

Commenter	Regarding which Recommendation	Comment	Response	Change	Where
GNSO-BC	45 to 120 days	The BC endorses the amendments to the Updated Supplementary Procedure rule #4, Time for Filing, such that 120 days will be allowed.			
GNSO-BC	Removing 1 year repose	The current revisions to the Updated Supplementary Procedure rule # 4, Time for Filing, addressed these time limitation concerns by extending the 45-day aspect of the Time-for-Filing language to a 120-day period for filing after the claimant becomes aware of the material effect and the 12-month limitation to file an IRP has been eliminated in the new amendment. The BC supports these revisions and urges the IOT not to revert on these essential changes to IRP procedures			
GNSO-BC	Other - Time for other dispute mechanisms should not be included	The BC further recommends that the calculation of any time period should not include the time within which the parties are formally engaged in any ICANN accountability mechanism relating to or in connection with the issue(s) being referred to IRP.			
GNSO-IPC	45 to 120 days	Regarding the change from 45 to 120 days for filing a claim, while the IPC does support this increased time period, in some cases an even longer time period may be warranted as damage resulting from ICANN actions may not be realized immediately. It is perfectly possible for a party not to be immediately affected by an illegal or inconsistent ICANN policy at the time of its adoption, but for the party to be affected by the very same policy when that policy is implemented or applied to the party's detriment. In such cases, a damaged party should not be barred from bringing its claim and the time for filing rule should not be used to justify a policy that contradicts ICANN's essential obligations. We assume that is the intention of the language "after a CLAIMANT becomes aware, or ought reasonably to have been aware, of the material affect of the action or inaction giving rise to the DISPUTE", and by the Bylaws, which define a Claimant as "any legal or natural person, group, or entity ... that has been materially affected by a Dispute. To be materially affected by a Dispute, the Claimant must suffer an injury or harm that is directly and causally connected to the alleged violation". but it would be beneficial to make this absolutely clear in these Rules when finalized.			
GNSO-IPC	Removing 1 year repose	On the removal of the separate 12-month limitation, as the IPC commented during the previous public comment on the draft Supplementary Procedure <sup>2</sup> , the previously proposed overarching limitation period would appear to be inconsistent with the constructive knowledge requirement under the ICANN Bylaws, as confirmed in the advice by the Sidley law firm. The IPC therefore supports its removal. In the event that the outcome of this public comment and the further deliberations of the IRP-IOT do conclude that some overall limitation period, or repose, is nevertheless required, the IPC asserts that there must be a reasonable limitation period from the date of ICANN's action or inaction. We believe that 12 months is inadequate, and that 24 months or 36 months is far more in line with analogous "statute of limitations" principles in established statutes and case law. Again, any such 24 or 36 months period should not prevent a party from raising a violation of ICANN's Articles of Incorporation or Bylaws when the harm only results from a later implementation of an ICANN action or inaction.			

GNSO-IPC	Other - The IPC believes that the starting point of the time for filing period must be unambiguous	The IPC believes that the starting point of the time for filing period must be unambiguous. The time for filing period should not start running before the publication of the adopted minutes setting out the reasoning of the action or inaction. Whenever an action or inaction immediately affects a party, or multiple parties, that can be identified in the action or inaction, ICANN should immediately communicate the publication of the minutes to the parties concerned and inform them about the possibilities for redress and the timing and procedure for introducing redress			
GNSO-IPC	Other - Interplay with other accountability mechanisms remains unclear.	Interplay with other accountability mechanisms remains unclear. We, and others, have previously expressed our strong belief that it is necessary to amend the time for filing periods to ensure that the deadline for filing an IRP be tolled during the time within which the parties are formally engaged in other accountability mechanisms over the issue(s) being referred to IRP, in particular: a. The Cooperative Engagement Process (CEP), which is a voluntary but strongly encouraged step prior to the commencement of an IRP (Bylaws Section 4.3(e)); b. An ongoing Reconsideration Request process, including any Ombudsman review which forms a part of that process pursuant to Bylaw Section 4.2(l); c. A request under ICANN's Documentary Information Disclosure Policy (DIDP); and d. A complaint to the Ombudsman pursuant to Bylaws Article 5. Since complaints to the Ombudsman generally are not subject to set time limits we recognize that this might give rise to concerns of undue delay. Nevertheless, Ombuds complaints are out of the hands of the Complainant and they should not be penalized for something which they cannot control. An IRP is an extremely costly and time-consuming process. It is not to be entered into lightly. All members of the community deserve the opportunity to attempt to resolve their dispute using the other accountability mechanisms in place without the concern that they will serve to exhaust the limitation period for bringing an IRP.			
GNSO-NCSG	45 to 120 days	The NCSG strongly supports the change in the updated supplementary procedure rule #4 ('Timing for Filing Rule'). The first Implementation Oversight Team recommendation draft had given the claimants only 45 days to file a claim against ICANN. As we said in our previous public comment dated 24 January 2017: "from a practical standpoint 45 days (the initial duration that was given in the first IoT report) is simply too short a time period for claimants. This is particularly true if the potential claimant is a collective body (like the NCSG) where significant public actions need to be coordinated with numerous members and other stakeholders." We support the modified language and warmly welcome the prolongation of the duration from 75 days to 120 days. We specifically support: "The modified language which provides for 120-day period for filing after the claimant becomes aware of the material effect (75 days more than was suggested previously)."			

GNSO-NCSG	Removing 1 year repose	<p>Hence we support the following change: "Under the prior text, a claimant would have had to have filed their IRP within one year of the action/inaction that is being challenged. Under the new text, the only timing requirement that the claimant has to meet is the 120-day requirement above, whether the challenged action/inaction happened 3 months, 3 years or 5 years prior (or more)."</p> <p>The NCSG under no circumstances accepts the return to the previous text, as the IRP is a critical tool to keep ICANN accountable and as transparent as possible. However, we reiterate our previous comment that while the time limit might be appropriate for commercial actors, it is not for consensus policy.</p>			
GNSO-RrSG	45 to 120 days	<p>While the RrSG generally agrees with the IRT-IOT Draft Recommendations, we are concerned that 120 days from simple awareness of an action/inaction may still be insufficient, given other accountability processes can take up to a year. Instead, we recommend 120 days from the action/inaction which formed part of the actual dispute and not the one which gave rise to it.</p> <p>Accordingly, the RrSG proposes Procedure #4, Time for Filing, be amended to read as follows: An INDEPENDENT REVIEW is commences when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days from the later of: CLAIMANT becoming aware (or ought reasonably to have been aware) of the material affect of the action or inaction giving rise to the DISPUTE or ICANNs most recent action following the material affect of the action or inaction giving rise to the DISPUTE.</p>			
GNSO-RrSG	Removing 1 year repose	<p>The Registrar Stakeholder Group (RrSG) would like to thank the IRT-IOT for their work and the proposed amendment to its original Updated Supplementary Procedure #4, Time for Filing. The RrSG agrees that extending the time allowed for filing a dispute from when the claimant first becomes aware of the action/inaction is necessary. Likewise, having no limitation instead on being able to file a dispute (from the date when said action/inaction occurred) is a sensible idea.</p>			
GNSO-RrSG	Other - 120 days +	<p>While the RrSG generally agrees with the IRT-IOT Draft Recommendations, we are concerned that 120 days from simple awareness of an action/inaction may still be insufficient, given other accountability processes can take up to a year. Instead, we recommend 120 days from the action/inaction which formed part of the actual dispute and not the one which gave rise to it.</p> <p>Accordingly, the RrSG proposes Procedure #4, Time for Filing, be amended to read as follows: An INDEPENDENT REVIEW is commences when CLAIMANT files a written statement of a DISPUTE. A CLAIMANT shall file a written statement of a DISPUTE with the ICDR no more than 120 days from the later of: CLAIMANT becoming aware (or ought reasonably to have been aware) of the material affect of the action or inaction giving rise to the DISPUTE or ICANNs most recent action following the material affect of the action or inaction giving rise to the DISPUTE.</p>			

GNSO-RySG	45 to 120 days	The RySG agrees with the change from 45 to 120 days for filing a claim. The former seems too short and the latter seems just right, affording potential claimants enough time to consider the merits and costs of filing for IRP. The calculation of the 120-day deadline should exclude the time in which the IRP Claimant was engaged in CEP, an ongoing Reconsideration Request Process, the first ongoing Ombudsman review, or the first or second ongoing Documentary Information Disclosure Policy request, relating to the issues being referred to IRP.			
GNSO-RySG	Removing 1 year repose	On the separate 12-month limitation, the RySG does not support the new proposal that deletes this idea – we believe there must be a reasonable limitation period from the date of ICANN’s action or inaction. We believe that some cap is needed to allow for predictability and for the final establishment of a reliable body of precedent. We believe that 12 months is inadequate. The RySG believes that the calculation of the overall limitation should not include the time in which the IRP Claimant was engaged in certain accountability mechanisms. We provide alternative proposals, either of which is acceptable to the RySG. a. 36-month limitation, excluding the time in which the IRP Claimant was engaged in CEP or an ongoing Reconsideration Request process relating to the issues being referred to IRP; or b. 24-month limitation, excluding the time in which the IRP Claimant was engaged in CEP, an ongoing Reconsideration Request Process, the first ongoing Ombudsman review, or the first or second ongoing Documentary Information Disclosure Policy request, relating to the issues being referred to IRP.			
GNSO-RySG	Other - Alternative to no repose	On the separate 12-month limitation, the RySG does not support the new proposal that deletes this idea – we believe there must be a reasonable limitation period from the date of ICANN’s action or inaction. We believe that some cap is needed to allow for predictability and for the final establishment of a reliable body of precedent. We believe that 12 months is inadequate. The RySG believes that the calculation of the overall limitation should not include the time in which the IRP Claimant was engaged in certain accountability mechanisms. We provide alternative proposals, either of which is acceptable to the RySG. a. 36-month limitation, excluding the time in which the IRP Claimant was engaged in CEP or an ongoing Reconsideration Request process relating to the issues being referred to IRP; or b. 24-month limitation, excluding the time in which the IRP Claimant was engaged in CEP, an ongoing Reconsideration Request Process, the first ongoing Ombudsman review, or the first or second ongoing Documentary Information Disclosure Policy request, relating to the issues being referred to IRP.			
ICANN	45 to 120 days	The first question was settled amongst the IRP IOT, which agreed that a 120-day period from becoming aware (or reasonably should have been aware) of an action (rather than the previously proposed 45 days in the Draft Rules) is a sufficient time for filing. All participating IOT members, including the ICANN org, agree to this change.			

ICANN	Removing 1 year repose	ICANN organization submits this comment to express its continuing concerns with and opposition to the elimination of a “statute of repose” from the proposed Updated Supplementary Procedures for ICANN’s Independent Review Process (IRP), Rule 4 (Time for Filing). ICANN org’s comment specifically relates to the proposed elimination of any outer time limit for the filing of an IRP. ICANN org offers this comment to reiterate the contributions it made within the IRP Implementation Oversight Team (IOT) as it deliberated on this issue, and to flag that if an outer limit on filing is not provided within the Supplementary Procedures presented to the ICANN Board for approval, the concerns stated within this submission would be raised with the ICANN Board at that time. (detailed rationale is provided in the full response which too long to post here).			
INTA	45 to 120 days	INTA commends the IRP-IOT’s removal of Rule 4’s 12-month ultimate deadline for commencing an IRP, and its expansion of Rule 4’s period for filing from 45 days to 120 days.			
INTA	Removing 1 year repose	INTA commends the IRP-IOT’s removal of Rule 4’s 12-month ultimate deadline for commencing an IRP, and its expansion of Rule 4’s period for filing from 45 days to 120 days.			
INTA	Other - Definition of "ought reasonably to have been aware"	That said, we are concerned that the newly added language, “ought reasonably to have been aware,” is overly vague, may be subject to a variety of interpretations—and, in turn, may inadvertently prevent claimants from seeking redress through the IRP. In turn, INTA recommends that the IRP-IOT revise Rule 4 to include a test for identifying when a claimant is deemed to be under inquiry notice injury and the clock begins to run. Such tests have been devised under U.S. jurisprudence <sup>2</sup> and there may be other jurisdictions that apply similar tests. It would be beneficial to the ICANN community to have more clarity in this critical area of procedure.			
ISPCP	45 to 120 days	We support the IOT’s proposal to extend the period of the deadline for filing from 45 days to 120 days. This will be especially welcome to non-contracted parties, such as ISPs, who may not be familiar with ICANN and the options available to bring a claim under the IRP prior to the need to do so (unlike contracted parties, who often be able to anticipate the need to bring a claim).			
ISPCP	Removing 1 year repose	The ISPCP therefore strongly supports the decision to remove from Draft Rules the “supplementary deadline” of one year from the date of ICANN’s action or decision. The deadline of 120 days that the IOT now proposes is entirely sufficient to ensure prompt action and meet the purposes of the IRP as set out in the bylaws. We urge the IOT not to <u>revert this change</u> .			
Verisign	45 to 120 days	In Verisign’s view, the expansion of the time period for bringing a claim from 45 to 120 days, and the addition of a constructive knowledge requirement, are consistent with the Bylaws.			

Verisign	Removing 1 year repose	The elimination of a period of repose that requires that all claims be brought within a period of time from the date of the challenged action or inaction, however, is not consistent with the Bylaws. Verisign proposes that a repose period of 24-36 months be added back into Rule 4; the longer time period would address the concerns raised in the Comments while at the same time ensuring fundamental fairness and due process to other members of the Internet community impacted by the challenged action or inaction.			
Verisign	Other - Alternative to no repose	The elimination of a period of repose that requires that all claims be brought within a period of time from the date of the challenged action or inaction, however, is not consistent with the Bylaws. Verisign proposes that a repose period of 24-36 months be added back into Rule 4; the longer time period would address the concerns raised in the Comments while at the same time ensuring fundamental fairness and due process to other members of the Internet community impacted by the challenged action or inaction.			