Establishing Independent Review Process Standing Panel Process

ICANN

17 January 2018

Agenda

1. Welcome and Introduction – Samantha Eisner, Deputy General Counsel, ICANN (10 min)

2. Role of Independent Review Process Implementation Oversight Team in Standing Panel Selection Process – David McAuley, Sr. International Policy & Business Development Manager, Verisign Inc. (5 min)

3. Independent Review Process Standing Panel Selection Process – Elizabeth Le, Associate General Counsel, ICANN (20 min)

4. Group Discussion and Q&A (20 min)

5. Wrap Up – Samantha Eisner (5 min)

1. WELCOME AND INTRODUCTION

Purpose of Webinar

- Need to focus efforts on getting Standing Panel in place

- Standing Panel work includes cross-community efforts

- Jump starting community conversation to identify next steps

- Need to gain understanding of full timeline prior to sending out Call for Expressions of Interest

- Today's goal is not to reach conclusion on questions laid out in presentation

Overarching concern

- Need to build a process that gives the ICANN Community sufficient information to nominate a standing panel, while balancing concerns of independence, conflicts of interest, and efficiency

Questions to keep in mind

- What does your SO or AC need to do to/who does it need to empower to help answer the questions raised?

- How will your SO or AC work with others across ICANN to reach agreement on process?

- How will your SO or AC work with others across ICANN to reach agreement on a panel?

- What can we do to help your SO or AC with this work?

2. ROLE OF INDEPENDENT REVIEW PROCESS IMPLEMENTATION OVERSIGHT TEAM IN STANDING PANEL SELECTION PROCESS

IRP Implementation Oversight Team

IRP Implementation Oversight Team (IRP IOT)

- Created by CCWG Accountability (Work Stream One)

- Adopted by new ICANN Bylaw, section 4.3(n)(i)

- Members listed on IRP IOT wiki

IRP Implementation Oversight Team (cont.)

Purpose of IRP IOT:

Rules: "The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP ("**Rules of Procedure**") that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties." (Bylaw 4.3(n)(i))

Other: Bylaw 4.3 assigns other duties to IRP IOT – e.g., additional panelist independence requirements (Bylaw 4.3(q))

IRP Implementation Oversight Team (cont.)

IRP Standing Panel:

Bylaw 4.3(j)

Formal roles for ICANN and SOs/ACs

IRP IOT willing to act in informal advisory capacity

3. IRP STANDING PANEL SELECTION PROCESS

Overview of the IRP

- An accountability mechanism provided by Article 4, Section 4.3 of the ICANN Bylaws for independent third-party review of Board or staff actions (or inactions) alleged by Claimant to be inconsistent with ICANN's Articles of Incorporation or Bylaws.

- Scope of IRP:
  - Claimant = any legal or natural person, group, or entity including, but not limited to the Empowered Community, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute.
  - To be materially affected, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.
  - Concerns alleged violation of ICANN's Articles of Incorporation or Bylaws
- Proceedings are presided by an IRP Panel of three members selected from an omnibus Standing Panel.
- Intended to be a final, binding arbitration process.

Step 2: Call for Expressions of Interest (EOI) and Initial Evaluations

A. **Development of Call for Expressions of Interest** - nearly complete

B. **Identification and Solicitation of Applications**

   - ⊙ Issues for consideration: How to attract qualified candidates. What efforts can be made prior to the Call for EOI being posted? During the Call period?

C. **Initial Review and Vetting of Applications**

   - ⊙ Issues for consideration:

       - ❖ How will the candidates be evaluated? How to determine what is a well qualified candidate as opposed to not qualified candidate? What criteria should be established to evaluate the candidates and assess their qualifications in an objective way?

       - ❖ How to vet the applicants. What does this process look like? How will the SOs/ACs participate this process? Consider impact on size of participants in vetting process on efficiency, coordination efforts/logistics, concerns related to dissemination of candidate information (privacy concerns, confidentiality concerns, conflicts of interest concerns, concerns re potential impact on field on interested applicants)

Step 3: Nomination of Slate

- ⊙ Issues for consideration: ICANN Org recommends that the SOs and ACs begin discussions now on how the nomination process will work once the well-qualified applicants are identified. The skills and diversity of the panel should be evaluated as a whole, so there will be a need for coordinated vetting across the community, as opposed to relying solely on individual SO/AC nominations.

    - ❖ How can ICANN Org support this work?

    - ❖ Is 30 days days long enough to reach a nomination? If no, how long is needed?

Step 4: Final Selection of Standing Panel Members

⊙ Issues for consideration

❖ In the event that the ICANN Board has questions regarding the slate nomination during the Board's consideration of the slate nomination, what is the process to address such questions? What coordination needs to occur? How can ICANN Org support this? Does additional time need to be built in for this?

4. GROUP DISCUSSION AND Q&A

5. WRAP UP

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