

To: Mike Rodenbaugh on behalf of GCCIX WLL

Date: 28 July 2021

Re: Request No. 20210628-1

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This is in response to the request for documentary information (Request), which was submitted on 28 June 2021 by you on behalf of GCCIX WLL through the Internet Corporation for Assigned Names and Numbers' (ICANN organization or ICANN org) Documentary Information Disclosure Policy (DIDP). For reference, a copy of your Request is attached to the email forwarding this Response.

### **Items Requested**

Your Request seeks disclosure of “any and all information about the [Intergovernmental Organization [IGO] ‘work track’” referenced in the Governmental Advisory Committee’s (GAC) ICANN71 Communiqué, including, without limitation, “any and all public documents or information relating to this effort, its genesis, its scope, and/or its participants.”

Your Request also asks ICANN to provide “prompt written notification of any further, proposed ICANN Board and/or Staff action in relation to this topic, including without limitation any response to the GAC on this topic, and/or any related resolutions or next steps in the ‘work track.’”

### **Response**

#### **I. Background on the Genesis of the IGO Work Track**

Between 2014 and 2016, the Generic Names Supporting Organization (GNSO) Council chartered two separate Policy Development Processes (PDPs) to consider specific issues relating to different rights protection mechanisms (RPMs) for second level domain names. The first PDP focused on the particular needs of International Governmental Organizations (IGOs) and International Non-Governmental Organizations (INGOs) (IGO-INGO PDP). The second PDP focuses on trademark issues as part of the Review of All RPMs in All gTLDs PDP, for which the work was divided into two main phases. The first phase - the IGO-INGO PDP - is complete and involved a review of all the RPMs that had been developed for the 2012 New gTLD Program Round, including the Uniform Rapid Suspension System (URS) dispute resolution procedure. The second phase, which has not yet been initiated by the GNSO Council, will review the Uniform Domain Name Dispute Resolution Policy (UDRP). These PDPs are discussed in further detail below.

In June 2014, the GNSO Council initiated the IGO-INGO PDP and tasked the IGO-INGO Access to Curative Rights Protections Working Group (IGO-INGO PDP WG) to determine whether: (1) the curative rights protection mechanisms currently in place for both legacy and new generic top level domains (gTLDs) should be amended and, if so,

in what respects; or (2) a separate, narrowly-tailored dispute resolution procedure modeled on the existing curative rights protection mechanisms should be developed. (See Charter for IGO-INGO PDP WG, [https://gnso.icann.org/sites/default/files/filefield\\_45569/igo-ingo-crp-access-charter-24jun14-en.pdf](https://gnso.icann.org/sites/default/files/filefield_45569/igo-ingo-crp-access-charter-24jun14-en.pdf); IGO-INGO PDP WG Wiki, <https://community.icann.org/display/gnsoicrmpdp>.)

On 20 January 2017, the IGO-INGO PDP WG published its [Initial Report](#) for public comment. Following an extensive review of all the public comments received as well as additional discussions over a number of policy options developed subsequent to the Initial Report, the IGO-INGO PDP WG finalized its recommendations and submitted its [Final Report](#) to the GNSO Council on 9 July 2018. Final Report on the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (IGO-INGO PDP Final Report) at [https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en\\_0.pdf](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf), pg. 2.) At its meeting on 19 July 2018, the GNSO Council resolved to acknowledge the IGO-INGO PDP Final Report and noted that, in light of inconsistencies between GAC advice and prior GNSO PDP recommendations on so-called “preventative” (i.e., pre-registration of a second-level domain name) protections for IGOs, the GNSO Council would consider the topic of curative rights protections for IGOs in the broader context of the appropriate overall scope of protection for all IGO identifiers. Between its receipt of the IGO-INGO PDP Final Report and its eventual action on the report in April 2019, the GNSO Council extensively discussed the IGO-INGO PDP WG’s final recommendations, including during a webinar and over the course of several GNSO Council meetings, to determine the best course of action for the WG’s final recommendations. (See <https://gnso.icann.org/en/council/resolutions/2020#20200123-2>.)

The IGO-INGO PDP Final Report contained five recommendations. Recommendation 5 stated:

Where a losing registrant challenges the initial UDRP/URS decision by filing suit in a national court of mutual jurisdiction and the IGO that succeeded in its initial UDRP/URS complaint also succeeds in asserting jurisdictional immunity in that court, the decision rendered against the registrant in the predecessor UDRP or URS shall be set aside (i.e. invalidated).

(See [IGO-INGO PDP Final Report](#), pg. 18.)

During the GNSO Council’s deliberations, concerns were expressed as to whether Recommendation 5 will:

- Require a substantive modification to the UDRP and URS (notwithstanding that these two dispute resolution procedures are currently under consideration in the Review of RPMs PDP).

- Result in a potential reduction of the existing level of curative protections currently available to IGOs (notwithstanding the fact that the PDP had been chartered to determine "whether to amend the UDRP and URS to allow access to and use of these mechanisms by IGOs and INGOs ...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").

(See Addendum to the Charter for the Review of All RPMs in All gTLDs PDP, effective 23 Jan. 2020, <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpms-charter-addendum-09jan20-en.pdf>, pg. 1-2.)

On 18 April 2019, the GNSO Council [resolved](#) to approve Recommendations 1 through 4 of the IGO-INGO PDP Final Report. (See GNSO Council Resolution 20190418-3, <https://gnso.icann.org/en/council/resolutions - 201904>.) The GNSO Council elected to not approve Recommendation 5 and directed the Review of All RPMs in All gTLDs PDP to consider, as part of its phase 2 work, whether an appropriate policy solution can be developed that is generally consistent with Recommendations 1 through 4 as approved by the GNSO Council, and:

- a. accounts for the possibility that an IGO may enjoy jurisdictional immunity in certain circumstances;
- b. does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction;
- c. preserves registrants' rights to judicial review of an initial UDRP or URS decision; and
- d. recognizes that the existence and scope of IGO jurisdictional immunity in any particular situation is a legal issue to be determined by a court of competent jurisdiction.

(See *id.*). The GNSO Council's [Resolution 20190418-3](#) further stated that the "GNSO Council intends to amend the charter for the RPM PDP Working Group to reflect this new instruction accordingly." (*Id.*)

The GNSO Council engaged with the GAC on several occasions during its deliberations on the IGO-INGO PDP Final Report. At the Joint GAC-GNSO session at ICANN65 in Marrakech, Morocco, the GNSO Council sought the GAC's feedback on the GAC's willingness to participate in a targeted effort that the GNSO Council would charter to focus on the issue raised by Recommendation 5 as to curative rights for IGOs and possibly drawing on the community's recent experiences with the Expedited PDP on the Temporary Specification and Work Track 5 of the GNSO New gTLD Subsequent Procedures PDP. (See <https://gac.icann.org/sessions/icann65-block-6-session-6-1-gac-meeting-with-the-generic-names-supporting-organisation-gnso>; <https://65.schedule.icann.org/meetings/1058182>; <https://gac.icann.org/file-asset/public/icann65-gac-briefing-06.1-meeting-with-gnso-v2->

[17jun19.pdf%20language\\_id=1.pdf?language\\_id=1;](#)  
<https://livestream.com/icannmeeting/events/8699173;>  
[https://icann.zoom.us/recording/share/wsUIDeuSs-vCHCIM4ALahzmbceR5RHY4\\_KeqnnHcemSwlumeKtziMw?startTime=1561455306000;](https://icann.zoom.us/recording/share/wsUIDeuSs-vCHCIM4ALahzmbceR5RHY4_KeqnnHcemSwlumeKtziMw?startTime=1561455306000;)  
[https://icann.zoom.us/recording/share/wsUIDeuSs-vCHCIM4ALahzmbceR5RHY4\\_KeqnnHcemSwlumeKtziMw?startTime=1561460808000.](https://icann.zoom.us/recording/share/wsUIDeuSs-vCHCIM4ALahzmbceR5RHY4_KeqnnHcemSwlumeKtziMw?startTime=1561460808000.))

On 20 August 2019, the GAC sent a [letter](#) to the ICANN Board, affirming, "its willingness to participate in such chartering effort." Dialogue between the GNSO Council, the GAC, and IGO representatives continued at ICANN66 in Montreal, Canada, followed by further discussions within the GNSO Council. (See Letter from GAC Chair to Chair of ICANN Board, 20 Aug. 2019, <https://www.icann.org/en/system/files/correspondence/ismail-to-chalaby-20aug19-en.pdf>.)

On 23 January 2020, the GNSO Council adopted an Addendum to the Charter for the RPM PDP Working Group (Addendum). The Addendum established a new and separate work track within the ongoing RPMs in All gTLDs PDP (the IGO Work Track) that will focus exclusively on the specific issues related to Recommendation 5 noted above. (See GNSO Council Resolution 20200123-2, <https://gns0.icann.org/en/council/resolutions/2020#202001>; Addendum, <https://gns0.icann.org/sites/default/files/file/field-file-attach/rpms-charter-addendum-09jan20-en.pdf>.) The scope of the IGO Work Track, as well as its deliverables, membership requirements are defined in the Addendum. (See [Addendum](#), pgs. 2-3.)

The GNSO Council Resolution 20200123-2 also specified:

1. The GNSO shall collaborate with each GNSO Stakeholder Group, Constituency, SO and AC to expeditiously issue a call for Members and Observers to join the IGO Work Track, each in accordance with its own rules. The GNSO Council specifically notes that Members and Observers, although appointed by community groups, must nevertheless meet the Membership Criteria as defined in the Addendum.
2. In accordance with the Addendum, the GNSO Council shall conduct a call for expressions of interest as soon as is reasonably possible, in order to identify and confirm a single, qualified Work Track Chair, consistent with the criteria as defined in the Addendum.

(See [GNSO Council Resolution 20200123-2](#).) On 26 October 2020, a call for expressions of interest (EOI) was issued for the Chair of the IGO Work Track. (See Call for EOI, <https://www.icann.org/en/announcements/details/call-for-expressions-of-interest-chair-of-the-intergovernmental-organization-igo-work-track-26-10-2020-en>; EOI for the IGO Work Track Chair document, <https://www.icann.org/en/system/files/files/eoi-igo-work-track-chair-26oct20-en.pdf>; GNSO Council Resolution 20200924-1, <https://gns0.icann.org/en/council/resolutions/2020#202009>.) Interested GNSO

Stakeholder Groups and Constituencies as well as the GAC, At Large Advisory Committee and IGOs also appointed their representatives to the IGO Work Track in accordance with the criteria and composition spelled out in the Addendum (see <https://community.icann.org/display/GNSOIWT/4.+WT+Members+and+mailing+list> for the list of IGO Work Track members).

The IGO Work Track convened its first meeting on 22 February 2020 and the work is continuing to date.

## II. Your Request

The DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization's operational activities, and within ICANN org's possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.)

Consistent with its commitment to operating to the maximum extent feasible in an open and transparent manner, ICANN org has published process guidelines for responding to requests for documents submitted pursuant to the DIDP (DIDP Response Process). In responding to this DIDP, ICANN org followed the DIDP Response Process and, upon receipt of the Request, consulted with ICANN personnel and conducted a reasonable search for responsive documentary information. ICANN org has evaluated responsive documentary information and considered whether any responsive documents that are not already public are subject to any of the Defined Conditions for Nondisclosure (Nondisclosure Conditions) under the DIDP, and whether the public interest outweighs the potential harm in disclosure of the documents that are subject to one or more DIDP Nondisclosure Conditions.

### A. Item No. 1 of Request

Item No. 1 seeks the disclosure of “any and all information about the IGO ‘work track’” referenced in the GAC ICANN71 Communiqué, including, without limitation, “any and all public documents or information relating to this effort, its genesis, its scope, and/or its participants.”

The IGO Work Track maintains a public [wiki page](#) that contains publicly accessible information about the IGO Work Track, including the following documents that are responsive to your request:

- Addendum, <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpms-charter-addendum-09jan20-en.pdf>;
- PDP Final Report, [https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en\\_0.pdf](https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf);
- Agendas of all IGO Work Track meetings, <https://community.icann.org/display/GNSOIWT/1.+WT+Meetings>;

- Audio recording of all IGO Work Track meetings, <https://community.icann.org/display/GNSOIWT/1.+WT+Meetings>;
- Monthly Project Package Updates & Workplan, <https://community.icann.org/pages/viewpage.action?pageId=164626455>;
- IGO Work Track Membership List, <https://community.icann.org/display/GNSOIWT/4.+WT+Members+and+mailing+list>;
- IGO Mailing List Archives, <https://mm.icann.org/pipermail/gnso-igo-wt/>.

The documents related to the formation of the IGO Work Track have been published and are identified above. With respect to the request for information regarding Work Track's scope of work, this can be found in the Addendum, which is published at <https://gnso.icann.org/sites/default/files/file/field-file-attach/rpms-charter-addendum-09jan20-en.pdf>. To the extent that there are any documents responsive to this item that have not already been published, such documents are subject to the following DIDP Nondisclosure Conditions and are therefore, not appropriate for disclosure:

- Information provided by or to a government or international organization, or any form of recitation of such information, in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party;
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications; and
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

The documents responsive to the Work Track's membership requirements and its participants can be found on the Work Track's wiki and in the Addendum. The composition of the IGO Work Track is as follows:

- The Registries Stakeholder Group: up to two members;
- The Registrars Stakeholder Group: up to two members;
- The Commercial Stakeholder Group: up to three members;
- The Non-Commercial Stakeholder Group: up to three members.
- Each AC, other SOs and IGOs: Up to two members per group.

(See IGO Work Track Membership List, <https://community.icann.org/display/GNSOIWT/4.+WT+Members+and+mailing+list>.)



Additional information regarding the composition of the IGO Work Track’s membership can be found at:

- Call for EOI, <https://www.icann.org/en/announcements/details/call-for-expressions-of-interest-chair-of-the-intergovernmental-organization-igo-work-track-26-10-2020-en>;
- EOI for the IGO Work Track Chair document, <https://www.icann.org/en/system/files/files/eoi-igo-work-track-chair-26oct20-en.pdf>; and
- GNSO Council Resolution 20200924-1, <https://gns0.icann.org/en/council/resolutions/2020#202009>.)

To the extent that there are additional documents responsive to this item, such as confidential discussions and vetting of the Chair of the Working Track, such documents are subject to the following Nondisclosure Conditions and are therefore not appropriate for disclosure:

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications; and

#### B. Item No. 2 of Request

Item No. 2 asks ICANN to provide “prompt written notification of any further, proposed ICANN Board and/or Staff action in relation to this topic, including without limitation any response to the GAC on this topic, and/or any related resolutions or next steps in the ‘work track.’” As noted above, the DIDP is a mechanism, developed through community consultation, to ensure that information contained in documents concerning ICANN organization’s operational activities, and within ICANN org’s possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality. (See <https://www.icann.org/resources/pages/didp-2012-02-25-en>.) Item No. 2 is beyond the scope of the DIDP. You can stay updated on the work of the IGO Work Track by regularly checking on the Work Track’s wiki.

#### Public Interest in Disclosure of Information Subject to Nondisclosure Conditions

Notwithstanding the applicable Nondisclosure Conditions identified in this Response ICANN org has considered whether the public interest in disclosure of the additional documentary information subject to these conditions at this point in time outweighs the harm that may be caused by such disclosure. ICANN org has determined that there are

no current circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.

### **About DIDP**

ICANN org's DIDP is limited to requests for documentary information already in existence within ICANN org that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN org makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN org continually strives to provide as much information to the community as is reasonable. We hope this information is helpful. If you have any further inquiries, please forward them to [didp@icann.org](mailto:didp@icann.org).