

Work Items

Next Steps

ccNSO PDP3 Review Mechanism Working Group

2020-05-05

1 1 Overview of existing procedures

- 2 • IANA Escalation procedure (discussed)
- 3 • Customer Standing Committee (CSC)/ Public Technical Identifier (PTI) Remedial
- 4 Action Procedure (discussed)
- 5 • Reconsideration of Board or staff action (Article 4.2 Bylaws)
- 6 • Community Engagement Procedure (CEP)

- 7 • Independent Review Process for Covered Actions (IRP, Article 4.3 ICANN Bylaws)
- 8 • Ombudsman procedures (Article 5 ICANN Bylaws)
- 9 Following community discussions during the IANA Stewardship Transition process
- 10 ccTLD delegation and redelegation are excluded from Reconsideration Board or staff
- 11 action, CEP and IRP.

12 **2 Issues/Items identified in Issue Report and order in**

13 **which they need to be addressed.**

14 **2.1 High Level overview of Issues pertaining to review mechanism**

15 Given the expressed need for a review mechanisms and based on the community
16 discussions, feed-back and comments to date, including but not limited to those
17 with respect to the CWG-Stewardship and CCWG-Accountability proposals and re-
18 lated work, the following issues have been identified:

19 **2.1.1 Scope of the review mechanism**

20 1. Which decisions and/or actions should be subject to a review mechanism?

21 Comment: Partly addressed in ccPDP WG RET Interim Paper and FoI. Needs to
22 be detailed for delegation, transfers and further detailed for revocation. Use
23 method the ccPDP3 WG Retirement used?

24 2. Whose decisions and/or actions should be subject to a review mechanism?

25 Comment: Determined for Retirement. Needs to be detailed for delegation, trans-
26 fers and revocation. Use method the ccPDP3 WG Retirement used?

27 3. What will be result / scope of the review decision? What powers will be bestowed
28 upon review panel?

29 **2.1.2 Standing at review mechanism**

30 1. Who will have standing at a review mechanism?

31 2. Should a Review Mechanism be open and applicable to all ccTLDs?

32 Partly answered through discussion of scope of Retirement process (effectively
33 of scope of ccNSO PDP). Policy directed at ICANN.

34 2.1.3 What are the grounds?

- 35 1. Should the questions for a review be limited to questions about whether due
36 process was followed in terms of a ccTLD delegation, transfer, revocation or re-
37 tirement or should they be broader?

38 2.1.4 Rules and structure of review mechanism

- 39 1. What are the rules and procedures to be used?
40 2. Structure of panel and requirements and selection of panellist

41 **3 Background: Topic document work items Review** 42 **mechanism¹**

43 **3.1 Issues to explore and define with respect to the review** 44 **mechanism**

45 **3.1.1 Introduction**

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

48 **3.1.2 RFC 1591**

49 According to RFC 1591, section 3.4,

50 *the Internet DNS Names Review Board (IDNB), a committee established by the*
51 *IANA, will act as a review panel for cases in which the parties [BB: the Significantly*

¹<https://community.icann.org/download/attachments/64068742/Issue%20to%20explore%20review%20mechanism%20January%202017.pdf?version=1&modification-Date=1491820322000&api=v2>

52 Interested Parties^{2]} can not reach agreement among themselves. The IDNB's
53 decisions will be binding.

54 This IDNB was never established by IANA, or any other entity.

55 3.1.3 Framework of Interpretation

56 With respect to the IDNB the FOIWG noted:

57 *The FOI WG believes it is consistent with RFC 1591 (section 3.4) and the duty to act*
58 *fairly to recognize the manager has the right to appeal a notice of revocation by*
59 *the IANA Operator to an independent body.*

60 3.1.4 CWG-Stewardship and CCWG-Accountability

61 Following public comments on its first proposal, the CWG-Stewardship proposed
62 that:

63 *An appeal mechanism, for example in the form of an Independent Review Panel,*
64 *for issues relating to the IANA functions. For example, direct customers with non-*
65 *remediated issues or matters referred by ccNSO or GNSO after escalation by the*

²Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

66 *CSC will have access to an Independent Review Panel. The appeal mechanism will*
67 *not cover issues relating to ccTLD delegation and re-delegation, which mechanism*
68 *is to be developed by the ccTLD community post-transition.*

69 In addition, as part of the CCWG Accountability Proposal to enhance the Independ-
70 dent Review Process, the results of delegation/redelegations are explicitly excluded³.
71 In its letter dated 15 April 2015, the CWG-Stewardship indicated that

72 *any appeals mechanism developed by the CCWG -Accountability should not cover*
73 *country code top-level domain delegation/redelegation issues as these are expected*
74 *to be developed by the country code top - level domain community through the ap-*
75 *propriate processes.*

76 As requested by the CWG - Stewardship, decisions regarding country code top- level
77 domain delegations or re delegations would be excluded from standing, until the
78 country code top - level domain community, in coordination with other parties, has
79 developed relevant appeals mechanisms.⁴

³The CCWG- Accountability also proposes that the IRP: Be subject to certain exclusions relating to the results of an SO's 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>

⁴<https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf> Annex 07 page 7, 8.

80 3.1.5 ICANN Bylaws 1 October 2016

81 According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration: ⁵

82 *Section 4.2. RECONSIDERATION*

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

89

90 *(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsid-*
91 *eration shall exclude the following:*

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

94 Following the discussions and comments on the Framework of Interpretation and
95 – later – on the initial proposals of the CWG-Stewardship, and input and feed-back
96 from the community at the Marrakesh and Helsinki meeting, the community present
97 was of the view that a policy needs to be developed with respect to the introduction

⁵<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

98 of a review mechanism. Based on the consultations to date this is considered to be
99 of highest priority, in particular in light of the IANA Stewardship transition.

100 **3.2 Issues to be explored and defined as part of the PDP** 101 **pertaining to Review Mechanism**

102 Given the expressed need for a review mechanisms and based on the community
103 discussions, feed-back and comments to date, including but not limited those with
104 respect to the CWG-Stewardship proposals and related work, the following issues
105 have been identified:

106 **3.2.1 Scope of the review mechanism**

107 1. Which decisions and/or actions should be subject to a review mechanism?

108 2. Who's decisions and/or actions should be subject to a review mechanism?

109 With regard to question 1 and 2 please note the following:

110 According to RFC 1591 section 3.4:

111 [The IDBS] *will act as a review panel for cases in which the parties [i.e the*
112 *Significantly Interested Parties] cannot reach agreement among themselves.*
113 *The IDNB's decisions will be binding.*

114 This assumes that disputes among Significantly Interested parties (as defined in
115 the Framework of Interpretation) are subject to a binding review mechanism.

116 According to the FOI⁶, recognising that ultimate authority on public policy for any
117 country is its government and legislature, nothing in the FOI is intended to, or
118 should be taken to constrain or limit applicable law in respect to matters relating
119 to country-code or IDN string, or in the state of incorporation/place of business
120 of the IANA operator.

121 Further, the FOI WG

122 *believes it is consistent with RFC 1591 (section 3.4) and the duty to act fairly*
123 *to recognize the manager has the right to appeal a notice of revocation by the*
124 *IANA Operator to an independent body.*

125 3. Should review Mechanism applicable to all ccTLDs?

126 Some members in the cTLD community have raised the point that a ccNSO de-
127 veloped policy is only applicable to members of the ccNSO and hence a review
128 mechanism developed through a PDP is only applicable for members of the cc-
129 NSO and only for the duration of the membership. At the same time the ccNSO

⁶<https://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>, page 3.

130 is the only entity through which policies for the IANA naming functions are de-
131 veloped.

132 Further, although considered ccTLDs by definition IDN ccTLDs managers can not
133 become member yet of the ccNSO awaiting the implementation of the IDN ccTLD
134 policy recommendations.

135 4. What will be result / scope of the review decision? What powers will be bestowed
136 upon review panel?

137 Assuming the introduction of a review mechanism the scope of the decision of
138 the review will need to be defined. Some members of the community raised the
139 question whether through such a review mechanism a final binding decision is
140 taken (replacing the decision subject to the review) or should it be limited to a
141 due process check (and if that is not the case refer it back to the entity that took
142 the decision in the first instance)

143 3.2.2 Standing at review mechanism

144 1. Who will have standing at a review mechanism?

145 Some members in the community argue that only the [incumbent] ccTLD man-
146 ager should have standing. Others have argued, at least raised, the point that

147 potentially other parties should have standing, in particular parties with a signif-
148 icant interest.

149 As noted above, according RFC 1591

150 *the Internet DNS Names Review Board (IDNB), a committee established by the*
151 *IANA, will act as a review panel for cases in which the **parties** [emphasis added]*
152 *can not reach agreement among themselves. The IDNB's decisions will be bind-*
153 *ing.*

154 This seem to imply that others then the ccTLD manager may have standing.

155 2. What are the grounds?

156 Should the questions for a review be limited to questions whether due process
157 was followed in terms of a ccTLD delegation, transfer, revocation or retirement
158 or should they be broader?

159 3.2.3 Rules and structure of review mechanism

160 1. the rules and procedures to be used?

161 Should existing mechanisms be used (like the reconsideration process or inde-
162 pendent review process for covered actions) or other existing rules?

163 2. Structure of panel and requirements and selection of panelist

164 As part of the review mechanism proposals need to be developed around the
165 structure of the panel (for example how many panelists, standing panel or to be
166 selected from a pool of panelists) and requirements and selection of panelists.

167 3. Structure of panel and requirements and selection of panelist

168 Depending on scope of the decisions for review, the choice of law may be con-
169 sidered relevant to ensure the consistency with RFC 1591 and the Framework of
170 Interpretation. According to the FOIWG,

171 *recognizing that ultimate authority on public policy for any country is its gov-*
172 *ernment and legislature, nothing in the FOI is intended to, or should be taken to*
173 *constrain or limit applicable law in respect to matters relating to country-code*
174 *or IDN string, or in the state of incorporation/place of business of the IANA*
175 *operator.*