CCPDP-RM WG - 20220814

Reading note regarding the original scenarios – the yellow highlighted text has been reformulated into the text which does not have highlighting and for which answers are now provided in this document. The pink highlighted text has been ignored.

Scenarios for stress testing the proposed CCPDP-RM mechanism:

- Retirement
    - Can a request for a change of Manager during a Retirement process, which is refused by the IFO, be reviewed by the IAR?
        - Although it is very rare for the IFO to refuse a decision the Retirement policy is clear that a transfer can happen during a retirement policy and the IAR policy is clear that it applies to all Transfer requests.
    - Can a ccTLD Manager request an IAR of an IFO decision to retire its ccTLD?
        - The Retirement policy only allows for the review of an IFO decision to retire a ccTLD if the ccTLD is a 2 letter Latin ccTLDs not corresponding to an ISO 3166-1 Alpha-2 Code Element[1].
    - Can a ccTLD Manager request an IAR if the IFO refuses to grant an extension as part of a Retirement process?
        - Yes, as stated in the Retirement policy.
    - change of registry operator in middle of retirement, who is eligible, is transfer subject to review? (**CAN THERE BE AN IAR IF THE TRANSFER IS REJECTED?)**
    - if manager refuses agreement with IANA retirement, and retitment is pushed through, how would thsi play out**? (UNCLEAR IS THIS ABOUT THE IAR)**
    - potential retirement, ccTLD manager asking for extension of time and being refused
- IFO does not respond
    - What happens if the IFO does not respond, within the delay specified by the policy to a request by the IAR Administrator?
        - From the IAR draft policy: "*If the IFO fails to comply with the requirements of the Review policy the Administrator will advise the ICANN CEO and the ccNSO Council of the situation and request that the ICANN CEO promptly correct the situation. In cases where the IFO fails to respond to a request by the Administrator within the delays specified in the policy the review process will be suspended until such time as the IFO properly responds to the request*."

[1] What was often referred to an "exceptionally reserved" code element.

- What happens if the IFO does not respect other requirements of the policy?
  - See the previous answer.

- also applies to the previous IFO actions **(UNCLEAR)**. delegations, transfers. What if IFO does not respond within the deadline (**IN AN IAR?)?**
- If deadline **(WHICH ONE?),** No action from IFO
- what if IFO does not reply within 90 days **(TO WHAT?)?**
- suggestion: add language, enforcement to respect the appropriate time
- if no response: extension is automatically granted? **(Retirement extension request? Was an IAR filed on the case?)**

- Language

  - Can a ccTLD Manager apply for an IAR in a language that is not English?
    - No. From the draft IAR policy: "To launch an IAR, the Claimant must submit an application (Application) via the IAR website to the Administrator in English".

- comment: that language might be for the implementation phase **(UNCLEAR)**
- if someone wants an IAR review but is only communicating in a non English language

- Terminology issues?

  - What happens if the issue between the Manager and the IFO is because of vagueness or ambiguity of terminology or differences in interpretation of policy or rules?
    - This is one of the key reasons for the creation of the IAR policy where an independent and knowledgeable reviewer will provide advice vs the IFO decision. Specifically, the draft IAR policy states:

      "*The Independent Advice Review (IAR) will only provide advice on whether or not:*

      - *There were significant issues with the IFO properly following its procedures and applying these fairly in arriving at its Decision; or*
      - *There were significant issues in how the IFO complied with RFC 1591, the CCNSO FOI for RFC1591 as adopted by the ICANN Board, and any other policies developed through a ccNSO policy development process and adopted by the ICANN Board in making its Decision."*

  - Could a change of terminology in 3166 impact a Manager's eligibility for an IAR or impact an IAR review?
    - It is difficult to imagine such a situation however, to ensure the IAR policy is future-proof the policy includes the following language: "*Should there be any significant changes to other ccNSO policies which are covered by this policy or to ISO 3166, as decided by the ccNSO, the ccNSO will launch a formal review of this*

policy to assess if the policy needs to be modified. If the review of the policy finds that the policy needs to be modified the ccNSO will launch a process to accomplish this."

- Percevied vagueness ambuigity of terminology, differences in interpreatation by applant and IFO
- Whatif lawyer or others starts re-interpreting **(UNCLEAR, in what part of WHICH process?)**
- A Change of terminology in 3166 result in impact on eligibility of review and its impact on the review **(UNCLEAR)**
- terminology /procedural change,**(UNCLEAR/VAGUE)**

- Name server issues
  - Can a ccTLD Manager use the IAR to settle name server issues with the IFO?
    - No, the IAR only deals with issues which can change the responsibility for a ccTLD. Nameserver issues can be dealt with via the CSC.
  - routine changes to name server (valid request refused)
  - registry has asked changes to name server - a technical demand to make a change - ccTLD manager doesnt respond or doesnt exist

- Other issues
  - How can the IAR handle competing applications for the same IFO decision?
    - It is important to note that the only case where this can happen is for the delegation of a new ccTLD where there are more than two applicants. The draft IAR policy addresses this issue as follows:

      For an IAR application to be accepted the draft policy states that*:*

      "Not be for an IFO Preliminary Decision which has been accepted for a Review, is currently being Reviewed or has already been reviewed."

      And

      "*For cases where there is a potential for more than one Claimant. Should there be more than one application for the same IFO Preliminary Decision the Administrator will accept the first application which meets all the eligibility criteria. Should there be a tie the Administrator will choose which application will be accepted. In all such cases where the Administrator has approved an Application for a Review, the Reviewer(s) will consider all elements of the IFO Decision for all potential Claimants.*"

- Can an application for an IAR be made at the same time, or during, an internal IFO review for the same IFO decision?
    - The draft IAR policy states that an IAR application must: "*Not be for an IFO Internal Review or for an IFO Mediation which has been applied for or is ongoing at the time of the IAR application.*"

- Can there be an IAR if the IFO has lost all contact with the Manager for that ccTLD?
    - No. The draft IAR policy is clear in that only the Manager of a ccTLD which is affected by an IFO decision can apply for an IAR.

- Can someone else than the Manager (back-end registry provider, DNS operator…) apply for an IAR?
    - See previous response.

- Can IAR findings for a given review apply to other cases including past IFO decisions?
    - No. IAR findings only apply to the case that was considered.

- In the context of a ccTLD retirement how is unreasonably withheld defined?
    - This term does not appear in the draft IAR policy however, it is included in the ccNSO Retirement policy:

      " Section 4.4…. Granting an extension to the Default Retirement Date is at the discretion of the IFO and shall not be unreasonably withheld. The Reasonable Requirements Document that the IFO will have included with the Notice of Removal will describe the factors it will consider when evaluating a request for an extension to the Default Retirement Period……. 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)."

      The term "unreasonable withheld" is a well-understood legal concept. Additionally, this will be considered in the implementation of both the Retirement and IAR policies.

- Situation two competing application to Review and at teh same time internal IFO review
- Change of existing policies that revert to review mechanism **(UNCLEAR)**
- IFO has lost contact but registry is operating **(how can the registry make a request to the IFO if there is no contact?)**
- renew country code ISO (declined) **,(UNCLEAR)**
- redelegation request ,(**UNCLEAR, REDELEGATION IS NO LONGER IN USE SINCE THE FOI)**
- Bach-end registry provider, ccTLD Manager, DNS service operator etc. what is issue between parties? ,**(UNCLEAR)**
- are teh parties who are invovled in operation of ccTLD all covered? **,(UNCLEAR)**

- several requests (IAR?) from different organization - and technically they are correct **(UNCLEAR)**
- Multi parties affected by decision in similar case, only one applies for review. Is there a precedence of review result, does it apply backwards?
- How do we define unreasonably withheld?