Phasing of ccNSO PDP

Introduction

At its meeting on 10 December 2015 the ccNSO Council the issue of launching formal Policy development processes to address the lack of policy with respect to retirement of ccTLDs and Appeals Mechanism on issues of delegation, revocation and retirement of ccTLDs was raised at the Council meeting. More specifically it was raised that part of the IANA stewardship transition process has demanded that at this point in time the process or processes need to be commenced, to fill the void of lack of relevant policy. At the meeting the secretariat was asked to map out the ccNSO PDPs and their potential timelines.

To inform the discussions of Council, two separate but clearly interrelated topics will be presented:
- Whether or not to combine the topics of retirement and Review Mechanism for decision regarding delegation, revocation, transfer and retirement of ccTLDs into one single formal policy decision process (section 2: One or two ccPDPs?)
- Phasing of a formal ccNSO Policy Development Process as defined in Annex C of the ICANN Bylaws (section 3: Structure of ccNSO PDP and tentative minimum timeline PDP).

Based on experience to date the scope of a policy development process or policy related process (DRD WG/FOIWG) and underlying issues that need to be addressed determine in large the intensiveness and duration of these processes.

One or two ccPDP?

Considerations on a combined ccPDP or Single ccPDP on the two separate but slightly inter-related topics of:
- a) Retirement of ccTLDs (i.e. the removal of a ccTLD from the IANA database)
- b) Review Mechanism[1] on decisions regarding delegation, revocation and transfer of ccTLDs.

Following the implementation of the Framework of Interpretation and in line with the recommendations of the Delegation and Redelegation working group in 2011[2], It is advised that the policy development process on retirement of ccTLDs will be started as soon as possible in order to fill the void of lack of policy and hence to increase the predictability and legitimacy of decision pertaining to the retirement of ccTLDs.

---

[1] "Review Mechanism" has been chosen as a term to differentiate the appeals process referred to in RFC1591 relating to the review of decisions relating to delegation, transfer and revocation of a ccTLD, from the generic Independent Review Process (IRP) as required by the CCWG-

[2] See DRD WG Final Report, page 10, https://ccnso.icann.org/workinggroups/drd-wg-final-report-03mar11-en.pdf and Report, page 19, 16 March 2011, http://ccnso.icann.org/workinggroups/drd-wg-final-report-

See DRD WG final Report, page 19, 16 March 2011.
http://ccnso.icann.org/workinggroups/minutes-council-16mar11-en.pdf

Assuming the IANA Stewardship Transition will be successful, it also clear that a Review Mechanism should be in place rather sooner then later to ensure a redress mechanism for ccTLDs for the most critical decisions pertaining to a ccTLD: delegation, revocation, transfer and retirement. Until such time a policy has been developed, such a mechanism is unavailable, whilst other decisions or similar decisions affecting gTLDs are subject to review and redress.

In the balance of this section some concerns are raised on combining the topics.

To date the discussion on a ccNSO PDP on the applicability of Review Mechanism has focused on decisions on delegation, revocation and transfer of ccTLDs. However, it is assumed that the Review Mechanism should also be available for decisions with respect to retirement of ccTLDs. If that is the case the policy on Retirement should at a minimum be concluded by the ccNSO itself, before starting with the development of the policy for the Review Mechanism. If the two topics are combined into one process it will have a major impact on initial scoping efforts and manageability of the process.

Further, the ccNSO PDP on a Review Mechanism will most likely be partly dependent on the outcome and implementation of the CCWG Accountability work stream 1 recommendations. Decision on delegation, revocation and transfer is excluded from the CCWG Accountability scope of work, and need to be addressed by the ccNSO in a ccPDP. However, the mechanisms that will be provided by the CCWG Accountability may be usable and relevant to frame and implement the Review Mechanism for ccTLDs. To assess whether this will be the case (that the IRP as proposed by the CCWG may be useful), the IRP will need to be implemented and fully operational first. This will take some time.

Different sets of expertise and skill sets will most likely be required to address the two issues. For the Retirement ccPDP a thorough understanding of RFC 1591, ISO 3166 rules, and the DRDWG final report is required, as well as operational understanding of the DNS. For the ccPDP on a Review Mechanism, a thorough understanding of RFC 1591 and legal expertise will be required, as well as an thorough understanding of the currently existing appeal mechanisms and proposed CCWG Accountability mechanism (including the IRP and other mechanisms proposed by the CCWG Accountability).

The PDPs on Retirement and Review Mechanism will be applicable to all ccTLDs (IDN and ASCII). According to the Fast Track IDN ccTLD and overall IDN ccTLD string selection, IDN ccTLDs are ccTLDs, and hence the rules for delegation, revocation, transfer, and, in future, retirement of ccTLDs, apply to all ccTLDs. Note that the IDN ccPDP still awaits a Board vote, pending review of the EPSRP. However, until the Board has adopted the IDN ccTLD policy, the status of IDN ccTLD and therefore the scope of the anticipated PDP(s) will not be clearly delineated. Looking at IDN ccTLDs, one should also consider whether the IRP or the Review Mechanism should apply to the IDN ccTLD string selection process.

The suggestion has been made to Fast Track the PDP, however that concept is not clearly defined. It was introduced for the IDN ccTLD, meaning that to meet the immediate demand for IDN ccTLD, a special process would be launched, whilst the PDP was on-going, and would not pre-empt on the outcome (effectively meaning only a limited, small number of IDN ccTLD strings could be requested) and on experimental basis. Further the Fast Track Process was launched after the ccNSO PDP was launched and at the request of Board, after pressures from ccNSO and GAC. ALAC and GNSO were supportive, and all participated in the CCWG launched by the Board (November 2007). Looking at timeline of the IDN ccTLD Fast Track process, the real gain was in minimizing the duration of the decision making phase, both at the start and the end of the process.

Structure of ccNSO PDP and tentative minimum timeline PDP.
At a high level and based on the ccNSO PDP as described in Annex B of the ICANN Bylaws, 8 phases can be distinguished, and described below. Initially, the most relevant are phases 1-5. Assuming the ccNSO PDP will be structured around a working group, a tentative minimal timeline for these phases is listed for each of these, based on experience to date. Annex A contains a detailed description of each of these phases associated timelines.

Phase	Description	Expected minimum duration of Phase	Cumulative Duration
Phase 1: Issue report	Start of ccNSO PDP: Request of Issue report	Minimum 1.5 month	Starting date + 1.5 months
Phase 2: Initiation of PDP	Decision of Council to initiate PDP and launch	Minimum 2 months	Starting date + 3.5 Months
Phase 3: Initial and Final Report.	Preparing Initial and Final substantive Reports, including at a minimum one (1) Public Comment	Minimum 4 months	Starting date + 7.5 Months
Phase 4: decision making (Council and Members).	Decision making procedures and requirements as prescribed for the Council and Members	Expected duration: at a minimum 2 months, maximum 4 months.	Starting date + 9.5 – 11.5 months
Phase 5: Submission Board report	Issue manager and Council to prepare Board report	0.5 Month	Starting date + 10 – 12 months
Phase 6: Board vote			
Phase 7: Supplemental Recommendation			
Phase 8: Implementation			

Assuming that the scope of a ccNSO PDP is focused e.g. has a relatively limited scope, a ccNSO PDP will take at a minimum 10 months. The effective active discussion/ work period during this period is estimated at 4 months for the WG members and 3 months for community members (minimum of two public consultations). Experience has shown that actively discussing an issue at WG level from start to finish within 4 months is optimistic.

Annex A: Detailed description of phasing of a ccNSO PDP
Phase 1: Issue Report
Start of ccNSO PDP: Request of Issue report
Expected duration: minimum of 1.5 month starting with Council Resolutions
Written request (Council resolution): describing the issue that needs to be addressed.
Mandatory Actions Council:
- Appoint Issue Manager (7 days after Council resolution)
- Creation of Issue report by Issue Manager (unless otherwise defined, within 15 days after appointment. Given the need for Opinion of ICANNs general Council and requirement to draft comprehensive Issue Report, suggest minimum time of 30 days.

Advisable:
- ccNSO Council appoints steering committee, to guide and assist Issue manager throughout the process. In the past one Councillor from every region.
- Inform ICANN General Council PDP has been launched. General Council need to provide an opinion: PDPD is within scope etc.
- Inform the Regional Organisations of potential PDP.
- Inform GAC ccNSO intends to launch PDP.

Requirements Issue Report
Mandatory requirements:
Defined in Annex B Section 2. Main ones:
- Definition of scope of issues, description of scope of issue. Scope of issue partly described in DRD WG Final Report.
- Opinion ICANN's General Counsel.
- Advise Issue Manager to initiate PDP.

Advisable: If using WG, included draft charter for structure and also include rationale (no Task Force as defined in Annex B, create WG with charter). Propose a Timeline

Phase 2 Initiation of PDP
Decision of Council to initiate PDP

Starts with submission of Issue Report
Total expected minimal duration: 2 months, depending on public comments

Mandatory Actions Council:
- Vote to initiate PDP within 21 days of receipt of the issue report. 10 Councillors need to vote in favour of initiating PDP.
- Adopt charter of WG
- Establish initial timeline of PDP
- Call and appointment of volunteers

Expected duration: 1.5 month

Mandatory actions ICANN (staff)/Issue Manager:
- Post notification of initiation of PDP, including Issue Report
- Public comment on Issue Report (minimum of 21 days, however current practice at least 40 days)
- Review of comments received, relate to WG.

Expected duration: 2 months, depending on number of public comments

Phase 3: Initial and Final Report
Preparing Initial and Final substantive Reports, including at a minimum one (1) Public Comment
Starting date: Closure of Public comment on Issue Report
Expected minimal duration: at least 4 months, depends on progress made by WG in preparing the initial report

Mandatory actions:
- Prepare Initial Report (Action WG)
- Public comment period on Initial Report (minimum 40 + 30 days review and update) (Action Issue manager and
- Request Regional Organisations to appoint representative to solicit view form regions on Initial Report.
- Formally ask GAC to offer opinion or advice on Initial Report.

- Preparation of Final Report (Issue Manager)

Note this phase is least defined. Progress depends very much on progress of the WG.

Phase 4: decision making (Council and Members)
Decision making procedures and requirements as prescribed for the Council and Members
Start of phase 4: Submission of Final Report
Expected duration: at a minimum 2 months, maximum 4 months.

Mandatory actions Council (Expected duration: 3 weeks)
- Distribute Final Report to all Councillors
- Formally send GAC chair an invitation to offer opinion or advice
- Recommendation by Council on the issue (Council Recommendation). To date this was adoption of recommendations contained in Final Report. Adoption by consensus (14 or more Councillors).

Mandatory Action Issue Manager (expected duration 1 week)
- Prepare and distribute Members Report to members

Mandatory Action ccNSO Members
- Electronic vote members (preparation vote 2 weeks + 21 days voting period). Quorum rule applies
- If no quorum, second round of voting (30 days notice + 21 days voting)

Recommendation adopted if 66% of votes lodged in favour of Recommendation.

Phase 5: Submission Board report
Issue manager and Council to prepare Board report
Total Expected duration: 2 weeks
Mandatory action Issue Manager:
- Prepare and submit draft Board report to Council
- Submit Board report, after approval by Council, to the Board

Mandatory action ccNSO Council:
- Approval of Board Report

Phase 6: Board vote
Not specified

Phase 7: Supplemental Recommendation
Not specified

Phase 8: Implementation
Not specified