
Public Comment Summary Report

ccNSO Proposed Policy for a Specific ccTLD Related Review Mechanism

Open for Submissions Date:

Tuesday, 01 August 2023

Closed for Submissions Date:

Thursday, 28 September 2023

Summary Report Due Date:

Thursday, 19 October 2023, extended to Monday, 16 November 2023

Category: Policy

Requester: Country Code Names Supporting Organization (ccNSO)

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Open Proceeding Link: <https://www.icann.org/en/public-comment/proceeding/ccnso-proposed-policy-for-a-specific-cctld-related-review-mechanism-01-08-2023>

Outcome:

In total six (6) submission were received: four (4) from community groups, one (1) from a ccTLD Manager, and one (1) submission was removed. The latter will not be further considered.

The comments are categorized into two categories: general observations and specific issues. This Public Comment summary report includes ICANN org staff summary of the comments and observations on the topic in relation to earlier comments received and responses.

All received comments, along with this summary, will be transmitted to the ICANN Board for its consideration.

Section 1: What We Received Input On

ICANN was seeking Public Comment on the Country Code Names Supporting Organization's proposed policy on the introduction of a review mechanism for specific decisions made by the IANA Functions Operator which apply to ccTLDs, known as the CCRM. The [proposed policy has been submitted to the ICANN Board of Directors](#) for its consideration. The proposed policy can be found in sections 2-6 and 9 of the Board Report referred to in the previous link.

Section 2: Submissions

In total (6) submissions were received. One (1) submission was retracted by the submitter.

Organizations and Groups:		
Name	Submitted by	Initials
Taiwan Network Information Center	Anthony Lee	TWNIC
GNSO Registries Stakeholder Group	Publiccomments@rysg. ..	RySG
Governmental Advisory Committee	Benedetta Rossi (staff)	GAC
At-Large Advisory Committee	staff@atlarge.icann...	ALAC
GNSO Business Constituency	Bc-policy@icann...	BC

Section 3: Summary of Submissions

General Comments

The RySG expressed its support for the proposed policy for a specific ccTLD related review mechanism.

TWNIC noted that the Review Mechanism concretely embodies the multi-stakeholder governance model of ICANN. Hence, TWNIC supports the proposed policy.

According to the BC, the establishment of the CCRM has been a missing piece in the ICANN Bylaws. The BC is concerned about the reliability and continuity of any TLD. The BC notes that the current geopolitical environment may create a situation of use or even abuse of the CCRM among “rival” ccTLD Managers.

Specific Comments

The GAC notes the requirement that the CCRM Manager must be a non-conflicted individual who is a subject matter expert with respect to ccTLDs, the IANA Functions Operator and ICANN and is the entity who will be responsible for overseeing and managing the CCRM System. The GAC expresses its concern that it may not be possible to find such an expert, who will be unanimously acceptable to the parties in conflict (ccTLD managers and applicants for new ccTLDs) and therefore the review decision taken by the CCRM Manager may not be acceptable to all parties involved. The GAC suggests an alternative option, including potential arbitration, where each party would be enabled to choose its own expert and a third expert would be chosen by the two experts or by ICANN org.

The GAC also commented on stress testing as described in section 7 and detailed in Annex C of the Report. In the view of the GAC it is not sufficiently clear and understandable how the stress tests were drafted and who carries out such a test for the corner cases defined.

The GAC noted that with the ccTLD status quo and protection in mind, the review mechanism shall have to respect and duly protect the rights and benefits of all parties that have concluded ccTLD agreements or other similar instruments with ICANN.

TWNIC noted that the proposed policy retains the autonomy of ccTLD managers, as well as the role of the IANA Functions Operator and ICANN Board in maintaining the IANA Naming Function with respect to ccTLDs and in addition referred to the ICANN Bylaw definition of “Territory”. Based on these observations TWNIC suggests that the proposed policy should not only refer to the principles of RFC 1591 and ISO 3166, but also that the relevant ccTLD Sponsorship Agreements should be “grandfathered” and apply to the relation between the contracted ccTLD Managers and ICANN even when there is a possibility the country code is removed from ISO 3166-1 and inclusion of this element in the policy should be further explored.

ALAC Comment – The ALAC focused its comments on the proposed Bylaws changes. In their view the proposed amendments to the ICANN Bylaws should be expanded to provide additional standing for “significant stakeholders” and “relevant government” under the proposed review mechanism.

BC Comment on Section 4.2 – The BC expressed a strong concern on the scenario where the IANA Functions Operator accepts the results of a review, but opts to redo the process. The BC is concerned this may make the process unpredictable and could be time-consuming.

BC Comment on Section 4.3 – BC recommends that any action or task by the CCRM Manager should be subject to ICANN’s reconsideration process, since the role is funded by ICANN.

BC Comment Section 4.4 – BC notes that only existing and possible future ccTLD Managers would be eligible to file reviews. BC recommends adding “local concerning party in ccTLD jurisdiction” to be able to file a review as to make the CCRRM similar to the ICANN IRP.

BC Comment Section 4.4 – The BC seeks clarification on why CCRM cannot run in parallel with IFO internal review or IFO mediation, and suggests a flow-chart.

BC Comment Section 4.4 – The BC recommends conservative approach to handle competing application, not on a first-come, first-serve approach.

BC Comment Section 9 – The BC suggest to remove the 4th point, that the advice to the ccNSO that any future ccNSO policy should include a consideration on how claims and disputes flowing from the application of the policy should be handled, as it is outside the scope of the CCRM. This should be taken up in a separate future ccPDP.

BC Comment Annex C – The BC recommends a public website to list and archive all CCRM cases to serve as reference for future cases.

Section 4: Analysis of Submissions

Analysis of General Comments

The general support for the proposed policy by the BC, RySG and TWNIC is noted. With respect to the comments from the GAC and TWNIC that the review mechanism shall respect and duly protect the rights and benefits of all parties that have concluded ccTLD agreements or other similar instruments with ICANN, it is noted that the proposed policy does not amend or change current policies for the delegation, transfer, revocation and retirement of ccTLDs, but builds on these policies. Hence, to the extent the agreements or other similar instruments apply and are considered under these current policies, they are respected under the proposed review mechanism.

It is noted that the proposed policy recommends to change ICANN Bylaws sections 4.2(d)(i) and 4.3(c)(ii), clarifying that all disputes and claims related to the delegation, transfer, revocation and retirement of ccTLDs shall remain excluded from ICANN's Reconsideration Process and the Independent Review Process for Covered Actions and that the relevant terminology will be adjusted as well. To avoid confusion, it is noted that whether the review mechanism as proposed will be referenced in the ICANN Bylaws is not suggested in the proposed policy, and may be a matter of further and future consideration.

Related, the BC comment with respect to the advice to the ccNSO (section 9 fourth bullet point) is not considered a policy recommendation. It is understood that as the advice is directed at the ccNSO it is by definition out of scope of the ccNSO policy and hence not a policy recommendation. It is also understood that because it is not a policy recommendation wording was used (advice) to reflect this difference.

Analysis of Specific Comments

The GAC expressed its concern on the role and person of the Country Code Review Mechanism (CCRM) Manager. Review decisions taken by the CCRM Manager may not be acceptable to all parties involved. With respect to the concerns regarding the CCRM it is noted that according to the proposed policy the role of the CCRM Manager is limited to being responsible for overseeing and managing the CCRM system (section 4.3). This role is further detailed in Annex B to the proposal. Accordingly, a claimant may choose from 3 options for a review, including but not limited to a review by the Manager. The Claimant and therefore the parties do have other options if the CCRM Manager may not be acceptable to review the claim. The other options do include a similar kind of option suggested by the GAC, i.e. the IANA Functions Operator and the Claimant will each choose a Reviewer, and the chosen reviewers will cooperatively pick a third Reviewer.

The GAC expressed its concern that it is not sufficiently clear and understandable as it *does not specified how the stress tests is drafted and who carries out such a test for the corner cases defined*. With respect to this concern, the following is noted: The stress testing is not part of the proposed policy as stated in section 1.3. The working group that developed the policy and the stress tests included these tests to provide context to the recommended policy, assist in future interpretation of the policy, and to provide understanding of the considerations of the Working Group that developed the policy. It is further noted that the WG itself developed these tests and applied them to the proposed policy (see for example the [10 August 2022 WG meeting](#)).

With respect to the suggestion of the ALAC and BC on the need that others than the existing and possible future ccTLD Managers should be eligible to file reviews, the following is noted:

- Under the current Bylaws the Reconsideration process and IRP are limited to claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation. The scope of the IRP (and Reconsideration) is further limited by excluding claims relating to ccTLD delegations and re-delegations (interpreted to apply to delegation, transfer, revocation and retirement). For reference, under the IANA Naming Function contract direct customers are defined as “a gTLD registry operator, a ccTLD manager or registry operator or other direct customer of Contractor (e.g., a root server operator or other non-root zone function)” and excluding “significant stakeholders” and the “respective government” as listed by the ALAC or “local concerning party in ccTLD jurisdiction” as suggested by the BC.
- The proposed review mechanism builds on this limitation by offering only direct customers of the IANA Naming Function an independent review mechanism for specifically identified decisions by the IANA Naming Function Operator.
- Further, according to the IRP and proposed policy, the IRP or review mechanism can only be invoked for claims that are not resolved through mediation. Mediation with respect to PTI service is described in the IANA Naming Function Contract and accordingly only customers may initiate mediation (Article VIII section (c)),
- Finally, if the significant interested parties (i.e. significant stakeholders” and the “respective government” as listed by the ALAC or “local concerning party in ccTLD jurisdiction”) cannot reach agreement among themselves and/or with the ccTLD manager this is considered a local matter, and not a matter between the IFO and a Significant Interested Party, and should therefore be addressed locally.

With respect to the BC’s suggestion that the CCRM Manager’s decisions should be subject to ICANN’s reconsideration process and IRP, since the role is funded by ICANN, the following is noted: The CCRM Manager is an integral and core part of the proposed review mechanism for claims and disputes relating to the “delegation, transfer, revocation and retirement of ccTLDs”. Under the proposed policy it is recommended (section 9) that all claims and disputes shall remain excluded from the IRP and Reconsideration Process. Hence the CCRM manager’s decision should be excluded as well from the IRP and Reconsideration Process.

As to the BC question of why the review mechanism cannot run in parallel with the mediation. To avoid conflicting outcomes and to reduce costs the proposed policy suggests that either the

claimant initiates the review mechanism within 30 days after the IANA Functions Operator takes a preliminary decision, which is subject to review process as proposed or within 30 days after closure of an IFO internal review or IFO mediation.

The BC raised the point that if the IFO accepts the results of the CCRM, but opts to redo the process may make the process unpredictable and could be time-consuming. With respect to this concern, it is noted that although this will take additional time and prolong the procedure, for the total duration of the process the status quo will be maintained as no definite decision will be taken and no action can be taken by the IFO with respect to the decision before conclusion of the process. In addition, it is noted that a decision that is redone by the IFO is subject to a second, final review. The result of this second, final review will have either to be accepted or rejected by the IFO.

With respect to the BC recommending a conservative approach to handle competing application, not on a first-come, first serve approach, it is noted that this principle to handle multiple applications only applies for a case where there is a potential for more than one claimant. In such cases the first application which meets all eligibility criteria will be accepted. However, as is also stated in the proposed policy, no matter which application is first, it is recommended that for the review of such a case (with multiple applicants) all elements for all claimants of the decision which will be reviewed, are considered.

With respect to the BC recommendation to list and archive all CCRM cases on a public website it is noted that such a public website is implied and proposed in Annex A of the Board Report. As stated in the Board Report – although Annex B is not considered part of the proposed policy itself – it provides context to the recommended policy and could assist in future interpretation of the policy and implementation, as well as an understanding of the considerations underpinning the recommended policy.

Section 5: Next Steps

The full text of the comments received, along with this summary, will be transmitted to the ICANN Board for its consideration.