**PROPOSED REVISIONS TO RULE 4: TIME FOR FILING- comparison of September working draft and new ICANN proposed text 13 December 2021; ICANN text edited to reflect discussion on subsequent calls**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Draft of 21 September – annotated/amended** |  | **ICANN draft of 13 December** |
| A | A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days after the CLAIMANT becomes aware of the material effect of the action or inaction giving rise to the DISPUTE;  | A | 1. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR within the following timeframes:
	1. for DISPUTES challenging Board or Staff action, within 120 days after the date on which the CLAIMANT became aware of, or reasonably should have become aware of, being materially affected by the action being challenged in the DISPUTE; or
	2. for DISPUTES challenging Board or Staff inaction, within 120 days after the date on which the CLAIMANT became aware of, or reasonably should have become aware of, being materially affected by the failure to act being challenged in the DISPUTE.
 |
| Acont | provided, however, that a statement of a DISPUTE may not be filed more than [*length TBD by IRP IOT; currently 12 months*] months from the date of such action or inaction. | B | 1. A statement of a DISPUTE may not be filed more than [*length TBD by IRP IOT; currently 12 months*] months from the date of such action or inaction being challenged in the DISPUTE.
 |
| B | An IRP Panel may permit CLAIMANT to file its written statement of a DISPUTE after the timeframe set forth in (A) above if the CLAIMANT demonstrates the following requirement by clear and convincing evidence:  | C | The CLAIMANT may be permitted to file its written statement of a DISPUTE after the timeframes set forth in (A) and (B) above under certain exceptional circumstances. A CLAIMANT may seek leave to file a late written statement of DISPUTE by demonstrating by clear and convincing evidence that |
|  |  |  | * 1. either
 |
|  |  extraordinary circumstances not caused by the CLAIMANT prevented the CLAIMANT from becoming aware of the action being challenged in the DISPUTE or |  | * 1. extraordinary circumstances not caused by the CLAIMANT prevented the CLAIMANT from becoming aware of the action or inaction being challenged in the DISPUTE within the timeframes set forth in 4.A or 4.B, or being eligible under the Bylaws as a CLAIMANT within those timeframes; or
 |
|  | from being able to file a written statement of a DISPUTE within [*length TBD by IRP IOT; currently 12 months*] months from the date of the disputed action or inaction.  |  | * 1. extraordinary circumstances not caused by the CLAIMANT prevented the CLAIMANT from being able to file a written statement of a DISPUTE within [*length TBD by IRP IOT; currently 12 months*] months from the date of the action or inaction being challenged in the DISPUTE within the timeframes set forth in 4.A or 4.B.
 |
|  |  | C cont | The application for leave to file a late written statement of DISPUTE shall include an explanation of how the CLAIMANT satisfies the standing requirements set forth in the Bylaws.  |
|  |  |  |  |
| Bcont | Any request for leave to file a written statement of a DISPUTE after the time period set forth in (A) above shall be accompanied by CLAIMANT’s proposed statement of a DISPUTE and must be filed within 30 calendar days of the CLAIMANT becoming aware of the material effect of the action or inaction being challenged in the DISPUTE or from being able to file a written statement of a DISPUTE as set forth in this paragraph | D | Any request for leave to file a written statement of a DISPUTE under 4.C shall be accompanied by CLAIMANT’s proposed statement of a DISPUTE and must be filed within 30 calendar days of: * 1. the CLAIMANT becoming aware of being materially affected by the action or inaction being challenged in the DISPUTE, if the late filing is requested under 4.C.ii above; or
	2. the CLAIMANT becoming able to file a written statement of a DISPUTE, if the late filing is requested under 4.C.iii above.

Nothing in this Rule 4D is intended to preclude a Claimant who has initiated an IRP in the belief that their claim is within time, but where that timeliness is successfully challenged, from then seeking leave to pursue that IRP out of time in response. |
|  |  | E | Any request for leave to file a written statement of a DISPUTE under 4.C shall be directed to the IRP Provider, who will appoint a single Panelist to consider and make a determination on the request.Where the Standing Panel is in place, ICANN and the CLAIMANT shall endeavour to agree on a single Panelist. Where they are unable to do so either Party may request that the IRP Provider appoints a single Panelist from the Standing Panel using the procedure set out in ICDR Rule 13(6).In the event that no STANDING PANEL is in place ICANN and the CLAIMANT shall endeavour to agree on a single Panelist. Where they are unable to do so either Party may request that the IRP Provider appoints a single Panelist using the procedure set out in ICDR Rule 13(6). |
|  |  | F | When considering whether an applicant should be permitted to file an IRP Claim out of time, the Panelist shall have regard to the Purposes of the IRP and any jurisprudence of IRP panels relevant to interpretation of this clause in the light of the Purposes. |
|  |  | G | For avoidance of doubt, ICANN shall have a right to respond to a CLAIMANT’s request for leave to file submitted pursuant to 4.C and D. |
| C | Under no circumstances may a CLAIMANT file a statement of a DISPUTE more than four years after the date of the disputed action or inaction affecting the CLAIMANT. | H. | Under no circumstances may a CLAIMANT seek to file a statement of a DISPUTE more than four years after the date of the action or inaction being challenged in the DISPUTE. |
|  |  | I | 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 a statement of a DISPUTE. |