

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

### Objective:

Develop a review mechanism for IFO decisions that would meet most of the requirements of the CCPDP-RM WG except for being binding on ICANN. Such a mechanism could be used prior to the parties launching an arbitration or court proceeding.

Summary of the proposed mechanism:

- Administrative objectives:
  - The mandate of the Panel is to decide if the IFO decision being reviewed is consistent with RFC 1591, the CCNSO FOI for RFC1591 as approved by the ICANN Board as well as any other policies which apply to CCNSO members and is approved by the ICANN Board.
  - **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.
- **The** Administrator
  - A non-conflicted individual who is a SME wrt ccTLDs, the IFO and ICANN and who is selected by the CCNSO (similarly as to how the ICANN Board selects its Ombuds).
  - The office of the administrator will be funded by ICANN in a fashion similar as to how ICANN funds the Office of the Ombuds.
  - **Fees** collected by the Office of the Administrator will be handled by ICANN.
  - **The** fees collected by the Administrator may be used to fund the Office of the Administrator, panelists, and any associated legal costs. Any annual surpluses will set aside by ICANN for the ccNSO to administer, according to rules to be developed by it, for purposes of funding CCNSO members who wish to apply for an Independent Advice Review but cannot pay the fees.
- The Panel:
  - Would be managed and supported by the Administrator.
  - **Is to** be constituted of 3 subject matter experts (SME) wrt ccTLDs and the rules and procedures governing them but are not required to be lawyers (1 selected by the plaintiff, 1 selected by the IFO/ICANN and 1 by mutual agreement of both (failure to agree on a third would require the Administrator to select the final member). Usual conflict of interest rules would apply. (the Administrator will have a roster of pre-approved panelists, a plaintiff may choose another SME but this one will have to be certified by the Administrator prior to being eligible).

- Will not accept supplementary material from non-IFO participants but can hold individual teleconference hearings with all the involved parties.
  - Can request a presentation by the IFO on the matter under review. The Panel, at its discretion, can also request answers to its questions from the IFO which must respond promptly to these (2 business days California time following the day of the request – this should be included in the IFO SLE process statistics).
  - The Independent Advice should explain in detail its decision which must be supported by at least two of the panelists.
  - Final Independent Advice from the panel cannot be appealed.
  - If the Advice is against the IFO the IFO/ICANN the panel can recommend that the IFO/ICANN re-imburse all review costs to the plaintiff.
- The IFO:
    - Must amend its procedures to allow concerned parties sufficient time to file for Independent Advice prior to the IFO making a recommendation to the ICANN Board regarding the decision which is being challenged.
    - IFO cannot make a recommendation to the ICANN Board on the matter being reviewed prior to the panel providing Advice.
    - Will make all relevant internal materials available to the panelist who will be under a formal confidentiality agreement. These will include all internal emails on the matter and all communications from all the relevant parties but does not include formal legal advice to the IFO.
    - If the IFO does not accept the Panel's Advice, it must include it in its recommendation to the ICANN Board and explain why it was not accepted.
- The plaintiff:
    - Must be a ccTLD which is a member of the CCNSO except in the case of the delegation of a new ccTLD where any applicant for that new ccTLD is eligible. (The new ccTLD scenario could involve 2 or more applicants for the same ccTLD – in such a case if more than one applicant wishes to pursue Independent Advice then the Administrator could require that these cases be consolidated – corner case).
    - May only apply for an Independent Advice Review within 30 days of the IFO publishing its Initial Decision.
      - 30 days to be calculated as follows – The IFO publishing its Initial Decision will be deemed Day 0. Day 1 will begin 1 minute after 23:59 UTC of Day 0. The opportunity to submit an application for an Independent Advice Review will expire on Day 30 at one minute past 23:59 UTC.
    - To launch an Independent Advice Review, the plaintiff must provide the Administrator with a statement (in English) detailing which IFO decision should

be reviewed, identify the plaintiff contact, payment for the review, and clearly indicating why the plaintiff believes it is inconsistent with RFC 1591, the CCNSO FOI for RFC1591 as approved by the ICANN Board or any other policies which apply to CCNSO members and is approved by the ICANN Board.

- The plaintiff will have to agree to the rules for the Independent Advice Review which will include a clause preventing the applicant from taking the Administrator, panelists, the CCNSO or ICANN to court with respect to the Independent Advice Review.
- The Administrator may interact with the plaintiff's contact person to obtain clarifications on the request (and may allow the applicant to resubmit).
- If the Administrator rejects the application for an Independent Advice Review the plaintiff's payment will be refunded minus initial administrative costs (objective 1,000 to 5,000\$US maximum - TBD). There is no mechanism to appeal the Administrator's decision to reject an application however the Administrator will be required to publish its reasons for rejecting the application.