**COMPARISON OF AND NOTES ON THE DIFFERENCES BETWEEN GNSO POLICY RECOMMENDATIONS, GAC ADVICE AND THE RECENT SMALL GROUP PROPOSAL**

**10 October 2016**

I. GENERAL:

There are two types of protections under consideration, each of which may be dealt with differently under the GNSO’s processes because of how these were treated by the original (2012-2013) GNSO PDP. Accordingly, it may be easier to consider the small group proposal in two parts, with each requiring a different procedural resolution. However, while the two types of protections are distinct in nature, it may be necessary in considering next steps and consequences to view them in combination – i.e. any “preventative” protections conferred may be more effective when combined with some form of curative rights protection.

Current, known examples of the first type – the so-called **“preventative”** protections - include the temporary reservation of IGO acronyms under Specification 5 of the New gTLD Registry Agreement; and in the trademark context, sunrise registrations and pre-registration Claims Notices.

***Recommendations regarding some form of “preventative” protections from the original GNSO PDP were approved by the GNSO Council in November 2013[[1]](#footnote-1). These recommendations remain pending before the ICANN Board. Should the GNSO Council decide to propose modifications to the approved recommendations, the process to be followed is outlined in Section 16 of the PDP Manual[[2]](#footnote-2) (see further note under IV, below).***

The second type of protections are the **“curative rights”** processes; currently, the Uniform Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension procedure (URS). The original GNSO PDP did not include specific recommendations in this regard.

***The question of appropriate curative protections for IGOs (and INGOs) is currently being considered by the ongoing IGO-INGO Curative Rights PDP Working Group. It is expected that the GNSO Council will refer these aspects of the small group proposal to this Working Group. The Board has stated that it will not act on GAC advice regarding curative rights until the PDP is concluded.***

II. PREVENTATIVE PROTECTIONS – A COMPARISON:

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| **Initial GNSO policy recommendations** | **GAC advice** | **Small group proposal** |
| Second level protection in the form of:1. 90 days TMCH claims notice for IGOs whose acronyms are on the GAC list of 22 March 2013[[3]](#footnote-3)

**Note:*** The PDP WG did not fully discuss the question whether the current TMCH remains the best mechanism, and whether it will continue to operate beyond the current 2012 round (the PDP recommendations were issued in November 2013, as the first wave of new gTLDs were being delegated)
 | Second level protection in the form of:1. Permanent system of notifications to both the potential registrant of a matching domain and the relevant IGO;
2. Allow the IGO a timely opportunity to effectively prevent potential misuse and confusion;
3. Allow for final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and
4. Be at no cost or of a nominal cost only to the IGO
 | Second level protection in the form of:1. A mechanism functionally equivalent to the current TMCH, for IGOs on the GAC list (as updated from time to time by the GAC) to submit up to two acronyms per IGO name in up to two different languages, at no cost
2. Participating IGOs to receive email notifications of registrations corresponding to their submitted IGO Acronyms for the duration of the existence of that functionally equivalent mechanism[[4]](#footnote-4)
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**Notes:**

* The differences between the GNSO policy recommendations in this regard essentially revolve around the duration of the Notice of Registered Name that is sent to the IGO, and whether it is the TMCH that is to be used for this purpose.
* Unlike the trademark context, no sunrise period or pre-registration Claims Notice is being proposed.

III. CURATIVE RIGHTS PROTECTIONS – A COMPARISON:

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| --- | --- | --- |
| **Initial GNSO policy recommendations** | **GAC advice** | **Small group proposal** |
| No specific recommendation – called for an Issue Report (now completed)[[5]](#footnote-5)**Notes:*** Issue Report resulted in the launch of the ongoing IGO-INGO Curative Rights PDP
* This PDP Working Group intends to complete its Initial Report for public comment shortly after ICANN57
 | See #3 & #4 above: *“final and binding determination by an independent third party … at no cost or nominal cost only to the IGO”* | Two different forms of dispute resolution:1. A rapid relief mechanism in clear-cut cases of abuse, in situations where it would not be reasonable for the IGO to use the agreed Dispute Resolution Mechanism, subject to specific conditions
2. A separate (i.e., separate from the existing UDRP) process to resolve claims of abuse of domains registered and used in situations where:
	1. the registrant is pretending to be the IGO or that are otherwise likely to result in fraud or deception, and where the domain is either
		1. identical to an IGO acronym; or
		2. confusingly similar to an IGO acronym; or
		3. contains the IGO acronym.

**Notes on 1:*** The rapid relief mechanism would apply only if the domain is:

(a) identical or confusingly similar to an IGO acronym, and (b) registered and used in situations where the registrant is pretending to be the IGO or that are otherwise likely to result in fraud or deception; and(c) there is an obvious risk of imminent harm from the claimed abuse of such domain name, (e.g. such as fraudulently soliciting donations in the wake of a humanitarian disaster)* Remedy to be the same as under the URS (i.e. suspension of the domain)

**Notes on 2:*** Decisions from this separate mechanism to be “appealable” through arbitration (process to be agreed)
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IV. NOTES ON SECTION 16 OF THE GNSO PDP MANUAL:

Section 16 of the GNSO’s [PDP Manual](http://gnso.icann.org/en/council/annex-2-pdp-manual-16feb16-en.pdf) provides that (with emphasis added) -

*“Approved GNSO Council policies may be modified or amended by the GNSO Council* ***at any time prior to the final approval by the ICANN Board*** *as follows:*

*1. The PDP Team is reconvened or, if disbanded, reformed, and should be* ***consulted with regards to the proposed amendments or modifications****;*

*2. The proposed amendments or modifications are posted for* ***public comment*** *for not less than thirty (30) days;*

*3. The GNSO Council approves of such amendments or modifications with a* ***Supermajority Vote of both Houses*** *in favour.”*

**Note that it is the Council that makes the modifications (if any) – subject to consultation with the original PDP Working Group on the nature and content of the proposed modifications, as well as public comments on the proposal.**

Note further that this procedure will apply only where the Board has not yet approved the original PDP recommendations (“*Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue”).*

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1. GNSO Council resolution: <https://gnso.icann.org/en/council/resolutions#20131120-2>. [↑](#footnote-ref-1)
2. PDP Manual: <https://gnso.icann.org/en/council/annex-2-pdp-manual-01sep16-en.pdf>. [↑](#footnote-ref-2)
3. See Section 3.3.5 and 3.3.7 of the IGO-INGO PDP WG Final Report ([https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf)](https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf%29). The GAC’s list of IGOs (as at 22 March 2013) can be found here: <https://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>, and the criteria used for their selection and inclusion explained here by the GAC: <https://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>. [↑](#footnote-ref-3)
4. This would correspond to the Notice of Registered Name (“NORN”) that is issued to trademark owners in the TMCH context, following a registrant’s proceeding with registering a domain after receiving and acknowledging a Claims Notice. [↑](#footnote-ref-4)
5. See Section 3.5.3 of the IGO-INGO PDP WG Final Report. For information about the ongoing IGO-INGO Curative Rights PDP, see <http://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access>. [↑](#footnote-ref-5)