

Agenda

-
-
- 1. Admin/Attendance/SOI;
-
- 2. Status/Update with respect to SO/AC education/outreach re: Standing Panel – webinar/training design thoughts (see [email](#) of Aug. 16);
-
- **3. Joinder issues** – confirm first reading (this also affects **Challenges to Consensus Policy**) see Sam's [email](#) of September 7 (which includes my summary email of Aug. 25) and I will send a new summary to the list prior to the call (with only the change suggested by Sam – not a major re-write);
-
- **4. Ongoing monitoring** issue – confirm first reading – I will be sending an email to list prior to the call – again, it won't be a major re-write from what we have been discussing;
- **5. Translation and Interpretation** issue – initial discussion (see my [email](#) of Sept. 25) – perhaps get to first reading;
- **6. Other – Payment of Fees** - I will take the lead;
- **7. Initial discussion Discovery, Evidence, Statements** – I will take the lead;
- 8. AOB.

Joinder

- SUGGESTED JOINDER LANGUAGE:
 1. That only those persons/entities who participated in the underlying proceeding as a "party" receive notice from a claimant (in IRPs under Bylaw section 4.3(b)(iii)(A)(3)) of the full Notice of IRP and Request for IRP (including copies of all related, filed documents) contemporaneously with the claimant serving those documents on ICANN.
 2. That, subject to the following sentence, all such parties have a right to intervene in the IRP. Notwithstanding the foregoing, a person or entity seeking to intervene in an IRP can only be granted party status if that person or entity demonstrates that it meets the standing requirement to be a Claimant under the IRP at Section 4.3(b) of the ICANN Bylaws and as Defined within these Supplemental Procedures. The timing and other aspects of intervention shall be managed pursuant to the applicable rules of arbitration of the ICDR except as otherwise indicated here. Subject to the preceding provisions in this paragraph, the manner in which this limited intervention right shall be exercised shall be up to the PROCEDURES OFFICER, who may allow such intervention through granting IRP-party status or by allowing such party(ies) to file amicus brief(s), as the PROCEDURES OFFICER determines in his/her discretion. An intervening party shall be subject to applicable costs, fees, expenses, and deposits provisions of the IRP as determined by the ICDR. An amicus may be subject to applicable costs, fees, expenses, and deposits provisions of the IRP as deemed reasonable by the PROCEDURES OFFICER.
 3. No interim relief that would materially affect an interest of any such amicus to an IRP can be made without allowing such amicus an opportunity to be heard on the requested relief in a manner as determined by the PROCEDURES OFFICER.
 4. In handling all matters of intervention, and without limitation to other obligations under the bylaws, the PROCEDURES OFFICER shall endeavor to adhere to the provisions of Bylaw section 4.3(s) to the extent possible while maintaining fundamental fairness.

Ongoing Monitoring

- After the IOT finishes its current work items **AS INDICATED IN BYLAW SECTION 4.3**, it terminates as implied in that section;
- Section 4.3 (n) needs to be amended to remove section (i) once the IOT is terminated;
- The review of the IRP under Bylaw Section 4.6(b)(ii)(F) shall be made mandatory rather than discretionary **AND SHALL BE AMENDED TO INCLUDE PARTICIPATION IN SUCH REVIEW BY A REPRESENTATIVE OF THE IRP STANDING PANEL.**

Discovery

- I recommend an addition into Rule 6 as follows (where the red, underlined language is the addition).
- **6. Written Statements**
- The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font. All necessary and available evidence in support of the Claimant s Claim(s) should be part of the initial written submission. Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence. The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties. In addition, the IRP PANEL may grant a request for additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties upon the showing of a compelling basis for such request.
- Otherwise, with respect to Rule 8, Discovery Methods, I recommend no change. The rule directs the panel to be guided by considerations of accessibility, fairness, and efficiency (both as to time and cost) in considering discovery requests. This leaves the matter to the panel, where it will be better handled than by us trying to imagine a context to fix. I also note that ICDR Article 21 states that depositions, interrogatories, and requests to admit are not appropriate for these arbitrations. Article 21.5 deals with exchanging confidential information. We should keep in mind that the IRP is not just for US lawyers and it is meant to be streamlined and efficient.