



**IPC Comments on the
Final Report on the IGO-INGO Access to Curative Rights Protection Mechanisms
Policy Development Process (PDP) Working Group.**

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) welcomes the opportunity to comment on the Final Report of the GNSO Protected International Governmental Organizations (“IGOs”) and International Non-Governmental Organizations (“INGOs”) Access to Curative Rights Protection Mechanisms Policy Development Process Working Group (the “Report”).

Initial Remarks

The IPC notes that Recommendation #5 of the Final Report does not form part of this public comment proceeding. Unfortunately, this means here are still important issues left open needed to be solved before the special needs of IGOs for a workable Curative Rights Protection Mechanism can be fully considered.

The IPC further notes that Recommendation #5 is to be considered by the Review of All Rights Protection Mechanisms in All gTLDs PDP as part of its Phase 2 work. This presents a further delay in finding an acceptable solution, and although the IPC understands the complexity of the topic, we highly recommend that this remaining question should be handled discretely within Phase 2 under a separate, specific accelerated/fast track deadline.

Recommendations #1(a) and 1(b):

“1(a). For INGOs (including the Red Cross movement and the International Olympic Committee), no substantive changes to the UDRP and URS are to be made, and no specific new dispute resolution procedures are to be created.

1(b). For IGOs, no specific new dispute resolution procedures are to be created.”

The IPC supports Recommendation #1(a):

As could be seen from the WGs Initial Report, and also noted from IPC members that participated in the WG, having represented INGO's in several domain name disputes, the current dispute resolution policies are already useful and functional for INGO's without any need of changes.

The IPC supports Recommendation #1(b):

In March 2014, IPC provided comments on the "Preliminary Issue Report on IGO-INGO Access to the UDRP & URS". At that time, there were only two alternative solutions presented: to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs, or develop a separate, narrowly-tailored dispute

resolution procedure at the second level modelled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs.

Provided with those two options, the IPC's position was that there are "several distinct reasons for creating a separate, dedicated UDRP-like dispute resolution mechanism for IGOs rather than modifying the current UDRP to take into account the specific characteristics and limitations faced by IGOs in attempting to utilize the UDRP". The IPC further commented that any such "new" policy or policies would be modified versions of the existing UDRP and URS, minimally adjusted and narrowly tailored to accommodate use by IGOs, and to account for the special circumstances of those categories of organizations. "Thus, IPC does not recommend major changes to the basic elements of a UDRP or URS claim in any new policy".

The IPC's view remains that there is no need for changing/modifying the current UDRP or URS in order to make it possible for IGO's to use these dispute resolution procedures.

The IPC, however, further notes that the Working Group has found a more practical and efficient way for IGO's to access and use the UDRP and/or URS, rather than creating a new separate IGO related version of these dispute resolution procedures.

Recommendation #2:

"The Working Group notes that an IGO may seek to demonstrate that it has the requisite standing to file a complaint under the UDRP or URS by showing that it has complied with the requisite communication and notification procedure in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property. An IGO may consider this to be an option where it does not have a registered trademark or service mark in its name and/or acronym but believes it has certain unregistered trademark or service mark rights for which it must adduce factual evidence to show that it nevertheless has substantive legal rights in the name and/or acronym in question. In this regard, the Working Group recommends that specific Policy Guidance on this topic be issued by ICANN..."

The IPC supports Recommendation #2.

Policy Guidance updates are needed from time to time, based on specific questions or uncertainties that may be raised from both parties in a domain name dispute.

The identification of name rights for IGO's is a clear example of such uncertainty that needs to be specified. The reference to traditional registered or unregistered trademark rights is well-known. However, the additional reference to Article 6ter of the Paris Convention, although not relating to traditional trademark rights is welcomed, being an acceptable, internationally legally binding and clear identification of the protective basis for an IGO's rights in a complaint using the URS or the UDRP.

The proposed Policy Guidance is for the benefit of panelists, registrants and IGOs.

Recommendation #3:

“ICANN shall create and issue Policy Guidance: (a) outlining the various procedural filing options available to IGOs, e.g. they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; and (b) advising IGOs and INGOs to, in the first instance and prior to filing a UDRP or URS complaint, contact the registrar of record to address the harms for which they are seeking redress. In addition, ICANN shall ensure that this Policy Guidance document is brought to the notice of the Governmental Advisory Committee (GAC) for its members’ and observers’ information, and published along with the procedures and rules applicable to the UDRP and URS on the ICANN website”.

IPC does not support Recommendation 3(a). IGO's do not normally use licensees, holding companies or other legal arrangements to shield themselves from liability in the same manner that private sector organizations/companies do. This suggestion is not consistent with the real world operations of IGO's. Licensing or creating an agency for IGO names would neither shield them from liability, nor provide them with safe harbor immunity. As this suggested recommendation does not work for the majority of IGO's, the IPC sees no value in adding that to the Policy Guidance document.

The IPC has no objections to the Recommendation (b), as long as it is clear that the suggested advisement in the Policy Guidance is not mandatory, but only provided as examples of optional alternative steps for IGOs to consider. IPC however sees no need or reason to also specifically include INGOs in that recommendation. Contacting the registrar of record to address the harm of a specific domain name registration is not a possibility that is restricted to IGOs or INGOs; this is already frequently used today by private individuals and juristic entities as an initial step to resolve a domain name dispute.

Recommendation #4:

“Notwithstanding GAC advice concerning access to curative rights processes for IGOs as well as the Charter language requiring the Working Group to consider “the need to address the issue of cost to IGOs and INGOs to use curative processes”, there was no support within the Working Group for a recommendation to provide subsidies to any party to use the UDRP or URS. Nevertheless, the Working Group recognizes that it has no authority to obligate the expenditure of ICANN funds, and it understands, further, that the feasibility of providing IGOs with access to the UDRP and URS at no or nominal cost to the IGOs is a question that must be addressed directly through discussions between the ICANN Board with the GAC and IGOs.”

The IPC's notes on Recommendation #4:

Although the costs for using the URS or UDRP is already today lower than traditional civil court actions, the IPC has no objections if the GNSO and GAC together can find a solution where at least IGOs can gain access to the UDRP and URS curative processes at nominal cost.

Respectfully submitted,

Intellectual Property Constituency (IPC)

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