

- 1 **Summary discussion Wednesday 17 February**
- 2 Included summary, based on the notes of the 17 February 2021 call
- 3 Also include **additional** clarifications and/or questions regarding topics discussed

1 **Must Include**

2 **1. Reference to RFC 1591 and FoI**

3 All groups added reference to RFC1591 and FOI.

4 To which extent? In the sense of a policy doc (delegation, transfer, revocation), or referring to a specific part of RTFC
5 1591?

6

7 If parties are not satisfied, they have an avenue for appeal. Then the question comes what can you appeal? It originates
8 from the RFC. Need reference to both RFC 1591 and FoI. Complete rehearing is a must.

9

10 Comment: Not refer to RFC1591. Not always unambiguous. Many elements are not relevant anymore. When the FOI was
11 prepared, attempt to make it up to date. Everything should be in the FOI report. Reference to RFC1591 would confuse
12 matters. FOI should take precedence, it supersedes the RFC.

13 Note FOI is not a formal policy and was not developed through a ccPDP. Is that relevant? Yes, not new policy. It's role was
14 to interpret policy. Agreed formulae: “

15 Further noted: From RFC as developed through IETF procedures: RFC1591 is information only memo, not normative. It
16 provides some information. Be careful to use

17

18 **The reference to RFC1591 as a source doc as interpreted by the FOI sets the parameters for the RM, especially the**
19 **decision-making etc.**

20

21 **Note that in the FoI the topic of a review panel/ or review mechanism is NOT included.**

22

23 **Should include a reference to the Retirement policy or limit to description of decisions**

24

25

1 **Must Include**

2 **2. Complete re-hearing vs. administrative review**

3 Complete re-hearing to be interpreted as Full review of the decision.

4 must be a substantive review (not how it was done)

5 Majority of participants on the call feel that one point a full rehearing of facts etc should be feasible

6 Does that mean that in the procedure new facts/figures can be brought in, that were not judged before by PTI?

7 There is no review mechanism for matters related to cctld transfers and delegation. Carve out. Accountability
8 mechanisms. Internal review. IANA might think again, appeals to the icann board. But: those are not independent, and we
9 need that.

10

11 Summary requirements:

12 At least one external, independent tribunal

13 Binding decision (replacing the litigated decision)

14

15 Review must be substantial: Bring on “new” facts, dispute about the facts, interpretation of the applicable policy rule, was
16 process followed

17

18

19

20

1 **Must Include**

2 **Process and policy MUST be “timeless”**

3 To be discussed 3 March 3, 2021

4

5

6 **Look at existing mechanisms to build on**

7 Best place for intervention is in between the decision of IANA and the decision by the Board. No spillage that could
8 possibly create secondary issues.

9

10 The Board has ultimate fiduciary responsibility for the entire corp. By convention IANA takes the decision and the board
11 approves. Board has ultimate responsibility for what PTI does. To be included in the process. The board can correct a
12 mistake, if a mistake is being made.

13

14 Note: how this relate to some of the decisions identified in spreadsheet?

15 How related to “Covered Actions”

16 **Covered Actions**" are defined as any actions or failures to act by or within ICANN committed by the Board, individual
17 Directors, Officers, or Staff members that give rise to a Dispute.

18 Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

19 (ii) Claims relating to ccTLD delegations and re-delegations;

20

21 IRP could be made applicable by striking this section, and turning decisions identified into covered actions.

22

23 German administration. Rechtsmittelbelehrung. What options you have to file a request for appeal. If they fail to include
24 this, it has consequences. No preference : before or after the board

25

26

1 **Nice to include**

2 **Look at existing mechanisms to build on**

3 Need to be reviewed?

4

5 **Who's decision or action to be reviewed**

6

7 **Scope of review**

8 Is outcome binding i.e replaces the litigated decision?

9

10 **Do not include**

11 **Subject to local law**

12 Subject to local law interpreted as potentially applicable national laws. One can not expect that decisions that are subject
13 to review have to be interpreted according to law that applies to each and every ccTLD.

14

15 **For discussion: how to determine applicable law?**

16

17 **Link with constitutional documents**

18

19 **Reference to CWG Stewardship (stress-test?)**

20 Should be applicable to all ccTLDs? Reformulate to" Should be available to all ccTLDs?

21

22 **Determine who has standing at panel?**

23

24 **Rules and Procedures of processes**

25 (must be included, nice to include, or does reference suffice?)