

**Revised Independent Review Process – Suggested Bylaws Revisions
Redline against Existing Bylaws Provisions**

ARTICLE IV, Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, ICANN shall have in place a separate process for independent third-party review of Board actions. “Action” for this purpose includes a decision by the Board to act and a failure of the Board to act by the Board when it has the power to do so.

2. Any person materially affected by a Board Action, submit a request for independent review of that Action. The grounds on which review may be requested are:

- a. that the independent review applicant is a person or entity that the Board should have known was likely to be materially affected by the Board Action and the applicant:

 - i. was not given a reasonable opportunity to make submissions to the Board before the decision was made;
 - ii. was not given reasonable access to the information on the basis of which the Board was proposing to act;
- b. that the Action was not within the scope of the authority conferred on ICANN, or was not reached in compliance with any applicable procedures mandated by ICANN’s Articles of Incorporation, Bylaws, the procedural provisions of ICANN’s Accountability and Transparency Frameworks and Principles, or the published decisions of the Board;
- c. that the Action took place after the Board took into account considerations that were irrelevant (with regard to the circumstances of the matter) and the Board based its decision in whole or substantial part on those irrelevant considerations;
- d. that the Action took place after the Board failed to take into account all considerations provided to the Board that were relevant and necessary to be taken into account having regard for the circumstances of the matter;
- e. that the Action was not in good faith in that its primary purpose was a purpose contrary to the mission and core values of ICANN (that is, for an ulterior purpose);
- f. that the Action was not the result of a genuine consideration of the circumstances of the particular case;
- g. that the Action was wholly outside the scope of a reasonable exercise of power by the Board;
- h. that the Action was based on facts for which there was no support; or
- i. that the Action detrimentally interfered with the existing rights or interests of the applicant and was a disproportionate exercise of the power being exercised by the Board in that ICANN’s objective could practicably and reasonably be achieved by other means which did not

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have such an impact on the applicant or others.

3. Requests for such independent review shall be referred to an Independent Review Body ("IRB"), consisting of a standing panel of internationally recognized relevant technical experts as well as internationally recognized jurists, including persons with senior appellate judge experience. Members should be appointed for either a set period of five years or until they resign.

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4. The independent review process shall be administered by an international dispute resolution provider appointed from time to time by ICANN ("the IRB Provider").

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5. Subject to the approval of the Board, the IRB Provider shall establish operating rules and procedures, which shall implement and be consistent with this Section 3.

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6. Either party may elect that the request for independent review be considered by a three-member IRB panel; in the absence of any such election, the issue shall be considered by a one-member IRB panel.

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7. The IRB Provider shall determine a procedure for the IRB standing panelists.

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8. The IRB shall have the authority to:

a. request additional written submissions from the party seeking independent review, the Board, the Supporting Organizations, or from other parties;

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b. if the IRB deems the request for independent review was justified, require the Board to reconsider the matter, and give advice to the Board as to the respects in which the request was justified, and if the IRB considers it appropriate to do so, to advise the Board as to how the Board might ensure that in reconsidering the matter the Board uses fair procedures, and is faithful to its Articles of Incorporation, Bylaws, procedural provisions of ICANN's Accountability and Transparency Frameworks and Principles, or the published decisions of the Board; and

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c. recommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRB.

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9. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the IRB.

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10. In order to keep the costs and burdens of independent review as low as possible, the IRB should conduct its proceedings by e-mail and otherwise via the Internet to the maximum extent feasible. Where necessary, the IRP may hold meetings by telephone.

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11. The IRB shall adhere to conflicts-of-interest policy stated in the IRB Provider's operating rules and procedures, as approved by the Board.

12. Declarations of the IRB shall be in writing. The IRB shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all costs of the IRB Provider and the IRB fees, but in an extraordinary case the IRB may in its declaration allocate up to half of the costs of the IRB Provider and IRB fees to the prevailing party based upon the circumstances, including a consideration of the reasonableness of the parties' positions and their contribution to the public interest. Each party to the independent review proceedings shall bear its own expenses.

13. The IRB operating procedures, and all petitions, claims, and declarations, shall be posted on the ICANN Website when they become available.

14. The IRB may, in its discretion, grant a party's request to keep certain information confidential, such as trade secrets.

15. Where feasible, the Board shall consider the IRB declaration at the Board's next meeting.

a. The Board shall endeavor to follow, where practicable, the recommendations of the IRB unless the Board determines that such recommendations are not in the best interest(s) of ICANN.

b. If the Board determines that the IRB's recommendation is not in the best interest(s) of ICANN, the Board shall direct the publication of a report to the community setting forth the Board's reasons for that determination. The minutes of the Board's discussion may serve as the report.

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