

Charter Working Group Review Mechanism of ccTLDs

0. Contextual Background Information Review Mechanism¹

To date decisions taken as part of the processes for the delegation, transfer and revocation of ccTLDs are not subject to a review or appeal mechanism:

RFC 1591

According to RFC 1591, section 3.4, *the Internet DNS Names Review Board (IDNB), a committee established by the IANA, will act as a review panel for cases in which the parties [Issue Manager: the Significantly Interested Parties²] can not reach agreement among themselves. The IDNB's decisions will be binding.*

This IDNB was never established by IANA, or any other entity.

Framework of Interpretation

With respect to the IDNB the FOI WG noted: *The FOI WG believes it is consistent with RFC 1591 (section 3.4) and the duty to act fairly to recognize the manager has the right to appeal a notice of revocation by the IANA Operator to an independent body.*

CWG-Stewardship and CCWG-Accountability

Following public comments on its first proposal, the CWG-Stewardship proposed that: *An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.*

In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review Process, the results of delegation/re-delegations are explicitly excluded³.

ICANN Bylaws 1 October 2016

According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration: ⁴

¹ The term "Review Mechanism" has been chosen to differentiate from the appeals process referred to in RFC1591 relating to the review of decisions relating to delegation, transfer and revocation of a ccTLD, and from the generic Independent Review Process (IRP) as required by the CCWG- Accountability group for appeals / reviews on other decisions.

² Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

³ The CCWG- Accountability also proposes that the IRP:

Be subject to certain exclusions relating to the results of an SO's policy development process, country code top- level domain delegations/ redelegations, numbering resources, and protocols parameters. See: page 33 <https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>

⁴ <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

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Section 4.2. RECONSIDERATION

*(a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff may request ("**Requestor**") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "**Staff**" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.*

....

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

*(i) Disputes relating to country code top-level domain ("**ccTLD**") delegations and re-delegations;*

Following the discussions and comments on the Framework of Interpretation and – later – on the initial proposals of the CWG-Stewardship, and input and feed-back from the community at the Marrakesh and Helsinki meeting, the community present was of the view that a policy needs to be developed with respect to the introduction of a review mechanism. Based on the consultations to date the community considers this the highest priority, in particular in light of the IANA Stewardship transition.

1. Goal, Scope and issues to be addressed**1.1 Goal**

The goal of the working group (WG) is to report on and recommend a policy for a review mechanism with respect to decisions pertaining to the delegation, transfer, revocation and retirement of the delegated Top Level Domains associated with the country codes assigned to countries and territories listed in the ISO 3166-1 and within the framework of the ccNSO Policy Development Process.

1.2 Scope

To achieve its goal, the WG shall initially focus on and be guided by the topics and issues listed below in section 1.3. If other topics and issues become apparent that are not listed and that in the view of the WG need to be addressed to achieve its goal, the WG should take these into consideration and inform the ccNSO Council and Issue Manager accordingly.

As this WG will undertake its activities within the framework of the ccNSO Policy Development Process, the limitations with respect to the scope of a ccPDP, Article 10 and Annexes B and C to the ICANN Bylaws, shall also limit the scope of the WG's work.

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If topics issues become apparent that are considered out of scope of the WG, the Chair of the WG shall inform the ccNSO Council and Issue Manager accordingly. If the ccNSO Council is also of the opinion it is outside the scope of the WG, it is expected to deal with it appropriately.

1.3 High Level overview of topics and Issues pertaining to review mechanism

Given the expressed need for a review mechanisms and based on the community discussions, feed-back and comments to date, including but not limited to those with respect to the CWG-Stewardship and CCWG-Accountability proposals and related work, the following issues have been identified:

Scope of the review mechanism

1. *Which decisions and/or actions should be subject to a review mechanism?*
2. *Whose decisions and/or actions should be subject to a review mechanism?*

With regard to these questions, RFC 1591 section 3.4 called for the creation of the IDNB: [The IDNB] *will act as a review panel for cases in which the parties [i.e the Significantly Interested Parties] cannot reach agreement among themselves. The IDNB's decisions will be binding.* This assumes that disputes among Significantly Interested parties (as defined in the Framework of Interpretation) are subject to a binding review mechanism. The IDNB has never been established.

Following the Framework of Interpretation of RFC 1591⁵, recognising that ultimate authority on public policy for any country is its government and legislature, nothing in the FOI is intended to, or should be taken to constrain or limit applicable law in respect to matters relating to country-code or IDN cc Top Level Domains, or in the state of incorporation/place of business of the IANA operator.

Further, the FOI WG *believed that it is consistent with RFC 1591 (section 3.4) and the duty to act fairly to recognize the manager has the right to appeal a notice of revocation by the IANA Operator to an independent body.*

3. *Should a Review Mechanism be open and applicable to all ccTLDs?*
4. *What will be result / scope of the review decision? What powers will be bestowed upon review panel?*

Assuming the introduction of a review mechanism, the scope of the decision of the review will need to be defined.

Who will have standing at a review mechanism?

What are the grounds?

Should the questions for a review be limited to questions whether due process was followed in terms of a ccTLD delegation, transfer, revocation or retirement or should they be broader?

⁵ <https://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>, page 3.

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Rules and structure of review mechanism*1. the rules and procedures to be used?**2. Structure of panel and requirements and selection of panelist*

As part of the review mechanism proposals the structure of the panel (for example how many panellists, should there be a standing panel, or selection from a pool of panellists) and the requirements and selection of panellists need to be developed

Depending on scope of the decisions for review, the choice of law may be considered relevant to ensure the consistency with RFC 1591 and the Framework of Interpretation. According to the FOIWG, *“recognizing that ultimate authority on public policy for any country is its government and legislature, nothing in the FOI is intended to, or should be taken to constrain or limit applicable law in respect to matters relating to country-code or IDN string, or in the state of incorporation/place of business of the IANA operator.”*

2. The WG**2.1 Members and other participants of the WG**

The WG is open to members who are representatives of ccTLDs, participants from other stakeholder groups, observers and experts.

Members, participants, and experts commit to participate actively and regularly in the work of the WG and are expected to have at least a basic understanding of the reference material (section 6).

Once appointed all participants in the WG will be subscribed to a mailing list. The mailing list will be archived after closure of the WG.

The names and affiliation of the WG members and other participants will be published on a dedicated WG page on the ccNSO website.

At any time WG members, participants, observers and experts may resign from the WG, by informing the Chair of the WG, who will then inform the ccNSO Council. After receiving a notification the ccNSO Council may seek a replacement.

2.1.1 Members

The working group should have at least 10 members who are representatives from ccTLD managers or their nominees (at least two (2) from each of the 5 ICANN Geographic Regions). With respect to members of the WG there is no requirement for a ccTLD to be a ccNSO Member. If fewer than two (2) nominations are received from a Geographic Region, the ccNSO Council will actively encourage additional nominations from those regions. Members are appointed by the ccNSO Council in accordance with the general rules and procedures of the ccNSO for working groups⁶.

⁶ <https://ccnso.icann.org/about/guidelines-working-groups-30mar16-en.pdf>

The expectation is that any ccTLD that wishes to be actively involved in the WG will be allowed to do so.

The WG members shall nominate a chair and alternate chair from the members of the Working Group, who will then be appointed by the ccNSO Council.

2.1.2 Participants, experts and observers to the WG

In addition, the WG is open to participants, who shall not be considered members of the WG. Participants are entitled to participate on equal footing with members, unless the charter states otherwise. The ccNSO Council will request the following stakeholders to appoint at least one participant:

- Each of the Regional Organisations as defined in Section 10.5 of the ICANN Bylaws;
- ALAC
- GAC
- GNSO
- SSAC

Experts to the WG

The ccNSO Council may also invite and appoint experts as advisors to the WG. Experts shall not be considered members of the WG, but are entitled to participate on an equal footing in their area of expertise. The Council will at least invite the following persons:

- PTI staff
- Expert on the ISO 3166-1 list.

Observers

The WG will have the following observers:

- The Issue Manager for the ccPDP
- Any person appointed as observer by the chair of the WG

2.1.3 Staff Support

ICANN will be requested to provide adequate staff support to the WG

2.2 Chair and vice-chair

At the nomination of the members of the WG, the Chair and vice-chair of the WG will be appointed by the ccNSO Council. The chair and vice-chair should be members of the Working Group.

The Chair together with the vice-chair, will manage the ongoing activities of the WG and ensure an appropriate working environment by:

- Promptly sharing relevant information with the entire WG.
- Planning the work of the WG to meet the WG goals and leading the WG through its discussions.

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- Regularly assessing and reporting on the progress of the WG to the Council and broader community.
- Keeping track of WG participation. Where a WG member does not regularly participate, the Chair will reach out to the member to engage that person in the WG. If, after a conversation that member does not regularly participates, the Chair will advise the Council, so that further steps can be taken to resolve the situation.

The Chair is the representative of the WG. If the Chair of a WG is not a member of the ccNSO Council, the ccNSO Council will appoint a ccNSO Council liaison, to act as an intermediary between the WG and the ccNSO Council or invite the chair to Council meetings to regularly inform the Council on progress made, take questions and participate in any deliberations related to the WG.

The chair and vice-chair will regularly inform the broader community on progress of the WG and seek (informal) feed-back from the community.

3. Operations of the WG

3.1 Working Methods

The first work item of the WG is to develop and agree on its working methods that will guide how the WG intends to conduct its business. These working methods will be made publicly available and be guided by the following principles:

- The meetings will rotate from a timing perspective to share the burden as the membership is distributed over different time zones.
- No firm decisions are taken during any single meeting without the substance of those decisions having been discussed and open for review / consideration by those that may not have been present during the meeting.
- Efforts should be made to ensure that non-native English speakers can participate on an equal basis in the discussions
- The WG will consider public comments and other input as appropriate, and at its reasonable discretion.
- The Secretariat will set up conference calls, maintaining mailing lists, etc. at the direction of the chair and vice-chair of the WG. At the request of the chair the Secretariat or other ICANN staff will also provide other forms of assistance, for example providing advice or an expert opinion.

3.2 Internal Decision making

In developing its output – guideline for operations, working method, work plan and any reports or papers - the WG shall seek to act by consensus. The Chair may make a call for consensus. In making such a call, the chair should always make reasonable efforts to involve at a minimum all members of the WG. The chair shall be responsible for designating each position as having one of the following designations:

- Full Consensus - a position where no minority disagrees; identified by an absence of objection
- Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report, paper or other relevant deliverable.

In rare cases, the Chair may decide to use of a poll to assess the level of support for a recommendation. However, care should be taken in using polls: they should not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results. Such a poll shall be limited to the members, unless the chair decides otherwise.

Any person on the WG who disagrees with the consensus-level designated by the Chair, or believes that her/his contributions have systematically been ignored or discounted, should first discuss the circumstances with the Chair. If the matter cannot be resolved satisfactorily, the person should discuss the situation with the Chair of the ccNSO or a person designated by the Chair of the ccNSO.

If no consensus can be reached by the WG, the Chair of the WG will submit a Chair's Report to the ccNSO Council and Issue Manager. In this report the Chair shall document the issues that are considered contentious, the process that was followed to try to reach a consensus position and suggestions to mitigate those issues, if any. If, after implementation of the mitigating measures, consensus still cannot be reached, the Chair shall prepare a Final Chair's Report documenting the processes that was followed to reach consensus and this Final Chair's Report will be deemed to replace the Final Paper. In this case, the ccNSO Council, advised by the Issue Manager, may decide to close the WG, or take mitigating measures, for example changing the charter and reconstitute a WG based on the new charter.

3.3 Standards of Behaviour

The persons on the WG are expected to behave in a mature and professional way when conducting its business. This includes, but is not limited to communicating with the fellow membership professionally and ensuring that the WG remains inclusive and productive. To resolve incidents of non-professional communication the following steps should be followed:

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- Any concerns regarding the behaviour of one of the members, participants, observers or experts should first be raised with that person.
- If the issue is not satisfactorily resolved, a formal complaint may be raised with the Chair of the WG, who will attempt to mediate.
- If that is not possible, or if the complaint is sufficiently serious in nature, the Chair of the WG is empowered to restrict the participation of the person if in the chairs view the continued participation would not be appropriate and/or would seriously disrupt the working group from conducting its business.
- Generally, a person should first be warned privately, and then warned publicly before such the restriction is put into effect; only in extreme circumstances to be determined by the chair and vice-chair together, this restriction may be put in effect immediately.

If a WG Member disagrees with an imposed restriction, or the complainant disagrees with a restriction (or the lack of one), or there are other matters regarding the complaint that cannot be resolved satisfactorily, the participant, complainant, or the Chair of the WG may raise the issue with the Chair and Vice-Chairs of the ccNSO Council or their designate(s). They will review the matter and then decide. The ccNSO Council, WG Chair, WG person and complainant shall be informed accordingly.

4. Deliverables

4.1. Working Method & Work Plan

The WG is expected to develop its working methods and a work plan first. The working methods should provide guidance on how the WG intends to conduct its business (see section 3.1). The work plan should include at a minimum, where feasible, timelines and expected outputs of the WG, based on the deliverables outlined in this Charter. Purpose of the work plan is to inform the community and ccNSO on the expected progress and anticipated schedule of public consultations.

Once the work plan is completed, the Time Line as set forth in section 6 shall be updated and published. If in the course of conducting its business the WG or the chair of the WG is of the view that the Time Line is untenable, the chair will inform the ccNSO Council and Issue Manager. The chair will then also suggest an adjusted Time Line to be adopted by the WG. Once adopted, the chair will inform the ccNSO Council and Issue Manager and the adjusted Time Line will be published.

4.2 WG Interim Paper

The WG shall develop and publish for public consultation an Interim Paper, which shall, at a minimum, include proposals to address the topics and issues identified in the Issue Report, an impact analysis of the proposals and any documentation necessary to make the proposals effective. The Interim Paper shall also contain a review and analysis of comments made on the Issue Report, if any, with respect to the retirement of ccTLDs. The

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Interim Paper shall be published for public consultation on the ICANN website following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. The chair of the WG will send the Interim Paper to the Issue Manager of the ccPDP.

4.3 WG (draft) Final Paper

After conclusion of the public consultation on the Interim Paper, the WG shall prepare a (draft) Final Paper reflecting the Interim Paper, the comments received on the Interim Paper from the public consultation period.

If the WG is of the view that an additional public consultation is appropriate, it will prepare a draft Final Paper to be published for public consultation on the ICANN website and following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. After conclusion of the public consultation on the draft Final Paper, the WG shall prepare its Final Paper that reflects the draft Final Paper, the comments received and how they have been taken into consideration by the WG, if at all.

The Final Paper will include the proposed policy recommendations. This Final Paper shall be published within fourteen (14) days after adoption of the paper by the WG and conveyed to the chairs of the ccNSO and GAC and the Issue Manager of the ccPDP. The Issue Manager shall include the Final Paper in the Interim Report of the ccPDP.

5 Miscellaneous

5.1 Omission in or unreasonable impact of Charter

If this charter does not provide sufficient guidance and/or the impact of the charter is found to be unreasonable for conducting the business of the WG, the Chair has the authority to determine a proper course of action to mitigate the issue. Such action may, for example, consist of a modification to the Charter to address the omission or its unreasonable impact, in which case the Chair(s) may propose such modification to the ccNSO Council and Issue Manager. A modification shall only be effective after adoption of the amended by the ccNSO and after publication of the amended Charter. The chair of the WG shall exercise reasonable discretion with respect to question as to whether this charter does not provide guidance and/or the impact of the charter is unworkable with respect to the conduct of business of the WG.

5.2 Closure of the Working Group

If the WG determines that it has completed its work, or if the WG cannot achieve its goal(s) the Final Chair Report, it will submit a Final Paper to the ccNSO Council and Issue Manager. This report should include a recommendation on the time to close the WG.

A WG is closed by a resolution of the ccNSO Council.

6. WG Time Line

| Activity | Date* | Closure* | Minimum Duration |
|---------------------------------|-------|----------|------------------|
| Establishment of Working Group | | | |
| Publish Interim Report | | | NA |
| Public Comment on Interim Paper | | | 40 days |
| Publish Final Paper | | | NA |
| Closure of the WG | | | |

* Latest date possible to meet minimum duration for public consultation period.

** It is assumed in this schedule / time line the Final Paper is presented at an ICANN meeting.

7. References

- RFC 1591 (<https://www.ietf.org/rfc/rfc1591.txt>)
- The ccNSO Framework of Interpretation working group Final Report, (<http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>)
- ISO 3166 standard (http://www.iso.org/iso/country_codes)
- CWG-Stewardship Final Report, Annex O: ccTLD Appeals Mechanism Background and supporting Findings Sections 1414- 1428, (https://community.icann.org/download/attachments/53779816/FinalTransitionProposal_11June.pdf?version=1&modificationDate=1434047705000&api=v2).
- Issue paper to explore review mechanism January 2017 (to be included on webpage drafting team)