

IGO WORK TRACK: PROPOSED RECOMMENDATIONS

Draft as of 15 June 2021

Problem Statement:

International Governmental Organizations (IGOs) currently face two challenges when considering whether to file a complaint under either the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension procedure (URS). These challenges arise because of the requirements that:

- (1) A complainant must demonstrate that the domain name at issue is identical or confusingly similar to a trademark in which the complainant has rights; and
- (2) A complainant must agree to submit to Mutual Jurisdiction, which can compromise an IGO's immunities and privileges in relation to the jurisdiction of a court, in the event that a losing registrant files suit against the IGO which prevailed in the initial UDRP or URS decision phase.

The IGO Work Track has deliberated on both issues and considered possible policy solutions in light of the GNSO Council's instructions, which were that the Work Track's final recommendations should be "generally consistent" with the four IGO-INGO Curative Rights Policy Development Process (PDP) recommendations that the GNSO Council has already approved, including a restriction against developing a new and separate dispute resolution process for IGOs.

Proposed Solutions:

As a result of its discussions, the IGO Work Track recommends addressing the two issues noted above in the following manner.

1. How IGO Complainants May Demonstrate the Requisite Rights to Proceed Against a Domain Name Registrant

The IGO Work Track recommends that the UDRP Rules and URS Rules be modified in the following two ways.

(i) Add a description of "IGO Complainant" to section 1 (definitions section of both sets of Rules):

"IGO Complainant" refers to:

- (a) an international organization established by a treaty and which possesses international legal personality; or
- (b) an 'Intergovernmental organization' having received a standing invitation to participate as an observer in the sessions and the work of the United Nations General Assembly (as the case may be); or
- (c) a distinct entity, organ or program of the United Nations."

(ii) Additionally, add the following explanatory text to UDRP Rules Section 3(b)(viii), URS Section 1.2.6 and URS Rules Section 3(b)(v):

“Where the Complainant is an IGO Complainant, it may show rights in a mark by demonstrating that the identifier which forms the basis for the complaint is used by the IGO Complainant to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document).”

2. How to Recognize IGO Jurisdictional Immunity While Preserving a Registrant’s Right to File Proceedings in a Court of Mutual Jurisdiction

The IGO Work Track recommends that IGO Complainants (as defined under the proposed modifications to the UDRP and URS Rules) be exempt from the requirement to agree to submit to Mutual Jurisdiction when filing a complaint under the UDRP or URS.

In addition, the IGO Work Track recommends that one of the following two avenues be added to the UDRP and URS.

Option A: An Appeals Panel

- Within [TBD] business days following the communication of a UDRP or URS panel determination to the parties, either party may file a notice of appeal with the relevant UDRP or URS provider [via the prescribed form under the UDRP/URS/provider’s rules], including payment of any applicable fees.
- Within [TBD] business days of receipt of the notice of appeal, the UDRP or URS provider shall notify the other party and the relevant registrar, and the relevant registrar shall stay the implementation of the initial UDRP or URS decision until it has received notification from the UDRP or URS provider as to the outcome of the appeal or other satisfactory evidence of a settlement or other final resolution of the dispute.
- The respondent shall not be permitted to transfer the disputed domain name during the pendency of the appeal.
- The respondent to the appeal shall have the right to file a response within [TBD] business days from [receipt/the date] of the notification, including the payment of any applicable fees.
- At the expiration of [TBD] business days following the expiration of the response period or the receipt of a response, whichever is earlier, the UDRP or URS provider shall convene an Appeals Panel consisting of three members drawn from its roster of panelists.
- The panelist(s) who issued the initial determination will not be eligible to serve on the Appeals Panel.
- The Appeals Panel will review the case de novo, i.e. based on a full review of all the facts. It shall have the same General Powers as the initial UDRP or URS panel in conducting the appeal.

- The Appeals Panel shall conduct a de novo review of the case; i.e. the parties will be permitted to make new factual and legal arguments and submit new evidence.
- The Appeals Panel's decisions shall be made by a majority.
- In the absence of exceptional circumstances, the Appeals Panel shall deliver its decision in writing within [TBD] business days of its appointment.
- The right of either party to file proceedings in a court of [Mutual Jurisdiction/competent jurisdiction] shall not be affected by the initiation of an appeal under this process.

Option B: Binding Arbitration Following the Initial Panel Determination

- In communicating a UDRP or URS panel determination to the parties where the complainant is an IGO Complainant, the UDRP or URS provider shall also request that the parties indicate whether they agree that any review of the panel determination will be conducted via binding arbitration.
- The request shall include information regarding the applicable arbitral rules, which shall be those of [TBD].
- If the UDRP or URS provider receives an affirmative response from both parties within [seven] business days, it shall promptly inform the parties and the relevant registrar. The relevant registrar shall stay the implementation of the initial UDRP or URS decision until it has received official documentation concerning the outcome of the arbitration or other satisfactory evidence of a settlement or other final resolution of the dispute.
- The registrant shall not be permitted to transfer the disputed domain name during the pendency of the arbitration.
- In addition to the specific arbitral rules to be applied, the following general principles shall govern all arbitral proceedings conducted through this process:
 1. The arbitration shall be conducted as a de novo review; i.e. the parties are permitted to restate their case completely anew, including making new factual and legal arguments and submit new evidence;
 2. The arbitral tribunal should consist of one or more neutral and independent decision makers, who should not be identical or related to the panelists who rendered the initial UDRP or URS decision; and
 3. Both parties should be able to present their case in a complete manner. The arbitral tribunal should, for example, have the authority to allow for, or request, additional written submissions, and it should be possible to hold in person hearings (which may be conducted online).
- Either party has the right to file proceedings in a court of competent jurisdiction, up to the point in time when it informs the UDRP or URS provider of its agreement to submit to binding arbitration.