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, independent step following the IFO Customer Service Complaint Resolution Process[1] and is available before 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 Managers[2] who are directly impacted by an IFO decision (Decision) for the following processes:

    - Delegations of a new ccTLD:
      - Directly involved parties: Applicants
      - IFO timing: No deadline for the IFO to reach a decision.
      - IFO rejection of an application: Applications are never rejected but usually go away if not accepted over a long period. The IFO has a process for cancelling, as opposed to rejecting, inactive applications.
      - Proposed eligibility for a Review: Limit to All Applicants.
      - Basis for requesting a Review: Delegation by the IFO to another party.
    - Transfers:
      - Directly involved parties: Current Manager and the proposed Manager
      - IFO timing: No deadline for the IFO to reach a decision.

---

[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.

▪ IFO Rejection of an application: Applications are never rejected but
usually go away if not accepted over a long period. The IFO has a process
for cancelling, as opposed to rejecting, inactive applications.
▪ Proposed eligibility for a Review: Limit to Current (or incumbent)
Manager.
▪ Basis for requesting a Review: Rejection of an application for Transfer
which never occurs?
o Revocations (A last resort action by the IFO[3]):
▪ Directly involved parties: Current Manager[4]
▪ IFO timing: No deadline for the IFO to reach a decision.
▪ IFO Rejection of an application: There is no formal IFO process for
revocation.
▪ Proposed eligibility for a Review: Current Manager.
▪ The basis for requesting a Review:
• Current Manager requesting a Review of a Revocation notice by
the IFO.
o Refusal to grant an extension to the retirement deadline per the CCNSO
Retirement Policy:
▪ Directly involved parties: Current Manager.
▪ IFO timing: Per the Retirement Policy the IFO must reply to the
application for an extension within 90 days of it being submitted by the
Manager.
▪ IFO Rejection of an application: Can be rejected by the IFO but per the
Retirement Policy "*The approval of an extension request shall not be*
unreasonably withheld."
▪ Eligibility for a Review: Per the Retirement Policy the current Manager.
▪ Basis for requesting a Review: Rejection of an application for an
Extension by the IFO that is being unreasonably withheld.
o 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:
▪ Directly involved parties: Current Manager.
▪ IFO timing: None - per the Retirement Policy the IFO must send a Notice
of Retirement.
▪ Eligibility for a Review: Per the Retirement Policy the current Manager.
▪ Basis for requesting a Review: Per the Retirement Policy - *For 2 letter*
Latin ccTLDs which do not correspond to an ISO 3166-1 Alpha-2 Code

---

[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

[4] The IFO does not have a formally documented process for revocations.

68			*Element – The Trigger is the ISO 3166-1 MA making a change (other than*
69			*making it an ISO 3166-1 Alpha-2 Code Element) to any of these. For each*
70			*such Triggering Event the IFO will consider if the change requires deleting*
71			*that ccTLD. If the ccTLD Manager disagrees with the IFO's decision to*
72			*initiate the Retirement process it can appeal the decision using the ccTLD*
73			*Appeals Mechanism.*
74		o	Any other policy developed by the ccNSO and adopted by the ICANN Board
75			which allows ccTLDs to appeal a decision by the IFO.
76			
77	•		The Independent Advice review will only provide advice whether or not:
78			
79		o	There were significant issues with the IFO properly following its procedures and
80			applying these fairly in arriving at its Decision; or
81		o	There were significant issues in how the IFO complied with RFC 1591, the CCNSO
82			FOI for RFC1591 as adopted by the ICANN Board, and any other policies
83			developed through a ccNSO policy development process and adopted by the
84			ICANN Board in making its Decision.
85			
86	•	**Administrative objectives:**	
87			
88		o	Low cost (10,000 to 100,000$US maximum including all administrative and
89			Reviewer(s) costs for both parties).
90		o	Fast – Reviewers to return a decision in less than 90 days from the beginning of their
91			consideration of the case.
92		o	Minimize the total time required to review any specific IFO decision which can be
93			reviewed by this mechanism.
94			
95	•	**Process Overview**	
96			
97			(Note: Once the process is agreed a summary will be kept here, and the details will be
98			moved to an annex)
99			
100		o	Prior to applying for an Independent Advice Review (IAR or Review):
101			▪ Note: The CCPDP-RM will have to decide if an Internal IFO Review and/or
102			IFO Mediation is/are a pre-requisite to apply for an IAR. Regardless if they
103			are pre-requisites or not, a party who is eligible to apply for an IAR should
104			not be prevented from applying for an IAR because they have passed the
105			30 day deadline because they have chosen to use these other
106			mechanisms first. As such a party who is eligible for an IAR will have 30
107			days (from the original IFO decision) to apply for an Internal IFO review,

Deleted: Arbitrator

Deleted: Arbitrator

Formatted

IFO Mediation or an IAR and will be given 30 days after that review is completed to undertake another review mechanism. As an example using all the options: 30 days (from the original IFO decision) to apply for an IFO Internal Review, X days for an IFO Internal Review to be completed, 30 days to decide to apply for IFO mediation, Y days for IFO Mediation to be completed, 30 days to apply for an IAR.

- The IFO makes a Decision that can be reviewed.
- An eligible party submits an application (Application) for a Review to the Administrator.
- The Administrator confirms receipt of the Application and requests that the IFO take no further action regarding this decision until advised otherwise by the Administrator.
- The Administrator evaluates the application (see application requirements in the Applicant/Claimant section).
- If the Administrator rejects the Application, it will:
  - Advise the Applicant and request that the Application fee minus a processing fee be reimbursed to the Applicant (TBD). The Applicant may re-apply if within the 30 day deadline.
  - Advise the IFO of the rejection and that the IFO may proceed with this Decision.
  - Close the Application and update the review website accordingly.
- If the Administrator accepts the Application, it will:
  - Advise the Applicant (now Claimant) that the Application has been accepted.
  - Advise the IFO that the Application has been accepted and that the IFO may not proceed further with the Decision until informed otherwise by the Administrator.
  - Update the Review website accordingly.
  - Will request that the Applicant select which type of Review it will opt for (Administrator, 1 Reviewer, 3 Reviewers – see Reviewer section for details) and advise the IFO of this.
  - The Administrator will work with the Applicant and the IFO to select the Reviewer(s). Once selected the Administrator will advise the Claimant of the Application fee deposit required (TBD in implementation) to launch the Review which must be paid within 30 days.
- If the Claimant does not pay the Application fee deposit within the 30 day period the Administrator will:
  - Advise the Applicant and request that the Application fee minus a processing fee be reimbursed to the Applicant (TBD). The Applicant may re-apply if within the 30-day deadline.
  - Advise the IFO of the rejection and that the IFO may proceed with this Decision.

4

Deleted: <#>¶

Commented [BT1]: Will there be a prerequisite to an IAR? Internal IFO Review and/or Mediation?

Deleted: <#>¶

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

- 157   ▪ Close the Application and update the review website accordingly.
- 158   o If the Claimant pays the Application fee deposit within the 30-day period the
- 159   Administrator will:
- 160   ▪ Launch the Review.   [Formatted: Indent: Left: 1.25"]
- 161 o Conducting the Review
- 162   ▪ The Administrator will manage the Review as the Reviewer(s) consider(s) the   [Deleted: Arbitrator]
- 163   case:
- 164   • The Reviewer(s) may request a presentation by the IFO or ask   [Deleted: Arbitrator]
- 165   formal questions of the IFO.
- 166   ▪ The Reviewer(s) will decide if there were significant issues or not in their   [Deleted: Arbitrator]
- 167   report.
- 168   ▪ The Administrator will review the Reviewer(s)' report to ensure it is   [Deleted: Arbitrator]
- 169   consistent with the requirements for such reports.
- 170   ▪ The Administrator will publish the Reviewer(s) decision and advise the   [Deleted: Arbitrator]
- 171   Claimant.
- 172 o If the Reviewer(s) did not find any significant issues: [Deleted: Arbitrator]
- 173   ▪ The Administrator will advise the Claimant, close the Review and advise the   [Deleted: case]
- 174   IFO that it may proceed with its Decision
- 175 o If the Reviewer(s) did find significant issues: [Deleted: Arbitrator]
- 176   ▪ The Administrator will advise the Claimant of the findings and of the possible
- 177   next steps.
- 178   ▪ The Administrator will contact the IFO asking it to confirm which option it will
- 179   take vs the Advice (30 days):
- 180   • Accept the Reviewer(s) decision and Reverse its original Decision.   [Deleted: Arbitrator]
- 181   • Accept the Reviewer(s) decision but opt to re-do the evaluation of   [Deleted: Arbitrator]
- 182   the request which led to the original Decision.
- 183   • Reject the Reviewer(s) decision.   [Deleted: Arbitrator]
- 184 o If the IFO accepts the Reviewer(s) Advice and reverses its original decision: [Deleted: Arbitrator]
- 185   ▪ The Administrator will advise the Claimant and will close the case and
- 186   update the website.
- 187   ▪ Note: This assumes that IFO Decisions are basically binary in most cases.   [Deleted: bascially]
- 188   Transfers, Revocations, requests for an extension in a retirement process,   [Deleted: request]
- 189   and Retirement of a 2 letter Latin non-ISO 3166-1 ccTLD can only be
- 190   binary. Delegation of a new ccTLD between 2 contending parties is also
- 191   binary but is not if there are 3 or more applicants (which should be very
- 192   exceptional).
- 193 o If the IFO rejects the Reviewer(s) decision: [Deleted: Arbitrator]
- 194   ▪ If the IFO decision requires Board approval: The Administrator will close
- 195   the case and work with the IFO to ensure that the Advice is properly
- 196   included in any IFO recommendation to the ICANN Board on this matter.

- If the IFO decision does not require Board approval: The Administrator will close the case and advise the ICANN CEO and the ccNSO Council.
  - If the IFO accepts the Reviewer(s) decision but opts to re-do its process with respect to this Decision:
    - Once the IFO has completed re-doing its process that Decision will be presented to the Claimant.
    - The Administrator will request that the Claimant select one of the two following options (30 days):
      - Accept the new Decision.
      - Apply for a Review of this new decision at the IFO's expense (no charge to the Claimant).
    - If the Claimant accepts the new decision the Administrator will close the case and update the website.
    - If the Claimant decides to apply for a new Review the Review process begins anew with the following changes:
      - If the Application for a Review is accepted the IFO will bear all costs.
      - If the Review finds significant issues with the new IFO Decision the IFO can only opt to accept the new Review decision and reverse its Decision or reject the Review's findings.(30 days).
      - If the Review does not find any significant issues the Administrator will advise the Claimant and the IFO and will advise the IFO that it can proceed with its Decision and close the case.
    - If the Review finds there were significant issues and the IFO reverses its Decision the Administrator will advise the Claimant and close the case.
    - If the Review finds there were significant issues and the IFO rejects the Advice:
      -
      - If the IFO decision requires Board approval: The Administrator will close the case and work with the IFO to ensure that the Advice is properly included in any IFO recommendation to the ICANN Board on this matter.
      - If the IFO decision does not require Board approval: The Administrator will close the case and advise the ICANN CEO and the ccNSO Council.
        -

- **The Administrator - details not included in the process overview:**

- The Administrator must be a non-conflicted individual who is a SME with respect to ccTLDs, the IFO and ICANN and who will be responsible for overseeing and managing the Independent Advice system.
  - Conflict of interest will disqualify anyone with a current "relationship" (business, financial or family) with a ccTLD, known applicant for a new ccTLD, the IFO or who is pursuing legal action against these same parties. This would be assessed via a Conflict-of-Interest Declaration form (TBD).
- The office of the Administrator will be funded and managed by ICANN.
- General administrative responsibilities of the Administrator:
  - Maintain ongoing relationship with the ccNSO, IFO and ICANN.
    - Monitor Decisions by the IFO which have a potential to be reviewed.
  - Set up and oversee the operation of the website which will include:
    - General information on the Review process.
    - Q&A section.
    - All relevant forms.
    - List of certified Reviewers.
    - List of ongoing cases.
    - List of Review decisions.
    - List of past cases.
  - Prepare and manage application of all relevant forms including:
    - Application/contract for a Review.
    - Application to become a certified Reviewer.
    - COI form for specific cases.
    - NDA for certified Reviewers.
    - Review decision form.
    - Fee agreements for Reviewers.
    - Billing forms for Reviewers.
  - Set up process to certify and manage Reviewers.
    - Establish criteria for the certification of Reviewers with the ccNSO and the IFO.
    - Manage the recruiting process for potential Reviewers.
    - Certification of Reviewers (validation as a SME, COI, NDA, contract).
    - Creation and management of a list of certified Reviewers.
  - Manage financial matters including:
    - Review application payments and refunds.
    - Approval of Reviewer billing.
    - Billing of Claimant and IFO for Reviewers.

	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator
	Deleted: Arbitrator

- **Reviewer(s) - details not included in the process overview:**

  - All Reviewers will be certified, managed, and supported by the Administrator.
  - Reviewers will be paid for by ICANN/IFO.
  - Certification requirements will include:
    - Functional ability to work in English.
    - CV highlighting that the individual is a Subject Matter Expert (SME) with respect to CCNSO policies, RFC1591 and its FOI as well as IFO procedures. Minimum qualification will be 10 years of practical experience in all these areas (proposal TBD in cooperation between the Administrator, the ccNSO and the IFO). Legal experience is also desirable.
    - Interview with the Administrator to confirm SME status and ability to work in English.
    - Duly executed NDA regarding any non-public information obtained while acting as an Reviewer on any Independent Advice case.
    - Duly executed Reviewer contract with ICANN.
    - Duly executed COI form which will include certification of no COI with ICANN or the IFO. If selected for a specific case Reviewers will have to provide a formal confirmation that they are impartial with respect to the Claimant.
      - Conflict of interest is defined as a party having a "relationship" (business, financial or family) with another party or who is involved in any formal legal action vs another party.
      - Being a Manager or employee of a ccTLD registry will not be considered a COI vs ICANN or the IFO in this context unless there are significant pending issues between the parties.
  - Choice of Reviewers by Claimants - 3 options for a review:
    - Review by the Administrator only. This will be a minimal cost option only requiring the Administrative costs.
    - Review by one Reviewer selected jointly by the IFO and the Applicant from the list of pre-Certified Reviewers managed and maintained by the Administrator. The selection process will be managed by the Administrator and if the parties cannot agree on a single Reviewer within 30 days of the Application being approved, the Administrator will select one from the list. The selected Reviewer will be required to formally confirm that it is impartial with respect to the Claimant.
    - Review by 3 Reviewers.
      - The IFO and the Claimant will each choose an Reviewer. The proposed Reviewers do not have to be from the list of pre- certified Reviewers. If the candidates are not from the list of pre-

certified Reviewers, they will have to be certified by the Administrator prior to undertaking any work on the case. Once certified the IFO and Claimant Reviewers will cooperatively pick a third Reviewer from the list of pre-certified Reviewers through a process managed by the Administrator. If the two Reviewers cannot agree on a third within 30 days, the Administrator will nominate the third from the list of pre-certified Reviewers.

- o The IFO and the Claimant must select their Reviewers within 30 days of the Application being approved. Failure to do so will cause the Administrator to select and Reviewer for the party from the list of pre-certified reviewers.
- o If the chosen Reviewer is not pre-certified it will have to be Certified by the Administrator within 30 days of being named before it can join the proceedings. If the chosen Reviewer fails to be certified prior to the deadline the party may choose another if still within the original 30 day limit to choose an Reviewer.
- All Reviewers will be required to formally confirm that they are impartial with respect to the Claimant.
- Any decision in a 3 Reviewer system will require the support of at least two of the three.
- o Reviewers will only accept supplementary materials from the Claimant or the IFO if approved by the Administrator. All such requests to submit additional material must be made using the appropriate form (TBD) and submitted to the Administrator within 30 days of the request for Independent Advice being approved by the Administrator. The Administrator, using his best judgement for the fair administration of justice, will consider the following in determining if any new material should be accepted and made available to the Panel:
  - ▪ Is this material directly and critically relevant to the case?
  - ▪ Why was this material not included in the original request to the IFO?
- o Can hold individual teleconference hearings with all the involved parties.
- o 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 (TBD with the IFO) California time following the day of the request – this should be included in the IFO SLE process statistics).
- o Definition of Significant Issue – Any clearly demonstrable inconsistency or deviation by the IFO of properly following its procedures and applying these fairly or how the IFO complied with the requirements of RFC 1591, the CCNSO FOI for RFC1591 as

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: chose

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: <#>Each party will pay for its chosen Arbitrator as well as 50% of the costs for the third Arbitrator.¶

Deleted: <#>Arbitrator

Deleted: Arbitrator

adopted by the ICANN Board as well as any other policies developed through a ccNSO policy development process and adopted by the ICANN Board in making its Decision which, in the opinion of the Reviewer(s), could have significantly impacted the Decision if it had not occurred.

- o The Reviewer(s)' Advice will explain in detail their decision.
- o The Administrator will review the Advice from the Reviewers to ensure it meets all the requirements prior to publishing it. The Administrator may work with the Reviewer(s) to amend the Advice to ensure it meets the requirements:
  - The Advice provides all the relevant administrative and background information.
  - The Advice will clearly indicate if there were any significant issues or not.
  - If there were issues the Advice clearly indicates what the issues are as well as why they are issues.
  - Formal sign-off of the Reviewer(s) on the final Advice and a statement of majority opinion if necessary.
- o Final Independent Advice from the Reviewer(s) cannot be appealed.

- **IFO - details not included in the process overview:**

  - o Will maintain a good working relationship with the Administrator.
  - o Must amend its procedures to allow concerned parties sufficient time to file for Independent Advice prior to the IFO implementing or making a recommendation to the ICANN Board regarding the decision which is being challenged. As such the IFO will advise all directly involved parties of any decisions which can be reviewed under this Policy. Such decisions will be labelled Preliminary Decisions and will advise the concerned parties of their options for Reviewing such decisions.
  - o After reaching a decision on a ccTLD request which can be Reviewed, the IFO will advise those parties which could apply for a Review of the Decision and of their options for Reviewing the Decision as well as the timeline for doing so.
  - o If a Decision is being Reviewed to the Administrator, the IFO cannot make a recommendation to the ICANN Board on the matter being reviewed prior to the Administrator confirming it can do so.
  - o Will make all relevant internal materials available to the Reviewer(s) 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.
  - o Will make itself available to the Reviewer(s) to present details of the case or answer questions.
  - o If the Review finds there were significant issues and the IFO rejects the Advice the IFO will work with the Administrator to include all Review results in any recommendations on this matter to the ICANN Board.

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: Arbitrator

Deleted: appealable

Deleted: appealing

Deleted: appealed

Deleted: appealing

Deleted: appealed

Deleted: Arbitrator

Deleted: Arbitrator

476   o If the IFO fails to comply with the requirements of the Review policy the
477   Administrator will advise the ICANN CEO and the ccNSO Council of the situation and
478   request that the ICANN CEO promptly correct the situation.

479

480 **• Applicant and Claimant - details not included in the process overview:**

481

482   o Must be a ccTLD Manager except in the case of the delegation of a new ccTLD where
483   any applicant for that new ccTLD is eligible.
484   o To launch an Independent Advice Review (Review), the Claimant must submit an
485   application (Application) via the website to the Administrator (in English) within 30
486   days of the Decision being made.
487   ■ 30 days to be calculated as follows – The IFO publishing its Initial Decision
488   will be deemed Day 0. Day 1 will begin 1 minute after 23:59 UTC of Day 0.
489   The opportunity to submit an application for an Independent Advice
490   Review will expire on Day 30 at one minute past 23:59 UTC.
491   o The evaluation criteria for an Independent Advice Review Application are:
492   ■ Be on the properly completed form/contract (TBD)
493   ■ Be received prior to the 30 day deadline.
494   ■ Clearly indicate which IFO Preliminary Decision is being Reviewed,
495   • An Application for Independent Advice cannot be approved for a
496   Decision which is currently the subject of an Independent Advice
497   Review or was the subject of a completed Independent Advice
498   Review.
499   ■ Not be for an IFO Preliminary Decision which has been accepted for a
500   Review, is currently being Reviewed or has already been Reviewed.
501   ■ Have paid the required fees (fees and details TBD).
502   ■ Be a party listed in the IFO Decision that is a ccTLD manager listed in the
503   IANA database or in cases related to the delegation of a new ccTLD any
504   parties who applied to be the Manager for that ccTLD.
505   ■ Clearly indicate the individual the Applicant has delegated to be
506   responsible for the Application including all relevant contact information.
507   ■ Clearly state why the Claimant believes that:
508   • That the IFO did not properly follow its procedures or applied
509   these fairly in arriving at its preliminary decision; or
510   • The IFO decision being reviewed is inconsistent with RFC 1591,
511   the CCNSO FOI for RFC1591 as approved by the ICANN Board, as
512   well as any other policies which apply to CCNSO members and is
513   approved by the ICANN Board.

Deleted: appealed

Deleted:

516   o For cases where there is a potential for more than one Claimant[5]. In all such cases
517   where the Administrator has approved an Application for a Review, the Reviewer(s)
518   will consider all elements of the IFO Decision for all potential Claimants.
519   o By submitting an Application, the Claimant will agree to the rules for the
520   Independent Advice Review, which will include a clause preventing the Applicant
521   from taking the Administrator, Reviewers, the CCNSO, or ICANN to court with
522   respect to the Independent Advice Review. This in no way prevents the Claimant
523   from taking the IFO or ICANN to a relevant court regarding the Decision by the IFO
524   and any approval of such recommendation by the ICANN Board.
525   o The Administrator may interact with the Claimant's contact person to obtain
526   clarifications on the application (and may allow the Applicant to resubmit).
527   o If the Administrator rejects the application for an Independent Advice Review the
528   Claimant's payment will be refunded minus administrative costs (objective 1,000 to
529   5,000$US maximum - TBD). There is no mechanism to appeal the Administrator's
530   decision to reject an application however the Administrator will be required to
531   publish its reasons for rejecting the application.

532

533

534

535

536

537

| Deleted: Arbitrator |

| Deleted: Arbitrator |

---

[5] e.g. a Decision regarding the delegation of a new ccTLD that had three applicants – if the ccTLD is allocated to one of the three, the two others could appeal – obviously a corner case