

# **EXHIBIT 1**

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Interim Supplementary Procedures for Internet Corporation for Assigned Names and Numbers (ICANN) Independent Review Process (IRP)<sup>1</sup>

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Revised as of [Day, Month], 2018

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These interim procedures (Interim Supplementary Procedures) supplement the International Centre for Dispute Resolution’s international arbitration rules in accordance with the independent review process set forth in Article 4, Section 4.3<sup>2</sup> of ICANN’s Bylaws. These procedures apply to all independent review process proceedings filed after 1 May 2018.

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In drafting these Interim Supplementary Procedures, the IRP Implementation Oversight Team (IOT) applied the following principles: (1) remain as close as possible to the current Supplementary Procedures or the Updated Supplementary Procedures (USP) posted for public comment on 28 November 2016<sup>3</sup>; (2) to the extent public comments received in response to the

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<sup>1</sup> CONTEXTUAL NOTE: These Interim Supplementary Procedures are intended to supplement the ICDR RULES. Therefore, when the ICDR RULES appropriately address an item, there is no need to re-state that Rule within the Supplemental Procedures. The IOT, through its work, may identify additional places where variance from the ICDR RULES is recommended, and that would result in addition or modification to the Supplemental Procedures.

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<sup>2</sup> Formatting has been updated to conform with the Bylaws approved by the ICANN Board of Directors on 22 July 2017 (hereafter the July 2017 ICANN Bylaws).

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<sup>3</sup> See <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>

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USP reflected clear movement away from either the current Supplementary Procedures or the USP, to reflect that movement unless doing so would require significant drafting that should be properly deferred for broader consideration; (3) take no action that would materially expand any part of the Supplementary Procedures that the IOT has not clearly agreed upon, or that represent a significant change from what was posted for comment and would therefore require further public consultation prior to changing the supplemental rules to reflect those expansions or changes.

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## 1. Definitions

In these Interim Supplementary Procedures:

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A CLAIMANT is any legal or natural person, group, or entity including, but not limited to the Empowered Community, a Supporting Organization, or an Advisory Committee, that has been materially affected by a Dispute.<sup>4</sup> To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.

COVERED ACTIONS are any actions or failures to act by or within ICANN committed by the Board, individual Directors, Officers, or Staff members that give rise to a DISPUTE.<sup>5</sup>

DISPUTES are defined as:

(A) Claims that COVERED ACTIONS violated ICANN's Articles of Incorporation or Bylaws, including, but not limited to, any action or inaction that:

- 1) exceeded the scope of the Mission;
- 2) resulted from action taken in response to advice or input from any Advisory Committee or Supporting Organization that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 3) resulted from decisions of process-specific expert panels that are claimed to be inconsistent with the Articles of Incorporation or Bylaws;
- 4) resulted from a response to a DIDP (as defined in Section 22.7(d)) request that is claimed to be inconsistent with the Articles of Incorporation or Bylaws; or

<sup>4</sup> ICANN Bylaws, Article 4, Section 4 3(b)(i)

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<sup>5</sup> ICANN Bylaws, Article 4, Section 4 3(b)(ii)

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5) arose from claims involving rights of the EC as set forth in the Articles of Incorporation or Bylaws;

(B) Claims that ICANN, the Board, individual Directors, Officers or Staff members have not enforced ICANN’s contractual rights with respect to the IANA Naming Function Contract; and

(C) Claims regarding the Post-Transition IANA entity service complaints by direct customers of the IANA naming functions that are not resolved through mediation.<sup>6</sup>

EMERGENCY PANELIST refers to a single member of the STANDING PANEL designated to adjudicate requests for interim relief<sup>7</sup> or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for interim relief.

IANA refers to the Internet Assigned Numbers Authority.

ICDR refers to the International Centre for Dispute Resolution, which has been designated and approved by ICANN’s Board of Directors as the IRP Provider (IRPP) under Article 4, Section 4.3 of ICANN’s Bylaws.

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ICANN refers to the Internet Corporation for Assigned Names and Numbers.

INDEPENDENT REVIEW PROCESS or IRP refers to the procedure that takes place upon the Claimant’s filing of a written statement of a DISPUTE with the ICDR.<sup>8</sup>

IRP PANEL refers to the panel of three neutral members appointed to decide the relevant DISPUTE.<sup>9</sup>

IRP PANEL DECISION refers to the final written decision of the IRP PANEL that reflects the reasoned analysis of how the DISPUTE was resolved in compliance with ICANN’s Articles and Bylaws.<sup>10</sup>

<sup>6</sup> ICANN Bylaws, Article 4, Section 4 3(b)(iii)

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<sup>7</sup> ICANN Bylaws, Article 4, Section 4 3(p)

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<sup>8</sup> ICANN Bylaws, Article IV, Section 4 3(d)

<sup>9</sup> ICANN Bylaws, Article IV, Section 4 3(k)(i)

<sup>10</sup> Change recommended for consistency with ICANN Bylaws, which refer to an “IRP PANEL decision” rather than a “declaration” (although the same Bylaws state that an IRP PANEL will “declare” certain findings) See ICANN Bylaws, Article 4, Section 4 3(k)(v) & Section 4 3(p)(v)(G)

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ICDR RULES refers to the ICDR’s rules in effect at the time the relevant request for independent review is submitted.

PROCEDURES OFFICER refers to a single member of the STANDING PANEL designated to adjudicate requests for consolidation, intervention, and joinder, or, if a STANDING PANEL is not in place at the time the relevant IRP is initiated, it shall refer to the panelist appointed by the ICDR pursuant to its International Arbitration Rules relating to appointment of panelists for interim relief.

PURPOSES OF THE IRP are to hear and resolve Disputes for the reasons specified in the ICANN Bylaws, Article 4, Section 4.3(a).

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STANDING PANEL refers to an omnibus standing panel of at least seven members from which three-member IRP PANELS are selected to hear and resolve DISPUTES consistent with the purposes of the IRP.<sup>11</sup>

## 2. Scope<sup>12</sup>

The ICDR<sup>13</sup> will apply these Interim Supplementary Procedures, in addition to the ICDR RULES, in all cases submitted to the ICDR in connection with Article 4, Section 4.3 of the ICANN Bylaws after the date these Interim Supplementary Procedures go into effect. In the event there is any inconsistency between these Interim Supplementary Procedures and the ICDR RULES, these Interim Supplementary Procedures will govern. These Interim Supplementary Procedures and any amendment of them shall apply in the form in effect at the time the request for an INDEPENDENT REVIEW is commenced. IRPs commenced prior to the adoption of these Interim Supplementary Procedures shall be governed by the Supplementary Procedures in effect at the time such IRPs were commenced.

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In the event that any of these Interim Supplementary Procedures are subsequently amended, the rules surrounding the application of those amendments will be defined therein.

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~~Deleted: such amendments will not apply to any IRPs pending at the time such amendments come into force unless a party successfully demonstrates that application of the former Supplementary Procedures would be unjust and impracticable to the requesting party and application of the amendments would not materially disadvantage any other party’s substantive rights. Any party to a then-pending IRP may oppose the request for application of the amended Supplementary Procedures. Requests to apply interim updated amended supplementary procedures will be resolved by the IRP PANEL in the exercise of its discretion.~~

<sup>11</sup> ICANN Bylaws, Article 4, Section 4.3(i)(i)

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<sup>12</sup> IOT has engaged in substantial discussion concerning retroactive application of the USP to IRPs in progress when the USPs are enacted. Full changes relating to those discussions are not reflected herein. The full provision on applicability of future rules is expected to be fully set out in the full set of Updated Supplementary Procedures, which will then apply to how those procedures will be considered for application.

<sup>13</sup> ICANN Bylaws, Article 4, Section 4.3(m)

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### 3. Composition of Independent Review Panel<sup>14</sup>

The IRP PANEL will comprise three panelists selected from the STANDING PANEL, unless a STANDING PANEL is not in place when the IRP is initiated.<sup>15</sup> The CLAIMANT and ICANN shall each select one panelist from the STANDING PANEL, and the two panelists selected by the parties will select the third panelist from the STANDING PANEL. A STANDING PANEL member’s appointment will not take effect unless and until the STANDING PANEL member signs a Notice of STANDING PANEL Appointment affirming that the member is available to serve and is independent and impartial pursuant to the ICDR RULES.<sup>16</sup> In addition to disclosing relationships with parties to the DISPUTE, IRP PANEL members must also disclose the existence of any material relationships with ICANN, and/or an ICANN Supporting Organization or Advisory Committee. In the event that a STANDING PANEL is not in place when the relevant IRP is initiated or is in place but does not have capacity due to other IRP commitments, the CLAIMANT and ICANN shall each select a qualified panelist from outside the STANDING PANEL, and the two panelists selected by the parties shall select the third panelist. In the event that the two party-selected panelists cannot agree on the third panelist, the RULES shall apply to selection of the third panelist.<sup>17</sup> In the event that a panelist resigns, is incapable of performing the duties of a panelist, or is removed and the position becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of this Section [3] of these Interim Supplementary Procedures.

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### 4. Time for Filing

An INDEPENDENT REVIEW is commenced when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after a CLAIMANT<sup>18</sup> becomes aware of the material effect of the action or inaction giving rise to the DISPUTE; provided, however, that a statement of a DISPUTE may not be filed more than twelve (12) months from the date of such action or inaction.

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Comment [A3]: On 30 April 2018 David McAuley proposed to the IRP IOT that the repose issue be put “into a second ‘bucket’-the bucket of rules that are not yet ready for release. This would be a de facto moratorium while the IOT does further work on the notion of repose.”

However, we still need to include some level of guidance to the panel on timing, and so we propose that this be included because it aligns with what was included in the public comment, and it is far easier to move to a less restrictive rule in the full update than it would be to move to a more restrictive rule. As public comment is needed in order to make a substantial change to get to no repose, if the outcome of the further public comment supports no repose, and that is in alignment with the global public interest, the final set of rules will incorporate that standard

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<sup>14</sup> IOT reached tentative agreement as of 8 February 2018 on adding a statement about independence, impartiality, and obligation to disclose material relationship with ICANN, Supporting Organization, Advisory Committee, or any other Participant in an IRP proceeding

<sup>15</sup> ICANN Bylaws, Article 4, Section 4 3(k)(i)

<sup>16</sup> ICDR International Dispute Resolution Procedures, Art 13 “Impartiality and Independence of Arbitrator.” at Pg 21-22, available at [https://www.icdr.org/sites/default/files/document\\_repository/International\\_Dispute\\_Resolution\\_Procedures\\_English.pdf](https://www.icdr.org/sites/default/files/document_repository/International_Dispute_Resolution_Procedures_English.pdf)

<sup>17</sup> ICANN Bylaws, Article 4, Section 4 3(k)(ii)

<sup>18</sup> This issue remains under discussion within the IOT

In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.<sup>19</sup>

## 5. Conduct of the Independent Review<sup>20</sup>

It is in the best interests of ICANN and of the ICANN community for IRP matters to be resolved expeditiously and at a reasonably low cost while ensuring fundamental fairness and due process consistent with the PURPOSES OF THE IRP. The IRP PANEL shall consider accessibility, fairness, and efficiency (both as to time and cost) in its conduct of the IRP.

The IRP PANEL should conduct its proceedings by electronic means to the extent feasible. Where necessary,<sup>21</sup> the IRP Panel may conduct live telephonic or video conferences.

The IRP PANEL should conduct its proceedings with the presumption that in-person hearings shall not be permitted. The presumption against in-person hearings may be rebutted only under extraordinary circumstances, where, upon motion by a Party, the IRP PANEL determines that the party seeking an in-person hearing has demonstrated that: (1) an in-person hearing is necessary for a fair resolution of the claim; (2) an in-person hearing is necessary to further the PURPOSES OF THE IRP; and (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of an in-person hearing.<sup>22</sup> In no circumstances shall in-person hearings be permitted for the purpose of introducing new arguments or evidence that could have been previously presented, but were not previously presented, to the IRP PANEL.

All hearings shall be limited to argument only unless the IRP Panel determines that a the party seeking to present witness testimony has demonstrated that such testimony is: (1) necessary for a fair resolution of the claim; (2) necessary to further the PURPOSES OF THE IRP; and (3) considerations of fairness and furtherance of the PURPOSES OF THE IRP outweigh the time and financial expense of witness testimony and cross examination.

<sup>19</sup> Currently there are no rules on the timely payment of fees. Inclusion of this language is designed to provide firmer guidance and to ensure that a Claimant is committed to the process.

<sup>20</sup> [IOT agreement to set 15 day deadline for written statements as of 8 Feb 2018](#). [IOT has engaged in substantial discussion concerning translation services. Because translation services were not considered in the initial public comment, consideration of how translation services might be incorporated into the Supplemental Procedures is reserved for the full update.](#)

<sup>21</sup> Some members of the IOT would prefer to remove the phrase, “where necessary.”

<sup>22</sup> ICANN continues to have serious concerns about the impact of in-person hearings on cost and time to resolution, and prefers to specify that the requisite demonstration must be made by clear and convincing evidence.

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All evidence, including witness statements, must be submitted in writing 15 days in advance of any hearing.

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With due regard to Bylaw Section 4.3(s), the IRP PANEL retains responsibility for determining the timetable for the IRP proceeding.<sup>23</sup> Any violation of the IRP PANEL's timetable may result in the assessment of costs pursuant to Section 10 of these Interim Supplementary Procedures.<sup>24</sup>

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## 6. Written Statements<sup>25</sup>

The initial written submissions of the parties shall not exceed 25 pages each in argument, double-spaced and in 12-point font.<sup>26</sup> All necessary and available evidence in support of the CLAIMANT'S Claim(s) should be part of the initial written submission.<sup>27</sup> Evidence will not be included when calculating the page limit. The parties may submit expert evidence in writing, and there shall be one right of reply to that expert evidence.<sup>28</sup> The IRP PANEL may request additional written submissions from the party seeking review, the Board, the Supporting Organizations, or from other parties.<sup>29</sup>

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In addition, the IRP PANEL may grant a request for additional written submissions from any person or entity admitted as a party or as an amicus upon the showing of a compelling basis for such request. In the event the IRP PANEL grants a request for additional written submissions, any such additional written submission shall not exceed 15 pages, double-spaced and in 12-point font.

<sup>23</sup> ICANN Bylaws, Article 4, Section 4 3(o)(vi)

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<sup>24</sup> This is an issue for future consideration within the IOT This provision maintains the status quo until there is an agreed recommendation to change

<sup>25</sup> IOT tentative agreement as of 8 February 2018

<sup>26</sup> This is an issue for future consideration within the IOT This provision maintains the status quo until there is a recommendation to change that is agreed upon

<sup>27</sup> Language modified to reflect broadened scope of IRPs See ICANN Bylaws, Article 4, Section 4 3(i) IOT tentative agreement as of 8 February 2018

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<sup>28</sup> This is an issue for future consideration within the IOT This provision maintains the status quo until there is a recommendation to change that is agreed upon

<sup>29</sup> ICANN Bylaws, Article 4, Section 4 3(o)(ii)

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7. Consolidation, Intervention, and Joinder<sup>30</sup>

At the request of a party, a PROCEDURES OFFICER may be appointed from the STANDING PANEL to consider requests for consolidation, intervention, and joinder. Requests for consolidation, intervention, and joinder are committed to the reasonable discretion of the PROCEDURES OFFICER. In the event that no STANDING PANEL is in place when a PROCEDURES OFFICER must be selected, a panelist may be appointed by the ICDR pursuant to its INTERNATIONAL ARBITRATION RULES relating to appointment of panelists for interim relief.

Consolidation of DISPUTES may be appropriate when the PROCEDURES OFFICER concludes that there is a sufficient common nucleus of operative fact such that the joint resolution of the DISPUTES would foster a more just and efficient resolution of the DISPUTES than addressing each DISPUTE individually. Any person or entity qualified to be a CLAIMANT may intervene in an IRP with the permission of the PROCEDURES OFFICER. CLAIMANT’S written statement of a DISPUTE shall include all claims that give rise to a particular DISPUTE, but such claims may be asserted as independent or alternative claims.<sup>31</sup>

Intervention and Joinder:

If a person, group, or entity participated in an underlying proceeding (a process-specific expert panel as per Bylaw Section 4.3(b)(iii)(A)(3)), (s)he/it/they shall receive notice that the INDEPENDENT REVIEW has commenced. Such a person, group, or entity shall have a right to intervene in the IRP as a CLAIMANT or as an amicus, as per the following:

Comment [A4]: NOTE to IOT: In the process of trying to include this agreed upon concept, we recommend that it is not yet ready for inclusion. There are a few issues: (1) we do not have a definition of a "party" here, and so we need to vet if we mean a claimant (2) for intervention as of right, we need to build in some sort of tethering to the dispute; it's not that anyone can join in, it should be that those with related issues may join. We also need to consider things like filing fees and other practical issues

i. (S)he/it/they may only intervene as a party if they satisfy the standing requirement to be a CLAIMANT as set forth in the Bylaws.

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ii. If the standing requirement is not satisfied, then (s)he/it/they may intervene as an amicus.

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Any person, group, or entity that did not participate in the underlying proceeding may intervene as a CLAIMANT if they satisfy the standing requirement set forth in the Bylaws. If the standing requirement is not satisfied, such persons may intervene as an amicus if the PROCEDURES OFFICER determines, in her/his discretion, that the proposed amicus has a material interest at

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<sup>30</sup> There is no existing Supplemental Rule. The CCWG Final Proposal and ICANN Bylaws recommend that these issue be considered by IOT. See ICANN Bylaws, Article 4, Section 4.3(n)(iv)(B); CCWG- Accountability Supplemental Final Proposal on Work Stream 1 Recommendations, 23 February 2016, Annex 07 – Recommendation #7, at § 20

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<sup>31</sup> See ICANN Bylaws, Article 4, Section 4.3(n)(iv)(B)

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stake directly relating to the injury or harm that is claimed by the CLAIMANT to have been directly and causally connected to the alleged violation at issue in the DISPUTE.

In addition, the Supporting Organization(s) which developed a Consensus Policy involved when a DISPUTE challenges a material provision(s) of an existing Consensus Policy in whole or in part shall have a right to intervene as a CLAIMANT to the extent of such challenge. Supporting Organization rights in this respect shall be exercisable through the chair of the Supporting Organization.]

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In the event that requests for consolidation, intervention, and joinder are granted, the restrictions on Written Statements set forth in Section 6 shall apply to all CLAIMANTS collectively (for a total of 25 pages exclusive of evidence) and not individually unless otherwise modified by the IRP PANEL in its discretion.

#### 8. Discovery Methods<sup>32</sup>

The IRP PANEL shall be guided by considerations of accessibility, fairness, and efficiency (both as to time and cost) in its consideration of discovery requests.

On the motion of either Party and upon finding by the IRP PANEL that such discovery is necessary to further the PURPOSES OF THE IRP, the IRP PANEL may order a Party to produce to the other Party, and to the IRP PANEL if the moving Party requests, documents or electronically stored information in the other Party's possession, custody, or control that the Panel determines are reasonably likely to be relevant and material<sup>33</sup> to the resolution of the CLAIMS and/or defenses in the DISPUTE and are not subject to the attorney-client privilege, the work product doctrine or otherwise protected from disclosure by applicable law. Where such discovery method(s) are allowed,<sup>34</sup> all Parties shall be granted the equivalent discovery rights.

A motion for document discovery shall contain a description of the specific documents, classes of documents or other information sought that relate to the subject matter of the Dispute along with an explanation of why such documents or other information are likely to be relevant and material to resolution of the Dispute.

Depositions, interrogatories, and requests for admission will not be permitted.

<sup>32</sup> There is no existing Supplemental Rule. The [CCWG Final Proposal and] ICANN Bylaws recommend that discovery methods be considered by IOT. See ICANN Bylaws, [Article 4](#), Section 4 3(n)(iv)(D).

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<sup>33</sup> ICANN NOTE: Materiality requirement aligns with the ICDR Rules

<sup>34</sup> ICANN prefers to retain "in the extraordinary circumstances "

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In the event that a Party submits what the IRP PANEL deems to be an expert opinion, such opinion must be provided in writing and the other Party must have a right of reply to such an opinion with an expert opinion of its own.<sup>35</sup>

### 9. Summary Dismissal

An IRP PANEL may summarily dismiss any request for INDEPENDENT REVIEW where the Claimant<sup>36</sup> has not demonstrated that it has been materially affected by a DISPUTE. To be materially affected by a DISPUTE, a Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation.<sup>37</sup>

An IRP PANEL may also summarily dismiss a request for INDEPENDENT REVIEW that lacks substance or is frivolous or vexatious.<sup>38</sup>

### 10. Interim Measures of Protection

A Claimant may request interim relief from the IRP PANEL, or if an IRP PANEL is not yet in place, from the STANDING PANEL. Interim relief may include prospective relief, interlocutory relief, or declaratory or injunctive relief, and specifically may include a stay of the challenged ICANN action or decision in order to maintain the status quo until such time as the opinion of the IRP PANEL is considered by ICANN as described in ICANN Bylaws, Article 4, Section 4.3(o)(iv).<sup>39</sup>

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An EMERGENCY PANELIST shall be selected from the STANDING PANEL to adjudicate requests for interim relief. In the event that no STANDING PANEL is in place when an EMERGENCY PANELIST must be selected, a panelist may be appointed by the ICDR pursuant to ICDR RULES relating to appointment of panelists for interim relief. Interim relief may only be provided if the EMERGENCY PANELIST determines that the Claimant has established all of the following factors:

- (i) A harm for which there will be no adequate remedy in the absence of such relief;

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<sup>35</sup> Pursuant to the ICANN Bylaws, Article 4, Section 4 3(n) (Rules of Procedure), these Supplementary Rules will govern the format of proceedings. This is an issue for future consideration within the IOT ICANN Bylaws, Article 4, Section 4 3(n)(iv)(D)

<sup>36</sup> ICANN Bylaws, Article 4, Section 4 3(b)(i)

<sup>37</sup> ICANN Bylaws, Article 4, Section 4 3(o)(i)

<sup>38</sup> ICANN Bylaws, Article 4, Section 4 3(o)(i)

<sup>39</sup> ICANN Bylaws, Article 4, Section 4 3(p)

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(ii) Either: (A) likelihood of success on the merits; or (B) sufficiently serious questions related to the merits; and

(iii) A balance of hardships tipping decidedly toward the party seeking relief.<sup>40</sup>

Interim relief may be granted on an ex parte basis in circumstances that the EMERGENCY PANELIST deems exigent, but any Party whose arguments were not considered prior to the granting of such interim relief may submit any opposition to such interim relief, and the EMERGENCY PANELIST must consider such arguments, as soon as reasonably possible. The EMERGENCY PANELIST may modify or terminate the interim relief if the EMERGENCY PANELIST deems it appropriate to do so in light of such further arguments.

#### 11. Standard of Review<sup>41</sup>

Each IRP PANEL shall conduct an objective, de novo examination of the DISPUTE.

- a. With respect to COVERED ACTIONS, the IRP PANEL shall make findings of fact to determine whether the COVERED ACTION constituted an action or inaction that violated ICANN'S Articles or Bylaws.
- b. All DISPUTES shall be decided in compliance with ICANN's Articles and Bylaws, as understood in the context of the norms of applicable law and prior relevant IRP decisions.
- c. For Claims arising out of the Board's exercise of its fiduciary duties, the IRP PANEL shall not replace the Board's reasonable judgment with its own so long as the Board's action or inaction is within the realm of reasonable business judgment.
- d. With respect to claims that ICANN has not enforced its contractual rights with respect to the IANA Naming Function Contract, the standard of review shall be whether there was a material breach of ICANN's obligations under the IANA Naming Function Contract, where the alleged breach has resulted in material harm to the Claimant.

<sup>40</sup> ICANN Bylaws, Article 4, Section 4 3(p)

<sup>41</sup> The standard of review is dictated by ICANN's Bylaws and cannot be modified or updated without a corresponding Bylaws amendment

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- e. IRPs initiated through the mechanism contemplated at Article 4, Section 4.3(a)(iv) of ICANN’s Bylaws shall be subject to a separate standard of review as defined in the IANA Naming Function Contract.<sup>42</sup>

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**12. IRP PANEL Decisions<sup>43</sup>**

IRP PANEL DECISIONS shall be made by a simple majority of the IRP PANEL.<sup>44</sup> If any IRP PANEL member fails to sign the IRP PANEL DECISION, the IRP PANEL member shall endeavor to provide a written statement of the reason for the absence of such signature.<sup>45</sup>

**13. Form and Effect of an IRP PANEL DECISION**

- a. IRP PANEL DECISIONS shall be made in writing, promptly by the IRP PANEL, based on the documentation, supporting materials and arguments submitted by the parties.<sup>46</sup>
- b. The IRP PANEL DECISION shall specifically designate the prevailing party as to each Claim.<sup>47</sup>
- c. Subject to Article 4, Section 4.3 of ICANN’s Bylaws, all IRP PANEL DECISIONS shall be made public, and shall reflect a well-reasoned application of how the DISPUTE was resolved in compliance with ICANN’s Articles and Bylaws, as understood in light of prior IRP PANEL DECISIONS decided under the same (or an equivalent prior) version of the provision of the Articles and Bylaws at issue, and norms of applicable law.

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<sup>42</sup> ICANN Bylaws, Article 4, Section 4 3(i)

Deleted: May 2016

<sup>43</sup> The ICANN Bylaws, Article 4, Section 4 3(k)(v), refer to an “IRP PANEL decision” (although they also state that an IRP PANEL will “declare” certain findings in Article 4, Section 4 3(o)(iii))

Deleted: Article IV

<sup>44</sup> ICANN Bylaws, Article 4, Section 4 3(k)(v)

Deleted: May 2016

<sup>45</sup> This is an issue for future consideration within the IOT This provision maintains the status quo until there is a recommendation to change that is agreed upon

Deleted: Article IV

Deleted: Article IV

Deleted: May 2016

Deleted: Article IV

<sup>46</sup> ICANN Bylaws, Article 4, Sections (s), (t) The ICANN Bylaws require the IRP PANEL to “issu[e] an early scheduling order and its written decision no later than six months after the filing of the Claim, except as otherwise permitted under the Rules of Procedure ” While the current language maintains the status quo, consideration should be given to whether maintaining the status quo is sufficient given the clear directive in, and the need to comply with, the ICANN Bylaws

Deleted: May 2016

Deleted: Article IV

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Deleted: May 2016

Deleted: May 2016

<sup>47</sup> ICANN Bylaws, Article 4, Section 4 3(t)

Deleted: Article IV

Deleted: 31 October 2016

Deleted: Updates to

#### 14. Appeal of IRP PANEL Decisions<sup>48</sup>

An IRP PANEL DECISION may be appealed to the full STANDING PANEL sitting en banc within 60 days of the issuance of such decision. The en banc STANDING PANEL will review such appealed IRP PANEL DECISION based on a clear error of judgment or the application of an incorrect legal standard. The en banc STANDING PANEL may also resolve any disputes between panelists on an IRP PANEL or the PROCEDURES OFFICER with respect to consolidation of CLAIMS or intervention or joinder.

#### 15. Costs

The IRP PANEL shall fix costs in its IRP PANEL DECISION.<sup>49</sup> Except as otherwise provided in Article 4, Section 4.3(e)(ii) of ICANN's Bylaws, each party to an IRP proceeding shall bear its own legal expenses, except that ICANN shall bear all costs associated with a Community IRP, as defined in Article 4, Section 4.3(d) of ICANN's Bylaws, including the costs of all legal counsel and technical experts.

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Except with respect to a Community IRP, the IRP PANEL may shift and provide for the losing party to pay administrative costs and/or fees of the prevailing party in the event it identifies the losing party's Claim or defense as frivolous or abusive.<sup>50</sup>

<sup>48</sup> There is no existing Supplemental Rule. The proposed text is based upon the CCWG Final Proposal, Annex 7, ¶ 16, which provides for en banc appeal "based on a clear error of judgment or the application of an incorrect legal standard."

<sup>49</sup> This is an issue for future consideration within the IOT. This provision maintains the status quo until there is a recommendation to change that is agreed upon.

<sup>50</sup> Bylaws, Article 4, Section 4.3(r).

Deleted: May 2016

Deleted: July 2017

Deleted: Article IV

## **EXHIBIT 2**

**Subject:** Added language to the amicus section

**Date:** Tuesday, October 16, 2018 at 11:10:31 AM Pacific Daylight Time

**From:** Samantha Eisner

**To:** Bernard Turcotte, McAuley, David

**CC:** Elizabeth Le

Here is a proposed addition (in underline), including a footnote, for the amicus section:

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)) shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. Similarly, if the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.<sup>[1]</sup> The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

[1] During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in considering the scope of briefing available from *amicus curiae*, the IRP PANEL shall also consider how the purposes of the IRP set forth at Section 4.3(a) of the ICANN Bylaws are furthered, including the need for coherent, consistent and just resolution of DISPUTES.

I hope with this language you are supportive of moving this to the IOT to get clearance on an interim set of procedures. If we are to delay and not have the procedures in place, all entities that have interests in the matters that will proceed to IRP will be impaired.

As we discussed on the call, if we were to give other associated rights for defense of claims or other things that would create a new type of "party" (i.e., not claimant but not amicus) participation in the IRP, I do not think that we have that dictate at this time from the IOT. What I did not mention on the call is that I believe that would be a significant modification from what was posted for comment,



and so even if we could build out procedures that allow that happen in a manner that is consistent with the IRP, we'd still need to take that out for public comment.

Thanks,

Sam

---

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

## **EXHIBIT 3**

**Subject:** RE: [Ext] note to IOT  
**Date:** Wednesday, October 17, 2018 at 8:53:22 AM Pacific Daylight Time  
**From:** McAuley, David  
**To:** Samantha Eisner, Contact Information Redacted  
**CC:** Elizabeth Le

Sam, Liz,

I am attaching a few changes to Sam's suggested language, shown in track change format.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

---

**From:** Samantha Eisner <Samantha.Eisner@icann.org>  
**Sent:** Wednesday, October 17, 2018 10:28 AM  
**To:** McAuley, David Contact Information Redacted; Bernard Turcotte Contact Information Redacted

**Cc:** Elizabeth Le <elizabeth.le@icann.org>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

I am about to step onto a plane, so please copy in Liz Le on your reply.

The language of the note works for me if you are OK with the language proposed yesterday.

Attached is a redline of the rules with the updates that I believe we agreed upon already, other than this new joinder language.

Thanks,

Sam

—

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

---

**From:** David McAuley Contact Information Redacted  
**Date:** Wednesday, October 17, 2018 at 7:17 AM  
**To:** Samantha Eisner <[samantha.eisner@icann.org](mailto:samantha.eisner@icann.org)>, "Bernard Turcotte (Contact Information Redacted

**Subject:** [Ext] note to IOT

Sam, Bernie:

Below is note I would send to IOT if we arrive at language.

I am working on Sam's email and will reply shortly

David

--

Dear members of the IRP IOT:

First, a word of thanks to those who participated in two productive calls during the week of October 8<sup>th</sup>.

As mentioned by Sam, we have an opportunity to have the board accept and approve 'interim rules of procedure' at ICANN 63 but we must move quickly to do so. In my opinion, establishing interim rules is timely (considering all the work we have done since October 2016) and appropriate.

Attached is the draft of the interim rules meant to capture what we discussed on the phone in the recent calls. Please take a good look.

I would like to note one particular area – that of Joinder etc. (Rule 7). You may recall that I, wearing my **participant** (not leader) hat, had suggested certain text and with Malcom's help we seemed to have achieved compromise.

As Sam attempted to draft the compromise in this respect she encountered difficulty in capturing appropriate language that she felt would be consistent with bylaws. Sam reached out to me in my participant capacity and we discussed over the ensuing days and so the language you will see there is not exactly as discussed on the calls. The language is acceptable to me in my participant capacity. I felt these discussions were appropriate inasmuch as I had raised the issue as participant and knew I would forward the resulting language to the list – a way to try to take advantage of board action at next week's meeting.

Could you please review these rules and if you have any concern please post to the list by 23:59 UTC on October 19. If we are agreed I will forward for board action.

And then, of course, we will turn to the very few remaining items for final rules – they should be able to follow in pretty quick order.

Best regards to all,  
David

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3)) shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. Similarly, if the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP shall be deemed to have a material interest relevant to the DISPUTE and shall be permitted to ~~may~~ participate as an *amicus* before the IRP PANEL. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity shall be deemed to have a material interest relevant to the DISPUTE and ~~may~~ shall be permitted to participate as an *amicus* before the IRP PANEL.

All requests to participate as an *amicus* must contain the same information as the Written Statement (set out at Section 6), specify the interest of the *amicus curiae*, and must be accompanied by the appropriate filing fee.

If the PROCEDURES OFFICER determines, in his or her discretion subject to the conditions set forth above, that the proposed *amicus curiae* has a material interest relevant to the DISPUTE, he or she shall allow participation by the *amicus curiae*. Any person participating as an *amicus curiae* may submit to the IRP Panel written briefing(s) on the DISPUTE or on such discrete questions as the IRP PANEL may request briefing, in the discretion of the IRP PANEL and subject to such deadlines, page limits, and other procedural rules as the IRP PANEL may specify in its discretion.<sup>[1]</sup> The *amicus curiae* shall be informed of the proceedings in the same manner as the parties thereto. The IRP PANEL shall determine in its discretion what materials related to the DISPUTE to make available to a person participating as an *amicus curiae*.

[1] During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in considering the scope of briefing available from *amicus curiae*, the IRP PANEL shall ~~also~~ consider how the purposes of the IRP set forth at Section 4.3(a) of the ICANN Bylaws are furthered, including the need for coherent, consistent and just resolution of DISPUTES. In addition, the IRP PANEL shall allow persons, groups or entities with a material interest relevant to the DISPUTE to participate broadly as an *amicus curiae* consistent with ICANN's pertinent bylaws, including, without limitation, Bylaw Sections 4.3(a) and 4.3(n)(iv)(B).

## **EXHIBIT 4**

**Subject:** Re: [Ext] note to IOT  
**Date:** Thursday, October 18, 2018 at 10:11:47 AM Pacific Daylight Time  
**From:** Samantha Eisner  
**To:** McAuley, David, Contact Information Redacted  
**CC:** Elizabeth Le

Hi David -

Thanks for your language. Attached is a further redline. The first paragraph appears to have a lot of changes, but what it does is:

- 1) adopt your language of "shall participate";
- 2) makes that language applicable to all three types of situations; and
- 3) is reframed in a bulleted list so as to avoid repeating the same participation right 3 times.

You'll see my comment that I do not recommend accepting the line regarding how amicus are informed. It creates a lot of vagueness in the document, and the procedures don't have other discussion about how parties are "informed". Again, this is something that we can continue discussing for the final set.

Finally, I reorganized the footnote to return to one sentence, as there was some duplication and reference to Bylaws sections that do not appear to apply to amicus. In this reorganization, I incorporate that concept of "broad participation" that was not in my previous sentence.

Please let us know your thoughts. It would be good if we could get this out either later today or by tomorrow .

Thanks,

Sam

---

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

---

**From:** McAuley, David Contact Information Redacted  
**Sent:** Wednesday, October 17, 2018 8:53 AM  
**To:** Samantha Eisner; Contact Information Redacted  
**Cc:** Elizabeth Le  
**Subject:** RE: [Ext] note to IOT

Sam, Liz,

I am attaching a few changes to Sam's suggested language, shown in track change format.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

---

**From:** Samantha Eisner <Samantha.Eisner@icann.org>  
**Sent:** Wednesday, October 17, 2018 10:28 AM  
**To:** McAuley, David Contact Information Redacted; Bernard Turcotte Contact Information Redacted

**Cc:** Elizabeth Le <elizabeth.le@icann.org>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

I am about to step onto a plane, so please copy in Liz Le on your reply.

The language of the note works for me if you are OK with the language proposed yesterday.

Attached is a redline of the rules with the updates that I believe we agreed upon already, other than this new joinder language.

Thanks,

Sam

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Direct Dial: +1 310 578 8631

---

**From:** David McAuley Contact Information Redacted  
**Date:** Wednesday, October 17, 2018 at 7:17 AM  
**To:** Samantha Eisner <[samantha.eisner@icann.org](mailto:samantha.eisner@icann.org)>, "Bernard Turcotte Contact Information Redacted"  
**Subject:** [Ext] note to IOT

Sam, Bernie:

Below is note I would send to IOT if we arrive at language.



I am working on Sam's email and will reply shortly

David

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Attached is the draft of the interim rules meant to capture what we discussed on the phone in the recent calls. Please take a good look.

I would like to note one particular area – that of Joinder etc. (Rule 7). You may recall that I, wearing my **participant** (not leader) hat, had suggested certain text and with Malcom's help we seemed to have achieved compromise.

As Sam attempted to draft the compromise in this respect she encountered difficulty in capturing appropriate language that she felt would be consistent with bylaws. Sam reached out to me in my participant capacity and we discussed over the ensuing days and so the language you will see there is not exactly as discussed on the calls. The language is acceptable to me in my participant capacity. I felt these discussions were appropriate inasmuch as I had raised the issue as participant and knew I would forward the resulting language to the list – a way to try to take advantage of board action at next week's meeting.

Could you please review these rules and if you have any concern please post to the list by 23:59 UTC on October 19. If we are agreed I will forward for board action.

And then, of course, we will turn to the very few remaining items for final rules – they should be able to follow in pretty quick order.

Best regards to all,  
David

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. The following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, if requested, shall be permitted to participate as an *amicus* before the IRP PANEL:

- i. A person, group or entity that participated in an underlying proceeding (a process-specific expert panel per ICANN Bylaws, Article 4, Section 4.3(b)(iii)(A)(3));
- ii. ~~shall be deemed to have a material interest relevant to the DISPUTE and may participate as an *amicus* before the IRP PANEL. Similarly, if the IRP relates to an application arising out of ICANN's New gTLD Program, a person, group or entity that was part of a contention set for the string at issue in the IRP; and~~
- iii. ~~shall be deemed to have a material interest relevant to the DISPUTE and shall be permitted to participate as an *amicus* before the IRP PANEL. If the briefings before the IRP PANEL significantly refer to actions taken by a person, group or entity that is external to the DISPUTE, such external person, group or entity shall be deemed to have a material interest relevant to the DISPUTE and may shall be permitted to participate as an *amicus* before the IRP PANEL.~~

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**Commented [SE1]:** The procedures do not discuss what it means to be "informed" of proceedings, so I recommend removal, as this could lead to vagueness. I'm also not sure what this means. ICANN will always maintain the online docket of filings and orders. If this is anticipating different notification requirements on ICDR, we'd have to obtain their authorization before we could put this into effect.

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[1] During the pendency of these Interim Supplementary Rules, in exercising its discretion in allowing the participation of *amicus curiae* and in then considering the scope of briefing available participation from *amicus curiae*, the IRP PANEL shall also lean in favor of allowing broad participation of an *amicus curiae* as needed to further consider how the purposes of the IRP set forth at Section 4.3(a) of the ICANN Bylaws are furthered, including the need for coherent, consistent and just resolution of DISPUTES. In addition, the IRP PANEL shall allow persons, groups or entities with a material interest relevant to the DISPUTE to participate broadly as an *amicus curiae* consistent with ICANN's pertinent bylaws including without limitation Bylaw Sections 4.3(a) and 4.3(n)(iv)(B).

**Commented [SE2]:** They have to have a material interest to be an *amicus*, so nothing is added by this phrase.

**Commented [SE3]:** Reference to 4.3(a) is captured above.

**Commented [SE4]:** This refers to setting of rules for joinder and consolidation, which is handled separately in these procedures and reference thereto would likely lead to confusion.

## **EXHIBIT 5**

**Subject:** RE: [Ext] note to IOT

**Date:** Thursday, October 18, 2018 at 11:21:48 AM Pacific Daylight Time

**From:** McAuley, David

**To:** Samantha Eisner, Contact Information Redacted

**CC:** Elizabeth Le

Thank you, Sam,

This is much better but I offer a few small (I believe) points of clarification:

First – change ‘if requested’ in first paragraph to ‘upon request of person, group or entity seeking to so participate’

Second – in ‘iii’ change ‘to actions taken’ to ‘to actions taken, or interests held,’

And, third, change reference in final line of footnote from ‘4.3(a)’ to ‘4.3’

I have a doctor’s appointment at 3pm here and will be away (your time in Barcelona) until around 10pm I suspect.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

---

**From:** Samantha Eisner <Samantha.Eisner@icann.org>  
**Sent:** Thursday, October 18, 2018 1:12 PM  
**To:** McAuley, David Contact Information Redacted; Contact Information Redacted  
**Cc:** Elizabeth Le <elizabeth.le@icann.org>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

Hi David -

Thanks for your language. Attached is a further redline. The first paragraph appears to have a lot of changes, but what it does is:

- 1) adopt your language of "shall participate";
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Please let us know your thoughts. It would be good if we could get this out either later today or by tomorrow .

Thanks,

Sam

---

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

---

**From:** McAuley, David Contact Information Redacted  
**Sent:** Wednesday, October 17, 2018 8:53 AM  
**To:** Samantha Eisner; Contact Information Redacted  
**Cc:** Elizabeth Le  
**Subject:** RE: [Ext] note to IOT

Sam, Liz,

I am attaching a few changes to Sam's suggested language, shown in track change format.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

---

**From:** Samantha Eisner <[Samantha.Eisner@icann.org](mailto:Samantha.Eisner@icann.org)>  
**Sent:** Wednesday, October 17, 2018 10:28 AM  
**To:** McAuley, David Contact Information Redacted; Bernard Turcotte Contact Information Redacted  
**Cc:** Elizabeth Le <[elizabeth.le@icann.org](mailto:elizabeth.le@icann.org)>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

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Thanks,

Sam

—

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Direct Dial: +1 310 578 8631

---

**From:** David McAuley Contact Information Redacted  
**Date:** Wednesday, October 17, 2018 at 7:17 AM  
**To:** Samantha Eisner <[samantha.eisner@icann.org](mailto:samantha.eisner@icann.org)>, "Bernard Turcotte Contact Information Redacted"  
**Subject:** [Ext] note to IOT

Sam, Bernie:

Below is note I would send to IOT if we arrive at language.

I am working on Sam's email and will reply shortly

David

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As Sam attempted to draft the compromise in this respect she encountered difficulty in capturing appropriate language that she felt would be consistent with bylaws. Sam reached out to me in my participant capacity and we discussed over the ensuing days and so the language you will see there is not exactly as discussed on the calls. The language is acceptable to me in my participant capacity. I felt these discussions were appropriate inasmuch as I had raised the issue as participant and knew I would forward the resulting language to the list – a way to try to take advantage of board action at next week's meeting.

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And then, of course, we will turn to the very few remaining items for final rules – they should be able to follow in pretty quick order.

Best regards to all,  
David

## **EXHIBIT 6**



**Subject:** Re: [Ext] note to IOT

**Date:** Thursday, October 18, 2018 at 2:05:50 PM Pacific Daylight Time

**From:** Samantha Eisner

**To:** McAuley, David, Contact Information Redacted

**CC:** Elizabeth Le

Hi David - everything sounds good other than the "interests held" - it's not clear what this means in light of the rest of the section or what conduct or minimum standard we are saying qualifies for mandatory amicus status. Also, we don't want to develop the amicus as a right as an easy way to plead in friendly parties by saying "x also has a significant interest in this outcome".

Would you be OK if we moved this to the IOT with all but that phrase included?

---

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

---

**From:** McAuley, David Contact Information Redacted  
**Sent:** Thursday, October 18, 2018 11:21 AM  
**To:** Samantha Eisner; Contact Information Redacted  
**Cc:** Elizabeth Le  
**Subject:** RE: [Ext] note to IOT

Thank you, Sam,

This is much better but I offer a few small (I believe) points of clarification:

First – change ‘if requested’ in first paragraph to ‘upon request of person, group or entity seeking to so participate’

Second – in ‘iii’ change ‘to actions taken’ to ‘to actions taken, or interests held,’

And, third, change reference in final line of footnote from ‘4.3(a)’ to ‘4.3’

I have a doctor’s appointment at 3pm here and will be away (your time in Barcelona) until around 10pm I suspect.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

**From:** Samantha Eisner <Samantha.Eisner@icann.org>  
**Sent:** Thursday, October 18, 2018 1:12 PM  
**To:** McAuley, David Contact Information Redacted; Contact Information Redacted  
**Cc:** Elizabeth Le <elizabeth.le@icann.org>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

Hi David -

Thanks for your language. Attached is a further redline. The first paragraph appears to have a lot of changes, but what it does is:

- 1) adopt your language of "shall participate";
- 2) makes that language applicable to all three types of situations; and
- 3) is reframed in a bulleted list so as to avoid repeating the same participation right 3 times.

You'll see my comment that I do not recommend accepting the line regarding how amicus are informed. It creates a lot of vagueness in the document, and the procedures don't have other discussion about how parties are "informed". Again, this is something that we can continue discussing for the final set.

Finally, I reorganized the footnote to return to one sentence, as there was some duplication and reference to Bylaws sections that do not appear to apply to amicus. In this reorganization, I incorporate that concept of "broad participation" that was not in my previous sentence.

Please let us know your thoughts. It would be good if we could get this out either later today or by tomorrow .

Thanks,

Sam

---

Samantha Eisner  
Deputy General Counsel, ICANN  
12025 Waterfront Drive, Suite 300  
Los Angeles, California 90094  
USA  
Direct Dial: +1 310 578 8631

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**From:** McAuley, David Contact Information Redacted

**Sent:** Wednesday, October 17, 2018 8:53 AM  
**To:** Samantha Eisner; Contact Information Redacted  
**Cc:** Elizabeth Le  
**Subject:** RE: [Ext] note to IOT

Sam, Liz,

I am attaching a few changes to Sam's suggested language, shown in track change format.

David

David McAuley  
Sr International Policy & Business Development Manager  
Verisign Inc.  
Contact Information Redacted

---

**From:** Samantha Eisner <[Samantha.Eisner@icann.org](mailto:Samantha.Eisner@icann.org)>  
**Sent:** Wednesday, October 17, 2018 10:28 AM  
**To:** McAuley, David Contact Information Redacted; Bernard Turcotte Contact Information Redacted  
**Cc:** Elizabeth Le <[elizabeth.le@icann.org](mailto:elizabeth.le@icann.org)>  
**Subject:** [EXTERNAL] Re: [Ext] note to IOT

I am about to step onto a plane, so please copy in Liz Le on your reply.

The language of the note works for me if you are OK with the language proposed yesterday.

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**From:** David McAuley Contact Information Redacted  
**Date:** Wednesday, October 17, 2018 at 7:17 AM  
**To:** Samantha Eisner <[samantha.eisner@icann.org](mailto:samantha.eisner@icann.org)>, "Bernard Turcotte Contact Information Redacted"  
**Subject:** [Ext] note to IOT

Sam, Bernie:

Below is note I would send to IOT if we arrive at language.

I am working on Sam's email and will reply shortly

David

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Dear members of the IRP IOT:

First, a word of thanks to those who participated in two productive calls during the week of October 8<sup>th</sup>.

As mentioned by Sam, we have an opportunity to have the board accept and approve 'interim rules of procedure' at ICANN 63 but we must move quickly to do so. In my opinion, establishing interim rules is timely (considering all the work we have done since October 2016) and appropriate.

Attached is the draft of the interim rules meant to capture what we discussed on the phone in the recent calls. Please take a good look.

I would like to note one particular area – that of Joinder etc. (Rule 7). You may recall that I, wearing my **participant** (not leader) hat, had suggested certain text and with Malcom's help we seemed to have achieved compromise.

As Sam attempted to draft the compromise in this respect she encountered difficulty in capturing appropriate language that she felt would be consistent with bylaws. Sam reached out to me in my participant capacity and we discussed over the ensuing days and so the language you will see there is not exactly as discussed on the calls. The language is acceptable to me in my participant capacity. I felt these discussions were appropriate inasmuch as I had raised the issue as participant and knew I would forward the resulting language to the list – a way to try to take advantage of board action at next week's meeting.

Could you please review these rules and if you have any concern please post to the list by 23:59 UTC on October 19. If we are agreed I will forward for board action.

And then, of course, we will turn to the very few remaining items for final rules – they should be able to follow in pretty quick order.

Best regards to all,  
David

## **EXHIBIT 7**

**Subject:** RE: [Ext] note to IOT

**Date:** Friday, October 19, 2018 at 6:08:25 AM Pacific Daylight Time

**From:** McAuley, David

**To:** Samantha Eisner, Contact Information Redacted

**CC:** Elizabeth Le

Thanks Sam,

OK – I can accept if we can then make one clarification – I suspect it will be ok:

To avoid any doubt that expressing some interests may exclude others, please add introductory language to the second sentence of the intro paragraph as follows:

Without limitation to the persons, groups, or entities that may have such a material interest, ...

Thus that paragraph would now read:

Any person, group, or entity that has a material interest relevant to the DISPUTE but does not satisfy the standing requirements for a CLAIMANT set forth in the Bylaws may participate as an *amicus curiae* before an IRP PANEL, subject to the limitations set forth below. Without limitation to the persons, groups, or entities that may have such a material interest, the following persons, groups, or entities shall be deemed to have a material interest relevant to the DISPUTE and, if requested, shall be permitted to participate as an *amicus* before the IRP PANEL:

David

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Sr International Policy & Business Development Manager  
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