Specific Curative Rights Protections for International Governmental Organizations (IGOs) Final Report

GNSO Council Briefing to ICANN Board

GNSO Council Leadership

11 January 2023
### Timeline to Final Report

- **April 2019**: GNSO Council approved the first four recommendations from the IGO-INGO Access to Curative Rights Protection Policy Development Process (PDP), but not Recommendation #5, which the Council referred to the Review of All Rights Protection Mechanisms (RPMs) PDP, to consider as part of its Phase 2 work;
- **January 2020**: following consultations with the GAC, the GNSO Council approved an Addendum to the RPMs PDP Charter, creating an IGO Work Track to address concerns with Recommendation #5 of the IGO-INGO Access to Curative Rights Protections PDP;
- **October 2020**: GNSO Council launched a call for expressions of interest for a Chair of the IGO Work Track and a call for volunteers from specific community groups as identified in the Addendum, including IGO representatives;
- **January 2021**: RPMs PDP Phase 1 ends with GNSO Council approval of all 35 recommendations;
- **August 2021**: GNSO Council takes procedural step to approve, in accordance with its Expedited Policy Development Process (EPDP) Manual, initiating an EPDP to carry forward the work and momentum of the IGO Work Track, with the EPDP Charter reflecting the same scope of work;
- **September 2021**: EPDP team published its Initial Report for Public Comment, following which the EPDP team reviewed the comments and amended its proposed recommendations as it considered necessary, based on the input received and continued deliberations;
Timeline (cont’d)

Timeline to Final Report

- April 2022: EPDP team delivered its Final Report to the GNSO Council:
  - Final Report contains five final recommendations which are intended to be interdependent (as outlined in Section 13 of the PDP Manual) and which have attained “Full Consensus” within the EPDP team.

Subsequent Steps:

- The GNSO Council approved (unanimously) all five final recommendations on 15 June 2022.
- The GNSO Council approved the Bylaws-mandated Recommendations Report to the ICANN Board on 21 July 2022.
- The requisite public comment period on the Final Report, for input to the ICANN Board as it considers the EPDP recommendations, is currently open and will close on 16 January 2023.
Recommendations Overview

Recommendation #1: Definition of “IGO Complainant”

Recommendation #2: Exemption from Submission to “Mutual Jurisdiction”

Recommendation #3: Arbitral Review following a UDRP Proceeding

Recommendation #4: Arbitral Review following a URS Proceeding

Recommendation #5: Applicable Law for Arbitration Proceedings
Recommendation #1: Definition of “IGO Complainant”

- The UDRP and URS Rules would be modified to add description of “IGO Complainant”, defined below:
  
  “‘IGO Complainant’ refers to:

  (i) an international organization established by a treaty, and which possesses international legal personality; or
  
  (ii) an ‘Intergovernmental organization’ having received a standing invitation, which remains in effect, to participate as an observer in the sessions and the work of the United Nations General Assembly; or
  
  (iii) a Specialized Agency or distinct entity, organ or program of the United Nations.”

- The UDRP and URS Rules would also be amended to include text to account for instances where an IGO may not have a registered trademark or service mark. In those instances, the IGO Complainant may address the standing requirement by proving unregistered rights (see specific, detailed text included in the Final Report).
Rec #2: Exemption from Submission to “Mutual Jurisdiction”

- An IGO Complainant, as defined in Recommendation #1, will be exempt from the “mutual jurisdiction” requirement under Section 3(b)(xii) of the UDRP Rules and Section 3(b)(ix) of the URS Rules.
- Respondents must be informed that they retain the right to challenge a UDRP decision or URS determination by filing a claim in court.
  - However, the IGO Complainant may assert its privileges and immunities, resulting in the court declining to hear the merits of the case.
  - In such circumstances (or in lieu of initiating court proceedings), the respondent has the option to agree to binding arbitration.
Recommendations #3 and #4: Arbitral Review

- The UDRP and URS would be amended to include provisions to accommodate the possibility of binding arbitration to review an initial panel decision issued under the UDRP or Determination made under the URS, respectively.

- Notable elements include:
  - In submitting its complaint, the IGO Complainant commits to binding arbitration (if the registrant also agrees).
  - Procedural and communication components as it relates to the various parties (e.g., IGO Complainant, respondent, UDRP/URS provider, registrar, arbitral institution).
Arbitration will be conducted in accordance with the law as mutually agreed by the parties. Where the parties cannot reach mutual agreement, the IGO Complainant shall elect either the law of the relevant registrar’s principal office or the domain name holder's address as shown for the registration of the disputed domain name in the relevant registrar's Whois database at the time the complaint was submitted to the UDRP or URS provider. Where neither law provides for a suitable cause of action, the arbitral tribunal shall make a determination as to the law to be applied in accordance with the applicable arbitral rules.
Questions?
Resources

Project Page: https://gnso.icann.org/en/group-activities/active/specific-crp-igo-epdp


Wiki Space: https://community.icann.org/display/GNSOIWT