

ARTICLE 4 ACCOUNTABILITY AND REVIEW

Section 4.1. PURPOSE

In carrying out its Mission, ICANN shall be accountable to the community for operating in accordance with the Articles of Incorporation and these Bylaws, including the Mission set forth in Article 1 of these Bylaws. This Article 4 creates reconsideration and independent review processes for Covered ICANN Actions and procedures for periodic review of ICANN's structure and operations, which are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article 3 and the Board and other selection mechanisms set forth throughout these Bylaws.

Section 4.2. RECONSIDERATION

- (a) ICANN shall have in place a process by which any person or entity materially affected by an action or inaction of the ICANN Board or Staff ~~(i.e.,~~ may request (“Requestor”) the review or reconsideration of that action or inaction by the Board. (“Staff” includes employees and individual long-term paid contractors serving in locations where ICANN does not have the mechanisms to employ such contractors directly.)
- (b) ~~(“Requestor”) may request the review or reconsideration of that action or inaction by the Board.~~ The EC ~~Chairs Council~~ may ~~also~~ file a Reconsideration Request (as defined below in Section 4.2(c)) if approved pursuant to Section 4.3 of the Annex D (“**Community Reconsideration Request**”) and if the matter relates to the powers and rights of the EC as defined in Article 6 of these Bylaws. The EC Chairs Council shall act as the Requestor for such a Community Reconsideration Request and shall act on behalf of the EC for such Reconsideration Request as directed by the Decisional Participants, as further described in Section 4.3 of Annex D.
- (c) ~~(b)~~ A Requestor may submit a request for reconsideration or review of an ICANN action or inaction (“**Reconsideration Request**”) to the extent that the Requestor has been adversely affected by:
- (i) ~~one~~One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
 - (ii) ~~one~~One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or

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- (iii) ~~one~~One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

(d) ~~(e)~~ Notwithstanding any other provision in this Section 4.2, the scope of reconsideration shall exclude the following:

- (i) ~~disputes~~Disputes relating to country code top-level domain ("ccTLD") delegations and ~~redelegations~~re-delegations;
- (ii) ~~disputes~~Disputes relating to Internet numbering resources; and
- (iii) ~~disputes~~Disputes relating to ~~the resources for~~ protocol parameters.

(e) ~~(d)~~ The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

- (i) ~~evaluate~~Evaluate Reconsideration Requests;
- (ii) ~~summarily~~Summarily dismiss insufficient or frivolous Reconsideration Requests;
- (iii) ~~evaluate~~Evaluate Reconsideration Requests for urgent consideration;
- (iv) ~~conduct~~Conduct whatever factual investigation is deemed appropriate;
- (v) ~~request~~Request additional written submissions from the affected party, or from other parties; and
- (vi) ~~make~~Make a recommendation to the Board on the merits of the Reconsideration Request, if it has not been summarily dismissed.

(f) ~~(e)~~ ICANN shall absorb the normal administrative costs of the Reconsideration Request process. ICANN reserves the right to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, that fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the Requestor, who shall then have the option of withdrawing the request or agreeing to bear such costs.

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(g) ~~(f)~~-All Reconsideration Requests must be submitted by the Requestor to an email address designated by the Board Governance Committee within 30 days after:

- (i) for requests challenging Board actions, the date on which information about the challenged Board action is first published in a resolution, unless the posting of the resolution is not accompanied by a rationale. In that instance, the request must be submitted within 30 days from the initial posting of the rationale;
- (ii) for requests challenging Staff actions, the date on which the Requestor became aware of, or reasonably should have become aware of, the challenged Staff action; or
- (iii) for requests challenging either Board or Staff inaction, the date on which the Requestor reasonably concluded, or reasonably should have concluded, that action would not be taken in a timely manner.

(h) ~~(g)~~-To properly initiate a Reconsideration Request, all Requestors must review, complete and follow the Reconsideration Request form posted on the Website at <https://www.icann.org/resources/pages/accountability/reconsideration-en>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.

(i) ~~(h)~~-Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

(j) ~~(i)~~-Reconsideration Requests from different Requestors may be considered in the same proceeding so long as: (i) the requests involve the same general action or inaction; and (ii) the Requestors are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is substantially the same for all of the Requestors. Every Requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.

(k) ~~(j)~~-The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if: (i) the Requestor fails to meet

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the requirements for bringing a Reconsideration Request; or (ii) it is frivolous. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be documented and promptly posted on the Website.

(l) ~~(k)~~ For all Reconsideration Requests that are not summarily dismissed, except Reconsideration Requests described in [Section 4.2\(k\)\(iii\)](#), the Reconsideration Request shall be sent to the Ombudsman, who shall promptly proceed to review and consider the Reconsideration Request.

(i) The Ombudsman shall be entitled to seek any outside expert assistance as the Ombudsman deems reasonably necessary to perform this task to the extent it is within the budget allocated to this task.

(ii) The Ombudsman shall submit to the Board Governance Committee his or her substantive evaluation ~~to~~[of](#) the Reconsideration Request within 15 days of the Ombudsman's receipt of the Reconsideration Request. The Board Governance Committee shall thereafter promptly proceed to review and consideration.

(iii) For those Reconsideration Requests involving matters for which the Ombudsman has, in advance of the filing of the Reconsideration Request, taken a position while performing his role as the Ombudsman pursuant to [Article 5](#) of these Bylaws, or involving the Ombudsman's conduct in some way, the Ombudsman shall recuse himself and the Board Governance Committee shall review the Reconsideration Request without involvement by the Ombudsman.

(m) ~~(l)~~ The Board Governance Committee may ask ICANN Staff for its views on a Reconsideration Request, which comments shall be made publicly available on the Website.

(n) ~~(m)~~ The Board Governance Committee may request additional information or clarifications from the Requestor, and may elect to conduct a meeting with the Requestor by telephone, email or, if acceptable to the Requestor, in person. A Requestor may also ask for an opportunity to be heard. The Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.

(o) ~~(n)~~ The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board

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Governance Committee, it shall so state in its recommendation. Any information collected by ICANN from third parties shall be provided to the Requestor.

~~(p)~~ ~~(e)~~ The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review, by the ICANN Staff, and by any third party.

~~(q)~~ ~~(p)~~ The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman's evaluation (or 30 days following receipt of the Reconsideration Requests involving those matters for which the Ombudsman recuses himself), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Governance Committee shall endeavor to produce its final recommendation to the Board within 90 days of receipt of the request. The final recommendation of the Board Governance Committee shall be documented and promptly (i.e., as soon as practicable) posted on the Website and shall address each of the arguments raised in the Reconsideration Request. The Requestor may file a 10-page (double-spaced, 12-point font) document in rebuttal to the Board Governance Committee's recommendation within 15 days of receipt of the recommendation, which shall also be promptly (i.e., as soon as practicable) posted to the Website and provided to the Board for its evaluation; provided, that such rebuttal shall: (i) be limited to rebutting or contradicting the issues raised in the Board Governance Committee's final recommendation; and (ii) not offer evidence to support an argument made in the Requestor's original Reconsideration Request that the Requestor could have provided when the Requestor initially submitted the Reconsideration Request.

~~(r)~~ ~~(e)~~ The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board and its rationale shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 45 days of receipt of the Board Governance Committee's recommendation or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the Website. In any event, the Board's final decision shall be made within 135 days of receipt of the Reconsideration Request was initially received by the

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Board Governance Committee. The Board's decision on the recommendation shall be posted on the Website in accordance with the Board's posting obligations as set forth in [Article 3](#) of these Bylaws. If the party seeking reconsideration so requests, the Board shall post ~~either~~[both](#) a recording ~~or~~[and](#) a transcript of the substantive Board discussion from the meeting at which the Board considers the Board Governance Committee's recommendation. The [ICANN](#) Board ~~shall decide as between~~[may redact the](#) recording and ~~a~~ transcript. ~~The Board may only redact from the posted record that portion of the record that: (i) reflects privileged advice from legal counsel; (ii) includes ICANN trade secrets; (iii) if disclosed would breach a binding contractual obligation or legal requirement to which ICANN is subject; or (iv) if disclosed would present a material risk of negative impact to the security, stability or resiliency of the DNS.~~ [on the same basis that such information is of a category or type described in Section 22.7\(b\), in which case ICANN will provide the Requestor a written rationale for such redactions. Inappropriate redaction may be grounds for an IRP as an action inconsistent with these Bylaws.](#)

[\(s\)](#) ~~(r)~~ If the Requestor believes that the Board action or inaction for which a Reconsideration Request is submitted is so urgent that the timing requirements of the process set forth in this [Section 4.2](#) are too long, the Requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (as calculated by local time at the location of ICANN's principal office) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.

[\(t\)](#) ~~(s)~~ The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause notice to be provided to the Requestor, who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Reconsideration Request, or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the Requestor may still file a Reconsideration Request within the regular time frame set forth within these Bylaws.

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(u) ~~(t)~~ The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:

- (i) the number and general nature of Reconsideration Requests received, including an identification if the Reconsideration Requests were acted upon, summarily dismissed, or remain pending;
- (ii) for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any Reconsideration Request pending for more than ninety (90) days;
- (iii) an explanation of any other mechanisms available to ensure that ICANN is accountable to persons materially affected by its decisions; and
- (iv) whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by ICANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 4.3. INDEPENDENT REVIEW OF COVERED ICANN ACTIONS In addition to the reconsideration process described in Section 4.2, ICANN shall have a separate process for independent third-party review of Disputes (defined in Section 4.3(b)(iii), below) ~~that are~~ alleged by a Claimant to be within the scope of the Independent Review Process ("**IRP**"), ~~which~~, The IRP is intended to hear and resolve Disputes for the following purposes ("**Purposes of the IRP**"):

- (i) Ensure that ICANN does not exceed the scope of its limited technical Mission and otherwise complies with its Articles of Incorporation and Bylaws.
- (ii) Empower the global Internet community and Claimants to enforce compliance with the Articles of Incorporation and Bylaws through meaningful, affordable, accessible expert review of Covered Actions.
- (iii) Ensure that ICANN is accountable to the global Internet community and Claimants.

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- (iv) Address claims that ICANN has failed to enforce its rights under the IANA Naming Function Contract.
- (v) Provide a mechanism by which direct customers of the IANA naming functions may seek resolution of PTI service complaints that are not resolved through mediation.
- (vi) Reduce Disputes by creating precedent to guide and inform the Board, Officers, Staff members, Supporting Organizations, Advisory Committees, and the global Internet community in connection with policy development and implementation.
- (vii) Secure the accessible, transparent, efficient, consistent, coherent, and just resolution of Disputes.
- (viii) Lead to binding, final resolutions consistent with international arbitration norms that are enforceable in any court with proper jurisdiction.
- (ix) Provide a mechanism for the resolution of Disputes, as an alternative to legal action in the civil courts of the United States or other jurisdictions.

This Section 4.3 shall be construed, implemented, and administered in a manner consistent with these Purposes.

(b) The scope of the IRP is defined with reference to the following terms:

- (i) A “**Claimant**” is any legal or natural person, group, or entity including, but not limited to the EC, a Supporting Organization, or an Advisory Committee that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

(A) The EC is deemed to be materially affected by all Covered Actions. ICANN shall not assert any defenses of standing or capacity against the EC in any forum.

(B) ICANN shall not object to the standing of the EC, a Supporting Organization, or an Advisory Committee to participate in an IRP, to compel an IRP, or to enforce an IRP Decision on the basis that it is not a legal person with capacity to sue. No special pleading of a Claimant’s capacity or of the legal existence of a person that is a Claimant shall be required in the IRP proceedings. No Claimant shall be allowed to proceed if the IRP Panel concludes based on evidence

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submitted to it that the Claimant does not fairly or adequately represent the interests of those on whose behalf the Claimant purports to act.

- (ii) “**Covered Actions**” are defined as any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a Dispute.
- (iii) “**Disputes**” are defined as:

(A) ~~claims~~[Claims](#) that Covered Actions constituted an action or inaction that violated the Articles of Incorporation or Bylaws, including but not limited to any action or inaction that:

- (1) exceeded the scope of the Mission;
- (2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- (3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- (4) resulted from a response to a DIDP request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- (5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws.

(B) ~~claims~~[Claims](#) that ICANN, its Board, individual Directors, Officers or Staff members, have not enforced ICANN’s contractual rights with respect to the IANA Naming Function Contract, and

(C) ~~claims~~[Claims](#) regarding PTI service complaints by direct customers of the IANA naming functions that are not resolved through mediation.

- (c) Notwithstanding any other provision in this Section 4.3, the IRP’s scope shall exclude all of the following:

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- (i) EC challenges to the result(s) of a PDP, unless the Supporting Organization(s) that approved the PDP supports the EC bringing such a challenge;
 - (ii) ~~claims~~[Claims](#) relating to country code top-level domain (“**ccTLD**”) delegations and re-delegations;
 - (iii) ~~claims~~[Claims](#) relating to Internet numbering resources, and
 - (iv) ~~claims~~[Claims](#) relating to ~~the resources for~~ protocol parameters.
- (d) An IRP shall commence with the Claimant’s filing of a written statement of a Dispute (a “**Claim**”) with the IRP Provider (described in [Section 4.3\(m\)](#) below). The EC may commence a Community IRP pursuant to [Section 4.2](#) of Annex D.
- (e) Cooperative Engagement Process
- (i) Except for Claims brought by the EC in accordance with [this Section 4.3](#) and [Section 4.2](#) of Annex D, prior to the filing of a Claim, the parties are strongly encouraged to participate in a non-binding Cooperative Engagement Process (“**CEP**”) for the purpose of attempting to resolve and/or narrow the Dispute. CEPs shall be conducted pursuant to the CEP Rules to be developed with community involvement, adopted by the Board, and as amended from time to time.
 - (ii) The CEP is voluntary. However, except for Claims brought by the EC in accordance with [this Section 4.3](#) and [Section 4.2](#) of Annex D, if the Claimant does not participate in good faith in the CEP and ICANN is the prevailing party in the IRP, the IRP Panel shall award to ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.
 - (iii) Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator (“**IRP Mediator**”) after at least one CEP meeting.
 - (iv) Unless all parties agree on the selection of a particular IRP Mediator, any IRP Mediator appointed shall be selected from the members of the Standing Panel (described in [Section 4.3\(j\)](#) below) by its Chair, but such IRP Mediator shall not thereafter be eligible to serve as a panelist presiding over an IRP on the matter.

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- (f) ICANN hereby waives any defenses that may be afforded under Section 5141 of the California Corporations Code (“**CCC**”) against any Claimant, and shall not object to the standing of any such Claimant to participate in or to compel an IRP, or to enforce an IRP Decision on the basis that such Claimant may not otherwise be able to assert that a Covered Action is *ultra vires*.
- (g) Upon the filing of a Claim, an Independent Review Process Panel (“**IRP Panel**”) shall be selected in accordance with the Rules of Procedure. Following the selection of an IRP Panel, that Panel shall be charged with hearing and resolving the Dispute, considering the Claim and ICANN’s written response (“**Response**”) in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Panel decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law. If no Response is filed by ICANN, the IRP Panel may accept the Claim as unopposed and proceed to evaluate and decide the Claim pursuant to the procedures set forth in these Bylaws.
- (h) After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel.
- (i) Each IRP Panel shall conduct an objective, de novo examination of the Dispute.
 - (i) With respect to Covered Actions, the IRP Panel shall make findings of fact to determine whether the Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws.
 - (ii) All Disputes shall be decided in compliance with the Articles of Incorporation and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
 - (iii) For Claims arising out of the Board’s exercise of its fiduciary duties, the IRP Panel shall not replace the Board’s reasonable judgment with its own so long as the Board’s action or inaction is within the realm of reasonable business judgment.
 - (iv) With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN’s obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

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(v) For avoidance of doubt, IRPs initiated through the mechanism contemplated at [Section 4.3\(a\)\(iv\)](#) above, shall be subject to a separate standard of review as defined in the PTI Contract.

(j) Standing Panel

(i) There shall be an omnibus standing panel of at least seven members (the “**Standing Panel**”) each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN's Mission, work, policies, practices, and procedures. Members of the Standing Panel shall receive at a minimum, training provided by ICANN on the workings and management of the Internet's unique identifiers.

(ii) ICANN shall, in consultation with the global Internet community, initiate a process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP. The [process shall provide that that the community shall be directly involved in the selection of the Standing Panel and the designation of the nominate and select a slate of panel members and designate the](#) Chair of the Standing Panel. ~~The process shall include a call by ICANN for expressions of interest, and shall provide that the community shall nominate a slate of panel members.~~ subject to confirmation by the Board. [The process shall also provide for direct involvement by the community in determining the attributes to be solicited from candidates in the call for expressions of interest and in reviewing and vetting applications from interested candidates.](#)

[\(iii\) Appointments to the Standing Panel shall be made for a fixed term of five years with no removal except for specified cause in the nature of corruption, misuse of position, fraud or criminal activity.](#)

~~(iv) (iii)~~ Reasonable efforts shall be taken to achieve cultural, linguistic, gender, and legal tradition diversity, and diversity by Geographic Region.

(k) IRP Panel

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- (i) A three-member panel shall be selected from the Standing Panel to hear a specific Dispute (each an “**IRP Panel**”).
- (ii) The Claimant and ICANN shall each select one panelist from the Standing Panel, and the two panelists selected by the parties will select the third panelist from the Standing Panel. In the event that a Standing Panel is not in place when an IRP Panel must be convened for a given proceeding or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding, the Claimant and ICANN shall each select a qualified panelist from outside the Standing Panel and the two panelists selected by the parties shall select the third panelist. In the event that no Standing Panel is in place when an IRP Panel must be convened and the two party-selected panelists cannot agree on the third panelist, the IRP Provider’s rules shall apply to selection of the third panelist.
- (iii) Assignment from the Standing Panel to IRP Panels shall take into consideration the Standing Panel members’ individual experience and expertise in issues related to highly technical, civil society, business, diplomatic, and regulatory skills as needed by each specific proceeding, and such requests from the parties for any particular expertise.
- (iv) Upon request of an IRP Panel, the Panel shall have access to independent skilled technical experts at the expense of ICANN, although all substantive interactions between the IRP Panel and such experts shall be conducted on the record, except when public disclosure could materially and unduly harm participants, such as by exposing trade secrets or violating rights of personal privacy.
- (v) IRP Panel decisions shall be made by a simple majority of the Panel.
- (l) All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.
- (m) IRP Provider
 - (i) All IRP proceedings shall be administered by a well-respected international dispute resolution provider (“**IRP Provider**”). The IRP Provider shall receive and distribute IRP Claims, Responses, and all other submissions arising from an IRP at

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the direction of the IRP Panel, and shall function independently from ICANN.

- (ii) ICANN shall, in consultation with the global Internet community, initiate a tender process for an organization to serve as the IRP Provider to provide administrative support for the Standing Panel and IRP Panels.

(n) Rules of Procedure

- (i) ~~Members of the~~The global Internet community through a CCWG (assisted by counsel, appropriate experts and the Standing Panel when confirmed) shall develop ~~processes~~clear published rules for the IRP ~~that are governed by clearly understood and pre-published rules~~ applicable to all parties (“**Rules of Procedure**”). Such Rules of Procedures shall be informed by international arbitration norms and consistent with the Purposes of the IRP and shall be approved by the Board, such approval not to be unreasonably withheld. Specialized Rules of Procedure may be designed for reviews of PTI service complaints asserted by direct customers of the IANA naming functions that are not resolved through mediation
- (ii) ~~As The Standing Panel may recommend amendments to such Rules of Procedure as~~ it deems appropriate ~~in order~~ to fulfill the Purposes of the IRP, ~~the Standing Panel may revise such Rules of Procedure, provided that all such revisions shall be published for comment and shall reflect~~however no such amendment shall be effective without approval by the global Internet community by a consensus to the extent reasonably reasonable possible after publication and a period of public comment.
- (iii) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:
 - (A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;
 - (B) Issues relating to joinder, intervention, and consolidation of Claims;
 - (C) Rules governing written submissions, including the required elements of a Claim, other requirements or limits on content, time for filing, length of statements, number of supplemental statements, if any, permitted evidentiary support (factual and

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expert), including its length, both in support of a Claimant's Claim and in support of ICANN's Response;

(D) Availability and limitations on discovery methods;

(E) Whether hearings shall be permitted, and if so what form and structure such hearings would take;

(F) Procedures if ICANN elects not to respond to an IRP; and

(G) The standards and rules governing appeals from IRP Panel decisions, including which IRP Panel decisions may be appealed.

(o) Subject to the requirements of this [Section 4.3](#), each IRP Panel shall have the authority to:

(i) ~~summarily~~[Summarily](#) dismiss Disputes that are brought without standing, ~~lacking in~~[lack](#) substance, ~~or are~~ frivolous or vexatious;

(ii) ~~request~~[Request](#) additional written submissions from the Claimant or from other parties;

(iii) ~~declare~~[Declare](#) whether a Covered Action constituted an action or inaction that violated the Articles of Incorporation or Bylaws;

(iv) ~~recommend~~[Recommend](#) that ICANN stay any action or decision, or take necessary interim action, until such time as the opinion of the IRP Panel is considered;

(v) ~~consolidate~~[Consolidate](#) Disputes if the facts and circumstances are sufficiently similar, and take such other actions as are necessary for the efficient resolution of Disputes;

(vi) ~~determine~~[Determine](#) the timing for each IRP proceeding, and

(vii) ~~determine~~[Determine](#) the shifting of IRP costs and expenses consistent with ~~this~~ [Section 4.3\(ar\)](#).

(p) A Claimant may request interim relief. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, [and specifically may include a stay of the challenged ICANN action or decision until such time as the opinion of the IRP Panel is considered as described in Section 4.3\(o\)\(iv\)](#), in order to maintain the *status quo*. A single member of the Standing Panel ("**Emergency Panelist**") shall be selected to adjudicate requests for interim relief. In the event that no Standing Panel is in place when an Emergency Panelist must be

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selected, the IRP Provider's rules shall apply to the selection of the Emergency Panelist. Interim relief may only be provided if the Emergency Panelist determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;
 - (ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and
 - (iii) A balance of hardships tipping decidedly toward the party seeking relief.
- (q) Conflicts of Interest
- (i) Standing Panel members must be independent of ICANN and its Supporting Organizations and Advisory Committees, and so must adhere to the following criteria:
 - (A) Upon consideration for the Standing Panel and on an ongoing basis, Panelists shall have an affirmative obligation to disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.
 - (ii) The IRP Provider shall disclose any material relationship with ICANN, a Supporting Organization, an Advisory Committee, or any other participant in an IRP proceeding.
 - (r) ICANN shall bear all the administrative costs of maintaining the IRP mechanism, including compensation of Standing Panel members. Each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, including the costs of all legal counsel and technical experts. Nevertheless, except with respect to a Community IRP, the IRP Panel may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.
 - (s) An IRP Panel should complete an IRP proceeding expeditiously, issuing an early scheduling order and its written decision no later than six months after the filing of the Claim, ~~unless that is not reasonably possible~~ except as otherwise permitted under the ~~circumstances~~ Rules of Procedure.

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- (t) Each IRP Panel shall make its decision based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its decision shall specifically designate the prevailing party as to each part of a Claim.
 - (u) All IRP Panel proceedings shall be conducted on the record, and documents filed in connection with IRP Panel proceedings shall be posted on the Website, except for settlement negotiation or other proceedings that could materially and unduly harm participants if conducted publicly. The Rules of Procedure, and all Claims, petitions, and decisions shall promptly be posted on the Website when they become available. Each IRP Panel may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets, but only if such confidentiality does not materially interfere with the transparency of the IRP proceeding.
 - (v) Subject to this [Section 4.3](#), all IRP decisions shall be written and made public, and shall reflect a well-reasoned application of how the Dispute was resolved in compliance with the Articles of Incorporation and Bylaws, as understood in light of prior IRP Decisions decided under the same version of the provision of the Articles of Incorporation and Bylaws at issue, and norms of applicable law.
 - (w) Subject to any limitations established through the Rules of Procedure, an IRP Panel decision may be appealed to the full Standing Panel sitting en banc within sixty (60) days of issuance of such decision.
 - (x) The IRP is intended as a final, binding arbitration process.
 - (i) IRP Panel decisions are binding final decisions to the extent allowed by law unless timely and properly appealed to the en banc Standing Panel. En banc Standing Panel decisions are binding final decisions to the extent allowed by law. ~~Such~~
 - (ii) [IRP Panel](#) decisions [and decisions of an en banc Standing Panel upon an appeal](#) are intended to be enforceable in any court with jurisdiction over ICANN without a *de novo* review of the decision of the IRP Panel or en banc Standing Panel, as applicable, [with respect to](#) factual findings or conclusions of law.
 - ~~(iii)~~ ICANN intends, agrees, and consents to be bound by all IRP Panel decisions of Disputes of Covered Actions as a final, binding arbitration.
- (A) Where feasible, the Board shall consider its response to IRP Panel decisions at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based

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on an expressed rationale. The decision of the IRP Panel, or en banc Standing Panel, shall be final regardless of such Board action, to the fullest extent allowed by law.

(B) If the Board rejects an IRP ~~decision~~Panel decision without undertaking an appeal to the en banc Standing Panel or rejects an en banc Standing Panel decision upon appeal, the Claimant or the EC may seek enforcement in a court of competent jurisdiction. In the case of the EC, the EC Chairs Council may convene as soon as possible following such rejection and consider whether to authorize commencement of such an action ~~in a court with jurisdiction over ICANN to enforce the IRP decision.~~

~~(iv)~~(iii) By submitting a Claim to the IRP Panel, a Claimant thereby agrees that the IRP Decision is intended to be a final, binding arbitration decision with respect to such Claimant. Any Claimant that does not consent to the IRP being a final, binding arbitration may initiate a non-binding IRP if ICANN agrees; provided that such a non-binding IRP Decision is not intended to be and shall not be enforceable. Parties that have contracted with ICANN may not initiate a binding or non-binding IRP if the party's claims arise out of the party's contract with ICANN and are subject to binding arbitration pursuant to such contract.

(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.

[Section 4.4.](#)

Summary report:	
Litéra® Change-Pro TDC 7.5.0.166 Document comparison done on 4/12/2016 6:33:03 PM	
Style name: Sidley Default	
Intelligent Table Comparison: Active	
Original DMS: iw://SIDLEYDMS/ACTIVE/214213147/1	
Description: Section 4.3 of April 6 ICANN Bylaws	
Modified DMS: iw://SIDLEYDMS/ACTIVE/214213147/3	
Description: Edits to Section 4.1, 4.2 and 4.3 of April 6 ICANN Bylaws	
Changes:	
Add	104
Delete	88
Move From	10
Move To	10
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	212