

## IRP-IOT

### Rule 3 Composition of the IRP Panel – Mark Up 12 September 2023

1. The IRP PANEL will comprise three panelists, ~~and the IRP PANEL will not be considered to be to have been convened until all three panelists have been appointed.~~
2. The three panelists ~~for the IRP PANEL~~ will be selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the ~~relevant IRP~~ ~~PANEL must be convened, or is in place but does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for the particular IRP proceeding.~~ 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. ~~If one party has not selected a panelist within 30 days of the commencement of the IRP then, at the request of the other party, the STANDING PANEL shall make the selection from within its ranks. If the STANDING PANEL has not made such appointment within 72 hours of the request the IRP Provider's Administrator shall make the selection from the STANDING PANEL within [14/21] days.<sup>1</sup>~~
  - b. ~~If the two party-selected panelists cannot agree on the third panelist from the STANDING PANEL, within 21 days of the appointment of the later of the two such panelists, then, at the request of either party, the STANDING PANEL shall make the selection from within its ranks. If the STANDING PANEL has not made such appointment within 72 hours of the request the IRP Provider's Administrator shall make the selection from the STANDING PANEL within [14/21] days.<sup>2</sup>~~
3. If the STANDING PANEL does not have the capacity ~~due to other IRP commitments~~ it must notify the Claimant and ICANN in writing as soon as possible, and in any event within 14 days.<sup>3</sup> ~~If a party believes that the STANDING PANEL does not have the requisite diversity of skill and experience for the particular IRP proceeding they must notify the STANDING PANEL and the other party in writing within 14 days of the commencement of the IRP. In the event that a STANDING PANEL is not in place when the relevant IRP PANEL must be convened, or is in place but does not have capacity or the requisite diversity of skill and experience needed for the particular IRP proceeding, IRP panelists shall be selected on the following basis.~~
  - a. ~~If the STANDING PANEL lacks capacity the STANDING PANEL Chair may propose a process for IRP PANEL selection. Absent this, paragraphs b-e shall apply.~~

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Commented [SP1]: All timing to be reviewed prior to finalisation of the Rules

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<sup>1</sup> IOT considers that once the Standing Panel is in place then it should be responsible for resolving panelist appointment issues, but that the IRP Provider's (ICDR) Administrator should act as a fallback where the Standing Panel is unable to reach agreement for some reason.

<sup>2</sup> See footnote 1

<sup>3</sup> Bylaws 4.3(k)(ii) refers to the possibility of not using the Standing Panel because it "does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding". The IOT understands the intent to be that the Standing Panel will be used, except in exceptional circumstances. The proposed rule therefore leaves it to the Standing Panel to raise issues of lack of capacity. The IOT did not therefore propose a specific process for a Party to make representations about lack of capacity (of any form), but assumes that a Party will nevertheless raise this if this is a genuine concern. Feedback is welcome on whether a specific challenge process is necessary.

b. 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.

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c. If one party has not selected a panelist within 30 days of the commencement of the IRP then, at the request of the other party, the IRP Provider's Administrator shall make the selection

Commented [2]: Same point re timing

d. If the two party-selected panelists cannot agree on the third panelist, within 21 days, the IRP Provider's Administrator shall make the selection of the third panelist using the list method as described in (d) below.

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e. The Administrator shall send simultaneously to each party an identical list of names of persons for consideration as arbitrator(s). The parties are encouraged to agree to an arbitrator from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the parties are unable to agree upon an arbitrator, each party shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator to serve. If the parties fail to agree on any of the persons listed, or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.

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4. In the event that an IRP 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 Supplementary Procedures.

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#### 5. Conflict of Interest

a. A STANDING PANEL member's appointment to an IRP PANEL will not take effect unless and until the STANDING PANEL member signs, within 7 days<sup>4</sup> of appointment, a Notice of STANDING PANEL Appointment confirming their compliance with the Conflict of Interest requirements at Bylaws Article 4.3(q)(i) and making any disclosures of material relationships so required.

b. Where an IRP panelist is to be appointed from outside of the STANDING PANEL, their appointment will not take effect unless and until the proposed panelist signs, within 7 days of appointment, a Notice of Panelist Appointment confirming their compliance with the same Conflict of Interest requirements as apply to a STANDING

<sup>4</sup> IOT welcomes input on this timing. IOT proposes a time limit of 7 days for panelists to confirm they have no COI, in order to keep things moving and bearing in mind that there is a Bylaws expectation that IRPs should be concluded in 6 months. However depending on the make-up of the Standing Panel some IOT members expressed concern that this may be insufficient to do conflict checks across a large law firm, for example. On the other hand, once an IRP is commenced Standing Panel members could begin their conflict checks immediately, and there will generally be advance notice on a potential IRP since Claimants are encouraged to enter into CEP first.

PANEL, as set out at Bylaws Article 4.3(q)(i) and making any disclosures of material relationships so required.

- c. Prior to accepting any appointment, potential IRP panelists are also expected consider whether other circumstances of the relevant IRP are liable to influence their decision such that they would be considered to have a conflict of interest. An example of such a circumstance would be where considerations of nationality are material to the matters in dispute.
- d. Where, at any time, an IRP panelist develops a conflict of interest, they must recuse themselves.