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# IGO Protection Matters

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ICANN | GAC

Governmental Advisory Committee

# IGO Protection Matters Agenda

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1. GNSO IGO Work Track Update
2. Discussion on relevant developments on the consultation with the ICANN Board on IGO Protections
3. Potential process to manage changes to the GAC IGO List used for protection of full IGO names in new gTLDs

# Overview of IGO Protections in the DNS

- **Historically:** the protection of IGO identifiers against unauthorized use in the DNS emerged as an issue as part of the [Second WIPO Internet Domain Name Process](#) (2001). Over the following decade, several attempts were made to include IGO identifiers in the scope of the trademark-based [Uniform Domain Name Dispute Resolution Procedure \(UDRP\)](#).
- **New gTLDs:** The [GAC Principles regarding New gTLDs](#) (March 2007) recognized that *“the process for introducing new gTLDs must make proper allowance for prior third party rights, in particular [...] rights in the names and acronyms of [...] IGOs”*.
- During the development of the [New gTLD Program](#), the issue of protecting IGO identifiers in the DNS was raised in an [open letter](#) from IGO legal counsels (December 2011), followed by an IGO Common Position Paper (May 2012) and a [letter on behalf of the United Nations Secretary General](#) (July 2012) suggesting:
  - a *“targeted exclusion of third party registrations of the names and acronyms of IGOs both at the top and second level, at least during ICANN’s first application round and until further appropriate policy could be developed.”*

# Overview of IGO Protections in the DNS (continued)

- **Subsequently:** interactions between the ICANN Board ([Request for policy advice](#), March 2012), the GAC ([GAC Toronto Communiqué](#) and subsequent Communiqués) and the GNSO (which [Initiated](#) a PDP on this matter on October 2012) **led to a PDP establishing the temporary protections of IGO identifiers, to be replaced by permanent protections.**
- Since the GNSO delivered its [recommendations on the Protection of IGO and INGO Identifiers in All gTLDs](#) (November 2013), the ICANN Board has been challenged to reconcile the divergence between these policy recommendations and GAC Advice, as reflected in the Board [resolution](#) of April 2014
- **Policy work:** The outcome of the ensuing [IGO/INGO Access to Curative Rights Protection Mechanism GNSO PDP](#) (June 2016-July 2018) faced a number of procedural and substantive challenges and has been disputed by IGOs e.g., in a [letter from the United Nations Assistant Secretary-General, Office of Legal Affairs to the ICANN Board](#) (July 2018).
- **Currently:** given that the Second Level IGO acronym protection is temporary, and that it does not prevent the possibility of infringing registrations from being undertaken, ***the need for a post-registration “curative” dispute resolution mechanism was identified as a priority.***

# IGO Access to Curative RPMs

## Background: Inconsistencies of GAC Advice / GNSO Recommendations to the ICANN Board

|  | GAC Advice  | GNSO Recommendations   |
|--|---|--|
| <b>Protection of IGO Acronyms</b>                          | <p><a href="#">Durban Communiqué</a> (18 July 2013)</p> <ol style="list-style-type: none"> <li>1. Permanent claims notification</li> <li>2. Final &amp; binding third party review in the event of disputes with a potential registrant</li> <li>3. Mechanism to be low/no cost to IGOs</li> </ol>  | <p><a href="#">IGO/INGO Protection PDP</a> (20 Nov. 2013)</p> <ol style="list-style-type: none"> <li>1. No reservations at top or second level</li> <li>2. Acronyms entered into TMCH for 90-days Claims Protection (in 2 languages)</li> <li>3. PDP to determine IGO access to and use of curative rights mechanisms (UDRP &amp; URS)</li> </ol>  |
| <b>IGO Access to Curative Rights Protection Mechanisms</b> | <p><a href="#">Los Angeles Communiqué</a> (16 October 2014)<br/>The UDRP should not be amended</p> <p><a href="#">IGO Small Group Proposal</a> (4 October 2016)<br/>endorsed in <a href="#">Hyderabad Communiqué</a> (8 November 2016):</p> <ul style="list-style-type: none"> <li>● procedure to notify IGOs of third-party registration of their acronyms;</li> <li>● a dispute resolution mechanism modeled on but separate from the UDRP,</li> <li>● an emergency relief domain name suspension mechanism to combat risk of imminent harm.</li> </ul> | <p><a href="#">IGO Access to Curative RPMs PDP</a> (18 April 2019):</p> <ul style="list-style-type: none"> <li>● no specific new dispute resolution procedures are to be created (Rec. 1)</li> <li>● Options for IGOs to file complaints under URS/UDRP (Rec. 2-3)</li> <li>● No support for providing subsidies to use the URS or UDRP (Rec. 4)</li> </ul> <p>GNSO Council did not approve Rec. 5 (related to IGO Immunities) and directed further work on an appropriate policy solution generally consistent with Recommendations 1, 2, 3 &amp; 4</p> |

# IGO Access to Curative RPMs

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## Latest Developments

- In the [GAC Barcelona Communiqué](#) (25 October 2018), the GAC [advised](#) the ICANN Board to: ***“facilitate a substantive, solutions-oriented dialogue between the GNSO and the GAC in an effort to resolve the longstanding issue of IGO protections”***
- In its [response to the ICANN Board’s notification](#) (20 August 2019) of its consideration of the GNSO’s policy Recs 1-4, 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 its [response](#) (October 2019), the ICANN Board indicated that *“At its workshop at ICANN65 in Marrakech in June 2019, the Board decided to form a Board Caucus Group to review the community’s work on this matter”* and that consequently it *“does not presently intend to act on the GNSO’s PDP recommendations 1, 2, 3, and 4 until the newly formed Board Caucus Group has completed its review of the matter and formulated suggestion for possible paths forward”*

## Moratorium on new gTLD registrations / IGO Access to Curative RPMs

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- The Board's resolution of [22 October 2020](#), described the Board's intention to take an action that is not or may not be consistent with GAC Advice on the scope of a permanent notification mechanism concerning third party registrations of second level domain names matching the acronyms of IGOs on the GAC's list. **The Board resolution previewed the initiation of the required Board-GAC Bylaws Consultation Process.**
- As noted in a [Board letter](#) to the GAC on 26 January 2021, **the envisaged Board-GAC Consultation Process relates only to GAC advice on “preventative” protections for IGOs.** The Board has deferred action on all curative rights protection recommendations approved by the GNSO Council. A new Work Track (with GAC and IGO participants) was launched by the GNSO regarding Rec 5 that was not approved by the GNSO Council, and the Board is awaiting the Work Track's output.
- On the [11 March 2021 Board-GAC Interaction Group Call](#), **the GAC Chair asked for clarification on the above statement by the Board to understand if the current IGO acronym reservation list would stay in place or is intended to be replaced by a post-registration notification scheme.**
- Regarding any future Board decision on lifting the current moratorium -- and noting that without a curative mechanism, a notification to an IGO of a registration would be of little use -- **the GAC recalled earlier Advice expressing a clear preference for a holistic approach which maintained the existing pre-registration moratorium on registrations until completion of the curative rights protections Work Track.**

# Currently the GAC is Focusing on the Following Issues

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- **Seeking to resolve the long-standing issue of diverging GNSO policy recommendations and GAC Advice regarding the protection of IGO identifiers in the DNS.**
  - Addressing the concern that internationally-recognized IGO privileges and immunities have not been taken into account in the Final Report of the GNSO PDP WG on IGO Access to Curative RPMs, [adopted in part](#) by the GNSO Council.
    - The GAC [advised](#) the Board to “*abstain from taking a decision on these recommendations inter alia to allow the parties sufficient time to explore possible ways forward*” in an August 2019 letter to the Board. In [response](#), the Board informed the GAC (Oct. 2019) it would form a Board Caucus Group for GNSO Recs 1, 2, 3, and 4. **A Board-GAC Consultation process was initiated, and is still underway.**
      - **A new Work Track to address Rec 5 regarding a curative rights protection mechanism is underway.**
- Ensuring that the GAC’s [IGO List of March 2013](#) is per the [GAC San Juan Communiqué](#) as complete as possible, and to ensure that it is maintained going forward, **establishing a process to consider updates to such IGO list as and when necessary.**