

Julie Bisland:Welcome to the New gTLD Subsequent Procedures Sub Team – Track 3 – String Contention, Objections & Disputes on Tuesday, 20 June 2017 at 15:00 UTC

Julie Bisland:Agenda Wiki Page: https://urldefense.proofpoint.com/v2/url?u=https-3A__community.icann.org_x_FxLfAw&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=sNnBtFps5NdS6XIF_naXdHYjP8-3VMQNEvkwz0Rtqw4&s=5xpZalySIASuBSJDmELbgeOnNBVXs0Qcs0V67MdPTuQ&e=

David McAuley (IRP IOT):I am no. 4154

Julie Bisland:thank you, David

Jeff Neuman:New IRP is a "Substantive review of whether they violate the bylaws." But that is different than a substantive review of whether the Guidebook was breached, correct?

Jeff Neuman:In other words, would a breach of something in the Guidebook be a violation of the bylaws?

Jeff Neuman:This is what we need to consider....

Jim Prendergast:or an action by a contractor to ICANN - IRPs have discovered some actions there that didnt seem right - especially in the CPE space.

Jeff Neuman:@Jim, but it is a stretch to argue that all breaches of the guidebook are violations of the bylaws....which is why many have argued that an appeals process is required

Jim Prendergast:correct

Jim Prendergast:which leads to the question of - are the 4 on the first slide enough?

Anne Aikman-Scalese (IPC):@Jeff - It seems that a breach of ByLaws or Mission is not the same as a decision which "breaches" the Guidebook. Directors are held to standard of Mission and ByLaws and can review decisions of panel. I am not seeing basis for "breach" of Guidebook per se unless the action or inaction breaches mission or bylaws.

Anne Aikman-Scalese (IPC):I doubt we can change the scope of the revised IRP at this point in time. It's a function of the consensus and Chartering Org approval accomplished in WS1.

John Laprise:I like the IRP structure

Jeff Neuman:@Anne - correct ; which is again why many believe an appeals process is necessary for substantive decisions, or actions or inactions of icann staff or its contractors in violation of the guidebook

Anne Aikman-Scalese (IPC):@Jeff - Does Request for Reconsideration apply in the circumstances you describe and is there an appeal from that?

Jeff Neuman:Requests for Reconsideration is not a substantive review of whether provisions of the Guidebook were breached.

Anne Aikman-Scalese (IPC):What is the standard of review in Request for Reconsideration?

Paul McGrady 2:@Avir ot Jeff - I see the 2 geo sessions on the JoBurg calendar, but I didn't see the F2f Plenary for SubPro. Can you let me know when that is? Sorry.

Karen Day:@Paul - it's Tues am 8:30 local time

Emily Barabas 2:https://urldefense.proofpoint.com/v2/url?u=https-3A__schedule.icann.org_event_B49Q_gnso-2Dnew-2Dgtld-2Dsubsequent-2Dprocedures-2Dpdp-2Dworking-2Dgroup-2Dface-2Dto-2Dface-2Dmeeting&d=DwIFaQ&c=FmY1u3PJp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=QiF-05YzARosRvTYd84AB_UYInlydmFcjNmBM5XgySw&m=sNnBtFps5NdS6XIF_naXdHYjP8-3VMQNEvkwz0Rtqw4&s=cFtUTkzHbxinNsbqtDS5VgnRo4f82ZVI4IIA9U50YrQ&e=

Anne Aikman-Scalese (IPC):@Paul - goes to noon I think on Tuesday

Paul McGrady 2:Thanks Karen Thanks Emily! & Anne!

Jeff Neuman:Standard of Review for Reconsideration: (c) A Requestor may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that the Requestor has been adversely affected by:(i) One or more Board or Staff actions or inactions that

contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);(ii) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or(iii) One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or staff's reliance on false or inaccurate relevant information.

Jeff Neuman:Again, does not necessarily cover violations of the Guidebook. And of course an applicant cannot go to court because of ICANN's disclaimers of all liability

Alan Greenberg:Sorry, that screech was me switching to a new phone.

Susan Payne:does the cost sanction work the other way - if ICANN does not meaningfully engage in CEP?

Jeff Neuman:So, there is still NO mechanism to handle cases where the ICANN staff, contractor, or board just got a decision wrong substantively.

Jeff Neuman:unless it is of such a degree to violate the mission, core values or bylaws

Anne Aikman-Scalese (IPC):@Jeff - Issue of "breach" of Guidebook provision is very touchy. In the past, the Board has received policy advice - both from the GNSO and from the GAC, that arguably varied from the Guidebook provisions. When you consider that the Board is already bound to one degree or another in relation to voting majorities that apply to GNSO advice (2/3 to overcome) and GAC Advice (60% to overcome) and by IRP on Mission and ByLaws violations, I think you are putting the Board in a very difficult position where they won't be able to make decisions on issues that arise after the Guidebook is finalized if you say there can be IRP on Guidebook breaches.

Paul McGrady 2:Sorry all, have to step away early. See many of you in JoBrug

Karen Day:Thanks, Paul. Safe travels

Susan Payne:I don't think that is what we would be seeking to do Anne.

Susan Payne:I think the idea is more whether we consider that we should implement appeals to decisions based on the guidebook

David McAuley (IRP IOT):I will hang on till end of call

Anne Aikman-Scalese (IPC):Thanks Jeff. Agree IRP does not cover breach of guidebook so worth looking at in Sub Pro.

Anne Aikman-Scalese (IPC): PICDRP was originally drafted as a complaint to be filed outside of ICANN and adjudicated by a neutral not selected by ICANN staff. Too bad that was not the structure was adopted because these problems would not have arisen in that procedural context.

Jeff Neuman:[Co-Chair Hat off][Former Registry Hat on]: When we started this PIC Process the registries asked that it only be ICANN that enforces / does not enforce the PICs. ICANN did not want to exclusively take on that role since it did not feel like it had the knowledge or expertise to do so. It also did not want to take on the liability of making the decisions. Registries did not want to be left without an appeals process if the decision was made exclusively by an outside provider (especially if the panel made an overly harsh decision), so thus the compromise was that the Panel makes a recommendation, but ICANN determines the remedy such that a registry can challenge under the contractual provisions in their agreement. This is why it is so complex.

Anne Aikman-Scalese (IPC):"Registries did not want to be left without an appeals process if the decision was made exclusively by an outside provider" - i.e. registries knew that they would be protected to some degree by ICANN itself due to relationship. This goes to the core of definition of "public interest" and who should be deciding what is in the public interest - the old "GPI" debate.

Susan Payne:thaks Kiran

Anne Aikman-Scalese (IPC):QUESTION: Should a PICDRP decision be appealable to IRP now that scope of IRP includes review of panel decisions? QUESTION

Anne Aikman-Scalese (IPC):I think Alan also means that ICANN Compliance is supposed to be monitoring compliance with PICs - e.g. Are eligibility provisions be applied in Safeguarded strings?

Anne Aikman-Scalese (IPC):Sorry must drop off for another call. Thank you.

Alan Greenberg:A complaint to Compliance would not result in your being compensated, but it in theory should address any violation.

Kiran Malancharuvil:Hi Alan, thanks. We aren't seeking compensation, just addressing the violation

David McAuley (IRP IOT):I will drop off now, many thanks

Kiran Malancharuvil:violation

Cheryl Langdon-Orr (CLO):thanks for this and obviously lots more to discuss....

Alan Greenberg:Sorry, not a targeted you but a general one!

Steve Chan:FYI, WT2 submitted questions to contractual compliance on complaints related to PICs. We will make sure that the responses are made available to both WTs 2 and 3.

Cheryl Langdon-Orr (CLO):bye for now everyone.... safe travels to those who are attending JNB

avri doria:bye, thanks

Kiran Malancharuvil:Thanks Karen, great call