

ACCOUNTABILITY MECHANISMS

	Name of Mechanism	Independent Review Panel
Description	Purpose	<ol style="list-style-type: none"> 1. Empower the community and affected individuals/entities to prevent “mission creep” and due process violations and to protect the multistakeholder process through meaningful, affordable, access to informed and expert review of ICANN actions. 2. Ensure that ICANN is accountable to the community and individuals/entities for actions outside its mission or that violate community-approved standards of behaviour. 3. Reduce disputes going forward by creating precedent to guide and inform ICANN Board, staff, SOs/ACs, and the community in connection with policy development and implementation.
	Description	A standing judicial/arbitral panel tasked with reviewing and acting on complaints brought by individuals, entities, and/or the community who have been materially harmed by ICANN’s action or inaction in violation of commitments made in ICANN’s Articles of Incorporation and/or Bylaws, including commitments spelled out in the proposed <i>Statement of Mission, Fundamental Commitments & Core Values</i> . This reflects proposed changes and enhancements to ICANN’s existing Independent Review Process.
	Category (check & balance, review, redress)	Review, redress, and checks/balances. The overall purpose is to ensure that ICANN does not exceed the scope of its limited technical mission and, in carrying out that mission, acts in a manner that respects community-agreed fundamental rights, freedoms, and values.
	Is the mechanism triggered or non-triggered?	Triggered (by filing of a complaint by aggrieved party) alleging that a specified action or inaction is not within ICANN’s Mission or that is undertaken in manner that violates ICANN’s Fundamental Commitments to the community and/or Core Values.
	Possible outcomes (approval, re-do, amendment of decision, etc.)	<p>Decision that an action/failure to act (a) is or is not within ICANN’s Mission and/or (b) was undertaken in a manner that violates ICANN’s Fundamental Commitments or Core Values.</p> <p>The extent to which an IRP decision can be deemed to bind ICANN, and the manner in which ICANN can be forced to comply with an IRP decision are topics of ongoing review and discussion with legal counsel to the CCWG.</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • Should the Board be permitted under certain circumstances to reject an IRP decision? If so, would this apply to all or only some kinds of complaints? Only with the unanimous or super majority support of the Board? • Is the ability to recall some or all members of the Board a sufficient mechanism to ensure compliance with Panel decisions?
Standing	Conditions of standing (ie « last resort », type of decision being	<p>At least in some situations, the decision of the panel will be final, in that no appeals process will be available.</p> <p>The IRP is designed in the first instance as a means of holding ICANN</p>

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	<p>challenged,)</p>	<p>to its limited technical mission and to its Fundamental Commitments and Core Values. We note that this mechanism could be used to challenge other actions or inactions. For example, direct customers of IANA services may want to use the mechanism for challenging compliance with IANA SLAs, delegations, revocations, etc. In such cases, it would be up to the relevant stakeholders to determine whether this is appropriate and, if so, what standard(s) would be applied by the panel.</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • Should proceedings before the IRP be “last resort” (i.e., no appeals process) in all cases? • Should ICANN or complainants have the ability to appeal panel decisions to a court of competent jurisdiction? In some cases or only in specified cases?
	<p>Who has standing (directly or indirectly affected party, thresholds...)</p>	<p>Any person/group/entity “materially affected” by Board/management/staff action that (a) exceeds the scope of ICANN’s limited Mission and/or (b) has been undertaken in a manner that violates ICANN’s Fundamental Commitments and/or Core Values.</p> <p>Interim (prospective, interlocutory, injunctive, status quo preservation) relief will be available in advance of Board/management/staff action where a complainant can demonstrate:</p> <ul style="list-style-type: none"> • Harm that cannot be cured once a decision has been taken or for which there is no adequate remedy once a decision has been taken; • Either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits; and • A balance of hardships tipping decidedly toward the party seeking the relief. <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • How would “material affect” be measured in the event that the “community” generally, or specific community groups sought independent review? • Who should have the right to intervene in an IRP in order to support or oppose the merits of a complaint? • Should ICANN have the right or obligation to “join” necessary parties to an independent review? What constitutes a “necessary party”?
<p>Standard of review</p>	<p>Which standards is the decision examined against (process, principles, other standards...)</p>	<p>A party challenging an action or inaction has the burden to demonstrate that the complained-of action violates either (a) substantive limitations on the permissible scope of ICANN’s actions, or (b) decision-making procedures, in each case as set forth in ICANN’s By-laws, Articles of Incorporation, or <i>Statement of Mission, Fundamental Commitments, and Core Values</i>.</p>
	<p>Which purpose(s) of accountability</p>	<p>Ensuring that ICANN stays within its limited technical mission (prevent “mission creep”) and enforcing compliance with stated</p>

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	does the mechanism contribute to?	procedures, due process, Fundamental Commitments, and Core Values.
Composition	Required skillset	<p>Significant legal expertise, particularly international arbitration expertise and expertise, developed over time, about the DNS and ICANN’s policies, practices, and procedures. At a minimum, panellists should receive training on the workings and management of the domain name system, and technical expertise should be available to the panel in appropriate cases.</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • In addition to legal expertise, to what extent should panelists possess technical, civil society, business, diplomatic, and regulatory skills?
	Diversity requirements (geography, stakeholder interests, gender, other...)	<p>Geographic diversity</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • How will geographic diversity be defined? For example, no more than X members from any one Region? Alternatively, no less than 1 member from each region? • Other diversity, e.g., gender?
	Number of persons (approximate or interval)	5 or 7
	Independence requirements	<p>Members must be independent of ICANN, including ICANN SOs and ACs. Members should be compensated at a rate that cannot decline during their fixed term; no removal except for specified cause (corruption, misuse of position for personal use, etc.) To ensure independence, term limits should apply, and post-term appointment to Board, Nomcom, or other positions within ICANN would be prohibited.</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • What is the term of the appointment? 3 or 4 years? • Limit to a single term?
	Election / appointment by whom?	<p>Separation of powers for nomination and confirmation of panellists. For example: (i) members nominate and Board confirms; (ii) Board nominates and members confirm; or (iii) third party international arbitral bodies nominate and members, board, or both confirm.</p>
	Recall or other accountability mechanism	<p>Appointments made for a fixed term with no removal except for specified cause (corruption, misuse of position for personal use, etc.).</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • Process for removal of panellists for cause must be defined. Board or community initiated process? Ultimate decision maker – Board, community, other members of the IRP standing panel, or

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		some combination?
Settlement Efforts	Mandated or Optional	Reasonable efforts, as specified in a public policy, must be made to resolve disputes informally prior to/in connection with filing an IRP case.
	Process	<p>Parties to cooperatively engage informally, but either party may inject independent dispute resolution facilitator (mediator) after initial CEP meeting. Either party can terminate informal dispute resolution efforts (CEP or mediation) if, after specified period, that party's concludes in good faith that further efforts are unlikely to produce agreement.</p> <p>The process must be governed by clearly understood rules and subject to strict time limits.</p> <p><u>Questions and Open Issues:</u></p> <ul style="list-style-type: none"> • What timeline is appropriate? • What is the source for independent dispute resolution facilitators? Professional mediation services? A member of the standing IRP panel (who could not then serve as a IRP panellist in that case)? Community members acceptable to ICANN and the complainant? • What non-disclosure obligations are appropriate? Can complainant waive confidentiality with respect to some or all issues?
Decision making	Decision maker	<p>In each case, a single or 3 member panel will be drawn from standing panels. In single member panel, ICANN and complaining party agree on panellist. In 3-member panel cases, each party selects one panellist, and those panellists select a third.</p> <p><u>Questions and Open Issues:</u></p> <ul style="list-style-type: none"> • When is a single member panel appropriate, when is a 3-member panel appropriate? • Can a complainant elect a 3-member panel in any case? If so, is cost shifting appropriate?
	Rules of Procedure	Standing Panel to draft, issue for comment, and revise procedural rules. Focus on streamlined, simplified processes with rules that are easy to understand and follow.
	Is the decision mandated or based on personal assessment	Based on each IRP panellist's assessment of the merits of the claimant's case. The panel may undertake a de novo review of the case, make findings of fact, and issue decisions based on those facts. All decisions will be documented and will reflect a well-reasoned application of the standard to be applied (i.e., the <i>Statement of Mission, Fundamental Commitments, and Core Values.</i>)
	Decision made by consensus or vote?	Vote. Alternatively, this could be included in the category of procedures that the IRP itself should be empowered to set
	Majority threshold	Simple majority.

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CCWG Accountability

Template

	(if applicable)	
Accessibility	Cost requirements	<p>ICANN to bear administrative costs of maintaining the system (including Panellist salaries); Panel to determine filing fees for claimants.</p> <p>Panel may provide for loser pays/fee shifting in the event it identifies a challenge or defense as frivolous or abusive.</p> <p>ICANN will seek to establish access to pro bono representation for community, non-profit complainants.</p>
	Timeframe requirements	<p>Panel should complete work expeditiously; issuing a scheduling order early in the process, and in the ordinary course should issue decisions within a standard time frame.</p> <p>Questions and Open Issues:</p> <ul style="list-style-type: none"> • 3-month/6 month decision requirement? • Provision for complex cases, such as monthly reports?
	Language requirements	<p>English as primary working language with provision of translation services for claimants as needed.</p>
Implementation	Potential means to implement	<p>Adopted as “durable” Bylaws provision.</p>