

## ***DRAFT***

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

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.”

There exists in the ccTLD community an apparent lack of consensus on the question of the introduction of an ‘appeals mechanism’ in respect of ccTLD delegations and redelegations. At ICANN 51 in Los Angeles an overwhelming majority of ccTLD representatives at the October 15, 2014 ccNSO meeting indicated they 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% of 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’. The expression of need resulted in the appeal mechanism proposal that the CWG 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.

A survey was undertaken in January of this year 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% of 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 when questions were posed about potential specific parameters of such an appeal mechanism support for it was 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 laws”.

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 ‘have standing’ to appeal a decisions,
- what aspects of decisions might be subject to an appeal,
- whether the scope should be limited to determining whether the process followed was complete and fair,
- 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 they 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.

## 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?
2. If you answered ‘yes’ should such a mechanism be
  - a. Developed now and introduced as part of the IANA oversight transition , or
  - b. Developed later, likely by the ccNSO, and introduced after the IANA transition has taken place.
3. 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 (this would likely entail the ccNSO proceeding with a separate process).

Form of Appeal Mechanism and Composition of Panel

4. The CWG indicated it believes that an appeal 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, 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 that a three person panel be used, with each party to a dispute choosing one of the three panelists, with these two panelists choosing the third panelist. Do you agree with this overall approach to establishing an appeal mechanism?
  - a. Do you have another idea – please indicate.
  
5. Where there is a panel of individuals, should they be chosen:
  - a. From a list of recognized international experts regardless of country, or
  - b. from individuals the country that the ccTLD represents.
  - c. In another manner (please specify)

Eligibility to Appeal a (re)delegation decision.

6. 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: :
  - a. the government or territorial authority for the country or territory associated with the ccTLD
  - b. the incumbent ccTLD(s) manager, and
  - c. any other individuals, organizations, companies, associations, educational institutions, or others that have a direct, material, substantial, legitimate and demonstrable interest in the operation.

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

- a. The governmental or territorial authority referred to in a. above?
- b. The incumbent ccTLD manager?
- c. Any of the parties referred to in c. above?

- a. Should any of the parties referenced above be excluded from the appeals process? If yes, please indicate.

#### Scope and Authority of the Appellant Organization

7. What should the scope of the appeal mechanism be?
  - a. Should it be limited to the question if procedures have been followed properly;
  - b. Should it have the authority to order that an existing delegation process be redone?
  - c. Should it have the authority to suspend a pending delegation?
  - d. Should it have authority to order to revoke an existing delegation?
  - e. Should it have the authority to order that another party be delegated the ccTLD?