ICANN IRP

Presentation to GNSO Council
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• 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.