

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

### Status of this Document

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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

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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.

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# 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 the  
36 PDP Charter by the GNSO Council, which remains outstanding. The GNSO Council  
37 confirmed that the scope of work for the EPDP team was not affected in any way by this  
38 procedural change, as the 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, the  
45 original UDRP or URS panel decision is to be set aside. The effect of implementing  
46 Recommendation #5 would be to put the parties to the dispute in their original  
47 situations, as if the UDRP or URS proceeding in which the IGO had prevailed had never  
48 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, most of the EPDP team agreed that, in order to  
127 address this specific issue, it needed to first determine how and which IGOs are able to  
128 file a complaint under the relevant dispute resolution mechanism. In this regard, EPDP  
129 team members noted that, due to national State obligations under the Paris Convention  
130 for the Protection of Industrial Property, IGOs may not own or hold registered  
131 trademarks<sup>1</sup> in 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 Manual<sup>2</sup>). 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

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

<sup>2</sup> 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 Nations<sup>3</sup>.”

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 Consensus level designation for Recommendation #1: Full Consensus

209

210 Explanatory Text:

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

220

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

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<sup>3</sup> 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](https://www.un.org/en/pdfs/un_system_chart.pdf).

228 **2.1.2 Recommendations to Address IGO Immunities While**  
229 **Preserving a Registrant’s Right to Seek Review of a UDRP or**  
230 **URS Decision Issued Against It**

231

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

233

234 (a) The EPDP team recommends that an IGO Complainant (as defined under  
235 Recommendation #1) be exempt from the requirement under Section 3(b)(xii) of  
236 the UDRP Rules and Section 3(b)(ix) of the URS Rules.

237

238 (b) The EPDP team recommends that, when forwarding a complaint filed by an IGO  
239 Complainant to the respondent (pursuant to Paragraph 2(a) of the UDRP or  
240 Paragraph 4.2 of the URS, as applicable), the relevant UDRP or URS provider  
241 must also include a notice informing the respondent;

242

243 (i) of its right to challenge a UDRP decision canceling or transferring the domain  
244 name, or a URS Determination rendered in favor of an IGO Complainant, by filing  
245 a claim in court;

246

247 (ii) that, in the event the respondent chooses to initiate court proceedings, the  
248 IGO Complainant may assert its privileges and immunities with the result that  
249 the court may decline to hear the merits of the case on the basis of IGO  
250 privileges and immunities; and

251

252 (iii) that the respondent has the option to agree to binding arbitration to settle  
253 the dispute at any time, including in lieu of initiating court proceedings or, if it  
254 files a claim in court, where the court has declined to hear the merits of the case.

255

256 Consensus level designation for Recommendation #2: Full Consensus

257

258 Explanatory Text:

259 This recommendation addresses the GNSO Council’s instructions that the EPDP team’s  
260 recommended policy solution must “[account] for the possibility that an IGO may enjoy  
261 jurisdictional immunity in certain circumstances; ... not affect the right and ability of  
262 registrants to file judicial proceedings in a court of competent jurisdiction whether  
263 following a UDRP/URS case or otherwise; and ... [recognize] that the existence and scope  
264 of IGO jurisdictional immunity in any particular situation is a legal issue to be determined  
265 by a court of competent jurisdiction”.

266

267 Early in its deliberations, the EPDP team agreed on the need to balance the rights and  
268 interests of registrants and IGOs. In finalizing its recommendation to exempt IGO  
269 Complainants from the requirement to agree, with respect to any challenge to a UDRP  
270 decision or URS Determination, to submit to the jurisdiction of the courts in at least one

271 specified Mutual Jurisdiction (as the term is defined in the UDRP Rules and URS Rules),  
272 the EPDP team thought it important to ensure that registrants who wish to challenge a  
273 UDRP or URS outcome in court be made aware that an IGO Complainant's exercise of its  
274 privileges and immunities may mean that the court declines to hear the registrant's  
275 case.

276

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

278

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

282

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

314 on the basis of IGO privileges and immunities, the original UDRP decision will be  
315 implemented by the registrar.

316

317 vi. Where a registrant decides to submit the dispute to binding arbitration, it shall  
318 notify the relevant registrar prior to initiating the arbitration proceeding with the  
319 arbitral tribunal.

320

321 vii. The arbitral institution to whom the registrant submits a request for or notice of  
322 arbitration shall notify the IGO Complainant of the registrant's decision to  
323 initiate arbitration.

324

325 Consensus level designation for Recommendation #3: Full Consensus

326

327 Implementation Guidance:

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

334

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

336 The EPDP team recommends that the following provisions be added to the URS to  
337 accommodate the possibility of binding arbitration to review a Determination made  
338 under the URS:

339

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

343

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

347

348 iii. Where the registrant initiates court proceedings and the court declines to hear  
349 the merits of the case on the basis of IGO privileges and immunities, the  
350 registrant may submit the dispute to binding arbitration within ten (10) business  
351 days from the date of the court order declining to hear the merits of the case, by  
352 submitting a request for or notice of arbitration to the competent arbitral  
353 institution, with a copy to the URS provider. The relevant domain name(s) will  
354 remain suspended throughout the pendency of any such arbitration proceeding.

355

356 iv. Where the registrant files an appeal under URS Section 12 and does not prevail  
357 in the appeal, it may submit the dispute to binding arbitration within ten (10)

358 business days from the date of the appeal panel’s decision, by submitting a  
359 request for or notice of arbitration to the arbitral institution, with a copy to the  
360 URS provider and the IGO Complainant. The relevant domain name(s) will remain  
361 suspended throughout the pendency of any such arbitration proceeding.

362

363 v. Where a registrant decides to submit the dispute to binding arbitration, it shall  
364 notify the relevant URS provider prior to initiating the arbitration proceeding  
365 with the competent arbitral tribunal.

366

367 vi. The arbitral provider to whom the registrant submits a request for or notice of  
368 arbitration shall notify the IGO Complainant of the registrant’s decision to  
369 initiate arbitration.

370

371 Consensus level designation for Recommendation #4: Full Consensus

372

373 Implementation Guidance:

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

381

382 **Recommendation #5: Applicable Law for Arbitration Proceedings**

383 Arbitration will be conducted in accordance with the law as mutually agreed by the  
384 parties. Where the parties cannot reach mutual agreement, the IGO Complainant shall  
385 elect either the law of the relevant registrar’s principal office or the domain name  
386 holder's address as shown for the registration of the disputed domain name in the  
387 relevant registrar's Whois database at the time the complaint was submitted to the  
388 UDRP or URS provider. Where the parties cannot reach mutual agreement in a case  
389 where the domain name [was registered through a privacy or proxy service](#)<sup>4</sup> and the  
390 underlying registrant’s identity is disclosed as part of the UDRP or URS proceeding, the

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<sup>4</sup> The EPDP team has considered the differences between privacy and proxy services (e.g., as expressed in the respective definitions in Sections 1.2 and 1.3 of the Privacy & Proxy Specification in the Registrar Accreditation Agreement: <https://www.icann.org/resources/pages/approved-with-specs-2013-09-17-en#privacy-proxy>) as well as UDRP Rule 4(b) (concerning timely updates to a respondent’s data, including as a result of a request by a privacy or proxy service to disclose underlying customer data). As Recommendation #5 is intended to ensure that the choice of law for an arbitration proceeding is linked to the actual or underlying registrant and where they are located, the EPDP team has included language in the recommendation to address a situation where a domain name was registered via a privacy or proxy service.

391 IGO Complainant shall elect either the law of the relevant registrar's principal  
392 office or the law in the location of the underlying registrant. In all cases,  
393 where neither law provides for a suitable cause of action, the arbitral tribunal shall  
394 make a determination as to the law to be applied in accordance with the applicable  
395 arbitral rules.

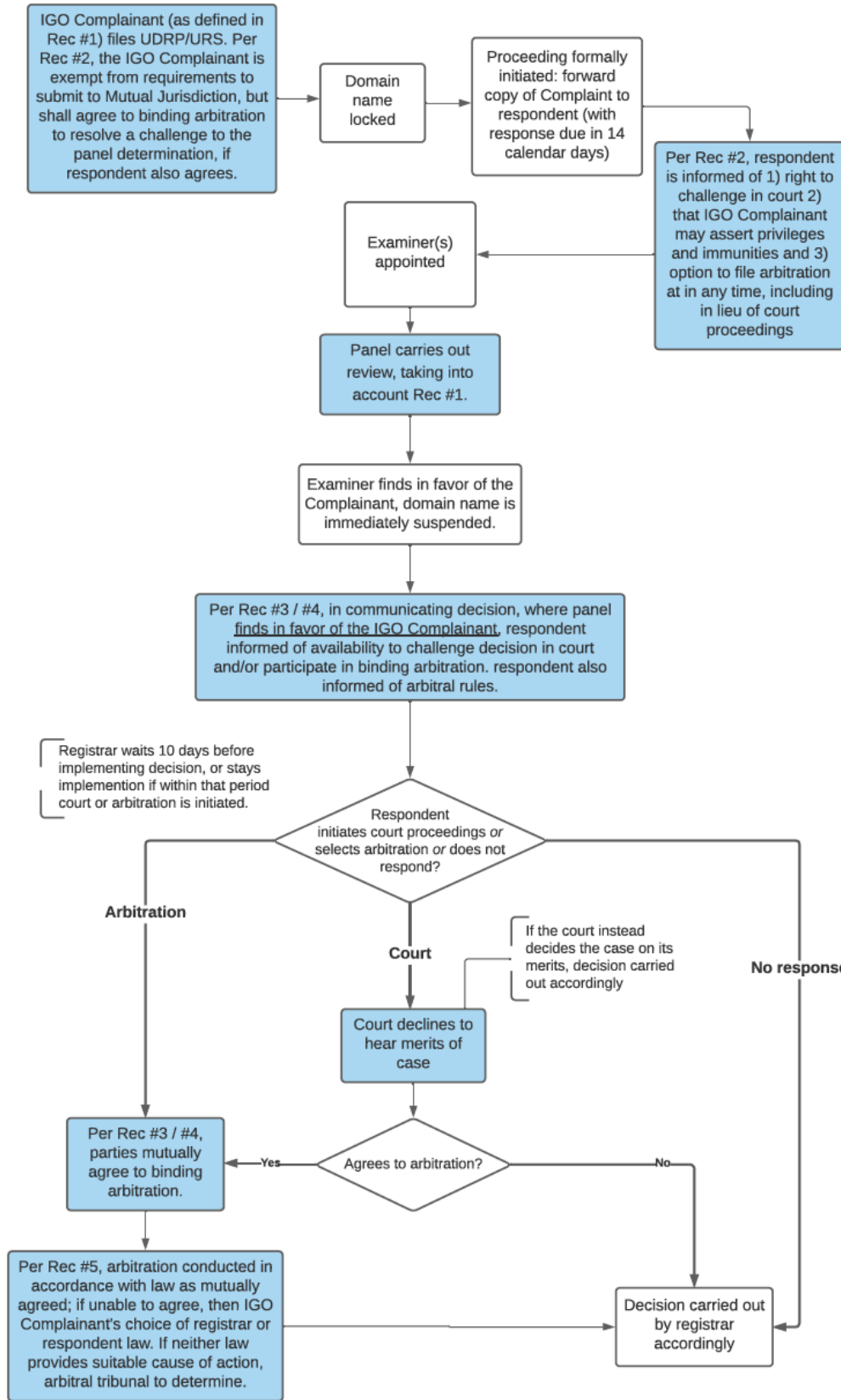
396

397 Consensus level designation for Recommendation #5: Full Consensus

398

399 NOTE ON RECOMMENDATIONS #1 - #5:

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



[Link to full chart](#)

411

412 

## 2.2 Policy Change Impact Analysis

413

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

421

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

427

428 The EPDP team believes that a review should include determination of the effectiveness  
429 of the policy. The EPDP team therefore proposes that a review include consideration of  
430 the following questions:

- 431 • Did the introduction of a definition of "IGO Complainant" assist IGOs with accessing and  
432 using the UDRP and URS?
- 433 • Were there instances where IGOs were not able to proceed with a UDRP or URS  
434 complaint for failure to meet the definition of "IGO Complainant"?
- 435 • Are UDRP and URS providers aware of any instances where a respondent was confused  
436 by the information included with the notice of complaint or opted for arbitration  
437 instead of initiating court proceedings?
- 438 • Did the changes outlined in recommendations 3 and 4 preserve the registrant's rights  
439 for judicial review in a court but also provided the option for arbitration instead of court  
440 or subsequent arbitration where an IGO successfully asserted its immunity?

441

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

- 444 • Number of UDRP and URS complaints filed by IGOs
- 445 • Number of UDRP and URS panel decisions in favor of IGO Complainants:
  - 446 ○ (i) implemented by a registrar after ten (10) business days, without a court or  
447 arbitral proceeding; and
  - 448 ○ (ii) stayed (i.e., not implemented) by a registrar as a result of the  
449 commencement of arbitration proceedings
- 450 • Number of UDRP and URS panel decisions involving IGO Complainants where there was  
451 no response from the registrant, and their outcomes
- 452 • Number of court proceedings filed by the registrant and whether the court assumed or  
453 declined jurisdiction
- 454 • Number of arbitration proceedings between an IGO Complainant and losing registrant



455

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

## 464 3 Summary of Deliberations

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

469  
470 The EPDP team published its Initial Report for Public Comments in September 2021. It  
471 received a total of thirty-three (33) comments, fourteen (14) of which were submitted  
472 by individual commentators, thirteen (13) by organizations (largely from either IGOs or  
473 members of the domain investor community), with the remaining six (6) filed by one of  
474 ICANN's recognized community structures (viz., the Business and Intellectual Property  
475 Constituencies, the At Large Advisory Committee (ALAC), the Governmental Advisory  
476 Committee (GAC), the Registrars Stakeholder Group and the Registries Stakeholder  
477 Group)<sup>5</sup>. The EPDP team used the GNSO's Public Comment Review Tool to organize the  
478 various submissions according to each preliminary recommendation contained in the  
479 Initial Report. This facilitated the EPDP team's analysis of each comment and  
480 identification of any new issues, facts or concerns raised by the commentators.

481  
482 The Public Comment Review Tool and the EPDP team's discussions of the comments it  
483 received can be reviewed on the EPDP team's wiki space [here](#).

484  
485 Between October 2021 (when the Public Comment Proceeding on the Initial Report was  
486 closed) to February 2022, the EPDP team reviewed the input it received and began  
487 developing draft final recommendations based on the feedback and its subsequent  
488 deliberations. The following sub-sections summarize the major themes and  
489 considerations discussed by the EPDP team in reaching its final conclusions.

### 490 3.1 Initial Fact-Finding and Research

491  
492 Under the Addendum establishing the IGO Work Track and reflected in the EPDP team  
493 Charter, the EPDP team *"is expected to take into account the review of the relevant*  
494 *historical documentation and prior community work conducted by the IGO-INGO Access*  
495 *to Curative Rights Protection Mechanisms PDP Working Group (see Sections 3.1 and 3.2*  
496 *of the PDP Final Report), relevant GAC Advice, the 31-October-2016 letter from IGO*  
497 *Legal Counsels to Council Leadership, the external legal expert opinion commissioned by*  
498 *the PDP Working Group (Annex F), and the IGO Small Group Proposal (Annex D)."* EPDP  
499 team members were provided with these documents and a [Briefing Paper](#) to clarify the

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<sup>5</sup> 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>.

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

502

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

### 512 3.2 Deliberations Regarding IGO Eligibility under the UDRP and 513 URS

514

515 As noted in Section 2 above, most of the EPDP team agreed that, to develop an  
516 appropriate policy solution for the problem it was tasked to solve, it was necessary to  
517 first consider the challenges which IGOs face with the current UDRP and URS  
518 requirement that a complainant have trademark rights. The GNSO Council had  
519 previously approved Recommendation #2 from the IGO-INGO Access to Curative Rights  
520 Protections PDP, which would allow IGOs to attempt to satisfy this requirement through  
521 reliance on the protections afforded by Article 6ter of the Paris Convention for the  
522 Protection of Industrial Property. In this regard, the EPDP team noted that, while Article  
523 6ter requires member states at minimum to protect IGO identifiers against potentially  
524 confusing third-party trademark registrations or use as a mark, it does not in and of  
525 itself confer a recordation of substantive trademark rights to IGOs. The EPDP team also  
526 observed that the original Recommendation #2, as approved, leaves the decision as to  
527 whether Article 6ter protections would suffice for eligibility to file a UDRP and URS  
528 complaint to the relevant panelist(s) in each case, thereby potentially creating  
529 uncertainty for the parties involved.

530

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

538

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

542 need to ensure consistency with the prior Curative Rights PDP recommendations and  
543 one commentator opposed the EPDP team’s proposal. As a result of its consideration of  
544 the comments submitted, the EPDP team formed a small team to review its initial  
545 proposed definition. The small team proposed a refinement to the definition that the  
546 EPDP team discussed and approved. The EPDP team’s final recommendations, including  
547 its amended proposed definition for an “IGO Complainant”, can be found in Section  
548 2.1.1, above.  
549

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

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

559

### 560 3.3 Deliberations Regarding IGO Immunity and Registrant Rights

561 The EPDP team noted that an external legal expert, Professor Edward Swaine, had been  
562 engaged previously to provide subject matter advice to the IGO-INGO Access to Curative  
563 Rights Protections PDP. The EPDP team discussed Professor Swaine’s conclusion that  
564 requiring a complainant to submit to Mutual Jurisdiction<sup>6</sup>, as is the case under the UDRP  
565 and URS, can amount to a waiver of jurisdictional immunity by an IGO. Conversely, the  
566 EPDP team acknowledged that removing this requirement for IGO Complainants could  
567 prejudice a registrant’s right and ability to have an initial UDRP or URS determination  
568 reviewed judicially, in that a successful assertion of immunity by an IGO means that the  
569 court in question will decline to proceed with the case. The EPDP team took note of the  
570 fact that Professor Swaine had suggested a few alternatives that could be pursued as a  
571 policy solution.

572

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

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<sup>6</sup> 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.

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

587 The EPDP team ultimately agreed to work on an arbitration process rather than an  
588 internal appeal mechanism and reached agreement on several elements that needed to  
589 be incorporated into the UDRP and URS as requirements, e.g., the arbitration must be  
590 conducted as a substantive, de novo review of the case, and in UDRP cases the  
591 registrar’s lock on the disputed domain must be maintained for the duration of the  
592 relevant proceedings. The EPDP team decided to seek public input on other key aspects  
593 regarding an arbitration option. In its Initial Report, which it published for Public  
594 Comments in September 2021, the EPDP team requested community feedback on the  
595 following two questions:

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

600  
601 The EPDP team had decided to seek Public Comments on these questions as some EPDP  
602 team members believed that preserving the option for a registrant to go to arbitration  
603 following an unsuccessful attempt to invoke judicial consideration of its case would lead  
604 to a much more costly and inefficient process, while other members thought it was  
605 important to ensure that a registrant continues to be able to seek consideration of the  
606 merits of its case.

607  
608 The Public Comments demonstrated strong concerns, particularly amongst individual  
609 commentators, regarding the EPDP team’s proposal to exempt IGO Complainants from  
610 the requirement to agree to submit to a Mutual Jurisdiction, to the extent that it would  
611 result in limitations on the registrant’s ability to file court proceedings against an IGO or  
612 in compelling a registrant to go to arbitration. These commentators emphasized that the  
613 outcomes of the EPDP should not reduce or otherwise adversely affect the rights of  
614 registrants.

615  
616 Some commentators, including the ALAC and the GAC, welcomed the introduction of an  
617 arbitration option into the UDRP and URS processes, noting that arbitration is a well-  
618 recognized dispute resolution process, including for commercial disputes. However,  
619 although there was some support for an arbitration option, there was no universal

620 agreement amongst the commentators as to whether arbitration should be the sole  
621 avenue for final resolution of a dispute or whether a registrant should continue to be  
622 able to seek arbitration following an unsuccessful attempt to have the merits of its case  
623 considered by a court. Several commentators expressed the clear view that adding  
624 arbitration to the UDRP and URS should not remove or reduce a registrant's right to  
625 initiate court proceedings, and a few commentators suggested that the EPDP team  
626 should clarify its recommendations in this regard.

627  
628 The EPDP team agreed that its final recommendations must represent a balance  
629 between the rights of IGOs and those of registrants. In reviewing all the Public  
630 Comments received on this topic, the EPDP team also considered specific alternative  
631 suggestions and text raised by a few commentators. A small team was tasked to develop  
632 specific policy principles on key elements that the EPDP team believes are important for  
633 arbitration proceedings between an IGO Complainant and a registrant. These policy  
634 principles are intended to guide the future Implementation Review Team in selecting an  
635 arbitration provider (or providers) and the applicable arbitral rules.

636  
637 Based on its analysis of the Public Comments, the EPDP team modified its preliminary  
638 recommendations to:

- 639 (i) Clarify that its proposal to exempt an IGO Complainant (as defined) from the  
640 requirement to agree to submit to a Mutual Jurisdiction does not alter or  
641 limit a registrant's ability and right to initiate court proceedings;
- 642 (ii) Include an obligation for a UDRP or URS provider to inform a registrant, when  
643 notifying it of a complaint filed by an IGO Complainant, that it has the right to  
644 file court proceedings as well as to seek arbitration, and the potential  
645 implications where an IGO raises its immunities and privileges in a court  
646 proceeding;
- 647 (iii) Provide that a registrant continues to have the option to seek arbitration  
648 after it has filed suit in court and the court has declined to hear the merits of  
649 the case on the basis of IGO privileges and immunities; and
- 650 (iv) Require that the relevant registrar (in a UDRP proceeding) or URS provider (in  
651 a URS proceeding) inform the IGO Complainant should a registrant decide to  
652 pursue arbitration.

653  
654 The EPDP team's final recommendations can be found in Section 2.1.2 (above).

655  
656

657

## 4 Conclusions and Next Steps

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### 4.1 Final Conclusions

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

670

### 4.2 Next Steps

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675

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

## 676 5 Relevant Process & Issue Background

### 677 5.1 Process Background

678

679 In June 2014, the GNSO Council [chartered](#) the IGO-INGO Access to Curative Rights PDP  
680 to develop policy recommendations as to whether “to amend the UDRP and URS to  
681 allow access to and use of these mechanisms by IGOs and [International Non-  
682 Governmental Organizations (INGOs)] and, if so in what respects or whether a separate,  
683 narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP  
684 and URS that takes into account the particular needs and specific circumstances of IGOs  
685 and INGOs should be developed.” The PDP Working Group submitted its [Final Report](#)  
686 containing five recommendations to the GNSO Council in July 2018. Following several  
687 months of deliberations over the PDP recommendations, during which several  
688 Councilors voiced concerns over the implications of Recommendation #5, in April 2019  
689 the GNSO Council [voted](#) to approve the first four recommendations, and to refer  
690 Recommendation #5 to the RPM PDP to consider during Phase 2 of its work.

691

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

701

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

706

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

714

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



718 and was intended to provide a process framework to maintain the momentum the IGO  
719 Work Track had displayed and to continue the same scope of work (via the new EPDP  
720 Charter) as reflected in the original Addendum that the GNSO Council had previously  
721 approved.

## 722 5.2 Issue Background

723

724 The IGO-INGO Access to Curative Rights PDP (active from June 2014 to July 2018) had  
725 been preceded by an IGO-INGO Protections in All gTLDs PDP, which had taken place  
726 between October 2012 and November 2013. One of the recommendations from that  
727 prior PDP, which the GNSO Council approved, was for the GNSO Council to request an  
728 Issue Report to determine whether a separate PDP should be initiated to explore  
729 possible amendments to the UDRP and the URS that would enable access to and use of  
730 such curative rights protection mechanisms by IGOs and INGOs. The [Final Issue Report](#)  
731 that the GNSO Council requested includes background on prior work within and outside  
732 the ICANN community on the issue of curative rights protections for IGOs and INGOs,  
733 and documented the challenges that these organizations face in using the existing UDRP  
734 and URS. Consequently, the GNSO Council initiated the IGO-INGO Access to Curative  
735 Rights PDP in June 2014, *“to evaluate: (i) whether the UDRP and/or URS should be  
736 amended (to enable their access and use by IGOs and INGOs whose identifiers had been  
737 recommended for protection by the IGO-INGO PDP WG) and if so, in what way; or (ii)  
738 whether a separate narrowly-tailored procedure modeled on these curative rights  
739 protection measures to apply only to protected IGO and INGO identifiers should be  
740 developed.”*

741

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

744

### 745 Recommendation #1:

746 *1(a): For INGOs (including the Red Cross movement and the International  
747 Olympic Committee), no substantive changes to the UDRP and URS are to be  
748 made, and no specific new dispute resolution procedures are to be created.*

749 *1(b): For IGOs, no specific new dispute resolution procedures are to be created.*

750

### 751 Recommendation #2:

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

761

762

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

763

764

*(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;*

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*(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*

768

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770

*(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).*

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*Recommendation #3:*

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*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.*

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*Recommendation #4:*

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*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.*

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*Recommendation #5:*

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

809

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

817

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

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## 829 6 Approach Taken by the EPDP Team

### 830 6.1 Working Methodology

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

835

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

840

#### 841 6.1.1 EPDP Membership and Attendance

842

##### 843 **Plenary Meetings:**

- 844 • 23 Plenary calls (+3 cancelled) for 34.5 call hours for a total of 637.5 person  
845 hours
- 846 • 84.8% total participation rate

847

##### 848 **Small Team Meetings:**

- 849 • 2 Small team calls for 2.0 call hours for a total of 12.0 person hours
- 850 • 100.0% total participation rate

851

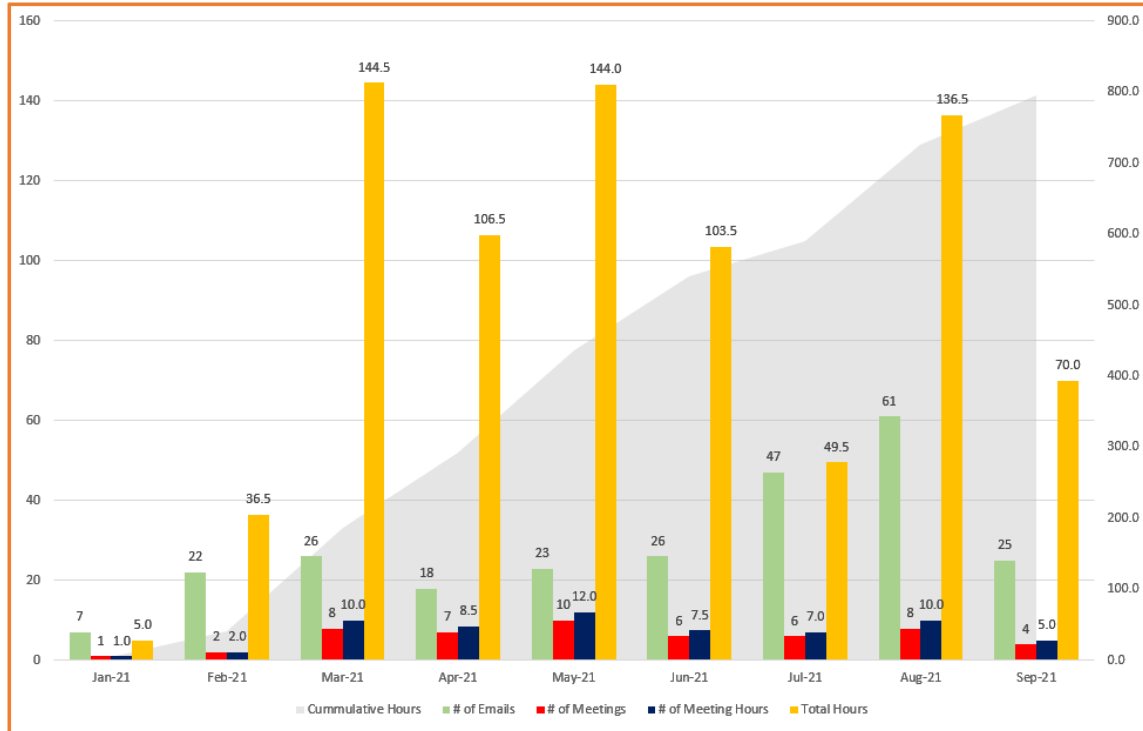
##### 852 **Leadership Meetings:**

- 853 • 27 Leadership calls for 27.0 call hours for a total of 161.0 person hours

854

855 The EPDP Team email archives can be found at [https://mm.icann.org/pipermail/gns-](https://mm.icann.org/pipermail/gns-igo-wt/)  
856 [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
<b>At-Large Advisory Committee (ALAC)</b>				<b>56.5%</b>	
Carlos Raúl Gutiérrez	<a href="#">SOI</a>	17-Dec-2020		21.7%	
Yrjö Länsipuro	<a href="#">SOI</a>	17-Dec-2020		91.3%	
<b>Commercial Business Users Constituency (BC)</b>				<b>100.0%</b>	
Jay Chapman	<a href="#">SOI</a>	17-Dec-2020		100.0%	
<b>GNSO Council</b>				<b>95.7%</b>	
Chris Disspain	<a href="#">SOI</a>	17-Dec-2020		100.0%	Chair
Jeffrey Neuman	<a href="#">SOI</a>	8-Jan-2021		95.7%	Liaison
John McElwaine	<a href="#">SOI</a>	8-Jan-2021		91.3%	Liaison
<b>Governmental Advisory Committee (GAC)</b>				<b>85.9%</b>	
Alexandra Excoffier	<a href="#">SOI</a>	17-Dec-2020		87.0%	
Brian Beckham	<a href="#">SOI</a>	17-Dec-2020		95.7%	
Kavouss Arasteh	<a href="#">SOI</a>	17-Dec-2020		60.9%	
Susan Anthony	<a href="#">SOI</a>	17-Dec-2020		100.0%	
<b>Intellectual Property Constituency (IPC)</b>				<b>91.3%</b>	
Paul McGrady	<a href="#">SOI</a>	17-Dec-2020		91.3%	
<b>Internet Service Providers and Connectivity Providers Constituency (ISPCP)</b>				<b>78.3%</b>	
Oswaldo Novoa	<a href="#">SOI</a>	17-Dec-2020		78.3%	
<b>Non-Commercial Stakeholder Group (NCSG)</b>				<b>75.0%</b>	

Ioana Florina Stupariu	<a href="#">SOI</a>	17-Dec-2020		73.9%	
Juan Manuel Rojas	<a href="#">SOI</a>	17-Dec-2020		73.9%	
Krishna Seeburn	<a href="#">SOI</a>	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
<b>At-Large Advisory Committee (ALAC)</b>				<b>90.3%</b>	
Justine Chew	<a href="#">SOI</a>	17-Dec-2020		89.5%	
Vanda Scartezini	<a href="#">SOI</a>	17-Dec-2020		91.7%	
<b>Governmental Advisory Committee (GAC)</b>				<b>94.9%</b>	
David Satola	<a href="#">SOI</a>	17-Dec-2020		100.0%	
Jorge Cancio	<a href="#">SOI</a>	17-Dec-2020		0.0%	
Matthew Coleman	<a href="#">SOI</a>	17-Dec-2020		100.0%	

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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 Report<sup>7</sup>.

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. As a general matter, the EPDP team acknowledges that these principles may be subject to the applicable law governing a particular arbitration proceeding.

### **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 must include customary and reasonable protections against 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 the UDRP or URS action.
7. Unless the parties agree to a more streamlined process, there should be a full exchange of documents and information relevant to the proceeding.

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<sup>7</sup> 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.

- 38 8. The parties should be encouraged to consider voluntary mediation prior to or  
39 during the arbitration.
- 40 9. Unless agreed otherwise by the parties, the arbitration should be conducted  
41 through hearings where both parties may present oral and written evidence as  
42 well as call, question and cross-examine witnesses. By default, hearings should  
43 be conducted online, though the parties should have the ability to opt for in-  
44 person or “hybrid” (i.e., combination of in-person and online) hearings.
- 45 10. The arbitrator(s) should have discretion as to the general conduct of the  
46 proceedings. In particular, the arbitrator(s) should have discretion regarding the  
47 admissibility and weight of the evidence presented by both parties.
- 48 11. There should be a clear, transparent, and uniform process for the selection and  
49 appointment of arbitrators, as well as for challenging an appointment. All  
50 arbitrators should be required to attest to their impartiality and independence.
- 51 12. All arbitration proceedings must result in clear and enforceable outcomes. These  
52 may include confirmation of a transfer or cancellation of the disputed domain  
53 name(s), or an order that the registrant retains the disputed domain name(s),  
54 including a declaration of abuse of process or reverse domain name hijacking in  
55 cases where the arbitrator(s) has/have found such behavior. The arbitrator(s)  
56 should have the discretion to award injunctive relief where this is considered  
57 necessary for equitable reasons.

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**59 Specific Principles:**

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- 61 1. To facilitate flexibility, the parties should be permitted to tailor any  
62 requirement or step in the arbitration process to their specific, mutually  
63 agreed needs.
- 64 2. Each party may be represented by a person of their choice, who need not be  
65 an attorney.
- 66 3. Except when presenting their case during the hearing, parties should be  
67 prohibited from communicating with the arbitrator(s) prior to or during the  
68 arbitration process.
- 69 4. The parties should be encouraged to agree on the appointment of a single  
70 arbitrator. In the event the parties cannot agree on the appointment of a  
71 single arbitrator, the arbitral tribunal shall appoint the sole arbitrator from a  
72 pre-defined list of arbitrators.
- 73 5. Either party may elect that a three-person panel be constituted, in which  
74 case each party is to elect an arbitrator from a pre-defined list of arbitrators,  
75 and the third (presiding) arbitrator shall be chosen through mutual  
76 agreement. In the event the parties cannot agree on the appointment of the  
77 third (presiding) arbitrator, the parties’ designated arbitrators shall choose  
78 the third (presiding) arbitrator from the available list .
- 79 6. Consideration should be given to publishing a list of potential arbitrators who  
80 are recognized as experts in domains name issues.



- 81           7. Arbitrators should observe specific rules of evidence, similar to those  
82           applicable to court proceedings.
- 83           8. Parties should be able to discuss and disclose details regarding possible  
84           settlements at any time.
- 85           9. Consideration should be given to the possibility of sanctions against parties  
86           that do not comply with applicable rules, who have been found to have  
87           engaged in an abuse of process, or who seek to cause unnecessary delay or  
88           expense.
- 89           10. All final arbitral decisions should be published or otherwise made available to  
90           the public. This does not include case filings or other documentation relating  
91           to the conduct of the proceedings.
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## 93 8 Annex B – Scope of Work (as approved by the 94 GNSO Council)

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97 EPDP Team Charter, as approved by the GNSO Council:

98 [https://gns0.icann.org/sites/default/files/file/field-file-attach/specific-crp-igo-epdp-  
100 charter-16aug21-en.pdf](https://gns0.icann.org/sites/default/files/file/field-file-attach/specific-crp-igo-epdp-<br/>99 charter-16aug21-en.pdf)

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101 GNSO Council resolution establishing the EPDP Team:

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

103

104 GNSO Council project webpage for the EPDP: [https://gns0.icann.org/en/group-  
105 activities/active/specific-crp-igo-epdp](https://gns0.icann.org/en/group-<br/>105 activities/active/specific-crp-igo-epdp)