

Report of Public Comments

Title:	Preliminary Issue Report on Access by IGOs & INGOs to the Curative Rights Protections of the UDRP & URS		
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Prepared By:	Mary Wong		
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Announcement			
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View Comments Submitted			
Report of Public Comments			
Staff Contact:	Mary Wong	Email:	policy-staff@icann.org
Section I: General Overview and Next Steps			
<p>In October 2013 the GNSO Council unanimously approved the consensus recommendations of its Policy Development Process (PDP) Working Group (WG) on Protection for IGO and INGO Identifiers in All gTLDs. One of these recommendations was for the Council to request an Issue Report, mandated in the ICANN Bylaws as a preceding step to a possible PDP, on the possibility of amending the Uniform Dispute Resolution Policy (UDRP) and Uniform Rapid Suspension procedure (URS) such as to enable access to and use of these curative rights protection measures by IGOs and INGOs. A Preliminary Issue Report was published for community input on 10 March 2014.</p> <p>Following the close of the public comment period and the publication of this Report of Public Comments, a Final Issue Report will be prepared for the GNSO Council, which will vote on whether or not to initiate a PDP on the issue. The Final Issue Report will include consideration of the feedback that was received through the public comment forum and that specifically addressed the contents of the Preliminary Issue Report. This summary report of all public comments received will be also be included as an Annex to the Final Issue Report.</p>			
Section II: Contributors			
<p><i>At the time this report was prepared, a total of twelve (12) community submissions had been posted to the Forum, not including a correction from one of the contributors and a spam message. One contributor submitted an initial comment and two reply comments. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the following narrative (Section III), such citations will reference the contributor's initials.</i></p>			
Organizations and Groups:			
Name	Submitted by	Initials	

IGO Commentators	OECD Legal	IGO
Internet Commerce Association	Phil Corwin	ICA
GNSO Intellectual Property Constituency	Claudio di Gangi	IPC

Individuals:

Name	Affiliation (if provided)	Initials
George Kirikos	Leap of Faith Financial Services, Inc.	GK
Alex Lerman		AL
Jay Chapman		JC
Konrad von Finckenstein		KF
Nat Cohen	Telepathy Inc.	NC
Ed Lehmann		EL
Chip Meade	MarketLift	CM

Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

Support for a PDP

One individual commentator (KF) and two groups/organizations (IGO; IPC) supported the initiation of a narrowly tailored PDP applicable only to IGOs and INGOs. KF noted that IGOs and INGOs face special issues, and supported ICANN staff’s suggestion to investigate alternatives other than amending the UDRP and URS to address these needs. IGO restated their support (as stated initially during the PDP WG phase) for preventative protections but commented that, to the extent second level identifier protection other than for full names is to be curative instead, this should take the form of a separate procedure modeled on the UDRP and URS (such that there would be no interference with existing third party rights and obligations under these mechanisms). IPC supported first determining that special treatment for appropriately qualified IGOs and INGOs is necessary and, if so, developing a resulting policy that should be a modified form of the UDRP and URS, minimally adjusted for IGO and INGO needs – it should not include consideration of other issues such as geographic TLDs or revisiting the UDRP, which may be the subject of other ICANN processes.

Opposition to a PDP

Six individual commentators (GK; AL; JC; NC; EL; CM) opposed the creation of “special rights” and “special rules” for IGOs, and one organization (ICA) specifically opposed the initiation of a PDP. GK, AL, JC and CM opposed any incursions on legitimate registrant and third party rights, including the need to protect due process. The creation of special rules for IGOs and INGOs was seen as amounting to the creation of new rights and new law by ICANN (GK; JC; ICA) and problematic in relation to acronyms

(CM; NC; ICA). ICA also believed that a PDP to investigate the avenues of enquiry recommended by ICANN staff in the Preliminary Issue Report would constitute a substantial drain on GNSO and staff time and resources; it also pointed out that key ICANN constituencies had previously either opposed the development of a separate procedure for IGOs (the GNSO's Registry then-Constituency) or questioned the extent of the problem for IGOs (the GNSO's Business Constituency), such that a protracted PDP may still not end up with a solution. GK believed this to be a "miniscule" issue which did not justify the expenditure of ICANN resources. NC indicated support for GK's and ICA's comments.

Concerns over developing a dispute resolution procedure specific to IGOs and INGOs

GK's and ICA's comments highlighted prior international inter-governmental forums where a dispute resolution procedure for IGOs had been discussed at length, viz. the Second WIPO Internet Domain Name Process (WIPO-2) in 2001 and the 2002 meeting of WIPO's Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications. These commentators quoted government and ICANN representatives participating in those proceedings who had warned against the creation of new law instead of focusing on procedures to address existing legal rights. In this regard, both commentators quoted the WIPO Secretariat's statement that Article 6ter of the Paris Convention contained guidelines for as well as qualifiers to the legal protections to be afforded to IGO names and acronyms; GK also commented that Article 6ter had been "misunderstood" and was not binding on ICANN.

GK and ICA also expressed concern that a procedure that removed the ability to appeal to a national court would unfairly dilute legitimate protections currently available to registrants. GK further pointed out that IGOs already currently waive their immunity from national jurisdiction in certain other contexts.

Suggestions for a dispute resolution procedure specific to IGOs and INGOs

IGO suggested a number of design elements that could guide the creation of such a procedure, including its scope (not trademark-based, but reliance on IGO-specific criteria such as the list of IGOs that had been provided to ICANN previously and that can be included in the Trademark Clearinghouse for permanent claims notice protection); jurisdiction (not submission to the jurisdiction of national courts but, if necessary, to arbitration for a limited appeal purpose); and cost (subsidized by ICANN in view of IGOs' public interest missions).

Other Comments and Suggestions

NC stated that international organizations should not be favored above other legitimate users of acronyms in widespread use, especially as international organizations can use the .int and .org extensions. GK and ICA considered that IGOs and INGOs should seek protection under existing laws and ICANN's current procedures and mechanisms, including trademark registrations, judicial options and existing second level protections. GK, EL and CM opposed the initial IPC reply comment (subsequently withdrawn and amended) that had suggested possibly changing a substantive

requirement in the UDRP and URS for any new procedure to be developed for IGOs and INGOs.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

Commentators did not challenge the substantive research and background information provided in the Preliminary Issue Report; instead, most comments focused on either on the design and conduct of the PDP should one be initiated by the GNSO Council (viz. those commentators who supported a PDP) or on the risks of a PDP outcome that would create unique procedures or rights for IGOs and INGOs (viz. those commentators who did not support a PDP).

Those commentators who supported the initiation of a PDP expressed a preference for a narrowly tailored dispute resolution procedure applicable specifically to IGOs and/or INGOs, modeled on the UDRP and URS. One commentator specifically disfavored amending the UDRP and URS as part of this effort, and another specified that it should not overlap with or include issues that may be taken up in other ICANN processes already underway or to be launched. A third commentator provided a number of suggestions for the design of such a narrowly tailored procedure.

Those commentators who opposed the initiation of a PDP did not provide views on the differences between a PDP that would amend the UDRP and/or URS for IGO and INGO use and a PDP that would focus on developing a narrowly tailored procedure specific to IGO and INGO needs. The clear overall concern expressed was that creating any procedure to cater to IGOs and INGOs could be tantamount to ICANN (rather than governments) creating new law, and in the process result in the dilution or divestiture of protections that legitimate registrants currently enjoy under the UDRP and URS, including the option for recourse to national courts.

In relation to the practicalities of conducting a PDP, one commentator was concerned about the number and scope of issues that had been identified by ICANN staff as possibly warranting consideration as part of a PDP. In relation to the legal basis warranting special protections or procedures for IGOs, two commentators brought up the question of the scope of Article 6ter of the Paris Convention.

The Final Issue Report will include this Report and analysis of the public comments received, to enable the GNSO Council to fully consider all the issues and concerns expressed by the community in order to vote on whether or not to initiate a PDP on access by IGOs and INGOs to the curative rights protections of the UDRP and URS.