

- 1 **Summary of discussions from the 17 February and 3 March 2021 calls including additional clarifications**
- 2 **and/or questions regarding topics discussed.**

1 **Must Include**

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

3 All groups added references 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 RFC 1591?

5  
6 If parties are not satisfied, they have an avenue for appeal. Then the question comes what can you appeal? It originates  
7 from the RFC. Need reference to both RFC 1591 and FoI. Complete rehearing is a must.

8  
9 Comment: Not refer to RFC1591 given it is not always clear. Many elements are no longer relevant. When the FOI was  
10 prepared there was an attempt to bring it up to date. Everything should be in the FOI report. Reference to RFC1591 would  
11 confuse matters. FOI should take precedence as it supersedes the RFC.

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

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

16  
17 **The reference to RFC1591 as a source doc as interpreted by the FOI sets the parameters for the RM, especially the**  
18 **decision-making etc.**

19  
20 **Note that in the FoI the topic of a review panel/ or review mechanism is NOT included.**

21  
22 **Should include a reference to the Retirement policy or limit to description of decisions**

23

24

25 **Must Include**

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

2 Complete re-hearing to be interpreted as Full review of the decision.  
3 must be a substantive review (not how it was done).

4  
5 Majority of participants on the call feel that at 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  
8 There is no review mechanism for matters related to cctld transfers and delegation. Carve out. Accountability  
9 mechanisms. Internal review. IANA might think again, appeals to the icann board. But: those are not independent, and we  
10 need that.

11  
12 Summary of requirements:

13 At least one external, independent tribunal

14 Binding decision (replacing the litigated decision)

15 “tribunal” was the language used by Nigel. Broader interpretation. Does not automatically mean arbitration

16 Nigel: 3 stages:

- 17       • Internal review. By the people that made the decision
- 18       • Mediation
- 19       • Binding arbitration
- 20       • Court proceedings

21 Tribunal used to mean “judge”. Could be 1 or many.

22

23

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

26

27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**Must Include**

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

The point of inclusion is that the policy be ‘timeless’ was that if there is superseding policy coming out for the ccNSO in the future, it is automatically applicable instead of locking the RM to RFC 1591 and FOI specifically.

The review mechanism would be intended to apply to the policy at the time the review is being conducted. Retirement policy is in final stages. If you tie the review mechanism too close to RFC1591 and other documents could cause interpretation difficulties. The applicability of the policy should be generally stated as the adopted policies at the time.

Question: how does this relate to the work done to date, with respect to identifying the decisions that should be subject to the RM? If the link is too loose, i.e every step / whenever there is a decision under policy may be become subject to RM.

Counter argument. “This could be applicable to delegation as defined in RFC1591”. What if the ccNSO develops policy, and the source document at the time this RM policy is developed no longer applies?

Conclusion: Ensure that RM is made future-proof as much as it is reasonable to do at this point.

**Process must have set pre-defined milestones and timelines**

Discussion in IOT-IRP group on limitation and respose. Whatever the RM, there has to be finality in the decision Relative to binding, consider that the IRP can only decide if the bylaws were followed or not. They do not decide on the remedy. They only decide if there is a fault and cannot order replacing the previous decision. Likes this reference Arbitration will be binding on all parties. ccNSO Members cannot go to court. If you want to go to court, the cctlD manager needs to cease to be a member. Board (panel) replacing the decision that is being reviewed. The word “board” is also used in the RFC.

Nigel: does not agree to call it a board. Confusion with icann board. Panel seems more appropriate

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

2 General agreement that we should look on the existing mechanism to use or build on, to save time/money.

3

4 With respect to saving time and money: mechanism should be affordable to smaller ccTLD Managers, to avoid that the  
5 RM becomes non-accessible to those ccTLD Managers who may need it the most as an alternative dispute resolution  
6 mechanism.

7

8 If feasible, best place for intervention is in between the decision of IANA and the decision by the Board. No spillage that  
9 could possibly create secondary issues.

10

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

14

15 **Note: how does this relate to some of the decisions identified in spreadsheet?**

16 **How is this related to "Covered Actions"**

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

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

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

21

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

23

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

26

1 **Choice of law is a subject to be further discussed. Scope (Binding and replacing previous decision or handing back to**  
2 **previous decision-maker, taking into account decision of panel))** still to be determined

3 **How have the ICANN review panels solved problems? To be asked to Sam Eisner.** Avoid Forum shopping.

4

5 At end of process understand if concerns Stewardship Transition are still valid. mconcerns still valid (2014, and discussion  
6 relevant meeting RM). To be included as stress test.

7

8

9 **Do not include**

10 **Subject to local law**

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

13

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

15 Has been discussed and is included in spreadsheet

16

17 **Rules and Procedures of processes**

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

19 To be addressed at later stage

20

21

22

1           **Pros and cons of various panels**

2 To be discussed by WG. Polling on experience to date

3

4 Per type of “tribunal”: Mediation, IRP like process, Arbitration (ICC< UNCITRAL, International Court of Arbitration)  
5 Court-like litigation, Appeal process

6

7           **Experience with any of the procedure:**

8

9           • IRP-like 1 out of 12

10          • Arbitration 10 out of 12

11          • Court-like litigation 8 out of 12

12          • Appeal 6 out of 12

13          • Mediation 6

14

15

16           **Pro’s and Con’s analyses**

17

1 **Two (2) or Three (3) step process?**

2 **Comments on 2 Step Process**

3

4 **Mediation**

5 (Voluntary?)

6

7

8

9

10

11

12 **PTI/IFO complaint process**  
13 **(Always available)**

14

15

16

17

Comments:

18

PTI complaint process. Word complaint could be misinterpreted. Term by IANA. IANA complaint process. Available for every step where PTI is involved. Internal remedy. **Must be exhausted first i.e. CONDITION to be eligible to enter into RM?**

20

21

22

Mediation is without prejudice. Meaning, whether it is used or not, no pre-condition to have access to RM. Mediation is NOT required before going to court/ RM. Mediation is external tribunal-connected

23

24

Bernie: going back to IRP. the advantages are significant to both parties. CEP is optional. To encourage parties to undertake this first, some of the costs in an IRP can be covered by icann

25

26

**Full, Independent Review**



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**Three (3 step Process**

**Mediation**

(Voluntary?)

**Appeal**



**Full, Independent Review**

**PTI/IFO complaint process  
(Always available)**

Do you want to allow for an appeal of the independent reviewer? Including appeal  
IRP currently looks at an appeals mechanism to its decision. It is Expensive. Finding appropriate people and train them. For  
the ccNSO this would be a step even further. This potentially affects usefulness to small and medium-sized ccTLDs.  
Otherwise it is not fair. **Cost issue to be discussed with Sam.**  
Understands the arguments. Note that the procedures in all should not take too much time, and should not be too costly

- 1 Should the outcome be binding? If it is binding, can there be court proceedings afterwards? On the other hand, people
- 2 may not use the RM, but go to court directly, and there they will have an appeals opportunity. Having the appeal
- 3 mechanism available in court-system may be reason for choosing that avenue.
- 4
- 5 Results of initial call for preference/temperature of the room
- 6 Large majority of participants (9) in favor of 2 step process
- 7 Only 3 in favor of 3 step process, whereby one participant noted that 2 step is understandable, but from user perspective
- 8 3 step process is most likely preferred.