CCPDP Review Mechanism

Policy Update

ICANN 75

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Agenda

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Background

(2017) Charter for the Working Group Review Mechanism of ccTLDs - 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 (ccTLDs).

Principles of the CCPDP-RM WG - 1

- Low-cost of Process - The total costs of the process and costs for individual parties should be as limited as possible compared to litigation in courts.

- Limited Duration of the process - The total duration of the review mechanism process should be limited to ensure the stability of the DNS and the availability of the ccTLD.

Principles of the CCPDP-RM WG - 2

- Accessibility of the process – Non-cost thresholds and barriers should be low and reasonable ensuring easy access to the procedure to the relevant stakeholders.

- Fundamental Fairness - Due process, with due notices, opportunity to be heard, being aware a matter is pending, making an informed choice whether to contest before the appropriate (independent) body.

Status of the working group

The CCPDP-RM working group has completed the development of a draft policy for a review mechanism which includes the results of a stress testing exercise.

Key elements of the draft policy

General Objective

Develop a review mechanism for IFO decisions that would meet most of the requirements of the CCPDP-RM WG for an independent review except for being binding on the IFO or ICANN.

Such a mechanism is a logical next step in the options available to ccTLD Managers seeking a review of IFO decisions which can affect the ownership of their ccTLD.

Specific Objective

Create an optional and independent review mechanism inspired by arbitration, which is non-binding on the IFO or ICANN and will not prevent the Manager from using any other dispute resolution mechanism to address the IFO decision affecting it.

Scope - 1

- The Independent Advice Review (IAR) is available to ccTLD Managers who are directly impacted by an IFO decision (Decision) for the following processes:

- Delegations of a new ccTLD

- Transfers

- Revocations

- Refusal to grant an extension to the retirement deadline.

- Notice of Retirement for 2-letter Latin ccTLD which does not correspond to an ISO 3166-1 Alpha-2 Code Element

Scope - 2

The Independent Advice Review (IAR) will only provide advice on whether or not:

- There were significant issues with the IFO properly following its procedures and applying these fairly in arriving at its Decision; or

- There were significant issues in how the IFO complied with RFC 1591, the CCNSO FOI for RFC1591 as adopted by the ICANN Board, and any other policies developed through a ccNSO policy development process and adopted by the ICANN Board in making its Decision.

Review Process Overview - 1

- A ccTLD Manager submits an application for an Independent Advice Review (IAR) of an IFO decision to the IAR Administrator.

- If the application is accepted the reviewers will review all the relevant IFO information and produce a report within 90 days which will clearly state if there were significant issues or not.

- If the IAR finds that there were no significant issues the IAR process is concluded.

Review Process Overview - 2

- If there were significant issues, there are three possible next steps:
  - The IFO accepts the results and changes its decision.
  - The IFO rejects the results.
  - The IFO accepts the results but opts to redo the process which led to the original decision.

- If the IFO accepts the results and changes its decision the IAR process is concluded.

Review Process Overview - 3

- If the IFO rejects the results, there are two options:
  - If the IFO decision requires Board approval: The Administrator will close the case and work with the IFO to ensure that the Advice is properly included in any IFO recommendation to the ICANN Board on this matter.
  - If the IFO decision does not require Board approval: The Administrator will close the case and advise the ICANN CEO and the ccNSO Council of the situation and request appropriate action.

Review Process Overview - 4

- If the IFO accepts the results but opts to redo the process which led to the original decision – once this process is completed:
  - The results will be presented to the ccTLD Manager who will:
    - Accept the new results – this will conclude the IAR process.
    - Request an IAR of the new decision by the IFO.

Review Process Overview - 5

- Request an IAR of the new decision by the IFO. If the Administrator accepts the request:

  – If the IAR finds that there were no significant issues the IAR process is concluded.

  – If the IAR finds that there were significant issues the IFO now only has two options:

    - The IFO accepts the results and changes its decision – This will conclude the IAR process.

    - The IFO rejects the results – with the same next steps as previously described for such a rejection.

Review Process Overview - 6

- The CCPDP-RM will have to decide if an Internal IFO Review and/or IFO Mediation is/are a pre-requisite to apply for an IAR. Regardless of if they are prerequisites or not, a party who is eligible to apply for an IAR should not be prevented from applying for an IAR because they have passed the 30-day deadline as a result of their choosing to use these other mechanisms first. Details of this requirement will be established in implementation.

The Administrator

- The Administrator must be a non-conflicted individual who is an SME with a minimum of 20 years of experience with respect to ccTLDs, the IFO and ICANN and who will be responsible for overseeing and managing the Independent Advice system.

- The office of the Administrator will be funded and managed by ICANN.

Reviewers

- All Reviewers will be certified, managed, and supported by the Administrator.

- Reviewers will be paid for by ICANN/IFO.

- Reviewers must be impartial and have at least 10 years of relevant practical experience.

IFO - 1

- Following its decision, the IFO must allow sufficient time, per the policy, for the Manager to use the various review mechanisms available, before implementing any decision.

- If a Decision is being Reviewed under the IAR, the IFO cannot make a recommendation to the ICANN Board on the matter being reviewed prior to the Administrator confirming it can do so.

IFO - 2

- If the IFO fails to comply with the requirements of the Review policy the Administrator will advise the ICANN CEO and the ccNSO Council of the situation and request that the ICANN CEO promptly correct the situation. In cases where the IFO fails to respond to a request by the Administrator within the time period specified in the policy the review process will be suspended until such time as the IFO properly responds to the request.

Applicant and Claimant - 1

- Must be a ccTLD Manager except in the case of the delegation of a new ccTLD where any applicant for that new ccTLD is eligible.

- The evaluation criteria for an IAR Application include:

  – Not be for an IFO decision for which the Manager has applied for an IFO Internal Review or for IFO Mediation.

  – Not be for an IFO decision which is the subject of an active IFO Internal Review or IFO Mediation.

  – Not be for an IFO Preliminary Decision which has been accepted for an IAR, is currently being Reviewed or has already been Reviewed.

Applicant and Claimant - 2

- Be a party listed in the IFO Decision that is a ccTLD manager listed in the IANA database or in cases related to the delegation of a new ccTLD any parties who applied to be the Manager for that ccTLD.

- For cases where there is a potential for more than one Claimant. Should there be more than one application for the same IFO Preliminary Decision the Administrator will accept the first application which meets all the eligibility criteria. Should there be a tie the Administrator will choose which application will be accepted. In all such cases where the Administrator has approved an Application for a Review, the Reviewer(s) will consider all elements of the IFO Decision for all potential Claimants.

Reviewing and updating the IAR

Should the ccNSO Council decide that there have been significant changes to ccNSO policies which are covered by this policy or to the ISO 3166 standard, the ccNSO will launch a formal review of the IAR policy to assess if it needs to be modified to align with any such changes. If the review of the IAR policy finds that it needs to be modified, the Council will launch a process to accomplish this.

Next Steps for the CCPDP-RM WG

Following presentations at ICANN 75 the CCPDP-RM WG will finalize its draft policy and prepare it for public consultation in the October/November timeframe of 2022.

Questions?

Next Steps for the CCPDP-RM WG

Wiki

https://community.icann.org/display/ccnsowkspc/Policy+Development+Process+%28ccPDP3%29+-+Review+Mechanism

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