

Hi Alejandra,

I'm attaching the notes from our call regarding the ccNSO PDP3 dispute resolution policies. Just one issue that I didn't catch and want to be sure to call out. The summary refers to a review of "procedural fairness." Please be assured that (as is clear later in the document) we understand that the ccNSO expects the process to review (1) adherence to the specified procedures; and (2) fairness in applying the policies.

Thanks to you and the team for a constructive discussion.

Best,  
Becky

## Meeting Notes - ccPDP3 RM Board Caucus - ccNSO Conversation on Remaining Questions | 30 January 2025, 2000-2100 UTC

### Attendees

Board Caucus: Becky Burr, Patricio Poblete, Leon Sanchez

ccNSO Council: Jordan Carter, Nick Wenban-Smith, Stephen Deerhake

ICANN org: Samantha Eisner, Odeline MacDonald, Russ Weinstein, Alperen Eken, Joke Braeken, Claudia Ruiz, Bart Boswinkel

### Background

The ccNSO and the Board Caucus on ccPDP3 Review Mechanisms (ccPDP3 RM) held a meeting to discuss key aspects of the ccPDP3 RM. The goal was to resolve any remaining questions in a more efficient and direct manner. The discussion was prompted by previous correspondence, in which the Board Caucus requested clarification, and the ccNSO provided detailed responses embedded within the policy text. However, since a few questions remained unresolved, and to avoid delays caused by further written exchanges, the ccNSO suggested a meeting to address the y outstanding issues. These were discussed during the meeting and the Caucus has outlined their understanding of the discussion as summarized below. Key points from the attendees are provided for reference. To listen to the full discussion, the recording is available [here](#).

### 1. Objective of the Review Mechanism - Procedural and Substantive Review

**Concern raised: The Board Caucus sought to ensure a shared understanding of the CCRM Review's role and align its procedural and substantive objectives.**

**Summary of the Board Caucus' understanding:** The ccPDP3 Review Mechanism is a procedural review designed to ensure that established rules are applied correctly. It is not an appeals process or a full-fledged dispute resolution system but rather a simple, low-cost mechanism that provides an independent assessment of procedural fairness. The reviewer's findings are non-binding recommendations, with the IFO making the final decision. This mechanism helps resolve disputes early by offering a second opinion from a trusted expert.

#### *Key points from the attendees:*

- Jordan Carter: Confirmed that the review is not an appeal, and findings are non-binding.
- Nick Wenban-Smith: Emphasized that the goal is to check for procedural correctness and avoid unnecessary litigation.
- Sam Eisner: Sought clarification on whether the review findings are binding (they are not) and confirmed the understanding that the review mechanism, if a problem is identified, is not a place to resolve the issue. Additionally, regarding the distinction between substantive and procedural review, it was confirmed that while the reviewer can assess the substance, the process should not require detailed legal opinions.

- Becky Burr: Stressed that the review ensures fairness, not just procedural correctness.

## **2. Scope of the Review**

*Concern raised:* The Board Caucus wanted to discuss whether the parameters defining the scope of the review were clear enough to facilitate the reviewer's work, in alignment with the policy's objectives.

Summary of the Board Caucus' understanding: The review mechanism must consider all relevant existing and future policies developed through the ccNSO Policy Development Process (PDP). It should also ensure consistency in decision-making by referencing past IFO decisions when applicable. The reviewer is not required to go beyond the information provided in the review request but may do so if necessary.

*Key points from the attendees:*

- Jordan Carter: Stated that past IFO decisions should be taken into account where relevant.
- Nick Wenban-Smith: Gave an example related to the extension of period to retire a domain, highlighting the need for consistency.
- Patricio Poblete: Noted that precedents will build up slowly over time, so initially each case should be evaluated on its own merit.
- Becky Burr: Suggested that the claimant should be encouraged to provide clear reasons for why they believe a review is necessary, and the reviewer should have clear guidance on what they are supposed to assess.
- Sam Eisner: Noted that if prior decisions are relied upon, confidentiality issues may arise, especially for undisclosed decisions. These should not be included in the report, though they can be reviewed by the reviewer. The confidentiality handling will need to be worked out during implementation.

## **3. Role of the ICANN President & CEO**

*Concern raised:* The Board Caucus sought clarification on the role of the CEO.

*Summary of the Board Caucus' understanding:* The ICANN CEO's role is limited to ensuring compliance with review procedures. They are not involved in resolving disputes but are notified when the IFO rejects a review finding or fails to comply with the review process, ensuring adherence to policies.

*Key points from the attendees:*

- Bart Boswinkel: Clarified that the CEO's role appears in two cases:
  - When IFO is the final decision-maker.
  - When IFO does not follow the review process.
- Becky Burr: Expressed concern about policy language that may imply CEO intervention.
- Jordan Carter: Stated that the CEO's role is to ensure policy compliance, not to intervene in review outcomes.

- Patricio Poblete: Explained that failure to comply with the review process is an objective issue, not a matter of opinion.
- Sam Eisner: Noted that the Legal team will need to have an additional look at this point as it is essential that we are clear, in any documentation produced, that being dissatisfied with the outcome after the process is not a reason to claim that IFO is not following the policy.

Meeting Recording: [https://icann.zoom.us/rec/play/C\\_v0aO98usGSZAbvMolgNf1HCGG7Jqbz-Ld0bO4VGD6H57\\_SPjJubT0vMiGE0bLyOgUKV3\\_K366uqbcv.c8u88FMmYjo8J-QF?autoplay=true](https://icann.zoom.us/rec/play/C_v0aO98usGSZAbvMolgNf1HCGG7Jqbz-Ld0bO4VGD6H57_SPjJubT0vMiGE0bLyOgUKV3_K366uqbcv.c8u88FMmYjo8J-QF?autoplay=true)