

## Panel Conflict of Interest

- From David McAuley [email](#) of May 3 (as participant):
- I tend to think term limits might be appropriate after two five-year terms to allow for appropriate development of panelist understanding of the DNS and ICANN's mission, work, policies, practices, and procedures (see bylaw section 4.3(j)(i)). But I could imagine reasonable arguments for no term limits, or term limits after one five-year term – **what do you think?**
- The guidelines have a general principle that I recommend we place in the rules (changed to tailor to IRP by replacing the word “award” with the word “decision”):
  - *Every arbitrator 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 (bylaws and rules)

- From David McAuley [email](#) of May 2 (as participant):
- I recommend against making the substantive bylaw provisions that became effective Oct. 1, 2016, applicable to IRPs filed prior to that date.

That sort of retroactivity seems well beyond the scope of “procedural” rules. In my opinion, had the CCWG Accountability wished for such a result it would have directly discussed it and presented the matter explicitly to the board - actions which it did not do.

- 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.