

IPC Comments (on Costs) (in part):

Include language within § 15 to the effect that “Nothing in these IRP Supplementary Procedures is intended to supersede ICDR Rules, Article 20(7) and Article 21(8), including the right to request an interim order allocating costs arising from a party's failure to avoid unnecessary delay and expense in the arbitration”.

...

Although matters of costs should be left to the ultimate discretion of the Appeals Panel, it seems reasonable, in the interests of justice, that there should be a presumption that an unsuccessful appellant will bear their opponents reasonable costs of the appeal. Such a provision ought to discourage frivolous appeals with little or no prospects of success.

It is common in such proceedings to seek to ensure the good conduct of parties by means of the threat of costs and other sanctions. The ICDR Rules do so at Article 20(7) and Article 21(8). Since the IRP Supplementary Procedures state that in case of conflict between the two sets of rules, the IRP Supplementary Procedures will apply (See IRP Supplementary Procedures § 2), and since the IRP Supplementary Procedures § 15 includes language regarding the treatment of the costs of the IRP, as provided for under ICANN Bylaws Section 4.3(r), the IPC believes it would be beneficial to clarify that no conflict exists in this regard. The addition of language within § 15 to the effect that “Nothing in these IRP Supplementary Procedures is intended to supersede ICDR Rules, Article 20(7) and Article 21(8), including the right to request an interim order allocating costs arising from a party's failure to avoid unnecessary delay and expense in the arbitration” would be beneficial in removing any possible doubt.