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3 Step approach identifying decisions subject to review

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3 **For discussion: Overview of decisions**

4 The following steps are proposed to develop an overview of decisions which should be subject to a
5 review mechanism:

6 **Step 1.** As part of the development of the retirement process the RET-WG first compiled a list of
7 decisions taken by the IANA Function Operator (IFO) and ICANN Board of Directors.

8 At the upcoming meeting (3 June 2020) PTI staff will present an overview of the delegation and
9 transfer process, to identify decision points. The presentation will be based on and reflect:

10 <https://www.iana.org/help/cctld-delegation> .

11
12 **Step 2.** Determine if decisions are within scope of policy on review mechanism: which decisions are
13 within scope and which are out of scope of the proposed review mechanism?

14 ***i. Due to limitations of the ccNSO Policy Development Process?***

15 Note with respect to point i. The scope of the ccNSO Policy Development Process is limited to those
16 topics foreseen in Annex C of the ICANN Bylaws. Most recently the Retirement WG discussed the
17 limitations of the scope of the ccNSO Policy Development Process (Interim Paper section 3):

18 *“As the activities of the WG are undertaken within the framework of the ccNSO Policy Development*
19 *Process, the limitations with respect to the scope of a ccPDP, specifically by Article 10 and Annexes B*
20 *and C to the ICANN Bylaws limit the scope of the WG’s work and proposals.”*

21 Further (Interim Paper section 5.1) : *“This policy (Editor: The proposed retirement policy} is directed*
22 *at ICANN and the IFO as the entity that performs the IANA Naming Functions with respect to ccTLDs.*

23 *This policy is not intended and shall not be interpreted to amend the way in which ICANN interacts with*
24 *the IFO and the delineation of their roles and responsibilities.*

25 *This policy will not change or amend the role of the ICANN Board of Directors with respect to*
26 *individual cases of ccTLD delegation, transfer and revocation, which is understood to be limited to a*
27 *review to ensure that the IFO (staff) has followed its procedures properly.”*

28 ***ii. Considered out of scope due to other criteria?***

29 **Step 3.** The WG is advised to discuss the following questions:

30 1. Who takes the identified decision?
31

32 2. Who provides oversight, if any and how is provided?

33 Working definitions of oversight:

34 i. In business, oversight of a system or process is the responsibility for making sure
35 that it works efficiently and correctly.

36 ii. In LAW, GOVERNMENT, MANAGEMENT systems or actions to control an activity and
37 make sure that it is done correctly and legally.

38

39 3. Related, which decisions should be subject to a review mechanism?

40 This is about identifying the decisions in the delegation, transfer and retirement process that
41 should be subject to the review mechanism. The Retirement WG considered some decisions
42 out of scope of review as they were considered operational, for example the decision of the
43 IFO to send a Notice of Removal (Interim Paper, section 4.2)

44 **Background**

45 For reference, some working descriptions of review from the Issue report March 2017 are included:

46 **Section 2.2.1 Contextual information Review Mechanism**

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

49 **RFC 1591** According to RFC 1591, section 3.4, *the Internet DNS Names Review Board (IDNB), a*
50 *committee established by the IANA, will act as a review panel for cases in which the parties [Issue*
51 *Manager: the Significantly Interested Parties¹] can not reach agreement among themselves. The*
52 *IDNB's decisions will be binding.*

53 IANA has never established the IDNB (or any other entity) to review disputed cases.

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

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

64 In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review
65 Process, the results of delegation/re-delegations are explicitly excluded².

66

67 **ICANN Bylaws 1 October 2016.** According to latest version of the ICANN Bylaws (Section 4.2)
68 Reconsideration:³

¹ Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

² The CCWG- Accountability also proposes that the IRP:

Be subject to certain exclusions relating to the results of an SOs 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>

³ <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

69 Section 4.2. RECONSIDERATION

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

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

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

78 **Assigning Decisions/oversight and/or review.**

79 The discussions should result in a table like the table below

80

Item #	Decision	Who takes decision?	Oversight by?	Subject to Review ?
1				
2				

81

82

83 **Example Retirement WG**

84 https://docs.google.com/document/d/1PufsgDnCMbQ9dP47t45aOa_T848dfW4PFNgLuMYGw0E/edit

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