

CCPDP-RM – Non-Binding Mechanism – Independent Advice Review Mechanism - DRAFT

- **General Objective:**

Develop a review mechanism for IFO decisions that would meet most of the requirements of the CCPDP-RM WG for an independent review except for being binding on the IFO or ICANN.

Such a mechanism would be a logical next step to the IFO Customer Service Complaint Resolution Process¹ and could be used prior to the parties launching an arbitration or court proceeding.

- **Specific Objective**

Create an optional and independent review mechanism inspired by arbitration, which is non-binding on the IFO or ICANN and will not prevent the Claimant from using any other dispute resolution mechanism to address the IFO decision affecting it.

- **Scope:**

- IFO decisions regarding ccTLDs which can be reviewed via the Independent Advice mechanism:
 - Delegation of a new ccTLD
 - Transfers
 - Revocations
 - Refusal to grant an extension to the retirement deadline per the CCNSO Retirement policy.
 - Notice of retirement for 2 letter Latin ccTLD which does not correspond to an ISO 3166-1 Alpha-2 Code Element per the CCNSO Retirement policy.
 - Any other policy approved by the ccNSO and ICANN which allows ccTLDs to appeal a decision by the IFO.
- The Independent Advice review will only provide advice regarding:
 - If the re were significant issues with the IFO properly following its procedures and applying these fairly in arriving at its Preliminary Decision; or
 - If the Preliminary Decision being reviewed is significantly in consistent with RFC 1591, the CCNSO FOI for RFC1591 as approved by the ICANN Board as well as

Commented [BT1]: Given this is non-binding, that we are aiming to have this done expeditiously and that we are proposing (later in the Process Overview section) that the IFO/ICANN re-imburse the Claimant is issues are found it4 seems logical that we focus on SIGNIFICANT issues.

¹ <https://www.iana.org/help/complaint-procedure>

any other policies which apply to CCNSO members and is approved by the ICANN Board.

- Standing/eligibility – Given the the Independent Advice review is a logical next step to the IFO Customer Service Complaint Resolution Process (both are reviews of IFO decisions resulting from a request, but one is internal while the other is external/independent) and that it is optional for claimants and not binding on the IFO or ICANN it is logical that, similarly to the IFO process, only the persons who initiated the request with the IFO are eligible to apply an Independent Advice Review.

Commented [BT2]: Expanded from V0.9 + other minor changes.

- **Administrative objectives:**

- Low cost (10,000 to 100,000\$US maximum including all administrative and panelist costs for both parties).
- Fast – less than 90 days to return a decision.
- Minimize the total time required to review any specific IFO decision which can be reviewed by this mechanism.

Commented [BT3]: This is meant to support the automatic consolidation of cases that is proposed in the Claimant section.

- **Process Overview**

- The Claimant has made a valid request concerning a ccTLD to the IFO.
- The IFO advises the Claimant that its Preliminary Decision is to reject the request.
- The Claimant submits an application for an Independent Advice Review (Review) to the Independent Advice Administrator (Administrator) within the specified deadline of 30 days².
- The Administrator will notify the IFO that an application for a Review has been made for a specific Preliminary Decision. This notice to the IFO will require that the IFO not take any further action with respect to the Preliminary Decision until advised otherwise by the Administrator.
- The Administrator evaluates if the application for a Review meets the basic requirements for approval. The Administrator may work with the Claimant to correct any technical deficiencies as part of the approval process.
- If the Administrator rejects the application for a Review:
 - The Administrator notifies the IFO that the application has been rejected and that the IFO may proceed with processing the Preliminary Decision.
 - The Claimant may submit a new application for a Review if still within the specified deadline.
- If the Administrator accepts the Application:

² See section on deadlines for details.

- The Administrator will notify the IFO that the Application has been accepted and that the IFO will:
 - Not take any further action with respect to the Preliminary Decision until advised otherwise by the Administrator.
 - Gather all the relevant material pertaining to the Preliminary Decision and communicate it to the Administrator within 7 days of the notice by the Administrator.
- The Administrator will require the parties to each select a Panelist from the list of Certified Panelists and notify it of their choices. The Administrator will then confirm that these Panelists are available and unconflicted with respect to the parties in this review.
- The Administrator will require that the two Panelists select a third from the list of Certified Panelists. The Administrator will then confirm that this Panelist is available and unconflicted with respect to the parties in this review.
- The Administrator will post the relevant information (?) regarding the case on its public website.
- The Panel is convened and considers the case.
 - The Administrator will distribute the relevant material to the Panelists and act as a project manager for their work.
 - The Administrator will review the Panelist's Advice with them to ensure it meets all the requirements for such Advice.
 - The Panelists will communicate their final Advice to the Administrator who will notify the Claimant and the IFO that the review has issued its Advice (but the review process is not yet completed).
- If the Panel finds significant issues with the Preliminary Decision:
 - The Administrator will request that the IFO advise it within 30 days³ what action it will take with respect to the Independent Advice.
 - Note regarding Preliminary Decisions and complying with Panel Advice. Preliminary Decisions are essentially binary if the Claimant does not give up on the process. Either the IFO will, sometimes after numerous exchanges with the Claimant over long periods of time, accept the Claimant's request or reject it. Obviously if the IFO accepts the Claimant's application there will be no need for a Review. If the IFO rejects the Claimant's application (stats on rejection vs giving up?) the Claimant can submit a request for a Review. In cases where a Review occurs and the Panel finds there were significant issues the IFO really only has three options vs such Advice given the Preliminary Decision is binary (you cannot partially transfer responsibility for a ccTLD to a new Manager) – 1

Commented [BT4]: Is this reasonable for the IFO?

Commented [BT5]: We will have to clearly define what this information is considering the various privacy concerns surrounding some of these processes. Obviously, some notice of a case has to be publicly posted. Minimally one would assume that include the Claimant, its representative and the Panelists?

Commented [BT6]: What happens if they do not? The Administrator can write to the ICANN CEO and/or the Board requesting that the IFO respect its commitment to this process?

³ See section on deadlines for details.

Accept the Advice from the Panel and grant the Claimant's original request, 2 Accept the Advice from the Panel and say it will completely re-do the evaluation process for the Claimant's original request or 3 refuse to accept the Panel's Advice. Now in the past we have said we should not allow appeals until the IFO has made a decision regarding a request, however, given the IFO puts no deadline for completing delegations and transfers (other Preliminary Decisions already have deadlines (extension for a retirement) or are initiated by the IFO (revocation, retirement of a non-ISO 3166 2 letter Latin code) this could be used to essentially block a request without having to officially reject it. As such, for Delegations and Transfers, at least until such time as the IFO includes a deadline for processing these, it would seem logical to allow for a Review of these on the grounds that the IFO is not properly following its procedures and applying these fairly – however the best way to deal with this issue would be for IFO to put a deadline on processing these requests which would require them to only accept or reject them and not allow these to be cancelled for being incomplete.

Commented [BT7]: If this is a new process this would mean that there will be a new preliminary decision which, if it still rejects the Claimants request, that there could be a new appeal for this decision – if this is the case this should be entirely at the IFO/ICANN's cost meaning there would be not cost to the Claimant.

- If the IFO advises the Administrator that:
 - It accepts the Independent Advice and that it will change its Preliminary Decision it will have 30 days to produce a Final Decision, from the time it advised the Administrator, and communicate it to the Administrator. The Administrator will analyze the Final Decision. If the Administrator concludes that:
 - The IFO accepts the Claimant's original request the Administrator will notify the Claimant of this and notify the IFO that it may proceed with processing the Final Decision and that it will re-imburse the Claimant's fees for the Review.
 - It accepts the Independent Advice but will opt to The IFO re-do the evaluation of the Claimant's request from the beginning and re-imburse the Claimant's fees for the Review. Once completed it will notify the Claimant and the Administrator of its Updated Preliminary Decision which will be analyzed by the Administrator. If the Administrator concludes that:
 - The IFO accepts the Claimant's original request the Administrator will notify the Claimant of this and notify the IFO that it may proceed with processing the Updated Preliminary Decision.
 - The IFO rejects the Claimant's original request the Administrator will notify the Claimant of this and advise it

Commented [BT8]: Need a process if the deadline is not respected.

Commented [BT9]: Obviously, there is a corner case for Delegations where there are multiple applicants. If the WG accepts this approach to the IFO's choices this will be considered (IFO stats on delegations where there are more than 2 applicants?)

Commented [BT10]: Minor update from V0.9

that it has 30 days to decide if it wishes to request Independent Advice on this Preliminary Decision at no cost to it.

- If the Claimant decides to request an Independent Advice Review the process will begin anew.
- If the Claimant decides not to request an Independent Advice Review or fails to notify the Administrator within the 30 day deadline the Administrator will notify the IFO that it may proceed with processing the Updated Preliminary Decision.
- If the IFO rejects the Independent Advice the Administrator will advise the Claimant and ensure that the Independent Advice is properly included (TBD in consultation with the IFO) in any recommendation the IFO makes regarding this case. Should the IFO fail, according to the Administrator, to properly include the Independent Advice in its recommendation to the Board the Administrator shall communicate this to the ICANN Board.
- If the Panel finds no significant issues with the Preliminary Decision.
 - The Administrator will notify the Claimant and the IFO that it may proceed with processing the Preliminary Decision.