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# Public Comment Summary Report

## The Independent Review Process Implementation Oversight Team (IRP-IOT) Draft Recommendations

**Open for Submissions Date:**

Friday, 22 June 2018

**Closed for Submissions Date:**

Friday, 10 August 2018

**Summary Report Due Date:**

Monday, 10 September 2018

**Category:** Other

**Requester:** Independent Review Process Implementation Oversight Team (IRP-IOT)

**ICANN org Contact(s):** [iot-pc@icann.org](mailto:iot-pc@icann.org)

**Open Proceeding Link:**

<https://www.icann.org/en/public-comment/proceeding/the-independent-review-process-implementation-oversight-team-irp-iot-draft-recommendations-22-06-2018>

**Outcome:**

The IOT held several meetings in late 2018 to consider the results of the consultation but could not achieve consensus on the issue of Repose before going dormant for all but one meeting in 2019.

The IOT was reconstituted in late 2019 by the ICANN Board and held the first meeting of the new IOT in January 2020 with the objective of proposing new Supplementary Rules which would address the issue of Repose.

## Section 1: What We Received Input On

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

The two specific points the IOT was seeking input on were:

- Changing the 45-day limit on time for filing to 120 days.
- Eliminating the one-year repose requirement.

## Section 2: Submissions

**Organizations and Groups:**

Name	Submitted by	Initials
GNSO – Business Constituency	Steve DelBianco	BC
GNSO – Intellectual Property Constituency	Brian Scarpelli	IPC
GNSO - ISPs and Connectivity Providers Constituency	Malcolm Hutto	ISPCP
GNSO - Non-Commercial Stakeholders Group	Rafik Dammak	NCSG
GNSO - Registrar Stakeholder Group	Zoe Bonython	RrSG
GNSO – Registry Stakeholder Group	Samantha Demetriou	RySG
ICANN Organization	Samantha Eisner	ICANN
The International Trademark Association	Lori Schulman	INTA
Verisign	Pat Kane	VS

**Individuals:**

Name	Affiliation (if provided)	Initials
(None)		

## Section 3: Summary of Submissions

Initials	45 to 120 days	Removing 1 year Repose	Other
BC	Supports	Supports	Supports tolling for IRP timings when other ICANN review mechanism are initially used.
IPC	Supports	Supports	- Supports tolling for IRP timings when other ICANN review mechanism are initially used. - If repose is required it should be a minimum of 24 to 36 months.
ISPCP	Supports	Supports	
NCSG	Supports	Supports	Absolutely against any repose period.
RrSG	Supports	Supports	Recommends the 120 days only begin when: <ul style="list-style-type: none"> <li>CLAIMANT becoming aware (or ought reasonably to have been aware) of the material effect of the action or inaction giving rise to the DISPUTE or</li> </ul>

			<ul style="list-style-type: none"> <li>ICANNs most recent action following the material effect of the action or inaction giving rise to the DISPUTE</li> </ul>
RySG	Supports	Against	<ul style="list-style-type: none"> <li>- Supports tolling for IRP timings when other ICANN review mechanism are initially used.</li> <li>- there should be a period of repose of 24 to 36 months.</li> </ul>
ICANN	Supports	Against	Lack of repose would be a significant concern for ICANN Org. and would be raised with the Board when it considered these changes.
INTA	Supports	Supports	INTA is "concerned that the newly added language, "ought reasonably to have been aware," is overly vague, may be subject to a variety of interpretations—and, in turn, may inadvertently prevent claimants from seeking redress through the IRP. "
VS	Supports	Against	There needs to be a period of repose of 24 to 36 months.

### Section 4: Analysis of Submissions

- Amending the time-to-File from 45 to 120 days – all submissions supported this proposal.
- Removing a period of Repose - Of the 9 submissions 6 supported the removal of a period of Repose and 3 opposed it (67% for to 33% against). The IPC submission did note that 'If repose is required it should be a minimum of 24 to 36 months.' The ICANN Org. submission noted that 'ICANN org offers this comment to reiterate the contributions it made within the IRP Implementation Oversight Team (IOT) as it deliberated on this issue, and to flag that if an outer limit on filing is not provided within the Supplementary Procedures presented to the ICANN Board for approval, the concerns stated within this submission would be raised with the ICANN Board at that time. '
- Other issues notable comments:
  - Allowing Tolling for IRP timings when other ICANN review mechanism are initially used – this was proposed in the submissions by the BC, IPC and the RySG.
  - The INTA submission was concerned that the "ought reasonably to have been aware" was overly vague and suggested that "the IRP-IOT revise Rule 4 to 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. It would be beneficial to the ICANN community to have more clarity in this critical area of procedure."

### Section 5: Next Steps

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The IOT will consider these inputs in its ongoing work.

----- **TEMPLATE END** -----

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# Publishing Your Summary Report

## Submit to the Policy Development Support Team for Proofing and Publishing

- ⦿ Create an email to [public-comment@icann.org](mailto:public-comment@icann.org) and include:
  - ⦿ Name of Legal reviewer
  - ⦿ Name of Communications reviewer
  - ⦿ Name of Executive approver
  
- ⦿ Add the following attachments:
  - ⦿ Your completed summary report template as a Word file
  
- ⦿ The Policy Development Support team will:
  - ⦿ Review and proof your summary report.
  - ⦿ Return the proofed summary report to you with tracked changes.
  - ⦿ **Once the summary report is finalized, no further action from you is required.**  
The Policy Development Support team will publish the summary report and will share the link.