1 **Work items: Next Steps**
2 **Overview of existing procedures**
3 • IANA Escalation procedure (discussed)
4 • Customer Standing Committee (CSC)/ Public Technical Identifier (PTI) Remedial Action Procedure (discussed)
5 • Reconsideration of Board or staff action (Article 4.2 Bylaws)
6 • Community Engagement Procedure (CEP)
7 • Independent Review Process for Covered Actions (IRP, Article 4.3 ICANN Bylaws)
8 • Ombudsman procedures (Article 5 ICANN Bylaws)
9 Following community discussions during the IANA Stewardship Transition process ccTLD delegation and redelegation are excluded from Reconsideration
10 Board or staff action, CEP and IRP.
11
12
13 **Issues/Items identified in Issue Report and order in which they need to be addressed.**
14
15 **Issue Report**
16 **2.2.2 High Level overview of Issues pertaining to review mechanism**
17 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
18 those with respect to the CWG-Stewardship and CCWG-Accountability proposals and related work, the following issues have been identified:
19
20 *Scope of the review mechanism*
21 1. *Which decisions and/or actions should be subject to a review mechanism?*
22 Comment: Partly addressed in ccPDP WG RET Interim Paper and FoI. Needs to be detailed for delegation, transfers and further detailed for revocation.
23 Use method the ccPDP3 WG Retirement used?
24
25 2. *Whose decisions and/or actions should be subject to a review mechanism?*
26 Comment: Determined for Retirement. Needs to be detailed for delegation, transfers and revocation. Use method the ccPDP3 WG Retirement used?
27
28 3. *What will be result / scope of the review decision? What powers will be bestowed upon review panel?*
29
30 *Standing at review mechanism*
31 1. *Who will have standing at a review mechanism?*

32   *2. Should a Review Mechanism be open and applicable to all ccTLDs?*

33   Partly answered through discussion of scope of Retirement process (effectively of scope of ccNSO PDP). Policy directed at ICANN.

34

35   ***What are the grounds?***

36   *1. Should the questions for a review be limited to questions about whether due process was followed in terms of a ccTLD delegation, transfer, revocation or*

37   *retirement or should they be broader?*

38

39   ***Rules and structure of review mechanism***

40   *1. What are the rules and procedures to be used?*

41   *2. Structure of panel and requirements and selection of panellist*

42

43

44

45

46 **Background: Topic document work items Review mechanism[1]**
47 **Issues to explore and define with respect to the review mechanism**
48
49 **Introduction**
50 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:
51
52 *RFC 1591*
53 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*
54 *in which the* parties [BB: the Significantly Interested Parties[2]] *can not reach agreement among themselves. The IDNB's decisions will be binding.*
55
56 This IDNB was never established by IANA, or any other entity.
57
58 *Framework of Interpretation*
59 With respect to the IDNB the FOIWG noted: *The FOI WG believes it is consistent with RFC 1591 (section 3.4) and the duty to act fairly to recognize the*
60 *manager has the right to appeal a notice of revocation by the IANA Operator to an independent body.*
61
62 *CWG-Stewardship and CCWG-Accountability*
63 Following public comments on its first proposal, the CWG-Stewardship proposed that: *An appeal mechanism, for example in the form of an Independent*
64 *Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO*
65 *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*
66 *re-delegation, which mechanism is to be developed by the ccTLD community post-transition.*
67
68 In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review Process, the results of delegation/redelegations are explicitly
69 excluded[3]. *In its letter dated 15 April 2015, the CWG-Stewardship indicated that "any appeals mechanism developed by the CCWG -Accountability should*
70 *not cover country code top-level domain*

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[1]https://community.icann.org/download/attachments/64068742/Issue%20to%20explore%20review%20mechanism%20January%202017.pdf?version=1&modificationDate=1491820322000&api=v2

[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

71 *delegation/redelegation issues as these are expected to be developed by the country code top - level domain community through the appropriate*
72 *processes."*
73
74 *As requested by the CWG - Stewardship, decisions regarding country code top- level domain delegations or re delegations would be excluded from standing,*
75 *until the country code top - level domain community, in coordination with other parties, has developed relevant appeals mechanisms.[4]*
76
77 **ICANN Bylaws 1 October 2016**
78 According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration: [5]

79 *Section 4.2. RECONSIDERATION*

80 *(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*
81 *("Requestor") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "Staff" includes employees and individual*
82 *long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.*

83 *….*

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

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

86 Following the discussions and comments on the Framework of Interpretation and – later – on the initial proposals of the CWG-Stewardship, and input and
87 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
88 respect to the introduction of a review mechanism. Based on the consultations to date this is considered to be of highest priority, in particular in light of the
89 IANA Stewardship transition.

90

91 **Issues to be explored and defined as part of the PDP pertaining to Review Mechanism**

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[4] https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf Annex 07 page 7, 8.
[5] https://www.icann.org/resources/pages/governance/bylaws-en/#article4

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

94
95 **Scope of the review mechanism**
96   1. *Which decisions and/or actions should be subject to a review mechanism?*
97   2. *Who's decisions and/or actions should be subject to a review mechanism?*
98
99 With regard to question 1 and 2 please note the following:
100 According to RFC 1591 section 3.4: [The IDBS] *will act as a review panel for cases in which the parties [i.e the Significantly Interested Parties] cannot reach*
101 *agreement among themselves. The IDNB's decisions will be binding.* This assumes that disputes among Significantly Interested parties (as defined in the
102 Framework of Interpretation) are subject to a binding review mechanism.
103
104 According to the FOI[6], recognising that ultimate authority on public policy for any country is its government and legislature, nothing in the FOI is intended
105 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
106 of business of the IANA operator.
107
108 Further, 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*
109 *of revocation by the IANA Operator to an independent body.*
110
111   3. *Should review Mechanism applicable to all ccTLDs?*
112
113 Some members in the cTLD community have raised the point that a ccNSO developed policy is only applicable to members of the ccNSO and hence a review
114 mechanism developed through a PDP is only applicable for members of the ccNSO and only for the duration of the membership. At the same time the
115 ccNSO is the only entity through which policies for the IANA naming functions are developed.
116 Further, although considered ccTLDs by definition IDN ccTLDs managers can not become member yet of the ccNSO awaiting the implementation of the IDN
117 ccTLD policy recommendations.
118
119   4. *What will be result / scope of the review decision? What powers will be bestowed upon review panel?*
120

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[6] https://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf, page 3.

121 Assuming the introduction of a review mechanism the scope of the decision of the review will need to be defined. Some members of the community raised
122 the question whether through such a review mechanism a final binding decision is taken (replacing the decision subject to the review) or should it be
123 limited to a due process check (and if that is not the case refer it back to the entity that took the decision in the first instance)
124
125
126 **Standing at review mechanism**
127   1. *Who will have standing at a review mechanism?*
128
129 Some members in the community argue that only the [incumbent] ccTLD manager should have standing. Others have argued, at least raised, the point that
130 potentially other parties should have standing, in particular parties with a significant interest.
131
132 As noted above, according RFC 1591 *the Internet DNS Names Review Board (IDNB), a committee established by the IANA, will act as a review panel for cases*
133 *in which the **parties** [emphasis added] can not reach agreement among themselves. The IDNB's decisions will be binding.* This seem to imply that others
134 then the ccTLD manager may have standing.
135
136   2.   *What are the grounds?*
137 Should the questions for a review be limited to questions whether due process was followed in terms of a ccTLD delegation, transfer, revocation or
138 retirement or should they be broader?
139
140
141 **Rules and structure of review mechanism**
142   1. *the rules and procedures to be used?*
143 Should existing mechanisms be used (like the reconsideration process or independent review process for covered actions) or other existing rules?
144
145   2. *Structure of panel and requirements and selection of panelist*
146 As part of the review mechanism proposals need to be developed around the structure of the panel (for example how many panelists, standing panel or to
147 be selected from a pool of panelists) and requirements and selection of panelists.
148
149   1. *Structure of panel and requirements and selection of panelist*
150 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
151 of Interpretation. According to the FOIWG, *"recognizing that ultimate authority on public policy for any country is its government and legislature, nothing in*
152 *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*
153 *incorporation/place of business of the IANA operator."*