

ICANN's Independent Review Process (IRP)

June 2017 Update/Overview

By

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IRP

- New IRP:
 - Bylaw Section 4.3
 - Came into effect Oct 1st, 2016:
- Agenda:
 - Purpose
 - Main Pillars
 - Miscellaneous

IRP (Purpose)

- Purpose of IRP (Section 4.3(a)):
 - Ensure: (a) against exceeding mission; (b) compliance with Articles/Bylaws;
 - Empower community/claimants to enforce compliance with Articles/Bylaws;
 - Ensure ICANN accountability;
 - 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; ...

IRP (Purpose) (con't)

- Purpose of IRP (Section 4.3(a)):
 - Accessible, transparent, efficient, consistent, and just resolution of disputes;
 - Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in proper courts;
 - Provide a vehicle for resolving disputes as an alternative to civil litigation.

IRP (Main Pillars)

- Three main pillars of new IRP:
 - New Standard of Review
 - Standing Panel
 - Updated 'Supplementary' Rules of Procedure

IRP (Main Pillars) (con't)

- New standard of review (Scope) of IRP (Section 4.3(b))
 - To 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 (Main Pillars) (con't)

- New standard of review ..
 - To 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 (Main Pillars) (con't)

- **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 (Main Pillars) (con't)

Nature of Review — “objective, de novo” (Section 4.3(i))

IRP (Main Pillars) (con't)

- 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 (Main Pillars) (con't)

- 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 (Main Pillars) (con't)

- Rules of Procedure (Section 4.3(n)):
 - First draft of [updated rules](#);
 - Review of [public comments](#) underway, making progress, including discussions on these rules, among others (**note** discussions not yet final):
 - Time within which a claim must be filed;
 - Retroactivity of (1) standard, and (2) rules;
 - Joinder of interested parties; and
 - Challenges to consensus policies.

Miscellaneous

- Note the Cooperative Engagement Process (CEP Process -Section 4.3(e)) – an informal attempt to resolve the dispute (non-mandatory but potential consequences for failure to engage).
- Also – note conciliation efforts to narrow issues under review (Section 4.3(h)) (non-mandatory).
- IRP IOT status to be addressed.
- Access consideration – Section 4.3(y):
 - *ICANN shall seek to establish means by which community, non-profit Claimants and other Claimants that would otherwise be excluded from utilizing the IRP process may meaningfully participate in and have access to the IRP process.*