ICANN’s Independent Review Process (IRP)

October 2017 Update/Overview

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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.