

**Draft: Independent Review Process (IRP) Supplementary Procedures**

Rule	Name	Notes	Outstanding Item(s)	Date Finalized
3	Composition of IRP panel	Draft text based on <a href="#">markup against current Interim Rules</a> ; draft text prepared by IRP-IOT.	N/A	12 Dec. 2023 (meeting #119)
4	Time for Filing, Initiation	<p><u>Rule organization:</u></p> <p>4A: Initiation (<i>generally, discussed and tracked separately, <a href="#">most recent language shared at meeting #102</a></i>)</p> <p>4B: Time to file (<i><a href="#">draft text</a> agreed to at meeting #96</i>)</p> <p>4C: Timing considerations for a Claimant to file IRP following RFR (<i><a href="#">concept text</a> from meeting #91</i>)</p> <p>4D: Limited circumstances for requesting permission to file after 24-month limit (<i><a href="#">draft text</a> reviewed at meeting #96</i>)</p> <p>IRP-IOT agrees on concepts / principles for 4A, 4C, and 4D, but not draft text.</p> <p>IRP-IOT appears to have reviewed and agreed to draft text for 4B.</p> <p>See <a href="#">Rule 4 concepts document</a> (meeting #119) and <a href="#">Rule 4 Proposed Final Draft</a> (meeting #96)</p>	Initiation and other fees referenced in Rule 7.	<p>4A: 4 April 2023 (meeting #103; <i>note: no quorum</i>)</p> <p>4B, D: 4 Oct. 2022 (meeting #96)</p> <p>4C: 10 May 2022 (meeting #91)</p> <p>Reorg: 19 Sept. 2023 (meeting #115)</p>
5B	Translation	<a href="#">Draft text</a> agreed to at meeting #59.	Timeline for appointment of Emergency Panelist.	3 Nov. 2020 (meeting #60)
7	Consolidation, Intervention, Participation as Amicus	<p>Draft text based on markup against current Interim Rules; draft text prepared by IRP-IOT.</p> <p><i>Note: most recent available Google Doc does not appear to be the 'clean' updated version. Available as a <a href="#">redline PDF</a> from meeting #114. Draft text can also be extracted from</i></p>	N/A	12 Sept. 2023 (meeting #114)

		Rule 7 <a href="#">rationale document</a> shared at meeting #119.		
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**Notes:**

- Internal references to rule sub-sections have been bracketed in case there is any further re-numbering or reorganization. We note that there was significant discrepancy in naming conventions for subsections (*e.g.*, subparagraph, section, clause, etc.). For avoidance of doubt, we have removed such terms and used only parentheses to indicate the relevant reference (*e.g.*, instead of Rule 3, Paragraph 1, Subsection b, we indicated Rule 3(1)(b)).
- Inconsistent reference to Bylaws was not addressed, *e.g.*,
  - Bylaws Article 4.3(q)(i)
  - Section 4.3(y) of the Bylaws
  - ICANN Bylaws, Article 4, Section 4.3(l)
  - Bylaws 4.3(x)(iv)
  - Article 4 of the Bylaws
- Inconsistent reference to “IRP” vs “Dispute”, *e.g.*
  - “When IRPs are consolidated” (Rule 7(13))
  - “If Disputes are consolidated” (Rule 7(15))

**Rule 3: Composition of IRP panel**

1. The IRP Panel will comprise three Panelists, and the IRP Panel will not be considered to have been convened until all three Panelists have been appointed.
2. The three Panelists for the IRP Panel will be selected from the Standing Panel, unless a Standing Panel is not in place when the relevant IRP Panel must be convened, or is in place but does not have capacity. The Claimant and ICANN shall each select one Panelist from the Standing Panel, and the two Panelists selected by the Parties will select the third Panelist from the Standing Panel.
  - a. If one Party has not selected a Panelist within 30 days<sup>1</sup> of the initiation of the IRP then, at the request of the other Party, the Standing Panel shall make the selection from within its ranks. If the Standing Panel has not made such appointment within 5 days of the request, the IRP Provider’s Administrator (Administrator) shall make the selection from the Standing Panel within [14/21] days.<sup>2</sup>
  - b. If the two Party-selected Panelists cannot agree on the third Panelist from the Standing Panel, within 21 days of the appointment of the later of the two such Panelists, then, at the request of either Party, the Standing Panel shall make the selection from within its ranks. If the Standing Panel has not made such appointment within 5 days of the request, the Administrator shall make the selection from the Standing Panel within [14/21] days.<sup>3</sup>
3. If the Standing Panel, in its discretion, does not have capacity to seat any or all of the Panelists necessary to comprise an IRP Panel for a Dispute, the Standing Panel must notify the Claimant and ICANN in writing as soon as possible, and in any event within 14 days of notification of the initiation of the IRP from the IRP Provider to the Standing Panel.<sup>4</sup> In the event that a Standing Panel is not in place when the relevant IRP Panel

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<sup>1</sup> All timing to be reviewed prior to finalisation of the Rules.

<sup>2</sup> IOT considers that once the Standing Panel is in place then it should be responsible for resolving panelist appointment issues, but that the IRP Provider’s (ICDR) Administrator should act as a fallback where the Standing Panel is unable to reach agreement for some reason.

<sup>3</sup> See above.

<sup>4</sup> Bylaws 4.3(k)(ii) refers to the possibility of not using the Standing Panel because it “does not have capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding”. The IOT understands the intent to be that the Standing Panel will be used, except in exceptional circumstances. The proposed rule therefore leaves it to the Standing Panel to raise issues of lack of capacity (of any form). The IOT concluded that, so far as panelist “diversity of skill and experience” is concerned this is likely to be an exceptional situation. There is not a general expectation in judicial and arbitral proceedings for the adjudicator(s) themselves to have detailed subject-matter expertise, and that Bylaws 4.3 (k)(iv) specifically allows for the IRP Panel to have access to independent skilled technical experts where required. Therefore the consensus of the IOT, is not to propose a specific process for a Party to make representations about lack of capacity, but assumes that a Party will nevertheless raise this if this is a genuine concern. Feedback is welcome on whether a specific challenge process is necessary.

must be convened, or is in place but does not have capacity, the IRP Panel shall be selected on the following basis:

- a. If the Standing Panel lacks capacity for seating one or two members of the IRP Panel, the Parties shall try to agree, within 14 days of the notification from the Standing Panel of lack of capacity referred to at [Rule 3(3)] above, to a process for the selection of suitably qualified IRP Panelists utilising, as far as possible, the available Standing Panel members. If the Parties are unable to reach agreement, or where selection of all three members of an IRP Panel is necessary, [Rule 3(3)(b)-(e)] shall apply.
  - b. The Claimant and ICANN shall each select a qualified Panelist from outside the Standing Panel, and the two Panelists selected by the Parties shall select the third Panelist.
  - c. If one Party has not selected a Panelist within 30 days of the commencement of the IRP then, at the request of the other Party, the Administrator shall make the selection.
  - d. If the two Party-selected Panelists cannot agree on the third Panelist, within 21 days, the Administrator shall make the selection of the third Panelist using the list method as described in [Rule 3(3)(e)] below.
  - e. The Administrator shall send simultaneously to each Party an identical list of names of persons for consideration as Panelist(s). The Parties are encouraged to agree to a Panelist from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the Parties are unable to agree upon a Panelist, each Party shall have 14 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. The Parties are not required to exchange selection lists. If a Party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the Parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite a Panelist to serve. If the Parties fail to agree on any of the persons listed, or if acceptable Panelists are unable or unavailable to serve, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding Panelist in consultation with the tribunal.
4. In the event that an IRP Panelist resigns, is incapable of performing the duties of a Panelist, or is removed, and the position becomes vacant, a substitute Panelist shall be appointed pursuant to the provisions of this [Rule 3] of these Supplementary Procedures.
  5. Conflict of Interest

- a. A Standing Panel member's appointment to an IRP Panel will not take effect unless and until the Standing Panel member signs, within 7 days<sup>5</sup> of appointment, a Notice of Standing Panel Appointment confirming their compliance with the Conflict of Interest requirements at Bylaws Article 4, Section 4.3(q)(i) and making any disclosures of material relationships so required. If the Standing Panel member is unable or unwilling to do so within the timeframe, an alternative IRP Panelist will be selected, following the procedures set out in this Rule 3.
- b. Where an IRP Panelist is to be appointed from outside of the Standing Panel, their appointment will not take effect unless and until the proposed Panelist signs, within 7 days of appointment, a Notice of Panelist Appointment confirming their compliance with the same Conflict of Interest requirements as apply to a Standing Panel, as set out at Bylaws Article 4, Section 4.3(q)(i) and making any disclosures of material relationships so required. If the proposed Panelist is unable or unwilling to do so within the timeframe, an alternative IRP Panelist will be selected, following the procedures set out in this Rule 3.
- c. Prior to accepting any appointment, potential IRP Panelists are also expected to consider whether other circumstances of the relevant IRP are liable to influence their decision such that they would be considered to have a conflict of interest. An example of such a circumstance would be where considerations of nationality are material to the matters in dispute.
- d. Where, at any time, an IRP Panelist develops a conflict of interest, they must recuse themselves.

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<sup>5</sup> IOT welcomes input on this timing. IOT proposes a time limit of 7 days for panelists to confirm they have no COI, in order to keep things moving and bearing in mind that there is a Bylaws expectation that IRPs should be concluded in 6 months. However, depending on the make-up of the Standing Panel, some IOT members expressed concern that this may be insufficient to do conflict checks across a large law firm, for example. On the other hand, once an IRP is commenced Standing Panel members could begin their conflict checks immediately, and there will generally be advance notice on a potential IRP since Claimants are encouraged to enter into CEP first.

**Rule 4: Time for Filing**

***4A: Principles of Initiation***

1. The written statement of a Dispute filed by the Claimant shall be accompanied by the appropriate filing fee of [\$X], unless a waiver of the fee has been obtained through the process established in accordance with Section 4.3(y) of the Bylaws. Any filing fee paid by the Claimant shall be reimbursed by ICANN at the conclusion of the proceedings.
2. ICANN is responsible for the costs of the Panelists, including both the costs of the Standing Panel and, where necessary, the costs of any Panelists who are not on the Standing Panel.
3. ICANN shall pay the administrative costs of the proceedings as they are incurred, including, but not limited to, the cost of administrative office time required for the IRP proceedings, the cost of hosting virtual hearings, and costs associated with providing copies of documents and other papers to Panelists.
4. In accordance with the Bylaws, each Party is responsible for its own legal fees in connection with the IRP.
5. Notwithstanding the above, where the three-person IRP Panel, on making its IRP Panel Decision, finds that part or all of a Party's claim or defense is frivolous or abusive, it may exercise its discretion to shift all or a portion of the filing fee, Panelist costs, administrative costs, or legal fees to that Party. If the IRP Panel exercises its discretion to shift costs or fees in this way, the Party to whom the costs or fees are shifted may file an opposition to the fee/cost shifting. The IRP Panel may establish deadlines and/or page limits in connection with this opposition. The IRP Panel may also, in its discretion, permit the other Party to file a statement regarding the fee/cost shifting, in accordance with any deadlines and/or page limits the IRP Panel may establish.

***4B: Time to File***

1. A Claimant shall file a written statement of a Dispute with the IRP Provider within the following timeframes:
  - a. for Disputes challenging Board or Staff action, within 120 days after the date on which the Claimant became aware of, or reasonably should have become aware of, being materially affected by the action being challenged in the Dispute; or
  - b. for Disputes challenging Board or Staff inaction, within 120 days after the date on which the Claimant became aware of, or reasonably should have become aware of, being materially affected by the failure to act being challenged in the Dispute.
2. Subject to [Rule 4C and 4D] below, a written statement of a Dispute may not be filed more than 24 months from the date of such action or inaction being challenged in the Dispute.

3. In order for an IRP to be deemed to have been timely filed, all fees must be paid to the IRP Provider within three business days (as measured by the IRP Provider) of the filing of a written statement of a Dispute.

***4C: Timing considerations for a Claimant to file an IRP following a request for reconsideration (RFR)***

1. If, prior to filing a written statement of a Dispute, the Claimant filed a Request for Reconsideration (RFR) relating to the same Dispute, which RFR did not serve to wholly resolve the Dispute, the Claimant may submit a written statement of a Dispute pursuant to the requirements in [Rule 4A], and as provided in this [Rule 4C].
  - a. If, at the time of publication of the Approved Resolution by the Board on the final disposition of the RFR [or publication of the summary dismissal by the BAMC where appropriate], the Claimant is within the timeframe to file a written statement of a Dispute as provided in [Rule 4B], and the remaining time to file a written statement of a Dispute is greater than or equal to 30 days, the Claimant shall have this remaining time to file a written statement of a Dispute.
  - b. If the Claimant is not within the timeframe established above [in Rule 4C(1)(a)], the Claimant shall have 30 days from the time of the publication of the Approved Resolution by the Board on the final disposition of the RFR [or publication of the summary dismissal by the BAMC where appropriate] to file a written statement of a Dispute.
2. In order to submit a written statement of a Dispute under this [Rule 4C], the Claimant, at the time such Claimant filed the RFR relating to the same Dispute, must have been within the timeframes established in [Rule 4B] to file a written statement of a Dispute.

***4D: Limited circumstances for requesting permission to file after 24-month limit***

1. The Claimant may be permitted by the IRP Panel to file its written statement of a Dispute after the timeframes set forth above [in Rule 4B] under certain limited circumstances. Such a Claimant shall seek leave to file a late written statement of a Dispute by demonstrating by clear and convincing evidence that either:
  - a. exceptional circumstances not caused by the Claimant and out of the Claimant's control prevented the Claimant from either becoming aware of the action or inaction being challenged in the Dispute within the timeframes set forth in [Rule 4B], or being eligible under the Bylaws as a Claimant within those timeframes; or
  - b. exceptional circumstances not caused by the Claimant and out of the Claimant's control prevented the Claimant from being able to file a written statement of a Dispute within 24 months from the date of the action or inaction being challenged in the Dispute within the timeframes set forth in [Rule 4B].

The application for leave to file a written statement of a Dispute pursuant to [this Rule 4D] shall include an explanation of how the Claimant satisfies the standing requirements set forth in the Bylaws.

2. Under no circumstances may a Claimant seek to file a written statement of a Dispute more than four years after the date of the action or inaction being challenged in the Dispute.
3. Any request for leave to file a written statement of a Dispute under this [Rule 4D] shall be accompanied by Claimant's proposed written statement of a Dispute and must be filed within 30 calendar days of:
  - a. the Claimant becoming aware of being materially affected by the action or inaction being challenged in the Dispute, if the late filing is requested under [4D(1)(a)] above; or
  - b. the Claimant becoming able to file a written statement of a Dispute, if the late filing is requested under [4D(1)(b)] above.

Nothing in this [Rule 4D(1)] is intended to preclude a Claimant who has initiated an IRP in the good faith belief that their claim is within time, but where that timeliness is successfully challenged, from then seeking leave to pursue that IRP pursuant to this [Rule 4D].

4. Any request for leave to file a written statement of a Dispute under this [Rule 4D] shall be directed to the IRP Provider, who will appoint a single Panelist to consider and make a determination on the request.
  - a. Where the Standing Panel is in place, ICANN and the Claimant shall endeavor to agree on a single Panelist from the Standing Panel. Where they are unable to do so, either Party may request that the IRP Provider appoint a single Panelist from the Standing Panel using the procedure set out in ICDR Rule 13(6).
  - b. In the event that no Standing Panel is in place, ICANN and the Claimant shall endeavor to agree on a single Panelist. Where they are unable to do so, either Party may request that the IRP Provider appoint a single Panelist using the procedure set out in ICDR Rule 13(6).
5. When considering whether an applicant should be permitted to file an IRP Claim out of time, the Panelist shall have regard to the Purposes of the IRP and any jurisprudence of prior IRP Panels relevant to interpretation of this [clause] in light of the Purposes.
6. For avoidance of doubt, ICANN shall have a right to respond to a Claimant's request for leave to file submitted pursuant to this [Rule 4D]. The IRP Panel may establish deadlines and/or page limits in connection with this response.



**Rule 5B: Translation**

1. As required by ICANN Bylaws, Article 4, Section 4.3(l), “All IRP proceedings shall be administered in English as the primary working language, with provision of translation services for Claimants if needed.” Translation may include both:
  - i. translation of submitted written statements, documents that have specific relevance to the subject matter of the Dispute, transcripts and Panelist decisions, and
  - ii. interpretation of oral proceedings, ensuring that no Party is unable to fairly participate in the proceedings due to language.
2. The Claimant’s written statement of a Dispute must be submitted in English. No adverse inference as to the need for ICANN to provide translation services will be drawn from the fact that the written statement of a Dispute or request for translation services is in English.
3. A request for translation services:
  - i. must accompany the written statement of a Dispute if the Claimant is:
    - a. seeking reimbursement of the costs of translating the written statement of a Dispute into English, or
    - b. seeking translation of ICANN’s written statement in response from English into the language identified by Claimant as Claimant’s preferred language for the proceeding (“Claimant’s Preferred Language”), but
  - ii. may otherwise be made subsequent to the written statement of a Dispute.Where the request for translation services is made with the written statement of a Dispute, it does not count towards the page limit for the written statement of a Dispute.
4. Any request for translation services must be submitted in English, identify the Claimant’s Preferred Language, and include an explanation of why the Claimant needs such services in order to be able to fairly participate in the proceedings. The request for translation services should also explain the extent to which the Claimant or its representative has a suitable level of understanding to permit fair participation in more than one language, including in particular the competency of the Claimant or its representative in an official language of the United Nations. Any accompanying statement explaining the need for translation services shall not exceed five pages of text, double-spaced using 12-point font.
5. Prior to filing any request for translation services, Claimants are strongly encouraged to approach ICANN directly with a request for a stipulation for ICANN to provide translation services in accordance with [Rule 5B(9)]. If stipulated, the IRP Panel still retains scheduling discretion as specified in [Rule 5B(14)].
6. Requests for translation services generally shall be determined by the IRP Panel, unless ICANN has already agreed to the request. In exceptional circumstances, if a determination is required as a matter of urgency before the IRP Panel is seated, the request may include an application for emergency determination of translation services. Within [TBD] days after receipt of such application, an Emergency Panelist selected

from the Standing Panel (or if no Standing Panel is in place, a Panelist appointed by the ICDR pursuant to ICDR Rules) shall be appointed. A determination of the emergency request shall be made as a preliminary issue for the proceeding within [TBD] days after the date of such appointment.

7. The IRP Panel shall have discretion to determine:
  - i. whether the Claimant has a need for translation services,
  - ii. which documents or hearings relate to that need, and
  - iii. the language for which translation services will be provided.
  
8. In exercising its discretion, the IRP Panel should bear in mind the Purposes of the IRP, set out in ICANN Bylaws, Article 4, Section 4.3(a), and in particular Purpose (vii), and should have regard to the following non-exhaustive considerations:
  - i. the materiality of the particular document, hearing or other matter or event requested to be translated, including the need to ensure that all material portions of the record of the proceeding are available in English;
  - ii. the Claimant's ability to fairly participate in the proceedings due to the level of understanding of spoken and written English, by an officer, director, principal (or equivalent) with responsibility for the Dispute, and, to the extent that the Claimant is represented in the proceedings by an attorney or other agent, that representative's level of understanding of spoken and written English; and
  - iii. level of understanding in another official language of the United Nations (i.e., Arabic, Chinese, French, Russian, or Spanish).

Where Claimant or its representative has a suitable level of understanding to permit fair participation in more than one language, of which one is a UN language, then translation services will be limited to that UN language where possible.
  
9. All translation services ordered by the IRP Panel shall be coordinated through ICANN's Language Services providers and shall be considered an administrative cost of the IRP, paid for by ICANN unless the IRP Panel later orders otherwise pursuant to ICANN Bylaws, Article 4, Section 4.3(r).
  
10. A Claimant determined by the IRP Panel not to have a need for translation services must submit all materials in English.
  
11. If the Claimant, at any point during the course of the proceedings, identifies that it no longer requires translation services ordered by the IRP Panel, the Claimant should request the discontinuation of translation services.
  
12. If the Claimant arranges for its own translation, either because translation services are not requested or are denied, such translation shall be considered part of the Claimant's legal costs, and so borne by the Claimant pursuant to ICANN Bylaws, Article 4, Section 4.3(r), and not an administrative cost to be borne by ICANN, unless otherwise ordered by the IRP Panel.

13. A Claimant may rely in the IRP proceedings on its own translation only if it is a certified translation from a qualified independent service provider.
14. The IRP Panel may order that the deadlines for submission of documents or other papers, and the timing of any appeal, be amended to take into account reasonable delays generated by the translation of documents, transcripts, or Panelist decisions.

**Rule 7: consolidation, intervention, and participation as amicus**

*[General]*

1. Any request for consolidation, intervention, and/or participation as an amicus shall be considered and determined by the IRP Panel appointed to the involved IRP which was commenced first (the First IRP). No consolidation will be permitted between binding and non-binding (as provided for under Bylaws 4.3(x)(iv)) IRPs, and the nature of the First IRP will not be changed from binding to non-binding, or vice versa, as a result of any consolidation, intervention or participation as an amicus.
2. Except as otherwise specifically stated herein, actions on requests for consolidation, intervention, and/or participation as an amicus are committed to the reasonable discretion of the First IRP Panel. Where all the Parties, proposed Parties and proposed amici consent to the request for consolidation, intervention, and/or participation as an amicus, respectively, then there is a presumption that the First IRP Panel will permit the request.
3. In the event that no IRP Panel is in place for the First IRP when a request for consolidation, intervention, and/or participation as an amicus is made, the request will be suspended pending IRP Panel appointment for the First IRP.
4. In the event that requests for consolidation or intervention are granted, the restrictions on written statements set forth in [Rule 6] shall apply to each Claimant and Intervening Party individually unless the First IRP Panel concludes otherwise, in its discretion consistent with the Purposes of the IRP.

***Consolidation***

5. Consolidation of Disputes may be appropriate when the First IRP Panel concludes that there is a sufficient common nucleus of operative facts among multiple IRPs such that the joint resolution of the Disputes would foster a more just and efficient resolution of the Disputes than addressing each Dispute individually.
6. All motions requesting consolidation shall be submitted to the IRP Provider with copies to ICANN and any Parties to an IRP which is the subject of a request for consolidation. Motions [shall] be submitted:
  - a. within [21/28] days of the publication of the later IRP; and
  - b. within 60 days of the publication of the First IRPunless the First IRP Panel, in its discretion, deems that the Purposes of the IRP are furthered by accepting such a motion after such time limits. The IRP Provider will direct the request to the First IRP Panel.
7. All motions for consolidation must be accompanied by the appropriate filing fee and must explain why the Disputes should be consolidated, in other words:
  - a. What the common nucleus of operative facts is; and

- b. Why consolidation would foster a more just and efficient resolution than addressing the Disputes individually.
8. All motions for consolidation shall also include a declaration by the moving Party that:
  - a. All statements it makes in its motion are true and correct;
  - b. It is not intentionally misleading the Panel; and
  - c. It is not filing the motion and seeking to consolidate for improper purposes. Improper purposes include, but are not limited to:
    - i. Having the primary intent to delay either IRP action or the resolution of an underlying proceeding;
    - ii. Seeking to harass ICANN, another IRP Claimant or any other Party or potential Party to the IRP proceedings; or
    - iii. Having the primary intent of impacting the composition of the IRP Panel that will hear either Dispute, be that through the selection or changing of the IRP Panelists who will hear either dispute.”
9. ICANN and any IRP Claimant who is a Party to an IRP which is the subject of a request for consolidation shall be entitled to submit a statement in response within [21/28 days] of receipt of the motion to consolidate.
10. The IRP Provider or the respective IRP Panels may stay either or both IRPs in their discretion pending a decision on the motion for consolidation, provided that the non-moving Parties shall be granted an opportunity to make representations on any such stay to their IRP.
11. In considering whether to consolidate, the First IRP Panel should consider all relevant circumstances, including, without limitation:
  - a. The views of all the Parties.
  - b. The progress already made in the IRPs, including whether allowing the request would require previous decisions to be reopened, steps to be repeated, or other duplication of work.
  - c. Whether an IRP Panel has been appointed in more than one of the IRPs and, if so, whether the same or different Panelists have been appointed.
  - d. Whether granting a request to consolidate would create a conflict of interest for an already-appointed Panelist.
  - e. How consolidation better furthers the Purposes of the IRP generally, as compared to the proceedings continuing independently.
12. The First IRP Panel should endeavor to make a decision on a motion for consolidation as soon as possible and in any event shall do so within [15] days of final submissions. The First IRP Panel shall provide a brief statement of the reasons for their decision.
13. When IRPs are consolidated, they shall be consolidated into the First IRP, unless otherwise agreed by all Parties or the First IRP Panel finds otherwise.

14. The First IRP Panel shall continue in place for the consolidated IRP proceedings unless one or more of the Panelists is unable to continue and withdraws due to conflict of interest, in which case the Party whose Panelist withdraws will select a further Panelist in accordance with Rule 3.
15. If Disputes are consolidated, each existing Dispute shall no longer be subject to further separate consideration, provided that the First IRP Panel shall have the discretion to determine otherwise.
16. Excluding materials exempted from production under Rule 8 (Exchange of Information) below, the First IRP Panel shall direct that all materials related to the consolidated Dispute be made available to Parties that have had their claim consolidated unless a Claimant or ICANN objects that such disclosure will harm commercial confidentiality, personal data, or trade secrets; in which case the First IRP Panel shall rule on objection and provide such information as is consistent with the Purposes of the IRP and the appropriate preservation of confidentiality as recognized in Article 4 of the Bylaws.

### ***Intervention***

17. Any person or entity qualified to be a Claimant pursuant to the standing requirement set forth in the Bylaws may intervene in an IRP with the permission of the First IRP Panel, as provided below. This applies whether or not the person, group, or entity participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)).
18. Intervention is appropriate to be sought when the prospective participant does not already have a pending related Dispute, and the potential claims of the prospective participant stem from a common nucleus of operative facts based on such briefing as the First IRP Panel may order in its discretion.
19. In addition, the Supporting Organization(s) which developed a Consensus Policy involved when a Dispute challenges a material provision(s) of an existing Consensus Policy in whole or in part shall have a right to intervene as an Intervening Party to the extent of such challenge. Supporting Organization rights in this respect shall be exercisable through the chair of the Supporting Organization.
20. Any person, group, or entity who intervenes pursuant to this section will become a Party in the existing Independent Review Process and have all of the rights and responsibilities of other Parties in that matter and be bound by the outcome to the same extent as any other Party.
21. All motions requesting permission to intervene shall be submitted to the IRP Provider, who will direct the request to the First IRP Panel and copy the existing Parties to the IRP. Motions should be submitted within [21/28 days] of the publication of the IRP unless the First IRP Panel, in its discretion, deems that the Purposes of the IRP are furthered by accepting such a motion after that time limit. Filing a motion to intervene does not stop

the clock on the intervener's own time to bring an IRP unless the First IRP Panel exceeds the time for decision-making referred to at [Rule 7(26)] below, and so a potential intervener should consider whether they will be at risk of being out of time, should the motion be rejected.

22. All requests to intervene must be accompanied by the appropriate filing fee, contain the same information as a written statement of a Dispute and, explain why the right to intervene should be granted, in other words:
  - a. What the common nucleus of operative facts is; and
  - b. Why allowing intervention would foster a more just and efficient resolution than addressing the Disputes individually.
  
23. All motions for intervention shall include a declaration by the moving Party that:
  - a. All statements it makes in its motion are true and correct;
  - b. It is not intentionally misleading the Panel; and
  - c. It is not filing the motion and seeking to intervene for improper purposes. Improper purposes include, but are not limited to:
    - i. Having the primary intent to delay the IRP action or the resolution of an underlying proceeding;
    - ii. Seeking to harass ICANN, another IRP Claimant or any other Party or potential Party to the IRP proceedings; or
    - iii. Having the primary intent of selecting the IRP Panelists who will hear either Dispute.
  
24. ICANN and any IRP Claimant who is a Party to an IRP which is the subject of a request for intervention shall be entitled to submit a statement in response within [21/28] days of receipt of the motion to intervene.
  
25. In considering whether to allow intervention, the First IRP Panel should consider all relevant circumstances, including, without limitation:
  - a. The views of all the Parties.
  - b. The progress already made in the IRP, including whether allowing the request would require previous decisions to be reopened, steps to be repeated, or other duplication of work.
  - c. Whether granting a request to intervene would create a conflict of interest for an already-appointed Panelist.
  
26. The First IRP Panel should endeavor to make a decision on a motion for intervention as soon as possible and in any event shall do so within [15] days of final submissions. The First IRP Panel shall provide a brief statement of the reasons for their decision.
  
27. The First IRP Panel shall continue in place after an application for intervention is granted unless one or more of the Panelists is unable to continue, and withdraws, due to conflict of interest, in which case the Party whose Panelist withdraws will select a further Panelist in accordance with Rule 3.

28. Excluding materials exempted from production under Rule 8 (Exchange of Information) below, the First IRP Panel, shall direct that all materials related to the Dispute be made available to Parties that have intervened unless a Claimant or ICANN objects that such disclosure will harm commercial confidentiality, personal data, or trade secrets; in which case the First IRP Panel shall rule on objection and provide such information as is consistent with the Purposes of the IRP and the appropriate preservation of confidentiality as recognized in Article 4 of the Bylaws.

*Participation as an Amicus Curiae*

29. Any person, group, or entity that has a material interest relevant to the Dispute, even if they do not satisfy the standing requirements for a Claimant set forth in the Bylaws, may seek leave to participate as an amicus curiae before an IRP Panel, subject to the limitations set forth in [Rule 7(29)-(34)]. The purpose of participation as an amicus curiae is to assist the IRP Panel by offering information, expertise or other input that has a bearing on the issues in the Dispute. For the avoidance of doubt, an amicus curiae is not a Party to the Dispute. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the Dispute and, upon request of such person, group, or entity to participate as an amicus curiae, then there is a presumption that the IRP Panel will permit the request:
- a. A person, group, or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)) the outcome of which is material and relevant to the Dispute;
  - b. If the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group, or entity that was part of a contention set for the string at issue in the IRP; and
  - c. If the briefings before the IRP Panel significantly refer to actions taken by a person, group, or entity that is external to the Dispute, such external person, group, or entity.
30. All requests to participate as an amicus must meet the requirements of the written statement (set out at Rule 6), specify the interest of the amicus curiae, include the same declaration as referred to at [Rule 7(8)] and must be accompanied by the appropriate filing fee.
31. All requests to participate as an amicus curiae shall be submitted to the IRP Provider, who shall direct them on to the IRP Panel if already in place. Where no IRP Panel is in place the IRP Provider shall refer the request to the IRP Panel once appointed. Requests to participate as an amicus must be made within 30 days of the publication of the Independent Review Process unless the IRP Panel, in its discretion, deems that the Purposes of the IRP are furthered by accepting such a request after 30 days.
32. ICANN and any IRP Claimant who is a Party to an IRP which is the subject of a request for participation as an amicus shall be entitled to submit a statement in response within



[21/28] days of receipt of the motion to participate as an amicus.

33. If the IRP Panel determines, in its discretion, subject to the conditions set forth above, that the proposed amicus curiae has a material interest relevant to the Dispute and that they have information, expertise or other input that has a bearing on the issues in the Dispute which is likely to assist the IRP Panel, it shall allow participation by the amicus curiae.
34. In addition to the written statement referred to at [Rule 7(30)] above, any person participating as an amicus curiae may, at the request and in the discretion of the IRP Panel, submit to the IRP Panel written briefing(s) on the Dispute or on such discrete questions as the IRP Panel may request briefing, subject to such deadlines, page limits, rights of the Parties to file briefings in response and other procedural rules as the IRP Panel may specify in its discretion.
35. A person, group, or entity participating as an amicus curiae shall be given access to all publicly available written statements, evidence, motions, procedural orders and other materials in the Dispute in a timely manner. Where a Claimant or ICANN claims that any such materials are confidential, the IRP Panel shall determine in its discretion<sup>6</sup> whether and if so the extent to which and terms on which such material documents must be made available to a person, group, or entity participating as an amicus curiae.

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<sup>6</sup> During the pendency of these Supplementary Rules, in exercising its discretion in allowing the participation of amicus curiae and in then considering the scope of participation from amicus curiae, the IRP PANEL shall lean in favor of allowing broad participation of an amicus curiae as needed to further the purposes of the IRP set forth at Section 4.3 of the ICANN Bylaws