

Reviewing the CEP WS2 subgroup

Meeting 2
November 23, 2016

AGENDA

- Introduction, Attendance, Regrets, SOI's
- Report from India: Meeting with Becky Burr
- Bylaws (Anna)
- CEP Rules (Farzi)
- How to engage with community members with CEP experience? Discussion.
- Way Forward
 - Community Input
 - CEP Rules
 - Bylaws
- AOB

Report from India

- The intent was for the CEP to be strengthened by changes made to the Bylaws
- Recommendation that we look for mediation / arbitration models in constructing CEP rules rather than creating a system from scratch

Bylaws

Uncertainty regarding conciliation rules

- “CEPs shall be conducted pursuant to CEP Rules to be developed with community involvement, adopted by the Board, and amended from time to time”

Conciliation (IRP)

- After a Claim is referred to an IRP Panel, the parties are urged to participate in conciliation discussions for the purpose of attempting to narrow the issues that are to be addressed by the IRP Panel. (New Bylaws, §4.3 (h))

- Conciliation rules assumed but not specifically mandated in new Bylaws
- Should inquiry be made to IRT Implementation Oversight Team team about development of conciliation rules and procedures?

Mediation

- Either party may terminate the CEP efforts if that party: (A) concludes in good faith that further efforts are unlikely to produce agreement; or (B) requests the inclusion of an independent dispute resolution facilitator (“IRP Mediator”) after at least one CEP meeting. (New Bylaws, §4.3(e)(iii))

- May a party request mediation for the first meeting?
- Do we want ICANN to be able to end the CEP because the Complainant requests and feels mediation can help narrow the issue or resolve the complaint? Should this be the decision of ICANN (or the complainant) or of the mediator him / her self?

Old Bylaws: Confidentiality

- All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose within the IRP, and are without prejudice to either party.
(Bylaws, Article IV, §3-17)

- New bylaws are silent on confidentiality.
- Should we be looking to consider this issue in the context of a Bylaws change or develop it within the CEP Rules?

Bylaws or CEP Rules

- Should issues such as deadlines, filing procedure etc. be contained in the Bylaws or in the CEP Rules?
- Confidentiality

CEP Rules

CEP:
Negotiation, mediation,
both?

Sources

- International Centre for Dispute Resolution
- JAMS
- Chicago International Dispute Resolution Association (CIDRA)
- Centre for Effective Dispute Resolution (CEDR)
- Others?

Topics

- Specific procedures and regulations for connecting a CEP
- Deadlines
- Procedures for making a request
- Discovery rules and prohibitions / evidentiary rules / exemptions
- Current processes
- Third party rights / notification
- Confidentiality versus transparency

Current CEP Processes

- Form for requesting a CEP
- Deadlines for filing (15 days) and Responses (initial - 3 business days; appointment of ICANN rep - 3 business days; initial meeting - 2 business days following ICANN appointment; further meeting, if needed - 7 business days)
- Rules for disposition of proceedings; further deadlined
- (<https://www.icann.org/en/news/irp/cep-11apr13-en.pdf>)

Engagement with Community Members with CEP Experience

- Deliverable from meeting one: list of participants: status
- Recruitment attempts: result / lack thereof
- Proposal: survey

Work Plan

- Relationship with Conciliation (outreach to IRP Implementation Oversight group)
- Exploration of ICDR / JAMS/CIDRA
- Bylaws / CEP Rules: proposal for what goes where
- Involvement of community members with CEP experience: way forward

AOB

Next meeting:
December 9, 2016
@
19:00 UTC

Thank you!