

Work Stream 2 Topic:

Reviewing the Cooperative Engagement Process (CEP) (as set forth in Section 4.3)

Scope

In Recommendation #7 of the CCWG-Accountability Work Stream 1 report, the group describes the independent review process, and under Settlement Efforts, paragraph 50, cites the following:

- *The process must be governed by clearly understood and prepublished rules applicable to both parties and be subject to strict time limits. In particular, the CCWG-Accountability will review the CEP as part of Work Stream 2.*

This is currently listed in the new ICANN Bylaws at page 135 item (b) (ix) as “Reviewing the CEP (as set forth in Section 4.3).”

Background for Discussion

The Cooperative Engagement Process (CEP) is currently a voluntary process available prior to the filing of a request for Independent Review. The purpose of a CEP is to resolving or narrowing the issues that are contemplated to be brought within the Independent Review Process (IRP) (See Bylaws, Art. IV, §§ 3.14-3.17.) The CEP is intended to facilitate direct conversation between ICANN and the requesting party. ICANN participates through an identified executive, and the requesting parties also have an identified representative. Though not required, requesting parties sometimes invite outside counsel to the CEP discussions.

The requesting party may invoke the CEP by providing written notice to ICANN, noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated (or other action/inaction that would support the filing of an IRP), and designating a single point of contact for the resolution of the issue. The CEP Process as currently in place at ICANN is set out at: <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>.

While the CEP is voluntary, there are potential impacts to the complainant for either not initiating a CEP or not participating in good faith in the CEP, if ICANN is ultimately the prevailing party in the IRP. The IRP Panel could award ICANN costs and fees, including legal fees. Bylaws, Article IV, Section 4.3(e)(ii).

ICANN maintains status updates on ongoing CEP matters at <https://www.icann.org/resources/pages/accountability/irp-en>

Resources

Pending CEP and IRP Matters Archive:

<https://www.icann.org/resources/pages/cep-irp-pending-archive-2014-09-26-en>.