

## Introduction to the Third IOT Public Consultation

Thank you for taking the time to comment on the Independent Review Process (IRP) Implementation Oversight Team's (IOT) latest proposed updates to the IRP Supplementary Procedures.

### Background

The IRP is a key accountability mechanism under ICANN's Bylaws (Article 4.3), which provides for third-party review of Board or Staff actions or inactions which are alleged to exceed ICANN's Mission or otherwise be inconsistent with its Articles or Bylaws. The procedural rules for the IRP are set out in *Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP Supplementary Procedures)*, which supplement the [International Arbitration Rules](#) of the IRP Provider, the International Center for Dispute Resolution (ICDR). The current version of the IRP Supplementary Procedures is the [Interim IRP Supplementary Procedures](#).

Shortly following the amendment of ICANN's Bylaws as a result of the IANA Transition and work of the CCWG-Accountability, the IRP-IOT was convened to review and revise the IRP Supplementary Procedures.

Between 2016 and 2019, the first iteration of the IRP-IOT worked to develop draft IRP Supplementary Procedures and held two public consultations:

- [First Public Consultation](#), closing in February 2017, on a set of draft updated IRP Supplementary Procedures. The page for the First Public Consultation includes links to all of the public comments received and to the staff-prepared Report of those comments. After reviewing this public comment input, revisions were made to the draft IRP Supplementary Procedures and one specific issue (time for submission of an IRP) was identified as likely to benefit from further community input.
- [Second Public Consultation](#), closing in August 2018, on issues related to the time for submission of an IRP. The page for the Second Public Consultation includes links to all public comments received and the staff-prepared Report of those comments. The public comment input on this issue was not reviewed and acted upon by the first iteration of the IRP-IOT but has been reviewed by the reconvened IRP-IOT.

In October 2018, the ICANN Board adopted the Interim IRP Supplementary Procedures. These Procedures were developed by the IOT to align the rules with the Bylaws as updated on 1 October 2016 in the event that an IRP was initiated while the IOT continued working on a final set of Updated IRP Supplementary Procedures. The Interim IRP Supplementary Procedures do not take into consideration the community input from the Second Public Consultation.

In January 2020, the IRP-IOT was reconvened with additional volunteers to continue reviewing and revising the IRP Supplementary Procedures, including the input from the Second Public

Consultation and feedback from ICANN Legal and Practitioner members of the IRP-IOT about their experiences with the IRP. The IRP-IOT now seeks further community input.

### **Third Public Consultation**

The IRP-IOT seeks comments on its proposed updates to the following rules in the IRP Supplementary Procedures, using the Interim IRP Supplementary Procedures as a starting point for further edits:

- Rule 3 - Panel selection
- Rule 4 - Time for Filing, including:
  - 4A – Initiation of an IRP
  - 4B – Time to File
  - 4C - Timing considerations for a Claimant to File an IRP following a Request for Reconsideration (RFR)
  - 4D - Limited Circumstances for Requesting Permission to File After the 24 month limit
- Rule 5B - Translation
- Rule 7 - Consolidation, Intervention and Participation as an Amicus

The IRP-IOT would appreciate comments on the principles and recommendations proposed to update the IRP Supplementary Procedures together with the specific language being presented at this time.

It is important to note that the IRP-IOT considered all the comments made in previous public consultations when working on this proposed update to the IRP Supplementary Procedures.

The draft IRP Supplementary Procedures include several proposed time limits for taking various steps in the proceedings. These time limits are intended to allow Parties sufficient time, but in the context of the Bylaws' expectation that IRP proceedings should be concluded within 6 months. The IRP-IOT intends to review all timings (especially for consistency) before finalizing the IRP Supplementary Procedures, but it welcomes community input on these timings.

With respect to Rule 4, dealing with the time to file an IRP, the proposals are the result of substantial discussion amongst the members of the IRP-IOT and compromise. There was substantial opposition in the First Public Consultation input to the proposed 12-month repose, i.e. a 12-month time limit after which no IRP could be brought, irrespective of whether a cause of action had yet accrued. In the Second Public Consultation, the IRP-IOT sought input on a proposal that there should be no repose, which received good, but not unanimous, support in the public comments received, with some respondents contending that some period of repose of longer than 12 months, should be adopted. The proposals put forward in this public consultation do not reflect a full consensus of the IRP-IOT but do reflect a compromise that a

consensus of the group could agree to put out to public comment. More explanation is contained within the Rule 4 document.

Given the breadth of the proposed changes, the IRP-IOT is providing the following for comments:

- The current Interim IRP Supplementary Procedures.
- A red-line version of the proposed changes to the IRP Supplementary Procedures against the current Interim IRP Supplementary Procedures, which includes Rationales (in Italics and highlighted in grey) explaining why each major change is being proposed. The IOT is not seeking comments on the Rationales that are included in this document as they are simply meant to be explanations as to why the IOT is proposing these changes. These will not be included in the final updated version of the IRP Supplementary Procedures.
- A clean version of the proposed updates to the IRP Supplementary Procedures.

The IRP-IOT has, where possible, maintained the same numbering system currently used in the Interim IRP Supplementary Procedures to facilitate readers' referencing of that document for this public consultation. Where a new Rule is proposed, for example within Rule 4, a letter has been added. However, this does not imply that this numbering system will be used in the final version of the updated IRP Supplementary Procedures.

The IRP-IOT asks commenters to clearly identify which sections of which documents they are referring to in their comments.