ccNSO POLICY DEVELOPMENT AND IMPLEMENTATION

General Observations

A ccNSO policy recommendation develops through the ccNSO Policy Development Process (PDP), as referenced in Section 10.6 of the ICANN Bylaws and further detailed in Annex B. The policy recommendation must fall both within ICANN's mission and ccNSO's policy scope (Annex C). The PDP includes multiple opportunities for public input and comment via the ICANN public comment process, while ensuring that both the ccNSO Council and the ccNSO Members participate and vote.

1. Request for an Issue Report

Any of the following groups may request an Issue Report for a new policy recommendation: the ccNSO Council; at least ten members of the ccNSO; the ICANN Board; any of the ICANN Supporting Organizations or Advisory Committees; or the Regional Organizations. The written request should include sufficient details about the issue, while ensuring it falls within ICANN's mission and the ccNSO's scope (see Annex C: The Scope of the ccNSO). The ccNSO Council may request further information, or undertake further research before determining to proceed.

2. Creation of the Issue Report

The ccNSO Council selects any person/persons, including from within the ICANN organization, as the Issue Manager.

The Issue Report should include the Issue Manager's Recommendations, and the Issue Manager should seek General Counsel's opinion whether one or more issues to be addressed are within ICANN's mission and within the ccNSO's policy remit (Annex C: The Scope of the ccNSO); if it implicates or affects an existing ICANN Policy; and if it is likely to have lasting value or applicability. The General Counsel's findings are in the Issue Report.

If ICANN's General Counsel identifies that the issue is outside of ICANN's Mission, the PDP ends and the Issue Manager notifies the ccNSO Council.

If ICANN's General Counsel identifies that the issue is outside of the ccNSO's scope, the Issue Manager notifies the ccNSO Council. The ccNSO Council may vote to proceed if ten or more Councilors support proceeding with the PDP. As part of this procedure process the General Counsel and the ccNSO Council need to enter into a dialogue to determine whether the issue falls within the ccNSO's scope.

The ccNSO Council and General Counsel attempt to reconcile opinions on the PDP proceeding. If there is continued disagreement, the PDP may still proceed pending the results of a further vote of the ccNSO Council on whether the issue is within scope. The PDP continues if fifteen or more ccNSO Council members vote to proceed; fourteen or fewer ccNSO Council members are in favor, then the PDP ends.

If the PDP is proceeding, the Issue Manager's Issue Report should include at a minimum: the requester's identity; the issue raised and how it affects the requester; existing support for the PDP's initiation; and the Issue Manager's own recommendation on whether the ccNSO Council should initiate the PDP along with corresponding opinions expressed by General Counsel and the ccNSO Council; what support the PDP has; a draft timeline for the PDP; and if feasible, an expectation on how the Board will respond to the policy; and any other relevant information.

3. Initiation of PDP

Within 21 days of receiving the Issue Report, the Council votes on whether to initiate the PDP. A vote of ten or more Council members initiates the PDP. If less than ten support the initiation, the process ends.

NOTE TO LEGAL:
The Bylaws continue with these sections:
Four. Decision Whether to appoint Task Force; Establishment of Time Line
Five: Composition and Selection of Task Forces
Six: Public Notification of Initiation of the PDP and Comment Period: this is included below as #4.
Seven: Task Forces

Eight: Procedure if No Task Force is Formed

ICANN runs the Public Comment Forum for the Issue Report for a minimum of 21 days. The Issue Manager, or a designated Council member, creates the staff report of the public comment proceeding, which is intended to inform the work in the next phase of the process. The Issue Manager - or selected individuals who compile the information and then hand it off to the Issue Manager - is responsible for informing the working body that develops the recommendation.

The ccNSO Council determines how and through which working method the next phase will be conducted (Development of Recommendation). The options are a Task Force (the ccNSO will most likely not select a Task Force, but it remains an option in the Bylaws) or a Working Group (ccNSO Council is highly likely to select a Working Group as working method).

4. Development of Recommendation

The working body designated to develop a preliminary recommendation produces a draft report (if a Task Force is used, the report is called a "Task Force Report"; if a Working Group or only the Issue Manager is used, the report is called the "Initial Report and Draft Recommendations"). The drafted report at a minimum compiles Regional Statements solicited from the Regional Organizations; the GAC's views or advice (solicited at the end of the previous Phase); the staff report of the public comment proceeding from the first Public Comment Forum; a collection of any other pertinent information or reports, such as reports obtained from Outside Advisors; and when a Working Group, the Working Group charter and recommendations.

The Issue Manager submits the Initial Report/Task Force Report for the Public Comment Forum process through the ICANN organization. When the Public Comment period ends (it must be at least 21 days), the Issue Manager compiles the staff report of the public comment proceeding and prepares a draft Final Report, submitting it to the ccNSO Council.

5. ccNSO Decision Making

The ccNSO Council considers the Issue Managers' Final Report, and may return the Final Report for modifications if the ccNSO Council has any concerns. Simultaneously, the ccNSO invites the GAC to provide views or advice on the Final Report.

The Council votes on this Final Report, seeking to act by consensus. If no consensus is reached, then a Council Recommendation carried by 14 or more members of Council shall be deemed to reflect the view of the Council and are conveyed as the Council's Recommendation in the Member Report. However, all viewpoints expressed during the voting meeting will be included in the Member Report. If the Council Recommendation receives thirteen or less votes in support, the PDP ends.

After adoption of the Final Report by Council, the Issue Manager prepares the Members Report, which includes the Council Recommendation, meeting minutes taken during the Council's deliberations, along with the Final Report originally produced for the ccNSO Council. All members of the ccNSO receive the Members Report.

The ccNSO members vote on the Council Recommendation. At least 50% of the ccNSO members must vote within the pre-designated voting period to achieve quorum. If quorum is met, then at least 66% of the lodged votes need to be in favor of the Council Recommendation in order for the Members Report to be adopted. If less than 66% of the lodged votes are in favor of the Council Recommendation, the PDP ends.

If quorum is not achieved, after 30 days, a second and final round of voting occurs. In the second round, there is no quorum requirement. At least 66% of those ccNSO members participating in the second round must support the Council Recommendation, or the PDP ends.

The voting process takes at least 35 days (announcement 14 days + 21 days to lodge a vote). If quorum is not met in the first round, the process takes at least 100 days (35 days first round, 30 days waiting period, 35 days second round).

If the Council Recommendation is adopted by the ccNSO members, the Issue Manager prepares a Board Report that contains a clear statement of the ccNSO Recommendation, the Final Report, and the Members Report.

The ccNSO Council approves the Board Report by a simple majority. If not approved, the Council may send the Board Report back to the Issue Manager to make changes.

The Chair of the ccNSO Council Chair sends the approved Board Report to the ICANN Board.

6. Board Vote

In preparation for the ICANN Board's deliberation and vote, the ICANN organization publishes the approved Board Report for a Public Comment Forum[1], after which the ICANN organization compiles a staff report of the public comment proceeding. At the same time, the GAC is notified of the ccNSO-approved policy recommendations that will be considered by the ICANN Board for adoption, as per the requirements of Section 3.6 of the Bylaws.

After receipt of the Board Report and staff report of the public comment proceeding rt, the ICANN Board then considers the ccNSO Recommendation.

If the ICANN Board receives Advice from an ICANN Advisory Committee that conflicts with the ccNSO's Recommendation, this could represent a potential impasse (i.e., any situation in which the parties involved can't, or won't, move forward or make any sort of progress) based on the nature and extent of the conflict between the Advice and ccNSO Recommendation and in consideration of the Board's role and obligations. However, there are informal and formal mechanisms in place that could facilitate dialogue as well as

---

[1] Note this part of the process - from submission of the Board report up and until the point of the rule for Board adoption of the ccNSO Recommendation - follows the procedures for Board consideration of recommendations: Annex B section **15. Board Vote:** a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, **taking into account procedures for Board consideration** (emphasis added).

.

possible reconsideration either by the Advisory Committee and/or ccNSO that could avoid such an impasse.

The ccNSO Recommendation shall be adopted by the Board unless more than 66% of the Board determines that the proposed policy is not in the best interest of ICANN.

If the Board rejects the policy recommendations, it must issue the rationale in a Board Statement and discuss the issues with the ccNSO Council within 30 days. After the Board/ccNSO discussion is concluded, the ccNSO Council convenes to discuss whether to affirm or modify its Council Recommendation. Modification, in the form of a Supplemental Recommendation, requires a vote of fourteen or more Council members. Less than fourteen approval votes requires the ccNSO Council to continue their internal discussions until a Supplemental Recommendation is approved.

A supported Supplemental Recommendation must be submitted for a ccNSO Members vote, following the ccNSO Member voting procedures outlined earlier in Phase 5.

If the Members vote supports the Supplemental Recommendations, the ccNSO Supplemental Recommendation is conveyed to the Board. The Board may request additional information or consultation with the ccNSO Council before voting on the ccNSO Supplemental Recommendation.

The Board shall adopt the ccNSO Supplemental Recommendations unless more than 66% of the Board determines that the policy is still not in the best interest of ICANN. If the Board rejects the ccNSO Supplemental Recommendation, the Board is not entitled to set policy on the issue raised. The ccNSO Council may continue to work on Supplemental Recommendations until approved by the Board.[2]

---

[2] To date, the Board has rejected part of a ccNSO PDP Recommendation, however that was rejection was later resolved through the Supplemental Recommendation procedure. See Board decision, February 2006: https://www.icann.org/resources/board-material/minutes-2006-02-28-en

If the Board adopts the ccNSO Supplemental Recommendation, the ICANN organization is directed to implement the policy.

In the event the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccNSO PDP make a recommendation on the issue that is deemed acceptable by the Board.

7. Implementation

As directed by the Board, the ICANN organization begins implementing the adopted policy recommendations. To create an Implementation Plan, the ICANN organization first creates a project plan to organize activities, determine milestones, target dates, staff and resource requirements. The ICANN organization also gathers requirement details, such as evaluation criteria, timelines, required specialized expertise, the need to modify existing services or create new services, etc. From these requirements, the ICANN organization designs and documents the operational processes needed to support the new policy. An external communication plan is also developed, including how any required legal notices to community entities will be handled, ensuring impacted parties are aware of policy effective dates, and developing education and outreach materials needed for socializing the policy changes to impacted parties as well as the broader community, if appropriate.

8. Ongoing

The ICANN organization follows standard operating procedures, and if applicable to the policy creates metrics to monitor the expected performance, and creates any procedures necessary to maintain the policy's requirements.

Appendix A: ccNSO PDP Applicability Rules

To the extent a policy affects ccTLD managers, the policy only impacts those ccTLDs that are members of the ccNSO and only for the duration of their membership. To the extent that a policy is directed to ICANN, ICANN's ability to apply that policy to TLDs that are not members of the ccNSO remains unclear and is still under debate.

In addition, PDPs may not conflict with laws applicable to the ccTLD manager, nor be in conflict with local public policies, custom or religion by the member, and failure to implement policy would not impair the operation of the DNS or its interoperability. However, the ccNSO member may still seek exemption by providing a declaration to the ccNSO Council that:

(i)   Implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j) of the ICANN Bylaws), and

(ii)   Failure to implement the policy would not impair DNS operations or interoperability, giving detailed reasons supporting its statements.

After review, the ccNSO Council provides a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration, which may be demonstrated by a vote of 14 or more members of the ccNSO Council, the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise, the response shall state the ccNSO Council's agreement with the declaration.

If the ccNSO Council disagrees, the ccNSO Council shall review the situation again after a six-month period. At the end of that period, the ccNSO Council shall make findings as to:

(A)   Whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in Section 10.4(j) of the ICANN Bylaws), and

(B)   Whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration, the ccNSO Council shall proceed by consensus, which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Since the ccNSO was established this procedure has never been used.

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