

## Policy Development Process (PDP) Update

### IGO & INGO Access to the Curative Rights Protection Mechanisms of the UDRP & URS

July 2017

#### Upcoming Important Dates

The Working Group (WG) has completed its review of all forty-six comments received (including from the GAC) to its Initial Report that had been published for public comment in late January 2017 (closed on 31 March). The report contains all the WG's preliminary recommendations and a few open questions for which the WG sought community input. The WG is now wrapping up its discussions on whether new or additional facts, legal arguments and perspectives were brought out through the public comments that warrant modification of any of the WG's preliminary recommendations. The next step will be to prepare the final recommendations to be included in the Final Report that is submitted to the GNSO Council. The WG hopes to complete its Final Report by ICANN60 and welcomes GAC and IGO participation in this final phase of its work.

#### Summary

This Policy Development Process (PDP) originated in a consensus recommendation from the GNSO's prior PDP Working Group on the Protection of International Organization Names in All gTLDs (IGO-INGO WG). This was for the GNSO Council to request an Issue Report, as a preceding step to a possible PDP to explore possible amendments to existing curative rights protection mechanisms, i.e. the Uniform Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension (URS) procedure, to address the specific needs of International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs).

#### Engagement Opportunity Status



On 2 June 2014 the GNSO Council [resolved](#) to initiate the PDP following its review of the [Final Issue Report](#), and on 25 June the GNSO Council [adopted](#) the charter for the PDP Working Group to be formed. On 20 January 2017 the WG [published](#) its Initial Report for public comment. As part of its preparation of its preliminary recommendations, the WG consulted an external legal expert on the question of IGO jurisdictional immunity, and reviewed the IGO Small Group Proposal that was submitted to the GAC and the GNSO Council in October 2016. The full text of the expert's legal opinion and the IGO Small Group Proposal are included as Annexes to the WG's Initial Report.

The WG's preliminary recommendations include:

- (1) No changes proposed to the UDRP or URS;
- (2) For IGOs, standing to file under either procedure may be demonstrated by fulfilling the communications and notification procedure under Article 6<sup>ter</sup> of the Paris Convention for the Protection of Industrial Property;
- (3) Creation of a Policy Guidance document for the UDRP and URS clarifying –
  - (a) the procedural options available to IGOs in considering whether and how to file a complaint (e.g. via an assignee, agent or licensee)
  - (b) how IGOs may satisfy the standing requirement
  - (c) that the limitation contained in Article 6<sup>ter</sup>(1)(c) should be taken into account by panelists in relation to questions of bad faith when an IGO files a complaint, and
  - (d) that no changes or specific new process are recommended for INGOs.
- (3) On the question of IGO jurisdictional immunity, while the WG does not recommend any change to the Mutual Jurisdiction clause in the UDRP or URS, it suggests two options for dealing with the initial panel decision in the case where an appeal from that decision is brought by a losing respondent in a national court and the IGO succeeds in pleading jurisdictional immunity in that court. The two options are that –
  - (a) the initial panel decision is vitiated, or
  - (b) the initial panel decision may be brought before an international arbitral tribunal for a de novo review and determination.

Finally, the WG recommended that ICANN investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS at no or nominal cost, in line with GAC advice on the topic.

Input was received from the GAC, the United States Government and a number of IGOs during the public comment period for the Initial Report, as well as from various GNSO Stakeholder Groups and Constituencies and community members. The WG has reviewed all comments received and is considering which of its initial recommendations may need amending based on the community's input. The WG will also consider a suggestion made to it at ICANN59, to publish its draft Final Report for a further public comment period prior to submission to the GNSO Council.

#### **Additional Information:**

- Public comment announcement and forum: <https://www.icann.org/public-comments/igo-ingo-crp-access-initial-2017-01-20-en>
- Text of WG Initial Report: <https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf>
- PDP Charter (as adopted by the GNSO Council on 25 June 2014): <http://gnso.icann.org/en/drafts/igo-ingo-crp-access-charter-24jun14-en.pdf>
- Amended Charter provisions: <http://gnso.icann.org/en/council/resolutions#20150416-3>
- WG wiki space including background documents and latest updates on the WG's meetings and deliberations: <https://community.icann.org/x/37rhAg>

