



Digimedia.com, LP (“Digimedia”) is pleased to provide its comments to the Initial Report from the EPDP on Specific Curative Rights Protections for IGOs (the “Initial Report”). Established in a watermelon farm shed in 1997, Digimedia is a domain development company whose mission is to utilize its generic and descriptive domain names to create, operate, advise or invest in emerging companies and organizations.

Regarding Recommendation 1

Digimedia supports Recommendation 1 to the extent that IGOs are properly defined and quantified. We do this while fully recognizing that Recommendation 1 does not assist all IGOs, as (per the previous IGO working group’s independent expert) some IGOs have already satisfactorily utilized the UDRP without the need for Recommendation 1.

Regarding Recommendation 2

Digimedia does not support Recommendation 2 to the extent it “packages” the preliminary recommendations together as “interdependent.” (See Further Comment, below)

Regarding Recommendation 3

Digimedia does not support Recommendation 3. First, the mutual jurisdiction requirement was not mandated by the GNSO to be affected by this EPDP. Recommendation 3 stands in stark contrast to the previous IGO working group’s consensus - and GNSO approved - recommendations 1-4. Moreover, we agree with the BC in its Comments on the Final Report of the previous IGO/INGO Working Group, “claims of jurisdictional immunity to a court proceeding *can and should be advanced before such national court and cannot be pre-determined by ICANN fashioning a blanket rule that does not take into account the facts and circumstances of each case* (emphasis added).” Removing the Mutual Jurisdiction requirement from existing and longstanding consensus ICANN policy would be just that: an ICANN fashioned, blanket rule that cares not for the facts and circumstances of a particular situation.

Regarding Recommendations 4 & 5

To the extent Recommendation 3 is decoupled from Recommendation 4, Digimedia supports Recommendation 4 in conjunction with Option 2, as this is the substance for the existence of the present EPDP. We agree with the same BC statement in its Comments on the Final Report of the previous IGO/INGO PDP that “claims of jurisdictional immunity to a court proceeding *can and should be advanced before such national court...* (emphasis added).” Digimedia also aligns with the BC’s previous guidance, “namely that ‘in those rare instances in which a losing registrant seeks judicial appeal and the IGO subsequently successfully asserts its immunity to the court’s jurisdiction...the decision rendered against the registrant in the predecessor UDRP or URS may be brought before a to-be-determined arbitration forum for de novo review and determination.’”



To the extent Recommendation 3 is decoupled from Recommendation 5, then similar to its support of Recommendation 4 in conjunction with Option 2, Digimedia would also support Recommendation 5 in conjunction with Option 2.

In the event Recommendation 3 is not decoupled from either or both of Recommendation 4 and/or Recommendation 5, Digimedia would support only Recommendation 4 or 5 in conjunction with Option 2.

Regarding Recommendation 6

Digimedia supports Recommendation 6 in conjunction with subsection i, Option 1, as it aligns with the pragmatic flow of current post-UDRP procedure. Digimedia does not support section ii of Recommendation 6, as it is unclear what might be a “satisfactory cause of action” or who might make such a decision. Specific to section iii of Recommendation 6, Digimedia stresses that any arbitral process should follow, if not mirror, a court hearing, explicitly including but not limited to normal due process procedures and features including but not limited to oral hearing, cross examination of witnesses, the ability to depose, etc.

Futher Comment

The Initial Report indicates that the EPDP’s preliminary recommendations are to be considered as a “package” and are “interdependent.” As an initial fact, not all members of the EPDP support such statement. Just as important, the other proposed Recommendations are not impacted by the absence of Recommendation 3. We see no nexus between Recommendation 3 (the suggested removal of the Mutual Jurisdiction requirement for IGOs – which we do not support) and recommendations 1, 3, 4, 5 and 6. In fact, no evidence has been provided by the EPDP to establish or even postulate any such nexus.

Closing Comment

Digimedia aligns with and supports the Comments submitted by the Internet Commerce Association (ICA).