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

WHAT CAN I EXPECT AT ICANN66 IN RELATION TO THIS TOPIC?

The International Governmental Organization and International Non-Governmental Organization (IGO-INGO) Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group has completed its work, delivered its Final Report to the Generic Names Supporting Organization (GNSO) Council, and will not be holding any meetings at ICANN66.

The GNSO Council has voted to adopt recommendations 1-4 of the Final Report but elected to refer recommendation 5 to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs PDP. After a small team of GNSO Councilors met with a team of Governmental Advisory Committee (GAC) members at ICANN65, the GNSO Council hopes to adopt an amendment to the RPMs PDP Charter at or soon after ICANN66.

WHAT IS THIS ABOUT?

This PDP was initiated in June 2014 by the GNSO Council to consider whether existing curative rights mechanisms at the second level of the Domain Name System (DNS), namely the Uniform Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension (URS) dispute resolution procedure, should be modified to address the needs of International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs). IGOs and INGOs have highlighted certain difficulties they face in using these mechanisms to protect their names and acronyms.

WHY IS THIS IMPORTANT?

Protecting the names and acronyms of IGOs and INGOs at the top-level and second-level of the DNS 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. However, those recommendations did not address whether existing domain name dispute resolution procedures provided adequate protection for IGO and INGO names and acronyms. The GNSO Council tasked this working group to consider whether the UDRP and URS should be amended to resolve the problems faced by IGOs and 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 INGOs.

WHAT IS THE CURRENT STATUS OF THIS PROJECT?

The working group submitted its Final Report to the GNSO Council on 9 July 2018. The GNSO Council resolved to accept the Final Report on 19 July 2018, though it did not take final action on the report at that time. The Council noted that it would seek to consider the topic of curative rights protections for IGOs in the broader context of the appropriate overall scope of protection for all IGO identifiers.

In the ensuing period of time, the GNSO Council continued to consider how it would proceed with the Final Report. In October 2018, the Council held a question and answer webinar to review the recommendations and to ask itself a series of questions concerning the process the PDP followed and the PDP's outcomes. The Council continued to debate and consider the best path forward through 2018 and early 2019, with a proposal put forth by Council leadership in December 2018.

The Council and Governmental Advisory Committee (GAC) met prior to and at ICANN64 to discuss the Final Report. The Council and GAC had productive discussions on topics including the procedural options that the Council is considering. The GAC's ICANN64 Kobe Communique noted the GAC's "fruitful exchanges with the GNSO Council regarding the possibility of restarting the PDP on curative protections, under conditions amenable to all interested parties, including IGOs and interested GAC members, with a view to achieving mutually acceptable results [with] a timeline...associated with such a course of action."

Based on discussions and consultation with the GAC, the Council believed that it had thoroughly considered the available options. On 18 April 2019, the Council resolved to approve recommendations 1-4 of the Final Report and refer recommendation 5 to be considered by the Review of All RPMs in All gTLDs PDP as part of its Phase 2 work.

On 16 May 2019, the GNSO Council confirmed the transmission of the Recommendations Report (relating to recommendations 1-4) to the ICANN Board. Shortly afterward, the GAC sent a **letter** to the GNSO Council, noting that the approval of recommendations 1-4 and referring recommendation 5 to the Review of All RPMs in All gTLDs PDP is inconsistent with GAC Advice. ICANN organization conducted a **Public Comment** consultation process for recommendations 1-4 from 11 July to 20 August 2019.

Separately, a small team of GNSO Councilors met with a team of GAC members at ICANN65 to discuss possible next steps for recommendation 5. The GNSO Council agreed to prepare a draft charter amendment for the Review of All RPMs in All gTLDs PDP and consult with the GAC prior to adoption. Prior to ICANN66, the GNSO Council has shared a draft amendment with the GAC.

WHAT ARE THE EXPECTED NEXT STEPS?

The GNSO Council and GAC are expected to meet at ICANN65 to discuss next steps.

HOW CAN I GET INVOLVED?

The working group has concluded its Final Report and the GNSO Council has taken action on the recommendations. Therefore, the working group is no longer meeting at this stage.

MORE INFORMATION

- Working Group Initial Report containing the preliminary recommendations: <https://go.icann.org/2o1UbEZ>
- Public comment of the WG Initial Report: <https://go.icann.org/2C0tY2u>
- Working Group Final Report: <https://gnso.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf>
- Working Group Recommendations Report: <https://gnso.icann.org/sites/default/files/file/field-file-attach/council-recommendations-pdp-igo-ingo-crp-access-final-16may19-en.pdf>
- Public Comment proceeding for the final policy recommendations: <https://www.icann.org/public-comments/igo-ingo-crp-recommendations-2019-07-11-en>
- PDP Webpage: <http://gnso.icann.org/en/group-activities/active/igo-ingo-crp-access>
- Working Group Workspace: <https://community.icann.org/x/37rhAg>
- Working Group Charter: <https://gnso.icann.org/en/drafts/igo-ingo-crp-access-charter-24jun14-en.pdf>

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 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 working group continues to take into account in its deliberations.

Staff Responsible: Mary Wong, Steve Chan