11 June 2022

RE: ICANN outreach regarding ccTLD regulation

Barbara Povše, Board Chair
Council of European National Top-Level Domain Registries (CENTR)

Dear Barbara,

Thank you for your 7 June 2022 letter concerning ICANN Organization (org)'s engagement in Europe concerning the Proposal for a Directive on measures for a high common level of cybersecurity across the Union (the "NIS2 Directive"). Since the NIS2 Directive was proposed, ICANN org has been actively engaged in outreach concerning the NIS2 Directive in light of the significant impacts this proposal could have across the Domain Name System (DNS).

As reiterated in public meetings, ICANN org's engagement concerning the proposed NIS2 Directive (and other issues, regulations, and legislative efforts) is aimed at providing information concerning potential impacts within the scope of ICANN's Mission or Articles of Incorporation. We work to identify issues that could impact our ability to work in service of our mission and that could impact the ability of the ICANN community to make global policies for the DNS in support of maintaining one unfragmented Internet. The purpose of ICANN org's engagement concerning the NIS2 Directive has been to highlight and prevent adverse effects on the functioning of the DNS and defend the multistakeholder model and its policy-making, which supports and protects the global Internet.

As such, I read your letter with great surprise. ICANN org has not, as stated in your letter, asked "that governments should impose data accuracy rules as developed by the international multistakeholder community on the ccTLD." To the contrary, ICANN has consistently defended the independence of the ccTLDs.

With respect to Article 23 of the proposed NIS2 Directive, ICANN org has raised concerns about fragmentation due to the potential for different requirements being placed on gTLD registries and registrars in each EU Member State, which would bypass policy requirements for gTLDs developed via the multistakeholder model. Even aside from the significant operational hurdles and inconsistencies this could create for the industry and Internet stakeholders, this carries the risk of undermining the

multistakeholder model itself. In the same vein, ICANN org has repeatedly noted our concern with NIS2 ignoring that ccTLDs (not only European) make their own policies.[1]

To address that risk, ICANN org has advocated for the recognition of the global policies developed by the ICANN community through the multistakeholder model. As you pointed out in your letter, the policies developed via the multistakeholder GNSO Policy Development Process model do not apply to ccTLDs. In recognition of this, ICANN org suggested that policies and procedures regarding relevant information to identify and contact the holders of domain names should be left to each country for its own ccTLD.

I am saddened to hear of this significant misunderstanding regarding ICANN org's engagement concerning the NIS2 Directive. Particularly at a time when the DNS is increasingly being placed at the center of the geopolitical agenda at global level, with legislative initiatives aimed at controlling the DNS (rather than directly tackling the content-related challenges on the Internet), debates at international organizations questioning the multistakeholder bottom-up management of the unique identifiers, and attempts to leverage the DNS for political purposes. The outcome of such politicization of the DNS can be grave: impairment of the stability and interoperability of the Internet, restricting access to information for those who may need it most, and indeed even threatening the global nature of the Internet itself. This is a time to stick together defending the multistakeholder model and the global Internet.

I hope that we can correct this quickly, and my team will reach out to you to try to find an agreeable time to discuss during ICANN74.

Kind Regards,

Göran Marby
President and Chief Executive Officer
Internet Corporation for Assigned Names and Numbers (ICANN)

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[1] See, for example, in ICANN community sessions: Discussion Forum on Geopolitical, Legislative and Regulatory developments, 10 March 2022, GAC call with Government Engagement Team, 12 May 2022.