

GNSO PDP – IGO-INGO Access to Curative Rights Protection Mechanisms Working Group

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Background

Agenda Item 1

Background

- ⦿ On 20 Nov 2013, the GNSO Council unanimously adopted consensus recommendations made by the GNSO's PDP WG on the **Protection** of IGOs in All gTLDs
- ⦿ One recommendation from that WG was for the GNSO Council to request an Issue Report
- ⦿ On 25 May 2014, the Final Issue Report was delivered to the GNSO Council and the PDP was initiated on 5 June 2014

What's this PDP about?

Agenda Item 2

What's this PDP about?

- ⦿ The purpose of this PDP:
 - Tasked with determining whether to amend the UDRP and URS to allow access to and use of these mechanisms by Intergovernmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs) or
 - Whether a separate, narrowly-tailored dispute resolution procedure, modeled on the UDRP/URS, that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed.

What's the current status of this PDP?

Agenda Item 3

What's the current status of this PDP?

- ⦿ PDP has been meeting and deliberating since mid 2014
- ⦿ Has considered the questions posed in the charter and reviewed the substantial amount of existing work already completed on the topic
- ⦿ Requested and received expert legal advice on the topic of IGO immunity
- ⦿ On 20 January 2017, the WG published its Initial Report for public comment
 - 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

PDP WG Preliminary Recommendations

- ⦿ *Recommendation 1:* 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.
- ⦿ *Recommendation 2:* 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

PDP WG Preliminary Recommendations, cont.

- ⦿ *Recommendation 3**: 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.**

* Note, after considering public comment, the WG has determined the original preliminary recommendation 3 should be deleted. What is presented as recommendation 3 now was previously recommendation 4.

PDP WG Preliminary Recommendations, cont.

- ⊙ *Recommendation 3, cont.*: 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 has considered input received and is continuing to discuss benefits and disadvantages, **particularly around Option 2**. The WG is also discussing ways **to limit appeals to disposition of the ownership of the domain name**.

PDP WG Preliminary Recommendations, cont.

- ⦿ *Recommendation 4:* 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.

What are the next steps?

Agenda Item 4

What are the next steps

- ⦿ The PDP WG is focusing on the options as it relates to Recommendation 3 (e.g., *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*).
- ⦿ The PDP WG is seeking to finalize discussion and recommendations on this topic, and prepare its Final Report prior to ICANN60.
- ⦿ Normal PDP steps expected afterwards (e.g., consideration and adoption by GNSO Council, public comment, consideration and adoption by ICANN Board, implementation).

How to get involved

Agenda Item 5

How to get involved

- ⦿ The PDP WG is nearing completion of its work, so joining WG at this juncture likely impractical.
- ⦿ The PDP WG, depending on the scope of changes made to its preliminary recommendations, may consider publishing its Final Report for public comment.

Q&A

Agenda Item 6

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