
IGO Protections Matters

Session # 2

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Session Objective

GAC to (a) review recent developments from the EPDP Specific Curative Rights Protections for IGOs, including the publication of the Initial Report and GAC input to the EPDP and (b) engage in discussions on the GAC-ICANN Board consultation on IGO protections.

Leadership Proposal for GAC Action

1. GAC to review current status and engage in discussions on the EPDP on Specific Curative Rights Protections for IGOs Initial Report and subsequent GAC public comment input.
2. Discussion on relevant developments on the GAC consultation with the ICANN Board on IGO Protections
3. GAC to discuss potential process to manage changes to the GAC-IGO List of full IGO names to be reserved in new gTLDs.

Recent Developments / Status / For GAC Members Consideration

In August 2021, the GNSO Council made the procedural decision that the IGO Curative Rights Protection Work Track would continue its work via an Expedited Policy Development Process (EPDP). *The scope of the work of the EPDP remains unchanged.*

On 14 September 2021, the EPDP on Specific Curative Rights Protections for IGOs **published its [Initial Report for Public Comment](#)**.

This Initial Report largely focuses on Recommendation #5 of the IGO-INGO Access to Curative Rights PDP which the GNSO Council elected not to approve, and referred to the RPM PDP Phase 2 work (now the EPDP on Specific Curative Rights Protections for IGOs).

Recommendation #5 from the IGO-INGO Access to Curative Rights PDP attempted to address a situation where an IGO has prevailed in a Uniform Domain Name Dispute Resolution Policy (UDRP) or Uniform Rapid Suspension (URS) proceeding, following which the losing registrant files suit in a court and the IGO asserts immunity from the jurisdiction of that court. Recommendation #5 provided that, in such event, the original UDRP or URS panel decision would be “set aside” such that the effect will be to put the parties to the dispute in their original situations, as if the UDRP or URS proceeding in which the IGO had prevailed had never been commenced.

During the GNSO Council’s deliberations over the Final Report from the IGO-INGO Access to Curative Rights PDP, concerns were expressed as to whether Recommendation #5 was fit for purpose, noting also that it would require a substantive modification to the UDRP and URS as well as result in a potential reduction of the existing level of curative protections currently available to IGOs.

Preliminary Recommendations:

The EPDP team reached several conclusions and preliminary recommendations to address the issue of IGO access to curative rights protection within the scope of its work, in accordance with the GNSO Council’s instructions as documented in its Charter.

The EPDP team reached initial agreement on the following points:

1. adding a definition of “IGO Complainant” to the current Rules applicable to the UDRP and URS, to facilitate an IGO’s demonstration of rights to proceed against a registrant (in the absence of a registered trademark);
2. clarifying that an IGO Complainant would be exempt from the current requirement to state that it will “submit, with respect to any challenges to a decision in the administrative proceeding canceling or transferring the domain name, to the jurisdiction of the courts in at least one specified Mutual Jurisdiction”;
3. including an option for voluntary arbitration following the initial UDRP or URS panel decision, to resolve the issue of how to recognize an IGO’s jurisdictional immunity while preserving a registrant’s ability to choose to go to court.

However, the EPDP team has not agreed on:

- whether the option to arbitrate will remain available to a registrant following the outcome of a court proceeding initiated by the registrant where the court declines to hear the merits of the case; and
- what should be the applicable choice of law for any arbitration that the parties may agree to.

In parallel to engaging in the EPDP work, the GAC is focusing on the following issues relative to IGO Protections:

1. Seeking to resolve the long-standing issues created by the divergence of policy recommendations provided to the ICANN Board by the GNSO and GAC Advice regarding the protections afforded to IGOs.
2. Specifically, addressing the concerns that IGOs immunities (under international and national laws), have not been appropriately taken into account in the Final Report of the GNSO PDP WG on IGO Access to Curative Rights Protection Mechanisms, [adopted](#) in part by the GNSO Council (18 April 2019) which the GAC [advised](#) the ICANN Board to “*abstain from taking a decision on these recommendations inter alia to allow the parties sufficient time to explore possible ways forward*” in a letter to the ICANN Board on 20 August 2019.

As a [response](#), the ICANN Board informed the GAC (15 October 2019) it would form a Board Caucus Group for the GNSO’s PDP WG Recommendations 1, 2, 3, and 4. Subsequently, a Board-GAC Consultation process on IGO Protections was initiated, and is still underway.

3. Reviewing the process to ensure that the GAC’s [IGO List of 22 March 2013](#) is updated,¹ is as complete as possible, and is maintained in the future, consistent with [Advice](#) in the [GAC San Juan Communiqué](#), in response to which the Board [directed](#) a feasibility study.

¹ According to a set of [criteria](#), as included in the [letter](#) to the ICANN Board dated 22 March 2013 which introduced the IGO List.

Key Reference Documents

- [Initial Report & Preliminary Recommendations from the Expedited Policy Development Process on Specific Curative Rights Protections for International Governmental Organizations \(IGOs\)](#)
- [GAC Response to ICANN Board Clarifying Questions on ICANN71 Communique - IGO Protections](#) (7 October 2021)

Further Information

- GAC Policy Background Document on IGO Protections:
<https://gac.icann.org/briefing-materials/public/gac-policy-background-igo-protections.pdf>

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