

USP 4. Time for Filing:

The “Time for Filing” section was the issue on which the IRP-IOT received the most comments, almost all in support of extending the time for filing.

The IRP-IOT’s first draft USP.4 had suggested two separate deadlines: a 45 day limit based on the Claimant’s awareness that they were affected by an ICANN action, to encourage prompt action by the Claimant, and a separate 1 year deadline based on the date of ICANN’s action (and independent of the awareness of the Claimant, or the Claimant being affected).

With regard to the first deadline, comments were received in support of a range of options, with 90 days, 180 days and an indefinite period each having multiple advocates. Having considered the points made, the IRP-IOT settled on 120 days as a reasonable compromise respecting the views submitted, while also retaining fidelity to the goal of “celerity and due process”.

Only one comment received (Hill) supported the principle of the second deadline; opposing comments came from a broad range of commenters including RySG (who are contracted parties), BC (non-contracted but commercial parties) and NCSG (non-contracted non-commercial), organisations primarily concerned with intellectual property interests (INTA, DotMusic), networking (LINX) and public policy (CCG New Delhi), as well as individuals.

Arguing against the principle of a second deadline, many of these considered that it would in some cases prevent a valid dispute from ever being filed with the IRP.

Eight commenters pointed out that it sometimes takes several years between the date of an ICANN action, such as a policy decision, and that decision being fully implemented such that it begins to affect those to whom it is addressed. Accordingly, the second deadline could easily expire before any prospective Claimant had the opportunity to challenge ICANN’s action, because the standing rules prohibit filing a claim until the Claimant has been personally affected by the action, which cannot happen until it has been implemented. Some respondents argued that inability to challenge such decisions could critically impair the IRP’s objective of enforcing the limits on ICANN’s mission (e.g. NCSC, Rosenzweig) and even that such a limit conflicted with the bylaws requirements for the IRP (LINX, CCG New Delhi).

The IRP-IOT considers that it is preferable to address these concerns by adjusting the USP.4 Time for Filing rather than by weakening the restrictions on Standing, as we do not believe the Purposes of the IRP set out in Bylaws Section 4.3(a) would be advanced by encouraging speculative claims or claims from Claimants only weakly connected with the action, and not suffering a material harm as a result. Moreover, changing the requirements for Standing would require a Bylaws amendment.

The IRP-IOT therefore withdraws its proposal to introduce a second deadline for filing.

Accordingly, the IRP-IOT requests Sidley to amend the USP.4 Time for Filing section so that the Claimant will have 120 days in which to file an IRP dispute, instead of 45 days as previously proposed. The starting date for this 120 day period shall be when the Claimant knew, or ought reasonably to have known, of the material effect on them of the action giving rise to the dispute. The IRP-IOT further requests that Sidley amend the same section so as to remove the additional deadline for filing based on the date of ICANN’s action alone.

The effect of these changes will be that any Claimant with standing to bring an IRP case will have 120 days in which to bring it, or lose the opportunity to do so. The changes eliminate the possibility that some potential Claimants might never be allowed to bring an IRP case however promptly they act, because they did not have standing to file the dispute until after the deadline to do so had already expired.