

Subject: Added language to the amicus section

Date: Tuesday, October 16, 2018 at 11:10:31 AM Pacific Daylight Time

From: Samantha Eisner

To: Bernard Turcotte, McAuley, David

CC: Elizabeth Le

Here is a proposed addition (in underline), including a footnote, for the amicus section:

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)) shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. Similarly, if the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.^[1] The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

[1] During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in considering the scope of briefing available from *amicus curiae*, the IRP PANEL shall also consider how the purposes of the IRP set forth at Section 4.3(a) of the ICANN Bylaws are furthered, including the need for coherent, consistent and just resolution of DISPUTES.

I hope with this language you are supportive of moving this to the IOT to get clearance on an interim set of procedures. If we are to delay and not have the procedures in place, all entities that have interests in the matters that will proceed to IRP will be impaired.

As we discussed on the call, if we were to give other associated rights for defense of claims or other things that would create a new type of "party" (i.e., not claimant but not amicus) participation in the IRP, I do not think that we have that dictate at this time from the IOT. What I did not mention on the call is that I believe that would be a significant modification from what was posted for comment,

and so even if we could build out procedures that allow that happen in a manner that is consistent with the IRP, we'd still need to take that out for public comment.

Thanks,

Sam

Samantha Eisner
Deputy General Counsel, ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California 90094
USA
Direct Dial: +1 310 578 8631