August 10, 2026

Re: FORUM Comments on the Proposed Implementation of the IGO-INGO Curative Rights Policy Recommendations

Introduction

FORUM appreciates the opportunity to comment on the proposed implementation of the IGO-INGO Curative Rights Policy Recommendations. FORUM administers proceedings under the UDRP and URS, as well as other intellectual property dispute resolution procedures and contractual arbitrations.

FORUM recognizes the policy objective of allowing qualifying IGOs to use the UDRP and URS without compromising applicable privileges and immunities, while preserving meaningful review for registrants. FORUM also recognizes that this Public Comment concerns implementation rather than reconsideration of the adopted policy recommendations.

FORUM nevertheless has substantial concerns about how the proposal will affect the operation and predictability of the UDRP and URS. It changes more than the process available after an IGO prevails. It affects eligibility determinations, complaint intake, case timing, registrar and registry obligations, existing appeal and court procedures, the administrative record, available remedies, and implementation of decisions.

Those changes are complicated by the creation of a separate Arbitral Proceeding whose legal character, substantive mandate, and relationship to national law remain uncertain. The proposal describes binding arbitration under institutional rules, requires application of national substantive law, and directs registrar or registry implementation. It does not establish how a juridical seat will be determined, what national arbitration law will apply, which courts may exercise supervisory authority, or how judicial proceedings will affect implementation.

The proposal also does not clearly explain how de novo review of the UDRP or URS is to operate together with a national-law cause of action. That uncertainty affects pleadings, burdens and standards of proof, tribunal qualifications, foreign-law evidence, remedies, costs, and the form of the decision.

If the Arbitral Proceeding is intended to be a nationally seated arbitration, the final materials should explain how the seat will be determined and address the resulting supervisory law and judicial role. If it is instead intended to operate principally as an ICANN contractual review mechanism, the final materials should explain the legal status and intended consequences of the proceeding and its decision.

These questions also affect the IGO's consent and immunities and the protections available to arbitrators and administering institutions. The proposal should not resolve one immunity concern while creating material and unpredictable legal or operational risks elsewhere in the system.

FORUM offers the comments below in a constructive spirit. We first address the proposal's direct effects on UDRP and URS administration and implementation, then its legal architecture, and finally institutional and implementation-readiness considerations.

Comments

1. Impact on UDRP and URS Commencement, Eligibility, Deadlines, and Notice

The proposal creates new threshold determinations and filing routes that will affect the ordinary administration of UDRP and URS cases. Those matters should be addressed through clear and uniform rules rather than left to ad hoc interpretation by Providers, Arbitral Institutions, registrars, or registry operators.

IGO eligibility

The proposed Rules define the categories of entities that qualify as IGO Complainants, but applying those criteria may still present factual or legal questions that are not suitable for routine administrative intake.

An eligibility determination has important consequences. It affects whether the special procedure applies, whether the IGO must consent to arbitration, what notices must be given, and whether the registrant may later invoke the Arbitral Proceeding.

The final framework should:

- specify the documentation ordinarily sufficient for administrative compliance;
- distinguish administrative review for completeness from disputed legal determinations;
- clarify the respective roles of the Provider and the panel or examiner when eligibility is contested or uncertain;
- permit a practical challenge procedure;
- state whether eligibility may be reconsidered in the Arbitral Proceeding; and
- explain what occurs if the complainant is later found ineligible.

If an IGO is found ineligible, the Rules should state whether the complaint may proceed under the ordinary UDRP or URS, whether a Mutual Jurisdiction election may be supplied, and how deadlines and registrar instructions are affected.

Because eligibility triggers special procedural and jurisdictional consequences, mandatory standards should appear in the Rules or another binding implementation instrument, not only in advisory Guidance.

Timing and interaction of arbitration requests

The proposed UDRP framework appears to permit a Respondent to request arbitration at three different stages: before the administrative decision, if the IGO agrees; within ten business days after a decision in favor of the IGO; or within ten business days after a court declines to hear the merits because of the IGO's privileges or immunities.

The final Rules should explain how those routes interact with the underlying UDRP proceeding. In particular, they should address whether the proceeding continues while an IGO considers a pre-decision request, how long the IGO has to respond, and what happens to the request, fee, and Lock if the IGO declines. The final Rules should also preserve and clearly implement the adopted recommendation that timely commencement of qualifying court proceedings during the ten-business-day UDRP implementation period stays implementation of the panel decision. They should further clarify how long that stay continues, how it interacts with a later court order declining to hear the merits on immunity grounds, when the resulting arbitration period begins, and what occurs if implementation has already taken place.

These issues affect not only the later arbitration but also the timing and administration of the underlying UDRP case.

Timely but deficient requests

A timely arbitration request may contain a curable administrative deficiency. The final Rules should provide for prompt compliance review, written notice of curable deficiencies, a short cure period, and preservation of the filing date and applicable Lock or suspension during that period.

Administrative staff should determine objective filing compliance. Contested questions of jurisdiction, standing, governing law, or legal sufficiency should ordinarily be reserved for the Arbitral Panel.

Duplicate filings and applicable rules

If more than one Arbitral Institution is approved, the Rules should prevent parallel proceedings and establish priority, transfer, and fee rules where an institution has a conflict, lacks capacity, or receives a duplicate filing.

The framework should also identify separately which version of the ICANN Rules, institutional rules, and fee schedule governs the Arbitral Proceeding. That issue is especially important where the arbitration begins long after the original complaint.

Notice to registrants

Because a registrant may have only ten business days to act, the notice should state the actual deadline and time zone, approved institutions, filing steps, required documents, initial fee, service requirements, consequences of delay, and any available language or reduced-fee assistance.

ICANN should prescribe a concise standard notice.

Preservation of ordinary UDRP and URS routes

The draft Policy Guidance discusses the possibility that an IGO may act through an authorized representative, agent, licensee, or assignee, while noting that the legal consequences may depend on the arrangement.

FORUM does not ask ICANN to reconsider the adopted policy recommendations or replace the proposed arbitration mechanism. The final Guidance should simply confirm that the special IGO procedure is additional rather than exclusive and does not displace any otherwise available ability of a qualifying assignee, licensee, or other rights-holding entity to proceed under the ordinary UDRP or URS framework.

The Guidance should distinguish between a representative acting on behalf of an IGO and a rights-holding entity filing as complainant in its own right. Only the latter should independently assume the standing, certification, Mutual Jurisdiction, and litigation obligations of the complainant.

Preserving that option may provide a simpler and less costly route in appropriate cases.

2. Impact on UDRP and URS Case Status and Domain Name Implementation

The proposal will require Providers, Arbitral Institutions, registrars, and registry operators to coordinate case status and implementation across proceedings that may occur at different times and under different rules.

Multiple domains, parties, and proceedings

An underlying case may involve multiple domain names, multiple respondents, privacy or proxy services, different registrars, or registrations connected to different jurisdictions. The final Rules should address partial arbitration requests, consolidation and severance, different governing laws, partial settlements and awards, allocation of fees, and implementation of different outcomes for different domain names or parties.

Locks, suspensions, and lifecycle events

For UDRP matters, the Rules should identify when the registrar Lock begins, continues, and ends. For URS matters, the framework should separately define the obligations of the registry operator and registrar concerning suspension and restoration.

Implementation specifications should address:

- the authority to issue controlling status instructions;
- renewal, expiration, redemption, and pending deletion;
- responsibility for renewal fees;
- transfer of the registration or registrar portfolio;
- loss of registrar accreditation;
- erroneous transfers during an applicable hold;
- restoration, retransfer, or reversal of suspension; and
- corrective action following a judicial stay or set-aside decision.

Registrar and registry roles should not be treated interchangeably. The final materials should identify which actor performs each required step under the UDRP and URS. Independent action by a registrar, registry operator, hosting provider, or other service provider under an abuse policy should remain separate from the Arbitral Proceeding. ICANN should prescribe standardized notices for commencement, continuation of a Lock or suspension, deficiency cure, termination, judicial intervention, implementation, and restoration.

URS-specific issues

The URS already contains an appeal process. The proposed materials should clarify whether the Respondent must first complete that appeal and how its deadlines and record interact with the Arbitral Proceeding.

The proposed URS materials also appear inconsistent concerning when arbitration is available. The complaint certification refers to an Appeal Determination in favor of the IGO, while other provisions may be read more broadly.

The final URS Rules should therefore clarify:

- whether arbitration is available only after an Appeal Determination or after another URS Determination;
- how the definition of Arbitral Proceeding, complaint certification, and Rule 15(g) fit together;
- whether suspension remains in effect;
- what record is transmitted;
- how duplicate appeals, court proceedings, and arbitrations are prevented; and
- how reversal of suspension is implemented.

3. Effect on the UDRP and URS Record and Scope of Review

The proposed process is described as de novo, but the final materials do not fully explain the status of the underlying administrative record, decision, or findings.

Record and de novo review

The Rules should state whether the complete UDRP or URS record is transmitted automatically, whether the parties must resubmit materials, and whether prior evidence and admissions may be relied upon without further authentication.

Although the review is de novo, the Rules should state whether the original decision may have persuasive value and whether its factual findings may be considered as part of the record. The framework should also identify whether new claims, defenses, evidence, or parties may be introduced.

Proportionate evidence and hearings

The proposal may permit evidence and procedures far beyond those ordinarily used in UDRP and URS cases. The final Rules should preserve proportionality.

The parties should ordinarily exchange the materials on which they rely, with targeted additional production where necessary. Depositions, extensive written discovery, third-party discovery, and other costly procedures should require tribunal approval.

An early procedural conference should identify the governing law, claims and defenses, record, additional evidence, discovery, confidentiality, hearing needs, language, experts, interim relief, and timetable.

The Rules should state when a hearing is required and when the matter may be decided on written submissions.

Language, confidentiality, and publication

The framework should establish a presumptive language and address translation, interpretation, legal authorities, and allocation of related expenses.

Uniform confidentiality standards should protect privileged, personal, security-sensitive, and immunity-sensitive material. The Rules should permit protective orders, appropriate redactions, confidential and public versions of a decision, and exceptional withholding or delayed publication.

Because the proposed Rules contemplate publication of arbitral decisions, the final materials should state the standard for withholding or redacting the full decision and whether the original UDRP or URS decision will be annotated or updated.

Default, settlement, interim measures, and timing

The Rules should define the effects of nonparticipation, abandonment, withdrawal, settlement, and nonpayment. A default should not relieve the participating party of the burden to establish entitlement to relief.

The framework should also clarify whether interim measures are available, whether they may affect DNS resolution or use, whether they are limited to preserving the status quo, and which registrar or registry operator may implement them.

Baseline timelines should apply to compliance review, appointment, case management, document-only proceedings, hearings, and issuance of the decision, while permitting reasonable flexibility for genuinely complex cases.

4. Remedies, Fees, and Party Exposure

The existing UDRP and URS remedies do not by themselves answer what an Arbitral Panel may order when affirming, reversing, or modifying the underlying result.

Outcomes and relief

The final Rules should state whether available domain name outcomes include transfer, cancellation, continued registration, restoration, retransfer, suspension, continued suspension, or reversal of a URS suspension.

If the proceeding is intended to remain limited to the disposition or status of the domain name, that limitation should be express.

Fees and costs

ICANN should establish minimum principles governing filing and institutional fees, arbitrator compensation, hearings, experts, translations, and cost allocation.

The Rules should clarify:

- which fees are required to commence the proceeding;
- whether a filing date is preserved where payment processing is incomplete through no fault of the filing party;
- whether fees are shared;
- whether one party may advance another party’s share;
- whether costs or attorneys’ fees may be awarded;
- whether cost orders fall within the IGO’s consent; and
- how fees are treated after settlement, withdrawal, severance, or consolidation.

The fee structure should preserve meaningful access to review while discouraging filings used mainly to prolong a Lock or suspension.

Nonparticipation and nonpayment

An IGO’s nonparticipation or nonpayment should not automatically defeat a properly invoked right to review, but the Rules should define the resulting inferences, cost consequences, suspension, or termination. The Rules should also prevent a registrant from maintaining an indefinite hold by initiating and then abandoning the proceeding.

5. Legal Character, Arbitral Seat, and Judicial Supervision

Several of the operational questions described above depend on the legal character of the Arbitral Proceeding.

The proposal describes binding arbitration under the rules of an approved Arbitral Institution, involving national substantive law, hearings, discovery, and a final decision. It then directs registrar or registry implementation.

A legally recognized arbitration ordinarily operates within a national legal framework, even when institutional rules govern most of the procedure. The law of the juridical seat may affect tribunal jurisdiction, arbitrator appointment and challenge, procedural fairness, interim judicial assistance, jurisdictional review, and applications to set aside an award.

An approved institution's rules may supply a method for selecting the seat. The current implementation materials, however, do not require such a provision, state when the seat must be selected, or explain whether different institutions may use materially different approaches.

The final materials should state whether the process is:

- a legally recognized arbitration governed by the law of a juridical seat;
- an ICANN contractual review mechanism operating through domain name system obligations; or
- another form of private adjudication with defined legal consequences.

If it is a nationally seated arbitration, the final framework should establish when and how the seat is selected and disclosed, the resulting supervisory law and courts, and the effect of judicial proceedings on the Arbitral Proceeding, decision, and domain name implementation.

If it is principally an ICANN contractual mechanism, the final materials should explain the law governing the parties' agreement, the legal status of the decision, the intended consequences of the terms "arbitration" and "final and binding," the possible role of courts, and the process for raising a serious jurisdictional or procedural defect before implementation.

Judicial proceedings and implementation

Once a seat is selected, a party may argue that the IGO has accepted the limited supervisory role ordinarily exercised by the courts of that seat. A related but distinct question is whether that consent would be treated as a limited waiver of immunity for proceedings incidental to the arbitration.

The answer may depend on the IGO's consent language, applicable privileges and immunities instruments, and the law applied by the court.

The final materials should identify the categories of judicial proceedings contemplated, whether immunity from execution remains unaffected, and whether the IGO may assert immunity to prevent judicial supervision of the tribunal or decision.

The proposed Rules require implementation within five business days but provide no express period for seeking judicial relief and no procedure for notifying the registrar or registry operator of a stay or set-aside application.

The final framework should therefore state whether there is a waiting period, what filing or court order suspends implementation, what documentation is required, and how the parties and domain name system actors must respond if the decision is stayed or set aside after implementation.

If no judicial role is intended, the final materials should say so and explain the legal and operational consequences.

6. Tribunal Mandate, Governing Law, and Cause of Action

The final Rules should define the substantive task assigned to the Arbitral Panel.

The proposed materials do not describe the tribunal's task consistently. Proposed UDRP Policy Paragraph 10(a) describes the Arbitral Proceeding as a hearing de novo on the criteria in Paragraphs 4(a), 4(b), and 4(c), while proposed Rule 20(g)(i) refers to de novo review of the merits of the claim and Rule 20(g)(ii) requires application of national substantive law through a cause-of-action framework. The final materials should reconcile these formulations and state:

- whether the UDRP or URS elements remain the elements to be proved;
- whether a separate national-law cause of action is required;
- whether national law supplements, replaces, or informs the Policy analysis;
- whether separate findings are required under the Policy and national law; and
- what outcome follows if one framework is satisfied but the other is not.

Cause of action and governing law

The term "cause of action" is not self-defining. Potential claims may include trademark infringement, unfair competition, statutory cybersquatting, protection of an IGO identifier, or declaratory relief, depending on the selected law and the party required to assert the claim.

These claims may differ in standing, territorial nexus, required use, fault, defenses, limitation periods, burdens, and remedies. Some jurisdictions may offer no claim closely corresponding to the UDRP or URS, particularly where the IGO relies on an identifier that is not protected as a conventional trademark.

The Rules should identify which party must assert the cause of action, when it must be pleaded, whether it must support the requested domain name outcome, whether broader counterclaims are permitted, and what occurs if no viable cause of action exists under the identified laws.

The choice-of-law process should occur early enough to support informed tribunal appointment and case planning. Before appointment, whenever practicable, the record should identify the agreed or elected law, the factual basis for the jurisdiction, the asserted cause of action, any objection, and the qualifications reasonably required of the tribunal.

If the selected law provides no suitable cause of action, the parties should have notice and an opportunity to address any replacement law before completing their merits submissions.

Foreign law and tribunal qualifications

The final Rules should address how foreign law is established, whether party-appointed or tribunal-appointed legal experts may be used, the parties' opportunity to respond, and allocation of expert and translation costs.

A legal expert may assist with the content of local law but should not decide the dispute, participate in deliberations, or displace the Arbitral Panel's responsibility for the decision.

Burdens and standards of proof

The Rules should distinguish the substantive burdens governing the merits from the procedural rules governing evidence.

They should clarify whether the balance-of-probabilities standard generally applied in UDRP practice or the clear-and-convincing URS standard continues to govern the Policy elements, whether national law supplies a different standard for a national-law claim or defense, and how the tribunal applies different standards to different issues.

The decision should identify the claims, elements, burdens, and standards applied.

7. Scope of IGO Consent and Protection of the Arbitral Process

The IGO's consent should be clear enough to make the proceeding workable while remaining limited to the particular domain name dispute.

Standard consent language should address the tribunal's jurisdiction, the IGO's participation, compliance with procedural orders, production of information, hearings, fees and costs, domain name orders, registrar and registry implementation, and preservation of privileges and immunities outside the defined scope.

The Rules should also make clear when the arbitration agreement is formed, how each party manifests assent, and whether the agreement satisfies any applicable form requirements. They should require confirmation that the person filing the complaint has authority to bind the IGO to that agreement and should define the consequences of nonparticipation, nonproduction, or nonpayment.

The final framework should similarly identify the terms accepted by the Respondent when initiating arbitration, including institutional rules, fees, confidentiality requirements, liability exclusions, and limits on relief.

Arbitral and adjudicative protection

Arbitral or adjudicative immunity, where recognized by applicable law, is an important safeguard for independent private adjudication. Arbitrators should be able to decide cases without personal liability for claims based on the merits, conduct, or outcome of the proceeding. Administering institutions likewise should receive appropriate protection when performing functions closely connected to the adjudicative process.

The practical concern is not limited to ultimate liability. Even an unsuccessful claim may impose substantial expense, discovery obligations, disclosure of confidential records, reputational harm, and diversion of institutional and panelist resources. Uncertain protection may discourage qualified arbitrators from accepting appointments, discourage reputable institutions from administering the process, increase fees and insurance costs, and encourage defensive administration.

A conventional arbitration framework may strengthen the conclusion that the decision-makers and administering institution are performing recognized arbitral functions. If the proposed mechanism is treated as a purely private administrative procedure operating outside an ordinary national arbitration framework, the availability and scope of arbitral or quasi-judicial immunity may become less predictable. That concern may be especially significant for administering institutions and for functions that are administrative rather than strictly adjudicative.

The proposal should not resolve the IGO's immunity concern by creating material and unpredictable litigation exposure for the arbitrators and institutions asked to administer the replacement process. To the greatest extent permitted by applicable law, the final framework should support prompt dismissal of claims based on protected adjudicative and closely related administrative functions.

Proposed UDRP Rule 21 and complaint certification

Proposed UDRP Rule 21 names Providers, Panelists, Arbitral Institutions, and Arbitral Panelists, but applies only to acts or omissions connected with an "administrative proceeding." The proposed Rules separately define the new process as an "Arbitral Proceeding."

The UDRP provision should follow the clearer approach used in proposed URS Rule 20 and expressly cover both proceedings.

The complaint certification required by proposed UDRP Rule 3(b)(xiii) also waives claims against the dispute-resolution provider and panelists but does not expressly identify the Arbitral Institution administering the later proceeding, Arbitral Panelists, or persons acting on their behalf. If the waiver is intended to cover those actors, it should name them.

The final liability provision should clarify:

- the persons and institutional functions covered;
- whether both parties accept the applicable exclusions;
- the governing law;
- the meaning of "deliberate wrongdoing"; and
- severability if part of the exclusion is unenforceable.

A contractual exclusion of liability is useful but is not necessarily equivalent to immunity under applicable law. Its effectiveness may depend on assent, governing law, public policy, the conduct alleged, and whether the claimant is bound by the Rules.

8. Institutional Approval and Implementation Readiness

ICANN should decide foundational matters uniformly, including eligibility, commencement, tribunal mandate, governing-law structure, IGO consent, minimum seat requirements, remedies, liability protections, judicial proceedings, and registrar or registry implementation.

Approved Arbitral Institutions may develop ordinary filing, scheduling, hearing, discovery, confidentiality, fee, award-formatting, and record-retention procedures within those uniform requirements.

Implementation schedule

Implementation will require changes to intake systems, payment processes, case-management tools, panelist appointment procedures, notices, publication systems, record transfer, training, and registrar and registry communications.

Before launch, ICANN should:

- publish a firm implementation schedule;
- issue final policy, procedural, and technical specifications with adequate lead time;
- provide standard notices and forms;
- coordinate operational testing with Providers, Arbitral Institutions, registrars, and registry operators;
- clarify transitional cases; and
- establish a process for confirming operational readiness and resolving urgent implementation questions.

Conclusion

FORUM supports the objective of creating an effective and administrable process implementing the adopted IGO-INGO Curative Rights Policy Recommendations.

The proposal would materially affect the operation of the UDRP and URS. It introduces new eligibility determinations, filing routes, deadlines, notices, case-status requirements, record-transfer obligations, remedial questions, and registrar and registry implementation procedures.

Those operational changes are intertwined with a separate adjudicative framework whose legal character and substantive mandate are not yet sufficiently defined. The proposal does not clearly establish whether the Arbitral Proceeding is a nationally seated arbitration or an ICANN contractual mechanism, how the seat will be determined, what role national arbitration law and courts will play, or how judicial proceedings will affect implementation.

It also does not clearly explain how de novo review of the UDRP or URS elements is to operate together with national substantive law and a required cause of action. Those uncertainties affect pleadings, proof, tribunal qualifications, foreign-law expertise, remedies, costs, party consent, and the legal status of the decision.

The proposal should not resolve the IGO's immunity concern by creating material and unpredictable litigation exposure for arbitrators, administering institutions, Providers, registrars, registry operators, or parties. That concern is particularly significant if the Arbitral Proceeding is intended to operate as a private administrative mechanism outside an ordinary national arbitration framework, because the availability and scope of arbitral or quasi-judicial immunity may then be less predictable, especially for administering institutions and functions that are administrative rather than strictly adjudicative. Proposed UDRP Rule 21 and the complaint certification should expressly address the later Arbitral Proceeding and the actors administering it, and the final framework should support prompt dismissal of claims based on protected adjudicative and closely related administrative functions, to the greatest extent permitted by applicable law.

Many procedural details can properly be left to approved Arbitral Institutions. Foundational matters should be resolved uniformly before launch. These include:

- eligibility, commencement, and notice;
- Locks, suspensions, and domain name implementation;
- treatment of the underlying UDRP or URS record;
- available domain name outcomes, broader remedies, fees, and costs;
- the legal character and seat of the proceeding;
- the tribunal's mandate and applicable cause of action;
- burdens and standards of proof;
- the scope of IGO and Respondent consent;

- reliable legal and rule-based protections for panelists, administering institutions, and related personnel; and
- minimum institutional and operational-readiness standards.

Clarifying these matters before implementation will promote consistency, give the parties meaningful notice, preserve the predictability of the UDRP and URS, support appointment of qualified arbitrators, permit fair use of local-law expertise where needed, reduce avoidable disputes, protect appropriate IGO privileges and immunities, and allow all affected actors to build reliable systems.

FORUM remains available to provide operational input and to work with ICANN, registrars, registry operators, other Providers, approved Arbitral Institutions, and interested community members as implementation proceeds.

Respectfully submitted,

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