



**Comment on Independent
Review Process
Implementation Oversight
Team (IRP-IOT) Draft
Recommendations**

Status: FINAL

Version: 3

10-Aug-2018

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC Comment on the Revised Independent Review Process (IRP) Draft Supplementary Rules of Procedure Proposed by Oversight Implementation Oversight Team (IOT)¹

The BC endorses the amendments to the Updated Supplementary Procedure rule #4, Time for Filing, such that 120 days will be allowed.

In Jan-2017 the BC submitted statements expressing concerns regarding the proposed time limitations to file an IRP as proposed by the IRP-IOT in its November 28, 2016 draft.² The original draft stated:

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 45 days after a CLAIMANT becomes aware of material affected 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.

The BC noted that such a tight time restriction would restrict access to the IRP to those claimants having significant resources to monitor all ICANN decisions and to quickly generate required legal research and filing documents. The allotted 45-day period for filing written statement with the International Centre for Dispute Resolution (ICDR) would have been insufficient for most claimants to analyze and prepare for a proper statement of dispute.

The original draft also fixed a twelve (12) month time limitation from the date of the action or inaction giving rise to the claim. ICANN's slow-moving systems and processes mean that it can take years for a policy to be developed, approved by the Board, and then actually implemented.

Under this 12-month limitation, adopted policies or decisions that take more than a year to implement would be immune to challenges in the IRP. In addition, the Updated Supplementary Procedures

¹ See ICANN public comment page at <https://www.icann.org/public-comments/irp-iot-recs-2018-06-22-en>

² ICANN public comment page at <https://forum.icann.org/lists/comments-irp-supp-procedures-28nov16/pdfO1LDGYUeOv.pdf>

restricted the filing of an IRP to claimants who have been materially affected by a Dispute.³ 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.

The current revisions to the Updated Supplementary Procedure rule # 4, Time for Filing, addressed these time limitation concerns by extending the 45-day aspect of the Time-for-Filing language to a 120-day period for filing after the claimant becomes aware of the material effect and the 12-month limitation to file an IRP has been eliminated in the new amendment. The BC supports these revisions and urges the IOT not to revert on these essential changes to IRP procedures.

The BC further recommends that the calculation of any time period should not include the time within which the parties are formally engaged in any ICANN accountability mechanism relating to or in connection with the issue(s) being referred to IRP.

--

This comment was drafted by Kirsten Doan, with edits by Steve DelBianco and Chris Wilson. It was approved in accord with the BC charter.

³ <https://www.icann.org/en/system/files/files/draft-irp-supp-procedures-31oct16-en.pdf>