

Intergovernmental Organization Curative Rights Work Track (IGO-WT)

Update to the At-Large Consolidated Policy WG

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Agenda

- ⦿ About the IGO-WT
- ⦿ Factors impacting IGO-WT timeline & work scope
- ⦿ One scenario of an IGO versus a Registrant
- ⦿ IGO-WT Problem Statement
- ⦿ IGO-WT Proposed Solution (as at 9 August)
- ⦿ Mandate sought by At-Large Participants
- ⦿ Q & A

About the IGO-WT

- ⊙ “Intergovernmental Organization Curative Rights Work Track”
- ⊙ Originally convened under the Review of All Rights Protection Mechanisms PDP WG (RPM PDP WG)
 - Chartered as an addendum to the RPM PDP WG charter
- ⊙ **Has a narrow mandate**
 - ***“Identifiers”***: Acronyms of IGO names, eg. WHO, WTO, UNU
 - **Rec #5 from the IGO-INGO Curative Rights PDP WG** – question regarding ***IGO jurisdictional immunity***
 - Is there a policy solution consistent with Rec’s #1, #2, #3 & #4? i.e. one that:-
 - Accounts for possibility of IGO enjoying jurisdictional immunity;
 - Does not affect right, ability of registrant to file judicial proceedings in a court of competent jurisdiction;
 - Preserves registrants’ right to judicial review of an initial UDRP or URS decision; and
 - Recognizes existence and scope of IGO jurisdictional immunity as a legal issue to be determined by a court of competent jurisdiction

Factors impacting IGO-WT timeline & work scope

1. Timeline Issue

Shifting delivery because:

- August moratorium on public comment proceeding launches
- **Solution:** Project Change Request to extend delivery approved by GNSO Council:
 - Initial Report: 7 Sep
 - Final Report: 21 Dec



2. Existential Issue

Recently highlighted:

- IGT-WT is an orphan, no ability to develop consensus policy recommendations
- **Solution:** GNSO Council to reconstitute WT as an EPDP WG
- Not really At-Large's concern *per se*



3. Work Scope Issue

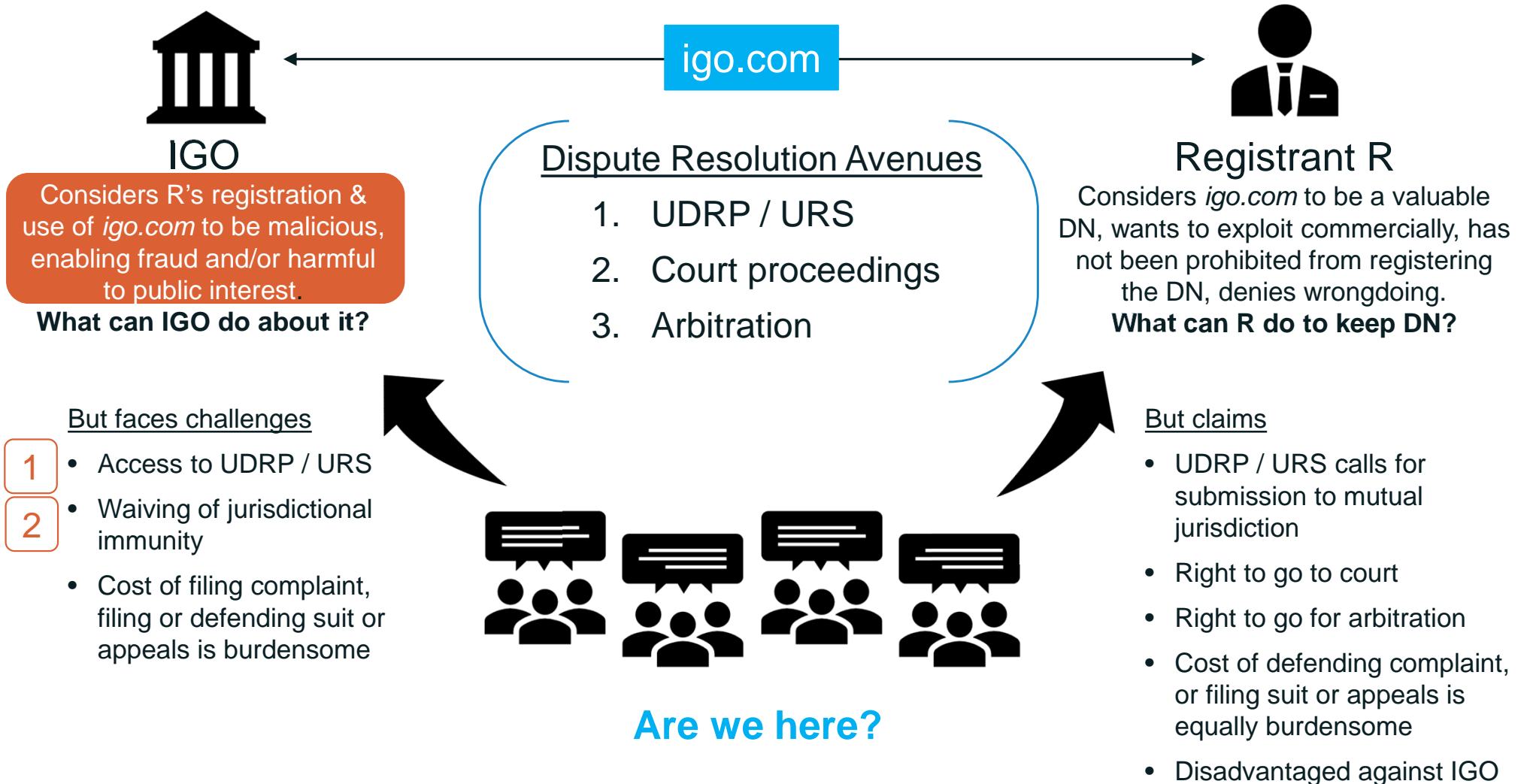
What's been established:

- Problem statement arising from Rec #5 is in itself problematic **
- IGO-WT charter limits ability to propose appropriate solution
- GNSO Council to discuss whether IGO-WT's recommendations must adhere strictly to charter
- **What does this mean?**



One Scenario of an IGO versus a Registrant

Using “igo.com” as an example



IGO-WT Problem Statement: Rec #5 is Problematic

Rec #5 from the IGO-INGO Curative Rights PDP WG:

“Where:

- 1 (i) An IGO has prevailed in a UDRP or URS proceeding; and
- (ii) The losing registrant challenges that UDRP/URS decision by filing suit in a national court of mutual jurisdiction and
- 2 (iii) That IGO successfully claims jurisdictional immunity in that court, then
- 3 (iv) That UDRP or URS decision rendered against the registrant shall be set aside (i.e. invalidated).”

Why is Rec #5 problematic?

- ⊙ GNSO Council’s concerns, hence rejection
 - Requiring substantive modification to UDRP/URS
 - Result in potential reduction of existing level of curative protections to IGOs
- ⊙ IGO-WT’s understanding
 - Apart from aspects in 1 and 2
 - 3 Setting aside UDRP or URS decision against Registrant should only be ordered if the Registrant wins (at any level, not if the IGO wins)

IGO-WT Problem Statement Rewritten

Rec #5 from the IGO-INGO Curative Rights PDP WG:

*“Where a losing registrant challenges the initial UDRP/URS decision by filing suit in a national court of mutual jurisdiction and **1** the IGO that succeeded in its initial UDRP/URS complaint **2** also succeeds in asserting jurisdictional immunity in that court, the decision rendered against the registrant in the predecessor UDRP or URS shall be set aside (i.e. invalidated).”*

But IGOs currently face 2 challenges with UDRP/URS:

- 1** ○ **Access where basis is trademark rights**
 - Complainant must demonstrate DN is identical or confusingly similar to a trademark in which complainant has rights
 - IGO may not have registered trademarks over identifiers (i.e. acronym matching DN)
 - **i.e. how may IGO complainants demonstrate rights in order to file a UDRP / URS complaint against a Registrant?**

- 2** ○ **Immunities and privileges compromised**
 - Complainant must agree to submit to Mutual Jurisdiction (court where Registrar or Registrant is located)
 - In some jurisdictions, this effectively means having to waive jurisdictional immunity
 - **i.e. how to recognize IGO jurisdictional immunity while preserving Registrant’s right to file suit in a court of Mutual Jurisdiction?**

IGO-WT Proposed Solution re: Access

1 How may IGO complainants demonstrate rights in order to file a UDRP / URS complaint against a Registrant?

○ REC 1: Need to modify UDRP Rules, URS Rules in 2 respects:

○ (i) The “Who”: Definition of an IGO Complainant

- (a) an international org established by a treaty, having international legal personality; or
- (b) an “IGO” having received standing invitation to participate as observer in the sessions and work of the UNGA (See: <https://undocs.org/A/INF/75/3>);* or
- (c) a distinct entity, organ or program of the UN.

○ (ii) The “How”: Right to file **

- Provide that IGO Complainant may show rights in a mark (identifier / acronym matching the DN) by demonstrating use in conducting public activities per its stated mission (and not through trademark)

* One WT member from GAC believes this limb needs to also include receipt of admission to participate

** UDRP Rules s3(b)(viii), URS s.1.2.6 & URS Rules s.3(b)(v)

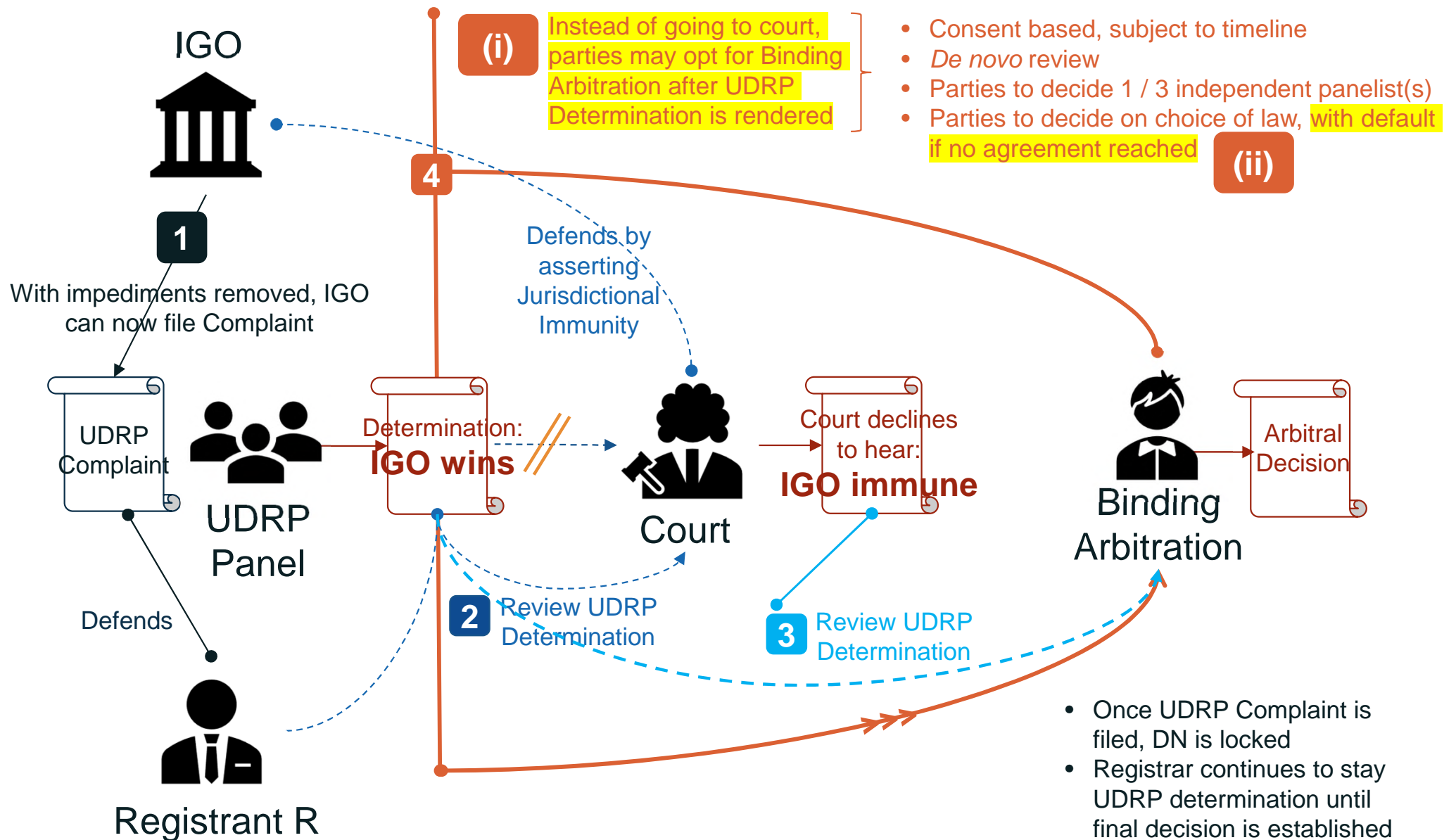
IGO-WT Proposed Solution re: Juris. Immunity

2 How to recognize IGO jurisdictional immunity while preserving Registrant's right to file suit in a court of Mutual Jurisdiction?

○ REC 2 A, B & C as a package:

- 2A: Reject Rec #5 from the IGO-INGO Curative Rights PDP WG
 - Part which says, “....the decision rendered against the registrant in the predecessor UDRP or URS shall be set aside (i.e. invalidated)” is incorrect
- 2B: Exemption from requirement to submit to Mutual Jurisdiction when filing UDRP / URS complaint
 - This preserves IGO's ability to assert jurisdictional immunity
- 2C: Possibility of Binding Arbitration after a UDRP/URS determination
 - Parties to be able to opt for binding arbitration to resolve dispute in finality
 - However, 2 aspects remain unsettled and will go out for community consultation:
 - (i) When it applies – is Registrant excluded from going to court?
 - (ii) Choice of law applied by arbitrator – i.e. when no agreement between parties

IGO-WT Proposed Solution Simplified Flow Chart



IGO-WT Proposed Solution: What to Expect Next?

- ⦿ BC rep is pushing back on possibility of Binding Arbitration which excludes Registrant's right to go to court
- ⦿ Thus, no full consensus within WT, as yet
- ⦿ WT Chair proposed for community consultation / Initial Report on:
 - REC 1: Need to modify UDRP Rules, URS Rules in 2 respects:
 - The Who: Definition of IGO Complainant
 - The How: Demonstrating rights based on use per stated mission
 - REC 2, and specifically REC 2C on Binding Arbitration:
 - Court proceedings: To exclude or retain
 - Choice of Law: If no agreement reached between parties
- ⦿ TBC after draft Initial Report circulated for WT input

Mandate Sought

- ALAC/At-Large's goals for this IGO-WT should:
 - Be focused solely on how to best alleviate (1) end-user confusion and/or (2) harm to end-users, brought about by use of DN matching an IGO's acronym, and especially where that DN use is malicious and/or for fraudulent purposes;
 - Base any formulation of solutions and/or recommendations on the assessment of actual facts or highly conceivable circumstances; this ought to include helping to **ensure** that:
 - Both IGOs and Registrants have, under those circumstances, equitable access to established or acceptable (1) dispute resolution mechanism and (2) appeal mechanism that are equipped to consider the nature of complaints put before them;
 - An IGO's assertion of a right over a relevant DN is not estopped by any inability to show a registered trademark (as presently required to succeed in UDRP/URS); and
 - An IGO may, but is not forced to, waive its claim to jurisdictional immunity in order to participate in a court proceeding to resolve a dispute over the relevant DN.
 - Accordingly guide the participation of ALAC appointed members & alternates in the WT deliberations.

Thank you for giving us your attention.

Questions?