

**IN THE MATTER OF AN INDEPENDENT REVIEW PROCESS BEFORE THE
INTERNATIONAL CENTER FOR DISPUTE RESOLUTION**

**FEGISTRY, LLC, MINDS + MACHINE GROUP, LTD., RADIX DOMAIN SOLUTIONS
PTE, LTD., and DOMAIN VENTURE PARTNERS PCC LIMITED**

Claimants

v.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS,

Respondent

ICDR Case No. 01-19-0004-0808

AFFIDAVIT OF SAMANTHA EISNER

31 August 2021

I, Samantha Eisner, declare as follows:

1. I am a Deputy General Counsel of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the respondent in this Independent Review Process (“IRP”). I have personal knowledge of the matters set forth herein and am competent to testify as to those matters. I make this declaration in support of ICANN’s Response to Claimants’ Request for Stay of Proceedings.

2. The provision of ICANN’s Bylaws calling for the creation of a Standing Panel was first included in ICANN’s April 2013 Bylaws:

There shall be an omnibus standing panel of between six and nine members with a variety of expertise, including jurisprudence, judicial experience, alternative dispute resolution and knowledge of ICANN’s mission and work from which each specific IRP Panel shall be selected. The panelists shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within the ICANN structure are not eligible to serve on the standing panel.¹

3. In October 2016, ICANN’s Bylaws were amended to provide additional guidance on the composition of the Standing Panel:

There shall be an omnibus standing panel of at least seven members (the “**Standing Panel**”) each of whom shall possess significant relevant legal expertise in one or more of the following areas: international law, corporate governance, judicial systems, alternative dispute resolution and/or arbitration. Each member of the Standing Panel shall also have knowledge, developed over time, regarding the DNS and ICANN’s Mission, work, policies, practices, and procedures.²

The October 2016 Bylaws also set forth the process for implementing the Standing Panel as follows:

(ii) ICANN shall, in consultation with the Supporting Organizations and Advisory Committees, initiate a four-step process to establish the Standing Panel to ensure the availability of a number of IRP panelists that is sufficient to allow for the timely

¹ April 2013 Bylaws, Art. IV, § 3(6), available at <https://www.icann.org/resources/pages/bylaws-2014-04-04-en>.

² 1 October 2016 Bylaws, Art. 4, § 4.3(j)(i), available at <https://www.icann.org/resources/pages/bylaws-2016-09-30-en>.

resolution of Disputes consistent with the Purposes of the IRP.

(A) ICANN, in consultation with the Supporting Organizations and Advisory Committees, shall initiate a tender process for an organization to provide administrative support for the IRP Provider (as defined in Section 4.3(m)), beginning by consulting the “IRP Implementation Oversight Team” (described in Section 4.3(n)(i)) on a draft tender document.

(B) ICANN shall issue a call for expressions of interest from potential panelists, and work with the Supporting Organizations and Advisory Committees and the Board to identify and solicit applications from well-qualified candidates, and to conduct an initial review and vetting of applications.

(C) The Supporting Organizations and Advisory Committees shall nominate a slate of proposed panel members from the well-qualified candidates identified per the process set forth in Section 4.3(j)(ii)(B).

(D) Final selection shall be subject to Board confirmation, which shall not be unreasonably withheld.³

These provisions have remained unchanged since October 2016 and are included in the current Bylaws, which were last amended as of 28 November 2019.

4. In late 2014 and 2015, the Cross Community Working Group to Enhance ICANN Accountability (“CCWG-Accountability”) viewed enhancements to the IRP as a cornerstone of its work. Once the CCWG-Accountability concluded its work, certain of its recommendations were embedded in the 1 October 2016 Bylaws, including the more detailed process for composition of the IRP Standing Panel. In accordance with the process set forth in the October 2016 Bylaws, ICANN facilitated meetings in 2018 with the leaders of its Supporting Organizations (“SOs”) and Advisory Committees (“ACs”) regarding the creation of a Standing Panel, developed a process roadmap for the establishment of the Standing Panel, created a document of pending issues to be decided by the SOs and ACs, and developed a skills evaluation matrix for Standing Panel candidates.

5. The Bylaws specify that the SOs and ACs shall collectively agree on one slate of panelists that will be submitted to the ICANN Board. To help the SOs and ACs determine how

³ 1 October 2016 Bylaws, Art. 4, § 4.3(j)(ii).

they would go about conducting this work, in September 2018, ICANN published a list of issues for the SOs and ACs to address regarding the establishment of a Standing Panel. Six sets of comments were received from the Country Code Names Supporting Organization (“ccNSO”) Council, the Generic Names Supporting Organization (“GNSO”) Council, the Intellectual Property Constituency (“IPC”), the Registry Stakeholder Group (“RySG”), the Noncommercial Stakeholder Group (“NCSG”), and the Security and Stability Advisory Committee (“SSAC”). ICANN received the last of the community inputs in October 2019 and proceeded to review those inputs. In March 2020, ICANN published a summary of the comments ICANN received regarding the Standing Panel and a summary of the next steps of the process.

6. On 30 March 2020, ICANN opened a call for expressions of interest for panelists to serve on the Standing Panel. On 23 July 2020, ICANN extended this call for expressions of interest. ICANN received nearly 100 submissions from persons interested in serving on the Standing Panel.

7. ICANN then began consulting with leadership from the SOs and ACs on specific steps for the community work within the IRP Standing Panel Selection Process, and received inputs on the community role. In July 2020, ICANN published a Summary of Comments Received from SOs and ACs regarding Next Steps in Community Work on IRP Standing Panel Selection Process.

8. Following further discussions facilitated by ICANN involving leadership from the SOs, ACs, stakeholder groups and constituencies, it was agreed that community work on the establishment of the Standing Panel would be accomplished through a small representational group of members appointed by the SOs and ACs. This group was named the “Community Representatives Group on the Establishment of the Independent Review Process Standing Panel” (“Community Rep. Group”). On 5 October 2020, ICANN published Terms of Reference for the Community Rep. Group. On 18 November 2020, ICANN issued a call for expressions of interest for appointment to this new Community Rep. Group.

9. The SOs and ACs decided that an external selection firm would be engaged to

facilitate the completion of the Community Rep. Group's work. On 11 March 2021, ICANN published the Requirements and Qualifications For External Selection Firm and a Statement of Work for External Selection Firm. Evaluation of external selection firm candidates is currently in process. Once the external selection firm is appointed, it will work with the Community Rep. Group to: (i) define the process by which the firm will coordinate with the Community Rep. Group; (ii) confirm a skillsets matrix for evaluation of panel candidates; (iii) develop questions for candidate interviews; and (iv) participate in the evaluation and vetting of candidates in order to create a slate of panelists that will be submitted to the ICANN Board for approval.

10. While much work has been done, a significant amount of work remains prior to the final selection of the first Standing Panel members and having them ready to preside over IRPs. Both the ICANN community and ICANN have an interest in seeing the most qualified members selected to the Standing Panel, and we expect an appropriate level of inquiry and care to go into the diligence of identifying a proposed slate of potential Standing Panel members. The ICANN Board then will have its required step of confirmation. After that, Bylaws' mandated training must take place, and only then will Standing Panel members be prepared to start their important roles within ICANN's IRP Accountability Mechanism.

I swear under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this ^{30th} day of August, 2021 at Los Angeles, California.

By:


Samantha Eisner