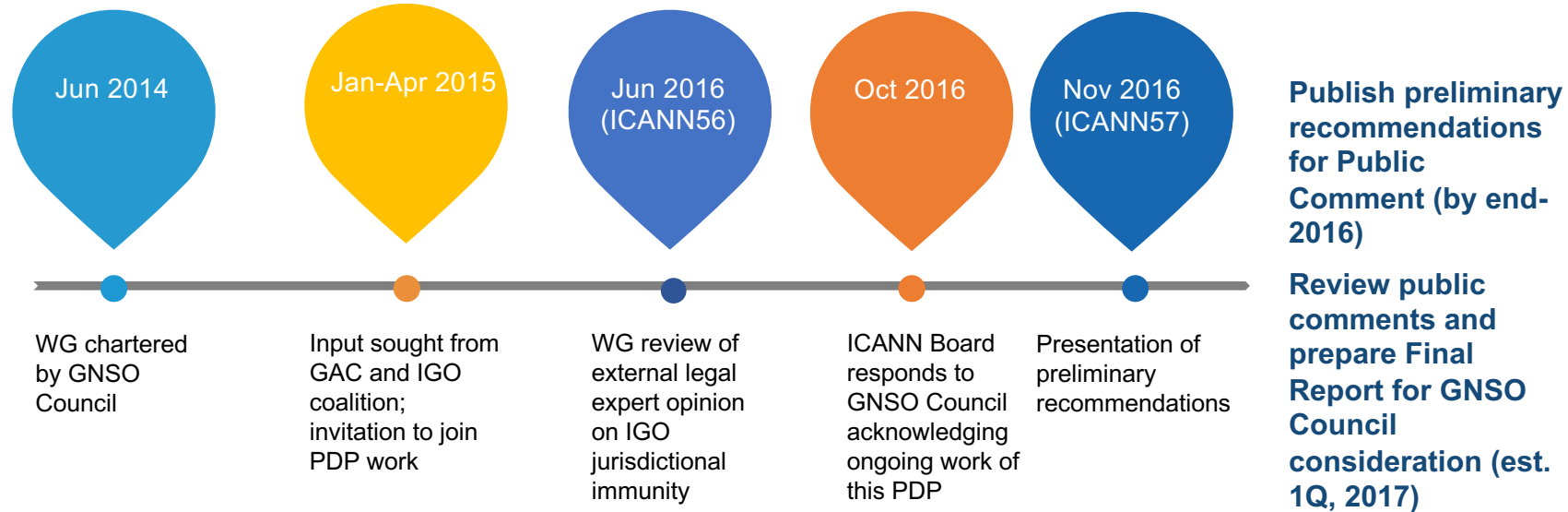


IGO-INGO Access to Curative Rights Policy Development Process

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4 November 2016

OVERVIEW: Project Timeline & Major Milestones



WHAT THIS PROJECT IS ABOUT

This PDP was chartered by the GNSO Council to consider if existing curative rights processes (i.e. the Uniform Dispute Resolution Policy and the Uniform Rapid Suspension procedure) needed modifications to accommodate the needs of IGOs and INGOs and, if so, how; or if a new, narrowly-tailored dispute resolution procedure should be developed

What are the current challenges & issues under discussion (1/3)?

- ⊙ **IGO Small Group formed in 2014 to develop proposal for GAC and GNSO consideration**
 - ⊙ Dec 2015: Working Group solicited input from the GAC
 - *Input received from the GAC (April 2015) and IGOs (Jan 2015; follow up questions sent subsequently to IGOs)*
 - ⊙ End-2015: Working Group engaged external legal expert to provide opinion on IGO jurisdictional immunity
 - *Preliminary memo submitted before ICANN55 (Mar 2016); final opinion submitted and discussed at ICANN56 (Jun 2016)*
 - ⊙ Final Small Group Proposal sent to the GNSO and GAC in early October 2016
 - ⊙ *Aug 2016 – present: Working Group concretizing preliminary recommendations for community comment*

What are the current challenges & issues under discussion (2/3)?

- ⊙ **Working Group's preliminary recommendations likely to differ from the IGO Small Group Proposal**
 - ⊙ On standing to file a complaint under the UDRP or URS:
 - ⊙ *WG recommending no new dispute resolution procedure and no essential substantive change to the UDRP and URS*
 - ⊙ *WG recommending that standing to file under UDRP and URS for IGOs can be shown by an IGO's having followed the requisite notification process under Article 6ter of the Paris Convention for the Protection of Industrial Property (international treaty that now also binds WTO member states) – thus broadening the scope and availability of UDRP/URS to IGOs who may not have trademark rights*
 - ⊙ On IGO jurisdictional immunity:
 - ⊙ *Based on external legal expert opinion that there is no uniform international law on this, and different national courts treat the issue differently (e.g. depending on the IGO concerned, whether there is a bilateral treaty, and which test of immunity is used), WG recommends no change to Mutual Jurisdiction clause of UDRP and URS*
 - ⊙ *IGOs can also file complaints through an agent, assignee or licensee*

What are the current challenges & issues under discussion (3/3)?

- ⦿ **The issue of Curative Rights is distinct from that of Preventative Protections, and both need to be dealt with under distinct GNSO processes as a result of the recommendations of the original IGO-INGO PDP (2013)**
- ⦿ **Regardless of the disposition of the Preventative Protections, IGOs deserve meaningful curative rights protections**
 - ⦿ **Working Group recommendations likely to be:**
 - *No separate DRP (see earlier slide) and no new rapid relief mechanism (use the URS)*
 - *However, where an IGO succeeds in claiming immunity in a national court to which a losing registrant has filed an appeal, that appeal may be resolved via arbitration (WG will seek community input on this)*
 - ⦿ **Small Group Proposal is for:**
 - *Post-registration notice to an affected IGO when a third party registers a domain matching or containing the IGO acronym;*
 - *Separate dispute resolution procedure (appealable via arbitration)*
 - *Rapid relief mechanism modeled after the URS*

How can the GNSO Council & ICANN community assist?

- ⦿ **GNSO Council currently in discussions with ICANN Board on reconciling inconsistent GAC advice and previously-adopted GNSO policy (from the 2013 IGO-INGO PDP)**
 - ⦿ Although curative rights issues are being dealt with by the current PDP, there is a need to keep the whole picture in mind:
 - Preventative protections may need to be aligned with appropriate curative rights mechanisms
 - This PDP is concerned with and will make broad recommendations for all gTLDs, but some elements of the IGO Small Group Proposal concern only New gTLDs
 - *Any final solution regarding adequate IGO protections in all gTLDs should include consideration of the deliberations and recommendations from this PDP*
- ⦿ **Working Group preliminary recommendations will be published for public comments soon (est. December 2016)**
 - ⦿ *It will be helpful if the community can provide input for consideration by the Working Group in preparing its Final Report*

Sessions at ICANN57 and Further Information

- ⦿ Open Working Group meeting/community session: **Monday 7 November, 0900-1030, Hall 6** (remote participation details available at <https://community.icann.org/x/P4LDAw>)
- ⦿ Background information: <https://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access>
- ⦿ ICANN57 Background Briefing Paper: <https://gnso.icann.org/en/issues/background-briefing-27oct16-en.pdf> (at p.6)
- ⦿ Working Group online wiki space (with meeting transcripts, call recordings, draft documents and background materials): <https://community.icann.org/x/37rhAg>