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## [IOT] Time limit for motions to intervene or for consolidation

1 message

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To: "iot@icann.org" <iot@icann.org>

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Dear IOT members,

On the last IOT, the issue was raised regarding whether the current time limit of 15 days from the initiation of an IRP for motions to intervene or for consolidation is adequate. We had some research done on other jurisdictional practices on how the deadline/timeframe for intervention and consolidation is treated. Below is some information for the IRP-IOT's discussion on this matter.

### SPECIFIC ANALOGOUS RULES

#### ICDR Rules

([https://www.icdr.org/sites/default/files/document\\_repository/ICDR\\_Rules.pdf](https://www.icdr.org/sites/default/files/document_repository/ICDR_Rules.pdf).)

- Art. 7 Sec. 1 (Joinder): no party may be joined after the appointment of any arbitrator unless all parties, including the party to be joined, agree.
- Art. 8 (Consolidation): no time limit, though "whether one or more arbitrators have been appointed in more than one of the arbitrations" and "the progress already made in the arbitrations" are among the "relevant circumstances" that the consolidation arbitrator must consult in deciding whether to consolidate. (Art. 8 Sec. 3.b, 3.c)
- No provision for intervention.

**ICC Rules** ([https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#article\\_7](https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#article_7) [iccwbo.org])

- Art. 7 Sec. 1 (joinder): "No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The Secretariat may fix a time limit for the submission of a Request for Joinder"
- Art. 10 (consolidation): no time limit, though the Court "may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations."
- No provision for intervention

#### Federal Rules of Civil Procedure (FRCP)

- Rule 24 (Intervention): No strict time limit: "upon timely motion" an entity may intervene. "[T]imeliness is to be judged in consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008) (internal quotation marks and citations omitted).
- Rule 42 (Consolidation): No time limit
- Rule 14(a)(1): "A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the

court's leave if it files the third-party complaint more than **14 days after serving its original answer.**"

### **SUMMARY OF RULES:**

For **consolidation**, analogous arbitration rules tend not to set a strict time limit; instead, they require or encourage the decision-maker to consider whether an arbitrator has been appointed and the progress made in the arbitration. Analogous litigation rules tend not to set a deadline at all.

For **intervention**, we have not seen analogous arbitration rules. This is not surprising, as we've previously noted that intervention does not appear to be a common concept in arbitration. Litigation rules tend to require "timely" application to intervene.

The arbitration rules that set a deadline for **joinder** tend to say that no party may be joined after an arbitrator has been appointed *unless* all the parties, including the party to be joined, agree. Analogous litigation rules for joinder do not set a time limit.

Litigation rules for interpleader (by a defendant as a third-party plaintiff, bringing a third-party defendant into the action): FRCP sets the time limit at 14 days after the defendant serves its original Answer. This might serve as guidance if there are any situations where a Claimant to an IRP or ICANN is seeking to compel the participation of another entity.

### **TAKEAWAYS FOR THE IOT**

As the IOT considers updating the time limit on motions to intervene and for consolidation, the IOT may wish to consider the overall timeframe for completion of IRPs is recommended to be six months, and to consider the impact of any timeframe (or lack of timeframe) on the purposes of the IRP as defined in the Bylaws. The IOT may also wish to consider if there are any events from which a timeframe could be "triggered". For example, we know that the supplementary procedures currently require notice of the filing of an IRP to be provided to certain persons or entities. Would it make sense to have a timeframe for that group calculated from notice? Understanding that IRP filings are posted on ICANN.org, would timing from date of posting be appropriate to consider for other persons seeking to join in? If either of the parties to the IOT are seeking to bring a person or entity in, should that type of motion be held to a more stringent timeframe?

Best regards,

Liz

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