

Final Report of the Expedited Policy Development Process on Specific Curative Rights Protections for International Governmental Organizations (IGOs)

Status of this Document

This is the Final Report containing final recommendations from the GNSO's Expedited Policy Development Process (EPDP) on Specific Curative Rights Protections for International Governmental Organizations (IGOs). This Final Report has been prepared for the GNSO Council's consideration of the EPDP recommendations, in accordance with the ICANN Bylaws and the GNSO's Policy Development Process Manual.

This Final Report will be translated into different languages; please note that only the English version is authoritative.

Preamble

This Final Report is part of broader work that has been undertaken by the ICANN community to facilitate the protection of IGO identifiers in the domain name system (DNS). The scope of work described in this report is limited to the topics and considerations outlined by the GNSO Council in its instructions to the EPDP team, via a motion proposed and carried during the GNSO Council teleconference meeting on 23 January 2020. This report describes the EPDP team's deliberations and sets out its final recommendations on specific policy issues arising in cases where, following an initial decision in favor of an IGO in a proceeding under either the Uniform Domain Name Dispute Resolution Policy or the Uniform Rapid Suspension procedure, the losing registrant seeks a review of the merits of the case in court and the court declines to proceed on the basis of IGO privileges and immunities. Following its review of all Public Comments received on its Initial Report, the EPDP team has finalized its policy recommendations and now submits this Final Report to the GNSO Council.

Table of Contents

Table of Contents

1 EXECUTIVE SUMMARY	4
2 FINAL RECOMMENDATIONS	7
3 SUMMARY OF DELIBERATIONS	16
4 CONCLUSIONS AND NEXT STEPS	21
5 RELEVANT PROCESS & ISSUE BACKGROUND	22
6 APPROACH TAKEN BY THE WORK TRACK	26
7 ANNEX A – PRINCIPLES REGARDING ARBITRAL RULES	29
8 ANNEX B – SCOPE OF WORK (AS APPROVED BY THE GNSO COUNCIL)	31

1 Executive Summary

2 1.1 Introduction

3
4 On 23 January 2020, the GNSO Council approved an [Addendum](#) to the Review of All Rights Protection Mechanisms (RPM) Policy Development Process (PDP) Charter that
5 created an IGO Work Track. The GNSO Council initiated this work to consider “*whether*
6 *an appropriate policy solution can be developed that is generally consistent with [the*
7 *first four recommendations from the GNSO’s IGO-INGO Access to Curative Rights PDP]*
8 *and:*
9

- 10
11 a. *accounts for the possibility that an IGO may enjoy jurisdictional immunity in*
12 *certain circumstances;*
- 13 b. *does not affect the right and ability of registrants to file judicial proceedings in a*
14 *court of competent jurisdiction;*
- 15 c. *preserves registrants' rights to judicial review of an initial [Uniform Domain*
16 *Name Dispute Resolution Policy or Uniform Rapid Suspension decision; and*
- 17 d. *recognizes that the existence and scope of IGO jurisdictional immunity in any*
18 *particular situation is a legal issue to be determined by a court of competent*
19 *jurisdiction.”*
20

21 Following the GNSO Council’s [appointment](#) of Chris Disspain as the IGO Work Track
22 Chair and confirmation of their representatives by interested GNSO Stakeholder Groups,
23 Constituencies, Advisory Committees, other Supporting Organizations and IGOs in
24 accordance with membership requirements outlined in the Addendum, the IGO Work
25 Track commenced its work in February 2021.
26

27 The GNSO Council’s decision to create the IGO Work Track followed from its 18 April
28 2019 [resolution](#) to approve only the first four recommendations from the IGO-INGO
29 Access to Curative Rights PDP, which had submitted its [Final Report](#) to the GNSO Council
30 in July 2018. The GNSO Council had elected not to approve Recommendation #5 from
31 the PDP, preferring to refer the matter at the time to the RPM PDP for its Phase 2 work.
32

33 In August 2021, the GNSO Council made the [procedural decision](#) to continue the work of
34 the IGO Work Track via an Expedited Policy Development Process, since Phase 1 of the
35 RPM PDP had concluded but Phase 2 had not yet been initiated, pending a review of
36 the PDP Charter by the GNSO Council. The GNSO Council confirmed that the scope of
37 work for the EPDP team was not affected in any way by this procedural change, as the
38 original Addendum became in effect the EPDP team Charter.
39

40 Recommendation #5 from the IGO-INGO Access to Curative Rights PDP attempted to
41 address a situation where an IGO has prevailed in a Uniform Domain Name Dispute

42 Resolution Policy (UDRP) or Uniform Rapid Suspension (URS) proceeding, following
43 which the losing registrant files suit in a court and the IGO asserts immunity from the
44 jurisdiction of that court. Recommendation #5 provided that, in such a situation and
45 where the court declines to hear the merits of the registrant’s case, the original UDRP or
46 URS panel decision is to be set aside. The effect of implementing Recommendation #5
47 will be to put the parties to the dispute in their original situations, as if the UDRP or URS
48 proceeding in which the IGO had prevailed had never been commenced.

49
50 During the GNSO Council’s deliberations over the Final Report from the IGO-INGO
51 Access to Curative Rights PDP, concerns were expressed as to whether
52 Recommendation #5 will require a substantive modification to the UDRP and URS as
53 well as result in a potential reduction of the existing level of curative protections
54 currently available to IGOs – such as they are; i.e., at present IGOs must agree to *submit*
55 *to the jurisdiction of a court at “either (a) the principal office of the registrar (provided*
56 *that the domain name registrant has submitted in the Registration Agreement to that*
57 *jurisdiction for court adjudication of disputes concerning or arising from the use of the*
58 *domain name) or (b) the domain name registrant’s address as shown for the registration*
59 *of the domain name in the concerned registrar’s WHOIS database at the time the*
60 *Complaint is submitted to a dispute resolution service provider (“Mutual Jurisdiction”).*
61 IGOs are concerned that the agreement to this “Mutual Jurisdiction” clause could be
62 considered an express or implied waiver of the IGOs’ immunities under existing national
63 laws. The Curative Rights PDP had been chartered to determine *“whether to amend the*
64 *UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs ...or*
65 *whether a separate, narrowly-tailored dispute resolution procedure at the second level*
66 *modeled on the UDRP and URS that takes into account the particular needs and specific*
67 *circumstances of IGOs and INGOs should be developed”*, and Recommendation 5 was
68 viewed by many as reducing access to curative rights mechanisms by IGOs. As a result,
69 the GNSO Council decided that additional policy work was needed on the specific issue
70 that Recommendation #5 had been intended to resolve.

71 1.2 Final Recommendations

72
73 The EPDP team has arrived at five final recommendations to address the issues within
74 the scope of its work, in accordance with the GNSO Council’s instructions as
75 documented in its Charter.

76
77 The EPDP team reached final agreement on the following points: (1) adding a definition
78 of “IGO Complainant” to the current Rules applicable to the UDRP and URS, to facilitate
79 an IGO’s demonstration of rights to proceed against a registrant (in the absence of a
80 registered trademark); and (2) including an option for voluntary arbitration following
81 the initial UDRP or URS panel decision in favor of an IGO Complainant, to resolve the
82 issue of how to recognize an IGO’s jurisdictional immunity while preserving a
83 registrant’s right to choose to go to court.

84

85 1.2.1 Recommendation regarding UDRP and URS Eligibility 86 Requirements for IGOs

87
88 The first recommendation from the EPDP team (Recommendation #1) addresses an
89 initial challenge that IGOs face under the current UDRP and URS requirement for a
90 complainant to have trademark rights in order to proceed against a domain name
91 registrant. In this regard, the EPDP team is proposing specific modifications to the Rules
92 applicable to the UDRP and URS that will add a definition clarifying the criteria for “IGO
93 Complainants”. The EPDP team believes that adding this definition will provide clearer
94 eligibility requirements for IGOs in relation to the need to show that they have
95 adequately demonstrated rights to proceed with a UDRP or URS complaint.
96

97 1.2.2 Recommendations to Address IGO Immunities While 98 Preserving a Registrant’s Right to Seek Review of a UDRP or 99 URS Decision Issued Against It

100
101 Together with Recommendation #1, Recommendations #2, #3, #4, and #5 from the
102 EPDP team comprise a set of related, interdependent recommendations. This set of
103 recommendations is intended to achieve an appropriate policy balance between respect
104 for an IGO’s privileges and immunities (specifically, immunity from judicial process) and
105 maintaining a registrant’s right to file a court case seeking judicial consideration of the
106 merits of the case where a UDRP or URS decision has been issued against the registrant.
107

108 1.3 Summary of Deliberations to Date

109
110 Section 3 of this report outlines the EPDP team’s deliberations regarding how it
111 considered and developed the final recommendations.
112

113 1.4 Next Steps

114
115 This Final Report will be delivered to the GNSO Council for its consideration of the
116 recommendations developed through this EPDP.

117

118 2 Final Recommendations

119

120 The EPDP team has kept the GNSO Council’s instructions regarding consideration of an
121 appropriate policy solution for Recommendation #5 from the IGO-INGO Access to
122 Curative Rights PDP at the forefront in its work. However, most of the EPDP team
123 concluded early on that a feasible and appropriate policy solution cannot be crafted
124 simply by looking at that recommendation in isolation. Although Recommendation #5 is
125 concerned with the outcome of a dispute resolution process where the affected IGO
126 asserts immunity from jurisdiction, the EPDP team agreed that, in order to address this
127 specific issue, it needed to first determine how and which IGOs are able to file a
128 complaint under the relevant dispute resolution mechanism. In this regard, EPDP team
129 members noted that, due to national State obligations under the Paris Convention for
130 the Protection of Industrial Property, IGOs may not own hold registered trademarks¹ in
131 their names, acronyms, or other identifiers.

132

133 This presents a challenge for such IGOs, as there is a specific requirement under the
134 UDRP and URS that a complainant “*must demonstrate that the domain name at issue is*
135 *identical or confusingly similar to a trademark in which the complainant has rights*”. As a
136 result of its discussions, the EPDP team proposes Recommendation #1, which it believes
137 will clarify eligibility requirements for IGOs to demonstrate (unregistered) rights under
138 the UDRP and URS.

139

140 To address the specific issue under Recommendation #5 from the IGO-INGO Access to
141 Curative Rights PDP, the EPDP team proposes a further set of recommendations
142 (Recommendations #2, #3, #4, and #5) that, in combination with Recommendation #1,
143 are intended to be “interdependent” (as contemplated by Section 13 of the GNSO’s PDP
144 Manual²). Most of the EPDP team believes that this set of recommendations is
145 responsive to the GNSO Council’s directions that the proposed policy solution be
146 “*generally consistent*” with the four other recommendations from the IGO-INGO Access
147 to Curative Rights PDP.

148

¹ IGOs do not engage in trade or commerce in the strict sense for which trademarks are generally registered and used.

² See <https://gns0.icann.org/sites/default/files/file/field-file-attach/annex-2-pdp-manual-24oct19-en.pdf> (“Although the GNSO Council may adopt all or any portion of the recommendations contained in the Final Report, it is recommended that the GNSO Council take into account whether the PDP Team has indicated that any recommendations contained in the Final Report are interdependent. The GNSO Council is strongly discouraged from itemizing recommendations that the PDP Team has identified as interdependent”).

149 2.1 Final Recommendations

150

151 The GNSO Council had decided not to approve the original Recommendation #5 from
152 the IGO-INGO Access to Curative Rights Protection Mechanisms PDP. The EPDP Team’s
153 collective understanding is that the GNSO Council thereby rejected the original
154 Recommendation #5 and, instead, tasked the RPM PDP Working Group to develop a
155 policy solution for the problem that the original Recommendation #5 was intended to
156 solve and that would be generally consistent with Recommendations #1 - #4 from that
157 PDP. The EPDP Team believes that its final recommendations (below) address the issues
158 raised by IGOs’ jurisdictional immunity in relation to court proceedings following a UDRP
159 or URS decision, and that these recommendations are responsive to the GNSO Council’s
160 directions that the proposed policy solution be “generally consistent” with
161 Recommendations #1 - #4 from the IGO-INGO Access to Curative Rights PDP. As such,
162 the EPDP Team recommends that the GNSO Council approve the following final
163 Recommendations #1 - #5 from this EPDP.

164

165 To address the specific issue under Recommendation #5 from the IGO-INGO Access to
166 Curative Rights PDP, the EPDP team is proposing the following single package of
167 recommendations.

168

169 The EPDP team wishes to emphasize that its final recommendations are to be read in
170 the following context:

171

- 172 • The inclusion of an arbitration option in the UDRP and URS does not replace,
173 limit, or otherwise affect the availability of court proceedings to either party, or,
174 in respect of the URS, the ability to file an appeal within the URS framework.
175 Either party continues to have the right to file proceedings in a court, up to the
176 point in time when an arbitration proceeding is commenced (if any).
- 177 • The inclusion of an arbitration option in the UDRP and URS does not affect the
178 timelines for filing or for implementing the relevant remedy, unless otherwise
179 expressly stated in the recommendations below.

180 2.1.1 Recommendation regarding UDRP and URS Eligibility

181

Requirements

182

183 **Recommendation #1: Definition of “IGO Complainant”**

184 The EPDP team recommends that the UDRP Rules and URS Rules be modified in the
185 following two ways:

186

- 187 i. Add a description of “IGO Complainant” to section 1 (i.e., the definitions section
188 of both sets of Rules):

189

190 “‘IGO Complainant’ refers to:

191 (i) an international organization established by a treaty, and which possesses
192 international legal personality; or
193 (ii) an ‘Intergovernmental organization’ having received a standing invitation,
194 which remains in effect, to participate as an observer in the sessions and the
195 work of the United Nations General Assembly; or
196 (iii) a Specialized Agency or distinct entity, organ or program of the United
197 Nations⁴.”

198

199 ii. Add the following explanatory text to UDRP Rules Section 3(b)(viii), URS Section
200 1.2.6 and URS Rules Section 3(b)(v):

201

202 “Where the Complainant is an IGO Complainant, it may show rights in a mark by
203 demonstrating that the identifier which forms the basis for the complaint is used
204 by the IGO Complainant to conduct public activities in accordance with its stated
205 mission (as may be reflected in its treaty, charter, or governing document). Such
206 use shall not be a token use.”

207

208 Explanatory Text:

209 The EPDP team acknowledged that there is no single authoritative source for
210 determining whether an organization is an IGO. To ensure that its recommendations are
211 limited to a policy solution for the specific issue it was tasked to address, the EPDP team
212 thought it necessary to ensure that its recommendations apply only to those
213 organizations for which there is demonstrable factual proof of their status as IGOs. In
214 arriving at its final definition for an “IGO Complainant”, the EPDP team analyzed the
215 United Nations system and documentation, relevant provisions in international treaties
216 (such as Article 6ter of the Paris Convention for the Protection of Industrial Property),
217 and GAC advice.

218

219 The EPDP team also believes it is critical to maintain the UDRP and URS standing
220 requirement that a complainant must have rights in a trademark or service mark with
221 which the registrant’s domain is identical or confusingly similar. In the case of IGO
222 Complainants (as defined) who may not possess a registered trademark in the relevant
223 IGO identifier, the EPDP team’s recommendation makes it clear how such complainants
224 may fulfill that standing requirement by proving unregistered rights that are functionally
225 equivalent to a trademark.

⁴ A visual depiction of the United Nations system is available here, including its Specialized Agencies and various programs: https://www.un.org/en/pdfs/un_system_chart.pdf.

2.1.2 Recommendations to Address IGO Immunities While Preserving a Registrant’s Right to Seek Review of a UDRP or URS Decision Issued Against It

Recommendation #2: Exemption from Submission to “Mutual Jurisdiction”

- (a) The EPDP team recommends that an IGO Complainant (as defined under Recommendation #1) be exempt from the requirement under Section 3(b)(xii) of the UDRP Rules and Section 3(b)(ix) of the URS Rules.
- (b) The EPDP team recommends that, when forwarding a complaint filed by an IGO Complainant to the respondent (pursuant to Paragraph 2(a) of the UDRP or Paragraph 4.2 of the URS, as applicable), the relevant UDRP or URS provider must also include a notice informing the respondent;
- (i) of its right to challenge a UDRP decision canceling or transferring the domain name, or a URS Determination rendered in favor of an IGO Complainant, by filing a claim in court;
 - (ii) that, in the event the respondent chooses to initiate court proceedings, the IGO Complainant may assert its privileges and immunities with the result that the court may decline to hear the merits of the case; and
 - (iii) that the respondent has the option to agree to binding arbitration to settle the dispute at any time, including in lieu of initiating court proceedings or, if it files a claim in court, where the court has declined to hear the merits of the case.

Explanatory Text:

This recommendation addresses the GNSO Council’s instructions that the EPDP team’s recommended policy solution must “[*account*] for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances; ... not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction whether following a UDRP/URS case or otherwise; and ... [*recognize*] 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”.

Early in its deliberations, the EPDP team agreed on the need to balance the rights and interests of registrants and IGOs. In finalizing its recommendation to exempt IGO Complainants from the requirement to agree, with respect to any challenge to a UDRP decision or URS Determination, to submit to the jurisdiction of the courts in at least one specified Mutual Jurisdiction (as the term is defined in the UDRP Rules and URS Rules), the EPDP team thought it important to ensure that registrants who wish to challenge a UDRP or URS outcome in court be made aware that an IGO Complainant’s exercise of its

269 privileges and immunities may mean that the court declines to hear the registrant's
270 case.

271

272 **Recommendation #3: Arbitral Review following a UDRP Proceeding**

273

274 The EPDP team recommends that the following provisions be added to the UDRP to
275 accommodate the possibility of binding arbitration to review an initial panel decision
276 issued under the UDRP:

277

- 278 i. When submitting its complaint, an IGO Complainant shall indicate that it agrees,
279 if the registrant also agrees, to have the final determination of the outcome of
280 the UDRP proceeding settled through binding arbitration.
- 281
- 282 ii. In communicating a UDRP panel decision to the parties where the complainant is
283 an IGO Complainant, the UDRP provider shall provide both parties with
284 information regarding the applicable arbitral rules.
- 285
- 286 iii. In accordance with Paragraph 4(k) of the UDRP, the relevant registrar shall wait
287 ten (10) business days (as observed in the location of its principal office) before
288 implementing a UDRP panel decision rendered in the IGO Complainant's favor.
289 The registrar shall stay implementation if, within that period, it receives official
290 documentation that the registrant has either initiated court proceedings in its
291 location or in the location of the registrar's principal office or has submitted a
292 request for or notice of arbitration.
- 293
- 294 iv. Where the relevant registrar has received a request for or notice of arbitration, it
295 shall stay or continue to stay, as applicable, implementation of the UDRP panel
296 decision until it receives official documentation concerning the outcome of an
297 arbitration or other satisfactory evidence of a settlement or other final
298 resolution of the dispute.
- 299
- 300 v. Where the registrant initiates court proceedings and the court declines to hear
301 the merits of the case, the registrant may submit the dispute to binding
302 arbitration within ten (10) business days from the court order declining to hear
303 the merits of the case, by submitting a request for or notice of arbitration to the
304 competent arbitral institution with a copy to the relevant registrar and UDRP
305 provider and the IGO Complainant. Where the registrant does not submit a
306 request for or notice of arbitration to the competent arbitral institution (with a
307 copy to the registrar, UDRP provider and the IGO Complainant) within ten (10)
308 business days from the court order declining to hear the merits of the case, the
309 original UDRP decision will be implemented by the registrar.
- 310
- 311 vi. Where a registrant decides to submit the dispute to binding arbitration, it shall
312 notify the relevant registrar prior to initiating the arbitration proceeding with the

313 competent arbitral tribunal. The registrar shall notify the IGO Complainant of the
314 registrant's decision to initiate arbitration.

315

316 Implementation Guidance:

317 The EPDP team believes that the selection of the appropriate arbitral rules and
318 provider(s) is a matter more appropriately addressed during implementation. To that
319 end, the EPDP team has developed a set of policy principles which are set out in Annex
320 A of this Final Report. These policy principles are intended to be an overarching
321 guidance framework for the Implementation Review Team that will be formed to advise
322 ICANN org on the implementation of approved policies from this EPDP.

323

324 **Recommendation #4: Arbitral Review following a URS Proceeding**

325 The EPDP team recommends that the following provisions be added to the URS to
326 accommodate the possibility of binding arbitration to review a Determination made
327 under the URS:

328

329 i. When submitting its complaint, an IGO Complainant shall indicate that it agrees,
330 if the registrant also agrees, to have the final determination of the outcome of
331 the URS proceeding settled through binding arbitration.

332

333 ii. In communicating a URS Determination to the parties where the complainant is
334 an IGO Complainant, the URS provider shall provide both parties with
335 information regarding the applicable arbitral rules.

336

337 iii. Where the registrant initiates court proceedings and the court declines to hear
338 the merits of the case, the registrant may submit the dispute to binding
339 arbitration within ten (10) business days from the date of the court order
340 declining to hear the merits of the case, by submitting a request for or notice of
341 arbitration to the competent arbitral institution, with a copy to the URS provider
342 and IGO Complainant. The relevant domain name(s) will remain suspended
343 throughout the pendency of any such arbitration proceeding.

344

345 iv. Where the registrant files an appeal under URS Section 12 and does not prevail
346 in the appeal, it may submit the dispute to binding arbitration within ten (10)
347 business days from the date of the appeal panel's decision, by submitting a
348 request for or notice of arbitration to the competent arbitral institution, with a
349 copy to the URS provider and the IGO Complainant. The relevant domain
350 name(s) will remain suspended throughout the pendency of any such arbitration
351 proceeding.

352

353 v. Where a registrant decides to submit the dispute to binding arbitration, it shall
354 notify the relevant URS provider prior to initiating the arbitration proceeding
355 with the competent arbitral tribunal. The URS provider shall notify the IGO
356 Complainant of the registrant's decision to initiate arbitration.

357

358 Implementation Guidance:

359 The EPDP team believes that the selection of the appropriate arbitral rules and
360 provider(s) is a matter more appropriately addressed during implementation. To that
361 end, the EPDP team has developed a set of policy principles which are set out in Annex
362 A of this Final Report that is intended to serve as a guidance framework for the
363 Implementation Review Team that will be formed to advise ICANN org on the
364 implementation of policies from this EPDP that are approved by the GNSO Council and
365 adopted by the ICANN Board.

366

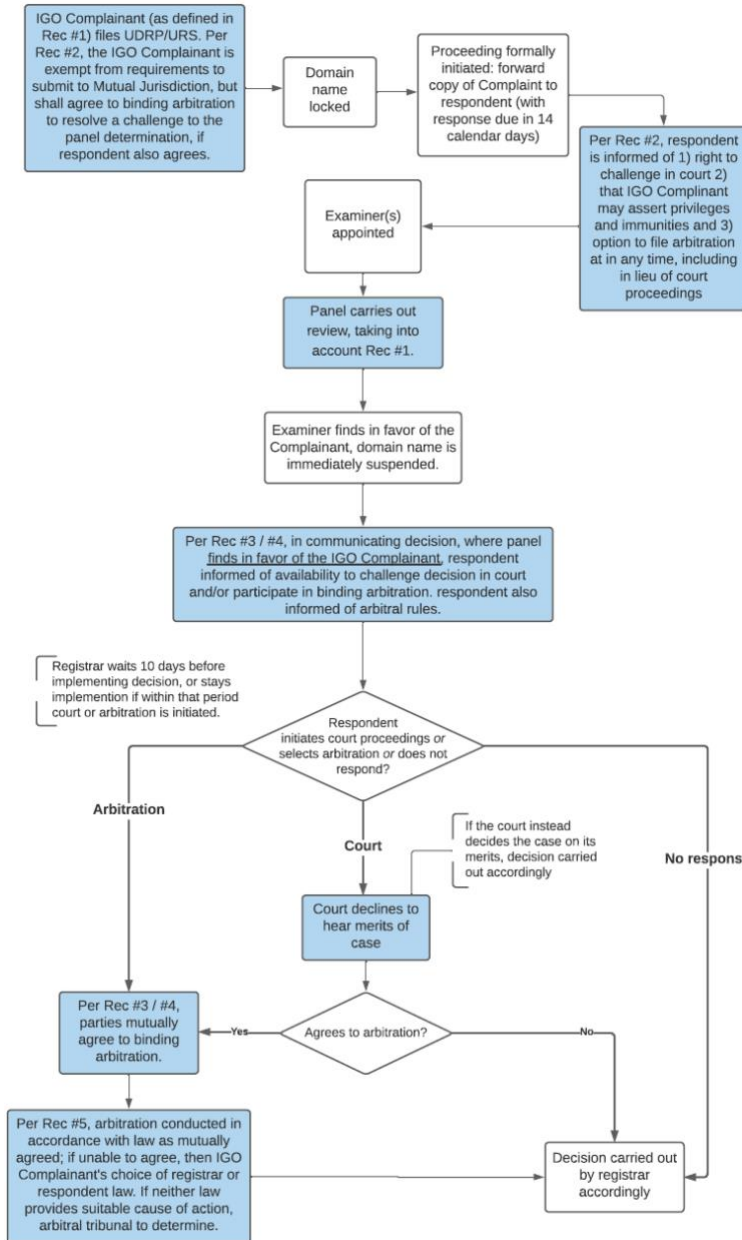
367 Recommendation #5: Applicable Law for Arbitration Proceedings

368 Arbitration will be conducted in accordance with the law as mutually agreed by the
369 parties. Where the parties cannot reach mutual agreement, the IGO Complainant shall
370 elect either the law of the relevant registrar's principal office or the domain name
371 holder's address as shown for the registration of the disputed domain name in the
372 relevant registrar's Whois database at the time the complaint was submitted to the
373 UDRP or URS provider. Where neither law provides for a suitable cause of action, the
374 arbitral tribunal shall make a determination as to the law to be applied in accordance
375 with the applicable arbitral rules.

376

377 NOTE ON RECOMMENDATIONS #1 - #5:

378 The flow chart below depicts the sequence of events that occur during a UDRP or URS
379 proceeding, with the additions and changes proposed by the EPDP team highlighted in
380 blue. The flow chart was prepared by the EPDP team for illustrative purposes only, to
381 assist with understanding of the implications of the EPDP team's final
382 recommendations. It should not be interpreted as the authoritative source of the EPDP
383 team's final recommendations, nor is it an indication of the entire UDRP/URS
384 procedures. In the event of any inconsistencies or gaps between the flow chart and the
385 text of the EPDP team's final recommendations (as set forth above), the text version of
386 the recommendation shall prevail.



[Link to full chart](#)

387
388
389

390 2.2 Policy Change Impact Analysis

391

392 The EPDP team believes that its recommendations, if approved and adopted, will
 393 facilitate access to and use of the UDRP and URS by IGOs while preserving existing
 394 registrant rights. In addition, the EPDP team has developed specific rationale for its
 395 recommendations that it believes demonstrates how its proposed solution is
 396 appropriate and proportionate to the problem(s) it was tasked to solve, without modifying
 397 the essential structure or scope of the UDRP or URS, both of which have been or will be
 398 reviewed by the GNSO's RPM PDP in its Phase 2 work.

399

400 The EPDP team understands that, if these recommendations become consensus policy,
401 the policy will undergo review. Although the GNSO Council is responsible for
402 determining when consensus policy reviews take place, the EPDP team suggests that
403 initiation of a review should be triggered by a certain threshold number of IGO
404 Complaints rather than conducted at fixed intervals or by calendar date.

405

406 The EPDP team believes that a review should include determination of the effectiveness
407 of the policy. The EPDP team therefore proposes that a review include consideration of
408 the following questions:

409

- 410 • Did the introduction of a definition of “IGO Complainant” assist IGOs with accessing and
using the UDRP and URS?
- 411 • Were there instances where IGOs were not able to proceed with a UDRP or URS
412 complaint for failure to meet the definition of “IGO Complainant”?
- 413 • Are UDRP and URS providers aware of any instances where a respondent was confused
414 by the information included with the notice of complaint or opted for arbitration
415 instead of initiating court proceedings?
- 416 • Did the changes outlined in recommendations 3 and 4 preserve the registrant’s rights
417 for judicial review in a court but also provided the option for arbitration instead of court
418 or subsequent arbitration where an IGO successfully asserted its immunity?

419

420 The EPDP team also proposes the following metrics to assist with defining context to
421 assess the effectiveness of the policy:

422

- 423 • Number of UDRP and URS complaints filed by IGOs
- 424 • Number of UDRP and URS panel decisions in favor of IGO Complainants:
 - 425 ○ (i) implemented by a registrar after ten (10) business days, without a court or
arbitral proceeding; and
 - 426 ○ (ii) stayed (i.e., not implemented) by a registrar as a result of the
427 commencement of arbitration proceedings
- 428 • Number of UDRP and URS panel decisions involving IGO Complainants where there was
429 no response from the registrant, and their outcomes
- 430 • Number of court proceedings filed by the registrant and whether the court assumed or
431 declined jurisdiction
- 432 • Number of arbitration proceedings between an IGO Complainant and losing registrant

433

434 The EPDP team recognizes that while some of these suggested metrics may be obtained
435 from the relevant UDRP and URS service providers and ICANN-accredited registrars, it
436 will likely be very difficult to obtain accurate counts and reports regarding post-
437 UDRP/URS court proceedings. Similarly, obtaining accurate numbers and outcomes of
438 arbitration proceedings will be extremely difficult, especially where these are not public.
439 In these cases, it may be necessary to attempt to obtain illustrative data via registrant
440 and IGO surveys, although the EPDP team acknowledges that the data obtained via such
441 means are likely to be incomplete.

442 3 Summary of Deliberations

443 This Section provides an overview of the deliberations of the EPDP team. The points
444 outlined below are meant as brief, relevant background information on the group's
445 discussions that provide the context for its proposed outcomes. They should not be read
446 as representing the entirety of the deliberations of the EPDP team.

447
448 The EPDP team published its Initial Report for Public Comments in September 2021. It
449 received a total of thirty-three (33) comments, fourteen (14) of which were submitted
450 by individual commentators, thirteen (13) by organizations (largely from either IGOs or
451 members of the domain investor community), with the remaining six (6) filed by one of
452 ICANN's recognized community structures (viz., the Business and Intellectual Property
453 Constituencies, the At Large Advisory Committee (ALAC), the Governmental Advisory
454 Committee (GAC), the Registrars Stakeholder Group and the Registries Stakeholder
455 Group)⁵. The EPDP team used the GNSO's Public Comment Review Tool to organize the
456 various submissions according to each preliminary recommendation contained in the
457 Initial Report. This facilitated the EPDP team's analysis of each comment and
458 identification of any new issues, facts or concerns raised by the commentators.

459
460 The Public Comment Review Tool and the EPDP team's discussions of the comments it
461 received can be reviewed on the EPDP team's wiki space [here](#).

462
463 Between October 2021 (when the Public Comment Proceeding on the Initial Report was
464 closed) to February 2022, the EPDP team reviewed the input it received and began
465 developing draft final recommendations based on the feedback and its subsequent
466 deliberations. The following sub-sections summarize the major themes and
467 considerations discussed by the EPDP team in reaching its final conclusions.

468 3.1 Initial Fact-Finding and Research

469
470 Under the Addendum establishing the IGO Work Track and reflected in the EPDP team
471 Charter, the EPDP team *"is expected to take into account the review of the relevant
472 historical documentation and prior community work conducted by the IGO-INGO Access
473 to Curative Rights Protection Mechanisms PDP Working Group (see Sections 3.1 and 3.2
474 of the PDP Final Report), relevant GAC Advice, the 31-October-2016 letter from IGO
475 Legal Counsels to Council Leadership, the external legal expert opinion commissioned by
476 the PDP Working Group (Annex F), and the IGO Small Group Proposal (Annex D)."* EPDP
477 team members were provided with these documents and a [Briefing Paper](#) to clarify the

⁵ The Public Comment proceeding, submissions and the staff report can be viewed here:
<https://www.icann.org/en/public-comment/proceeding/initial-report-epdp-specific-curative-rights-protections-igos-14-09-2021>.

478 expected scope of work and to highlight the previous deliberations that took place in
479 the IGO-INGO Access to Curative Rights PDP.

480

481 Notably, the Addendum provides that “[i]n order to avoid, to the extent possible, re-
482 opening or re-visiting the policy recommendations, the GNSO Council instructs the IGO
483 Work Track to base its recommendations on its analysis of the materials cited in this
484 paragraph, and its deliberations as to whether there is a need to develop appropriate
485 policy recommendations to address identified IGO needs in respect of the specific issue
486 that was referred to the RPM PDP by the GNSO Council.” In this context, the EPDP team
487 also reviewed a limited number of [prior materials](#) that the IGO-INGO Access to Curative
488 Rights Protections PDP had considered relating to its discussions of an appeal process
489 and possible elements of an arbitration process.

490 3.2 Deliberations Regarding IGO Eligibility under the UDRP and 491 URS

492

493 As noted in Section 2 above, the EPDP team agreed that, to develop an appropriate
494 policy solution for the problem it was tasked to solve, it was necessary to first consider
495 the challenges which IGOs face with the current UDRP and URS requirement that a
496 complainant have trademark rights. The GNSO Council had previously approved
497 Recommendation #2 from the IGO-INGO Access to Curative Rights Protections PDP,
498 which would allow IGOs to attempt to satisfy this requirement through reliance on the
499 protections afforded by Article 6ter of the Paris Convention for the Protection of
500 Industrial Property. In this regard, the EPDP team noted that, while Article 6ter requires
501 member states at minimum to protect IGO identifiers against potentially confusing
502 third-party trademark registrations or use as a mark, it does not in and of itself confer a
503 recordation of substantive trademark rights to IGOs. The EPDP team also observed that
504 the original Recommendation #2, as approved, leaves the decision as to whether Article
505 6ter protections would suffice for eligibility to file a UDRP and URS complaint to the
506 relevant panelist(s) in each case, thereby potentially creating uncertainty for the parties
507 involved.

508

509 The EPDP team sought to reach a solution that would provide more uniform and clearer
510 guidance to IGOs, registrants and panelists without creating inconsistency with
511 Recommendation #2. Following its analysis of Article 6ter, relevant GAC advice and the
512 United Nations system, the EPDP team developed a proposed definition (including a
513 demonstration of their public activities) for an “IGO Complainant” that would allow an
514 IGO to demonstrate the rights that would be functionally equivalent to unregistered
515 trademark rights.

516

517 The EPDP team’s review of the Public Comments received on its proposed initial
518 definition showed that those commentators who addressed the topic generally
519 supported the EPDP team’s proposal, though a few expressed concerns relating to the

520 need to ensure consistency with the prior Curative Rights PDP recommendations and
521 one commentator opposed the EPDP team’s proposal. As a result of its consideration of
522 the comments submitted, the EPDP team formed a small team to review its initial
523 proposed definition. The small team proposed a refinement to the definition that the
524 EPDP team discussed and approved. The EPDP team’s final recommendations, including
525 its amended proposed definition for an “IGO Complainant”, can be found in Section
526 2.1.1, above.
527

528 The EPDP team referred to the following resources about the United Nations system in
529 arriving at its proposed definition:

- 530 • A list of the current (as of August 2020) states and organizations that have
531 received standing invitations to be observers at the United Nations General
532 Assembly: <https://undocs.org/A/INF/75/3>.
- 533 • A list of the United Nations’ various entities and programs, including its
534 Specialized Agencies: <https://www.un.org/en/about-us/un-system>.
- 535 • A list of the United Nations’ subsidiary bodies, including its standing and ad hoc
536 committees: <https://www.un.org/en/ga/about/subsidiary/index.shtml>.

537

538 3.3 Deliberations Regarding IGO Immunity and Registrant Rights

539 The EPDP team noted that an external legal expert, Professor Edward Swaine, had been
540 engaged previously to provide subject matter advice to the IGO-INGO Access to Curative
541 Rights Protections PDP. The EPDP team discussed Professor Swaine’s conclusion that
542 requiring a complainant to submit to Mutual Jurisdiction⁶, as is the case under the UDRP
543 and URS, can amount to a waiver of jurisdictional immunity by an IGO. Conversely, the
544 EPDP team acknowledged that removing this requirement for IGO Complainants could
545 prejudice a registrant’s right and ability to have an initial UDRP or URS determination
546 reviewed judicially, in that a successful assertion of immunity by an IGO means that the
547 court in question will decline to proceed with the case. The EPDP team took note of the
548 fact that Professor Swaine had suggested a few alternatives that could be pursued as a
549 policy solution.

550

551 The EPDP team discussed several proposals that could allow for the recognition of IGO
552 privileges and immunities without adversely affecting a registrant’s right to file
553 proceedings in a court: in particular, the benefits and risks of developing an appeal
554 process internal to the UDRP (i.e., where appeals from an initial UDRP panel decision
555 would be reviewed by a panel comprising experienced UDRP panelists) compared with

⁶ This term in the UDRP and URS refers to the jurisdiction either of a court where the relevant registrar’s principal office is located, or of the registrant’s location.

556 allowing for a voluntary arbitration process. The EPDP team reviewed proposals
557 concerning the required elements for either an appeal process or an arbitration option,
558 covering matters ranging from the selection of an appeals panel or arbitral tribunal and
559 how to ensure their neutrality, to the procedural rules that should apply to either
560 process option⁷. Initially, some EPDP team members believed that an internal appeals
561 process was the most efficient path forward (e.g., pointing to the process that Nominet
562 has been using in the “.uk” ccTLD), but other members of the Work Track thought that
563 making the option of voluntary arbitration explicit in the UDRP and URS was the more
564 appropriate solution.

565 The EPDP team ultimately agreed to work on an arbitration process rather than an
566 internal appeal mechanism and reached agreement on several elements that needed to
567 be incorporated into the UDRP and URS as requirements, e.g., the arbitration must be
568 conducted as a substantive review of the case, and in UDRP cases the registrar’s lock on
569 the disputed domain must be maintained for the duration of the relevant proceedings⁸.
570 The EPDP team decided to seek public input on other key aspects regarding an
571 arbitration option. In its Initial Report, which it published for Public Comments in
572 September 2021, the EPDP team requested community feedback on the following two
573 questions:

- 574 • Whether a losing registrant should have the ability to preserve the option to go
575 to arbitration if it decides to first file a case in court and the court declines to
576 hear the merits of the case; and
- 577 • What substantive law should apply in the arbitration proceeding.

578
579 The EPDP team had decided to seek Public Comments on these questions as some EPDP
580 team members believed that preserving the option for a registrant to go to arbitration
581 following an unsuccessful attempt to invoke judicial consideration of its case would lead
582 to a much more costly and inefficient process, while other members thought it was
583 important to ensure that a registrant continues to be able to seek consideration of the
584 merits of its case. .

585
586 The Public Comments demonstrated strong concerns, particularly amongst individual
587 commentators, regarding the EPDP team’s proposal to exempt IGO Complainants from
588 the requirement to agree to submit to a Mutual Jurisdiction, to the extent that it would
589 result in limitations on the registrant’s ability to file court proceedings against an IGO or
590 in compelling a registrant to go to arbitration. These commentators emphasized that the

⁷ See [INSERT RELEVANT EARLY GOOGLE DOC] for details of the proposed appeal process that the IGO Work Track considered.

⁹ These were the rules in use at the International Center for Dispute Resolution, the Permanent Court of Arbitration, the United Nations Commission for International Trade Law, and the World Intellectual Property Organization.

591 outcomes of the EPDP should not reduce or otherwise adversely affect the rights of
592 registrants.

593

594 Some commentators, including the ALAC and the GAC, welcomed the introduction of an
595 arbitration option into the UDRP and URS processes, noting that arbitration is a well-
596 recognized dispute resolution process, including for commercial disputes. However,
597 although there was some support for an arbitration option, there was no universal
598 agreement amongst the commentators as to whether arbitration should be the sole
599 avenue for final resolution of a dispute or whether a registrant should continue to be
600 able to seek arbitration following an unsuccessful attempt to have the merits of its case
601 considered by a court. Several commentators expressed the clear view that adding
602 arbitration to the UDRP and URS should not remove or reduce a registrant's right to
603 initiate court proceedings, and a few commentators suggested that the EPDP team
604 should clarify its recommendations in this regard.

605

606 The EPDP team agreed that its final recommendations must represent a balance
607 between the rights of IGOs and those of registrants. In reviewing all the Public
608 Comments received on this topic, the EPDP team also considered specific alternative
609 suggestions and text raised by a few commentators. A small team was tasked to develop
610 specific policy principles on key elements that the EPDP team believes are important for
611 arbitration proceedings between an IGO Complainant and a registrant. These policy
612 principles are intended to guide the future Implementation Review Team in selecting an
613 arbitration provider (or providers) and the applicable arbitral rules.

614

615 Based on its analysis of the Public Comments, the EPDP team modified its preliminary
616 recommendations to:

- 617 (i) Clarify that its proposal to exempt an IGO Complainant (as defined) from the
618 requirement to agree to submit to a Mutual Jurisdiction does not alter or
619 limit a registrant's ability and right to initiate court proceedings;
- 620 (ii) Include an obligation for a UDRP or URS provider to inform a registrant, when
621 notifying it of a complaint filed by an IGO Complainant, that it has the right to
622 file court proceedings as well as to seek arbitration, and the potential
623 implications where an IGO raises its immunities and privileges in a court
624 proceeding;
- 625 (iii) Provide that a registrant continues to have the option to seek arbitration
626 even after it has filed suit in court and the court has declined to hear the
627 merits of the case; and
- 628 (iv) Require that the relevant registrar (in a UDRP proceeding) or URS provider (in
629 a URS proceeding) inform the IGO Complainant should a registrant decide to
630 pursue arbitration.

631

632 The EPDP team's final recommendations can be found in Section 2.1.2 (above).

633

634

635 4 Conclusions and Next Steps

636 4.1 Final Conclusions

637

638 As described more fully in Section 2, above, the EPDP team has reached agreement on
639 the addition of a definition of “IGO Complainant” to the current Rules applicable to the
640 UDRP and URS, which is intended to clarify how an IGO may demonstrate rights to
641 proceed against a registrant in the absence of a (registered) trademark. The EPDP team
642 has also agreed that providing for voluntary arbitration within the overall framework of
643 the UDRP and URS is an appropriate approach toward resolving the issue of how to
644 recognize an IGO’s jurisdictional immunity, provided that a registrant’s right to choose
645 to go to court is also preserved.

646

647

648 4.2 Next Steps

649

650 This Final Report will be delivered to the GNSO Council for its consideration of the
651 recommendations from the EPDP team.

652

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5 Relevant Process & Issue Background

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5.1 Process Background

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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 IGOs and INGOs should be developed.” The PDP Working Group submitted its [Final Report](#) containing five recommendations to the GNSO Council in July 2018. Following several months of deliberations over the PDP recommendations, during which several Councilors voiced concerns over the implications of Recommendation #5, in April 2019 the GNSO Council [voted](#) to approve the first four recommendations, and to refer Recommendation #5 to the RPM PDP to consider during Phase 2 of its work.

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As indicated in its April 2019 resolution, the GNSO Council [approved](#) an Addendum to the RPM PDP Charter in January 2020 to initiate the necessary policy work on Recommendation #5. The Addendum reflects the outcomes of various discussions between the GNSO Council and the GAC as well as interested IGOs, during which the GAC and IGO representatives had indicated that they would be willing to participate in a targeted policy effort that focuses on the issue of curative rights for IGOs and drawing on the community's recent experiences with the Expedited PDP on the Temporary Specification for gTLD Registration Data and Work Track 5 of the GNSO New gTLD Subsequent Procedures PDP.

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In October 2020, the GNSO Council issued a call for [Expressions of Interest](#) to serve as the IGO Work Track Chair. Following the GNSO Council leadership team's review of the applications it received, the GNSO Council [appointed](#) former ICANN Board Director Chris Disspain to the position in December 2020.

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The [Addendum](#) to the RPM PDP Charter laid out certain criteria for membership appointments to the IGO Work Track and specified its overall composition and representativeness across the ICANN community. The GNSO's Business Constituency, Intellectual Property Constituency, Internet Service Providers and Connectivity Providers Constituency and the Non-Commercial Stakeholder Group, as well as the ALAC, the GAC and interested IGOs all appointed [members](#) in accordance with the requirements in the Addendum.

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Following the completion of Phase 1 of the RPM PDP and pending the launch of Phase 2, the GNSO Council [resolved](#) to continue the IGO Work Track's work through an EPDP in August 2021. The Council emphasized that this decision was wholly procedural in

696 nature, and was intended to provide a process framework to maintain the momentum
697 the IGO Work Track had displayed and to continue the same scope of work (via the new
698 EPDP Charter) as reflected in the original Addendum that the GNSO Council had
699 previously approved.

700 5.2 Issue Background

701

702 The IGO-INGO Access to Curative Rights PDP (active from June 2014 to July 2018) had
703 been preceded by an IGO-INGO Protections in All gTLDs PDP, which had taken place
704 between October 2012 and November 2013. One of the recommendations from that
705 prior PDP, which the GNSO Council approved, was for the GNSO Council to request an
706 Issue Report to determine whether a separate PDP should be initiated to explore
707 possible amendments to the UDRP and the URS that would enable access to and use of
708 such curative rights protection mechanisms by IGOs and INGOs. The [Final Issue Report](#)
709 that the GNSO Council requested includes background on prior work within and outside
710 the ICANN community on the issue of curative rights protections for IGOs and INGOs,
711 and documented the challenges that these organizations face in using the existing UDRP
712 and URS. Consequently, the GNSO Council initiated the IGO-INGO Access to Curative
713 Rights PDP in June 2014, *"to evaluate: (i) whether the UDRP and/or URS should be*
714 *amended (to enable their access and use by IGOs and INGOs whose identifiers had been*
715 *recommended for protection by the IGO-INGO PDP WG) and if so, in what way; or (ii)*
716 *whether a separate narrowly-tailored procedure modeled on these curative rights*
717 *protection measures to apply only to protected IGO and INGO identifiers should be*
718 *developed."*

719

720 Following four years of deliberations, the IGO-INGO Access to Curative Rights PDP
721 proposed five recommendations to the GNSO Council, as follows:

722

723 Recommendation #1:

724 *1(a): For INGOs (including the Red Cross movement and the International*
725 *Olympic Committee), no substantive changes to the UDRP and URS are to be*
726 *made, and no specific new dispute resolution procedures are to be created.*

727 *1(b): For IGOs, no specific new dispute resolution procedures are to be created.*

728

729 Recommendation #2:

730 *The Working Group notes that an IGO may seek to demonstrate that it has the*
731 *requisite standing to file a complaint under the UDRP or URS by showing that it*
732 *has complied with the requisite communication and notification procedure in*
733 *accordance with Article 6ter of the Paris Convention for the Protection of*
734 *Industrial Property. An IGO may consider this to be an option where it does not*
735 *have a registered trademark or service mark in its name and/or acronym but*
736 *believes it has certain unregistered trademark or service mark rights for which it*
737 *must adduce factual evidence to show that it nevertheless has substantive legal*
738 *rights in the name and/or acronym in question.*

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In this regard, the Working Group recommends that specific Policy Guidance on this topic be issued by ICANN to clarify the following points:

(a) this alternative mechanism for standing is not needed in a situation where an IGO already holds trademark or service mark rights in its name and/or acronym, as the IGO would in such a case proceed in the same way as a non-IGO trademark owner;

(b) whether or not compliance with Article 6ter will be considered determinative of standing is a decision to be made by the UDRP or URS panelist(s) based on the facts of each case; and

(c) the possibility that an IGO may seek to rely on its compliance with Article 6ter to demonstrate standing should not modify or affect any of the existing grounds which UDRP and/or URS panelists have previously found sufficient for IGO standing (e.g., based on statutes and treaties).

Recommendation #3:

ICANN shall create and issue Policy Guidance: (a) outlining the various procedural filing options available to IGOs, e.g. they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; and (b) advising IGOs and INGOs to, in the first instance and prior to filing a UDRP or URS complaint, contact the registrar of record to address the harms for which they are seeking redress. In addition, ICANN shall ensure that this Policy Guidance document is brought to the notice of the Governmental Advisory Committee (GAC) for its and its members' and observers' information and published along with the procedures and rules applicable to the UDRP and URS on the ICANN website.

Recommendation #4:

Notwithstanding GAC advice concerning access to curative rights processes for IGOs as well as the Charter language requiring the Working Group to consider "the need to address the issue of cost to IGOs and INGOs to use curative processes", there was no support within the Working Group for a recommendation to provide subsidies to any party to use the UDRP or URS. Nevertheless, the Working Group recognizes that it has no authority to obligate the expenditure of ICANN funds, and it understands, further, that the feasibility of providing IGOs with access to the UDRP and URS at no or nominal cost to the IGOs is a question that must be addressed directly through discussions between the ICANN Board with the GAC and IGOs. The Working Group also notes that many Working Group members believe that a respondent should also be eligible to receive financial support for its defense in a case where ICANN has subsidized the complainant.

Recommendation #5:

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

787

788 As noted in Section 1, above, the GNSO Council’s review of the PDP Final Report
789 revealed several concerns over the implications of Recommendation #5. The GNSO
790 Council therefore decided not to approve this recommendation, electing instead to
791 refer it to the RPM PDP and to create a separate IGO Work Track within that PDP
792 framework that was to try to develop a policy solution that would nevertheless be
793 “*generally consistent*” with the other four PDP recommendations that the GNSO Council
794 approved.

795

796 The GNSO Council’s intentions and instructions as to the scope of work for the new IGO
797 Work Track are documented in its resolution creating the Work Track and the
798 Addendum laying out the problem statement, membership requirements and process
799 methodology for the Work Track. As noted above, these instructions and scope of work
800 were not affected or modified through the GNSO Council’s procedural decision to
801 continue the Work Track’s work via an EPDP.

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807 6 Approach Taken by the Work Track

808 6.1 Working Methodology

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810 The EPDP team held its first meeting in February 2021. Recordings and transcripts of the
811 group's discussions can be found on its [wiki space](#). It has conducted its work primarily
812 through weekly conference calls, in addition to email exchanges on its mailing list.

813

814 As instructed by the GNSO Council, the EPDP team prepared a [work plan](#) which it
815 reviewed on a regular basis. The EPDP Chair and the GNSO Council liaison to the EPDP
816 team also provided regular reports to the GNSO Council regarding the status and
817 progress of the group's work.

818

819 6.1.1 Work Track Membership and Attendance

820

821 **Plenary Meetings:**

822 • 23 Plenary calls (+3 cancelled) for 34.5 call hours for a total of 637.5 person
823 hours

824 • 84.8% total participation rate

825

826 **Small Team Meetings:**

827 • 2 Small team calls for 2.0 call hours for a total of 12.0 person hours

828 • 100.0% total participation rate

829

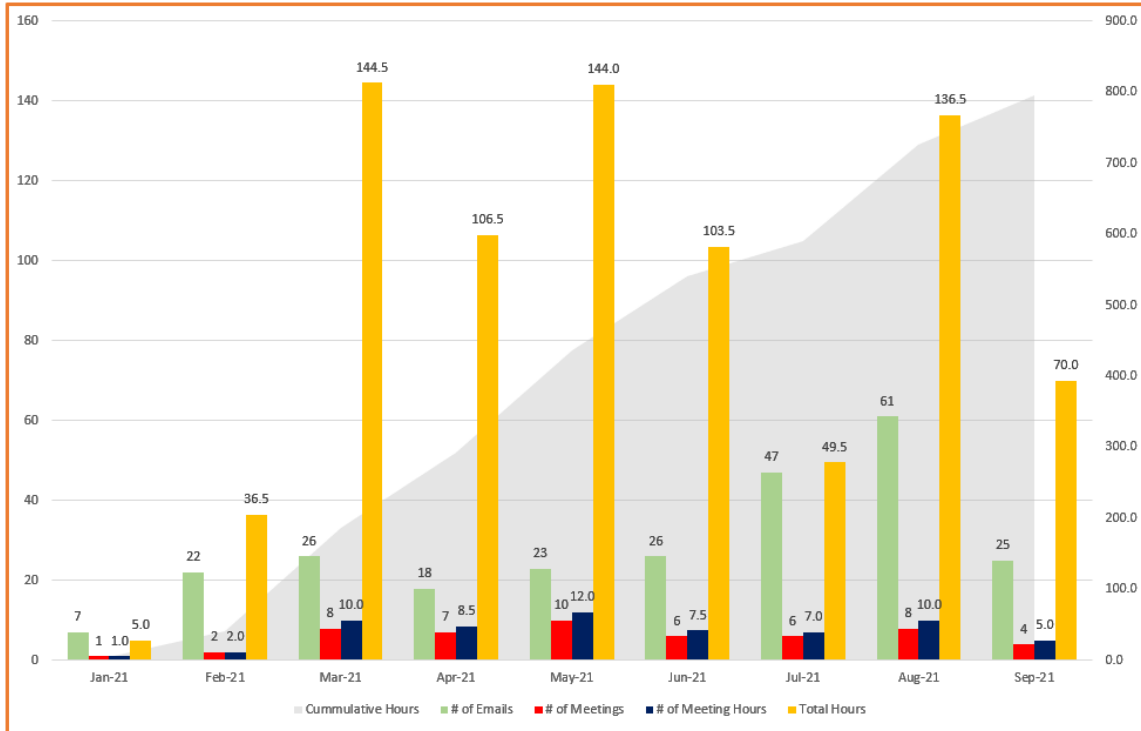
830 **Leadership Meetings:**

831 • 27 Leadership calls for 27.0 call hours for a total of 161.0 person hours

832

833 The EPDP Team email archives can be found at [https://mm.icann.org/pipermail/gns-](https://mm.icann.org/pipermail/gns-igo-wt/)
834 [igo-wt/](https://mm.icann.org/pipermail/gns-igo-wt/).

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The members* of the EPDP team are:

Represented Group / Member	SOI	Start Date	Depart Date	Attended %	Role
At-Large Advisory Committee (ALAC)				56.5%	
Carlos Raúl Gutiérrez	SOI	17-Dec-2020		21.7%	
Yrjö Länsipuro	SOI	17-Dec-2020		91.3%	
Commercial Business Users Constituency (BC)				100.0%	
Jay Chapman	SOI	17-Dec-2020		100.0%	
GNSO Council				95.7%	
Chris Disspain	SOI	17-Dec-2020		100.0%	Chair
Jeffrey Neuman	SOI	8-Jan-2021		95.7%	Liaison
John McElwaine	SOI	8-Jan-2021		91.3%	Liaison
Governmental Advisory Committee (GAC)				85.9%	
Alexandra Excoffier	SOI	17-Dec-2020		87.0%	
Brian Beckham	SOI	17-Dec-2020		95.7%	
Kavouss Arasteh	SOI	17-Dec-2020		60.9%	
Susan Anthony	SOI	17-Dec-2020		100.0%	
Intellectual Property Constituency (IPC)				91.3%	
Paul McGrady	SOI	17-Dec-2020		91.3%	
Internet Service Providers and Connectivity Providers Constituency (ISPCP)				78.3%	
Oswaldo Novoa	SOI	17-Dec-2020		78.3%	
Non-Commercial Stakeholder Group (NCSG)				75.0%	

Ioana Florina Stupariu	SOI	17-Dec-2020		73.9%	
Juan Manuel Rojas	SOI	17-Dec-2020		73.9%	
Krishna Seeburn	SOI	17-Dec-2020	3-Mar-2021	100.0%	

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The Alternates* of the EPDP Team are:

Represented Group / Alternate	SOI	Start Date	Depart Date	Attended %	Role
At-Large Advisory Committee (ALAC)				90.3%	
Justine Chew	SOI	17-Dec-2020		89.5%	
Vanda Scartezini	SOI	17-Dec-2020		91.7%	
Governmental Advisory Committee (GAC)				94.9%	
David Satola	SOI	17-Dec-2020		100.0%	
Jorge Cancio	SOI	17-Dec-2020		0.0%	
Matthew Coleman	SOI	17-Dec-2020		100.0%	

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844
845

ICANN org Policy Staff Support for the EPDP Team:

Represented Group / Staff Assigned	SOI	Start Date	Depart Date	Attended %	Role
Andrea Glandon		17-Dec-2020			
Berry Cobb		17-Dec-2020			
Julie Bisland		17-Dec-2020			
Mary Wong		17-Dec-2020			
Steve Chan		17-Dec-2020			
Terri Agnew		17-Dec-2020			

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* This membership list was accurate as of the date of publication of this report.

7 Annex A – Principles regarding Arbitral Rules

In agreeing to include a voluntary arbitration option in the UDRP and URS, the EPDP team understood and agreed that it will also be necessary to provide guidance for the policy implementation phase regarding the key elements to include in an arbitration proceeding. The EPDP team acknowledged that there are several major sets of international arbitral rules that could potentially be applied, which it noted in its Initial Report⁹.

Following further deliberations and consideration of the Public Comments that were submitted, the EPDP Team agreed that the Implementation Review Team would benefit from the clarity that a set of governing policy principles can provide. A small team of EPDP members was formed to develop the proposed principles. Below is the final set of principles that the EPDP team approved.

General Principles:

1. As the type of arbitration proceeding contemplated by the EPDP recommendations is intended to be final and binding, the arbitration should be conducted in such a manner as to be the substantive equivalent of a judicial review of the merits of the case as much as is feasible.
2. At the same time, any arbitration proceeding should be conducted as expeditiously as possible. As such, the arbitral rules framework should be sufficiently flexible to allow for a more streamlined process if the parties agree.
3. The Arbitration process shall have customary and reasonable protections against an abuse of process.
4. To ensure predictability, the process for initiating, conducting, and concluding the arbitration should be clear and should allow for electronic communications by default.
5. The arbitration process should be cost-efficient. A fixed range of arbitral fees should be encouraged to ensure predictability and affordability.
6. Arbitration is not an appeal limited to specific circumstances; it is a de novo review of the elements of a UDRP/URS action*.
7. Unless a more streamlined process is agreed by the parties, there should be a full exchange of documents and information*.
8. The parties should be encouraged to consider voluntary mediation or prior to the arbitration.

⁹ These were the rules in use at the International Center for Dispute Resolution, the Permanent Court of Arbitration, the United Nations Commission for International Trade Law, and the World Intellectual Property Organization.

9. The arbitration should be conducted through hearings where both parties may present oral and written evidence as well as call and question and cross-examine witnesses. By default, hearings should be conducted online, though the parties should have the ability to opt for in-person or “hybrid” (i.e., combination of in-person and online) hearings.
10. The arbitrator(s) should have discretion as to the general conduct of the proceedings. In particular, the arbitrator(s) should have discretion regarding the admissibility and weight of the evidence presented by both parties.
11. There should be a clear, transparent, and uniform process for the selection and appointment of arbitrators, as well as for challenging an appointment. All arbitrators should be required to attest to their impartiality and independence.
12. All arbitration proceedings must result in clear and enforceable outcomes. These may include confirmation of a transfer or cancellation of the disputed domain name(s), or an order that the registrant retains the disputed domain name(s). The arbitrator(s) should have the discretion to award injunctive relief where this is considered necessary for equitable reasons*.

Specific Principles:

1. To facilitate flexibility, the parties should be permitted to tailor any requirement or step in the arbitration process to their specific, mutually agreed needs.
2. Each party may elect to be represented by a person of their choice, who need not be an attorney.
3. Except when presenting their case during the hearing, parties should be prohibited from communicating with the arbitrator(s) prior to or during the arbitration process.
4. The parties are encouraged to agree on a single arbitrator, but in the event that no agreement can be reached, the arbitration should be heard by three arbitrators; rules for three to be determined later*. A list of arbitrators should be recognized as experts in domains names*.
5. Arbitrators should observe specific rules of evidence, similar to those applicable to court proceedings.
6. Parties should be able to discuss and disclose details regarding possible settlements at any time.
7. Consider whether there should be sanctions for parties that do not comply with applicable rules or who seek to cause unnecessary delay or expense.
8. Final decisions are to be made public (as opposed to case documentation).

Note: “*” still under review by the principles small team

8 Annex B – Scope of Work (as approved by the GNSO Council)

EPDP Team Charter, as approved by the GNSO Council:

<https://gns0.icann.org/sites/default/files/file/field-file-attach/specific-crp-igo-epdp-charter-16aug21-en.pdf>

GNSO Council resolution establishing the EPDP Team:

<https://gns0.icann.org/en/council/resolutions/2020-current#20210819-2>

GNSO Council project webpage for the EPDP: <https://gns0.icann.org/en/group-activities/active/specific-crp-igo-epdp>