

# **Initial Report & Preliminary Recommendations from the Expedited Policy Development Process on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs)**

## **Consultation with the At-Large Consolidated Policy WG**

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# Agenda

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- ⦿ Recap of Problem Statement
- ⦿ Overview of all 6 Preliminary Recommendations
- ⦿ Distilling each Preliminary Recommendation
  - PR #1: IGO as complainant
  - PR #3: Exemption from submission to Mutual Jurisdiction under UDRP & URS
  - PR #4: Arbitral review of UDRP panel decision, *with options*
  - PR #5: Arbitral review of URS panel decision, *with options*
  - PR #6: Applicable law for arbitral review, *with options and addition*
  - PR #2: Consequence to Package of recommendations #3, #4, #5 and #6

# Recap of Problem Statement

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 allow recognition of IGO immunities & privileges while preserving Registrant’s right to file suit in a court of Mutual Jurisdiction?**

# Overview of the Preliminary Recommendations

Proposing to solve both issues and consequences thereof:

## 1 Facilitating Access

IGO as complainant – **Prelim Rec #1: how to Identify IGOs**

## Administrative Consequence

1. Prelim Recs #3, #4, #5 and #6 form a package, so either accept all or reject all
2. If GNSO Council approves this package of recommendations, then per **Prelim Rec #2** the *earlier Rec #5 from the IGO-INGO Curative Rights PDP WG* should be rejected

## 1 Facilitating Access + 2 Facilitating IGO Immunities

Remove barrier for IGOs to file UDRP/URS claims, allow immunities to be asserted – **Prelim Rec #3: exemption from submission to Mutual Jurisdiction**

## Then, possibility of Binding Arbitration post UDRP or URS proceeding

1. Add arbitral review under UDRP – **Prelim Rec #4: require both parties' agreement, 10-business day wait for registrar to implement UDRP panel decision**
2. Add arbitral review under URS – **Prelim Rec #5: require both parties' agreement, no stay on URS panel decision**
3. Applicable law for arbitral review - **Prelim Rec #6: applicable law to be agreed by parties**

# Prelim Rec #1 re: Facilitating Access

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

- Modify UDRP Rules, URS Rules in 2 respects:
  - (i) “Who”: Add a description of **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; or
    - (c) a Specialized Agency or distinct entity, organ or program of the UN (see: [https://www.un.org/en/pdfs/un\\_system\\_chart.pdf](https://www.un.org/en/pdfs/un_system_chart.pdf)).
  - (ii) “How”: Demonstrating rights 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)

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

# Prelim Rec #3 re: Facilitating Access + Immunity

Skipping over Prelim Rec #2 for now, .....

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

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

⊙ To remove impediments, IGO Complainants require exemption from agreement to submit to Mutual Jurisdiction under UDRP and URS, thus:

○ PR #3(i) – UDRP:

...IGO Complainant be exempt from requirement to state that it will “submit, with respect to any challenges to a decision in the administrative proceeding cancelling or transferring the DN, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction” – UDRP Rules s.3(b)(xii)

○ PR #3(ii) – URS:

...IGO Complainant be exempt from requirement to state that it will “submit, with respect to any challenges to a determination in the URS proceeding, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction” – URS Rules s.3(b)(ix)

# Prelim Rec #4(i)-(iv)&(vi) re: Binding Arbitration post UDRP

Forms a package together with Prelim Recs #3, #5 & #6 .....

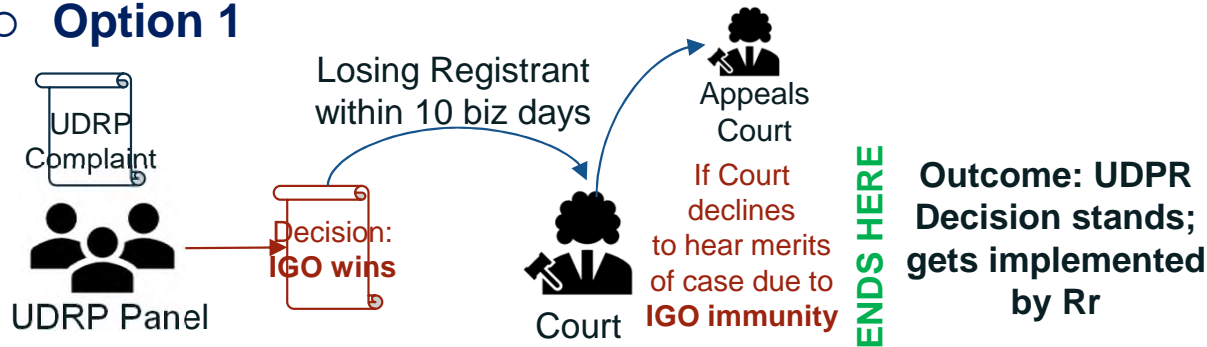
- Possibility of Arbitral Review following UDRP proceeding – add to UDRP to allow parties to opt for binding arbitration to review UDRP panel decision
  - (i) Agreement of both parties needed to allow this; IGO Complaint’s agreement is at point of filing UDRP complaint
  - (ii) Registrant’s agreement is at point when UDRP panel determination is communicated. Request to registrant for agreement to include information re applicable arbitral rules (with arbitral rules determined by IRT by considering those of known DRSP - ICDR, WIPO, UNCITRAL, PCA)
  - (iii) 10-business day waiting period to implement UDRP panel decision remains; implementation stayed if registrar receives official document that registrant submitted request for or notice of arbitration
  - (iv) Registrar only take action on implementation when it receives official documentation on arbitration or other satisfactory evidence of settlement or final resolution of dispute
  - (vi) Lock on disputed DN maintained until final resolution of dispute
- The premise for Binding Arbitration proposed by IGOs was to encourage a Losing Registrant to opt for this arbitral review instead of taking out court proceedings.
- Lock on DN does not mean DN does not resolve, can continue to be used by Registrant.

# OPTION in PR #4(v) re: Binding Arbitration post UDRP

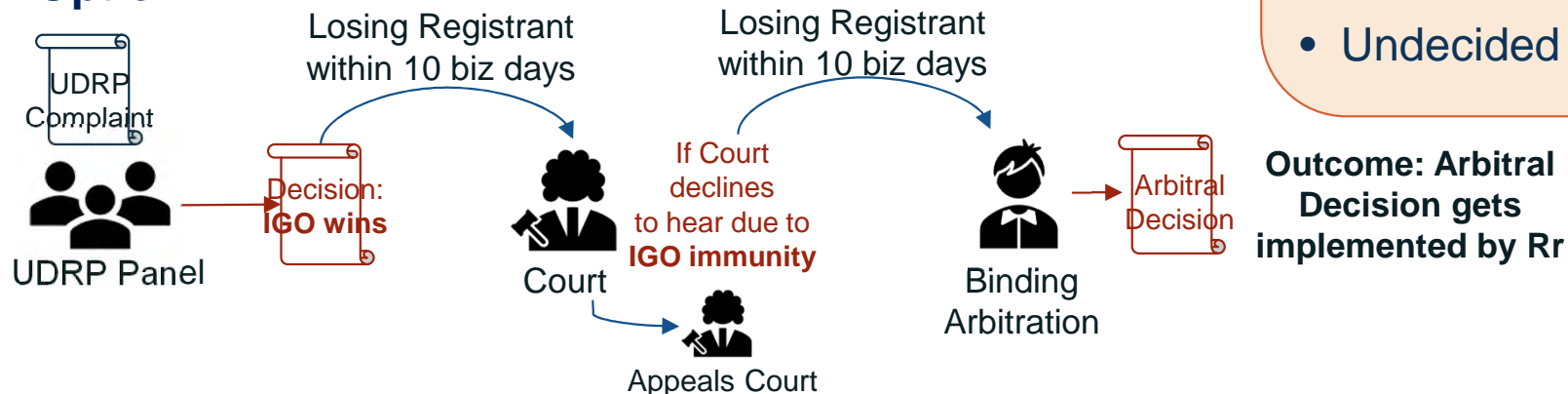
Forms a package together with Prelim Recs #3, #5 & #6 .....

- ◉ In both options, a losing registrant retains right to initiate court proceedings during / after UDRP – status quo
- ◉ Instead, options present different routes with introduction of arbitration

## Option 1



## Option 2



## STRAW POLL Q1

Which option under Preliminary Recommendation #4(v) do you think should apply?

- Option 1
- Option 2
- Undecided



# Prelim Rec #5(i),(ii)&(iv) re: Binding Arbitration post URS

Forms a package together with Prelim Recs #3, #4 & #6 .....

- ⊙ Possibility of Arbitral Review following URS Proceeding – add to URS to allow parties to opt for binding arbitration to review URS Determination

- (i) Agreement of both parties needed to allow this; IGO Complaint's agreement is at point of filing URS complaint
- (ii) Registrant's agreement is at point when URS Determination is communicated. Request to registrant for agreement to include information re applicable arbitral rules (with arbitral rules determined by IRT by considering those of known DRSP - ICDR, WIPO, UNCITRAL, PCA)
- (iv) Where Losing Registrant files an appeal under URS s.12 and loses the appeal, can submit dispute to binding arbitration within 10-business days. Relevant DN will remain suspended during arbitration.

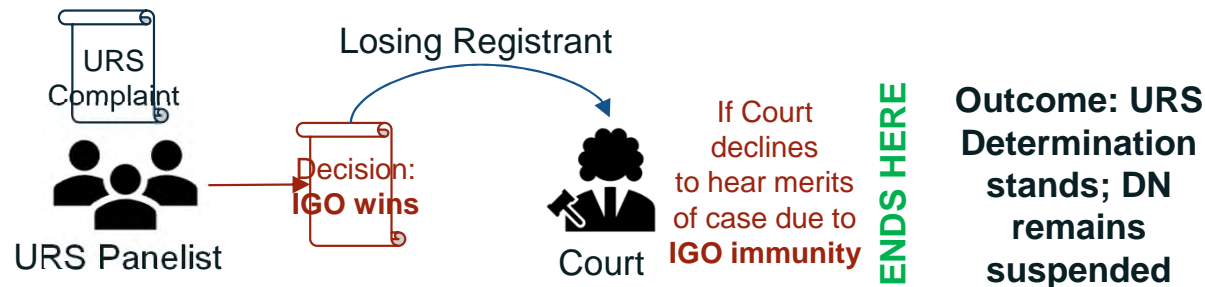
- The premise for Binding Arbitration proposed by IGOs was to encourage a Losing Registrant to opt for this arbitral review instead of taking out court proceedings.
- Also, URS has a built-in appeals process.
- There is no waiting period for implementation of URS Determination.

# OPTION in PR #5(iii) re: Binding Arbitration post URS

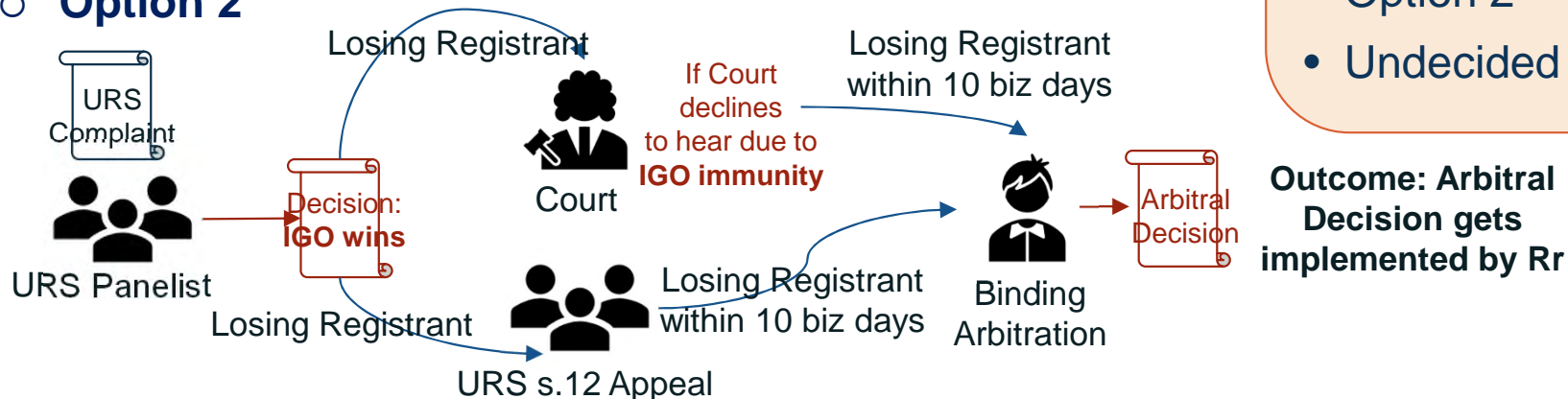
Forms a package together with Prelim Recs #3, #4 & #6 .....

- In both options, a losing registrant retains right to initiate court proceedings during / after URS – status quo
- Instead, options present different routes with introduction of arbitration

## ○ Option 1



## ○ Option 2



## STRAW POLL Q2

Which option under Preliminary Recommendation #5(iii) do you think should apply?

- Option 1
- Option 2
- Undecided

# Prelim Rec #6 re: Applicable Law for Arbitration

Forms a package together with Prelim Recs #3, #4 & #5 .....

- ◉ Where Arbitral Review following UDRP/URS Proceeding is taken – what should be the applicable law for the proceeding?

- (i) Conducted in accordance with law mutually agreed to by parties

What happens if parties cannot agree on applicable law?

- **Option 1:** Go with law of (a) relevant registrar’s principal office location or (b) where respondent resides **at the election of IGO Complainant**
- **Option 2:** Arbitral tribunal to decide

But subject to an added step?

- (ii) If either party raises concerns to arbitral tribunal on limits of applicable law – i.e. (a) or (b) above – impeding satisfactory cause of action, then arbitral tribunal may request submissions from parties as to suggested applicable law or principles of law to be applied

## STRAW POLL Q3

Which option under Prelim Rec #6(i) do you think should apply?

- Option 1
- Option 2
- Undecided

## STRAW POLL Q4

Do you agree to Prelim Rec #6(ii) added step?

- Yes?
- No?
- Undecided?

# Prelim Rec #2 re: Package of PR #3, #4, #5 & #6

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- ⦿ Is purely administrative, outcome is subject to what happens with the package of Preliminary Recommendations #3, #4, #5 and #6

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**Thank you for giving us your input.**