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# IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process

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## **WHAT CAN I EXPECT AT ICANN57 IN RELATION TO THIS TOPIC?**

The Working Group (WG) will be holding an open community session on Monday 7 November (from 09:00-10:30). At the meeting, the WG will present its likely preliminary recommendations to the community for feedback. The WG plans to finalize these recommendations and publish an Initial Report for public comment shortly following ICANN57.

## **WHAT IS THIS ABOUT?**

This PDP was initiated in June 2014 by the GNSO Council to consider whether existing curative rights protection mechanisms (namely, the Uniform Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) procedure) should be modified to address the needs of International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs) in order to protect their names and acronyms at the second level in both existing and new gTLDs.

## **WHY IS THIS IMPORTANT?**

Protecting the names and acronyms of IGOs and INGOs at the top and second levels has been a long-standing issue over the course of the New gTLD Program. The GNSO had previously recommended certain protective measures to the ICANN Board, but those that pertained to IGO acronyms and certain names and acronyms of the Red Cross movement differed from the advice provided by the Government Advisory Committee's (GAC) to the Board. In early 2014, the Board tasked its New gTLD Program Committee (NGPC) to develop a proposal that would take into account both the GNSO's recommendations and GAC advice, while adopting those GNSO recommendations that are consistent with GAC advice received. In addition, the NGPC and the GNSO Council discussed the possibility of the GNSO amending its remaining recommendations so as to reconcile them with GAC advice, in accordance with the prescribed procedure in the GNSO's PDP Manual.

This new PDP is not dependent on the outcome of those discussions that focus on the issue of preventive (i.e. before a third party registers a domain name) rather than on curative (i.e. following a third party domain name registration) protections. However, a small group of Board, GAC and IGO representatives have been working on a proposal covering both types of protections. This proposal was delivered to the GAC and the GNSO for their consideration in early October.

### WHAT IS THE CURRENT STATUS OF THIS PROJECT?

The Charter directs the WG to consider whether the UDRP and URS should be amended to resolve the problems faced by IGOs and/or INGOs and if so in what way; or if a separate, narrowly tailored dispute resolution procedure should be developed to apply only to IGOs and/or INGOs. The WG reached preliminary agreement on a number of points, including the basis upon which an IGO would have standing to file a complaint under the existing scope of the UDRP and URS. The WG also completed discussions on the issue of IGO immunity from the jurisdiction of national courts for purposes of an appeal from a UDRP or URS decision, based on advice obtained from an external subject matter expert on international law. It is now reviewing those parts of the small group proposal that touch on curative rights protections, to determine whether and how the proposal affects the WG's preliminary conclusions on this topic.

### WHAT ARE THE EXPECTED NEXT STEPS?

The WG hopes to complete its Initial Report shortly after ICANN57 and to put its preliminary recommendations out for public comments before the end of this calendar year.

### HOW CAN I GET INVOLVED?

Although it is at a fairly late stage in its work, the Working Group continues to be open to anyone; please contact the GNSO Secretariat to be added to the mailing list ([gnso.secretariat@gnso.ICANN.org](mailto:gnso.secretariat@gnso.ICANN.org)). You can also attend the WG's open session on Monday 7 November, to provide your feedback on the WG's likely preliminary recommendations.

### MORE INFORMATION

- GNSO project page with relevant dates and background: [gnso.ICANN.org/en/group-activities](https://gnso.ICANN.org/en/group-activities)
- IGO-INGO Curative Rights Protection WG collaborative Wiki Space with meeting records and draft documents: [community.ICANN.org](https://community.ICANN.org)

## **BACKGROUND**

IGOs and INGOs are currently unable to fully use either the UDRP or URS for a number of reasons. For IGOs, the requirement that a complainant submit to the jurisdiction of a national court is alleged to jeopardize an IGO's jurisdictional immunity status. For both IGOs and INGOs, the fact that the UDRP and URS were designed as protective mechanisms for trademark owners currently means that they cannot utilize these procedures unless they also own trademarks in their names and/or acronyms. Both types of organizations are also concerned about the cost involved in using these procedures, which would mean diverting resources and funds from their primary missions. The GAC has issued advice on the topic which the WG is taking into account in its deliberations, along with the recently received proposal from the Board-GAC-IGO small group.

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