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# Policy Development Process: International Governmental Organization-International Non-Governmental Organization Access to Curative Rights Protection Mechanisms

## **WHAT CAN I EXPECT AT ICANN58 IN RELATION TO THIS TOPIC?**

The Policy Development Process (PDP) Working Group (WG) will be holding an open session on Wednesday, 15 March (Day 5) at 13.45-15.00. At this session, the WG plans to discuss the community feedback received to date to its preliminary recommendations, which were published for Public Comment on 20 January 2017. The WG will review all input received from the community in preparing its Final Report, which it hopes to submit to the Generic Names Supporting Organization (GNSO) Council by ICANN59. It particularly welcomes community members with expertise on the topics covered by its Initial Report to attend its open session.

## **WHAT IS THIS PDP ABOUT?**

This PDP was initiated in June 2014 by the GNSO Council to consider whether existing curative rights 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 relation to protection for their names and acronyms at the second level of the domain name system, in both existing and new generic top-level domains (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. Nevertheless, those that pertained to IGO acronyms and some specific names and acronyms of the Red Cross movement differed from the advice provided by the Governmental Advisory Committee (GAC) to the Board. In early 2014, the Board adopted those of the GNSO's recommendations that were consistent with GAC advice, and tasked its New gTLD Program Committee (NGPC) to develop a proposal that would take into account the remaining inconsistencies. Since then, work has continued in relation to reconciling the inconsistencies between GAC advice and GNSO policy on IGO acronyms and specific Red Cross identifiers.

The scope of this current 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's domain name registration) protections. However, a small group of Board, GAC and IGO representatives had worked on a proposal that touched on both types of protections for IGO acronyms; the proposal was delivered to the GAC and the GNSO before ICANN57. The PDP WG considered the proposal in preparing its preliminary recommendations prior to publishing them.

As the WG's preliminary recommendations concerning IGOs are not consistent with the small group's proposal, the WG will also be monitoring the facilitated dialogue between the GAC and GNSO that will take place at ICANN58 on the broader topic of Red Cross and IGO protections (Saturday, 11 March at 07:30-09:30, and Sunday, 12 March at 18:30-20:30). To the extent that the outcomes of this facilitated dialogue, if any, relate to curative rights for IGOs or INGOs, these will need to be considered and factored into their final deliberations by the WG.

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

The WG's charter directed the WG to consider: 1) 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 2) if a separate, narrowly tailored dispute resolution procedure should be developed to apply only to IGOs and/or INGOs. The WG's preliminary recommendations, as published for Public Comment, essentially recommend that no changes be made to either the UDRP or URS and that no specific new process need be developed. In addition, the WG developed some specific recommendations for IGOs, including the basis upon which an IGO may demonstrate standing to file a complaint under the UDRP and URS. The WG also analyzed the issue of IGO jurisdictional immunity with the assistance of an external legal expert. It decided against modifying the Mutual Jurisdiction clause of the UDRP and URS which requires a complainant to agree to submit to the jurisdiction of a national court. In this regard it is requesting community feedback on two options for dealing with the situation where an IGO successfully pleads immunity in a national court where there is an appeal brought by a losing registrant to that court.

#### **WHAT ARE THE EXPECTED NEXT STEPS?**

The WG will continue its review of all public comments and community input received after ICANN58 in preparing its final recommendations and Final Report. It hopes to submit the Final Report to the GNSO Council for the Council's action by ICANN59, although its timeline may be impacted by the outcomes of the GAC-GNSO facilitated dialogue on Red Cross and IGO protections.

### **HOW CAN I GET INVOLVED?**

The Public Comment forum and the open community session at ICANN58 is an excellent opportunity to contribute to shaping the final recommendations for this PDP. In addition, and although it is at a late stage in its work, the WG continues to be open to anyone; please contact the GNSO Secretariat at [gnso-secs@ICANN.org](mailto:gnso-secs@ICANN.org) to be added to the mailing list.

### **MORE INFORMATION**

- WG Initial Report containing preliminary recommendations: [goo.gl/mg60wl](http://goo.gl/mg60wl)
- Public Comment of the WG Initial Report: [goo.gl/g5Hc0x](http://goo.gl/g5Hc0x)
- PDP Webpage: [gnso.icann.org/en/group-activities/active/igo-ingo-crp-access](http://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access)
- WG Workspace: [community.icann.org/x/37rhAg](http://community.icann.org/x/37rhAg)
- WG Charter: [gnso.icann.org/en/drafts/igo-ingo-crp-access-charter-24jun14](http://gnso.icann.org/en/drafts/igo-ingo-crp-access-charter-24jun14)

### **BACKGROUND**

IGOs and INGOs face certain challenges in fully using the UDRP and URS for a number of reasons. IGOs see the Mutual Jurisdiction requirement for both processes as jeopardizing their jurisdictional immunity status. For both IGOs and INGOs, the fact that the UDRP and URS were designed as protective mechanisms for trademark owners means that they cannot use 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 means diverting resources and funds from their primary missions. The GAC has issued advice on the topic which the WG continues to take into account in its deliberations.

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