Decisions Subject to Review

3 Step Approach to Identification

ccNSO PDP3 Review Mechanism Working Group

2020-05-19

1 # 1 For Discussion: Overview of Decisions

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

1.1 Step 1

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

At the upcoming meeting (3 June 2020) PTI staff will present an overview of the delegation and transfer process, to identify decision points. The presentation will be based on and reflect: https://www.iana.org/help/cctld-delegation.

1.2 Step 2

Determine if decisions are within scope of policy on review mechanism: which decisions are within scope and which are out of scope of the proposed review mechanism?

1.2.1 Due to limitations of the ccNSO Policy Development Process?

Note with respect to point 1.2.1: The scope of the ccNSO Policy Development Process is limited to those topics foreseen in Annex C of the ICANN Bylaws. Most recently the Retirement WG discussed the limitations of the scope of the ccNSO Policy Development Process (Interim Paper section 3):

20   "As the activities of the WG are undertaken within the framework of the ccNSO
21   Policy Development Process, the limitations with respect to the scope of a
22   ccPDP, specifically by Article 10 and Annexes B and C to the ICANN Bylaws
23   limit the scope of the WG's work and proposals."

24 Further (Interim Paper section 5.1) :

25   "This policy *[Editor: The proposed retirement policy]* is directed at ICANN and
26   the IFO as the entity that performs the IANA Naming Functions with respect
27   to ccTLDs.

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

31   This policy will not change or amend the role of the ICANN Board of Directors
32   has with respect to individual cases of ccTLD delegation, transfer and revoca-
33   tion, whic*h is understood to be limited to a review to ensure that the IFO (staff)
34   has followed its procedures properly."*

35 1.2.2 Considered out of scope due to other criteria?

36 1.3 Step 3

37 The WG is advised to discuss the following questions:

38   1. Who takes the identified decision?

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

40   Working definitions of oversight:

41   2.1. In business, oversight of a system or process is the responsibility for making
42   sure that it works efficiently and correctly.

43   2.2. In LAW, GOVERNMENT, MANAGEMENT **systems** or **actions** to **control** an **activity**
44   and make **sure** that it is done **correctly** and **legally**.

45   3. 3. Related, which decisions should be subject to a review mechanism?

46   This is about identifying the decisions in the delegation, transfer and retirement
47   process that should be subject to the review mechanism. The Retirement WG
48   considered some decisions out of scope of review as they were considered oper-
49   ational, for example the decision of the IFO to send a Notice of Removal (Interim
50   Paper, section 4.2)

51 2 Background

52 For reference, some working descriptions of review from the Issue report March
53 2017 are included:

54 ***Section 2.2.1 Contextual information Review Mechanism***

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

57 ***RFC 1591*** *According to RFC 1591, section 3.4,*

58 *the Internet DNS Names Review Board (IDNB), a committee established by*
59 *the IANA, will act as a review panel for cases in which the parties* [Issue
60 Manager: the Significantly Interested Parties Section 3.4 RFC 1591 is
61 about the definition and role of Significantly Interested parties[1]] *can not*
62 *reach agreement among themselves. The IDNB's decisions will be binding.*

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

64 ***Framework of Interpretation****. With respect to the IDNB the FOIWG noted:*

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

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

68   ***CWG-Stewardship and CCWG-Accountability****. Following public comments on its*
69   *first proposal, the CWG-Stewardship proposed that:*

70   *An appeal mechanism, for example in the form of an Independent Review*
71   *Panel, for issues relating to the IANA functions.   For example, direct cus-*
72   *tomers with non-remediated issues or matters referred by ccNSO or GNSO af-*
73   *ter escalation by the CSC will have access to an Independent Review Panel. The*
74   *appeal mechanism will not cover issues relating to ccTLD delegation and re-*
75   *delegation, which mechanism is to be developed by the ccTLD community*
76   *post-transition.*

77   In addition, as part of the CCWG Accountability Proposal to enhance the Inde-
78   pendent Review Process, the results of delegation/re-delegations are explic-
79   itly excluded[2].

80   ***ICANN Bylaws 1 October 2016****. According to latest version of the ICANN Bylaws*

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[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

81 *(Section 4.2) Reconsideration[3]:*

82   *Section 4.2. RECONSIDERATION*

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

89   *(d) Notwithstanding any other provision in this Section 4.2, the scope of re-*
90   *consideration shall exclude the following:*

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

93 3 Assigning Decisions/Oversight and/or Review

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

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

Item #	Decision	Who Takes Decision?	Oversight By?	Subject to Review?
1				
2				

3.1 Example Retirement WG

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