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Relation between ccNSO and gNSO: New gTDLs

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> 4. The apportionment of the name space between gTLDs and ccTLDs should be determined prior to allocation of any IDN TLDs and this should be done jointly by the GNSO and ccNSO. This would not impede the effort to create a fast track mechanism, but could impede the deployment of that mechanism. If it is not possible to develop a complete approach for such apportionment by the time the technical and operational capabilities are set, then an interim approach should be developed that provides sufficient guidance to allow new IDN gTLDs and fast track IDN ccTLDs to be introduced in a timely manner.

I understand that it is considered to extend the cc namespace. It can be described as establishing a row with as many cells as there are ISO country codes. Today there is one row behind this first row, where the cc domain corresponds to the ISO abbreviation. It is suggested to extend this with as many rows as there are names with a qualified relation to the territory indicated by the ISO country code.

I am not aware of more detailed discussion, whether these names for the country should be in a language spoken within the territory, or also include the name of the country in other languages. To exemplify, Norway has two official names in the two official versions of Norwegian (Norge and Noreg), in addition there may be the version of the name of the country in the language of the indigoes people, the Sami – and perhaps any significant immigrant community (for instance in Urdu). But it may also extend to the name in other languages, like Norway (English), Norvège (French), Norwegen (German) *etc.* It does not really matter; it is obvious that there may be several or many rows in addition to the ISO abbreviation.

In addition there will be a layer for each script with a qualified relation to the territory. Latin will absorb, I understand, variations created by accents (like ó, ö or õ) and special national characters (like Norwegian æ, ø or å). But in the eu domain there will be Cyrillic script (which also comes in several versions), and in countries like India there may be a large number of scripts.

Visualising the rows for country names and the layers for script will create an irregular Lego brick structure, with rows of country names and layers of scripts of different lengths.

I understand that it is proposed that one should grant the cc domains a "fast track" for international domains, that is the domains using different country names from the ISO codes or [inclusive or] scripts different from Latin. It is expected, as I understand it, to take approximately two years to develop a full PDP which will govern international domains of a generic nature. This will give the cc domains an advantage in commercial terms or terms of competition. I can see

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that operators placing themselves in the generic domain experience this as a problem, but it is not my main concern.

I understand that it is suggested that when the final PDP for international domains are adopted, it will be given retroactive effect for the "fast track" cc domains. ICANN does not as such have any authority to impose such a decision on registries operating the new cc domains. The only authority that is available is the autonomy of the parties. Therefore, th only way this can be realised, is either through a contractual clause with the fast track registries, or by these registries to acknowledge unilaterally that they are bound by the PDP. The first, and perhaps most realistic alternative, presumes that the registries of these fast track domains have formal contracts with ICANN.

But I have understood that there is some uncertainty to whether such registries will accept to be governed by contracts with ICANN. Traditionally, many of the cc registries started to operate before the establishment of ICANN, and on a basis that was pretty informal. Many of them – including the Norwegian – have no contract with ICANN, but work on the basis of an exchange of letters, Memorandum of Understanding *etc*. It has been argued that the new international cc registries will operate on the same basis that is without any formal contractual relationship with ICANN.

The argument for this– as presented to me – is that a country cannot enter into contract with a private foundation under Californian law, and that national sovereignty is at stake. This is in my mind a very weak argument. Most countries would govern a cc registry under national law, perhaps with some more detailed regulation in secondary legislation. The registry would be similar to a telecommunication operator and after the deregulation in Europe and many other countries, such entities are incorporated in the private sector, though the state may have strong influence over its operation by different means. Restricting my comments to Europe, it is rather obvious that a telecommunication operator is a private organisation, and that it has a number of agreements with other private organisations abroad, for instance to allow roaming or to terminate a call in the network of another operator.

I think it would be very precarious to permit international cc registries on the fast track to start operating without a formal contractual relation to ICANN obliging them to adopt the result of a future PDP. Otherwise they may refuse to do so. According to the new PDP, there will be established a set of international generic registries governed by ICANN policies and decisions, including choice of law and dispute resolution procedures. At the same time there will prevail another set of cc international registries governed by the law of the different countries (or whatever will be the applicable law in a certain situation). If established, it may also easily apply additional international cc registries, expanding into the name space indicated initially after the fast track domains, and in parallel with the generic international domains.

In my native language there is an expression of "painting the devil on the wall", meaning taking things to the extreme. It may be argued that if one will permit two different legal regimes to establish themselves, the international cc registries in practice and principle beyond ICANN's control, it may tear the whole DNS apart, leaving the bits and pieces to be picked up and organised within a conventional international regime, perhaps using the framework of ITU.

Probably this note is just evidence of my own lack of understanding the politics and pragmatics of the issues. But if there may be something in the argument, it becomes vital that ICANN insist on a formal contractual relationship with any fast track international cc registry – and perhaps the gNSO should advice the Board to do so.