

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 [NOTE: DP thinks overflow panel is unwise](#)
- Board confirmation

Formatted: Highlight

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 [single](#) ICANN region

6. [Panel](#) Size

- 7 members [of standing panel, with ability to expand or reduce to 5 based on experience](#)
- 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 [NOTE: some disagreement on this](#)
- [Review individual](#) panels of 3 decision-makers (appealable to full panel); [parties-complainant](#) may agree to [elect to proceed with a single-member decision](#) [single panelist, which-but decisions of single panelist](#) will not be binding. [NOTE: some oppose single panelist provision altogether](#)
 - [ALTERNATIVE: Standing panel decides all cases as a whole, subject to Panel's ability to implement a process for the composition of sub-panels](#)

Formatted: Highlight

Formatted: Highlight

Formatted

- One review panel member chosen by each party, who in turn select the 3rd review panel member.

Formatted: Superscript

Formatted: Font: Avenir Book, 11 pt

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. NOTE: is this the correct standard? Others that should be considered?
- [Interim/transition][Permanent] community over-ride of clearly erroneous decisions. NOTE: WP2 is split on this provision. Some argue that it should be removed, others that it should be crafted to permit review of truly "bone-headed" decisions only, with a very high threshold.

Formatted: Highlight

Formatted: Highlight

8. Independence

- Bylaws obligation to fund process
- Fixed term of 4, 5, 6, 7 years, [non-renewable][renewable once]
- Compensation may not be reduced
- 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

Formatted: Highlight

9. Exhaustion

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

- NOTE: There is significant push back on this idea. Several people believe that self interest will be sufficient to ensure that stakeholders participate in the multistakeholder process, and that end-users may be unaware of ICANN policy development unless and until it harms them. Others believe that it should be retained, but limited appropriately.

Formatted: Highlight

Formatted: List Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Avenir Book, 11 pt

10. Settlement efforts

CEP or, at any party's election, mediation

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

Formatted: Highlight

Formatted: List Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Avenir Book, 11 pt

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) to the extent permitted by law, 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?] NOTE: WP2 is split on this provision. Some argue that it should be removed, others that it should be crafted to permit review of truly "bone-headed" decisions only.

Formatted: Highlight

- 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
- IRP to be the subject of periodic community review, in a manner similar to ATRT

Formatted: Font: Avenir Book, 11 pt

Formatted: List Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: Avenir Book, 11 pt