

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

What is this about?

This PDP was initiated 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 amended, or possibly a new process developed, to address the needs of International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs). This PDP originated in one of the consensus recommendations from the GNSO's prior PDP Working Group on IGO and INGO Protections in All gTLDs (IGO-INGO WG), which was for the GNSO Council to request an Issue Report, as a preceding step to a possible PDP, on the access to and use by IGOs and INGOs to curative rights processes to protect their names and acronyms at the second level in both existing and new gTLDs. In June 2014 the GNSO Council approved the initiation of the PDP and chartered a new PDP Working Group to consider this issue.

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. There are a number of differences between the GNSO's policy recommendations that were submitted to the Board in Feb 2014 and the Government Advisory Committee's (GAC) advice to the Board on this topic, notably in respect of protections for IGO acronyms. In February 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 for the Board's further consideration at a subsequent Board meeting. The NGPC sent a proposal to the GAC in March. In April 2014 the Board resolved to adopt those of the GNSO's recommendations that are not inconsistent with GAC advice received on the topic, and requested additional time to consider the remaining recommendations. It also resolved to facilitate dialogue between the GAC and the GNSO to resolve the remaining differences. These largely pertain to the scope and duration of protection for certain names associated with the international Red Cross movement (an INGO) and for IGO acronyms, including the use of the Trademark Clearinghouse. The NGPC and the GNSO Council have discussed the possibility of the GNSO's 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, as it concerns the issue of curative (i.e. occurring after a third party has registered a domain name) remedies for IGOs and INGOs that were identified as eligible for certain second level protections by the original IGO-INGO WG.

What is the current status of this project?

- The WG is meeting weekly to discuss the issues raised in its Charter. 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.
- In response to its solicitation for input from all GNSO stakeholder groups and constituencies, as well as all ICANN's SO/ACs (including the GAC), responses were received from the following GNSO constituencies: BC, IPC, ISCP, as well as the ALAC, the GAC and a small group of IGO representatives to whom the WG had sent specific questions for their feedback.
- The WG has preliminarily agreed that for various substantive reasons INGOs should not be considered any further in this PDP.
- The WG has also reached preliminary agreement on the issue of standing to file a complaint for IGOs. It is currently discussing issues concerning IGO jurisdictional immunity, including concerns over ensuring adequate due process protections for registrants in any process that may be recommended.

Expected next steps

The WG continues to research and deliberate the issue of sovereign immunity for IGOs, concerning their ability to submit to the jurisdiction of a national court for purposes of an appeal (as is required by the current curative rights processes). Input from the GAC and the IGOs will be expected to be key to the WG's conclusions on this topic. The WG hopes to complete its Initial Report by ICANN54.

Background

In November 2013 the GNSO Council unanimously adopted all the consensus recommendations of its previous IGO-INGO WG, including calling for an Issue Report on IGO and INGO access to and use of the curative rights protections afforded by the UDRP and URS. An Issue Report is the preceding step toward the possible initiation of a PDP by the GNSO Council.

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 status as being immune from national jurisdiction. 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.

How can I get involved?

The Working Group is open to anyone interested in participating. If you want to join the WG either as a Member or as an Observer please contact the GNSO Secretariat to be added to the mailing list (gns.secretariat@gns.icann.org). You can also attend the WG's meeting in Buenos

Aires on Wednesday morning, scheduled from 1000-1130 local time (please see the final Meeting Schedule for confirmation).

Where can I find more information?

- IGO-INGO WG Final Report: <http://gns0.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>
- GNSO Council Recommendations Report to the ICANN Board: <http://gns0.icann.org/en/issues/council-board-igo-ingo-23jan14-en.pdf>
- Final Issue Report on IGO & INGO Access to Curative Rights Protection Mechanisms: <http://gns0.icann.org/en/drafts/igo-ingo-crp-final-25may14-en.pdf>
- IGO-INGO Curative Rights Protection WG collaborative wiki space: <https://community.icann.org/x/37rhAg>.
- WG open meeting during ICANN53 in Buenos Aires on Wednesday 24 June from 10.00 – 11.30: <http://buenosaires53.icann.org/en/schedule/wed-igo-ingo-crp-access>

Staff responsible: Mary Wong and Steve Chan