ICANN’s Independent Review Process (IRP)

June 2017 Update/Overview

By

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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.
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.
• 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.*