Top of Form

|  |  |  |  |
| --- | --- | --- | --- |
| CCWG-Accountability WS2 Jurisdiction Subgroup Draft Recommendations | | | |
| **Open Date:** | XX June 2018 | **Close Date:** | XX August 2018 |
| **Originating Organization:** | Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) | | |
| **Categories/Tags:** | * accounability | | |
| **Brief Overview:** | (see below) | | |
| **Link:** | [Do not complete; Web Content Operations Team will insert URL] | | |

Bottom of Form

**Updated Supplementary Procedures for the Independent Review Process (IRP) – Rule # 4 Time for Filing (repose)**

**Brief Overview**

**Purpose:** The Independent Review Process Implementation Oversight Team (IRP-IOT) is seeking further public comments on the Time for Filing rule (Updated Supplementary Procedure rule #4, Time for Filing) .

**Current Status:** The IOT reviewed the results of the 28 November 2016 public comments on its draft Updated Supplementary Procedures (USP) for the Independent Review Process (IRP) and noted that a significant number of comments did not support the proposed limitations underpinning rule #4. In response to this the IOT is proposing significant amendments to this rule.

**Next Steps:** Following the public comment period the inputs will be analyzed by the IOT who will consider amending the amended rule in light of the comments received and will publish a report on the results of the public consultation. If significant changes are required as a result of the public consultation the IOT may opt to have a further public comment period on these changes. If there are no significant changes this rule will be included in the USP.

**Section I: Description, Explanation, and Purpose**.

Note: Given the text which is being presented for public comment is short it is included in its entirety in this section of the announcement.

The Updated Supplementary Procedures for the Independent Review Process (IRP) were [submitted](https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en) for public comment on Nov. 28, 2016. The comment period closed on Feb. 1, 2017, and the staff report on the public comments was [issued](https://www.icann.org/en/system/files/files/report-comments-irp-supp-procedures-02aug17-en.pdf) on August 2, 2017. The public comments submitted are available [here](https://forum.icann.org/lists/comments-irp-supp-procedures-28nov16/).

A number of public comments focused on Updated Supplementary Procedure #4, Time for Filing. That rule as proposed by the IRP Implementation Oversight Team (IOT) was:

*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 the material affect 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.*

*In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.*

*[Footnotes 14 and 15 omitted – they are available at* [*https://www.icann.org/en/system/files/files/draft-irp-supp-procedures-31oct16-en.pdf*](https://www.icann.org/en/system/files/files/draft-irp-supp-procedures-31oct16-en.pdf) *]*

On the topic of the 45-day aspect of the Time-for-Filing language, 11 of the 19 respondents commented on this portion of the draft and all 11 had issues with this proposal and either opposed it or proposed changes. The modified language now available for comment now provides for a 120-day period for filing after the claimant becomes aware of the material effect (75 days more than was suggested previously).

On the topic of the 12-month limitation to file an IRP, 13 of the 19 respondents to the public consultation commented on this with 11 ​having issues with this proposal and either opposed it or proposed changes. The modified language now available for comment removes any outside time limit to file an IRP. Under the prior text, a claimant would have had to have filed their IRP within one year of the action/inaction that is being challenged. Under the new text, the only timing requirement that the claimant has to meet is the 120-day requirement above, whether the challenged action/inaction happened 3 months, 3 years or 5 years prior (or more).

All material and comments relating to the public consultation on the IRP held in late 2016 is archived at <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>

Following its deliberations, the IRP IOT proposes amending its original Updated Supplementary Procedure #4, Time for Filing, in its entirety, to say as follows:

*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 120 days after a CLAIMANT becomes aware, or ought reasonably to have been aware, of the material affect of the action or inaction giving rise to the DISPUTE.*

*In order for an IRP to be deemed to have been timely filed, all fees must be paid to the ICDR within three business days (as measured by the ICDR) of the filing of the request with the ICDR.*

**Section II: Background**

ICANN operates a separate process for independent third-party review of Disputes – the Independent Review Process (IRP). The International Centre for Dispute Resolution (ICDR) currently administers ICANN’s Independent Review Processes. ICANN IRPs are governed by the ICDR’s International Dispute Resolution Procedures as modified by Supplementary Procedures for ICANN’s IRP.

The CCWG-Accountability Work Stream 1 (WS1) in its final report included the following under Implementation for Recommendation 7 concerning the IRP:

*“The CCWG-Accountability proposes that the revised IRP provisions be adopted as Fundamental Bylaws. Implementation of these enhancements will necessarily require additional detailed work. Detailed rules for the implementation of the IRP (such as rules of procedure) are to be created by the ICANN community through a CCWG (assisted by counsel, appropriate experts, and the Standing Panel when confirmed), and approved by the Board, such approval not to be unreasonably withheld.”*

This part of the recommendations on IRP is included in the following section of the new ICANN Bylaws which took effect on 27 May 2016:

*“(n) Rules of Procedure*

*(i) An IRP Implementation Oversight Team shall be established in consultation with the Supporting Organizations and Advisory Committees and comprised of members of the global Internet community. The IRP Implementation Oversight Team, and once the Standing Panel is established the IRP Implementation Oversight Team in consultation with the Standing Panel, shall develop clear published rules for the IRP (“Rules of Procedure”) that conform with international arbitration norms and are streamlined, easy to understand and apply fairly to all parties. Upon request, the IRP Implementation Oversight Team shall have assistance of counsel and other appropriate experts.*

*(ii) The Rules of Procedure shall be informed by international arbitration norms and consistent with the Purposes of the IRP. Specialized Rules of Procedure may be designed for reviews of PTI service complaints that are asserted by direct customers of the IANA naming functions and are not resolved through mediation. The Rules of Procedure shall be published and subject to a period of public comment that complies with the designated practice for public comment periods within ICANN, and take effect upon approval by the Board, such approval not to be unreasonably withheld.”*

In early in 2016 the CCWG-Accountability created the IRP IOT which has been working on updating the Supplementary Rules of Procedures.

It is important to note that the IRP IOT was included as part of WS2 for administrative simplicity but is in fact independent of WS2 . Current expectations are that the IRP IOT will continue beyond the scheduled completion date for WS2 of June 2018.

**Section III: Relevant Resources**

* ICANN BYLAWS - <https://www.icann.org/resources/pages/governance/bylaws-en>
* CCWG-Accountability Work Stream 1 – Final recommendations – Recommendation #7 https://community.icann.org/pages/viewpage.action?pageId=58723827&preview=/58723827/58726371/Annex%2007%20-%20FINAL-Revised.pdf
* November 2016 Public consultation on the Updated Supplementary Rules - <https://www.icann.org/public-comments/irp-supp-procedures-2016-11-28-en>

**Section IV: Additional Information**

**Report and Supporting Documents**

* IOT wiki - <https://community.icann.org/display/WEIA/WP-IOT+-+IRP+Implementation+Oversight+Team>

**Section V: Reports**

**Report**

**Staff Contact**

Patrick Dodson