

## ***DRAFT***

### **Survey of ccTLD Managers on Need for Appeal Mechanism for ccTLD Delegations and Redelegations**

There is considerable uncertainty in the ccTLD community on the issue of an appeal mechanism for ccTLD delegations and redelegations. This survey is intended to explore the level of consensus on this issue.

#### Background on Survey

On December 1, 2014, the Cross Community Working Group on IANA transition issued a [draft proposal](#) which contained a proposal for an ‘independent appeal panel’:

“Independent Appeals Panel (IAP) - The CWG recommends that all IANA actions which affect the Root Zone or Root Zone WHOIS database be subject to an independent and binding appeals panel. The Appeals Mechanism should also cover any policy implementation actions that affect the execution of changes to the Root Zone File or Root Zone WHOIS and how relevant policies are applied. This need not be a permanent body, but rather could be handled the same way as commercial disputes are often resolved, through the use of a binding arbitration process using an independent arbitration organization (e.g., ICDR, ICC, AAA) or a standing list of qualified people under rules promulgated by such an organization.”

At the ICANN 51 (October 2014) ccNSO meeting in Los Angeles an overwhelming majority of ccTLD representatives present indicated their wish for an ‘appeal mechanism’ as part of the IANA transition, though what was meant by ‘an appeal mechanism’ was not defined. In a survey of all ccTLD managers undertaken in November 2014, 94 per cent of the respondents agreed that ‘if the IANA operator does not perform well or abuses its position, the affected ccTLD should have the opportunity to (have access to) an independent and binding appeal process’. These expressions of need resulted in the appeal mechanism proposal that was included as part of the broader CWG IANA transition proposal that was released on December 1 2014. The proposal indicates that such a mechanism could be used in disputes over the consistency of ccTLD delegation or redelegation decisions.

The feedback on the December draft proposal, with regard to the “independent appeal panel” was inconclusive. In addition, in January of this year a survey was undertaken of CWG members and participants (this includes representation from many communities, not just ccTLD managers) on many aspects of the CWG’s December 1 proposal. It found that 97

per cent of the respondents agreed that “*ccTLD registry operators should have standing to appeal delegation and re-delegation decisions to which they are a party that they believe are contrary to applicable laws and/or applicable approved ccTLD policy*”. However in response to questions on potential specific characteristics of such an appeal mechanism the levels of support reduced. For example, only 54% of respondents agreed that “*ccTLD registry operators should have standing to appeal delegation and redelegation decisions to which they are a party that they believe are contrary to applicable laws and/or applicable approved ccTLD policy, even if the operator is not a party involved in the delegation or redelegation*”. In addition, only 60% of respondents agreed that “*Governments should have standing to appeal any ccTLD delegation or redelegation decisions that they believe are contrary to applicable*”

This information suggests that while there may be support for an appeal mechanism in general, consensus may be difficult to achieve on some of the important aspects of such a mechanism, including:

- who would be permitted to launch an appeal,
- whether the dispute resolution panel would have the authority to substitute its own view on a delegation, for example, direct that the incumbent manager be retained rather than a proposed new manager, or
- be limited to requiring that the delegation process be repeated.

As a consequence, this survey is intended to determine whether there might be sufficient consensus within the ccTLD community as a whole to seek a binding appeal mechanism and if so, whether this should be sought as part of the IANA stewardship transition process.

## ***START OF SURVEY***

### **QUESTIONS**

#### Overall Need for an Appeal Mechanism

1. Do you as a ccTLD manager believe that there is a need for an appeal mechanism on ccTLD (re)delegation decisions?

Yes

No → end of survey

1.2 (YES): When should the mechanism be developed?

Developed now and introduced as part of the IANA oversight transition

Developed later, and introduced after the IANA transition has taken place.

Other (please, state).....

1.3 (YES): If the design of this appeal mechanism were preventing the finalization of the IANA stewardship transition, would you agree to defer finalizing it so that the IANA process could be completed

Yes

No

Form of Appeal Mechanism and Composition of Panel

The CWG indicated it believes that an appeal mechanism need not include a permanent body. It suggested that disputes could be handled the same way as many commercial disputes, through the use of a binding arbitration process, using an independent arbitration organization, such as the ICC, ICDR or AAA, or a standing list of qualified panelists under established rules promulgated by such an organization.

The CWG recommended using this approach and that it use a three person panel, with each party to a dispute choosing one of the three panelists, with these two panelists choosing the third panelist.

2) Do you agree with this overall approach to establishing an appeal mechanism?

Yes

No

Other .....

3) If the mechanism uses a panel of individuals, how should they be chosen:

From a list of recognized international experts regardless of country

From individuals of the country that the ccTLD represents.

Other (please, indicate).....

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Eligibility to Appeal a (re)delegation decision.

In the delegation and redelegation of ccTLDs, the following entities are seen to have a role, according to the Report of the Framework of Interpretation Working Group:

- the government or territorial authority for the country or territory associated with the ccTLD
- the incumbent ccTLD(s) manager, and
- any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation.

4) Who do you believe should be permitted to launch an appeal a ccTLD (re)delegation decision?

The governmental or territorial authority associated with the ccTLD

The incumbent ccTLD manager?

Other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation?

4.1 Should any of the parties referenced above be excluded from the appeals process?

YES

NO

4.1.1

(If yes) please indicate what parties should be excluded from the appeals process:

Scope of the Appeal Mechanism

5) Should there be any limit on the scope of the appeal?

YES

NO

5.1 (IF YES): Should the scope be limited to questions about whether procedures have been followed properly;

Yes

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No

6) Should a panel have the authority to order that an existing delegation process be done again?

Yes  
No

7) Should the same panel have the authority to suspend a pending delegation?

Yes  
No

8) Should the panel have authority to order to revoke and existing delegation?

Yes  
No

8) Should it have the authority to order that another party be delegated the ccTLD?

Yes  
No

***END OF SURVEY***

Thank you for participating.