ICANN 59
POLICY FORUM

JOHANNESBURG
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IGO-INGO Access to Curative Rights Mechanisms Policy Development Process (PDP)

GNSO Working Session @ICANN59

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OVERVIEW: Project Timeline & Major Milestones

Original GNSO PDP: Some preventative protections recommended

Issue Report on IGO-INGO curative rights recommended

Current PDP initiated on curative rights

March: External legal expert opinion obtained on IGO immunity

November: Review of IGO Small Group Proposal

Initial Report published for public comment: 46 comments received (including 1 from GAC, 21 from IGOs, 4 from GNSO Stakeholder Groups & Constituencies

Some modifications to initial recommendations proposed

Discussion on arbitration and separate narrow dispute process continues

Final Report sent to GNSO Council

Timing may be affected if facilitated GAC-GNSO dialogue continues or if a new legal opinion on IGO rights is sought

What are the current challenges? How can the GNSO Council assist? (1/2)

1. Working Group's (WG) likely final recommendations may not be aligned with GAC advice:

- WG is likely to modify its preliminary recommendation on ***standing to file a complaint*** under the Uniform Dispute Resolution Policy (UDRP) or Uniform Rapid Suspension procedure (URS), it is not likely to recommend substantive change to the legal basis for relief (i.e. registered or unregistered trademark rights)
  - GAC view: IGOs are in an "objectively unique category of rights-holders" and protections are based on public policy concerns related to IGOs' status and public interest missions
- WG is currently considering an ***arbitration option*** (to resolve respondent "appeals" from an initial panel determination – but this will kick in (if at all) only after an IGO successfully claims immunity in a national court
  - GAC view: appeal should be to "an arbitral tribunal instead of national courts, in conformity with relevant principles of international law concerning recognized privileges and immunities conferred by governments on IGOs"

What are the current challenges? How can the GNSO Council assist? (2/2)

- WG currently contemplating whether to revisit original recommendation to not have a ***separate dispute resolution process*** for IGOs
  - GAC view: There should be a separate standalone IGO-specific dispute resolution mechanism

2. Need clarity as to whether there is a further role for GAC-GNSO facilitated dialogue, and role of the Board

- WG believes that a facilitated dialogue, if continued, should be considered only as input to the PDP (not advice/guidance to the ICANN Board or GNSO Council)

- Question has been raised as to other possible legal basis for IGO rights – e.g. consumer protection and false advertising statutes

3. If WG's final recommendations require modification of the UDRP/URS, this could impact the ongoing Review of All Rights Protection Mechanisms PDP

- E.g. if arbitration is ultimately recommended

Sessions at ICANN59 and Further Information

- Open Working Group community session on **Tuesday 27 June, 1030 – 1200, Ballroom 2**: http://sched.co/B49J
- Background information: https://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access
- ICANN59 Background Briefing Paper: https://gnso.icann.org/en/issues/policy-briefing-igo-ingo-crp-access-19jun17-en.pdf
- Working Group online wiki space (with meeting transcripts, call recordings, draft documents and background materials): https://community.icann.org/x/37rhAg