

## Recommended Resolution of Option 2 Issues

**This outline addresses identified issues with an Option 2 arbitration scenario (Domain registrant Respondent loses UDRP and files de novo judicial appeal; IGO Complainant successfully asserts immunity defense in judicial forum, resulting in appeal being shifted to arbitration forum)**

**Substantive law** – arbitrator decides dispute under the national law under on which the judicial appeal was originally brought, not the UDRP / both parties can mutually agree to proceed under another national law (this is the normal practice in arbitration cases)

**Procedural rules** – same as in the applicable judicial system / different rules can be mutually agreed to by both parties

**Venue** – to be conducted in an arbitration forum certified to meet certain basic criteria, and cannot be an IGO (e.g., WIPO) or the arbitration forum that decided the underlying UDRP, to assure lack of bias and de novo review. In addition the panelist must be a retired judge from that jurisdiction, with the option to have a three-member panel that includes one such retired judge as chair

**Language** – same language to be used as in national judicial forum (alternate language can be selected by mutual agreement of the parties)

**Discovery** – same as in judicial case

**Interim remedies (e.g., domain locking)?** – same as if court case had continued

**Remedies** – same as in judicial case

**Costs** – seek to be the same as or lower than in a judicial case

**Enforcement of award** – decision to uphold UDRP determination would result in domain transfer or extinguishment; enforcement of any available monetary award against IGO needs to be considered, but at a minimum failure to pay could bar it from any future ability to file a UDRP or URS

**Precedential value of decision** – While there's no way to fully replicate the precedent of a court decision, policy could state a distinct recommendation that any case shifted to arbitration should consider and seek to follow judicial precedent on similar cases brought under the same law, and also be consistent with prior arbitrations under that law (if any)