

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

INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

CASE NO. 01-14-0002-1065

GULF COOPERATION COUNCIL

v.

INTERNET CORPORATION FOR ASSIGNED

NAMES AND NUMBERS

**INDEX TO DOCUMENTS SUBMITTED WITH THE GCC'S REPLY IN SUPPORT OF  
ITS SUPPLEMENTAL REQUEST FOR INDEPENDENT REVIEW PROCESS**

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S-11	December 19, 2014 email from E. Enson, et al. to K. Salour et al., Re: Gulf Cooperation Council V. ICANN - Case 01-14-0002-1065.

# **ANNEX S-10**

## **Cooperative Engagement Process – Requests for Independent Review**

11 April 2013

As specified in Article IV, Section 3 of the ICANN Bylaws, prior to initiating an independent review process, the complainant is urged to enter into a period of cooperative engagement with ICANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the IRP. It is contemplated that this cooperative engagement process will be initiated prior to the requesting party incurring any costs in the preparation of a request for independent review. Cooperative engagement is expected to be among ICANN and the requesting party, without reference to outside counsel.

The Cooperative Engagement Process is as follows:

1. In the event the requesting party elects to proceed to cooperative engagement prior to filing a request for independent review, the requesting party may invoke the cooperative engagement process by providing written notice to ICANN at [independentreview@icann.org], noting the invocation of the process, identifying the Board action(s) at issue, identifying the provisions of the ICANN Bylaws or Articles of Incorporation that are alleged to be violated, and designating a single point of contact for the resolution of the issue.
2. The requesting party must initiate cooperative engagement within fifteen (15) days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party's contends demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation.
3. Within three (3) business days, ICANN shall designate a single executive to serve as the point of contact for the resolution of the issue, and provide notice of the designation to the requestor.
4. Within two (2) business days of ICANN providing notice of its designated representatives, the requestor and ICANN's representatives shall confer by telephone or in person to attempt to resolve the issue and determine if any issues remain for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
5. If the representatives are not able to resolve the issue or agree on a narrowing of issues, or a reference to the ICANN Board, during the first conference, they shall further meet in person at a location mutually agreed to within 7 (seven) calendar days after such initial conference, at which the parties shall attempt to reach a definitive agreement on the resolution of the issue or on the narrowing of issues remaining for the independent review process, or whether the matter should be brought to the ICANN Board's attention.
6. The time schedule and process may be modified as agreed to by both ICANN and the requester, in writing.

If ICANN and the requestor have not agreed to a resolution of issues upon the conclusion of the cooperative engagement process, or if issues remain for a request

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for independent review, the requestor's time to file a request for independent review designated in the Bylaws shall be extended for each day of the cooperative engagement process, but in no event, absent mutual written agreement by the parties, shall the extension be for more than fourteen (14) days.

Pursuant to the Bylaws, if the party requesting the independent review does not participate in good faith in the cooperative engagement process and ICANN is the prevailing party in the independent review proceedings, the IRP panel must award to ICANN all reasonable fees and costs incurred by ICANN in the proceeding, including legal fees. ICANN is expected to participate in the cooperative engagement process in good faith.

# **ANNEX S-11**

## Salour, Kamran

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**From:** Eric P. Enson <epenson@JonesDay.com>  
**Sent:** Friday, December 19, 2014 12:47 PM  
**To:** Salour, Kamran  
**Cc:** Kohne, Natasha; 'Rachel Zernik'  
**Subject:** Gulf Cooperation Council V. ICANN - Case 01-14-0002-1065

Natasha and Kamran,

I am following up on the discussions yesterday. There were essentially four issues discussed.

First, it appears that the parties are in agreement that an in-person IRP hearing should take place only in extraordinary circumstances. If the IRP Panel were to determine that an in-person hearing is appropriate, that hearing will be held in Los Angeles, California.

Second, the parties are in agreement that they do not wish to proceed with the ICDR's mediation program in order to resolve this IRP.

Third, the parties have not agreed on a method for selecting the IRP Panel. The GCC would like the ICDR to generate a list of potential panelists and the parties will then strike and rank the potential panelists. Based on ICDR's review of the rankings, the ICDR will select to the top two panelists and those two panelists will then select the chair. If the two panelist cannot agree on a chair, the ICDR will select. ICANN would prefer a more traditional system for selecting IRP panels. That is, both parties appoint a panelist, and those two panelists, assuming they are free of conflicts and there are no objections, select the chair. As I said, this is the customary method used in IRPs and we believe it is quicker, more efficient and less expensive to follow this process. The elements of speed, efficiency and reduced costs, as you know, are hallmarks of the IRP and ICANN believes they should be given consideration in the panel selection process, particularly where the GCC is seeking emergency relief. Perhaps we can discuss this on Monday before you send your letter to the ICDR.

Fourth, during the call yesterday, you mentioned the possibility of entering a Cooperative Engagement Process ("CEP"), as set forth in ICANN's Bylaws. A CEP is supposed to take place before the filing of an IRP in the hope of avoiding, or at least minimizing, the costs associated with an IRP. That, obviously, did not happen in this matter. In addition, a CEP is supposed to be a dialogue between the parties, rather than counsel for the parties. ICANN is always willing to discuss amicable resolutions of issues, but I think we need additional information from the GCC before agreeing to engage in a CEP, at this point. First, ICANN would like to know whether the GCC believes that there is a realistic possibility that the GCC would dismiss its IRP based on CEP discussions. The reason this is important to ICANN is because ICANN representatives informed GCC representative, on several occasions, that the CEP was available to the GCC and should be invoked before the filing of an IRP. In other words, ICANN would like to know what has changed from the GCC's perspective. Second, is the GCC proposing a CEP involving counsel or just the parties? Third, when would this CEP take place? A CEP after a declaration on the GCC's Emergency Request may greatly alter the parties' positions in a CEP. With the holidays approaching, ICANN's holiday shut down, and the soon-approaching hearing on the GCC's Emergency Request, it will be difficult, I think, to complete a CEP before we have a declaration on the GCC's Emergency Request. This is another issue we can discuss on Monday.

As of now, I am free all day Monday. Please let me know how you would like to proceed. Thank you.

Eric

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