

**Requests for Clarification/ Confirmation and  
related responses  
with respect to**

**Proposed Policy for a Review Mechanism  
Pertaining to IFO decisions which apply to ccTLDs  
(CCRM)**

**Final version 7  
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# 1 Context and Introduction

## 1.1 Context

The ccNSO Delegation and Redelegation Working Group (DRDWG) already noted in 2011<sup>1</sup> that the lack of a ccNSO-developed policy relating to an independent Review Mechanism needed to be filled to increase the predictability and legitimacy of decisions pertaining to the delegation, transfer, revocation and retirement of ccTLDs,

To date, decisions taken as part of the processes for the delegation, transfer, revocation and retirement of ccTLDs are not subject to an independent review or appeal mechanism. However, over time the requirements for such a process have been clearly stated in several critical documents:

**RFC 1591** - 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 in which the parties [Issue Manager: The Significantly Interested Parties<sup>2</sup>] cannot reach agreement among themselves. The IDNB's decisions will be binding. The IDNB was never established by IANA, or any other entity.

**Framework of Interpretation** - 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 manager has the right to appeal a notice of revocation by the IANA Operator to an independent body.

**CWG-Stewardship and CCWG-Accountability** - The CWG-Stewardship proposed that: An appeal mechanism be instituted, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. The notion of a review mechanism was further developed by the CCWG -Accountability as part of its workstream 1. It would be for direct customers of the IANA Naming Function with non-remediated issues or matters referred by the ccNSO or GNSO after escalation by the CSC. However, following public comments on the proposals, it was agreed that the appeal mechanism would not cover issues relating to ccTLD delegation and re-delegation, with the understanding that such a mechanism would be developed by the ccTLD community after the transition<sup>3</sup>.

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<sup>1</sup> 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>

<sup>2</sup> Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

<sup>3</sup> 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-23feb16en.pdf>

**ICANN Bylaws 1 October 2016 – Reconsideration** According to the latest version of the ICANN Bylaws (Section 4.2), Reconsideration<sup>4</sup>:

Section 4.2. RECONSIDERATION - (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 ("Requestor") the review or reconsideration of that action or inaction by the Board. For purposes of these Bylaws, "Staff" includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.

(d) Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following - (i) Disputes relating to country code top-level domain ("ccTLD") delegations and redelegations.

**ICANN Bylaws 1 October 2016 – Independent Review Process for Covered Actions (IRP)**

**Section 4.3** INDEPENDENT REVIEW PROCESS FOR COVERED ACTIONS

(a) In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii)) alleged by a Claimant (as defined in Section 4.3(b)(i)) to be within the scope of the Independent Review Process ("IRP"). The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

(b) The scope of the IRP is defined with reference to the following terms:

(....)

(ii) "**Covered Actions**" are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.

(iii) "**Disputes**" are defined as:

(....)

Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

c) Notwithstanding any other provision in this Section 4.3, the IRP's scope shall exclude all of the following:

(....)

(ii) Claims relating to ccTLD delegations and re-delegations;

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<sup>4</sup> <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

## 1.2 Introduction

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

In March 2017, and in accordance with Annex B section 3 and 4 of the ICANN Bylaws, the ccNSO Council decided to initiate the third (3<sup>rd</sup>) ccNSO Policy Development Process 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).

The ccPDP3 Retirement WG (CCPDP3WG-RET) began its work In June 2017 and completed its Initial Report in early 2020. The ccPDP3 Review Mechanism WG (CCPDP3WG-RM) began its work in March 2020.

As it became apparent that the originally envisioned advantages of combining the two efforts into one (1) ccNSO Policy Development Process had become obsolete<sup>5</sup>, the ccNSO Council decided on June 2021<sup>6</sup> to immediately split these two PDPs. Following this split, the ccNSO adopted the retirement policy in September 2021 and submitted it to the ICANN Board of Directors for its consideration. The Board adopted the proposed policy at the ICANN75<sup>7</sup> meeting in September 2022.

According to its charter, the CCPDP3WG-RM has the following goal:

*“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 the delegated Top-Level Domains associated with the country codes assigned to countries and territories listed in the ISO 3166-1 and within the framework of the ccNSO Policy Development Process.”*

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<sup>5</sup> The two efforts were originally combined to enhance simplicity from a ccNSO members perspective (only one members vote) less resources, reduced duration and ensure consistency across the processes.

<sup>6</sup> <https://ccnso.icann.org/en/about/council/decisions-resolutions/2021>

<sup>7</sup> <https://www.icann.org/resources/board-material/resolutions-2022-09-22-en#2.c>

The CCPDP3WG-RM charter also listed the following questions:

- Which decisions and/or actions should be subject to a review mechanism?
- Whose decisions and/or actions should be subject to a review mechanism?
- Should a Review Mechanism be open and applicable to all ccTLDs?
- What will be the result / scope of the review decision?
- What powers will be bestowed upon the review panel?
- Who will have standing at a review?
- What are the grounds (for a review)?

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

Further, the ccPDP3 Retirement WG was tasked to report to the ccNSO Council on topics or issues which they identified and considered out of scope for the WG.

Finally, In July 2022, the ccNSO Council requested the Working Group specifically recommend and/or advise on the need for clarification of the scope of ICANN Bylaws Sections 4.2 (d) (i) and 4.3 (c) (ii)<sup>8</sup>.

### 1.3 Reading Guide for the Final Report

The proposed policy includes the details of the recommended policy (sections 2 to 6 and 9 of the Final Report).

In addition, annexes A and B provide details and requirements for various aspects of the policy. The WG believes these details, although important, are suggestions to facilitate and guide implementation.

**Comment NUMBER 41 - Request for Confirmation - Based upon the language of Section 1.3, it is ICANN's understanding that the "details and requirements" noted in**

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<sup>8</sup> In July 2021 the ccNSO Council informed ICANN that for avoidance of doubt disputes and claims related to the retirement of ccTLDs should be handled in the same manner as those pertaining to the delegation, transfer, and revocation of ccTLDs and excluded from ICANN's Reconsideration and Independent Review Process:

*...the ccNSO Council believes that ICANN Bylaws Section 4.2 (d) (i) (Disputes relating to country code top-level domain ("ccTLD") delegations and re-delegations) and ICANN Bylaws Section 4.3 (c) (ii) (Claims relating to ccTLD delegations and re-delegations) should be interpreted as to include all disputes and claims concerning delegation, transfer, revocation and retirement of ccTLDs.*

*We also want to stress and re-confirm that the ccNSO believes all disputes and claims related to the delegation, transfer and revocation of ccTLDs should be excluded from ICANN's Reconsideration Process and the Independent Review Process for Covered Actions.*

Annexes A and B are meant to be advisory, rather than directive, in that they "are suggestions to facilitate and guide implementation." Please confirm this is a correct understanding.

## Response - Correct

This policy proposal also contains sections that - although not considered part of the proposed policy itself - provide context to the recommended policy and could assist in the future interpretation of the policy as well as an understanding of the considerations of the Working Group. These sections are:

- Stress tests and the results of stress testing (section 7)
- Verification that the charter questions were answered (Section 8)
- Process to date, describing the steps the WG went through in developing the proposed policy (section 10), and finally
- References (section 11)

Finally, as part of the development of this policy, the RM Working Group has created and used a wealth of background documentation such as identifying all IFO decisions pertaining to the delegation and transfer of ccTLDs. Although not part of the Policy as proposed, this material was very helpful in providing an understanding of the context and impact of the proposed review mechanism. The background material, including the presentations by the Working Group and to the Working Group, can be found on the webpage and wiki space of the Review Mechanism Working Group<sup>9</sup>.

## 2 Policy Objective

This policy does not amend or change current policies for the delegation, transfer, revocation and retirement of ccTLDs, but rather builds on these policies.

The objective of the policy is to offer ccTLD managers and applicants for new ccTLDs as direct customers of the IANA Naming Function an independent review mechanism for specifically identified IFO decisions. Such a mechanism would be a logical, independent step following the IFO Customer Service Complaint Resolution Process and the IFO Mediation process.

Comment NUMBER 1 - Request for Confirmation - Based on the language of the proposed CCRM policy, it is ICANN's understanding that complainant is not required to exhaust the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism. Could you please confirm this understanding and/or indicate whether the ccNSO intends for a complainant to first utilize the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism.

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<sup>9</sup> <https://ccnso.icann.org/en/workinggroups/pdp-review-mechanism.htm>

**Response - Correct, there is currently no requirement for the Complainant to exhaust the other options.**

To guide the development and implementation of the review mechanism the CCPDP3WG-RM defined the following objectives:

- Low cost (Registry/Manager fees will be established at implementation but these need to take into account the size/ability to pay off the Registry by having variable fees).

**Comment NUMBER 2 - Request for Confirmation - Based on the language of the CCRM policy, it is ICANN's understanding that establishing the review fee to be paid by complainant and overall being mindful of costs of the review process are part of ICANN's implementation process. Please confirm this is a correct understanding.**

**Response - Correct**

- Fast – Reviewers to return a decision in less than 90 days from the beginning of their consideration of the case.

**Comment NUMBER 3 - Request for Clarification - The proposed CCRM policy indicates that one of its objectives is a "fast" review process (less than 90 days to decision). Could the ccNSO please provide input regarding process parameters and/or limitations it is proposing in order to ensure a timely resolution?**

**Response: The process was designed to be simple, effective and low-cost:**

- There can only be one review per IFO decision. Please note Comment Number 18 when a redone Decision can be reviewed.
- There can only be two parties to the review - the IFO and the claimant which must be the ccTLD Manager concerned or an official representative of this Manager.
- There are no requirements for legal representation.
- The only documentation that will be considered, unless required otherwise by the Reviewer(s), will be the application for a review and the documentation supplied by the IFO.
- There are no requirements for translation.
- Reviewers will be picked from a preset list of qualified Reviewers.
- The Reviewers will only consider the documentation in the light of the applicable policies and procedures and if these were applied fairly.
- There are no hearings of witnesses or experts etc. beyond questions by the Reviewer(s) to the IFO and the claimant.
- There is no possibility of Amicus, joinder, consolidation or any

interim action.

- There is no possibility of appeals, including an “en banc” or similar reconsideration of a CCRM report.

**It is expected that the objectives of the policy, that the CCRM is simple, effective, and low-cost, will guide the implementation work.**

- Minimize the total time required to review any specific IFO decision.

Comment NUMBER 4 - Request for Clarification - The proposed CCRM policy indicates that one of its objectives is to "minimize" the total time to review an IFO decision. Could the ccNSO please provide input regarding what process parameters and/or limitations it is proposing in order to ensure a timely resolution?

**Response - See the response to comment number 3.**

- Ensure fundamental Fairness.

### 3 Applicability of the Policy

The Review Mechanism for IFO decisions which apply to ccTLDs (CCRM) is available to ccTLD Managers, or applicants for a new ccTLD, who are directly impacted by an IFO decision (Decision) for the following processes:

- Delegations of a new ccTLD

Comment NUMBER 42 - Request for Confirmation - Under certain circumstances, such as after a revocation or other discontinuity of operations, the ccTLD may be subsequently delegated through an evaluation process that is functionally the same as delegating a new ccTLD. This is to be distinguished from a transfer of a currently delegated ccTLD. It is ICANN's understanding that under the proposed policy these subsequent delegations should be considered “delegations of a new ccTLD” even though the ccTLD had been delegated previously. Please confirm this is a correct understanding.

**Response - Correct. The term New ccTLD can be defined to incorporate these ccTLDs in implementation.**

- Transfers.
- Revocations (A last resort action by the IFO).

- Refusal to grant an extension to the retirement deadline per the CCNSO Retirement Policy.
- Notice of Retirement for two-letter Latin ccTLD which does not correspond to an ISO 3166-1 Alpha-2 Code Element per the CCNSO Retirement policy.
- Any other policy developed by the ccNSO and adopted by the ICANN Board which allows ccTLDs to appeal a decision by the IFO.

**Comment NUMBER 5 - Request for Clarification: Could the ccNSO please provide input regarding whether the intention is that any CCRM Review will only be applicable to what is specifically excluded from accountability mechanisms in the Bylaws, unless and until a Bylaws revision has been concluded with adopted revisions to the Bylaws?**

**Response - The intention is that the CCRM review will be applicable to the decisions defined in the CCRM policy. The Bylaws will need to be amended, as noted in Section 9 of the policy, to implement this in full.**

## **4. Review Mechanism for IFO decisions which apply to ccTLDs (CCRM)**

### **4.1 Possible findings of the CCRM**

The CCRM will only report on whether:

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

**Comment NUMBER 6, point 1 - Request for Confirmation - Section 4.1 indicates, in part, that the CCRM will only report on whether there were significant issues "with the IFO properly following its procedures." ICANN understands this to mean that a Review and ultimate CCRM report is limited to determining whether the IFO adhered to the existing procedure that led to the IFO decision at issue.**

**Response Point 1 - Section 4.1 of the CCRM policy clearly specifies that this goes beyond IFO procedures.**

**The CCRM will only report on whether:**

- **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.**

**Further, Reviewer(s) are expected to determine if there were any significant issues with the IFO properly following applicable policies and procedures and applied those fairly in arriving at its Decision or how the IFO complied**

with the relevant policies enumerated in the text. The outcome of the Review does not replace the IFO decision, but as suggested in section 4.2, the IFO may adjust its decision, taking into account the outcome of the review.

Comment NUMBER 6, point 2 - Request for Confirmation - ICANN further understands this to mean that the CCRM Review may not involve a substantive review of the procedure itself. Please confirm this is a correct understanding.

**Response Point 2 - Taking into account that - as stated under point 1 of this Comment Number- Reviewer(s) are expected to determine if there were any significant issues with the IFO applying procedures fairly in arriving at its Decision or how the IFO complied with the relevant policies enumerated in the text, the Reviewer(s) are free to identify and note any inconsistencies between the relevant procedures and applicable policies in their report. The outcome of the Review does not replace the IFO decision, but as suggested in section 4.2, the IFO may adjust its decision, taking into account the outcome of the Review.**

Comment NUMBER 7 - Request for Clarification - Could the ccNSO please provide clarity/information regarding what is meant by "applying these fairly" in arriving at the CCRM's decision, and how such fairness would be determined by the CCRM.

**Response - The intent was that decisions are made in a just, unbiased manner and that all IFO customers are treated equally when considering how the IFO applies the rules and policies.**

- 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.

Comment NUMBER 8 - Request for Confirmation - It is ICANN's understanding that the request for Review will identify the relevant policy/RFC/process and that the CCRM will not have to independently try to determine the applicable policy/RFC/process to consider. Please confirm this is a correct understanding.

**Response - The request for a CCRM Review should indicate which policies/processes the Applicant believes are at issue. This is meant to be used by the CCRM Manager to decide whether to accept the Application.**

**Once an application is accepted, the Reviewer(s) will review all aspects of the IFO decision vs all applicable policies and procedures to determine if there were any significant issues. This is linked to the fact that there can only be one CCRM Review per IFO decision and that there can be no appeal of the Reviewer(s) findings.**

**Comment NUMBER 9 - Request for Confirmation - It is ICANN's understanding that this provision, and the Review mechanism as a whole, is intended to be a procedural review of whether the IFO followed the relevant procedure/policy in reaching its decision. In addition, it is ICANN's understanding that this provision, and the Review mechanism as a whole, is not intended to be a substantive review of the IFO decision itself nor is it intended to be a substantive review of the procedure/policy itself. Please confirm these are correct understandings.**

**Response - See Response comment number 6 points 1 and 2**

Definition of Significant Issues – Any clearly demonstrable inconsistency or deviation by the IFO of properly following its procedures and applying these fairly or how the IFO complied with the requirements of RFC 1591, the CCNSO FOI for RFC1591 as adopted by the ICANN Board as well as any other policies developed through a ccNSO policy development process and adopted by the ICANN Board in making its Decision which, in the opinion of the Reviewer(s), could have significantly impacted the IFO Decision.

**Comment NUMBER 10, Point 1 - Request for Confirmation - It is ICANN's understanding that this provision, and the Review mechanism as a whole, is intended to be a procedural review of whether the IFO followed the relevant procedure in reaching its decision; and, specifically, this is not intended to be a substantive review of the IFO decision. Please confirm this is a correct understanding.**

**Response Point 1 - See responses to Comment Number 6 points 1 and point 2.**

**Comment NUMBER 10, Point 2 - Request for Confirmation - nor is it intended to be a review of the policy itself. Please confirm this is a correct understanding.**

**Response Point 2 - See the response to Comment Number 6 point 2.**

## **4.2 CCRM Process Overview**

- IFO takes a decision that is subject to review (as covered by the policy).

**Comment NUMBER 11 - Request for Confirmation - It is ICANN's understanding**

that "the policy" here means the CCRM policy. Please confirm this is a correct understanding.

**Response - Correct**

- The ccTLD Manager, or an applicant for a new ccTLD, applies for a Review.

Comment NUMBER 12 - Request for Confirmation - Based on the language of the CCRM policy, it is ICANN's understanding that complainant is not required to exhaust the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism. Could you please confirm this understanding and/or indicate whether the ccNSO intends for a complainant to first utilize the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism.

**Response - See the response to Comment Number 1.**

- The CCRM Manager accepts the application.

Comment NUMBER 13 - Request for Confirmation - It is ICANN's understanding that "application" refers to a request for CCRM Review; and that the CCRM Manager's "acceptance" will involve an administrative review as set forth in the Annexes. Additionally, it is understood that the administrative review process will be prescribed in further detail, as needed, during the implementation phase. Please confirm this is a correct understanding.

**Response - Correct**

- Reviewer(s) complete the review.

Comment NUMBER 14 - Request for Confirmation - It is ICANN's understanding that "the review" refers to the CCRM Review. Please confirm this is a correct understanding.

**Response - Correct**

- If no significant issues were found by the Reviewer(s) the review process is concluded and the IFO decision is confirmed.
- If significant issues were found by the Reviewer(s) the IFO has three options:

Comment NUMBER 15, Point 1 - Request for Confirmation - It is ICANN's

understanding that the CCRM Reviewers will issue a report regarding their findings (whether they find significant issues with following the procedure or not).

**Response Point 1 - The Reviewers(s) will indeed issue a report with their findings. As to “(whether they find significant issues with following the procedure or not)” see the response to Comment Number 6, point 1.**

Comment NUMBER 15, Point 2 - Request for Confirmation - and that developing a template report framework will be part of the implementation phase. Please confirm this is a correct understanding.

**Response - Correct**

Comment NUMBER 16, Point 1 - Request for Clarification - Could the ccNSO provide clarity on how to ensure that the same IFO decision is not reviewed multiple times? For instance, per Section 4.4, a claimant could be 'any applicant for that new ccTLD.' Section 4.4 indicates that if there are several Review requests of an IFO decision, then the requests would be consolidated into one Review. Presumably, this would be possible if the Review requests were submitted at or near the same time.

**Response Point 1 - The CCRM Manager is responsible for ensuring that there will be only one CCRM review per IFO decision. As stated in section 4.4, the first application for a review that is accepted by the CCRM Manager will be reviewed, and the Reviewer(s) will look at all aspects of the IFO decision, which will include elements relating to other applicants for a delegation of the same new ccTLD. There is no process in the CCRM to consolidate all (potential) applications for reviews. Please note the response to Comment Number 28.**

Comment NUMBER 16, Point 2 - Request for Clarification - However, what would happen if a claimant waited until the initial Review was completed and then later submitted its Review request?

**Response Point 2 - Note that the window to submit an application for a Review is 30 days after the IFO decision was made. Secondly, a specific IFO Decision can only be reviewed once. Accordingly, such a review request does not meet the requirements and is not eligible.**

Comment NUMBER 16, Point 3 - Request for Clarification - For instance, what if a Review was conducted and found procedural issues, and the IFO decided to redo its process and issue a new decision, then another claimant decided to

challenge that (new) IFO decision? What provisions in the proposed CCRM mitigate against the risk of this type of gamesmanship?

**Response to Point 3 - From the CCRM point of view, such a new IFO decision is the result and part of the review of the original IFO decision and given section 4.4 another applicant/claimant cannot request a review.**

- The IFO accepts the results and adjusts its decision – this would conclude the review process.

Comment NUMBER 17, Point 1 - Request for Clarification - It is ICANN's understanding that "the results" refers to the findings of the CCRM Reviewers. Please confirm this is a correct understanding.

**Response Point 1 - Correct**

Comment NUMBER 17, Point 2 - Request for Clarification - It is also ICANN's understanding that the CCRM Review mechanism is intended to be a procedural review of whether the IFO followed the relevant procedure in reaching its decision; and, specifically, the CCRM Review mechanism is not intended to be a substantive review of the IFO decision.

**Response Point 2 - See the response to Comment Number 6 points 1 and 2.**

Comment NUMBER 17, Point 3 - Request for Clarification - Given that, could the ccNSO provide clarification on what is meant by "adjusts its decision"?

**Response Point 3 - "Adjusts its decision" implies that following the Review, the IFO has produced a new decision which addresses the issue(s) identified by the Reviewer(s).**

Comment NUMBER 17, Point 4 - Request for Clarification - It appears that, if there was a procedural issue, the only way the IFO would modify its decision is if the IFO decided to redo the process; and, in that instance, it would appear that Options One and Two in this section would be the same. Could the ccNSO provide input on this?

**Response Point 4 - The CCRM policy does not require the IFO to redo the process before making any change to its decision. Therefore, Options One and Two are distinct from the point of view**

## of the CCRM policy.

- The IFO accepts the results but opts to redo the process which resulted in the original decision. Once the IFO completes the redo of the process, the original applicant must decide to:
  - Accept the new results – this will conclude the Review process.
  - Apply for a Review of the new decision by the IFO (in such a case if the Reviewer(s) find significant issues the IFO will only have two options – Accept or Reject the findings).

Comment NUMBER 18 - Request for Clarification - With regard to the reference to "the original applicant must decide to" - could the ccNSO provide clarity as to who makes the decision to accept or request review of new results if the "original applicant" is a consolidation of Review requests from multiple applicants for a new ccTLD (per Section 4.4)?

**Response - In this section of the policy, the term 'original applicant' refers to the person or entity who applies for a review of an IFO decision and whose application for a review is deemed acceptable to proceed by the CCRM. It is this person or entity who, in the event that, as a result of the review, the IFO redoes its process, has the right to either accept the result of the redone process or ask the CCRM to review the result of the redone process. There cannot be consolidated, multiple applications for a review.**

- The IFO rejects the results:
  - If the IFO decision requires Board approval - the IFO shall include the findings from the review in its recommendation to the Board for confirmation.

Comment NUMBER 19 - Request for Confirmation - With regard to the reference to "if the IFO decision requires a Board approval," it is ICANN's understanding that this refers to whether the IFO decision has to be effectuated with Board involvement (e.g. that the IFO decision "require[d]" Board approval), which would then result in the IFO needing to inform the Board in the IFO's rejection of the Review results. Please confirm this is a correct understanding.

**Response - Correct**

- If the IFO decision does not require Board approval, the ICANN CEO and the ccNSO Council shall be advised of the situation.

Comment NUMBER 20 Point 1 - Request for Confirmation - With regard to the reference to "if the IFO decision does not require Board approval," it is ICANN's understanding that this refers to whether the IFO decision was previously effectuated without Board involvement (e.g., that the IFO decision previously "[did] not" require Board approval).

**Response Point 1 - Not all IFO decisions go to the Board. Some of these decisions may be subject to a Review. Review of this class of IFO Decisions does not affect whether they need to go to the Board.**

**Note that under the CCRM policy, a reviewable IFO Decision cannot be effectuated within 30 days of being made.**

Comment Number Point 2 - Request for Confirmation - ...which would then result in the IFO needing to only advise the ICANN President and CEO and ccNSO council of the IFO's rejection of the Review results. Please confirm this is a correct understanding.

**Response Point 2- In this situation, when the IFO decision does not require Board approval, it is the CCRM Manager's responsibility to advise the ICANN CEO and the ccNSO Council.**

Please see Annex A of this document for more details.

### 4.3 The CCRM Manager

- The CCRM Manager must be a non-conflicted individual who is a Subject Matter Expert with respect to ccTLDs, the IFO and ICANN and who will be responsible for overseeing and managing the CCRM system.

Comment NUMBER 21 - Request for Confirmation - It is ICANN's understanding that determining the manner in which to assess whether a potential CCRM Manager is a "non-conflicted individual who is a Subject Matter Expert with respect to ccTLDs, the IFO and ICANN" is intended to be part of the implementation phase. Please confirm this is a correct understanding.

### **Response - Correct**

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

Comment NUMBER 22 - Request for Clarification - Could the ccNSO please provide clarity/information regarding what is intended in this instance with regard to how/in what way ICANN will be "managing" the CCRM Manager?

**Response - Details to be worked out in implementation vs ICANN requirements. The expectation is that it would be similar to the Ombudsman, the IRP standing panel members, the ICANN Complaints Office or some combination of these.**

Please see Annex B of this document for more details.

#### **4.4 Applicant and Claimant to the CCRM**

COMMENT NUMBER 23 - Request for Clarification - The terms "Applicant" and "Claimant" appear to be used interchangeably in this instance and in the proposed CCRM Policy. Could the ccNSO please clarify whether the CCRM Policy intends to use these terms interchangeably or if there should be a distinction between the two within the CCRM Policy.

**Response - These terms are used interchangeably in the policy document.**

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.

COMMENT NUMBER 43 - Request for Confirmation - Under the aforementioned assumption of "new delegation" (*Note: see section 3 "Delegations of new ccTLDs"*), the exception rule described in the first bullet point of section 4.4 applies to all cases of "new delegation" of a ccTLD, i.e. including those cases where it was previously revoked or otherwise removed. Please confirm this is a correct understanding.

### **Response - Correct**

- To launch a CCRM, the Claimant must submit an application (Application) via the CCRM website to the CCRM Manager in English within 30 days of the Decision being made except if the Applicant has requested an IFO internal review or IFO Mediation. If the Applicant has used these other mechanisms, within 30 days of the Decision being made, it will be granted 30 days to apply for a CCRM after these processes are completed.

COMMENT NUMBER 24 - Request for Confirmation - It is ICANN's understanding that "application" refers to a request for CCRM Review. Please confirm this is a correct understanding.

### **Response - Correct**

COMMENT NUMBER 25 - Request for Confirmation - Based on the language of the proposed CCRM policy, it is ICANN's understanding that complainant is not required to exhaust the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism. Could you please confirm this understanding and/or indicate whether the ccNSO intends for a complainant to first utilize the Complaint Resolution Process and the Mediation process before being permitted to submit a request for the independent review mechanism.

### **Response - See response to Comment Number 1**

- 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 CCRM Manager will accept the first application which meets all the eligibility criteria. Should there be a tie the CCRM Manager will choose which application will be accepted. In all such cases where the CCRM Manager has approved an Application for a Review, the Reviewer(s) will consider all elements of the IFO Decision for all potential Claimants.

COMMENT NUMBER 26 Request for Confirmation - It is ICANN's understanding that "application" refers to a request for CCRM Review. Please confirm this is a correct understanding.

### **Response - Correct**

COMMENT NUMBER 27 Point 1 - Request for Clarification - ICANN requests clarification/information regarding what is intended by defining the IFO's decision as "preliminary" in light of the fact that an IFO decision is final unless and until it is challenged and then subsequently modified. Could there be confusion if the term "preliminary" is used?

**Response Point 1 - The word "preliminary" creates confusion. The IFO Decision is taken, but any reviewable IFO Decision could be challenged through the CCRM during a period of 30 days before it is effective.**

COMMENT NUMBER 27: Point 2 - Request for Clarification - ICANN requests clarification regarding what circumstances would create "a tie" between Review applications?

**Response Point 2 - "Tie" in this context refers to a situation where more than one valid application is received at precisely the same time.**

COMMENT NUMBER 28 Request for Clarification - ICANN requests clarification/information regarding how a Review would be handled if there are multiple claimants that have different claims. Section 4.4 indicates that, in such cases, "the Review(s) will consider all elements of the IFO Decision for all potential Claimants." Does that mean that it is intended that all claims (even if the claims are distinct) would be consolidated into one Review?

**Response - In the event of potentially multiple claimants/applicants to review a specific IFO Decision, the first application that meets all requirements to be eligible for a review of the IFO Decision will be accepted by the CCRM Manager. All other requests from other potential applicants will not be accepted. However, all elements relevant to the IFO Decision, including, but not limited to, elements related to the delegation requests for a new ccTLD of potential other Applicants/Claimants, will be considered by the Reviewer(s) in reviewing the IFO Decision. In practice, this means that any delegation request for a ccTLD would be investigated in the course of the Review. Given the CCRM policy's requirement that any IFO decision will only be reviewed once, any application for Review that arrives after a Review starts will not be dealt with under this process.**

COMMENT NUMBER 29 - Request for Confirmation - It is ICANN's understanding that determining the "eligibility criteria" is intended to be part of the implementation phase. Please confirm this is a correct understanding

**Response - Correct**

COMMENT NUMBER 30, Point 1 - Request for Clarification - Similar to Comment Number 28 (request for clarification relating to this section above) above - ICANN requests clarification/information regarding how a Review would be handled if there are multiple claimants that have different claims. Section 4.4 indicates that, in such cases, "the Review(s) will consider all elements of the IFO Decision for all potential Claimants." Does that mean that it is intended that all Review requests would be provided to the Reviewer(s) for consideration as part of one Review?

**Response Point 1 - See the answer to Comment Number 28**

COMMENT NUMBER 30, Point 2- Request for Confirmation - As raised before with regard to the CCRM Policy and Review process, ICANN's understanding is that the ccNSO intends that any Review of an IFO Decision is limited to a review of whether the IFO properly followed its process in reaching that decision; and

that the substantive IFO Decision itself is not subject to review. Please confirm this is what is intended for the CCRM Policy and Review process.

#### **Response Point 2 - See Comment Number 6 points 1 and 2.**

- By submitting an Application, the Claimant will agree to the rules for the CCRM, which will include a clause preventing the Applicant from taking the CCRM Manager, Reviewers, the CCNSO, or ICANN to court with respect to the CCRM process or findings (The Working Group recognizes that this in no way prevents the Claimant from taking the IFO or ICANN to a court with relevant jurisdiction regarding the Decision by the IFO and approval of this Decision by the ICANN Board).

Please see Annex B of this document for more details.

#### **4.5 The Reviewers**

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

COMMENT NUMBER 31 Point 1 - Request for Clarification - ICANN requests clarification/information regarding who will determine whether a Reviewer is "certified" (as guided by the certification requirements in Annex B). Is it intended that the CCRM Manager will make the determination as to whether a potential Reviewer is certified?

#### **Response Point 1- Correct**

COMMENT NUMBER 31 Point 2 - Request for Clarification - Is it intended that the certification requirements listed in Annex B are exhaustive, minimum threshold, or suggestions to consider including in the implementation phase?

#### **Response Point 2 – Certification requirements can be adjusted during implementation, but the core requirements need to be maintained.**

- Reviewers will be paid for by ICANN/IFO.
- Reviewers must be impartial.

COMMENT NUMBER 32, Request for Clarification - ICANN requests clarification/information regarding how "impartiality" is to be determined and who will be making the determination.

#### **Response - As per Annex B, the recommendation for this is:**

**“Duly executed Conflict of Interest form which will include certification of no Conflict of Interest with ICANN or the IFO. If selected for a specific case, Reviewers will have to provide a formal confirmation that they are impartial with respect to the Claimant:**

- **Conflict of interest is defined as a party having a “relationship” (business, financial or family) with another party or who is involved in any formal legal action vs another party.**
- **Being a manager or employee of a ccTLD registry will not be considered a COI vs ICANN or the IFO in this context unless there are significant pending issues between the parties.”**

**This may be adjusted at Implementation.**

- Certification requirements will include a minimum of 10 years of practical experience with respect to ccTLD administration and IFO processes as well as the ability to function in English.

**COMMENT NUMBER 33, Request for Clarification - ICANN requests input from the ccNSO regarding whether there is a concern about finding sufficient Reviewers that have the required level of experience yet are "non-conflicted"; and what steps should be taken if there is difficulty in finding such Reviewers.**

**Response - Both the group working on these responses and the working group that developed the policy believe that finding such individuals will not be problematic.**

- Findings from the Reviewer(s) cannot be appealed.

**COMMENT NUMBER 34, Request for Confirmation - It is ICANN's understanding that the proposed CCRM policy's directive that the Reviewer(s) findings "cannot be appealed" means that neither a CCRM claimant nor any other party may challenge the Reviewer(s) findings via ICANN's accountability mechanisms. Please confirm this is a correct understanding.**

**Response - Correct**

Please see Annex B of this document for more details.

## 4.6 The IFO

- Will maintain a good working relationship with the CCRM Manager.
- Must amend its procedures to allow concerned parties sufficient time to file for a CCRM or other official IFO review mechanisms prior to the IFO implementing or making a recommendation to the ICANN Board regarding the decision which is being challenged (implementation). As such the IFO will advise all directly involved parties of any decisions which can be reviewed under this Policy. Such decisions will be labeled Preliminary Decisions and will advise the concerned parties of their options for

Reviewing such decisions.

COMMENT NUMBER 35, Point 1 - Request for Confirmation - It is ICANN's understanding that not all Reviews will (or could) result in recommendations to the ICANN Board. Please confirm this is a correct understanding.

**Response Point 1 – Correct**

COMMENT NUMBER 35, Point 2 - Request for Confirmation - Also, please see comment below (Comment Number 36) regarding referring to the IFO's Decision as "preliminary" - in light of the fact that an IFO decision is final unless and until it is successfully challenged and subsequently modified, could there be confusion if the term "preliminary" is used?

**Response Point 2 – Please see the response to COMMENT NUMBER 27 point 1 (re: “preliminary”) regarding Section 4.4 above.**

COMMENT NUMBER 36, Request for Clarification - ICANN requests clarification/information regarding what is intended by defining the IFO's decision as "preliminary" in light of the fact that an IFO decision is final unless and until it is challenged and then subsequently modified. Could there be confusion if the term "preliminary" is used? Also, many IFO Decisions will not be challenged but seemingly would be termed "preliminary"; at what point would such Decisions be considered "final"? Could persons misunderstand the term "preliminary" to mean "draft"?

**Response - Please see the response to Comment NUMBER 27 point 1**

- After reaching a decision on a ccTLD request which can be Reviewed, the IFO will advise those parties who could apply for a CCRM of the Decision and of their options for Reviewing the Decision as well as the timeline for doing so.
- If a Decision is being Reviewed under the CCRM, the IFO cannot take any action with respect to its decision prior to the CCRM Manager confirming it can do so.
- Will make all relevant internal materials available to the Reviewer(s) who will be under a formal confidentiality agreement. These will include all internal emails on the matter and all communications from all the relevant parties but does not include formal legal advice to the IFO.

COMMENT NUMBER 37, Point 1 - Request for Clarification - As raised before with regard to the CCRM Policy and Review process, ICANN's understanding is that the ccNSO intends that any Review of an IFO Decision is limited to a review of whether the IFO properly followed its process in reaching that decision; and that the substantive IFO Decision itself is not subject to review.

**Response Point 1- Please see Comment Number 6 points 1 and 2**

COMMENT NUMBER 37 Point 2 - Request for Clarification -If that is correct, then ICANN requests clarification/information as to how "all internal emails on the matter and all communications from all the relevant parties" is needed for a procedural review and what impact this level of litigation-type discovery could have on the speed and efficiency of the Review Process. Is there a specific subset of documentation that the IFO could provide to the Reviewer(s) that would be limited to a procedural review?

### **Response Point 2 - Please see response to comment number 38**

- Will make itself available to the Reviewer(s) to present details of the case or answer questions.

COMMENT NUMBER 38, Point 1 - Request for Clarification - Similar to comment nb 37 (*see question re making available "all internal emails on the matter and all communications from all the relevant parties"*) -- ICANN's understanding is that the ccNSO intends that any Review of an IFO Decision is limited to a review of whether the IFO properly followed its process in reaching that decision; and that the substantive IFO Decision itself is not subject to review.

### **Response Point 1 – See response to Comment number 6 points 1 and 2**

Comment Number 38 Point 2 - Request for Clarification - If that is correct, then ICANN requests clarification/information as to what is intended by the requirement that the IFO "will make itself available to the Reviewer(s) to present details of the case or answer questions" and how this is needed for a procedural review. This type of requirement sounds similar to litigation-style deposition testimony, which is not even permitted in ICANN's accountability mechanisms. Would the ccNSO's intention here be addressed via the issuance of a specific set of clarifying questions to the IFO, limited to a procedural review, which the IFO could respond to in writing?

**Response Point 2 - One has to remember that there is NO information that is made public vs ccTLD requests to the IFO beyond confirming, via its actions, that a request has been accepted and implemented. This implies that if the IFO rejects a ccTLD request, there is no published trace of this. As such, if there is no requirement for the IFO to produce relevant information, the Reviewer(s) would have to rely only on the documentation provided by the complainant, which would significantly curtail the ability of the Reviewer(s) to perform their work effectively. The implementation may provide additional specifications as to what the IFO must provide to the CCRM, which would act as a set of guardrails.**

**This being said, there is an expectation that there will be a Non-Disclosure**

**agreement in place with the CCRM Manager and Reviewer(s), however, this is considered a matter of implementation.**

- If the IFO fails to comply with the requirements of the Review policy the CCRM Manager 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 CCRM Manager 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.

COMMENT NUMBER 39, Point 1 - Request for Clarification - ICANN requests clarification/information regarding what is intended by the reference to the ICANN President and CEO "correct[ing] the situation." What steps does the ccNSO envision that the ICANN President and CEO would be permitted to take to enforce compliance by the IFO?

**Response Point 1 - The Actions of the ICANN President and CEO are purposefully left unspecified. The President and CEO may take whatever action it deems necessary. Note ICANN's CEO can play a direct role with IFO (PTI) flowing from the IANA Naming Function Contract.**

Comment Number 39 Point 2 - Request for Clarification - What if the Reviewer(s) findings and directives go beyond the parameters of a procedural review; who would make that determination and what would be the remediation?

**Response Point 2 - If the CCRM publishes a finding that the IFO believes is flawed, the IFO can simply reject it and take no further action. After noting the rejection, and if the CCRM Manager believes the Reviewers(s) stayed within the parameters of the CCRM (see response to Comment Number 6 points 1 and 3), the CCRM manager may opt to request the ICANN President and CEO to correct the situation.**

**It will be up to the ICANN President and CEO to determine, through whatever means, to decide whether the CCRM finding is flawed.**

**Should the ICANN President and CEO determine that the findings are flawed, the CCRM implementation should specify that this should be communicated to the CCRM and the ccNSO Council. Should the ICANN President and CEO determine that the CCRM finding is not flawed, it should take whatever action it believes is necessary to correct the situation.**

COMMENT NUMBER 40 - Request for Clarification - ICANN requests clarification/information as to whether the IFO may request additional time to respond to request by the CCRM Manager.

**Response - This is considered a matter of Implementation. However, It is expected that the objectives of the policy, that the CCRM is simple, effective and low cost will guide the implementation work (see Responses to Comments Number 3 & 4).**

Please see Annex B of this document for more details.

## **5. Reviewing and updating the policy**

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 CCRM policy to assess if it needs to be modified to align with any such changes. If the review of the CCRM policy finds that it needs to be modified, the Council shall launch a process to accomplish this.

## **6. Oversight**

This Policy is directed at ICANN and the IFO as the entity that performs the IANA Naming Functions with respect to ccTLDs.

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

This Policy will not change or amend the role that the ICANN Board of Directors has, which is understood to be limited to a review to ensure that the IFO (staff) has followed its procedures properly, with respect to individual cases of ccTLD Delegation, Transfer, Retirement, Revocation, or any other policy developed by the ccNSO and adopted by the ICANN Board which allows ccTLDs to appeal a decision by the IFO.

Please see Annex C of this document for more details.

## 9. Recommendations regarding ICANN Bylaws Sections 4.2 (d) (i) and 4.3 (c) (ii).

In July 2022 the ccNSO Council requested that the CCPDP3WG-RM look at the need for further clarification of the ICANN Bylaws Sections 4.2 (d) (i) and 4.3 (c) (ii), and, if in their view clarification is needed, make a recommendation to that effect.

The CCPDP3WG-RM makes the following recommendations regarding ICANN Bylaws Sections 4.2 (d) (i) and 4.3 (c) (ii):

- The CCPDP3WG-RM recommends that all disputes and claims related to the delegation, transfer, and revocation of ccTLDs shall remain excluded from ICANN’s Reconsideration Process and the Independent Review Process for Covered Actions.
- The CCPDP3WG-RM also recommends that all claims and disputes related to the retirement of a ccTLD shall be excluded from ICANN’s Reconsideration Process and the Independent Review Process for Covered Actions.
- The CCPDP3WG-RM recommends that the relevant section of the ICANN Bylaws shall be amended accordingly, including but not limited to amending the terms “delegation and re-delegation” to “delegation, transfer and revocation”. Amendment of the Bylaws is considered a matter of implementation.
- The CCPDP3WG-RM advises the ccNSO to consider that any future policy to be developed by the ccNSO and which can affect the stewardship of a ccTLD should include a consideration whether claims and disputes flowing from the application of the policy should be excluded from ICANN’s Reconsideration Process and the Independent Review Process for Covered Actions, and if so, explicitly specify the outcome of this consideration in any such policy.

## Annex A: CCRM Process Details

- The IFO makes a Decision regarding a ccTLD which is eligible for a CCRM.
- An eligible party for a CCRM submits an application (Application) for a CCRM to the CCRM Manager.
- The CCRM Manager confirms receipt of the Application and requests that the IFO take no further action regarding this decision until advised otherwise by the CCRM Manager<sup>10</sup>.
- The CCRM Manager evaluates the application (see application requirements in the Applicant/Claimant section):
  - If the CCRM Manager accepts the Application, it will:
    - Advise the Applicant (now Claimant) that the Application has been accepted.
    - Advise the IFO that the Application has been accepted and that the IFO may not proceed further with the Decision until informed otherwise by the CCRM Manager.
    - Update the CCRM website accordingly.
    - Will request that the Applicant select which type of Review it will opt for (CCRM Manager, 1 Reviewer, 3 Reviewers – see Reviewer section for details) and advise the IFO of this.
    - The CCRM Manager will work with the Applicant and the IFO to select the Reviewer(s). Once selected the CCRM Manager will launch the review.
  - If the CCRM Manager rejects the Application, it will:
    - Advise the Claimant that its application has been cancelled.
    - Advise the IFO of the rejection and that the IFO may proceed with this Decision.
    - Close the Application and update the CCRM website accordingly.
- Conducting the Review:
  - The CCRM Manager will manage the Review as the Reviewer(s) consider(s) the case:

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<sup>10</sup> Regardless of if the decision required Board approval.

- The Reviewer(s) may request a presentation by the IFO or ask formal questions of the IFO.
  - The Reviewer(s) will decide if there were significant issues or not and indicate this in their report (Report)
  - The CCRM Manager will evaluate the Report and work with the Reviewer(s) to ensure it is consistent with the requirements for such reports.
  - The CCRM Manager will publish the Report and advise the Claimant.
- If the Reviewer(s) did not find any significant issues:
  - The CCRM Manager will advise the Claimant, close the Review and advise the IFO that it may proceed with its Decision.
- If the Reviewer(s) did find significant issues:
  - The CCRM Manager will advise the Claimant of the findings and of the possible next steps.
  - The CCRM Manager will contact the IFO asking it to confirm which option it will take vs the Advice – the IFO will have 30 days to advise the CCRM Manager of its decision:
    - If the IFO responds within the 30-day deadline with one of the following options, the process can continue:
      - Accepts the Reviewer(s) decision and reverses its original Decision.
      - Accepts the Reviewer(s) decision but opts to re-do the evaluation of the request which led to the original Decision.
      - Rejects the Reviewer(s)' decision.
- If the IFO accepts the Reviewer(s) Advice and reverses its original decision:
  - The CCRM Manager will advise the Claimant and will close the case and update the CCRM website.
  - Note: This assumes that IFO Decisions are basically binary in most cases. Transfers, Revocations, requests for an extension in a retirement process, and Retirement of a 2-letter Latin non-ISO 3166-1 ccTLD can only be binary. Delegation of a new ccTLD between 2 contending parties is also

binary but is not if there are 3 or more applicants (which should be very exceptional).

- If the IFO rejects the Reviewer(s) decision:
  - If the IFO decision requires Board approval: The CCRM Manager 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 CCRM Manager will close the case and advise the ICANN CEO and the ccNSO Council of the situation and request appropriate action.
  
- If the IFO accepts the Reviewer(s) decision but opts to re-do its process with respect to this Decision:
  - Once the IFO has completed re-doing its process that Decision will be presented to the Claimant.
  - The CCRM Manager will request that the Claimant select one of the two following options and respond within 30 days:
    - Accept the new Decision.
    - Apply for a Review of this new decision at the IFO's expense (no charge to the Claimant).
  
  - If the Claimant accepts the new decision the CCRM Manager will close the case and update the CCRM website.
  - If the Claimant decides to apply for a new Review the Review process begins anew with the following changes:
    - If the Application for a Review is accepted the IFO will bear all costs.
    - If the Review finds significant issues with the new IFO Decision the IFO can only opt to accept the new Review decision and reverse its Decision or reject the Review's findings – the IFO will have 30 days to advise the CCRM Manager of its decision.
  
  - If the Review does not find any significant issues the CCRM Manager will advise the Claimant and the IFO and will advise the IFO that it can proceed with its Decision and close the case.
  - If the Review finds there were significant issues and the IFO reverses its Decision the CCRM Manager will advise the Claimant and close the case.

- If the Review finds there were significant issues and the IFO rejects the Advice:
  - If the IFO decision requires Board approval: The CCRM Manager 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 CCRM Manager will close the case and advise the ICANN CEO and the ccNSO Council.

## Annex B: Detailed requirements of the parties directly involved in the CCRM.

- **The CCRM Manager - details not included in the process overview:**
  - The Manager must be a non-conflicted<sup>11</sup> 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 Manager will be funded and managed by ICANN.
  - General administrative responsibilities of the Manager:
    - Maintain an ongoing relationship with the ccNSO, IFO and ICANN. This includes monitoring Decisions by the IFO which have the potential to be reviewed.
    - Set up and oversee the operation of the website which will include:
      - General information on the Review process.
      - Q&A section.
      - All relevant forms.
      - List of certified Reviewers.
      - List of ongoing cases.
      - List of Review decisions.
      - List of past cases.
    - Prepare and manage the application of all relevant forms including:
      - Application/contract for a Review.
      - Application to become a certified Reviewer.
      - COI form for specific cases.
      - NDA for certified Reviewers.
      - Review decision form.
      - Fee agreements for Reviewers.
      - Billing forms for Reviewers.
    - Set up a process to certify and manage Reviewers. This includes, but is not limited to:

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<sup>11</sup> A conflict of interest is defined as anyone with a current “relationship” (business, financial or family) with a ccTLD, a known applicant for a new ccTLD, the IFO or who is pursuing legal action against these same parties. This would be assessed via a Conflict-of-Interest Declaration form (implementation).

- Establishing criteria for the certification of Reviewers with the ccNSO and the IFO.
  - Managing the recruiting process for potential Reviewers.
  - Certification of Reviewers (validation as an SME, COI, NDA, contract).
  - Creation and management of a list of certified Reviewers.
- Manage financial matters including:
  - Review application payments and refunds.
  - Approval of Reviewer billing.
- **Reviewer(s) - details not included in the process overview:**
  - All Reviewers will be certified, managed, and supported by the Manager.
  - Reviewers will be paid for by ICANN/IFO.
  - Certification requirements will include:
    - Functional ability to work in English.
    - CV highlighting that the individual is a Subject Matter Expert (SME) with respect to CCNSO policies, RFC1591 and its FOI as well as IFO procedures. The minimum qualification will be 10 years of practical experience in all these areas (proposal TBD at implementation in cooperation between the Manager, the ccNSO and the IFO). Legal experience is also desirable.
    - Interview with the Manager to confirm SME status and ability to work in English.
    - Duly executed NDA regarding any non-public information obtained while acting as a Reviewer on any Independent Advice case.
    - Duly executed Reviewer contract with ICANN.
    - Duly executed COI form which will include certification of no COI with ICANN or the IFO. If selected for a specific case Reviewers will have to provide a formal confirmation that they are impartial with respect to the Claimant:
      - Conflict of interest is defined as a party having a “relationship” (business, financial or family) with another party or who is involved in any formal legal action vs another party.
      - Being a Manager or employee of a ccTLD registry will not be considered a COI vs ICANN or the IFO in this context unless there are significant pending issues between the parties.

- Choice of Reviewers by Claimants - 3 options for a review:
  - Review by the Manager only. This will be a minimal cost option only requiring the administrative costs.
  - Review by one Reviewer selected jointly by the IFO and the Claimant from the list of pre-Certified Reviewers managed and maintained by the Manager. The selection process will be managed by the Manager and if the parties cannot agree on a single Reviewer within 30 days of the Application being approved, the Manager will select one from the list. The selected Reviewer will be required to formally confirm that it is impartial with respect to the Claimant.
  - Review by 3 Reviewers:
    - The IFO and the Claimant will each choose a Reviewer. The proposed Reviewers do not have to be from the list of pre-certified Reviewers. If the candidates are not from the list of pre-certified Reviewers, they will have to be certified by the Manager prior to undertaking any work on the case. Once certified the IFO and Claimant Reviewers will cooperatively pick a third Reviewer from the list of pre-certified Reviewers through a process managed by the Manager. If the two Reviewers cannot agree on a third within 30 days, the Manager will nominate the third from the list of pre-certified Reviewers:
      - The IFO and the Claimant must select their Reviewers within 30 days of the Application being approved. Failure to do so will cause the Manager to select a Reviewer for the party from the list of pre-certified reviewers.
      - If the chosen Reviewer is not pre-certified it will have to be Certified by the Manager within 30 days of being named before he/she can join the proceedings. If the chosen Reviewer fails to be certified prior to the deadline the party may choose another if still within the original 30-day limit to choose a Reviewer.
    - All Reviewers will be required to formally confirm that they are impartial with respect to the Claimant.
    - Any decision in a 3 Reviewer system will require the support of at least two of the three.

- Reviewers will only consider supplementary materials from the Claimant or the IFO if approved by the Manager. All such requests to submit additional material must be made using the appropriate form (implementation) and submitted to the Manager within 30 days of the request for Independent Advice being approved by the Manager. The Manager, using his best judgement for the fair administration of justice, will consider the following in determining if any new material should be accepted and made available to the Panel:
  - Is this material directly and critically relevant to the case?
  - Why was this material not included in the original request to the IFO?
- Can hold individual teleconference hearings with all the involved parties.
- Can request a presentation by the IFO on the matter under review. The Panel, at its discretion, can also request answers to its questions from the IFO which must respond promptly to these (2 business days (TBD at implementation with the IFO) California time following the day of the request – this should be included in the IFO SLE process statistics).
- Definition of Significant Issues – Any clearly demonstrable inconsistency or deviation by the IFO of properly following its procedures and applying these fairly or how the IFO complied with the requirements of RFC 1591, the CCNSO FOI for RFC1591 as adopted by the ICANN Board as well as any other policies developed through a ccNSO policy development process and adopted by the ICANN Board in making its Decision which, in the opinion of the Reviewer(s), could have significantly impacted the IFO Decision.
- The Reviewer(s)' Findings will explain in detail their conclusions.
- The Manager will review the Findings from the Reviewers to ensure it meets all the requirements prior to publishing it. The Manager may work with the Reviewer(s) to amend the Findings to ensure it meets the requirements:
  - The Findings provides all the relevant administrative and background information.
  - The Findings will clearly indicate if there were any significant issues or not.
  - If there were Significant Issues the Findings shall clearly indicate what the issues are as well as why they are issues.
  - Formal sign-off of the Reviewer(s) on the Findings and a statement of majority opinion if necessary.
- Findings from the Reviewer(s) cannot be appealed.

- **IFO - details not included in the process overview:**

- Will maintain a good working relationship with the Manager.
- Must amend its procedures to allow concerned parties sufficient time to file for a CCRM or other official IFO review mechanisms prior to the IFO implementing or making a recommendation to the ICANN Board regarding the decision which is being challenged (implementation). As such the IFO will advise all directly involved parties of any decisions which can be reviewed under this Policy. Such decisions will be labelled Preliminary Decisions and will advise the concerned parties of their options for Reviewing such decisions.
- After reaching a decision on a ccTLD request which can be Reviewed, the IFO will advise those parties who could apply for a CCRM of the Decision and of their options for Reviewing the Decision as well as the timeline for doing so.
- If a Decision is being Reviewed under the CCRM, the IFO cannot make a recommendation to the ICANN Board on the matter being reviewed prior to the Manager confirming it can do so.
- Will make all relevant internal materials available to the Reviewer(s) who will be under a formal confidentiality agreement. These will include all internal emails on the matter and all communications from all the relevant parties but does not include formal legal advice to the IFO.
- Will make itself available to the Reviewer(s) to present details of the case or answer questions.
- If the IFO fails to comply with the requirements of the Review policy the Manager 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 Manager within the time period specified in the policy the review process will be suspended<sup>12</sup> until such time as the IFO properly responds to the request.

- **Applicant and Claimant - details not included in the process overview:**

- 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.

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<sup>12</sup> Suspension of the review process does not modify any other obligations of the IFO with respect to the CCRM policy. As such the IFO cannot proceed with any actions regarding the IFO decision being reviewed.

- To launch a CCRM, the Claimant must submit an application (Application) via the CCRM website to the Manager in English<sup>13</sup> within 30 days<sup>14</sup> of the Decision being made except if the Applicant has requested an IFO internal review or IFO Mediation. If the Applicant has used these other mechanisms, within 30 days of the Decision being made, it will be granted 30 days to apply for a CCRM after these processes are completed.
- The evaluation criteria for a CCRM Application are:
  - Be on the properly completed form/contract (TBD)
  - Be received prior to the 30-day deadline<sup>15</sup>.
  - Clearly indicate which IFO Preliminary Decision is being Reviewed.
  - 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 a CCRM, is currently being Reviewed or has already been Reviewed.
  - Have paid the required fees (fees and details to be finalized at implementation).
  - 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.
  - Clearly indicate the individual the Applicant has delegated to be responsible for the Application including all relevant contact information.
  - Clearly state why the Claimant believes that:
    - That the IFO did not properly follow its procedures or applied these fairly in arriving at its preliminary decision; or
    - The IFO decision being reviewed is inconsistent with RFC 1591, the CCNSO FOI for RFC1591 as approved by the ICANN Board, as well as any other policies which apply to CCNSO members and is approved by the ICANN Board.

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<sup>13</sup> All requests, templates, and documentation required for a CCRM must be in English. Where accuracy is essential, English documentation and/or English translations of key documents (such as governmental decrees relating to the request) must be notarized or certified as official translations,

<sup>14</sup> 30 days to be calculated as follows – The IFO publishing its Initial Decision will be deemed Day 0. Day 1 will begin 1 minute after 23:59 UTC of Day 0. The opportunity to submit an application for an Independent Advice Review will expire on Day 30 at one minute past 23:59 UTC.

<sup>15</sup> With the stated exceptions regarding the IFO Internal Review and IFO Mediation.

- For cases where there is a potential for more than one Claimant<sup>16</sup>. Should there be more than one application for the same IFO Preliminary Decision the Manager will accept the first application which meets all the eligibility criteria. Should there be a tie the Manager will choose which application will be accepted. In all such cases where the Manager has approved an Application for a Review, the Reviewer(s) will consider all elements of the IFO Decision for all potential Claimants.
- By submitting an Application, the Claimant will agree to the rules for the Independent Advice Review, which will include a clause preventing the Applicant from taking the Manager, Reviewers, the CCNSO, or ICANN to court with respect to the Independent Advice Review (The Working Group recognizes that this in no way prevents the Claimant from taking the IFO or ICANN to a court with relevant jurisdiction regarding the Decision by the IFO and approval of this Decision by the ICANN Board).
- The Manager may interact with the Claimant's contact person to obtain clarifications on the application (and may allow the Applicant to resubmit).
- If the Manager rejects the application for an Independent Advice Review the Claimant's payment will be refunded minus administrative costs (implementation). There is no mechanism to appeal the Manager's decision to reject an application however the Manager will be required to publish the reasons for rejecting the application.

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<sup>16</sup> e.g. a Decision regarding the delegation of a new ccTLD which had three applicants – if the ccTLD is allocated to one of the three, the two others could appeal – obviously a corner case