



**Comment of the ICANN Business Constituency (BC) on  
Proposed updates to IRP Supplementary Procedures (IRP-IOT)**

**16-Sep-2024**

The Business Constituency (BC) welcomes the opportunity to provide feedback on [Proposed updates to IRP Supplementary Procedures \(IRP-IOT\)](#)

We acknowledge the critical importance of the Independent Review Process (IRP) as a mechanism to hold ICANN accountable to its stakeholders, and we vigorously supported improvements to the IRP as part of the 2016 IANA Transition.

Below, **in bold**, are our specific comments on the proposed updates.

**Section 4 – Time for Filing**

In the [BC's 2018 Comment on the Second Public Consultation](#), we made these three points about timing for IRP filing:

- Support increasing the time to file a dispute from 45 to 120 days after a claimant becomes aware that it has been materially affected by the relevant action/inaction
- Support completely removing the 12 month repose deadline. We noted, “The effect of some actions may take more than 12 months to be apparent. As such, the set 12-month limit to file a written statement may prevent materially affected claimants from ever having an opportunity to file an IRP case.”
- Recommend that the calculation of any time should not include time within which the parties are formally engaged in any ICANN accountability mechanism relating to the same issue

The current proposal by IRP-IOT:

1. Maintains the 120-day period for filing a claim
2. Reintroduces a repose period but makes it overly complicated. The IRP-IOT now proposes a 24-month repose, subject to complicated exceptions, with an absolute cap of 4 years after the relevant action/inaction complained of. The exceptions are vague and

hard to follow, which would make it difficult for a claimant to determine if it can even pursue an IRP. For example, a claimant may file a Dispute after more than 24 months if it can demonstrate that “exceptional circumstances” prevented it from becoming aware of the relevant action/inaction complained of.

3. Does not allow for an RFR to completely toll the time within which an IRP must be filed. Instead, the proposed revision states that an IRP must be filed within 30 days of publication of the Approved Resolution by the Board on the final disposition of an RFR (when the time to file is otherwise up).

**BC Comment:**

- **The BC is not supportive of the way the time for filing has been reframed in the current draft. The BC strongly urges the IRP-IOT to return Section 4 to the way it was drafted under the Second Public Consultation (i.e., 120 days to file, with no repose), plus a qualification that the calculation of time should not include time during which parties are engaged in another accountability mechanism.**
- **If the IRP-IOT does not agree to remove the repose altogether, the BC recommends removing the 24-month time limit with all of the complicated exceptions and instead applying a simple, straightforward 4-year repose.**
- **We also urge that the calculation of time should not include any time during which the parties are engaged in another accountability mechanism, including an RFR. Involvement in another accountability mechanism should completely toll the clock for filing an IRP Dispute (rather than only allow for an additional 30 days after conclusion of the accountability mechanism).**
- **The BC notes that the complicated time to file scheme in the current draft is also counter to the note under 4A which expresses a need to provide clarity for potential claimants considering bringing an IRP.**

**Composition of IRP Panel**

- Section 3(2) – Three panelists shall be selected from the Standing Panel “unless a Standing Panel is not in place when the relevant IRP Panel must be convened, or is in place but *does not have capacity*.”

**BC Comment: The IRP-IOT does not define “does not have capacity” in the rule itself, but notes in the explanatory text that this term is defined in the Bylaws. Given that, the BC recommends defining “does not have capacity” by explicitly referencing Bylaws s. 4.3(k)(ii) and/or by copying the text of the Bylaws outright (e.g., “does not have**

capacity due to other IRP commitments or the requisite diversity of skill and experience needed for a particular IRP proceeding”).

- Section 3(2)(b) – IOT seeks input on whether the Standing Panel should move a panelist appointment along of its own volition, or only where requested to do so by one of the parties.

**BC Comment: Only where requested by one of the parties.**

- Section 3(5) – Panel member must confirm compliance with conflict of interest requirements within 7 days of appointment.

**BC Comment: 7 days is a tight turnaround to run conflicts. Recommend extending to at least 14 days.**

### **Motions to Intervene/Consolidate/Participate as Amicus**

- Section 7(6) – Motions to consolidate must be filed within (a) within [21/28] days of the publication of the later IRP; and (b) within 60 days of publication of the First IRP.

**BC Comment: Recommend at least 30 days under (a). Recommend removing (b) or extending it to 120 days. If two IRPs are related and could benefit from consolidation, it doesn't make sense to arbitrarily disallow consolidation because it is beyond 60 days from the publication of the First IRP.**

- Section 7(9) – Allows the party to an IRP that is the subject of a consolidation request [21/28 day] to respond to a motion to consolidate.

**BC Comment – Support 28 days.**

- Section 7(21) – Motions to intervene must be submitted within [21/28 days] of publication of the IRP. Filing a motion to intervene does not stop the clock for intervener's own time to file an IRP.

**BC Comment: Support 28 days. Disagree that a motion to intervene should toll time to file own IRP.**

- Section 7(28) – Allows the party to an IRP that is the subject of an intervention request [21/28 day] to respond to a motion to intervene.

**BC Comment: Support 28 days.**

- Section 7(31) – Requests to participate as an amicus must be made within 30 days.

**BC Comment – Recommend extending to at least 120 days. No reason to arbitrarily cut off at 30 days. For example, a direct party to the dispute may raise a point in a filing**

**after the 30-day cutoff which may be the impetus for an amicus to join in order to express its views.**

- Section 7(32) – Allows the party to an IRP that is the subject of a request to participate as an amicus [21/28 day] to respond to request.

**BC Comment: Support 28 days.**

## **Filing Fees**

- Section 4A – Proposes a complicated filing fee process whereby each claimant must pay a filing fee that is later reimbursed by ICANN unless the claim is found to be frivolous.

**BC Comment: Instead of requiring every claimant to pay a filing fee that ICANN later reimburses, BC recommends removing the filing fee altogether. Removing the filing fee will minimize the barrier to entry for filing an IRP, and it also minimizes the unnecessary complexity of ICANN having to provide reimbursements. (In the commentary under s. 4A, the IRP-IOT states that it does not want to create an exception process for requesting a waiver of the filing fee because that “would add complexity” – the current process would add complexity to every single case.)**

**To the extent there is a bona fide concern regarding “trivial or vexatious actions,” this is addressed by the remainder of s. 4A.6 which allows the IRP Panel to “exercise its discretion to shift all or a portion of the filing fee, Panelist costs, administrative costs, or legal fees to that Party.”**

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This comment was drafted by Chris Wilson and edited by Steve DelBianco.

It was approved in accord with the BC Charter.