



June 7, 2017
NIC-CR-215-2017

Mr. Thomas Schneider
GAC Chair
ICANN

Dear Mr. Thomas Schneider,

NIC Costa Rica is the ccTLD manager of .cr domains since 1990 and an active participant of the ccNSO. We are not-for-profit organization part of the Costa Rican Academy of Science. NIC Costa Rica also leads national scale projects related to cyber security, Internet governance, Internet infrastructure, DNS and network trainings on global best practices and we host the national Internet Exchange Point (IXP), among many other initiatives to promote the growth and resilience of the Internet.

We want to update ICANN's Government Advisory Committee (GAC) about a current situation regarding take down of domain names. Since 2015, the United States Embassy in Costa Rica, who represents the interests of the United States Department of Commerce, has frequently contacted our organization regarding the domain name thepiratebay.cr. This domain is part of a worldwide operation of The Pirate Bay, an online index of digital content that includes entertainment media and software created since 2003. More than 70 other domain names are involved in their operations where Internet users can download, share and torrent different content. These interactions with the United States Embassy have escalated with time and include great pressure since 2016 that is exemplified by several phone calls, emails and meetings urging our ccTLD to take down the domain, even though this would go against our domain name policies that are explained in detail below. Moreover, the United States Department of Commerce has urged our local Ministry of Commerce to carry out an investigation as to why our organization does not take down this domain, even though the process they ask us to follow goes against our current domain name polices. The Costa Rican Ministry of Commerce has carried out an investigation and informed us that NIC Costa Rica was acting following best practices and has clear mechanisms to take down domain names that required a local





court order. The representative of the United States Embassy, Mr. Kevin Ludeke, Economic Specialist, who claims to represent the interests of the US Department of Commerce, has mentioned threats to close our registry, with repeated harassment regarding our practices and operation policies and even personal negative comments directed to our Executive Director, based on no clear evidence or statistical data to support his claims as a way to pressure our organization to take down the domain name without following our current policies.

Our domain policies work in accordance with the Tunis Agenda for the Information Society from the year 2005 (www.itu.int/net/wsis/docs2/tunis/off/6rev1.html), which is backed by consensus of the 174 countries participating within the framework of the World Summit for the Information Society. NIC Costa Rica recognizes that "Policy authority for Internet-related public policy issues is the sovereign right of the States. They have rights and responsibilities for international Internet-related public policy issues", as clearly stated in the Tunis Agenda.

In accordance with these guidelines, when confronted with a conflict related to a domain name registered under .cr, which infringes upon the legislation pertaining to intellectual property, the registration of marks, or in which there is a crime including--but not limited to--drug trafficking, child pornography, human trafficking, or bank fraud, then NIC Costa Rica will proceed to eliminate the domain name if ordered to do so by a final judgment from the Courts of Justice of the Republic of Costa Rica.

Throughout our history, we have always cooperated with local Law Enforcement agencies each time there has been a situation when we have received a court order requesting information about our domain names, take downs, freezing or blocking domains. In all these cases, we have cooperated and responded immediately to their requests following our policies.

In several occasions, NIC Costa Rica has explained to Mr. Ludeke the need to have a local court order in order to proceed to take down or block any domain as exemplified above. However, despite these arguments, the pressure and harassment to take down the domain name without its proper process and local court order persists.



As such, we wanted to call to your attention what is currently happening. After talking to several experts in the subject, other ccTLDs with experience dealing with domain names with illegal content and others, our need for a local court order has been reaffirmed and we strongly believe we are following the best practices in the industry.

Please let me know if there is any additional information that you need, any questions or suggestion you may have regarding this issue.

Thanking you in advance for your time and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pedro León Azofeifa'.

Dr. Pedro León Azofeifa
President
Costa Rican Academy of Science

Cc: ICANN Board President Dr. Stephen D. Crocker
ICANN President and CEO Mr. Göran Marby
GAC Vice Chair Mr. Ghislain de Salins
GAC Vice Chair Mr. Guo Feng
GAC Vice Chair Ms. Manal Ismail
GAC Vice Chair Mr. Mark Carvell
GAC Vice Chair Ms. Milagros Castañón Seoane
United States Ambassador to Costa Rica Mr. Stafford Fitzgerald Haney
Costa Rica Ministry of Commerce Ms. Leonor Obando
Costa Rica Ministry of Commerce Ms. Mariana Castro
Costa Rica Minister of MICITT Ms. Carolina Vásquez Soto