

GAC Discussion on IGO Protections

Session 5

Contents

Session Objective	p.1	Leadership Proposal for GAC Action	p.1	Current Status and Recent Developments	p.1	Key Reference Documents	p.3
-----------------------------------	-----	--	-----	--	-----	---	-----

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 status of EPDP and related GAC Advice on Curative Rights Protections for IGOs.

Leadership Proposal for GAC Action

1. GAC to discuss the draft process to manage changes to the GAC-IGO List of full IGO names to be reserved in new gTLDs.
2. GAC to discuss prior and proposed updated (not new) GAC Advice on Curative Rights Protections for IGOs with the view of potentially updating it following the EPDP on Specific Curative Rights Protections for IGOs Final Report, for alignment.

Current Status and Recent Developments

Process for Updating the GAC IGO List for Protections of IGOs in New gTLDs

The GAC has been 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. A proposed mechanism to manage changes to the GAC IGO List of IGOs full names to be reserved in new gTLDs was circulated to GAC membership for review and input following ICANN73 and again in preparation for ICANN76.

The focus for ICANN76 is to review the proposed process (including being made aware of forms for IGOs to be added to the List) with the view of finalizing the proposed mechanism and allow the

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 to be in a position to action any requests relative to the GAC IGO list including: additions, changes or removals from the list.

EPDP on Specific Curative Rights Protections for International Governmental Organizations (IGOs)

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.

The GNSO Council approved the [Final Report](#) from the EPDP on Specific Curative Rights Protections for International Governmental Organizations (IGOs) in June 2022 and submitted the [Recommendations Report](#) to the ICANN Board describing the proposed policy and its impacts in July 2022. GAC members submitted a GAC collective comment in support of the final report findings in January 2023 as part of the public comment proceeding.

EPDP Final Recommendations:

The EPDP team reached **full consensus** on the five final 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 Council has **unanimously** voted to approve and has now passed this to the Board.

The EPDP team reached agreement in its Final Report on the following five recommendations:

1. Definition of “IGO Complainant”: adding such definition 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. Exemption from Submission to “Mutual Jurisdiction”: 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. Arbitral Review following a UDRP Proceeding: 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).
4. Arbitral Review following a URS Proceeding: Including provision in the URS to accommodate the possibility of binding arbitration to review a determination made under the URS.
5. Applicable Law for Arbitration Proceedings: Arbitration will be conducted in accordance with the law as mutually agreed by the parties. Where the parties cannot reach mutual agreement, the IGO complainant shall elect either the law of the relevant registrar’s principal office or the domain name holder’s address as shown for the registration of the disputed domain name in the relevant registrar’s Whois database at the time the complaint was submitted to the UDRP or URS provider.

Key Reference Documents

- [Final report](#) - EPDP Specific Curative Rights Protections for IGOs
- [Proposed Mechanism to Update IGO List](#)

Further Information

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

Document Administration

Title	ICANN76 GAC Session Briefing - Session 5 - IGO Protections
Distribution	GAC Members (before meeting) and Public (after meeting)
Distribution Date	Version 1: 3 March 2023