

## ICANN – a huge disappointment and a worry

### A briefing

In November 2015 “One in Three” was published by the Global Commission on Internet Governance and the UK-based Royal Institution for International Affairs (Chatham House). It established that 1 in 3 of all human internet users is a child, that is to say a person below the age of 18. This rises to closer to 1 in 2 in parts of the developing world.

Thus, whatever else one might believe, imagine or want the internet to be it is unquestionably a medium for children and families. Yet you would find precious little recognition or acceptance of this if you looked closely at the workings of various internet governance institutions, most notably the Internet Corporation for Assigned Names and Numbers (ICANN). Domiciled in California ICANN is the global body responsible for running key parts of the internet.

Inter alia, one of ICANN’s tasks is “keeping the internet secure”. As you will see it has definitely *not* been keeping the internet secure for children.

ICANN’s revenues are derived from the sale of website addresses (domain names). The money reaches ICANN via Registries and Registrars who are its effective paymasters.

ICANN’s operational budget for 2017 stands at around \$132 million of which US\$ 128 million is derived from fees paid by Registrars and Registries. One Registry (Verisign, see below) and one Registrar (Go Daddy) account for more than 40% of ICANN’s total operational income in the current year.

ICANN, the Registries and the Registrars have a manifest financial interest in increasing the number of domain names being sold. Their interest in securing their revenues appears sometimes to blind them to a larger duty, namely to protect the weak and vulnerable e.g. in this instance children. In fact ICANN unambiguously refuses to acknowledge it has any sort of obligation towards children and its behaviour most definitely bears that out.

Historically, aside from country codes that are the prime responsibility of national governments, there were only a handful of so-called “generic top level domains” (gTLDs) e.g. .com, .net and .org.

In 2012 ICANN initiated a process to allow the creation of over 1,000 “new gTLDs”. ICANN decided “.kids” would be one of them.

gTLDs are operated by Registries who, typically following a bidding process, are granted that status when they sign a contract with ICANN. It is open to ICANN to insert Terms and Conditions into the contract which are binding on the Registry, Registrars and anyone who subsequently buys an individual website address within the domain.

A number of children’s organizations were tracking the (slow) progress being made by ICANN to determine who would finally be awarded the contract to operate .kids. Amazon and Google are two of the entities in contention for the domain in the English language. One or other is the likely winner. The matter is still unresolved but, by chance, it was recently discovered that ICANN had already let “.kids” in Cyrillic Script. It has gone to a Russian organization. On learning this the Russian Registry was contacted and the following questions were put. The entirety of the relevant text is reproduced below:

1. Do you make any stipulations about who may buy a .kids domain name e.g. nobody with criminal convictions, or convictions for child sex offences? And if you do, do you carry out any checks to make sure the people meet those criteria?

Answer: No.

2. Do you make any stipulations about who may work for a business or organization operating a .kids domain name e.g. nobody with criminal convictions, or convictions for child sex offences? And if you do, do you carry out any checks to make sure the people meet those criteria?

Answer: No.

While at the time of writing there is no information which suggests anything untoward has happened with any Russian .kids websites, it should be noted that the volume of sales so far has been low. But the matter should never have been left open in that way. This is because a domain such as .kids is guaranteed to attract the attention of paedophiles. They go where children go. That being so ICANN's failure to insist on even the most rudimentary safeguards, commonly found elsewhere and not infrequently required by law, is tantamount to gross negligence or worse. Incidentally, if it is not utterly obvious, making stipulations about ownership and operations has nothing whatsoever to do with the nature of any content that might appear on a website.

What happened with .kids in Russian stands in sharp contrast to what happened with .pharmacy, .bank and .insurance as well as others e.g. linked to the legal professions.

In these instances, fearful of the consequences of bad actors being able to buy and run websites within these newly created domains, pharmaceutical, banking and insurance interests combined to establish what are now known as "Verified Top Level Domains". To be able to buy a web address within any of them the individuals or entities concerned must go through a pre-approval process to determine they are fit and proper and appropriately qualified to hold themselves out as pharmacists, bankers or insurance agents. There are no known instances of a bad actor acquiring one of these domains.

How did the banks, pharmacies and insurance companies manage to do this? It happened because the banking, insurance and pharmaceuticals industries (a) had an established presence within ICANN and therefore knew what was going on, what the deadlines were etc. and (b) had the financial wherewithal to employ the necessary, lawyers, lobbyists and staffers to deliver this highly desirable outcome.

The children's organizations had no similarly endowed or entrenched interlocutors but that does not give ICANN permission to put children at risk. It is truly shocking no one within ICANN accepted they had an institutional obligation to ensure children's interests were properly safeguarded. Moreover while clearly there is no objection in principle to ICANN creating a .kids domain or indeed any other domains which might pitch directly to children and young people, if ICANN chooses to step into this space at the very least they should be certain they will do no harm. They did not do that.

Few could doubt that Amazon and Google would do the right thing whichever of them was the eventual winner of the bid for .kids but matters of this kind should never be discretionary or optional. ICANN has to be persuaded to change the terms of .kids contracts in the way indicated in every language and for this to become the rule in any other new gTLDs which may be established in the future where there is a clear orientation towards children. Perhaps there is even a case for extending the principle to every child focused web site, irrespective of the domain. The very large presence of children on the internet is ample justification.

The second and different major failure on ICANN's part in respect of children's interests is starkly illustrated when one turns to what has been happening with the distribution of child sex abuse images (csai - child pornography) on the internet.

Down the years the lion's share of csai have been found in two domains. In 2016 50% of *all* child abuse images reported to the Internet Watch Foundation (IWF, the UK's hotline ) had been published from within .com and 20% were published from within .net. Both are owned by the same company, Verisign, based in Reston, Virginia.

On 3<sup>rd</sup> April 2017, the IWF also released data for 2016 showing it had taken action against 1,550 addresses on 272 websites within new gTLDs. Although the numbers are still comparatively small this represents an increase of over 200% and almost 400% respectively since 2015.

When ICANN allowed the new gTLDs to be created it added significantly to its own income stream and that of Registries and Registrars. What it plainly did not do was ensure they were not also adding to an already dreadful problem in terms of distributing csai over the internet. The IWF noted that of the 272 new gTLD websites it acted against in 2016 226 appeared to have been created *solely* to distribute child abuse images.

It is too soon to say if new gTLDs will become the domains of choice for criminals intent on distributing csai but no one should be blind to that possibility. A trend has been established and is gathering pace. That should never have been allowed to happen.

It was open to ICANN to decline to expand the number of available domains until they were satisfied they could not be misused in this way. Alternatively, they could have insisted on Registrars and Registries taking steps which would minimise or reduce the risks e.g. by requiring all Registrars and Registries to ensure they had accurate and up to date information about the identity and location of everyone buying or running a domain. They didn't do either of these things.

No single public body or organization can direct ICANN to behave in a given way but ICANN has to listen if enough people speak out. For that reason, various children's groups are promoting a campaign which aims to press the ICANN Board to do the following

1. Acknowledge it has a duty of care to children and act accordingly, and in twelve months report on the steps it has taken to reflect that acknowledgement.
2. Engage more vigorously with measures which will reduce the volumes of csai circulating on the internet across all domains and in twelve months publish a report on the steps they have taken in that regard.
3. Mindful of the call made by Secretary General of the Council of Europe, devise contractually based rules which ensure web site names may not be created, maintained or used to advertise or suggest child abuse images will or may be available on any web site

George Bernard Shaw famously said all professions are a conspiracy against the laity. ICANN has taken this idea to new heights. There is no widely recognized children's organization with the resources needed to sustain the level of engagement ICANN's processes demand. ICANN has erected a redoubt of labyrinthine, obscure, expensive and protracted processes all of which combine to discourage new entrants, preserve the status quo or slow down the rate of change to the greatest extent possible in favour of the economic interests of Registries, Registrars and ICANN itself.

As if to prove the point about their arcane ways, in a press statement issued to *The Times* of London on 4<sup>th</sup> April 2017 ICANN said the following

*ICANN is a unique institution that is governed via a bottom up, consensus-driven multistakeholder model. As a result, ICANN staff cannot unilaterally impose guidelines or requirements on registries, registrars or other stakeholders in a top-down manner. Policy recommendations are developed and refined by the ICANN community through its Supporting Organizations and influenced by Advisory Committees – all comprised of volunteers from across the world – in a “bottom-up”, multistakeholder, open and transparent process.....*

“Bottom up, consensus-driven multistakeholder model” might mean something to the initiated but in the end it is simply a method of working that counts for nothing if it produces mayhem. Speaking of the “ICANN community” is just another way of talking about people who, overwhelmingly, have a material i.e. economic or employment, interest in its work. However, as the above illustrates, not being on an inside track can mean ICANN will trample on your interests or disregard your safety, even if only through inertia or ignorance. The ICANN “community” should include stakeholders who do not have loud voices, deep pockets and time to fly around the world.

There is nothing wrong, and a great deal that is right about ICANN wanting to talk to as many people as possible before making a decision but ICANN is not a modern-day Pontius Pilate, able to dodge any responsibility for its actions by referring to a “community” that only exists within their own self-constructed and self-serving bubble.

Finally, isn’t the rather palpable point that ICANN is in a position to make the internet safer or less safe for children just as they can make it harder or easier for regulators and law enforcement to do their job. Regulators and law enforcement agencies do not wilfully overlook malfeasance, but the way ICANN has set its rules means in some areas the volumes of unlawful behaviour have become overwhelming. It doesn’t have to be that way.

ICANN should act in the wider public interest. Its own economic or other interests and those of Registries and Registrars should always take second place.

---OOO---

John Carr  
London, April, 2017.  
[chisgb@outlook.com](mailto:chisgb@outlook.com)