of procedure in section 4.10 to determine if a policy is in conflict with applicable law. The underlying concern is that a ccNSO member could end up in a tug of war with ICANN over the non-implementation of a policy which infringes applicable law.

Methods for resolving the matter

Solution 1

No changes

Solution 2

Introduction of declaration combined with an expert legal opinion on conflict of policy with applicable law

Analysis of resolutions

One should be aware of the fact that in this case an exemption mechanism as some have suggested, is senseless. One can not exempt oneself from a policy that already does not apply when it is in conflict with applicable law. A policy developed in a corporate environment and through private mechanisms, such as ICANN policies, can not replace law and therefore does not apply to the extent the matter is considered under applicable law.

In considering the methods for resolving this matter one should therefore take into account the following elements: burden of proof, enforcement mechanism when it should come to a court case between ICANN and the ccTLD manager involved and transparency in order to avoid a possible conflict.

Burden of proof concern—

When a member can not apply a policy because the policy is in conflict with applicable law and considering the current language in section 4.10 the burden to prove otherwise is on ICANN. Therefore the introduction of presumptive language does not shift the burden of proof.

Enforcement of implementation policy–

Even if ICANN is able to prove the member of the ccNSO had intentionally misrepresented a conflict between a policy and applicable law then it has no legal means to force the member to implement the policy. To force an individual member to implement a policy crucial adjudication parts and consequence parts are missing in the bylaws. One could argue therefore there is no need to introduce additional safeguards. However the introduction of a declaration supported by external legal opinion that the policy is in conflict with applicable law is in itself valuable to avoid a possible conflict.

For reasons of transparency the second solution (introducing a declaration combined with legal opinion) may offer some comfort. One could argue this is already implicit in the current wording. Nothing stops the member from making a declaration which is supported with an opinion. This in itself would raise the threshold and burden of proof on ICANN, but to avoid confusion and to improve the transparency - one of the core values of ICANN according to its bylaws - it also makes sense to introduce such a mechanism.

As this issue involves not only the position of ccNSO members and ICANN, but also the GAC, and it touches on politically sensitive issues currently under debate in other for a it is advised to seek explicitly the opinion of the GAC on this issue to ensure the basic concept that applicable (national) law remains paramount and at the same time avoid possible conflict over interpretation of applicability of law and scope of a policy.

Tentative Proposal

Introduction of declaration combined with an expert legal opinion on conflict of policy with applicable law

Comments received Comment Period 2

In the view of DENIC, Nominet and UNINETT Norid, the tentative proposal should be simplified. A simple declaration of the ccTLD manager should suffice to make clear a policy is in conflict with applicable law. The proposed additional requirement of a expert legal opinion to the effect that policy is in conflict with applicable law only complicates the process and according to DENIC, Nominet and UNINETT Norid puts the ccTLD manager in a even worse position then under the current wording.

Review of Comments

The principle that policies developed through the ccNSO and adopted by the ICANN Board do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount, is not a matter raised in this ccPDP. The debate focuses on if a mechanism should be introduced and if so in what way to invoke this principle and to avoid a possible conflict between the relevant stakeholders on the meaning and extent of the law applicable. In light of the current discussions in other fora and the possible ramifications of a proposal in light of these discussions the ccNSO is advised to defer a recommendation on this particular matter, but enter into a substantive dialogue with the GAC on this matter. The Chair of the ccNSO was therefore requested to contact the Chair of the GAC on the principle to enter in such a dialogue. As a result the Chair of the GAC and the ccNSO have agreed in principle to enter in a ccNSO/GAC dialogue

on this topic (the email exchange between the Chair of the ccNSO and the Chair of the GAC is attached to this report in Annex A).

Proposal

Defer a ccNSO recommendation on this particular issue to the future to take into account the outcome of the dialogue between the ccNSO and the GAC on this matter. The ccNSO Council is advised to decide that Comment Period 2 of this ccPDP will remain open for this particular issue until as a result of the dialogue a mutual acceptable conclusion is reached which will then be included in an addendum to the Final Report as the recommendation to resolve this particular issue.

I—MEMBERSHIP QUORUM VOTING ON PDP RECOMMENDATIONS

Relevant bylaw

Annex B section 13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed irrespective of whether 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

Issue

According to the current bylaws (Annex B section 13) a vote of the members is valid without a quorum. Should a vote of ccNSO members only be valid if at least 50% of the members have lodged a vote irrespective of the round of voting?

Summary of comments received Comment Period 1

The comments received and the public hearing indicate that the introduction of a quorum for the second round of members voting (Annex B section 13) has strong support both among members and non-members of the ccNSO. It is also clear that a second round of voting is needed where less than 50 % of the members have lodged a vote in the first round of the members vote.

Methods for resolving the matter

Solution 1

No change, to avoid apathy

Solution 2

Change of Annex B section 13: introduction of a quorum of 50 % for a second round of voting, No more than two rounds of voting

Analysis of resolutions

The current bylaw language is a compromise. It is an attempt to balance the role of active members of the ccNSO versus apathy. The perception is that apathy among ccNSO members has in the past determined the outcome of a vote. Under the current bylaw language, in the second round of voting, those members who do not vote are effectively not counted.

The past experience is grounded on the voting behaviour in the former ccTLD constituency and other loose ccTLD associations. This behaviour should not be compared with the potential voting behaviour of ccNSO members. First of all one has to take into account the fact that in order to be

eligible for voting a ccTLD manager needs to be a member of the ccNSO. To become a member a ccTLD manager is actively engaged in the ccNSO (pay a fee to the ccNSO, abide by the rules of the ccNSO and apply policies by virtue of membership). In other ccTLD constituencies a ccTLD manager was and is part of the constituency automatically. Secondly, the issues to be voted upon will probably deal with substantial issues which will have an impact on the ccTLD manager. Experience with this ccPDP shows a policy development process will not be initiated light heartedly.

As to the substantive matter itself, if a ccPDP is on an issue that is of importance to the membership and the broader community - running the ccPDP is already an indication - a reasonable quorum like 50 % as suggested should not be too high a threshold. It is also an indication of the support of a policy in the ccTLD community if a recommendation will be passed to the Board with at least a substantial part of the ccNSO members actively in favour of such a recommendation.

Proposal

Change of Annex B section 13: introduction of a quorum of 50 % for a second round of voting, No more than two rounds of voting.

Annex B section 13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

In the event that at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. In the event that fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a **final**, second round of voting, conducted after at least thirty days notice to the ccNSO members, will be employed ~~irrespective of whether~~ **if at least** 50% of the ccNSO members lodge votes. In the event that more than 66% of the votes received at the end of the voting period shall be in favour of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with Item 14 below as the ccNSO Recommendation.

J—REJECTION OF PDP RECOMMENDATIONS BY THE ICANN BOARD

Relevant bylaw

Annex B section 15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.

Issue

Under the current bylaws the Board can reject a recommendation of the ccNSO where the Board determines by a vote of more than 66% that such policy is not in the best interest of the ICANN community or of ICANN (Annex B section 15).

Should the ICANN Board only be able to reject a Recommendation or Supplemental Recommendation as the case may be in 'exceptional circumstances'?

Summary of comments received Comment Period 1

It is accepted that the Board has its own responsibility and therefore can reject a recommendation of the ccNSO. It is also accepted that the current 66% vote against is indication of widely carried opinion of the Board to reject. Thirdly transparency of the Board decision (motivation of

rejection) should remain. The core issue is what are the grounds for rejecting a ccNSO recommendation or Supplemental recommendation.

Methods for resolving the matter

Solution 1

Current wording remains.

Solution 2.

The criteria will be replaced by “exceptional circumstances” as the determining factor.

Analysis of resolutions

A recommendation submitted to the Board would be the result of a long and tedious policy development process including all stakeholders. The reasons for rejection of a recommendation should therefore be limited to exceptional circumstances. The concern is that the standard for the Board to reject a recommendation (not in the best interest of the ICANN community or of ICANN) is currently too low.

The proposed solution tries to reflect this by the introduction of a standard for rejection only in ‘exceptional circumstances’. This might include a circumstance where accepting the recommendation would lead to a breach of fiduciary duty but would also include other circumstances. Therefore as it does not list the circumstances which should be considered exceptional, it may include the current criterion (the best interest of the ICANN community or ICANN).

Further, the proposed criterion introduces additional subjective and non-verifiable elements in the decision making process of the Board. The assessment of whether circumstances are exceptional shall be up to the Board.

Tentative Proposal

The current proposal to simply use the words ‘exceptional circumstances’ is not considered to be explicit enough and input should be sought during the second comment period on refining the words or providing some alternative suggestions.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid response. In the view of DENIC, Nominet and UNINETT Norid the Board should only be able to reject a ccNSO recommendation where acceptance would put the directors in breach of their fiduciary duties to the company. In common law jurisdictions the concept of “fiduciary duties” of directors is matter of general company law and is therefore well understood in case law and practice.

Review of comments

In the event the ICANN Board rejects a ccNSO Recommendation in the first instance then, according to Annex B section 15, a reconciliation process will be initiated at the end of which the ICANN Board should decide a second, final time. The matter as raised should be viewed in the context of this two step decision process and the open, multi-stakeholder nature of the policy development process as described in Annex B of the bylaws.

At the Luxemburg hearing during comment period 1 the concern of those who have raised the matter was that the threshold for rejection of ccNSO recommendation should be made higher. In the comments received during Comment Period 2 it is suggested the criterion for rejection should be that accepting a Recommendation would put the directors in breach of their fiduciary duties to the company. Both in common and civil law jurisdictions the concept of “fiduciary duties” of directors is matter of general company law and is therefore well understood in case law and practice.

However as was noted during Comment Period 1 the criterion is more rigorous and just one example of exceptional circumstances that would give cause to the ICANN Board to reject a ccNSO Recommendation. Further, if the suggested criterion would be applied in both instances of the Board’s decision making process the character of the reconciliation process would change. The risk being that the reconciliation process as defined in section 15 of Annex B would turn into a debate on the interpretation of the fiduciary duties of ICANN directors. To maintain the current flexibility and open and multi-stakeholder nature of the ccNSO policy development process it is therefore recommended to maintain the current wording for the initial Board vote on a ccNSO recommendation and to change the criterion for the decision in the final, second instance as suggested.

Proposal

Amendment of Annex B section 15, 2 c as suggested in the review of comments (introduce breach of fiduciary duties of a director to the company as criterion for rejection).

Proposed wording Annex B section 15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation

shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that ~~such policy is not in the best interest of the ICANN community or of ICANN~~ **that acceptance of such policy would constitute a breach of the fiduciary duties of the Board to the Company.**

INTERRELATED ISSUES

Introduction

Interrelated issues are defined as any matter raised which in itself or in its resolution depends upon or is conditional upon another matter or its resolution.

The items in the Issue Report considered to be interrelated are:

D—setting binding policies—should a policy only be binding on members if and only to the extent the policy is on an issue that is within Scope and has been developed through the ccPDP and is adopted by the Board?;

H—initiating a ccPDP—should it only be possible for the Council to initiate a ccPDP on matters that are within the Scope of the ccNSO?;

K—Ability of Board to set binding policies on Issues not within scope—if the Council will remain able to initiate a ccPDP outside the Scope pursuant to the opinion of the General Counsel and in case the Supplemental Recommendation is rejected by the Board?; and

L—should the scope of the ccNSO be redefined?

Under the current bylaws a policy is binding by virtue of membership of the ccNSO when a) it has been developed by use of the cc policy development process, b) has been recommended to the Board as such and c) is adopted by the Board. Of concern is that the issue, which the policies address, should be within the scope of the ccNSO (Issue D).

Currently, the ccNSO Council may initiate a ccPDP, through a vote of 12 or more members, if General Counsel is of the opinion the subject matter is not within ICANN's mission Statement or not within the scope of the ccNSO. This is interpreted as an ability of the ccNSO to make recommendations on any issue. Directly related is the question of who determines what is in scope or ICANN's Mission Statement. Currently ICANN General Counsel determines this. As already stated the Council may with a supermajority initiate a ccPDP (Issue H).

Directly related to items D and H is item K and the presumed ability of the Board to set binding policies on Issues which are not within scope. According to those who have raised the issue, the Board can set binding policies in instances where a Supplemental Recommendation has been rejected and the ccPDP has been initiated on an issue which in the opinion of General Counsel is not within the scope of the ccNSO. The resolution of this matter depends on the resolution of issues D and H. However it has merits of its own which will be discussed in section 4.3.

The last matter raised is on the scope of the ccNSO as defined in Annex C of the bylaws. If the scope were to be redefined as part of this ccPDP this will have an impact on most of the other matters that have been raised in this ccPDP.

D—SETTING BINDING POLICIES

Relevant bylaw

Article IX section 4.10

Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies

- (a) have been developed through the ccPDP as described in [Section 6 of this Article](#), and
- (b) have been recommended as such by the ccNSO to the Board, and
- (c) Are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLD's.

Issue

Under the current bylaws (Article IX section 4.10) a member of the ccNSO shall be bound by an ICANN policy if, and only to the extent that this policy (a) has been developed through the ccPDP and (b) has been recommended as such by the ccNSO to the Board, and (c) is adopted by the Board as a policy.

Should a policy only be binding on members if and only to the extent the policy is on an issue that is within Scope and has been developed through the ccPDP and is adopted by the Board?

Summary of comments received Comment Period 1

In all comments received it is stressed that a policy can only be binding if and only to the extent that:

- a. the issue the policy addresses is within scope of the ccNSO (Annex C),
- b. has been developed by use of the ccPDP (Annex B),
- c. has been recommended as such by the ccNSO and
- d. is adopted by the Board. Condition a. needs to be added to section 4.10.

However, resolving this issue as suggested raises another: the ccNSO should at least be able to co-determine whether or not an issue is within or outside scope of the ccNSO. Currently (Annex B section 2) this is firstly determined by ICANN's General Counsel. However the ccNSO Council may initiate a ccPDP with a supermajority even if the issue is not within scope of Mission Statement or the scope of the ccNSO (Annex B section 3 b). A recommendation should resolve both matters at the same time.

Methods for resolving the matter

Solution 1

No change of the bylaws to address this issue. The other changes to the bylaws as suggested provide a reasonable protection (both at individual level and common level).

Solution 2

Firstly, change of section 4.10 to include an additional condition that to be binding, the policy needs to be within scope of ccNSO (Annex C). The relevant part of Article IX section 4.10 would read: a policy only applies by virtue of membership of the ccNSO if and only to the extent that:

- a. The issue the policy addresses is within scope of the ccNSO (Annex C),
- b. Has been developed by use of the ccPDP (Annex B),
- c. Has been recommended as such by the ccNSO and
- d. Is adopted by the Board.

Secondly, to cope with the concern of determination of scope, an amendment of Annex B section 3 (b) is proposed. It should include a mechanism for the ccNSO to at least co-determine if an issue is within the scope of the ccNSO. Possible mechanisms are:

- A. Supermajority vote of the ccNSO Council (12 or more Council members) to initiate the ccPDP when the Council is of the opinion the issue is within ICANN’s Mission Statement or scope of the ccNSO (Annex C) with a reasoned statement of its determination;
- B. Introduction of conciliation process if General Counsel is of the opinion issue is not within scope and ccNSO Council is of the opinion issue is within scope of the ccNSO or ICANN’s Mission Statement.

In the event that General Council and the ccNSO continue to disagree on an issue, the ccNSO could still decide to run a PDP outside of Scope, however this would be on the understanding that any recommendation approved by the Board would be non-binding.

The issue regarding the initiation of a ccPDP (Issue H) becomes obsolete, as it can only be limited to issues that are within scope.

Analysis of resolutions

Solution 1—No changes

The current wording in the bylaws is the result of long and intense discussions undertaken during the formation of the ccNSO. It has resulted in the ability of the ccNSO to develop binding policies which apply to members by virtue of their membership, and at the same time introduce safeguards for the ccNSO membership as a whole and as individual members. It is also intended to empower the ccNSO (the Council and the members) to set policies for the ccTLD community on issues which they consider relevant. For this reason the ccNSO Council is empowered to initiate a PDP on an issue with a supermajority in instances where ICANN’s General Counsel considers the issue to be outside ICANN’s Mission Statement or outside the scope of the ccNSO (Annex B section 3 b). Depending on one’s interpretation of Annex B section 3(b) the issue to be addressed should be within ICANN’s mission or within the scope of the ccNSO (Annex C) according to General Counsel and only with a supermajority vote of the ccNSO Council. The core concern expressed however is not addressed. The substantive issues for which a policy can be developed have to be within the scope of the ccNSO.

By changing the bylaws the current system of empowerment and safeguards is changed. Not changing the bylaws (solution 1) is therefore an option to maintain the current balance of powers.

Solution 2—Changes in the bylaws to reflect Annex C as condition for a binding policy.

Both in the submissions and at the public hearing the discussion focused on the “scope of the ccNSO” i.e. which issues can be resolved by developing a policy by use of the ccPDP.

Taking into account the objective of this ccPDP, the comments and input received and the long and intense discussions particularly on the development of the scope of the ccNSO (Annex C) in the past, more emphasis on Annex C as a condition to set a binding policy is indicated.

Solution 2 is a straightforward method to resolve issue D and H.

The second element in the debate over Issue D, in particular at the public hearing, was the concern that the ccNSO should at least co-determine whether or not an issue is within scope. Currently this is determined by the ICANN General Counsel. This matter has to be addressed in conjunction with the other change suggested in order to maintain a balanced system. If not some of the current members of the ccNSO will object to a change, and during the public hearing it became clear potential members understand this concern.

Given the concern expressed 2 possible resolutions are:

- A. The ccNSO Council determines with a supermajority the issue is to be considered within scope, including a reasoned statement of its opinion;
- B. A reconciliation mechanism between ICANN's General Counsel and the ccNSO Council to determine if an issue is within scope or within ICANN's mission statement.

Should the ccNSO Council decide to initiate a PDP without reaching agreement with General Counsel on whether an issue is within scope, they do so on the understanding that even if the Board approves any recommendation/s, the policy would be non-binding. This is on the basis that the suggested amendment to section 4.10 takes precedence over the co-determination issue.

However it may be that neither of these 2 methods is entirely satisfactory and so it is recommended that proposals for appropriate mechanisms be put forward during the second comment period.

Tentative proposal

It may be that neither of these 2 methods is entirely satisfactory and so it is recommended that proposals for appropriate mechanisms be put forward during the second comment period.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid response. The response is a combined response to issues D and H.

DENIC, Nominet and UNINETT Norid support the suggested change to Article IX Section 4.10 (solution 2). They also support the notion that the ccNSO is best placed to determine whether an issue is within scope of a ccPDP, but propose this should be resolved by a vote of the membership not of the Council. In the event there is disagreement between General Counsel and the ccNSO Council as to whether an issue is in or not within scope, it is the view of DENIC, Nominet and UNINETT Norid that the ccNSO should be able to progress on the issue, however not by developing a policy through the ccPDP but through the development of a best practice for the ccNSO and its members or a recommendation to ICANN on the issue. This resolution of the matter on determining whether an issue in or not within scope builds on the what in their view is the fundamental purpose of the ccNSO; to be a forum for information exchange and developing non-binding best practice.

Review of Comments

In their response DENIC, Nominet and UNINETT Norid support the suggested change to Article IX section 4.10. With regard to their opinion that ultimately the members of the ccNSO should determine whether an issue should be resolved through a ccPDP, this does not take into account the rules and procedures of the ccNSO Council and membership. According to these rules and procedures (www.ccnsso.org/meetings) Council decisions can be ratified or vetoed by the members of the ccNSO at the initiation of 10 % of the members.

With regard to the underlying concern of some of the current members of the ccNSO - who determines if an issue is within the scope of the ccNSO and hence on the initiation of a ccPDP - the resolution proposed by DENIC, Nominet and UNINETT Norid does not take into account the different, legitimate roles and responsibilities of General Counsel and the members of the ccNSO and its Council within the ICANN structure. The current bylaws in particular Annex B section 3 b on the initiation of a ccPDP were designed to overcome a disagreement on whether an issue was in or outside the Mission Statement of ICANN or the scope of the ccNSO and henceforth on the initiation of a ccPDP. As the recommendation will be to limit a ccPDP to only those issues which are within scope of the ccNSO a mechanism should be introduced to balance the respective roles and responsibilities and resolve the potential disagreement between General Counsel and the ccNSO. It should be noted that the discussion only focuses on the scope of the ccNSO and not on the scope of ICANN's mission statement. The determination whether an issue is within or outside ICANN's mission statement will be the prerogative of General Counsel.

The starting point and not disputed is the current role of General Counsel to determine whether an issue is within scope of the ccNSO should be maintained. General Counsel should remain as the first to give an opinion whether the issue considered is properly within the scope of the ccNSO. It should also be maintained that this opinion is part of the Issues Report on the basis of which the Council may initiate a ccPDP to resolve the issue.

However, in the event General Counsel is of the opinion the issue raised is not properly within scope of the ccNSO, the Issue Manager should inform the Council of this opinion of General Counsel. The ccNSO Council may then consider this opinion of General Counsel. In the event the Council is of the opinion the issue is within scope, contrary to the opinion of General Counsel, the Council and General Counsel should engage in a dialogue as appropriate and in accordance with agreed procedures to resolve their disagreement.

In the event agreement is reached, the Issue Manager will then proceed to make a recommendation on whether the Council should move to initiate a ccPDP supported by the opinion of General Counsel whether the issue is in scope.

If after the reconciliation the disagreement is not resolved, the Council may decide with a supermajority of 15 or more members of the Council that it is of the reasoned opinion that despite the opinion of the General Counsel, the issue is within scope for a policy development process of the ccNSO. According to the rules and procedures of the ccNSO as established this decision of the Council can be ratified or vetoed by the members of the ccNSO if called for by 10% or more of the members.

In the event the Council is of the opinion the issue is within scope and General Counsel is of another opinion, the Issue Manager shall proceed to come to a recommendation on whether or not to initiate a ccPDP, incorporating both the reasoned opinion of the Council and General Counsel in the Issues Report.

After receipt of the Issues Report (including the opinion of General Counsel or General Counsel and the Council as the case may be) the Council shall then vote on the initiation of a ccPDP. According to the rules and procedures of the ccNSO this decision can again be ratified or vetoed by the members of the ccNSO.

Proposal

Part 1. Amendment of Article IX section 4.10 to reflect that a policy only applies by the virtue of being member of the ccNSO if and only to extent that the policy has been:

- a. The issue the policy addresses is within scope of the ccNSO (Annex C),
- b. Has been developed by use of the ccPDP (Annex B),

- c. Has been recommended as such by the ccNSO and
- d. Is adopted by the Board.

Part 2. Amendment of Annex B section 3 b to reflect that a policy cannot be developed which is not within scope. For that matter the last sentence of this section should be deleted.

Part 3. Amendment of Annex B section 2 to reflect that in the event General Counsel is initially of the opinion the issue is outside of scope a reconciliation process may be initiated between General Counsel and the Council by the Issue Manger. Further section 2 should reflect the vote of the Council in the event the disagreement on whether the issue is within scope remains.

Part 4. Amendment of Article IX and Annex B to reflect part 1, 2 and 3 of the changes (needs to be further checked). Deletion of the reference to General Counsel's opinion in the event a Supplemental Recommendation made to the Board is rejected.

Suggested bylaw language:

Part 1: Article IX section 4.10

Subject to clause 4(11), ICANN policies shall apply to ccNSO members by virtue of their membership to the extent, and only to the extent, that the policies

(a) Only address issues that are within scope of the ccNSO according to Article IX, Section 6 and Annex C;

- (b) Have been developed through the ccPDP as described in [Section 6 of this Article](#), and
- (c) Have been recommended as such by the ccNSO to the Board, and
- (d) Are adopted by the Board as policies, provided that such policies do not conflict with the law applicable to the ccTLD manager which shall, at all times, remain paramount. In addition, such policies shall apply to ICANN in its activities concerning ccTLD's.

Part 2 : Annex B section 3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.

b. A vote of ten or more Council members in favour of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and ccNSO Scope. ~~In the event that the Issue Report states it is not properly within the scope of the ICANN mission statement or the ccNSO Scope, then a vote of twelve or more Council members in favor of initiating the PDP shall be required to initiate the PDP.~~

Part 3 Amendment of Annex B section 2

Additional language to reflect a reconciliation mechanism and decision making of the ccNSO Council in the event General Counsel and ccNSO Council initially disagree whether an issue is within or outside of Scope of the ccNSO.

Proposed language Annex section 2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in Item 1(a) above or the receipt of a request as outlined in Items 1 (b), (c), or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of ICANN (in which case the costs of the Issue Manager shall be borne by ICANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager).

Within fifteen (15) calendar days after appointment (or such other time as the Council shall, in consultation with the Issue Manager, deem to be appropriate), the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following:

- a. The proposed issue raised for consideration;
- b. The identity of the party submitting the issue;
- c. How that party is affected by the issue;
- d. Support for the issue to initiate the PDP;
- e. A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include, and be supported by, an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO. In coming to his or her opinion, the General Counsel shall examine whether:

- 1) The issue is within the scope of ICANN's mission statement;
- 2) Analysis of the relevant factors according to [Article IX, Section 6\(2\)](#) and [Annex C](#) affirmatively demonstrates that the issue is within the scope of the ccNSO;

In the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue:

- 3) Implicates or affects an existing ICANN policy;
- 4) 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.

In all events, consideration of revisions to the ccPDP (this [Annex B](#)) or to the scope of the ccNSO ([Annex C](#)) shall be within the scope of ICANN and the ccNSO¹.

In the event that General Counsel is of the opinion the issue is not properly within the scope of the ccNSO Scope, the Issue Manager shall inform the Council of this opinion. If after an analysis of the relevant factors according to [Article IX, Section 6](#) and [Annex C](#) a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside scope then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manger accordingly. The Issue Manager shall then proceed with a

¹ Note that this section will be changed in the event Issue C will be resolved as suggested.

recommendation whether or not to the Council shall move to initiate the PDP including both the opinion and analysis of General Counsel and the Council in the Issues Report.

f. In the event that the Manager Recommendation is in favor of initiating the PDP, a proposed time line for conducting each of the stages of PDP outlined herein (PDP Time Line).

g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the ICANN Board. In some circumstances, it will not be possible to do this until substantive discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issue Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

Part 4 Deletion of the reference to General Counsel's opinion in the event a Supplemental Recommendation made to the Board is rejected.

Suggested wording of relevant section Annex B section 15. 5

5. In the event ~~circumstances where~~

~~(i) If the Board determines not to accept a ccNSO Supplemental Recommendation, and~~

~~(ii) The opinion of the General Counsel pursuant to Item 2.c. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,~~

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

H—INITIATING A ccPDP

Relevant bylaw

Annex B section 3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible the vote may occur by e-mail.
- b. A vote of ten or more Council members in favour of initiating the PDP shall be required to initiate the PDP provided that the Issue Report states that the issue is properly within the scope of the ICANN mission statement and the ccNSO Scope. In the event that the Issue Report states it is not properly within the scope of the ICANN mission statement or the ccNSO Scope, then a vote of twelve or more Council members in favour of initiating the PDP shall be required to initiate the PDP.

Issue

Under the current bylaws the ccNSO Council can initiate a ccPDP on matters, which are within Scope and outside of Scope (Annex B section 3.b).

Should it only be possible for the Council to initiate a ccPDP on matters that are within the Scope of the ccNSO?

Summary of comments received Comment Period 1.

The issue itself is relevant in the context of setting binding policies (issue D Issues Report).

Methods for resolving the matter

The resolutions to this issue are discussed and need to be considered in the context of Issue D.

Proposal

This matter is resolved as part of the resolution of Issue D part 3

K—ABILITY OF BOARD TO SET BINDING POLICIES ON ISSUES NOT WITHIN SCOPE.

Relevant bylaw

Annex B section 15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 1. In the event that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board Statement. The discussions shall be held in good faith and in a timely and efficient manner, to find a mutually acceptable solution.
 3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). That Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation. Members shall be given an opportunity to vote on the Supplemental Recommendation under the same conditions outlined in Item 13. In the event that more than 66% of the votes cast by ccNSO Members during the voting period are in favour of the Supplemental Recommendation then that recommendation shall be conveyed to Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that such policy is not in the best interest of the ICANN community or of ICANN.
 4. In the event that the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").
 5. In circumstances where
 - (i) The Board determines not to accept a ccNSO Supplemental Recommendation, and
 - (ii) The opinion of the General Counsel pursuant to Item 2.e. was that the issue was within the scope of the ccNSO pursuant to the ccNSO's Scope,

then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

Issue

Under the current bylaws an issue outside of scope can be considered in a PDP. In a case where the final recommendation to resolve the issue is a Supplemental Recommendation (Annex B

section 15) and the issue is within scope according to General Counsel pursuant to Annex B section 2, the Board may not set a policy and the status quo remains.

If the Council will remain able to initiate a ccPDP outside of Scope, is the ICANN Board able to set its own policy, if the issue is not within scope pursuant to the opinion of the General Counsel and in case the Supplemental Recommendation is rejected by the Board? If so, should this remain the case? If not, should this be introduced?

Summary of comments received Comment Period 1

The issue as raised has no merits on its own. As such it is based on a specific interpretation of the relevant section of the bylaws. Even if the interpretation is correct i.e. the Board sets a policy, this policy will not apply as it has not been proposed as such by the ccNSO. In case a ccPDP on a substantive issue (not a modification of Annex B or Annex C or possibly in future a modification of Article IX) the issue will evaporate altogether.

Method for resolving the matter

At this stage there is no solution suggested.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid response
Although DENIC, Nominet and UNINETT Norid do not necessarily agree with the assertion in the Initial Report that this issue is a non-issue, they believe the issue would be resolved anyway by amendments to Article IX section 4.10 as suggested in the Initial Report i.e. that no ccPDP can be initiated outside scope.

Proposal

Assuming the proposal for issue D part 4 is recommended, no further change of bylaws is suggested.

L—SHOULD THE SCOPE OF THE ccNSO BE REDEFINED?

Relevant bylaw

Annex C (Scope of the ccNSO)

Issue

Should the scope of the ccNSO be redefined?

Summary of comments received Comment Period 1

Most comments received indicate the current scope of the ccNSO is unclear and ambiguous. While some suggestions were made for a change it was agreed at the public hearing that this could be done at a later stage.

Method for resolving the matter

The ccNSO Council is advised to address concerns with the current scope of the ccNSO at a later stage and in a separate process.

Comments received Comment Period 2

DENIC, Nominet and UNINETT Norid response
DENIC, Nominet and UNINETT Norid reiterate their comments made during Comment Period 1. In their opinion registries considering ccNSO membership should have a clear understanding and appreciation of the actual range of issues for which a policy may be developed and which applies to them by virtue of their membership. For that matter they make some suggestions.

Review of Comments

Although there is some merit in the observation made on the current scope of the ccNSO as defined through Annex C, the response does not consider and take into account that the scope of the ccNSO is the result of long and intense debate in the ccTLD community and with other stakeholders. Secondly, although it is clear the current scope can be improved and is ambiguous at some points, it offers a method to cope with the changes of the Internet and the DNS in particular in relations to the roles and responsibilities of both ccTLD managers and ICANN/IANA in a wider context. Finally the ambiguity and therefore the appreciation of the possible range of policies and their impact on an individual ccTLD manager should be considered in the context of all the elements in the bylaws relating to the development and implementation of ccNSO policies and membership of the ccNSO.

Proposal

As part of this ccPDP there is no proposal to change Annex C of the bylaws. The ccNSO Council is however advised to address concerns with the current scope of the ccNSO at a later stage and in a separate process.

Annex A Email exchange Chair of the ccNSO and Chair of the GAC

From: Chris Disspain
Sent: Wednesday, 28 September 2005 21:13
To: Mohd Sharil Tarmizi
Subject: Letter from ccNSO to GAC

Dear Sharil,

I refer to my previous letter regarding the ccNSO Policy Development Process currently underway.

One of the issues canvassed in the Issues Report was a change to Article IX Section 4.10 of the ICANN By Laws. This article makes the statement that the law applicable to a ccTLD manager is paramount where there is a conflict between an applicable law and a policy developed by the ccNSO and adopted by the Board of ICANN. This principle is not under discussion. However there is no mechanism describing how a ccTLD manager makes such a claim or to deal with the possibility of a dispute between ICANN and the ccTLD manager as to the meaning or effect of the applicable law.

It is clear that this issue is of particular interest to the GAC and it is suggested by our Issue Manager, Bart Boswinkel, that it be separated from the balance of the PDP issues and the ccNSO enter into a dialogue with the GAC to consider if such a mechanism is necessary and if so what shape that mechanism should take. The results of this dialogue would then form a recommendation to the members of the ccNSO albeit after the balance of the issues have been dealt with.

The PDP Final Report should be completed within the next 7 days and this recommendation of dialogue with the GAC, if acceptable, needs to be included in the report. Accordingly I would appreciate a response as to whether the principle of such a dialogue with the GAC would be acceptable.

Chris Disspain
CEO - auDA

From: Mohd Sharil Tarmizi
Sent: Thursday, 6 October 2005 12:01
To: Chris Disspain
Subject: Letter ccNSO to GAC

Dear Chris,

Thank you for this letter.

First and foremost, please accept my apologies for the delay in reply. I have just returned from Geneva and had to deal with several issues in the office.

I would like to thank you for your sensitivity on this issue and highlighting it for my attention. I would very much welcome and support a dialogue with the GAC on the issue that you have identified.

Thank you and best regards,

Mohamed Sharil Tarmizi
Chairman
Government Advisory Committee
ICANN