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[IOT] Considerations for Rule 7

1 message

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Dear IOT members,

Prior to considering specific line edits as proposed on Rule 7, we propose that we consider some of the principles behind the proposed edits, to make sure that IOT concurs on the need for, purpose and intended impact of the changes. Below are some of the topics we noted for discussion from Susan's strawperson, and some questions that were raised for us at ICANN org during our review.

1. **Role of Procedure Officer.** Are we updating the role of Procedures Officer? If so, how?
2. **Page Limitation.** We will remove the collective page limitation (confirmed).
3. **Timing for Motion for Consolidation, Intervention and Participation as an Amicus.** What is the timeframe for seeking consolidation or intervention? Is there a different timeframe for requests to participate as an amicus?
4. **Additional Procedure Needed?** Do we need to have additional procedural steps detailed? If so, what are the procedural steps that are missing?
 - Do we need to detail out, as Susan suggests, required elements of the request?
 - Should we be clearer in this Rule 7 about the types of considerations that are important for upholding the purposes of the IRP, and are there specific "purposes of the IRP" that we should specifically call out? For example, because IRP proceedings are binding, possibility of conflicting rulings or a race to a ruling that would render a separately pending IRP moot could be a factor that would tend toward consolidation. Are there factors that might go against consolidation? Or other items that might support?
5. **IRP Panel Recomposition:** Susan's strawperson suggests specific language regarding the possibility of changing the IRP Panel as a result of consolidation or intervention. Outside of conflict of interest concerns that adding a new party to a proceeding might add, are there other scenarios where the IOT believes that it is appropriate to consider replacing an existing IRP Panel? From the ICANN org view, the more time that is allowed to pass between the initiation of the first IRP and filing for consolidation or intervention, the more important it becomes to have defined expectations and limitations on seeking a new Panel. From the ICANN org side, we'd recommend a very narrow set of circumstances (likely only conflict of interest related) for panel replacement orders. To the extent re-empowerment is required, from ICANN org we'd recommend reliance in full on Rule 3 instead of creating a new appointment path, while also concurring on the exclusion of the PROCEDURES OFFICER from that new IRP Panel. Some other considerations could include:
 - What would happen with issues already decided in the IRP by the "prior" panel?
 - Who is responsible for the cost of bringing a second panel up to speed?
 - How are the parties impacted in their legal spend?
6. **Scope of Intervening Claimant Filings:** On Intervention, the IOT might wish to consider if limitations on the scope of the proposed intervening claim are appropriate. Should intervention be limited only to those tailored to the issues already in DISPUTE, given that IRPs are not about delivering relief to particular entities, but are about challenging ICANN violations of Bylaws/Articles?
7. **Amicus as of Right:** Susan's strawperson proposes a new classification of persons allowed Amicus status as of right. Does the IOT agree that we need additional categories here, as there is already discretion? If so, what is the proper scope for addition, and can it be quantified or measured objectively?

8. **Reduction of Duplication:** As a drafting note, for areas of similar process as between any of the subparts of Rule 7, we can explore how to reduce duplication of concept as between each subpart.

Best regards,

Liz

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