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AT-LARGE ADVISORY COMMITTEE

ALAC Statement on Initial Report from the EPDP on Specific Curative Rights Protections for IGOs

Introduction

On 14 September 2021, Public Comment opened for the Initial Report from the EPDP on Specific Curative Rights Protections for IGOs. On the same day, an At-Large [workspace](#) was created for the statement. Two ALAC representatives involved in the EPDP on IGOs, Yrjö Lansipuro and Justine Chew, discussed the work of this EPDP with the CPWG on several occasions. The CPWG decided it would be in the interest of end users to develop an ALAC statement on the Public Comment, and this EPDP's ALAC representatives volunteered to draft the ALAC statement on the Initial Report.

On [13 October 2021](#), Yrjö Lansipuro and Justine Chew presented the draft ALAC statement to the CPWG. ICANN Policy staff in support of the At-Large community posted the draft statement to its [workspace](#) and on the weekly [CPWG agenda](#).

On [20 October 2021](#), Yrjö Lansipuro and Justine Chew presented the final ALAC statement to the CPWG. The CPWG provided final input on the At-Large points of consensus, and ICANN Policy staff in support of the At-Large community issued a final, 24-hour call for comments to the CPWG and ALAC mailing lists.

On 21 October 2021, Justine Chew and Yrjö Lansipuro finalized the ALAC statement. The ALAC Chair, Maureen Hilyard, requested that the statement be ratified by the ALAC for submission to ICANN Public Comment.

On 24 October 2021, staff confirmed the online vote resulted in the ALAC endorsing the statement with 13 votes in favor, 0 votes against, and 0 abstentions. Please note 86.67% (13) of the 15 ALAC Members participated in the poll. The ALAC Members who participated in the poll are (alphabetical order by first name): Abdulkarim Oloyede, Carlos Raul Gutierrez, Dave Kissoondoyal, Holly Raiche, Joanna Kulesza, Jonathan Zuck, Justine Chew, Matthias Hudobnik, Maureen Hilyard, Pari Esfandiari, Sarah Kiden, Sindy Obed, and Sylvia Herlein Leite. Two ALAC Members, Gregory Shatan and Marita Moll, did not participate in the poll. You may view the result independently under:

<https://www.bigpulse.com/pollresults?code=1343792hVthBb7ypNcMvJFzTnsA>

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The ALAC takes note of the deliberations of the EPDP on Specific Curative Rights Protections for IGOs (“this EPDP”) as well as the preliminary recommendations as contained in its Initial Report of 14 Sep 2021. We offer the following responses to those preliminary recommendations.

The ALAC takes the position that domain names which are identical to the respective acronyms of intergovernmental organizations (“IGOs”) and which are registered and used by third parties (non-IGO registrants), run a conceivable risk of creating confusion to Internet end-users, or worse where the use facilitates fraudulent activity. End-users need to be able to trust that any information delivered using such domain names emanates from the respective IGO.

Thus, the ALAC welcomes the results already achieved on facilitating an IGO’s access to the ICANN-created twin dispute resolution processes of UDRP (Uniform Domain Name Dispute Resolution Policy) and URS (Uniform Rapid Suspension) in a way which preserves an IGO’s privileges and immunities.

To this end the ALAC supports the following preliminary recommendations:

- Preliminary Recommendation #1 which seeks to provide clarity and reasonable certainty as to which entities are deemed as IGOs and defines an “IGO Complainant” for purposes of the UDRP and URS..
- Preliminary Recommendation #3 which seeks to remove the requirement for an IGO to submit to Mutual Jurisdiction in order to avail itself to the UDRP and URS, thereby preserving its privileges and immunities in the course of such proceedings..

The ALAC also welcomes the possibility of binding arbitration post a UDRP or URS proceeding involving an IGO and sees this as a favorable alternative and more direct route for a losing registrant to seek a review of an UDRP or URS decision, if the losing registrant so chooses.

To this end, the ALAC supports the following preliminary recommendations:

- Preliminary Recommendation #4(i) to #4(iv) and #4(vi), all of which are designed to introduce and facilitate the possibility of binding arbitral review of a UDRP decision, more or less, immediately after the said decision is rendered.
- Preliminary Recommendation #5(i), #5(ii) and #5(iv), all of which are designed to introduce and facilitate the possibility of binding arbitral review of a URS decision, also, more or less, immediately after the said decision is rendered.

As for Preliminary Recommendations #4(v) and #5(iii), we opine that from the end-users’ perspective the quicker the parties (i.e. IGO Complainant and losing registrant) can arrive at a final outcome, the sooner the question of risk of confusion (or harm) to end-users can be addressed in finality (more so for UDRP cases). For this reason, Options 1 in both #4(v) and #5(ii) are preferred, such that arbitration should not be sought to prolong a dispute for which a losing registrant has opted to initiate through a relevant court and has exhausted all recourse in that (court) route.

As for Preliminary Recommendation #6, we agree with #6(i) which is to allow the arbitral review to be conducted in accordance with the law that is mutually agreed to by the parties. We also support the

add-on of Option 2 which is for the arbitral tribunal to decide on the issue of applicable law for an arbitral review where the parties themselves are unable to agree on that issue, but subject to the added step per #6(ii) to compel the arbitral tribunal to request submissions from the parties on suggested applicable law or principles of law to be applied in the event either party raises concerns to the arbitral tribunal on limits of applicable law affecting it. We also reserve our opinion on #6(iii) in respect of the non-exhaustive general principles that are proposed to be further developed by an Implementation Review Team.

Finally, we understand that it is unnecessary for us to comment on Preliminary Recommendation #2 since the outcome would be subject to what ultimately happens with the package of Preliminary Recommendations #3, #4, #5 and #6.