



# New gTLD Subsequent Procedures

Work Track 3 | 20 JUNE 2017 | 15:00 UTC

# Agenda

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&  
Review/Revise Agenda

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Independent Review  
Process (IRP)

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# New gTLD Accountability Mechanisms

## CHARTER

Accountability Mechanisms: Examine whether dispute resolution and challenge processes provide adequate redress options or if additional redress options specific to the program are needed.

### 1. **Independent Review Process (IRP)**

Basis is ICANN Bylaws section 4.3

### 2. **Public Interest Dispute Resolution Procedure (PICDRP)**

Registry non-compliance with PICs in its Registry Agreement

### 3. **Registry Restrictions Dispute Resolution Procedure (RRDRP)**

Established communities being harmed by Registry non-compliance with registration restrictions

### 4. **Trademark Post Delegation Dispute Resolution Procedure (TM-PDDRP)\***

Trademark owner being harmed by Registry manner of use/operation of gTLD

\* Per agreement of GNSO & PDP Leadership, TM-PDDRP is being considered by the RPMs Review PDP

# Revised ICANN IRP

**David McAuley**

**On behalf of IRP  
Implementation Oversight  
Team**

# IRP

- New IRP:
  - Bylaw Section 4.3
  - Came into effect Oct 1<sup>st</sup>, 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.*





# PICDRP Procedural Observations

Kiran Malancharuvil  
Policy Counselor, MarkMonitor

# ICANN 59 Johannesburg F2F

Work Track 3: How GAC Advice & GAC Early Warnings impact freedom of expression and the application process.

❖ PDP F2F

Tuesday, June 27<sup>th</sup> 8:30am

❖ Geo-Names Session 1

Monday, June 27<sup>th</sup> 5:00pm

❖ Geo-Names Session 2

Thursday, June 29<sup>th</sup> 3:00 pm