

20 August 2019

Cherine Chalaby, Chair, ICANN Board of Directors

Subject: Submission by the ICANN Governmental Advisory Committee on the GNSO PDP on IGO-INGO Access to Curative RPMs Policy Recommendations for ICANN Board Consideration

The following is submitted to the ICANN Board of Directors, in response to its [letter](#) to the GAC on 11 July 2019, for purposes of informing its deliberations on the [recommendations](#) forwarded to it by the GNSO Council on the above-noted topic.

The GAC reminds the Board as a starting principle that the GAC has advised the Board that in order to accommodate the present policy question and the concerns of IGOs, the UDRP itself should not be amended, but that a *separate* dispute resolution mechanism modeled on the UDRP (e.g., using similar legal assessment of bad faith) be considered.

Public policy rationale for the present submission

The GAC recalls that IGOs – unique treaty-based institutions created by governments under international law – undertake global public service missions, and that protecting their names and acronyms in the DNS serves the global public interest.

The GAC further recalls that IGOs have recognized that policies seeking to protect their identities in the Domain Name System should accommodate legitimate third-party co-existence.

The GAC also notes that ICANN’s Bylaws and Core Values specify that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.

Requested Board action

Recommendations 1, 2, 3, and 4 of the PDP on IGO-INGO Access to Curative Rights Protection Mechanisms are in contravention of standing GAC Advice. (See also the March 12, 2017 [submission](#) by the ICANN Governmental Advisory Committee on the GNSO’s Initial Report on the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process.)

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Notably, this includes GAC Advice (see, e.g., the [Los Angeles](#) and [Hyderabad](#) Communiqués) indicating that the UDRP should not be amended – but that a separate dispute resolution mechanism modeled on the UDRP be considered – for purposes of accommodating the concerns of IGOs.

The GAC also notes that the changes to Recommendation 2 (standing) in the Final Report do not overcome its original objections to amending the UDRP.

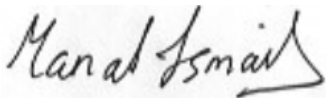
Also, IGOs could not agree to the change to Recommendation 3 in the Final Report, i.e., the suggestion that IGOs should use an agent to file a complaint.

The GAC therefore advises the ICANN Board to abstain from taking a decision on these Recommendations inter alia to allow the parties sufficient time to explore possible ways forward. (The GAC also understands that in Marrakech the parties discussed their desire to use an expedited policy development process (EPDP) in this outstanding matter and to seek to produce a report within 6-8 months.)

As to abstaining, it is noted here that expected future policy work on Recommendation 5 would be likely in practice to overtake Recommendations 1-4. Recommendation 5 was not part of the GNSO Council’s Report to the Board, but is expected to be the subject of future policy work once appropriately re-chartered.¹

The GAC affirms its willingness to participate in such chartering effort.

Submitted by and on behalf of the ICANN Governmental Advisory Committee,



Manal Ismail
Chair, Governmental Advisory Committee (GAC)

¹ The GAC notes that IGO Legal Counsels have provided input on the specific issue of appeal to an arbitral tribunal (instead of national courts), in conformity with relevant principles of international law concerning recognized privileges and immunities conferred by governments on IGOs.

Immunity from national court jurisdiction is a distinguishing characteristic of IGOs which allows them to carry out their public missions. This is further explained in the October 31, 2016 Memorandum from IGO Legal Counsels to the GNSO.

It is therefore unclear how an ICANN Working Group would be able to apply its own contradictory interpretation on such matter and the GAC suggests that this is an issue that would need to be addressed in future policy work on Recommendation 5.