

# ICANN's Independent Review Process (IRP)

October 2017 Update/Overview

By

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# IRP

- IRP:
  - Created as part of CCWG Accountability Work Stream One; then
  - Adopted as a separate entity by ICANN Board on Oct. 1, 2016
    - See Bylaw Section 4.3(n)(i)

# IRP - Purpose

- Purpose of IRP (Section 4.3(a)) (in part):
  - Ensure: (a) against exceeding mission; (b) compliance with Articles/Bylaws;
  - Empower community/claimants to enforce compliance with Articles/Bylaws;
  - Address claims ICANN failed to enforce IANA Naming Functions contract;
  - Provide vehicle for direct IANA customers to seek resolution of PTI service complaints that are not resolved through mediation;
  - Reduce disputes by creating precedent in connection with policy development and implementation;
  - Lead to binding, enforceable, final resolutions of such disputes.

# IRP - Standard of Review

- New IRP standard of review (Section 4.3(b))
  - Address claims that ICANN (Board, individual directors, officers or staff) acted/failed-to-act in manner that violated Articles/Bylaws, including:
    - Exceeded scope of mission;
    - Resulted from response to advice or input from any AC or SO that are claimed to be inconsistent with Articles or Bylaws;
    - Resulted from decisions of process-specific expert panels that are claimed to be inconsistent with Articles or Bylaws; ...

# IRP - Standard of Review (con't)

- New IRP standard of review ..
  - Address claims that ICANN ... violated Articles/Bylaws, by (among other things):
    - Resulted from a response to a DIDP request that is claimed to be inconsistent with Articles or Bylaws;
    - Arose from claims involving rights of the EC as set forth in Articles or Bylaws;
    - Claims of non-enforcement of ICANN's contractual rights with respect to the IANA Naming Function Contract; and
    - Claims regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

# IRP Review - Exclusions

- Excluded from Scope of IRP:
  - EC challenges to the result(s) of a PDP, unless the SO(s) that approved the PDP supports the EC challenge;
  - Claims relating to ccTLD delegations and re-delegations;
  - Claims relating to Internet numbering resources, and
  - Claims relating to protocol parameters.

# IRP – Standing Panel

- Standing Panel (Section 4.3(j))
  - At least seven members (ICANN to provide DNS training);
  - Secretariat/admin support to be provided (ICANN – SOs/ACs – IOT to coordinate selection);
  - Expression of Interest doc for panelist application (ICANN);
  - Seeking/vetting applications (ICANN – SOs/ACs);
  - Panel nominations by SOs/ACs – confirmation by Board (not to be unreasonably withheld);

# IRP – Standing Panel

- Standing Panel ...
  - Panelists serve five-year term (recall only for specific reasons like fraud/corruption – IOT to develop recall process);
  - Panelists must be independent of ICANN and SOs/ACs (Section 4.3(q));
  - Individual cases to be heard by three-member panel selected from standing panel (Section 4.3(k));
  - Appeals to full standing panel possible (Section 4.3(w));
  - Resolution within six months is target (Section 4.3(s));
  - Enforcement in court envisioned if needed (Section 4.3(x)).



# IRP – Rules of Procedure

- Rules of Procedure (Section 4.3(n)):
  - First draft of [updated rules](#) (these rules supplement ICDR Arbitration Rules);
  - Review of [public comments](#) underway, making progress, including discussions on these rules, among others:
    - Time within which a claim must be filed (need to add CEP consideration);
    - Retroactivity of (1) IRP-standard, and (2) IRP-rules;
    - Joinder of interested parties; and
    - Translation – interpretations.

# IRP IOT: Post – Rules Tasks

- Recommendations regarding training for Standing Panel;
- Review the Cooperative Engagement Process (CEP) (Bylaw sections 27.1(b)(ix) and 4.3(e));
- Standards/rules regarding IRP appeals to full panel;
- Process for recalling members of Standing Panel;
- Procedure when ICANN fails to reply to claim;
- Recommendations regarding periodic review of IRP.