

## 12 APRIL 2019: Allan's note to the Group

### Issue – Use of 'Mutually Agreed' and 'Retirement Plans'

I am just following up on our discussion on April 11 on the use of the term 'mutually agreed' and related issues. My greatest concern about the use of the term 'mutually agreed' is in the context of an extension beyond 5 years where a retirement plan is sought and there is in fact no 'mutual agreement' on it, potentially giving the incumbent operator an opportunity to appeal. For example, suppose that an incumbent manager wishes to continue to operate the ccTLD beyond 5 years and seeks an extension. The IFO agrees to the 3-year extension but requires the manager to include in the retirement plan a clause that the manager will inform their registrants of the date of the removal of the TLD from the root. The manager could accept the 3-year extension of the term, but not the announcement of the end date. It could then turn to the (as yet undefined) appeal mechanism for relief on the basis that it was forced to accept that element of the retirement plan even though it was opposed to the element involving registrant communication on the basis that it was not 'mutually agreed'.

That being said, I think that part of the debate we are having may be attributable to some parties having different interpretations of the term 'mutually agreed'. This suggests that the process of entering into these 'retirement plans' could benefit from greater elaboration. And, as an introduction to this, I would like to re-confirm what I believe the relevant elements of the overall policy are. We need to make sure we agree on the concepts before we can agree on the words.

#### Retirement Process

1. A Notice of Retirement is sent by the IFO establishing a date five years hence for removal of the ccTLD from the root.
2. If the manager is not seeking to extend that date beyond five years, a 'retirement plan' is not required, it is not mandatory.
3. If the manager wishes to remove the TLD from the root in a period less than five years, then the 'retirement plan' is still not mandatory. The agreement of the IFO on the date of the retirement (only) is however required.

(This is the point at which I feel that the term 'mutual; agreement' introduces too much ambiguity into the policy and why I propose more specificity by introducing the notions of 'draft retirement plans and 'accepted retirement plans'. )

4. Where the manager seeks an extension beyond 5 years, they must provide a draft retirement plan (e.g. with the communications plan for registrants etc.) along with the proposed new date for the retirement.
5. There may be time limits on the submission of such a draft retirement plan.
6. Following receipt and review of such a draft retirement plan, the IFO will either
  - o Accept the plan as presented, after which the draft plan will be called the 'accepted retirement plan', or
  - o Inform the manager of the elements of the plan that are not acceptable to the IFO and enter into good faith discussions with the manager in an attempt to secure agreement.

7. When these discussions have concluded, the IFO will send the manager a draft of the retirement plan that would be acceptable to the IFO along with a reaffirmation of the policy to the effect that the original five year date remains valid until such time as the manager accepts the draft plan.
8. Upon receipt of the IFO's draft plan, the manager may
  - o Accept the draft plan, after which it will be characterized as the 'accepted retirement plan', or
  - o Continue discussions with the IFO if it so chooses, but the five year limit remains in force

If we can get some consensus around this, then Bernie or I can propose specific text for the draft policy document.

Let's try and resolve this online if we can.

**13 APRIL 2019: Danko**

I agree that this more precise approach could lead us to the better solution for our policy. I like that it also proscribes general procedure, giving instructions to the CC manager how to proceed with retirement planning.

Danko

**15 April 2019: Barrack**

I am in agreement with Allans observation. Let us avoid ambiguities and aim for conciseness in principle as well as in the use of semantics.