

APTLD response to the ccNSO Assistance Group's  
Preliminary Recommendation on Policy-Development Process

1. Introduction

1.1. Via a NetMeeting on 18<sup>th</sup> November the APTLD Board considered the ccNSO Assistance Group's Preliminary Recommendation on Policy-Development Process and note that the Assistance Group has attempted to develop a policy development process (PDP) that balances the legitimate interests of the relevant parties. However, we are concerned that some of the recommendations do not achieve this purpose.

2. Issue Manager

2.1. We support the ccNSO's Assistance Group's ("AG") recommendation for a person, defined as the Issue Manager, to manage the PDP. However, we note that there is no additional information as to who appoints the Issue Manager. We strongly propose that the Issue Manager be accountable to the ccTLD community and is appointed by the ccNSO Council. The Issue Manager plays a pivotal role in policy formulation. Hence it is critical for the Council to appoint a person that they know and trust to be knowledgeable on ccTLD issues.

2.2. We will be liaising with other ccTLD colleagues on the possibility of the Issue Manager being part of the ccTLD Secretariat and will update the AG on any feedback received. On the issue of funding, we recommend that any contributions to ICANN by the ccTLD community pertaining to the Issue Manager functions be re-channeled to the agreed party (for example, the ccTLD Secretariat).

3. ICANN's General Counsel

3.1. The ICANN's General Counsel's opinion must be sought on whether the Issue Manager's Recommendations are properly within the scope of ICANN policy. While we regard this as relevant and useful, we object to two (of the five) components that must be part of his/her opinion. They are:-

“3. is likely to have lasting value or applicability, albeit with the need for occasional updates;

4. will establish a guide or framework for future decision-making; or”

3.2. Sub-items 1,2 and 5 are legal issues and are directly relevant in determining whether the issues being considered are properly within the scope of ICANN policy process as it pertains to ccTLDs. However, we do not see how sub-items 3 and 4 have any bearing on the issue.

3.3. We would recommend that the General Counsel examines sub-items 1, 2 and 5 in determining whether the issues come within ICANN's scope. In the event the

conclusion is in the positive, only then may the General Counsel add his/her comments on sub-items 3 and 4.

*[[Although we discussed having the Council ask for any further input from Counsel,. I am not sure how this is to be done as the Counsel's advice is sought very early on before anything is submitted to the Council. At what stage can Council ask for "more info"? Hence, we have inserted the last sentence in the para above.]]*

4. Initiation of PDP

- 4.1. Clause 3 of Annex A sets out the Council's voting mechanism of the Issue Report. We are concerned that sub-item (b) has provided that a vote of 100% of Council members of at least 2 Regions will amount to approval of the initiation of the PDP. Bearing in mind that there are 5 Regions, this is equivalent to a minority vote that should not be deemed as sufficient agreement by the Council. The option should be deleted. Hence initiation of PDP is limited to a vote of more than 50% of Council.

5. Board Vote

- 5.1. It is noted in item 13(a) that if the Council reaches a supermajority vote, the Board is to adopt the policy recommendation unless it is rejected by more than 66% of the Board. "Supermajority vote" is not defined. If a 66% vote is a supermajority, the term "supermajority" should be applied consistently. However, we recommend that "supermajority" be defined as 75% or more votes.
- 5.2. In light of the assumption and recommendation above, we would also like to propose that the rejection vote by Board be on par with the Council's. The Board must accept Council's recommendations unless more than 75% of the Board rejects it, in which case the recommendation is not adopted.
- 5.3. We also do not agree with the principle provided for in item 13(c) that a recommendation supported by more than 50% but less than 75% of Council is adopted as ccTLD policy unless more than 50% of the Board rejects the same. As these policies have the potential of binding all ccTLDs, it is not acceptable that a policy proceeds to the Board (let alone be ratified by the equivalent voting requirement of the Board) where 49% of the Council does not support it. Accordingly, we propose that item 13(c) be deleted.

*[[It was discussed at the Netmeeting, that additional safeguards be proposed (in addition to the 75% of Board votes in order to reject). Appreciate it if APTLD could propose these safeguards.]]*

6. Implementation of the Policy

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6.1. Several members have raised concerns as to whether policies that have not gone through this PDP can be imposed on ccTLDs. As such, we seek confirmation from the AG that the PDP process is the only way a policy affecting ccTLDs can be formulated.

7. Conclusion

7.1. The APTLD is keen to participate in the ICANN Evolution and Reform process and look forward to good faith consideration of our response.