Time for Filing: Proposal for tolling of time limits

Reminder: this is not intended to be the actual language used in the rules, but the principles on which we are agreed

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]
  - When does time start running?
    - Support in group for recommending an ICANN "Official Gazette" where major decisions can be published, BUT
    - Not every decision which might be subject to IRP will be published. ICANN Legal to consider as part of the "safety valve" language

1

Tolling – Prong 1

Time limits for the time for filing (Prong 1) shall be tolled for a Potential Claimant seeking first to utilize another accountability mechanism(s) for the time expended on such other accountability mechanism(s) filed in a timely manner (i.e. the time clock will be paused and restart from the same point, but not reset to day 1), as follows:

- **RFR** – any time spent seeking a reconsideration on matters directly related to the Dispute
  - Time for filing an IRP would therefore
    - Be paused from the filing of the request for reconsideration and
    - Restart from the publication of Board decision on the recommendation of the BAMC or BAMC summary dismissal
- **CEP** – any time spent in CEP
  - Time for filing an IRP would therefore
    - Be paused from the notice to commence the CEP and
    - Restart from the date ~~one~~ any party gives notice to the other that it is terminating the CEP
  - May need to sense check this against the CEP rules when drafted to ensure alignment

Tolling – Prong 1

- **DIDP** – any time spent awaiting a decision on a first DIDP on matters directly related to the Dispute, if filed in a timely manner
  - Time for filing an IRP would therefore
    - Be paused from the filing of the DIDP request, 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, and
    - Restart when Org notifies the complainant of the 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]
- **Ombuds Complaint** – any time spent in pursuing an Ombuds complaint, if filed in a timely manner
  - Time for an IRP would therefore
    - Be paused from the filing of the 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, and
    - Restart when the Ombuds declines jurisdiction or gives notice that it does not have jurisdiction over the Complaint, or issues a determination/decision/recommendation
  - Complainant would have to waive confidentiality as to the existence of their Ombuds process if seeking to toll time
  - May be beneficial to seek Ombuds' views on this

Maximum time for Tolling – Prong 1

To prevent endless rounds of accountability mechanisms stopping the clock there should be a maximum time for tolling.

The aim is to strike a balance between:

- Allowing genuine access to other accountability mechanisms and, hopefully, opportunity to resolve disputes without recourse to the IRP, and

- ensuring IRPs are adjudicated in a timely manner, while recollections and evidence is fresh

Maximum time to be based on:

- an assessment of the cumulative outer time limits for an RFR and DIDP (since these are not in the complainant's control), **plus**

- a reasonable period of time for a CEP, having consideration to past cases (where timing is in the control of both ICANN and Complainant)

Tolling – Prong 2

Suggest that the "Prong 2" timing should be tolled in the same manner as Prong 1

However, once we have assessed the appropriate maximum time for tolling under Prong 1, we may consider building this into the length of the repose instead