

CCPDP-RM – Non-Binding Mechanism – Independent Advice Review Mechanism SUMMARY - 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 independent step following the IFO Customer Service Complaint Resolution Process¹ and is available prior to launching [a binding review] 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 Manager from using any other dispute resolution mechanism to address the IFO decision affecting it.

- **Scope:**

- The Independent Advice Review (Review) is available to ccTLD Managers² which are directly impacted by an IFO decision (Decision) for the following processes:
 - Delegations of a new ccTLD (No deadline for the IFO to reach a decision. When the IFO reaches a decision, it will formally advise all applicants of the decision starting the 30 day timer during which applicants can file for a Review).
 - Transfers (No deadline for the IFO to reach a decision. When the IFO reaches a decision regarding the Transfer request it will formally advise the current ccTLD Manager of the decision starting the 30 day timer during which the Manager can file for a Review).
 - Revocations (A last resort action by the IFO³ – If the IFO approves the Revocation it will formally advise the current ccTLD Manager of the decision starting the 30 day timer during which the Manager can file for a Review).

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

² Given New ccTLDs do not have a Manager, and that it is clearly stated in RFC 1591 that there needs to be an appeal mechanism applicable to the delegation process for new ccTLDs the CCPDP-RM WG believes it is consistent with RFC 1591 that all applicants for a New ccTLD are eligible to request an Independent Advice Review.

³ How the IFO processes revocation requests from third parties is beyond the scope of this policy. If the IFO decides to revoke a delegation it must notify the Manager and allow it 30 days to apply for an Independent Advice Review. [According to the FOI \(section 4.7\) Revocation is the last resort option for the IFO. Revocation is therefore a matter between the IFO and the ccTLD Manager.](#)

Commented [BT1]: NEW TEXT – by focusing on a DECISION by the IFO which affects a ccTLD Manager we automatically deal with the standing issue. All the bullet points below have been adjusted to reflect timing considerations.

Commented [BT2]: This was discussed at the 20211124 meeting and consideration was given to allow applicants to file for a Review if the IFO fails to reach a decision in reasonable time. However, this would go against RFC 1591 which essentially says the IFO should ask contending parties to work it out amongst themselves. Additionally forcing the IFO to reject applications due to a deadline does not prevent one or more of the original applicants from re-applying which would simply re-start the process. As such allowing for a Review in this case where there is no decision by the IFO would undermine RFC 1591 and would be impractical.

Commented [BT3]: This was discussed at the 20211124 meeting and consideration was given to allow applicants to file for a Review if the IFO fails to reach a decision in reasonable time. Again, if the IFO cancels a Transfer request it would not prevent that party from simply re-submitting the same request immediately after cancellation instead of applying for a Review. As such allowing for a Review in this case where there is no decision by the IFO would seem impractical. Given Delegations and Transfers are the only two processes where reasonable time would be a factor and considering that adding consideration of delays to reach a decision by the IFO would significantly complexify the Review process it is recommended that there cannot be a Review without an IFO decision.

Commented [BT4]: If the IFO approves the request without the support of the current Manager, that Manager must be allowed to file for a Review of this decision. If the IFO rejects the Transfer request supported by the current Manager, that Manager must be allowed to file for a review of this decision.

- Refusal to grant an extension to the retirement deadline per the CCNSO Retirement Policy (The notice to the Manager that IFO rejects the application for an extension will start the 30 day timer during which the Manager can file for a Review).
- 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. (The Notice of Retirement⁴ to the Manager of such a ccTLD will start the 30 day timer during which the Manager can file for a Review).
- Any other policy developed by the ccNSO and adopted by the ICANN Board which allows ccTLDs to appeal a decision by the IFO.

- The Independent Advice review will only provide advice regarding:

- If there 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 inconsistent with RFC 1591, the CCNSO FOI for RFC1591 as adopted by the ICANN Board as well as any other policies developed through a ccNSO policy development and adopted by the ICANN Board.

Commented [BT5]: Amended to align with language used in other documents.

- **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 [BT6]: Note: No objections to this text on 20211124.

- **Process Overview**

- The IFO advises the Manager and the Administrator of the decision which can be reviewed (Decision⁵). If the Manager wishes to apply for an Independent Advice Review (Review) it must do so to the Independent Advice Administrator (Administrator) according to the specified process and within the specified deadline of 30 days⁶.
- If the Manager applies for a Review (Application) the Administrator will notify the IFO that an Application for a Review has been made for the specified

⁴ See ccNSO Retirement Policy for details.

⁵ See Scope section of this document.

⁶ See section on deadlines for details.

Decision. This notice to the IFO will require that the IFO not take any further action with respect to the Decision until advised otherwise by the Administrator.

- The Administrator has 30 days to evaluate if the Application meets the requirements for approval. The Administrator may work with the Manager to correct any technical deficiencies as part of the approval process.
- If the Administrator rejects the Application:
 - The Administrator notifies the IFO that the Application has been rejected and that the IFO may proceed with processing the Decision.
 - The Administrator will request that the Manager's fee for a Review (minus an administrative fee) be refunded.
 - The Manager may submit a new Application for a Review if still within the specified 30 day deadline from the original notification of the Decision by the IFO.
- If the Administrator accepts the Application:
 - 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 Decision until advised otherwise by the Administrator.
 - Gather all the relevant material pertaining to the 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 Manager and the IFO that the review has issued its Advice (but the review process is not yet completed).

Commented [BT7]: FOR DISCUSSION – Propose that there be a limitation that a Manager can only apply once for a Review for a specific Decision if the Application for that Review is accepted. This is meant to avoid using this process to indefinitely delay the implementation of a Decision.

Commented [BT8]: FOR DISCUSSION - New text. Looking to insert a little pain to avoid people submitting applications they know will not be accepted.

Commented [BT9]: Place holder until discussed and agreed with the IFO.

Commented [BT10]: FOR CONSIDERATION: The process could ask the parties to select a first Panelist as well as an alternate if the first choice cannot serve (unavailable or conflicted) this would save time etc. Additionally, if a Panelist cannot complete its assignment (illness, personal issues etc.) then we could automatically go to the alternate. This will have to be spelled out in the Panelist section.

Commented [BT11]: NOTE: This would eliminate any ICANN Staff from being a panelist?

Commented [BT12]: FOR CONSIDERATION – Require an alternate here also. Will have to be spelled out in the Panelist section.

Commented [BT13]: Place holder for now is the Manager, its representative and the Panelists as discussed on 20211124.

Commented [BT14]: This needs to be developed. As a minimum a clear statement by the Panel if there were significant issues or not.

- **Note:** *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 Decision is binary (you cannot partially transfer responsibility for a ccTLD to a new Manager) – 1 Accept the Advice from the Panel and amend its decision, 2 Accept the Advice from the Panel and say it will completely re-do the evaluation process for the original request or 3 refuse to accept the Panel’s Advice. As such we will cover these three possibilities if the Panel in its advice finds that there were significant issues.*
- **If the Panel finds significant issues with the Decision:**
 - The Administrator will request that the IFO advise it within 30 days⁷ as to what action it will take with respect to the Independent Advice.
 - The Administrator will request that the fees paid by the Manager be refunded.
 - If the IFO advises the Administrator that:
 - It accepts the Independent Advice and that it will amend its Decision it will have 30 days to produce an Amended Decision. Once the IFO has communicated the Amended Decision to the Manager and the Administrator:
 - The Administrator will advise the IFO not to take any further action with respect to the Updated Decision until advised otherwise by the Administrator.
 - The Manager will have 30 days to consider the Amended Decision and decide if it will apply for a Review of the Updated Decision:
 - If the Manager decides not to apply for a Review of the Amended Decision or fails to advise the Administrator of its decision by the deadline the Administrator will, after the 30 day deadline expires, advise the IFO that it may proceed with processing the Amended Decision.
 - If the Manager decides to apply for a Review of the Amended Decision, it must submit a new application to the Administrator within the 30 day deadline of being notified of the Updated Decision to restart the process at no cost to itself.
 - It accepts the Independent Advice but will opt to re-do the evaluation of the original request from the beginning. Once completed (no specified deadline) it will notify the Manager and

Commented [BT15]: NEW TEXT: This has been updated to align with the new approach in the scope.

Commented [BT16]: MODIFIED APPROACH – Removed the Administrator deciding if the IFO’s Updated Decision meets the Manager’s expectations. The Manager will decide if it does or not and can apply for a new Review if it does not. This is meant to limit the authority of the Administrator and ensure the Manager is deciding if an Updated Decision meets it’s expectations.

Commented [BT17]: 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?
 KD Noted on 20211124 that the Administrator also has to be held responsible for deadlines – NR noted that, if the Administrator is staff and it is expected that they will be, that there are already some mechanisms in place to ensure that. BT noted that this will be dealt with in the Administrator section when developed.

Commented [BT18]: Need a process if the deadline is not respected – see previous comment.

⁷ See section on deadlines for details.

the Administrator of the Amended Decision. Once the IFO has advised the Manager and Administrator of the Amended Decision:

- The Administrator will advise the IFO not to take any further action with respect to the Updated Decision until advised otherwise by the Administrator
- The Manager will have 30 days to consider the Amended Decision and decide if it will apply for a Review:
 - If the Manager decides not to apply for a Review of the Amended Decision or fails to advise the Administrator of its decision by the deadline the Administrator will, after the 30 day deadline expires, advise the IFO that it may proceed with processing the Amended Decision.
 - If the Manager decides to apply for a Review of the Amended Decision, it must submit a new application to the Administrator within the 30 day deadline of being notified of the Updated Decision to restart the process at no cost to itself.
- If the IFO rejects the Independent Advice the Administrator will advise the Manager 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 Decision.
 - The Administrator will notify the Manager and the IFO that it may proceed with processing the Decision.