KOSOVO'S DIGITAL INDEPENDENCE: TIME FOR KOSOVO'S CCTLD

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INTRODUCTION

In 2008, the Republic of Kosovo, formerly part of Yugoslavia and then part of Serbia, declared its political independence. After hundreds of years of historical conflict, ten years of recent warfare, and US and UN intervention, Kosovo finally stood on its own. Kosovo remains a Serbian "colony," in one regard–online, where it is deprived of full de facto independence. To date, the Internet Corporation for Assigned Names and Numbers (ICANN) refuses to grant Kosovo its own country code top-level domain (ccTLD). This refusal perpetuates the notion that Kosovo something less than a full-fledged country, and it forces Kosovo to run its Internet traffic either under "foreign flags" or routed through third countries. Kosovo may be independent in every physical way, but digitally it remains an occupied territory.

Given its otherwise independent status, Kosovo deserves digital independence. This is not just a matter of practicality or pride, which would be valid reasons for it. But, beyond that, digital independence is a matter of human rights and political necessity. The Universal Declaration of Human Rights states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."[1] Nevertheless, Kosovo finds itself under the digital thumb of a hostile foreign government[2] and under the watchful eye of a currently-friendly foreign government, the United States. Given the other choices, Kosovo has chosen to use ".com" for its governmental domains, placing it under the undemocratic control of a private, US-based company where freedom of expression and privacy rights are not exactly enviable.[3] "Kosovars have spent too many years stuck in a political limbo . . . and it is time for politicians and

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[1]   Reece Roman, *What if ICANN Can't?: Can the United Nations Really Save the Internet?*, 15 SYRACUSE SCI. & TECH. L. REP. 18-19 (2005).

[2]   The author takes no position with respect to the relative merits of the Serbian or Kosovar positions on independence. While Serbia has largely been painted as the antagonist in the American and Western European press, no value judgments are necessary in evaluating Kosovo's right to digital independence.

[3]   *2015 World Press Freedom Index: Details about United States,* REPORTERS WITHOUT BORDERS, https://index.rsf.org/#!/index-details/USA (last visited Dec. 12, 2015). Kosovo itself is listed at #87. *2015 World Press Freedom Index: Details about Kosovo,* REPORTERS WITHOUT BORDERS, https://index.rsf.org/#!/index-details/KOS (last visited Dec. 12, 2015).

diplomats to start leveling with the citizens of this region"[4] on a digito-political basis.

Before the advent of global telecommunications, a small country's national broadcasting capabilities could barely reach beyond their own borders. Today, even a minor website hosted on tiny Pitcairn Island has the same reach as the White House, with competing results.[5] Technology is a great equalizer; as Robert Corn-Revere wrote during the Internet's infancy, however, "censorship is the bastard child of technology."[6] As the marketplace of ideas grows, so do efforts to gain a market advantage in an anticompetitive manner.[7]

At this point, it is clichéd to describe the effect of Internet law as "revolutionary."[8] Nevertheless, in this circumstance, it is not entirely inappropriate, because there is an understudied notion of what is "nationality" or "independence" when it comes to Internet governance effects. The very notion of the World Wide Web depends upon the use of a top-level domain ("TLD"), without which no website can exist.[9] Meanwhile, the existence of a ccTLD can be as symbolically important as having a national flag as a sign of independence. As Professor Michael Froomkin wrote, "Branding can be part of the project of nation-building."[10] A ccTLD is not merely important as a symbolic indicator of

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[4]   *Kosovo: A Way Forward?: Hearing Before the Comm. on Foreign Relations*, 109th Cong. 3 (2005) [hereinafter *Hearing 2005*].

[5]   *See* Council Directive 95/46/EC, art. 12, 1995 O.J. (L 281). *See* Case C-131/12, Google Spain v. Agencia Española de Protección de Datos, 2014 E.C.R.

[6]   Robert Corn-Revere, *New Technology and the First Amendment: Breaking The Cycle of Repression*, 17 HASTINGS COMM. & ENT. L.J. 247, 264 (1994).

[7]   *See, e.g.*, *Top 10 Internet-censored Countries*, USA TODAY (Feb. 5, 2014, 5:44 PM), http://www.usatoday.com/story/news/world/2014/02/05/top-ten-internet-censors/5222385/ (listing ten countries notorious for limiting and monitoring Internet use. Most restrictions deal mainly with government and religious criticism, opposition, comment, or dissociation); James Vincent, *UK Branded an 'Enemy of the Internet' for the First Time by Reporters Without Borders*, INDEPENDENT (Mar. 17, 2014), http://www.independent.co.uk/life-style/gadgets-and-tech/uk-branded-an-enemy-of-the-internet-for-the-first-time-by-reporters-without-borders-9196571.html (criticizing US and UK efforts to monitor the Internet for terrorist activity but by proxy monitoring and gathering information on citizens); *China: Electronic Great Wall Getting Taller*, REPORTERS WITHOUT BORDERS (Mar. 10, 2014), http://12mars.rsf.org/2014-en/2014/03/10/china-electronic-great-wall-getting-taller (stating that China's State Internet Information Office is in charge of approving content on the Internet, providing funds to bloggers for posting pro-government information on their sites, distributing IP addresses, and punishing sites and individuals).

[8]   And given that the Internet is now nearly thirty years old, even "revolutionary" seems increasingly inappropriate.

[9]   *See* Peter K. Yu, *The Origins of ccTLD Policymaking*, 12 CARDOZO J. INT'L & COMP. L. 387, 387–92 (2004).

[10] *See* A. Michael Froomkin, *When We Say US™, We Mean It!*, 41 HOUS. L. REV. 839, 843 (2004).

independence, however. Control over ccTLDs allows a nation to control an essential part of their information and technological infrastructure that can affect telecommunications, power grids, banking, and electronic surveillance.[11] "National governments recognize [ccTLDs] as a component of their sovereignty and a vital national interest."[12]

Nevertheless, ICANN hands out TLDs and ccTLDs inconsistently, which results in arbitrary distribution and application of its processes. The Kosovo question places ICANN's inconsistency under a magnifying lens. Kosovo gained political independence, but it remains a digital vassal of its former master, Serbia. Despite Kosovo's political independence, won through armed conflict and international diplomatic recognition, ICANN denies the new country its *online* independence. Consequently, this Article will discuss Kosovo's past struggle to gain independence and its continued struggle for international recognition.

Specifically, this Article focuses the need and merit for Kosovo to have its own ccTLD and the impediment ICANN's procedures can place on digital independence for newly independent nations. Part I briefly discusses the history of Kosovo and its relationship with Serbia. Part II provides a brief explanation of ccTLDs and the procedures for granting them. Part III gives an overview of Kosovo's international recognition. Part IV discusses how international recognition fits into the ICANN ccTLD procedure and gives a brief history of ISO and ICANN. Part V concludes that Kosovo should be granted a ccTLD under ICANN's framework. Finally, Part VI provides additional criticism of ICANN's practices and alternative options for Kosovo and other countries seeking separation from ICANN.

I. KOSOVO

A. HISTORY

Kosovo is about the size of Connecticut.[13] Despite its tiny size, Kosovo's central Balkan location places its 4,203-square-miles in both

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[11] Kim G. von Arx & Gregory R. Hagen, *Sovereign Domains A Declaration of Independence of ccTLDs from Foreign Control*, 9 RICH. J.L. & TECH. 4, para. 60 (2002), *available at* http://www.jolt.richmond.edu/v9i1/article4.html.

[12] Yu, *supra* note 9, at 402.

[13] *See, e.g.*, *Kosovo Facts,* NATIONAL GEOGRAPHIC, http://travel.nationalgeographic.com/travel/countries/kosovo-facts/ (last visited May 12, 2015);

the United States' and the European Union's field of vision.[14] Perhaps if it were located elsewhere, the European Union and the United States would be less concerned about Kosovo's fate.[15] But, perhaps fortunately for the young nation, Kosovo is surrounded by EU and NATO states, and thus the conflict there was not easy to ignore. Before Yugoslavia disintegrated in the 1990s, Kosovo was a Province within the Socialist Republic of Serbia.[16] As Yugoslavia shattered, its constituent republics sought independence. Each left Serbia's orbit with some degree of bloodshed. Slovenia left after giving Yugoslavia a minor bloody nose.[17] Croatia broke away with a little more violence.[18] The most well-known and tragic split was that with Bosnia and Herzegovina, which saw "ethnic cleansing" by multiple parties in the three-way war.[19] In contrast, Macedonia and Montenegro left with little violence.[20]

Kosovo Brief, INDEP. COMM'N FOR MINES & MINERALS, http://www.kosovo-mining.org/kosovoweb/en/kosovo/brief.html (last visited May 12, 2015).

[14] TIM JUDAH, KOSOVO: WHAT EVERYONE NEEDS TO KNOW 128 (2008).

[15] *Id. See generally* TED DAGNE, CONG. RESEARCH SERV., R40115, RWANDA: BACKGROUND AND CURRENT DEVELOPMENTS (2011).

[16] *See The World Factbook: Kosovo*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html (last updated Feb. 11, 2016).

[17] Slovenia and Croatia declared independence on June 25, 1991. The "Ten Day War" following Slovenia's declaration of independence ended on July 4 with approximately forty-four casualties suffered by the Yugoslavian People's Army (YPA) and nineteen Slovenian casualties. The YPA first crossed the Slovenian border in Metlika on June 27, but the YPA armored vehicles were stopped by barricades. The YPA brought in planes to destroy barricades and let tanks through on the following days, injuring about four Slovenian truck drivers each day in the process. By July 2 the YPA had lost two weapons depots and multiple tanks to Slovenian forces but regained some ground breaking through the Gornja Radgona border crossing, destroying part of the town in the process. This success only ended in the subsequent defeat further into the border, and YPA forces began surrendering. A cease-fire was agreed to on July 3, and YPA forces began their retreat on July 4. *War of Slovenia 1991*, REPUBLIC OF SLOVENIA, www.slovenija2001.gov.si/10years/path/war/ (last visited Aug. 25, 2015). *See also* LESLIE BENSON, YUGOSLAVIA: A CONCISE HISTORY 160–66 (2001); Danica Fink-Hafner, *The Disintegration of Yugoslavia*, 37 CANADIAN SLAVONIC PAPERS 339 (1995).

[18] Benson, *supra* note 17, at 164.

[19] *Id.* at 165.

> In contrast to their reaction over Slovenia and Croatia . . . western governments pretended not to notice that the Serb offensive in Bosnia was in effect an invasion planned in Belgrade, for which there was ample precedent to justify armed international intervention. . . . The number of victims by the end of 1994 was 200,000 casualties and missing, and there were more than 500,000 displaced persons. War crimes were committed on a scale unknown to Europe since 1945, violations of human rights were a daily occurrence.

> *Id.* at 166.

[20] *Id.* at 164–65, 181–83. *See also* KENNETH MORRISON, MONTENEGRO: A MODERN HISTORY (2009).

Kosovo's divorce from Serbia, the inheritor of the Yugoslav state, is different from the others. All of the other former Yugoslav regions were "republics" within Yugoslavia with some degree of historical claim to independence.[21] Meanwhile, Kosovo was itself a province within one of these six constituent republics, Serbia. Second, while Kosovo's current population prefers independence, Serbians consider Kosovo to be a sacred place in Serbian history; from the Serbian perspective, therefore, more than mere land is at stake. Third, Kosovars are ninety-two percent ethnic Albanians, and Serbians make up less than two percent of the population.[22] These statistics would seem to make Kosovo's separation from Serbia a relatively simple question. But, as is the case in many things Balkan, history is the enemy of simplicity.

There are viable claims that Ethnic Albanians have been in Kosovo since the days of the medieval Serbian empire.[23] Serbians, however, regard Kosovo as the cradle of the Serbian nation. In 1389, the region was the site of "The Battle of Kosovo," where the Serbs fought and lost to the Turkish invaders. Despite being a loss, however, it was a formative historical event for Serbian identity.[24] For a comparison, consider the fact that the Battle of Bunker Hill was a loss for the Americans, but galvanized the Revolution. This historical tie gives Serbians an outsized attachment to the territory of Kosovo. Further, the legendary battle fits in the context of the centuries-old rivalry between Balkan Christendom and Islam, which itself fits conveniently into a more modern narrative.[25]

While the Western media largely painted Serbia as the aggressor, understanding the historical and emotional context can help put Serbian obsession over Kosovo in perspective. Despite Serbia's historical fondness for the *land* of Kosovo, Serbia's recent efforts to maintain control included war crimes and human rights violations in the region, even following NATO intervention in 1999.[26] The "campaign of ethnic cleansing against Kosovo Albanians" resulted in thousands of deaths and

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[21] MORRISON, *supra* note 20; *see also* Fink-Hafner, *supra* note 17, at 346.

[22] *Kosovo: The Balkans' Moment of Truth?: Hearing before the Comm. on Foreign Relations*, 110th Cong. 1 (2008) [hereinafter *Hearing 2008*] (opening statement of Joseph R. Biden, Jr.).

[23] Ioana Cismas, *Secession in Theory and Practice: The Case of Kosovo and Beyond* 2 GOETTINGEN J. INT'L L. 531, 556 (2010).

[24] *History of Kosovo up to 1918*, GLOBAL PERSPECTIVES, www.cotf.edu/earthinfo/balkans/kosovo/KVtopic3.html (last visited Aug. 25, 2015).

[25] *See generally* ANNA DI LELLIO, THE BATTLE OF KOSOVO 1389: AN ALBANIAN EPIC 8 (Robert Elsie trans., 2009).

[26] *Hearing 2005, supra* note 4, at 1.

forced "hundreds of thousands . . . to flee" to surrounding countries.[27] In 1998 and 1999, "[t]he United States and . . . NATO . . . attempted to stop the escalating violence between ethnic Albanians and Serb forces."[28] "These efforts culminated in 1999 in a 78-day NATO bombing campaign against Serbia."[29] Following the bombing, the United Nations Administration Mission in Kosovo ("UNMIK") took over political control.[30] The UNMIK gave Kosovo "supervised independence," but the country's fate had yet to be decided because the United Nations insisted upon a "standards before status" policy.[31] This meant that a decision on Kosovo's standing as an independent nation, as an independent part of Serbia, or as simply a part of Serbia, would only come after Kosovo made adequate economic and human rights progress. While this was the position of the international community, the Kosovars remained steadfast in their desire for independence.[32] "Kosovo's status has been the last major challenge left after the dissolution of Yugoslavia."[33] Requirements for independence included developing a democratic government and securing minority safety.[34]

On February 17, 2008, Kosovo implemented its declaration of independence, constitution, and flag.[35] The Kosovo declaration of independence states, in part:

> We, the democratically elected leaders of our people, hereby declare Kosovo to be an independent and sovereign state. . . . We declare Kosovo to be a democratic, secular and multiethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities

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[27] Oona A. Hathaway, *Fighting the Last War: The United Nations Charter in the Age of the War on Terror*, *in* CHARTER OF THE UNITED NATIONS: TOGETHER WITH SCHOLARLY COMMENTARIES AND ESSENTIAL HISTORICAL DOCUMENTS 210, 220 (Ian Shapiro & Joseph Lampert eds., 2014).

[28] *Hearing 2005, supra* note 4, at 1.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *See* AMNESTY INT'L, SERBIA AND MONTENEGRO (KOSOVO): THE LEGACY OF PAST HUMAN RIGHTS ABUSES 16–17, 20 (2004); Alissa J. Rubin, *Serbs, Kosovars Far Apart over Future of Kosovo*, BALTIMORE SUN (July 25, 2006), http://articles.baltimoresun.com/2006-07-25/news/0607250251_1_kosovo-serbs-special-envoy.

[33] *Hearing 2008*, *supra* note 22, at 1.

[34] *See e.g.*, *Hearing 2005*, *supra* note 4, at 15.

[35] "Do you have a flag? No flag no country, you can't have one." Eddie Izzard, *Dress to Kill* (1999), https://www.youtube.com/watch?v=nNw1lfJstVE.

in Kosovo and create conditions necessary for their effective participation in political and decision-making processes.[36]

In 2010, the International Court of Justice concluded, "the declaration 17 February of 2008 did not violate general international law."[37] Despite this, Serbia continued to insist that at least a portion of Kosovo remain part of Serbia.[38] Unsurprisingly, this idea lacks Kosovar and international support.[39] Kosovo's dedication to democracy and its secularism[40] allowed it to gain international favor, with diplomatic recognition from the United States and most of the European Union.[41] In short, Kosovo walked the Western European walk and was rewarded accordingly.

B. FIGHT OVER TECHNOLOGICAL DESIGNATIONS

Divorces can be messy, and they can devolve into quarrels over minutiae that make little sense to outside parties. Kosovo's efforts to achieve digital independence, however, are not the international equivalent of former spouses quarreling over a wedding gift. Media independence is of the utmost importance to all nations, but especially a new nation such as Kosovo. "Serbia and Montenegro had witnessed the repression over media and a strong restriction of freedom of expression during the 1990s, when the Internet became the alternative source of information."[42] This remains pronounced today, though there have been some moderate increases in the number of people with Internet access.[43] As recently as 2014, multiple critical blogs and news sites were shut down, seemingly as content-based restrictions on expression.[44] This highlights the necessity for technological independence.

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[36] *Documents on Democracy: Kosovo*, 19 J. DEMOCRACY 183 (2008).

[37] Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22), *available at* http://www.icj-cij.org/docket/files/141/15987.pdf.

[38] STEVEN WOEHREL, CONG. RESEARCH SERV., RS21721, KOSOVO: CURRENT ISSUES AND U.S. POLICY 5 (2013).

[39] *Id.*

[40] *Hearing 2005*, *supra* note 4, at 5.

[41] *See infra* Part III.

[42] *Country Report: Internet Regulation in Serbia and Montenegro*, ORG. FOR SECURITY & CO-OPERATION IN EUR. 1 (2013).

[43] *See id.*

[44] *See Online Freedoms in Serbia Still Under Threat, Analysis Shows*, EDRI (Aug. 27, 2014), https://edri.org/online-freedoms-in-serbia-still-under-threat/; *Freedom of Expression Under Threat in Serbia*, CIVIL RIGHTS DEFENDERS (June 4, 2014), https://www.civilrightsdefenders.org/news/freedom-of-expression-under-threat-in-serbia.

Despite its lack of online independence, Kosovo has broken most technological ties with Serbia. For example, Kosovo and Serbia agreed that Austria could apply on behalf of Kosovo for an international country calling code as part of the 2013 Brussels Agreement.[45] Up until 1999, Kosovo was covered by the Serbian cell phone network and used the +63 dialing code.[46] Without its own dialing code but with a need to distance itself from Serbian control, Kosovo could use the old Yugoslavian +381 code or could "borrow" a code from another country.[47] In 1999, Kosovo began using Monaco's +377 code.[48] The Kosovo government essentially regards +63 as illegal since 2008 and kicked out most of the Serbian cell network.[49]

As for its ccTLD designation, Kosovo cannot get out from under Serbia's thumb so easily.[50] Kosovo continues to remain under Serbia's ccTLD, even if as a practical matter Kosovo refuses to use it. Kosovo government websites are all on other TLDs, usually ".com" ".net" or ".org."[51] While this is superior to using a hostile foreign government's ccTLD, it places these TLDs at least partially under the laws of the United States, as they are privately administered by Verisign[52] and Public Interest Registry.[53] Legally, if someone wanted to take action against

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[45] Gov't. of the Republic of Kosova, *Brussels Agreements Implementation State of Play*, 16 (Mar. 23, 2015).

[46] Judah, *supra* note 14, at 99.

[47] *Id.*

[48] *Post and Telecom of Kosovo, the Ministry of Education, Science and Technology and Monaco Telecom International sign Heads of Agreement for better access to information technology and internet in schools*, MONACO TELECOM INTERNATIONAL (Apr. 8, 2010), https://operators.monaco-telecom.mc/images/Operateurs/CP-2010-04-08_PTK_MEST_MTI_internet_in_schools.pdf.

[49] Judah, *supra* note 14, at 99.

[50] Using "easily" lightly. Despite Kosovo's compliance with their dialing code agreement, the international community did not seem eager to do much more than give Serbia a shake of the finger and not actually implement the agreement until years later.

[51] *See e.g., Government*, STATE PORTAL OF THE REPUBLIC OF KOSOVA, https://www.rks-gov.net/en-US/Republika/Pages/Qeveria.aspx (last visited May 25, 2015); *The Office of the Prime Minister*, REPUBLIC OF KOSOVO, http://www.kryeministri-ks.net/?page=2,1 (last visited May 25, 2015); *Assembly*, REPUBLIC OF KOSOVO, http://ww.kuvendikosoves.org/?cid=1,1 (last visited May 25, 2015); *Ministry of Foreign Affairs*, REPUBLIC OF KOSOVO, http://www.mfa-ks.net/?page=2 (last visited May 25, 2015).

[52] *See Contact Us,* VERISIGN, https://www.verisigninc.com/en_US/contact-us/index.xhtml (last visited May 25, 2015); *Company Information – About Verisign,* VERISIGN, https://www.verisigninc.com/en_US/company-information/index.xhtml (last visited May 25, 2015).

[53] *See The Operator of .org, .ngo &.ong Domain Names*, YOUR PUBLIC INTEREST REGISTRY, http://pir.org (last visited May 25, 2015); *About Us*, YOUR PUBLIC INTEREST REGISTRY, http://pir.org/about-us/ (last visited May 25, 2015).

these domains, they could do so in the Eastern District of Virginia, even though American courts would normally have no place meddling in the affairs of any other independent nation.[54]

Ultimately, this renders Kosovo as an online anomaly. It violently broke free from Serbia, and no reasonable observer can likely see it ever returning to Serbian rule.[55] Since its official ccTLD remains .rs (Serbia) its online presence is still under the Serb National Internet Domain Registry.[56] To evade the censorship and cybersecurity issues that would arise from using ".rs," Kosovo places its online flag in Virginia. Given the revelations of what the U.S. government and U.S. corporations consider to be fair game when it comes to surveillance and the commercial and governmental use of personal information, one might imagine that this is an inappropriate state of affairs for a self-respecting independent country.

II. WHAT IS A CCTLD?

The ccTLD is the portion of a web address that comes after the second "dot" when it is shorthand for a country code.[57] A full domain name—for example, www.4chan.org—"is a domain name comprised of a series of alphanumeric codes representing each domain level separated by periods."[58] Top-level domains include generic domains such as ".com" and ".org" and country code domains such as ".ca" and ".it."[59] ICANN approves these top-level domains at the right side of the full website address, and this is the first level the computer translates to link

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[54] For example, US jurisdiction has been declared at least twice against Canadian company "Bodog.com." *See* 1st Tech., LLC v. Rational Enter., 2008 U.S. Dist. LEXIS 106100 (D. Nev. July 29, 2008); Michael Geist, *All Your Internets Belong to US, Continued: The Bodog.com Case* (Mar. 6, 2012), www.michaelgeist.ca/2012/03/bodog-case-column-post. Another Virginia case essentially asserted jurisdiction over any ".com" name but specifically over a Chinese company using the domain name "cnnews.com." *See* CNN L.P. v. CNNews.com, 162 F. Supp. 2d 484, 490 (E.D. Va. 2001). *See also* AOL v. AOL.org, 259 F. Supp. 2d 449 (E.D. Va. 2003) (finding jurisdiction over a Chinese company with the domain name "aol.org").

[55] *See* Judah, *supra* note 14, at 122–26, 140–51.

[56] *See generally* RNIDS *Serbian National Internet Domain Registry*, RNIDS, http://www.rnids.rs/en/ (last visited May 25, 2015).

[57] *List of Country Code Top Level Domains*, DOMAIN SHERPA, http://www.domainsherpa.com/country-code-top-level-domains/ (last visited Feb. 22, 2016).

[58] Lily Blue, *Internet and Domain Name Governance: Antitrust Litigation and ICANN*, 19 BERKELEY TECH. L.J. 387, 388 (2004).

[59] Yu, *supra* note 9, at 388–89.

to the appropriate server.[60] The second-level domain is the next field to the left, usually specifying the exact site (or plain English name) within the TLD.[61] Due to the large need for domain names, "there has been an ongoing power struggle over the control of the DNS and authority to delegate and administer ccTLDs."[62] ICANN and the United States have come out on top in this struggle.[63]

A. WHO GETS A CCTLD?

Since the beginning of ccTLD designation in 1985, International Organization for Standardization ("ISO") 3166-1 country codes have been used to determine who deserved a ccTLD. The person granted first priority over the ccTLD was "generally the first person that ask[ed] for the job."[64] In other words, if the ccTLD for the United States had yet to be issued, any "responsible" person or portion of the US government, for example, could scoop up and run the ".us" TLD. Once this "responsible" entity took control of the TLD, it controlled registration of second-level domain names under that TLD.[65] Following this system, some domain names were reassigned to different governing bodies better approved by the states, but the system of assignment essentially remains the same. By the mid-1990s, ccTLDs had been designated "for virtually all existing countries, including those with very limited Internet access."[66]

ICANN claims it continues to use the ISO country code system to create and assign ccTLDs. ccTLD delegating bodies, however, have not followed this purported rule. For example, in 1983 the United Kingdom was given the ccTLD ".uk" even though the ISO 3166-1 country code for the United Kingdom is ".gb" for "Great Britain."[67] In 1996, distribution was also based on codes delegated by the Internet Assigned Numbers Authority (IANA).[68] In fact, "some ccTLDs do not belong to entities that are officially recognized as countries, and some countries permit people anywhere in the world to register second-level

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[60] Blue, *supra* note 58, at 389.

[61] *Id.* at 390.

[62] Yu, *supra* note 9, at 389.

[63] *See infra* Part IV.

[64] Yu, *supra* note 9, at 390.

[65] *See id.*

[66] *Id.* at 391.

[67] *Id.*

[68] *Id.*

domain names under their ccTLD as a means to generate revenue."[69] A few of the controversial, questionable, or non-country ccTLDs are listed in Table 1 below:

Table 1

	NAME	CCTLD[70]	UN[71]	ISO[72]	DIALING CODE[73]
1	Puerto Rico[74]	.pr	No	Yes	1-7871-939 (part US)
2	Pitcairn Island[75]	.pn	No	Yes	No
3	State of Palestine[76]	.ps	No	Yes	970

[69] Scott P. Sonbuchner, *Master of Your Domain: Should the U.S. Government Maintain Control Over the Internet's Root?*, 17 MINN. J. INT'L L. 183, 187 (2008).

[70] *See Domain Name Dispute Resolution Service for country code top level domains (ccTLDs)*, WIPO, www.wipo.int/amc/en/domains/cctld/ (last visited May 13, 2015); *Top Level Domain Names & Country Codes*, THRALL.ORG, www.thrall.org/domains.htm (last visited May 13, 2015); *List of ccTLDs: Country Code Top-Level Domains*, STATDNS, www.statdns.com/cctlds (last visted May 13, 2015).

[71] *Member States of the United Nations*, U.N., www.un.org/en/members (last visited May 13, 2015).

[72] *See Online Browsing Platform*, ISO, www.iso.org/obp/ui/#search (last visited May 13, 2015).

[73] *Id.* COUNTRY CODES, https://countrycode.org, (last visited May 13, 2015).

[74] *Puerto Rico, Discover a Magnificent and Unique Island*, WELCOME TO PUERTO RICO, www.topuertorico.org (last visited May 13, 2015). Though Puerto Rico has a fluctuating, often thriving, economy based on sugar sales, the US mainland drives this. The island is the smallest of the Greater Antilles islands with a population of almost 4 million. *Id.* Certainly its population gives it greater clout than a small country with few inhabitants in comparison. Yet a country, like Kosovo, with its own running economy base, attempting to be wholly separate from outside interference should merit similar treatment.

[75] "The Pitcairn Islands group is a British Overseas Territory. It comprises the Islands of Pitcairn, Henderson, Ducie and Oeno." Of these islands Pitcairn is the only inhabited island. *The Government of the Pitcairn Islands: Online Portal*, PITCAIRN ISLANDS OFFICE, www.government.pn (last visited May 13, 2015). Furthermore, Pitcairn is home to 51 permanent residents and only has electricity 14 hours a day. Margalit Fox, *Tom Christian, Descendant of Bounty Mutineer, Dies at 77*, N.Y. TIMES (Aug. 23, 2013), www.nytimes.com/2013/08/24/world/asian/tom-christian-descendant-of-bounty-mutineer-dies-at-77.html?_r=0. Should we question why 51 potential, but not certain, Internet users with 14 out of 24 hours of access per day—assuming they don't have dial up and have to wait 10 minutes for AOL to load—need a ccTLD?

[76] Since the 1800s there has been much debate over the areas regarded as the State of Palestine, Jordan, and Israel. This geographic area has been inhabited by an Arab and Jewish mixed population with a fluctuating majority. Today there continues to be heated controversy, including terrorism as well as general disagreement from surrounding states over the designation of territory in this region. Recently the European Union and the Vatican have granted recognition to the State of Palestine. Current numbers reflect approximately 4 million people within the claimed state, though the numbers are questionable as calculations vary by source. *Cf. Palestinian State (proposed)*, INFOPLEASE, www.infoplease.com/country/palestinian-state.html (last visited Aug. 25, 2015); *What is Palestine and Palestinians?*, ISRAEL SCI. & TECH. HOMEPAGE,

4	Ascension Island[77]	.ac	No	Yes	No
5	American Samoa[78]	.as	No	Yes	1-684 (part US)
6	Soviet Union[79]	.su	No	No	No
7	Yugoslavia[80]	.yu	Formerly	Yes	38 (discontinued)
8	Bailiwick of Jersey[81]	.je	No	Yes	44-1534 (part UK)
9	Northern Mariana Islands[82]	.mp	No	Yes	1-670 (part US)

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www.science.co.il/History-Palestine.php (last visited Aug. 25, 2015); *Palestine: An Introduction to History & Issues*, PALESTINE SOLIDARITY COMM., www.palestineinformation.org/history.htm (last visited Aug. 25, 2015); *Palestinian Territories*, U.S. DEP'T OF STATE, www.state.gov/p/nea/ci/pt/ (last visited Aug. 25, 2015). The author notes that sources vary astoundingly in their information and for purposes of this article merely encourages readers to investigate on their own. The point in this debate is not the debate itself, but that Kosovo remains at odds with Russia and Serbia but is otherwise supported by the international community, yet such resounding excuses limit their Internet freedoms.

[77] *See Types of British Nationality*, GOV.UK, www.gov.uk/types-of-british-nationality/british-overseas-territories-citizen (last visited May 13, 2015); *see Ascension Island: History*, ASCENSION ISLAND GOV'T, http://www.ascension-island.gov.ac/the-island/history/ (last visited May 13, 2015). There are approximately one thousand inhabitants of Ascension at any one time, though most are workers who are there under fixed time contracts or have traveled from one of the larger islands, mainly St. Helena. *See Ascension: Population*, MYSTERRA MAGAZINE, mysterra.org/webmag/ascension-island/population.html (last visited Aug. 25, 2015); *Ascension Island*, ECONOMIST (Sept. 21, 2010), www.economist.com/node/17082686.

[78] American Samoa is an unincorporated United States territory. Its population in 2013 was calculated around 55,519. *See American Samoa At a Glance*, AMERICAN SAMOA GOV'T DEP'T OF COMMERCE, http://doc.as.gov/research-and-statistics/at-a-glance/ (last visited Feb. 22, 2016). Like Puerto Rico, the Samoan economy is heavily based on US economic activity and a large part of its commerce and employment are centered around the fishing industry. The *World Factbook: Australia-Oceania: American Samoa*, CIA, www.cia.gov/library/publications/the-world-factbook/geos/aq.html (last updated Aug. 6, 2015). Again this is simply an example of a territory—not a country—which though it is reliant on its parent country has been awarded its own ccTLD, again without UN recognition.

[79] Despite the dissolution of the Soviet Union in 1991 the domain name remains active, as IANA has failed to remove ".su" from the root zone file. Yu, *supra* note 9, at 394. We can keep the Soviet Union around in our hearts and minds, through its unused ccTLD that continues to take whatever capacity of ICANN's time and funds to keep it running.

[80] *See infra* Part V.

[81] Jersey is located within the Channel Islands and is under English rule. *See About the Bailiwick of Jersey*, CHANNEL ISLANDS BRUSSELS OFFICE, www.channelislands.eu/about-channel-islands/about-bailiwick-of-jersey (last visited May 13, 2015).

[82] This is also a commonwealth of the United States with a population of 52,000. *See The World Factbook: Mariana Islands*, CIA, https://www.cia.gov/library/publications/the-world-

10	East Timor[83]	.tp	No	Yes	670
11	French Southern and Antarctic Lands[84]	.tf	No	Yes	No
12	Vatican City	.va	No	No	379
13	Svalbard and Jan Mayen[85]	.sj	No	Yes	No
14	Tokelau[86]	.tk	No	Yes	None
15	Taiwan[87]	.tw	No	Yes	886

factbook/geos/cq.html (last updated Feb. 11, 2016). Its economy is heavily based on US financial assistance, and it maintains a small agricultural sector of small cattle ranches and farms. *Id.* The author does not know of many cows using the Internet but notes that granting a territory a ccTLD remains against ICANN "policy" as of the writing of this footnote.

[83] The current nation of Timor-Leste was previously the Portuguese colony of East Timor, or Timor Portugês. Historically part of Indonesia, the Portuguese colonized it until 1975, and in 1976, Indonesia took the territory over and incorporated it as a province. Voon, Tania, *Closing the Gap Between Legitimacy and Legality of Humanitarian Intervention: Lessons from East Timor and Kosovo*, 7 UCLA J. INT'L. L. & FOREIGN AFF. 31, 52 (2002). Even during the contested Indonesian occupation, East Timor had its own TLD of ".tp." Yet, upon full independence, ".tp" was replaced with ".tl." *See* Kieren McCarthy, *East Timor was Officially Removed from the Internet Yesterday*, REGISTER (Mar. 4, 2015), http://www.theregister.co.uk/2015/03/04/east_timor_was_officially_removed_from_the_internet_yesterday/.

[84] An overseas territory of France with no indigenous inhabitants. *The World Factbook: French Southern and Antarctic Lands*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/fs.html (last updated Feb. 11, 2016). The territory is a temporary home to fishermen and researchers numbering no more than 150 at a time. *See id.* Researchers likely need Internet access—at Cox like speeds—but this need does not correlate with the ccTLD issue.

[85] This small territory of Norway has about 2,000 inhabitants and brings in revenue from coal mining and tourism. *The World Factbook, Europe: Svalbard (Territory of Norway)*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/sv.html (last updated Jan. 5, 2015). The territory is not even large enough to have its own dialing code, yet it has a ccTLD. *Id.*

[86] Tokelau as of 2015 remains a territory of New Zealand, despite an attempt to transfer to free association status in 2007. *The World Factbook: Tokelau*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/tl.html (last updated Jan. 5, 2015). Its population as of 2013 was estimated at 1,337, and it relies on approximately $15 million a year in aid from New Zealand. *Id.* Kosovo, as noted, has moved past the attempts of Tokelau in gaining independence and does not rely on such extensive aid at this point in time from any one external or parent country. Further inconsistent with ICANN "policy" Tokelau and a few other noted territories fail the UN and ISO recognition requirements.

[87] While Taiwan is de facto independent, the People's Republic of China claims that it is a "reengage province" of China. *See* Christopher J. Carolan, *The "Republic of Taiwan": A Legal-Historical Justification for a Taiwanese Declaration of Independence*, 75 N.Y.U. L. Rev. 429, 429 (2000). *See* Pasha L. Hsieh, *An Unrecognized State in Foreign and International Courts: The Case of the Republic of China on Taiwan,* 28 MICH. J. INT'L L. 765, 766 (2007); Zhengyuan Fu, *The Taiwan Issue and Sino-U.S. Relations*, 16 TRANSNAT'L L. & CONTEMP. PROBS. 253 (2006).

While this paper takes no position on the legitimacy of these fifteen examples having claim to their own online independence, it makes little sense that Pitcairn Island, with barely fifty inhabitants, has its own TLD, while Kosovo, with about 1.1 million Internet users, airports, an army, and a full independent government, does not.[88] East Timor, before it was granted independence, enjoyed the ccTLD ".tp" and under this online flag, the activists rallied for full political independence.[89] This makes more sense than a country achieving political independence and then needing to beg for online recognition.

Furthermore, although East Timor's former master, Indonesia, recognizes its independence, the Kosovo question has been asked in other languages—like Chinese. Taiwan is a prime example of an unofficial sovereign state held captive by an ongoing international territorial dispute. Only twenty-four countries, not including any major world powers, formally recognize Taiwan's independence from Mainland China.[90] Accordingly, the vast majority of counties agree with China's view that Taiwan is a province of China. Taiwan is not even a member of the United Nations.[91] Nevertheless, Taiwan has full digital independence under the ccTLD ".tw." Meanwhile, more countries recognize Kosovo independence than Taiwanese. While 112 countries recognize Kosovo's independence, including the United States, Canada, and most of the European Union, Taiwan has diplomatic relations with only twenty-one UN member states and the Holy See.[92] Why then is Taiwan digitally untethered from China, while ICANN refuses to budge on the Kosovo question?

These examples undermine the credibility of any argument against Kosovo's online independence. The Soviet Union collapsed in 1991, yet it still exists online. The French Antarctic Lands proclaim digital sovereignty. Even Taiwan, while maintaining its own sovereignty, does not declare itself as politically "independent" from China.[93] Given

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[88] Kosovo has about 1.1 million Internet users, or about 77% Internet usage—the highest rate in the region. Besfort Ahmeti, *Internet Usage in Kosovo,* http://digjitale.com/2014/11/internet-usage-kosovo (last visited Aug. 27, 2015).

[89] Froomkin, *supra* note 10, at 859.

[90] Hsieh, *supra* note 87, at 766.

[91] *The World Factbook: Taiwan*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html (last updated Jan. 19, 2016).

[92] Eva Dou, *Gambia Cuts Taiwan Ties, Raising Stakes with China*, WALL ST. J. (Nov. 15, 2013), http://www.wsj.com/articles/SB10001424052702304243904579199280159090204.

[93] *Taiwan and China in 'Special Relations': Ma*, CHINA POST (Sept. 4, 2008, 12:00 AM TWN), http://www.chinapost.com.tw/taiwan/china-taiwan%20relations/2008/09/04/173082/Taiwan-

these facts, why do we keep Kosovo as an online colony of Serbia, or as a refugee pitching a tent in the United States?

In ducking the question, ICANN claims to use the ISO to determine certain country codes and to grant ccTLDs because it is "not in the business of deciding what is and what is not a country." In the same instance, however, it does decide "who is a country," or more specifically what land mass, country or not, deserves a ccTLD. Despite the general policy, ICANN will "intervene in cases where the designated manager has substantially misbehaved."[94] ICANN further claims to "[take] the desires of the government of the country very seriously,"[95] when determining whether to grant or transfer a ccTLD. ICANN may speak noncommittally, and it may not decide "what is and what is not a country" in a geopolitical sense. Nevertheless, ICANN recognition does grant or withhold digital independence, and withholding that independence from Kosovo lacks legitimacy.

III. INTERNATIONAL RECOGNITION

Many countries were initially concerned that Kosovo independence could spark additional conflicts in the Balkan region.[96] But unlike in 2006, when Montenegro divorced Serbia, the European Union did not speak against Kosovo independence.[97] Additionally, Kosovo has been under NATO and UN control for the past nine years, further distinguishing its break away from that of Montenegro, Serbia, or any other Balkan country.[98] Upon Kosovo's declaration of independence, it gained quick diplomatic recognition from twenty-two countries, including two-thirds of the European Union.[99] By 2012, Kosovo had diplomatic recognition from ninety-one countries.[100] Today, it is

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and.htm. *See also* Interview by Leslie H. Gelb, Council on Foreign Relations with Chas. Freeman, Projects International, Inc., and Arthur Waldron, American Enterprise Institute, University of Pennsylvania, *If Taiwan Declares Independence and China Reacts With Force, On Whom Should the U.S. Lean Harder, China or Taiwan?*, Council on Foreign Relations (Apr. 19, 2000), http://www.cfr.org/asia-and-pacific/if-taiwan-declares-independence-china-reacts-force-whom-should-us-lean-harder-china-taiwan/p3628.

[94] Yu, *supra* note 9, at 392.

[95] *Id.* at 393.

[96] Talis Saule Archdeacon, *Baltics Support Kosovo Independence,* BALTIC TIMES (Feb. 20, 2008), http://www.baltictimes.com/news/articles/19846/.

[97] *See* MORRISON, *supra* note 20, at 168–70.

[98] *Hearing 2008*, *supra* note 22, at 9.

[99] *Id*. at 23.

[100] Woehrel, *supra* note 38, at 1.

recognized by 108 UN member states—well over half of its 193 members—as an independent state.[101]

A. UNITED NATIONS

> Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.[102]

One hundred eight UN states recognize Kosovo as an independent country, but Russia refuses to. This is no surprise, given Russia's historical support of Serbia. Russia remains the main impediment to Kosovo's full UN recognition because Russia is a permanent member of the UN Security Council.[103] Normally, nine of the fifteen members of the Security Council need to approve a country to move discussions forward to the General Council for an official decision, however, any of the five permanent Security Council members can veto the decision.[104] With Russia as one of the five, the issue may never reach the General Council.

Even upon recommendation by the Security Council, Kosovo will need an additional ten percent of UN member states to recognize it or at least approve admission. As mentioned, Kosovo currently sits with 108 member states in recognition of its independence, which places it at fifty-seven percent of the UN's total 193 member states, slightly below the two-thirds majority necessary for UN admittance.[105]

Lack of UN recognition may be a determining factor as to why ICANN and the ISO have not listed Kosovo deserving of a ccTLD or country code.[106] Nevertheless, there is no rule requiring UN membership

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[101] *International Recognition of Kosovo*, WIKIPEDIA, https://en.wikipedia.org/wiki/International_recognition_of_Kosovo (last visited Dec. 11, 2015).

[102] U.N. Charter art. 4, paras. 1–2.

[103] *Hearing 2008*, *supra* note 22, at 32. *See also Hearing 2005*, *supra* note 4, at 39.

[104] *About UN Membership*, UNITED NATIONS, http://www.un.org/en/members/about.shtml (last visited May 12, 2015). The five permanent members include China, France, Russia, the United Kingdom, and the United States. China and Russia being the holdouts. *See Republic of Kosova Declares Independence*, KOSOVOTHANKSYOU.COM (Feb. 17, 2008 15:49 CET), http://www.kosovothanksyou.com.

[105] *See About UN Membership*, *supra* note 104.

[106] *See* Nate Tabak, *Kosovo Struggles to Gain International Recognition Online*, DEUTSCHE WELLE (May 11, 2010), http://www.dw.de/kosovo-struggles-to-gain-international-recognition-online/a-

to receive a ccTLD. Recall the examples *infra* where even territories that do not claim independence, and virtually uninhabited rocks have ccTLDs.

To be listed on the ISO country code, a country must be registered in the United Nations Terminology Bulletin, *Country Names*. In order to be part of this bulletin, a country must be a member of either the United Nations, its specialized agencies, or must be party to the Statute of the International Court of Justice.[107] Kosovo is conspicuously absent from the *Country Names* bulletin,[108] even though Kosovo is a member of several UN specialized agencies.[109] The ISO is overseen by the United Nations to an extent, which may partially explain why Kosovo does not have an ISO 3166 code, but it does not explain why other non-UN entities do have a code, as noted in Table 1. Again, ICANN has issued ccTLDs without UN or ISO approval. In short, ISO appears to be more of an excuse than a consistent rationale.

B. UNITED STATES

Since NATO's US-led action to protect Kosovo, the United States has been a cheerleader for Kosovo's sovereignty. The United States was one of the first countries to recognize Kosovo in 2008, recognizing it the day after the country declared its independence.[110] Despite this, no president has officially designated Kosovo as a country for purposes of special trade agreements, as President George W. Bush did with Montenegro in 2008.[111] In 2012, however, President Obama did

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6196330. "These organizations generally look to the United Nations for answers, which is a problem because Kosovo doesn't have UN membership and most importantly isn't included in its statistical database as a country or area." *Id*.

[107] *Qualifying Top-Level Domain Strings*, INTERNET ASSIGNED NUMBERS AUTH., http://www.iana.org/help/eligible-tlds (last visited June 26, 2015).

[108] Tenth United Nations Conference on the Standardization of Geographical Names, July 31 – Aug. 9, 2012, *UNGEGN List of Country Names*, U.N. Doc. E/Conf.101/25 (May 21, 2012), *available at* http://unstats.un.org/unsd/geoinfo/UNGEGN/docs/10th-uncsgn-docs/econf/E_CONF.101_25_UNGEGN%20WG%20Country%20Names%20Document.pdf.

[109] Kosovo joined the International Monetary Fund on June 29, 2009. *See* Press Release No. 09/240, International Monetary Fund, Kosovo Becomes the International Monetary Fund's 186th Member (June 29, 2009), *available at* https://www.imf.org/external/np/sec/pr/2009/pr09240.htm. *See Member Countries*, WORLD BANK, http://www.worldbank.org/en/about/leadership/members (last visited June 26, 2015).

[110] *U.S. Recognizes Kosovo as Independent State*, U.S. DEP'T OF STATE (Feb. 18, 2008), http://2001-2009.state.gov/secretary/rm/2008/02/100973.htm.

[111] *See, e.g.*, COMMUNICATION FROM THE PRESIDENT OF THE UNITED STATES, NOTIFICATION TO ADD SERBIA AND MONTENEGRO SEPARATELY TO THE LIST OF COUNTRIES UNDER THE

issue a statement announcing the end of supervised independence in Kosovo. The statement recognized that "Kosovo has made significant progress in building the institutions of a modern, multi-ethnic, inclusive and democratic state."[112]

In 2008, Senator Richard Lugar stated to Congress that Kosovo independence was "an important step toward putting the violence and unstable history of the Balkans in the past." He went on to say that the "goal [for Kosovo] must be the creation of a functioning democracy and free market economy based on the rule of law."[113] If Kosovo remains a digital refugee, this goal will remain incomplete. The Internet has a great impact on economic development; in particular, it lowers the barriers to start-up business and contributes to sustainable development.[114] As a result, many countries consider ccTLD independence to be a public or national resource,[115] much like international travel. Therefore, if the United States truly backs Kosovo's independence and development, it should bring some pressure to bear on ICANN in order to promote full digital independence.

GENERALIZED SYSTEM OF PREFERENCES AND TO TERMINATE TRINIDAD AND TOBAGO, H.R. Doc. No. 110-130 (2d Sess. 2008). The United States Generalized System of Preferences is the designation given for countries to be included in special trade designations with the United States in accordance with the 1974 Trade Act. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978, § 501 (codified at 19 U.S.C. Ch. 12).

[112] Woehrel, *supra* note 38 (internal quotations omitted).

[113] *Hearing 2008*, *supra* note 22, at 3 (statement of Richard G. Lugar).

[114] *See, e.g.*, *Advancing Internet Access in Developing Countries Can Help Achieve Sustainable Economies – UN Official*, UNITED NATIONS NEWS CENTRE (Nov. 9, 2012), http://www.un.org/apps/news/story.asp?newsid=43459#.Vr9ztZMrKRs; ORG. FOR ECON. CO-OPERATION AND DEV., THE ECONOMIC AND SOCIAL ROLE OF INTERNET INTERMEDIARIES (2010), *available at* http://www.oecd.org/internet/ieconomy/44949023.pdf.

[115] *See, e.g.*, Letter from Michael Binder, Assistant Deputy Minister Spectrum, Information Tech. and Telecomm., to Robert Hall, Chair, Canadian Internet Registration Auth. (11 Mar. 1999), *available at* http://www.iana.org/reports/2000/ca-report-01dec00/industry-canada-letter-11mar99.html; *U.S. Government Selects NeuStar(R) to Manage North American Numbering Plan Administration*, PR NEWSWIRE (July 14, 2003), http://www.prnewswire.com/news-releases/us-government-selects-neustarr-to-manage-north-american-numbering-plan-administration-70771867.html.

IV. THE UNITED NATIONS' AND UNITED STATES' ROLES IN CCTLD POLICY MAKING

A. ISO

The ISO was created around 1926 to develop and coordinate national proprietary, industrial, and commercial standards.[116] Since its creation, the ISO's specific objectives have been "to promote the development of standards in the world with the view to facilitate international exchange of goods and services; [and] to develop mutual cooperation in the sphere of intellectual, scientific, technological, and economic activity."[117] The ISO comprises different committees that cover different regulatory fields including but not limited to product standards, environmental, energy, and food safety.[118] The GATT Uruguay Round agreement, in part, "obligates the World Trade Organization to use international standards as the technical basis of domestic laws and regulations."[119]

Relevant to this study are the ISO 3166 designated country codes. "The purpose of ISO 3166 is to define internationally recognized codes of letters and/or numbers that we can use when we refer to countries and subdivisions."[120] The United Nations has its hand in the ISO but separately designates country names and dialing codes, which may or may not be the same as those reflected in the ISO 3166 database.[121] The United Nations should list Kosovo on the *Country Names* bulletin, because despite lacking full membership in the body, Kosovo is a member of the several UN specialized agencies.[122] However, the Tenth United Nations Conference on the Standardization of Geographical Names, the Working Group on Country Names, did not

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[116] H.R. COMM. ON SCI. & ASTRONAUTICS, 90TH CONG., REP. ON THE TRI-ANNUAL MEETING OF THE INT'L ORG. FOR STANDARDIZATION 2 (Comm. Print 1967).

[117] *Id.* at 2.

[118] TIM BUTHE & WALTER MATTLI, THE NEW GLOBAL RULERS: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY 5 (2011).

[119] *Id.* at 6.

[120] *Country Codes – ISO 3166*, ISO, www.iso.org/iso/home/standards/country_codes.htm (last visited Aug. 5, 2015).

[121] *See id.*

[122] *Qualifying Top-level Domain Strings*, INTERNET ASSIGNED NUMBERS AUTHORITY, http://www.iana.org/help/eligible-tlds (last visited June 26, 2015). *See* sources cited *supra note* 109.

include Kosovo on the on the list of the country names.[123] Kosovo does not appear on the UN Statistics Division, thus it is not reflected in the ISO 3166 database.[124]

ISO standards are created by its member bodies, corresponding members, and subscriber members.[125] Only the member bodies may participate in the development of standards.[126] The ISO currently has 119 member bodies, each representing their individual countries.[127] Russia and Serbia, as well as other countries influenced by them, are included among these member bodies,[128] which may indicate why Kosovo is not listed within ISO 3166 country codes. It is likely there will be blockades to Kosovo's recognition in most international bodies—including membership in the UN—as long as there is a Russian or Serbian influence. Simple distaste for Kosovo's full independence does not justify Kosovo's exclusion from the TLD club.

B. ICANN

The Internet Corporation for Assigned Names and Numbers (ICANN), located in Marina Del Rey, California, is the keeper of the keys for TLDs.[129] ICANN's stated objectives are to "preserve the operational stability of the Internet, to promote competition, to represent the global Internet community and to develop procedures to achieve these objectives."[130] It operates through a series of sub-organizations including the IANA and the Country Code Names Supporting Organization (ccNSO).[131] ICANN has not been entirely successful in

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[123] *See UNGEGN List of Country Names*, *supra* note 108.

[124] *Online Browsing Platform (OBP)*, ISO, https://www.iso.org/obp/ui/#search (last visited Aug. 5, 2015) (searching "Kosovo" yields no independent TLD results specific to Kosovo). The ISO 3166 is updated with approval of the "ISO 3166 Maintenance Agency" with participants including ICANN, UPU, ITU, standardization agencies in the US, France, and Germany, among others. *Country Codes – ISO 3166*, *supra* note 120.

[125] WHO GOVERNS THE GLOBE? 92 (Deborah D. Avant, Martha Finnemore & Susan K. Sell eds., 2010).

[126] *Id.*

[127] *ISO Members*, ISO, www.iso.org/iso/home/about/iso_members.htm (last visited May 13, 2015).

[128] *See id.*

[129] *See §1 Worldwide Domain Name Governance*, INT'L ENCYCLOPAEDIA OF LAWS: CYBER LAW ¶ 291 (2014), *available at* Westlaw 2015 WL 8049063.

[130] *Id.*

[131] These organizations will be collectively referred to as ICANN so as to not confuse the situation even further.

implementing all of these goals and has come under harsh criticism at times, both locally and internationally.[132]

C. ICANN AND THE UNITED STATES

The United States is the only state with true influence over ccTLD and domain name designation.[133] The United States privatized the DNS in the 1990s with the issuing of the "DNS Green Paper" and the "DNS White Paper."[134] Subsequently, the US Department of Commerce had authority to regulate the DNS within US borders. The White Paper asserted four principles for this system of regulation: "stability, competition, private bottom-up coordination, and representation."[135] This plan was meant to ensure that "neither national governments . . . nor intergovernmental organizations" should manage Internet names or addresses and that any system controlling these names and addresses needed "to ensure international input" and "acknowledge the authority of national governments 'to manage or establish policy for their own ccTLDs.'"[136] Specific details, however, were never laid out.

In 2009, the United States addressed whether the Department of Commerce ("DOC") oversight of ICANN continued to be necessary or beneficial.[137] The critical question was "whether, under [ICANN's] existing structure and practices, ICANN is sufficiently accountable to Internet stakeholders and global community of Internet users."[138] The hearings also raised questions about whether it was appropriate for ICANN to continue to be a "private sector led effort" as opposed to the DNS being controlled by an international body like the United Nations.[139] Because ICANN relies on the ISO to govern ccTLD designation, there is NGO influence over it. Some criticisms of ICANN related to DOC oversight; for instance, one congressional representative stated:

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[132] *See, e.g.*, Roman, *supra* note 1, at 27.

[133] *See* UTA KOHL, JURISDICTION AND THE INTERNET: REGULATORY COMPETENCE OVER ONLINE ACTIVITY 268 (2007).

[134] Yu, *supra* note 9, at 395.

[135] *Id.*

[136] *Id.* at 396.

[137] *Oversight of the Internet Corporation for Assigned Names and Number (ICANN): Hearing Before the Subcomm. On Commc'ns, Tech., & the Internet of the H. Comm. On Energy and Commerce*, 111th Cong. 1 (2009) [hereinafter *Hearing 2009*].

[138] *Id.* at 2.

[139] *Id.* at 3.

> [B]ecause the Internet is truly global, significant input from around the world is important to its governance, which is why it pains me to say that I hope that the Department of Commerce continues the JPA with ICANN, and not relinquish control at this time. I am afraid ICANN seems better at furthering its own interests than those of the millions of Internet users that it is supposed to look out for.[140]

In contrast, another representative stated:

> It is important to remember that ICANN was founded in a response to growing concerns about U.S. domination of the Internet, and today, I think many countries believe the U.S. continues to exert undue influence over ICANN and the administrative functions of the Internet . . . [but] ICANN doesn't have the independent authority and the governance structure to prevent other government from using power over the DNS to interfere with innovation, competition, and freedom of expression.[141]

US representatives recognize that ICANN is not operating satisfactorily. But, the solution continues to bounce between more and less US DOC involvement. Furthermore, criticism of the possibility of ICANN oversight through an intergovernmental agency like the United Nations misplaced because ICANN claims it uses the ISO, a United Nations body, to determine appropriate ccTLD distribution. This is not to advocate the abolition of intergovernmental oversight, but instead to note that that international oversight is not a major problem. It is understandable that the United States' continued hand in ICANN manifests in fears over free speech and expression control and interference of outside governments. It is similarly understandable that outside governments fear the same—or competing—restrictions from US ICANN control.

On September 30, 2009, the US DOC made a move to alter or reduce some of its control over ICANN by letting previous contracts with ICANN lapse and exchanging them for the "Affirmation of Commitments."[142] The Affirmation "commits ICANN to remain a private not-for-profit organization. It declares ICANN is independent and is not controlled by any one entity."[143] The Affirmation did not drastically change US oversight of the DNS. In fact, it requires ICANN to remain in

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[140] *Id.* at 6.

[141] *Id.*

[142] A. Michael Froomkin, *Almost Free: An Analysis of ICANN's 'Affirmation of Commitments'*, 9 J. ON TELECOMM. & HIGH TECH. L. 187, 188 (2011).

[143] *Id.*

the United States and to be subject to US jurisdiction for the remainder of its existence.[144]

V. ICANN'S CONFUSED RULES AND THEIR EFFECT ON KOSOVO

In response to the Kosovo issue, one ICANN representative stated, "[b]y strictly adhering to the ISO 3166-1 standard, we ensure that ICANN remains neutral by relying upon a widely recognized and impartial international standard."[145] But we know for certain, as discussed above and shown by Table 1, that ICANN does not always follow—and certainly does not have a set policy that it must comply with—ISO 3166 when granting a ccTLD. A contrary statement on ICANN's question forum acknowledged that ISO 3166 has been used to "help decide whether something is a country."[146] Given the inconsistency, something else is in play, although what that is remains a matter of speculation for the time being. The unfortunate result of this lack of consistency is that Kosovo remains in online limbo. In light of ICANN's blessing of the online divorce between Serbia and Montenegro, one might think that ICANN would be even more inclined to grant a ccTLD to Kosovo. Following the Serbia-Montenegro split in 2006, both countries were independently in the running for new dialing codes, ISO country codes, and ccTLDs. By February of 2007, ISO issued country codes for Serbia (RS and SRB), and Montenegro (ME and MNE). ICANN also provided each country a country code TLD name under ISO 3166-2.[147] Although Montenegro received its codes a year after the separation from Serbia, Kosovo has yet to receive its own.[148] Montenegro and Serbia also met Internet blockades set by the United Nations in response to war crimes and crimes against humanity, but they quickly received ccTLDs even though they had not met all qualifications in reducing and eliminating the effects of these past war crimes. Serbia and Montenegro also continue to use the former ".yu" ccTLD. This is not to argue that Montenegrin digital

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[144] *See id.* at 193–99.

[145] Kim Davies, *Abkhazia, Kosovo, South Ossetia, Transnistria . . . My oh my.*, ICANN BLOG (Sept. 23, 2008), https://www.icann.org/news/blog/abkhazia-kosovo-south-ossetia-transnistria-my-oh-my.

[146] *Time Zone for Kosovo?* ICANN PIPERMAIL (May 20, 2013, 18:26:10 UTC), http://mm.icann.org/pipermail/tz/2013-May/019293.html.

[147] Vesna Gakovic & Kathryn Szymczyk, *Serbian Domain Name System Reborn*, 166 MANAGING INTELL. PROP 36 (2007).

[148] *See id.*

independence is invalid, but it highlights the lack of integrity in denying the same to Kosovo. Kosovo, a country without the same war crime accountability as Montenegro and Serbia, is at least as deserving of digital independence as its former Yugoslav territorial cousins. One might also assume that Kosovo would receive the same privileges extended to the porn industry,[149] the less than fifty inhabitants of Pitcairn Island,[150] or the sovereign-but-not-independent Taiwan.[151] Kosovo has waited more than seven years for complete independence, yet ICANN insists that it continue to piggyback on other nations, with no rational reason for the delay.

In order to remedy this inconsistent application of standards when it comes to Kosovo, ICANN could follow the example of the European Commission, which uses the ISO country code XK for Kosovo in its financial programming and budget. Switzerland uses the same in its trade statistics. Since February 2015, the Society for Worldwide Interbank Financial Telecommunication (acting as the Registration Authority for ISO 13616) is using country code XK for Kosovo.[152] There seems to be little justification for the lack of a ".xk" ccTLD.

VI. ADDITIONAL CRITICISMS OF ICANN AND ALTERNATIVE OPTIONS FOR INTERNET ACCESS

It is perennial sport to criticize ICANN, but some of the criticisms resonate. For example, "although ICANN has control over

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[149] *See New sTLD RFR Application: .xxx*, ICANN, http://archive.icann.org/en/tlds/stld-apps-19mar04/xxx.htm (last visited Feb. 14, 2016).

[150] *See* Fox, *supra* note 75; *IANA Report of Request for Redelegation of the .pn Top-Level Domain*, IANA (Feb. 11, 2000), https://www.iana.org/reports/2000/pn-report-11feb00.html; Tom Rowley, *Why Will Nobody Move to Pitcairn, the Pacific Island with Free Land?*, TELEGRAPH (Feb. 17, 2015),
http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/pitcairnislands/11418280/Why-will-nobody-move-to-Pitcairn-the-Pacific-island-with-free-land.html.

[151] *See* Carolan, *supra* note 87, at 429 ("Taiwan exists in the international arena as a fully independent state in form, but it has never declared itself independent").

[152] *See, e.g.*, European Commission using XK as a country code for Kosovo, http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm (follow "Access by list of countries" hyperlink) (last visited June 29, 2015); LÄNDERVERZEICHNIS FÜR DIE AUSSENHANDELSSTATISTIK DER SCHWEIZ 2016 [Country Nomenclature for the Foreign Trade Statistics of Switzerland 2016] (2016), *available at* http://www.ezv.admin.ch/pdf_linker.php?doc=Tares_Laenderverzeichnis; THE SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL TELECOMMUNICATION SCRL (SWIFT), IBAN REGISTRY (63d ed. Feb. 2016), *available at* https://www.swift.com/sites/default/files/resources/swift_standards_ibanregistry.pdf.

extremely important aspects of the Internet, it is largely accountable to no one."[153] Some critics suggest that ICANN look to other international models or be placed under the rule of an intergovernmental organization, as opposed to operating under the rule of only the United States. One possible improvement would be a model similar to that of the International Telecommunication Union (ITU).[154] The ITU is the UN agency for information and communication technologies.[155] It is directly accountable to its member states, but it also has its own constitution and does not rely on the United Nations for approval.[156] These criticisms and suggestions have led to discussion, albeit among mostly European countries, of an alternative to ICANN and its processes; the United States, on the other hand, remains very comfortable with its current level of influence over ICANN.

A. ALTERNATIVE ROUTES

Many countries have also taken steps to gain more control over TLDs. "[T]he ccTLDs in particular have increasingly threatened to look outside the ICANN structure for management" of the system domain system.[157] Kosovo could use one of multiple alternatives to acquire a ccTLD, but these alternatives pose problems with interacting in the global Internet and with maintaining a close relationship with the United States. Notwithstanding these caveats, Kosovo could look to alternatives including (1) setting up a generic TLD (gTLD), (2) suing ICANN for rights to a ccTLD, (3) establishing an alternative root zone,[158] (4) supporting the transferred control of the root to another entity, or (5) promoting reform to ICANN's structure.[159]

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[153] *Hearing 2009*, *supra* note 137, at 66.

[154] *Id.* at 105.

[155] *About ITU*, ITU, http://www.itu.int/en/about/Pages/default.aspx (last visited May 13, 2015).

[156] *Hearing 2009*, *supra* note 137, at 105.

[157] Harold Feld, *Structured to Fail: ICANN and the "Privatization" Experiment*, *in* WHO RULES THE NET?: INTERNET GOVERNANCE AND JURISDICTION 351 (Adam Thierer & Clyde Wayne Crews Jr. eds., 2003).

[158] Yu, *supra* note 9, at 404

[159] Roman, *supra* note 1.

1. gTLD

ICANN generally awards gTLDs to private parties, but its procedure for issuing gTLDs has changed as of 2012.[160] In order to promote competition between gTLD candidates, ICANN sets considerably fewer new gTLDs than the DNS could handle,[161] and it allows applications for gTLDs only within certain time frames. An applicant for a gTLD will be asked to demonstrate financial, technical, and operational capability.[162] In the first review period, ICANN evaluates whether the gTLD is likely to cause problems in the DNS and reviews the applicants proposed registry services and capabilities to operate the gTLD.[163] The most recent application period ended in April 2012; therefore, Kosovo would have to wait for the next ICANN application period before it could register for a gTLD. ICANN has not released potential dates for the next application period.

Although gTLDs may be geographical names, two-letter ccTLD codes are reserved in case of a ccTLD issuance, so Kosovo would not be able to receive ".ks" or ".xk" as a TLD in lieu of a ccTLD designation.[164] Additionally, there are some limitations on what geographically identified names are permitted as gTLDs, but most of them are associated with ISO designations that are not yet relevant to Kosovo.[165] Under these rules, country or territory names are not generally permitted, so Kosovo may not be able to succeed in an application for ".kosovo" but may succeed in acquiring ".kos" or something similar. The new rules for registering geographic gTLDs are somewhat complex, so Kosovo may risk being rejected for even applying for a gTLD in its own name.

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[160] *See New Generic Top-Level Domain*, ICANN, http://gnso.icann.org/en/council/policy/new-gtlds (last visited May 27, 2015).

[161] *See How to Apply for a New Generic Top-Level Domain Draft Applicant Guidebook Now Available for Comment*, ICANN (Oct. 23, 2008), https://www.icann.org/news/announcement-2-2008-10-23-en; *see* A. Michael Froomkin & Mark A. Lemley, *ICANN and Antitrust*, 2003 U. Ill. L. Rev. 1, 23–24 (2003).

[162] GTLD APPLICANT GUIDEBOOK, ICANN, at 1-8 to 1-9 (2012), *available at https://newgtlds.icann.org/en/applicants/agb*.

[163] *Id.*

[164] *Id.* at 2-5 to 2-6.

[165] *Id.* at 2-16 to 2-22.

2. Legal Attacks on ICANN

As mentioned in Part IV, ICANN's broad Internet oversight leads to legal questions about the legitimacy of ICANN's worldwide power. One of the main legal efforts to challenge ICANN's operations has been to bring actions under the United States Sherman Antitrust Act ("Sherman Act"). Under the Sherman Act, "every person who shall monopolize, or attempt to monopolize" a relevant market, is subject to penalty.[166] In a case claiming such a monopoly exists, a US court will generally look at whether the defendant "engaged in predatory or anticompetitive conduct with a specific intent to monopolize and a dangerous probability of achieving monopoly power."[167] ICANN's policy making chronicles its many attempts to keep other domain name players out, namely with its regulation of domain name choices and availability and policies against alternative DNS providers.[168]

Legal challenges to ICANN operations have been largely unsuccessful in the past but have recently gained greater likelihood of lower court approval. For instance, a US District Court permitted a challenge to the ".xxx" domain in 2012.[169] Name.space also appealed a suit against ICANN in 2013.[170] This is not to suggest that these would be the only possible claims against ICANN should Kosovo seek to resolve this in the courts. Although precedent suggests that Kosovo or any other party would find a litigation solution to be challenging, Kosovo could use the potential for additional court battles as an encouragement for the

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[166] 15 U.S.C. § 2 (2012).

[167] *See* Spectrum Sports v. McQuillan, 506 U.S. 447 (1993).

[168] For an in-depth discussion of ICANN's liability under the Sherman Act, see Blue, *supra* note 58.

[169] Order Granting in Part and Denying in Part the Motions to Dismiss, Manwin Licensing Int'l v. ICM Registry (No. cv11-9514 PSG (JCGx)) (C.D. Cal. Aug. 14, 2012), *available at* https://www.icann.org/en/system/files/files/order-granting-denying-in-part-motions-to-dismiss-14aug12-en.pdf; Wendy Davis, *Judge Allows Antitrust Lawsuit Against ICANN*, ONLINE MEDIA DAILY (Aug. 17, 2012), http://www.mediapost.com/publications/article/181077/judge-allows-antitrust-lawsuit-against-icann.html.

[170] Notice of Appeal, Name.space v. Internet Corporation for Assigned Names and Numbers, (No. cv12-8676 (PA) (C.D. Cal. Apr. 2, 2013), *available at* https://www.icann.org/en/system/files/files/namespace-notice-of-appeal-02apr13-en.pdf; Andrew Allemann, *Name.space Sends Lawsuit Against ICANN Over New TLDs to Court of Appeals*, DOMAINNAMEWIRE.COM (Apr. 18, 2013), http://domainnamewire.com/2013/04/18/name-space-sends-lawsuit-against-icann-over-new-tlds-to-court-of-appeals. For additional and more recent cases against ICANN and its affiliates, see *Litigation Documents*, ICANN, https://www.icann.org/resources/pages/governance/litigation-en (last visited May 27, 2015).

United States to agree to move the root[171] and DNS out of ICANN's control or to implement additional international oversight of ICANN operations. ICANN may be willing to change its policies if alternative DNS providers, intergovernmental organizations, or multiple countries challenge its monopoly in the United States. At least the threat of such a challenge might stop ICANN from continuing its irrational unwillingness to grant Kosovo its independence.

3. Alternative Root Zone

The United States controls the major root zone operating Internet domain names, known as the "root." At least three private root zones operate outside the US,[172] and additional or alternative roots could be regulated within or between countries. In an alternative root scenario, "two entities each claiming to be authoritative would enter names. When those names conflicted, individual network operators would need to make individual determinations on how to resolve names, and packets could be directed to conflicting destinations."[173] This approach would take the DNS out of ICANN's exclusive control.[174] It is unclear, however, what would become of "The Internet" in the event that it became a free-for-all with competing root structures and competing political values driving an ever-proliferating number of alternate online universes.

ICANN's DNS is not the only possible domain name system available on the Internet. Alternative domain name systems, although rather uncommon, have created alternative TLDs outside of ICANN's grasp. In order to do this, alternative DNS providers, while utilizing ICANN-controlled legacy root files for common gTLDs such as *.com*, *.net*, and *.org*, create different TLDs within these legacy roots by using supersets of these roots.[175]

One major alternative system, and ICANN's only moderately successful adversary, is New.net. New.net operates more than 30 English

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[171] For a discussion of these roots, see *Root Servers*, INTERNET ASSIGNED NUMBERS AUTH., https://www.iana.org/domains/root/servers (last visited Feb. 22, 2016).

[172] Feld, *supra* note 157, at 337.

[173] *Id.* at 351.

[174] *Id.*

[175] Blue, *supra* note 58, at 399.

TLDs including a 2005 version of ".xxx"[176] and a number of Spanish, French, and Portuguese TLDs.[177] New.net must actively pursue recognition by ISPs or use the dual registration under ".*net*" to allow greater access to its registrants' websites. Without such recognition many "users worldwide who attempt to access [the sites with New.net TLDs] will get an error message."[178] To combat such alternative systems, ICANN has implemented a policy that "prohibits all ICANN affiliated registries from servicing alternative DNS providers."[179] Kosovo could use an alternative DNS provider as a temporary solution. By using one like New.net, with a worldwide user base, it could maintain some global access, although Kosovo sites may still reach only a fraction of worldwide Internet users.[180] Nevertheless, such a move could be a bold declaration in the face of ICANN's intransigence.

Although an alternative root would permit ccTLDs and gTLDs to be awarded under alternate standards, it would likely exclude users from the global Internet because most servers would not recognize the additional root.[181] This in turn could create Internet instability.[182] "A single root allows Internet users anywhere in the world to navigate to the same website when they click the same link."[183] With multiple roots, the users could instead encounter an error if the server did not recognize that root. For example, if the United States maintained the "A" root and Italy created the "I" root, users in Italy could access the "I" root but possibly not the "A" root and vice versa. This concept applies to New.net as well: if New.net cannot transfer the information through ".net," the server will not give the user access to the appropriate site.[184]

Alternative roots would likely be an unsatisfactory option for Kosovo, depending how many countries used the new root. The fewer countries that use or allow access to the same root(s), the more segregated the Internet. Important goals underlying Kosovo's use of a ccTLD would be to maintain control over its internal Internet law, have

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[176] Original and any current operation of .xxx is run by the ICM in Palm Beach, Florida. *Domains*, ICM REGISTRY, http://www.icmregistry.com/domains (last visited Feb. 17, 2016).

[177] Froomkin & Lemley, *supra* note 161, at 21.

[178] *Id.*

[179] Blue, *supra* note 58, at 399.

[180] *See* Froomkin & Lemley, *supra* note 161, at 22.

[181] Yu, *supra* note 9, at 404.

[182] Feld, *supra* note 157, at 351.

[183] Sonbuchner, *supra* note 69, at 203.

[184] *See* Froomkin & Lemley, *supra* note 161, at 21.

the capacity to access the globe online, and have the ability for outsiders to access Kosovo websites. Without use of the same root as all other countries, these opportunities are severely diminished. Kosovo could be stuck with its own root accessible only by users within Kosovo. If Kosovo adopted an alternative root, however, even the minor potential to destabilize the Internet could bring its right to digital independence to the forefront of discussion and force ICANN's hand.

4. Transfer Root Control

Countries other than the United States reason that US control of ICANN does not eliminate problems with ICANN's accountability. Regulation of the A root by an intergovernmental entity could result in less arbitrary and more international-friendly distribution of ccTLDs and gTLDs.[185] The European Union made a proposal for transferring the root to the ITU in 2006.[186] The United Nations already governs the ITU, so the ITU's policy making would have intergovernmental oversight.[187]

Although this could address many international concerns around US control, transferring the root in general could pose additional problems. "Transferring control of the root to another agency presents risks that the new root administrator would attempt to impose burdensome regulations, attempt [sic] charge new taxes, or even attempt [sic] control free speech."[188] Indeed, US control occasionally leads to questionable results such as the revocation of the ".xxx" domain name,[189] but transfer would not solve these problems. The possibility of risk to foreign state sovereignty and security, human rights abuses, and influence over ccTLD delegation would exist with any entity controlling the root without appropriate intergovernmental control.

5. ICANN Reform

Altering ICANN's function and control could be a better approach than creating an alternative root or transferring control over the A root.[190] Kosovo could lead the way or could be a major participant in

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[185] Roman, *supra* note 1.

[186] *Id.* at 21.

[187] *Id.* at 21–22.

[188] Sonbuchner, *supra* note 69, at 205.

[189] *See id.* at 200.

[190] *See generally id.*

proposing "a legally binding agreement that would provide clear limits on the United States' authority over ICANN and allow international organizations to have oversight over the ccTLDs."[191] Although ICANN has implemented multiple changes to address international concerns such as promoting global representation in the ICANN board and international membership in the Governmental Advisory Committee, it has been unable to escape continued criticism. "Reforms [should] increase the role of international governments, while at the same time reinforcing the principles of private sector bottom up control on which ICANN was founded."[192] Again, such radical solutions should not be required when a country like Kosovo simply seeks the same recognition online as Svalbard.

The United States could support such an agreement in lieu of the dangers of creating an alternative root or fully removing ICANN from US control.[193] Because "[t]he vast majority of nations believe that the United States has too much control over the Internet," the United States should be more willing to support such a proposal.[194] This option is a compromise between creating a new root and transferring the current dominant root. Supporting such change to ICANN's structure could aid Kosovo not only in receiving a ccTLD but also in entering higher-level international maneuvers as a means of gaining international respect.

VII. CONCLUSION

As Kosovo's recognition as an independent state grows, Kosovo still has to struggle to fully escape Serbia's orbit. As a matter of international law, "it is a bedrock principle that every state 'has the right freely to choose and develop its political, social, economic and cultural systems.'"[195] The international and technological communities have the ability to help Kosovo along this path to full digital independence—or to

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[191] *Id.* at 205.

[192] Roman, *supra* note 1, at 32.

[193] Sonbuchner, *supra* note 69, at 206.

[194] *Id.*

[195] *See* Froomkin, *supra* note 10, at 849 (quoting the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, GAOR Res. 2625, U.N. GAOR, 27th Sess., Supp. No. 18, at 124, U.N. Doc. A/8018 (1970). The ICJ endorsed this declaration as declarative of customary international law in Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 99-100 (June 27)).

at least get out of the way. Kosovo's full and complete independence requires that it have its own country code top-level domain.

ICANN could easily remedy the situation by granting a ccTLD to Kosovo as it has done for many countries (and for a number of less-than countries) in the past. ICANN relies on its general practice of using ISO 3166-1 country codes to refute any discussion of granting Kosovo its own ccTLD, although it has also made clear that this practice is not its official standard. Support from 111 of the UN members and the United States' backing of Kosovo make it inexplicable that Kosovo cannot receive a ccTLD. Kosovo gained its territorial independence through armed struggle and international recognition. Objections to its independence lack intellectually honest justification, and its digital independence should not be held hostage by old Balkan rivalries. The time has come for Kosovo to be given a full seat at the Internet, international, and independence tables.