**DISCUSSION OF BENEFITS/DISADVANTAGES OF DEVELOPING A SEPARATE DISPUTE RESOLUTION PROCESS (DRP) TO APPLY ONLY TO IGOS**

**Draft prepared by ICANN staff (31 May 2017)**

Summary of Benefits & Disadvantages of a Separate DRP:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Benefits** | **Disadvantages** | **WG Discussion/Comments** |
| 1.  | This would not require any modification or amendment of the existing UDRP or URS.Possible Considerations:* The scope and applicability of the separate DRP will need to be very clearly and narrowly defined, to make clear that it has no relationship to trademark law or dependence on the UDRP and URS
* Need to determine whether a separate DRP would be similar to the UDRP or to the URS (e.g. for burden of proof and remedies); in terms of substantive scope, what would be the grounds that will replace the current three prongs of the UDRP/URS?
* Would a separate DRP be more appropriate if it were limited to something akin to a URS-type of proceeding e.g. with a higher standard of proof and limited remedies?
 | This will add an entirely new process to the existing ICANN DRPs, to apply only to one specific group of complainants.Possible Considerations:* Need to be clear as to the exact public policy or legal grounds on which this is based, to minimize the risk that other parties might in due course petition the GAC or ICANN for such extraordinary treatment.
 |  |
| 2. | This is supported by the GAC and other community groups (e.g. IPC).Note:* The IPC has been on record for a number of years as opposing an amendment to the UDRP and supporting a separate DRP for this specific purpose.
 | Although the GAC at ICANN supports a separate DRP for IGOs, the issue of a separate DRP – whether for country names or IGO identifiers – has been a difficult issue in international circles (including at the WIPO General Assembly level) for many years – what are the implications of ICANN being the first to adopt one? |  |
| 3. | A separate DRP may address the public policy concerns that have been raised by the GAC and IGOs.Note:* The US Government comment notes its support for the IGO Small Group Proposal; a separate DRP may be a way to weave in elements of that proposal to create a narrow, specific process that may be acceptable to all interested parties and avoid yet another GAC-GNSO conflict on IGO protections.
 | This will tread entirely new legal and policy grounds for ICANN – the implications of creating a separate DRP that is not based on specific legal rights (since the UDRP and URS are based on trademark law) should be carefully examined.  |  |
| 4. | A separate DRP that is not based on trademark rights is not likely to cause potential issues (e.g. “scope creep”) in relation to the scope and future of the trademark-based UDRP and URSNote:* This seems to be a concern for the IP community, especially in view of the ongoing RPM review.
 | As noted above, the implications of creating a brand-new, non-trademark law-based DRP needs to be more fully examined. |  |
| 5. | A separate, narrowly tailored DRP could help resolve the jurisdictional immunity problem, e.g. by allowing for arbitration (on a de novo basis) as an option for “appealing” a panel decisionPossible Considerations:* The arbitration option must provide at least the same level of due process safeguards as going to a national court (e.g. parties should be able to argue the case anew, the process should not be more costly or have more procedural requirements than court filings, and arbitrator(s) must be neutral and independent).
* Need to consider if arbitration should be ad-hoc (i.e. the process simply specifies the applicable arbitral rules, e.g. UNCITRAL, ICC) or more institutional (i.e. similar to how UDRP and URS proceedings are administered today).
 | If arbitration is pursued as the sole option for a losing party, what are the implications of removing a party’s right of recourse to a national court versus preserving the jurisdictional immunity rights and privileges (in those jurisdictions where this will be recognized) for IGOs? |  |