

# ICANN | GNSO

Generic Names Supporting Organization

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

# Preamble

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- 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.



# #1 (a): Definition of “IGO Complainant”

- An “IGO Complainant” refers to:
  - (i) an international organization established by a treaty, and which possesses international legal personality; or
  - (ii) an ‘Intergovernmental organization’ having received a standing invitation, which remains in effect, to participate as an observer in the sessions and the work of the United Nations General Assembly; or
  - (iii) a Specialized Agency or distinct entity, organ or program of the United Nations.”

# #1 (b) IGO Rights in a Mark

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

## #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.



(xii) State that Complainant will **submit**, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, **to the jurisdiction of the courts in at least one specified Mutual Jurisdiction;**

## #2 Exemption from Submission to “Mutual Jurisdiction” (continued)

- (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

## #3: Arbitral Review following a UDRP Proceeding

- (i) When submitting its complaint, an IGO Complainant shall indicate that it agrees, if the registrant also agrees, to have the final determination of the outcome of the UDRP proceeding settled through binding arbitration.
- (ii) In communicating a UDRP panel decision to the parties where the complainant is an IGO Complainant, the UDRP provider shall provide both parties with information regarding the applicable arbitral rules.

### #3: Arbitral Review following a UDRP Proceeding *(continued)*

- (iii) In accordance with Paragraph 4(k) of the UDRP, the relevant registrar shall wait ten (10) business days (as observed in the location of its principal office) before implementing a UDRP panel decision rendered in the IGO Complainant's favor. The registrar shall stay implementation if, within that period, it receives official documentation that the registrant has either initiated court proceedings in its location or in the location of the registrar's principal office or has submitted a request for or notice of arbitration.
- (iv) Where the relevant registrar has received a request for or notice of arbitration, it shall stay or continue to stay, as applicable, implementation of the UDRP panel decision until it receives official documentation concerning the outcome of an arbitration or other satisfactory evidence of a settlement or other final resolution of the dispute.



### #3: Arbitral Review following a UDRP Proceeding (*continued*)

- (v) Where the registrant initiates court proceedings and the court declines to hear the merits of the case, the registrant may submit the dispute to binding arbitration within ten (10) business days from the court order declining to hear the merits of the case, by submitting a request for or notice of arbitration to the competent arbitral institution with a copy to the relevant registrar and UDRP provider and the IGO Complainant. Where the registrant does not submit a request for or notice of arbitration to the competent arbitral institution (with a copy to the registrar, UDRP provider and the IGO Complainant) within ten (10) business days from the court order declining to hear the merits of the case, the original UDRP decision will be implemented by the registrar.
- (vi) Where a registrant decides to submit the dispute to binding arbitration, it shall notify the relevant registrar prior to initiating the arbitration proceeding with the competent arbitral tribunal. The registrar shall notify the IGO Complainant of the registrant's decision to initiate arbitration

## #4: Arbitral Review following a URS Proceeding

- (i) When submitting its complaint, an IGO Complainant shall indicate that it agrees, if the registrant also agrees, to have the final determination of the outcome of the URS proceeding settled through binding arbitration.
- (ii) In communicating a URS Determination to the parties where the complainant is an IGO Complainant, the URS provider shall provide both parties with information regarding the applicable arbitral rules.

#### #4: Arbitral Review following a URS Proceeding (continued)

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

#### #4: Arbitral Review following a URS Proceeding (continued)

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

# #5: Applicable Law for Arbitration Proceedings

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

# Policy Change Impact Analysis

- EPDP team suggests that initiation of a review should be triggered by a certain threshold number of IGO Complaints rather than conducted at fixed intervals or by calendar date. Questions to include, eg.:
- Did the introduction of a definition of “IGO Complainant” assist IGOs with accessing and using the UDRP and URS?
- Did the changes outlined in recommendations 3 and 4 preserve the registrant’s rights for judicial review in a court but also provided the option for arbitration instead of court or subsequent arbitration where an IGO successfully asserted its immunity?

# Metrics

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

# Consensus Designations

Recommendation #	Chair Proposed Designation	Groups not supporting recommendation or part thereof
#1 - Definition of “IGO Complainant”	Full Consensus	
#2 - Exemption from Submission to “Mutual Jurisdiction”	Full Consensus	
#3 - Arbitral Review following a UDRP Proceeding	Full Consensus	
#4 - Arbitral Review following a URS Proceeding	Full Consensus	
#5 - Applicable Law for Arbitration Proceedings	Full Consensus	
Metrics for Policy Impact Analysis	Full Consensus	
Principles for Arbitral Rules	TBA	