

Time for Filing: Proposal for tolling of time limits

Time for filing of the IRP should be (subject to tolling, dealt with below):

- **Prong 1:** No more than 120 days of when the Claimant *becomes aware or reasonably should have become aware of the material effect of the action or inaction giving rise to the Dispute*. [Note: wording in italics is from the Interim Rules and taken from Bylaws: 4.3(b)(i) definition of a Claimant and 4.3(n)(iv)(A)]
- **Prong 2:** And in any event, no more than [24/36] months from the date of such action or inaction
 - [subject to the safety valve language which ICANN Legal are working on]
 - “date of the action or inaction” for the purposes of the repose shall run from the date of publication on the ICANN website. [Note: this will give a fixed date, knowledge of which is available to all, and will be an incentive for prompt publication]

Tolling

Both time limits for the time for filing (Prongs 1 and 2) shall be tolled for the time expended on other accountability mechanisms filed in a timely manner, as follows:

- **CEP** – any time spent in CEP.
 - Where there has been a CEP, therefore, time for an IRP would begin to run from the date one party gives notice to the other that it is terminating the CEP
 - Question: should this instead run from publication on the ICANN website that the CEP has terminated, in order to give certainty to third parties?
- **RFR** – any time spent seeking a reconsideration on matters directly related to the Dispute.
 - Time for an IRP would therefore begin to run from the publication of:
 - Board decision on the recommendation of the BAMC; or
 - BAMC summary dismissal

Tolling

- **Ombuds Complaint** – any time spent in pursuing an Ombuds complaint, provided that this was filed within 60 days of when the Claimant becomes aware or reasonably should have become aware of the material effect of the action or inaction.
 - Where there has been a timely Ombuds complaint, time for an IRP would begin to run from the date of publication of:
 - The Ombuds’ declining jurisdiction or giving notice that it does not have jurisdiction over the Complaint
 - the Ombuds determination/decision/recommendation [Note: ICANN Legal to please assist with identifying the appropriate conclusion of an Ombuds Complaint]
- **DIDP** – any time spent awaiting a decision on a first DIDP on matters directly related to the Dispute, provided that this was filed within 60 days of when the Claimant becomes aware or reasonably should have become aware of the material effect of the action or inaction.
 - Where there has been a timely DIDP, time for an IRP would begin to run from the date of publication of:
 - Org’s decision on the DIDP
 - Question: should this allow for more than one DIDP? [Note: RySG comments had proposed 2x DIDPs for the 120 day time limit and 2x DIDPs for the repose if 24 months, none if repose is 36 months]

Other issues on timing?

Do we need to identify and address uncertainties in when a potential Claimant “becomes aware or reasonably should have become aware” of the action/inaction under prong 1?

- 2nd PC: INTA: term overly vague. “include a test for identifying when a claimant is deemed to be under inquiry notice injury and the clock begins to run. Such tests have been devised under U.S. jurisprudence and there may be other jurisdictions that apply similar tests.”

Other?