



The Intellectual Property Constituency (IPC) welcomes this opportunity to comment on the proposed implementation of the IGO-INGO Curative Rights Policy Recommendations.

We provide our comments on the following three sets of documents:

I. ICANN POLICY GUIDANCE ON IGO USAGE OF UDRP AND URS

II. Updates to the UDRP and the UDRP Rules and

III. Updates to the URS and the URS Rules

I. ICANN Policy Guidance	IPC Position
General comments on ICANN Policy Guidance on IGO usage of UDRP and URS	IPC Position The IPC supports the Policy Guidance subject to the comments and suggestions on each element of the Policy Guidance below
1. IGO Standing to Use the UDRP and the URS	The IPC supports the proposed guidance in section 1 with the one suggestion below. The IPC suggests changing " <i>the IGO Complainant must demonstrate that the name or identifier which forms the basis for the complaint is used by the IGO Complaint</i> " to " <i>is used or has been recently used</i> " so as to not interpret active use too strictly. The IPC further suggests that the policy guidance should define "recently" as occurring within the preceding 12 months.
2. UDRP and URS Complaint Filing Options Available to IGOs	The IPC supports the proposed guidance with the following suggestion below. Consider changing the bolded text in section two stating " This suggestion has been questioned by IGOs " to instead say " this "

	may vary by jurisdiction" so as to not implicitly support the argument that an IGO waives their immunity by designating an authorized representative.
3. Use of the New Arbitral Proceeding for UDRP and URS Proceedings Involving IGO Complainants.	The IPC supports the proposed guidance with the following suggestions below. - Consider changing the third prong of when Arbitral Proceeding may be initiated from simply when a court order declines to hear the merits of a registrant's claim <i>"on the basis of IGO privileges and immunities"</i> to <i>"solely on the basis of IGO privileges and immunities"</i>; - In the portion where it states, <i>"[t]he decision to initiate such proceedings would not automatically affect, replace, supersede or interfere with any ongoing UDRP or URS proceeding,"</i> consider explicitly including the lack of a modification to any UDRP/URS deadlines: <i>"would not automatically affect, replace, delay, supersede or interfere with."</i> This would help clarify the next paragraph, which mentions that arbitration should not be initiated for the purpose of delaying or prolonging resolution of the dispute."
Implementation Note	The IPC supports the proposed language in the Implementation Note
II. Changes to the UDRP and the UDRP Rules	IPC Position
	The IPC overall supports the updated versions of both the Policy and the Rules with the following comments and suggestions - Noting that the Arbitral Proceeding is focused on the Respondents rights. It may well be that the IGO Complainant is not satisfied with the UDRP decision, and IGOs Complainants should have equal rights to the ones of Respondents.

The IPC suggests the following change to the **UDRP Rules, Rule 16**, a minor amendment to open up the proceeding to both parties (suggested changes are in **bold** and underlined):

*"Communication of Decision to Parties
(a) Within three (3) business days after receiving the decision from the Panel, the Provider shall*

*communicate the full text of the decision to each Party, the concerned Registrar(s), and ICANN. Where the Complainant is an IGO Complainant, the Provider shall, when notifying **the Parties of a decision**, provide information about the Arbitral Proceeding available to **the Parties**, including a link to the ICANN webpage at [link] listing the Arbitral Institution(s) designated by ICANN and their applicable arbitral rules. The concerned Registrar(s) shall within three (3) business days of receiving the decision from the Provider communicate to each Party, the Provider, and ICANN the date for the implementation of the decision in accordance with the Policy";*

- Taking into account suggested changes in the Policy Guidance, sec. 3 above, consider changing Rule 4 c (ii), UDRP Rules as follows: *"that, in the event the Respondent chooses to initiate court proceedings, the IGO Complainant may assert its privileges and immunities with the result that the court may decline to hear the merits of the case on the basis of IGO privileges and immunities" to **"solely on the basis of IGO privileges and immunities"** and Rule 20 a (ii) 2) as follows: "The date a court order is issued, in which the court decline to hear the merits of a case, brought by*

	<i>the Respondent in the administrative proceeding under the Policy, <u>solely on the basis of the IGO Complainant's privileges and immunities</u></i>; - Taking into account suggested changes in the Policy Guidance, sec. 1 above, consider changing Rule 3 b. (viii) of the UDRP Rules as follows: <i>"Where the Complainant is an IGO Complainant, it may show rights in a mark, as contemplated by the Policy, by demonstrating that the identifier that forms the basis for the complaint is used <u>or has been recently used</u> by the IGO Complainant to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document). Such use shall not be a token use"</i>.
III. Changes to the URS and the URS Rules	IPC Position
	The IPC overall supports the updated versions of both the URS and the URS Rules subject to the following comments and suggestions: - <u>How IGOs can demonstrate standing under the URS</u> Unlike the UDRP (where complainants can rely on unregistered/common law TMs and criteria for establishing common law TM rights can be flexible to a certain extent), the URS does not recognize "unregistered or common law" marks as such. The URS requirements are rather strict, currently there are only 3 types of marks that would give standing to a URS complainant.

	It has to be a word trademark: i) for which the Complainant holds a valid national or regional registration and that is in current use, Or ii) that has been validated through court proceedings; Or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed. These are listed in 1.2.6.1 of the URS and 8.1.1 of the URS. The IPC suggests adding sub-section iv) to 1.2.6.1 of the URS as follows: <i>"Where the Complainant is an IGO Complainant, it may show rights in a mark by demonstrating that the identifier which forms the basis for the Complaint is used or has been recently used by the IGO Complainant to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document)".</i> Currently this provision is included in sub-par. C. 1.2.6.1 that is related to the evidence of use, <u>rather than the type of marks that could give standing in URS proceedings.</u> Suggested language of sub-par. C. 1.2.6.1 shall be as follows: <i>"Where the Complainant is an IGO Complainant that relies on sub-par. iv) 1.2.6.1., use may be demonstrated as described in sub-par. iv) 1.2.6.1. Such use shall not be a token use;</i> Based on the above, it is suggested to amend sub-par 8.1.1. of the URS as follows: <i>"or iv) Where the Complainant is an IGO Complainant, it may show rights in a mark by demonstrating that the identifier which forms the basis for the Complaint is used or has been recently used by the IGO Complainant</i>
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	<i>to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document)”;</i> <i>Suggested change to 3 b (v) of the URS Rules is the following: “Where the Complainant is an IGO Complainant, it may show rights in a mark by demonstrating that the identifier which forms the basis for the Complaint is used or <u>has been recently used</u> by the IGO Complainant to conduct public activities in accordance with its stated mission (as may be reflected in its treaty, charter, or governing document). Such use shall not be a token use”.</i> - <i>Taking into account suggested changes to the Policy Guidance, sec. 3 above, consider changing par. 4.5 of the URS as follows: “(iii) that the</i> - <i>Registrant has the option to submit the dispute for resolution through a binding Arbitral Proceeding administered by an ICANN-designated Arbitral Institution in lieu of initiating court proceedings, or if a court declines to hear the merits of the case <u>solely</u> on the grounds of the IGO Complainant’s privileges and immunities and</i> - <i>Taking into account suggested changes to the Policy Guidance, sec. 3 above, consider changing 13.2.1.2.2 of the URS as follows: “a court’s issuance of an order declining to hear the merits of a cause brought by the Registrant as contemplated in section 13.1 <u>solely</u> on the basis of IGO privileges and immunities”.</i>
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