

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 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

Commented [DGP1]: See my comment below - I think it is unwise to have a "overflow/alternative pool".

Commented [MSAH2]: I think five or seven works as an initial choice, but we may need the ability to refine this in the light of further experience.

Commented [DGP3]: I think it is most inadvisable to have a set of "standby" panelists who can step in on an "emergency" basis. To give the power to invalidated Board action to such individuals seems unwise, when they may have no ongoing interest or stake in the IRP or DNS policy-making in general.

Commented [DGP4]: I believe the default should be that the "standing panel" decides all cases as a whole - subject to the IRP's ability itself to implement a different process for the composition of sub-panels.

Commented [MSAH5]: I don't understand the benefit of this

Commented [DGP6]: I also do not understand the benefit of this - why should the IRP issue decisions that are not binding? That too will negatively impact the "seriousness" with which they address their role.

Commented [DGP7]: If there are to be review panels, the IRP itself should determine, by its own internal rules and processes, how they are constituted.

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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?

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

9. Exhaustion

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

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 [MSAH8]: Some form of appeal is important. According to what principles should leave to appeal be granted? Presumably we don't want every single decision appealed.

Is this the correct standard of appeal? What other standards should we consider?

All questions that need answers, but I think we should also preserve the flexibility to change our answers later.

Commented [MD9]: I support this idea with appropriate restrictions/disincentives so that only "bonehead" decisions are taken up here

Commented [DGP10]: I don't think its a good idea to involve the community, by a veto or other procedure, in the IRP's work of deciding individual cases/claims that are brought before it. It might work if we could come up with a way to specify in advance the criteria that would allow recognition of the clearly erroneous or boneheaded decisions from others - but I doubt that we can do that.

Commented [MD11]: I support 4 years/renewable perhaps only once

Commented [MSAH12R11]: I think it should be non-renewable, to preserve independence. A longer term - up to seven years - might be useful. That doesn't prevent a panelist resigning early of course!

Commented [DGP13]: Has the removal/recall been specified somewhere? It will be important that it mirror the appointment procedure and involve both the Community and the Board in the removal decision.

Commented [MD14]: Participation in policy development process as a prerequisite only where applicable, e.g. many registrants will have no clue what that even is

Commented [MSAH15R14]: I agree with David's concern, and for that reason think this restriction should be removed.

It will always be in anybody's best interest to seek to achieve their goals through participation first, so the spectre of deliberately "sitting out" is a straw man.

Commented [MSAH16]: I propose changing this to "to the extent permitted by law".

Commented [DGP17]: With the understanding that this has yet to be fully defined/clarified, I would suggest that carving out decisions whose implementation would "undermine [the Board's] fiduciary roles" is too broad - the Board could rather easily use this as a way to ignore IRP decisions with which it disagrees, on the grounds that it (the Board) has a "fiduciary obligation" to make decisions in what it believes are the corporation's best interests, and that the corporation's best interests are not served by implementing the IRP decision in any particular case.

Commented [MSAH18]: Appeal. Only.

Commented [DGP19]: I agree - appeal only.

Commented [MD20]: Suggest the IRP process be reviewed by community in manner similar to ATRT to make sure these panelists do not enlarge their remit

Commented [MSAH21R20]: Agree. What is the mechanism for achieving this?

I see none, so have proposed text that would create one.