

The GNSO Council takes note that the GAC has reiterated its previous advice regarding IGO access to curative dispute resolution mechanisms. The Council hereby refers to its prior responses to the Board and GAC on this topic, which noted the ongoing work of the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group (WG). The GAC advice on this matter was encapsulated in the IGO Small Group Proposal that was extensively considered and discussed by the WG in its January 2017 IGO-INGO Access to CRP Mechanisms Initial Report, after being requested by the ICANN Board to give it the fullest consideration. The WG did not adopt the Small Group Proposal after concluding, based upon input from its expert legal adviser and other considerations, that there was no sound legal or policy basis for creation of a separate CRP solely for IGOs, and that it would be both inappropriate and ineffective for ICANN to attempt to grant blanket jurisdictional immunity to IGOs, or to attempt to deny redress by domain registrants via applicable national laws pertaining to domain-related disputes.

Notwithstanding the decision by IGOs to refrain from becoming members of the WG, the WG has nonetheless done its utmost to consider all input and expertise provided by IGOs. In particular, the WG reviewed and discussed all comments received on its Initial Report that contained new information and analysis, including extensive comments received from IGOs. Based upon such considered review, it is Council's understanding that the WG's Final report will likely change the effect on standing to initiate a CRP based upon an IGO's notification to WIPO to invoke its protections in national trademark law systems under Article 6ter of the Paris Convention. In addition, the WG is presently discussing an option whereby, when a domain registrant appeals an adverse dispute resolution decision to a court of mutual jurisdiction, and an IGO successfully invokes an immunity defense in that court, the appeal would be resolved through a subsequent arbitration procedure.

The Council further understands that the WG has made clear that it would delay submission of its Final Report if the facilitated GAC-Board-GNSO discussion group on IGO matters elected to seek a separate legal opinion regarding any legal basis for protection of IGO names and acronyms apart from trademark law, but that following discussion of this option by the discussion group no decision has been taken to seek such additional legal advice.

The IGO CRP WG is presently seeking to deliver its Final Report prior to the ICANN 60 meeting in Abu Dhabi. It is the Council's understanding that the WG remains committed to ensuring ready access by IGOs to effective and low cost curative rights protection mechanisms that recognize IGOs' performance of important public functions for citizens worldwide, and that protection of their identities in the DNS serves to minimize the potential for consumer harm.