

Inital Report on the IGO-INGO Access to Curative Rights Protection Mechanisms

Policy Development Proccess

Status of This Document

This is the Initial Recommendations Report of the GNSO Working Group for the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process. This report will be posted for public comment for a period of 40 days, commencing on xx-xx-2016 and closing on xx-xx-2016.

Preamble

This Initial Recommendations Report is being submitted to the GNSO Council in response to a motion proposed and carried during the Council teleconference meeting on 4 June 2014, at which the Council voted to initiate this Policy Development Process.

Table of Contents

Table of Contents

1 Executive Summary 3

2 Background to this Policy Development Process (PDP) 4

3 Approach taken by the PDP Working Group 5

4 Deliberations of the PDP Working Group 6

5 Community Input to the PDP Working Group 7

6 Working Group Initial Recommendations 8

Annex A – Working Group Charter 11

Annex B – SO/AC/SG /C Outreach Requests 12

Annex C – Legal Expert Opinion on IGO Jurisdictional Immunity 13

Annex D – IGO Small Group Proposal 14

# Executive Summary

## Background to this Policy Development Process (PDP)

Note relevant dates - Issue Report, Council initiation of PDP and approval of WG Charter.

Note/quote specific tasks and scope as outlined in Charter.

Include brief outline of outcome of previous IGO-INGO PDP leading to Council request for Issue Report for this PDP.

Add description of IGO small group work/proposal.

## The Initial Recommendations from the PDP Working Group

List all preliminary recommendations, minority positions (if any), open questions (if any). Refer reader to Section 6 for fuller descriptions/text.

### Recommendation 1

### Recommendation 2

### Recommendation 3 etc. etc.

## Next Steps

Note closing date for public comment, highlight need for WG to review all input received and (if appropriate) amend recommendations accordingly.

State that Final Report will be sent to GNSO Council for adoption and, if approved, sent on to ICANN Board for action.

# Background to this Policy Development Process (PDP)

## Initiation of the PDP

Note dates and main points of Issue Report.

Note dates of PDP initiation and Charter approval as well as subsequent Charter amendment.

Include notes on relevant outcomes of previous IGO-INGO PDP (e.g. curative rights not addressed and recommendation that GNSO Council call for new Issue Report specifically on this question)

### Scope of PDP Charter

Quote/describe from Charter.

### ICANN Community and Other Input

Note relevant GAC advice, SO/AC input, IGO feedback, consultation with external subject matter expert.

Note small group work/proposal.

## Expected Next Steps

Review of public comments and consequent update of recommendations/open questions for Final Report (for which a formal Consensus Call will be conducted).

Submission of Final Report to GNSO Council and (if approved) forwarding to ICANN Board for consideration and adoption.

# Approach taken by the PDP Working Group

## Working Group Composition

Note number of members, including any SO/AC/SG/C affiliations.

## Working Group Methodology and Meetings

Describe Working Group approach to Work Plan and specific questions listed in the Charter (e.g. whether Sub Teams were used, how historical documents were analyzed).

Note number of meetings (including at ICANN Public Meetings).

Include attendance records.

### Working Group Consultations with the ICANN Community

Briefly describe SO/AC/SG/C outreach and responses.

Note any meetings/interactions with GAC and IGO representatives.

Note Board-GNSO Council discussions and IGO small group work/proposal.

#### Consultation with External Subject Matter Expert

Briefly describe engagement of external legal expert (reason, scope, dates).

# Deliberations of the PDP Working Group

## Review of Existing Materials

Note historical ICANN materials and projects (e.g. 2011 ICANN Issue Report on UDRP), 2003 President’s Joint WG, previous IGO-INGO PDP Final Report, etc).

Note the WG’s list of existing external documentation (e.g. WIPO-2 Process, WIPO-SCT and Secretariat reports, etc.).

Link to WG Wiki space for all materials.

### Status of Previous ICANN Work

Summarize status of previous ICANN work (what the earlier recommendations were, no actual PDP initiated at the time (2006 or 2011), recommendation for new Issue Report from original IGO-INGO PDP Final Report).

#### 4.1.2 Review of Legal Instruments, Expert Opinion and Other Information from External Source Materials

Describe WG review of Article 6ter of the Paris Convention especially on the issue of IGO standing.

Describe WG review of substantive grounds under UDRP and URS.

Describe WG preliminary conclusions as to INGOs (no further work or change warranted).

Describe WG review of issue of IGO jurisdictional immunity, including conclusions/opinion of legal expert.

##### 4.2 Working Group Discussions of Policy Options

Describe WG review of policy options in the event that either UDRP and/or URS merit any changes (e.g. arbitral appeal, amending Mutual Jurisdiction clause, etc.)

Describe WG discussion of whether, following review of all of the above, there is WG consensus on: (1) whether UDRP and/or URS merit any substantive policy changes; (2) alternatively, whether a new, narrowly tailored process applicable only to certain disputes involving IGOs should be developed; or (3) whether no substantive policy changes or new procedures are warranted, including whether nevertheless a Policy Guidance document clarifying the scope of the current procedures is advised.

# Community Input to the PDP Working Group

## Feedback from ICANN Supporting Organizations, Advisory Committees, GNSO Stakeholder Groups and Constituencies, and Other ICANN Stakeholders

Note dates and scope of initial SO/AC/SG/C outreach letters and responses.

Note specific outreach to the GAC and IGOs, and responses.

Note impact of IGO small group discussions (and if submitted in time, WG review of the final small group proposal).

# Working Group Initial Recommendations

List all the WG’s preliminary recommendations on which the WG has informal, general consensus – as such, this section will also include any minority positions and list any open questions for which the WG either has no consensus at this time (e.g. divided opinions) and for which therefore the WG is specifically seeking community input to assist in its formulation of a final recommendation for the Final Report.

The preliminary recommendations should include:

* A specific WG recommendation on the two overall questions in its Charter, i.e. “whether to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs and, if so in what respects 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.”
	+ The reasons for this WG recommendation should be outlined.
	+ The WG recommendation that no changes or new proposals relating to INGOs should be noted.

On IGOs:

* The WG recommendation on IGO standing to file a complaint (whether based on Article 6ter or other basis).
* The WG recommendation on the substantive grounds on which complaint can be filed:
	+ If no change at all is recommended to the UDRP/URS, this means IGOs would have to rely on trademark rights (like all other complainants under the current policy and procedures).
	+ If another ground is recommended (i.e. not trademark), describe when, how and on what ground another legal basis (other than trademark rights) can be asserted.
	+ In either case, note if this applies to both the UDRP and URS, or one or the other.
* The WG recommendation on IGO jurisdictional immunity:
	+ If no change is recommended, note accordingly.
	+ If change is recommended, describe nature of recommended change – e.g. arbitral appeal or change to Mutual Jurisdiction clause or other
	+ In either case, note if this applies to both the UDRP and URS, or one or the other.
* The WG recommendation on other aspects of access to the UDRP and URS:
	+ This could include the cost issue.
* The WG recommendation on whether instead of changing either or both the UDRP/URS, a clarifying Policy Guidance document is preferred:
	+ If so, the scope and subjects of this document should be outlined.
* If there are any open questions where there is not a WG consensus, list them as well for specific community input.

# Annex A – Working Group Charter

# Annex B – SO/AC/SG /C Outreach Requests

Note that different letters were “customized” for the GAC but that requests were sent to all SO/AC/SG/Cs.

Note which SO/AC/SG/Cs sent responses.

Note IGO response/letters.

# Annex C – Legal Expert Opinion on IGO Jurisdictional Immunity

# Annex D – IGO Small Group Proposal