

**Independent Review Process - Implementation Oversight Team (IRP-IOT) –
Proposed updates to the IRP Supplementary Procedure**

NCSG Comments

August 02, 2024

About NCSG

Noncommercial Stakeholders Group (NCSG) represents the interests of non-commercial domain name registrants and end-users in formulating the Domain Name System policy within the Generic Names Supporting Organisation (GNSO). We are proud to have individual and organizational members in over 160 countries, and as a network of academics, Internet end-users, civil society actors, etc, we represent a broad cross-section of the global Internet community. Since our predecessor's inception in 1999, we have facilitated global academic and civil society engagement in support of ICANN's mission, stimulating an informed citizenry and building their understanding of relevant DNS policy issues.

About this Public Comment

<https://www.icann.org/en/public-comment/proceeding/irp-iot-proposed-updates-to-the-irp-supplementary-procedures-03-07-2024>

The NCSG appreciates the opportunity to provide input on the proposed updates to the IRP Supplementary Procedures as presented by the Independent Review Process Implementation Oversight Team (IRP-IOT). We recognize the importance of these procedures in ensuring accountability and transparency within ICANN's operations. Our comments focus on the specific rules under review: Rule 3 (Panel Selection), Rule 4 (Time for Filing), Rule 5B (Translation), and Rule 7 (Consolidation, Intervention, and Participation as an Amicus).

Rule 3 - Panel Selection

NCSG position: We support the proposed updates to Rule 3 regarding panel selection. However, we emphasize the need for additional safeguards to ensure the independence

and neutrality of panelists. The selection process should include clear criteria that prioritize candidates with no financial or material interest in the outcomes of IRP disputes.

Rationale: As outlined in the "Interim Supplementary Procedures for ICANN IRP," the IRP is a critical accountability mechanism designed to ensure that ICANN adheres to bylaw 4.3. Panelists must be impartial to maintain the integrity of this process. Independence and neutrality should be the cornerstone of the selection process, and any panelist with a direct or indirect interest in the dispute should be disqualified.

NCSG recommendation: The selection criteria should explicitly include provisions disqualifying individuals with any potential conflicts of interest. Additionally, the process should involve a diverse group of stakeholders in the vetting process to enhance the legitimacy of the selections. The selection of IRP panelists should be done in an accountable manner. Continuous review of stated accountability rules considering adoption of the new standards. Regional diversity should be considered in the concern of panelist selection. The selected IRP panelist should be updated & the ICDR's administrator too with approval from both ACs & SOs based on specific skills and qualifications. State a Note Well about independent review for IRP panelists without conflict of interest under the respect of the ICANN Bylaws. IRP panelists should have an accurate understanding of their role together with the ability to evaluate with neutrality. Select panelists and their alternatives for replacement in case of issues such as IRP Panelists resigning. The final step of IRP panelists selection depends on the approval from the Board and representatives from ACs & SOs.

Rule 4 - Time for Filing

NCSG position: We have concerns regarding the proposed time limits under Rule 4, specifically Rule 4C, which governs the timing considerations for filing an IRP following a Request for Reconsideration (RFR). We believe that the proposed 24-month limit for filing is overly restrictive and may unfairly bar legitimate claims.

Rationale: While it is important to have deadlines to ensure the timely resolution of disputes, the complexity of issues within ICANN and the often slow pace of internal decision-making can make a 24-month limit impractical. This is especially true in cases where the affected parties may need considerable time to gather evidence and prepare their cases. As noted in the "IRP-IOT Comparison"

document, some members did not support the consensus on this rule, which highlights the ongoing concerns within the community.

NCSG recommendation: We propose extending the time limit for filing an IRP to 36 months, with provisions for exceptions in cases where claimants can demonstrate that delays were beyond their control. This approach would provide a more equitable balance between timeliness and access to the IRP mechanism.

Rule 5B - Translation

NCSG position: We support the inclusion of Rule 5B, which mandates the translation of key documents into the languages of the involved parties. However, we believe that the rule should go further to ensure that language barriers do not impede access to the IRP process.

Rationale: The global nature of ICANN's work means that participants come from diverse linguistic backgrounds. The current rule, as proposed in the "Clean" document, requires translation only when requested by a party. However, this reactive approach may place an undue burden on non-English speakers, who might be unaware of their right to request translation.

NCSG Recommendation: We recommend that ICANN proactively offer translation services for all official documents related to IRP cases and ensure that all parties are informed of their right to request translations at the outset of the process.

Rule 7 - Consolidation, Intervention, and Participation as an Amicus

NCSG position: We agree with the proposed updates to Rule 7, which allows for consolidation, intervention, and amicus participation. However, we suggest that the criteria for intervention and amicus participation be further clarified to prevent misuse of these provisions.

Rationale: The ability for third parties to participate in the IRP process is essential for transparency and inclusivity. However, without clear criteria, there is a risk that these provisions could be used to delay proceedings or by parties with interests not aligned with the goals of the IRP. The "IRP-IOT Comparison" document

acknowledges the need for balance, and we believe further clarification is necessary to ensure that this balance is maintained.

NCSG recommendation: We recommend that ICANN establish specific criteria for the acceptance of interventions and amicus briefs, focusing on the relevance and potential impact of the third party's input on the dispute. Additionally, the rules should include provisions to expedite the review and acceptance of such submissions to prevent unnecessary delays. ICANN should control the accessibility of material to share with Amicus.