

**ICANN** 59  
**POLICY FORUM**

**JOHANNESBURG**  
26–29 June 2017



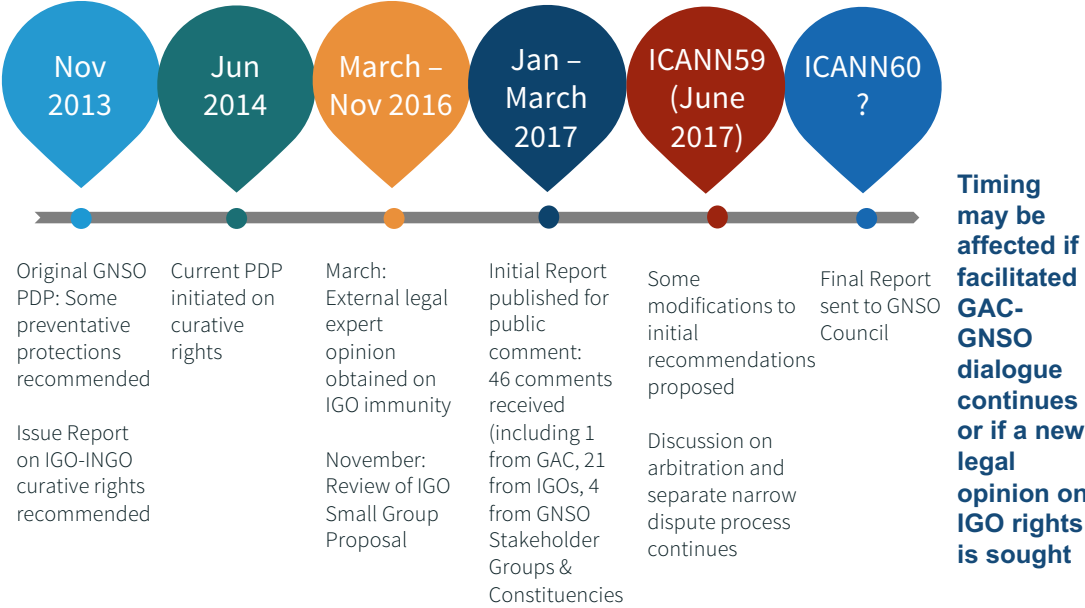
# IGO-INGO Access to Curative Rights Mechanisms Policy Development Process (PDP)

Open Community Session @ICANN59

27 June 2017



# OVERVIEW: Project Timeline & Major Milestones



## Working Group progress following January 2017 publication of Initial Report

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### 1. Working Group activity:

- ⦿ 46 comments received – 1 from an ICANN Advisory Committee (GAC); 4 from GNSO Stakeholder Groups/Constituencies (Registries SG, Registrars SG, Business Constituency, IP Constituency); 21 from IGOs; 1 from national government (USA), 10 from individuals
- ⦿ WG reviewed all comments received and developed list of new facts identified, possible new arguments and alternative options for discussion
- ⦿ WG currently completing deliberations over possible modifications to some of its initial recommendations, and finalization of remaining recommendations
- ⦿ Objective to complete and submit Final Report to GNSO Council before ICANN60

## Preliminary Recommendation #1 – NO CHANGE RECOMMENDED

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- ⦿ **The Working Group recommends that no changes to the UDRP and URS be made, and no specific new process be created, for INGOs (including the Red Cross movement and the International Olympic Committee). To the extent that the Policy Guidance document referred to elsewhere in this set of recommendations is compiled, the Working Group recommends that this clarification as regards INGOs be included in that document.**

## Preliminary Recommendation #2 – CHANGE RECOMMENDED

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### Original Recommendation:

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

### Recommended Change:

- ⦿ **IGOs may rely on their having complied with the requisite communication and notification procedure under Article 6ter of the Paris Convention to demonstrate that they have unregistered rights to their name or acronym**
- ⦿ This will be additional to an IGO's being able to demonstrate that they have a registered trademark in their name or acronym

## Preliminary Recommendation #3 – **DELETION RECOMMENDED**

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- ⦿ **WG does not recommend that any specific changes be made 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) as the WG believes that bad faith registration and use concept covers a very broad range of offensive activities, including those covered by scope of Article 6ter protections.**
- ⦿ **UDRP and URS panelists should 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.**

## Preliminary Recommendation #4 – UNDER DISCUSSION

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### **NO CHANGE RECOMMENDED TO THE INITIAL GENERAL RECOMMENDATION:**

- ⦿ **On the issue of jurisdictional immunity, which IGOs may claim successfully in certain circumstances (but not INGOs), WG recommends that:**
  - (a) **no change be made to the Mutual Jurisdiction clause of the UDRP and URS, as ICANN CRPs 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) **[Policy Guidance document to] include a section that outlines the various procedural filing options available to IGOs, e.g. they have 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 fall to be determined by the applicable laws of that jurisdiction.**



## Preliminary Recommendation #4 – UNDER DISCUSSION

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### WG DISCUSSING THE TWO OPTIONS PUT OUT FOR PUBLIC COMMENT:

- ⊙ **Where a losing registrant appeals to a court of mutual jurisdiction and an IGO succeeds in asserting its claim of jurisdictional immunity in a court of mutual jurisdiction, WG recommends that in that case:**
  - ***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 currently examining benefits and disadvantages of arbitration under Option 2 (see Arbitration Elements paper from the WG co-chairs)

## **Preliminary Recommendation #5 – NO CHANGE RECOMMENDED**

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- ⦿ **In respect of GAC advice concerning access to curative rights processes for IGOs, the Working Group recommends that ICANN investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS (in line with the recommendations for accompanying Policy Guidance as noted in this report), at no or nominal cost, in accordance with GAC advice on the subject.**

## Sessions at ICANN59 and Further Information

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- 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>