

## Overview of decisions

List of Implied decisions resulting from proposed policy process document (version ccPDP-RET draft policy version 1-30 redline)

Per the discussion on last call , please complete the list below, by answering following questions: Is the list complete? Do you think a decision needs to be deleted, amended, or added?

1. Decision to send out notice of retirement (ISO 3166 country code is removed from list and there is a functional manager) ( line 56)
2. Declaration/decree to retire after max 5 years (no retirement plan in place in time) (line 150)
3. Decision/note that Retirement plan meets requirements (line 101)
4. Decision/declaration on duration of extension (line 103)
5. Decision on Administrative Transfer
6. Decision to extend period to produce retirement plan (line 144-145)
7. Decision to agree to Retirement plan (line 101)
8. Declaration/decree that execution of retirement plan has been completed/not completed ( determination, marking the end of the retirement plan period (related to item 3 and 4 above)
9. Declaration/decree that 5 years have passed since notice of retirement, concluding retirement process, with no retirement plan. Marking the end of the retirement process (is the same relates to decision # 2 above)
10. Declaration/decree that 10 years have passed since notice of retirement with retirement plan
11. Decision to return to the initial 5 year period, following breach of retirement plan (line 159)
12. Other?

## Assigning Decisions/oversight and/or review.

Per the discussion on last call , please complete the table below

1. **Who takes the decision?**
2. **Who and how does oversight, if any, look like with respect to these decisions?**

### Working definitions of oversight:

In **business**, **oversight** of a system or process **is** the responsibility for making sure that it works efficiently and correctly.

LAW, GOVERNMENT, MANAGEMENT systems or actions to control an activity and make sure that it is done correctly and legally

3. **Related, which decisions should be subject to a review mechanism?**

As discussed on the call this is about identifying which decisions in the process should be subject to the review mechanism, which will be developed during the second part of this PDP.

Per question on the last call, please find included some working descriptions of independent review from the Issue report March 2017:

#### **Section 2.2.1 Contextual information Review Mechanism**

To date decisions taken as part of the processes for the delegation, transfer and revocation of ccTLDs are not subject to a review or appeal mechanism:

**RFC 1591** According to RFC 1591, section 3.4, *the Internet DNS Names Review Board (IDNB), a committee established by the IANA, will act as a review panel for cases in which the parties [Issue Manager: the Significantly Interested Parties<sup>1</sup>] can not reach agreement among themselves. The IDNB's decisions will be binding.*

IANA has never established the IDNB (or any other entity) to review disputed cases.

**Framework of Interpretation.** With respect to the IDNB the FOI WG noted: *The FOI WG believes it is consistent with RFC 1591 (section 3.4) and the duty to act fairly to recognize the manager has the right to appeal a notice of revocation by the IANA Operator to an independent body.*

**CWG-Stewardship and CCWG-Accountability.** Following public comments on its first proposal, the CWG-Stewardship proposed that: *An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.*

In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review Process, the results of delegation/re-delegations are explicitly excluded<sup>2</sup>.

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<sup>1</sup> Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

<sup>2</sup> The CCWG- Accountability also proposes that the IRP:

**ICANN Bylaws 1 October 2016.** According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration:<sup>3</sup>

*Section 4.2. RECONSIDERATION*

*(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.....*

*(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:*

*(i) Disputes relating to country code top-level domain ("**ccTLD**") delegations and re-delegations;*

Item #	Decision	Who takes decision?	Oversight by?	Subject to Review ?
1	Decision to send out notice of retirement.			
2	Declaration/decreed no retirement plan in place			
3	Decision/note that Retirement Plan meets requirements			
4	Decision on Duration of extension			
5	Decision on Administrative Transfer			
6	Decision to extend period to propose Retirement Plan			
7	Decision to agree to Retirement plan			

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*Be subject to certain exclusions relating to the results of an SOs policy development process, country code top-level domain delegations/ redelegations, numbering resources, and protocols parameters. See: page 33 <https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>*

<sup>3</sup> <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

Item #	Decision	Who takes decision?	Oversight by?	Subject to Review ?
8	Declaration/decreed that execution of retirement plan has been completed/not completed			
9	Declaration/decreed that 5 years have passed since notice of retirement, concluding retirement process, with no retirement plan			
10	Declaration/decreed that 10 years have passed since notice of retirement with retirement plan			
11	Decision to return to the initial 5 year period, following breach of retirement plan			
12	Other ?			

## Roles already identified by the Group during workshop in Kobe

### Board as an oversight entity

Assumption is that oversight process would develop parallel to delegation and transfer process decisions. If Board acts as an oversight entity i.e ensuring that all steps/ the procedure has been followed, another entity should have taken a decision re specific steps in retirement process.

Observation 1: The more the ICANN Board is involved in the operations, the lesser it is available for oversight.

Observation 2: Disadvantages of having ICANN Board involved: responsibility of IFO. Board decisions can be harder un-done than PTI decisions. The Board providing oversight is also in line with the notion that, the role of ICANN Board of Directors is limited to ensuring proper procedures were followed only.

Observation 3: In case the Board oversteps this boundary, basis for review?

### ICANN Board as Backstop