

Independent Review

1. Scope of Authority

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

- Determine whether ICANN has acted (or has failed to act) in violation of its Bylaws; and
- Hearing claims involving rights of the Sole Member under the Bylaws (subject to voting thresholds)

2. Standing

- Any person/entity materially harmed by action or inaction by ICANN in violation of its Bylaws and the community, acting through the Sole Member.
- Process will also be able to provide prospective relief based on a demonstrated likelihood of harm

3. Selection process

- 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 and overflow/alternative pool
- Board confirmation

4. Expertise

- Significant legal expertise, particularly international law, corporate governance, and judicial systems/dispute resolution/arbitration;
- 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.

5. Diversity

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

6. Panel Size

- 7 members of standing panel
- Process for selection from pre-vetted pool to respond to capacity issues – all review panels will be chaired by a member of the standing panel
- Review Individual panels of 3 decision-makers (appealable to full panel); parties may agree to single member decision, which will not be binding
- One review panel member chosen by each party, who in turn select the 3rd review panel member.

7. Appeal

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- 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
- [Interim/transition][Permanent] community over-ride of clearly erroneous decisions?

Commented [MD1]: I support this idea with appropriate restrictions/disincentives so that only "bonehead" decisions are taken up here

8. Independence

- Bylaws obligation to fund process
- Fixed term [4 years? Renewable?]
- Compensation may not be reduced
- Removal/recall only for cause (corruption, misuse of position for personal use)
- 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

Commented [MD2]: I support 4 years/renewable perhaps only once

9. Exhaustion

Exhaustion requirement: measures designed to encourage participation in policy development process/disincentives to "sit out" or game process.

Commented [MD3]: Participation in policy development process as a prerequisite only where applicable, e.g. many registrants will have no clue what that even is

10. Settlement efforts

CEP or, at any party's election, mediation

11. Decision

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

12. Binding

- Bylaws to provide that 3-member decisions are binding (subject to appeal to full panel), subject to carve out for "matters so material to the Board that it would undermine its statutory obligations and fiduciary roles." This standard is to be defined and clarified based on advice of counsel.
- [Process for setting aside a clearly erroneous decision?]
- Nothing will preclude GAC from giving Advice to ICANN regarding manner in which IRP decision is implemented.

13. 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.

Commented [MD4]: Suggest the IRP process be reviewed by community in manner similar to ATRT to make sure these panelists do not enlarge their remit