

Expedited Policy Development Process on Specific Curative Rights Protections for Intergovernmental Organizations (IGOs) Initiation Request	
a. Name of Council Member/SG/C	This Initiation Request is submitted to the GNSO Council by Pam Little, Councilor from the Registrar Stakeholder Group
b. Origin of issue (e.g. previously completed PDP)	<p>One of the five final recommendations from the GNSO IGO-INGO Access to Curative Rights Protection Mechanisms PDP Working Group which completed its work in July 2018 was that, in the admittedly rare case where:</p> <ul style="list-style-type: none"> (i) an IGO has prevailed in a Uniform Domain Name Dispute Resolution Policy (UDRP) or Uniform Rapid Suspension (URS) proceeding; and (ii) the losing registrant files suit in a court of competent jurisdiction; and (iii) the IGO successfully claims immunity from the jurisdiction of that court; then (iv) the original UDRP or URS panel decision is to be set aside. <p>Assuming an IGO were able to avail itself of the UDRP or URS process, the effect of this recommendation is that the parties to the dispute will be placed in the original situation as if the UDRP or URS proceeding had never been commenced.</p> <p>During the GNSO Council’s deliberations over the final PDP recommendations, concerns were expressed as to whether this particular recommendation will:</p> <ul style="list-style-type: none"> (i) require a substantive modification to the UDRP and URS (notwithstanding that these two dispute resolution procedures are currently under consideration in the RPM PDP); and (ii) result in a potential reduction of the existing level of curative protections currently available to IGOs (notwithstanding the fact that the PDP had been chartered to determine “whether to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs ...or whether a separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed”). <p>Consequently, the GNSO Council did not approve this particular recommendation and in April 2019 had tasked the Review of All Rights</p>

	<p>Protection Mechanisms in All gTLDs (RPM) PDP Working Group to “consider, as part of its Phase 2 work, whether an appropriate policy solution can be developed, to the extent possible, that is generally consistent with Recommendations 1, 2, 3 & 4 of the [IGO-INGO Access to Curative Rights] PDP Final Report and:</p> <ul style="list-style-type: none"> ● accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances; ● does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction whether following a UDRP/URS case or otherwise; and ● recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction” (see https://gnso.icann.org/en/council/resolutions#20190418-03).” <p>Accordingly, the GNSO Council approved an Addendum to the RPMs PDP Charter in January 2020 that would create an IGO Work Track to conduct the policy work on this specific issue . The Council launched the IGO Work Track in September 2020 with a call for Expressions of Interest for a qualified Chair and requested that the GNSO Stakeholder Groups, other interested Supporting Organizations, Advisory Committees and IGOs begin to select representative members. The Work Track began meeting in February 2021. As of 2 August 2021, the Work Track has held twenty-nine (29) weekly calls and has reached a point in its deliberations where it is preparing to draft preliminary recommendations to be published for Public Comment.</p>
<p>c. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address)</p>	<p>The scope of this EPDP is the same as what the Council approved for the Addendum to the RPMs PDP Charter, as noted above in (b); viz.:</p> <p>“...whether an appropriate policy solution can be developed, to the extent possible, that is generally consistent with Recommendations 1, 2, 3 & 4 of the [IGO-INGO Access to Curative Rights] PDP Final Report and:</p> <ul style="list-style-type: none"> ● accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances; ● does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction whether following a UDRP/URS case or otherwise; and ● recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction” (see

	https://gnso.icann.org/en/council/resolutions#20190418-03 .”
<p>d. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the ICANN Board or the implementation of such an adopted recommendation; or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP that was not completed or other similar effort, including relevant supporting information</p>	<p>Under the Bylaws (Annex A-1) and the Expedited GNSO Policy Development Process Manual, an EPDP may be initiated by the GNSO Council to provide new or additional policy recommendations on a specific policy issue that had been substantially scoped previously, such that extensive, pertinent background information already exists.¹ The GNSO Council’s creation of the IGO Work Track to develop new policy recommendations on the specific issue noted above in (b) and (c) in order to address concerns raised by Recommendation #5 from the IGO-INGO Access to Curative Rights PDP Working Group meets the relevant EPDP criteria. Supporting documentation includes the Addendum to the RPMs PDP Charter and the GNSO Council’s resolutions that referred the issues concerning Recommendation #5 to the RPMs PDP Working Group in April 2019 (https://gnso.icann.org/en/council/resolutions/1999-2019#20190418-3), and approving the Addendum creating the IGO Work Track in January 2020 (https://gnso.icann.org/en/council/resolutions/2020#202001).</p> <p>At the time that the Council created the IGO Work Track, Phase 1 of the RPMs PDP was ongoing. The RPMs Phase 1 Final Report was completed and submitted to the Council in November 2020 and approved by the Council in January 2021. The GNSO Council and community’s expectations throughout Phase 1 was that Phase 2 would launch shortly after Phase 1 concluded. Due, however, to concerns raised about scope, including via feedback received through the Phase 1 Working Group’s self-assessment, to date Phase 2 has not yet been launched, pending a review of the PDP Charter to address the concerns identified. As a result, while the IGO Work Track has been making steady progress, procedurally it is not attached to an active PDP Working Group. Following consideration of the available procedural options and based on the fact that the GNSO Council believes that the fundamental requirement for an EPDP has been fulfilled in this case, the GNSO Council is initiating this EPDP in order to ensure that the former Work Track is able to make Consensus Policy recommendations in accordance with the ICANN Bylaws and GNSO Operating Procedures.</p>

¹ See “Section 1. GNSO EPDP - Applicability” in the Annex 4 - Expedited GNSO Policy Development Process Manual: <https://gnso.icann.org/sites/default/files/file/field-file-attach/annex-4-epdp-manual-24oct19-en.pdf>
See GNSO Operating Procedures Annex 4 - Expedited GNSO Policy Development Process Manual, Section 3: <https://gnso.icann.org/sites/default/files/file/field-file-attach/annex-4-epdp-manual-24oct19-en.pdf>

<p>e. If not provided as part of item d, the opinion of the ICANN General Counsel regarding whether the issue proposed for consideration is properly within the scope of the ICANN’s mission, policy process and more specifically the role of the GNSO</p>	<p>This EPDP is focused on a single recommendation from the IGO-INGO Access to Curative Rights Protections PDP. In this regard, as part of the initial PDP scoping, the Final Issue Report for that PDP had considered:</p> <ul style="list-style-type: none"> ● Whether the issue is within the scope of ICANN’s mission statement ● Whether the issue is broadly applicable to multiple situations or organizations. ● Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates. ● Whether the issue will establish a guide or framework for future decision-making ● Whether the issue implicates or affects an existing ICANN policy <p>The General Counsel’s assessment was that a PDP “is properly within the scope of the ICANN’s mission, policy process and more specifically the role of the GNSO.” Accordingly, the consideration of the specific policy issue under Recommendation #5 of that PDP through this EPDP, following on the work of the IGO Work Track, also falls within the requisite scope.</p> <p>GNSO Policy staff also consulted ICANN’s Legal staff to ensure that an EPDP is an appropriate procedural vehicle to address the specific items described in Sections (b) and (c) above. ICANN Legal confirmed that the GNSO Operating Procedures require that a policy development sub-team exists as part of a Working Group chartered by the GNSO Council. As this EPDP is focused on a narrowly defined policy issue from a previous PDP and has been substantially scoped previously, such that extensive, pertinent background information already exists, ICANN Legal agrees that the requirements of an EPDP seem to be fulfilled where the Council believes this is the appropriate procedural path to address the situation at hand.</p>
<p>f. If not provided as part of item d, the opinion of ICANN staff and their rationale as to whether the Council should initiate the EPDP on the issue</p>	<p>Not applicable (see item d)</p>

g. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers)	The proposed mechanism is an EPDP Team.
h. Method of operation, if different from GNSO Working Group Guidelines	<p>This EPDP will follow the method of operation as detailed in the GNSO Working Group Guidelines.</p> <p>This EPDP will employ a “Representative + Observers” model, consisting of Members and Observers.</p>
i. Decision-making methodology for the proposed EPDP mechanism, if different from GNSO Working Group Guidelines	<p>This EPDP will follow the decision-making methodology as detailed in the GNSO Working Group Guidelines. The GNSO Working Group Guidelines apply in full and Consensus designations are therefore the responsibility of the EPDP Chair and are to be made in accordance with the consensus levels described in Section 3.6 of the Working Group Guidelines.</p> <p>Notably, due to the “Representative + Observers” model of this EPDP, consensus calls or decisions are limited to Members who may consult as appropriate with their respective appointing organizations. However, for the purpose of assessing consensus, groups that do not fulfil their maximum membership allowance should not be disadvantaged.</p> <p>The EPDP Chair shall ensure that all perspectives are appropriately taken into account in assessing Consensus designations on the final recommendations.</p> <p>For consensus building purposes, the EPDP Chair, EPDP Members, and GNSO Council Liaison are expected to review the Consensus Playbook which provides practical tools and best practices to bridge differences, break deadlocks, and find common ground within ICANN processes; potential training related to the Consensus Playbook may be provided for EPDP Leadership, Members, and GNSO Council Liaison.</p>
j. Desired completion date and rationale for this date	The EPDP is expected to deliver its work plan to the GNSO Council as its first deliverable, which should be consistent with the expectations of the IGO Work Track.