

# ICANN IRP

Presentation to GNSO Council

May 16, 2019

David McAuley

(Member, IRP Implementation Oversight Team)

- IRP in Bylaws:
  - First appearing in Bylaws effective as of 15 December 2002;
  - Before that reference to ‘Advisory Committee on Independent Review’;
  - IANA Transition - CCWG Accountability, Final Report, [Annex 07](#):
    - Proposed new IRP, with binding/enforceable decisions and a revised standard of review.
  - ‘Current’ IRP adopted as part of IANA Transition in October, 2016.

- IRP – **Pre-IANA** Transition - highlights:
  - Review of **Board** decisions/actions claimed to be inconsistent with Articles/Bylaws;
  - More narrow standard of review than current IRP;
  - IRP Panel could **recommend** that ICANN stay action/decision pending ruling;
  - Board had to **consider** IRP Panel decision.

- IRP – **Post-IANA** Transition - highlights:
  - Review of actions/inactions by **Board, individual directors, officers or staff members** claimed to be (1) inconsistent with Articles/Bylaws, (2) failure to enforce IANA contract, and (3) claims regarding PTI service complaints. (Four specific exclusions dealing with certain EC claims (relating to PDPs), ccTLD delegations and re-delegations, and claims regarding Internet numbering resources and protocol parameters.)
  - Broader, **'de novo'** standard of review than prior IRP;
  - IRP Panel **authority to 'declare'** whether action/inaction violates Articles or Bylaws (and address IANA contract/PTI services issues);
  - Broader interim-relief authority;
  - Panel decisions (subject to appeal to full standing panel) are **final, binding, enforceable**.

- IRP generally:
  - Form of arbitration – intended as an efficient alternative to litigation;
  - Claimants – any natural or legal person, group, or entity (includes EC, SOs, ACs);
  - IRP Panel – three members selected from Standing Panel;
  - De Novo review;
  - Appeals to full standing panel;
  - Final, binding, enforceable decisions.
  - Intended to create precedent.

(Bylaw 4.3 for IRP and Annex D, Section 4.2, for EC IRP.)

- IRP – Matters on the (near) horizon for GNSO Council:
  - Selection of ‘Standing Panel’:
    - See Bylaw Section 4.3(j) for SO/AC responsibilities in this regard.
  - Role in adding members to the IRP-IOT:
    - See Bylaw Section 4.3(n) – the IOT has requested addition of members.
  - Role in initiating and/or supporting Empowered Community IRP:
    - See Bylaw Annex D, Section 4.2.

- IRP Implementation Oversight Team (IOT) – Bylaw section 4.3(n)
- Work to do:
  - Finish Supplementary Rules of Procedure;
  - Develop rules for Cooperative Engagement Process;
  - Recommend training for Standing Panel;
  - Develop recall process for members of Standing Panel;
  - Consider designing specialized rules for PTI service complaints;
  - Develop procedures if ICANN elects not to respond to an IRP;
  - Develop standards/rules governing appeals
  - Consider developing additional independence requirements for panelists.