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ICANN72 GAC Discussion on IGO Protections

25 October 2021

Agenda

- 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.

EPDP on Curative Rights Protections for IGOs

- 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; and
 - It would result in a potential reduction of the existing level of curative protections currently available to IGOs.

Preliminary Recommendations:

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.

EPDP on Curative Rights Protections for IGOs

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.

The GAC Submitted a Comment:

The GAC comment focused on those points on which the working group has been unable to reach consensus, reiterating, where helpful, GAC Advice to the Board from previous Communiqués that the Work Track may not have sufficiently considered. In particular, the GAC commented on the following 2 points:

- Appeals should be through arbitration only
- If registrants are permitted to appeal at court, they should not also be able to commence arbitration if unsuccessful
- If arbitration is not the exclusive means of resolving appeals from a curative rights protection mechanism (in this context, the UDRP and/or URS): arbitration should at least be the default option, with the registrant permitted to opt out within a limited time period

GAC/Board Consultation Process on IGO Protections

- The GAC has been focusing on 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.
- 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.

GAC/Board Consultation Process on IGO Protections

- The ICANN Board communicated to the GAC (8 Dec. 2020), as a follow-up to the Board’s resolution of [22 October 2020](#), which described the Board’s intention to take an action that is not or may not be consistent with GAC advice (relative to the scope of a permanent notification mechanism concerning third party registrations of second level domain names matching the acronyms of the IGOs on the GAC’s list dating from April 2013).
- Said Board resolution initiated the required Board-GAC Bylaws Consultation Process, which is needed in such event.
- The Board-GAC Consultation process on IGO Protections is still underway.
- Current Board-GAC Consultation process relates only to GAC Advice on “preventative” protections for IGOs.
- 7 October 2021: The [GAC Responded](#) to the [ICANN Board’s Clarifying Questions](#) regarding the GAC ICANN71 Communiqué Advice shared in the context of the [GAC Communiqué Clarification Call](#) (29 July 2021).

Proposed Mechanism to Update IGO List

- GAC Support Staff drafted a proposed draft mechanism/process to update the GAC IGO List for Protection in gTLDs which includes:
 - Criteria for Protection of IGOs in gTLDs ([2013 Criteria](#));
 - Steps for a requestor to to join/withdraw from the GAC IGO list;
 - Who to submit the request to (GAC Chair via gac leadership mailing list);
 - **Confirmation of awareness of repercussions if requesting withdrawal from IGO list;**
 - Notification from GAC Chair to ICANN org for updating systems used to implement the Protections of IGO Names and Acronyms in gTLDs;
 - Notification from GAC chair to Requestor once ICANN org confirms implementation of request to join/leave IGO list;
 - A standard briefing for IGOs to know how to join/leave the GAC IGO List (to be developed).
- GAC Leadership and IGO Small Group are currently reviewing the proposed mechanism;
- The proposed draft is in early stages but will be shared with GAC membership for review and input as soon as it is ready.