

# ONVIF Appeals Policy

October 12, 2020

## 1.1 Appeals Policy

ONVIF acts as a voluntary consensus standard body in the development of its Specifications. This Appeals Policy describes the process that are available to members for the impartial handling of procedural appeals. To the extent the Appeals Policy set forth in document does not address or apply to a particular situation, then the Committees and Working Groups will use Robert's Rules of Order.

### 1.1.1 Definitions:

As stated earlier in this document, other than the terms and definitions defined herein, the terms and definitions contained in the ONVIF's Bylaws or Rules of Membership apply to this process.

A "Conflict" is present when, in the judgement of the SC, an SC member or Appeal Panel member has a stake in the outcome of the appeal that reduces the likelihood that an impartial decision can be rendered by that member.

A "Party" is an ONVIF Member involved in an appeal as either a complainant or a respondent.

### 1.1.2 Statement of Process

Our process describes how Members may file a procedural appeal. ONVIF Members who have directly and materially affected interests and who have been, or could reasonably be expected to be, adversely affected by an ONVIF Specification, or by the lack of action in any part of ONVIF, will have the right to appeal procedural actions or inactions, provided that the complainant will have first exhausted the appeals procedures of a Committee or Working Group before filing the procedural appeal with the SC.

ONVIF is not providing an appeals process to resolve a disagreement about a technical decision. All technical decisions must be made at or below the Committee level. Any member dissatisfied with a technical decision must follow the procedures of the Committee or Working Group that made the decision and including, but not limited to, making a technical comment during the applicable comment submission and/or voting period.

The SC will not consider any claim that (i) is based solely on ethical considerations; (ii) does not seek to amend or reverse a decision of a Committee or Working Group relating to the development or approval of a specification; or (iii) does not recommend remedial action or recommends remedial action not allowed by current ONVIF policies and procedures.

### 1.1.3 Appeals Process

Members of the SC will serve as members on the Appeal Panel. Only non-conflicted SC members will serve on the Appeal Panel. If all SC members have conflicts, the SC will identify other ONVIF members, or individuals, who lack conflicts and can serve on the panel.

#### 1.1.3.1 Appeal Brief

The complainant must file a written appeal brief to be sent by email to the Executive Director addressed to the official email address of the Executive Director (i) within 30 days after the date of announcement of the result of specification voting; or (ii) after 30 days and within 60 days of SC inaction. The complainant must first have exhausted procedures of the Committee or Working Group prior to filing an appeal with the SC. The appeal brief must state the nature of the objection(s) including any adverse effects, the section(s) of the procedures or the specification(s) that are at issue, actions or inaction that are at issue, and the specific remedial action(s) that would satisfy the complainant's concerns. Previous efforts, including all subordinate appeals, to resolve the objection(s) and the statement of outcome/decision of each, including a sequence of events of these efforts, must be provided in the brief. The complainant shall include documentation supporting all statements in the appeal brief. All issues regarding the subject action or inaction shall be filed together in one appeal brief.

The Executive Director will send the complainant a written acknowledgment of receipt of the appeal brief within five days of such receipt, and also provide a copy to the SC. The SC Officers shall review the appeal brief and determine within 20 days of receipt of the appeal brief whether the appeal will be heard by the Appeal Panel, or should be returned to the complainant with instructions. The appeal will be returned to the complainant for a complaint that deals with technical matters, or if the complainant has not exhausted the procedures of a Committee or Working Group. In these circumstances, the complainant will be instructed to follow the approved procedures for providing technical input including, but not limited to, making a technical comment during the applicable comment submission and/or voting period; or if the complainant has not exhausted the appeals procedures of a Committee, or Working Group to file a procedural appeal with such subordinate committee. The SC Officers (also called the Appeals Officers) shall review whether the complainant has established a clear case, especially in reviewing whether any previous appeal decision appealed from was resolved in accordance with the relevant policies and procedures. If it is determined that a clear case has not been established, the Executive Director shall notify the complainant in writing that the appeal will be dismissed.

If the SC Officers determine that an Appeal Panel should hear the appeal, the Executive Director shall, within 30 days of receipt of the appeal brief, send the respondent a copy of the appeal brief and acknowledgment, and shall send the complainant a hearing notice and the respondent a written notice of the date, time, and location for a hearing with the Appeal Panel. The hearing with the Appeal Panel shall be scheduled for, and in conjunction with, the first SC meeting that is at least 60 days after mailing of the hearing notice by the Executive Director.

#### 1.1.3.2 Reply Brief

Within 45 days of receipt of the hearing notice, the respondent may send the complainant and Executive Director a written reply brief, which specifically and explicitly addresses each allegation of fact in the appeal brief to the extent of the respondent's knowledge. If the respondent furnishes a reply brief, the brief shall include documentation supporting all statements contained in the reply brief.

#### 1.1.3.3 Appeal Panel

The SC Chair shall appoint from the SC an Appeal Panel consisting of a chair and two other SC members who have not been directly involved in the matter in dispute, and who will not be materially or directly affected by any decisions made concerning the dispute. If an Appeal Panel member resigns or is removed from the Appeal Panel at any time before the appeal hearing, then the SC Chair shall appoint a replacement from the SC or another impartial ONVIF member or individual. The replacement shall be subject to the acceptability criteria described above.

To ensure continuity of the appeals process, a specific Appeal Panel will remain impaneled until the publication of the Appeal Panel's final decision(s).

#### 1.1.3.4 Conduct of the Hearing

The number of participating (i.e., speaking) representatives for each of the parties to the appeal is limited to a maximum of three (3) and each party to the appeal may only present its information for a total of up to 60 minutes (not including any question and answer period that may be provided for by the Appeal Panel). Other individuals may attend the hearing, but will not be permitted to address, or be addressed by, the Appeal Panel or either of the parties to the appeal at any time (including during the question and answer period). No recordings or verbatim transcriptions of the hearing are allowed, except by ONVIF at its sole discretion.

The Appeal Panel may call an Executive Session before, during the course of, or following an appeal hearing to consider its action on a specific appeal.

No party to an appeal may communicate with any member of the Appeal Panel regarding the appeal while the matter is pending (i.e., from the time of filing of the appeal brief to finalization of the Appeal Panel decision).

The complainant has the burden of demonstrating adverse effects, improper action(s) or inaction, and the efficacy of the requested remedial action. Each party may offer other pertinent arguments, and members of the Appeal Panel may address questions to individuals. The Appeal Panel shall only consider documentation included in the appeal brief and reply brief, unless

- a) Significant new evidence has come to light; and
- b) Such evidence reasonably was not available to the complainant or respondent, as appropriate, at the time of filing; and
- c) Such evidence was provided by the complainant or respondent, as appropriate, to the other parties as soon as it became available.

Prior to the hearing, the members of the Appeal Panel may convene to review the ground rules before the participants appear.

#### 1.1.3.5 Appeal Panel Decision

The Appeal Panel will not consider technical appeals and will limit its consideration to procedural matters. The Appeal Panel shall render its decision, based upon majority vote of the Appeal Panel (Appeal Panel members will vote to find in favor of the complainant or the respondent and may not abstain), in writing

within 30 days of the hearing, stating findings of fact and conclusions, with reasons therefore, based on a preponderance of the evidence. The Appeal Panel shall only address the concerns raised by the complainant and the respondent.

The Appeal Panel may give consideration to the following positions, among others, in formulating its decision:

- a) Finding for the complainant, with a specific statement of the issues and facts showing that a policy or procedure was violated. In formulating its conclusions, the Appeal Panel may prescribe the remedy proposed by the complainant or may prescribe an alternative remedy;
- b) Finding against the complainant, with a specific statement of the issues and facts showing that complainant failed to meet its burden to demonstrate that a policy or procedure had been violated; or
- c) Finding that new, substantive evidence has been introduced, and remanding the entire action to the appropriate Committee or Working Group for reconsideration.

The Appeal Panel Chair, through the Executive Director, shall notify the complainant, the respondent, and members of the SC in writing of the decision of the Appeal Panel.

If an Appeal Panel member resigns or is removed after a hearing, then the remaining two members of the Appeal Panel may issue a decision if their decision is unanimous. If it is not unanimous, then the SC Chair shall appoint a replacement from the SC and a rehearing shall be conducted in conjunction with the next SC meeting.

#### 1.1.3.6 SC Appeal

The Appeal Panel's final decision can be appealed to the SC in writing to be sent by email to the Executive Director addressed to the official email address of the Executive Director within 30 days after the Appeal Panel decision becomes final on the basis of a perceived error in the Appeal Panel process or of a perceived error in the Appeal Panel decision. Such appeal shall proceed in accordance with normal SC meeting procedures.

#### 1.1.3.7 Informal settlement

ONVIF encourages settlement of disputes at any time if the settlement is consistent with the objectives of the Operational Guidelines or policies. Any settlement (to which the parties agree in writing) that is consistent with these process, or an agreement to withdraw the appeal, will terminate the appeal process.