

Canadian Domain Name Governance

The Twice delegated CIRA

A review of the policy documents concerning the recognition of CIRA
by the Government of Canada and ICANN

by

Timothy Denton

Interim Coordinator

Ca-registrars

www.tmdenton.com

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1. Purpose

The purpose of this paper is to outline the institutional relationships among ICANN, the Internet Corporation for Assigned Names and Numbers, and CIRA, the Canadian Internet Registration Authority, and to see on what terms the delegation has been authorized. Implicit in a delegation is the superior authority of the delegator. Has this proposed delegation to CIRA from ICANN taken place? What is the relationship of CIRA to the federal government of Canada? What is CIRA's relationship to the Internet Corporation for Assigned Names and Numbers (ICANN)? Are there conditions under which revocation of either of those two delegations could take place? And are there practical steps that could be taken to immunize CIRA against such a possibility?

The paper looks at the foundational documents of domain name governance in the country codes. It shows the conditions under which delegations take place, and the criteria that domestic domain name administrators must satisfy to be recognized and continued in their role.

2. Background to CIRA

In the course of this paper we will be making our acquaintance with a number of institutions, the importance of which is growing as the Internet becomes the standard by which all computers communicate.

IANA, ICANN and CIRA: you will hear these acronyms throughout, and it is worth understanding their institutional relationships.

The first of these relationships, of IANA to ICANN, is easily explained. IANA is a predecessor organization whose functions have been subsumed by ICANN. IANA was, in essence, John Postel, the computer scientist who first kept track of domain names. The IANA function is currently located administratively within the Internet Corporation for Assigned Names and Numbers (ICANN). IANA staff carry out administrative responsibilities for the assignment of IP Addresses, Autonomous System Numbers, Top Level Domains (TLDs), and other unique parameters of the domain name system (DNS) and its protocols.

The Internet Corporation for Assigned Names and Numbers (ICANN) is the non-profit corporation that was formed in October 1998 by the United States government to assume responsibility for the IP address space allocation, protocol parameter assignment, domain name system management, and root server system management functions

previously performed under U.S. Government contract by IANA and other entities.¹

The Canadian Internet Registration Authority (CIRA) was established as a not-for-profit corporation under federal authority on December 3, 1998 to manage the .ca domain in the public interest. CIRA was created as the instrument for Canadian domain name governance within the context of a country code system managed by IANA, the Internet Assigned Numbers Authority.

The relationship of ICANN to CIRA will be one of the subjects of this paper. It is from ICANN and from the federal government of Canada that CIRA draws its authority to manage the Canadian .ca domain space.

We shall look first at CIRA's origins in Canada and then discuss the context of delegation in which CIRA operates.

3. The Report of the Canadian Domain Name Consultative Committee

CIRA came into being in response to a report made by the Canadian Domain Name Consultative Committee, of September 15, 1998.² This final report was the modification of a preliminary report which they published in January of 1998, which had been subject to public comment in the intervening months.

Previously to the creation of CIRA, and indeed until there is a formal handover of authority on December 1, 2000, the Canadian domain space had been managed on a voluntary basis by John Demco, a computer systems operator of the University of British Columbia. He had his authority from John Postel himself, the man who managed the entire DNS system at the University of Southern California's Information Sciences Institute at Marina del Rey, in Los Angeles. Those were the days when the Internet, having no commercial importance, was managed by volunteers. We shall one day look back on those days with amazement that it ever could have been that way.

At the Net97 conference in Halifax, Nova Scotia, concerns were expressed, particularly by Internet service providers, that the system managed by UBC was cumbersome and unfriendly to users. As the CDNCC report stated:

“The recent evolution of the Internet, the nature of the current .CA policies and the delay involved in obtaining a .CA registration (usually about one week) relative to other DNS administrations such as NSI for .COM, generated widespread dissatisfaction within the Canadian Internet community.”

....Following the meeting it was generally agreed that the CDNCC should be created to address the transition from the current management of the .CA domain to a more commercial

¹ <http://www.icann.org/general/abouticann.htm>

² <http://www.cira.ca/en/docs.html>

type of operation. The CDNCC would be composed of representatives from the .CA Committee (current administrator of the .CA domain), the Canadian Internet Society (CISOC), Canadian Association of Internet service Providers (CAIP) and the Federal Government”

The Committee was composed of Bernard Turcotte, in his capacity as the possibly sole member of the Canadian Internet Society, Rob Hall, who then sat on the Board of CAIP, the Canadian Association of Internet Providers, and John Demco and the Government of Canada, represented by Paul Pierlot of Industry Canada. The official line was that the government of Canada was acting as an observer in these deliberations. It is a fiction we can safely ignore.

The Consultative Committee’s final report laid down the fundamental lines that have been pursued by CIRA to date.

- First, there was to be a not for profit Canadian corporation to manage the country code:

CIRA will be a not-for-profit Canadian corporation managed by an elected Board that will administer the .CA domain.

- Second, the system was to be for Canadians. Physical presence requirements were imposed on registrars and registrants:

CIRA will act to preserve the .CA domain as a Canadian resource operated and managed by Canadians for Canadians. These clauses will be included in CIRA's by-laws and constitution.

Registrants must be Canadian citizens, residents, companies or other legal entities as defined by Canadian law and must be operating in Canada and have a physical presence in Canada (in the case of companies or legal entities) or be resident in Canada in the case of citizens.

Registrars must be Canadian citizens, residents, companies or other legal entities as defined by Canadian law and must operate the registration activity in Canada and have a physical presence in Canada.

- Third, the roles of registry, registrar and registrant were defined:

As a registry, CIRA will:

Provide registration services to registrars;

Maintain the .CA database;

Provide name resolution services for .CA domain names;

Bill registrars (based on the framework outlined in this document);

Provide services for handling registrant complaints about registrars.

Registrars will:

Provide services to applicants to register names in the .CA domain;

Complete registration of names in the .CA domain for registrants with the CIRA registry;

Provide registration information update services for registrants;

Bill registrants (registrars will be responsible for setting their fees).

Registrants will:

Register their .CA names through a registrar;

Have portability of their names between CIRA registrars;

Automatically be offered corporate membership in CIRA at no cost. Membership will allow registrants to vote in the annual CIRA Board elections, attend members' meetings and vote on all issues requiring membership approval. Each registrant will have one vote regardless of the number of domain names the registrant holds.

The important point about registrants was that they were granted membership in an organization where they would be entitled to elect a majority of the directors of the corporation to which they belonged.

4. The Creation of CIRA

CIRA was incorporated on December 3, 1998 and endowed with the powers and attributes that the Consultative Committee recommended. Its by-laws embody the decisions made by that Committee.³ The essential documents concerning the transfer from UBC to the government, and thence to CIRA, are found at the CIRA website.⁴

On March 11, 1999, the federal government recognized CIRA by means of a letter from the Assistant Deputy Minister of Spectrum, Information Technologies and Telecommunications, Mr. Michael Binder, in a letter to Mr. Rob Hall, then the Chairman of the Board of CIRA (the March 11 letter). It is cited extensively below.

³ <http://www.cira.ca/en/documents/bylawv71.html>

⁴ <http://www.cira.ca/en/transfer.html>

The .CA domain space is a key public resource, helping to promote the development of electronic commerce in Canada and important to our country's future social and economic development. As a major user of the .CA domain, as a promoter of the Internet and in its overall policy responsibility for the Information Highway, the Government stated several basic principles for the management of the Internet domain name system in a paper issued in September 1998, entitled "Reform of the Domain Name System -- Current Developments & Statement of Principles". We continue to encourage reliance on market forces and private sector leadership in the management of the .CA domain space. Industry Canada expects that the policies CIRA adopts and its operations will be consistent with the principles established by the Canadian government. To this end, we are confident that the CIRA Board will quickly put in place an effective structure predicated upon:

- conducting CIRA's activities in an open and transparent manner that ensures wide public access to all relevant information;
- following fair and sound business practices;
- ensuring an appropriate balance of representation, accountability and diversity on the board of directors for all categories of stakeholders; applying for domain names being as quick and easy as applying for domain names in other top level domains, and priced competitively;
- reducing conflicts between persons granted domain names and other rights holders, including trade-marks or business names; and
- a system that facilitates and encourages entry for new players including registrars.

We have a continuing interest in the progress of CIRA. Industry Canada will provide advice and assistance to ensure that the goals pertaining to the administration of the .CA domain name registry are met.

Yours sincerely,

Michael Binder
Assistant Deputy Minister
Spectrum, Information Technologies
and Telecommunications

There followed over the next fourteen months a series of negotiations between CIRA and UBC to pass the management of the Canadian DNS to CIRA. UBC held out for money, which CIRA had little means to pay. Finally, Canarie, a backbone Internet provider, funded in part by the federal government and in part by Bell Canada Enterprises, stepped in. UBC received compensation amounting to something like \$4 million. By the same token, Canarie, which lent CIRA the money to do this, became CIRA's paymaster and a tied client. Canarie lends staff support to CIRA, and charges CIRA for this assistance. It is not clear under present circumstances that the Board of CIRA could contract elsewhere for professional services. As an example, the manager of

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the CIRA registration functions is turcotte@canarie.ca, not turcotte@cira.ca. How long this situation will continue is an open question. Nevertheless, it shows that Canarie gained a significant role for itself when it stepped in with cash to buy out the previous domain name manager, UBC.

These negotiations culminated in the Umbrella Agreement of 9th May, 2000.⁵ By the terms of this agreement, UBC relinquished its interests in the management of the .ca domain name assignment.

1.UBC hereby relinquishes any interest arising from its operation of the .ca domain space, and CANADA in turn hereby designates CIRA to manage, operate, and control, or cause to be managed, operated, and controlled, the .ca domain space in accordance with the principles and structure set out in the March 11 Letter and in accordance with other principles, being in the public interest and being reasonable, as CANADA may, from time to time, set.

Further, the government of Canada may terminate the delegation:

5. CANADA may terminate the designation of CIRA described in Article 1 upon 90 days written notice to CIRA if, in the opinion of CANADA, acting reasonably, CIRA is unable to continue to manage, operate and control, or cause to be managed, operated and controlled, the .ca domain space in accordance with the principles and structure set out in the March 11, 1999 Letter and in accordance with such other principles as CANADA may, from time to time, set.

In the case of a terminated delegation, section 6(i) stipulates:

CANADA, with the cooperation of CIRA, shall take all necessary steps, and CANADA and CIRA shall execute all the required documentation, to transfer the administrative and operational responsibility for the .ca domain to such party as CANADA may designate and to cause such party to be recognized at the international level as having the exclusive authority to operate the top level domain servers for the .ca domain.

On the same day, May 9th, 2000, the University of British Columbia entered into an agreement with CIRA called the *Transition Agreement*⁶. This agreement governs the transition to CIRA from UBC, which inherited the management of the .ca domain from its employee, John Demco, the late John Postel's anointed domain manager. UBC's bargaining position had been strengthened by registration of the .ca as a trademark on May 12th, 1999.⁷

By the terms of the Transition Agreement, UBC shall to manage and operate the .ca domain space from the date of the agreement to the Operational Transfer Date in accordance with the same policies and procedures and with at least the same quality of

⁵ <http://www.cira.ca/en/umbrella.html>

⁶ <http://www.cira.ca/en/transition.html>

⁷ It would be interesting to know if the federal registrar of Trademarks was aware of the implications of what he was doing when he permitted this registration.

service as John Demco and UBC managed and operated the .ca domain space immediately prior to the date of the agreement. The Operational transfer date is now set for December 1, 2000.

5. CIRA's Delegated Authority from ICANN

5.1 RFC 1591

The basis of the domain name system structure and delegation is set forth in a document written by the late Dr. John Postel in March 1994, called a Request for Comment, or RFC 1591.⁸ In it John Postel describes the system that he and his colleagues created, and the policies that would be followed in delegating the authority to manage country codes. He wrote:

The major concern in selecting a designated manager for a domain is that it be able to carry out the necessary responsibilities, and have the ability to do a equitable, just, honest, and competent job.

1) The key requirement is that for each domain there be a designated manager for supervising that domain's name space. In the case of top-level domains that are country codes this means that there is a manager that supervises the domain names and operates the domain name system in that country....

2) These designated authorities are trustees for the delegated domain, and have a duty to serve the community.

The designated manager is the trustee of the top-level domain for both the nation, in the case of a country code, and the global Internet community.

Concerns about "rights" and "ownership" of domains are inappropriate. It is appropriate to be concerned about "responsibilities" and "service" to the community.

3) The designated manager must be equitable to all groups in the domain that request domain names.

This means that the same rules are applied to all requests, all requests must be processed in a non-discriminatory fashion, and academic and commercial (and other) users are treated on an equal basis. No bias shall be shown regarding requests that may come from customers of some other business related to the manager -- e.g., no preferential service for customers of a particular data network provider. There can be no requirement that a particular mail system (or other application), protocol, or product be used.

⁸ <http://www.isi.edu/in-notes/rfc1591.txt>

There are no requirements on subdomains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all subdomains shall be allowed to operate their own domain name servers, providing in them whatever information the subdomain manager sees fit (as long as it is true and correct).

4) Significantly interested parties in the domain should agree that the designated manager is the appropriate party....

5) The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence....

6) For any transfer of the designated manager trusteeship from one organization to another, the higher-level domain manager (the IANA in the case of top-level domains) must receive communications from both the old organization and the new organization that assure the IANA that the transfer is mutually agreed, and that the new organization understands its responsibilities.

5.2 More Recent ICANN/IANA Documents on Delegation

More recent documents from IANA reiterate most of the features of RFC 1591. ICANN/IANA published an update of *Internet Domain Name System Structure and Delegation* in May 1999.⁹

A few of the stipulations are cited here.

The Management of Delegated Domains

a) Delegation of a New Top Level Domain. Delegation of a new top level domain requires the completion of a number of procedures, including the identification of a TLD manager with the requisite skills and authority to operate the TLD appropriately. The desires of the government of a country with regard to delegation of a ccTLD are taken very seriously. The IANA will make them a major consideration in any TLD delegation/transfer discussions. Significantly interested parties in the domain should agree that the proposed TLD manager is the appropriate party.

b) TLD Manager Responsibility. TLD managers are trustees for the delegated domain, and have a duty to serve the community. The designated manager is the trustee of the TLD for both the nation, in the case of ccTLDs, and the global Internet community. Concerns about "rights" and "ownership" of domains are inappropriate. It is appropriate, however, to be concerned about "responsibilities" and "service" to the community.

f) Revocation of TLD Delegation. In cases where there is misconduct, or violation of the policies set forth in this document and RFC 1591, or persistent, recurring problems with

⁹ <http://www.icann.org/icp/icp-1.htm>

the proper operation of a domain, the IANA reserves the right to revoke and to redelegate a Top Level Domain to another manager.

As IANA has given way to ICANN, the new authority has chosen to manage its relations to country code top level domain managers (ccTLD managers) by means of contracts. In some cases the original delegations have been lost. The process of re-authorizing ccTLD managers is referred to as *relegation*.

5.3 The relationship of ICANN to National Governments

ICANN's authority over domain name delegations has not been fully accepted by all countries. In many cases, the relationship of IANA and its successor ICANN to country code managers precedes the awareness of some governments that there was such a thing as the Internet, let alone a country code domain name manager. In Canada's case, for instance, John Demco managed the .ca domain for years without the awareness of officialdom, and perhaps even his employers in the University of British Columbia. When ICANN was created, one of its problems was to try to incorporate the views of governments into what is a private corporation. Governments do not have a role as such in the management of the IP numbering system and the DNS, as the ICANN organization chart shows.¹⁰

However, the views of government are taken account of by means of a committee called the Government Advisory Committee, or GAC, which meets at the same time as ICANN and which makes representations to its Board.¹¹ The GAC is set up by the by-laws of ICANN and is in that sense part of the corporation. Yet sovereign governments are unused to being involved where they are not the final arbiters. In ICANN, all participants are learning as they go. Governments, geeks, businessmen, and lobbyists participate in ICANN, if not as equals, then as people with equal rights to participate.

The GAC's relations to ICANN have been and may always be touchy. Both are in uncharted waters. Some governments are surprised to find anything so important as the Internet managed by a private American corporation. ICANN for its part is setting a pattern of non-governmental management of what is becoming the world's most important communication system, not excluding the postal system and the telephone.

The exact status of a document from the Government Advisory Committee with the Board of ICANN is unknown and unknowable, since their relationships are being worked out in real time. The interest of many governments is to find out who their domain name manager is, under what authority he operates, and in some cases, to revoke that delegation and find a domain name manager more suitable to the government in question, and in so doing obtain the benefits to the public or the state's treasury that are believed to flow from this re delegation.

¹⁰ http://www.icann.org/general/icann-org-chart_frame.htm

¹¹ <http://www.noie.gov.au/projects/international/DNS/gac/index.htm>

The GAC stated in its *Principles For The Delegation And Administration of Country Code Top Level Domains*¹² that

- 5.1 Governments or public authorities have responsibility for public policy objectives such as: transparency and non-discriminatory practices; greater choice, lower prices and better services for all categories of users; respect for personal privacy; and consumer protection issues. Considering their responsibility to protect these interests, governments or public authorities maintain ultimate policy authority over their respective ccTLDs and should ensure that they are operated in conformity with domestic public policy objectives, laws and regulations, and international law and applicable international conventions.

The *Principles* document is important for two things. First, it establishes principles of delegation. Second, it set out the criteria to which a country code manager should conform, in order to maintain the delegation, and the role of governments in supervising a country's domain name system.

5.4 Principles of Delegation

The GAC advised that, in making a delegation from ICANN to a delegee of the management of the top level domain in the DNS root, there should be

- a communication between the relevant government or public authority and ICANN;
- a communication between ICANN and the delegee; and
- a communication between the relevant government or public authority and the delegee.

The delegee could be the manager itself of domain name assignments, or it could be the supervisor of the entity that actually carried out these functions.

5.5 Criteria to be met by a Domain Name Manager of a Country Code

The Government Advisory Committee clearly sees the country code manager as subordinate to the relevant local government.

4.1

The delegee of a ccTLD is a trustee for the delegated domain, and has a duty to serve the residents of the relevant country...

¹² <http://www.noie.gov.au/projects/international/DNS/gac/library/ccdocs/cctld.doc> (also available in pdf from the www.noie.gov.au site, above note 11)

4.2

No private intellectual or other property rights should inhere in the ccTLD itself, nor accrue to the delegee as the result of delegation or to any entity as a result of the management, administration or marketing of the ccTLD.

4.4

The delegee should recognise that ultimate public policy authority over the relevant ccTLD rests with the relevant government or public authority.

4.5

The delegee should work cooperatively with the relevant government or public authority of the country or territory for which the ccTLD has been established, within the framework and public policy objectives of such relevant government or public authority.

5.6 Criteria to be Met by a Government in the Management of a Country Code

The government of a country or territory has clear duties to supervise the country code manager, according to the Government Advisory Committee of ICANN.

5.1

The relevant government or public authority ultimately represents the interests of the people of the country or territory for which the ccTLD has been delegated. Accordingly, the role of the relevant government or public authority is to ensure that the ccTLD is being administered in the public interest, whilst taking into consideration issues of public policy and relevant law and regulation.

5.2

Governments or public authorities have responsibility for public policy objectives such as: transparency and non-discriminatory practices; greater choice, lower prices and better services for all categories of users; respect for personal privacy; and consumer protection issues. Considering their responsibility to protect these interests, governments or public authorities maintain ultimate policy authority over their respective ccTLDs and should ensure that they are operated in conformity with domestic public policy objectives, laws and regulations, and international law and applicable international conventions.

5.3

It is recalled that the Governmental Advisory Committee (GAC) to ICANN has previously adopted the general principle that the Internet naming system is a public resource in the sense that its functions must be administered in the public or common interest.

5.4

The relevant government or public authority should ensure that DNS registration in the ccTLD benefits from effective and fair condition of competition, at appropriate levels and scale of activity.

5.5

To give effect to governments' or public authorities' public policy interests, governments or public authorities should ensure that the terms outlined in Clause 9 are included in their communications with delegees.

5.6

In making a designation for a delegee, the government or public authority should take into consideration the importance of long term stability in the administration and management of the ccTLD and in the DNS. In most cases, such stability may be best served through the designation of an organisation or an enterprise rather than a specific individual.

The "communication" mentioned in paragraph 5.6 above is the instrument, law, order-in-council or letter whereby authority over a country code is delegated to the country code manager. Paragraph 9 of the *Principles* document further specifics to be contained in the instrument of delegation regarding performance and accountability of the country code manager.

It should be noted that the letter of Michael Binder to CIRA of March 11, 1999, which recognized CIRA, also established the criteria under which CIRA should operate. This letter would satisfy the principles of the GAC in most if not all respects.

5.7 The GAC's view of ICANN

Throughout the *Principles* document, there is a tone of governments firmly insisting upon their primacy in the policy making function as regards domain names. While ICANN's technical role is acknowledged in section 6, it is enjoined to set policy in conformity with the GAC's principles. When some of these principles are read, however, they turn out to be so technical that governments would never have known of them unless acquainted with the issues through participation in ICANN.¹³

The fact that both ICANN and governments are learning together what is relevant to stipulate in country code management is no surprise. The technology is new and developing in real time.

5.8 Relationship of ICANN and the GAC principles to Canada

¹³ See section 10 of the *Principles* document

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Canada is in a process of redelegation or reassignment of its country code manager from the successor to the person appointed by John Postel (IANA) to a government-sanctioned private corporation. The Principles document states:

- 7.1 With respect to future delegations or reassignment of delegations, ICANN should delegate the administration of a ccTLD only to an organisation, enterprise or individual that has been designated by the relevant government or public authority.

The Government Advisory Committee has made further stipulations about how governments wish redelegations and reassignments to be handled. At the recent July, 2000 ICANN meeting in Yokohama, Japan, the GAC issued a communiqué,¹⁴ stating in part:

In order to minimise prejudice (potential or otherwise) ICANN should not enter into any contractual arrangements with ccTLD administrators of ccTLDs for which redelegation requests are pending.

The GAC invites ICANN, as a first step, to write to the relevant governments and public authorities to ascertain their views concerning the current delegation for the ccTLDs that correspond to their jurisdictions.

The GAC advises ICANN not to enter into contracts with any ccTLD registries until they have received the relevant communication, as referred to above, from the relevant government or public authority.

Thereafter, the GAC encourages that any future contracts between ICANN and ccTLD administrators should reflect the administrators' commitment to be bound by the GAC Principles (as they are implemented by the relevant government or public authority) and minimize the liability of ICANN for implementing a redelegation according to these principles.

Accordingly, ICANN staff have drafted a "discussion draft Letter to Governments regarding ccTLD Managers".¹⁵ The letter indicates that for ICANN to perform its functions, it must enter into

"stable and appropriate contracts between ICANN and ccTLD managers. ICANN wishes to complete these contracts as soon as possible. These contracts will facilitate implementing the ICANN Governmental Advisory Committee's "Principles for Delegation and Administration of ccTLDs", 23 February 2000, which is posted at: <http://www.icann.org/gac/gac-cctldprinciples-23feb00.htm>".

¹⁴ <http://www.icann.org/gac/communique-14jul00.htm>

¹⁵ <http://www.icann.org/cctlds/draft-letter-to-govts-12nov00.htm>

The letter further asks whether the government in question “is satisfied with the current ccTLD manager”.

Canada has already recognized CIRA by the letter Michael Binder wrote on March 11, 1999. The Government wrote to ICANN on October 10, 2000 supporting the transfer of DNS management in Canada from UBC to CIRA.¹⁶ It also stated that Canada supported the GAC principles, and the government’s management would be generally consistent with those principles.

Accordingly, CIRA and ICANN will be entering into negotiations to develop a contract. It is anticipated that there will be a letter of intent between the parties prior to the formal contract negotiations, which will in some measure stake out the ground that the contract would cover.

6. Conclusions about CIRA’s delegated responsibilities

CIRA is delegated its authority from two sources: the federal government, and ICANN. ICANN states that country code managers should conform to the policies of RFC 1591 and its more recent iteration, *Internet Domain Name System Structure and Delegation* of May 1999.¹⁷

ICANN also has to take into account the advice its has received from its own Government Advisory Committee, though it is not completely bound by it.

How are we to make sense of the various documents? On the whole, there is consistency in the objectives to be met by a country code manager, even though there may be disagreement between ICANN and its GAC regarding the weight to be assigned to the advice its gets from that quarter.

ICANN’s documents state that

5) The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence....¹⁸

The GAC states that *governments* have responsibility for

¹⁶ Private communication from Mr. Drew Olsen of the Department of Industry, November 23, 2000

¹⁷ <http://www.icann.org/icp/icp-1.htm>

¹⁸ from RFC 1591

...public policy objectives such as: transparency and non-discriminatory practices; greater choice, lower prices and better services for all categories of users; respect for personal privacy; and consumer protection issues. Considering their responsibility to protect these interests, governments or public authorities maintain ultimate policy authority over their respective ccTLDs and should ensure that they are operated in conformity with domestic public policy objectives, laws and regulations, and international law and applicable international conventions.¹⁹

And finally, we have the objectives stated by the Canadian government when it recognized CIRA:

We continue to encourage reliance on market forces and private sector leadership in the management of the .CA domain space. Industry Canada expects that the policies CIRA adopts and its operations will be consistent with the principles established by the Canadian government. To this end, we are confident that the CIRA Board will quickly put in place an effective structure predicated upon:

- conducting CIRA's activities in an open and transparent manner that ensures wide public access to all relevant information;
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- reducing conflicts between persons granted domain names and other rights holders, including trade-marks or business names; and
- a system that facilitates and encourages entry for new players including registrars.

CIRA is entering a period during which it will be negotiating a contract with ICANN. It is clear that the views of the government of Canada and interested stakeholders, such as CIRA-accredited registrars, will be taken into account. The relevant questions to be asked in this period are whether and how well CIRA conforms to the stated requirements of the government for the country's domain name manager. This will be subject of other representations that the Canadian .ca domain name registrars will be making to CIRA, the government of Canada, and ICANN.

¹⁹ from the *Principles* document

<http://www.noie.gov.au/projects/international/DNS/gac/library/ccdocs/cctld.doc>

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Appendix 1

Questions About CIRA's Design Philosophy

The report of the Canadian Domain Name Consultative Committee consists mostly of conclusions. Arguments for and against them are absent. This is a pity, because the report embodies assumptions that, with the passage of time, seem less defensible. In the longer run, the two questions to which it would be interesting to know the answers are:

- Why was it thought best to put the management of the Canadian DNS into the particular form of a not-for-profit corporation? The question has two parts: why not-for-profit, and why a private corporation?
- Why were Canadian presence requirements thought desirable? Why was it thought desirable to restrict the use of the .ca suffix to Canadians?

For many people, the recommendations are self-evident. For those in the business of registering domain names, not-for-profit status

Corporate Structure

The reasons why the corporate format was chosen were not really discussed or explained in the Consultative Committee's Report, nor the reason for not-for-profit status.

The obvious answer is that the voting structure afforded by shares allows for a measure of democratic control. The Consultative Committee was firm on the requirement for a membership structure that would ensure more directors elected than would be appointed from the three recognized special interest groups. Accountability to the people on whose behalf domain names are registered seems to be indisputably right.

A second advantage of private, non-governmental status, may concern the exemption from the obligations that would apply if CIRA were governmental. I have heard the Vice Chairman of the Board explain to a meeting sponsored by Canarie that, by putting the management of the Canadian DNS into a private corporation, it could preserve Canada's interests better than if it were an organization of government, insofar as it would be less subject to international trade treaties. These obligations have a direct bearing on Canadian presence requirements.

The reason for the not-for-profit status is less obvious. Again, there is no discussion of competing alternatives in the CDNCC Report. It may have been thought self-evidently in tune with the spirit of the Internet that the registry should run on this basis, but no reasons are adduced. As an example of what not-for-profit status means, CIRA lost the opportunity to stage an auction to sell profitable .ca names on the occasion

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of transfer to it of UBC's authority. This was the proposal made to CIRA by Tucows, a large Canadian-based registrar. Such an auction would easily have made several hundreds of thousands of dollars. The reasons given for this refusal were that making a profit of this kind would threaten its not-for-profit status. Yet CIRA has bills to pay, including a large payment to UBC, as well as its own operating costs. CIRA's registration fee is \$20 per year, much higher than NSI's price of \$6US, will continue to hinder registrations in the .ca domain. So not-for-profit status is not a self-evident blessing.

Canadian Presence Requirements

Every country code organization faces the fundamental question of how much to favour domestic registrants and registrars. The .ca system is frankly and overtly discriminatory in favour of Canadians and Canadian companies.

As the Report stipulates:

- Registrars must be Canadian citizens, residents, companies or other legal entities as defined by Canadian law and must operate the registration activity in Canada and have a physical presence in Canada.
- The registry must be a Canadian entity as defined by Canadian law and have both a majority of its operations and its primary name server physically located in Canada.
- CIRA Board members must be Canadian citizens or residents.
- CIRA will operate according to Canadian law and will only recognize court orders from courts that have jurisdiction in Canada.

Considering the importance of the decision, there was no discussion in the report of alternatives. The feeling may have been that these provisions were necessary to tie the registrants and registrars to Canadian jurisdiction. In the world of computer contracts, what are called click-through agreements are used to bind the registrant to the jurisdiction of the court convenient to the person imposing the contract. For instance, disputes with the Network Solutions Inc (NSI) attorn to the courts of Virginia, regardless of the national origin of the parties. In the case of NSI, the .com registry, a Norwegian suing NSI would have to do so in Virginia. Whether the same Norwegian would have to sue in the United States for a commercial matter regarding a sale made over the Internet would be a matter of private international law.

Disputes related to the registry-registrar system can be confined to a court adjacent to the party imposing the contract. Disputes not relating to that system would not necessarily be connected to a court in Canada, depending on the facts of the case. In other words the Canadian presence requirements do not necessarily give Canada any more jurisdiction than it would have under the jurisdictional rules of private international law.

Conclusions on CIRA's Goals and Structure

The decisions made in the beginning of any enterprise hold until there are powerful reasons and forces to change them. For the foreseeable future, we can expect a CIRA that will be

- Confined to Canadians and Canadian corporations
- Not-for-profit, and
- Ultimately, a membership-based structure, although current Board incumbents have significant powers until the first elections.

Until elections are held, which is expected some time in the spring of 2001, the membership of CIRA is restricted to the current Board members, plus three people who have served on it: Rob Hall, a private businessman, Ken Fockler, a retired IBM executive and a member of the Board of ICANN, and Chris Scatliff, a former UUNet executive, who sat on the Board as a representative of CAIP.

Appendix 2

Letter from the Government of Canada to ICANN Designating CIRA as the Appointed Successor to UBC

Mr. Michael Roberts
President and Chief Executive Officer
Internet Corporation for Assigned
Names and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292
USA

Dear Mr. Roberts:

As you know, the .ca top level domain has been administered by John Demco of the University of British Columbia (UBC) since 1987, with the assistance of a committee of volunteers from across Canada. Mr. Demco and his committee, among other responsibilities, set and implemented the policies and procedures for registering domain names within the .ca domain space. Initially, these policies were appropriate for the size and role of the Internet in Canada, however with the growth of the Internet and electronic commerce, the local Internet community in Canada began contemplating a change.

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In 1997, at the Canadian Internet community's annual conference, discussions of reform led to the formation of the Canadian Domain Names Consultative Committee to address the transition from the current management of the .ca domain to a "more commercial type of operation". Following a public consultation, the CDNCC recommended that a private sector, not-for-profit corporation be set up to take over the administration of the .ca from UBC and John Demco. In late December 1998, the Canadian Internet Registration Authority (CIRA) was incorporated to assume this function. On March 11, 1999, in a letter on which you were copied, I formally recognized CIRA as the new administrator of the .ca. CIRA and UBC then engaged in discussions regarding the details of the transition of administrative responsibility for the .ca

These discussions were successfully completed in May, 2000, and CIRA, UBC and the Government of Canada entered into the attached contract, the "Umbrella Agreement". This agreement provides that the Government of Canada will designate CIRA to be the new administrator of the .ca and that CIRA will manage the .ca in accordance with principles set by the Government of Canada in the March 11, 1999 letter referred to above and any additional principles that are in the public interest and reasonable.

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The Umbrella Agreement contains the communication between the Government of Canada and CIRA that is contemplated by the "Principles for the Delegation and Re-delegation of Country Code Top Level Domains" adopted by the Government Advisory Committee to ICANN (GAC Principles). This letter constitutes the "communication" between the Government of Canada and ICANN recommended in the same Principles. I am confident that ICANN and CIRA will be able to enter into the third communication contemplated in the GAC Principles. Canada's approach in this re-delegation request is therefore consistent with the GAC Principles and demonstrates the effectiveness of this system for re-delegation requests.

I am pleased to formally designate CIRA as the Government of Canada's designee to be the .ca delegee. I request that ICANN, through its IANA functions, effect the necessary changes to the Internet's "A" root server to accomplish this re-delegation. CIRA will be assuming its responsibilities on November 1, 2000. I would anticipate that the change in the "A" root server would occur on this date, but I would ask that ICANN and CIRA discuss directly its exact timing.

The relevant contact within the Government of Canada for matters related to this letter is:

Mr. Drew Olsen,

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Telecommunications Policy Branch
Industry Canada
16th Floor
300 Slater Street,
Ottawa, Ontario K1A 0C8
(613) 998-3382
olsen.drew@ic.gc.ca

Thank you for your attention to this request.

Yours sincerely,

Michael Binder
Assistant Deputy Minister
Spectrum, Information Technologies
and Telecommunications

Enclosure