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AT-LARGE ADVISORY COMMITTEE

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

Introduction

Staff/EE to complete

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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.

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- 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(v), 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(iii) 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). We also support the add-on of Option 2 (i.e. for the arbitral tribunal to decide on the issue of applicable law for an arbitral review where the parties

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As for Preliminary Recommendation #6, we agree with #6(i). We also support the add-on of Option 2, (i.e. 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 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 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

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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.