ccNSO Council Statement:
Selecting Members of the Standing Panel to hear IRP claims

Date: 15 May 2019

The ccNSO Council welcomes the opportunity to comment on the process for selecting members of the standing panel to hear IRP claims.

- ***Qualifications for Standing Panellists:*** Are there specific qualifications that should be included? If so, what are they? Anything disqualifying? Should the SOs and ACs recommend qualifications? And if so, how?

The ccNSO Council believes that the qualifications in Bylaw section 4.3(j)(i) are appropriate. Those qualifications are:

… 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 and other appropriate training as recommended by the IRP Implementation Oversight Team …

As for disqualifications, the ccNSO Council believes that any person who has been a 'party' to an IRP should not serve as a panellist. In addition, the standing panellists should obviously all be completely independent of ICANN, including any perception of conflict of interest. All relevant business and personal interests should be made public record. It is very hard to conceive of a situation where an individual with a current or historic relationship with ICANN would be appointed.

As and when an IRP panel is selected to determine a particular dispute, each member of the panel should be required to certify their independence in a formal statement for the record. Where either ICANN or a complainant party objects to the appointment of a panellist on the basis of lack of impartiality or independence, there should be a process for this. To some extent this is implied by the Bylaw requirements including Section 4.3(q) but this needs expansion. We believe that standard practices for the appointment of neutrals in analogous dispute and complaints practices could be usefully adopted (see for example the International Chambers of Commerce Rules of Arbitration).

It is also important to ensure that in the process of establishing a standing panel, the SOs and ACs are able to recommend additional insights for qualifications and disqualifications as they develop a better appreciation for the process once it gets underway.

- ***Identifying a Slate of Well-Qualified Panellists:*** We've heard concerns from some members of the ICANN community as to whether the broader community has the appropriate experience and skill for this selection work, and have suggested the possibility that ICANN instead contract with experts to perform this vetting process. Should the community rely on expertise to help vet and recommend a final slate for the standing panel?

The ccNSO Council welcomes the suggestion and would encourage the involvement of experts, as approved by SOs and ACs, to support the process of vetting and recommending panellists. Any expert should have an advisory role only. SOs and ACs must be involved in each step of the selection process, including conducting interviews if they so wish.

- **Board Approval of Panel Slate – Further Questions:** After there is a slate of well-qualified applicants, the Board must confirm the panel. If the Board has questions that might impact its confirmation, to whom should those questions be addressed? If experts are used to develop the slate, should the experts, the SOs and ACs, or some combination thereof be part of that conversation?

The ccNSO Council believes that questions should be addressed to a combination of experts and SO/ACs and answers must be made by, or confirmed by, SO/ACs. It is possible that SO/ACs will act through a team approach, with team members selected by SOs and ACs individually.

- **Future Selections:** Should the process being designed today be reviewed for effectiveness after the first slating is completed, prior to making it standard operating procedure for future selection rounds?

The ccNSO Council supports the idea to conduct such a review.