

Joinder recommendations

1. That all those who participated in the underlying proceeding as a “party” receive notice from a claimant (in IRPs under Bylaw section 4.3(b)(iii)(A)(3)) of the full Notice of IRP and Request for IRP (including copies of all related, filed documents) contemporaneously with the claimant serving those documents on ICANN.
2. That all such parties have a right to intervene in the IRP. How that right shall be exercised shall be up to the PROCEDURES OFFICER, who may allow such intervention through granting IRP-party status or by allowing such party(ies) to file amicus brief(s), as the PROCEDURES OFFICER determines in his/her discretion. No interim relief or settlement of the IRP can be made without allowing those given amicus status as a matter of right as described herein a chance to file an amicus brief on the requested relief or terms of settlement.

Joinder recommendations (con't)

3. In reviewing such applications, and without limitation to other obligations under the bylaws, the PROCEDURES OFFICER shall endeavor to adhere to the provisions of Bylaw section 4.3(s) to the extent possible while maintaining fundamental fairness.
- ~~4. Persons/entities participating in IRPs as amici shall each, for purposes of bylaw section 4.3(r) only, be considered "parties" to the IRP.~~

[On call May 11, 2017, we agreed to strike number 4, which is no longer part of this Joinder recommendation. We may look for other, non-financial, avenues to create disincentives for frivolous or abusive amici briefs but for now have not done so and this Joinder recommendation consists only of points 1 – 3 of these two Joinder slides.]

Panel Conflict of Interest recommendations

1. Term limit of five years (as in bylaw) – ~~no renewal (as in Work Stream One Final Report);~~
[reconsidered on call – appears agreement for one additional five-year term (total ten-year term possible but not guaranteed) and so that is the proposal for first reading].
2. Panelists in ongoing cases (still pending at end of **the panelist's final** term) can proceed to conclusion in that case but cannot be assigned to others.
3. ~~Further discussion needed:~~
 - **Staggered terms** – if we use 3-year term for three of the first members to standing panel shall they be eligible for **two full** a second, five-year terms **thereafter (total 13-year term possible but not guaranteed beyond three)?** (I recommend yes); **[support on call for yes and so that is the proposal for first reading]**
 - ~~Do case-assignments end before term ends?~~

Panel Conflict of Interest recommendations

4. Add a provision to Section 3 of the USPs in appropriate place as follows:

In addition to the requirements in the Bylaws, every panelist shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final decision has been rendered or the proceedings have otherwise finally terminated.

Retroactivity recommendations

1. With respect to substantive IRP standard:

- No retroactivity.

2. With respect to USP rules:

- With respect to the retroactive application of the new rules to IRPs now pending and filed on or after Oct. 1, 2016, I recommend that we insert a provision allowing a party to request the panel hearing the case to decide this as a matter of discretion. We should add a standard for the panel in reviewing such requests, specifically that unless all parties consent it shall not allow new rules to apply to pending cases if that action would work a substantial unfairness or increase in costs to any party or otherwise be unreasonable in the circumstances.

“Materially affected” – Standing recommendations

1. As for the recommendation that essentially anyone can bring an IRP claim:

- Recommend against that as beyond bylaws.

2. As for standing with respect to “imminent harm” recommend:

- Revise the definition of Claimant (Section 1 of USPs) to take into account the strict provisions of bylaw section 4.3(p) (even though the definition of Claimant in the USPs follows the provision of bylaw section 4.3(b)(i)).
- Make corresponding changes in Section 9 of the USPs as required.
- Recommend against changing provisions of Section 11.d of the USPs and recommend that they be left unchanged.