

# Overview of the ccNSO PDP on Review Mechanisms

Webinar, April 2021

# Topics

1. History of review mechanisms for ccTLDs.
2. Update on work to date.
3. Next Steps.

# 1. History of review mechanisms for ccTLDs

- **1994 RFC1591** - *“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 can not reach agreement among themselves. The IDNB's decisions will be binding.”*
- December 1998 ICANN formally takes over the IANA functions from USC.
- May 1999 ICANN/IANA unilaterally introduces **ICP-1** as a replacement for RFC1591 which does not include the IDNB. Final decisions regarding ccTLDs are made by the ICANN Board.

# 1.1 History of review mechanisms for ccTLDs

- June 2015 – The final proposal of the **IANA Stewardship Transition from the Cross Community Working Group on Naming Related Functions (CWG-Stewardship)** does not include a review mechanism in the new IANA functions per the request of the ccNSO.
- June 2015 - The ICANN Board adopts all of the recommendations of the **ccNSO FOI WG** which include the following:
  - “4.8. Note: The FOI WG believes it is consistent with RFC1591 (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.”*

## 1.2 History of review mechanisms for ccTLDs

- February 2016 – The final proposal of the **Cross Community Working Group on Enhancing ICANN Accountability (CCWG-WS1)** does not include a review mechanism which applies to ccTLDs at the request of the ccNSO.
- May 2016 – The **CCWG-WS1** recommendations are implemented in the ICANN Bylaws.
- April 2017 the ccNSO launches the **PDP on a Review Mechanism for ccTLDs** which is coupled with the **PDP on the Retirement of ccTLDs** . Due to a number of factors the two PDPs did not proceed in parallel.

# 1.3 History of review mechanisms for ccTLDs

- June 2017, the **ccNSO WG for the PDP on the Retirement of ccTLDs** holds its first meeting
- March 2020, the **ccNSO WG for the PDP on a Review Mechanism** holds its first meeting.
- February 2021 the **ccNSO WG for the PDP on the Retirement of ccTLDs** published its final report and requested it be separated from the Review Mechanism PDP so the Retirement policy can be adopted independently. This proposal has been accepted.

## 2. Update on work to date

The WG considered the following dependencies with respect to a Review Mechanism:

- **RFC1591** - *“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 can not reach agreement among themselves. The IDNB's decisions will be binding.”*
- ccNSO FOIWG Recommendations on Reviews - *“4.8. Note: The FOIWG believes it is consistent with RFC1591 (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.”*

## 2.1 Update on work to date

- Review requirements of the draft ccNSO Retirement Policy:
  - “ (Section 3) - *For 2 letter Latin ccTLDs which do not correspond to an ISO 3166-1 Alpha-2 Code Element – The Trigger is the ISO 3166-1 MA making a change (other than making it an ISO 3166-1 Alpha-2 Code Element) to any of these. For each such Triggering Event the IFO will consider if the change requires deleting that ccTLD. If the ccTLD Manager disagrees with the IFO’s decision to initiate the Retirement process it can appeal the decision using the ccTLD Appeals Mechanism.*”
  - - “ (Section 4.4 - regarding a request for an extension) - *If the request for an extension is rejected and the ccTLD Manager believes that the rejection is unreasonable or is inconsistent with the Reasonable Requirements Document, it may appeal the decision by the IFO (see Section 5.2 of this Policy).*”



## 2.2 Update on work to date

The WG also considered the possible requirement for a Review Mechanism by the ongoing PDP on IDN ccTLDs.

## 2.3 Update on work to date

The WG identified the following IFO decisions which could be subject to a review:

- Failure to accept a Delegation application for a newly created ccTLD.
- Contested Delegation of a newly created ccTLD by a losing party.
- Rejection of a Transfer request by a ccTLD Manager.
- Contested Revocation of an active ccTLD.
- Contested Retirement of an active ccTLD for an active 2 letter Latin ccTLD which do not correspond to an ISO 3166-1 Alpha-2 Code Element.
- Failure to accept an IDN ccTLD (dependent on the IDN ccTLD PDP and the responsibility of the ICANN Board).

## 2.4 Update on work to date

The WG identified the following elements which should be considered in any potential Review Mechanism:

- Must Include references to RFC 1591 and Fol.
- Must decide on complete re-hearing vs. administrative review.
- Process and policy MUST be “timeless”.
- Process must be affordable for small ccTLDs.
- Process must have set pre-defined milestones and timelines (once a ccTLD is delegated it is considered impossible to undo this).
- Look at existing mechanisms to build on.
- Process must be clear as to who has standing to access the Review Mechanism.
- Process should not be subject to local law.

## 2.5 Update on work to date

The WG has also started working with ICANN Legal.

In a presentation ICANN Legal stated its position regarding the following Corporate Governance Fundamentals:

- ICANN Board is not able to defer decision making to other bodies. Fiduciary Duties preclude this.
- ICANN is entrusted to perform the IANA Functions – not an external tribunal. ICANN is not in a position to place decisions on IANA functions external to PTI/ICANN.

# 3. Next Steps

- The WG will continue to interact with ICANN Legal and consider its work in the context of the input by ICANN Legal in an effort to complete a first draft of a Review Mechanism.
- The WG will continue to work on the issue of a required 2 or 3 step process:
  - PTI/IFO complaint process.
  - Mediation.
  - Full, Independent Review.
- Going forward the WG will proceed by a Topic driven working method of addressing 1 topic per meeting where there will be a topic paper produced for that topic.

# ccNSO PDP WG on Review Mechanism

- Chair: Stephen Deerhake
- Vice-Chair: Eberhard Lisse
- Staff lead: Bart Boswinkel
  
- ccNSO page - <https://ccnso.icann.org/en/workinggroups/pdp-review-mechanism.htm>
- Wiki - <https://community.icann.org/display/ccnsowkspc/Policy+Development+Process+%28ccPDP3%29+--+Review+Mechanism>