

ISSUE REPORT

country code Policy Development Process 3

on introduction of a Review Mechanism and Retirement of country code Top Level Domains

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Table of Contents	Page
Executive Summary	3
1. Introduction	4
1.1 Background	4
1.2 Process	4
1.3 Readers' Guide	5
2. Recommendation	6
2.1 Introduction	6
2.2 Summary of the issues identified	6
2.2.1 <i>Contextual information Review Mechanism</i>	7
2.2.2 <i>High Level overview of Issues pertaining to review mechanism</i>	8
2.2.3 <i>Contextual Information retirement of ccTLDs</i>	8
2.2.4 <i>High Level overview of Issues pertaining to Retirement</i>	9
2.3 PDP Initiation Threshold Criteria	9
2. 4 Opinion ICANN's General Counsel	10
2.5 One or two PDP's?	11
2.6 Methodology: Working Groups	13
2.7 Recommendations of Issue Manager	14
3. Uncertainty of approval of outcome by the ICANN Board	16
4. Structure of ccNSO PDP and tentative minimum timeline.	17
4.1 Structure of the ccNSO Policy Development Process	17
4.2 Basic Schedule and Timeline	17
5. Background material & References	19
 Annex A: Charter Working Group Review Mechanism ccTLDs	 20
Annex B: Charter Working Group Retirement of ccTLDs	31
Annex C: Detailed Schedule and Timeline	39

Executive Summary

In December 2015, the ccNSO Council discussed the need to launch a formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and introduction of 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 and to fill the lack of policy pertaining to the retirement of ccTLDs.

At its meeting on 16 June 2016 the ccNSO Council resolved:

- a. Request and Issue Report in accordance with Annex B section 1 of the ICANN Bylaws.
The Issue Report should address the following topics:
 - a. Recommend whether the ccNSO should initiate the ccNSO Policy Development Process on the retirement of ccTLDs and Review Mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.
 - b. Advise whether to convene a Taskforce or use other method
 - c. Advice whether to initiate one or two ccNSO Policy Development Processes, and order the order in which the topics should be addressed.
- b. To appoint an Issue Manager

In November 2016, the ccNSO Council further resolved to appoint a drafting team to develop charters and delineate the issues pertaining to the review mechanism and retirement of ccTLDs.

Following the discussions within the Council, feed-back and input from the community and the drafting team, the Issue Manager recommends:

1. The ccNSO Council initiates a ccNSO Policy Development Process to develop policies for a Review Mechanism and on the retirement of ccTLDs.
2. To initiate one (1) ccNSO Policy Development Process. It is further recommended that the initial focus needs to be on developing a Review Mechanism, which is considered the highest priority, in particular in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.
3. To appoint two working groups each with its own charter, working method and schedule.

1. Introduction

1.1 Background

At its meeting on 10 December 2015 the ccNSO Council discussed the launch of the formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and introduction of a Review Mechanism¹ 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. As already recommended by the ccNSO Delegation and Redlegation working group (DRDWG) in 2011², the void or lack of policy relating to the retirement of ccTLDs needs to be filled by a policy developed by the ccNSO. However, at the time the DRDWG also recommended that such a ccNSO PDP should be launched following the development of a Framework of Interpretation of RFC 1591.

Following the initial discussions of the Council, input and feed-back was sought from the community at the Marrakesh, Helsinki and Hyderabad meeting. The community present at these meetings confirmed the need for developing a policy for a Review Mechanism and on retirement of ccTLDs. ,

At its meeting on 16 June 2016 the ccNSO Council resolved to request and Issue Report in accordance with Annex B section 1 of the ICANN Bylaws. The Issue Report should address the following topics:

1. Recommend whether the ccNSO should initiate the ccNSO Policy Development Process on the retirement of ccTLDs and Review Mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.
2. Advise whether to initiate one or two ccNSO Policy Development Processes, and the order in which the topics should be addressed.
3. Advise whether to convene a Taskforce or use another method

1.2 Process

The general process framework for a ccNSO Policy Development Process is the following:

- A. **Initiation of ccPDP.** The Council will need to vote on whether to initiate the PDP on the issues as defined. The basic document of this phase is the Issue Report.
- B. **Comments Issue Report.** If the Council decides to initiate the ccPDP, comments on the issue(s) as defined in the Issue Report are sought.
- C. **Preparing Recommendations.** Within the scope defined in the Issue Report and taking into account the comments received, community members will develop the recommended policy in the manner as determined by the ccNSO Council. The

¹ The term “Review Mechanism” has been chosen to differentiate from 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- Accountability group for appeals / reviews on other decisions.

² 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>

recommendations will be included in the Initial Report for public comment and then in the Final report.

- D. **Decision making on Recommendations by ccNSO.** Based on the Final Report the ccNSO Council and members of the ccNSO will need to vote on the proposed recommendations.

This general framework is the basis for the more detailed schedule for the ccPDP included in section 4, Schedule and Timeline for the upcoming ccPDP. This Issue Report is the basis for the ccNSO Council decision for initiation of the ccPDP.

1.3 Readers' Guide

To inform the discussions of Council and broader community, three (3) separate but clearly interrelated questions were raised by the ccNSO Council:

1. Recommend whether the ccNSO should initiate the ccNSO Policy Development Process on the retirement of ccTLDs and Review Mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.
2. Advise whether to initiate one or two ccNSO Policy Development Processes, and the order in which the topics should be addressed.
3. Advise whether to convene a Taskforce or use another method

The answers to these questions will be presented in the following order as part of the Recommendation (section 2) of this report. First after a high level overview of the issues pertaining to the review mechanism and retirement of ccTLDs is provided in section 2.2. The threshold criteria to initiate a PDP are presented in section 2.3 and the the required Opinion of ICANN's General Counsel is included in section 2.4. In section 2.5 will deal

The second and third part of the Council questions, whether to combine the development of proposals pertaining to the Retirement of ccTLDs and Review Mechanism for decision regarding delegation, revocation, transfer and retirement of ccTLDs in one single formal policy development process, is discussed in section 2.5. This is followed (section 2.6) by the proposal to undertake the development effort in two working groups. The proposed charters of these working groups, including their respective scope of topics and proposed working methods are included in Annex A and B. The Recommendation to initiate the PDP itself is contained in section 2.7.

Under the Bylaws (Annex B section 2.g) the Issue Manager is required to advise whether the proposed policy that will be approved by the ICANN Board of Directors. This is (briefly) discussed in section 3.

The final two sections of this report, section 4 Structure of ccNSO PDP and tentative minimum timeline and section 5 References, are administrative in nature.

2. Recommendation

2.1 Introduction

The Bylaws (Annex B) require the Issue Manager to recommend to the ccNSO Council whether to initiate a ccPDP. To proceed the Issue Manager must first determine that the PDP Issue(s) identified to be addressed (Section 2.2) meet threshold criteria defined in the Annex B (See section 2.3 below). The Bylaws (Annex B) also require that any such recommendation should include the opinion of ICANN's General Counsel as to whether the identified PDP Issues are within the scope of ICANN's mission and the scope of the ccNSO for policy making; implicate or affect an existing ICANN policy; and likely to have lasting value or applicability (see section 2.4. below).

In the final part of this section the recommendation of the Issue Manager is included as to whether the Council should move to initiate the PDP to address the identifies issues.

2.2 Summary of the issues identified

This section contains a summary of the main topics to be addressed. The first sets of issues are summarized in section 2.2.2. In Section 2.2.1 some contextual information is provided with relation to a Review Mechanism³.

The issues pertaining to the retirement of ccTLDs, including IDN ccTLDs are summarized in Section 2.2.3 (contextual information) and section 2.2.4.

Following the discussions and comments on the Final Report of the ccNSO Delegation and Redefinition Working Group, the Framework of Interpretation and – later – on the initial proposals of the CWG-Stewardship, and input and feed-back from the community at the Marrakesh, Helsinki and Hyderabad meeting, the included issues have been presented to community present at these meetings and were further refined by the ccNSO Drafting Team for charters under the ccPDP.

The results of the PDP(s) on Retirement and Review Mechanism should be available and be applicable to both IDN and ASCII ccTLDs. According to the Fast Track IDN ccTLD and overall recommended policy for the selection of IDN ccTLDs, IDN ccTLDs are ccTLDs, and hence the rules for delegation, revocation, transfer, and, in future, retirement of ccTLDs, apply to these 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 could also consider whether the IRP or the Review Mechanism to be developed should apply to the IDN ccTLD string selection process.

³ The more detailed topic paper can be found at: <https://community.icann.org/display/ccnsowkspc/Documents>

2.2.1 Contextual information Review Mechanism

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

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 Parties⁴] can not reach agreement among themselves. The IDNB's decisions will be binding.*

This 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

Following public comments on its first proposal, the CWG-Stewardship proposed that: *An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.*

In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review Process, the results of delegation/re-delegations are explicitly excluded⁵.

ICANN Bylaws 1 October 2016

According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration: ⁶

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**"

⁴ Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

⁵ The CCWG- Accountability also proposes that the IRP:

Be subject to certain exclusions relating to the results of an SO's policy development process, country code top-level domain delegations/ redelegations, numbering resources, and protocols parameters. See: page 33

<https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>

⁶ <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

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 re-delegations;

2.2.2 High Level overview of Issues pertaining to review mechanism

Given the expressed need for a review mechanisms and based on the community discussions, feed-back and comments to date, including but not limited to those with respect to the CWG-Stewardship and CCWG-Accountability proposals and related work, the following issues have been identified:

Scope of the review mechanism

- 1. Which decisions and/or actions should be subject to a review mechanism?*
- 2. Who's decisions and/or actions should be subject to a review mechanism?*
- 3. What will be result / scope of the review decision? What powers will be bestowed upon review panel?*

Standing at review mechanism

- 1. Who will have standing at a review mechanism?*
- 2. Should a Review Mechanism be open and applicable to all ccTLDs?*

What are the grounds?

- 1. Should the questions for a review be limited to questions whether due process was followed in terms of a ccTLD delegation, transfer, revocation or retirement or should they be broader?*

Rules and structure of review mechanism

- 1. What are the rules and procedures to be used?*
- 2. Structure of panel and requirements and selection of panellist*

A more detailed overview of topics of the issues pertaining to the Review Mechanism is included in the proposed charter of WG 1.

2.2.3 Contextual Information retirement of ccTLDs

To date, only a limited number of ccTLDs have been undelegated. The majority of these cases are recorded in the Delegation Redelegation working group (DRDWG) final report on the retirement of ccTLDs⁷. Since publication of this report in 2011 two more cases of retirement have occurred⁸. As the DRDWG has noted, although the frequency of retirements is very low,

⁷ <https://ccnso.icann.org/workinggroups/drd-wg-retirement-report-07mar11-en.pdf>

⁸ The retirement process of .AN was completed in 2015, see <http://www.iana.org/domains/root/db/an.html>
The retirement process of .TP was completed in 2015, see <http://www.iana.org/domains/root/db/tp.html>

there is no policy in place regarding the retirement of ccTLDs, and the practices to date seem to provide an insufficient framework for such a critical activity.

Looking at the recorded cases of undelegation (retirement), most cases appear to be initiated when the name of the country or territory was removed from the ISO 3166-1 list. Country names might be removed from ISO 3166-1 for various reasons⁹:

- A country might change a significant part of its name, for example Burma (BU) was changed to Myanmar (MM) in 1989.
- A country may divide into two or more new ones, for example Czechoslovakia was divided into Czech Republic and Slovakia in 1993. Later CS was used as assigned code for Serbia, which caused all kinds of confusion worldwide. With the subsequent separation of Montenegro as a separate country the code CS got retired again.
- Two or more countries may merge for example Democratic Yemen (YD) and Yemen Arab Republic (YE) merged into the Republic of Yemen (YE) in 1990.

2.2.4 High Level overview of Issues pertaining to Retirement

Based on an initial analysis of the cases of retirement to date the following initial topics and issues emerge that among others need to be addressed:

- 1. Consistency of terminology**
- 2. What triggers a retirement of a (IDN) ccTLD?**
- 3. Who triggers retirement process?**
- 4. Additional conditions for retirement of a ccTLD?**
- 5. Compliance with conditions?**

A more detailed overview of topics of the issues pertaining to the Retirement of ccTLDs is included in the proposed charter of WG 2.

2.3 PDP Initiation Threshold Criteria

The proposed issues raised for consideration

The topics and issues raised for consideration are set out in section 2.2 above. This is an initial list to focus and guide the WG to achieve their goal of proposing a policy. A more detailed list is provided in section 1.3 in the charters of the proposed Working Groups (see section 2.6 below and Annex A and Annex B). In addition, if the WGs are aware of other topics and issues that are not listed and that in the view of a WG need to be addressed to achieve its goal, a WG should take these into consideration and inform the ccNSO Council and Issue Manager accordingly.

If topics and issues become apparent that are considered out of scope of the WG as defined

⁹ This is language that is not included in the official standard, but for illustration from the ISO 3166 website: http://www.iso.org/iso/country_codes_glossary.html

in the charter of the WG, the Chair of the WG shall inform the ccNSO Council and Issue Manager accordingly. If the ccNSO Council concurs with the WG, the ccNSO Council it is expected to deal with it appropriately.

The identity of the party submitting the issue

The ccNSO Council on behalf of broader ccNSO membership and ccTLD community. The topics and issue pertaining to the retirement of ccTLDs flow from the Delegation and Redelegation WG Final Report on Retirement of ccTLDs (2011) as adopted by the ccNSO Council. The topics and issues with respect to the review mechanism follow from the CWG- IANA Stewardship Transition and CCWG-Accountability WS 1 discussion processes, including the public comments from the ccTLDs on draft proposals and adoption of the respective final proposals by the ccNSO Council.

How that party is affected by the issue

ccTLD managers and others with an interest in the ccTLD are affected. Once the PDP(s) will be concluded the predictability and legitimacy of decisions with respect to the delegation, transfer, revocation and retirement of ccTLDs is ensured and the policy void pertaining to the retirement of ccTLDs will be filled.

Support for the issue to initiate the PDP

There is significant support in the ccTLD community based on:

- The feed-back and comment received on the possible launch of the ccPDP during session at ICANN 56, 56 and 57
- With respect to the review mechanism demonstrated through the public comment on the CWG- Stewardship Proposals and CCWG-Accountability
- Adoption of Council and support by the community for the recommendations of the Delegation and Redelegation Working Group Final report on retirement of ccTLDs.

2. 4 Opinion ICANN's General Counsel

ICANN Bylaws Annex B, Section 2 specifies that every ccNSO Issue Report shall include "an opinion of the ICANN General Counsel regarding whether the issue is properly within the scope of the ICANN policy process and within the scope of the ccNSO¹⁰."

The opinion of the ICANN General Counsel is that the development of policies for 1. review mechanism pertaining to the delegation, transfer, revocation and retirement of (IDN) ccTLDs and 2. Retirement of (IDN) ccTLDs for the selection and delegation of IDN ccTLDs are within the scope of the ccNSO and the ICANN policy process.

(Note: while the general subjects of review mechanism and retirement selection are within scope of the ccNSO, it should be noted that a few of the particular questions raised might not be within the scope of the scope of the ccNSO PDP, or within the

¹⁰ <https://www.icann.org/resources/pages/governance/bylaws-en/#annexC>

scope of the ccNSO as defined in Annex C. For example, the question is raised whether a review mechanism should be open to all ccTLDs? Should that be vetted by non-ccNSO members?)

In reaching the determination on the question of scope, the ICANN Bylaws specify that the following considerations should be examined; whether:

- 1) The issue is within the scope of ICANN's mission;
- 2) Analysis of the relevant factors according to Section 10.6(b) and Annex C affirmatively demonstrates that the issues are within the scope of the ccNSO;
- 3) Implicates or affects an existing ICANN policy;
- 4) Is likely to have lasting value or applicability, albeit with the need for occasional updates, and to establish a guide or framework for future decision-making.

These considerations support the appropriateness of policy development for 1. a review mechanism pertaining to decision on delegation, transfer, revocation and retirement of ccTLDs and 2. retirement of ccTLDs being conducted within the ccNSO PDP. The policy pertaining to a Review Mechanism as outlined within this Issues Report does fall within ICANN's Mission to ensure the stable and secure operation of the Internet's unique identifier systems, which includes coordinating the allocation and assignment of names in the root zone of the DNS. The review mechanism is within the scope of ICANN's mission because it would potentially develop a review mechanism pertaining to decisions on delegation, transfer, revocation and retirement of country code top level domains. Development of a review mechanism as outlined falls within the scope of the ccNSO policy development process as it intends to provide a review mechanism for decisions pertaining existing processes and procedures which are within the policy development remit of the ccNSO (delegation, transfer and revocation of ccTLDs) or will be developed as such (retirement of ccTLDs). In addition, it will bring clarity, update or change existing policy documentation¹¹.

The retirement of (IDN) ccTLDs is within ICANN's mission to coordinate at the overall level the Internet's domain name system, and scope of ccNSO policy development. It is a process, and procedure that potentially directly impacts ccTLDs, and hence the allocation and assignment of names in the root zone of the DNS.

2.5 One or two PDP's?

At its meeting on 10 December 2015 the ccNSO Council discussed the launch of the formal ccNSO Policy Development Processes to address the lack of policy with respect to retirement of ccTLDs and Review Mechanism on issues of delegation, revocation and retirement of ccTLDs. One of the questions of the ccNSO Council was whether to combine the development of policies under one formal Policy Development Process or initiate two separate but interrelated processes.

¹¹ <https://www.ietf.org/rfc/rfc1591.txt>

In line with the recommendations of the Delegation and Redefinition working group in 2011¹², it was advised that the policy development process on retirement of ccTLDs should be launched once the Framework of Interpretation was concluded to fill the void of lack of policy and hence to increase the predictability and legitimacy of decision pertaining to the retirement of ccTLDs.

At the request of Council, the secretariat prepared an overview of the different alternatives and associated timelines, taking into account the feed-back and input received at the Marrakesh, Helsinki and Hyderabad meeting.

These alternatives were presented to Council at its meeting on 12 May 2016:

1. The two PDPs (Review Mechanism and Retirement) run sequentially
2. One PDP two sequential WG (Review Mechanism, Retirement)
3. One PDP two Parallel WG (effectively the same as one PDP with one WG)

Analysis suggested that the major differences between the alternatives are:

- Moment when Review Mechanism is available to the community.
- Topics to be addressed and hence required skill set and expertise to resolve the issues;
- Availability of community members/ Workload for the community.

The discussion on the applicability of Review Mechanism has focused on decisions on delegation, revocation and transfer of ccTLDs. However, the Review Mechanism should also be available for decisions pertaining to the retirement of ccTLDs. If the two policy development processes would run separately this implies that:

- Alternative 1: the policy on Retirement should be concluded first, before the policy for the Review Mechanism is concluded or
- Alternative 2 The policy on the Review Mechanism should be revisited after its conclusion.

If the two topics would be combined under one PDP it will have an impact on the initial scoping efforts and manageability of the process, however it avoids the major complication to revisit and review a recommended policy almost immediately after it is adopted (and potentially before its implementation has been completed).

With the successful conclusion of the IANA Stewardship Transition the community present at the Helsinki meeting expressed strong view that a Review Mechanism should be in place rather sooner than later. It was felt that ensuring a redress mechanism for ccTLDs for the most critical decisions pertaining to a ccTLD: delegation, revocation, transfer and retirement is a high priority. Until such time a policy has been developed, such a mechanism is

¹² 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>

unavailable, whilst other decisions or similar decisions affecting gTLDs are subject to review and redress.

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 a thorough understanding of the currently existing appeal mechanisms and proposed CCWG Accountability mechanism (including the IRP and other mechanisms proposed by the CCWG Accountability).

Following the initial discussions of Council, and the input and feed-back received it is recommended to initiate one (1) ccNSO Policy Development Process. In addition it is recommended that the initial focus needs to be on developing a Review Mechanism, which is considered the highest priority, in particular in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.

2.6 Methodology: Working Groups

The Bylaws permit the ccNSO Council to appoint a Task Force to gather information documenting the positions of the various parties or groups as specifically and comprehensively as possible, to facilitate meaningful and informed deliberation by the Council on the issue(s).

To convene a Task Force, the Council must:

- A. Identify Task Force members (including the required participation of two Representatives of the Regional Organizations) and formally request the GAC participation);
- B. Develop a charter or terms of reference that must specify:
 - a. The issues to be addressed by the Task Force;
 - b. The time line to be followed by the Task Force;
 - c. Any specific instructions for the Task Force t, including whether or not the task force should solicit the advice of outside advisors on the issue.

Alternatively, in the event the ccNSO Council does not convene a Task Force:

- i. Each Regional Organization is supposed to appoint a representative to solicit the Region's view on the issue, within the time designated in the PDP Time Line;
- ii. The Council must formally request the Chair of the GAC to offer opinion or advice; and
- iii. The Council may take other steps to assist in the PDP, for example, appointing particular individual(s), to gather information and to assist the Issue Manager.

Given the issue(s) to be resolved and the cross cutting interests involved, and taking into account the experiences to date with Working Groups in general and under the previous PDP in particular, the Issue Manager concludes that any potential benefits of appointing a Task Force are not outweighed by its inherent limitations. The ccNSO Council is therefore advised not to appoint a Task Force, but to appoint two working groups each with its own charter, working method and schedule.

The goal of the first working group (WG 1) is to report on and recommend a feasible policy for a review mechanism with respect to decisions pertaining to the delegation, transfer, revocation and retirement of the 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.

The goal of the second working group (WG2) is to report on and recommend a feasible policy for the retirement of the delegated Top Level Domains associated with the country codes assigned to countries and territories listed in the ISO 3166-1 within the framework of the ccNSO Policy Development Process.

The working groups are to be guided by the scope as defined in the charter. In addition to the members from the ccTLD community, the Council should invite each of the Regional ccTLD Organisations, the ALAC, GAC, GNSO and SSAC to participate and to appoint at least one participant to each of the Working Groups, in accordance with their own rule sand procedures. The Issue Manager further recommends that at least one staff member from PTI is invited to each of the WGs and an expert on ISO 3166 standardisation will be invited at least for the WG on retirement of ccTLDs. The working methods and internal decision-making are also described in the charter for the Working Groups. The charters as proposed are included as Annex A and B and have been developed by the ccNSO charter drafting team¹³

The Issue Manager further recommends that the second working group (on retirement of ccTLDs) will be launched once working group 1 on the review mechanism has concluded its work with respect to delegation, transfer and revocation of ccTLDs. After Working group 2 has concluded its work, working group will need to revisit its work to update its proposed policy to build on the proposals of Working group 2. The high-level timeline is included in section 5

2.7 Recommendations of Issue Manager

According to the Bylaws (Annex B section 2.e), the Issue Manager is required to make a Recommendation as to whether the Council should move to initiate the PDP for the issues identified in this report.

The ccNSO Council asked the Issue Manager to:

4. Recommend whether the ccNSO should initiate the ccNSO Policy Development

¹³ <https://ccnso.icann.org/workinggroups/charters.htm>

Process on the retirement of ccTLDs and Review Mechanism for decision pertaining to the delegation, transfer, revocation and retirement of ccTLDs.

5. Advise whether to initiate one or two ccNSO Policy Development Processes, and the order in which the topics should be addressed.
6. Advise whether to convene a Taskforce or use another method

Recommendation 1: Should the ccNSO Council initiate the a ccPDP to develop policy for a Review Mechanism and on the retirement of ccTLDs?

Based on a review of the issues, considering that the Threshold Criteria are met, and taking into account General Counsel's opinion, the Issues Manager recommends that the ccNSO Council initiates a ccNSO Policy Development Process to develop policies for a Review Mechanism and on the retirement of ccTLDs.

Recommendation 2: Should the ccNSO Council initiate one or two ccNSO Policy Development Processes, and in what order should the topics be addressed?

Following the initial discussions of Council, and the input and feed-back received it is recommended to initiate one (1) ccNSO Policy Development Process. It is further recommended that the initial focus needs to be on developing a Review Mechanism, which is considered the highest priority, in particular in light of the IANA Stewardship transition. Only then the focus should be on retirement, and, if needed, revisit the Review Mechanism to include decisions relating to the retirement of ccTLDs.

Recommendation 3: Should the ccNSO Council convene a Taskforce or use another method?

Any potential benefit of appointing a Task Force is not outweighed by its inherent limitations. The ccNSO Council is advised not to appoint a Task Force, but instead to appoint two working groups each with its own charter, working method and schedule.

3. Uncertainty of approval of outcome by the ICANN Board

The Bylaws (Annex B section 2.g) require the Issue Manager to advise as to whether the ccNSO Policy Development Process is likely to result in a proposed policy that will be approved by the ICANN Board of Directors. To date, no substantive discussion on these issues has taken place, nor are they likely to take place before any substantial output has been produced. Therefore, at this stage in the process it

4. Structure of ccNSO PDP and tentative minimum timeline.

4.1 Structure of the ccNSO Policy Development Process

At a high level and based on the description of the ccNSO Policy development Process in Annex B of the ICANN Bylaws, 8 phases should be distinguished. However, the four last ones, as of the Board vote up until implementation are beyond the control of the ccNSO community.

- A. **Initiation of ccPDP.** According to the ICANN By-laws Appendix B, section 3, the Council will need to vote on whether to initiate the PDP on the issues as defined. The basic document of this phase is the Issue Report.
- B. **Comments Issue Report.** If the Council decides to initiate the ccPDP, the first step is to seek comments on the issue(s) as defined in the Issue Report. Comments will then be compiled by the Issue Manager and, together with the Issue Report, used as starting point for developing the recommendations.
- C. **Preparing Recommendations.** Within the scope defined in the Issue Report and taking into account the comments received, community members will develop the recommended policy in the manner as determined by the ccNSO Council (through a Task force or in another way). The recommendations will be included in the Initial Report that will be open for public comments. These comments will be reviewed and the appropriate comments, to be determined by the Issue Manager, will be added to the Initial report, to create the Final report.
- D. **Decision making on Recommendations by ccNSO.** Based on the Final Report the Council shall work towards achieving recommendations to be submitted to the ICANN Board of Directors for adoption. The process would require support of the recommended policy by a supermajority (66% or more) of the members of the ccNSO who at the end of the process lodge a vote.

4.2 Basic Schedule and Timeline

Assuming the ccNSO PDP will be structured around two working groups, a tentative minimal timeline for these phases is listed below. This timeline is based on experience to date with the previous PDP and working groups like the ccNSO FOIWG and DRDWG.

Assuming the scope of this ccNSO PDP is focused e.g. has a relatively limited scope, the ccNSO PDP will take at a minimum 21 months. However the actual duration will be determined by the duration of the effective active discussion/ work period. For purposes of this timeline it is estimated at 4 months per WG and 3 months for community members (minimum of 2 public consultations). Experience has shown that actively discussing an issue at WG level from start to finish in 4 months is optimistic.

A more detailed Schedule and Timeline is included in Annex C

Schedule and Timeline

Phase	Description	Expected starting date and minimal duration if applicable.	Cumulative Timeline
Phase 1: Initiation of ccPDP	Decision of Council to initiate PDP and launch Phase 3 by call for volunteers	March 2017	
Phase 2: Comments on Issue PDP	Publish Issue report, call for volunteers, inform SO/ACs etc.	Minimum 2 months	March- May 2017
Phase 3: Preparing Recommendations	Preparing Initial and Final proposals by WGs , including at a minimum one (1) Public Comment on combined output	Minimum 18 months (9 months WG 2, 7 months WG 2, Interim Report Issue Manager 2 Months . WG 1 and WG 2 partially parallel)	May 2017 – March 2019
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. Start post ccNSO members meeting	November 2018- January 2019
Phase 5: Submission Board report	Issue manager and Council to prepare Board report	0.5 Month	January 2019
Phase 6: Board vote			
Phase 7: Supplemental Recommendation			
Phase 8: Implementation			

5. Background material & References

In preparing the Issue Report, and, in proposing a time line for conducting each stage of the ccPDP the the following documents provided guidance and were taken into account:

- The ccNSO Delegation and Redelelegation working group Final report on retirement of ccTLDs, 07 march 2011 (<http://ccnso.icann.org/workinggroups/drd-wg-retirement-report-07mar11-en.pdf>)
- RFC 1591 (<https://www.ietf.org/rfc/rfc1591.txt>)
- ISO 3166 standard (http://www.iso.org/iso/country_codes)
- The ccNSO Framework of Interpretation working group Final Report, (<http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>)
- CWG-Stewardship Final Report, Annex O: ccTLD Appeals Mechanism Background and supporting Findings Sections 1414- 1428.
- and any other matters that the Issues Manager considers to be of relevance.

Annex A: Charter Working Group 1: Review Mechanism

Charter Working Group Review Mechanism of ccTLDs

0. Contextual Background Information Review Mechanism¹⁴

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

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 Parties¹⁵] can not reach agreement among themselves. The IDNB's decisions will be binding.*

This 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

Following public comments on its first proposal, the CWG-Stewardship proposed that: *An appeal mechanism, for example in the form of an Independent Review Panel, for issues relating to the IANA functions. For example, direct customers with non-remediated issues or matters referred by ccNSO or GNSO after escalation by the CSC will have access to an Independent Review Panel. The appeal mechanism will not cover issues relating to ccTLD delegation and re-delegation, which mechanism is to be developed by the ccTLD community post-transition.*

In addition, as part of the CCWG Accountability Proposal to enhance the Independent Review Process, the results of delegation/re-delegations are explicitly excluded¹⁶.

ICANN Bylaws 1 October 2016

¹⁴ The term "Review Mechanism" has been chosen to differentiate from the appeals process referred to in RFC1591 relating to the review of decisions relating to delegation, transfer and revocation of a ccTLD, and from the generic Independent Review Process (IRP) as required by the CCWG- Accountability group for appeals / reviews on other decisions.

¹⁵ Section 3.4 RFC 1591 is about the definition and role of Significantly Interested parties.

¹⁶ The CCWG- Accountability also proposes that the IRP:

Be subject to certain exclusions relating to the results of an SO's policy development process, country code top-level domain delegations/ redelegations, numbering resources, and protocols parameters. See: page 33

<https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-work-stream-1-recs-23feb16-en.pdf>

According to latest version of the ICANN Bylaws (Section 4.2) Reconsideration: ¹⁷

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 re-delegations;*

Following the discussions and comments on the Framework of Interpretation and – later – on the initial proposals of the CWG-Stewardship, and input and feed-back from the community at the Marrakesh and Helsinki meeting, the community present was of the view that a policy needs to be developed with respect to the introduction of a review mechanism. Based on the consultations to date the community considers this the highest priority, in particular in light of the IANA Stewardship transition.

1. Goal, Scope and issues to be addressed

1.1 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.

1.2 Scope

To achieve its goal, the WG shall initially focus on and be guided by the topics and issues listed below in section 1.3. If other topics and issues become apparent that are not listed and that in the view of the WG need to be addressed to achieve its goal, the WG should take these into consideration and inform the ccNSO Council and Issue Manager accordingly.

¹⁷ <https://www.icann.org/resources/pages/governance/bylaws-en/#article4>

As this WG will undertake its activities within the framework of the ccNSO Policy Development Process, the limitations with respect to the scope of a ccPDP, Article 10 and Annexes B and C to the ICANN Bylaws, shall also limit the scope of the WG's work.

If topics issues become apparent that are considered out of scope of the WG, the Chair of the WG shall inform the ccNSO Council and Issue Manager accordingly. If the ccNSO Council is also of the opinion it is outside the scope of the WG, it is expected to deal with it appropriately.

1.3 High Level overview of topics and Issues pertaining to review mechanism

Given the expressed need for a review mechanisms and based on the community discussions, feed-back and comments to date, including but not limited to those with respect to the CWG-Stewardship and CCWG-Accountability proposals and related work, the following issues have been identified:

Scope of the review mechanism

1. *Which decisions and/or actions should be subject to a review mechanism?*
2. *Whose decisions and/or actions should be subject to a review mechanism?*

With regard to these questions, RFC 1591 section 3.4 called for the creation of the IDNB: *[The IDNB] will act as a review panel for cases in which the parties [i.e the Significantly Interested Parties] cannot reach agreement among themselves. The IDNB's decisions will be binding.* This assumes that disputes among Significantly Interested parties (as defined in the Framework of Interpretation) are subject to a binding review mechanism. The IDNB has never been established.

Following the Framework of Interpretation of RFC 1591¹⁸, recognising that ultimate authority on public policy for any country is its government and legislature, nothing in the FOI is intended to, or should be taken to constrain or limit applicable law in respect to matters relating to country-code or IDN cc Top Level Domains, or in the state of incorporation/place of business of the IANA operator.

Further, the FOI WG *believed that 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.*

3. *Should a Review Mechanism be open and applicable to all ccTLDs?*
4. *What will be result / scope of the review decision? What powers will be bestowed upon review panel?*

Assuming the introduction of a review mechanism, the scope of the decision of the review will need to be defined.

¹⁸ <https://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>, page 3.

Who will have standing at a review mechanism?

What are the grounds?

Should the questions for a review be limited to questions whether due process was followed in terms of a ccTLD delegation, transfer, revocation or retirement or should they be broader?

Rules and structure of review mechanism

1. *the rules and procedures to be used?*

2. *Structure of panel and requirements and selection of panelist*

As part of the review mechanism proposals the structure of the panel (for example how many panelists, should there be a standing panel, or selection from a pool of panelists) and the requirements and selection of panelists need to be developed

Depending on scope of the decisions for review, the choice of law may be considered relevant to ensure the consistency with RFC 1591 and the Framework of Interpretation. According to the FOIWG, *“recognizing that ultimate authority on public policy for any country is its government and legislature, nothing in the FOI is intended to, or should be taken to constrain or limit applicable law in respect to matters relating to country-code or IDN string, or in the state of incorporation/place of business of the IANA operator.”*

2. The WG

2.1 Members and other participants of the WG

The WG is open to members who are representatives of ccTLDs, participants from other stakeholder groups, observers and experts.

Members, participants, and experts commit to participate actively and regularly in the work of the WG and are expected to have at least a basic understanding of the reference material (section 6).

Once appointed all participants in the WG will be subscribed to a mailing list. The mailing list will be archived after closure of the WG.

The names and affiliation of the WG members and other participants will be published on a dedicated WG page on the ccNSO website.

At any time WG members, participants, observers and experts may resign from the WG, by informing the Chair of the WG, who will then inform the ccNSO Council. After receiving a notification the ccNSO Council may seek a replacement.

2.1.1 Members

The working group should have at least 10 members who are representatives from ccTLD managers or their nominees (at least two (2) from each of the 5 ICANN Geographic Regions). With respect to members of the WG there is no requirement for a ccTLD to be a ccNSO Member. If fewer than two (2) nominations are received from a Geographic Region, the ccNSO Council will actively encourage additional nominations from those regions. Members are appointed by the ccNSO Council in accordance with the general rules and procedures of the ccNSO for working groups¹⁹.

The expectation is that any ccTLD that wishes to be actively involved in the WG will be allowed to do so.

The WG members shall nominate a chair and alternate chair from the members of the Working Group, who will then be appointed by the ccNSO Council.

2.1.2 Participants, experts and observers to the WG

In addition, the WG is open to participants, who shall not be considered members of the WG. Participants are entitled to participate on equal footing with members, unless the charter states otherwise. The ccNSO Council will request the following stakeholders to appoint at least one participant:

- Each of the Regional Organisations as defined in Section 10.5 of the ICANN Bylaws;
- ALAC
- GAC
- GNSO
- SSAC

Experts to the WG

The ccNSO Council may also invite and appoint experts as advisors to the WG. Experts shall not be considered members of the WG, but are entitled to participate on an equal footing in their area of expertise. The Council will at least invite the following persons:

- PTI staff
- Expert on the ISO 3166-1 list.

Observers

The WG will have the following observers:

- The Issue Manager for the ccPDP
- Any person appointed as observer by the chair of the WG

2.1.3 Staff Support

¹⁹ <https://ccnso.icann.org/about/guidelines-working-groups-30mar16-en.pdf>

ICANN will be requested to provide adequate staff support to the WG

2.2 Chair and vice-chair

At the nomination of the members of the WG, the Chair and vice-chair of the WG will be appointed by the ccNSO Council. The chair and vice-chair should be members of the Working Group.

The Chair together with the vice-chair, will manage the ongoing activities of the WG and ensure an appropriate working environment by:

- Promptly sharing relevant information with the entire WG.
- Planning the work of the WG to meet the WG goals and leading the WG through its discussions.
- Regularly assessing and reporting on the progress of the WG to the Council and broader community.
- Keeping track of WG participation. Where a WG member does not regularly participate, the Chair will reach out to the member to engage that person in the WG. If, after a conversation that member does not regularly participates, the Chair will advise the Council, so that further steps can be taken to resolve the situation.

The Chair is the representative of the WG. If the Chair of a WG is not a member of the ccNSO Council, the ccNSO Council will appoint a ccNSO Council liaison, to act as an intermediary between the WG and the ccNSO Council or invite the chair to Council meetings to regularly inform the Council on progress made, take questions and participate in any deliberations related to the WG.

The chair and vice-chair will regularly inform the broader community on progress of the WG and seek (informal) feed-back from the community.

3. Operations of the WG

3.1 Working Methods

The first work item of the WG is to develop and agree on its working methods that will guide how the WG intends to conduct its business. These working methods will be made publicly available and be guided by the following principles:

- The meetings will rotate from a timing perspective to share the burden as the membership is distributed over different time zones.
- No firm decisions are taken during any single meeting without the substance of those decisions having been discussed and open for review / consideration by those that may not have been present during the meeting.
- Efforts should be made to ensure that non-native English speakers can participate on an equal basis in the discussions

- The WG will consider public comments and other input as appropriate, and at its reasonable discretion.
- The Secretariat will set up conference calls, maintaining mailing lists, etc. at the direction of the chair and vice-chair of the WG. At the request of the chair the Secretariat or other ICANN staff will also provide other forms of assistance, for example providing advice or an expert opinion.

3.2 Internal Decision making

In developing its output – guideline for operations, working method, work plan and any reports or papers - the WG shall seek to act by consensus. The Chair may make a call for consensus. In making such a call, the chair should always make reasonable efforts to involve at a minimum all members of the WG. The chair shall be responsible for designating each position as having one of the following designations:

- Full Consensus - a position where no minority disagrees; identified by an absence of objection
- Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report, paper or other relevant deliverable.

In rare cases, the Chair may decide to use of a poll to assess the level of support for a recommendation. However, care should be taken in using polls: they should not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results. Such a poll shall be limited to the members, unless the chair decides otherwise.

Any person on the WG who disagrees with the consensus-level designated by the Chair, or believes that her/his contributions have systematically been ignored or discounted, should first discuss the circumstances with the Chair. If the matter cannot be resolved satisfactorily, the person should discuss the situation with the Chair of the ccNSO or a person designated by the Chair of the ccNSO.

If no consensus can be reached by the WG, the Chair of the WG will submit a Chair's Report to the ccNSO Council and Issue Manager. In this report the Chair shall document the issues that are considered contentious, the process that was followed to try to reach a consensus position and suggestions to mitigate those issues, if any. If, after implementation of the mitigating measures, consensus still cannot be reached, the Chair shall prepare a Final Chair's Report documenting the processes that was followed to reach consensus and this Final Chair's Report will be deemed to replace the Final Paper. In this case, the ccNSO Council, advised by the Issue Manager, may decide to close the WG, or take mitigating measures, for example changing the charter and reconstitute a WG based on the new charter.

3.3 Standards of Behaviour

The persons on the WG are expected to behave in a mature and professional way when conducting its business. This includes, but is not limited to communicating with the fellow membership professionally and ensuring that the WG remains inclusive and productive. To resolve incidents of non-professional communication the following steps should be followed:

- Any concerns regarding the behaviour of one of the members, participants, observers or experts should first be raised with that person.
- If the issue is not satisfactorily resolved, a formal complaint may be raised with the Chair of the WG, who will attempt to mediate.
- If that is not possible, or if the complaint is sufficiently serious in nature, the Chair of the WG is empowered to restrict the participation of the person if in the chairs view the continued participation would not be appropriate and/or would seriously disrupt the working group from conducting its business.
- Generally, a person should first be warned privately, and then warned publicly before such the restriction is put into effect; only in extreme circumstances to be determined by the chair and vice-chair together, this restriction may be put in effect immediately.

If a WG Member disagrees with an imposed restriction, or the complainant disagrees with a restriction (or the lack of one), or there are other matters regarding the complaint that cannot be resolved satisfactorily, the participant, complainant, or the Chair of the WG may raise the issue with the Chair and Vice-Chairs of the ccNSO Council or their designate(s). They will review the matter and then decide. The ccNSO Council, WG Chair, WG person and complainant shall be informed accordingly.

4. Deliverables

4.1. Working Method & Work Plan

The WG is expected to develop its working methods and a work plan first. The working methods should provide guidance on how the WG intends to conduct its business (see section 3.1). The work plan should include at a minimum, where feasible, timelines and expected outputs of the WG, based on the deliverables outlined in this Charter. Purpose of the work plan is to inform the community and ccNSO on the expected progress and anticipated schedule of public consultations.

Once the work plan is completed, the Time Line as set forth in section 6 shall be updated and published. If in the course of conducting its business the WG or the chair of the WG is of the view that the Time Line is untenable, the chair will inform the ccNSO Council and Issue Manager. The chair will then also suggest an adjusted Time Line to be adopted by the WG. Once adopted, the chair will inform the ccNSO Council and Issue Manager and the adjusted Time Line will be published.

4.2 WG Interim Paper

The WG shall develop and publish for public consultation an Interim Paper, which shall, at a minimum, include proposals to address the topics and issues identified in the Issue Report, an impact analysis of the proposals and any documentation necessary to make the proposals effective. The Interim Paper shall also contain a review and analysis of comments made on the Issue Report, if any, with respect to the retirement of ccTLDs. The Interim Paper shall be published for public consultation on the ICANN website following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. The chair of the WG will send the Interim Paper to the Issue Manager of the ccPDP.

4.3 WG (draft) Final Paper

After conclusion of the public consultation on the Interim Paper, the WG shall prepare a (draft) Final Paper reflecting the Interim Paper, the comments received on the Interim Paper from the public consultation period.

If the WG is of the view that an additional public consultation is appropriate, it will prepare a draft Final Paper to be published for public consultation on the ICANN website and following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. After conclusion of the public consultation on the draft Final Paper, the WG shall prepare its Final Paper that reflects the draft Final Paper, the comments received and how they have been taken into consideration by the WG, if at all.

The Final Paper will include the proposed policy recommendations. This Final Paper shall be published within fourteen (14) days after adoption of the paper by the WG and conveyed to the chairs of the ccNSO and GAC and the Issue Manager of the ccPDP. The Issue Manager shall include the Final Paper in the Interim Report of the ccPDP.

5 Miscellaneous

5.1 Omission in or unreasonable impact of Charter

If this charter does not provide sufficient guidance and/or the impact of the charter is found to be unreasonable for conducting the business of the WG, the Chair has the authority to determine a proper course of action to mitigate the issue. Such action may, for example, consist of a modification to the Charter to address the omission or its unreasonable impact, in which case the Chair(s) may propose such modification to the ccNSO Council and Issue Manager. A modification shall only be effective after adoption of the amended by the ccNSO and after publication of the amended Charter. The chair of the WG shall exercise reasonable discretion with respect to question as to whether this charter does not provide guidance and/or the impact of the charter is unworkable with respect to the conduct of business of the WG.

5.2 Closure of the Working Group

If the WG determines that it has completed its work, or if the WG cannot achieve its goal(s) the Final Chair Report, it will submit a Final Paper to the ccNSO Council and Issue Manager. This report should include a recommendation on the time to close the WG.

A WG is closed by a resolution of the ccNSO Council.

6. WG Time Line

Activity	Date*	Closure*	Minimum Duration
Establishment of Working Group			
Publish Interim Report			NA
Public Comment on Interim Paper			40 days
Publish Final Paper			NA
Closure of the WG			

* Latest date possible to meet minimum duration for public consultation period.

** It is assumed in this schedule / time line the Final Paper is presented at an ICANN meeting.

7. References

- RFC 1591 (<https://www.ietf.org/rfc/rfc1591.txt>)
- The ccNSO Framework of Interpretation working group Final Report, (<http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>)
- ISO 3166 standard (http://www.iso.org/iso/country_codes)
- CWG-Stewardship Final Report, Annex O: ccTLD Appeals Mechanism Background and supporting Findings Sections 1414- 1428, (https://community.icann.org/download/attachments/53779816/FinalTransitionProposal_11June.pdf?version=1&modificationDate=1434047705000&api=v2).
- Issue paper to explore review mechanism January 2017 (to be included on webpage drafting team)

Annex B: Charter Working Group 2: Retirement ccTLDs

Charter Working Group Retirement of ccTLDs

0. Contextual background information Retirement of ccTLDs

To date, only a limited number of ccTLDs have been undelegated. The majority of these cases are recorded in final report of the Delegation Redelegation working group (DRDWG) on the retirement of ccTLDs²⁰. Since publication of this report in 2011 two additional cases of retirement have occurred²¹. With respect to the retirement of ccTLDs the DRDWG noted, although retirements are very rare it is a very critical recommendation ICANN can make and as a policy based organisation, a proper policy should be in place.

Looking at the recorded cases of undelegation (retirement), most cases appear to be initiated when the name of the country or territory was removed from the ISO 3166-1 list. Country names might be removed from ISO 3166-1 for various reasons²² and retirement policy needs to consider different possible scenarios. Looking at historical cases might provide a useful starting point for the working group, for example:

- A country might change a significant part of its name, for example Burma (BU) was changed to Myanmar (MM) in 1989.
- A country may divide into two or more new ones, for example Czechoslovakia was divided into Czech Republic and Slovakia in 1993. Later CS was used as assigned code for Serbia, which caused all kinds of confusion worldwide. With the subsequent separation of Montenegro as a separate country the code CS got retired again.
- Two or more countries may merge for example Democratic Yemen (YD) and Yemen Arab Republic (YE) merged into the Republic of Yemen (YE) in 1990.

1. Goal, Scope and issues to be addressed

1.1 Goal

The goal of the working group (WG) is to report on and recommend a policy for the retirement of the delegated Top Level Domains associated with the country codes assigned to countries and territories listed in the ISO 3166-1 within the framework of the ccNSO Policy Development Process.

1.2 Scope

To achieve its goal, the WG shall initially focus on and be guided by the topics and issues listed below in section 1.3. If other topics and issues become apparent that are not listed and that in the view of the WG need to be addressed to achieve its goal, the WG should take these into consideration and inform the ccNSO Council and Issue Manager accordingly.

²⁰ <https://ccnso.icann.org/workinggroups/drd-wg-retirement-report-07mar11-en.pdf>

²¹ The retirement process of .AN was completed in 2015, see <http://www.iana.org/domains/root/db/an.html>
The retirement of .TP was completed in 2015 as well, see <http://www.iana.org/domains/root/db/tp.html>

²² This is language that is not included in the official standard, but for illustration from the ISO 3166 website: http://www.iso.org/iso/country_codes_glossary.html

As this WG will undertake its activities within the framework of the ccNSO Policy Development Process, the limitations with respect to the scope of a ccPD, specifically by Article 10 and Annexes B and C to the ICANN Bylaws shall also limit the scope of the WG's work.

If topics/issues become apparent that are considered out of scope of the WG, the Chair of the WG shall inform the ccNSO Council and Issue Manager accordingly. If the ccNSO Council is also of the opinion it is outside the scope of the WG, it is expected to deal with it appropriately.

1.3 High Level overview of topics and Issues pertaining to Retirement

Based on an initial analysis of the cases of retirement to date the following initial topics and issues emerge that, among others, may need to be addressed:

- Consistency of terminology
- What triggers a retirement?
- Who triggers retirement process?
- Additional conditions for retirement of a ccTLD?
What are conditions for actual retirement of a ccTLD? Is the occurrence of a triggering event sufficient or should additional requirements be in place?

- Compliance with conditions?
Assuming retirement of a ccTLD is conditional, who will monitor, and who will be held accountable, if at all, if requirements are not met?

2. The WG

2.2 Members and other participants of the WG

The WG is open to members who are representatives of ccTLDs, participants from other stakeholder groups, observers and experts.

Members, participants, and experts commit to participate actively and regularly in the work of the WG and are expected to have at least a basic understanding of the reference material (section 6).

Once appointed all participants in the WG will be subscribed to a mailing list. The mailing list will be archived after closure of the WG.

The names and affiliation of the WG members and other participants will be published on a dedicated WG page on the ccNSO website.

At any time WG members, participants, observers and experts may resign from the WG, by informing the Chair of the WG, who will then inform the ccNSO Council. After receiving a notification the ccNSO Council may seek a replacement.

2.1.1 Members

The working group should have at least 10 members who are representatives from ccTLD managers or their nominees (at least two (2) from each of the 5 ICANN Geographic Regions). With respect to members of the WG there is no requirement for a ccTLD to be a ccNSO Member. If fewer than two (2) nominations are received from a Geographic Region, the ccNSO Council will actively encourage additional nominations from those regions. Members are appointed by the ccNSO Council in accordance with the general rules and procedures of the ccNSO for working groups²³.

The expectation is that any ccTLD that wishes to be actively involved in the WG will be allowed to do so.

The WG members shall nominate a chair and alternate chair from the members of the Working Group, who will then be appointed by the ccNSO Council.

2.1.2 Participants, experts and observers to the WG

In addition, the WG is open to participants, who shall not be considered members of the WG. Participants are entitled to participate on equal footing with members, unless the charter states otherwise. The ccNSO Council will request the following stakeholders to appoint at least one participant:

- Each of the Regional Organisations as defined in Section 10.5 of the ICANN Bylaws;
- ALAC
- GAC
- GNSO
- SSAC

Experts to the WG

The ccNSO Council may also invite and appoint experts as advisors to the WG. Experts shall not be considered members of the WG, but are entitled to participate on an equal footing in their area of expertise. The Council will at least invite the following persons:

- PTI staff
- Expert on the ISO 3166-1 list.

²³ <https://ccnso.icann.org/about/guidelines-working-groups-30mar16-en.pdf>

Observers

The WG will have the following observers:

- The Issue Manager for the ccPDP
- Any person appointed as observer by the chair of the WG

2.1.3 Staff Support

ICANN will be requested to provide adequate staff support to the WG

2.2 Chair and vice-chair

At the nomination of the members of the WG, the Chair and vice-chair of the WG will be appointed by the ccNSO Council. The chair and vice-chair should be members of the Working Group.

The Chair together with the vice-chair, will manage the ongoing activities of the WG and ensure an appropriate working environment by:

- Promptly sharing relevant information with the entire WG.
- Planning the work of the WG to meet the WG goals and leading the WG through its discussions.
- Regularly assessing and reporting on the progress of the WG to the Council and broader community.
- Keeping track of WG participation. Where a WG member does not regularly participate, the Chair will reach out to the member to engage that person in the WG. If, after a conversation that member does not regularly participates, the Chair will advise the Council, so that further steps can be taken to resolve the situation.

The Chair is the representative of the WG. If the Chair of a WG is not a member of the ccNSO Council, the ccNSO Council will appoint a ccNSO Council liaison, to act as an intermediary between the WG and the ccNSO Council or invite the chair to Council meetings to regularly inform the Council on progress made, take questions and participate in any deliberations related to the WG.

The chair and vice-chair will regularly inform the broader community on progress of the WG and seek (informal) feed-back from the community.

4. Operations of the WG

4.1 Working Methods

The first work item of the WG is to develop and agree on its working methods that will guide how the WG intends to conduct its business. These working methods will be made publicly available and be guided by the following principles:

- The meetings will rotate from a timing perspective to share the burden as the membership is distributed over different time zones.
- No firm decisions are taken during any single meeting without the substance of those decisions having been discussed and open for review / consideration by those that may not have been present during the meeting.
- Efforts should be made to ensure that non-native English speakers can participate on an equal basis in the discussions
- The WG will consider public comments and other input as appropriate, and at its reasonable discretion.
- The Secretariat will set up conference calls, maintaining mailing lists, etc. at the direction of the chair and vice-chair of the WG. At the request of the chair the Secretariat or other ICANN staff will also provide other forms of assistance, for example providing advice or an expert opinion.

4.2 Internal Decision making

In developing its output – guideline for operations, working method, work plan and any reports or papers - the WG shall seek to act by consensus. The Chair may make a call for consensus. In making such a call, the chair should always make reasonable efforts to involve at a minimum all members of the WG. The chair shall be responsible for designating each position as having one of the following designations:

- Full Consensus - a position where no minority disagrees; identified by an absence of objection
- Consensus – a position where a small minority disagrees, but most agree

In the absence of Full Consensus, the Chair should allow for the submission of minority viewpoint(s) and these, along with the consensus view, shall be included in the report, paper or other relevant deliverable.

In rare cases, the Chair may decide to use of a poll to assess the level of support for a recommendation. However, care should be taken in using polls: they should not become votes, as there are often disagreements about the meanings of the poll questions or of the poll results. Such a poll shall be limited to the members, unless the chair decides otherwise.

Any person on the WG who disagrees with the consensus-level designated by the Chair, or believes that her/his contributions have systematically been ignored or discounted, should first discuss the circumstances with the Chair. If the matter cannot be resolved satisfactorily, the person should discuss the situation with the Chair of the ccNSO or a person designated by the Chair of the ccNSO.

If no consensus can be reached by the WG, the Chair of the WG will submit a Chair's Report to the ccNSO Council and Issue Manager. In this report the Chair shall document the issues that are considered contentious, the process that was followed to try to reach a consensus position and suggestions to mitigate those issues, if any. If, after implementation of the mitigating measures, consensus still cannot be reached, the Chair shall

prepare a Final Chair's Report documenting the processes that was followed to reach consensus and this Final Chair's Report will be deemed to replace the Final Paper. In this case, the ccNSO Council, advised by the Issue Manager, may decide to close the WG, or take mitigating measures, for example changing the charter and reconstitute a WG based on the new charter.

3.3 Standards of Behaviour

The persons on the WG are expected to behave in a mature and professional way when conducting its business. This includes, but is not limited to communicating with the fellow membership professionally and ensuring that the WG remains inclusive and productive. To resolve incidents of non-professional communication the following steps should be followed:

- Any concerns regarding the behaviour of one of the members, participants, observers or experts should first be raised with that person.
- If the issue is not satisfactorily resolved, a formal complaint may be raised with the Chair of the WG, who will attempt to mediate.
- If that is not possible, or if the complaint is sufficiently serious in nature, the Chair of the WG is empowered to restrict the participation of the person if in the chairs view the continued participation would not be appropriate and/or would seriously disrupt the working group from conducting its business.
- Generally, a person should first be warned privately, and then warned publicly before such the restriction is put into effect; only in extreme circumstances to be determined by the chair and vice-chair together, this restriction may be put in effect immediately.

If a WG Member disagrees with an imposed restriction, or the complainant disagrees with a restriction (or the lack of one), or there are other matters regarding the complaint that cannot be resolved satisfactorily, the participant, complainant, or the Chair of the WG may raise the issue with the Chair and Vice-Chairs of the ccNSO Council or their designate(s). They will review the matter and then decide. The ccNSO Council, WG Chair, WG person and complainant shall be informed accordingly.

4. Deliverables

4.1. Working Method & Work Plan

The WG is expected to develop its working methods and a work plan first. The working methods should provide guidance on how the WG intends to conduct its business (see section 3.1). The work plan should include at a minimum, where feasible, timelines and expected outputs of the WG, based on the deliverables outlined in this Charter. Purpose of the work plan is to inform the community and ccNSO on the expected progress and anticipated schedule of public consultations.

Once the work plan is completed, the Time Line as set forth in section 6 shall be updated and published. If in the course of conducting its business the WG or the chair of the WG is of the view that the Time Line is untenable, the chair will inform the ccNSO Council and Issue Manager. The chair will then also suggest an adjusted Time Line to be adopted by the WG. Once adopted, the chair will inform the ccNSO Council and Issue Manager and the adjusted Time Line will be published.

4.2 WG Interim Paper

The WG shall develop and publish for public consultation an Interim Paper, which shall, at a minimum, include proposals to address the topics and issues identified in the Issue Report, an impact analysis of the proposals and any documentation necessary to make the proposals effective. The Interim Paper shall also contain a review and analysis of comments made on the Issue Report, if any, with respect to the retirement of ccTLDs. The Interim Paper shall be published for public consultation on the ICANN website following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. The chair of the WG will send the Interim Paper to the Issue Manager of the ccPDP.

4.3 WG (draft) Final Paper

After conclusion of the public consultation on the Interim Paper, the WG shall prepare a (draft) Final Paper reflecting the Interim Paper, the comments received on the Interim Paper from the public consultation period.

If the WG is of the view that an additional public consultation is appropriate, it will prepare a draft Final Paper to be published for public consultation on the ICANN website and following the guidelines for public consultations. The consultation should be scheduled in such a manner that it also allows for a public discussion with the relevant stakeholders at a designated ICANN meeting. After conclusion of the public consultation on the draft Final Paper, the WG shall prepare its Final Paper that reflects the draft Final Paper, the comments received and how they have been taken into consideration by the WG, if at all.

The Final Paper will include the proposed policy recommendations. This Final Paper shall be published within fourteen (14) days after adoption of the paper by the WG and conveyed to the chairs of the ccNSO and GAC and the Issue Manager of the ccPDP. The Issue Manager shall include the Final Paper in the Interim Report of the ccPDP.

5 Miscellaneous

5.1 Omission in or unreasonable impact of Charter

If this charter does not provide sufficient guidance and/or the impact of the charter is found to be unreasonable for conducting the business of the WG, the Chair has the authority to determine a proper course of action to mitigate the issue. Such action may, for example, consist of a modification to the Charter to address the omission or its unreasonable impact, in which case the Chair(s) may propose such modification to the ccNSO Council and Issue Manager. A modification shall only be effective after adoption of the amended by the ccNSO and after publication of the amended Charter. The chair of the WG shall exercise reasonable discretion with respect to question as to whether this charter does not provide guidance and/or the impact of the charter is unworkable with respect to the conduct of business of the WG.

5.2 Closure of the Working Group

If the WG determines that it has completed its work, or if the WG cannot achieve its goal(s) the Final Chair Report, it will submit a Final Paper to the ccNSO Council and Issue Manager. This report should include a recommendation on the time to close the WG.

A WG is closed by a resolution of the ccNSO Council.

6. WG Time Line

Activity	Date*	Closure*	Minimum Duration
Establishment of Working Group			
Publish Interim Report			NA
Public Comment on Interim Paper			40 days
Publish Final Paper			NA
Closure of the WG			

* Latest date possible to meet minimum duration for public consultation period.

** It is assumed in this schedule / time line the Final Paper is presented at an ICANN meeting.

7. References

- RFC 1591 (<https://www.ietf.org/rfc/rfc1591.txt>)
- The ccNSO Framework of Interpretation working group Final Report, (<http://ccnso.icann.org/workinggroups/foi-final-07oct14-en.pdf>)
- ISO 3166 standard (http://www.iso.org/iso/country_codes)
- CWG-Stewardship Final Report, Annex O: ccTLD Appeals Mechanism Background and supporting Findings Sections 1414- 1428,

(https://community.icann.org/download/attachments/53779816/FinalTransitionProposal_11June.pdf?version=1&modificationDate=1434047705000&api=v2).

- Issue paper to explore review mechanism January 2017 (to be included on webpage drafting team)

Annex C: Detailed Schedule and Timeline

	Event		Entity	Tentative Date completion	Comment
1	Draft Issue Report		Issue Manager	March 2017	To be presented to the Council for its Copenhagen meeting
Initiation PDP					
2	Formal Decision to initiate the ccPDP		ccNSO Council	March 2017	ccNSO Council vote
Comments on Issue PDP					
3	Comments on Issue PDP	Public notification of Initiation of ccPDP	Issue Manager	March 2017	Notification of initiation of the ccPDP on the ICANN Website and to the other ICANN Supporting Organizations and Advisory Committees. Open comment period (in accordance with the PDP Time Line. At least 40 days long) shall be commenced for the issue.
4		Call for Volunteers	Issue Manager	March 2017	
5		Formal request to Chair of the GAC to offer opinion or advice	ccNSO Council	March 2017	
6		Formation of Working Group I under ccPDP Call for volunteers, invite participants	ccNSO Council	March 2017	As part of the ccPDP, create a Working Group to propose and develop policy for Review Mechanism
Preparing Recommendations					

7		Appointment members, chair	Council	May 2017	With appointment of chairs etc, kick-off second phase PDP
8		Interim Paper	ccPDP WG I	October 2017	To be published in time to be discussed at ICANN meeting and public comment
9		Formation WG II, Call for volunteers, appointment etc.	ccNSO Council	December 2017	Call fro volunteers WG 2 Retirement of ccTLDs, Self-nominations, invite ALAC, GAC, GNSO and, SSAC to appoint at least one participant. Invite Regional Organisations to appoint at least 1 participant. Invite PTI staff and expert on ISO 3166.
10		Update Paper WG I	ccPDP WG I	January 2018	Interim paper on Review Mechanism will need to be updated to take into account the public comments.
		Hybernation of WG I	ccNSO Council	January 2018	WG 1 will recommence its work after WG 2 has fished its work to update the proposal to incorporate
11		Interim Paper WG 2	ccPDP WG 2	May 2018	Interim paper for public comment on Retirement of ccTLDs
12		Final Paper WG 2	ccPDP WG 2	October 2018	Submission Final Paper to Issue Manager and chair of WG 1.
13		Closure of Working Group 2		October 2018	
14		Draft Final Paper WG 1	WG 1	January 2019	Review and update proposal WG 1, based on final paper

					WG 2. Open for public comment.
		Final Paper WG 1		March 2019	Submission Final Paper to Issue Manager.
15		Initial Report ccPDP	Issue Manager	March 2019	Initial Report of IM. This report consolidates final recommendations WG 1 and WG 2 into one report. Needs to be published in time for full discussion at ICANN meeting and public comment
16		Final Report	Issue Manager	May 2019	Final Report of the ccPDP. This contains the recommendations to resolve issues as identified in Issues Report and will be submitted to the Council. This step initiates the decision making process.
ccNSO Decision making phase					
18		Submission of Final Report to the ccNSO Council	Issue Manager	May 2019	
19		Invite the Chair of the GAC to offer opinion or advice	ccNSO Council	May 2019	Formal step as defined for the ccPDP
20		ccNSO Council Adoption of Final Report	ccNSO Council	June 2019	Decision ccNSO Council
21		ccNSO members vote	ccNSO Members	July or September 2019	Final vote of the ccNSO members
22		Board Report	ccNSO Council	October 2019	Conclude the ccNSO Decision making
Board Decision making Phase					

23		Submission Board report	Issue Manager	October 2019	
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