

With respect to the Time-for-Filing issue, in light of the discussion on our last call I went back and reviewed the 'consensus' we reached last year on the overall 'repose' issue. While my personal inclination would support an overall repose period, on reviewing the record I recall why I went along with the 'no-repose' position - it strikes me as the position that accords with the bylaws.

While I read more of the record (including Sam Eisner's comments (email<<http://mm.icann.org/pipermail/iot/2017-March/000178.html>> March 30, 2017) and Liz Le's summary (email<<http://mm.icann.org/pipermail/iot/2017-April/000186.html>> April 13, 2017) of Jones Day comments), the two items that seem to me most important on this issue are Bylaw section 4.3(n)(iv)(A):

(iv) The Rules of Procedure are intended to ensure fundamental fairness and due process and shall at a minimum address the following elements:

(A) The time within which a Claim must be filed after a Claimant becomes aware or reasonably should have become aware of the action or inaction giving rise to the Dispute;

And CCWG Accountability (Work Stream One) Final Report, Annex 07, which speaks to claimants' obligations vis-à-vis timely filing, saying (at paragraph 19, in part):

They must [file] within a certain number of days (to be determined by the IRP Subgroup) after becoming aware of the alleged violation and how it allegedly affects them.

I would like to ensure that we have reached consensus though. To that end, I will ask Bernie to note from the record how many attended that consensus call -- do we need to confirm that we have consensus via email? As mentioned, despite my personal inclination otherwise, I would support (as participant) the 'no-repose' position and thus would support the following language proposed by Malcolm Hutty:

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.

Best regards, David