

5B. Translation

As required by ICANN Bylaws, Article 4, Section 4.3(l), "All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed." Translation may include both translation of written statements, documents, transcripts and decisions as well as interpretation of oral proceedings, ensuring that no party is disadvantaged by language.

The Claimant's written statement of dispute must be submitted in English. No adverse inference as to the need for ICANN to provide translation services will be drawn from the fact that the statement of dispute and/or request for translation services is in English.

A request for translation services:

- (i) May accompany the written statement of dispute, and must do so if the Claimant is seeking reimbursement of the costs of translating the written statement of claim into English, and/or seeking translation of ICANN's written statement in response from English into another language. Where the request for translation services is made with the written statement of dispute, it does not count towards the page limit for the statement of dispute; or
- (ii) May be made subsequently if a new need for translation services arises during the course of the proceedings.

Any request for ICANN translation services must identify the language(s) in question and include an explanation of why the Claimant needs such services in order be able to fairly participate in the proceedings. Each request shall be made on the designated form and shall not exceed 5 pages of text, double-spaced and in 12-point font.

Requests for translation services generally shall be determined by the IRP Panel, unless ICANN has already agreed to the request. In exceptional circumstances, the request may also be dealt with by an emergency panelist, selected from the Standing Panel (or if no Standing Panel is in place a panelist appointed by the ICDR pursuant to ICDR Rules) as an interim measure under section 10 if a determination is required as a matter of urgency before the IRP panel ~~is~~ seated.

The IRP Panel shall have discretion to determine (i) whether the Claimant has a need for translation services, (ii) what documents and/or hearing that need relates to, and (iii) what language the document, hearing or other matter or event shall be translated into the language for which translation services will be provided.

In exercising its discretion, the IRP Panel should bear in mind the Purposes of the IRP, set out in ICANN Bylaws, Article 4, Section 4.3(a) and in particular Purpose (vii), and should have regard to the following non-exhaustive considerations:

- ~~(i) The intent of the IRP, namely to secure the meaningful, affordable, efficient, accessible, transparent, consistent, coherent, and just settlement of disputes;~~
- ~~(ii) the need to ensure fundamental fairness and due process under ICANN Bylaws, Article 4, Section 4.3(n)(iv);~~
- ~~(iii)(i)~~ (i) the materiality of the particular document, hearing or other matter or event requested to be translated, including the need to ensure that all material portions of the record of the proceeding are available in English;

Commented [SP1]: Form to be developed. To include a note that 5 pages is a maximum and applications may be shorter

Commented [SP2]: Now referred to above as a reminder to the Panel of what the intent behind the IRP is rather than a specific consideration. As Kurt rightly pointed out the purposes of the IRP are why the proceedings exist at all, rather than a consideration on translation

Commented [SP3]: Deleted because on reconsideration this is a consideration for this IOT (and subsequently the Standing Panel) in drafting the Rules

~~(iv) [the cost and delay incurred by translation];~~

~~(v)(ii)~~ (ii) the Claimant's ~~proficiency-ability to fairly participate in the proceedings due to the level of understanding of~~ spoken and written English, by an officer, director, principal (or equivalent) with responsibility for the dispute, and, to the extent that the Claimant is represented in the proceedings by an attorney or other agent, that representative's ~~proficiency level of understanding of~~ spoken and written English; and

~~(vi)(iii)~~ (iii) ~~proficiency level of understanding~~ (as above) in another official language of the United Nations (i.e., Arabic, Chinese, French, Russian, or Spanish): where Claimant, ~~or its representative~~ has ~~proficiency a suitable level of understanding to permit fair participation~~ in more than one language, of which one is a UN language, then translation services will be limited to that UN language where possible.

All translation services ordered by the IRP Panel shall be coordinated through ICANN's Language Services providers and shall be ~~considered an administrative cost of the IRP~~, paid for by ICANN ~~unless the IRP Panel later orders otherwise pursuant to ICANN Bylaws, Article 4, Section 4.3(r) as an administrative cost.~~

A Claimant determined by the IRP Panel not to have a need for translation services must submit all materials in English.

If the Claimant arranges for its own translation, either because translation services are not requested or are denied, such translation shall be considered part of the Claimant's legal costs, ~~and so borne by the Claimant pursuant to ICANN Bylaws, Article 4, Section 4.3(r)~~, and not an administrative cost to be borne by ICANN, unless otherwise ordered by the IRP Panel.

The IRP Panel may order that the deadlines for submission of documents etc., and for the timing of any appeal, be amended to take into account reasonable delays generated by the translation of documents/transcripts.

Commented [SP4]: I was initially minded to qualify this by noting something to the effect that these would not be deciding factors alone, but on reflection if translation is needed to fairly participate and the document, etc, is material then that really should outweigh the cost and delay