

## Terms of Reference (ToR) for the Community Representatives Group on the Establishment of the Independent Review Process Standing Panel

### 1. Background

The Independent Review Process (IRP) is form of arbitration that provides for independent third party review of ICANN actions alleged by an affected party to be inconsistent with ICANN's Articles of Incorporation or Bylaws.<sup>1</sup> The Bylaws require that an omnibus Standing Panel be established from which Panelists shall be selected to preside over each IRP dispute.<sup>2</sup> The Bylaws specify that the omnibus Standing Panel shall be established in the following manner:

- (ii) ICANN shall, in consultation with the Supporting Organizations [SOs] and Advisory Committees [ACs], initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely resolution of Disputes consistent with the Purposes of the IRP.

\* \* \*

- (B) ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.
- (C) The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).
- (D) Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.<sup>3</sup>

Following discussions facilitated by ICANN org with the Chairs of the SOs, ACs, Stakeholder Groups and Constituencies, it was agreed that the community work on the establishment of the Standing Panel will be accomplished through a small representational group of members appointed by the SOs and ACs (the Community Representatives Group on Establishment of the IRP Standing Panel or IRP Community Rep. Group or the Group). It was further agreed that an external expert will be engaged to facilitate the completion of the IRP Community Rep. Group's work.

---

<sup>1</sup> See ICANN Bylaws, Art. 4, § 4.3 (<https://www.icann.org/resources/pages/governance/bylaws-en/#article4>).

<sup>2</sup> See *id.* at § 4.3(j).

<sup>3</sup> *Id.* at § 4.3(j)(ii).

## 2. Purpose, Scope of Work, Issues to be Addressed, and Timeline

### 2.1. Purpose

The purpose of the IRP Community Rep. Group is to work with ICANN org to evaluate and vet candidates for the IRP Standing Panel, and to collectively nominate a slate of Standing Panelists to the ICANN Board for approval.

### 2.2. Scope of Work

To achieve its purpose, the IRP Community Rep. Group will focus on and be guided by the topics and issues listed in Section C. If other topics and issues become apparent that are not listed and that in the view of the IRP Community Rep. Group need to be addressed to achieve its goal or if topics and issues become outside of the scope of the Group, the IRP Community Rep. Group should take these into consideration and amend the ToR as appropriate in the manner specified in Section 2.4.

As the selection of IRP Standing Panel members is expected to occur at regular intervals, this ToR is expected to guide both the initial slate recommendation process as well as future slate recommendations processes. ICANN org will consult with the SO/ACs to identify appropriate times to initiate the slate recommendation process and to initiate re-composition of the IRP Community Rep. Group for that iteration of the slate recommendation process.

### 2.3. High Level Overview of Topics and Issues to Be Resolved and Timeline

The main topics to be addressed by the IRP Community Rep. Group and associated timeline by which they will be achieved are as follows.

Topic/Issue	Timeline
1. In coordination with ICANN org, select an external expert to help conduct initial interviews, vet candidates, and identify a slate of well qualified panelists for Board approval. The duties and responsibilities of the external expert will be defined in a Statement of Work for that vendor.	Within 2 weeks after the Group is comprised.
2. Define the process for how the expert will coordinate with the IRP Community Rep. Group on vetting candidates and identifying a slate of panelists, including potential interviews as appropriate.	Within 2 weeks after completion of contracting for engagement of expert.

3. Work with the expert to confirm a skillsets matrix for evaluation of candidates.	Within 2 weeks after completion of contracting for engagement of expert
3. Coordinate with and oversee the expert's work on vetting candidates.	Within 4 weeks after completion of contracting for engagement of expert
4. After facilitation by the expert, recommend a slate of well qualified panelists for Board approval.	Within 8 weeks after completion of contracting for engagement of expert

#### 2.4. Approval of ToR; Amendments to ToR

The initial ToR has been approved upon consensus agreement by the chartering SOs and ACs to the IRP Community Rep. Group. The ToR may be amended by consensus agreement of the chartering SOs and ACs to the IRP Community Rep. Group.

### 3. The Community Representatives Group on Establishment of the IRP Standing Panel

#### 3.1. Members

The IRP Community Rep. Group is comprised of representatives of the SOs and ACs, and shall be a group of no less than 7 members and no more than 15 members, with all times maintaining an odd number of members. The membership of the IRP Community Rep. Group shall, in the aggregate, have the following expertise, and, to the furthest extent possible, represent a diversity of stakeholders and interests across the ICANN community:

- experience in selecting board members or similar officers or appointees with fiduciary duties or service on a nominating committee for such selections;
- experience working with recruitment firms and managing vendors;
- relevant organizational and process experience (i.e. ability to understand and evaluate the standing panelist criteria and responses, which includes legal and arbitration experience);
- understanding of the IRP and its role as an ICANN accountability mechanism;
- ability to work in a small team across multiple timezones; and

- ability to commit considerable time and effort to the selection process over a short but concentrated time period.

The size of the Group is less important than the skillsets of the members on the Group. Each participating SO and AC shall use its own processes to identify ideally one, but preferably no more than two, volunteer(s) to serve as its representative(s) on the IRP Community Rep. Group. In the event that the collective number of representatives identified is an even number or in excess of 15, the SO/AC Chairs shall select the composition of the IRP Community Rep. Group from amongst the SO/AC nominees. The representatives shall perform the work defined in these ToR on behalf of the representatives' appointing organization and will have the authority to make decisions necessary to carry out the scope of work on behalf of his/her organization. Representatives shall be expected to participate regularly and in good faith. The IRP Community Rep. Group Chair shall notify the appointing SO/AC if its appointed representative fails to regularly attend meetings or participate in the work of the Group.

### 3.2. Staff Support

ICANN will provide adequate staff support to the IRP Community Rep. Group.

### 3.3. Chair

The Chair of the IRP Community Rep. Group shall be selected by the Group upon consensus agreement. The Chair may also be removed by Group upon consensus agreement. The Chair shall have an administrative role but shall also be permitted to cast votes in the event a vote is called.

## 4. Operations of the IRP Community Rep. Group

The outcome of IRP Community Rep. Group's work—the proposed slate of IRP Standing Panelists—will be presented to the ICANN Board for approval.

### 4.1. Communications and Meetings

The IRP Community Rep. Group will conduct its business in English.

The IRP Community Rep. Group will carry out its work primarily through teleconferences and email. When proposed for immediate decisions, draft materials for the IRP Community Rep. Group's work should normally be distributed at least five working days in advance of the meetings.

The Chair will seek to facilitate confidential communications in a way that makes the most sense for the IRP Community Rep. Group members.

#### 4.2. Quorum and Decision Making

At any meeting of the IRP Community Rep. Group a majority (more than 50%) of the total number of current IRP Community Rep. Group members shall constitute a quorum for the transaction of the Group's work.

Matters that constitute the act or decisions of the IRP Community Rep. Group in particular, which are outcome determinative with respect to the selection or non-selection of any Candidate within the process of assessments or selections by the IRP Community Rep. Group shall be deemed to require either a consensus call or a vote. While the IRP Community Rep. Group may consider candidates individually, the IRP Community Rep. Group is also expected and explicitly authorized to consider candidates as part of groupings.

The IRP Community Rep. Group is expected to act by consensus. However, in the event consensus cannot be reached, the Group may act by majority vote. If a vote is deemed necessary, the Chair may participate in the vote. For voting conducted on the IRP Community Rep. Group's mailing list, the voting shall be conducted in a manner that allows for all members to participate, and shall only be valid if a majority (more than 50%) of the total number of current IRP Community Rep. Group members cast a vote within the time allowed.

An act through consensus agreement of the IRP Community Rep. Group members when at any meeting at which there is a quorum shall be the act of the IRP Community Rep. Group.

Any act by majority vote conducted pursuant to the provisions of this section shall also be the act of the IRP Community Rep. Group.

If a quorum shall not be satisfied at any meeting of the IRP Community Rep. Group, the members present at that meeting may discuss any matters but not take any decisions or may adjourn the meeting to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours, notice shall be given to those members not at the meeting at the time of the adjournment.

All IRP Community Rep. Group members may participate in all discussions and deliberations (unless a conflict of interest has been determined to be present).

#### 4.3. Volunteer Service

IRP Community Rep. Group members serve as volunteers, without compensation. This contribution is respected and appreciated.

#### 4.4. Handling of Sensitive Information

The nature of the IRP Community Rep. Group functions and activities requires confidentiality for some information (such as vetting of candidates and deliberations).

Any information relating or pertaining to a Candidate for the IRP Standing Panel will be marked "*IRP Community Rep. Group Confidential Information*" whether the information is in physical or electronic form. If ICANN org is able to provide information in a manner that anonymizes a candidate's identifying information, with a number or in another commonly accepted manner, ICANN org will confirm whether such information shall be considered IRP Community Rep. Group Confidential Information.

IRP Community Rep. Group members agree to keep all materials designated as "*IRP Community Rep. Group Confidential Information*" confidential.

Access to IRP Community Rep. Group Confidential Information shall be restricted only to IRP Community Rep. Group members and ICANN org staff supporting the Group, as well as to the expert engaged to support the Group. IRP Community Rep. Group members' confidentiality obligations shall be continuing and will survive a member's resignation from or conclusion of service on the Group, or the conclusion of the IRP Community Rep. Group's mandate.

To the greatest extent practical, IRP Community Rep. Group Confidential Information will be stored only in a non-public central repository, which members can access on a read-only basis. Access controls and security safeguards protecting this information must comply with highest standards used by ICANN for protecting user authentication, confidentiality, and data integrity. Mechanisms must be in place that provide for the ability to identify and distinguish between IRP Community Rep. Group Confidential Information and non-confidential information. This will enable IRP Community Rep. Group Confidential Information to be destroyed or otherwise disposed of after the conclusion of the IRP Community Rep. Group deliberations without risking the loss of files that are needed for archival purposes.

IRP Community Rep. Group members agree to take all reasonable steps to dispose of any IRP Community Rep. Group Confidential Information in their possession, custody or control after the conclusion of the IRP Community Rep. Group deliberations.

#### 4.5. Access to Information

ICANN org will maintain a non-public central repository of information about candidates under consideration, including available background, professional information, and all other gathered information. All IRP Community Rep. Group members will have access to the information in the non-public central repository. The non-public central repository is confidential to IRP Community Rep. Group

members and ICANN org staff supporting the IRP Community Rep. Group, and to any and all outside consultants who may be retained by the IRP Community Rep. Group to assist with any phase of its work, as is appropriate with respect to the terms of their engagement.

## 5. External Communications and Relations

### 5.1. Transparency

In balancing the requirements of transparency and confidentiality, the IRP Community Rep. Group will follow the principle that the process is as transparent as feasible and data (i.e., information relating to Candidates) is kept confidential. The IRP Community Rep. Group will publish this ToR, the Group members' Statements of Interests and other relevant documents on the [Establishment of Standing Panel for Independent Review Process community wiki page](#). The Chair, in consultation with the other the IRP Community Rep. Group members, will establish and publicize milestones, deadlines and updates, as appropriate, so as to keep the public duly informed and to allow the IRP Community Rep. Group to complete its work in a timely way.

The IRP Community Rep. Group Chair will serve as the official spokesperson for the IRP Community Rep. Group.

### 5.2. Confidentiality and Privacy

All IRP Community Rep. Group members and ICANN org staff supporting the IRP Community Rep. Group will safeguard all internal IRP Community Rep. Group Confidential Information and treat it as strictly private, confidential, and for the use of immediate committee members and organization staff supporting the IRP Community Rep. Group only.

Communications within the IRP Community Rep. Group are limited to the IRP Community Rep. Group members, ICANN org staff supporting the IRP Community Rep. Group, and the expert engaged to support the IRP Community Rep. Group. Members may not designate alternates or include assistants or other associates. To ensure confidentiality of its deliberations, the IRP Community Rep. Group mailing list will be private (i.e. not publicly-accessible).

IRP Community Rep. Group members will not disclose outside of the IRP Community Rep. Group any of the discussions, deliberations, communications, record and notes about the candidates. Further, IRP Community Rep. Group members, ICANN org staff supporting the IRP Community Rep. Group, and the expert engaged to support the IRP Community Rep. Group will not disclose outside of the IRP Community Rep. Group the identities of the candidates under consideration by the IRP Community Rep. Group.

After Panelists have been appointed to the IRP Standing Panel, the identities and qualifications of the appointed Panelists will be published by ICANN org.

## **6. Standards of Behavior & Conflicts of Interest**

IRP Community Rep. Group members will act with the highest standard of personal integrity and ethical conduct in accordance with the ICANN Expected Standards of Behavior and the ICANN Community Anti-Harassment Policy and Terms of Participation and Complaint Procedure.

The ICANN Board adopted a Conflicts of Interest Policy that applies to Officers, Directors, Board Liaisons and key employees of ICANN. (<https://www.icann.org/resources/pages/governance/coi-en>). The Policy further states: *ICANN will encourage ICANN Supporting Organizations and Advisory Committees and other ICANN bodies, as appropriate, to consider implementing the principles and practices of this COI Policy as relevant.*

IRP Community Rep. Group members are expected to observe the principles and intent of the ICANN Conflicts of Interest Policy. IRP Community Rep. Group members are required to provide to the IRP Community Rep. Group Chair a Statement of Interest (SOI), updated at least annually or whenever there is a material change, setting forth those specified interests, relationships, arrangements, and affiliations that may affect (or might reasonably be seen to affect) the judgment of the members in the conduct of their participation within the IRP Community Rep. Group. A completed SOI, updated at least annually, is a precondition for members to participate in the IRP Community Rep. Group. SOIs will be published for transparency purposes. IRP Community Rep. Group members must promptly notify the Chair of the IRP Community Rep. Group and update their SOIs whenever there is a material change, setting forth those specified interests, relationships, arrangements, and affiliations that may affect (or might reasonably be seen to affect) the judgment of the members in the conduct of their participation within the Group, including any financial connections to any candidate or employer of any candidate and/or personal non-monetary advantages to any individual under consideration by the Group. In the event that a member discloses a conflict of interest, the Chair of the IRP Community Rep. Group shall decide how to handle the conflict and shall be empowered with the ability to notify the appointing SO/AC when the amount of disclosed conflicts of interests predominates the member's ability to participate meaningfully in the process, whereupon the appointing SO/AC should have the opportunity to select a replacement member.