

Specific Curative Rights Protections for International Governmental Organizations (IGOs) Final Report

GNSO Council Briefing to ICANN Board

GNSO Council Leadership

11 January 2023



From Initiation to Final Report: Timeline



Timeline to Final Report

- April 2019: GNSO Council [approved](#) the first four recommendations from the IGO-INGO Access to Curative Rights Protection Policy Development Process (PDP), but not Recommendation #5, which the Council referred to the Review of All Rights Protection Mechanisms (RPMs) PDP, to consider as part of its Phase 2 work;
- January 2020: following consultations with the GAC, the GNSO Council [approved](#) an Addendum to the RPMs PDP Charter, creating an IGO Work Track to address concerns with Recommendation #5 of the IGO-INGO Access to Curative Rights Protections PDP;
- October 2020: GNSO Council launched a call for [expressions of interest](#) for a Chair of the IGO Work Track and a [call for volunteers](#) from specific community groups as identified in the Addendum, including IGO representatives;
- January 2021: RPMs PDP Phase 1 ends with GNSO Council approval of all 35 recommendations;
- August 2021: GNSO Council takes procedural step to approve, in accordance with its [Expedited Policy Development Process \(EPDP\) Manual](#), initiating an EPDP to carry forward the work and momentum of the IGO Work Track, with the [EPDP Charter](#) reflecting the same scope of work;
- September 2021: EPDP team published its [Initial Report](#) for [Public Comment](#), following which the EPDP team [reviewed](#) the comments and amended its [proposed recommendations](#) as it considered necessary, based on the input received and continued deliberations;

Timeline (cont'd)



Timeline to Final Report

- April 2022: EPDP team delivered its [Final Report](#) to the GNSO Council:
 - Final Report contains five final recommendations which are intended to be interdependent (as outlined in Section 13 of the [PDP Manual](#)) and which have attained “Full Consensus” within the EPDP team.

Subsequent Steps:

- The GNSO Council [approved](#) (unanimously) all five final recommendations on 15 June 2022.
- The GNSO Council [approved](#) the Bylaws-mandated Recommendations Report to the ICANN Board on 21 July 2022.
- The requisite [public comment period](#) on the Final Report, for input to the ICANN Board as it considers the EPDP recommendations, is currently open and will close on 16 January 2023.

Recommendations Overview

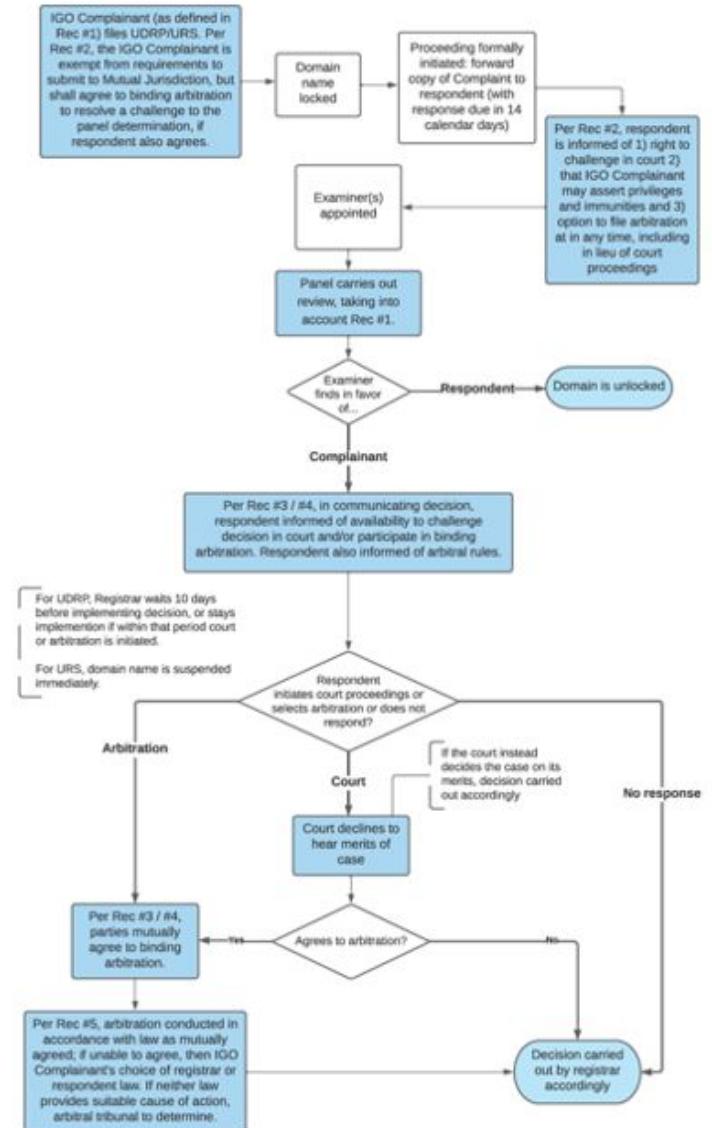
Recommendation #1: Definition of “IGO Complainant”

Recommendation #2: Exemption from Submission to “Mutual Jurisdiction”

Recommendation #3: Arbitral Review following a UDRP Proceeding

Recommendation #4: Arbitral Review following a URS Proceeding

Recommendation #5: Applicable Law for Arbitration Proceedings



Recommendation #1: Definition of “IGO Complainant”

- The UDRP and URS Rules would be modified to add **description of “IGO Complainant”**, defined below:
 - “IGO Complainant’ refers to:
 - (i) an international organization established by a treaty, and which possesses international legal personality; or
 - (ii) an ‘Intergovernmental organization’ having received a standing invitation, which remains in effect, to participate as an observer in the sessions and the work of the United Nations General Assembly; or
 - (iii) a Specialized Agency or distinct entity, organ or program of the United Nations.”
- The UDRP and URS Rules would also be amended to include text to account for **instances where an IGO may not have a registered trademark or service mark**. In those instances, the IGO Complainant may address the standing requirement by **proving unregistered rights** (see specific, detailed text included in the Final Report).

Rec #2: Exemption from Submission to “Mutual Jurisdiction”

- ◉ An IGO Complainant, as defined in Recommendation #1, will be exempt from the “mutual jurisdiction” requirement under Section 3(b)(xii) of the UDRP Rules and Section 3(b)(ix) of the URS Rules.
- ◉ Respondents must be informed that they **retain the right to challenge** a UDRP decision or URS determination by **filing a claim in court**.
 - However, the IGO Complainant **may assert its privileges and immunities**, resulting in the court **declining to hear the merits of the case**.
 - In such circumstances (or in lieu of initiating court proceedings), the **respondent has the option to agree to binding arbitration**.

Recommendations #3 and #4: Arbitral Review

- ⦿ The UDRP and URS would be **amended to include provisions to accommodate the possibility of binding arbitration** to review an initial panel decision issued under the UDRP or Determination made under the URS, respectively.
- ⦿ Notable elements include:
 - In submitting its complaint, the IGO Complainant **commits to binding arbitration** (if the registrant also agrees).
 - Procedural and communication components as it relates to the various parties (e.g., IGO Complainant, respondent, UDRP/URS provider, registrar, arbitral institution).

Rec #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. **Where neither law provides for a suitable cause of action**, the **arbitral tribunal shall make a determination** as to the law to be applied in accordance with the applicable arbitral rules.

Questions?

Resources

Project Page: <https://gns0.icann.org/en/group-activities/active/specific-crp-igo-epdp>

Final Report: <https://gns0.icann.org/en/issues/epdp-specific-crp-igo-final-report-02apr22-en.pdf>

Wiki Space: <https://community.icann.org/display/GNSOIWT>