

GAC Discussion on IGO Protections

Session 8

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Session Objective

GAC to (a) provide an update on work to date on an IGO List to be coordinated by the GAC with ICANN assistance, (b) review recent developments from the EPDP Specific Curative Rights Protections for IGOs.

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 in preparation for the Final Report and potential GAC input/GAC positions on policy recommendations.
2. GAC Topic Lead to update GAC membership on the status of the draft 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 would 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. This was seen as undesirable as a policy outcome.

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.

At the time of this briefing, the EPDP is converging on potential final recommendations to be published in its Final Report.

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 in its Draft Report on the following recommendations:

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. Rejecting the original Recommendation #5 from the IGO-INGO Access to Curative Rights Protections PDP;
3. 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”
4. Including an option for arbitration (“appeal”) to review an initial panel decision issued under the UDRP, following the initial UDRP or URS panel decision (this arbitration option reflects IGO jurisdictional immunity while preserving a registrant’s ability to choose to go to court prior to arbitration).

5. Including provision in the URS to accommodate the possibility of binding arbitration to review a determination made under the URS.

However, the EPDP team has not agreed on a suite of final recommendations, nor more specifically:

- 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 protections afforded to IGOs in the DNS.
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.

Key Reference Documents

- [Initial Report & Preliminary Recommendations from the Expedited Policy Development Process on Specific Curative Rights Protections for International Governmental Organizations \(IGOs\)](#)

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.

- [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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