

# ISPCP

**The Internet Service Provider and Connectivity Provider Constituency**

**ICANN**

30 January 2017

## **ISPCP Comments on ICANN Updated Supplementary Procedures for Independent Review Process**

The Internet Service Provider and Connectivity Providers Constituency (ISPCP) welcomes the opportunity to submit comments on the ICANN Updated Supplementary Procedures for Independent Review Process (IRP). See: <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>.

The ISPCP's comment on the Updated Supplementary Procedures for Independent Review Process, a.) expresses concern about the proposal of a 45-day clock, b.) recommends an explicit definition that the Standing Panel is comprised of at least seven members, and c.) recommends including sections relevant to the language accommodations for dispute resolution, as recommended by the International Center for Dispute Resolution.

### **ISPCP Concern About Timing and Time Tables**

The ISPCP is concerned that the time limit of 45 days is impractical given the ICANN process and nature of such rules of procedure. Specifically, the ICANN bylaws indicate the rules of procedure “are intended to ensure fundamental fairness and due process” and “shall be informed by international arbitration norms”. As there are *currently no time limits to bring forth an IRP*, moving to a system that now has a 45-day clock would not be acceptable especially as current precedent demonstrates there being no time limit for any such matters. The proposed time limits are both unreasonable and novel, so could reduce ICANN's accountability to the community.

The proposed times do not reflect the reality of how slowly ICANN's processes move. Policy development, board adoption and actual implementation can take years. How can someone be expected to determine if they will be harmed by a policy within the suggested 45 days, when such harm could take years to fully appreciate? This novel approach seeks to impose an arbitration system on largely non-contracted parties, who have not consented in contractual form to these rules of procedure. This is vastly different from a situation where two parties explicitly consent to dispute resolution terms via a contract. Due to this, ICANN should and must err on the side of caution when allowing a party to bring an action.

Therefore, the ISPCP encourages ICANN to reconsider those time limits and revert to timelines that are more practical for stakeholders engaged in the Independent Review Process. This would include, if necessary, a moratorium on the adoption of any time limits in the Updated Supplemental Procedures, until some further studies can be done to analyze the potential impacts of such time limits.

### **Other Matters of Support, Clarification, or Concern**

The ISPCP supports the efforts of the IRP Implementation Oversight Team, the ICANN legal team, and the external counsel of the CCWG-Accountability in reviewing, updating, and providing these Supplementary Procedures for comment. The need for review procedures that adhere to international standards is an admirable goal for an organization such as ICANN given its depth and breadth of global activity and impact.

Thus, the ISPCP supports the use of the International Centre for Dispute Resolution's (ICDR) procedures to amend the current Review Process:

1. The ISPCP supports the explicit statement that the Standing Panel is comprised of at least seven members, and recommends retaining this language in the final draft submitted to the ICANN Board. However, while the number of members is indeed mentioned in a prior section of the ICANN Bylaws, the ISPCP believes it would be useful to clarify and emphasize the size of the Standing Panel for the benefit of those claimants bringing a dispute.
2. The ISPCP is concerned about the lack of mention of language accommodations. The ICDR, in its guidance documents for drafting dispute resolution documents, recommends including a description of the language of the arbitration immediately following the definition of the place(s) of arbitration. While the draft text adequately describes the importance of location and region by allowing virtual hearings, the question of language or accommodation is not addressed. The ISPCP asks that appropriate text regarding language be included. Again, even if the expectations for language and ICANN's are defined elsewhere in the Bylaws, it is beneficial to restate them here in the IRP section.

The ISPCP thanks members, volunteers and the IRP Implementation Oversight Team, the ICANN legal team, and the external counsel of the CCWG-Accountability for their work on this process and stands ready to assist.

This comment was drafted by the ISPCP's Public Comment Drafting team. It was approved for submission through the regular January 2017 ISPCP mailing list approval process.

Submitted on behalf of the ISPCP Constituency.

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