

ICANN'S INDEPENDENT REVIEW PROCESS (IRP) and COOPERATIVE ENGAGEMENT PROCESS (CEP)

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Independent Review Process (IRP)

- ⦿ Independent Review Process (IRP) is an accountability mechanism provided by Article 4, Section 4.3 of the ICANN Bylaws.
- ⦿ Process for independent third-party review of disputes alleged by a claimant.
- ⦿ A “dispute” is any action or failure to act by or within ICANN committed by the Board, individual Directors, Officers or Staff members that allegedly violates the Articles of Incorporation or Bylaws.
- ⦿ A “claimant” is any legal or natural person, group, or entity that has been materially affected by a dispute.
 - To be materially affected, the claimant must suffer an injury or harm that is directly and causally connected to the alleged violation of the Articles or Bylaws.

IRP Standard of Review

- IRP Panel: A three-member IRP Panel is selected by the parties to preside over the IRP.
- Standard of Review:
 - IRP Panel is asked to evaluate whether an ICANN action or inaction is/was consistent with ICANN's Articles, Bylaws, and internal policies and procedures.
 - Core task of an IRP Panel is to determine whether ICANN has exceeded the scope of its Mission or otherwise failed to comply with its foundational documents and procedures.

IRP Proceeding

- ⦿ IRP commences with the claimant filing a written statement of the dispute with the IRP Provider (currently, the International Centre for Dispute Resolution (ICDR)).
- ⦿ Time for filing: Per the IRP Interim Supplementary Procedures...
 - Must file no more than 120 days after claimant becomes aware of the material effect of the action or inaction giving rise to the dispute;
 - However, may not file more than 12 months from the date of such action or inaction.
- ⦿ Once commenced, the IRP proceeds much like an arbitration and includes:
 - Written briefs;
 - Discovery (requests for documents);
 - Witness statements;
 - Expert reports (sometimes);
 - Interim hearings with the IRP Panel to resolve questions; and
 - Final hearing on the merits before the IRP Panel (usually in-person).

IRP Panel Decision and Board Consideration

- ⦿ IRP Panel decisions shall be made by a simple majority of the three-member panel; and will be provided in writing and made public.
- ⦿ IRP is intended as a final, binding arbitration process.
- ⦿ Board consideration of IRP decision:
 - Where feasible, the Board shall consider its response to the IRP Panel decision at the Board's next meeting, and shall affirm or reject compliance with the decision on the public record based on an expressed rationale.

IRP Standing Panel

- ⦿ Article 4, Section 4.3(j) of the Bylaws provide for an omnibus standing panel of at least seven members (“Standing Panel”), each with significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration.
- ⦿ As set forth in the Bylaws, ICANN is in the process of working with the Supporting Organizations and Advisory Committees to establish the Standing Panel.
- ⦿ Once the Standing Panel is established:
 - The Emergency Panelist for an IRP, if needed, will be selected from the Standing Panel.
 - The three-member IRP Panel for an IRP will be selected from the Standing panel.
 - IRP Panel decision may be appealed to the full Standing Panel sitting en banc.

Cooperative Engagement Process (CEP)

- The CEP is a precursor to an IRP provided by Bylaws Article 4, Section 4.3(e).
- The parties are strongly encouraged to participate in a non-binding CEP for the purpose of attempting to resolve and/or narrow the issues that are contemplated to be brought in the IRP.
- The CEP is voluntary. However, if the claimant does not participate in good faith in the CEP and ICANN is the prevailing party in the IRP, the IRP Panel shall award to ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.

Additional Resources

- ⦿ ICANN Bylaws, Article 4, Section 4.3,
<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>
- ⦿ IRP Interim Supplementary Procedures,
<https://www.icann.org/en/system/files/files/irp-interim-supplementary-procedures-25oct18-en.pdf>
- ⦿ Independent Review Process (IRP) webpage,
<https://www.icann.org/resources/pages/accountability/irp-en>

Thank You & Questions