

## **Background Material on Escalation and Remedial Action Procedures**

### **I. INTRODUCTION AND PROCESS FOR RESOLVING INDIVIDUAL COMPLAINTS**

The need for remedial action procedures is set out in the IANA Naming Functions Contract. The contract (section 8.1) sets out a Complaint Resolution Process for dealing with individual complaints. It allows for a number of steps to be taken in seeking resolution, including escalation to PTI Management, then the ICANN Ombudsman, then the use of a mediation process with the final step being to invoke the Independent Review Mechanism which is available to resolve many issues relating to more general ICANN decisions. The wording of these provisions of the IANA Naming Functions Contract is set out below. Note that the CSC has virtually no role in this process, save for a requirement that the CSC be informed of the complaint when it is escalated to PTI Management. Also note that even where the CSC finds the complaint to constitute a 'performance issue' i.e. a systemic problem, and initiates its own process, there is no provision that specifies that the individual complaint process should be suspended or terminated.

#### **Extract from IANA Naming Function Contract**

##### ***ARTICLE VIII: ESCALATION MECHANISMS***

##### ***Section 8.1 Complaint Resolution Process.***

*(a) If Contractor receives a customer service complaint from a customer (a "Complaint"), Contractor will review the Complaint and attempt to resolve it to the reasonable satisfaction of the person or entity who brought the Complaint (the "Complainant") as soon as reasonably practicable. If the Complaint is not so resolved, the Complainant may escalate the matter in writing to Contractor's management team, in which case Contractor shall notify the CSC. If the Complaint is still not resolved, the Complainant or the President of Contractor may escalate the matter in writing to ICANN's Ombudsman.*

*(b) If (i) a Complainant is a customer and (ii) after completing the escalation process provided for in Section 8.1(a), the Complaint is still not resolved, then*

*(A) the CSC may conduct a review to determine whether the Complaint is subject of a persistent performance issue of Contractor or an indication of a systemic problem with Contractor's performance of the IANA Naming Function pursuant to the terms of this Contract (a "Performance Issue") and*

*(B) the Complainant may (x) request mediation, which shall be conducted in a manner consistent with the terms and process set forth below in Section 8.1(c) and (y) if the issue is not resolved following such mediation and the Complaint meets the requirements of the Independent Review Process, initiate an Independent Review Process (as defined in the ICANN's Bylaws). If the CSC determines that a Performance Issue exists, the CSC may*

*seek remediation of the Performance Issue through the IANA Problem Resolution Process described in Section 8.2.*

*(c) Customer Mediation Process.*

*(i) If a Complainant is a customer of Contractor, after completing the escalation process provided for in Section 8.1(a), the customer may initiate mediation by delivering a written notice to the President of Contractor and the Secretary of ICANN.*

*(ii) There shall be a single mediator who shall be selected by the agreement of the customer and ICANN. ICANN shall propose a slate of at least five potential mediators, and the customer shall select a mediator from the slate or request a new slate until a mutually agreed mediator is selected. The customer may recommend potential mediators for inclusion on the slates selected by ICANN. ICANN shall not unreasonably decline to include mediators recommended by the customer on proposed slates and the customer shall not unreasonably withhold consent to the selection of a mediator on slates proposed by ICANN.*

*(iii) The mediator shall be a licensed attorney with general knowledge of contract law and general knowledge of the DNS and ICANN. The mediator may not have any ongoing business relationship with ICANN, Contractor or the customer. The mediator must confirm in writing that he or she is not, directly or indirectly, and will not become during the term of the mediation, an employee, partner, executive officer, director, consultant or advisor of ICANN, Contractor or the customer.*

*(iv) The mediator shall conduct the mediation in accordance with this Section 8.1(c), the laws of California and the rules and procedures of a well-respected international dispute resolution provider.*

*(v) The mediation will be conducted in the English language and will occur in Los Angeles County, California, unless another location is mutually agreed between ICANN, Contractor and the customer.*

*(vi) ICANN, Contractor and the customer shall discuss the dispute in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute.*

*(vii) ICANN shall bear all costs of the mediator.*

*(viii) If ICANN, Contractor and the customer have engaged in good faith participation in the mediation but have not resolved the dispute for any reason, ICANN, Contractor and the customer may terminate the mediation at any time by declaring an impasse.*

*(ix) If a resolution to the dispute is reached by ICANN, Contractor and the customer, ICANN, Contractor and the customer shall document such resolution.*

## **II. CSC ROLE AND REMEDIAL ACTION PROCEDURES**

The IANA Naming Functions Contract (section 8.2) contains provisions requiring PTI and the CSC to ‘work cooperatively to develop “Remedial Action Procedures for the purpose of addressing Performance Issues’. These Remedial Actions Procedures (RAPs) can be invoked when the CSC finds, after conducting a review, that “the Complaint is subject of a persistent performance issue of Contractor or an indication

of a systemic problem with Contractor’s performance of the IANA Naming Function pursuant to the terms of this Contract (a “Performance Issue”). The CSC may not undertake its review until escalation to the ICANN Ombudsman is completed and the complaint remains unresolved.

**Extract from IANA Naming Function Contract**

**ARTICLE VIII: ESCALATION MECHANISMS**

**Section 8.2 IANA Problem Resolution Process.**

*Following the Effective Date, Contractor shall work cooperatively with the CSC to develop “Remedial Action Procedures” for the purpose of addressing Performance Issues. If the CSC determines that a Performance Issue exists, the CSC may seek resolution of the Performance Issue with Contractor, in which case Contractor shall comply with such Remedial Action Procedures if and to the extent the CSC also complies with such procedures.*

**Section 8.3 Notice and Mitigation Plan.**

*(a) Contractor shall promptly inform ICANN of any issue or dispute arising from its performance of the requirements and services contemplated by this Contract prior to the Complaint being escalated pursuant to Section 8.1(a), and shall agree with ICANN on a plan to resolve the Complaint.*

*(b) If, for any reason, Contractor fails to meet any of the requirements of this Contract, Contractor shall*

- (i) conduct an analysis of its operations to determine the root cause of such failure,*
- (ii) (ii) develop a mitigation plan to avoid the root cause of such failure from occurring in the future, and*
- (iii) (iii) deliver the report to ICANN upon its completion. Contractor shall modify and update any mitigation plan as directed by ICANN.*

**III. NEED FOR CSC TO DEVELOP RAPs AND CSC ILLUSTRATIVE PROCEDURES**

The RAPs have yet to be developed. The CWG’s Design Team C did develop what it called a proposal that is “illustrative of what could be included in the Remedial Action Procedures.” This was included in the CWG Final Report and subsequently in the CSC Charter.

**Extract from CSC Charter**

**Proposed Remedial Action Procedures**

This proposal is illustrative of what could be included in the Remedial Action Procedures. It is anticipated that the procedures would be agreed between the CSC and the IANA Functions Operator prior to implementation.

	Notification	1st Escalation	2nd Escalation	3rd Escalation
<b>Occurs</b>	<ul style="list-style-type: none"> <li>Process control limit exceeded</li> <li>IANA customer presents evidence that IANA did not meet SLA</li> <li>IANA periodic report indicates SLA not met</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan late</li> <li>Corrective action plan milestones missed</li> <li>Two or more additional "notification" violations occur while corrective action plan is open</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan late</li> <li>Corrective action plan milestones missed</li> <li>Two or more additional "notification" violations occur while corrective action plan is supposed to be in place</li> </ul>	<ul style="list-style-type: none"> <li>Corrective action plan from 2nd escalation not delivered or executed timely.</li> <li>Additional similar violations occur when corrective action from 2nd escalation is supposed to be in place</li> </ul>
<b>Addressee</b>	IANA Manager	PTI Board	GDD President	ICANN Board, CEO
<b>Message Content</b>	<ul style="list-style-type: none"> <li>Identify SLA breach and evidence</li> <li>Conference call request to discuss issues raised by CSC message.</li> <li>Corrective action requirement</li> <li>Time frame</li> <li>Identify party requiring response</li> </ul>	<ul style="list-style-type: none"> <li>Identify SLA breach and evidence</li> <li>Conference call request to discuss issues raised by CSC message.</li> <li>Corrective action requirement</li> <li>Time frame</li> </ul>	<ul style="list-style-type: none"> <li>same as previous</li> </ul>	<ul style="list-style-type: none"> <li>same as previous</li> </ul>
<b>Response Required</b>	<ul style="list-style-type: none"> <li>Agreement that SLA violation occurred(or evidence to contrary)</li> <li>Cause Correction made on individual case</li> <li>Corrective action plan to: <ul style="list-style-type: none"> <li>remedy current situation</li> <li>prevent future occurrence</li> </ul> </li> <li>Corrective action plan required in 14-days</li> </ul>	<ul style="list-style-type: none"> <li>Reissue corrective action plan to: <ul style="list-style-type: none"> <li>Remediate earlier failed plan</li> <li>Include new violations</li> </ul> </li> <li>Corrective action plan milestones missed</li> <li>Two or more additional "notification" violations occur while corrective action plan is open</li> </ul>	<ul style="list-style-type: none"> <li>same as previous plus</li> <li>organizational, operational changes to correct lack of corrective action</li> </ul>	<ul style="list-style-type: none"> <li>same as previous plus</li> <li>Remediation through the ICANN-PTI Contract and/or Special IFR</li> </ul>