**Public Comment Review Tool – EPDPSPCR-IGO – Initial Report**

Updated 27 October 2021

# Other Comments

| **#** | **Comment** | **Contributor** | **EPDP Response / Action Taken** |
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| Additional comments submitted not specific to any of the six recommendations specifically. | | | |
|  | I OPPOSE, REJECT, DISAPPROVE, & OBJECT TO this Initial Report from the EPDP on Specific Curative Rights Protections for IGOs. This is no different than an attempt to open the flood gates of allowing people to perform reverse domain name hijacking on any & all domains without any consequences whatsoever. Domain names are essentially no different than luxury goods. Domain names have never been the determining factor of whether an IGO or any company can exist, thrive, be recognized by the general public, continue to be in operation, continually function, and/or succeed. For example, WHO.int never needed WHO.com in order to exist. The general public can easily find out that WHO.int is the correct domain name for the IGO known as WHO. This report is attempting to infringe the rights of every legitimate business owner who uses short acronyms in their domain names by allowing currently existing and future IGOs to take away any and all domain names from every legitimate business owner. This report is also tantamount to disrespecting the peoples' rights to due process & legal equality by allowing privileged groups such as IGOs to bypass the Court for unnecessary disputes such as domain name disputes on domain names that the IGOs never needed in order to continually function.  This report is an unnecessary report that is self-serving and nothing more than a desire to fulfil the greed of only and only the super rich, privileged, and powerful people such as the IGOs who wanted more than is needed to operate their organizations.  To conclude, I will repeat my initial stand that I OPPOSE, REJECT, DISAPPROVE, & OBJECT TO this Initial Report from the EPDP on Specific Curative Rights Protections for IGOs. | Ted Chang | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | I would like to have more time to understand and consider the implications of this report, well beyond the standard 40 days. I note these issues have been discussed for many years, so I do not understand the urgency or the stealthiness behind this work. At first glance at least, it appears to disregard the output of a duly formed GNSO Working Group tasked with the same policy development, in which I participated. At minimum, I would have expected this EPDP team to have consulted with the members of that Working Group before publishing a report that varies so drastically with the prior output. | Mike Rodenbaugh | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | This is an unnecessary and harmful policy. They already have access to disputes, this is just making it easier to steal domain names with even less proof of merit than is already required. | Dan Runido | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | I choose to reject this report since it's nothing more than an excessive extension of IGOs' diplomatic immunity. There's no valid reason for them to have such special privileges as stated in this report. It seems that these IGOs are spending their time on unnecessary things when they should be fulfilling their god-given duties instead. No wonder things don't get done and worldly problems don't get solved. Or are they running out of money so badly that they have to resort to stealing valuable domain names just to finance themselves? Either way, I'm rejecting this report. Thank you for allowing me to comment and for reading this. | Michael Zachery | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | My overall position on this matter is against Curative Rights Protections for IGOs Policy. On a side note, there should be allowed more EOT time for this matter, because many people are not aware of this Policy case. Thank you and stay safe.  I have read peoples comments and Initial Report and came to conclusion that any immunity provided to any party is a barrier for equality. Every human whether he is part of a company, organization or society have the right to protect and attack, thus creating an equal envyronment, when someone have immunity that natural envyronment is violated, thus creating an imbalance everywhere in the physical or digital world. In conclusion what I mean is that everyone should have the same rights and treated at the same level no matter of it's status. | Philip Busca | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | I am against any impediment or restraint to free speech, however cleverly disguised. This proposal would be disruptive to free speech, and only serve to line the pockets of the legal profession. It paves the way for jurisdiction that would result in the automatic suspension of domains and tlds based on the unfounded notions of large organisations. It is simply a vanity proposal and reeks of self-indulgence. It must be summarily shelved.  Take, for example the United Nations - "the UN", as the organisation is referred to. In the (hopefully unlikely) event that a member of the UN, with dubious command over the English vocabulary, and wishing to impress a peer group, decided that "UN" was a text string that could be automatically appropriated by them. With the backing of your proposal, this would cascade into suspension of all domain names which contain this string. Anyone in their right mind can appreciate how untenable a position that would be. Text strings have numerous meanings. Case in point: "un-". a prefix meaning “not,” freely used as an English formative, giving negative or opposite force in adjectives and their derivative adverbs and nouns (unfair; unfairly; unfairness; unfelt; unseen; unfitting; unformed; unheard-of; un-get-at-able), and less freely used in certain other nouns (unrest; unemployment). I am aware of the rampant abbreviating, word cropping and other ungrammatical actions carried out on the English language, especially by those who have little knowledge of it. The above is an example of how disruptive and irrational this proposal could be - and similar proposals that that pave the way for jurisdiction that would result in the automatic suspension of domains and tlds based on the unfounded notions of large organisations. So, please do not let self-indulgence or vanity get in the way of rational thinking, free speech and common sense. Shelve this proposal and let us get on with the important things in life. Thank you. | Aarti Narayan-Denning | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The growing need for protection  The 2001 Report of the Second WIPO Internet Domain Name Process illustrates the underpinnings for this effort: “The registration and use of domain names to create misleading associations with the duly constituted international authorities for public health, labor practices, peace-keeping operations, nuclear test bans, the containment of the proliferation of chemical weapons, trade disciplines, children’s rights, refugees, AIDS and so forth is unacceptable, offensive to numerous public policies established by the international community and conducive to undermining the credibility and reliability of the DNS.”  It is therefore important that this work track recognizes that IGOs are unique institutions created by governments under international law to undertake global public missions, and that as such, IGO identifiers require tailored protection by ICANN in keeping with the public interest behind their causes.  As an example of such need, a 2007 ICANN Staff Report notes how abusive registrations of the names and acronyms of IGOs “were used in millions of fraudulent e-mail messages to solicit [tsunami relief] donations from unsuspecting individuals.”  In another example, IGO identifiers were abused during the Ebola crisis.1  More recently, in the context of a World Health Organization (WHO) Solidarity Response Fund for the COVID-19 crisis, a dedicated webpage has been set up to warn of the occurrence of phishing and malicious emails appearing to be from the WHO.2  In seeking protection from abuse, IGOs do not seek to hamper legitimate uses of the Internet Domain Name System. Illustrating a spirit of compromise, a 2016 letter from the United Nations Secretary-General stated (emphasis added):  There is a sure way to address this issue: preliminarily blocking the illicit registration of domain names corresponding to IGO names and acronyms. The Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit corporation, administers the internet Domain Name System (DNS). IGOs have repeatedly appealed to ICANN to protect their names and acronyms in the DNS. Over the last four years, a coalition of IGOs has sought from the ICANN Board safeguards that reflect the protection that IGO names and acronyms enjoy under domestic and international laws. At the same time, IGOs made it clear that they would not take issue with legitimately sought third-party domain name registrations which would not pose risks to IGO missions.3  In conclusion  Beyond these legal observations and suggestions, the overarching issue here is that were the EPDP to insist on jurisdiction of courts, this would seriously undermine the utility of the mechanism under consideration. As IGOs cannot afford to enter into court litigation with infringers, the serious abuses summarized in the first paragraphs above would continue unchecked. We know that this is not the intention of the EPDP and thus invite the EPDP team’s serious reflection on this vital point.  1 https://bits.blogs.nytimes.com/2014/10/24/malicious-ebola-themed-emails-are-on-the-rise/?\_r=0  2 https://[www.who.int/about/cyber-security](http://www.who.int/about/cyber-security)  3 https://mm.icann.org/pipermail/council/attachments/20181022/73dc1f76/UNSGIGOLetter-0001.pdf | WIPO | Concerns  Divergence Support New Idea  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | We endorse WIPO Arbitration and Mediation Center observations on Initial Report from the EPDP on Specific Curative Rights Protections for IGOs – October 22, 2021. | Council of Europe | Concerns  Divergence Support New Idea  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The International Civil Aviation Organization (ICAO) strongly associates itself with the comments submitted by WIPO. We support the waiver or elimination of the mutual jurisdiction clause and regard arbitration as a valid, efficient, and internationally recognized dispute settlement mechanism. At the very least, an arbitration-as-a-default with an opt-out provision should be considered. | ICAO (International Civil Aviation Organization) | Concerns  Divergence Support New Idea  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The GAC appreciates the work of the EPDP convened to address the question of IGO access to a curative rights protection mechanism. The GAC reiterates that IGOs are unique treaty-based institutions created by governments under international law, and especially noting that IGOs undertake global public service missions, that protecting their names and acronyms in the DNS is in the global public interest. The GAC also recalls that ICANN’s Bylaws and Core Values indicate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.  The central issue that has been raised in the EPDP is that unlike trademark owners, IGOs benefit from privileges and immunities under international law; indeed, this is seen as core to their existence and ability to carry out their activities. As stated in the Swaine Memo “IGO immunity is often likened to the foreign ‘sovereign’ immunity of states, but [in fact] IGOs are considered more vulnerable than states, since they have no territory or population, and must conduct their affairs in jurisdictions and through persons not their own.” Whereas a trademark owner in a UDRP case is able to agree to submit to the jurisdiction of a court if a registrant wishes to “appeal” a UDRP decision against it, this (agreement to submit to the jurisdiction of a court) is not a viable option for IGOs. As a result, IGOs have raised concerns about access to the UDRP as a curative rights protection mechanism. (It is worth noting here too that IGOs have conceded that requesting a block of their identifiers (often short acronyms) in the DNS would not adequately account for legitimate co-existence.) For this reason, in its Hyderabad and Johannesburg Communiqués, GAC Advice stated that a mechanism such as the UDRP should respect IGOs’ jurisdictional status by facilitating appeals through arbitration. Looking again to the Swaine Memo, many pages (including robust footnotes) are spent to summarize the highly complex scope of immunities and different possible national implementation and court assessment approaches, which it is said overall can be characterized as unpredictable; nevertheless Prof. Swaine concludes that and that “an argument that it is part of an IGO’s mission to maintain the distinctive character of its name, and avoid confusing domain- name registration, and thus deserving of immunity, seems colorable or even likely to prevail.” Moreover, the increased reliance during COVID times of an Internet presence would almost unavoidably be seen as linked to an IGO’s functions (one of the tests for assessing the scope of immunities). In other words, it is likely that the court option being sought would ultimately prove fruitless. | GAC | Concerns  Divergence Support New Idea  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The GNSO’s mandate to the IGO Work Track (now EPDP) was clear:  “Whether an appropriate policy solution can be developed that is generally consistent with [the first four recommendations from the GNSO’s IGO-INGO Access to Curative Rights PDP] and:  a. accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances;  b. does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction;  c. preserves registrants' rights to judicial review of an initial [Uniform Domain Name Dispute Resolution Policy or Uniform Rapid Suspension decision; and  d. recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction.”  Accordingly, any proposed policy solution which “affects the right and ability of registrants to file judicial proceedings” and/or which fails to “preserve registrants’ rights to judicial review” of a UDRP or URS decision, will not comply with the clear and specific mandate given by the GNSO pursuant to the Addendum to the PDP Charter.i It is therefore crucial that the GNSO carefully evaluate whether the policy proposals made by the EPDP in the Initial Report genuinely comply in spirit and in substance with the specific mandate provided to the EPDP.  i https://gnso.icann.org/sites/default/files/file/field-file-attach/rpms-charter-addendum-07jan20-en.pdf  Final Recommendation:  Whatever path that the GNSO decides to take in connection with IGO participation in RPMs, it is critical that it be re-evaluated in the near and mid-term to ensure that approach works. The UDRP was not subject to review for over 21 years but there is no reason not to have a much earlier review of practices regarding IGOs to determine whether the experience of IGOs and other stakeholders is positive or whether adjustments need to be made. It would be a grievous error to employ a new and untested approach only to find out that it didn’t work as intended and have no recourse of repealing it absent a lengthy and fraught policy development process. Accordingly, any new approach should be subject to a sunset clause which automatically repeals it unless a preemptive decision is made based upon evidence, consultation, and Consensus, to maintain it.  Lastly, the UDRP is a delicate procedure that cannot sustain ad hoc policy revisions without examining how they would affect and work with the existing and remaining procedures. The RPM Working Group is the group that has the requisite expertise to fully and comprehensively consider any proposed IGO-centric revisions within the overall UDRP and therefore it is strongly recommended that no implementation be undertaken of any new IGO-centric procedures until such time as the RPM WG has had an adequate opportunity to review them in context. | Internet Commerce Association | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | Dear ICANN,I reject policy proposals in the Initial Report which negatively affect the rights of domain registrants to file judicial proceedings. Domain registrants' rights to judicial review must be preserved. I agree with the Internet Commerce Association position that "It is crucial that the GNSO Council carefully evaluate whether the policy proposals made in the Initial Report genuinely comply in substance and in spirit with the EPDP's specific mandate and ensure that registrant rights are protected." Sincerely, Alex Lerman Domain Registrant | Alex Lerman | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | We have some concern in general regarding changes to the URS and UDRP processes. However, we understand that IGOs have cited a unique set of jurisdictional challenges impacting their ability to avail themselves of various rights protection mechanisms (RPMs) and that this work was an attempt to accommodate their specific needs and will be utilized on a very limited basis. We would support the EPDP in reaching out to the GNSO to gather input from the RPM PDP, if possible, on these recommendations prior to finalizing them. We offer more specific input on some recommendations below. | RySG | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The Initial Report indicates that the EPDP’s preliminary recommendations are to be considered as a “package” and are “interdependent.” As an initial fact, not all members of the EPDP support such statement. Just as important, the other proposed Recommendations are not impacted by the absence of Recommendation 3. We see no nexus between Recommendation 3 (the suggested removal of the Mutual Jurisdiction requirement for IGOs – which we do not support) and recommendations 1, 3, 4, 5 and 6. In fact, no evidence has been provided by the EPDP to establish or even postulate any such nexus.  Closing Comment  Digimedia aligns with and supports the Comments submitted by the Internet Commerce Association (ICA). | Digimedia.com, LP | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | **While we have severe disagreements with the proposals in this initial report, we also make our comments in good faith, and propose a “win-win” alternative** (a “Notice of Objection” system, documented later in this submission). By addressing the **root cause** of the “quirk of process” that we found in the prior working group’s research, we can modify the UDRP/URS in a way that would be beneficial for both IGOs and domain name registrants, simultaneously improving the procedure for both complainants and respondents. We are confident that if this proposal was seriously considered, it would be welcomed as a great improvement in policy that solves multiple existing problems while balancing the rights of both sides of a dispute.  It’s important to note that we are not cybersquatters. We **despise** cybersquatting, and applaud efforts to hold those bad actors fully accountable, especially in the courts (as Verizon did with iREIT[1](#_bookmark0), for example). We have advocated for **balanced policies** which target actual cybersquatters while ensuring that those falsely accused of cybersquatting are fully protected.  This is not some theoretical debate. We personally faced a UDRP over a valuable short dictionary word dot-com (Pupa.com), despite registering it in good faith. Instead of waiting for the outcome of the UDRP (which eventually decided to defer to the courts), we exercised our right to go to court in Ontario, Canada, and our position was fully vindicated, with costs awarded against the defendant (an Italian cosmetics company).[2](#_bookmark1)  We are sympathetic to trademark holders or other rightsholders, including IGOs who are targeting actual cybersquatters. However, we must ensure that the rights of innocent domain name registrants who are falsely accused of cybersquatting are fully protected, including their due process rights. Those due process rights include the right to have the merits of their dispute fully argued and decided in their national courts.  Article 8 of the ***Universal Declaration of Human Rights***[3](#_bookmark2) states that:  Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.  Section 2 of Article 17 of the ***Universal Declaration of Human Rights***  states that:  No one shall be arbitrarily deprived of his property.  It is these fundamental rights that we are defending, to ensure that any mandatory policy imposed upon domain name registrants by ICANN fully reflects the existing legal rights of domain name registrants.  Furthermore, we fully acknowledge that IGOs have certain legal rights as well (discussed in more depth later on in this document). It is important, though, that they are not given any **new rights** at the **expense** of domain name registrants’ rights. Instead of a “win-lose” approach, we must instead adopt “win-win” solutions.  We believe that a sound policy should not prejudice either party’s legal rights. The goal of the UDRP/URS should be to get the **exact same results** as would have been obtained had the parties gone to court instead, but in a **more streamlined, faster and cheaper manner where possible**.  In the next section, we look at the historical development of the UDRP, to understand how we got to where we are today, and the principles that motivated its creation.   1. Verizon hits tiny iREIT with cybersquatting suit, April 22, 2007, <https://www.bizjournals.com/houston/stories/2007/04/23/story4.html> 2. Ontario Court Rules In Favor Of George Kirikos On Pupa.com & Awards $4,500 In Fees, April 8, 2013,   [https://www.thedomains.com/2013/04/08/ontario-court-rules-in-favor-of-george-kirikos-on-pupa-com-awards-](https://www.thedomains.com/2013/04/08/ontario-court-rules-in-favor-of-george-kirikos-on-pupa-com-awards-4500-in-fees/) [4500-in-fees/](https://www.thedomains.com/2013/04/08/ontario-court-rules-in-favor-of-george-kirikos-on-pupa-com-awards-4500-in-fees/) ; Canadian court orders company pay costs over wrongful domain claim, April 8, 2013, [https://domainnamewire.com/2013/04/08/canadian-court-orders-company-pay-costs-over-wrongful-domain-](https://domainnamewire.com/2013/04/08/canadian-court-orders-company-pay-costs-over-wrongful-domain-claim/) [claim/](https://domainnamewire.com/2013/04/08/canadian-court-orders-company-pay-costs-over-wrongful-domain-claim/)   1. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> | Leap of Faith Financial Services Inc. | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | To understand what led to the current report, I decided to look at the actual participation of working group members, as per the [mailing list activities](https://mm.icann.org/pipermail/gnso-igo-wt/) and on the weekly calls (transcripts are available on the [GNSO Calendar page](https://gnso.icann.org/en/group-activities/calendar)). The shocking results[8](#_bookmark7) [visible on the web via a [published Google](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml) [Spreadsheet](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml), with graphs) clearly demonstrate why such one-sided proposals were arrived at by the working group. In particular, the IGOs (through the GAC) had **far greater participation**, via Brian Beckham of WIPO and others, with only Jay Chapman of Digimedia (participating on behalf of the Business Constituency) as a voice for domain name owners. **It is clear that the output of the working group reflects capture**.   Methodology Kevin Ohashi of ReviewSignal.com was commissioned to assist with part of the work, in particular the parsing of the PDF transcripts. Mr. Ohashi authored a [widely cited study looking at regulatory capture in the renewal of the .org](https://reviewsignal.com/blog/2019/06/24/the-case-for-regulatory-capture-at-icann/) [contract](https://reviewsignal.com/blog/2019/06/24/the-case-for-regulatory-capture-at-icann/)[9](#_bookmark8).  Cleaning up the data was a huge task, and credit goes to Mr. Ohashi's persistence in getting to a clean data set that could be analyzed. For example, there was an obvious transcription error where some text was attributed to “Brian King” (a [famous name in ICANN circles](https://community.icann.org/display/gnsosoi/Brian%2BKing%2BSOI)), who wasn’t even a participant in the working group. Consulting with the Zoom original recordings confirmed that that text should have been attributed to Brian Beckham. Similarly, some people had variations on their name (e.g. Jeff vs Jeffrey) on different transcripts. Had the transcripts been provided in a tagged format such as XML, analysis would have been much easier. All the chat transcripts of the Zoom calls were also reviewed, but we did not separately tabulate them, given very little activity took place via chat. Results The above pie chart speaks for itself. While Jay Chapman spoke for 5% of the total words (excluding ICANN staff), he was drowned out by members of the GAC (mainly IGOs, in particular Brian Beckham of WIPO, who by himself had nearly triple the participation of Jay). Paul McGrady of the IPC also had a large amount of participation, and given his pro-complainant policy positions, he can’t be counted upon to protect the interests of domain name registrants.  You can see the “raw” results in tabular form on the [published Google](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml) [Spreadsheet](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml) (and the charts are bigger on that). [NB: To make it easier to see groups affiliations, they were colour coded accordingly. e.g. green for GAC]  What’s also clear is that some members of the working group had little, if any participation. [Full attendance records of each participant can be found on pages 29-30 of the [ICANN report](https://itp.cdn.icann.org/en/files/generic-names-supporting-organization-council-gnso-council/initial-report-epdp-specific-curative-rights-protections-igo-14-09-2021-en.pdf).] ALAC members barely even made their presence known by speaking. Two of the three NCSG members didn’t speak at all, despite attending over 70% of the meetings! [we thought there was a database error or something, but we double-checked manually] The third NCSG member left the group after 2 meetings. The ISPCP member just spoke one time on the first call, despite attending nearly 80% of the calls.  No members of the Registry or Registrar constituencies even participated in the working group.  Similar domination by GAC and IPC members took place on the mailing list, as per the pie chart that follows (raw data is available in the [published](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml) [Google Spreadsheet](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml)).    The role of the chair in ensuring balanced participation and representation is crucial, yet unfortunately Chris Disspain should have done better to ensure that the voices of affected stakeholders were heard, especially on the calls (not very much work was done via the mailing list on this working group, as compared to other working groups that I’ve seen). Excluding staff, he accounted for a whopping 49.8% of the spoken words on calls just by himself. Given that the chair of a call takes on an extra administrative burden, one would expect the chair to have above-average participation. But, to me that is very high indeed, truly excessive by any reasonable metric. There should have been far greater outreach to affected stakeholders (i.e. domain name registrants), to ensure a balanced policy outcome. Unfortunately, that didn’t happen. Conclusions in relation to capture In conclusion, we are where we are because ICANN policymaking has been captured by an unrepresentative group. This is a failure of the bottom-up multistakeholder model. ICANN and the GNSO should:   1. Do greater outreach even after the comment period has concluded, so that affected stakeholders become aware that proposals exist that will negatively affect their fundamental legal rights. 2. Consider a second period period that is more widely publicized and longer, to ensure greater opportunity for outreach and study. 3. Expand membership of the working group, to ensure that the voice of domain name registrants is heard. Otherwise, the GNSO should respect the results of the prior working group's effort (despite criticisms, it had much better balance). 4. Rethink the entire restricted membership working group model, which has led to these kinds of results. In particular, **the second phase of the RPM PDP, which will do the very first review of the UDRP, is subject to similar capture if it is not an open membership working group model where affected stakeholders particularly domain name owners like myself, can actively participate**. 5. See: [https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF- 3VDGosbwO0vx94cN\_ttlVJERClT81-44\_4zVrxI\_oruIm2gNj98/pubhtml#](https://docs.google.com/spreadsheets/d/e/2PACX-1vRyhPivBSZxfZ1Cu8tHtZHNNwqF-3VDGosbwO0vx94cN_ttlVJERClT81-44_4zVrxI_oruIm2gNj98/pubhtml) 6. The Case for Regulatory Capture at ICANN, June 24, 2019, [https://reviewsignal.com/blog/2019/06/24/the-case- for-regulatory-capture-at-icann/](https://reviewsignal.com/blog/2019/06/24/the-case-for-regulatory-capture-at-icann/) | Leap of Faith Financial Services Inc. | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | This new working group was given a limited mission, namely to review the prior IGO PDP working group's Recommendation #5. It was not appropriate to relitigate Recommendations #1, #2, #3, and #4. Any proposed alternative to Recommendation #5 was to be "generally consistent" with the first four **already approved** recommendations.  Instead, due to capture (discussed in section 7 above), this new working group strayed far beyond its limited scope. We agree with the analysis provided by the Internet Commerce Association in their own submission on this point (page 2 of their submission, "Background" section).  The new working group decided to ignore its charter almost immediately upon formation. For example, on page 28 of the transcript of **the very first call** (February 22, 2021):  [**https://gnso.icann.org/sites/default/files/policy/2021/transcript/**](https://gnso.icann.org/sites/default/files/policy/2021/transcript/transcipt-igo-work-track-22Feb.en_.pdf)[**transcipt-igo-work-track-22Feb.en\_.pdf**](https://gnso.icann.org/sites/default/files/policy/2021/transcript/transcipt-igo-work-track-22Feb.en_.pdf)  Brian Beckham of WIPO was saying:  "Also, I note that the concept of boundaries and beating back the boundaries and the potential questions about relaying some questions or work that we have back to the GNSO and/or the GAC … So, I say let's beat back these boundaries and not tie our own hands."  Chris Disspain, the chair, also did not feel constrained by the charter, in the very first meeting again, on page 32:  Let's take the spirit of the discussion around tweaking and being able to come up with creative solutions using words and tweaking the other four recommendations and the boundaries, and let's see if those of you who have the time and the ability to do this work can perhaps come to the next meeting with some thoughts and suggestions about possible solutions that fit within the tweaking of the scope and the boundaries.  So, I’m not seeking a strict reading. I’m suggesting that, as [is quite right,] these boundaries and this scope are open to interpretation, and there's no suggestion that they're not. So, I would encourage those of you who have an interest in doing this, to please come to our next meeting with some suggestions that you think would fit within the sort of tweaking of the scope and so on.  It is not surprising that the new working group lost its way, when the members had such an utter disregard for any constraints imposed by the charter. Instead, an unrepresentative group captured the new working group, coming in with a predetermined "wish list" that would overturn the charter and past recommendations. That is not acceptable.  Now, some might claim that the prior working group's Recommendation #5 was out of scope with its charter, and it would be a double standard to hold the new working group constrained by its own charter. However, that is **not correct**.  As per my comments submitted in August 2019 to the Board (included in full as a separate PDF for this comment period, to accompany my new submission), see:  [https://mm.icann.org/pipermail/comments-igo-ingo-crp-recommendations-](https://mm.icann.org/pipermail/comments-igo-ingo-crp-recommendations-11jul19/2019q3/000025.html) [11jul19/2019q3/000025.html](https://mm.icann.org/pipermail/comments-igo-ingo-crp-recommendations-11jul19/2019q3/000025.html)  I explicitly raised (as part of a Section 3.7 appeal) the concern of whether Recommendation #5 was within that old working group's charter, or whether the "quirk of process" should just be noted and referred instead to the RPM PDP for further policy work. See a summary of what happened on pages 5 and 6 of that 2019 PDF.  In particular, Heather Forrest, the chair of the GNSO, explicitly told us it was "**sufficiently related to a charter**" and we could "**deal with this**" and not "**fling it to another PDP**".  That's all on the record. In particular, that was **several years into a PDP**, after randomly encountering that "quirk of process" through our research as a working group. We discovered it, and made a recommendation about it, after long study.  That's in sharp contrast with the new working group, which **came in with preconceived ideas** to test the limits and boundaries of its charter, and hadn't even started doing any work yet.  Indeed, in the second meeting, Brian Beckham of WIPO was openly advocating changing the "AND" in the UDRP/URS rules to "OR" (conjunctive vs. disjunctive debate). That March 1, 2021 transcript can be read at:  [https://gnso.icann.org/sites/default/files/policy/2021/transcript/transcript-](https://gnso.icann.org/sites/default/files/policy/2021/transcript/transcript-gnso-igo-worktrack-01mar21-en.pdf) [gnso-igo-worktrack-01mar21-en.pdf](https://gnso.icann.org/sites/default/files/policy/2021/transcript/transcript-gnso-igo-worktrack-01mar21-en.pdf)  For instance, on page 8, Brian Beckham said:  "Obviously, the former presents the possibility of significant gaming. That's a problem that we see in the UDRP context. So, the UDRP requires both that the registration be shown to be registered at the time of registration and then subsequently used in bad faith.  A number of ccTLDs have actually combined that to just say [that] there has to be a showing of bad faith. So, something targeting the brand owner. And that ccTLD-type formulation, if you will, has tended in practice to be a little simpler and cause a few less headaches.“  When Chris Disspain wanted to be clear (page 9) about what Brian Beckham was saying, he asked:  "Thanks, Brian. I’m going to Jeff in a second, but forgive me. I just want tomake sure I’m clear. Are you suggesting that these are topics we should be discussing?"  Brian Beckham responded (still on page 9):  "I think that whatever output we … If we sort of look into the crystal ball, if we ended up creating, let's say, some adjustments to the UDRP that address this Recommendation 5 issue, these are the topic that, in previous discussions, were some of the forks in the road that we would want to look at."  Even Jeff Neuman questioned this straying from, indeed subversion of, the charter, on page 10:  "I thought the only issue—nothing else, nothing about changing the “or” to an “and” or any other criteria of the UDRP. That's not before this committee. I thought the only thing that's before this committee is what do we do about the mutual jurisdiction clause because IGOs are either unable—let's just say unable—to sign that because there are issues with sovereign immunity.  I think everything else you brought up is just completely … That's for the UDRP Review to look at, not for us to look at."  But Brian Beckham of WIPO (one of the most active members of the working group, second only to the chair in terms of overall words spoken, as per the analysis earlier in this submission) continued to persist, as per page 11:  "Yeah. Thanks, Chris. I’m happy to. And I think that’s … I don't know that I would share that limitation. First of all, when we look back at the briefing note on this, we look at some of the issues that have been raised in terms of the scope of the work and the potential issues faced by IGOs and the problem statement."  And on page 12, Brian Beckham continued:  "To me, that limitation sort of, sorry to put it this way, but that kind of puts our collective heads in the sand as to the problem statement that we’re tasked to address. And failing to actually think more creatively about a holistic solution, I think, misses the mark. And if we're only here to look at what happens in the case of an appeal. In case an IGO wins and a registrant wants to take that to court, then obviously that simplifies our work. But I think it misses the mark in terms of the issue that's been put in front of us.  I would say, broadly speaking, the problem statement is, “As drafted, the UDRP is not framed in a way that IGOs can use it.” And that goes not only to this jurisdiction issue, but some of the more substantive issues about trademark rights and bad faith criteria."  This should be shocking to anyone. Indeed, it floored me when I was reviewing the transcripts in such detail, to figure out how the working group arrived where it did.  Now, of course they did not end up recommending changing the "AND" to "OR", but the above gives you the foundation of their mindset, that they were going to do what they would do regardless of any limits of the charter. And that's reflected in the recommendations that they did make, which were out of scope.  Indeed, this calls into question the very suggestion by IGOs that the procedure would be used, as per the submission of the Registry Stakeholders Group, "on a very limited basis." When they are **actively looking to create loopholes in policy**, or interpretations of working group charters, that's when the broader community should be concerned.  We've seen this in the past in other ICANN policy debates, where a lobbyist or stakeholder would argue that "they would never use that power" or "they would never do such and such". This came up in the tiered pricing debate [10](#_bookmark9) long ago. Even Frank Schilling's companies suggested in their new gTLD applications that their future price increases would be limited to inflation, but then reversed themselves.[11](#_bookmark10) Or, as we alone warned, what would happen with private equity and dot-org, if pricing caps were removed.[12](#_bookmark11)  IGOs are no different. They are, after all, run by human beings. They can say one thing now, but then do something entirely different later. That's why it's imperative that one looks at the **actual words of policies or contracts**. If something is allowed, or if there is a loophole, **it is almost certain to be exploited in the future**. That's what people do, they test boundaries, as happened in this new working group from the very start.  In this case, they went well past the boundaries, and as such their recommendations should be rejected (as we'll discuss in detail in the next sections).   1. ICANN Confirms: Tiered Pricing Not Forbidden in New .BIZ, .INFO and .ORG Contracts, August 24, 2006, <https://circleid.com/posts/icann_tiered_pricing_tld_biz_info_org_domain> 2. Frank Schilling just killed the New gTLD domain name program (Warning!), March 8, 2017, [https://onlinedomain.com/2017/03/08/domain-name-news/frank-schilling-just-killed-new-gtld-domain-name- program-warning/](https://onlinedomain.com/2017/03/08/domain-name-news/frank-schilling-just-killed-new-gtld-domain-name-program-warning/) 3. Breaking: Private Equity company acquires .Org registry, November 13, 2019, <https://domainnamewire.com/2019/11/13/breaking-private-equity-company-acquires-org-registry/> | Leap of Faith Financial Services Inc. | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The policy change impact analysis section of the report (page 17) seems to be more of a box-checking exercise, rather than a serious analysis.  In particular, the key issue of whether or not any arbitration panel got the decision "wrong" would be **impossible to measure**. For example, had the ADO.com or IMI.com cases been unable to be decided on the merits by the courts, how would they ever have been determined to be "incorrect"?  The "howling of the domain industry press" isn't a metric that ICANN has ever taken seriously, so that's obviously not a suitable metric.  In other words, there's not a "fail safe" mechanism triggered by any metrics to protect registrants from unfair arbitration decisions, once an arbitration policy is involuntarily mandated by ICANN.  Here's a question for the working group to research - ask WIPO what specific changes they made after the ADO.com decision. Or ask NAF what they did after IMI.com. The answers to those question will inform you as to why domain name registrants should be skeptical of any institutional arbitration provider as the "final say" over the fate of a domain name, instead of allowing the courts to take over. In a real sense, arbitration providers are like airlines that have plane crashes, but don't make any changes to protect future passengers after those crashes have taken place. There should be zero tolerance for any crashes at all.  This new working group wishes to treat domain name registrants as guinea pigs, experimental test subjects who can be mistreated, without repercussions or any metrics to document their abuse.  Essentially, the new working group has deliberately avoided putting forward **any reasonable metric that would expose to the world that their proposed solution (once implemented) has harmed domain name registrants**. This alone speaks volumes, and is a **reason to reject this report in its entirety**. | Leap of Faith Financial Services Inc. | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | In order to clean up my submission, I've moved my concerns about the new ICANN Comments System into this appendix, so that they're on the record. Please forward these concerns to the appropriate department, so that they can fix the issues for future comment periods.   * 1. deadline time wasn't showing (they've since added text to the main page showing that 23:59 UTC is the deadline, but that could have been added much earlier)   2. number of days left is miscalculated   3. ordering of the sections doesn't make sense; it should be: 1) summary of submission, 2) attachment(s), 3) summary of attachment(s), 4) other comments   4. Bold, Italics, Underline and Link tools aren't available in the "Summary of Submission" section! (all the rest have it!)   5. There's no obvious way to delete a "draft" comment (I created a test "Draft" for the dot-name issue, to test out their platform). I can edit it, I can save it, I can publish it, I can download it, but I can't find a way to "discard" or "delete" a draft comment.   6. The entire system appears to only support **ENGLISH** (I tested it with a browser set to French, and there are no account profile preferences for other languages). That hurts non-English members of the community.   7. Furthermore, the ICANN Bylaws require a meaningful Reply Period for public comments. I reminded ICANN about this in my submission to the Complaints Department in April 2021, yet this new comment system doesn't have such a reply period. See my blog post:   [https://freespeech.com/2021/04/26/icann-staff-have-repeatedly-](https://freespeech.com/2021/04/26/icann-staff-have-repeatedly-violated-public-comment-period-requirements-in-bylaws/) [violated-public-comment-period-requirements-in-bylaws/](https://freespeech.com/2021/04/26/icann-staff-have-repeatedly-violated-public-comment-period-requirements-in-bylaws/) which cited Article 3.6(a)(ii) of the bylaws.  [https://www.icann.org/resources/pages/governance/bylaws-en/#articl](https://www.icann.org/resources/pages/governance/bylaws-en/#article3) [e3](https://www.icann.org/resources/pages/governance/bylaws-en/#article3)  "provide a reasonable opportunity for parties to comment on the adoption of the proposed policies, **to see the comments of others, and to reply to those comments** (such comment period to be aligned with ICANN’s public comment practices), prior to any action by the Board"  While technically those might appear to apply "prior to any action by the Board", the same principles must apply to **any comment period** (and did exist in the past explicitly, to ensure robust debate, instead of simply slipping in comments at the final moment that couldn't be responded to by affected stakeholders). Plus, the lack of reply period definitely existed prior to comment periods explicitly referencing Board action (as I noted to the Complaints Office).  Or see how Donuts reminded ICANN of that very same Bylaw requirement, when they asked for a 21 day reply period:  [https://newgtlds.icann.org/en/applicants/cpe/guidelines-comment-](https://newgtlds.icann.org/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf) [extend-donuts-20sep13-en.pdf](https://newgtlds.icann.org/en/applicants/cpe/guidelines-comment-extend-donuts-20sep13-en.pdf)   * 1. Lastly, the way to "edit" an already-published comment has an unnatural user experience. When you go to edit a past comment, none of the submission can actually be changed. You have to first "retract it" (which, as it turns out, **unpublishes it for everyone else (I saw this when I went back to the main page**), which then enables editing. Then you have to republish it after you've made changed [I was naturally concerned that if I retracted it, I might lose all the material already written, so I had to copy/paste it to a different file just in case ] | Leap of Faith Financial Services Inc. | Concerns  **EPDP Response:**  None required, as this is out of scope for the EPDP.  **Action Taken:**  Staff will forward this input to the appropriate team.  [**COMPLETED**] – No changes to the EPDP report. |
|  | Am I right in my understanding that this proposed policy change would result in legitimate domain owners losing their domain names because anyone would be able to pay a fee to have a random person make a purely personal decision on the fate of the domain without being held accountable for their actions, even if they are in violation of any rightful logic? Oh wait, that is already the case in so many ridiculous unjust UDRP proceedings. Now ICANN wants to double down on this injustice and even deny the wronged domain owners due process rights in the judicial system to try to recover their wrongly seized property. | Kevin Garvin | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | There are smaller owners, like myself that would not be served well if you made UDRP worse for us.  I agree with what George posted here: https://freespeech.com/wp-content/uploads/2021/10/LEAP-comments-IGO-ePDP-2021-final-20211023.pdfI don't own names like School.com but I do own Deceivers.com and Wars.us, both valuable names, but if someone wrongly tried to sue over them I would not have the funds to defend them, and would probably not be able to. I would rather you not make things worse for people who own valuable names. | Joseph Slabaugh | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | OPPOSED to proposed changes on Specific Curative Rights Protections for International Governmental Organizations | Pierce Dawson | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | Before going further in this project, and in order to ICANN transparency policies, please provide this report in the six United Nations languages. This will let more people understand and participate in this very important case. | Mikael Kervevan | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | We support the position of George Kirikos of Leap of Faith Financial Services Inc., submitted Oct 23rd. | Castle Holdings | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | I am resolutely opposed to the proposed recommendations, which would inequitably skew the landscape for dispute resolution in favour of IGOs. I fully support the submissions made by both George Kirikos and the Internet Commerce Association:https://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-igos-14-09-2021/submissions/kirikos-george-24-10-2021https://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-igos-14-09-2021/submissions/internet-commerce-association-22-10-2021 | Paul Cotton | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | REPUTABLE COMPANIES AND ORGANIZATIONS HAVE MISUSED THE UDRP  High-profile and reputable companies and organizations have been found guilty of Reverse Domain Name Hijacking – including Range Rover (https://domainnamewire.com/2013/08/19/land-rover-found-guilty-of-rdnh-is-scathing- cybersquatting-decision/), Procter and Gamble (https://domainnamewire.com/2013/03/11/procter-gamble-guilty-of-reverse-domain-name- hijacking/), Puma Sportwear company (https://domainnamewire.com/2021/08/10/sportswear- company-puma-tries-reverse-domain-name-hijacking/), even her Majesty the Queen, in right of her Government of New Zealand, was found guilty of attempting to reverse hijack the domain name newzealand.com (https://[www.wipo.int/amc/en/domains/decisions/html/2002/d2002-](http://www.wipo.int/amc/en/domains/decisions/html/2002/d2002-) 0754.html).  JUDICIAL REVIEW IS NECESSARY AS A REMEDY FOR ABUSE OF THE UDRP AND FOR FLAWED UDRP DECISIONS  The history of the UDRP, as briefly alluded to above, is that reputable organization misuse the UDRP and that UDRP panels at times issue unjust transfer decisions that require judicial review to correct.  The claim by IGOs that no harm will result if ICANN accedes to their demand that they be allowed to use the UDRP as a remedy while depriving respondents of the right to judicial review of those UDRP decisions is belied by even a cursory review of the history of the UDRP.  THE IGOS’ DEMAND THAT ICANN BESTOW EXTRA-JUDICIAL RIGHTS ON IGOS VIOLATES ICANN’S MANDATE  The UDRP is supposed to be a distillation of the rights that the complainant could assert in a court of law. As was recognized by the drafters, the UDRP is a stripped-down, expedited proceeding lacking most of the evidentiary procedures available in a court of law. The adoption of the UDRP was justified on the grounds no decision would be final until a losing respondent had the opportunity to challenge in a court of law whether the UDRP decision was consistent with the law.  The root problem with the IGOs’ demands and with the recommendations of the IGO EPDP is that it deprives the registrant of judicial review. The procedural issues that the IGOs use to justify depriving registrants of their rights to judicial review can be remedied without taking this drastic action. Possible solutions include the use of a surrogate for the IGO or that any court challenge would be limited to the disposition of the disputed domain name. In addition, the Notice of Objection procedure detailed in the Leap of Faith Financial Services comment (“LEAP comment”) (https://[www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-](http://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-) curative-rights-protections-igos-14-09-2021/submissions/kirikos-george-24-10-2021), is an alternative worth further consideration.  In the absence of the UDRP, how would the IGOs assert their rights? The answer is that they would have to go to court. It is entirely at the IGOs’ discretion whether they choose to file a UDRP rather than go to court. No one is forcing them to file a UDRP complaint.  The IGOs’ wish to voluntarily avail themselves of the UDRP is not a reason for ICANN to create extra-judicial rights for IGOs and to deprive the respondents of the right to judicial review.  It is ironic that the IGOs, who exist to serve the public good, and though motivated by good intentions to remedy the harm caused by bad actors, is advocating for a policy that deprives hundreds of millions of registrants around the globe of their judicial rights.  The political clout of the IGOs far exceeds that of a diverse, unorganized group of global registrants, yet this unbalanced political clout at ICANN is translating into unbalanced policy recommendations. A policy development process where one interest has an outsized voice leads to bad policies. The GNSO Council should see through the self-serving yet unjustified rationale offered by the IGOs in support of their radical demand to eliminate judicial rights from the global base of domain name registrants.  Telepathy recommends that the GNSO Council rejects all of the recommendations of the IGO EPDP as they are all contrary to the guidance provided to the working group by the GNSO. The recommendations are all failed attempts to solve a non-existing problem as they are based on a flawed and unsupported assertion that the IGOs are unable to seek relief under the UDRP as currently constituted.  Of the recommendations made, Telepathy supports the ICA’s comment for the reasons given therein that Option 2 of Recommendation 4 is the least objectionable. | Telepathy, Inc. | Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | As previously stated in the BC’s Comment on IGO-INGO Access to Curative Rights Protection Mechanisms Policy Recommendations for ICANN Board Consideration,3 the UDRP recently celebrated its 20th anniversary and has been widely credited as an effective tool for dealing with clear cases of cybersquatting. Also as previously stated by the BC in its Comment, the original IGO Working Group considered IGO and INGO access to the UDRP and URS and determined that “the UDRP and URS could be satisfactorily used by IGOs and INGOs to address clear cases of  cybersquatting” and that some had even “done so to-date”, although such cases are extremely rare.  Accordingly, the BC wishes to re-emphasize its original Comment that it continues to “support the existing UDRP and URS framework for IGOs” without the need “to conceive, develop, and implement a separate rights protection mechanism for IGOs.”  Given that the UDRP has successfully dealt with tens of thousands of abusive domain name registrations over the course of its 21+ year history, any adjustments to the UDRP to address participation by IGOs as recommended by this EPDP, should nonetheless undergo further review and consideration by the Phase 2 RPM Working Group, as that is the body with the requisite expertise to contemplate how any such adjustments can and should work within an already successful RPM regime.  The BC also previously stated in its aforementioned Comment4 that “examination of the [access to UDRP and immunity of IGOs issue] should be addressed within a dedicated small group under the umbrella of the RPM Working Group where hopefully a solution may be found which satisfies all stakeholders”. Notwithstanding the August 2021 procedural decision of the GNSO Council to continue IGO curative rights work via this EPDP, the BC continues to see value in subsequent expert review and consideration of EPDP recommendations within the RPM Working Group in Phase 2.  Otherwise, there is risk that well-intentioned revisions to the UDRP to address the discrete issue of IGO participation, could inadvertently result in destabilization of the to-date successful practice, procedure, and case law of the UDRP. Therefore, the BC recommends that the RPM Working Group during Phase 2, review and consider how the current Proposed Recommendations or any subsequent Final Recommendations work along with the existing UDRP for overall internal consistency.  3 [https://www.icannbc.org/assets/docs/positions-](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf) [statements/2019/2019\_08August\_20%20BC%20comment%20on%20IGO-](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf) [INGO%20access%20to%20curative%20RPMs.pdf](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf)  4 [https://www.icannbc.org/assets/docs/positions-](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf) [statements/2019/2019\_08August\_20%20BC%20comment%20on%20IGO-](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf) [INGO%20access%20to%20curative%20RPMs.pdf](https://www.icannbc.org/assets/docs/positions-statements/2019/2019_08August_20%20BC%20comment%20on%20IGO-INGO%20access%20to%20curative%20RPMs.pdf)  Whatever path that the GNSO decides to take in connection with IGO participation in RPMs, it is critical that it be examined from a holistic perspective in the near and mid-term as part of the RPM Review PDP to ensure that the approach remains internally consistent and effective. | ICANN Business Constituency (BC) | Concerns  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | Before addressing concerns regarding specific recommendations, the RrSG would like to provide general feedback regarding the Interim Report.  First, the RrSG is concerned that some of the preliminary recommendations violate the EPDP’s charter by potentially impacting the ability of registrants to file court proceedings. While these will be considered in detail within this comment, it is concerning that the EPDP team participants as well as ICANN support staff allowed such problematic recommendations to be included in the Interim Report.  Second, the RrSG notes that the EPDP does not appear to contain any representatives from the RrSG, the Registry Stakeholder Group (RySG), and the Not-for-Profit Operational Concerns Constituency (NPOC), and some of the recommendations appear to have significant impact on those constituencies or domain name registrants. The absence of certain constituencies in the EPDP should not be rationale for drafting recommendations that could impact those constituencies. The RrSG strongly recommends that for the Final Report, the EPDP must consider and incorporate the feedback from constituencies not represented on the EPDP.  Third, the RrSG review of the recommendations in the Interim Report suggest that the Interim Report conflicts with ICANN Board feedback regarding the EPDP’s efforts, specifically "the Board remains of the view that protections for IGO names and acronyms cannot result in a broader scope of protection than is available under international treaties and national laws, including intellectual property laws."1 [placeholder: waiting for feedback from outside counsel]  Fourth, the RrSG notes that several members of the EPDP have a direct financial interest in adopting these recommendations. Mandating costly arbitration procedures will significantly benefit arbitration service providers and attorneys, at the expense of domain name registrants. Costs for these arbitrations could be tens of thousands of dollars or more, and at least one of the providers recommended for review of rules includes a “loser pays” provision. The RrSG would be less concerned about these recommendations if the anticipated utilizing review processes that utilizes the services of providers not represented on the EPDP, or represent significantly lower potential costs than the four providers identified in the Interim Report.  Fifth, the RrSG is concerned that this EPDP is a solution looking for a problem. According p.12 of the [Final Report on the IGO-INGO Access to Curative Rights Protection Mechanisms Policy](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf)  [Development Process](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf), one of the reasons that the working group reached a conclusion not to create a new and separate dispute resolution process applicable to IGOs was:  *There is only an extremely limited probability of a scenario where a losing respondent in a UDRP or URS proceeding files suit against the winning IGO in a national court such that the IGO might need to assert jurisdictional immunity in that court.*  Has the EPDP considered whether there is significant need for IGOs to utilize UDRP or URS to resolve domain name disputes? Will this result in a few cases per year, or dozens? If the number of domain name disputes is low, then the significant time and resources dedicated to addressing this issue could be better focused elsewhere (as ICANN and the ICANN community have finite resources).  As detailed in footnote 5 on p.118 of [Final Report on the IGO-INGO Access to](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf)  [Curative Rights Protection Mechanisms Policy Development Process](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf), IGOs have filed and prevailed in UDRPs:  *Respectively, in International Mobile Satellite Organisation and Inmarsat Ventures Limited (formerly known as Inmarsat Holdings Limited) v. Domains, EntreDomains Inc. and Brian Evans, D2000-1339 (WIPO Nov. 30, 2000); International Bank For Reconstruction and Development d/b/a The World Bank v. Yoo Jin Sohn, D2002-0222 (WIPO May 7, 2002); and Bank for International Settlements v. BFIS, D2003- 0984 (WIPO March 1, 2004), Bank for International Settlements v. BIS, D2003-0986 (WIPO March 2, 2004), Bank for International Settlements v. James Elliott, D2003-0987 (WIPO March 3, 2004), Bank for International Settlements v. G.I Joe, D2004-0570 (WIPO (Sept. 27, 2004), Bank for International Settlements v. BIS, D2004-0571 (WIPO Oct. 1, 2004), and Bank for International Settlements v. Fortune Nwaiwu, D2004-0575 (WIPO Oct. 1, 2004). A few other matters are catalogued in the Index of WIPO UDRP Panel Decisions,* [*http://www.wipo.int/amc/en/domains/search/legalindex/,*](http://www.wipo.int/amc/en/domains/search/legalindex/) *as involving IGOs. In*  *one, involving the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), a decentralized agency of the European Union, the complaint was denied due to its failure to establish rights to marks or services. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) v. Virtual Clicks / Registrant ID:CR36884430, Registration Private Domains by Proxy, Inc., D2010-0475 (WIPO July 7, 2010). In another, involving UNITAID, an IGO hosted by the World Health Organization (WHO), trademark rights were assigned by a fiduciary agreement to a private enterprise, which registered them on behalf of the WHO and UNITAID. Lenz & Staehelin Ltd v. Christopher Mikkelsen, D2012-1922 (WIPO Jan. 8, 2013).*  The RrSG did not review filings since the publication of the above-referenced Final Report, however it is likely that there were additional UDRP and/or URS filings by IGOs. Additionally, the number of filings by IGOs is likely higher than reported in the Final Report, as one is required to search by all IGO names to confirm all filings. It is thus not apparent to the RrSG why such extraordinary processes are needed.  ……..  For the reasons detailed above, the RrSG does not support the recommendations as detailed in the Interim Report. Thank you for your time and consideration, and the RrSG looks forward to a Final Report that reflects (and where appropriate incorporates) the feedback from public comments. | Registrar Stakeholder Group (RrSG) | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The World Bank has participated as an Observer to the Work Track that prepared the proposal now under public comment. We support the comments of the GAC submitted on 22 October 2021, as well as the comments of WIPO submitted on 22 October 2021. | World Bank | Support  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | 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. | ALAC | Support  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | Namecheap, Inc. (“Namecheap”) thanks ICANN for the opportunity to provide a comment on the EPDP on Specific Curative Rights Protections for IGOs (“Interim Report”). Namecheap believes that the multistakeholder model (“MSM”) of developing policy is one of the most important aspects of ICANN. This Interim Report, however, is not representative of the MSM. It does not consider the interests of other ICANN constituencies, it is biased in favor of trademark owners and arbitration providers, and ignores domain name registrants completely. It seeks to create new trademark rights for IGOs, anticipates costly arbitration that registrants cannot afford, and attempts to circumvent the UDRP and URS. The Interim Report also fails to consider many examples of IGOs filing (and winning) UDRPs, and as such, is a solution in search of a problem. Namecheap strongly urges the EPDP team to reassess and modify the recommendations in the Interim Report in light of the comments from Namecheap, the Registrar Stakeholder Group (RrSG), and other ICANN community members opposing these recommendations.  The EPDP team’s proposed solution exempts IGOs from the UDRP and URS Mutual Jurisdiction requirements and gives IGOs the option to waive (or not) judicial immunity at its own choosing in favor of arbitration. As currently proposed, the EPDP team’s recommendations could potentially force registrants into costly arbitration under foreign law in order to exercise their right to review/appeal a UDPR or URS decision. As such, the EPDP’s recommendations confer greater rights upon IGOs than non-IGO registrants, in direct violation of ICANN Board’s instruction that “protections for IGO names and acronyms cannot result in a broader scope of protection than is available under international treaties and national laws, including intellectual property laws."1   1. https://[www.icann.org/en/system/files/files/resolutions-icann71-gac-advice-scorecard-12sep21-en.pdf](http://www.icann.org/en/system/files/files/resolutions-icann71-gac-advice-scorecard-12sep21-en.pdf) | Namecheap, Inc. | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The Recommendations of the Interim Report Appear Biased in Favor of the EPDP Members and Exceed the Charter The members of the EPDP are not representative of the diverse interests of the ICANN community. It does not appear that any of the EPDP members are from the RrSG, the gTLD Registries Stakeholder Group (RySG)4, or the Not-for-Profit Operational Concerns Constituency (NPOC). As a result, the recommendations favor the participant groups of the EPDP, to the detriment of the unrepresented groups, and above all, domain name registrants. It should be expected that when certain groups are not represented in an ICANN PDP, recommendations should be drafted to consider those not represented on the PDP. This, however, does not appear to have happened for the Interim Report. Trademark attorneys and arbitration providers were represented on the EPDP whereas domain name registrants were not (via the RrSG or RySG), and the resulting recommendations skew in favor of trademark rights protection and increased arbitration for domain name disputes to the detriment of domain name registrants.  In addition to Namecheap’s concerns regarding bias in the EPDP’s recommendations, it appears that the EPDP has exceeded its charter. As detailed in this comment, Namecheap has demonstrated that the Interim Report are against the following requirements in the charter, specifically that the recommendations:  “[do] not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction; [and]  preserves registrants' rights to judicial review of an initial [Uniform Domain Name Dispute Resolution Policy or Uniform Rapid Suspension decision”5  Namecheap requests that the EPDP team, along with ICANN org support staff, review the recommendations against the charter, and provide an explanation how, in their opinion, the recommendations align with the charter. To the extent that they do not (as Namecheap has demonstrated repeatedly in this comment), the EPDP should amend or remove those recommendations.   1. Namecheap notes that the Chair of the EPDP, Chris Disspain, began providing consulting services to a registry during the EPDP. However, as the Chair role is intended to be neutral (see https://gnso.icann.org/en/basics/101/wg-chairs-guide), the participation of Mr. Disspain cannot be considered as an advocate for RySG interests.   …….  Namecheap would like to acknowledge the efforts of the RrSG in drafting a comment to the Interim Report, and the diverse participants that contributed to the RrSG efforts. Namecheap supports the RrSG comment, and incorporates it by reference in this comment.  For the reasons detailed above, the Namecheap does not support the recommendations contained in the Interim Report, and requests that the EPDP consider alternative means of addressing the imbalance of rights between IGOs and non-IGOs in the context of dispute resolution that respect the rights of registrants. Thank you. | Namecheap, Inc. | Concerns Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | In June 2014, the GNSO Council chartered the IGO-INGO Access to Curative Rights PDP to develop policy recommendations as to whether “to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and [International Non-Governmental Organizations (INGOs)] and, if so in what respects or whether a separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGO-INGOs should be developed.” The working group also said its proposal recommendations “will facilitate access to and use of the UDRP and URS by IGOs.”1  Due to the charter wording, various stakeholder groups did not participate in the work, as concerns about their or their registrants' rights did not appear to be affected. In the absence of that participation, which would otherwise be guardrails to keep things practical and balanced, other groups availed the opportunity to operate with abandon, making suggested changes that lack balancing.  Further, this charter statement and proposed recommendations are fundamentally flawed and make little sense. IGO-INGO’s always have had access to the UDRP systems, and they have in fact used the UDRP systems with success. **There is nothing preventing IGO-INGO’s from filing and using the UDRP process today**. Historically, after more than 20 years, there has not been one case where an IGO-INGO has won a UDRP or URS, where the registrant has filed action in the court of law. Thus, what exactly is the problem this working group is attempting to solve? Considering this situation has never occurred in the past - why are we spending all this time and effort?  Does it make sense to create carve outs for small group of IGO-INGO’s? It seems like we are creating a precedent that carve-outs from the general rules and regulations for the entire UDRP system is something that will be possible in the future? And ICANN granting immunity in certain circumstances?  Or is the core problem that IGO-INGO’s want something that no other complaint has - the ability to initiate a complaint without ever having to take the risk of court action? This seems quite unfair! **Why should IGO-INGO’s be granted the ability to play by a different set of rules than everyone else? Why should an IGO-INGO have greater legal rights than everyone else?** How is this fair and balanced?  Most concerning is that these recommendations will strip domain registrants of their rights – and be more advantageous for IGO-INGO’s and potentially now introduce an arbitration mechanism which can be expensive for registrants with legitimate rights in names to defend internationally. Arbitration will also benefit an IGO-INGO over registrants. There have been defective outcomes or biased panelists or arbitrators finding for complainants without careful examination in certain geographies, which can be expensive in circumstances where the arbitration finds for the IGO- INGO despite the defendant's legitimate interests.  While the proposal is seeking to make things more efficient for IGO-INGO’s, what balances the other side of the scale? Creating policy so one-sided – without even consulting or considering registrants rights under their respective law is problematic. Stripping Registrars Rights they have under the law: This working group even said, “*Relatedly, the EPDP team acknowledged that removing this requirement for IGO Complainants could prejudice a registrant’s right and ability to have an initial UDRP or URS determination reviewed judicially.*”  Exactly!  This is deeply concerning and problematic. Essentially, the recommendations favor the interest of IGO-INGO’s, and put domain registrants at a material disadvantage by taking away their rights under the law.  We also find the summary of the proposal to be misleading. It says several times in the summary that it is “preserving registrant rights” and “does not affect the right and ability of registrants”2 - but this is simply not true. These proposals are fundamentally reducing registrants’ rights - not preserving those rights. Thus, the working group summary pitch line is spinning the narrative - while at the same time ignoring the core fact that registrants will have fewer judicial rights.  Even one member of the working group said, *“I worry about not only the legal ramifications to registrants, but also the optics of ICANN appearing to want to strip registrants of rights they otherwise have at law."*  1 https://itp.cdn.icann.org/en/files/generic-names-supporting-organization-council-gnso-council/initial- report-epdp-specific-curative-rights-protections-igo-14-09-2021-en.pdf   1. https://[www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-](http://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-) igos-14-09-2021   **How were Registrants Involved in this proposed policy recommendations?**  Most importantly, were registrants consulted, interviewed, invited to participate, surveyed, or involved in the deliberations of this working group? If not, why not? Or was this new proposed policy created in a vacuum without the views of registrants considered?  What expert or legal analysis was provided before proposing to make such changes to the UDRP system? What legal analysis was performed from the registrants’ rights under the law?  ICANN claims it is a multi-stakeholder model – but we are concerned that registrants had hardly any voice in these recommendations. Thus, this working group has put forward a proposal without consulting any registrants at all - or obtaining a balanced view from the various multi- stakeholders, including registrants (the party that will be most impacted by these changes.) It is deeply concerning this proposal would take away a registrant's right and ability to have the decision be reviewed judicially – without ICANN ever consulting the larger registrant community.  Why would ICANN allow for such a one-sided decision to pass through without giving registrants the ability to weigh in on these matters?  **Conclusion:**  IGO-INGO’s already have access to the UDRP system - thus, what exactly is the problem this working group is attempting to solve?  We do not support removing mutual jurisdiction.  We do not support ICANN offering immunity if the IGO-INGO has elected to initiate a UDRP or URS proceedings. We do not support taking registrants rights away they legally have under the laws.    We do not support forcing arbitration.  Thus, we do not support the policy recommendations contained in this report. | TurnCommerce Inc. | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | There is a concern that the EPDP-IGO team may have not fully considered the negative consequences of their initial policy proposal on the inherent rights of legal domain name registrants. While weighed against the need to protect international trademarks, it is extremely important that any policy revisions not dilute the protections currently afforded to domain name registrants. Cybersquatting represents a tiny proportion of total global domain name registrations. Facilitating trademark protections is indeed necessary, but the processes provided to complainants should be balanced with legitimate protections for domain registrants whose assets are sometimes unfairly threatened in reverse domain name hijacking attempts. Any ICANN-approved process that disproportionately empowers complainants will specifically disadvantage legal domain name registrants who must defend their assets against purposeful & strategic overreach by bad actors seeking to misidentify legal registrants as "cybersquatters".Thank you for considering these comments. | Domain Registrant Rights | Concerns  Divergence  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |
|  | The growing need for protection  The 2001 Report of the Second WIPO Internet Domain Name Process illustrates the underpinnings for this effort: “The registration and use of domain names to create misleading associations with the duly constituted international authorities for public health, labor practices, peace-keeping operations, nuclear test bans, the containment of the proliferation of chemical weapons, trade disciplines, children’s rights, refugees, AIDS and so forth is unacceptable, offensive to numerous public policies established by the international community and conducive to undermining the credibility and reliability of the DNS.”  It is therefore important that this work track recognizes that IGOs are unique institutions created by governments under international law to undertake global public missions, and that as such, IGO identifiers require tailored protection by ICANN in keeping with the public interest behind their causes.  As an example of such need, a 2007 ICANN Staff Report notes how abusive registrations of the names and acronyms of IGOs “were used in millions of fraudulent e-mail messages to solicit [tsunami relief] donations from unsuspecting individuals.”  In another example, IGO identifiers were abused during the Ebola crisis.1  More recently, in the context of a World Health Organization (WHO) Solidarity Response Fund for the COVID-19 crisis, a dedicated webpage has been set up to warn of the occurrence of phishing and malicious emails appearing to be from the WHO.2  In seeking protection from abuse, IGOs do not seek to hamper legitimate uses of the Internet Domain Name System. Illustrating a spirit of compromise, a 2016 letter from the United Nations Secretary-General stated (emphasis added):  There is a sure way to address this issue: preliminarily blocking the illicit registration of domain names corresponding to IGO names and acronyms. The Internet Corporation for Assigned Names and Numbers (ICANN), a non-profit corporation, administers the internet Domain Name System (DNS). IGOs have repeatedly appealed to ICANN to protect their names and acronyms in the DNS. Over the last four years, a coalition of IGOs has sought from the ICANN Board safeguards that reflect the protection that IGO names and acronyms enjoy under domestic and international laws. At the same time, IGOs made it clear that they would not take issue with legitimately sought third-party domain name registrations which would not pose risks to IGO missions.3  1 https://bits.blogs.nytimes.com/2014/10/24/malicious-ebola-themed-emails-are-on-the-rise/?\_r=0  2 https://[www.who.int/about/cyber-security](http://www.who.int/about/cyber-security)  3 https://mm.icann.org/pipermail/council/attachments/20181022/73dc1f76/UNSGIGOLetter-0001.pdf  In conclusion  Beyond these legal observations and suggestions, the overarching issue here is that were the EPDP to insist on jurisdiction of courts, this would seriously undermine the utility of the mechanism under consideration. As IGOs cannot afford to enter into court litigation with infringers, the serious abuses summarized in the first paragraphs above would continue unchecked. We know that this is not the intention of the EPDP and thus invite the EPDP team’s serious reflection on this vital point. | UNESCO | Concerns  Support  **EPDP Response:**  **Action Taken:**  [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.] |