Proposed Separation of ccPDP3 Part 1 and Part 2

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0. Executive Summary

In February 2021 the ccNSO Working Group on Retirement of country code Top-Level Domains(ccTLDs) concluded its work by unanimously supporting the policy recommendations pertaining to the retirement of ccTLDs. This policy development effort is part of the third ccNSO Policy Development Process, which was initiated in 2017 to develop policy recommendations on the Retirement of ccTLDs (Part 1) and to develop policy recommendations for a Review Mechanism for decisions pertaining to the delegation, transfer, revocation and retirement of ccTLDs (Part 2).

In accordance with its 2017 Charter, the Chair of the Retirement WG conveyed the Final Paper of the Working Group to the Issue Manager of ccPDP3 to be included in the Initial Report of the ccPDP.

The ccPDP3 Retirement WG believes - after extensive consultation of the ccTLD community and the ccNSO Council - that parting the Proposed Retirement Policy from the Review Mechanism would be beneficial to the process for the following reasons:

- The originally anticipated dependency between the retirement process as will be proposed and recommended and the Review Mechanism - which is under development – has proven to be very limited and the area of interdependency is addressed in the proposed Retirement Policy.
- The anticipated time saving of at least 3 months to make the Review Mechanism available to the community and to simplify the process by Combining Part 1 and Part 2 has been overtaken by events.
- Deferring the decision-making on the Proposed Retirement Policy by the ccNSO Council and ccNSO Membership, will have an adverse effect on the decision-making process.

The ccNSO Council is therefore recommended to support and adopt the following Resolution:
To expedite the ccNSO decision-making on the proposed recommended policy for the Retirement of ccTLDs, Part 1 of the third (3rd) ccNSO Policy Development Process (ccPDP3) on the Retirement of ccTLDs shall be further treated separately and independently from Part 2 of ccPDP3 on developing a Review Mechanism and now follow the steps required under ICANN Bylaws Annex B, starting with section 9.c. Part 2 of ccPDP3, on review mechanism will continue according to the timeline and Annex B of the ICANN Bylaws.

This Council decision to separate Part 1 and Part 2 will not a decision on the policy and hence not subject to the vote of the ccNSO Membership as required under Annex B of the ICANN Bylaws, but will be subject to section 6 of the 2004 Rules of the ccNSO.

Once the decision to separate of Part 1 and Part 2 is adopted and becomes effective, the recommended Retirement Policy itself, will be formally submitted to the ccNSO Council and later to ccNSO Membership for their consideration.

1. Advise to separate ccPDP3 Part 1 (Retirement) and Part 2 (Review Mechanism)

1.1 Proposed Decision
The ccNSO Council is therefore recommended to support and adopt the following Draft Resolution:
Background
The ccNSO membership, broader ccTLD community and other relevant stakeholders were extensively consulted on a possible separation of Part 1 and Part 2 of ccPDP3 starting in October 2020 until April 2021. In addition, a public consultation was conducted from 3 March 2021 until 14 April 2021, where a central question was whether there was any objection to separating Part 1 and Part 2 of ccPDP3 and no objections opinions were submitted.
Decision
To expedite the ccNSO decision-making on the proposed recommended policy for the Retirement of ccTLDs, Part 1 of the third (3rd) ccNSO Policy Development Process (ccPDP3) on the Retirement of ccTLDs shall be further treated separately and independently from Part 2 of ccPDP3 on developing a Review Mechanism and now follow the steps required under ICANN Bylaws Annex B, starting with section 9.c. Part 2 of ccPDP3, on review mechanism will continue according to the timeline and Annex B of the ICANN Bylaws.

The secretariat is requested to publish this Resolution as soon as possible after adoption and will become effective seven (7) days after publication.

1.2 Rationale of the Proposed Decision
In February 2021 the ccNSO Working Group on Retirement of country code Top-Level Domains(ccTLDs) concluded its work by unanimously supporting the policy recommendations pertaining to the retirement of ccTLDs. This policy development effort is part of the third ccNSO Policy Development Process, which was initiated in 2017 to develop policy recommendations on the Retirement of ccTLDs (Part 1) and to develop policy recommendations for a Review Mechanism for decisions pertaining to the delegation, transfer, revocation and retirement of ccTLDs (Part 2). Relevant excerpts of the Issue report and related ccNSO Council Decision are included in Annex A: Section 3.5 Issue Report March 2017: One or two PDP? and Annex B: Excerpt ccNSO Council resolution (127-03) 15 March 2017.

In accordance with its 2017 Charter[1], the Chair of the Retirement WG conveyed the Final Paper[2] of the Working Group to the Issue Manager of the ccPDP to be included in the Initial Report of the ccPDP. As required under section 8.d of Annex B of the ICANN Bylaws, the Issue Manager is tasked to publish the Initial Report to seek comments from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. According to the ccPDP3 Issue Report[3], in which the scope of the third ccNSO Policy Development Process is defined, the Initial Report should be published when both Part 1 and Part 2 are completed.

However, the Chair of the WG also noted that the WG believes -after extensive consultation of the ccTLD community and the ccNSO Council, that parting the Proposed Retirement Policy from the Review Mechanism would be beneficial to the process.

Both the Retirement and Review Working Groups think that the dependency between the retirement process as developed and recommended and the Review Mechanism - which is under development - are limited. The only dependency that has been identified are those decisions in the

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[1] https://ccnso.icann.org/workinggroups/charter-wg-retirement-cctlds-10apr17-en.pdf
[2] https://ccnso.icann.org/en/workinggroups/pdp3-retirement-final-report-09feb21-en.pdf
[3] https://ccnso.icann.org/workinggroups/issue-report-pdp-rrm-10apr17-en.pdf

retirement process that should be subject to the Review Mechanism once this becomes effective. These decisions have been identified by the Retirement Working Group.

In addition, it is anticipated that the development of the Review Mechanism will take at least another nine (9) months (until December 2021, including at least one (1) public consultation period), which is well beyond the expected duration of the process when it was initiated. Combining Part 1 and Part 2 to save at least 3 months to make the review Mechanism available to the community and to simplify the process, has therefore been overtaken by events.

Finally, the Retirement WG and Issue Manager believe that deferring the decision-making on the Proposed Retirement Policy by the ccNSO Council and ccNSO Membership, will have an adverse effect on the decision-making process. By waiting for completion of the proposals of the review mechanism increases the risk that both ccNSO Council and Membership lose track of the Retirement Policy Proposals. In addition, due to the time-lag between the development of the proposal and the decision-making on the Proposed Retirement Policy the risk increases of losing the required engagement in the decision-making process[4].

Public consultation on the Initial Report opened on 3 March 2021 and closed 14 April 2021. One of the two questions raised by the Issue Manager was whether there any concerns separating the two policy development efforts Retirement of ccTLDs (Part 1) and Review Mechanism (Part 2)? In the responses received, no concerns were raised[5].

1.3 Impact of Decision
The Council decision to separate Part 1 and Part 2 is not a decision on the policy and hence not subject to the vote of the ccNSO Membership as required under Annex B of the ICANN Bylaws. In terms of the Charter of the Retirement WG[6], the proposed separation of Part 1 and Part 2 of ccPDP3 is a topic that was considered out of scope by the Retirement WG, which consideration was supported by the second ccPDP3 Review Mechanism WG), and the Chair of the WG has – as required - informed 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.

If the ccNSO Council were to decide to adopt the proposed resolution to separate Part 1 and Part 2, this decision would deal with the issue appropriately. Note that the decision itself would be subject to section 6 of the 2004 Rules of the ccNSO[7].

Consequently, if the recommendation to separate of Part 1 and Part 2 is adopted and becomes effective, the recommended Retirement Policy itself, will be formally submitted to the ccNSO Council and ccNSO Membership for their consideration.

2. Background of ccPDP3
In December 2015, the ccNSO Council discussed the launch of a formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and to introduce a Review Mechanism on issues pertaining to the delegation, transfer, revocation and retirement of

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[4] According to Annex B section 13, at least 50% of the ccNSO membership (which 87 out of 172 ccNSO members in February 2021) need to cast a vote to meet the required quorum.

[5] See Summary report: https://www.icann.org/en/system/files/files/report-comments-ccpdp3-1-retirement-cctlds-22apr21-en.pdf

[6] Charter of the Retirement WG, section 1.2 final paragraph.

[7] Rules of the ccNSO: https://ccnso.icann.org/sites/default/files/filefield_25723/ccnso-rules-dec04-en.pdf

ccTLDs. This discussion was grounded in the need to ensure the predictability and legitimacy of decisions with respect to the delegation, transfer, revocation and retirement of ccTLDs.

At its meeting on 16 June 2016 the ccNSO Council resolved to:
  a. Request an Issue Report in accordance with Annex B section 1 of the ICANN Bylaws. The Issue Report should address the following topics:
      i. Recommend whether the ccNSO should initiate the ccNSO Policy Development Process on the retirement of ccTLDs and Review Mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.
      ii. Advise whether to initiate one or two ccNSO Policy Development Processes and the order in which the topics should be addressed.
      iii. Advise whether to convene a Taskforce or use another method.
  b. Appoint an Issue Manager.

In November 2016, the ccNSO Council further resolved to appoint a drafting team to develop charters and delineate the scope of issues pertaining to the Review Mechanism and Retirement of ccTLDs.

Following the discussions of the Council, feed-back and input from the community and the drafting team, the Issue Manager recommended the ccNSO Council to:
  1. Initiate a ccNSO Policy Development Process to develop policies for a Review Mechanism first to be followed by developing policy recommendations on the Retirement of ccTLDs.
  2. Initiate one (1) ccNSO Policy Development Process.
  3. Appoint two working groups each with its own charter, working method and schedule.

In March 2017, and in accordance with Annex B section 3 and 4 of the ICANN Bylaws, the ccNSO Council decided - among others – to initiate ccNSO Policy Development Process 3 with the initial focus on developing a policy for Retirement of ccTLDs (Part 1), and only after the substantive work on that topic would have been concluded, focus on the development of policy recommendations for a Review Mechanism pertaining to decisions on delegation, transfer, revocation and retirement of ccTLDs (Part 2).

3. Separation of Retirement Part 1 and Part 2 of ccPDP3
As stated, the community is requested to provide feed-back and input on the question if there are any concerns about separating the two policy development efforts Part 1 (on the Retirement of ccTLDs) and Part 2 (Review Mechanism) under ccNSO Policy Development Process 3 to expedite Part 1?

In June 2016, when the ccNSO Council decided to request an Issue Report, two of the questions that needed to be addressed were: 1. Whether the ccNSO should initiate one or two ccNSO Policy Development Processes to develop a policy on the retirement off ccTLDs and pertaining to a Review Mechanism, and 2. The order in which the topics should be addressed.

After extensive consultation with the community the Issue Manager advised in the Issue Report that the ccNSO Council should undertake one (1) ccNSO Policy Development Process and first focus on developing policy recommendations relating for a Review Mechanism for decisions pertaining to the delegation, transfer, revocation and retirement of ccTLDs to be followed by the development of policy recommendations on the Retirement of ccTLDs. For ease of reference the relevant section of the Issue Report is included as Attachment B, Section 3.5 Issue Report March 2017: One or two PDP?

In developing his advice, the Issue Manager compared the following alternatives and associated timelines:
1. The two PDPs (Review Mechanism and Retirement) run sequentially
2. One PDP with two sequential WGs (Review Mechanism, Retirement)
3. One PDP with two parallel WGs (effectively the same as one PDP with one WG)

Analysis suggested that the major differences between the alternatives would be:
- The Review Mechanism could be available to the community more quickly with separate PDPs (although decisions might need to be revisited in the light of work on Retirement).
- Topics to be addressed and hence required skill set and expertise to resolve the issues might be more effectively and efficiently used.
- Better availability of community members and a more manageable workload for the community.

The discussion on the applicability of Review Mechanism has focused on decisions on delegation, revocation and transfer of ccTLDs. However, the Review Mechanism should also be available for decisions pertaining to the retirement of ccTLDs. If the two policy development processes would run separately this would imply that:
- Alternative 1: the policy on Retirement should be concluded first, before the policy for the Review Mechanism is concluded or
- Alternative 2: The policy on the Review Mechanism should be revisited after its conclusion.

Combining the two topics under one PDP would have an impact on the initial scoping efforts and manageability of the process, however it would avoid the major complication to revisit and review a policy that is recommended almost immediately after adoption (and potentially before its implementation has been completed).

Following the initial discussions of Council, and the input and feed-back received during various consultations, the Issue Manager recommended to initiate one (1) ccNSO Policy Development Process. In addition, the Issue Manager recommended that the initial focus should be on developing a Review Mechanism, which the ccTLD managers consulted considered to be of the highest priority in particular in light of the IANA Stewardship transition. Only after the work on the Review Mechanism would be completed, the focus should be on Retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the Retirement of ccTLDs.

However, at the final consultation meeting in Copenhagen (ICANN58, March 2017) community members strongly advised to change the suggested order in which the topics would be addressed. Additional analysis showed that this newly proposed order (Retirement first and then Review Mechanism) would save at least 3 months and simplify the process. Effectively, this would mean that by developing the policy recommendations for Retirement first, the potential Review Mechanism would be available sooner to the community.

At its meeting on 15 March 2017 (ICANN58), the ccNSO Council decided to initiate one (1) ccPDP. The initial focus should be on developing a policy for Retirement of ccTLDs. Only after that substantive work would be concluded, the focus should be on developing recommendations pertaining to the Review Mechanism. For ease of reference, the relevant section of the relevant ccNSO Council decision is included as Attachment B, Excerpt ccNSO Council resolution (127-03) 15 March 2017.

In March 2021, four (4) years after the ccNSO Policy Development Process 3 was initiated, the envisioned advantages of combining the two topics into one (1) ccNSO Policy Development Process have become obsolete.

In the view of both the Retirement and Review Working Groups, the dependency between the retirement process as developed and a Review Mechanism is limited. The only dependency - decisions in the retirement process that should be subject to the Review Mechanism once this becomes effective - has been identified and addressed.

In addition, given the expected duration of the process to develop the Review Mechanism (at least until November 2021) the anticipated decrease in the duration of the overall process, has been overtaken and will not be achieved anymore. The efforts and decision-making procedures to develop the Review Mechanism are not dependent anymore on the efforts and decision-making relating to the policy recommendations for the Retirement of ccTLDs, which was originally thought to be the case.

Effectively, deferring the ccNSO Council and membership decision-making on the proposed retirement policy, may have an adverse effect. Waiting on completion of the proposals of the review mechanism may risk that both ccNSO Council and membership lose track of the proposals. In addition, some members may lose interest in the effort, with the risk of losing the required engagement in the decision-making process[8].

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[8] According to Annex B section 13, at least 50% of the ccNSO membership (which 87 out of 172 ccNSO members in February 2021) need to cast a vote to meet the required quorum.

Annex A: Section 3.5 Issue Report March 2017: One or two PDP?

At its meeting on 10 December 2015 the ccNSO Council discussed the launch of the formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and Review Mechanism on issues of delegation, transfer, revocation and retirement of ccTLDs. One of the questions the ccNSO Council raised was whether to combine the development of the two policies under one formal Policy Development Process or initiate two separate but interrelated processes.

In line with the recommendations of the Delegation and Redelegation working group in 2011[9], it was advised that a policy development process on retirement of ccTLDs should be launched once the Framework of Interpretation was concluded to fill the void of lack of policy and hence to increase the predictability and legitimacy of decisions pertaining to the retirement of ccTLDs.

At the request of Council, the Issue Manager prepared an overview of the different alternatives and associated timelines, taking into account the feed-back and input received at the Marrakesh, Helsinki and Hyderabad meetings.

These alternatives were presented to Council at its meeting on 12 May 2016:
1. The two PDPs (Review Mechanism and Retirement) run sequentially
2. One PDP with two sequential WG (Review Mechanism, Retirement)
3. One PDP with two Parallel WG (effectively the same as one PDP with one WG)

Analysis suggested that the major differences between the alternatives are:
- The Review Mechanism could be available to the community more quickly with separate PDPs (although decisions might need to be revisited in the light of work on retirement).
- Topics to be addressed and hence required skill set and expertise to resolve the issues might be more effectively used.
- Better availability of community members and a more manageable workload for the community.

The discussion on the applicability of Review Mechanism has focused on decisions on delegation, revocation and transfer of ccTLDs. However, the Review Mechanism should also be available for decisions pertaining to the retirement of ccTLDs. If the two policy development processes run separately this implies that:
- Alternative 1: the policy on Retirement should be concluded first, before the policy for the Review Mechanism is concluded or
- Alternative 2: The policy on the Review Mechanism should be revisited after its conclusion.

If the two topics are combined under one PDP it will have an impact on the initial scoping efforts and manageability of the process, however it avoids the major complication to revisit and review a recommended policy almost immediately after it is adopted (and potentially before its implementation has been completed).

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[9] See DRD WG Final Report, page 19, http://ccnso.icann.org/workinggroups/drd-wg-final-report-07mar11-en.pdf and Council Decision 16 March 2011, http://ccnso.icann.org/workinggroups/minutes-council-16mar11-en.pdf

With the successful conclusion of the IANA Stewardship Transition the community present at the Helsinki meeting expressed a strong view that a Review Mechanism should be in place rather sooner than later. It was felt that ensuring a redress mechanism for ccTLDs for the most critical decisions pertaining to a ccTLD: delegation, revocation, transfer and retirement is a high priority. Until such time as a policy has been developed, such a mechanism is unavailable, whilst other decisions or similar decisions affecting gTLDs are subject to review and redress.

Different sets of expertise and skill sets will most likely be required to address the two issues. For the Retirement ccPDP a thorough understanding of RFC 1591, ISO 3166 rules, and the DRDWG final report is required, as well as operational understanding of the DNS. For the ccPDP on a Review Mechanism, a thorough understanding of RFC 1591 and the FOI, and legal expertise will be required, as well as a thorough understanding of the currently existing appeal mechanisms and proposed CCWG Accountability mechanism (including the IRP and other mechanisms proposed by the CCWG Accountability).

Following the initial discussions of Council, and the input and feed-back received, it is recommended to initiate one (1) ccNSO Policy Development Process. In addition, it was recommended that the initial focus needed to be on developing a Review Mechanism, which was considered the highest priority, in particular in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.

Annex B: Excerpt ccNSO Council resolution (127-03) 15 March 2017[10]
At its meeting on 10 December 2015 the ccNSO Council discussed the launch of the formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and Review Mechanism on issues of delegation, revocation and retirement of ccTLDs.

To increase the predictability and legitimacy of decision pertaining to the retirement of ccTLDs and in accordance with the recommendations of the ccNSO Delegation and Redelegation Working Group (DRDWG) in 2011[11], the void or lack of policy relating to the retirement of ccTLDs needs to filled by a policy developed by the ccNSO. However, at the time the DRDWG also recommended that such a ccNSO PDP should be launched following the development of a Framework of Interpretation of RFC 1591.

Assuming the IANA Stewardship Transition will be successful, a Review Mechanism should be in place sooner than later to ensure a redress mechanism for ccTLDs with respect to the most critical decisions pertaining to ccTLDs: delegation, revocation, transfer and retirement of a ccTLD. Until such time a policy this has been developed and is implemented, such a

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[10] https://ccnso.icann.org/sites/default/files/file/field-file-attach/2017-04/minutes-ccnso-council-meeting-15mar17-en.pdf
[11] See DRD WG Final Report, page 19, http://ccnso.icann.org/workinggroups/drd-wg-final-report-07mar11-en.pdf and Council Decision 16 March 2011, http://ccnso.icann.org/workinggroups/minutes-council-16mar11-en.pdf

mechanism remains unavailable, whilst comparable decisions or similar decisions affecting gTLDs are subject to review and redress.

Following the initial discussions of Council, input and feed-back was sought from the community at the Marrakesh and Helsinki meetings. The community present was of the view that the initial focus needs to be on developing a Review Mechanism, which is considered the highest priority, particularly in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.

At its meeting in Helsinki (ICANN 56, June 2016) the ccNSO Council requested an Issue Report, which should address the following topics:
   i.   Recommend whether the ccNSO should initiate the ccNSO Policy Development Process on the retirement of ccTLDs and review mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.
   ii.   Advice whether or not to initiate a ccPDP to develop a policy on Review Mechanism first and defer the decision on the Retirement to a later stage, and if so, when the decision should be taken.
   iii.   Advise whether to convene a Taskforce or use other method
   iv.   If recommended to initiate to a ccNSO Policy Development Process a proposed timeline for conducting each of the stages of PDP outlined herein (PDP Timeline)

Following the discussion with the community present at the Hyderabad meeting (ICANN57, November 2016) on the topics to be dealt with through a ccPDP, and at the request of the Issue Manager, the ccNSO Council called for one or two drafting teams which would develop charters of the working groups to:
   • Develop the review mechanism of decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs and
   • Develop recommendations for a policy on the retirement of ccTLDs.
The draft charters should be included in the Issue Report.

On 9 March 2017, the Issue Manager submitted the Final Issue Report to Council. Following the previous discussions within the Council, feed-back and input from the community and the drafting team, the Issue Manager recommended:
   1. The ccNSO Council initiates a ccNSO Policy Development Process to develop policies for a Review Mechanism and on the retirement of ccTLDs.
   2. To initiate one (1) ccNSO Policy Development Process. It is further recommended that the initial focus needs to be on developing a Review Mechanism, which is considered the highest priority, particularly in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.
   3. To appoint two working groups each with its own charter, working method and schedule.

However, at the meeting in Copenhagen(ICANN58, March 2017) community members suggested to change the order in which the topics need to be addressed. Analyses shows that such an alternative order would safe at least 3 months and simplify the process. Effectively this means that by reversing the order, so first retirement and then review mechanism, the potential review mechanism would be available sooner to the community.

Finally, as already noted in 2011, the retirement of ccTLDs were undertaken with no policy in place. As the ccNSO will embark on the development of a policy for the retirement of ccTLDs, and pending the outcome of this process, new decisions in this area could impact the development of such a policy and are taken with the knowledge that a policy is being developed.

Decisions

1. In accordance with Annex B section 3 and 4 of the ICANN Bylaws, the ccNSO Council decides that:

    A. […]
    B. The initial focus needs to be on developing a policy for Retirement of ccTLDs, and only after the substantive work has been concluded the focus should be on developing recommendations pertaining to the Review Mechanism pertaining to decisions on delegation, transfer, revocation and retirement of ccTLDs.
    C. [….]