

I agree with these points.

Purely a drafting note -- it should be clear that the "parties" referred to in item 2 are the parties in the underlying proceeding, and the "amici" referred to in item 3 are the amici in the underlying proceeding.

I would suggest considering 45 days for the time period in item 6, considering that SO/AC/SG/C parties can require levels of approval/discussion beyond those of most other parties.

Greg

**Greg Shatan**

---

On Wed, Mar 29, 2017 at 4:14 AM, McAuley, David via IOT <[iot@icann.org](mailto:iot@icann.org)> wrote:

Dear Members of the IRP IOT,

In this email, I want to move forward and seek your input on the issue of "Joinder" that was mentioned in several public comments and that was raised in the last call Thursday March 23rd.

The public comments on this topic were from (1) [Fletcher, Heald & Hildreth\[forum.icann.org\]](#), (2) the GNSO's [IPC\[forum.icann.org\]](#), and (3) the GNSO's [NCSG\[forum.icann.org\]](#) (these three raised other issues as well).

The comments make these suggestions:

- [Fletcher](#): Provide actual notice to all original parties to an appeal to IRP of an underlying Third Party Proceeding (see expert panel decision appealability at Bylaw 4.3(b)(iii)(A)(3));
- [Fletcher](#): Provide mandatory right of intervention to all parties to the underlying proceeding being appealed to IRP;
- [Fletcher](#): Require IRP panel to allow all such parties to be heard before deciding on interim relief or protection;
- [IPC](#): Any third party "directly involved" in underlying action being appealed to IRP should be able to join or intervene as claimant of in opposition to claimant. (Multiple claimants should not have one collective 25-page limit for Written Statements);
- [NCSG](#): Right of intervention must be added for the winning party below. At the least they should be able to file briefs as *Amici* – meaning "friends" of the panel;
- [NCSG](#): Emergency panels/interim relief requests must be openly heard with all relevant parties present.

As mentioned in the call, we are directed by bylaws that provide for:

- Just resolution of disputes (Section 4.3(a)(vii)); and

· Fundamental fairness and due process (Section 4.3(n)(iv)).

In addition, the bylaws specifically direct that the rules address “Issues relating to joinder, intervention, and consolidation of Claims...” (Section 4.3(n)(iv)(B)).

The current [draft\[icann.org\]](http://draft.icann.org) of the updated supplementary procedures deals with joinder etc. at section 7 on page 8. The current draft leaves these matters up to a procedures officer and allows joinder by those who qualify as a claimant – which the winning party below is unlikely to be.

With these things in mind, as a participant in this group I propose that we agree the following points and, at a suitable time, ask Sidley to draft appropriate language into the draft supplementary procedures. I believe these comments have made reasonable and persuasive points about ensuring that the winning party below can defend the judgment below and will likely be a more motivated party in this respect than ICANN, although ICANN will be motivated, of course, to defend the notion that its compliance with an expert panel would not violate the article or bylaws. Suggestions:

1. That all parties to the underlying proceeding get timely notice (including copies of all pleadings and other filed documents) of the institution of IRP;
2. That all parties have a right to intervene or file an amicus brief, as they elect. If they elect to become a party they take on all rights/obligations of parties;
3. That all parties have a right to be heard in any petition for interim relief – whether amici can be heard on interim relief would be up to the panel or procedures officer (whichever is acting);
4. That all parties each enjoy equivalent rights/obligations with respect to pleadings – e.g. length, manner of filing, etc.
5. That other “interested” parties be able to petition the panel or procedures officer (whichever is acting) to intervene (as parties or as amici) and the decision in this respect will be up to the panel or procedures officer (whichever is acting).
6. That such joining parties to be given a reasonable amount of time to file their pleading or brief but this can be a relatively short period. They will have actual notice and the time should run from that date. They will have been a party below and so are in some degree prepared on the issues. I suggest 30 days here.

I welcome discussion on list and, if we need, on next call.

David