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

WHAT CAN I EXPECT AT ICANN68 IN RELATION TO THIS TOPIC?

The GNSO Council has voted to adopt recommendations 1-4 of the International Governmental Organization and International Non-Governmental Organization (IGO-INGO) Access to Curative Rights Protection Mechanisms Policy Development Process Final Report, but elected to refer recommendation 5 to the Review of All Rights Protection Mechanisms (RPMs) in All gTLDs Policy Development Process (PDP). In January of 2020, the GNSO Council adopted an Addendum to the RPMs charter to integrate consideration of recommendation 5. This new work track is in its initiation phase and will not be meeting at ICANN68.

WHAT IS THIS ABOUT?

The original and concluded 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. Similarly, the new work track will focus on curative rights protection mechanisms for IGOs that, to the extent possible, are consistent with the original PDP's recommendations 1-4.

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 had tasked the 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. The new work track will continue this effort, with a more limited scope on just IGOs.

WHAT IS THE CURRENT STATUS OF THIS PROJECT?

The original and concluded PDP 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 considered how it would proceed with the Final Report, held a question and answer webinar to review the recommendations, and debated about the best path forward through 2018 and early 2019.

Based on discussions and consultation with the Governmental Advisory Committee (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 both ICANN65 and ICANN66 in 2019 to discuss possible next steps for recommendation 5. The GNSO Council agreed to prepare a draft Addendum to the charter for the Review of All RPMs in All gTLDs PDP and consult with the GAC prior to adoption. After engaging in dialogue with the GAC and IGOs, the GNSO Council adopted the **Addendum** to the charter in January of 2020 to initiate a separate IGO work track.

The GNSO Council has prepared an Expression of Interest document for the IGO Work Track Chair and a call for volunteers for the various community groups to assign members. However, circulating these two documents has been deferred due to the GNSO Council's concerns about community capacity to initiate new substantive work.

WHAT ARE THE EXPECTED NEXT STEPS?

The ICANN Board is now considering recommendations 1-4, taking into account public comments received from the public consultation process.

With respect to recommendation 5, the GNSO Council will continue to consider when it is most appropriate to initiate the work track focusing on the deliberation of IGO issues. As noted, the initiation of the work track will require issuing a call for members and observers and conducting an Expressions of Interest process to identify a single work track chair.

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 for recommendations 1-4.

In respect to recommendation 5, interested parties should coordinate with their respective Stakeholder Group (SG), Constituency, Supporting Organization (SO), or Advisory Committee (AC) when the call for members and observers is issued for the IGO work track.

MORE INFORMATION

- Addendum to the charter for the Review of All RPMs in All gTLDs PDP: <https://go.icann.org/2vTyl8e>
- Working Group Initial Report containing the preliminary recommendations: <https://go.icann.org/2o1UeEZ>
- Public Comment proceeding for the working group Initial Report: <https://go.icann.org/2C0tY2u>
- Working Group Final Report: <https://gns0.icann.org/en/issues/igo-ingo-crp-access-final-17jul18-en.pdf>
- Working Group Recommendations Report: <https://gns0.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://gns0.icann.org/en/group-activities/active/igo-ingo-crp-access>
- Working Group workspace: <https://community.icann.org/x/37rhAg>
- Working Group Charter: <https://gns0.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.

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