IGO-INGO CURATIVE RIGHTS PDP INITIAL REPORT

PUBLIC COMMENT REVIEW TOOL

Draft as of 4 April 2017

PRELIMINARY NOTE:

The following tables have been prepared by ICANN staff for the use of the Working Group as it reviews the public comments that were submitted to its Initial Report. Where it was thought helpful, staff has excerpted relevant portions of the actual comment text; however, this summary and the excerpts do not replace or supersede the full comments submitted. All comments submitted can be viewed at https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/.

KEY TO ABBREVIATIONS USED IN THE DOCUMENT:

Name of Commenting Organization	Submitted by	Initials
WIPO	Brian Beckham	WIPO
Organisation for Economic Co-Operation and Development	Jonathan Passaro	OECD
The North Atlantic Treaty Organization	Antoaneta Boeva	NATO
The International Federation of Intellectual Property Attorneys	Roberto Pistolesi	FICPI
The International Civil Aviation Organization	Arie Jacobs	ICAO
The Inter-American Development Bank	Alessandro Macrì	IADB
The United Nations	Noam Wiener	UN
United States Government	Ashley Heineman	USG
Inter-American Investment Corporation	Andres Consuegra	IIC
Internet Commerce Association	Phil Corwin	ICA
GNSO Business Constituency	Steve DelBianco	BC
ICANN Governmental Advisory Committee	Tom Dale	GAC
i2Coalition	Jay Sudowski	i2c
International Atomic Energy Agency	Peri Lynne Johnson	IAEA
World Bank	Ingo Burghardt	WB
GNSO Registries Stakeholder Group	Stephane van Gelder	RySG
UNESCO	Garcia Marquez	UNESCO
Universal Postal Union	Ricardo Guilherme	UPU
International Finance Corporation	Gordon Myers	IFC
GNSO Intellectual Property Constituency	Greg Shatan	IPC
GNSO Registrars Stakeholder Group	Zoe Boynton	RrSG

Name of Individual Commenter	Affiliation (if provided)	Initials
Richard Hill (several comments)		RH
George Kirikos	Leap of Faith Financial Services Inc.	GK
Jordan Evens		JE
Patrick Quinn	Allegheny Internet, LLC	PQ
Mike Anderson		MA
Russ Smith		RS
Jay Chapman		JC

John Pepin		JP
Ronald Edge		RE
Paul Tattersfield		PT

Public Comment Categories – Table of Contents

General Support or Non-Support of Overall Recommendations

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			
1.	**Recommendations do not address the problems for which the WG was chartered:** To assess whether a particular policy would in fact "address the specific needs and circumstances of IGOs", that question would naturally be put to IGOs themselves. In fact, on numerous occasions in the history of this file, it was. Nevertheless, the Initial Report does not take proper account of IGOs' feedback. Correspondence from IGO Legal Counsels as well as GAC Advice has been clear: both in terms of (i) the scope of rights to support standing to file a case, and (ii) "Mutual Jurisdiction", the UDRP does not accommodate IGOs' specific needs and circumstances; but a separate mechanism modeled on the UDRP would. While ICANN's Bylaws and Core Values indicate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes, the Working Group's recommendations fail to adequately meet this mandate. IGOs are unique institutions created by governments to fulfill global public missions. As such, IGO identifiers warrant tailored protection by ICANN in keeping with the global public interest behind their causes … nothing in today's DNS prevents criminal elements from executing scams through the misuse of IGO identities. In addition to individual donors being defrauded, it is the IGO beneficiaries such as victims of humanitarian disasters who lose out when bad actors misappropriate funds intended for IGO campaigns. … GAC Principles on New gTLDs call on ICANN to accommodate IGOs' rights in their names and acronyms. Likewise, having observed ICANN's failure to address these concerns so far, the United Nations Secretary-General in 2016 addressed this topic with UN Member States.	WIPO	Color Key: Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:**

#	Comment	Contributor	WG Response / Action Taken
	[The] core question: Should an unfettered DNS market prevail over appropriately protecting IGO identifiers in accordance with their international status? … ICANN should be able to accommodate IGOs' specific needs and circumstances through a narrowly tailored dispute resolution mechanism modeled on, but separate from, the UDRP. By facilitating this, not only would ICANN help protect IGO causes recognized by governments the world over, but it would signal a commitment to a more credible DNS that prioritizes trust and consumer safety in balancing the rights of IGOs and good-faith registrants. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00000.html	WIPO	
2.	**Support for all five recommendations:** The ICA supports all five of the recommendations, particularly because they recommend necessary adjustments and enhancements of existing UDRP and URS practice that will enable IGOs and INGOs to more readily access these existing expedited and low-cost curative rights mechanisms to effectively respond to misuse of their names and acronyms in the DNS. Such an incremental approach is preferable when compared to the uncertainty and implementation-related difficulty of the alternative of developing a completely separate set of curative rights mechanism that would only be used by a small number of IGOs. Creating additional rights protection schemes that apply to only an extremely small subset of Internet users is impractical and would only be justified if the mutual jurisdiction appeals clause of current DRPs would always offend the degree of judicial immunity that is generally recognized for IGOs. However, based upon the input of its legal expert, the WG properly concluded that there is no such universal absolute immunity for IGOs in domain-related disputes, and that the proper forum for adjudicating an IGO's immunity claim is a national court. This cautious approach is consistent with the principle that, while ICANN policies should recognize and respect existing law, ICANN has no authority to grant legal rights that go beyond contemporary law. … it would be fundamentally unfair to attempt to bar the owner of a valuable domain who believes that a UDRP or URS has been wrongly decided from seeking truly independent de novo judicial review. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfb23CpD8fIN.pdf	ICA	

#	Comment	Contributor	WG Response / Action Taken
3.	**Support for all five recommendations:** The BC supports all five of the recommendations, particularly because they recommend necessary adjustments and enhancements of existing UDRP and URS practice that will enable IGOs and INGOs to access these existing expedited and low-cost curative rights mechanisms to effectively respond to misuse of their names and acronyms in the DNS. Such an incremental approach is preferable, particularly for business users of the Internet, when compared to the alternative of developing a completely separate set of curative rights mechanism that would only be used by IGOs. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00020.html	BC	
4.	**Support for all five recommendations:** I generally support all five recommendations, and also echo the comments made by the ICA and the "ICANN Ecosystem Process Concerns" section of i2Coalition's comment. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00031.html	JC	
5.	**General support:** The Proposal describes reasonable adjustments to the Uniform Domain-Name Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension (URS) that will address gaps in the ability for International Governmental Organizations (IGOs) to access these curative RPMs to protect their names, and maintains the ability for International Non-Governmental Organizations (INGOs) to use the mechanisms in their current form. The Proposal wisely avoids the creation of additional process and bureaucracy where none are needed. We believe that this approach, tailored to fit a limited and finite set of qualified entities, is preferable to the creation of wholly new mechanisms, given that the same basic substantive grounds for the URS and UDRP should apply regardless of the complainant, as established by Recommendation 3. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfeNbWHfSoJb.pdf	RrSG	

#	Comment	Contributor	WG Response / Action Taken
6.	**Qualified support:** The i2Coalition is looking forward to supporting all five of the recommendations at the completion of the PDP process. From our perspective, they largely provide for minor enhancements that enable to IGOs and INGOs to access existing curative rights mechanisms, in particular the UDRP and URS. Such an approach is preferable, when compared to the alternative of developing a completely separate set curative rights mechanism that would only be used by IGOs and INGOs. We are, however, withholding full support from each recommendation until the completion of the PDP process. This is because we await the input of affected IGOs and INGOs, as well as the GAC and representatives of government. We understand that these are complex issues, and that the input of affected parties is an essential component of the process. We simply want to ensure that the final work product, and final recommendations, lead to implementable policy. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00025.html	i2c	
7.	**General:** I wish to enter my comment and objection to IGO's being allowed any rights to domains over and above the existing rights and certainly they should not have any higher rights than that granted by a properly registered Trade Mark. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00029.html	JP	
8.	**General:** The GAC affirms its position, expressed in the Hyderabad Communiqué and elsewhere, and articulated in more detail below, that the small-group compromise proposal should be duly taken into account by ICANN and the GNSO (at both the Working Group, and Council, levels). The GAC also notes that ICANN's Bylaws and Core Values specify that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	
9.	**General:** As a participant in the PDP working group, I generally agree with the findings in the report, although my own comments here are independent of those of the working group itself or other participants. It's a well-researched and detailed report, with numerous footnotes that support its conclusions with relevant facts and law. Indeed, an external independent legal expert (an experienced law professor) was commissioned to support the research effort with regards to international law and immunity. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00004.html	GK	

#	Comment	Contributor	WG Response / Action Taken
10	**General:** FICPI notes that curative rights for International Intergovernmental Organizations (IGOs) is a topic that has been under discussion for many years, with no clear result thus far. Generally, FICPI supports the Working Group's suggestion to use the existing dispute resolution procedures to the extent possible to resolve the concerns of INGOs and IGOs. It is considered best to avoid changes to the Uniform Rapid Suspension System (URS) and/or UDRP, other than for clarification purposes in respect of, for example, administrative or information issues. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfxxK9I5sjsB.pdf	FICPI	

Comments on Recommendation 1

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			
1.	**The OECD takes no position on this issue.** https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
2.	**FICPI supports Recommendation No 1.** In concordance with the Initial Report, and as confirmed through the experiences of FICPI members, including those who have represented INGOs involved in domain name disputes, the current dispute resolution policies are effective and there is therefore no need for change. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfxxK9I5sjsB.pdf	FICPI	
3.	**[Support]** INGOs are nongovernmental, private organizations and as such have no claim to any jurisdictional immunity; they presently enjoy ready access to the UDRP and URS to protect their trademarked names and acronyms. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00019.html	ICA	

#	Comment	Contributor	WG Response / Action Taken
4.	**[No objection]** The GAC does not take exception to the Working Group Recommendation #1, which notes that the Initial Report recommendations do not apply to international non-governmental organizations (INGOs) particularly insofar as two such INGOs, the Red Cross and International Olympic Committee, are the subject of separate, GAC advice. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	
5.	**[No comment]** The World Bank is not an INGO, and has no comments on this recommendation concerning INGOs. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00033.html	WB	
6.	**[Support]** The UDRP and URS, as drafted, adequately serve the proposal to provide certain curative rights. As the WG found, INGOs are not readily differentiated from other private parties and are in fact perfectly capable of enforcing their trademark rights under these policies. Further, changes would present uncertainty and any expansion could lead to a slippery slope that would embolden others to attempt to alter well-established and -defined procedures to accommodate their own interests that are appropriately addressed elsewhere. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfKVjlkkZPOH.pdf	RySG	

#	Comment	Contributor	WG Response / Action Taken
7.	IPC supports the first sentence of Recommendation #1. [T]he current dispute resolution policies are already useful and functional for INGOs without any need of changes. IPC does not support the second sentence of Recommendation #1. As discussed below, IPC does not support preparing and issuing a "Policy Guidance" document. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC	

Comments on Recommendation 2

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			
1.	**[Does not support Policy Guidance]** The Working Group's suggestion to issue "Policy Guidance" on UDRP standing, and to apply agency principles to avoid jurisdictional questions, is misguided in two respects. First, such "alternative guidance" would contravene the plain language of the UDRP itself. We strongly feel that ICANN should see this as inadvisable for a number of reasons. Second, given that fair resolution of disputes involving IGOs more generally through independent and impartial arbitration is already widely accepted (see Swaine Memo page 28), the application of agency principles would be an artifice creating unnecessary legal hurdles. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00000.html	WIPO	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
2.	**[Agrees on standing under 6ter]** Given the non-commercial nature of IGOs and the unique protection their marks enjoy under international law, we agree that standing to file a complaint under the UDRP and URS should be based on international law rather than national trademark law. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD	

3.	**FICPI support Recommendation No 2.** Although Article 6ter of the Paris Convention does not cover trademark rights, but rather "state emblems, official hallmarks, and emblems of Intergovernmental Organizations", the protection is similar to the identification of trademark rights when it comes to Paragraph 4 a (i) of the UDRP, as well as Article 1.2.6.1. of the URS. Article 6ter also has more international legal effect than does a list of IGO references or identifications provided by GAC or other ICANN related interest groups. FICPI notes that once an IGO's rights are identified according to Article 6ter, the IGO/Complainant must also provide arguments and evidence to show that the domain name holder has no rights or legitimate interests in respect of the domain name and that the domain name has been registered and is being used in bad faith. [Article 6ter 1(c)] is comparable to Paragraph 4 a (ii) and (iii) of the UDRP, as well as Articles 1.2.6.2. and 1.2.6.3. of the URS, referring to the fact that a domain name holder may have rights/legitimate interests in a disputed domain name, and may also have registered and is using the disputed domain name in good faith. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00005.html	FICPI	

4.	[UPU] urges ICANN to finally take the necessary steps to respect the unique legal and functional nature of IGOs. In that regard, we would once more emphasize the fact that the protection afforded to IGO names and abbreviations under international law and various domestic statutes stems from public policy considerations and goes beyond the mere concept of "trademarks", especially since such IGO designations are, as a matter of principle, not subject to the trademark registration requirements outlined in ordinary national, regional and international intellectual property frameworks (without prejudice to the possibility for an IGO to voluntarily register its name and abbreviation as a trademark, or to register any other trademark within the scope of its activities and projects). https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00045.html	UPU	
5.	**[Does not support 6ter for standing]** The U.S. disagrees with this recommendation because it incorrectly concludes that an IGO has standing, and therefore a right that is equivalent or similar to trademark rights, based on completion of the communication and notification under Article 6ter. This procedure does not have any legal effect under the terms of the treaty itself and therefore, there is no international right. Further, there is no harmonized approach among treaty members in implementation of Article 6ter. The WG has acknowledged that Article 6*ter* does not create any substantive rights, yet it has concluded that Article 6*ter* of the Paris Convention provides the basis for IGOs' "rights" to use the UDRP/URS. (Initial Report at 12.) But there is no equivalency between a Paris Convention notification and a trademark right …	USG	

	A disagreement between several GAC members, including the U.S., and the IGOs on whether Article 6*ter* of the Paris Convention provides a legal basis for the presumption of protection for IGO names and acronyms led the GAC to advance an alternative basis for protection, i.e., the existing criteria for registration at the second level in the .int top-level domain. This approach was adopted in October 2012 and it has been the basis for progressive exchanges between the GAC and the ICANN Board, ultimately culminating in the IGO Small Group Report. While the IGOs continue to disagree with the U.S. (and others) on the interpretation of Article 6*ter*, the IGOs and the U.S. nevertheless "agreed to disagree" on the applicability of Article 6*ter* and to move forward on an alternative basis, as is reflected in the IGO Small Group Report. GAC advice to the ICANN Board has repeatedly emphasized that IGOs are in an objectively different category to other right holders and that the governments support the implementation of appropriate protections of IGO names and acronyms on public policy grounds. This is the basis for the inclusion of IGOs on the reserved names list for gTLDs … <u>The Purpose of 6*ter* and Notification</u>: Eligibility to use the UDRP/URS cannot be defined on the basis of whether an IGO has notified its name or acronym to the World Intellectual Property Organization (WIPO), who then communicates that notification to WIPO Member States. The notification process has no legal effect under the Paris Convention and WIPO does not have the authority under the treaty to grant any international rights or recognition by virtue of that process. The WG's conclusion that an IGO may meet the "standing" requirement under the UDRP/URS as long as the IGO has completed the communication and notification procedure of Article 6*ter* reflects a misunderstanding of the nature of the treaty and its obligations. The conclusion necessarily assumes that the notification process results in either an international or national right.	USG (cont'd)	

	Proposed Expansion of IGO List: The GAC list was the result of protracted negotiations with the IGOs. Replacing that list with "all IGOs" (that have complied with the requisite communication and notification procedure, as set forth in Recommendation #2) is a game-changer, in that at least some organizations that proclaim themselves to be IGOs in fact are not. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00013.html	USG (cont'd)	
6.	**[Disagreeing with USG submission]** It seems to me that the United States has missed the key point regarding consumer protection in its learned disquisition on the intricacies of implementing (or not) Article 6ter of the Paris Convention, particularly because it seems to me that subparagraph (c) of that article implies (read a contrario) that the purpose of Article 6ter includes protecting the public from misleading use of IGO names and acronyms. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00018.html	RH	
7.	**[Supports 6ter for standing]** This recommendation eliminates the need for IGOs to trademark their names and acronyms as a prerequisite for seeking UDRP/URS protection. More importantly, the list of IGOs that have asserted their Article 6ter rights is broader than the list of IGOs for which the GAC has sought access to CRP, so this recommendation offers access to CRP for an expanded group of IGOs. Finally, we note that Article 6ter protections are recognized not only by all nations that have signed the Paris Convention but also by all members of the World Trade Organization (WTO); these two groups comprise the vast majority of national governments https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfb23CpD8fIN.pdf	ICA	

8.	**[Supports 6ter for standing]** This recommendation eliminates the need for IGOs to file national trademark applications before seeking UDRP/URS protection. More important, the list of IGOs that have asserted their Article 6ter rights is broader than the list for which the GAC has sought access to CRP, so this recommendation offers expanded access to CRP for IGOs. Finally, we note that Article 6ter protections are recognized not only by all nations that have signed the Paris Convention but also by all members of the World Trade Organization. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00020.html	BC	
9.	ICANN should establish a dispute resolution mechanism *modeled on but separate from the UDRP*, which provides: • Standing for IGOs which need not be expressly grounded in trademark law as such, as IGOs are created by governments under international law and are in an objectively different category of rights-holders. **[Concerns with Policy Guidance]** First, insofar as the Recommendation itself would effectively alter an existing Consensus Policy (no amendment of the UDRP), it improperly bypasses the ordinary Bylaws-prescribed Policy Development Process (it should not therefore be described merely as some form of policy "implementation" guidance). Second, aside from failing to adequately account for GAC Advice on this subject, this Recommendation disregards the plain language of the UDRP which requires trademark rights for standing to file a case. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	

10.	**[Support]** The IAEA submits that it is in the interests of ICANN and of domain-name registrants to establish curative mechanisms usable by all IGOs. The Initial Report does not propose such curative mechanisms. Recommendation #2 is a welcome step forward in this regard, as it formally recognizes the legal reality that IGOs derive the protection of their names and acronyms from Article 6ter of the Paris Convention. Like many IGOs, the IAEA does not register its names or acronyms as trademarks with domestic authorities. The pursuit of such protection would be superfluous in light of Article 6ter and therefore an inefficient use of public resources. In order for the ICANN curative mechanisms to be usable by the IAEA, they will need to recognize the protection afforded to the names and acronyms of IGOs by Article 6ter. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00028.html	IAEA	
11.	**[Neither pro nor con]** The RySG has neither a pro nor con comment on this recommendation, as no case has yet been presented. However, this seems like a reasonable threshold for an IGO to meet, and is reasonable for the protection of registrant interests. The RySG sees little need to invent a new process specifically for IGOs. The RySG supports no changes to the UDRP or URS process for either party in disputes involving IGOs. The RySG further supports an appropriate policy guidance document that clearly explains the limitations of any rights under Article 6ter of the Paris Convention. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfKVjlkkZPOH.pdf	RySG	

12.	**[No special restrictions should be imposed]** The World Bank believes that the GNSO seeks to require too legalistic and technical a test before many IGOs would be able to even access the Uniform Dispute Resolution Procedure or Uniform Rapid Suspension Process. The UDRP and URS generally require a claimant to prove that it has the right to assert protection for a name or acronym. A convenient shorthand is to require evidence of a valid trademark or service mark in the name or acronym a claimant seeks to protect. For corporations organized under national law, this test makes sense. For IGOs, however, such a requirement is often disqualifying, since IGOs often choose not to register their names as trademarks in all of the nations in which they operate. The World Bank, for example, has 189 member countries. The cost of registering and monitoring trademark applications across 189 countries would consume resources better spent on development assistance. The World Bank, like the OECD, urges the GNSO to allow arbitrators in the URDP and URS systems to apply international law, which may include Article 6ter of the Paris Convention, to evaluate whether an IGO has standing to file a claim. No special restrictions are justified for IGO claims. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00033.html	WB	

13.	**[Does not support]** First, IPC does not support using 6ter notifications as an independent basis for standing under the UDRP or URS. The mere notification to WIPO that an entity is claiming 6ter rights does not provide a sufficient basis for standing to bring a claim.It might be possible to consider whether (a) a 6ter notification has been actively accepted by any national trademark office and (b) conversely, whether a 6ter notification has been rejected by any national trademark office, in considering whether to allow standing. However, this seems both complex and uncertain. On the other hand, the list assembled by the GAC has even more tenuous claims as a legal basis for standing. While the list was the subject of extensive discussions between the GAC and IGOs, and was considered in the GAC/IGO "small group," it is far from clear what method, if any, was used for determining that an IGO had sufficient rights in its name to convey standing and be admitted to the list. There is a simpler solution to be found in the current UDRP – the ability to assert common law or unregistered trademark rights. [G]iving each IGO the opportunity to demonstrate a legal basis for its rights is far preferable to bootstrapping either the 6ter list or the GAC list (unless the GAC used a demonstrated and transparent methodology for determining whether each IGO name had "secondary meaning or distinctiveness.") This provides further support for creating a parallel and slight modified IGO-DRP, as discussed below, rather than amending the UDRP and URS. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC	

	[On a Policy Guidance document:] IPC is still of the position that there is no need for changing/modifying the current UDRP or URS in order to make it possible for IGO's to use these dispute resolution procedures. Instead, the IPC continues to support the creation of a separate, narrowly-tailored UDRP or URS-like process solely for IGOs to protect their identifiers. Such a mechanism would likely only need a few key amendments to the UDRP/URS: 1. Removal of the "mutual jurisdiction" clause as to not prejudice arguments regarding IGO sovereign immunity; 2. Explicitly permitting appeals of the decision to any court of competent jurisdiction, e.g., on an in rem basis where the domain name is located (via the registry or registrar) and/or specifying that appeals must be made to an arbitrator (e.g., any ICC arbitrator, not a special panel) rather than a court (in order to preserve IGO immunity …); and 3. While Article 6ter of the Paris Convention cannot by itself confer standing, a 6ter notification could be considered as an element in evidencing common law trademark rights in the IGO identifier(s) at issue sufficient to afford standing … Of course, an IGO would still be able to use any actual trademark registrations it might have to satisfy this element, or it could rely on other evidence of secondary meaning or distinctiveness. Pursuing this preferable approach, the IPC believes that no "Policy Guidance" document would be warranted. Indeed, such a document appears aimed at making inappropriate back-door modifications to the existing UDRP and URS. We reject this approach. The IPC is also concerned that the WG's treatment of 6ter notifications seems designed to cause UDRP or USR filings by IGOs to fail … the WG is recommending that UDRP or URS cases using 6ter notifications give less "deference" to the IGO's rights than in the typical UDRP or URS case. This "less deference" recommendation would handicap IGO UDRP cases at their very start. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC (cont'd)	

Comments on Recommendation 3

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			
1.	**[Does not support]** … Recommendation #3 unduly interferes with panellists' decision-making and proposes an interpretation of Article 6ter(1)(c) which does not enjoy consensus. Panellists should adjudicate the cases before them based on their interpretation of the applicable legal principles in the context of the facts at hand. The proposed recommendation would unduly increase the burden on IGOs bringing cases in the UDRP. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
2.	**FICPI support Recommendation No 3.** FICPI further notes that both the URS and the UDRP have Rules and Supplemental Rules wherein references to rights of IGO under Article 6ter can be included without changing current policies. WIPO also provides "a Model Complaint and Filing Guidelines" for UDRP cases, wherein a further clarification related to IGO protection can easily be made, again without revising the policies. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfxxK9I5sjsB.pdf	FICPI	

#	Comment	Contributor	WG Response / Action Taken
3.	**[Support]** This recommendation will align the scope of Article 6ter protections with its use as a basis for IGO standing. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfb23CpD8fIN.pdf	ICA	
4.	**[Does not support]** The GNSO attempts to mandate a second technical, legalistic limitation on the ability of an IGO to file a UDRP or URS complaint. The GNSO proposes that "UDRP and URS Panelists should take into account the limitation enshrined in Article 6ter(1)(c) of the Paris Convention in determining whether a registrant against whom an IGO has filed a complained registered and used the domain name in bad faith." It is not clear that this recommendation even makes sense. The GNSO apparently desires to limit an IGO's ability to argue that a fraudulent website is fraudulent unless the IGO proves that the website is "of such a nature as to mislead the public as to the existence of a connection between the user and the organization." Such a formalistic preliminary determination is not currently required for any commercial claimant before the UDRP or the URS, and none should be imposed on IGOs. There is no reasonable or legal basis to attempt to use the Paris Convention for something that it was never designed to do – the provision above applies to the "countries of the Union," not to ICANN. Article 6ter(1)(c) was not drafted with ICANN or the UDRP in mind, and the attempt to use it to limit an IGO's claim that its acronym is being used in bad faith is unwarranted. An IGO should have the same ability to argue and prove bad faith as a commercial claimant. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00030.html	WB	

#	Comment	Contributor	WG Response / Action Taken
5.	**[Does not support]** For these same reasons [as noted for Recommendation #2], the GAC cannot agree to Recommendation #3. Such dispute resolution mechanism should also provide for: • Appeal to an arbitral tribunal instead of national courts, in conformity with relevant principles of international law concerning recognized privileges and immunities conferred by governments on IGOs. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	
6.	**[Support]** The RySG supports no changes to the UDRP or URS process for either party in disputes involving IGOs. The RySG further supports an appropriate policy guidance document that clearly explains the limitations of any rights under Article 6ter of the Paris Convention. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfKVjlkkZPOH.pdf	RySG	

#	Comment	Contributor	WG Response / Action Taken
7.	**[Does not support]** [I] in view of the above suggestion that the Working Group reconsider developing a separate DRP solely for use by IGOs, Recommendation #3 would be rendered unnecessary, given that UDRP and URS panelists would have separate guidelines for regular UDRP and URS cases and for cased involving IGOs under the envisaged separate mechanism. Again, pursuing this preferable approach, no "Policy Guidance" would be needed … The IPC is also concerned by the suggestion that the "limitation enshrined in Article 6ter (1)(c)"4 should be imported into UDRP/URS jurisprudence. This would introduce an additional hurdle for IGO Complainants not currently found in UDRP/URS cases. Not only does this appear to be yet another instance where the Initial Report has created a UDRP that is "designed to fail," this would open the door to importing this limitation into UDRP/URS cases that do not involve IGOs. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC	

Comments on Recommendation 4

#	Comment	Contributor	WG Response / Action Taken

Section Summary:			
1.	As far as I can tell from the current GNSO Initial Report, the main reason given for not recommending a new UDRP for IGOs is that it would be somehow unfair to impose an arbitration clause on registrants, because that deprives them of the possibility of suing in national courts to reverse a UDRP decision. It seems to me that this objection is weak for at least two reasons. First, if a registrant loses a UDRP case, there is a prima facie finding of cybersquatting against an IGO name … Second, the very idea of the UDRP is to create a fast and inexpensive method to allow trademark owners to obtain redress in case of cybersquatting, with the consequence that a registrant that loses a UDRP case has to resort to national courts to recover the disputed domain name, if they think that the UDRP ruling is not correct. By analogy, it seems logical to me to create a fast and inexpensive method to allow IGOs to obtain redress in case of cyberquatting, with the consequence that a registrant that loses a UDRP case has to resort to an arbitration court to recover the disputed domain name, if they think that the UDRP ruling is not correct. The reason why an arbitration court, rather than a national court, is appropriate in the case of a claim made by an IGO regarding its name have been exposed many times: basically, it is not appropriate for IGOs to litigate matters in national courts. Litigation regarding IGOs normally takes place in arbitration courts for what concerns commercial matters. IGOs have stated repeatedly, and for many years, that they are unable to use the present UDRP because it requires them to waive immunity of jurisdiction, which they do not wish to do. Some people disagree with this position and think that IGOs should agree to waive immunity, or find some other means to use the existing UDRP. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00001.html	RH	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

	But the fact remain that, as shown by the present round of comments, IGOs do not agree with that position and maintain that they should be able to have access to a UDRP-like process without having to waive immunity … As a consequence, abusive registrations using IGO names and acronyms are not challenged … If there aren't many such abusive registrations, then what's the harm in creating a UDRP-like process that the IGOs can use without waiving immunity? Conversely, if there are a significant number of such abusive registrations, then surely consumers should be protected and a UDRP-like process that the IGOs can and will use should be created. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00018.html It is important to understand that the institution administering an arbitration (e.g. WIPO) does not have any role regarding the decisions made by the arbitrators. The arbitrators are not employees of the institution: they are independent professionals who are named to hear a dispute. Further, the choice of the arbitration institution could be left up to the non-IGO party in a domain name dispute … In the case of a UDRP-like mechanism, the arbitrators would hear the case de novo, just as would a national court, and they would not give any deference to the UDRP decision. Finally, it is worth noting that an arbitration clause in a contract between a private party and an IGO typically protects the private party, because it ensures that the IGO will not invoke immunity, as it might if the private party took the IGO to court in a national jurisdiction. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00024.html	RH (cont'd)	

	As I understand the situation, at present IGOs do not agree to the current mutual jurisdiction clause in the UDRP, and there is significant opposition to the proposal to create a UDRP-like process that would force non-IGO's to agree to an arbitration clause. Unless there is a change in those positions, it might be better to explore the option of making it easier for IGO's to file a complaint through an assignee. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00024.html	RH (cont'd) – also attached possible strawman language (https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/doccbBcfNLO9i.doc)	

2.	[The WG's conclusion that it] "is not able to say for certain that a third party's infringing registration of a domain name would necessarily impede an IGO in carrying out its core mission within the scope of a functional immunity inquiry" is not supported by the findings of the PDP for three main reasons. First, the WG incorrectly restates the immunity test proposed by its own legal expert, Prof. Edward Swaine. Second, the WG misapplies this incorrect test by applying an inappropriate legal standard. Third, the WG's proposed remedy for IGOs concerned about their immunities entails a complicated legal workaround which could undermine both an IGO's immunities and its ability to defend its rights in its own name. First, the WG incorrectly restates the functional immunity test provided by Prof. Swaine. The WG's test asks whether, in a UDRP proceeding, the third party's infringing use would be found to impede an IGO's ability to carry out its core mission. However, Prof. Swaine stated that a functional immunity analysis would "typically look to whether immunity concerns activities immediately or directly related to the performance of tasks entrusted to the organization." This is an important distinction: the immunity analysis as stated by Prof. Swaine does not focus on the potential legitimacy of the third party's claim, or on whether the third party's use might interfere with the IGO's core mission. Instead, Prof. Swaine's immunity test asks whether, as a matter of principle, the IGO's use and protection of its name falls within its mission or functions (hence the term "functional immunity" test). On that question of principle, Prof. Swain found that "an argument that it is part of an IGO's mission to maintain the distinctive character of its name, and avoid confusing domain-name registration, and thus deserving of immunity, seems colorable or even likely to prevail." … It is important to remember that this analysis assumes a court which interprets IGO immunities narrowly. Even using this strict test, Prof. Swaine found that an IGO's immunity claim is likely to prevail.	OECD	

	Second, the WG applies an impossible-to-attain standard to the test it devised: it establishes the threshold of legal "certainty", which will be satisfied only if it can be demonstrated that all courts will "necessarily" find that an infringing registration impedes the IGO from carrying out its core mission. However, a legal certainty threshold is impossible to fulfil on virtually any issue. Prof. Swaine's conclusion that an IGO's assertion of immunity under the circumstances in question is "likely to prevail" should be more than sufficient to justify accommodating these immunities in ICANN dispute resolution mechanisms. Third, the WG states that no change to the mutual jurisdiction provision is necessary because "IGOs are able to file complaints through an assignee, licensee or agent." The legal basis for this claim is tenuous; Prof. Swaine states that "the assignment might be ineffective". Even if such an assignment were found to be legally effective—a claim for which there is little jurisprudential support—Prof. Swaine admits that "such assignments could themselves be regarded as waivers of immunity". Moreover, Prof. Swaine observes that an IGO employing the assignment strategy is in danger of not only inadvertently waiving its immunities, but also potentially weakening its claim to the very mark it is trying to protect … *The graver problem is that a flawed assignment might diminish the assignor's priority in the underlying mark for all purposes.* In light of the uncertainty surrounding the effectiveness of assignment from both an immunities and intellectual property perspective, the conclusion that such a complicated legal workaround is a viable remedy for the problem at hand is unsupported by the facts presented in the WG's report. Finally, the WG states that it would be unfair to allow an IGO to invoke its immunities to avoid an appeal after prevailing in a UDRP proceeding if that IGO would be able to waive its immunities and appeal to a court of mutual jurisdiction if the IGO lost a UDRP case. This perceived imbalance could easily be avoided by providing for the possibility of appeal through an arbitration mechanism … https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD (cont'd)	

	Comment on Options to Recommendation 4: As a preliminary matter, we are concerned that the WG fails to appreciate the ramifications of its recommendation to leave the mutual jurisdiction provision unchanged for IGOs. The WG posits a possible case where an IGO "succeeds in asserting its claim of jurisdictional immunity in a court of mutual jurisdiction". However, mere acceptance of the mutual jurisdiction provision could be seen as a waiver of jurisdictional immunities for the purposes of the relevant proceeding. This is why IGOs have stated from the outset that the mutual jurisdiction provisions of the UDRP must be amended in order to be compatible with IGO immunities. If an IGO is found to have already waived its immunities, it is a purely theoretical exercise to contemplate what would occur if an IGO subsequently succeeded in asserting a claim of jurisdictional immunity in the relevant court of mutual jurisdiction. Where a court finds that the relevant IGO had already waived its immunity by submitting to the UDRP, the IGO would likely be estopped from subsequently raising jurisdictional immunity as a procedural defence. Implementing [Option 1] would curtail any rights the IGO does have to its immunities. Any losing registrant would know that one means of sweeping aside an unfavourable UDRP decision would be to lodge an appeal in a court of mutual jurisdiction. Even if that appeal is baseless, the IGO will be prevented from asserting the immunities granted to it under national and international law because the decision in its favour will simply be swept aside if the immunities claim succeeds. This option is likely to lead to a higher number of appeals against IGOs; a losing registrant may hope to have the ruling against it vitiated by lodging a baseless appeal against the IGO in the hopes that the latter will raise its immunities as a procedural defence. By forcing the IGO to forfeit its case if it raises its immunities, ICANN would have effectively withdrawn the IGO's immunities as recognised by the relevant nation's courts.	OECD (cont'd)	

	The OECD strongly supports [Option 2] as the only viable proposal, which would preserve the due process rights of both parties. In fact, as stated above, providing for the possibility of appeal to an arbitral tribunal from the outset of proceedings would resolve many of the issues raised in this PDP by eliminating the need for the mutual jurisdiction provision. We disagree with the WG's claim that arbitration is a "mechanism … unfamiliar to registrants". Arbitration is a common means of resolving commercial contractual disputes. … The WG inaccurately claims that "introducing this option would require that a registrant agree to such an appeal mechanism up front, in the form of a new provision in the domain name registration agreement". [Citing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and a United Nations Commission on Trade and Development treatise on arbitration], an agreement signed by the parties at the outset of UDRP proceedings (or later) will therefore constitute a valid agreement to arbitrate. No amendment to registration agreements would be necessary. … Given that only a minimum number of cases (the small number of those cases involving IGOs and which are subsequently appealed) would be concerned, there is no apparent basis for [the WG's concern of "a risk that the jurisprudence developed under such a system diverges from and becomes disconnected from that developed in national courts, without the ability to reconcile those differences"]. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD (con'td)	

3.	Comments on Options to Recommendation 4: The only reasonable option in this situation is to vitiate or set aside the UDRP/URS ruling, in order to preserve the status quo and the legal rights of all parties and to ensure that the UDRP/URS does not interfere with those legal rights. It would put all parties in the same situation as if the UDRP/URS did not exist, and only the national laws existed. The UDRP/URS was not designed to replace the law, but was instead put forth as a fast low-cost alternative procedure for clear cut cases of cybersquatting that fully preserved the rights of all parties to pursue their dispute in the courts, before, during, or after a UDRP/URS decision. Depriving a domain name registrant recourse to the courts through compulsory arbitration represents a denial of due process to those domain name registrants. These are not trivial concerns, given that arbitration panels are not constituted in the same independent manner as the national courts, are not more expert with regards to national laws than the judges of those nations, and are often subject to forum shopping by complainants. Given the choice of proceeding in the courts (which IGOs are free to do) or proceeding with a UDRP/URS, IGOs will naturally choose the venue where the playing field is tilted unfairly in their favour. Removing the ability to appeal to the courts means that arbitration panelists, many of whom are notorious for their poor judgement, would have their decisions left unchecked. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00004.html	GK	

4.	**Support for Recommendation #4** FICPI further support the recommendation that the Policy Guidance document also include a section that outlines the various procedural filing options available to IGOs, especially as these will be the same as already exist for traditional trademark owners using these dispute resolution procedures. FICPI notes from the Working Group report (especially from Professor Swaine's legal conclusion in relation to an IGO's jurisdictional immunity) that there is no international clear praxis, and that claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will have to be determined by the applicable laws of that jurisdiction. FICPI therefore also support the Working Group's conclusion on this topic. **Comments on the two options:** Option 1 seems to correspond more closely to traditional trademark/domain name disputes, and is therefore also likely to be both more practical and more accepted by domain holders, registrars and other groups involved in domain name registration and administration. However, Option 2 may be more acceptable from the perspective of IGO's, as the final decision will not be restricted to a specific national court but will still be handled in a neutral / international way. FICPI therefore recommends the Working Group should reach out to GAC and representatives of IGO's to obtain their view on relative merits of the two options. If a majority of active GAC members prefer Option 2, FICPI recommends the Working Group accept that solution in its Final Report. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfxxK9I5sjsB.pdf	FICPI	

5.	It is common knowledge that UDRP/URS panelists are financial incentivized to find in favor of complainants to get repeat business. The biased panelists should never be allowed to have the last word. They have given away very common single word domains that have been overturned in court. The panelists are helping complainants commit flat out theft in order to get repeat business, and there just be an option to stop the theft, like going to court. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00006.html	JE	
6.	[Narrating personal experience manifesting concerns with the UDRP …] Given the failure to properly manage the UDRP the court challenge should remain in place. As it is currently it could be argued that an IGO-INGO waives their right to immunity when they agree to the arbitration agreement. That should be changed so any entity who files a UDRP explicitly waves their right to any immunity. The respondent should have the matter reviewed in a legitimate legal forum rather than some kangaroo court run by NAF and INTA members. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00009.html	RS	
7.	I would like to voice my wholehearted support for the position elucidated by George Kirikos, namely that domain name owners not have their right to appeal to their national courts taken away by being forced into binding arbitration … I sincerely hope that ICANN will give appropriate weight to the concerns of the many thousands of small business owners who rely on their domain names for their livelihoods. *https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00010.html*	PQ	

8.	This recommendation fails to address both the status of IGOs as organizations of sovereign member states and the basic premise of forum selection clauses such as the Mutual Jurisdiction Clause in the UDRP and URS. The status of IGOs – By the terms of the treaties establishing them, the United Nations and other international inter-governmental organizations have, in the territories of their Member States, such privileges and immunities as are necessary for the fulfilment of their functions. Because the Member States act as a collective when determining the functions and activities of the United Nations and other IGOs and collectively bear the liabilities of such IGOs, individual Member States cannot, through their judicial, administrative or legislative processes interfere with the independent functions and activities of IGOs or individually impose liabilities on them. The IGOs cannot, therefore, waive their immunities from national jurisdictions by agreement in advance, as is required by the UDRP and URS. This does not mean that IGOs are above the law. The treaties that establish IGOs effectively require IGOs to resolve contractual or other legal disputes through appropriate non-Member State dispute-resolution means such as arbitration. Forum Selection Clauses – Forum selection clauses provide an expression of consent by the participating parties to submit to a given jurisdiction. The Mutual Jurisdiction Clause of the UDRP and URS does this exactly. The Mutual Jurisdiction Clause provides that the parties agree in advance that national courts shall be competent to hear and rule on disputes that have been brought to the UDRP and URS. Thus, leaving the jurisdictional clause of the UDRP and URS in place would require an IGO to have already agreed to appear before a court of national jurisdiction and, therefore, to have agreed in advance to waive its immunities. Should the IGO subsequently assert its immunity, the IGO could be perceived as reneging on that agreement.	UN	

	[Disagree] that arbitration may not be a proper alternative to national courts as a means to appeal an UDRP or URS finding because the arbitration mechanism is not familiar to registrants. Arbitration is a common method for dispute resolution and especially popular between entities that come from different national jurisdictions, since the awards are valid in any country, regardless of where the decision was made. As the United Nations has noted on multiple occasions, a simple means of allowing IGOs to benefit from the UDRP and URS processes is to eliminate for them the obligation, set forth in the Mutual Jurisdiction Clauses of the UDRP and URS, to waive their immunity from national jurisdictions in advance. In light the reasons enumerated by the OECD, and of the further elaboration offered above by the United Nations, we urge all relevant parties to adopt an effective mechanism that will protect the public and prevent the misleading use of the names and acronyms of inter-Governmental organizations in the DNS. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00012.html	UN (cont'd)	

9.	Clarifying that an IGO may avoid any concession on the matter of jurisdictional immunity by electing to file a UDRP or URS through an assignee, agent or licensee … greatly respects the views of some IGOs in regard to the question of immunity. This recommendation also properly states that, in the rare circumstance in which a losing registrant elects to exercise its legal right to appeal to a court of mutual jurisdiction under applicable statutory law, any claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will be determined by the applicable laws of that jurisdiction. Given that the determination of an immunity claim will depend on a wide variety of factors - - including the applicable laws of that jurisdiction, the treaty or charter basis of the IGO, the accepted analytical approach exercised by the jurisdiction's courts, and the particular facts and circumstances of the matter in dispute -- determination of the immunity claim by the court is the only responsible way to proceed, as it would be impossible and improper for ICANN to assert a blanket rule that predetermines the outcome for every IGO in every potential domain-related dispute. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfb23CpD8fIN.pdf	ICA	

10	This clarification respects the views of some IGOs in regard to the question of immunity. This recommendation also properly states that, in the rare circumstance in which a losing registrant elects to exercise its legal right to appeal to a court of mutual jurisdiction under applicable statutory law, any claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will be determined by the applicable laws of that jurisdiction. Given that the determination of an immunity claim will depend on a wide variety of factors … determination of the immunity claim by the court is the only way to proceed as it would be impossible and improper for ICANN to assert a blanket rule that predetermines the outcome for every IGO in every potential dispute. In those rare instances in which a losing registrant seeks judicial appeal and the IGO subsequently successfully asserts its immunity to the court's jurisdiction, our preference is for Option 2 as set forth in recommendation 4 … It is important to note that it is only within this very narrow circumstance of a complainant IGO's successful assertion to a court of its judicial immunity in which we would countenance compelling a domain registrant to submit to arbitration as an appeals mechanism, and this position should not be viewed as setting a broader precedent. If the WG is swayed by public comment to adopt Option 2 then it will be extremely important that its eventual implementation rest upon carefully balanced selection of an arbitration forum and applicable rules for the de novo determination. Option 1 would effectively compel an IGO to waive its (potentially valid) claim of jurisdictional immunity after prevailing in a UDRP … The BC remains open to the input of affected IGOs on this matter … we urge the WG to carefully review all comments and to be mindful of the potential impacts on time and cost to resolution, as well as the necessity to assure that the CRP provided to IGOs can be utilized in a practical matter that is respectful of valid immunity claims. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00020.html	BC	

11	One of the worst goals of the current efforts of corporations is to destroy access to their national courts by litigants … arbitration panels always end up selected by and controlled by the corporations. The result is a further erosion of the protection of the rights of individuals, and access to determination of ownership and rights through a due process in courts under law established in their nation of residence. I am totally against this movement which erodes legal rights of owners of domains, and removes their access to due process under legal structures in the courts of their nation of residence.	RE	
12	[The WG's suggestion of] a form of workaround, is incompatible with the position conveyed by the Legal Counsels of IGOs which was provided to the Working Group at its request. … Working Group Recommendation #4 does not adequately account for GAC Advice on this subject which recognizes international norms regarding IGOs' status as treaty-based organizations. More fundamentally, as noted above, Working Group Recommendations #2 and #4 which suggest various adjustments to the UDRP plainly fail to account for GAC Advice (see, e.g., the Los Angeles and Hyderabad Communiqués) which calls for a separate standalone IGO-specific dispute resolution mechanism. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	

13	[W]e appreciate the WG asking for input on which of two options are optimal, and also being open to a third alternative that has yet to be considered. We have no specific comment on either option, but instead suggest that the WG be mindful of the potential impacts on time to resolution and cost to resolution, when determining the optimal approach. Such practical considerations are highly relevant to INGOs, IGOs, and domain registrants who are subject to a UDRP or URS action. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00025.html	i2c	
14	the UPU must express its clear and unambiguous opposition to certain allegations that arbitration procedures would constitute "denial of due process" or that arbitration would reflect a "playing field [that] is tilted unfairly" in favour of IGOs or tainted by "poor judgement" on the part of arbitrators. Indeed, the unsubstantiated character of these allegations can be easily demonstrated by the fact that even the UPU itself was the subject of negative rulings arising from the .EPOST and .MAIL objection cases under the New gTLD Program. In fact, it is evident from the relevant international law provisions applicable to IGOs that each organization shall make provision for appropriate modes of settlement (i.e. arbitration) in the light of their immunity from every form of domestic legal process. Such allegations also seem to ignore the fact that, even in a hypothetical scenario where an IGO expressly decides to waive its immunity, such a waiver shall never extend to any measure of execution. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00045.html	UPU	

15	**[Does not support]** First, Professor Swaine's analysis, while valuable, does not fully reflect and is not fully consistent with our immunities analysis … In particular, we note that IFC enjoys other privileges and immunities, including archival and staff member immunities, and considers none of these waived by any submission to judicial process or otherwise. These immunities are accorded to IFC by implementing legislation, such as the International Organizations Immunities Act, the IFC Act, and similar legislation in other jurisdictions, as well as our Articles of Agreement and principles of international law. Second, we note (without waiver or agreement) Professor Swaine's counsel that "granting Mutual Jurisdiction – via initiation of a complaint, or, for that matter, registration – would likely be understood as a waiver of any immunity the IGO might otherwise assert". The WG's assertion that its proposed outcome "respects and preserves an IGO's assertion of jurisdictional immunity", or indeed any immunity, is therefore incorrect on the WG's own terms. Finally, we note that whatever the substantive concerns, by declining to consider the accommodations supported by the Small IGO Group, the GAC, or apparently, the ICANN Board, the WG is recommending an approach that impedes rapid or efficient resolution of domain name disputes by registrants. To the contrary, it is effectively proposing that where IGOs are complainants, they pursue actions outside ICANN mechanisms, at considerable burden to both IGOs and registrants, in order to preserve legal rights well established and recognized under international and national laws. By overriding Professor Swaine's analysis, the WG is also incentivizing non-IGO complainants to pursue frivolous claims against IGOs within the UDRP/URS mechanism, with a view to arriving in national courts asserting arguments inconsistent with the principle of preservation of rights, and pursuing additional and perhaps unrelated claims in that context. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00039.html	IFC	

16	[Despite Recommendation #2] IAEA would still not be in a position to use the current or the proposed URS and UDRP mechanisms because of their "Mutual Jurisdiction" provisions. Acceptance of these clauses would likely require the IAEA to waive the immunity it enjoys under international law. Under Article XV of the Statute of the IAEA and as elaborated in Article III, Section 3, of the Agreement on the Privileges and Immunities of the IAEA, the IAEA "shall enjoy immunity from every form of legal process" in its Member States. This immunity facilitates the operations of the IAEA by allowing it to operate under the unified legal framework that its Member States have created for it, rather than inefficiently dedicating public resources to compliance with 168 legal regimes and worrying about potential litigation in as many court systems … Consequently, the IAEA is not in a position to use URS or UDRP, even though there currently are domain names registered by third parties that abuse the IAEA acronym. The dispute resolution and rapid relief mechanisms proposed under points 2 and 3 of the IGO "Small Group" Proposal (Annex E to the Initial Report) would allow IGOs like the IAEA to participate in ICANN curative mechanisms because final recourse to a national court would be replaced by arbitration. As the WIPO Arbitration and Mediation Center and the United Nations each note in their observations, arbitration is the standard mode of dispute settlement used in disputes between IGOs and other parties and is also commonplace in commercial settings. All IAEA contracts with outside parties include an arbitration clause. Its inclusion in a narrowly tailored curative mechanism for IGOs would not represent a departure from standard legal practice and would instead facilitate the rapid and costeffective settlement of IGO DNS disputes in a manner that preserves the rights of all stakeholders. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00028.html	IAEA	

	[Regarding use of agent or assignee:] IAEA is in general agreement with the comments of the OECD that raise concerns that such an assignment might not be effective and may weaken an IGO's rights in its name or acronym. Moreover, such a possibility is contrary to the goals of URS and UDRP. Both of these processes are designed to be accessible, cost-effective, and usable by rights-holders of any size with a minimum of legal support in cases where a domain has been registered in a clearly abusive fashion. The involvement of a third party would unnecessarily complicate proceedings under the curative mechanisms and pose an additional financial burden on IGOs, which, as the Initial Report recognizes in Recommendation #5, should be minimized rather than increased in light of the global public interests that IGOs serve. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00028.html	IAEA (cont'd)	
17	The World Bank adopts the OECD's comments in their entirety on this point. The World Bank admits that the privileges and immunities of IGOs are not a simple topic. This is why some deference should be accorded to the IGOs on this issue, who are experts, or at least to the GAC, whose membership consists of government representatives. Overall, the World Bank does not accept the GNSO's statement that its present recommendations "will result in substantial improvement and clarity regarding IGOs' access to curative rights protections mechanisms." Instead, the GNSO's preliminary recommendations simply defend the status quo and the existing URDP and URS process, and seek to avoid making any accommodations for IGOs. The GNSO does not adequately consider the actual threat posed to IGOs by being forced to waive their immunities in order to participate in the UDRP, and provides no reasonable options. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00033.html	WB	

18	The RySG supports Recommendation 4(a) [Mutual Jurisdiction clauses of UDRP and URS remain unchanged] Recommendation 4(b) [Policy Guidance]: The RySG does not believe ICANN or the WG should provide any sort of legal advice to an IGO filing a UDRP or URS complaint. Furthermore, the locale of the agency or assignee filing the complaint is completely unrelated to the Mutual Jurisdiction of UDRP or URS (which are both limited to the location of the registrar or registrant, as elected by the complainant). The RySG supports Recommendation 4(c) [claims of jurisdictional immunity determined by the applicable laws of that jurisdiction] … neither Option 1 nor 2 solve the problem the working group is trying to address. Both merely introduce new levels of complexity and cost and lose the delicate balance the UDRP and URS have struck. All complainants choose from a variety of legal and non-legal options including doing nothing, going to court and using the UDRP/URS, and must weigh the relative costs and benefits accordingly. The RySG supports the WG's conclusion as stated on page 19 that "it would not be possible to recommend a single solution that takes into account all [of the variables]…." https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfKVjlkkZPOH.pdf	RySG	

19	**[Does not support]** UNESCO submits that this recommendation deprives [IGOs] of their access to an effective curative rights protection mechanism because it fails to account for IGOs' immunities. It is worth recalling that IGOs are particularly exposed to fraudulent registrations of domain names. Since ICANN introduced a program which resulted in a potentially limitless expansion of the domain name system in 2011, UNESCO and other IGOs have been exposed to online fraud in a way not previously seen. For instance, cyber-criminals have used UNESCO's name or acronym in a domain name to fool internet users into making payments. These frauds are of particular gravity because they do not only affect IGOs themselves and their donors, but also the public interests towards which these payments could have been directed. UNESCO submits that the Mutual Jurisdiction Clause, as it stands, is inconsistent with IGOs' jurisdictional immunity. [Citing a number of UN treaties] By treaty, the international community has therefore granted IGOs full immunity from legal process to ensure their independence from any State, and allow them to fulfil the objectives of public interest for which they were established. First, … national courts have no jurisdiction to determine the extent of the immunities enjoyed by IGOs. Second, an IGO would have immunity from jurisdiction under any of these three legal approaches [explained by Professor Swaine] … Contrary to the recommendation of the Working Group, the Mutual Jurisdiction clause should be amended to take into account the nature of IGOs and their full immunity from legal process, while also respecting registrants' right to have an unfavourable UDRP Panel decision reviewed. As stated by Professor Swaine, "IGOs typically resolve the tension between immunity and judicial processes" by referring to arbitration".	UNESCO	

	Contrary to what the Working Group stated, IGOs are not "able to file complaints through an assignee, licensee or agent" without waiving their immunity. An assignee, licensee or agent would lodge a complaint on behalf of the IGO, and thus even an assignment could be construed as a waiver of immunity. For these reasons, we concur with OECD's comment that "[i]n light of the uncertainty surrounding the effectiveness of assignment from both an immunities and intellectual property perspective, the conclusion that such a complicated legal workaround is a viable remedy for the problem at hand is unsupported by the facts presented in the [Working Group]'s report. [P]recisely because IGOs are immune from jurisdiction by international treaty, the extent of this immunity cannot be determined by a national court. In fact, IGOs' immunity from legal process prevents IGOs from appearing before a national court at all, even if it is to raise a so-called "immunity claim." This is because the mere fact that an IGO appears before a court could be construed as a waiver of immunity. Therefore, the Working Group based Recommendation #4 on the wrong assumption… IGOs' immunity is not a mere jurisdictional objection that has to be raised during the proceedings by the IGO and that is ultimately decided by the Court … the mere fact that an IGO agrees to a Mutual Jurisdiction under the UDRP or URS could likely be interpreted as an implicit waiver of immunity. [T]he Mutual Jurisdiction clause could be amended by adding the following paragraph: *"in the event that the complainant is an IGO enjoying privileges and immunities under relevant treaties, challenges to a decision in the administrative proceeding cancelling or transferring a domain name shall be referred to final and binding arbitration."* https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00037.html	UNESCO (cont'd)	

20	**[Does not support]** Specifically, the IPC does not support maintaining the "Mutual Jurisdiction" clause with regard to IGO cases, nor does IPC support the creation of a "Policy Guidance" document. The IPC does support (c): "claims of jurisdictional immunity … will be determined by the applicable laws of that jurisdiction." The separate IGO DRP [supported by IPC] could include explicit instructions that any decisions under the DRP would be appealable to any court of competent jurisdiction on an in rem basis where the domain name is located (via the registry or registrar). IGOs would then be free to enter a special appearance arguing sovereign immunity without having prejudiced such arguments by agreeing to mutual jurisdiction in the first instance. The IGO DRP could be appealable to an arbitration entity as suggested in Option 2. Either way, there needs to be a mechanism that does not require an IGO to choose between initiating a claim and preserving immunity. Again, by pursuing this solution, there would be no need to create a separate Policy Guidance document. **[On the two options:]** Option 1 seems harsh and draconian, and puts an IGO complainant in an appeal in an untenable position. On the other hand, it offers a "free pass" to the losing respondent. Option 2 is consistent with the general practice for appeals of UDRP cases, as registrants on the losing side of a UDRP are entitled to a de novo review upon appeal, except that the appeal goes to an arbitrator rather than a court. IPC especially supports and notes the importance that the arbitration entity handles such case for de novo review and determination. Option 2 is easily transferrable to an IGO-DRP as recommended by IPC. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC	

21	We recognize the complex legal considerations raised with Recommendation 4, regarding jurisdictional immunity claimed by some IGOs, and its impact on the use of these mechanisms. However, we do not believe that it's within the remit of ICANN or GNSO consensus policy to grant or limit the scope of immunity as applied to some IGOs. We therefore applaud the working group's consultation of outside experts on this topic, and encourage them to continue to engage all necessary resources in their review of Public Comments and development of their Final Report. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfeNbWHfSoJb.pdf	RrSG	

Comments on Recommendation 5

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			
1.	**[Support]** Given the non-commercial nature of IGOs, the OECD agrees that ICANN should investigate the possibility of subsidising the cost of IGO access to the UDRP and URS. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfQMY4Efq7Aa.pdf	OECD	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]
2.	**FICPI support Recommendation No 5.** https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfxxK9I5sjsB.pdf	FICPI	
3.	**[Support]** Recommendation #5 is the one Working Group recommendation that takes the GAC's advice into account, i.e., that any curative rights protection mechanisms be provided at no or nominal cost. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00023.html	GAC	
4.	**[Support]** The World Bank agrees with Recommendation 5, which is in line with prior GAC advice on this issue. IGOs rely on public funds from their member countries, and should be allowed to spend those funds on the public missions for which they are established. IGOs should not have to divert those funds to protect their acronyms against fraud and abuse in ICANN's domain name system. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00030.html	WB	

#	Comment	Contributor	WG Response / Action Taken
5.	**[Does not support]** The RySG respectfully disagrees with the notion that actions might be brought at nominal or no cost, as this sets a dangerous policy precedent and could encourage other various parties to plead for similar nocost access to UDRP and URS, potentially leading to abusive use. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfKVjlkkZPOH.pdf	RySG	
6.	**[Support in principle]** … but would want assurance that any costs are not passed on to other stakeholders. We wish also point to the fact that the costs for using URS or UDRP (or, presumably, the IGO DRP) are already lower than traditional civil court actions. Finally, it should be clear that this refers only to filing fees, and not to any other costs in bringing an action (and not to any costs on appeal). https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00043.html	IPC	
7.	**[Some concern]** We are somewhat concerned by the possibility that, per Recommendation 5, dispute resolution costs might be borne unequally by parties to a dispute, but note that the working group recommendations are not sufficiently conclusive to permit full comment. We would advise ICANN to seriously consider the potential negative implications of an imbalanced fee scheme for the URS and UDRP in assessing the feasibility of subsidizing IGO or INGO access to these mechanisms. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/pdfeNbWHfSoJb.pdf	RrSG	

General/Other Comments

#	Comment	Contributor	WG Response / Action Taken
Section Summary:			

1.	**[Responding to WIPO's examples of domain name abuses]** There are several ways in which malware & phishing can be delivered and most do not actually need a confusingly similar domain name that would be required to take action under UDRP or URS … It is far easier to make part of the URL other than the domain look official to a percentage of people either through the use of a sub-domain, directory path or additional parameters and then use a batch of non-infringing domains … as a significant percentage of people would not know that domain in the above example is actually the blue part of the text. I understand fully the IGOs reluctance to have to deal in different jurisdictions around the world but any actors engaged in the kind of behaviours cited by WIPO would be extremely unlikely to ever provide a defence against a UDRP never mind seek to overturn an adverse UDRP outcome against them in their domestic courts. I personally believe a separate, narrowly tailored dispute resolution mechanism isn't the best way forward especially given better alternative non UDRP/URS mechanisms already exist to deal with the vast majority of the cited bad behaviour. It would be far better to improve the existing protection mechanisms which would also help other non-IGO organizations which currently experience in excess of 99.9% of these kinds of problems. Any tailored UDRP protections offering a pervasive right of immunity would also grant substantial additional rights to IGOs bringing a dispute against a registrant in a non Member state and especially so, for regional IGOs. Finally, on standing it is worth pointing out UDRP is exceptionally well drafted and there are a lot of myths promulgated by interested parties. There is nowhere in the UDRP policy that requires the registration of a trademark or service mark. And 6ter simply evidences Governmental & IGO marks in the same way the registration of trademarks simply evidences the existence of marks of the underlying goods and services. https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/msg00038.html	PT	Concerns Divergence Agreement New Idea **WG Response:** **Action Taken:** [**COMPLETED / NOT COMPLETED**] – [Instruction of what was done.]

#	Comment	Contributor	WG Response / Action Taken