

4 Independent Review Process ("IRP")

1. Scope of Authority

The role of the Independent Review Process (IRP) will be to:

- ~~Determine whether ICANN~~ Hear and resolve claims that ICANN through its Board of Directors or staff has acted (or has failed to act) in violation of its Articles of Incorporation or Bylaws (including any violation of the Bylaws resulting from action taken in response to advice/input from any advisory committee or supporting organization);
- ~~Reconciling~~ Reconcile conflicting ~~holdings in process specific~~ decisions of process-specific "expert panels"; and
- ~~Hearing~~ Hear and resolve claims involving rights of the Sole Member under the Articles or Bylaws (subject to voting thresholds)

2. Standing and Intervention

- Any person/entity materially harmed by ICANN, through action or inaction ~~by ICANN~~ of its Board of Directors or staff that is in violation of ~~its Bylaws and the community, acting~~ the Articles or Bylaws may seek review through the ~~Sole Member IRP~~
- Any person/entity may join into an existing IRP if the independent review panel or relevant member(s) thereof (IRP Panel) upon review of relevant evidence, finds that the intervening party has been materially affected by the same or materially similar actions or inaction by ICANN at issue in the IRP

3. Rule of Decision and Relief Available

- The IRP Panel or relevant member(s) thereof shall decide the issue(s) presented based on their own independent interpretation of the ICANN Articles and Bylaws in the context of governing law
- An IRP Panel or relevant member(s) thereof shall consider and may rely upon prior decisions of other IRPs addressing similar issues and circumstances
- An IRP will result in a declaration that the ICANN action complied or did not comply with the Articles or Bylaws
- ~~Process~~ The IRP will also be able to provide prospective relief based on a demonstrated likelihood of harm

4. 3-Selection process for IRP Panelists

- Tender process for organization to provide administrative support for IRP, including to issue a call for expressions of interest; work with the community to identify and solicit applications from well-qualified candidates with the goal of securing diversity; reviewing and vetting applications; working with ICANN and community to develop operational rules for IRP
- Community selection of proposed panel members
- Board confirmation

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5. ~~4.~~ Expertise

- Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration;
- ~~Independent from prior employment (within the past 3 years) by or current financial ties to or other material relationships with ICANN or SOs/ACs~~ NOTE- We have not agreed on this and independence is addressed in Section 9 below, so I have removed this suggested change.
- Expertise (through experience and/or training) on the workings and management of the DNS and ICANN; and
- Access to skilled technical, business, diplomatic, regulatory and/or other experts upon request.

6. ~~5.~~ Diversity

- Reasonable efforts to achieve cultural, linguistic, gender, legal tradition diversity, with a goal of no more than 2 panelists from any single ICANN region

7. ~~6.~~ Panel Size

- A minimum of 7 members of standing panel
- Review panels of 3 decision-makers (appealable to full panel);
- One review panel member chosen by each party, who in turn select the 3rd review panel member, subject to revision with input of sub-group (see section 13 for details) and panel members.

8. ~~7.~~ Appeal

- Individual panels of 3 decision-makers in any case; appealable to full panel based on a clear error of judgment, or application of an incorrect legal standard, subject to revision with input of sub-group and panel members.

9. ~~8.~~ Independence

- Bylaws obligation to fund process, subject to further input of sub group and panel members regarding measures to prevent abuse of the independent review.
- Fixed term of 5 years, non-renewable
- Compensation may not be reduced
- Ongoing obligation to disclose any material relationships with ICANN, SOs/ACs or any other party in an IRP
- Removal/recall only for cause (corruption, misuse of position for personal use). Removal/recall process to be specified
- Pre-existing and post-term limits on relationships with ICANN and its SOs/ACs that create an appearance of conflict such as financial relationship with ICANN, SOs/ACs, constituencies

10. ~~9.~~ Settlement efforts

CEP or, at any party's election, mediation

- NOTE: WS2 will include an in-depth review of the current CEP process

11. ~~10.~~ Decision

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Action/inaction is/is not consistent with Bylaws
Substantive decision on Sole Member rights

12. ~~11.~~ Binding

- Bylaws to provide that 3-member decisions are binding (subject to appeal to full panel) to the extent permitted by law,
- Nothing will preclude GAC from giving Advice to ICANN regarding manner in which IRP decision is implemented.

13. ~~12.~~ Rules, procedures, etc.

- CCWG sub group, assisted by counsel and appropriate experts, will continue to work on implementation details and will work with initial panel and the IRP provider on rules of procedure, etc. as part of WS2
- IRP to be the subject of periodic community review, in a manner similar to ATRT

| Summary report: | |
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| Litéra® Change-Pro TDC 7.5.0.145 Document comparison done on 7/29/2015 11:34:10 AM | |
| Style name: Sidley Default | |
| Intelligent Table Comparison: Active | |
| Original DMS: iw://SIDLEYDMS/ACTIVE/209401304/1 | |
| Modified DMS: iw://SIDLEYDMS/ACTIVE/209401304/3 | |
| Changes: | |
| Add | 41 |
| Delete | 23 |
| Move From | 0 |
| Move To | 0 |
| Table Insert | 0 |
| Table Delete | 0 |
| Table moves to | 0 |
| Table moves from | 0 |
| Embedded Graphics (Visio, ChemDraw, Images etc.) | 0 |
| Embedded Excel | 0 |
| Format changes | 0 |
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