

IRP-IOT Call 4 April 2023

IRP Supplementary Procedures: Discussion and Next Steps on Outstanding Issues

Previously Identified Outstanding Topics on the Rules

1. Consolidation, Intervention & Amicus (Art 7)

Proposal for handling:

- Briefly reconvene small team over email and potential 1-2 meetings
- Report back on recommendations to the full group, for discussion and agreement

2. ICANN non-response – referred to in Bylaws 4.3(n)(iv)(F) as a matter expected to be covered by these Rules

Proposal for handling:

- 1-2 volunteers to review the close-to-final rules and identify if there are any areas where this needs to be addressed (e.g. might include selection of arbitrators)

3. Appeals (Art 14)

Proposal for handling: As per previous discussion, begin work on a set of Rules for Appeals once we have the draft Supplementary Procedures out

4. Selection of Arbitrators (Art 3) – see following slides

Proposal for handling:

- In plenary
- Light touch

Arbitrators (Art 3) Current Text

Article 3. Composition of Independent Review Panel

The IRP PANEL will comprise three panelists selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the IRP is initiated. The CLAIMANT and ICANN shall each select one panelist from the STANDING PANEL, and the two panelists selected by the parties will select the third panelist from the STANDING PANEL. A STANDING PANEL member's appointment will not take effect unless and until the STANDING PANEL member signs a Notice of STANDING PANEL Appointment affirming that the member is available to serve and is Independent and Impartial pursuant to the ICDR RULES. In addition to disclosing relationships with parties to the DISPUTE, IRP PANEL members must also disclose the existence of any material relationships with ICANN, and/or an ICANN Supporting Organization or Advisory Committee. In the event that a STANDING PANEL is not in place when the relevant IRP is initiated or is in place but does not have capacity due to other IRP commitments, the CLAIMANT and ICANN shall each select a qualified panelist from outside the STANDING PANEL, and the two panelists selected by the parties shall select the third panelist. In the event that the two party-selected panelists cannot agree on the third panelist, the ICDR RULES shall apply to selection of the third panelist. In the event that a panelist resigns, is incapable of performing the duties of a panelist, or is removed and the position becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of this Section [3] of these Interim Supplementary Procedures.

Considerations on Arbitrators

Updates to the Selection of Arbitrators (Art 3):

- a) Consider better aligning Article 3 language with the ICDR Rules, which set out a specific procedure for selection of a third panelist where there is disagreement amongst the party-appointed arbitrators.
- b) Consider adding a specification on the nationality of arbitrators and whether one or more arbitrators may be of the same nationality or of the same nationality as ICANN or the claimant.
- c) Consider specifying the date of when an IRP Panel is in “in place”, to give clarity to when an Emergency Arbitrator might need to be empowered.

[a) - c) were raised as potential issues for consideration by IOT members including ICANN Legal]

Possible considerations include:

- Our rules are supplemental to the ICDR Rules, but consider whether greater clarity is needed on when the ICDR process applies
 - E.g. If two Standing Panelists cannot agree on the third, do we want the full Standing Panel, or the SP Leader to select?
 - E.g. what happens if a party does not select a panelist
- Standing Panel will be a minimum 7 people. How would nationality restrictions work?
- Are time limits for selection needed? Interim rules have none