

IGO-INGO Curative Rights Protection Mechanisms PDP Working Group

Section 3.7 Appeal, January 11, 2018

By: George Kirikos

A. INTRODUCTION

This is an appeal of the actions of the Co-Chairs of the IGO-INGO Curative Rights Protection Mechanisms PDP Working Group, as permitted by Section 3.7 of the GNSO Working Group Guidelines ("WGG").¹

B. REMEDIES SOUGHT

1. The specific remedies sought are:

- (a) Proposed use of second anonymous poll by Co-Chairs shall be disallowed, as it is inconsistent with the WGG;
- (b) Past use of first anonymous poll by Co-Chairs shall be declared null and void, as it was inconsistent with the WGG; and
- (c) The GNSO shall appoint a completely neutral and independent Chair as allowed for under Section 6.1.3 of the WGG. In the alternative, that the GNSO use a professional facilitator to help ensure neutrality and promote consensus as allowed for under Section 6.1.3.

C. SUMMARY OF KEY PRINCIPLES AND ARGUMENTS

2. A brief overview of the key principles and arguments which are later discussed in depth:

- (a) there is a presumption of full transparency in all working groups
- (b) any deviation from full transparency is extraordinary, and must be at the request of the entire working group, and not just at the request and/or discretion of the Co-Chairs
- (c) there are precedents within ICANN specifically against anonymous participation and/or anonymous polling
- (d) the historical record of development of the WGG explained the circumstances where deviation from full transparency can be justified, and those circumstances are not present in this PDP (i.e. fear of retribution by oppressive government regimes)

¹ See: <https://gns0.icann.org/en/council/annex-1-gns0-wg-guidelines-01sep16-en.pdf>

- (e) the WGG are clear that whenever polls are taken, they must not be anonymous
- (f) first anonymous poll was already treated as a vote, contrary to the WGG
- (g) Co-Chairs are required to be neutral and refrain from promoting a specific agenda, but have failed to meet that standard
- (h) this PDP appears at risk of going outside the scope of its charter

D. VIEWS OF OTHER WORKING GROUP MEMBERS

3. I am but one of 7 members of the PDP Working Group who've openly opposed the anonymous poll as proposed by the Co-Chairs. The others are:

Name	Excerpt of Comments (footnotes link to full comments)
Mike Rodenbaugh ²	"I agree with George on this. I have seen no reasoning to support an anonymous poll, which seems exactly opposite to ICANN's mission of developing policy transparently -- always."
Paul Keating ³	"In EACH Poll the following conditions are applicable: ... Participant must acknowledge that their identity and response are public and will become part of the record of the WG."
Zak Muscovitch ⁴	"It seems to me to be counterproductive to proceed with the proposed anonymous poll in light of the Guidelines and precedent which this may set, particularly when there appears to be considerable opposition to this approach."
Nat Cohen ⁵	"I support Zak's statement."
Paul Tattersfield ⁶	"Given these additional issues I too support George's request for a formal review of the co-chairs decision to hold another anonymous poll at this stage."
Jay Chapman ⁷	"I agree, Zak, and would also request the co-chairs to reconsider."

It is worth noting that Mike Rodenbaugh was a member of the team that created the WGG, as noted in point 7 below. No other member of the IGO PDP working group other than the Co-Chairs themselves have expressed support for anonymous polling.

2 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001006.html>

3 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001009.html>

4 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001014.html>

5 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001017.html>

6 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001018.html>

7 See: <http://mm.icann.org/pipermail/gnso-igo-ingo-crp/2017-December/001021.html>

E. ANALYSIS

4. Section 4.1 of the WGG is unambiguous that:

“There is a presumption of full transparency in all WGs.”

This clause is capable of only one interpretation, namely complete transparency, and is consistent with long-standing principles of transparency and accountability both within the GNSO (the policymaking body of ICANN), and ICANN itself. Section 3.1 of ICANN's bylaws⁸ clearly states that:

“ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner....”

and the WGG are consistent with those bylaws. Section 2.1.3.1 of the WGG also states that:

“Members of the Working Group should be informed that all Working Groups are normally expected to operate under the principles of transparency and openness, which means, inter alia, that mailing lists are publicly archived, meetings are normally recorded and/or transcribed, and SOIs are required from Working Group participants which will be publicly posted.”

Transparency is an important principle which is intertwined with accountability. Anonymous input is not consistent with either transparency or accountability.

The recent book *Principles* by successful investor Ray Dalio advocates for transparency, in alignment with ICANN's own fundamental and long-standing principles, writing:

“1.3 Create an environment in which everyone has the right to understand what makes sense and no one has the right to hold a critical opinion without speaking up.

Whether people have the independence and character to fight for the best answers will depend upon their nature, but you can encourage them by creating an atmosphere in which everyone's first thought is to ask: “Is it true?”

(a) Speak up, own it, or get out. In an idea meritocracy, openness is a responsibility; you not only have the privilege to speak up and “fight for right” but are obliged to do so. This extends especially to principles. Just like everything else, principles need to be questioned and debated. What you're not allowed to do is complain and criticize privately -- either to others or in your own head. If you can't fulfill this obligation, then you must go.” (p. 329)

5. To understand the historical context of transparency at ICANN, long before the WGG were established, anonymity of input into policymaking within the GNSO was specifically considered, and rejected. The Minutes of the August 25, 2005 GNSO Council meeting⁹ make that clear, stating:

“Comments on Methodology

8 See: <https://www.icann.org/resources/pages/governance/bylaws-en/#article3>

9 See: <https://gns0.icann.org/en/meetings/minutes-gns0-25aug05.html>

Concerns were expressed with regard to anonymity and confidentiality of input and the question was whether transparency, a characteristic of the GNSO processes should continue. There was general agreement that people should be accountable for their contributions, and that there should be open dialogue. The aim was continual improvement and that required open dialogue contrary to anonymous submission which killed open and transparent discussion, one of ICANN's strengths."

6. Prior to the establishment of the WGG, anonymous participation and comments were explicitly rejected. For example, in the Post-Expiration Domain Name Recovery (PEDNR) drafting team conference call of August 24, 2010 Transcript¹⁰, there are multiple instances of the topic arising:

James Bladel: "Two, maybe mentioned a little bit about you know the anonymous participation, whether we want to discount or discard those responses or try to follow up with them if there are other identifying information and see if we can't get those folks to identify themselves as per the ICANN working group conventions and bylaws." (pp. 24-25)

James Bladel: "But I feel very strongly about anonymous participation in ICANN and I think that you know that goes hand in hand with making sure that everyone's interests are known and public.

You know so I think that you know the strictest - you know taking the recommendations and the bylaws or the operating rules or whatever with a grain of salt, I think that doesn't sit well with me." (p. 29)

Alan Greenberg: "But what I was saying was I really have no trouble ignoring or extracting the number of people who are completely anonymous that didn't provide a name or an email address." (p. 31)

7. The WGG were first developed within the GNSO's Policy Process Steering Committee ("PPSC")¹¹ and specifically the Working Group Work Team ("WG-WT").¹² Of note, IGO PDP member Mike Rodenbaugh was one of the members¹³ of the PPSC that developed the WGG, and agreed that the use of an anonymous poll can't be justified in this PDP (see point 3 above).

8. Anonymity of input into policymaking within the GNSO is not an *uncontemplated edge case* within the WGG. Rather, the WG-WT of the PPSC *specifically considered and rejected* that scenario. For example, Tim Ruiz stated¹⁴:

"We can discuss further, but I strongly believe that all stated views and claims of consensus of any level MUST indicate the specific WG members in support. Anyone that does not want to be identified with a particular view should not be counted, and I question why they would be participating in the first place. We cannot have anonymous participation. So, I

10 See: <https://gns0.icann.org/en/meetings/transcript-pednr-24aug10-en.pdf>

11 See: <https://community.icann.org/display/gnsoppsc/PPSC+-+Home>

12 See: <https://community.icann.org/display/gnsoppsc/6.+Work+Teams>

13 See: <https://community.icann.org/display/gnsoppsc/4.+Members>

14 See: <https://forum.icann.org/lists/gns0-ppsc/msg00215.html>

believe there is more work that needs to be done in this section. These WGs are not setting optional standards, they are establishing mandatory regulations for contracted parties and for registrants.”

This comment by Mr. Ruiz was expressly debated when determining the “Standard Methodology for Making Decisions” in the WGG, see yellow highlighted text below the August 24, 2010 draft Section 3.6.¹⁵

9. While Section 3.6 of the WGG states:

“Based upon the WG’s needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.” (bottom of page 9)

the first sentence of that paragraph is actually only to be used in very limited circumstances, as seen in the historical documents that led to the development of the WGG. As discussed in the PPSC WG-WT meeting of May 12, 2010¹⁶:

Cheryl Langdon-Orr: “So it’s an automatic opt in. If you want to opt out, you've got to say so, and the work group has to know about it.” (also see pp. 39-44 for further discussion)

which means that even when names are not explicitly associated with a final report’s “Consensus”, one still has to be transparent about who is opting out of that. That opt-out only takes place *after* the consensus has been established via the fully transparent procedures.

The specific scenario that the drafters of the WGG contemplated, where that language would ever even come into play, is discussed in that same transcript:

J. Scott Evans: “And Avri, the only way I can see this happening is if maybe you are from a government that has a very oppressive... [skip irrelevant text] ...not want to. And I could think of you might really advocate for something, but not want to be on the public records for political reasons.” (p. 44)

Retaliation by oppressive governments/regimes is not a factor in this current PDP’s work and with its current membership. There are no politically sensitive topics involved that warrant anonymity.

As for the second sentence of the WGG above, it makes clear that whenever polls are taken, they must not be anonymous. Names must be explicitly linked with a view or position. The Co-Chairs seem to not be parsing that statement correctly, attempting to justify an anonymous poll that is not permitted.

10. For any deviation from the presumption of “full transparency”, the WGG state in Section 4.1:

15 See: <https://community.icann.org/display/gnsoppsc/GNSO+Working+Group+Guidelines+-+Including+Comments+-+Updated+24+August+2010>

16 See: <https://gnsso.icann.org/en/meetings/transcript-ppsc-12may10-en.pdf>

“In the extraordinary event that the WG should require confidentiality, it is up to that WG to propose a set of rules and procedures in collaboration with the CO.”

This had not been done prior to the first anonymous poll conducted by the Co-Chairs (thereby making that first poll inconsistent with the WGG, and thus null and void).

The WGG language above is clear that it is up to the **working group** to propose those set of rules and procedures, and not just via the unilateral will/discretion of the Co-Chairs. Thus, to the extent that the letter to the GNSO Council by the Co-Chairs dated December 21, 2017¹⁷ represents an “extraordinary event” and request to deviate from full transparency, it must be rejected on the basis that it is not actually a request from the **working group** as required by the WGG – it is only a request from the Co-Chairs, and does not represent the views of the working group.

11. To the extent that Section 3.6 of the WGG even allows for the use of polls, it only contemplates them in a “rare case” and only **after** “several iterations” of steps (i) and (ii) (making an evaluation of the designation, discussion of it, reevaluation and updating of the designation, etc.), or that there are time pressures. The steps (i) and (ii) have never even been attempted by the Co-Chairs. Also, there is no imminent deadline that requires interfering with the natural process. IGOs have filed 10 UDRP complaints historically, for example, and the completion of this PDP has no impact on their ability to file more of them. They are not waiting for our work to complete in order to launch a large number of UDRP or URS complaints.

If there is any Chair discretion for the use of polls *at the appropriate time*, there is no discretion with regards to anonymous ones. They are not allowed, as expressly stated at the bottom of page 9 of the WGG:

“However, in all other cases ... their name must be explicitly linked, especially in those cases where polls where (sic) taken.”

as was previously discussed in point 9 above.

12. The WGG go on to say:

“If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology it should be affirmatively stated in the WG Charter.” (bottom of page 9 and top of 10)

Any deviation from the standard methodology has not been authorized by the GNSO in the PDP Charter. Also, as noted in point 10 above, the issue of confidentiality is entirely separate from that of the standard methodology (deviations from full transparency happen via Section 4.1, and are not at the discretion of the Co-Chairs).

If there is to be any deviation from the standard methodology (and one has not been properly justified), one must select an alternative methodology that minimizes the deviation. It is difficult to imagine a

¹⁷ See: <https://mm.icann.org/pipermail/council/2017-December/020781.html>

greater deviation from standard methodology than the use of anonymous polling. Alternatives would need to be carefully considered and explored (which has not been done), rather than jump to the proposed methodology advocated by the Co-Chairs.

13. After adoption of the WGG, there is further precedent against anonymous polls, namely in the RDS PDP. The February 1, 2017 post¹⁸ by Lisa Phifer establishes why polls, if used, must not be anonymous. Here's the salient text:

“While some WG members may not be fully comfortable with inclusion of WG names and timestamps in future poll results, the leadership team believes this decision reflects the majority desire for complete transparency in all WG deliberations- including these informal polls - and aligns with the GNSO Working Group Guidelines principles of transparency and accountability. As stated previously, member responses to these informal polls are assumed to be provided in their individual capacity and not as representative of any groups to which they belong.”

Given that the RDS PDP is one of the most divisive PDPs in ICANN’s history, it’s worth noting that the responses to that post were uniformly positive.¹⁹

In this PDP’s Co-Chairs’ letter to the GNSO Council of December 21, 2017, they attempt to argue that the circumstances of that RDS PDP are different. That could not be further from the truth. The principles of full transparency and accountability are universal and must be followed by all working groups, to be consistent with the WGG. “Comfort” of working group members in desiring confidentiality is simply not a credible justification.

14. In their December 21, 2017 letter to the GNSO Council, after this Formal Appeal was started, the Co-Chairs appear to argue that the working group has been captured, stating that participants are “largely associated with a single domain industry sector” or that somehow “regular” participants are preventing any other participants from expressing their views. Those are very serious allegations, and are not correct. Nothing prevents anyone from attending the working group calls or participating on the mailing list. Full and equal opportunities were provided (as Section 3.3 of the WGG) for anyone to provide input.

Section 3.2 of the WGG also explicitly says:

“Similarly, if the Chair is of the opinion that there is over-representation to the point of capture, he/she should inform the Chartering Organization.”

They have never done so, to my knowledge. Furthermore, over-representation, if actually present, is solved through greater outreach and expanded membership, not via anonymous polling.

The actual attendance record²⁰ of the most recent call demonstrates no capture, and shows good

18 See: <http://mm.icann.org/pipermail/gns0-rds-pdp-wg/2017-February/002167.html>

19 See: <http://mm.icann.org/pipermail/gns0-rds-pdp-wg/2017-February/date.html> (subject is "Update to RDS PDP polling process" -- a few messages at the top of that page)

20 See: <http://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/000983.html> and

diversity:

George Kirikos – individual
 Petter Rindforth – IPC
 Paul Tattersfield – individual
 Philip Corwin – RySG
 Jay Chapman – BC
 Nat Cohen – BC
 Zak Muscovitch – BC
 Osvaldo Novoa – ISPCP
 Mike Rodenbaugh – IPC
 Gary Campbell - GAC

While not in attendance at that call (but an active member of the mailing list), Paul Keating is listed with the NCUC.

Regardless of which constituency or background a participant is from, their work is expected to follow (see Section 3.4 of the WGG) the ICANN Expected Standards of Behavior²¹ which includes the statement that they:

“Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability and security of the Internet’s system of unique identifiers, **irrespective of personal interests and the interests of the entity to which an individual might owe their appointment.**” (emphasis added)

Thus, any personal interests of any member are subordinate to their higher duty on what is in the overall best interest of Internet users and the stability and security of the Internet’s system of unique identifiers. If the Co-Chairs feel that anyone is not acting in accordance with that undertaking, they should challenge that participant accordingly. Simply expressing thoughtful and well-reasoned disagreement with the Co-Chairs on a matter of process or policy is not evidence of violation of this undertaking, though.

Indeed, one of the Co-Chairs (Phil Corwin) used to represent the Internet Commerce Association until recently. The fact that other members of the PDP whose personal interests might be aligned with or sympathetic to that organization expressed entirely different views than Mr. Corwin at that time (before he joined Verisign) demonstrates that participants are not acting as a bloc to determine outcomes and capture any processes. If there was “capture”, then Mr. Corwin would have had to have been a part of such capture, prior to his move to Verisign, which is simply not credible.

If capture was truly a concern of the Co-Chairs, one alternative procedure that is entirely consistent

<https://community.icann.org/pages/viewpage.action?pageId=48347895> for last call attendance and full membership list, respectively.

21 See: <https://www.icann.org/resources/pages/expected-standards-2012-05-15-en>

with the principles of transparency would be to have a second Public Comment period.

15. The ICANN Expected Standards of Behavior also state that participants shall:

“Listen to the views of all stakeholders when considering policy issues. ICANN is a unique multi-stakeholder environment. Those who take part in the ICANN process must acknowledge the importance of all stakeholders and seek to understand their points of view.

Work to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN’s responsibility. The ICANN model is based on a bottom-up, consensus driven approach to policy development. Those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants.”

Simply showing up to vote in a poll anonymously, and not participate in any other manner in a working group, is incompatible with those requirements. Rather than attempting to form a consensus, such polls simply capture a snapshot that cements divisions, rather than reconciling them.

16. The Co-Chairs did not seek to use a poll for determining the consensus level of support for all the PDP recommendations (e.g. the recommendation about whether ICANN should explore subsidizing UDRP/URS complaints for IGOs). This undermines the suggestion by the Co-Chairs that any poll at all is required due to lack of participation by some members, and demonstrates instead that the poll is being used strategically to impact the outcome of a single recommendation. If there was lack of participation, it should have affected all recommendations equally, and not just a single recommendation.

17. Despite the claims by the Co-Chairs that the polls would not be treated as votes (in violation of the WGG), that’s exactly how the first poll was treated. At the Abu Dhabi meeting (ICANN 60), the numeric totals were explicitly called “votes”, as per the October 29, 2017 GNSO meeting transcript:²²

Phil Corwin: “But the **voting** – the **vote totals** I’m showing you reflect about 2/3 of the final membership of the working group so this is not a super large working group, I think there’s 19 members right now including the co-chairs. And so – and of the active ones, about 2/3 participated in the – I may be messing up that final number, staff can correct me.”
(p. 7 of part 2, emphasis added)

Since the first poll was treated as a vote, that’s yet another reason for it to be declared null and void (even if it had been conducted transparently without anonymity, which wasn’t the case).

It is not credible by the Co-Chairs to now assert that a future poll would not be treated in the exact same manner, namely as a vote, given they *already* openly treated the prior one in that manner. It is clear that it would be used to rebut any challenge to the consensus designations by the Co-Chairs, as the Co-Chairs would point to anonymous poll results and claim with finality “the members have

²² See: <https://schedule.icann.org/event/CbId/gnso-working-session> and https://sched.ws/hosted_files/icann60abudhabi2017/3f/Transcript%20GNSO%20Working%20Session%20part%202%2029%20Oct.pdf (page 7 of part 2)

voted,” preempting steps (i) and (ii) of the process described in Section 3.6 of the WGG.

In addition, the historical record shows changing narratives by ICANN staff and the Co-Chairs as to how the poll would be used. It is not credible for them to now claim that the polls aren’t in fact the consensus call (rather than informing the Co-Chairs in preparation for a consensus call). For example, in the transcript of our November 30, 2017 call:²³

Mary Wong: “In which case, and I’ll end with this, then given the three remaining meetings, if we can get that done and launch a formal consensus call on all the recommendations before the break at the end of the year.....

So we’re looking at three more meetings, possibly opening a consensus call before Christmas, closing it out around the 10th of January....” (p. 27)

which is consistent with the second anonymous poll being treated as a “consensus call”, one launching just before Christmas.

Then Co-Chair Phil Corwin followed up with:

Phil Corwin: “So we’re aiming to basically wrap up discussion by the week of - the week before Christmas and put out a consensus call and give working group members two weeks to respond to that.” (page 28)

In a December 18, 2017 posting²⁴ to the mailing list on behalf of the Co-Chairs, the proposed length of time to respond to the second anonymous poll was exactly two weeks, and would have started the week before Christmas, matching up identically with the November statements.

Thus, it’s not credible for the Co-Chairs to later assert that the anonymous poll’s usage would be any different from their long-established plan. All that is changing is their narrative, to justify it ex-post after they already established and decided upon a course of action, rather than ex-ante before their plans were in place.

Despite the Co-Chairs' changing narratives, they can't “unring the bell” now.

18. Section 6.1.3 of the WGG sets a standard for the Chair that the current Co-Chairs have not met, and this supports a call for the GNSO Council to “appoint a completely neutral and independent Chair” as allowed for by the guidelines. In particular, the WGG state:

“6.1.3 Purpose, Importance, and Expectations of the Chair

...

The Chair is expected to assume a neutral role, refrain from promoting a specific agenda, and ensure fair treatment of all opinions and objectivity in identifying areas of agreement. This does not mean that a Chair experienced in the subject matter cannot express an opinion, but he or she should be explicit about the fact that a personal opinion or view is being stated, instead of a ‘ruling of the chair.’ However, a Chair should not become an

23 See: <https://gns0.icann.org/en/meetings/transcript-igo-ingo-crp-access-30nov17-en.pdf>

24 See: <http://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/000988.html>

advocate for any specific position.”

The Co-Chairs failed to be neutral in the run-up to the first anonymous survey (itself a breach of the WGG), when they posted a one-sided document that was hardly neutral and objective, but instead promoted their preferred option. That September 27, 2017 document²⁵ is written from the perspectives of “Co-Chairs”, and not as individual members. Without repeating all the arguments that followed on the mailing list and subsequent calls, that document is clearly not neutral, and was designed to attack the options that were not preferred by the Co-Chairs. Rather than persuade participants through arguments based on logic, law, evidence and merit, the Co-Chairs instead repeatedly stated that the entire report would be rejected by GNSO Council if their preferred option was not accepted. The film-based metaphor of “Thelma and Louise” was later used to suggest that opponents of their preferred option would be in effect committing suicide, driving the entire working group over a cliff. That is inappropriate.

This reinforces the need for the GNSO to appoint a completely neutral and independent chair, rather than permit further attempts by the Co-Chairs to advantage their own preferred options through so-called “discretionary choices” in the remainder of this PDP.

Policymaking should be robust and merit-based, leading to the same outcomes regardless of who performs the administrative duties of Chair. Processes should not be open to discretionary manipulation to advance a particular outcome which could not otherwise be achieved following the natural and mainstream process. Deviation from standard processes invite criticism.

19. Without delving too deeply into matters of policy (rather than process), it is unclear that some of the specific recommendations being proposed to be surveyed even fit within the IGO PDP Charter. At this point, the emerging leading proposal appears to be the one by Zak Muscovitch²⁶, to hand-off the “quirk of process” we discovered, which affects domain name registrants’ access to courts and judicial review, to the larger RPM PDP, as solutions would fit within the scope of their charter.

However, with regards to alternative proposals (including his preferred option), one of the Co-Chairs, Phil Corwin, has openly stated²⁷:

“I have viewed that as a **new protection for registrants, not IGOs**, as in that scenario under current UDRP policy the stay on the UDRP decision would be lifted and the domain would be transferred or extinguished.” (emphasis added)

That appears entirely inconsistent with our (amended) IGO PDP WG Charter²⁸ which was tasked to:

“provide the GNSO Council with policy recommendations regarding whether to amend the

25 See: <http://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-September/000847.html> (the PDF attachment to the email)

26 See: <http://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/000977.html>

27 See: <http://mm.icann.org/pipermail/gns0-igo-ingo-crp/2017-December/000997.html>

28 See: <https://community.icann.org/display/gns0icrpmpdp/WG+Charter> and <https://community.icann.org/download/attachments/48347887/WG%20Charter%20-%20as%20amended%2016%20April%202015.pdf?version=1&modificationDate=1483721507000&api=v2>

UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs and, if so in what respects or whether a separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed.” (pp. 2-3)

This PDP was not chartered to improve protections for registrants. A policy recommendation to do so, only in the context of disputes involving IGOs, appears to go beyond the IGO PDP’s limited charter and conflicts with the work of the RPM PDP, which is best suited to handle that “quirk of process” for all disputes, rather than just those involving IGOs. Indeed, the IGO PDP Charter specifically says that the working group should consider:

“The interplay between the topic under consideration in this PDP and the forthcoming GNSO review of the UDRP, URS and other rights-protection mechanisms;” (p. 3)

Appointment of a completely neutral and independent Chair would thus help ensure that this PDP stays within the actual scope of its charter.

F. CONCLUSION

20. In light of the above, it is respectfully requested that the three specific remedies be provided in an expeditious manner, so that the work of this PDP can be concluded according to the WGG and ICANN/GNSO principles of transparency and accountability. Once again, they are:

- (a) Proposed use of second anonymous poll by Co-Chairs shall be disallowed, as it is inconsistent with the WGGs.
- (b) Past use of first anonymous poll by Co-Chairs shall be declared null and void, as it was inconsistent with the WGG.
- (c) The GNSO shall appoint a completely neutral and independent Chair as allowed for under Section 6.1.3 of the WGG. In the alternative, that the GNSO use a professional facilitator to help ensure neutrality and promote consensus as allowed for under Section 6.1.3.