Analysis of Specific ccTLD Related Review Mechanism

https://www.icann.org/en/public-comment/proceeding/ccnso-proposed-policy-for-a-specific-cctld-related-review-mechanism-01-08-2023

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ICANN
AT-LARGE

Agenda

- Brief History of ccNSO
- Is this within ALAC's remit?
- Is there any recourse for Internet Users within a specific national jurisdiction regarding a wrongful action?
- Impact of proposed policy in light of previous ccTLD delegation issues (aka stress test)
- Is this within ALAC's remit?
- ALAC Options

Brief ccNSO History

- Under the original ICANN by-laws, ccTLDs were expected to participate in the Domain Name Supporting Organization (DNSO), see Section 3(a)(ii) of ICANN by-laws (8-Nov-1998), https://www.icann.org/resources/unthemed-pages/bylaws-1998-11-06-en

- Following ICANN Evolution and Reform (2002), the ccNSO was recognized as a stand-alone SO in Article XX, Section 4, see https://www.icann.org/resources/unthemed-pages/bylaws-2002-12-15-en

- Most ccTLD have executed either an Accountability Framework or an Exchange of Letters with ICANN, see https://www.icann.org/resources/pages/cctlds/cctlds-en

- ccTLDs contribute approximately 2.3 million annually to ICANN's budget, although their contributions are listed as a Schedule B Contributor, See https://www.icann.org/resources/pages/cctlds/cctlds-en and https://www.icann.org/en/system/files/files/icann-irs-990-fy22-10may23-en.pdf

Relevant Current ICANN Bylaw Provisions

- Most of ICANN's accountability mechanisms set forth in the ICANN bylaws explicitly exclude review of ccTLD delegation and re-delegation issues.

- (Reconsideration Request) Section 4.2(d), "Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following: (i) Disputes relating to country code top-level domain ("ccTLD") delegations and re-delegations;"

- (Independent Review) Section 4.3(c) states in relevant part "Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:(ii) Claims relating to ccTLD delegations and re-delegations"

Is this within ALAC's Remit?

ICANN Bylaw Section 12.2(d) - At-Large Advisory Committee

(i) The role of the ALAC shall be to consider and provide advice on the activities of ICANN, insofar as they relate to the interests of individual Internet users. This includes policies created through ICANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in ICANN's accountability mechanisms, also coordinates some of ICANN's outreach to individual Internet users.

Questions

- Is there a potential impact on Internet users when the IANA Naming Function Operator (IFO) makes a wrong decision?
- Does ALAC think that a review mechanism that limits the ability of **ANY** third party to challenge the actions of the IFO is problematic?
- Should there be an ability of a third party to challenge the actions of the IFO as wrongful, e.g. the national government of the impacted ccTLD?

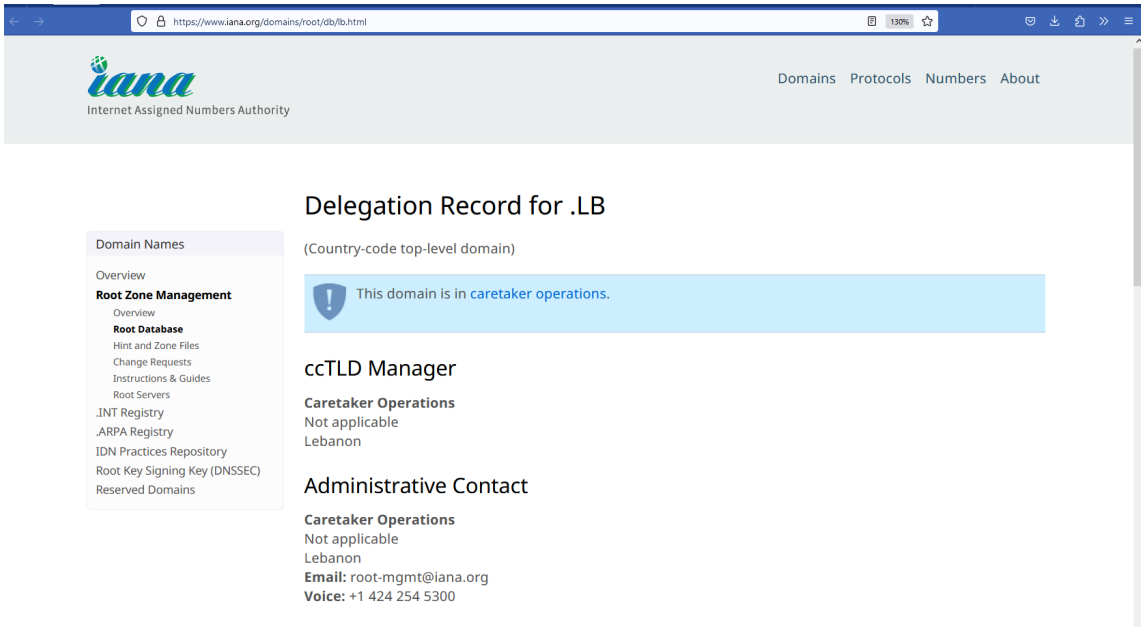
Additional Consideration

- ICANN has lost 6 out of the last 7 Independent Review Process (IRP) proceedings.

	Case	Win/Loss	Fees Awarded	Notes
2	ICM v. ICANN	Loss	($241.372.46)	
3	Manwin v. ICANN	Settled	$0.00	
4	DCA Trust v. ICANN	Loss	($606,113.12)	
5	Booking.com v. ICANN	Won	($83,805.03)	Though ICANN won, ICANN was required to foot 1/2 the total costs.
6	Better Living v. ICANN (.thai)	Closed	$0.00	
7	VistaPrint v/ ICANN	Won	($93,507.08)	Though ICANN won, ICANN was required to foot 40% the total costs.
8	Merck v. ICANN	Won	$48,588.54	
9	Dot Registry v. ICANN (.inc)	Loss	($461,388.70)	
10	Donuts v ICANN	Won	$83,067.66	
11	GCC v. ICANN	Loss	($316,272.46)	
12	.hotel v. ICANN	Won	($119,100.52)	Each Party boree 50% of Costs because of concerns expressed even though ICANN won
13	Dot Sport Ltd v. ICANN	Loss	($152,673.26)	
14	Corn Lake v. ICANN	Loss	$0.00	Each Party was asked to bear own Costs.
15	Afilias v. ICANN (.radio)	Withdrawn	$0.00	
16	Asia Green (.isalm) v. ICANN	Loss	($175,807.82)	
17	Commercial Connect v. ICANN	Terminated	$0.00	
18	Amazon v. ICANN (.amazon)	Loss	($320,340.96)	
19	Afilias v. ICANN (.web)	Loss	($1,648,493.88)	
20	Afilias v. ICANN (.web article 33)	Won	$377,219.69	
21	NameCheap v. ICANN	Loss	($855,719.76)	
22	GCCIX v. ICANN	Ongoing	-	

Stress Test #1 - .LB

- IANA recently took the unprecedented action of unilaterally establishing a caretaking designation in connection with the .LB ccTLD. See communication from VP, IANA Services, Kim Davies to ccNSO Chair, Alejandra Reynoso, dated 13 July 2023, https://ccnso.icann.org/sites/default/files/field-attached/davies-to-reynoso-13jul23-en.pdf



Stress Test #1 - .LB (Continued)

- The crisis involving the .LB ccTLD appears to have escalated since the death of Nabil Bukhalid, LBDR's founder who was also a member of ISOC's Internet Hall of Fame earlier this year.

- The LBDR website has a history of the attempts to delegate the .LB ccTLD to another ccTLD, see https://www.lbdr.org.lb/history-of-lb-cctld

- The relationship between LBDR and the previous ccTLD Manager, the American University of Beirut Computing and Networking Services, appears to have become irreconcilable in 2020.

Stress Test #1 - .PR

- There was a change in IANA database regarding the ccTLD in and around 2007.
- There was concern from the local Puerto Rician internet community about this change (aka redelegation), see http://domainincite.com/docs/Exhibit8-LETTER.DavidConrad-0001.pdf
- This led to a lawsuit being filed, see https://domainincite.com/5475-legal-fight-breaks-out-over-pr-domains

Is this within ALAC's Remit?