DRAFT WORKING GROUP CHARTER

Working Group Charter for a Policy Development Process for IGO and INGO Access to Curative Rights Protections

WG Name:	IGO-INGO Access to Curative Rights Protection Working Group	
Section I: Working Group Identification		
Chartering Organization(s):	Generic Names Supporting Organization (GNSO) Council	
Charter Approval Date:	TBD	
Name of WG Chair:	TBD	
Name(s) of Appointed Liaison(s):	TBD	
WG Workspace URL:	TBD	
WG Mailing List:	TBD	
GNSO Council Resolution:	**Title:**	Motion to initiate a Policy Development Process (PDP) for IGO and INGO Access to Curative Rights Protection Mechanisms
	Ref # & Link:	TBD
Important Document Links:	•	

Section II: Mission, Purpose, and Deliverables

Mission & Scope:

Background

At its meeting on 20 November 2013, the GNSO Council unanimously adopted all the consensus recommendations made by the GNSO's PDP Working Group on the Protection of International Organization Names in All gTLDs (IGO-INGO WG) and requested an Issue Report to assist in determining whether a PDP should be initiated in order to explore possible amendments to the Uniform Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension procedure (URS), to enable access to and use of such curative rights protection mechanisms by protected IGOs and INGOs.

In 2007 a [GNSO Issue Report on Dispute Handling for IGO Names & Abbreviations](#) had analyzed some possible methods for handling domain name disputes concerning IGO names and abbreviations, but not those of INGOs. A PDP on the topic was however not initiated due to lack of the requisite number of votes in the GNSO Council. Previously, in 2003, an ICANN Joint Working Group comprising community members from the At Large Advisory Committee (ALAC), the Government Advisory Committee (GAC) and the GNSO had also discussed various possible dispute resolution mechanisms for IGOs in response to a 2001 report on the applicability of the UDRP to certain types of identifiers (including those of IGOs) by the World Intellectual Property Organization (WIPO). The Joint Working Group failed to reach consensus on WIPO's recommendations, and no formal action was taken by the GNSO Council or ICANN on the matter.

In January 2012 ICANN launched the New gTLD Program, which included a number of rights-protection mechanisms specifically developed for the Program. These included objection procedures to new gTLD applications (including a legal rights objection procedure for trademark owners and organizations with registrations in the .int TLD) and the URS for second level registrations in approved new gTLDs (modeled after the UDRP). The ICANN Board also granted certain temporary protections at the top and second levels in the New gTLD Program for the Red Cross movement, the International Olympic Committee and IGOs, which were to remain in place until a permanent solution based on GAC Advice and policy recommendations from the GNSO could be developed. The GNSO's recommendations, as approved by the GNSO Council on 20 November 2013, were submitted to the ICANN Board for consideration in February 2014. These were acknowledged by the Board in February 2014, in directing its New gTLD Program Committee (NGPC) to develop a comprehensive proposal taking into account the GAC advice received on the topic and the GNSO's recommendations. The NGPC developed and sent a proposal to the GAC in March 2014. In April 2014 the ICANN Board adopted those GNSO recommendations that are not inconsistent with GAC advice received on the same topic and resolved to facilitate dialogue among the GAC, GNSO and other affected parties to resolve the remaining differences between GAC advice and the GNSO recommendations.

Mission and Scope

This Curative Rights Protection for IGOs and INGOs PDP Working Group (WG) is tasked to provide the GNSO Council with policy recommendations regarding whether to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs and, if so in what respects or whether a

separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed. In commencing its deliberations, the WG should at an early stage gather data and research concerning the specific topics listed in Section X of the Final Issue Report as meriting such further documentation.

As part of its deliberations, the CRP PDP WG should, at a minimum, consider the following issues detailed in Section IX of the Final Issue Report. These are:

- *The differences between the UDRP and the URS;*

- *The relevance of existing protection mechanisms in the Applicant Guidebook for the New gTLD Program;*

- *The interplay between the topic under consideration in this PDP and the forthcoming GNSO review of the UDRP, URS and other rights-protection mechanisms;*

- *The distinctions (if any) between IGOs and INGOs for purposes of this PDP;*

- *The potential need to distinguish between a legacy gTLD and a new gTLD launched under the New gTLD Program;*

- *The potential need to clarify whether the URS is a Consensus Policy binding on ICANN's contracted parties;*

- *The need to address the issue of cost to IGOs and INGOs to use curative processes; and*

- *The relevance of specific legal protections under international legal instruments and various national laws for IGOs and certain INGOs (namely, the Red Cross movement and the International Olympic Committee)*

The WG should also include the following additional topics in its deliberations:

- *Review the deliberations of the 2003 President's Joint Working Group on the 2001 WIPO report as a possible starting point for the PDP WG's work and consider whether subsequent developments such as the introduction of the New gTLD Program and the URS may mean that prior ICANN community recommendations on IGO dispute resolution are no longer applicable;*

- *Examine whether or not similar justifications and amendments should apply to both the UDRP and URS, or if each procedure should be treated independently and/or differently;*

- *Reach out to existing ICANN dispute resolution service providers for the UDRP and URS as well as experienced UDRP panelists, to seek input as to how the UDRP and/or URS might be amended to accommodate considerations particular to IGOs and INGOs;*

- *Determine what (if any) are the specific different considerations (including without limitation qualifying requirements, authentication criteria and appeal processes) that should apply to IGOs and INGOs;*

- *Conduct research on applicable international law regarding special privileges and immunities for IGOs*

- *Conduct research on the extent to which IGOs and INGOs already have trademarks and might be covered, in whole or in part, by existing UDRP and URS proceedings;*

- *Conduct research on the number and list of IGOs currently protected under Article 6ter of the Paris Convention on Intellectual Property;*

- *Conduct research on the number and list of INGOs included on the United Nations list of non-governmental organizations in consultative status with the Economic and Social Council. ;*

- *Consider whether or not there may be practicable alternatives, other than amending the UDRP and URS, that can nonetheless provide adequate curative rights protections for IGOs and INGOs, such as the development of a specific, narrowly-tailored dispute resolution procedure modeled on the UDRP and URS, and applicable only to IGOs and/or INGOs;*

- *Consider mechanisms that would require a very clear definition of the mission of the IGOs, its scope of operations and the regions and countries in which it operates; the goal here being to provide a context for the IGO or INGO similar to the scope and terms of a trademark with its International Class and clear description of goods and services;*

- *Consider recommendations that incorporate fundamental principles of fair use, acknowledge free speech and freedom of expression, and balance the rights of all to use generic words and other terms and acronyms in non-confusing ways; and*

- *Bear in mind that any recommendations relating to the UDRP and URS that are developed by this PDP WG may be subject to further review under the GNSO's forthcoming PDP to review the UDRP and all the rights protection mechanisms that were developed for the New gTLD Program.*

The WG should invite participation from other ICANN Supporting Organizations and Advisory Committees, including the GAC, and from interested IGOs and INGOs. It should track any ongoing discussions between the GAC and GNSO on resolving remaining differences between GAC advice and the GNSO recommendations on RCRC and IGO acronym protection. It may also wish to consider forming sub-groups to work on particular issues or sub-topics in order to streamline its work and discussions.

For purposes of this PDP, the scope of IGO and INGO identifiers is to be limited to those identifiers previously listed by the GNSO's PDP WG on the Protection of International Organization Identifiers in

All gTLDs as protected by their consensus recommendations (designated by that WG as Scope 1 and Scope 2 identifiers, and listed in Annex 2 of the Final Issue Report).

Objectives & Goals:

To develop, at a minimum, an Initial Report and a Final Report regarding the WG's recommendations on issues relating to the access by IGOs and INGOs to curative rights protection mechanisms, following the processes described in Annex A of the ICANN Bylaws and the GNSO PDP Manual.

Deliverables & Timeframes:

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and the PDP Manual. As per the GNSO Working Group Guidelines, the WG shall develop a work plan that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in Annex A of the ICANN Bylaws and the PDP Manual, and shall submit this to the GNSO Council.

Section III: Formation, Staffing, and Organization

Membership Criteria:

The WG will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the WG, including:
- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other ICANN Supporting Organizations and Advisory Committees

Working Group Roles, Functions, & Duties:

The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.
Staff assignments to the Working Group:

- GNSO Secretariat

- ICANN policy staff members (Berry Cobb & Mary Wong)

The standard WG roles, functions & duties shall be those specified in Section 2.2 of the GNSO Working Group Guidelines.

Statements of Interest (SOI) Guidelines:

Each member of the WG is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.

Section IV: Rules of Engagement

Decision-Making Methodologies:

The Chair will be responsible for designating each position as having one of the following

designations:

- **Full consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as **Unanimous Consensus.**
- **Consensus** - a position where only a small minority disagrees, but most agree. *[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP WG, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]*
- **Strong support but significant opposition** - a position where, while most of the group supports a recommendation, there is a significant number of those who do not support it.
- **Divergence** (also referred to as **No Consensus**) - a position where there is no strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.
- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to **Consensus**, **Strong support but significant opposition**, or **No Consensus;** or it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document variances in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence,** the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

   i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
   ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
   iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
   iv. In rare cases, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
      o A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
      o It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence.**

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus views/positions. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls where taken.

Consensus calls should always involve the entire WG and, for this reason, should take place on the designated mailing list to ensure that all WG members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus has been reached and to announce this designation to the WG. WG member(s) should be able to challenge the designation of the Chair as part of the WG discussion. However, if disagreement persists, WG members may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:
1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. If the Chair still disagrees with the complainants, the Chair will forward the appeal to the liaison(s) from the Chartering Organization (CO). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison(s). If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the liaison(s) disagrees with the Chair, the liaison(s) will forward the appeal to the CO. Should the complainants disagree with the liaison(s)'s support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
3. In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison(s) of their issue and the Chair and/or Liaison(s) will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initiate a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that

could be considered in case any of the parties are dissatisfied with the outcome of this process.

| **Status Reporting:** |
| As requested by the GNSO Council, taking into account the recommendation of the Council liaison(s) to the WG. |
| **Problem/Issue Escalation & Resolution Processes:** |
| The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison(s) and, if unsatisfactorily resolved, to the Chair of the CO or their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN's Expected Standards of Behavior as referenced above.

The Chair, in consultation with the CO liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the CO. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the CO or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked. |
| **Closure & Working Group Self-Assessment:** |
| The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council. |

Section V: Charter Document History

Version	Date	Description

| **Staff Contact:** | Mary Wong | **Email:** | Policy-staff@icann.org |