



# **IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process: Preliminary Recommendations**

Community Webinar || 7 February 2017

# Agenda for the session today

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Overview of this PDP: Why, When, What

2

Where this PDP fits into overall work on IGO/INGO protections

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Presentation of Working Group preliminary recommendations

4

Next steps: PDP completion

5

Q&A / Discussion

Webinar Presenters:

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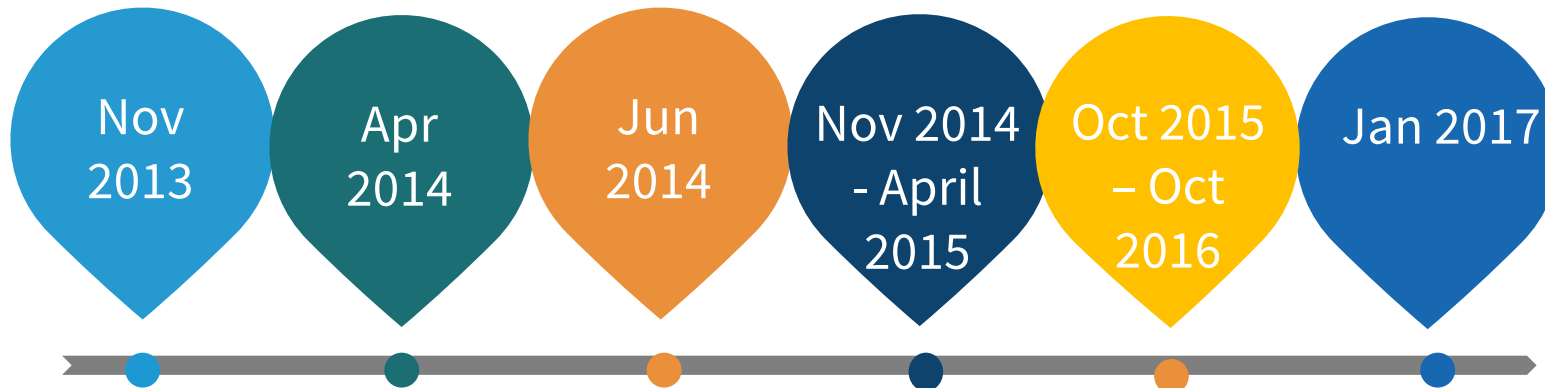
*Co-Chairs, PDP Working Group*

# Overview of this PDP

PDP Working Group chartered by the GNSO Council to develop policy recommendations on:

- ⦿ ***Whether to amend the UDRP [Uniform Dispute Resolution Policy] and URS [Uniform Rapid Suspension procedure] to allow access to and use of these mechanisms by IGOs and 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.***
  - *IGOs = International Governmental Organizations*
  - *INGOs = International Non-Governmental Organizations*

# PDP Timeline – How We Got Here



Previous IGO-INGO PDP: Recommended preventative protections for IGO, Red Cross, Olympic names

Recommended Issue Report on curative rights issues

ICANN Board adopts 2013 PDP proposals on preventative protections for IGO, Red Cross, Olympic names

Proposals for IGO acronyms inconsistent with GAC advice not adopted

GNSO Council initiates new PDP on IGO-INGO curative rights issues following Issue Report

WG agrees to exclude INGOS from further consideration  
PDP Charter amended to include all appropriate IGOs (not limited to the IGO list scoped by 2013 PDP)

Consultation with legal expert on IGO jurisdictional immunity (up to Jun 2016)  
Review of IGO Small Group Proposal (received Oct 2016)


Initial Report published for public comment (closing **1 MARCH 2017**)

**PDP WG reviews input and completes Final Report (estimated by June 2017)**

# Other Work Relating to IGO & INGO Protections

Two other ongoing efforts, concurrently with this PDP:

1. Implementation of Board-adopted recommendations from original 2013 PDP, mostly for preventative protections (e.g. reservation, pre-registration Claims Notification) for certain IGO & INGO names
  - ***The current PDP does not cover preventative protections; scope is limited to curative rights (i.e. post-registration dispute resolution)***
2. New GAC-GNSO facilitated dialogue, to reconcile inconsistent GAC advice and remaining recommendations from 2013 PDP
  - ***IGO Small Group Proposal reviewed in this PDP touches on curative rights, as complement to certain other recommended protections***
    - e.g. Claims Notice to an IGO if a matching domain name is registered
  - ***GAC-GNSO Dialogues on IGO protections likely to begin at ICANN58***
    - Final curative rights policy recommendations come through appropriate GNSO process (i.e. this PDP)
    - Timing of PDP Final Report and completion of GAC-GNSO Dialogues will therefore be critical



# The Working Group's Preliminary Recommendations

# Preliminary Recommendation #1

**No changes recommended to the UDRP and URS, and no specific new dispute resolution process created, for INGOs (including the Red Cross movement and the International Olympic Committee).**

**The Policy Guidance document referred to in Recommendation #2 to include this clarification as regards INGOs.**

# Preliminary Recommendation #2

**For an IGO to demonstrate standing to file a complaint under the UDRP and URS, it should be sufficient (as an alternative to and separately from an IGO holding trademark rights in its name and/or acronym) to show that it has complied with the requisite communication and notification procedure in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property.**

**A Policy Guidance document for the UDRP and URS is to be prepared and issued in this regard for the benefit of panelists, registrants and IGOs.**

- ⦿ *Under Article 6ter, States “agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of ... armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations ... ”*



# Preliminary Recommendation #3

**No specific changes recommended to the substantive grounds under the UDRP or URS upon which a complainant may file and succeed on a claim against a respondent (Section 4(a)(i) – (iii) of the UDRP).**

**The Policy Guidance document (see Recommendation #2) to include a further recommendation that UDRP and URS panelists take into account the limitation enshrined in Article 6ter(1)(c) of the Paris Convention in determining whether a registrant against whom an IGO has filed a complaint registered and used the domain name in bad faith.**

- ⦿ *There is no State obligation when the third party use or registration “is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the ... abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.”*

# Preliminary Recommendation #4 (Part 1)

**Recommendations on the issue of jurisdictional immunity, which IGOs (but not INGOs) may claim successfully in certain circumstances:**

- (a) no change to the Mutual Jurisdiction clause of the UDRP and URS, as these processes are in addition to and not a substitute for existing statutory rights, and ICANN has no power to extinguish registrant rights to seek judicial redress;**
- (b) the Policy Guidance document described in Recommendation #2 to also include a section that outlines the various procedural filing options available to IGOs, e.g. the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; such that**
- (c) claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will be determined by the applicable laws of that jurisdiction .**

# Preliminary Recommendation #4 (Part 2)

**Two alternative recommendations where a losing registrant appeals to a court of mutual jurisdiction and an IGO succeeds in asserting its claim of jurisdictional immunity:**

***Option 1 - the decision rendered against the registrant in the predecessor UDRP or URS shall be vitiated; or***

***Option 2 - the decision rendered against the registrant in the predecessor UDRP or URS may be brought before the [name of arbitration entity] for de novo review and determination.***

- ⦿ *WG has yet to agree on which Option, or another option, is preferred*
- ⦿ *WG relied extensively on the opinion of an external legal expert that the state of international law on the issue of IGO jurisdictional immunity is not uniform, and may vary (e.g. by IGO, treaty, or national court treatment)*
- ⦿ *WG also recommends that the Policy Guidance document (see Recommendation #2) be brought to the notice of the Governmental Advisory Committee (GAC) for its and its members' and observers' information*

# Preliminary Recommendation #5

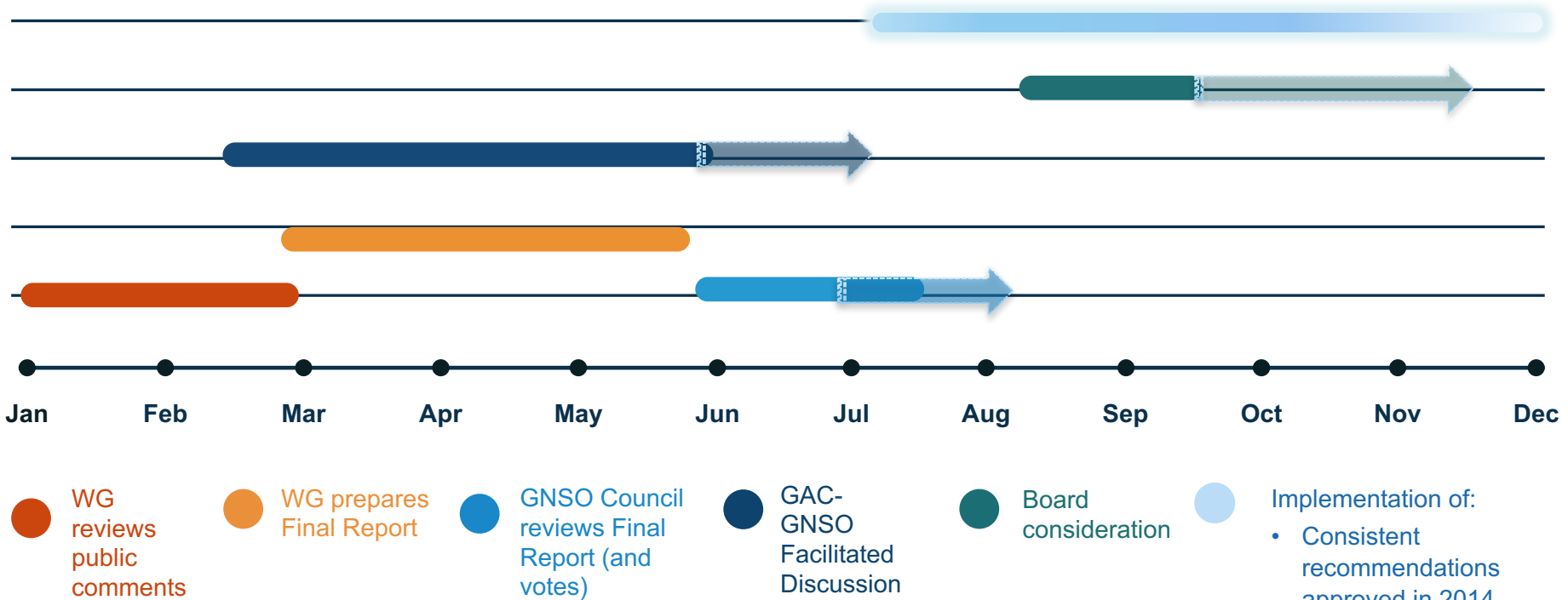
**Recommendation in respect of GAC advice concerning access to curative rights processes for IGOs:**

**ICANN to investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS at no or nominal cost, in accordance with GAC advice on the subject.**

- ◉ *WG inquired of GAC whether existing administrative fees for URS and UDRP were viewed as "nominal" but GAC did not provide definitive response*
- ◉ *WG considers questions of cost subsidization to be outside the PDP scope*

# Next Steps & PDP Completion

# Timeline to PDP completion (in broader context)



## NOTES

- PDP completion and subsequent actions (GNSO Council and Board adoption) may be impacted by duration and outcome of GAC-GNSO Facilitated Discussions on IGO acronyms
- However, PDP Working Group will follow PDP Rules in preparing its final recommendations

- Consistent recommendations approved in 2014
- Final recommendations (curative rights and remaining inconsistencies)?

# Additional Information

- ⦿ Public comment announcement (with closing dates and link to submission forum): <https://www.icann.org/public-comments/igo-ingo-crp-access-initial-2017-01-20-en>
- ⦿ PDP Working Group Initial Report (containing all preliminary recommendations, the legal expert opinion and the IGO Small Group Proposal): <https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf>
- ⦿ Background information on the PDP (Issue Report, PDP Charter, Council initiation): <https://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access>
- ⦿ PDP Working Group online wiki space (with meeting transcripts, call recordings, draft documents and additional background materials): <https://community.icann.org/x/37rhAg>