

31 May 2019

Manal Ismail
Chair, Governmental Advisory Committee (GAC)

Cc: Cherine Chalaby, Chair, ICANN Board of Directors

Subject: IGO Access to Curative Rights Mechanism: Next Steps; GNSO Council Response

Dear Manal,

Thank you for your letter of 23 May 2019 concerning next steps on the IGO Access to Curative Rights Mechanism issue. The GNSO Council looks forward to continued engagement with the Governmental Advisory Committee (GAC) and interested International Governmental Organizations (IGOs) as we undertake further GNSO policy work to develop appropriate policy recommendations pertaining to IGO curative rights protections.

As referenced in your letter, the GNSO Council voted on 18 April 2019 to approve recommendations #1-4 from the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (CRP PDP) Working Group and to forward those to the ICANN Board for consideration and action. As such, and unless the ICANN Board rejects those recommendations in accordance with the requisite process under the ICANN Bylaws, the GNSO Council's role in the consideration of those recommendations is complete.

The GAC may wish to note that the GNSO Council was divided over whether to fully approve or fully reject all five IGO-INGO CRP PDP recommendations, and the final vote approving recommendations 1-4 and referring recommendation 5 for further policy work, via what appeared the most appropriate vehicle, was the remaining viable option. This topic was the subject of significant Council discussion, which ultimately resulted in a non-unanimous vote. While an imperfect solution, after many months of consideration and debate, it became clear that we did not have the requisite level of support to reject all five recommendations and initiate a new, expedited PDP.

While we await the ICANN Board's decision on recommendations 1-4, the GNSO Council is now beginning work to initiate a dedicated work team under an updated charter for the Rights Protection Mechanisms in all gTLDs PDP Working Group (RPM PDP WG). We look forward to engaging with the GAC and IGOs during our meeting at ICANN 65 in Marrakech to ensure that this new group will see the participation of IGOs and other interested parties, and, importantly, comprise experts in the field of public international law, international intellectual property and/or alternative dispute resolution. We sincerely hope and expect that this dedicated effort will provide a framework for a focused, timely, and satisfactory policy resolution for IGO curative rights protections in all gTLDs.

The GNSO Council welcomes further dialogue with the GAC and IGOs as this process moves forward. If it appears necessary, the Council is not opposed in principle to future facilitated dialogue among the parties, either with the ICANN Board or with another facilitator. During our GNSO Council meeting of 28 May 2019, we discussed the possibility of engaging a facilitator for our joint GNSO Council-GAC joint meeting in Marrakech, and also possibly inviting interested ICANN Board members to attend. These are points we would like to further explore with you in the coming days and weeks approaching ICANN 65.

Sincerely,

Keith Drazek, GNSO Chair