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**Leap of Faith
Financial Services Inc.**

August 9, 2026

Subject: Proposed Implementation of the IGO-INGO Curative Rights Policy Recommendations – comments

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Dear ICANN org and members of the IGO-INGO Curative Rights Implementation Review Team,

This submission is in response to the call for public comments on the "Proposed Implementation of the IGO-INGO Curative Rights Policy Recommendations," as per the notice at:

https://www.icann.org/en/public-comment/proceeding/proposed-implementation-of-the-igo-ingo-curative-rights-policy-recommendations-30-06-2026 [archived]

This document is our submission in its entirety and constitutes our response to all four questions posed in the guided submission form, which it answers in turn rather than in separate uploads. Each distinct point is separately numbered (1.1, 1.2, …; 2.1, …; 3.1, …; 4.1, …) so that each may be individually addressed in the Public Comment Summary Report. Citations to "EPDP Final Report" are to the Final Report of the EPDP on Specific Curative Rights Protections for IGOs (2 April 2022) [archived]; citations to "PDP Final Report" are to the Final Report of the IGO-INGO Access to Curative Rights Protection Mechanisms PDP (17 July 2018) [archived]; both sets of recommendations were adopted by the ICANN Board on 30 April 2023 (Resolutions 2023.04.30.09-10 [archived]). Citations to the draft documents are to the clean versions dated 10 June 2026 (17 June 2026 for the Policy Guidance) published for public comment on 30 June 2026.

HOW TO READ THIS SUBMISSION

This submission is not an attempt to reopen policy. It asks for strict application of the recommendations the Board adopted on 30 April 2023 and of the ICANN Bylaws, and our objections of record to the underlying recommendations are preserved without being re-argued here (Point 4.1).

The points that follow are of three kinds, and we identify which is which in the body of each point rather than by any system of labels: some identify draft text that departs from the words the Board adopted; some identify matters the adopted texts presuppose but the drafts leave blank or unworkable; and a few identify difficulties that the implementation exercise has itself exposed, which cannot be cured within implementation and can be resolved only by the bodies competent to make policy. Where a point falls into that last category we say so expressly. We are not asking ICANN org to make policy, and we do not advance these points as preferences: we identify the change that would be required, and we ask that the point be answered on the record and, where ICANN org concludes that faithful implementation of the adopted text is not possible, that the question be referred to the GNSO Council — and, as necessary, to the Board — under ICANN's own escalation rules, rather than resolved by silence at the drafting table (see Point 4.2). We ask that no point be set aside on the basis of a category label rather than its substance: each is numbered so that it can be addressed individually in the Public Comment Summary Report, and each is capable of being addressed on its own terms.

A word on the limits of this submission. The comment period allowed for a package of four redlined instruments, a guidance document, and an implementation record spanning more than a year. We have not explored every angle, and we do not present this as a complete audit; where we have proposed text, we have in several places found and corrected our own errors while preparing it, and we say where (Appendix A). What we do say is that the number, direction, and character of the misalignments set out below are sufficient to establish that this package is not aligned with the recommendations the Board adopted, and is not close to being so. Establishing alignment is not the community's task. It is the task of ICANN org and of the Implementation Review Team, which has had this material for over a year, and which is far better placed than an outside reviewer working against a deadline to carry out the provision-by-provision reconciliation this package plainly has not had. If a single reviewer with limited time can find this much, the right inference is not that the reviewer has been thorough; it is that the review that should already have happened has not.

One consequence follows for how this submission should be read and reported. Where we identify a misalignment **and** propose text to cure it, the two are severable. We have proposed text because an objection without operative language is easily recorded and easily set aside, not because the objection depends on the language. Every proposed provision in this document is offered as illustration and is open to improvement by ICANN org, the Implementation Review Team, and the registrars who would operate it; several were improved by us in the course of preparing this submission, and we say where. A criticism of our drafting is not an answer to the defect it addresses, and we ask that the Staff Report not treat one as the other.

QUESTION 1: Are any changes to the draft updates to the UDRP and UDRP Rules necessary to ensure alignment with the Board-adopted PDP and EPDP recommendations?

ANSWER: YES.

The draft updates to the UDRP and the UDRP Rules depart from the Board-adopted recommendations in multiple, material respects. Each departure identified below operates in the same direction: to the detriment of domain name registrants and to the benefit of IGO complainants. We identify the adopted policy text, the draft text, the misalignment, proposed corrective text, and the rationale for each point. As a general observation, where the adopted recommendations were the product of "Full Consensus" of the EPDP team — a body in which registrant interests were already minimally represented — the implementation may not further dilute the limited registrant protections that survived that process. Implementation fidelity is not optional: under the ICANN Bylaws [archived] (Annex A, Section 10, governing Implementation Review Teams), ICANN org implements adopted consensus policy; it does not renegotiate it.

> **Point 1.1 — The registrar stay for court proceedings required by EPDP Recommendation 3(iii) has been eliminated, and must be restored through a mechanical, characterization-free stay design**

Before anything else, a word on what stands or falls with what. This Point makes two requests, and they are severable. The first is that the court-proceedings stay required by Recommendation 3(iii) be restored, and that the stay end on the terminal condition Recommendation 3(iv) states. That request depends on nothing we have drafted. The second is a proposed text for giving effect to it, offered because an alignment objection with no operative text is easily recorded and easily set aside. If ICANN org, the Implementation Review Team, or the registrars who would operate the provision find fault with our drafting — and we identify several faults of our own below — the answer is a better provision, not the absence of one. **A defect in our proposed cure is not an answer to the defect in the draft.** We ask that the Staff Report address the two separately.

(a) Adopted policy text. EPDP Recommendation 3(iii) (Full Consensus; Board-adopted):

> “In accordance with Paragraph 4(k) of the UDRP, the relevant registrar shall wait ten (10) business days (as observed in the location of its principal office) before implementing a UDRP panel decision rendered in the IGO Complainant’s favor. **The registrar shall stay implementation if, within that period, it receives official documentation that the registrant has either initiated court proceedings in its location or in the location of the registrar’s principal office or has submitted a request for or notice of arbitration.**” (emphasis added)

EPDP Recommendation 3(iv) requires the stay to continue “until it receives official documentation concerning the outcome of an arbitration or other satisfactory evidence of a settlement or other **final resolution of the dispute**” (emphasis added). EPDP Recommendation 3(v) then expressly contemplates the litigation pathway proceeding to completion: “Where the registrant initiates court proceedings and the court declines to hear the merits of the case on the basis of IGO privileges and immunities, the registrant may submit the dispute to binding arbitration within ten (10) business days from the court order…”

(b) Draft text. Draft UDRP ¶4(k)(ii) provides that in proceedings brought by an IGO Complainant, the registrar “will then implement the decision **unless** we have received from you during that ten (10) business day period **a copy of your request to initiate an Arbitral Proceeding** as submitted to an Arbitral Institution, and confirmation of receipt from the Arbitral Institution…” No other ground for a stay is provided. The general court-proceedings stay in ¶4(k)(i) is unavailable in IGO cases because it applies only to lawsuits “commenced… in a jurisdiction to which the complainant has submitted under Paragraph 3(b)(xiii) of the Rules of Procedure,” and the drafts exempt IGO Complainants from that Mutual Jurisdiction submission (draft UDRP Rules ¶3(b)(xii), implementing EPDP Recommendation 2(a)).

(c) Misalignment. Recommendation 3(iii) creates two alternative stay triggers — court proceedings **or** arbitration. The draft implements only one. A registrant who does exactly what the adopted policy, the EPDP charter, and the draft’s own Written Notice (draft UDRP Rules ¶4(c)(i): the respondent’s “right to seek to challenge the UDRP decision… by filing a claim in court”) contemplate — filing a court claim within the ten-business-day window — obtains no stay, and the domain name is transferred while the litigation is pending. This nullifies:

- Recommendation 3(iii)’s express text;
- Recommendation 3(v), which becomes incoherent: it grants a ten-business-day arbitration window following a court order declining jurisdiction on immunity grounds, but court proceedings take months or years, by which time the domain name will long since have been transferred, re-deployed, or re-sold. The drafts contain no mechanism to unwind an implemented transfer following such a court order or subsequent arbitration — and no such mechanism could realistically be created, because once the domain name is registered to the IGO, any attempt to compel its return runs headlong into the very privileges and immunities this

framework exists to accommodate: the IGO in possession can assert immunity from the process of any court asked to order a re-transfer, and it will hold the name under a new registration agreement, potentially at a registrar of its own choosing, outside the machinery of these Rules (see subsection (f), final paragraph). A premature transfer to an immunity-asserting complainant is, as a practical matter, irreversible;

- the GNSO Council's binding conditions in [Resolution 20190418-3 (18 April 2019) [archived]], carried into the EPDP charter and quoted in the EPDP Final Report's own explanatory text to Recommendation 2, that any solution "does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction" and "preserves registrants' rights to judicial review." A "right" to litigate while one's property is transferred to the adverse party is not a preserved right; and
- EPDP Annex A, General Principle 1, under which the arbitral mechanism is meant to substitute for judicial review only "as much as is feasible" — not to punish registrants who choose the judicial route that the recommendations preserve.

A second, less visible omission compounds the first: the draft also discards the adopted terminal condition. Recommendation 3(iv) ends the stay by reference to the state of the **dispute** — the registrar stays "until it receives official documentation concerning the outcome of an arbitration or other satisfactory evidence of a settlement or other **final resolution of the dispute**." Draft ¶4(k)(ii) instead ends it by reference to the fate of a **proceeding**: the registrar acts on "evidence satisfactory to us that your Arbitral Proceeding has been dismissed or withdrawn" or "a copy of an order from an Arbitral Panel."

That difference is not stylistic, and it is the source of most of the operational defects in this part of the package. A terminal condition scoped to a single proceeding is workable where only one forum exists — which is why the existing ¶4(k)(i), addressed to court proceedings alone, has functioned since 1999. This framework contemplates two forums in sequence: a court proceeding that may be followed by an Arbitral Proceeding (Recommendation 3(v)), or an Arbitral Proceeding alone (Recommendation 3(i)). In that setting a proceeding-scoped ending answers the wrong question. "Dismissed or withdrawn" no longer signifies that anything is over, because an Arbitral Proceeding may follow; no ending describes the position where a court has declined and the registrant's election window remains open; and no ending at all describes the registrant **winning**. Recommendation 3(iv)'s formulation avoids each of these because it terminates on the resolution of the dispute rather than on the disposal of a proceeding.

Reading Recommendations 3(iii), 3(iv) and 3(v) together confirms that this is the scheme the EPDP adopted. Recommendation 3(iv) is expressed as applying where the registrar "has received a request for or notice of arbitration," but it directs the registrar to "stay **or continue to stay, as applicable**" — words that presuppose a stay already running, which under Recommendation 3(iii) can only have begun with court proceedings. Recommendation 3(iii) supplies no endpoint of its own, so unless 3(iv) governs the stay that 3(iii) creates, the adopted scheme has no terminal condition for the court limb at all. Recommendation 3(v) then supplies the endpoint for the remaining branch expressly: where a court declines and the registrant does not elect arbitration within ten business days, "the original UDRP decision will be implemented by the registrar." Together the three provisions cover every branch with a single dispute-scoped terminal condition. The draft adopts none of them.

We should meet the obvious answer to that reading rather than wait for it. ICANN org may say that Recommendation 3(iv) is conditioned on the registrar having "received a request for or notice of arbitration," and so does not on its face govern a stay founded on court proceedings where no arbitration is ever requested. We think "or continue to stay, as applicable" is the better reading, for the reason just given. But the point does not depend on winning that argument, and the alternative is worse for the draft, not better. If Recommendation 3(iv) does not supply the endpoint for the court limb, then the adopted recommendations supply **no** endpoint for a stay that Recommendation 3(iii) unambiguously requires — a lacuna that implementation must fill, since a stay with no terminating condition is not capable of performance. In filling it, ICANN org is not at large. "Final resolution of the dispute" is the only terminal formula the adopted text contains anywhere; it appears in the immediately following provision, addressed to the same stay; and the alternative formula — importing ¶4(k)(i)'s proceeding-scoped endings — is demonstrably unworkable in a two-forum sequence, for the reasons set out at subsection (e). On either reading, therefore, the implementation should adopt Recommendation 3(iv)'s condition. On the first it is compelled; on the second it is the only defensible choice available.

(d) Proposed text. Two prefatory notes. First, everything proposed here operates **inside ¶4(k)(ii)**; we propose no amendment to ¶4(k)(i), which governs proceedings generally and should not be disturbed for the sake of a defect confined to IGO cases. Our text is modelled on the familiar structure of ¶4(k)(i) — wait ten business days, implement unless documentation is received, then take no further action until a terminating event — while omitting the Mutual Jurisdiction condition, which cannot apply because Recommendation 2(a) exempts IGO Complainants from that submission, and while substituting the dispute-scoped terminal condition of Recommendation 3(iv) for ¶4(k)(i)'s proceeding-scoped endings. Second, this Point should be read with Point 1.3, which addresses the circumstances in which a Respondent is entitled to initiate an Arbitral Proceeding; the text below allocates to the Arbitral Institution and the Arbitral Panel every question of entitlement, and to the Registrar only dates and documents.

Replace draft UDRP ¶4(k)(ii) in its entirety with the following:

> "(ii) In proceedings brought by an IGO Complainant, if an Administrative Panel decides that your domain name registration should be canceled or transferred, we will wait ten (10) business days (as observed in the location of our principal office) after we are informed by the applicable Provider of the Administrative Panel's decision before

implementing that decision. We will then implement the decision unless we have received from you during that ten (10) business day period either:

(A) official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that you have commenced court proceedings concerning the domain name(s) in the jurisdiction of your address as shown in our Registration Data or in the location of our principal office; or

(B) a copy of your request to initiate an Arbitral Proceeding as submitted to an Arbitral Institution in accordance with Paragraph 10 of this Policy, Paragraph 20 of the Rules of Procedure, and the applicable arbitral rules of the Arbitral Institution (a record of its transmission being sufficient).

Documentation previously provided to us in respect of proceedings that remain pending is treated as received during that period.

If we receive such documentation within the ten (10) business day period, we will not implement the Administrative Panel's decision, and we will take no further action until we receive evidence satisfactory to us of the **final resolution of the dispute**, and we will then act in accordance with that final resolution.

The dispute is **not** finally resolved while: (1) any court proceeding commenced by you in either of the jurisdictions identified in sub-paragraph (A) above, or any Arbitral Proceeding, concerning the domain name(s) remains pending, including any appeal, application for review or for leave to appeal, rehearing, remand, or continuation after transfer, whether or not it bears a different case number, is filed in a different court or registry, or is given a different title; (2) any period for appeal from, or review of, an order or decision has not expired; (3) any period within which you are entitled under Paragraph 20(a)(ii) of the Rules of Procedure to initiate an Arbitral Proceeding remains open; or (4) a period of thirty (30) calendar days has not elapsed since the conclusion of a court proceeding within sub-paragraph (1). A court order declining to hear the merits of the case is not, of itself, a final resolution of the dispute. Sub-paragraphs (1) to (4) are **not** an exhaustive statement of the circumstances in which a dispute is not finally resolved; we may implement the Administrative Panel's decision only upon evidence satisfactory to us that the dispute has been finally resolved. Once the dispute has been finally resolved, the commencement of any further proceeding does not make it unresolved again.

For the purposes of this Paragraph, a proceeding concerns the domain name(s) only if your entitlement to the domain name(s) is in issue in it. Any statement that a period for appeal or review has expired, or that a proceeding is no longer pending, shall be made by the party supplying it as an express certification, and any dispute as to such a statement shall be determined by the Arbitral Institution on notice to the Parties and to us, and not by us.

For the purposes of this Paragraph, we are not required to, and will not, determine the grounds on which a court or Arbitral Panel disposed of any proceeding, or otherwise

> interpret or characterize any order; our obligations depend solely on the documents and dates specified above."

Four features of that text deserve a word of explanation, because each answers an objection rather than a gap.

The **jurisdictional and party bounds** in sub-paragraph (1) are not ours; they are Recommendation 3(iii)'s, which speaks of "official documentation that **the registrant** has either initiated **court proceedings in its location or in the location of the registrar's principal office**." An earlier formulation of ours said simply "any court proceeding," which would have allowed a stay to rest on litigation brought by a third party, in a jurisdiction the recommendations do not permit — an obvious route to abuse, and a departure from the adopted text that we criticise ICANN for elsewhere. The bounds now match sub-paragraph (A)'s trigger, as they should: a terminal condition wider than the trigger that opened it is a drafting error, not a protection. We do **not**, however, restore the existing ¶4(k)(i) requirement that the lawsuit be brought "against the complainant." Recommendation 3(iii) names no defendant, and the routes an assertion of immunity makes necessary — an in rem proceeding against the domain name, or one naming the registry operator — are not proceedings "against the complainant" (see Point 1.3 and Appendix A, trap 5).

The **thirty-day period** in sub-paragraph (4) exists so that a registrant whose claim is disposed of for a procedural reason has an interval in which to recommence, without the Registrar being asked to determine whether the disposal was on the merits. It runs from the conclusion of any court proceeding, whatever the reason, precisely so that no characterisation is required (Design principle 1). Thirty days is short enough to cost an IGO Complainant almost nothing and long enough to be usable.

The **non-exhaustiveness clause and the no-reopening rule** work as a pair, and they answer opposite objections. The first makes explicit what the structure already required: the four circumstances listed are sufficient conditions for non-finality, not necessary ones, and the operative condition remains the affirmative one — the Registrar may implement only on evidence satisfactory to it that the dispute has been finally resolved. Silence in the list is therefore not permission to implement. The second forecloses the mirror-image abuse: once finality has been reached, a later proceeding cannot revive the stay. That is the same one-way operation the existing ¶4(k)(i) has today, where a stay that has ended does not restart, expressed in dispute-scoped rather than proceeding-scoped form. Together they mean that no numerical cap on proceedings is required, and we ask that none be imposed (see below).

The **scope limiter** — that a proceeding concerns the domain name(s) only if the Respondent's entitlement to them is in issue — prevents the stay from being invoked on the strength of collateral litigation, such as a payment dispute with a broker over the same name, which would otherwise satisfy a bare "concerning the domain name(s)" test. We volunteer it because an open-ended trigger would be the first abuse route a critic of this proposal would look for, and because it costs a registrant with a genuine case nothing. The **certification requirement** answers the objection that a statement about the expiry of a foreign appeal period is contestable and that the Registrar would be left holding contradictory documents. It is not: the party asserting finality must certify it, and any dispute goes to the Arbitral Institution. The Registrar records a certification; it does not evaluate one.

Five short companion provisions are required in the Rules to make that operate, and we set them out separately because each answers a distinct failure that we identified only by testing the text against as wide a range of outcomes as we were able to identify — a range we make no claim to be exhaustive, for the reasons given at subsection (e).

(1) Corrective recommencement, so that a procedural misstep is not fatal. A registrant whose claim is dismissed for want of jurisdiction, improper venue, or a defect of form may lawfully commence again in a competent court: such a dismissal does not adjudicate the merits, although it may carry preclusive consequences on the point actually decided, and limitation or abuse-of-process rules may in some circumstances bar the fresh claim. Under the text proposed above the recommenced proceeding is simply a pending proceeding, so the dispute remains unresolved and the stay continues without any special provision.

We should be precise about how that compares with the position today, because the comparison answers the obvious objection that we are seeking more than the existing policy gives. Paragraph 4(k)(i) is, on its face, unforgiving here: the stay ends on "evidence satisfactory to us that your lawsuit has been dismissed or withdrawn," and a dismissal for want of jurisdiction is a dismissal. What makes that tolerable in ordinary cases is Rules ¶3(b)(xiii): the complainant has submitted to the very jurisdiction in which the registrant must sue, so an objection to the court's jurisdiction over the complainant is not realistically available, and the situation scarcely arises. Recommendation 2(a) withdraws that submission for IGO Complainants. The risk accordingly moves from negligible to foreseeable — Recommendation 3(v) is itself premised on the expectation that courts will decline — and a rule that was harmless when jurisdiction was assured becomes, unchanged, a trap. What we propose therefore secures no advantage over the current policy: it preserves the practical position that ¶4(k)(i) produces, in circumstances where the mechanism that produced it has been removed. The provision that is genuinely needed concerns the **arbitral election window**, which is short and can expire while a misdirected request is being rejected. Add to Rules ¶20: "Where a request to initiate an Arbitral Proceeding does not result in a commenced Arbitral Proceeding because it was submitted to an institution that is not a designated Arbitral Institution, or because of an administrative deficiency, and the Respondent submits a compliant request within ten (10) business days of being notified, the request is treated as having been submitted on the date of the original submission. Not more than one such recommencement may be made."

(2) A release event wherever the Arbitral Proceeding does not reach the merits — and the consequence that must follow. Draft ¶20(e)(ii) addresses dismissal for administrative deficiency and withdrawal by the Respondent. It does not address a request the Arbitral Institution declines to commence; nor — while draft ¶20(a)(iii) stands — a request the IGO Complainant refuses to accept; nor a proceeding that is commenced and then terminated without any adjudication of the merits, whether because the Arbitral Panel holds that it lacks competence, because the designated Institution ceases to act, or for any other reason. In each case the Registrar holds a Lock with no defined release, and the registrant holds an adverse administrative decision that nothing has reviewed. A notification provision is therefore required: "Where a request to initiate an Arbitral Proceeding does not result in a commenced Arbitral Proceeding, or where a commenced Arbitral Proceeding concludes otherwise than by a decision on the merits, the Arbitral Institution shall notify the Respondent, the IGO Complainant, the Registrar(s), the UDRP Provider and ICANN within two (2) business days, stating the reason, and no Arbitral Proceeding shall thereafter be treated as pending for the purposes of Paragraph 4(k)(ii) of the Policy."

But notification alone is not sufficient, and the consequence matters more than the mechanics. The Arbitral Proceeding exists in this framework as the substitute for the judicial review that an IGO Complainant's immunity may foreclose. Where that substitute never comes into existence, or comes into existence and then decides nothing, for a reason that is not the Respondent's doing, the registrant is left with an adverse administrative decision that no tribunal anywhere will ever examine on its merits — the precise outcome the GNSO Council's binding conditions prohibit, requiring as they do that any solution "preserves registrants' rights to judicial review" and "does not affect the right and ability of registrants to file judicial proceedings in a court of competent jurisdiction." Implementing the decision in those circumstances is not a neutral default; it is the conversion of a summary administrative determination into a final and irreversible transfer, unreviewed by anyone.

The Rules must therefore distinguish between failures attributable to the Respondent and failures that are not. Add:

> "Where an Arbitral Proceeding does not result in a decision on the merits by reason of the Respondent's failure to comply with the applicable requirements after the notice and opportunity to correct provided in Paragraph 20(e), the Respondent's withdrawal, the Respondent's failure to pay a fee for which it is liable after notice and a reasonable opportunity to do so, or because the Respondent was not entitled under Paragraph 20(a)(ii) to initiate the Arbitral Proceeding, the Registrar(s) shall implement the administrative panel decision in accordance with Paragraph 4(k)(ii) of the Policy.
>
> Where the Parties resolve the dispute between themselves, the Registrar(s) shall act in accordance with that resolution.
>
> Where an Arbitral Proceeding does not result in a decision on the merits for any other reason — including the unavailability of a designated Arbitral Institution, the

> withholding of agreement by the IGO Complainant under Paragraph 20(a)(iii), or a determination by the Arbitral Panel that it lacks competence to decide the claim — the administrative panel decision **shall be set aside and shall not be implemented**, and the Provider shall annotate the published decision accordingly."

We record that our own earlier formulation of this provision was scoped to whether an Arbitral Proceeding ever *came into existence*, and therefore said nothing about one that commenced and then ended without deciding anything. That is Appendix A, trap 1 — a condition keyed to the stage a proceeding reached rather than to the state of the dispute — and it is the third occasion on which we have caught ourselves in it. The correction is to ask what the proceeding *produced*, not how far it *got*. We draw attention to the error because the same test should be applied to every provision in the package that turns on the fate of an Arbitral Proceeding, and because a checklist is worth more when its author demonstrates that it catches him too. Two of the three limbs above exist for reasons worth stating: the settlement limb, because a settlement concludes a proceeding without a merits decision and would otherwise be swallowed by the set-aside; and the reference to non-payment, because without it a Respondent could manufacture a set-aside by declining to pay.

That consequence is not an innovation of ours. It is what the original 2018 PDP proposed for the case in which an IGO's immunity defeated review, and the EPDP displaced it only by substituting arbitration; where the substitute is unavailable, the reason for displacing it falls away. It also disposes of an objection to Point 1.2 that would otherwise be available: if the IGO Complainant's refusal of agreement under ¶20(a)(iii) results in the decision being set aside rather than implemented, the veto ceases to be worth exercising, and the difficulty this submission identifies at Points 1.2 and 2.1 substantially resolves itself.

(3) Who decides whether the Respondent was entitled to arbitrate, on what test, and by when. Point 1.3 settles **which** court outcomes entitle a Respondent to initiate an Arbitral Proceeding. Nothing in the drafts settles **who** applies that test, against what standard, or within what time — and the answer matters to the Registrar, because under the text proposed above an election window that remains open keeps the dispute unresolved. Draft ¶20(e) addresses administrative compliance only. The gap should not be filled by leaving the Registrar to infer entitlement from the documents, which would undo the division of labour this Point is built on. Add to Rules ¶20(e): "Upon receipt of a request to initiate an Arbitral Proceeding, the Arbitral Institution shall review the submission for administrative compliance and shall determine, on a *prima facie* basis, whether the request falls within one of the circumstances specified in Paragraph 20(a)(ii). Where the request is manifestly outside those circumstances — including where the documentation submitted shows that a court has determined the merits of the dispute concerning the domain name(s) — the Arbitral Institution shall decline to commence and shall notify the Respondent, the IGO Complainant, the Registrar(s), the UDRP Provider and ICANN within two (2) business days, stating the reason. Where the question is not manifest, the

Arbitral Institution shall commence the proceeding and the Arbitral Panel shall determine the admissibility of the request as a preliminary question, the stay under Paragraph 4(k)(ii) of the Policy continuing meanwhile. A request declined under this sub-paragraph may not be re-submitted to any Arbitral Institution in respect of the same court outcome.” The threshold is deliberately set at *manifest* non-entitlement: a screening body deciding arguable questions of foreign law on the papers, within two days, would be adjudicating the very issue the arbitration exists to provide. The final sentence closes the forum-shopping variant, under which a determined Respondent files serially with each designated Institution.

(4) A means of resolving whether a proceeding remains pending. A dormant proceeding would otherwise leave a dispute unresolved indefinitely. A word on terminology first, because these provisions span two kinds of proceeding in which the labels reverse: in this Paragraph “**Respondent**” bears its UDRP Rules meaning of the domain name registrant, who in any court proceeding contemplated here is the **plaintiff** and in any Arbitral Proceeding is the party initiating. Where the position of the IGO Complainant in those proceedings is intended, we say so. The test must measure the registrant’s engagement rather than the activity of the court, because judicial speed varies by orders of magnitude between jurisdictions and Recommendation 3(iii) expressly permits the Respondent to sue in its own location: a case in a congested list, or one set down for hearing two years hence, may show no activity for a year while remaining entirely alive. Add: “The IGO Complainant may request the Registrar to serve on the Respondent (that is, the domain name registrant) a Status Request in respect of a proceeding relied upon. A Status Request shall identify the proceeding by reference to the documentation previously supplied and shall be accompanied by a statement, signed on behalf of the IGO Complainant, that it has no information indicating that the proceeding remains pending; a Status Request unaccompanied by that statement is of no effect. The Respondent shall have fifteen (15) business days to confirm that the proceeding remains pending; it is not required to demonstrate that any step has been taken in it, or that any hearing has yet taken place. Where the Respondent does not reply, the Registrar shall serve a second Status Request no earlier than thirty (30) calendar days after the first; if the Respondent does not reply to that either, the proceeding shall be presumed no longer to be pending. That presumption is rebuttable at any time before the Administrative Panel’s decision is implemented, by official documentation showing that the proceeding was pending, and the Registrar shall not implement the decision before the expiry of thirty (30) calendar days from the second Status Request. Where an IGO Complainant serves a Status Request in respect of a proceeding it knows or ought to know remains pending, the Arbitral Institution may on application declare the Status Request abusive, in which case no further Status Request may be served in respect of that proceeding. The IGO Complainant may request not more than one Status Request in any six (6) month period in respect of the same proceeding. A Status Request shall be transmitted by the IGO Complainant to the UDRP Provider that administered the administrative proceeding, and not to the Registrar. The UDRP Provider shall satisfy itself that the request has been made by the complainant in that proceeding, using the

contact details of record, and shall forward it to the Registrar(s) and to the Respondent within two (2) business days. Any other communication from the IGO Complainant to a Registrar for the purposes of Paragraph 4(k)(ii) of the Policy shall be transmitted in the same manner, or, where an Arbitral Proceeding is on foot, through the Arbitral Institution. Where the UDRP Provider that administered the proceeding no longer performs that function, ICANN shall designate a Provider to act in its place. A Registrar shall disregard any communication received otherwise than in accordance with this sub-paragraph, and shall incur no liability for doing so."

The last of those sentences answers an objection a registrar is entitled to make, and which was put to us while this submission was in preparation: *we have no relationship with the IGO Complainant and no means of knowing whether a communication purporting to come from one is genuine.* The objection is well founded, and it is specific to this channel. Every other communication in the mechanism arrives over a path the Registrar can already authenticate — the Respondent is its own customer, the UDRP Provider informed it of the decision, and the Arbitral Institution is a body ICANN has designated. The IGO Complainant is the single inbound party with which a Registrar has no relationship of any kind, and the scope for confusion is not hypothetical, since at least one UDRP Provider is itself an IGO. Without this provision a forged Status Request would start a fifteen-business-day clock against a registrant, and two unanswered forgeries would end the stay and cost it the domain name — a result achieved by a party the Registrar was never in a position to identify. Routing the communication through the Provider imposes no new burden on the Registrar, requires no one to verify anything they are not already positioned to verify, and asks of the Provider only a clerical check against contact details it already holds from the proceeding it administered. We note a related but distinct defect in draft Rules ¶20(a)(iii): it fixes no period within which the IGO Complainant must decide whether to agree, identifies no recipient for that decision, and requires no record of it. Because agreement is optional, withholding operates by silence — which means that under the provision proposed at (2) above, where the withholding of agreement results in the administrative decision being set aside, there is no way to establish that a refusal has occurred or when. We ask that ¶20(a)(iii) be deleted for the reasons given at Point 1.2; if it survives, it must at least specify a period, a recipient, and a notification.

Three safeguards in that text answer Appendix A, trap 12, which requires that any right to compel a response be paired with a documentary precondition, a frequency cap and a consequence for misuse. An earlier formulation of ours had the cap alone, and would have failed our own test. It would also have failed Design principle 4: a rule under which two unanswered emails produce an irreversible transfer, while a live appeal listed eighteen months hence remains on foot, is a rule that fails catastrophically in the very situation it exists to address. The presumption is therefore rebuttable up to the moment of implementation, and a further thirty days must run before implementation can occur, so that a registrant whose contact details have changed retains a route back.

(5) An implementation floor, in place of a ceiling — required for the Arbitral Proceeding decision itself. This one is not confined to ¶4(k)(ii), and it is addressed at Point 1.15(n) below: draft Policy ¶3(g) and Rules ¶20(i)(i) each require the Registrar to implement an Arbitral Panel decision "**within** five (5) business days," which permits implementation on the first day and leaves no interval in which any challenge to the award could be commenced.

Conforming changes are also required to: draft UDRP Rules ¶20(a)(ii)(2) (per Point 1.3); ¶20(c)(ii) and ¶20(e)(iv) (per Point 1.15); and footnote 2 of the draft UDRP Rules, extending the "extenuating circumstance" renewal right to the pendency of court proceedings and not only of Arbitral Proceedings.

A word about the form of this proposal. We offer this text as a working solution rather than a finished one. The comment period has been short, the interaction between two forums in sequence is genuinely intricate, and we cannot be confident that every situation has been accounted for — indeed an earlier formulation of ours, published before this submission, did not account for several, and we have said so publicly rather than quietly revising it. We would welcome review of the mechanics by others, and by registrars in particular, since they would operate the provision and the Registrar Stakeholder Group has no member on this Implementation Review Team (see Point 4.4). What does not depend on the drafting is the requirement itself: Recommendation 3(iii) directs the registrar to stay implementation on official documentation of court proceedings **or** arbitration, and Recommendation 3(iv) ends that stay on the final resolution of the dispute. The draft implements neither. If our formulation can be improved, ICANN org, the IRT and the registrars who must operate it are far better placed to improve it than to leave the adopted requirements unimplemented. The recurring ways in which provisions of this kind fail — including the ways our own earlier text failed — are set out in Appendix A, offered as a checklist rather than as criticism.

(e) Rationale. This is the single most consequential defect in the package. The ICANN Board's own rationale for adopting these recommendations (Minutes, Regular Meeting of the ICANN Board, 30 April 2023, section 2.c [archived]) described what the Board understood itself to be adopting: "a voluntary arbitration component to both the UDRP and URS Rules, **without affecting the respondent-registrant's ability to file judicial proceedings against an IGO at any time during a UDRP or URS proceeding**" (emphasis added). A draft under which the exercise of that judicial option results in the loss of the domain name ten business days later plainly "affects" — indeed, guts — that ability, and is therefore misaligned not only with Recommendation 3(iii)'s text but with the Board's stated basis for adoption. Without the court-proceedings stay, the entire architecture that the EPDP presented to the community — "the registrant keeps the right to go to court; arbitration is a backstop if immunity defeats the court case" — is inverted: court access becomes a guaranteed way to lose the domain name, and the "backstop" becomes the only exit. No reading of the adopted recommendations supports that inversion; Recommendation 3(iii) forecloses it in terms. We also note the draft's additional requirement of "confirmation of receipt from the Arbitral Institution" within the window exceeds Recommendation 3(iii), which requires only documentation that the registrant "has submitted a request for or notice of arbitration"; a registrant's timely submission cannot be defeated by a third party's processing delays (see also Point 1.7).

On the form of the cure, and how we arrived at it. We record this because it bears on which of the available formulations the Implementation Review Team should prefer, and because our own first attempt got it wrong in an instructive way.

Our initial corrective text restored the two triggers of Recommendation 3(iii) but retained the terminal conditions of the existing ¶4(k)(i) — resolution between the parties, the lawsuit dismissed or withdrawn, or an order that the registrant may not continue to use the name — with provisos attached to accommodate a subsequent arbitration. Testing that text against a wider range of outcomes than the obvious ones — a range we could not then, and cannot now, claim to be complete — showed why it could not work. Those three endings are a complete enumeration for a single forum, which is what ¶4(k)(i) governs. Placed in a two-forum sequence they answer the wrong question, and each proviso added to repair one gap opened the next: the situations multiply faster than the text can close them, and any situation the drafter fails to anticipate resolves against the registrant, because the unanticipated case falls through to the default, which is transfer.

That is not a defect further drafting cures. A default-implementation rule is correct only if its enumeration of exits is **complete** — it must anticipate every way a dispute can end — and completeness cannot be demonstrated. A dispute-scoped terminal condition replaces a proposition that must be proved exhaustively with one that can be refuted by a single instance: the dispute is not finally resolved if any proceeding, appeal, or election period remains open, and a proceeding nobody thought to enumerate is still a proceeding that is pending. No taxonomy of outcomes is required.

The failure modes differ accordingly, and that is the decisive consideration. Under a proceeding-scoped rule an unanticipated situation ends in the transfer of a domain name to a complainant against whom, for the reasons given at subsection (f), no subsequent order can be enforced. Under a dispute-scoped rule the same situation ends in the stay continuing, at a cost to the IGO Complainant of time alone. Where a rule cannot be guaranteed complete — and we do not claim ours is — it should be built so that its incompleteness fails towards the outcome that can still be corrected. We did not invent that principle for this submission: it is the asymmetry of irreparable harm described at subsection (f), applied to the structure of the rule rather than to the facts of a case. Nor did we invent the formulation, which is Recommendation 3(iv)'s.

Subsection (f) explains the design of the proposed replacement text in detail.

(f) Explanation of the proposed mechanism, scenario by scenario. Because the interlocking timing rules here are genuinely complex — and because the IRT's closed, eleven-member format did not subject the drafts to the kind of adversarial, scenario-level stress-testing that open participation provides (see Question 4; the undersigned, who was not permitted to participate in the IRT, identified the scenarios below in the course of a single outside review of the published drafts) — we set out below exactly how the proposed text operates, why each design choice is compelled by the adopted recommendations, and why simpler-looking alternatives fail.

Design principle 1: the registrar reads an order for its operative direction, never for its grounds. Any stay provision that operates differently depending on *why* a court disposed of a case (merits? immunity? personal jurisdiction? cause of action? mixed grounds?) makes the registrar the first-instance adjudicator of that question. Registrars are not competent to characterize foreign court orders, are not compensated for doing so, and face liability whichever way they guess — so in practice they will resolve every doubt in favor of the safest course for themselves, which is implementation (transfer). A protection that depends on registrar legal analysis is a protection that will fail exactly when it matters. The distinction the proposed text draws is therefore between an order's **operative direction** concerning the domain name — which registrars have identified under Policy ¶3(b) since 1999, and which sub-paragraph (2)(a) of the current draft already requires them to identify — and the **grounds** of a disposition, which they are never asked to classify. Checking whether an order says something about the domain name is clerical; deciding why a foreign court ruled as it did is not. The legal significance of the court's disposition is assessed where it belongs — in the Arbitral Proceeding, by the Arbitral Institution at intake and the Arbitral Panel on the merits (including, where a court has already decided the merits, through ordinary preclusion doctrines under the applicable law).

Design principle 2: finality is defined negatively, which is what preserves appeals and absorbs the unforeseen. The proposed text does not list the ways a dispute may end. It states three circumstances in which the dispute is **not** finally resolved — a proceeding still pending, an appeal period still open, an election window under Rules ¶20(a)(ii) still running — and leaves everything else to be evidenced as a final resolution. Two consequences follow, and both matter more than they may appear to.

The first is that appellate rights are preserved without any special machinery. A ten-business-day arbitration window running from a *first-instance* order would force a registrant to abandon its appeal — in every developed legal system, an appeal as of right — as the price of preserving the arbitration backstop. Nothing in the adopted recommendations extinguishes appellate review: Recommendation 3(v)'s reference to "the court order declining to hear the merits" is properly read as the court system's final word rather than its first; Recommendation 3(iv) requires the stay to persist until "final resolution of the dispute," and an order under active appeal has resolved nothing finally; and the EPDP's own working materials contemplated appellate proceedings, including to a supreme court, when the *IGO* was the losing party (see pp. 47-48 of our 23 October 2021 comments [archived], describing the EPDP's flowcharts). Appellate rights that were explicitly in contemplation for IGOs cannot be impliedly abolished for registrants. The negative definition secures them in a single clause, and — importantly — it does so without requiring anyone to determine whether an appellate filing "continues" an earlier proceeding, a question that would otherwise be complicated by the fact that appeals routinely acquire new case numbers in different courts.

The second is that the provision absorbs situations nobody anticipated. A positive list of endings is only as good as the imagination of its drafter, and what the drafter misses resolves against the registrant. A negative definition inverts that: an unforeseen turn of events is simply not a final resolution, and the stay continues until it becomes one.

Design principle 3: entitlement is decided in the arbitral forum, not at the registrar. Whether a registrant may initiate an Arbitral Proceeding following a particular court outcome is a question of law, addressed at Point 1.3 and determined under Rules ¶20. The Registrar's only involvement is to know whether an election window remains open, which the parties evidence and which the Arbitral Institution resolves if disputed. The division of labour is: the Registrar handles dates and documents; the Arbitral Institution and the Arbitral Panel handle law.

Design principle 4: where the drafters have not provided for a situation, the default state must be the reversible one. The three principles above concern situations we were able to identify. This one concerns the situations we were not, and it is the principle we regard as most important, because it is the only one that does any work when the analysis above turns out to have missed something — as, on the evidence of our own drafting history recorded in Appendix A, it may well have.

No drafter can enumerate every scenario, and an implementation is not sound merely because it disposes correctly of the scenarios someone thought of. What determines whether the omission is survivable is the state the text leaves in place when it has provided for nothing. Two candidate defaults are available here and they are not symmetrical. If the default is that the stay continues, an omission costs the IGO Complainant delay: the IGO applies, evidences the final resolution, and the name is transferred, later than it should have been. Delay is a real cost and we do not pretend otherwise. It is, however, a cost the framework can still absorb, because the outcome the recommendations specify remains available at the end of it. If the default is that the decision is implemented, an omission costs the registrant the domain name — and a transferred name is, as a practical matter, gone. And irreversibly so, because of the unique characteristics of IGOs: a registrant seeking the name back would face an assertion of immunity in whatever court it approached, and would have to litigate that threshold question — at its own cost, years after the transfer — before reaching the merits at all. That is a defence available to no other UDRP complainant, and it is why a wrongly executed transfer to an IGO is not merely hard to undo but, in practical terms, final.

An implementation that fails gracefully in the unforeseen situation remains aligned with recommendations that never addressed it, because the outcome the recommendations do specify can still be reached once the situation is understood. An implementation that fails catastrophically does not, because by the time anyone identifies the gap the remedy has already been executed and there is nothing left to align. This is not a plea for indulgence towards registrants; it is the ordinary logic of provisional relief, which reserves irreversible orders for cases that have been decided.

Two objections to that reasoning should be answered here rather than left to be made. The first is that a court granting interim relief usually requires an undertaking in damages or security, whereas the stay proposed here requires neither. The analogy does not run that way. A registrant resisting the execution of a summary administrative determination is not an applicant seeking relief; it is the party in possession, asking that its property not be given away before the dispute about it has been decided. The complainant, not the registrant, chose the summary forum, and did so knowing that ¶4(k) has provided exactly this stay to every registrant since 1999 without security of any kind. If security is thought appropriate for IGO cases, it is a change to the UDRP as a whole and belongs in a proceeding where every registrant is represented.

The second is that a domain name left in the registrant's hands may be used for phishing, fraud, or other abuse while the stay runs, and that such harm is itself irreversible. It may be — but a UDRP transfer is not, and has never been, the mechanism for stopping it. Abusive use of a domain name is addressed by registrar and registry suspension, by the Registrar Accreditation Agreement's obligations, by the URS where it applies, and by law enforcement, all of which operate regardless of who holds the registration and none of which is affected by a stay under ¶4(k). A complainant with evidence of live abuse has faster remedies than a UDRP proceeding and does not need this one. The same reasoning applies throughout the UDRP and the URS wherever an implementation must choose what happens in the absence of provision, and we invite ICANN org and the IRT to apply it as a general test rather than only to the provisions we have had time to examine.

How the provision handles the common situations. The list below is illustrative and is expressly **not** an enumeration of every situation that can arise — that is the whole point of the design, and a submission arguing that no enumeration can be complete should not present one as though it were. What follows shows how the provision disposes of the situations most likely to occur; situations nobody has yet thought of are handled by the same rule, because a proceeding nobody anticipated is still a proceeding that is pending.

1. *Registrant does nothing within the initial ten-day window.* The decision is implemented on day eleven — identical to the current UDRP and to the draft. No change.
2. *Registrant elects arbitration within the window.* The stay runs until the dispute is finally resolved; the Arbitral Panel's decision is that resolution, and the Registrar acts in accordance with it — implementing the Administrative Panel's decision if the Arbitral Panel so decides, and not implementing it if the Arbitral Panel decides for the registrant.
3. *Registrant sues and wins,* whether by an order directing that it retain the name, a declaration in its favour, or the dismissal of a claim against it. That is a final resolution, and the Registrar acts in accordance with it: the **Administrative Panel's** decision is not implemented. (The court's order, of course, is given effect — the point of the provision is that the administrative outcome yields to the judicial one.) Under a list of endings this situation had no matching limb and fell through to implementation; under a dispute-scoped test it needs no special provision at all.
4. *Registrant sues and loses on the merits (all appeal periods expired).* The dispute is finally resolved, no election window is open under Rules ¶20(a)(ii) as amended by Point 1.3, and the Registrar implements the Administrative Panel's decision.
5. *Registrant sues; the court declines to hear the merits* — on immunity grounds, for want of jurisdiction over a party that has submitted to no forum, for absence of a recognised cause of action, on forum non conveniens grounds, or on mixed grounds. A declination is expressly not a final resolution, and the election window under Rules ¶20(a)(ii) is open; the stay continues. The Registrar is not asked which of those grounds applied — only Point 1.3's entitlement question turns on that, and it is decided in the arbitral forum.
6. *An appeal is taken, in a different court and under a different case number.* The dispute is not finally resolved while a proceeding, including an appeal, remains pending, or while an appeal period is open.
7. *Registrant's claim is dismissed for want of jurisdiction or improper venue and is recommenced in the correct court.* The recommenced proceeding is pending, so the dispute is not finally resolved and the stay continues. No special provision is needed for the court limb; the corresponding allowance for the arbitral election window is at subsection (d)(1) above.
8. *Registrant discontinues and elects arbitration instead.* The arbitration is a pending proceeding; the dispute remains unresolved; the stay continues without interruption.
9. *A request to initiate an Arbitral Proceeding does not result in a commenced proceeding.* The Arbitral Institution notifies all parties within two business days and no Arbitral Proceeding is pending. What follows depends on the reason, as set out at

subsection (d)(2): where the failure is the registrant's own — an uncorrected deficiency, or a request it was not entitled to make — the Administrative Panel's decision is implemented; where it is not the registrant's own, and in particular where a designated Arbitral Institution is unavailable or the IGO Complainant has withheld agreement under ¶20(a)(iii), the Administrative Panel's decision is set aside, because otherwise an adverse administrative decision would stand without any tribunal having examined it.

10. *A proceeding goes dormant.* The IGO Complainant may obtain a Status Request; a registrant that is still litigating answers in one line, whatever its court is doing and whenever its hearing is listed; two unanswered requests mean the proceeding is no longer treated as pending, and the Administrative Panel's decision may then be implemented.
11. *The parties settle at any stage.* Settlement is a final resolution and the Registrar acts in accordance with its terms — current practice, unchanged.

Why this cannot be abused for delay. Three features bound what a registrant can achieve by delay. The Status Request procedure ends the treatment of any proceeding the registrant will not confirm is alive. The entitlement rules of Rules ¶20(a)(ii) admit no arbitration where a court has determined the merits, so a registrant who has had its day in court cannot buy a second one. And every phase is under a court's case-management control, the Arbitral Institution's control, or a fixed clock — none of them the registrant's to extend.

We have deliberately **not** proposed a cap on the number of court proceedings a registrant may bring, and we ask that none be introduced. Three reasons. First, no such cap exists in ¶4(k)(i), under which every complainant has operated since 1999, and to impose on registrants facing IGO Complainants a restriction that registrants facing every other class of complainant do not bear would be a further asymmetry in a package that already contains too many. Second, the work a cap would do is already done, and done better, by three features of the text proposed above: the party and jurisdictional bounds in sub-paragraph (1), which exclude proceedings brought by anyone other than the Respondent and anywhere other than the two jurisdictions Recommendation 3(iii) permits; the rule that a dispute once finally resolved is not reopened by a later proceeding; and the Status Request at (4) below. We should be candid that ¶4(k)(i) achieves the same end by a different route, and one we do not adopt: its stay is tied to the single lawsuit that triggered it, so it simply ends when that lawsuit does. That is the proceeding-scoped design we identify as the root cause of the defects in this package, and we cannot consistently rely on it here. What we can say is that ¶4(k)(i) contains no cap because its structure makes one unnecessary, and the same is true of ours. Third, a numerical cap is a blunt instrument that would fall on legitimate conduct: a claim brought in a state court that belonged in a federal one, an action commenced in one of the two permitted jurisdictions and properly pursued in the other, or a proceeding recommenced after a defect of form. There is in any event a practical limit built into the adopted text, since Recommendation 3(iii) confines the registrant to two possible jurisdictions.

If serial litigation is thought to present a risk, it is a risk inherent in ¶4(k)(i) as it has stood for twenty-six years, and one that has not materialised in a caseload numbering in the hundreds of thousands. Any change to it is a matter for a review of the UDRP as a whole, in which every complainant and every registrant would have a voice. It is not a matter for an implementation confined to IGO cases, and it is not something this policy was made to address. It is also, for the avoidance of doubt, beyond the competence of this body: introducing a restriction on registrants that the adopted recommendations nowhere contain would be the making of new policy, which ICANN's own Implementation Review Team Principles & Guidelines place outside an IRT's remit — "the IRT is **not a forum for opening or revisiting policy discussions**" (III.B; see Point 4.2) — and it could not honestly be characterised as an implementation of the recommendations the Board adopted. A cap on registrant litigation would have to come, if at all, from a policy process in which registrants were represented. We say this against our own convenience as much as anyone's: the discipline that forbids ICANN org and the IRT from writing a consent veto into the Rules forbids them equally from writing a litigation cap into them.

It is worth comparing this with what the current UDRP already permits every complainant. Paragraph 4(k)(i) — unchanged for twenty-six years and unchanged in this draft — provides that on documentation of a lawsuit the registrar "will not implement the Administrative Panel's decision, and we will take no further action, **until we receive**" evidence of a resolution, a dismissal or withdrawal, or an adverse order. There is no time limit, no diligence requirement, and no mechanism by which a complainant can compel the registrant to report anything. Our proposal is therefore **stricter on registrants than the policy in force**: the Status Request has no counterpart in ¶4(k)(i), where a complainant facing a dormant lawsuit has no administrative route at all and must go to court. An IGO Complainant would receive a protection that no trademark owner has had since 1999.

Compare, finally, the published draft's actual delay profile. By eliminating the stay it does not shorten disputes; it transfers the domain name *before* the dispute is resolved, and then leaves Recommendation 3(v)'s post-litigation arbitration to operate on a name the registrant no longer holds, with no unwind mechanism.

What happens to the domain name during the stay. Throughout all scenarios, the domain name remains registered to the registrant, subject to the Lock (draft Rules ¶1, ¶4), non-transferable (Policy ¶8), and renewable by the registrant (footnote 2 of the draft Rules as extended per subsection (d)). The IGO Complainant loses nothing but time — and if it prevails at the end of any pathway, it receives exactly the remedy the panel ordered. The registrant, by contrast, loses everything if the stay is absent and the eventual review succeeds: the drafts contain no mechanism to unwind an implemented transfer, and by then the name may have been re-delegated, re-sold, or absorbed into the IGO's operations. Asymmetry of irreparable harm is the classic justification for preserving the status quo pending review, and it is why Recommendation 3(iii) wrote the stay into the adopted policy in the first place.

The one-way ratchet: why a premature transfer to an IGO can never be undone. The irreversibility deserves particular emphasis, because it is unique to this class of complainant. When an ordinary complainant obtains a domain name and a court or arbitral panel later determines that the registrant was entitled to it, the complainant can be ordered to return the name, and that order can be enforced against the complainant through the ordinary processes of the courts. An IGO Complainant in possession is different in kind: it can assert immunity from the enforcement processes of any national court — the precise attribute around which this entire policy framework is built. A registrant holding a favorable arbitral award or court judgment would find that it directs the conduct of an entity entitled to assert immunity from the enforcement processes of the court to which the registrant must turn — an assertion that may or may not succeed, but that must be litigated first, at the registrant's expense and years after the transfer; that the domain name now sits in a fresh registration agreement between the IGO and a registrar of the IGO's choosing, to which the registrant is a stranger; and that the implementation obligations of these Rules — which bind the registrar of record in respect of the original proceeding — have no purchase on the IGO's new registrar in respect of a new registration. ICANN Contractual Compliance has no jurisdiction over registrants (which is what the IGO, post-transfer, would be), and no registrar can be compelled to breach its own customer's registration agreement on the strength of an award binding only the parties to a different proceeding. In short: the same immunity that justifies granting IGOs a substitute for the Mutual Jurisdiction requirement makes a premature transfer to an IGO practically irreversible in a way that no other transfer under this Policy is. We do not say that recovery is legally impossible in every case — Point 1.3 explains why we say the opposite about immunity when IGOs overstate it, and *Jam* establishes that immunity under the IOIA is restrictive rather than absolute. We say that the registrant must fund and win a threshold immunity fight, in a forum it did not choose, against a party that has been excused from submitting to any forum, before it can even reach the question of who was entitled to the name. This is the decisive answer to any suggestion that the missing stay is a minor sequencing issue that later proceedings can repair. They cannot. The stay is the only point in the entire architecture at which registrant rights are capable of protection, because it is the only point at which the domain name is still held by a party against whom orders can be enforced. Recommendation 3(iii) keeps the domain name with the registrant — where court and arbitral orders remain fully enforceable through the registrar under Policy ¶3(b) — until the dispute is finally resolved. That design choice was not incidental; it is the load-bearing element of the adopted policy, and the implementation has removed it.

Point 1.2 — The IGO's unilateral veto over pre-decision arbitration (draft Rules ¶20(a)(iii)) misaligns with Recommendation 3(i), Recommendation 2(b)(iii), and the GNSO Council's clarification of policy intent, and must be removed

(a) Adopted policy text. Three sources:

- EPDP Recommendation 3(i): "When submitting its complaint, an IGO Complainant **shall indicate that it agrees, if the registrant also agrees**, to have the final determination of the outcome of the UDRP proceeding settled through binding arbitration." The recommendation contains no temporal restriction on when the registrant's agreement may be given, and no provision for the IGO to withhold or revoke its own agreement once the complaint is filed. The condition — "if the registrant also agrees" — makes the registrant's election the only contingency.
- EPDP Recommendation 2(b)(iii): the mandatory notice to every respondent in an IGO case must state "that the respondent has the option to agree to binding arbitration to settle the dispute **at any time**, including in lieu of initiating court proceedings or, if it files a claim in court, where the court has declined to hear the merits of the case." (emphasis added)
- GNSO Council Resolution of 15 January 2026 [archived] (Motion 20260115-2), adopted at the request of the IRT's own Council liaison to resolve this precise question: "The GNSO Council confirms that the intent of the EPDP policy recommendations was to enable **the respondent** to a UDRP or URS dispute to voluntarily leverage alternative dispute resolution mechanisms **at any time** once the UDRP or URS proceeding has been initiated, and the policy recommendations enabling the new arbitral proceeding **should not be read to limit that ability**." The resolution's recitals state that "the implementation of the EPDP recommendations should permit initiation of the new arbitral proceeding at any time after the UDRP or URS complaint is filed by an IGO Complainant, including before a determination is made." (emphasis added)

(b) Draft text. Draft UDRP Rules ¶20(a)(iii): "If the Respondent requests to initiate an Arbitral Proceeding prior to the Provider's communication of an administrative panel's decision under the Policy, **the IGO Complainant may, but is not required to, agree**…" Draft Rules ¶3(b)(xii) correspondingly narrows the IGO's mandatory filing commitment to disputes submitted to arbitration "following the issuance of a decision in the administrative proceeding canceling or transferring the domain name."

(c) Misalignment. The draft converts the respondent's confirmed "at any time" election into a right exercisable only with the adverse party's consent. A right subject to the opponent's veto is not the right the Council confirmed; it is its negation. The misalignment is threefold: (i) it contradicts Recommendation 3(i)'s structure, under which the IGO's agreement is given unconditionally at filing and only the registrant's agreement remains outstanding; (ii) it contradicts the “at any time” language of Recommendation 2(b)(iii) — language the draft Written Notice itself quietly omits (see Point 1.4); and (iii) it contradicts the Council’s formal clarification of the recommendations’ intent, which ICANN org itself invokes on the proceeding page and in the draft Policy Guidance. We note that the draft Rules’ own definition of “Arbitral Proceeding” (¶1) — “to **resolve the claims raised in** or to challenge a determination issued in an administrative proceeding” (emphasis added) — reflects the correct, dual-purpose design; only ¶20(a)(iii) breaks it. The public record of the IRT mailing list (March-April 2026) shows this consent carve-out was introduced after, and in response to, objections by IGO participants to the Council’s resolution; an implementation review team may not relitigate a Council determination at the request of the interest group it inconveniences.

(d) Proposed text. Delete draft UDRP Rules ¶20(a)(iii). Amend ¶3(b)(xii) so that the complaint “shall state… that, in the event the Respondent elects to submit the dispute for resolution through a binding Arbitral Proceeding **at any time after the complaint has been transmitted to the Respondent, including before a decision is rendered in the administrative proceeding, or following the issuance of a decision, or following a court order as described in Paragraph 20(a)(ii)(2)**, the IGO Complainant agrees to resolve such dispute through a binding Arbitral Proceeding… and agrees to be bound by the decision of the Arbitral Panel.” Make conforming changes to ¶20(a)(ii) (the election windows) and to draft UDRP ¶10, including the chapeau of ¶10, which as drafted describes the Arbitral Proceeding only as a means “to challenge the outcome of an administrative proceeding” and would defeat a pre-decision election on its own terms (see Point 1.15(i)).

The drafts also omit any rule governing the interaction of the two proceedings, and that omission must be cured whichever way the consent question is resolved. Nothing in the package states whether an Arbitral Proceeding commenced before a decision suspends the UDRP, terminates it, or runs alongside it; which outcome controls if both produce one; or what becomes of the Lock in the meantime. We propose: “Where the Respondent submits a compliant request to initiate an Arbitral Proceeding before the Provider has communicated a decision, the Provider shall suspend the administrative proceeding upon notice from the Arbitral Institution of commencement, and all time periods in the administrative proceeding shall be tolled. The administrative proceeding shall terminate upon receipt of an Arbitral Panel decision resolving the claims raised in the complaint. Where the Arbitral Institution notifies the Provider and the Registrar that the request has been rejected, withdrawn, or not perfected, the administrative proceeding shall resume and the tolled periods shall recommence. In no case shall an Administrative Panel decision be issued while an Arbitral Proceeding concerning the same domain name(s) is pending.” This is the mechanism that answers the objection that pre-decision arbitration produces duplicative or conflicting proceedings: it produces neither, because only one forum is ever active.

(e) Rationale. The Board's adoption rationale is again instructive. First, the Board described the arbitration component as "voluntary" and as operating "without affecting the respondent-registrant's ability to file judicial proceedings against an IGO **at any time during** a UDRP or URS proceeding" (Minutes, 30 April 2023, section 2.c, emphasis added) — language that presupposes the respondent's mid-proceeding election rights that the draft now subjects to IGO consent. Second, the Board recorded the community's warning with precision: "commentators representing registrants focused on the risk that registrant rights could be adversely affected or reduced **if the recommendations were implemented in a way as to restrict a registrant's ability to file judicial proceedings against an IGO or to effectively compel a registrant to agree to arbitration**" (ibid., emphasis added). The draft realizes both halves of that warned-against implementation: it strips the practical value of judicial proceedings (Point 1.1) and it compels the registrant's timing in arbitration by handing the IGO a veto over every juncture except the one that follows the registrant's defeat. In the ordinary UDRP, a respondent can moot the administrative proceeding "at any time" by taking the dispute to a court to which the complainant has pre-submitted (UDRP ¶4(k)); the complainant has no veto. The EPDP's arbitral mechanism was presented to the GNSO Council and the Board as a substitute made necessary by IGO immunity — not as an opportunity to hand IGO complainants a control over forum timing that no other complainant class has ever possessed. Under the draft, the IGO enjoys a free option: it can test its claim in the summary, respondent-unfavorable UDRP forum, veto any escape to a fuller forum while its prospects are good, and face arbitration only after it has already won. If, contrary to our submission, ICANN org concludes it cannot implement the Council's confirmed reading, the proper course under the Bylaws is to refer the question back to the GNSO Council — not to adopt the position of the parties that disagreed with the Council. In the further alternative (which we do not support), at minimum: the IGO should be required to state at filing whether it consents to pre-decision arbitration; any refusal of a registrant's request must be in writing, copied to the Provider, and recorded in the eventual published decision, so that the community can monitor how the discretion is used.

Point 1.3 — The court-order arbitration trigger is limited to dismissals "on the basis of the IGO Complainant's privileges and immunities," leaving registrants with no review at all in every other dismissal scenario

(a) Adopted policy text. EPDP Recommendation 2(b)(iii) requires respondents to be told they may arbitrate "if [the respondent] files a claim in court, where the court has declined to hear the merits of the case" — with no restriction as to the ground of declination. EPDP Recommendation 3(v) describes the same pathway with the narrower phrase "on the basis of IGO privileges and immunities." The two provisions must be read together, and against the GNSO Council's 2019 conditions (Resolution 20190418-3) that the solution "preserves registrants' rights to judicial review" and "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." The controlling policy purpose is undisputed: no registrant should be left with an unreviewed adverse decision because the court route proved unavailable through no fault of the registrant.

(b) Draft text. Draft UDRP Rules ¶20(a)(ii)(2) permits post-litigation arbitration only within ten business days of "[t]he date a court order is issued, in which the court declines to hear the merits of a case... **on the basis of the IGO Complainant's privileges and immunities**." Notably, the draft's own Written Notice to respondents (¶4(c)(iii)) promises arbitration "if it files a claim in court, where the court has declined to hear the merits of the case" — unqualified, tracking Recommendation 2(b)(iii).

(c) Misalignment. By ICANN org's own choice to exempt IGO Complainants from Mutual Jurisdiction, the most likely grounds on which a court will decline to reach the merits of a registrant's post-UDRP claim are **not** a formal adjudication of "privileges and immunities" but: lack of personal jurisdiction over a defendant that has submitted to no forum; absence of a recognized cause of action (the documented England-and-Wales problem); forum non conveniens; or a dismissal resting on multiple or unspecified grounds. In each such case, under the draft: no arbitration trigger, no stay (Point 1.1), no merits review by any tribunal, ever. The draft thus manufactures precisely the outcome the 2019 Council conditions prohibit, while its own respondent notice (correctly tracking Recommendation 2(b)(iii)) promises the opposite. Where two adopted texts differ in breadth, implementation consistent with the charter's registrant-protective conditions — and with the representation made to every respondent in the mandated notice — must adopt the broader reading; the narrower reading creates an internal contradiction between the draft Rules' notice provision and the draft Rules' operative provision.

(d) Proposed text. Amend draft UDRP Rules ¶20(a)(ii)(2) to read: "The date on which a court proceeding brought by the Respondent in which its entitlement to the domain name(s) is in issue, in either of the jurisdictions identified in Paragraph 4(k)(ii)(A) of the Policy, is finally concluded (all rights of appeal having been exhausted or expired) by a court order that **declines to hear or otherwise disposes of the case without a determination of the merits, for any reason, including without limitation** on the basis of the IGO Complainant's privileges and immunities **or an absence of jurisdiction over the IGO Complainant or over the domain name(s)**." Add a further limb at ¶20(a)(ii): "The date on which such a court proceeding is discontinued by the Respondent." Make the corresponding changes to the Policy Guidance's description.

Two features of that drafting are deliberate and should not be treated as stylistic. First, it is **defendant-neutral**. The draft is keyed to "a lawsuit brought by the Respondent against the IGO Complainant," and Recommendation 3(iii) is not: it specifies *where* the registrant may sue, never *whom* it must sue. The routes that an assertion of immunity makes attractive — an in rem proceeding against the domain name itself, or a proceeding naming the registry operator — are not lawsuits "against the IGO

Complainant." A registrant who takes one of those routes and is turned away would obtain the stay under Point 1.1(d), whose trigger is defendant-neutral, and then lose the arbitral backstop under this provision, which is not. That mismatch would defeat the whole architecture in precisely the cases the architecture exists to serve, and we have drafted the two provisions to match (see Appendix A, trap 5, where we record that an earlier formulation of our own made the same mistake). Second, the **discontinuance limb** is necessary because a voluntary discontinuance frequently produces no court order at all, and the draft's trigger requires one. Recommendation 3(iii) permits a registrant to pivot from court to arbitration; a registrant who discontinues in order to do so must not be told, having already given up the court, that it has no trigger. The limb costs an IGO Complainant nothing, since discontinuance is a step only the registrant can take and it forfeits the court route in taking it.

This Point and Point 1.1 are an integrated pair: the text proposed at Point 1.1(d) leaves every question of entitlement to be decided under this provision, on the basis that the Registrar handles dates and documents while the Arbitral Institution and the Arbitral Panel handle law. Adopting Point 1.1 while retaining the immunity-only trigger would leave the registrant with no review in any forum wherever a court disposes of the case for a reason other than immunity — want of jurisdiction over a party that has submitted to no forum, absence of a recognised cause of action, forum non conveniens, or mixed grounds — since under Point 1.1(d) the dispute would be finally resolved and no election window would be open.

(e) Rationale. An IGO that has genuinely pre-committed to arbitration as the quid pro quo for its Mutual Jurisdiction exemption is indifferent to the ground on which a court declined the case: its obligation to arbitrate the merits is unchanged. The only party that benefits from the narrow trigger is an IGO seeking to defeat review entirely through procedural attrition. The adopted recommendations nowhere sanction that outcome, and Recommendation 2(b)(iii)'s unqualified language forecloses it.

The narrowness also rests on an assumption about immunity that the drafts nowhere examine. An assertion of privileges and immunities can end in three ways, and the package provides for one of them. If the assertion **succeeds**, the court declines and Recommendation 3(v)'s trigger operates as intended. If the court declines for **some other reason**, there is no trigger at all — the defect this Point addresses. And if the assertion **fails**, the court proceeds to the merits: an outcome the EPDP Final Report itself contemplates when it refers to "a **successful** assertion of immunity," which presupposes unsuccessful ones, and which is not hypothetical. In *Jam v. International Finance Corporation*, 139 S. Ct. 759 (2019) [archived] the Supreme Court of the United States held that the International Organizations Immunities Act confers on international organizations only the restrictive immunity that foreign sovereigns enjoy under the Foreign Sovereign Immunities Act, rejecting the absolute-immunity reading for which the organization had contended. The Court remanded, and we do not suggest that it decided the organization was ultimately amenable to suit; the point is that the scope of the immunity was determined by a court, and proved narrower than had been asserted.

That third possibility bears directly on Point 1.1, and it is the case in which the missing stay does its greatest damage. Where immunity turns out **not** to protect the IGO Complainant, a court of competent jurisdiction is willing and able to decide the merits — and under the published draft the domain name was transferred on the eleventh business day regardless. The registrant obtains a judgment concerning a name it no longer holds, from a court whose orders cannot be enforced against the transferee.

None of this asks ICANN org to adjudicate anyone's immunity, and we do not invite it to. The GNSO Council has already settled the point of principle: Resolution 20190418-3 requires that any solution "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**." Implementation may not treat an asserted immunity as self-proving, and a trigger drafted on the assumption that every declination will rest on immunity does precisely that. Two timing safeguards accompany this Point. The election period should run from the Respondent's **receipt** of the order rather than from its issuance, since court orders frequently issue without same-day notice to the parties, and self-represented parties abroad may learn of them later still. And the period should not begin while any appeal or period for appeal remains open: under the text proposed at Point 1.1(d) the dispute is not finally resolved in those circumstances, and the two provisions must not diverge. The reasoning is set out at Point 1.1(f), Design principle 2.

Point 1.4 — The mandatory Written Notice to respondents deviates from Recommendation 2(b): it is conditionally framed and silently deletes "at any time"

(a) Adopted policy text. EPDP Recommendation 2(b) requires that when forwarding an IGO complaint, the provider "must also include a notice informing the respondent; (i) of its right to challenge a UDRP decision canceling or transferring the domain name… by filing a claim in court; (ii) that… the IGO Complainant may assert its privileges and immunities with the result that the court may decline to hear the merits of the case…; and (iii) that the respondent has the option to agree to binding arbitration to settle the dispute **at any time**, including in lieu of initiating court proceedings or, if it files a claim in court, where the court has declined to hear the merits of the case."

(b) Draft text. Draft UDRP Rules ¶4(c) provides that the Written Notice "must inform the Respondent that **if the Panel issues a decision in favor of the IGO Complainant**: (i) the Respondent has the right to seek to challenge the UDRP decision… (ii)… (iii) that the Respondent has the option to initiate an Arbitral Proceeding… including in lieu of initiating court proceedings or, if it files a claim in court, where the court has declined to hear the merits of the case." (emphasis added)

(c) Misalignment. Two deviations: (i) the entire notice is reframed as contingent on a future IGO victory ("if the Panel issues a decision in favor of the IGO Complainant"), whereas Recommendation 2(b)(iii) requires the respondent to be told of an option exercisable "at any time" — including immediately, before any decision. The words "at any time" have been deleted. This is not a stylistic edit: it conceals from respondents exactly the early-election right that the GNSO Council confirmed in January 2026, and it dovetails with the consent veto criticized in Point 1.2. (ii) The reframing also misdescribes the court option, which under ¶4(k) is likewise available before or after the proceeding, not only after an adverse decision.

(d) Proposed text. Conform draft UDRP Rules ¶4(c) to Recommendation 2(b) verbatim, restoring "at any time" in clause (iii) and removing the conditional chapeau, e.g.: "…this Written Notice must inform the Respondent: (i) of its right to challenge a UDRP decision canceling or transferring the domain name(s) by filing a claim in court; (ii) that, in the event the Respondent chooses to initiate court proceedings, the IGO Complainant may assert its privileges and immunities with the result that the court may decline to hear the merits of the case; and (iii) that the Respondent has the option to submit the dispute to resolution through a binding Arbitral Proceeding at any time once the proceeding has been initiated, including before a decision is rendered, in lieu of initiating court proceedings, or, if it files a claim in court, where the court has declined to hear the merits of the case." The notice should also state the applicable time limits and include the link to the Arbitral Institution list and fees, so that the respondent learns the deadlines governing its rights at the moment those rights attach.

(e) Rationale. The notice is the only vehicle through which an unrepresented respondent — the typical respondent — learns of these mechanisms. A notice that (a) hides the early-arbitration option, (b) omits the statutory words "at any time," and (c) frames all rights as arising only upon defeat, systematically shapes respondent behavior in the IGO's favor and contradicts the adopted text it purports to implement. Implementation fidelity requires the notice to say what the recommendation says.

Point 1.5 — The IGO's filing attestation (draft Rules ¶3(b)(xii)) is narrower than the arbitration obligations the drafts themselves impose, and narrower than Recommendation 3(i)

(a) Adopted policy text. EPDP Recommendation 3(i): the IGO Complainant "shall indicate that it agrees, if the registrant also agrees, to have the final determination of the outcome of the UDRP proceeding settled through binding arbitration" — without temporal limitation. Recommendation 3(v) separately obligates arbitration following a court order declining the merits on immunity grounds.

(b) Draft text. Draft UDRP Rules ¶3(b)(xii) requires the IGO to agree to arbitrate only where "the Respondent elects to submit the dispute to arbitration **following the**

issuance of a decision in the administrative proceeding canceling or transferring the domain name."

(c) Misalignment. The attestation does not clearly cover the court-order pathway of draft Rules ¶20(a)(ii)(2) (arbitration elected up to ten business days after a court declines the merits — potentially years after the "issuance of a decision"), and does not cover pre-decision elections at all. Because the attestation is the contractual foundation of the IGO's duty to arbitrate — an entity that is otherwise immune from compulsion — any daylight between the attestation's scope and the Rules' triggers invites an IGO to argue, in the arbitration itself, that it never consented to that category of proceeding. The registrant would then face a jurisdictional fight inside the very mechanism that was supposed to spare them jurisdictional fights.

(d) Proposed text. Conform ¶3(b)(xii) to cover every circumstance in which the Rules entitle the Respondent to initiate an Arbitral Proceeding (per Point 1.2: at any time after commencement; at minimum: post-decision elections under ¶20(a)(ii)(1), post-court-order elections under ¶20(a)(ii)(2) following the conclusion of a court proceeding, **and** elections made upon the discontinuance of a court proceeding), and state expressly that the attestation constitutes the IGO Complainant's irrevocable written consent to arbitrate for the purposes of any applicable arbitration law.

(e) Rationale. For every other UDRP complainant, the Mutual Jurisdiction submission is drafted broadly ("with respect to any challenges to a decision"). The IGO's substitute commitment must be at least coextensive with the registrant rights it replaces; a narrower attestation is a latent defect that will surface at the worst possible moment for the registrant, in a forum with no court behind it.

Point 1.6 — Provider information obligations (draft Rules ¶16(a)) are narrower than Recommendation 3(ii)

(a) Adopted policy text. EPDP Recommendation 3(ii): "In communicating a UDRP panel decision to the parties where the complainant is an IGO Complainant, the UDRP provider shall provide **both parties** with information regarding the applicable arbitral rules." The obligation attaches to the communication of any panel decision in an IGO case.

(b) Draft text. Draft UDRP Rules ¶16(a) requires the Provider to provide information about the Arbitral Proceeding only "when notifying the Parties of a decision **in which the IGO Complainant prevails**."

(c) Misalignment. The draft narrows "a UDRP panel decision" to IGO-favorable decisions only. Split decisions (multi-domain complaints decided partly for each side) are common; and under the Council-confirmed "any time" design (Point 1.2), arbitral information remains relevant to both parties whatever the outcome. There is no warrant in the adopted text for the narrowing.

(d) Proposed text. Conform ¶16(a) to Recommendation 3(ii): "Where the Complainant is an IGO Complainant, the Provider shall, when notifying the Parties of the decision, provide both Parties with information regarding the Arbitral Proceeding and the applicable arbitral rules, including a link to the ICANN webpage listing the Arbitral Institution(s) designated by ICANN, their applicable arbitral rules, and the applicable fees." In addition, the same information should accompany the Written Notice at commencement (see Point 1.4), so that the ten-business-day clock never starts running against a respondent who has not yet been told the rules of the game.

(e) Rationale. Implementation fidelity, plus elementary due process: rights windows measured in days are meaningless unless the party holding them knows, in advance, where to file, under what rules, and at what cost. We note the "[link]" in ¶16(a) and ¶1 is currently a placeholder to an institution list that does not yet exist — see Point 1.9 and Question 4 below.

> **Point 1.7 — Administrative-deficiency treatment of arbitration requests (draft Rules ¶20(e)(ii)) defeats the ten-business-day right granted by Recommendation 3(iii), and is inequitably asymmetric to the five-day cure complainants receive**

(a) Adopted policy text. Recommendation 3(iii) grants the registrant ten business days to submit "a request for or notice of arbitration"; Recommendation 3(iv) requires the stay to continue once a request has been received. Annex A, General Principle 3 requires "customary and reasonable protections against abuse of process"; General Principle 4 requires that "the process for initiating, conducting, and concluding the arbitration should be clear."

(b) Draft text. Draft Rules ¶20(e)(ii): "If the Arbitral Institution dismisses the request to initiate an Arbitral Proceeding due to an administrative deficiency, or the Respondent withdraws the Arbitral Proceeding, the Arbitral Institution shall inform the Registrar(s)… Upon such notice, the Registrar(s) shall implement the administrative panel decision, if one has been issued, within ten (10) business days." Draft UDRP ¶4(k)(ii) additionally requires the registrant to obtain "confirmation of receipt from the Arbitral Institution" within the original ten-day window. By contrast, draft Rules ¶4(d) gives a complainant whose complaint is administratively deficient prompt notice of the deficiencies and "five (5) calendar days within which to correct" them.

(c) Misalignment. Under the draft, a trivial administrative defect in a registrant's timely arbitration request — a missing annex, a fee transmitted in the wrong form — results in immediate, irreversible implementation of the transfer, with no notice-and-cure, no ability to re-file even where time remains in the window, and no tolling while the Arbitral Institution conducts its intake review (of unspecified duration). The ten-business-day right granted by Recommendation 3(iii) is thereby converted into a right contingent on flawless first-attempt compliance with rules that (per Point 1.9) have not even been published. Meanwhile the complainant — the party with institutional legal resources — enjoys a codified cure period for its own defective filings. Nothing in the adopted recommendations authorizes this asymmetry.

(d) Proposed text. (i) Amend ¶20(e) to require the Arbitral Institution, upon identifying an administrative deficiency, to promptly notify the Respondent of the nature of the deficiency and afford five (5) calendar days to correct it (mirroring ¶4(d)), with the Lock and stay maintained in the interim; (ii) amend ¶4(k)(ii) to provide that the Respondent's obligation is discharged by transmission of the request (with a record of transmission) and payment instruction within the window, deleting the "confirmation of receipt" precondition; (iii) provide that implementation under ¶20(e)(ii) occurs only after the cure period has expired without correction, and without prejudice to a compliant re-filing within the original window.

(e) Rationale. Parity of procedural grace between the parties is the minimum content of the "customary and reasonable protections" the adopted Annex A requires. The current design makes the registrant's sole remaining remedy maximally fragile at its weakest point — a pro se registrant's first-ever arbitration filing under unfamiliar rules on a ten-day clock.

Point 1.8 — The applicable-law provision (draft Rules ¶20(g)(ii)) deviates from Recommendation 5 in four respects, each favoring the IGO Complainant

(a) Adopted policy text. EPDP Recommendation 5: "Arbitration will be conducted in accordance with the law as mutually agreed by the parties. Where the parties cannot reach mutual agreement, the IGO Complainant **shall elect** either the law of the relevant registrar's principal office or the domain name holder's address **as shown for the registration of the disputed domain name in the relevant registrar's Whois database at the time the complaint was submitted** to the UDRP or URS provider. Where the parties cannot reach mutual agreement in a case where the domain name was registered through a privacy or proxy service and the underlying registrant's identity is disclosed as part of the UDRP or URS proceeding, the IGO Complainant **shall elect either** the law of the relevant registrar's principal office **or the law in the location of the underlying registrant**. In all cases, where neither law provides for a **suitable** cause of action, the arbitral tribunal shall make a determination as to the law to be applied in accordance with the applicable arbitral rules." (emphasis added) Footnote 4 of the Final Report states the intent: "Recommendation #5 is intended to ensure that the choice of law for an arbitration proceeding is **linked to the actual or underlying registrant and where they are located**."

(b) Draft text. Draft Rules ¶20(g)(ii): "The applicable substantive law… shall be the law mutually agreed by the Parties. If no agreement is reached, the IGO Complainant **may elect** either (1) the law of the jurisdiction of the Registrar's principal office, or (2) the law of the Respondent's location. Where the Respondent used a privacy or proxy service, and the beneficial user of the domain name's identity was disclosed…, the IGO Complainant **may instead elect** the law of the jurisdiction of the beneficial user… **if different from the Respondent's location**. If none of these choices of law provide a cause of action, the Arbitral Panel shall determine the applicable law…"

(c) Misalignment. Four deviations: (i) "shall elect" has become "may elect," leaving the governing law indeterminate if the IGO simply declines to elect — with no default and no deadline; (ii) the temporal anchor ("at the time the complaint was submitted") has been deleted, permitting the relevant "location" to drift (or be argued to drift) with post-complaint changes; (iii) in privacy/proxy cases, Recommendation 5 gives the IGO two options — registrar's location or the **underlying registrant's** location — replacing the proxy's location, consistent with footnote 4's intent that the law be "linked to the actual or underlying registrant." The draft instead gives the IGO **three** options (registrar; the "Respondent's location," i.e., the privacy/proxy service's address; or the beneficial user's location), converting a substitution into an enlargement of the IGO's menu; and (iv) "suitable cause of action" has become "a cause of action," lowering the threshold at which the panel's residual law-selection duty is triggered and inviting the selection of law under which the registrant has a nominal but inadequate claim. Every one of the four deviations expands IGO optionality or degrades registrant certainty; none has any basis in the adopted text.

(d) Proposed text. Conform ¶20(g)(ii) to Recommendation 5 verbatim, updating only terminology ("Registration Data" for "Whois database"), and add: "The IGO Complainant shall make and communicate its election in the complaint or, at the latest, within five (5) calendar days of the commencement of the Arbitral Proceeding, failing which the applicable law shall be the law of the Respondent's location as shown in the Registration Data at the time the complaint was submitted."

(e) Rationale. We preserve our objection of record to Recommendation 5 itself (complainant's choice of law is contrary to basic conflict-of-laws fairness). But whatever its merits, the recommendation at least fixed the universe of options and anchored them in time. Implementation may not enlarge a one-sided mechanism further in the favored party's direction. Requiring election in the complaint also permits the respondent to know the governing law before deciding whether to elect arbitration at all — without which the election windows in ¶20(a)(ii) are exercised blind.

Point 1.9 — The Annex A "Principles regarding Arbitral Rules" — the Board-approved framework addressed to this Implementation Review Team — are almost entirely absent from the drafts, and cannot be verified against arbitral rules that have not been published

(a) Adopted policy text. The EPDP Final Report's Implementation Guidance to Recommendations 3 and 4 states: "the EPDP team has developed a set of policy principles which are set out in Annex A of this Final Report. These policy principles are intended to be an overarching guidance framework **for the Implementation Review Team** that will be formed to advise ICANN org on the implementation of approved policies from this EPDP." Annex A's General Principles include: the arbitration "should be conducted in such a manner as to be **the substantive equivalent of a judicial review of the merits of the case** as much as is feasible" (GP 1); it "should be conducted as expeditiously as possible" (GP 2); it "must include customary and reasonable protections against abuse of process" (GP 3); "should be cost-efficient. A **fixed range of arbitral fees** should be encouraged to ensure predictability and affordability" (GP 5); "there should be a **full exchange of documents and information** relevant to the proceeding" (GP 7); hearings with the ability to "call, question and cross-examine witnesses," online by default (GP 9); "a clear, transparent, and uniform process for the **selection and appointment of arbitrators**, as well as for challenging an appointment. All arbitrators should be required to **attest to their impartiality and independence**" (GP 11); and outcomes that "may include… an order that the registrant retains the disputed domain name(s), **including a declaration of abuse of process or reverse domain name hijacking** in cases where the arbitrator(s) has/have found such behavior" (GP 12). The Specific Principles add, inter alia: representation by a person of the party's choice, "who need not be an attorney" (SP 2); a single-arbitrator default with appointment from "a pre-defined list of arbitrators" (SP 4); a structured three-arbitrator option (SP 5); "publishing a list of potential arbitrators who are recognized as experts in domains name issues" [sic] (SP 6); "specific rules of evidence, similar to those applicable to court proceedings" (SP 7); and "the possibility of sanctions against parties… who have been found to have engaged in an abuse of process, or who seek to cause unnecessary delay or expense" (SP 9).

(b) Draft text. Of these adopted principles, the drafts implement only: de novo review (GP 6; draft Policy ¶10(a), Rules ¶20(g)(i)) and publication of decisions (SP 10; Rules ¶20(h)(ii)). Everything else is delegated to "the applicable arbitral rules" of Arbitral Institutions that have not been designated; the Rules' pointer to their identity and rules is a literal placeholder — "A list of such Arbitral Institutions and their applicable arbitral rules appears at **[link]**" (¶1). Fees are addressed only as: the Respondent "shall pay to the Arbitral Institution an initial fixed fee, in accordance with the applicable arbitral rules… All subsequent fee requirements, including how fees will be structured and shared between the Parties… will be stated in the applicable arbitral rules" (¶20(d); see Point 1.13, which addresses the fee and funding structure in detail). Nothing addresses arbitrator lists, selection, challenge, impartiality attestations, evidence, discovery, hearings, representation, expedition, abuse-of-process protections, or the availability of Reverse Domain Name Hijacking findings.

(c) Misalignment. We acknowledge that Annex A is expressed as an "overarching guidance framework" and that several of its principles are cast in the language of "should" or "encouraged" rather than "shall." That does not make it optional scenery. It was adopted by the Board as part of the package, it is addressed **in terms** to this Implementation Review Team, and it is the only place in the adopted policy where the content of the substitute forum is specified at all. A framework of that character can be honoured in the implementation, or departed from with reasons; what cannot be done is what has been done here — an implementation that (i) embeds none of the principles in binding text, (ii) delegates every one of them to unpublished third-party rules, and (iii) asks the community to sign off before the institutions or rules are identified. The result cannot be assessed for alignment at all, which is itself a failure of alignment with the adopted Implementation Guidance, and a failure of the ICANN Bylaws' own commitments to decisions made "with a fair reflection of the public interest" through the informed participation of those most affected (Bylaws §§1.2(a)(iv)-(v), 1.2(b)(vii); see also §3.1, requiring detailed explanations of policy actions) (ICANN Bylaws [archived]). Generic institutional arbitration rules (the ICDR, PCA, UNCITRAL and WIPO rules the EPDP surveyed, per footnote 7 of the Final Report) do not contain UDRP-specific elements such as RDNH declarations, domain-expert arbitrator lists, or fee ranges calibrated to domain disputes; those exist only if ICANN's own instruments require them.

(d) Proposed text. (i) Add to draft Rules ¶20 (and URS §13.2) a provision substantially as follows: "Arbitral Proceedings shall be conducted consistently with the Principles regarding Arbitral Rules set out in Annex A of the EPDP Final Report. ICANN shall designate as an Arbitral Institution only a provider whose applicable arbitral rules ICANN has verified to conform to those Principles, including: a published fixed range of fees; a published list of arbitrators with expertise in domain name disputes; appointment, challenge, and impartiality-attestation procedures; provision for document exchange, hearings and witness examination; party representation by a person who need not be an attorney; and the availability, in any final decision, of a declaration of abuse of process or Reverse Domain Name Hijacking and of sanctions for abuse of process or dilatory conduct." (ii) Republish the complete implementation package — including the designated Arbitral Institution(s), their full applicable arbitral rules, and complete fee schedules — for a further public comment period before any of these documents is finalized. (iii) Expressly provide that no arbitrator may serve who acted as panelist in the underlying UDRP/URS proceeding or who has, within a defined period, acted for the IGO Complainant — a minimal application of GP 11's impartiality requirement. (iv) Specify the **legal seat** of the Arbitral Proceeding in the published package. The seat is not an administrative detail: it determines the procedural law of the arbitration, which court (if any) exercises supervisory jurisdiction, the limitation period for any challenge to an award, and the method of service. A framework that declares awards “final and binding” and directs their automatic implementation, while leaving the seat unstated, has not decided the most basic question about the forum it is creating. The package should state the seat, the applicable arbitration law, the supervisory court, the challenge rights preserved and any that are waived, and the effect of a timely challenge on registrar implementation (see Point 1.12).

(e) Rationale. The Board’s adoption rationale expressly contemplated that implementation “will require drafting of new provisions and **the selection of appropriate arbitration rules and providers**” (Minutes, 30 April 2023, section 2.c). That selection is the heart of this implementation; publishing everything except it renders this public comment proceeding an exercise in commenting on the frame of a picture that has not been painted. On the current drafts, the only concrete facts a registrant can know about the forum that replaces their court access are: they must pay to enter it, an unknown amount, under unknown rules, before unknown arbitrators. That is not what the GNSO Council or the Board adopted.

Point 1.10 — The scope of the de novo Arbitral Proceeding (draft Policy ¶10(a)) must be reconciled with Recommendation 5 and Annex A GP 1: the panel applies the elected national law, not merely the UDRP criteria

(a) Adopted policy text. Recommendation 5 provides that “[a]rbitration will be conducted **in accordance with the law** as mutually agreed by the parties,” that “[w]here the parties cannot reach mutual agreement, the IGO Complainant shall elect” one of the specified national laws, and that “where neither law provides for a **suitable cause of action**, the arbitral tribunal shall make a determination as to the law to be applied” — language that presupposes the arbitration adjudicates legal claims under a national law. Annex A GP 1: the arbitration “should be conducted in such a manner as to be the **substantive equivalent of a judicial review of the merits** of the case as much as is feasible.” GP 6: it “is a de novo review of the elements of the UDRP or URS action.”

(b) Draft text. Draft UDRP ¶10(a): “An Arbitral Proceeding is a hearing de novo **on the criteria set forth in Paragraphs 4(a), 4(b), and 4(c) of this Policy**.” Draft Rules ¶20(g)(i): “a de novo review of the merits of the claim raised in the administrative proceeding,” conducted under the institution’s rules; ¶20(g)(ii) then designates a governing national law.

(c) Misalignment. The drafts are internally contradictory and, in their most natural reading, misaligned. If the Arbitral Panel merely re-runs the UDRP’s three-part test (¶10(a)), then: the elaborate choice-of-national-law machinery of Recommendation 5 is purposeless; the “cause of action” language is unintelligible; and — decisively — the proceeding is not the “substantive equivalent of a judicial review of the merits” (GP 1), because a court hearing the registrant’s claim would apply national law (e.g., the ACPA in the United States, with its safe harbors, or the tort and property law of the registrant's jurisdiction), under which registrants enjoy defenses, presumptions, and remedies that the UDRP criteria do not provide. A UDRP-criteria-only arbitration is simply a second UDRP with higher fees — which is precisely what the community was told this mechanism would not be. We accept that Annex A GP 6 describes the proceeding as "a de novo review of the elements of the UDRP or URS action," and we do not ask that the Arbitral Proceeding be converted into general civil litigation in which unrelated national-law claims may be joined. The narrower and necessary point is that the elected national law must actually do the work Recommendation 5 assigns to it: it must govern the interpretation of the elements, the burdens and standards of proof, the defences available to the registrant, the treatment of evidence, and any gap the UDRP criteria do not address. A choice-of-law rule that governs nothing is not an implementation of Recommendation 5; it is its deletion.

(d) Proposed text. Amend draft Policy ¶10(a) and Rules ¶20(g) to provide: "The Arbitral Proceeding is a de novo determination of the claims raised in the administrative proceeding concerning the domain name(s), decided in accordance with the applicable substantive law determined under Paragraph 20(g)(ii). That law shall govern the interpretation and application of the criteria set forth in Paragraphs 4(a), 4(b) and 4(c) of the Policy, the burdens and standards of proof, the defences available to the Respondent, the treatment of evidence, and any question those criteria do not address. Either Party may raise any defence available to it under that law in answer to the claims so raised."

(e) Rationale. The GNSO Council's 2019 conditions and the EPDP's charter promised the arbitral mechanism as a stand-in for the judicial review that IGO immunity might foreclose. A judicial review applies the law of the land. Unless the arbitral panel does the same, the mechanism replaces a right (court adjudication under national law) with a simulacrum (a repeat of the UDRP before a different panelist), and the "alignment" of the entire implementation with Recommendations 3-5 collapses at its foundation.

Point 1.11 — Consequences of a failed "IGO Complainant" showing must be specified (Recommendation 1 and Recommendation 2(a))

(a) Adopted policy text. Recommendation 1 defines the class of "IGO Complainant" and its explanatory text confines the recommendations "only to those organizations for which there is **demonstrable factual proof** of their status as IGOs"; Recommendation 2(a) exempts only "an IGO Complainant (as defined under Recommendation #1)" from the Mutual Jurisdiction requirement.

(b) Draft text. Draft Rules ¶3(b)(xiv) helpfully requires an IGO Complainant to "annex documentation demonstrating that the Complainant is, in fact, an 'IGO Complainant' as defined in Paragraph 1" (a requirement we support). But the drafts nowhere state: who adjudicates a dispute over IGO status; whether the Respondent may contest it; and — critically — what follows if the showing fails. A complainant that wrongly claimed IGO status will have filed a complaint containing no Mutual Jurisdiction submission (¶3(b)(xii)) and no ordinary ¶4(k)(i) rights would attach.

(c) Misalignment / gap. The exemption regime is coherent only if status is verifiable and failure has consequences. Otherwise the Mutual Jurisdiction exemption — which the adopted recommendations confine to a strictly defined class — becomes available de facto to any entity willing to assert the label, with the respondent bearing the risk.

(d) Proposed text. Add to draft Rules ¶3(b) (or ¶20): "The Respondent may, in its response, contest the Complainant's status as an IGO Complainant. Where the Panel determines that the Complainant has not demonstrated that it is an IGO Complainant as defined in Paragraph 1, the complaint shall be dismissed without prejudice to re-filing as a Complainant subject to all requirements of these Rules, including Paragraph 3(b)(xii)'s Mutual Jurisdiction submission."

(e) Rationale. This is a completeness defect rather than a textual contradiction, but alignment requires it: the adopted definition was the EPDP's guarantee that these extraordinary accommodations would be cabined to genuine treaty-based organizations, and a definition without a policing mechanism cabins nothing.

Point 1.12 — Award integrity: the drafts provide no remedy for arbitral fraud or manifest error, and the national-law safety valves that normally police arbitration are structurally unavailable against an immune IGO

(a) Adopted policy text. Annex A, General Principle 1: the arbitration "should be conducted in such a manner as to be the substantive equivalent of a judicial review of the merits of the case as much as is feasible." GP 3: "The arbitration process must include customary and reasonable protections against abuse of process." GP 11: arbitrator impartiality attestations and a process "for challenging an appointment." GP 12: "All arbitration proceedings must result in clear and enforceable outcomes." Annex A's chapeau further acknowledges that "these principles are subject to the applicable law governing a particular arbitration proceeding" — i.e., the EPDP assumed the arbitration would operate *within* the ordinary legal framework governing arbitral awards, not outside it.

(b) Draft text. Draft Rules ¶1 declares the outcome of an Arbitral Proceeding "final and binding"; ¶20(i) requires the registrar to implement the decision within five business days; and no provision anywhere in the package addresses a decision procured by fraud, fabricated evidence, or corruption; arbitrator partiality or misconduct discovered after the decision; or error manifest on the face of the decision.

(c) Misalignment. Every developed arbitration regime pairs “final and binding” with a narrow integrity check: setting aside on limited grounds at the seat, per the template of Article 34 of the UNCITRAL Model Law on International Commercial Arbitration [archived] (UNCITRAL reports [archived] legislation based on or influenced by the Model Law in 93 States and a total of 127 jurisdictions) — grounds that include a party being “unable to present his case,” the award exceeding the scope of the submission, and conflict with public policy — and, in national statutes, express provision for awards procured by fraud and for manifest error: see, e.g., the English Arbitration Act 1996, sections 68-69 [archived], under which an award may be challenged for “serious irregularity,” including “the award being obtained by fraud” (s. 68(2)(g)), and appealed where the tribunal’s decision is “obviously wrong” (s. 69(3)(c)(i)). Corresponding grounds appear in the New York Convention (Article V) and in national arbitration statutes generally. These safety valves are what make “final and binding” tolerable. Nor is arbitral fraud a theoretical concern. In *The Federal Republic of Nigeria v. Process & Industrial Developments Ltd* [2023] EWHC 2638 (Comm), the English Commercial Court set aside an award that had grown, with interest, to approximately US$11 billion — obtained against Nigeria over a gas-processing contract with its petroleum ministry — finding, after an eight-week trial, that the awards had been procured by fraud within the meaning of the very provision cited above, section 68(2)(g): the record included false evidence, corrupt payments, and the claimant’s improper retention of Nigeria’s privileged legal documents throughout the arbitration (judgment of Robin Knowles J, 23 October 2023 [archived]; see also the summary by Pinsent Masons [archived]). The October 2023 judgment upheld the section 68 challenge; the awards were set aside by order in December 2023. In *Vento Motorcycles, Inc. v. United Mexican States*, 2025 ONCA 82 [archived] (4 February 2025), the Court of Appeal for Ontario set aside a Toronto-seated investment award because officials on the state respondent’s side had, during the proceeding, engaged in undisclosed contacts with its party-appointed arbitrator concerning future appointment opportunities — holding that a reasonable apprehension of bias affecting even one arbitrator leaves the integrity of the adjudicative process compromised, even where the award was unanimous; leave to appeal to the Supreme Court of Canada was dismissed with costs on 18 September 2025 (see also the summary by Blakes [archived]). In Peru, the Odebrecht scandal revealed a scheme in which arbitration itself was the laundering instrument: the conglomerate procured favorable awards — including through a repeat-appointed arbitrator who took bribes — precisely because awards gave corrupt contract surcharges a “legal” appearance, and in November 2019 a Peruvian court was reported to have ordered the preventive detention of fourteen arbitrators and lawyers in the ensuing investigation — an order an appellate court was reported to have reversed as to eight of them later that same month, so the episode evidences allegation and judicial review rather than adjudicated guilt on the part of all those named (Kluwer Arbitration Blog [archived]). And the fraud exposed in the Chevron litigation — the Ecuadorian judgment against Chevron, entered in 2011 and, as doubled, approximately US$18 billion before Ecuador’s highest court removed the punitive component, leaving approximately US$9.5

billion — was, notably, the product of a national court rather than an arbitral tribunal: a United States District Judge found, after a full trial, that the judgment had been ghostwritten by the claimants' team and signed by a judge who, on the evidence the court accepted, had been promised US$500,000, writing "[i]f ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it" (*Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014); affirmed by the United States Court of Appeals for the Second Circuit, 833 F.3d 74 (2016) [archived]; see also Fortune [archived]) — and an international arbitral tribunal reached the same conclusion, holding in its Second Partial Award of 30 August 2018 that Ecuador's conduct in respect of the fraudulent judgment denied Chevron justice under the applicable treaty (*Chevron Corporation and Texaco Petroleum Company v. Ecuador (II)*, PCA Case No. 2009-23, Second Partial Award on Track II, 30 August 2018 [archived]; case record at italaw [archived]; the proceeding remains pending and the 2018 award was not its final disposition). The episode teaches two things: fraud follows the money into whatever forum decides a dispute — court and tribunal alike — and it is caught only by redundancy: independent fora, disclosure, appellate review, and time, deployed in that saga across a quarter-century. No forum is inherently immune to corruption; what matters is whether a second, independent forum exists to check the first. Under the present drafts, none does. The international arbitration community has itself recognized the danger: on 1 November 2024, the ICC Commission on Arbitration and ADR published "Red Flags or Other Indicators of Corruption in International Arbitration" [archived] — part of the work of its Task Force on Addressing Issues of Corruption in International Arbitration — setting out a three-step methodology to help arbitral tribunals, institutions, and practitioners identify, validate, and assess indicators of corruption (summary by Hill Dickinson [archived]). The present drafts stand in stark contrast: a single layer of decision, no red-flags or corruption-awareness guidance for Panels, Examiners, or Arbitral Panelists (ICANN has never published any such guidance for the UDRP or URS in their twenty-six years of operation), no supervisory court, and no review of any kind — handed to a complainant class that is immune from every national legal system. Two structural features of this implementation put those safety valves out of reach. First, an annulment application runs against the award's beneficiary — here an IGO Complainant that may assert immunity from the court's process, exactly as described at Point 1.1(f); whether immunity would succeed in any given forum depends on the organization's constituent instrument, the law of the forum, and any waiver, but the registrant must litigate that question before reaching the merits, and the drafts do nothing to resolve it. Second, there is no enforcement stage at which any court could refuse recognition: the registrar implements the decision automatically within five business days, converting the award into a completed transfer without judicial involvement of any kind. The drafts compound both problems by leaving the **seat** of the arbitration unspecified, so that the supervisory court, the procedural law, the limitation period for a challenge, and the method of service are all unknown (see Point 1.9). The result is a system with *fewer* integrity safeguards than either the courts it replaces (which have appeals) or ordinary commercial arbitration (which has annulment): a decision procured by forged evidence or a corrupted arbitrator is executed automatically and — given the transferee's immunity and the one-way ratchet described at Point 1.1(f) — permanently. That is not the "substantive equivalent of a judicial review" (GP 1), and it lacks the most "customary and reasonable protection against abuse of process" (GP 3) known to arbitration law.

(d) Proposed text. (i) Add to draft Rules ¶20 (mirrored in URS §13.2 — see Point 2.10) an **Integrity Review** mechanism: within ten (10) business days of the communication of an Arbitral Panel decision — or, where the ground is fraud or corruption not reasonably discoverable within that period, within one (1) year of implementation — either Party may request review by a separately-constituted three-member Integrity Panel of the Arbitral Institution, none of whom served in the underlying proceeding, **strictly limited** to the following grounds: (1) the decision was procured by fraud, fabricated evidence, or corruption; (2) evident partiality, corruption, or serious misconduct of an Arbitral Panelist; (3) a Party was not given proper notice or a fair opportunity to present its case; (4) the Arbitral Panel exceeded the scope of the submission; or (5) the decision rests on a finding of fact that is manifestly unsupported by any evidence in the record, or fails to decide a claim or defence that was properly before the Arbitral Panel. These are the standard grounds on which awards are set aside at the seat of an arbitration under Article 34 of the UNCITRAL Model Law and its national analogues; they are proposed for inclusion **in the institutional rules** solely because the courts that would ordinarily apply them are, by the design of this framework, unavailable against an immunity-asserting complainant. The Integrity Review is expressly **not an appeal**: it does not permit re-argument of the merits, does not re-weigh evidence, and does not substitute the Integrity Panel's judgment for the Arbitral Panel's on any contested question properly decided. A timely request stays implementation; a decision set aside is remitted to a freshly constituted Arbitral Panel. (ii) Amend the ¶3(b)(xii) attestation (see Points 1.5 and 2.2) so that the IGO Complainant's consent expressly encompasses the Integrity Review, and constitutes its irrevocable agreement that **any implementation in its favor is conditional**: should an Integrity Panel set the decision aside, the IGO consents to re-transfer of the domain name(s) effectuated directly through the registry and registrar systems, and undertakes to execute any instrument necessary to that end — so that restoration never requires enforcement proceedings against the IGO in any court. (iii) At the registry level, a domain name transferred pursuant to an Arbitral Panel decision remains subject to re-transfer upon the direction of an Integrity Panel during the fraud window. (iv) For completeness, state that nothing in the Policy or Rules waives any Party's rights under applicable national arbitration law, and that registrar implementation obligations yield to orders of competent courts (Policy ¶3(b)) — while recognizing that, against an immunity-asserting complainant, those national-law rights are structurally unavailable, which is precisely why items (i)-(iii) are necessary. (iv-bis) In addition, and independently of the Integrity Review, the completed package (Point 1.9) must specify the **legal seat** of the Arbitral Proceeding and the supervisory court of that seat; must state which challenge rights under the law of the seat are non-waivable and are not waived by these Rules; must provide for service of process on the Arbitral

Institution for the purposes of any such challenge; must provide a short automatic stay of registrar implementation sufficient to permit a challenge to be filed at the seat; and must record the IGO Complainant's limited, irrevocable consent to the supervisory jurisdiction of the courts of the seat **for the sole purpose of an application to set aside the award**, without prejudice to its privileges and immunities for all other purposes. An IGO that is genuinely confident of the integrity of the forum it is being given loses nothing by consenting to the ordinary supervisory jurisdiction that every other party to an international arbitration accepts as a matter of course. (v) Publish, in consultation with the designated Arbitral Institution(s), corruption- and fraud-awareness guidance for Panels, Examiners, and Arbitral Panelists — an analogue of the ICC's Red Flags guidance discussed above — so that the persons deciding these disputes have at least the tools that the mature institutions of international arbitration now consider necessary.

(e) Rationale. The grounds proposed here are not novelties, and they are not an appeal by another name: they are the classic **annulment** grounds that Article 34 of the UNCITRAL Model Law, section 68 of the English Arbitration Act 1996, and their equivalents in more than a hundred jurisdictions have paired with arbitral finality for decades. (The Arbitration Act 2025, which amended the 1996 Act in other respects, left that architecture intact.) The single difference is one of location: because the national courts that ordinarily apply these grounds are, by the design of this very framework, beyond the registrant's reach, the grounds must live inside the institutional rules instead. We have deliberately excluded from our proposal any ground resembling an appeal on a point of law — the "obviously wrong" test of section 69(3)(c)(i) of the English Act is a leave threshold for a merits appeal, not an integrity ground, and we do not propose it. What remains polices the *validity* of the decision, exactly as annulment does everywhere else, and leaves the merits untouched. The mechanism is symmetric: an IGO confronting a decision procured by a fraudulent registrant may invoke it equally. It will be rarely used, and its costs can be structured to deter abuse (Annex A SP 9). **Its deterrent function matters as much as its remedial one.** Misconduct is deterred not principally by the severity of the sanction but by the probability of detection, and this implementation reduces that probability substantially and by design: there is no appeal, no annulment mechanism in the rules, no identified supervisory court, and no enforcement stage at which a judge examines the award. Detection is not impossible — the other party may discover something, decisions are published, and criminal processes exist — but the one institutional safeguard that exists precisely to catch these failures, review by an independent body with the file in front of it, is absent. A party contemplating forged evidence, a materially false statement of IGO status, undisclosed contact with a panelist, or the quiet suppression of a document faces a correspondingly reduced expected cost. The same holds for the decision-makers: an arbitrator drawn from an undisclosed roster, appointed under unpublished rules by an institution selected by ICANN, whose reasoning no other body will ever review, operates without the discipline that reviewability supplies in every other adjudicative system. It is not necessary to allege that anyone will misbehave in order to insist that the system be built on the assumption that someone eventually might; that assumption is why annulment exists, why the ICC has invested in detection tooling, and why the absence of any check here is a design defect rather than an oversight. But its existence is what separates a dispute resolution system from a mechanism with no capacity to correct itself even once it is discovered to have been corrupted. A framework that answers "the arbitrator was bribed and the evidence was forged" with "the transfer stands, and no forum anywhere may revisit it" is not one that any ICANN body ever adopted, and not one the community should accept as faithful implementation. We note that in *P&ID* the fraud was not exposed until years after the final award, and in the Chevron litigation the process took far longer still. A fixed one-year outer window may therefore be too short; the limitation period should instead follow the mandatory law of the seat once the seat is specified, with the one-year period applying only as a default where that law provides none. And the timing of this implementation invites an unflattering comparison: at the very moment the established institutions of international arbitration are investing in anti-corruption tooling, ICANN proposes to launch an untested arbitral system with none of it — and to make that system the sole recourse of the party facing an opponent immune from every national court.

Point 1.13 — Fees and tribunal funding: the substitute forum must not price registrants out of the rights it implements

(a) Adopted policy text. Annex A, General Principle 5: "The arbitration process should be cost-efficient. A **fixed range of arbitral fees** should be encouraged to ensure predictability and affordability." GP 1: the arbitration should be "the substantive equivalent of a judicial review of the merits of the case as much as is feasible." PDP Final Report, Recommendation 4 (Board-adopted): while recording no support for a general subsidy recommendation, it expressly "recognizes that… the feasibility of providing IGOs with access to the UDRP and URS at no or nominal cost to the IGOs is a question that must be addressed directly through discussions between the ICANN Board with the GAC and IGOs," and records that "many Working Group members believe that **a respondent should also be eligible to receive financial support for its defense in a case where ICANN has subsidized the complainant**" (emphasis added). The GAC's ICANN51 (Los Angeles) Communiqué — circulated to the IRT by ICANN staff as relevant background — demanded that any curative mechanism "should be at no or nominal cost to IGOs."

(b) Draft text. Draft Rules ¶20(d) (and draft URS ¶13.2.3): the Respondent "shall pay to the Arbitral Institution an initial fixed fee, in accordance with the applicable arbitral rules, within the time and in the amount required. All subsequent fee requirements, including how fees will be structured and shared between the Parties involved in the Arbitral Proceeding, will be stated in the applicable arbitral rules." No amount, range, cap, or allocation principle appears anywhere in the package; the "applicable arbitral rules" are unpublished (Point 1.9).

(c) Misalignment. GP 1's "substantive equivalent of a judicial review" has a fiscal dimension that the drafts ignore entirely. In the national courts this framework displaces, **the tribunal itself costs the parties nothing — judges are paid by taxpayers** — and a registrant reaches a real judge for a filing fee on the order of a few hundred dollars, with appellate review included. In private arbitration, the parties fund the tribunal: every arbitrator-hour, every hearing day, every procedural skirmish is billed to them. The community need not speculate about the magnitude, because ICANN's own accountability mechanism supplies the benchmark: in the first Independent Review Process — ICM Registry's challenge concerning the .XXX sTLD, administered by the ICDR — the compensation and expenses of the three-member Independent Review Panel alone — exclusive of the provider's separate administrative fee and of both parties' legal costs — were reported at the time as US$473,744.91 (nearly half a million dollars), ultimately borne by ICANN as the non-prevailing party (see the Independent Review Panel Declaration of 19 February 2010, available on ICANN's ICM v. ICANN page [archived]; we documented this and related evidence in item 2 of the twenty enumerated objections to arbitration in our 23 October 2021 comments [archived], and in our 22 November 2017 analysis, "Arbitration costs would be HIGHER than court costs," [archived] posted to the original PDP's mailing list). Nor was .XXX an outlier; it sits near the *bottom* of a steeply rising series. In the *Gulf Cooperation Council* IRP (concerning .gcc), the tribunal costs fixed by the panel in its Final Declaration as to Costs of 15 December 2016 [archived] totaled US$208,348.30 — ICDR administrative expenses of $7,500.00, panelists' fees and expenses of $150,273.30, and emergency panelist's fees and expenses of $50,575.00 — all borne by ICANN as the non-prevailing party. And in *Afilias Domains No. 3 Ltd. v. ICANN* (concerning .WEB), the costliest arbitration on ICANN's public record, the panel fixed the total neutral costs of the proceeding at US$1,198,493.88 and separately ordered ICANN to pay US$450,000.00 of the claimant's legal fees as a sanction for conduct the panel found abusive (Final Decision, May 2021 [archived], at ¶410; the figures were confirmed by ICANN's own Board in Resolution 2022.01.16.13 of 16 January 2022 [archived], which recites the Final Declaration's directive that "ICANN shall reimburse Afilias the sum of US$450,000 for its legal costs relating to the Emergency Interim Relief proceedings and the sum of US$479,458.27 for its share of the IRP costs" and directs payment). The claimant's certified costs submission [archived] in that proceeding certified claimed fees and costs of US$10,248,227.02 on its side of the dispute alone (an amount claimed, not an amount awarded) — more than US$10.2 million of claimed expenditure, by one party, to obtain review of a single ICANN decision. A fee structure left wholly to unnamed institutions therefore does not merely leave a blank to be filled in later: it silently decides whether the substitute forum is a functioning curative right or a six- or seven-figure toll gate that no natural-person registrant and few small businesses will ever pass. And the asymmetry is aggravated by the surrounding record: the GAC has demanded "no or nominal cost" for the IGO side of these very disputes, and IGOs have long argued for financial support from ICANN — while the drafts leave the registrant, the party whose court access this framework curtails, to fund its only remaining merits review at unknown private rates.

(d) Proposed text. We separate what implementation of the adopted texts *requires* from what we *recommend* as policy, so that the former is not lost in a dispute about the latter.

Required to implement Annex A GP 5 and GP 1 (and capable of adoption by ICANN org within this implementation): (i) Add to draft Rules ¶20(d) (and URS ¶13.2.3): "The Respondent's fee to initiate an Arbitral Proceeding shall be a **fixed, published amount**, set at a level comparable to the filing fees of the national courts for which the Arbitral Proceeding substitutes. The Arbitral Institution shall publish a **fixed range of all arbitral fees and tribunal costs** applicable to Arbitral Proceedings, and the total tribunal costs recoverable from a Respondent shall not exceed the published maximum of that range. The Arbitral Institution shall provide for **waiver or reduction of fees** for a Respondent who is a natural person or small enterprise and who demonstrates that the fees would deprive it of the ability to bring the proceeding. The Arbitral Panel may, in its decision, **reallocate all or part of the tribunal costs** against a Party found to have engaged in abuse of process, Reverse Domain Name Hijacking, or conduct intended to cause unnecessary delay or expense (Annex A, Specific Principle 9)." (ii) Publish the complete fee schedules of the designated Arbitral Institution(s) as part of the republished package requested at Point 1.9; the community cannot assess affordability against fees it has not seen. (iii) State expressly, in the published fee materials, what a Respondent will be required to pay and when.

Recommended, and properly referred to the GNSO Council if ICANN org considers it beyond this implementation: (iv) that if ICANN, following the Board-GAC discussions PDP Recommendation 4 expressly contemplates, extends any financial support to IGO complainants for the use of the UDRP or URS, corresponding support be made available to respondents in the same proceedings — which is what PDP Recommendation 4 itself records that "many Working Group members believe," though we acknowledge it records no consensus for it; and (v) that the fees and expenses of the Arbitral Institution and the Arbitral Panel (the tribunal costs) be borne by ICANN, with each Party bearing its own legal costs — mirroring the allocation in the national courts this framework displaces, in which the tribunal is publicly funded and each party ordinarily bears its own costs. We acknowledge that PDP Recommendation 4 records no consensus for a general subsidy and states that the working group could not obligate ICANN funds; we therefore do not contend that the adopted policy *compels* this result. We contend that it is the correct one, that PDP Recommendation 4 expressly routes the funding question to "discussions between the ICANN Board with the GAC and IGOs," and that those discussions cannot properly resolve the complainant side of the ledger while leaving the respondent side unexamined. If ICANN org declines to adopt item (iv), it should say so in the Staff Report and refer the question to the Council and the Board rather than allow silence to decide it.

(e) Rationale. Items (i)-(iii) are not optional: Annex A GP 5 requires cost-efficiency and "a fixed range of arbitral fees… to ensure predictability and affordability," and an implementation that fixes no fee, publishes no range, caps nothing, and provides no relief for the impecunious does not implement that principle at all. Item (iv) is the fiscal completion of the policy bargain. ICANN's policy — not any registrant's choice — removed the taxpayer-funded forum for this class of disputes; the entity that removed it is the natural candidate to fund its replacement, exactly as it already funds the arbitral costs architecture of its own accountability mechanisms and exactly as the Board's adoption rationale anticipated implementation expenditure ("it may be necessary to engage the services of external vendors and legal experts… but will result in increased costs to ICANN org" — Minutes, 30 April 2023, section 2.c). The amounts involved are modest at the system level: IGO cases are, on the record of twenty-six years, vanishingly rare, and the EPDP itself predicted the arbitral mechanism would be invoked in only "the edge of the edge cases." What is not modest is the effect of the alternative on each individual registrant: a respondent of ordinary means facing a six-figure tribunal bill does not have a curative right; it has a price tag it cannot pay, and the IGO knows it. Under that fee structure, the rational IGO strategy in every contested case is attrition, and the "voluntary arbitration component" the Board adopted becomes, in practice, a right exercisable only by the wealthy. It would be indefensible — and corrosive to the legitimacy of this implementation — for ICANN to entertain subsidizing the treaty-based public international organizations that initiate these proceedings while pricing out the private parties defending their property within them. Putting ICANN in the taxpayer's role places registrants and IGOs on the equal footing that GP 1 requires, that PDP Recommendation 4 contemplates, and that basic fairness demands.

Point 1.14 — Remedies: transfer and cancellation are the most drastic outcomes known to this system and must remain a last resort, yet the drafts delegate the entire remedial architecture to rules that do not exist

(a) Adopted policy text. Recommendation 5 provides that the arbitration "will be conducted in accordance with the law" mutually agreed or elected by the parties, and contemplates the case "where neither law provides for a suitable **cause of action**" — presupposing adjudication of legal claims under a national law, with the remedial consequences that follow from that law. Annex A, General Principle 1: the arbitration "should be conducted in such a manner as to be the **substantive equivalent of a judicial review of the merits of the case** as much as is feasible." General Principle 12, quoted in full because every word of it matters here: "All arbitration proceedings must result in clear and enforceable outcomes. These **may include** confirmation of a transfer or cancellation of the disputed domain name(s), **or an order that the registrant retains the disputed domain name(s), including a declaration of abuse of process or reverse domain name hijacking** in cases where the arbitrator(s) has/have found such behavior. **The arbitrator(s) should have the**

discretion to award injunctive relief where this is considered necessary for equitable reasons." Three features of that text govern this point: the list of outcomes is introduced by "may include" rather than by mandatory language; retention by the registrant, with an abuse-of-process or Reverse Domain Name Hijacking declaration, is an expressly contemplated outcome; and the Annex expressly confers discretion to award **equitable injunctive relief**, which is relief of a kind the UDRP itself has never provided.

(b) Draft text. Draft Policy ¶10 and draft Rules ¶20 provide for a single binary: the Arbitral Panel's decision is communicated (¶20(h)) and the registrar implements it within five business days (¶20(i)); the domain name is transferred or cancelled, or it is not. Nothing in the package identifies the remedies available to the Arbitral Panel, states any standard governing the choice among them, or provides for any outcome short of the transfer or cancellation the underlying UDRP decision ordered. The entire question is delegated to the "applicable arbitral rules" of institutions that have not been designated and whose rules have not been published (Point 1.9). The same is true of the URS drafts (see Point 2.11).

(c) Misalignment. Three respects.

First, the drafts omit the equitable discretion that Annex A expressly confers. GP 12's final sentence gives the arbitrator(s) "the discretion to award injunctive relief where this is considered necessary for equitable reasons." The drafts confer no such discretion, mention no such relief, and provide no vehicle through which it could be exercised: draft ¶20(i) contemplates a single act of implementation of a single binary outcome. We do not ask that the Arbitral Panel be given powers Annex A withholds — we do not seek damages, accounts of profits, or authority over website content, and we recognise that ICANN's Mission (Bylaws §1.1(c)) places the regulation of content beyond its remit. We ask only that the adopted words be implemented: that the rules make available the outcomes GP 12 lists, including retention by the registrant and a declaration of abuse of process or Reverse Domain Name Hijacking, and that they preserve the equitable injunctive discretion GP 12 confers, so that a panel able to resolve a dispute by an order narrower than the forfeiture of the name is not compelled to choose between total relief and none.

And the omission matters because transfer is the gravest outcome this system can produce. In the national courts for which this mechanism substitutes, transfer or cancellation of a domain name is the most drastic remedy available and among the least frequently granted; a court can enjoin a particular infringing use while leaving the registration intact, accept undertakings, grant declaratory relief, or dismiss with costs, and it selects among them by asking whether relief is no broader than the wrong requires. An arbitration conducted "in accordance with the law" (Recommendation 5), before a panel holding an express equitable discretion (GP 12), that can nevertheless deliver only the UDRP's all-or-nothing outcome, is not "the substantive equivalent of a judicial review of the merits" (GP 1).

Second, the UDRP's remedial bluntness was always justified by the court access this framework removes. ICANN's own foundational record is explicit. The [Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (24 October 1999), ¶4.1(c)] [archived] records that the policy "calls for administrative resolution for only a small, special class of disputes," and that "[e]xcept in cases involving 'abusive registrations' made with bad-faith intent to profit commercially from others' trademarks (e.g., cybersquatting and cyberpiracy), the adopted policy leaves the resolution of disputes to the courts (or arbitrators where agreed by the parties) **and calls for registrars not to disturb a registration until those courts decide**"; it further records that "[t]he policy relegates all 'legitimate' disputes… to the courts; only cases of abusive registrations are intended to be subject to the streamlined administrative dispute-resolution procedure." The same report explains that the Board's Santiago resolutions required "a general parity between the appeal rights of complainants and domain name holders," and that parity was delivered by an integrated pair of provisions: the complainant's Mutual Jurisdiction submission in Rules ¶3(b)(xiii) (now ¶3(b)(xii)) and the staying effect of Policy ¶4(k) (¶¶4.7-4.8). This implementation dismantles both halves of that integrated solution for IGO cases — the Mutual Jurisdiction submission is removed by Recommendation 2(a), and the court-proceedings stay is removed by the draft (Point 1.1) — while leaving the blunt instrument in place and adding no remedial nuance to compensate. A summary procedure whose only outcomes are transfer and cancellation was tolerable for twenty-six years because a court with a full remedial toolkit stood behind it. Remove the court and the instrument must be recalibrated; it cannot simply be inherited.

Third, the choice of remedial architecture is being made in the wrong place, by the wrong people, without the community. Whether an Arbitral Panel may order anything other than transfer, whether it must find the case for transfer clearly established, whether it may make a declaration of Reverse Domain Name Hijacking (GP 12 says it must be able to), whether it may award costs — these are the questions that will determine what this mechanism actually does to registrants. Under the published drafts they will be answered, after the close of this comment period, in the unpublished rules of an unnamed institution selected by ICANN org. That is not a clerical or administrative residue: it is policy-significant design, and the Bylaws commit ICANN to making decisions of that character with the informed participation of those most affected and with documented, consistent, neutral, objective, and fair application (§§1.2(a)(iv)-(v), 3.1).

(d) Proposed text. (i) Add to draft Policy ¶10 (and mirror in Rules ¶20(g); for the URS see Point 2.11): "The outcomes available to the Arbitral Panel are those described in Annex A, General Principle 12 of the EPDP Final Report, namely: confirmation of a transfer or cancellation of the domain name(s); an order that the Respondent retain the domain name(s), including a declaration of abuse of process or Reverse Domain Name Hijacking where the Arbitral Panel so finds; and, where the Arbitral Panel considers it necessary for equitable reasons, injunctive relief. **The Arbitral Panel shall state the**

reasons for the outcome it selects, and where it orders transfer or cancellation shall state why no lesser outcome available to it would afford the IGO Complainant adequate relief.” This is a requirement of reasons, not a new substantive standard: it obliges the panel to consider what GP 12 already permits it to do. (ii) Add to the designation criteria proposed at Point 1.9(d) a requirement that the applicable arbitral rules of any designated Arbitral Institution make each GP 12 outcome available, together with the costs and sanctions contemplated by Annex A Specific Principle 9, and that they permit reasoned selection among them. (iii) Publish the remedial provisions of the applicable arbitral rules as part of the republished package requested at Point 1.9, so that the community can comment on them before, rather than after, they bind registrants. We note that, if ICANN org regards the requirement of reasons in (i) as going beyond implementation, it should say so and refer that element to the GNSO Council; items (ii) and (iii) stand independently of it.

(e) Rationale. This is not a request to weaken the position of an IGO with a meritorious complaint: where a domain name has been registered and used in bad faith to exploit an IGO’s identifier, the case for transfer will be clearly established and transfer will follow, exactly as it does today. It is a request that the mechanism be capable of distinguishing that case from the cases the UDRP was never designed to reach — the registrant with a genuine, if imperfect, claim to a common word or short string; the critic; the registrant whose conduct in one respect is objectionable while its claim to the registration is not. In a court, and under GP 12 before an arbitrator holding equitable discretion, those cases can produce tailored orders. Under these drafts they produce the same outcome as deliberate cybersquatting: an irreversible transfer to an immune complainant (Point 1.1(f)). ICANN’s own 1999 record describes the administrative procedure as “minimalist in its resort to mandatory resolution” (Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (24 October 1999), ¶4.1(c) [archived]); nothing in the Board-adopted recommendations authorizes an implementation that is maximalist in its resort to irreversible remedies while remaining silent about the alternatives Annex A expressly contemplates. Finally, the institutional point. The rules that will decide all of this are not yet written. When they are written, they will determine whether the equitable discretion GP 12 confers exists in practice or only on paper, and whether a registrant can lose an asset outright where a narrower order would have sufficed. That is not a matter for ICANN org and an as-yet-unnamed arbitral institution to settle privately between them after the community has been sent home; it requires community input and oversight, which means publication and a further comment period (Points 1.9 and 4.3).

Point 1.15 — Housekeeping and drafting defects that must be corrected before finalization

(a) Draft UDRP ¶4(k)(i) (and its explanatory parenthetical) cross-reference “Paragraph 3(b)(xiii) of the Rules of Procedure” for the Mutual Jurisdiction submission; since the

2015 renumbering, and in the draft Rules as published, that submission appears at ¶3(b)(xii), while ¶3(b)(xiii) is the certification clause. The package amends both provisions yet leaves the stale cross-reference uncorrected.

(b) The “[link]” placeholders in draft Rules ¶1 and ¶16(a) (list of Arbitral Institutions and applicable arbitral rules) must be populated, and the linked content published for comment, before finalization (see Point 1.9).

(c) Draft Rules ¶20(c)(ii) requires the Respondent’s arbitration request to be copied “to the concerned Registrar” only; Recommendation 3(v) requires copies “to the relevant registrar and UDRP provider” (and, for the default-implementation limb, “the registrar, UDRP provider and the IGO Complainant”). Conform the copy requirements to the adopted text.

(d) All references to time periods running from the “date” of a decision, communication, or court order should be conformed to run from the Respondent’s receipt of the relevant document, so that transmission delays do not consume the short windows on which the Respondent’s rights depend.

(e) Draft Rules ¶20(c)(ii) requires the Respondent’s arbitration request to be sent “with a copy to the concerned Registrar within the time frames identified in Paragraph 20(a)(ii)” — i.e., concurrently. EPDP Recommendation 3(vi) provides: “Where a registrant decides to submit the dispute to binding arbitration, it shall notify the relevant registrar **prior to** initiating the arbitration proceeding with the arbitral tribunal.” Conform the timing to the adopted text (or, if concurrent notice is thought preferable on operational grounds, say so and explain the departure), and add the copy recipients identified in sub-paragraph (c) above.

(f) Draft Rules ¶20(h)(ii) provides that the Arbitral Institution shall publish the full decision “[e]xcept if the Arbitral Panel determines otherwise (see Paragraph 4(j) of the Policy).” Paragraph 4(j) of the Policy confers the redaction power on the **Administrative Panel**, not the Arbitral Panel; as drafted, the cross-reference points to a power the Arbitral Panel does not have. Confer the redaction authority on the Arbitral Panel expressly, in terms parallel to ¶4(j).

(g) Draft Rules ¶20(h)(i) provides that the Arbitral Institution’s communication of the decision “constitutes an order from an arbitral tribunal for purposes of Paragraph 3(b) of the Policy.” A communication by an institution is not an order of a tribunal, and Policy ¶3(b) is addressed to court and tribunal orders binding on the registrar. The provision should say what it means: “shall be treated by the Registrar as an order for the purposes of Paragraph 3(b) of the Policy,” so that the registrar’s contractual obligation is clear without the fiction.

(h) Draft Rules ¶20(e)(iii) contains an unmatched quotation mark: “the UDRP Provider in the administrative proceeding (the “UDRP Provider), and ICANN”. Footnote 2 of the draft Rules likewise omits a closing parenthesis after the Registrar Accreditation Agreement URL. These are trivial to fix and should not survive into a consensus policy instrument.

(i) Draft Policy ¶10’s chapeau describes the Arbitral Proceeding as a proceeding “to challenge the outcome of an administrative proceeding under this Policy initiated by an IGO Complainant,” whereas the draft Rules’ own definition of “Arbitral Proceeding” (¶1) is broader — “to **resolve the claims raised in** or to challenge a determination issued in an administrative proceeding.” If the Council-confirmed pre-decision election is implemented (Point 1.2), the Policy ¶10 chapeau must be conformed to the broader formulation; as drafted, the Policy text alone would defeat it.

(j) Draft Policy ¶10(a) provides that “[a]n Arbitral Proceeding is a hearing de novo on the criteria set forth in Paragraphs 4(a), 4(b), and 4(c) of this Policy.” Only ¶4(a) sets out criteria — the three elements the complainant must prove. Paragraph 4(b) is a non-exhaustive list of circumstances evidencing bad faith, and ¶4(c) is a non-exhaustive list of ways a respondent may demonstrate rights or legitimate interests; neither is a “criterion,” and describing all three as criteria muddles which party bears the burden on what. Replace with: “a hearing de novo on the elements set forth in Paragraph 4(a) of this Policy, applying the non-exhaustive evidentiary provisions of Paragraphs 4(b) and 4(c).”

(k) Draft Policy ¶10(b) is headed “Selection of Provider” although its text concerns the selection of an **Arbitral Institution** — a distinct defined term. Since “Provider” is used throughout the Policy and Rules for the UDRP Provider, the heading should read “Selection of Arbitral Institution.”

(l) Draft Rules ¶20(e)(iv) requires the Registrar, “upon receipt of the Respondent’s request to initiate an Arbitral Proceeding,” to maintain the Lock and take no further action until it receives one of three things: evidence of a resolution between the parties, notice from the Arbitral Institution that the proceeding “has been terminated,” or a copy of the Arbitral Panel’s decision. The Lock therefore attaches on receipt of a request, before any determination that the request is compliant, before payment, and — under ¶20(a)(iii) as drafted — before the IGO Complainant has decided whether to consent. If consent is refused, or if the request is never perfected, no listed release event necessarily occurs and the drafts specify no other. Add an express release: the Arbitral Institution shall notify the Registrar and the Parties within two (2) business days where a request is rejected, withdrawn, unperfected, or (while ¶20(a)(iii) stands) declined by the IGO Complainant, and the Lock shall be released and the ordinary implementation timetable resumed upon that notice.

(m) Nothing in the drafts requires the administrative record to be transmitted to the Arbitral Institution. Draft Rules ¶20(g)(i) directs the Arbitral Panel to conduct “a de novo review of the merits of the claim raised in the administrative proceeding,” and draft Policy ¶10(a) describes a hearing de novo on the UDRP criteria — yet no provision in any of the four instruments entitles the Arbitral Panel to see the complaint, the response, the annexes, the Administrative Panel's decision, or any finding of reverse domain name hijacking made in the proceeding it is reviewing. The omission has practical consequences beyond inconvenience: a Respondent who defaulted in the administrative proceeding, or who is self-represented, is the party least able to reconstruct the file; and Annex A GP 12's requirement that outcomes may include "a declaration of abuse of process or reverse domain name hijacking" is difficult to operate where the arbitrator cannot see whether the Administrative Panel already found such conduct. Add to Rules ¶20: "Within five (5) business days of notice that an Arbitral Proceeding has been commenced, the UDRP Provider shall transmit to the Arbitral Institution the complete record of the administrative proceeding, including the complaint, the response (if any), all annexes and supplemental filings, and the decision, and shall copy the Parties on the transmission. The Parties may supplement the record in accordance with the applicable arbitral rules." This is a defect in the drafts rather than a matter of policy preference: a de novo review of a proceeding is not capable of performance if the reviewing body has no right to the proceeding's record.

(n) Draft Policy ¶3(g) and draft Rules ¶20(i)(i) each require the Registrar to implement an Arbitral Panel decision "**within** five (5) business days" of receiving it. "Within" fixes a maximum, not a minimum: the Registrar may implement on the first day, and enlarging the number would change nothing. Protective intervals must be expressed as floors rather than ceilings — as the existing ¶4(k) already does ("we will **wait** ten (10) business days… **before** implementing"). The distinction is not academic: implementation completed on the day a decision is received leaves no interval in which any challenge to that decision could be commenced (see Point 1.12), and the resulting transfer is irreversible. Proposed text for both provisions: "The Registrar(s) shall **not** implement the Arbitral Panel decision **before** the expiry of thirty (30) calendar days from the Arbitral Institution's communication of the decision, and shall implement it within five (5) business days after that expiry. Where, before that expiry, the Registrar receives official documentation that a Party has commenced proceedings to set aside or annul the decision at the seat of the arbitration, the Registrar shall take no further action pending the conclusion of those proceedings." The same correction is required at draft Rules ¶20(e)(ii), where "shall implement… within ten (10) business days" on notice of an administrative dismissal permits implementation before the notice-and-cure period sought at Point 1.7 can run.

(o) The version history of the draft UDRP and UDRP Rules describes the EPDP as concerning "Specific Curative Rights Protections for **International Governmental** Organizations (IGOs)." The adopted term, used throughout the EPDP Final Report and the Board's resolutions, is "**Intergovernmental** Organizations." The same error appears in the URS drafts. A defined-term and terminology concordance pass across all four instruments (including the inconsistent use of "Registrant" and "Respondent") should precede finalization.

QUESTION 2: Are any changes to the draft updates to the URS and URS Rules necessary to ensure alignment with the Board-adopted PDP and EPDP recommendations?

ANSWER: YES.

The draft updates to the URS and the URS Rules depart from the Board-adopted recommendations in the same structural respects as the UDRP drafts addressed in our Question 1 response, and add several defects unique to the URS. A note on presentation, offered respectfully: several points below necessarily cover ground that our Question 1 response also covers for the UDRP documents. We have deliberately made each point below **self-contained** — restating the relevant adopted policy text and analysis in full, rather than incorporating our Question 1 response by reference — because experience with prior proceedings has taught us that when comments are decomposed question-by-question and point-by-point into staff review tools, cross-referenced analysis can become separated from the points it supports, and the substance is then lost to the reviewer. We apologize to readers for the resulting duplication; it is intended solely to ensure that whichever reviewer takes up any individual point below has the complete analysis before them, without needing to consult a different section of this submission. (Parenthetical references to Question 1 points are provided as a courtesy for readers of the full document, but no point below depends on them.)

> **Point 2.1 — The IGO's unilateral veto over pre-determination arbitration (draft URS ¶13.2.1.3) misaligns with Recommendation 4(i), Recommendation 2(b)(iii), and the GNSO Council's clarification of policy intent, and must be removed (parallel to Point 1.2)**

This point follows the same reasoning as Point 1.2 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. Three sources:

- EPDP Recommendation 4(i): "When submitting its complaint, an IGO Complainant **shall indicate that it agrees, if the registrant also agrees**, to have the final determination of the outcome of the URS proceeding settled through binding arbitration." The recommendation contains no temporal restriction on when the registrant's agreement may be given, and no provision for the IGO to withhold or revoke its own agreement once the complaint is filed. The condition — "if the registrant also agrees" — makes the registrant's election the only contingency.

- EPDP Recommendation 2(b)(iii): the mandatory notice to every respondent in an IGO case (URS included) must state "that the respondent has the option to agree to binding arbitration to settle the dispute **at any time**, including in lieu of initiating court proceedings or, if it files a claim in court, where the court has declined to hear the merits of the case." (emphasis added)
- GNSO Council Resolution of 15 January 2026 (Motion 20260115-2), adopted at the request of the IRT's own Council liaison to resolve this precise question: "The GNSO Council confirms that the intent of the EPDP policy recommendations was to enable **the respondent** to a UDRP **or URS** dispute to voluntarily leverage alternative dispute resolution mechanisms **at any time** once the UDRP or URS proceeding has been initiated, and the policy recommendations enabling the new arbitral proceeding **should not be read to limit that ability**." (emphasis added) The resolution's recitals state that "the implementation of the EPDP recommendations should permit initiation of the new arbitral proceeding at any time after the UDRP or URS complaint is filed by an IGO Complainant, including before a determination is made."

The ICANN Board's rationale for adopting these recommendations (Minutes, Regular Meeting of the ICANN Board, 30 April 2023, section 2.c) described "a voluntary arbitration component to both the UDRP **and URS** Rules, without affecting the respondent-registrant's ability to file judicial proceedings against an IGO at any time during a UDRP or URS proceeding," and recorded the community's warning that registrant rights would be harmed "if the recommendations were implemented in a way as to restrict a registrant's ability to file judicial proceedings against an IGO or to effectively compel a registrant to agree to arbitration."

(b) Draft text. Draft URS ¶13.2.1.3: "If the Registrant requests to initiate an Arbitral Proceeding in circumstances other than those specified in section 13.2.1.2 [i.e., other than within ten business days of an Appeal Determination in the IGO's favor, or of a qualifying court order], the IGO Complainant **may, but is not required to, agree** to resolve such dispute through a binding Arbitral Proceeding…" The IGO's mandatory filing attestation (draft URS ¶1.2.9.2; draft URS Rules ¶3(b)(ix)) is correspondingly narrowed to post-Appeal-Determination elections only.

(c) Misalignment. The draft converts the respondent's confirmed "at any time" election into a right exercisable only with the adverse party's consent. A right subject to the opponent's veto is not the right the Council confirmed; it is its negation. The misalignment is threefold: (i) it contradicts Recommendation 4(i)'s structure, under which the IGO's agreement is given unconditionally at filing and only the registrant's agreement remains outstanding; (ii) it contradicts the "at any time" language of Recommendation 2(b)(iii) — language the draft URS notice itself omits (see Point 2.4); and (iii) it contradicts the Council's formal clarification of the recommendations' intent, which ICANN org itself invokes on the proceeding page and in the draft Policy Guidance. We note that draft URS ¶13.2.1.1 itself grants the Registrant "the right to seek a de novo review of the merits of **the claim raised by the IGO Complainant**" — a claims-resolution framing consistent with pre-determination use; only ¶13.2.1.3 breaks it. The public record of the IRT mailing list (March-April 2026) shows this consent carve-out was introduced after, and in response to, objections by IGO participants to the Council's resolution; an implementation review team may not relitigate a Council determination at the request of the interest group it inconveniences.

The resulting asymmetry tells its own story: where the registrant seeks arbitration *after the IGO has prevailed on appeal* — i.e., when the IGO already holds a favorable determination — the IGO **must** arbitrate (¶13.2.1.2); where the registrant seeks arbitration *before* a determination — when the outcome is uncertain — the IGO **may refuse** (¶13.2.1.3). The IGO thus enjoys a free option: it can test its claim in the summary, default-friendly URS forum, veto any escape to a fuller forum while its prospects are good, and face arbitration only after it has already won. No neutral policymaker designs a system this way.

(d) Proposed text. Delete draft URS ¶13.2.1.3. Amend draft URS ¶1.2.9.2 and draft URS Rules ¶3(b)(ix) so that the IGO Complainant's attestation, given as a condition of filing, extends to an Arbitral Proceeding initiated by the Registrant **at any time after the Complaint has been served**, including before a Determination or Appeal Determination is rendered, following an Appeal Determination in the IGO Complainant's favor, or following a qualifying court order (see Point 2.4). Make conforming changes to ¶13.2.1.2. The drafts must also supply the rule governing the interaction of the two proceedings, which is absent whichever way the consent question is resolved: "Where the Registrant submits a compliant request to initiate an Arbitral Proceeding before a Determination is issued, the URS Provider shall suspend the URS proceeding upon notice of commencement from the Arbitral Institution, and all time periods shall be tolled; the URS proceeding shall terminate upon receipt of an Arbitral Panel determination resolving the claims raised in the Complaint; and where the Arbitral Institution notifies the URS Provider, Registry Operator and Registrar that the request has been rejected, withdrawn, or not perfected, the URS proceeding shall resume and the tolled periods shall recommence." **And the consequence of a refusal must be stated.** If draft ¶13.2.1.3 survives in any form, the Rules must say what happens when an IGO Complainant declines to agree: the Registrant is then left with an adverse Determination that no tribunal will examine on its merits, because the court route is foreclosed by the very immunity this framework accommodates. As we set out at Point 1.1(d)(2) for the UDRP, the only outcome consistent with the GNSO Council's binding conditions is that the Determination is **set aside** rather than maintained. Add to §13.2: "Where a Registrant's request to initiate an Arbitral Proceeding does not result in a commenced Arbitral Proceeding by reason of the IGO Complainant withholding its agreement, or by reason of the unavailability of a designated Arbitral Institution, the Determination shall be set aside, the suspension shall be lifted, and the URS Provider shall annotate the published Determination accordingly. Where the request fails by reason of the Registrant's own non-compliance after notice and an opportunity to correct, or because the Registrant was not entitled to initiate the Arbitral Proceeding, the suspension shall be maintained in accordance with section 13.2.7.4.” That provision also disposes of the objection to deleting ¶13.2.1.3: an agreement that may be withheld only at the cost of losing the Determination is one no rational IGO Complainant would withhold, and the difficulty resolves itself.

The status of the domain name during that interval must also be stated expressly — see Point 2.7(c-bis), which addresses the related defect that draft ¶13.2.7.4 directs a Registry Operator to “maintain” a suspension that, before any Determination, does not exist.

(e) Rationale. The veto is more damaging in the URS than anywhere else: the URS operates on timelines measured in days, against respondents who are disproportionately unrepresented and frequently in default, and the registrant’s website and email are dark (suspended) from the initial Determination onward. The ability to move the dispute promptly into a forum with real procedural protections — without the adverse party’s leave — is correspondingly more valuable, and its denial more coercive. If ICANN org concludes it cannot implement the Council’s confirmed reading, the proper course under the Bylaws is to refer the question back to the GNSO Council — not to adopt the position of the parties that disagreed with the Council. In the further alternative (which we do not support), at minimum: the IGO should be required to state at filing whether it consents to pre-determination arbitration; any refusal of a Registrant’s request must be in writing, copied to the URS Provider, and recorded in the eventual published Determination, so that the community can monitor how the discretion is used.

Point 2.2 — The IGO’s URS filing attestation covers only the appeal-determination trigger, not the court-order trigger that draft ¶13.2.1.2.2 itself imposes — an internal contradiction that must be cured (parallel to Point 1.5, but more acute)

This point follows the same reasoning as Point 1.5 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. EPDP Recommendation 4(i): the IGO Complainant “shall indicate that it agrees, if the registrant also agrees, to have the final determination of the outcome of the URS proceeding settled through binding arbitration” — without temporal limitation. EPDP Recommendation 4(iii) separately obligates arbitration where “the registrant initiates court proceedings and the court declines to hear the merits of the case on the basis of IGO privileges and immunities,” with the registrant permitted to arbitrate within ten business days of the court order. EPDP Recommendation 4(iv) obligates arbitration where the registrant loses a URS appeal.

(b) Draft text. Draft URS ¶13.2.1.2 provides that the IGO "shall, as a condition to filing its Complaint as set forth in section 1.2.9.2, agree to resolve the claims raised in the Complaint through a binding Arbitral Proceeding" where the Registrant initiates within ten business days of **either** (¶13.2.1.2.1) an Appeal Determination in the IGO's favor **or** (¶13.2.1.2.2) a court order declining the merits on immunity grounds. But the attestation that ¶13.2.1.2 invokes — ¶1.2.9.2 — is drafted to cover only the first trigger: "in the event the Respondent elects to submit the dispute to arbitration **following the issuance of an Appeal Determination in favor of the IGO Complainant**, the IGO Complainant agrees…" Draft URS Rules ¶3(b)(ix) repeats the same appeal-only formulation.

(c) Misalignment. The operative provision (¶13.2.1.2) imposes an obligation broader than the consent instrument (¶1.2.9.2 and Rules ¶3(b)(ix)) that is supposed to create it. This matters because, for an immune complainant, the attestation is the entire legal foundation of the Registrant's arbitration right: an IGO cannot be compelled into arbitration by any court, so its duty to arbitrate exists only to the extent of its written consent. An IGO facing a post-court-order arbitration under ¶13.2.1.2.2 can argue — with the drafts' own text — that its filing attestation never extended to that scenario, forcing the Registrant into a jurisdictional fight inside the very mechanism that was supposed to spare it jurisdictional fights, at the worst possible moment: after months or years already spent in court. Recommendation 4(iii) unambiguously requires the arbitration option in the court-order scenario; a consent instrument that does not cover it fails to implement the recommendation.

(d) Proposed text. Conform ¶1.2.9.2 and URS Rules ¶3(b)(ix) to cover all triggers in ¶13.2.1.2 (and, per Point 2.1, elections at any time): "…an attestation that, in the event the Registrant elects to submit the dispute for resolution through a binding Arbitral Proceeding in accordance with section 13.2 [at any time after the Complaint has been served, including] following the issuance of an Appeal Determination in favor of the IGO Complainant or the issuance of a court order as described in section 13.2.1.2.2, the IGO Complainant agrees to resolve such dispute through a binding Arbitral Proceeding, in accordance with this Procedure, the URS Rules, and the applicable arbitral rules, and agrees to be bound by the decision of the Arbitral Panel, such attestation constituting the IGO Complainant's irrevocable written consent to arbitrate for the purposes of any applicable arbitration law."

(e) Rationale. For every other URS complainant, the Mutual Jurisdiction submission (URS Rules ¶3(b)(x)) is drafted broadly ("with respect to any challenges to a determination in the URS proceeding"). The IGO's substitute commitment must be at least coextensive with the registrant rights it replaces; a narrower attestation is a latent defect in the Registrant's only remedy, and any daylight between the attestation's scope and the Rules' triggers invites the IGO to exploit it.

Point 2.3 — Arbitral-proceeding information is provided at the wrong stages: present where premature, absent where the clock actually starts (Recommendation 4(ii); parallel to Point 1.6)

This point follows the same reasoning as Point 1.6 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. EPDP Recommendation 4(ii): "In communicating a URS Determination to the parties where the complainant is an IGO Complainant, the URS provider shall provide **both parties** with information regarding the applicable arbitral rules." The obligation attaches to the communication of any Determination in an IGO case.

(b) Draft text. Draft URS ¶9.5 requires the Provider to include information about the Arbitral Proceeding, with a link to the Arbitral Institution list, only "when notifying the Registrant and IGO Complainant of a Determination **in favor of the IGO Complainant**." Draft URS ¶12.5, governing the communication of Appeal Determinations — the event on which the Registrant's mandatory-arbitration window under ¶13.2.1.2.1 actually opens and begins to run — contains **no** arbitral-information requirement at all.

(c) Misalignment. The draft narrows Recommendation 4(ii) in one direction (from all Determinations in IGO cases to IGO-favorable ones only) while omitting the information entirely at the stage where the Registrant's ten-business-day right accrues and expires. A Registrant who loses an appeal learns of the arbitration deadline, if at all, from a notice received weeks earlier, at a stage when the option was not yet exercisable (and, under ¶13.2.1.3 as drafted, was subject to IGO veto). Rights windows measured in days are meaningless unless the party holding them is told, at the moment they open, where to file, under what rules, by when, and at what cost — a point of particular force in the URS, whose respondents are disproportionately self-represented.

(d) Proposed text. Conform ¶9.5 to Recommendation 4(ii) (information with **any** Determination in an IGO case), and add to ¶12.5: "Where the Complainant is an IGO Complainant, the notice of the Appeal Determination shall include information about the Arbitral Proceeding available to the Registrant under section 13.2, the applicable time limits, and a link to the ICANN webpage listing the Arbitral Institution(s) designated by ICANN, their applicable arbitral rules, and applicable fees."

(e) Rationale. Implementation fidelity to the adopted text, and elementary due process: notice of a right must arrive when the right can still be exercised.

Point 2.4 — The court-order arbitration trigger (draft URS ¶13.2.1.2.2) and the notice to registrants (draft URS ¶4) are narrower than Recommendation 2(b)(iii) (parallel to Points 1.3 and 1.4)

This point follows the same reasoning as Points 1.3 and 1.4 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. EPDP Recommendation 2(b) requires that when forwarding an IGO complaint, the provider include a notice informing the respondent “(i) of its right to challenge a UDRP decision canceling or transferring the domain name, **or a URS Determination rendered in favor of an IGO Complainant**, by filing a claim in court; (ii) that, in the event the respondent chooses to initiate court proceedings, the IGO Complainant may assert its privileges and immunities with the result that the court may decline to hear the merits of the case…; and (iii) that the respondent has the option to agree to binding arbitration to settle the dispute **at any time**, including in lieu of initiating court proceedings or, if it files a claim in court, **where the court has declined to hear the merits of the case**” — with no restriction as to the ground of declination. (emphasis added) EPDP Recommendation 4(iii) describes the court pathway with the narrower phrase “on the basis of IGO privileges and immunities.” The two provisions must be read together, and against the GNSO Council’s binding 2019 conditions (Resolution 20190418-3) that any solution “preserves registrants’ rights to judicial review” and “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.” The controlling policy purpose is undisputed: no registrant should be left with an unreviewed adverse determination because the court route proved unavailable through no fault of the registrant.

(b) Draft text. Draft URS ¶13.2.1.2.2 confines the court-order trigger to “a court’s issuance of an order declining to hear the merits of a cause brought by the Registrant… **on the basis of IGO privileges and immunities**.” The URS notice provision (draft URS ¶4) tells the Registrant it may arbitrate “in lieu of initiating court proceedings, or if a court declines to hear the merits of the case **on the grounds of the IGO Complainant’s privileges and immunities**” — inserting into the notice a qualifier that Recommendation 2(b)(iii) does not contain — and omits the words “at any time.”

(c) Misalignment. Because these same drafts exempt IGO Complainants from submitting to any Mutual Jurisdiction (URS Rules ¶3(b)(x)), the most likely grounds on which a court will decline to reach the merits of a Registrant’s post-URS claim are **not** a formal adjudication of “privileges and immunities” but: lack of personal jurisdiction over a defendant that has submitted to no forum; absence of a recognized cause of action (the documented England-and-Wales problem); forum non conveniens; or a dismissal resting on multiple or unspecified grounds. In every such scenario, under the draft: no arbitration trigger, and no merits review of the suspension by any tribunal, ever — the precise outcome the GNSO Council's 2019 conditions prohibit. The draft's own notice, meanwhile, deviates from the adopted notice text in the restrictive direction — the opposite defect from the draft UDRP Rules notice, which tracks Recommendation 2(b)(iii)'s unqualified language — so the two procedures' notices are also inconsistent with each other, guaranteeing confusion for the very parties the notices exist to inform. Where two adopted texts differ in breadth, implementation consistent with the charter's registrant-protective conditions — and with the representation made to every respondent in the mandated notice — must adopt the broader reading.

(d) Proposed text. In ¶13.2.1.2.2: "a court's issuance of an order declining to hear **or otherwise disposing of a cause brought by the Registrant as contemplated in section 13.1 without a determination of the merits, for any reason, including without limitation** on the basis of IGO privileges and immunities **or an absence of jurisdiction over the IGO Complainant**." In the ¶4 notice: conform to Recommendation 2(b)(iii) verbatim, restoring "at any time" and deleting the immunity qualifier from the court-declined clause.

(e) Rationale. An IGO that has genuinely pre-committed to arbitration as the quid pro quo for its Mutual Jurisdiction exemption is indifferent to the ground on which a court declined the case: its obligation to arbitrate the merits is unchanged. The only party that benefits from the narrow trigger is an IGO seeking to defeat review entirely through procedural attrition. Two timing safeguards are also required, for the same reasons given in our Question 1 response but restated here so this point is complete in itself: (i) the ten-business-day window should run from the Registrant's **receipt** of the Appeal Determination or court order (court orders frequently issue without same-day notice to the parties, particularly self-represented parties), and (ii) a lawsuit should be treated as concluded only when the court order concluding it is **final** — that is, when all rights of appeal of any party have been exhausted or the applicable appeal periods have expired — since a ten-day window running from a first-instance order would force the Registrant to abandon appellate rights that exist in every developed legal system and that nothing in the adopted recommendations extinguishes. (The EPDP's own working materials contemplated appellate proceedings, including to a supreme court, when the *IGO* was the losing party; appellate rights cannot be impliedly abolished only for registrants.)

Point 2.5 — The applicable-law provision (draft URS ¶13.2.6.2) deviates from Recommendation 5 in four respects, each favoring the IGO Complainant (parallel to Point 1.8)

This point follows the same reasoning as Point 1.8 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. EPDP Recommendation 5: "Arbitration will be conducted in accordance with the law as mutually agreed by the parties. Where the parties cannot reach mutual agreement, the IGO Complainant **shall elect** either the law of the relevant registrar's principal office or the domain name holder's address **as shown for the registration of the disputed domain name in the relevant registrar's Whois database at the time the complaint was submitted** to the UDRP or URS provider. Where the parties cannot reach mutual agreement in a case where the domain name was registered through a privacy or proxy service and the underlying registrant's identity is disclosed as part of the UDRP or URS proceeding, the IGO Complainant **shall elect either** the law of the relevant registrar's principal office **or the law in the location of the underlying registrant**. In all cases, where neither law provides for a **suitable** cause of action, the arbitral tribunal shall make a determination as to the law to be applied in accordance with the applicable arbitral rules." (emphasis added) Footnote 4 of the EPDP Final Report states the intent: "Recommendation #5 is intended to ensure that the choice of law for an arbitration proceeding is **linked to the actual or underlying registrant and where they are located**."

(b) Draft text. Draft URS ¶13.2.6.2: "The applicable substantive law governing the Arbitral Proceeding shall be the law mutually agreed by the Parties. If no agreement is reached, the IGO Complainant **may elect** either (1) the law of the jurisdiction of the Registrar's principal office, or (2) the law of the Registrant's location as provided to the URS Provider by the Registry Operator pursuant to section 4.1 or by the Registrar pursuant to section 4.4. Where the Respondent used a privacy or proxy service, and the beneficial user of the domain name's identity was disclosed as part of the URS proceedings, the IGO Complainant **may instead elect** the law of the jurisdiction of the beneficial user of the domain name (the privacy or proxy service customer) **if different from the Registrant's location**… If none of these choices of law provide **a** cause of action, the Arbitral Panel shall determine the applicable law…"

(c) Misalignment. Four deviations: (i) "shall elect" has become "may elect," leaving the governing law indeterminate if the IGO simply declines to elect — with no default and no deadline; (ii) Recommendation 5's temporal anchor ("at the time the complaint was submitted") is absent from the privacy/proxy limb, permitting the relevant "location" to be argued to drift with post-complaint changes; (iii) in privacy/proxy cases, Recommendation 5 gives the IGO two options — the registrar's location or the **underlying registrant's** location — *replacing* the proxy service's location, consistent with footnote 4's intent that the law be "linked to the actual or underlying registrant." The draft instead gives the IGO **three** options (registrar; the "Registrant's location," i.e., the privacy/proxy service's address as recorded under ¶¶4.1/4.4; or the beneficial user's location), converting a substitution into an enlargement of the IGO's menu; and (iv) "suitable cause of action" has become "a cause of action," lowering the threshold at which the panel's residual law-selection duty is triggered and inviting the selection of a law under which the Registrant has a nominal but inadequate claim. Every deviation expands IGO optionality or degrades Registrant certainty; none has any basis in the adopted text.

(d) Proposed text. Conform ¶13.2.6.2 to Recommendation 5 verbatim (updating terminology to "Registration Data"), and add: "The IGO Complainant shall make and communicate its election in the Complaint or, at the latest, within five (5) calendar days of the commencement of the Arbitral Proceeding, failing which the applicable law shall be the law of the Registrant's location as recorded at the time the Complaint was submitted."

(e) Rationale. We preserve our objection of record to Recommendation 5 itself: no principle of law or equity gives the complainant — the party that chose to initiate the dispute — unilateral choice of substantive law over an unwilling respondent. But whatever its merits, the recommendation at least fixed the universe of options and anchored them in time; implementation may not enlarge a one-sided mechanism further in the favored party's direction. Requiring the election in the Complaint also permits the Registrant to know the governing law before deciding whether to elect arbitration at all — without which the election windows in ¶13.2.1.2 are exercised blind.

Point 2.6 — The Annex A "Principles regarding Arbitral Rules" — the Board-approved framework addressed to this Implementation Review Team — are almost entirely absent from the URS implementation, and cannot be verified against arbitral rules that have not been published (parallel to Point 1.9)

This point follows the same reasoning as Point 1.9 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. The EPDP Final Report's Implementation Guidance to Recommendation 4 states that the Annex A principles are "intended to serve as a guidance framework **for the Implementation Review Team** that will be formed to advise ICANN org on the implementation of policies from this EPDP." Annex A's General Principles include: the arbitration "should be conducted in such a manner as to be **the substantive equivalent of a judicial review of the merits of the case** as much as is feasible" (GP 1); it "should be conducted as expeditiously as possible" (GP 2); it "must include customary and reasonable protections against abuse of process" (GP 3); it "should be cost-efficient. A **fixed range of arbitral fees** should be encouraged to ensure predictability and affordability" (GP 5); "there should be a **full exchange of documents and information** relevant to the proceeding" (GP 7); hearings with the ability to "call, question and cross-examine witnesses," online by default (GP 9); "a clear, transparent, and uniform process for the **selection and appointment of arbitrators**, as well as for challenging an appointment. All arbitrators should be required to **attest to their impartiality and independence**" (GP 11); and outcomes that "may include… an order that the registrant retains the disputed domain name(s), **including a declaration of abuse of process or reverse domain name hijacking** in cases where the arbitrator(s) has/have found such behavior" (GP 12). The Specific Principles add, inter alia: representation by a person of the party's choice, "who need not be an attorney" (SP 2); a single-arbitrator default with appointment from "a pre-defined list of arbitrators" (SP 4); a structured three-arbitrator option (SP 5); "publishing a list of potential arbitrators who are recognized as experts in domains name issues" [sic] (SP 6); and "the possibility of sanctions against parties… who have been found to have engaged in an abuse of process, or who seek to cause unnecessary delay or expense" (SP 9).

(b) Draft text. Draft URS ¶13.2.3 (fees), ¶13.2.5 (panel), ¶13.2.6 (proceeding) and ¶13.2.7 (determinations) delegate every one of these matters to the unpublished "applicable arbitral rules" of Arbitral Institutions that have not been designated (the URS drafts, like the UDRP Rules, point to a placeholder "[link]" for the institution list — see draft URS ¶9.5). Of the adopted principles, the URS drafts implement only de novo review (¶13.2.6.1) and publication of determinations (¶13.2.7.2).

(c) Misalignment. We acknowledge that Annex A is expressed as an "overarching guidance framework" and that several of its principles use "should" rather than "shall"; it was nonetheless adopted by the Board as part of the package, is addressed **in terms** to this Implementation Review Team, and is the only place in the adopted policy where the content of the substitute forum is specified at all. An implementation that embeds none of the principles in binding text, delegates all of them to unpublished third-party rules, and asks the community to sign off before the institutions or rules are identified, cannot be assessed for alignment at all — which is itself a failure of alignment with the adopted Implementation Guidance, and with the ICANN Bylaws' commitments to informed participation by those most affected and to detailed explanation of policy actions (Bylaws §§1.2(a)(iv)-(v), 3.1) (ICANN Bylaws [archived]). Generic institutional arbitration rules do not contain URS-specific elements such as Reverse Domain Name Hijacking declarations, domain-expert arbitrator lists, or fee ranges calibrated to domain disputes; those exist only if ICANN's own instruments require them. Two URS-specific consequences deserve emphasis: (i) GP 12 requires that available outcomes include "an order that the registrant retains the disputed domain name(s), including a declaration of abuse of process or reverse domain name hijacking" — yet draft ¶13.2.7 contemplates only IGO-prevails (suspension maintained, ¶13.2.7.4) and Registrant-prevails (unlock, ¶13.2.7.5) outcomes, with no provision for abuse-of-process or RDNH declarations, in the procedure whose speed and default rates make abuse cheapest; and (ii) GP 5's "fixed range of arbitral fees… to ensure predictability and affordability" is nowhere reflected, in the very procedure marketed as the low-cost option, where the amounts at stake will often be modest and any material fee makes the arbitration right illusory.

(d) Proposed text. (i) Add to draft URS §13.2 a provision substantially as follows: "Arbitral Proceedings shall be conducted consistently with the Principles regarding Arbitral Rules set out in Annex A of the EPDP Final Report. ICANN shall designate as an Arbitral Institution only a provider whose applicable arbitral rules ICANN has verified to conform to those Principles, including: a published fixed range of fees; a published list of arbitrators with expertise in domain name disputes; appointment, challenge, and impartiality-attestation procedures; provision for document exchange, hearings and witness examination; party representation by a person who need not be an attorney; and the availability, in any final determination, of a declaration of abuse of process or Reverse Domain Name Hijacking and of sanctions for abuse of process or dilatory conduct." (ii) Republish the complete implementation package — including the designated Arbitral Institution(s), their full applicable arbitral rules, and complete fee schedules — for a further public comment period before finalization. (iii) Expressly provide that no arbitrator may serve who acted as Examiner or appeal panelist in the underlying URS proceeding or who has, within a defined period, acted for the IGO Complainant. (iv) Specify the **legal seat** of the Arbitral Proceeding, the applicable arbitration law, the supervisory court, the challenge rights preserved or waived, and the effect of a timely challenge on implementation. The seat determines the procedural law, the supervisory jurisdiction, the limitation period for a challenge, and the method of service; a framework that declares determinations final and binding while leaving the seat unstated has not decided the most basic question about the forum it creates (see Point 2.10).

(e) Rationale. The Board's adoption rationale expressly contemplated that implementation "will require drafting of new provisions and **the selection of appropriate arbitration rules and providers**" (Minutes, 30 April 2023, section 2.c). That selection is the heart of this implementation; publishing everything except it renders this public comment proceeding an exercise in commenting on the frame of a picture that has not been painted.

Point 2.7 — Suspension mechanics during arbitration and litigation: the registration's expiry can moot the registrant's remedy (Recommendations 4(iii)-(iv))

(a) Adopted policy text. Recommendations 4(iii) and 4(iv) each provide: "The relevant domain name(s) will remain suspended **throughout the pendency of any such arbitration proceeding**" — presupposing that the registration continues to exist throughout that pendency, so that a prevailing registrant recovers a live domain name.

(b) Draft text. Draft URS ¶10.2 (unchanged) provides that a suspended domain remains suspended "for the balance of the registration period." Draft ¶13.2.2.3 maintains suspension during arbitration. Nothing addresses what happens when the registration period **expires** during a pending arbitration — or during the court proceedings and subsequent ten-business-day window that ¶13.2.1.2.2 contemplates, which will routinely outlast a registration year. The existing URS provision on extensions (¶10.3) gives a renewal option to the **Complainant**, not the Registrant. By contrast, the UDRP implementation grants renewal protection during Arbitral Proceedings via the Registrar Accreditation Agreement "extenuating circumstances" mechanism (draft UDRP Rules, footnote 2); the URS drafts contain no equivalent for the Registrant.

(c) Misalignment. A remedy that evaporates if the calendar turns is not the remedy Recommendation 4 adopted. A Registrant who prevails in arbitration under ¶13.2.7.5 must receive "full control of the domain name registration" — impossible if the registration lapsed mid-proceeding, or if only the adverse party held a renewal right.

(c-bis) A second, related gap: the drafts do not say what the domain name's status *is* during a pre-determination arbitration. Draft ¶13.2.7.4 provides that where the IGO Complainant prevails in an Arbitral Proceeding, "the Registry Operator shall maintain the suspension of the domain name as instituted pursuant to section 10" — and draft ¶13.2.4.2 says the same following an administrative dismissal of the arbitration. But if the Arbitral Proceeding was initiated **before** any Determination (as the GNSO Council confirmed it may be — see Point 2.1), there is no section 10 suspension in existence to "maintain": section 10 operates only upon a Determination in the Complainant's favor. The drafts therefore contain no rule at all for the most basic operational question in the pre-determination scenario: whether the domain name is suspended, locked, or unaffected during the arbitration; who directs the Registry Operator and on what notice; what becomes of the underlying URS proceeding; and what the Registry Operator does upon an award. The same silence affects renewal and expiry. Proposed text: add to §13.2 an express provision stating that, where an Arbitral Proceeding is initiated before a Determination, the domain name shall remain in the locked (but not suspended) status provided for by section 4 pending the outcome; that the URS proceeding shall be suspended pending the Arbitral Proceeding, and terminated upon an award resolving the claims; that the Registry Operator shall act only upon notice from the Arbitral Institution; and that ¶¶13.2.4.2 and 13.2.7.4 shall apply according to their terms only where a suspension under section 10 is in fact in existence.

(c-ter) Public record annotation is narrower in the Rules than in the Procedure. Draft URS Rules ¶15(g) requires the Provider to reference the Arbitral Panel's published decision on the webpage of the related Determination only where the Respondent requests arbitration "in response to a Determination in favor of an IGO Complainant," whereas draft Procedure ¶13.2.7.3 requires annotation "[u]pon notice of the Arbitral Panel's determination" without that limitation. Arbitral Proceedings initiated before a Determination, or following a qualifying court order, would therefore leave the published URS record uncorrected and misleading. Conform Rule 15(g) to ¶13.2.7.3, and require the annotation to state the outcome and its date.

(c-quater) The same drafting discipline is required throughout §13.2. The defects identified at Point 1.1 for the UDRP arise from a single structural cause: a terminal condition scoped to the disposal of a **proceeding** rather than to the resolution of the **dispute**. The URS drafts share that pattern. Section 13.2.4.2 directs the Registry Operator to maintain the suspension where "the Arbitral Institution dismisses the Arbitral Proceeding due to an administrative deficiency, or the Registrant withdraws" it; §13.2.7.4 directs it to maintain the suspension where the IGO Complainant "prevails"; and §13.2.7.5 directs an unlock where the Registrant prevails. Each keys the outcome to the fate of one proceeding, and none asks whether anything else remains on foot — a pending court action, an unexpired election window under §13.2.1.2, an appeal, or a corrective resubmission.

Three consequences follow, and they mirror the UDRP analysis. First, a Registrant who prevails other than by the Arbitral Panel "prevailing" for it — for example by obtaining relief in court, or by the IGO Complainant discontinuing — falls within none of the three provisions, and the suspension continues by default. Second, a Registrant whose arbitral request fails for a reason not of its own making is treated identically to one whose request fails through its own default, which is the defect addressed at Point 2.1 above and which should result in the Determination being set aside rather than the suspension maintained. Third, because §13.2.4.2 and §13.2.7.4 both operate by reference to the suspension "instituted pursuant to section 10," they have nothing to operate on where the Arbitral Proceeding preceded any Determination — the gap identified at subsection (c-bis).

The cure is the same as for the UDRP and requires no new concept: the Registry Operator's obligations should be expressed by reference to whether the dispute concerning the domain name has been finally resolved, with finality defined negatively — the dispute is not finally resolved while any court proceeding brought by the Registrant, or any Arbitral Proceeding, concerning the domain name remains pending, including any appeal, while any period for appeal has not expired, or while any period within which the Registrant is entitled under §13.2.1.2 to initiate an Arbitral Proceeding remains open.

With one difference from the UDRP, which the difference in remedy compels. In the URS the remedy is suspension, and suspension is the harm; restoration is the reversible state. It follows that the finality test must operate **asymmetrically**, and we say so expressly to avoid the very transplant error we warn against. Where an outcome is favourable to the Registrant — a court order in its favour, an Arbitral Panel decision in its favour, or the discontinuance of the IGO Complainant's claim — the suspension must be lifted at once, as draft §13.2.7.5 already requires within five business days, and it must not be prolonged because some further period during which the IGO Complainant might act has yet to expire. Recommendation 4 requires the domain name to remain suspended "throughout the pendency" of the arbitration; it does not require suspension throughout every subsequent challenge window, and reading it that way would convert a registrant protection into a registrant detriment. The finality test therefore governs only the question whether an **adverse** outcome may be acted upon; a favourable one is acted upon immediately.

We should be candid about the limits of this analysis. We have not audited §13.2 provision by provision in the way we have audited the UDRP text, against even the non-exhaustive range of outcomes we were able to identify there, and we do not claim to have identified every consequence. The URS differs from the UDRP in ways likely to change the analysis: the remedy is suspension rather than transfer, so the harm accrues continuously rather than at a single irreversible moment; the timelines are materially shorter; and the appeal stage has no UDRP counterpart. We ask that ICANN org and the IRT carry out that audit, applying the tests set out in Appendix A, and that its results be published with the completed package (Point 2.6).

(d) Proposed text. Add to §13.2: "Where an Arbitral Proceeding, court proceeding, or applicable election window under this section 13.2 is pending at the time the registration of a suspended domain name would otherwise expire, the Registrant shall be entitled to renew the registration notwithstanding the suspension (and the Registry Operator and Registrar shall process such renewal), or, failing renewal by the Registrant, the Registry Operator shall preserve the domain name in suspended status, and it shall not be released, deleted, or registered to any other party, until the conclusion of the proceeding and the implementation of its outcome."

(e) Rationale. Alignment requires, at a minimum, that the adopted remedies be capable of performance in every scenario the recommendations contemplate. But that is only the floor, and it is not enough. The recommendations cannot have contemplated every scenario — no drafter can — and an implementation is not aligned with them merely because it performs correctly on the situations that happened to be foreseen. Alignment must survive the unforeseen one as well, and the only way to achieve that is through the choice of default state: where the drafts have not provided for a situation, the position they leave in place must be one that a later decision can undo. That is the difference between failing gracefully and failing catastrophically. A stay that continues when it need not have continued costs the IGO Complainant time, and time can be given back; a suspension imposed or maintained when it should not have been, or a transfer executed when it should not have been, costs the registrant the use of the domain name and in the transfer case the name itself, and in the transfer case the loss is irreversible in fact whatever the paper remedy. We say more about this general principle at Point 1.1 (Design principle 4), where it applies with still greater force because the UDRP remedy is transfer rather than suspension. We note, preserving our broader objection for Question 4 below, that the continuing suspension of a domain — and the websites, email, and speech it carries — throughout a potentially lengthy arbitration whose timelines the drafts decline to fix, operates as a continuing restraint imposed on the strength of a summary examiner determination; at minimum, Annex A GP 2 (expedition) must be implemented through binding outer time limits on the Arbitral Proceeding (see Point 2.6).

Point 2.8 — Deficiency dismissals, receipt confirmations, copy requirements, and the scope of de novo review (parallel to Points 1.7, 1.10 and 1.15)

This point follows the same reasoning as Points 1.7, 1.10 and 1.15 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Deficiency dismissals without cure. Draft URS ¶13.2.4.2 provides that where the Arbitral Institution "dismisses the Arbitral Proceeding due to an administrative deficiency," the Registry Operator simply maintains the suspension — with no notice-and-cure, no tolling, and no re-filing right, even where time remains in the Registrant's ten-business-day window. Contrast the treatment of complainants: a URS complaint that fails administrative review is "dismissed **without prejudice** to the Complainant filing a new complaint" (draft URS ¶3.4), and a UDRP complainant receives notice of deficiencies and five calendar days to cure (draft UDRP Rules ¶4(d)). Nothing in the adopted recommendations authorizes making the Registrant's sole remaining remedy maximally fragile at its weakest point — a self-represented registrant's first-ever arbitration filing under unfamiliar, unpublished rules on a ten-day clock. Proposed text: the Arbitral Institution shall promptly notify the Registrant of the nature of any administrative deficiency and afford five (5) calendar days to correct it; the ¶13.2.1.2 windows are tolled during the Institution's intake review; and a dismissal for administrative deficiency is without prejudice to a compliant re-filing within the (tolled) window.

(b) Copy requirements. Draft URS ¶13.2.2.2 requires the Registrant's arbitration request to be copied "to the Registrar and Registry Operator." Recommendation 4(iii) requires a copy "to the URS provider," and Recommendation 4(iv) requires copies "to the URS provider and the IGO Complainant." Conform ¶13.2.2.2 to the adopted text by adding the URS Provider and the IGO Complainant as copy recipients, retaining the Registrar and Registry Operator as operational additions.

(c) Scope of de novo review. Draft URS ¶13.2.6.1 describes the Arbitral Proceeding as "a de novo review of the merits of the claim raised in the URS proceeding," while ¶13.2.6.2 designates a governing national law (Recommendation 5). The two must be reconciled the same way in the URS as in the UDRP: Annex A GP 1 requires the arbitration to be "the substantive equivalent of a judicial review of the merits," and Recommendation 5's choice-of-law machinery (including its "cause of action" language) presupposes that the arbitration adjudicates legal claims under a national law — under which a registrant enjoys defenses, presumptions, and remedies that the URS's summary criteria do not provide. Proposed text: "The Arbitral Proceeding is a de novo determination of the parties' claims concerning the domain name(s), decided in accordance with the applicable substantive law determined under ¶13.2.6.2. Either Party may raise any claim or defense available to it under that law. The URS Procedure's criteria shall inform, but shall not limit, the Arbitral Panel's determination." Without this clarification, the "arbitration" is simply a second URS with higher fees — which is not what the community was told this mechanism would be.

Point 2.9 — Reconciliation with RPM Phase 1 URS updates must not bypass public comment

The proceeding page states that the URS drafts "do not take these pending RPM Phase 1 updates into account" and that "both sets of updates will be systematically reconciled by ICANN org to ensure consistency and compatibility before publication of the final revised URS documentation." Reconciliation of two separately-adopted sets of amendments to the same instrument is not clerical; it involves exactly the kind of drafting choices this proceeding exists to check — and as this submission demonstrates throughout, drafting choices are where registrant rights are being lost. The reconciled URS documentation must be republished for public comment before finalization. This is an alignment point: the community cannot confirm that the *final* URS text implements the Board-adopted recommendations if the final text is assembled after the comment period closes.

Point 2.10 — Award integrity and tribunal funding for URS Arbitral Proceedings (parallel to Points 1.12 and 1.13)

This point follows the same reasoning as Points 1.12 and 1.13 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Award integrity. The URS drafts declare arbitral outcomes binding and self-executing, yet contain no remedy of any kind for a determination procured by fraud, fabricated evidence, or corruption; for arbitrator partiality or misconduct discovered after the determination; or for error manifest on the face of the determination. Every developed arbitration regime pairs finality with a narrow integrity check — setting aside on limited grounds at the seat (the template of Article 34 of the UNCITRAL Model Law on International Commercial Arbitration [archived], the basis or influence for legislation in 93 States and 127 jurisdictions on UNCITRAL's published status list [archived]), and express statutory provision for fraud and manifest error (e.g., the English Arbitration Act 1996, section 68 [archived]: "serious irregularity… which has caused or will cause substantial injustice," including "the award being obtained by fraud," s. 68(2)(g)). These protections operate in practice: in 2023 the English Commercial Court set aside an approximately US$11 billion award against Nigeria as procured by fraud under that very provision (Pinsent Masons [archived]); in 2025 the Court of Appeal for Ontario set aside a Toronto-seated investment award after the state respondent covertly courted its party-appointed arbitrator (*Vento Motorcycles, Inc. v. United Mexican States*, 2025 ONCA 82; Blakes summary [archived]); and in Peru, a court in 2019 ordered the preventive detention of fourteen arbitrators and lawyers (an order reversed as to eight of them on appeal later that month) amid allegations that Odebrecht used arbitral awards to launder corrupt surcharges (Kluwer Arbitration Blog [archived]). Those safety valves are structurally unavailable here: an annulment application runs against the award's beneficiary — an IGO asserting immunity from the court's process — and there is no enforcement stage at which any court could refuse recognition, because the suspension is maintained or lifted automatically upon notice (¶13.2.7). The URS is, moreover, the procedure in which fraud and error are cheapest to commit and most damaging when committed: it operates on default-friendly timelines measured in days, against respondents who are disproportionately unrepresented, with the Registrant's website and email dark from the initial Determination onward — and under draft ¶13.2.7.4, an IGO-favorable arbitral determination perpetuates that suspension for the life of the registration with no further review of any kind. **Proposed text:** add to §13.2 an Integrity Review mechanism identical in substance to that proposed at Point 1.12(d): within ten (10) business days of the communication of an Arbitral Panel determination — or, for fraud or corruption not reasonably discoverable in that period, within one (1) year — either Party may request review by a separately-constituted three-member Integrity Panel (none of whom served in the underlying proceeding), strictly limited to: (1) determination procured by fraud, fabricated evidence, or corruption; (2) evident partiality, corruption, or serious misconduct of an Arbitral Panelist; (3) denial of proper notice or a fair opportunity to present a Party's case; (4) excess of the scope of the submission; or (5) the determination fails to decide a claim or defence that was properly before the Arbitral Panel, where the failure has caused substantial injustice. The Integrity Review is expressly **not an appeal**: these are the classic annulment grounds of Article 34 of the UNCITRAL Model Law and its national analogues, proposed for inclusion in the institutional rules only because the courts that would ordinarily apply them are unavailable against an immunity-asserting complainant; the Integrity Panel may not re-argue or re-weigh the merits. A timely request suspends implementation of the determination; a determination set aside is remitted to a freshly constituted Arbitral Panel. The point is as much about deterrence as remedy: misconduct is deterred by the probability of detection, and a procedure in which no body will ever examine the file again sets that probability, by construction, at zero — for parties and for panelists alike. The completed package must in addition specify the seat of the Arbitral Proceeding, the supervisory court of that seat, the non-waivable challenge rights preserved, and the IGO Complainant's limited consent to that court's jurisdiction for the sole purpose of an application to set aside a determination. The IGO's attestation (¶1.2.9.2; URS Rules

¶3(b)(ix)) must expressly encompass the Integrity Review and constitute irrevocable consent to registry-level restoration of the domain name should the determination be set aside, so that restoration never requires enforcement proceedings against the IGO in any court.

(b) Tribunal funding. Draft ¶13.2.3 requires the Registrant to pay an unspecified "initial fixed fee," with all further fee structure and allocation deferred to unpublished institutional rules. In the national courts this framework displaces, the tribunal itself costs the parties nothing — judges are paid by taxpayers — while in private arbitration every arbitrator-hour is billed to the parties; ICANN's own accountability arbitrations (Independent Review Processes, administered by the ICDR) have generated tribunal costs ranging from US$208,348.30 in the *GCC* IRP concerning .gcc (Final Declaration as to Costs, 15 December 2016 [archived]), through US$473,744.91 in panel compensation and expenses in the .XXX IRP (see the Independent Review Panel Declaration of 19 February 2010, available on ICANN's ICM v. ICANN page [archived]), to US$1,198,493.88 — plus a US$450,000.00 fee award against ICANN for conduct the panel found abusive — in the .WEB IRP, *Afilias Domains No. 3 Ltd. v. ICANN* (Final Decision, May 2021 [archived], at ¶410; confirmed by ICANN's Board in Resolution 2022.01.16.13 [archived]), in which the claimant's certified costs submission [archived] certified claimed fees and costs of US$10,248,227.02 on its side alone (we documented the .XXX evidence in item 2 of the twenty enumerated objections to arbitration in our 23 October 2021 comments [archived]). Annex A GP 5 requires cost-efficiency and "a fixed range of arbitral fees… to ensure predictability and affordability"; GP 1 requires the substantive equivalent of judicial review; and PDP Recommendation 4 (Board-adopted) records both that IGO-side cost relief "must be addressed directly through discussions between the ICANN Board with the GAC and IGOs" and that "many Working Group members believe that a respondent should also be eligible to receive financial support for its defense in a case where ICANN has subsidized the complainant." **Proposed text:** apply to ¶13.2.3 the same two-part structure we propose for the UDRP, restated here so that this point is complete in itself. *Required to implement Annex A GP 5:* the Registrant's initiation fee shall be a fixed, published amount comparable to civil court filing fees; the Arbitral Institution shall publish a fixed range of all arbitral fees and tribunal costs, with the total recoverable from a Registrant capped at the published maximum; fee waiver or reduction shall be available to natural-person and small-enterprise Registrants who demonstrate need; the complete fee schedules shall be published as part of the republished package (Point 2.6); the Arbitral Panel may reallocate tribunal costs against a Party found to have engaged in abuse of process, Reverse Domain Name Hijacking, or dilatory conduct (Annex A SP 9); and any financial support extended to IGO complainants following the Board-GAC discussions contemplated by PDP Recommendation 4 shall be matched by equal support for respondents, as that recommendation itself records many working group members believed. *Recommended, and properly referred to the GNSO Council if ICANN org considers it beyond this implementation:* that ICANN bear the tribunal costs, with each Party bearing its own legal costs, mirroring the allocation in the courts this framework displaces. The URS's dramatically lower amounts at stake make this dispositive: a URS respondent facing even a four-figure tribunal bill to challenge the suspension of a single domain name has, in practice, no remedy at all — an outcome irreconcilable with Annex A General Principles 1 and 5 and with the "curative rights" purpose of the entire framework.

> **Point 2.11 — Remedies in URS Arbitral Proceedings: the drafts provide only "suspension maintained" or "suspension lifted," and delegate every other question to rules that do not exist (parallel to Point 1.14)**

This point follows the same reasoning as Point 1.14 (concerning the UDRP documents). Consistent with the note above, the analysis is deliberately restated here in full, rather than incorporated by reference, so that this point is complete in itself for review purposes.

(a) Adopted policy text. Annex A, General Principle 1: the arbitration "should be conducted in such a manner as to be the **substantive equivalent of a judicial review of the merits of the case** as much as is feasible." General Principle 12, quoted in full: "All arbitration proceedings must result in clear and enforceable outcomes. These **may include** confirmation of a transfer or cancellation of the disputed domain name(s), **or an order that the registrant retains the disputed domain name(s), including a declaration of abuse of process or reverse domain name hijacking** in cases where the arbitrator(s) has/have found such behavior. **The arbitrator(s) should have the discretion to award injunctive relief where this is considered necessary for equitable reasons.**" Recommendation 5 requires the arbitration to be "conducted in accordance with the law" mutually agreed or elected, and refers to a "cause of action" under that law. Specific Principle 9 contemplates "the possibility of sanctions against parties… who have been found to have engaged in an abuse of process, or who seek to cause unnecessary delay or expense."

(b) Draft text. Draft URS ¶13.2.7 provides exactly two outcomes: where the IGO Complainant prevails, "the Registry Operator shall maintain the suspension of the domain name" (¶13.2.7.4); where the Registrant prevails, the Registry Operator unlocks the name and returns "full control of the domain name registration to the Registrant" (¶13.2.7.5). There is no provision for a declaration of abuse of process or Reverse Domain Name Hijacking, for costs or sanctions, for any relief short of continued suspension, or for any statement of the standard governing the Arbitral Panel's choice. Everything else is delegated to the unpublished "applicable arbitral rules" of institutions that have not been designated (Point 2.6).

(c) Misalignment. First, GP 12 contemplates as an available outcome an order that the registrant retains the domain name(s) "including a declaration of abuse of process or reverse domain name hijacking" where the arbitrator so finds; draft ¶13.2.7 provides no such outcome, in the procedure whose speed, low cost, and high default rate make abusive filings cheapest to bring. Second, GP 12's final sentence confers on the arbitrator(s) "the discretion to award injunctive relief where this is considered necessary for equitable reasons"; the URS drafts confer no discretion of any kind, and provide no vehicle through which equitable relief could be granted or recorded. Third, the resulting binary is not "the substantive equivalent of a judicial review of the merits" (GP 1): suspension of an entire domain name — with the registrant's website and email dark for the balance of the registration period, and under ¶13.2.7.4 for the life of the registration — is the URS's single, maximal remedy, and the drafts make an arbitral proceeding conducted "in accordance with the law," before a panel Annex A intended to hold equitable discretion, incapable of ordering anything less. We do not ask that the Arbitral Panel be given power over website content, which lies outside ICANN's Mission (Bylaws §1.1(c)); we ask that the outcomes Annex A lists, and the discretion it confers, appear in the instruments that bind the panel. Third, the remedial architecture is being settled after this comment period, in unpublished rules written for an institution the community cannot name; the questions it will settle (may the Arbitral Panel order partial relief? must it find the case for continued suspension clearly established? may it declare Reverse Domain Name Hijacking or award costs?) are policy-significant, not clerical, and the ICANN Bylaws commit ICANN to deciding such questions with the informed participation of those most affected and with documented, neutral, objective and fair application (§§1.2(a)(iv)-(v), 3.1).

(d) Proposed text. Amend §13.2.7 to provide: "The outcomes available to the Arbitral Panel are those described in Annex A, General Principle 12 of the EPDP Final Report, namely: maintenance of the suspension; an order that the Registrant retain the domain name(s) and that the suspension be lifted, including a declaration of abuse of process or Reverse Domain Name Hijacking where the Arbitral Panel so finds; and, where the Arbitral Panel considers it necessary for equitable reasons, injunctive relief. The Arbitral Panel shall state the reasons for the outcome it selects, and where it maintains the suspension shall state why no lesser outcome available to it would afford the IGO Complainant adequate relief. Costs and sanctions may be allocated in accordance with Annex A, Specific Principle 9." Add the corresponding requirement to the designation criteria proposed at Point 2.6(d), and publish the remedial provisions of the applicable arbitral rules as part of the republished package.

(e) Rationale. ICANN's own foundational record for this family of procedures explains why remedial restraint matters. The Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (24 October 1999), ¶4.1(c) [archived] records that the administrative procedure was "minimalist in its resort to mandatory resolution," reserved for "a small, special class of disputes," and that "[e]xcept in cases involving 'abusive registrations' made with bad-faith intent to profit commercially from others' trademarks…, the adopted policy leaves the resolution of disputes to the courts (or arbitrators where agreed by the parties) and calls for registrars not to disturb a registration until those courts decide." The URS is more summary still. Where an IGO complainant's immunity forecloses the court that was supposed to stand behind that summary procedure, the substitute forum must supply the graduated remedies the court would have had — otherwise the registrant's position is worse than under the instrument the community adopted in 1999, not better, and the "curative rights" framework cures nothing for the party it leaves without recourse.

QUESTION 3: Are any changes to the Policy Guidance document necessary to ensure alignment with the Board-adopted PDP and EPDP recommendations?

ANSWER: YES.

The draft "ICANN Policy Guidance on IGO Usage of UDRP and URS" (17 June 2026) fails to implement two Board-adopted PDP recommendations, misdescribes the arbitral mechanism in ways that track the misalignments identified in Questions 1 and 2, and — although styled as neutral guidance — is drafted throughout as a practice aid for IGO complainants, with its sole cautionary admonition directed at registrants. The following changes are necessary.

> **Point 3.1 — The "Implementation Note" unilaterally declares Board-adopted PDP Recommendations 2 and 3 "superseded" and "obsolete"; neither ICANN org nor the IRT has that authority**

(a) Adopted policy text. PDP Recommendation 2 (Consensus; GNSO Council-approved 18 April 2019; Board-adopted 30 April 2023): "the Working Group recommends that **specific Policy Guidance on this topic be issued by ICANN** to clarify the following points: (a) [the] alternative mechanism for standing is not needed [where] an IGO already holds trademark or service mark rights…; (b) whether or not compliance with Article 6ter will be considered determinative of standing is a decision to be made by the UDRP or URS panelist(s) based on the facts of each case; and (c) the possibility that an IGO may seek to rely on its compliance with Article 6ter to demonstrate standing should not modify or affect any of the existing grounds which UDRP and/or URS panelists have previously found sufficient for IGO standing…" PDP Recommendation 3: "**ICANN shall create and issue Policy Guidance**: (a) outlining the various procedural filing options available to IGOs, e.g. they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; and (b) advising IGOs and INGOs to, in the first instance and prior to filing a UDRP or URS complaint, contact the registrar of record…; In addition, ICANN shall ensure that this Policy Guidance document is brought to the notice of the [GAC]…" (emphasis added). The Board adopted both recommendations without qualification (Resolution 2023.04.30.09) and its rationale described this very content: “The remainder of the recommendations focused on the provision of Policy Guidance on the UDRP and URS by ICANN org to IGOs, registrants and the GAC, noting the procedural options available to IGOs that do not hold trademarks in their acronyms” (Minutes, 30 April 2023, section 2.c).

(b) Draft text. The guidance document’s “Implementation Note” states that the IRT “agreed that the original suggestions for standalone Policy Guidance in Recommendations 2 and 3 had been **effectively superseded**”; that PDP Recommendation 2 “was rendered **obsolete** by EPDP Recommendation 1”; and that issuing guidance “strictly reflecting the text of PDP Recommendations 2 and 3 would therefore be both **misleading and potentially confusing**.”

(c) Misalignment. An implementation review team advises on implementation; it does not sit in review of the Board. If intervening policy developments have genuinely superseded adopted recommendations, the ICANN Bylaws and the GNSO’s procedures supply the remedy: a formal determination by the GNSO Council (as manager of the PDP) and the Board — on the record, with community visibility — that specified recommendations will not be implemented as written, and why. What has happened instead is that Board-adopted consensus policy has been edited out of existence in a footnote to a non-binding document, by a closed advisory body, with the result presented to the community as a completed decision. Whatever one thinks of the substance (and the merger of the guidance documents may well be defensible on substance), the precedent is unacceptable: if an IRT can declare adopted Recommendation 2 “obsolete” today, a future IRT can declare an adopted registrant protection “obsolete” tomorrow. We are prepared to accept that PDP Recommendation 2 is substantively superseded **to the extent** that EPDP Recommendation 1 replaces the Article 6ter route to standing with a new definition — that much is a genuine consequence of the later, Board-adopted package, and we do not ask ICANN to issue guidance that would mislead registrants about the current standing test. But supersession must be established provision by provision, on the record, by the bodies competent to determine it. PDP Recommendation 2(c) (that reliance on Article 6ter “should not modify or affect any of the existing grounds which UDRP and/or URS panelists have previously found sufficient for IGO standing”) retains independent content under the new definition, and PDP Recommendation 3’s content — the assignee/agent/licensee filing options, the advice to contact the registrar of record before filing, and the requirement that the guidance be brought to the GAC’s notice — is not superseded by anything in the EPDP outputs, as the guidance itself concedes by devoting its §2.2 to the first of those topics (see Point 3.2).

(d) Proposed change. Delete the Implementation Note’s “superseded”/”obsolete” determinations. Either (i) implement PDP Recommendations 2 and 3 as adopted (their content can be accommodated within the single consolidated document — Recommendation 2’s points (a)-(c) require only a short additional subsection on Article 6ter, and Recommendation 3’s content belongs in §§2 and 2.2), or (ii) obtain from the

GNSO Council and Board a formal, minuted determination that specified elements of PDP Recommendations 2-3 are not to be implemented, before this guidance is finalized. In either case, the guidance must retain Recommendation 3's requirements that it be brought to the GAC's notice and published alongside the UDRP/URS procedures and rules.

(e) Rationale. Alignment with Board-adopted recommendations begins with implementing them, or securing proper authority not to. Nothing else is within ICANN org's or the IRT's gift.

Point 3.2 — Section 2.2's treatment of filing by an assignee, agent, or licensee replaces the adopted PDP finding with IGO advocacy positions

(a) Adopted policy text. PDP Recommendation 3(a) directs guidance "outlining the various procedural filing options available to IGOs, e.g. they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee." That text embodies the PDP's factual finding — grounded in the case record it reviewed — that these options exist and have been used successfully.

(b) Draft text. Guidance §2.2 states: "**It has been suggested** that an IGO may also designate an authorized representative, such as its legal counsel, agent, or licensee, to file a complaint on its behalf. **This suggestion has been questioned by IGOs** and does not constitute legal advice, and IGOs are encouraged to seek legal counsel…"

(c) Misalignment. The Board adopted a recommendation to issue guidance *outlining available options*; the draft instead reports the adopted finding as a mere "suggestion," and elevates the objections of the interest group that dislikes it — objections found nowhere in any adopted recommendation — into the operative message. Policy guidance implementing a Board-adopted recommendation must state the adopted position; IGOs remain free to seek their own counsel, but ICANN's guidance is not the vehicle for their litigation positions. (The assignee/agent/licensee route matters to registrants as well: a complaint filed by a non-immune assignee or licensee proceeds under the ordinary UDRP/URS with full Mutual Jurisdiction protections, making it the path most protective of both sides' legal rights — which is presumably why the PDP highlighted it and why IGO representatives now disparage it.)

(d) Proposed change. Rewrite §2.2 to track PDP Recommendation 3(a): state affirmatively that an IGO may elect to have a complaint filed on its behalf by an assignee, agent, or licensee; note (accurately) that panels may require evidence of the authorization or rights transfer, citing the existing panel practice the PDP reviewed; and delete the sentence reporting that the option "has been questioned by IGOs." The guidance should also complete the implementation of Recommendation 3(b) by retaining and clarifying the advice to contact the registrar of record before filing.

Point 3.3 — The guidance's description of the Arbitral Proceeding's availability misstates the adopted design and omits the GNSO Council's confirmation it purports to reflect

(a) Adopted policy text. Recommendation 2(b)(iii) ("at any time"); Recommendation 3(i)/4(i) (IGO's unconditional advance agreement, contingent only on the registrant's agreement); GNSO Council resolution of 15 January 2026 (quoted at Point 1.2(a)); Board rationale (arbitration "without affecting the respondent-registrant's ability to file judicial proceedings against an IGO at any time during a UDRP or URS proceeding").

(b) Draft text. The guidance states that "[t]he ICANN-created Arbitral Proceeding is **designed to occur following** a UDRP, URS, or relevant court determination" (§3); describes the pre-decision election as one the IGO "may, but is not required to agree" to; asserts that its arbitration content is included "[p]ursuant to the GNSO Council resolution in January 2026" while never quoting or accurately summarizing what that resolution confirmed; and admonishes that "[a]rbitration should not be initiated for the purpose of delaying or prolonging the resolution of a dispute" (addressed at Point 3.4).

(c) Misalignment. A guidance document that invokes the Council's resolution as its authority while suppressing the resolution's operative content — that the respondent may invoke alternative dispute resolution "at any time" and that the recommendations "should not be read to limit that ability" — is not guidance; it is advocacy. If the operative documents are corrected per Points 1.2 and 2.1, the guidance must describe the corrected design. If ICANN org declines to correct them, the guidance must at minimum quote the Council's resolution accurately and disclose the divergence, so that registrants (and the GAC, to whom this document is to be presented under PDP Recommendation 3) understand what the Council confirmed and what the implementation delivers.

(d) Proposed change. Rewrite §3 to: (i) state that a respondent may initiate the Arbitral Proceeding at any time after the complaint is served (subject to the operative documents as corrected); (ii) quote Resolved clause 1 of the 15 January 2026 resolution in full; (iii) describe the court-order pathway in the unqualified terms of Recommendation 2(b)(iii) (see Points 1.3 and 2.4); and (iv) disclose the choice-of-law mechanism of Recommendation 5, including the IGO's election right — a matter of obvious materiality to any registrant weighing arbitration that the guidance currently omits entirely.

Point 3.4 — The guidance’s sole “good faith” admonition is directed exclusively at registrants; the adopted principles require abuse protections to run in both directions

(a) Adopted policy text. Annex A GP 3: “The arbitration process must include customary and reasonable protections against abuse of process.” GP 12: outcomes may include “a declaration of abuse of process or reverse domain name hijacking.” SP 9: “Consideration should be given to the possibility of sanctions against parties that do not comply with applicable rules, who have been found to have engaged in an abuse of process, or who seek to cause unnecessary delay or expense.” All of these are party-neutral. The UDRP Rules themselves (¶15(e)) have recognized Reverse Domain Name Hijacking — abuse by complainants — since 1999.

(b) Draft text. The guidance’s only admonition: “Arbitration should not be initiated for the purpose of delaying or prolonging the resolution of a dispute. The use of arbitration should be in good faith and with a view to resolving the dispute in an efficient and coordinated manner.” Only the registrant can “initiate” the Arbitral Proceeding, so this warning runs against registrants alone. The guidance contains no reference to Reverse Domain Name Hijacking, no admonition against abusive or overreaching IGO complaints, and no statement that the IGO’s standing showing must be made with candor.

(c) Misalignment and proposed change. Either delete the admonition, or balance it, e.g.: “The UDRP, URS, and the Arbitral Proceeding must be used in good faith by all parties. Complaints should not be brought to harass a registrant or to acquire a domain name to which the complainant knows it is not entitled (see UDRP Rules ¶15(e) on Reverse Domain Name Hijacking); and arbitration should not be initiated solely for delay. Panels and Arbitral Panels retain the ability to make findings of abuse of process against any party.” A neutral steward’s guidance cannot lecture only the party that the underlying policy already disadvantages.

Point 3.5 — The guidance’s “functionally equivalent” standing standard must be carried into, not contradicted by, the operative Rules — and the guidance should state the evidentiary rigor the EPDP intended

(a) Adopted policy text. EPDP Recommendation 1(ii) (the “public activities” showing, with “Such use shall not be a token use”), read with the Final Report’s explanatory text: “The EPDP team also believes it is **critical to maintain the UDRP and URS standing requirement that a complainant must have rights in a trademark or service mark**… the EPDP team’s recommendation makes it clear how such complainants address that standing requirement by proving **unregistered rights that are functionally equivalent to a trademark**.” (Final Report, Recommendation 1 explanatory text; see also the deliberations section: “rights that would be functionally equivalent to unregistered trademark rights.”)

(b) Draft text. The guidance correctly describes the new provisions as specifying “how an IGO Complainant can show unregistered rights to a name or identifier that are **functionally equivalent to trademark rights**” and directs users to WIPO Jurisprudential Overview §1.3 (the unregistered-mark criteria: distinctiveness/secondary meaning, supported by evidence of duration and nature of use, advertising, consumer recognition). But the operative Rules text (draft UDRP Rules ¶3(b)(viii); URS Rules ¶3(b)(v)) contains no functional-equivalence limitation — on its face, any identifier an IGO “use[s]… to conduct public activities in accordance with its stated mission” qualifies, however generic, descriptive, or devoid of secondary meaning.

(c) Misalignment and proposed change. The guidance’s gloss is the correct reading of the adopted recommendation — the EPDP said in terms that the trademark-rights standing requirement is “maintain[ed]” and that the alternative showing proves “functionally equivalent” unregistered rights. To ensure the operative documents align with that adopted intent (and do not leave the correct standard stranded in a non-binding document that “imposes no requirements,” as the guidance describes itself), we propose: (i) in the guidance, add after the WIPO Overview reference: “Consistent with the EPDP Final Report, the ‘public activities’ showing is the means by which an IGO Complainant establishes rights functionally equivalent to unregistered trademark rights; the evidence submitted should be capable of demonstrating that the name or identifier functions to identify the IGO, and panels should make an express finding that the demonstrated use is public, in accordance with the IGO’s stated mission, and more than token use, giving examples of the kinds of evidence (duration and geographic scope of use, publications and programmes, media and third-party references) that will ordinarily be probative”; and (ii) conform the operative Rules text as set out in our Question 1 and Question 2 responses. We are not asking ICANN to graft the whole of unregistered-trademark doctrine onto Recommendation 1(ii), which would change the adopted test; we are asking that the adopted test — including the words “public activities,” “in accordance with its stated mission,” and “shall not be a token use” — appear in the instruments that bind panels, and that the guidance not describe a standard the Rules do not contain. Registrants of acronym and dictionary-word domain names — the categories most exposed to IGO identifier claims — are entitled to have the adopted limits appear in the texts that bind panels, not only in guidance that binds no one.

Point 3.6 — Omissions that must be cured for the guidance to serve “registrants” as the Board contemplated

The Board’s rationale describes the adopted guidance recommendations as providing “Policy Guidance on the UDRP and URS by ICANN org **to IGOs, registrants and the GAC**” (Minutes, 30 April 2023, section 2.c, emphasis added). The draft is addressed to

IGOs alone. To align with the adopted purpose, the guidance should add a short section for respondents/registrants in IGO cases, covering: (i) the notice they will receive (Recommendation 2(b)) and what it means; (ii) the three pathways following an adverse decision (court; Arbitral Proceeding; both in sequence where a court declines the merits) and every applicable time limit; (iii) the fact that the IGO Complainant will have pre-agreed to arbitration and what that commitment covers; (iv) the choice-of-law mechanism (Recommendation 5); (v) where to find the Arbitral Institutions, their rules, and their fees; and (vi) the availability of findings of abuse of process/RDNH. A document that walks one party through its options step-by-step while telling the other party only to act "in good faith" does not implement recommendations that the Board adopted, in part, for registrants' benefit.

QUESTION 4: Additional feedback on this Public Comment Proceeding

Each point below is separately numbered for review purposes, as in the preceding sections.

Point 4.1 — Preliminary statement, incorporation of prior submissions, and reservation of rights

This submission is made by Leap of Faith Financial Services Inc. (George Kirikos, President), a Toronto-based company holding a portfolio of valuable domain names and a two-decade record of detailed participation in ICANN policymaking on registrant rights. We incorporate by reference, in their entirety, our three prior comment submissions on this topic (August 20, 2019; October 23, 2021; and January 30, 2023), collected at:

https://www.icann.org/en/public-comment/proceeding/final-report-from-the-epdp-on-specific-curative-rights-protections-for-igos-28-11-2022/submissions/kirikos-george-30-01-2023 [archived]

Nothing in this submission waives, narrows, or abandons any position taken in those documents. Our detailed engagement with the alignment questions in this proceeding (Questions 1-3) must not be construed as acceptance of the underlying policy recommendations, which we continue to oppose for the reasons stated in those prior submissions. We participate under protest as to the merits, while demonstrating that the drafts fail even on the proceeding's own terms — faithful implementation of what the Board adopted. We note that the misalignments we identify in Questions 1-3 are not randomly distributed: **every material deviation from the adopted texts operates against domain name registrants and in favor of IGO complainants.** Random drafting error does not produce a one-directional pattern. That pattern is itself evidence of the structural imbalance in this implementation process, documented in Point 4.4 below.

Point 4.2 — Objection to the "Note to Reviewers"

The proceeding page instructs that submissions "should relate strictly to this final implementation stage" and "should not revisit the content or merits of the policy recommendations themselves." We object to this attempt to pre-constrain public comment. ICANN's Bylaws (Section 3.6) require public comment opportunities precisely so that the public — not only the participants in restricted processes — can be heard. The merits and the implementation are, in any event, inseverable here: as Questions 1-3 demonstrate, the implementation contradicts the GNSO Council's own clarification of the policy's intent, omits registrant protections the adopted texts expressly require, and purports to nullify two Board-adopted recommendations. Each of those defects can only be evaluated against the policy background. To be clear about what we are and are not doing: we accept that this proceeding is directed at implementation, and Questions 1-3 of this submission are framed accordingly — every point in them measures a draft provision against the text the Board adopted. Our objection is to the use of the scope instruction to place beyond comment matters that are unavoidably part of implementation: deviations from adopted policy text, the absence of operative content from the published package, the feasibility of what registrars and registrants are being asked to do, and the process by which the drafts were produced.

We are not asking ICANN org to reopen policy. We are asking it to apply the policy that exists — strictly, and in full. That distinction runs through every point in this submission, and we ask that the Staff Report engage with it rather than treat our comments as merits re-litigation. The measure of this implementation is the words the Board adopted on 30 April 2023, read with the ICANN Bylaws (§§1.2(a)(iv)-(v) and 3.1; Annex A, Section 10, which assigns implementation to ICANN org working with the GNSO Council) (ICANN Bylaws [archived]) and with the rules ICANN has itself written for implementation review teams. Those rules are not ours; they are ICANN's, and ICANN staff cited them to this IRT on 17 November 2025. The Implementation Review Team (IRT) Principles & Guidelines [archived] provide that "the IRT is **not a forum for opening or revisiting policy discussions**," and that "[w]here issues emerge that may require possible policy discussion, these **will be escalated**" (III.B); and they specify the escalation route: where a disagreement over the implementation approach "prove[s] irreconcilable," the GNSO Council liaison, in consultation with the IRT, assesses the level of consensus on whether to raise the issue with the **GNSO Council**, which then determines how to proceed — which "could include, for example, the initiation of a GGP, a PDP or further guidance to the IRT and/or GDD staff" (V.E). Where we say a draft provision departs from those words, we ask for the words back. Where we say the adopted texts presuppose something the drafts leave blank, we ask for the blank to be filled in public. And where we advance a proposal that goes beyond the adopted texts, we have said so ourselves, in terms, and asked for a referral to the GNSO Council rather than a rewrite at the drafting table.

If this implementation exercise has exposed defects in the underlying policy, that is a reason to return to the policy — not a licence to make new policy at the drafting table. We anticipate the response that some of what we ask cannot be delivered because the adopted recommendations do not fit together cleanly: that the arbitral mechanism cannot function unless a consent requirement found nowhere in the recommendations is added; that a trigger the GNSO Council has said must not be narrowed must nevertheless be narrowed to make the timing work; that the Annex A principles cannot be implemented until an institution is chosen, and the institution cannot be chosen until the policy is final. If that is so, then what this exercise has surfaced is a defect in the policy itself — precisely the kind of defect we and others identified when the recommendations were before the community, and which we were told at the time was not a problem. Three consequences follow, and none of them is a drafting solution.

First, a defect in adopted policy is remedied by the bodies competent to make policy, through the route ICANN's own IRT rules prescribe. The GNSO Council manages the PDP; the Board adopts. Both remain available, and the Council has already shown, in its resolution of 15 January 2026, that it will answer a question of policy intent when the IRT puts one to it. What the record shows instead is a departure from V.E at the decisive moment. On 17 November 2025, ICANN staff themselves set out the escalation rule to this IRT in terms: "In the event of a disagreement between the IRT and staff regarding the proposed implementation approach, we will strive to resolve the disagreement. If the disagreement cannot be reconciled, the GNSO Council liaison, in consultation with the IRT, is expected to make an assessment as to the level of consensus within the IRT on whether to raise the issue with the GNSO Council for consideration." Five months later, staff recorded that "the IRT does not collectively agree" on the approach in the circulated drafts (24 April 2026), and published the staff-drafted consent compromise for public comment. We do not assert that V.E has been breached: V.E is engaged once a disagreement "cannot be reconciled," and staff described the text as a "potential compromise" on which work was continuing, so the condition may not yet have been reached. What we ask is that it be answered. If the disagreement over ¶20(a)(iii) and ¶13.2.1.3 remains unresolved after this comment period — and the comments filed in this proceeding will show whether it does — then it has become irreconcilable within the meaning of V.E, and the liaison assessment and referral that V.E prescribes must occur before the package is finalised, rather than the disagreement being settled by publication. The provenance is set out with citations at Point 4.4.

Second, it is not for those whose choices created the difficulty to resolve it in their own favour. The parties who advocated for this architecture, and the staff who drafted it, hold the pen at the implementation stage. Holding the pen confers drafting responsibility; it does not confer policy authority — that is the point of III.B — and it does not confer authority to convert a right the Council has confirmed into a right exercisable only with the opposing party's consent (Points 1.2 and 2.1). The IRT rules anticipate precisely this hazard: V.G provides that "IRT deliberations should not be used as a tool to reopen a previously explored policy issue only because a constituency or stakeholder group was not satisfied with the outcome of a previously held process on the same policy issue." The Council decided the timing question on 15 January 2026; the interest group that was dissatisfied with that outcome raised it again inside the IRT; and the drafts now before the community embody the result.

Third, the Board's own adopted record marks the outer boundary of what may be built here. The 2018 PDP Final Report's Recommendation #1 — Full Consensus, and adopted by the Board in the same resolutions as the EPDP package — provides in terms: "For IGOs, no specific new dispute resolution procedures are to be created" (PDP Final Report [archived], Recommendation #1(b)). We do not cite that recommendation to argue that ICANN org should discard the later EPDP package, which authorises an arbitral component integrated into the existing UDRP and URS; the two are reconciled on the footing that no freestanding new dispute resolution procedure was authorised. We cite it as a governance boundary. Where the drafts go beyond implementing an integrated arbitral component — by creating consent requirements, triggers, or forum rules that appear in neither adopted package — they are not filling gaps but building something the Board did not authorise, and Recommendation #1(b) is the adopted text that says so. The remedy in that situation is escalation under IRT Principle V.E, not further drafting. We also note that the "guided" submission form, by structuring input into narrow alignment questions, should not be used in the Staff Report to marginalize substantive objections; all input filed in this proceeding is properly before ICANN org, the IRT, the GNSO Council, and the Board.

Point 4.3 — The community is asked to approve a system whose operative content does not yet exist; the package must be republished for comment once complete

As detailed at Points 1.9 and 2.6: the identity of the Arbitral Institution(s) is a "[link]" placeholder; their arbitral rules are unwritten or unpublished; the fees a registrant must pay to preserve its rights are unspecified; arbitrator selection, qualification, challenge, discovery, evidence, hearings, seat, language, and timelines are all delegated to those unpublished rules. The EPDP's Annex A principles — the adopted guardrails for exactly these questions — appear nowhere in the binding drafts. A public comment period on an arbitration system whose entire operative content is to be supplied later is not the "final implementation stage" of anything; it is a request for a blank check. The community is being asked to endorse a materially incomplete system — a dispute mechanism published for public comment without its rules, its fees, or its administrators — and to trust that the missing content will be supplied later, out of public view. The complete package (designated institutions, full rules, full fee schedules, and the reconciled URS text per Point 2.9) must be republished for a further public comment period before finalization, accompanied by a disposition matrix showing how each Annex A principle has been implemented, departed from, or delegated, and why. That request is grounded in ICANN's own Bylaws: §1.2(a)(iv) commits ICANN to "well-informed decisions based on expert advice" and to the participation of "those most affected"; §1.2(a)(v) to decisions "by applying documented policies consistently, neutrally, objectively, and fairly"; §1.2(b)(vii) to a decision-making process reflecting a reasonable balance among stakeholders and resistant to capture; and §3.1 to detailed explanation of policy actions (ICANN Bylaws [archived]). None of those commitments can be satisfied by a comment period on documents whose operative content is missing. We remind ICANN org that the Board's adoption rationale contemplated "the selection of appropriate arbitration rules and providers" as a core implementation task (Minutes, Regular Meeting of the ICANN Board, 30 April 2023, section 2.c [archived]); it is not severable from this review.

Point 4.4 — The IRT process that produced these drafts departed from ICANN's own IRT Principles & Guidelines, and its record explains the one-directional pattern of misalignments

The IRT's published membership [archived] tells the essential story briefly: of its eleven members, the overwhelming majority were drawn from, or are professionally aligned with, the governmental, IGO, trademark, and registry interests that have pursued these changes for two decades — including members whose IGO employment is apparent from the correspondence in the IRT's own public archive but who appear on the roster under a "Non-Affiliated" designation that the roster nowhere explains, and a senior official of WIPO — itself an intergovernmental organization within the drafts' own definition of "IGO Complainant," the largest UDRP provider by published cumulative caseload, and a prospective administrator of the new arbitral system — seated among the GAC's representatives. The registry seats belong to a stakeholder group with a declared commercial interest in completing this implementation, which ICANN staff described as work that "serves as a dependency for the release of IGO acronyms currently withheld from registration," alongside "the launch of a post-registration notification system for IGOs" (ICANN staff email to the IRT, 17 November 2025 [archived]). There was **no Registrar Stakeholder Group member and no Non-Commercial Stakeholder Group member**, and — through no fault of the individual members whose sympathies ran toward registrants, but as a matter of structure, numbers, and mandate — **no effective representation of registrant interests**.

That is not merely our characterisation; it is a departure from the rules ICANN has written for implementation review teams and which ICANN staff cited to this IRT on 17 November 2025. The Implementation Review Team (IRT) Principles & Guidelines [archived] provide that, where stakeholder groups are "significantly impacted by the policy implementation," recruitment "should seek to enhance awareness of the effort and the opportunity to participate," and that "[t]o the extent feasible and applicable,

composition of the IRT should be balanced among stakeholder groups" (I.E); that recruitment "may need to reach beyond the working group members to ensure broad participation by **parties directly impacted** by the implementation" (I.C); and that "**IRTs are should be open to all interested parties**" (II.C, quoted as written). A team implementing a policy that alters the remedies available against domain name registrants, containing no registrar and no non-commercial representative, is not balanced among the stakeholder groups significantly impacted by it. The community's most active registrant-side reviewer of this policy area, the undersigned, did not participate.

Routine IRT calls were conducted among members; the ICANN83 sessions were open, but non-members were told that "questions from non-IRT participants will be invited during the final 10 minutes of the session - but not before" (ICANN staff email to the IRT, 6 June 2025 [archived]).

We add one structural observation about disclosure, and make no accusation against any individual. ICANN's Statement of Interest regime asks participants to disclose the entities they represent, but accommodates the professional-confidentiality obligations of the lawyers and consultants who make up much of the community, so a participant may advocate a position without the community being able to identify the client whose interest it serves. A roster that designates members as "Non-Affiliated" without explaining what the designation means compounds the difficulty. The relevance here is narrow: where a process is already unbalanced by the countable measures set out above, participant labels cannot supply the assurance that the roster arithmetic withholds.

The consequences are visible in the record. The mailing-list archive [archived] shows that when the timing of the arbitral election was disputed in late 2025, the IRT's GNSO Council liaison properly took the question to the Council; the Council resolved it on 15 January 2026 in registrants' favor ("at any time… should not be read to limit that ability"); IGO participants then objected in writing — the OECD's position, exchanged with ICANN staff on 20-24 March 2026 and reposted to the IRT list by staff on 7 April 2026 "so that they can be logged in our public archive," being that arbitration "instead of or in parallel of UDRP/URS is entirely separate from the UDRP/URS" and "should not be regulated in UDRP/URS Rules" (IRT list, 7 April 2026 [archived]). The IRT's own GNSO Council liaison reported the position to the Council in these words: "since the passing of the Resolution, IGO representatives within the IRT have voiced strong objections. They contend that allowing access to the new specialized arbitration mechanism before a UDRP or URS determination oversteps the original policy scope and should not be permitted. Neither do they regard the Council Resolution as addressing this scenario" (Council liaison email, 14 April 2026 [archived]). ICANN staff thereupon proposed, on 10 April 2026, the "compromise" now embodied in draft UDRP Rules ¶20(a)(iii) and draft URS ¶13.2.1.3, in terms that leave nothing to interpretation: "The new Arbitral Proceeding exists and can be filed by a registrant at any time after a

UDRP/URS is filed. However, an IGO is not required to consent to resolution via arbitral proceeding until after a UDRP/URS decision is issued" (ICANN staff email to the IRT, 10 April 2026 [archived]). Staff's email of 24 April 2026 records that "although the IRT does not collectively agree on the approach set out in the most recently circulated draft updates, there is support to explore 'Item 2: Additional Proposal regarding IGO Consent to Arbitration'… as a potential compromise" (ICANN staff email to the IRT, 24 April 2026 [archived]). The published drafts thus embody, on staff's own account, a position the IRT never collectively agreed, adopted after the affected interest group objected to a Council resolution that had gone against it. The same archive records that an IRT member proposed dispensing with public comment on these implementation products altogether, "given previous public comment proceedings on the PDP and EPDP Final Reports," and that staff heard no constituency feedback opposing that idea "other than that the NCSG are strongly opposed" (ICANN staff email to the IRT, 7 April 2026 [archived]). Had that proposal carried, the defects catalogued in this submission would have entered the UDRP and URS without the community seeing them at all. In fifteen months of archived correspondence, we find no substantive discussion of registrant due process, the cost of arbitration to respondents, self-represented respondents, or the missing court-proceedings stay (Point 1.1). None of this is new to this implementation. In section 7 of our 23 October 2021 comments [archived] (pages 27-29), we published a quantified analysis of participation in the EPDP that produced these very recommendations, based on the published transcripts of every call: measured by spoken words and excluding ICANN staff, the single registrant-side voice accounted for about 5% of the total, while the WIPO representative alone accounted for nearly three times that; two of the three NCSG members did not speak at all despite attending more than 70% of the meetings; and no member of the Registry or Registrar constituencies participated in the working group. We placed that analysis on the record before the recommendations were adopted. The composition of the implementation review team has now reproduced the same imbalance at the implementation stage.

We fault no individual member: sympathy for registrant interests was present in the room, but structure, numbers, and mandate determine outcomes, and a team without registrar or non-commercial representation cannot replicate what broad participation supplies — the adversarial, line-by-line scenario testing performed by the parties most directly affected. The record bears this out: the defects catalogued in Questions 1-3, including the eliminated court-proceedings stay (Point 1.1), which is visible on a direct comparison of draft ¶4(k)(ii) against Recommendation 3(iii), survived fifteen months of IRT review and were identified from the published drafts by an outside commenter. The remedy is in ICANN's hands for the comment-review phase: see request (i) below.

We request: (i) additional, active, and effective registrant, registrar, and non-commercial representation on the IRT — in numbers sufficient to counterbalance the governmental and IGO-aligned representation documented above, and consistent with IRT Principles I.C, I.E and II.C — before the IRT participates in the review of comments received in this proceeding; (ii) disclosure in the Staff Report of the provenance of the ¶20(a)(iii)/

¶13.2.1.3 consent mechanism, including the March-April 2026 correspondence; and (iii) an explanation, on the record, of why the disagreement staff recorded on 24 April 2026 was resolved by staff drafting rather than escalated to the GNSO Council under IRT Principle V.E, as staff had described the process to the IRT on 17 November 2025.

Point 4.5 — The designation criteria for Arbitral Institutions must be institution-neutral, published, and enforceable before any institution is selected

The neutrality of the Arbitral Institution is the load-bearing wall of this entire construction: it is the body that will administer the only merits review most registrants in IGO cases will ever get. We do not ask ICANN to single out any institution by name, and we make no allegation of actual bias against any candidate. We ask first for institution-neutral safeguards, which follow from Annex A GP 3 and GP 11 and from the ordinary law of arbitral neutrality, and which are the essential ask of this point. The designation criteria requested at Point 1.9(d) should require, for every candidate institution: open and documented selection; published conflict-of-interest and disclosure rules covering the institution itself as well as individual arbitrators; a prohibition on an institution administering a proceeding in which it, or an entity of which it is a constituent part, has an interest; published arbitrator rosters, appointment and challenge procedures; reasoned decisions; periodic performance review; and an express de-designation mechanism. With those safeguards published, the suitability of any candidate becomes a question the community can assess on the record — which is precisely what the present placeholder prevents.

We add a second observation for ICANN org's consideration, and state it as such rather than as a condition. An entity that would itself satisfy the definition of "IGO Complainant" in these Rules is poorly placed to administer Arbitral Proceedings under them. The reason is structural rather than personal: the class of complainants whose conduct these arbitrations exist to review is defined by intergovernmental status and immunity from national courts, and a registrant already deprived of the courts should not be asked to accept, absent published safeguards, a forum administered from within that same class. We note in this connection that the World Intellectual Property Organization is a United Nations specialized agency that appears to fall within the drafts' own "IGO Complainant" definition; that it reports the largest publicly available cumulative caseload of any domain name dispute provider (WIPO statistics [archived]); that it has advocated IGO exemption from Mutual Jurisdiction for over two decades; and that a WIPO official sat on this IRT among the GAC's representatives. We draw no inference of misconduct from any of that, and we do not ask ICANN to exclude any institution by name. We say that these are exactly the circumstances the safeguards above exist to address, and that they should be settled by published rules before an institution is designated, rather than by argument afterwards. Where ICANN org designates an institution that falls within the “IGO Complainant” definition, its reasons should be published.

Point 4.6 — Transition provisions: grandfathering and non-retroactivity

The drafts contain no transition provisions: upon the effective date, every existing gTLD registration — including registrations predating this policy by decades — becomes subject to the new regime through the UDRP’s incorporation into registration agreements. Registrants who acquired and built upon domain names in reliance on the UDRP’s twenty-six-year-old court-access architecture will have the rules changed beneath them. We acknowledge that UDRP ¶9 [archived] contemplates that modifications to the policy become binding on existing registrants after publication, with cancellation of the registration as the registrant’s alternative, and we therefore do not contend that the absence of grandfathering is itself a deviation from the Board-adopted recommendations. We advance it as a transition recommendation, properly directed to the GNSO Council if ICANN org considers it beyond this implementation. We renew the proposals in section 13 of our January 30, 2023 submission [archived]: grandfather existing registrations, or at minimum confine the new framework to registrations (or gTLDs contracted) after the effective date. At the very least, and squarely within implementation, the drafts must specify: prospective application to complaints filed after the effective date; an adequate notice period before that date; no application to proceedings already pending; and registrar and provider training and notice materials, so that registrants learn of the change from something other than a complaint. If ICANN org considers the wider question a policy matter beyond the IRT’s remit, it should say so in the Staff Report and refer it to the GNSO Council — not implement maximum retroactivity by silence.

Point 4.7 — Metrics, reporting, and review

The adopted recommendations are the product of predictions — about IGO filing behavior, registrant responses, arbitration costs, and outcomes — that were contested throughout the policy process. Alignment with the community’s interest in accountable implementation requires that the implementation include measurement: ICANN org should publish, at least annually: the number of UDRP/URS complaints filed by IGO Complainants (and by asserted definitional limb); the number of respondent requests to arbitrate, at each stage; the number of pre-decision requests refused by IGO Complainants (if the consent veto survives, contrary to Points 1.2 and 2.1); arbitration outcomes, durations, and fee ranges; any court proceedings and their disposition; and any findings of abuse of process or RDNH. The existing URS review clause (URS ¶14) demonstrates that review mechanisms are an accepted part of these instruments. Without data, the community will be told in five years — as it is told now — that concerns are hypothetical, by the parties who designed the system so that no data would exist.

Point 4.8 — Cost equity

The GAC's ICANN51 advice urged that curative mechanisms be available "at no or nominal cost to IGOs," and the Board's rationale contemplates ICANN expenditure on external vendors and legal experts to build this system. The party paying to *use* the system's central innovation, however, is the registrant: the drafts require the respondent to pay an unspecified "initial fixed fee" to preserve rights that the current UDRP affords for the cost of a court filing. ICANN's own experience shows the stakes: tribunal costs in its accountability arbitrations have ranged from over US$208,000 (.gcc) through nearly half a million dollars (.XXX) to almost US$1.2 million (.WEB) — with the claimant's own certified claimed legal costs in the .WEB case exceeding US$10.2 million (see Point 1.13 and, for the URS, Point 2.10(b)) — in a forum where, unlike the courts, the parties rather than taxpayers pay for the tribunal. If any party's costs deserve subsidy in a mechanism created because ICANN's policy stripped registrants of effective court access, it is the respondent's. Our specific proposal — that ICANN assume the "taxpayer" role by bearing the tribunal costs of Arbitral Proceedings, with each party bearing its own expenses, exactly as in the courts this framework displaces — is set out at Point 1.13 (mirrored for the URS at Point 2.10(b)), grounded in Annex A General Principles 1 and 5 and in PDP Recommendation 4's recognition that respondent-side financial support must accompany any complainant-side support. At minimum, fees must be fixed, published, and modest, and ICANN should also evaluate a fee-waiver mechanism for natural-person and small-business respondents, mirroring the solicitude the GAC advice extends to IGOs — treaty-based organizations funded by the governments of the world.

Point 4.9 — The stakes: domain names are first-class capital assets, and these are not trivial disputes

Any assessment of the adequacy of this implementation's due process protections must begin from an honest account of what is at stake. Domain names are not incidental digital ephemera; they are, in the modern economy, capital assets of the first rank — recognized as property by the courts (see [*Tucows.Com Co. v. Lojas Renner S.A.*, 2011 ONCA 548] [archived], in which the Court of Appeal for Ontario held, for jurisdictional purposes, that a domain name is intangible personal property situated in the registrant's jurisdiction), carried on corporate balance sheets, and traded at values that rival significant real estate. In the period since the UDRP was adopted: Gannett Co., Inc.'s [Form 10-K for fiscal year 2014] [archived], filed with the U.S. Securities and Exchange Commission, recorded the Cars.com trade name, upon its acquisition, as an indefinite-lived intangible asset valued at **US$872 million**; the LasVegas.com domain name was placed under a 2005 lease-to-own agreement with scheduled payments totaling approximately **US$90 million over 35 years** if continued to term, per the payment schedule disclosed in [VEGAS.com, LLC's consolidated financial statements] [archived] filed with the U.S. Securities and Exchange Commission (Note 7:

US$12,000,000 upon execution in June 2005, followed by escalating monthly payments through June 30, 2040 — see our running payment calculator [archived], which tracks the cumulative amount paid to date and collects the documentary record); the AI.com domain name changed hands in 2025 for **US$70 million**, widely reported [archived] as the largest publicly reported domain name transaction in history — and its buyer has publicly stated [archived] that he was offered more than **US$500 million** for the name shortly after closing — a figure we report as the buyer's own account rather than as an independently verified valuation — surpassing the **US$30 million** in cash that Block.one paid for Voice.com in 2019, a price disclosed in the seller's filings with the U.S. Securities and Exchange Commission [archived] ("MicroStrategy sold the Voice.com domain name for $30 million in cash"). An unknowable number of comparable transactions have closed privately, under non-disclosure, without ever appearing in public sales charts. Our own company's portfolio of dictionary-word domain names, held and developed in good faith for more than two decades, is worth many millions of dollars.

Three consequences follow for this proceeding. **First**, the asymmetry of irreparable harm described at Point 1.1(f) scales with these values: a wrongly transferred domain name is not a modest administrative error to be regretted, but the uncompensated deprivation of what may be a party's single most valuable asset — permanently, given the immunity-driven one-way ratchet described there. **Second**, the fee architecture criticized at Points 1.13 and 2.10(b) must be assessed against these stakes: where the asset is worth eight or nine figures and the substitute forum's costs are unbounded and privately funded, arbitration-by-attrition is not a hypothetical risk but the dominant strategy for any well-resourced complainant — and IGO Complainants, funded by the treasuries of the world's governments while seeking "no or nominal cost" access for themselves, are the most consistently well-resourced complainant class ever admitted to these procedures. **Third**, the standing test the drafts implement (see Points 3.5 and 1.11) reaches exactly this asset class: the most valuable domain names on Earth are short dictionary words and two- and three-letter strings — AI.com is itself a two-letter string — and short acronyms are precisely what IGO identifiers consist of, a collision we have warned about since 2007 (George Kirikos, "Short Domain Names Threatened by Proposed Policy on IGO Dispute Resolution Procedure," CircleID, 2 October 2007 [archived]). Nearly every such string carries multiple non-infringing meanings and uses; that is the very reason these assets command such prices, and the very reason a summary procedure with a lightweight "public activities" standing test is so dangerous in the hands of complainants that would prefer to obtain an asset through a dispute procedure rather than pay its market price.

If this seems fanciful, consider a name the whole community knows. The Amazon Cooperation Treaty Organization (ACTO) — established by treaty among eight South American states and possessed of international legal personality — appears capable of satisfying the organizational limb of the drafts' definition of an "IGO Complainant," and "Amazon" is an identifier ACTO uses in conducting public activities in accordance with its stated mission. We offer what follows as a jurisdictional stress test of the *process*, not as a prediction about the merits: we do not suggest that such a complaint would or should succeed against a company with Amazon.com, Inc.'s manifest rights and legitimate interests, and the three-part test of UDRP ¶4(a) would remain to be satisfied. The point is what the drafts provide if a panel gets such a case wrong. The community has already watched ACTO's member governments contest "Amazon" with Amazon.com, Inc. for the better part of a decade in the .AMAZON top-level domain dispute [archived]. Under these drafts, nothing would prevent ACTO from filing a UDRP against the Amazon.com domain name itself: it would owe no submission to any court's jurisdiction; it could assert immunity against any suit the company filed; and if the company lost before a panel, its only recourse would run through an arbitral system whose administrators, rules, and fees no one has seen, applying a law of ACTO's choosing, with no integrity review and no court behind it. Amazon.com, Inc. would never accept that its flagship asset be adjudicated on those terms — it would demand precisely the safeguards this submission proposes: a genuine stay, real judicial review or its true equivalent, published rules, neutral tribunal funding, and an integrity check against fraud. Every registrant is entitled to the same protections the most powerful registrant on the Internet would insist upon; rules must be written for the case where the complainant is wrong, because that is the only case in which rules matter. (We first raised the Amazon scenario in section 14 of our January 30, 2023 comments [archived].)

Predictions of this kind are routinely dismissed as fanciful — until they occur. When ICANN removed the price caps from the .ORG registry agreement in 2019, the undersigned was the only commenter to warn that the change invited a private-equity takeover of the .ORG registry (point 6 of our submission in that proceeding, recounted in the introduction to our January 30, 2023 comments [archived]). Within months, the Internet Society agreed to sell the Public Interest Registry — and with it the .ORG registry and its revenue stream — to Ethos Capital, a private-equity firm formed for the purpose, in a transaction whose price the Internet Society did not disclose in its announcement [archived] and subsequently confirmed, at a members' webinar recounted in its Board's own account of the sale [archived], as approximately US$1.135 billion. The transaction was abandoned in 2020 only after ICANN withheld its consent amid broad community opposition, including an inquiry by the California Attorney General (ICANN Board resolutions, 30 April 2020 [archived]). A contractual change that ICANN had presented as routine turned out to be worth more than a billion dollars to the party on the other side of it — which is the point: the community was assured the change was technical, and the warning that it was not came from a single commenter reading the fine print.

Nor was .ORG an isolated call. Let us not forget that it was the same critical eye that flagged, in 2006, how seemingly slight changes to draft registry agreements would have permitted unlimited, tiered pricing of domain renewals in .BIZ, .INFO and .ORG — a warning that ignited community outrage, drew thousands of opposing comments, and preserved uniform pricing with price caps; that helped lead the opposition to Verisign's

SiteFinder wildcard — including a petition gathering more than 20,000 signatures — until it was withdrawn; that helped defeat the "Expedited Transfer Reversal Policy," which would have let "seller's remorse" unwind legitimate secondary-market transfers; and that, in the recent Transfer Policy Review, helped preserve the "Losing FOA" safeguard against domain theft. Each of these episodes is recounted, with references, at pages 4-5 of our January 30, 2023 comments [archived]. The community should weigh our warnings about IGO overreach against that track record: we read the fine print, our alarms have repeatedly proven correct, and the cost of ignoring them has been borne, every time, by registrants.

We put the point plainly, because no one inside this process has: an asset class in which single transactions reach US$70 million — and single valuations approach a billion dollars — is being made subject to a procedure in which a decision can issue in days, on paper, from a single examiner, for a filing fee of a few hundred dollars; in which the losing registrant's path to a real court is structurally foreclosed by the complainant's immunity; and in which the only remaining review runs through an arbitral system whose administrators, rules, and fees are, as of this public comment period, unwritten. Property rights of this magnitude are protected, everywhere else in the developed world, by exactly the institution this framework is engineered to avoid: independent courts, applying national law, with appeals. Domain names must not be relegated to a lesser class of property than any other multi-million-dollar asset, and their owners must not be relegated to a lesser class of due process. There is a further inference to draw from these values, developed at Point 4.11: the safeguards these drafts remove are safeguards that only a resisting registrant ever invokes, and only a registrant with something worth defending resists. A cybersquatter does not seek a stay, elect arbitration, or challenge an award. The architecture is therefore calibrated for contested cases over valuable names — which is precisely the class in which the protections have been thinnest. As we wrote in our 23 October 2021 comments [archived] (item 17 of the twenty enumerated objections): it is precisely "when creatures of government… seek to take what they can" that "innocent domain name registrants need the protection of the courts the most."

Point 4.10 — Free expression and due process: the stakes of getting this implementation wrong

Domain names are speech platforms as well as property. The identifiers this regime covers — short acronyms and words used by IGOs "to conduct public activities in accordance with [their] stated mission" — overlap pervasively with lawful commentary, criticism, scholarship, and ordinary commerce. The complainants it empowers are treaty-based public international organizations asserting immunity from every national court. The mechanism it substitutes for judicial review will operate, if the defects identified above are not corrected, as: a summary administrative decision; followed by a transfer or continuing suspension notwithstanding pending litigation (Point 1.1) — a transfer which, once made to an immunity-asserting IGO, is as a practical matter irreversible (Point 1.1(f)); reviewable only in a forum whose rules, fees, and administrators are unknown (Point 4.3), entered through a ten-day window disclosed after it opens (Point 2.3), on payment of an unspecified fee (Point 4.8), applying law selected by the adverse party (Points 1.8, 2.5), limited to re-running the UDRP criteria (Point 1.10), with no abuse-of-process remedy (Points 2.6, 3.4) and no court behind it. Article 8 of the Universal Declaration of Human Rights speaks of "an effective remedy by the competent national tribunals"; Article 17(2) provides that "[n]o one shall be arbitrarily deprived of his property." We do not contend that these instruments bind ICANN as they bind states, nor that private arbitration is incapable of being a fair remedy. We invoke them as the design principles they are — principles ICANN has itself adopted into its Bylaws, which commit it to respect internationally recognized human rights in carrying out its Mission (§1.2(b)(viii)), to consistent, neutral, objective and fair decision-making (§1.2(a)(v)), and to a decision-making process that reflects a reasonable balance among affected stakeholders (§1.2(b)(vii)) (ICANN Bylaws [archived]). For twenty-six years, UDRP ¶4(k) has been the safety valve that reconciled ICANN's private dispute system with those principles — as Professor Wendy Seltzer wrote in 2003 [archived], "the possibility of appeal to national courts is no minor detail, but part of the balance keeping domain name disputes in check." The adopted recommendations already narrow that valve for IGO cases; the draft implementation, through the accumulation of "small" deviations catalogued in Questions 1-3, closes it. ICANN org's obligation at this stage is modest but non-negotiable: implement what was adopted, all of what was adopted, and nothing beyond what was adopted.

Point 4.11 — Balanced alternatives exist and were set aside; what that choice reveals about the cases this mechanism is built for

Consider which cases actually need this architecture. The stated justification for the entire framework is the recovery of domain names registered and used in bad faith to exploit an IGO's name or acronym — the indefensible case. But the indefensible case has never required any of what is being built here. Those disputes are resolved today, under the existing UDRP and URS, and they are resolved overwhelmingly by default: a registrant with no answer does not file a response, does not commence court proceedings, does not pay to arbitrate, and does not appear anywhere near a courtroom. That is why the immunity problem, in the class of cases the framework is said to target, is very largely a theoretical one — a registrant who will not defend an administrative proceeding costing nothing will not sue an intergovernmental organization in a foreign court.

It follows that the protections this implementation removes have no practical value against a cybersquatter, because a cybersquatter never invokes them. A stay pending court proceedings (Point 1.1), an election the complainant cannot veto (Point 1.2), a choice of law not made by one's opponent (Point 1.8), an integrity check on an award procured by fraud (Point 1.12), a remedy proportionate to the wrong (Point 1.14) —

every one of these matters only to a registrant who does resist: one who believes, rightly or wrongly, that it holds the name legitimately, and whose name is valuable enough to be worth the cost of resisting. A design is calibrated for the cases in which its provisions bite. On that measure, the drafts before the community are calibrated not for clear cases but for contested ones, over names worth fighting for.

The same inference arises from what has been declined. Balanced alternatives have been on the table for years and would have met the need the IGOs themselves articulated. Their core requirement, as their own representative put it at the EPDP's first meeting, was to participate without waiving immunity at any point; the "Notice of Objection" model described below delivers exactly that, while leaving the registrant's court access intact. The 2018 PDP's assignee, agent and licensee filing routes deliver a workable path as well, with both parties in their ordinary legal positions. Neither alternative was adopted. A party that declines mechanisms which fully satisfy its stated need, in favour of one that additionally removes the other side's safeguards, has disclosed something about its objectives that no assurance in a policy document can offset.

We make no allegation of bad faith against any particular organization, and we accept that most IGO filings to date have been unremarkable. Nor do we suggest that every objection to a safeguard betrays an improper motive: safeguards carry real administrative costs, and delay, expense, and the potential for abuse are legitimate concerns that Annex A itself recognises (GP 2, GP 5). The inference we draw is about consequence rather than motive, and it is the one that matters for this proceeding: **an implementation must be tested against the contested case, because in the uncontested case none of its safeguards is ever invoked.** A design assessed only against the defaulting cybersquatter will appear to work perfectly, while telling the community nothing about how it performs in the only cases in which it is asked to do anything at all.

There is a corollary we offer constructively. Those corrections in Questions 1 and 2 that simply restore adopted wording — the court-proceedings stay, the notice language, the "any decision" information requirement, the choice-of-law formulations, the URS attestation — impose no burden on the merits of a complainant with a clear case. A registrant with no answer does not commence court proceedings, so a stay conditioned on official documentation of a lawsuit is never triggered against a genuine cybersquatter. Those corrections can therefore be adopted by anyone whose object is the recovery of names registered and used in bad faith, at no cost to that object. Other requests in this submission — a published fee structure, an integrity mechanism, a complete arbitral package — do carry administrative cost, and we do not pretend otherwise; we say those costs are modest against the consequences of an erroneous and irreversible transfer.

We have never argued that IGOs should be left without effective curative tools against genuine cybersquatting; we have argued — with the support of the original PDP's consensus — that those tools must not be built out of registrants' rights. Our October 23, 2021 submission [archived] (pp. 15-20) detailed a "Notice of Objection" mechanism, modeled on the Civil Resolution Tribunal of British Columbia, under which: an IGO could file a UDRP/URS **without waiving immunity at any point** (the feature the OECD's own representative identified as the IGOs' core need at the EPDP's first meeting); a dissatisfied respondent could render the administrative decision unenforceable by posting a meaningful objection fee; and any further proceedings would occur in court **with the parties in their natural roles** — IGO as plaintiff — eliminating the "role reversal" that creates both the immunity quirk and the UK cause-of-action problem. The EPDP's own Public Comment Review Tool recorded that the team "agreed to remain open to this option following its review of all other comments"; it never returned to it. We do not re-argue that design here and do not ask ICANN org to adopt it at the implementation stage: if the Council reopens the architecture, our 2021 proposal remains in the public record, and we remain willing to assist any ICANN body in developing it.

CONCLUSION

Our answers to the proceeding's questions are: **Question 1: Yes** (fifteen numbered changes); **Question 2: Yes** (eleven numbered changes); **Question 3: Yes** (six numbered changes); with additional feedback at Points 4.1-4.11. The consistent theme is not subtle. Where the Board-adopted texts gave registrants something — a stay pending court proceedings (Recommendation 3(iii)), an "at any time" election (Recommendation 2(b)(iii), as confirmed by the GNSO Council), an unconditional IGO commitment to arbitrate (Recommendations 3(i)/4(i)), a fixed and anchored choice-of-law menu (Recommendation 5), party-neutral abuse protections and cost discipline (Annex A) — the drafts take it away, dilute it, or defer it to documents that do not exist. Where the adopted texts gave IGOs something, the drafts deliver it fully and add more. ICANN org's task at the implementation stage is fidelity. We emphasise, because the Staff Report should record it accurately, that we are not asking anyone to reopen settled policy: we are asking that the adopted words be applied as written, and that where they cannot be, the question be returned to the bodies competent to answer it rather than resolved by whoever holds the pen (Point 4.2). And we note the corollary developed at Point 4.11: the corrections that restore adopted wording cost nothing to a complainant pursuing an indefensible registration, because the safeguards at issue are invoked only by registrants who resist — which is also why an implementation cannot be assessed against defaults alone. One point of method, because it determines whether this submission is answered or merely absorbed. Where we have identified a defect **and** proposed text to cure it, the two are severable and must be addressed separately. The most consequential example is Point 1.1: the elimination of Recommendation 3(iii)'s court-proceedings stay is a defect whether or not our proposed replacement is well drafted, and a criticism of our drafting is not an answer to the omission. The same applies wherever we have offered operative language. We have volunteered the weaknesses we found in our own text precisely so that they are corrected rather than used, and we ask that the Staff Report not record a defect as resolved on the basis that the commenter's proposed cure was imperfect.

We ask that each deviation identified above be corrected, that the completed package be republished for comment, and that the Staff Report address each numbered point individually. Where a point identifies a difficulty that implementation has exposed but cannot itself cure, we ask only that it be answered on the record and, where ICANN org concludes that faithful implementation is not possible, that the question be referred to the GNSO Council under the escalation procedure ICANN has written for implementation review teams, rather than resolved by silence at the drafting table. Where a point identifies adopted words that the drafts have changed, omitted, or narrowed, no such discretion arises: the adopted text says what it says.

Respectfully submitted,

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APPENDIX A — Recurring drafting traps in this package, and the tests that catch them

The provisions at issue are unusually easy to draft badly, for a reason worth naming: they govern a sequence of proceedings in different forums, under different legal systems, administered by a party — the registrar — that is not a tribunal and must act on documents alone. Formulations that read naturally in isolation fail at the joins.

We include this appendix for two reasons.

The first is transparency about our own method. This submission proposes text; text of this kind is easy to get wrong; and we got it wrong ourselves, more than once, before arriving at what we now propose. We make no claim that what we now propose is free of the same faults. Rather than present a finished product and ask the community to take it on trust, we set out how provisions of this kind fail, identify which of those failures were ours, and leave the record of our corrections visible — including in the commentary we published before filing, which we annotated rather than quietly revised. A reader is entitled to see how a proposal was arrived at, and to test the reasoning rather than the assertion.

The second is that these traps will recur, and the community gains nothing by discovering each of them twice. The same problems will arise in the reconciliation with the RPM Phase 1 updates (Point 2.9), in the arbitral rules that remain to be written (Point 1.9), in the audit of URS §13.2 we ask for at Point 2.7, and in every future implementation that sequences an administrative procedure with a judicial or arbitral one. A checklist costs nothing to publish and may spare a good deal of work later — and it has the incidental merit of making the traps visible to everyone, so that a provision which falls into one in future must be explained rather than merely drafted. We assume throughout that every instance in the present package was fallen into rather than laid; the checklist serves equally well either way.

The list follows. Where we fell into a trap ourselves, we say so.

1. Terminal conditions scoped to a proceeding rather than to the dispute. The existing ¶4(k)(i) ends a stay upon events describing the fate of one court case. That enumeration is complete for one forum and incomplete for two: after a court declines, an arbitration may follow, so "dismissed or withdrawn" no longer signifies that anything is over. *Test:* does the ending describe what happened to a proceeding, or the state of the dispute? Only the second is safe where more than one forum is available. **We fell into this**, by carrying ¶4(k)(i)'s endings into our first proposed text and attaching provisos to them.

2. Positive enumeration of exits. Any closed list of the ways a dispute may end will omit something, and in a default-implementation rule whatever is omitted resolves against the registrant, irreversibly. *Test:* state what is **not** a final resolution, make the statement expressly non-exhaustive, and require affirmative evidence of final resolution before the irreversible step may be taken. A negative list is only open-ended if the text says it is; a bare list of three or four circumstances, however broadly drawn, will otherwise be read as a closed one, and silence will be taken for permission. **We fell into this as well**, and it is why our first text grew provisos faster than it closed gaps.

3. "Within N days" where a floor is required. A provision that a registrar "shall implement within five business days" permits implementation on day one, and enlarging N changes nothing. Protective periods must say "shall **not** implement **before**," with any maximum stated separately. The existing ¶4(k) gets this right; draft Policy ¶3(g), Rules ¶20(i)(i) and ¶20(e)(ii) do not (Point 1.15(n)).

4. Requiring the registrar to characterise a foreign order. Whether a court declined "on the basis of privileges and immunities," reached the merits, or dismissed on some other ground is a question of law under a foreign system. Registrars are not competent to answer it, are not compensated for doing so, and face liability either way, so they will resolve doubt in favour of the safest course for themselves. *Test:* distinguish an order's **operative direction** concerning the domain name, which registrars have identified under Policy ¶3(b) since 1999, from the **grounds** of the disposition, which they should never be asked to classify.

5. Triggers keyed to the identity of the defendant. Recommendation 3(iii) specifies where proceedings must be brought, not against whom. A trigger drafted as “a lawsuit against the IGO Complainant” excludes in rem proceedings against the domain name and proceedings against the registry operator — the very routes that an immunity defence makes attractive. *Test:* key the trigger to subject matter and forum, as the adopted text does. **We fell into this too.**

6. Receipt windows drafted as intervals rather than as deadlines. Requiring documentation to be received “**during** that ten business day period” penalises the registrant who acted early: one who commenced proceedings before the decision issued and sent the registrar the filed copy at the time has satisfied every purpose the provision serves, yet its documentation was received before the period opened rather than during it, and on a literal reading it must send the same document again or lose the stay. The condition a protective window should impose is a **deadline, not an interval**: the registrar must hold the documentation **before the end of** the window, whenever it happened to arrive. Nor does the adopted text require the underlying proceeding to have been commenced within the window — only that the registrar be in possession of the documentation in time. *Test:* rewrite every “within N days” receipt condition as “the Registrar has received … before the expiry of the N-day period,” and then ask whether a registrant who supplied the document a month early still satisfies it.

7. States with no defined exit. Draft Rules ¶20(e)(iv) locks a domain name on receipt of a request to initiate an Arbitral Proceeding and lists the events on which the Registrar may act — none of which occurs if the Institution declines to commence, or if, under ¶20(a)(iii), the IGO Complainant withholds consent. *Test:* for every state a provision creates, enumerate each way it can end and confirm that each has a release event; where one is missing, ensure the default is the recoverable outcome rather than the irreversible one.

8. Bounds that penalise a permitted procedural correction. A registrant whose claim is dismissed for want of jurisdiction or improper venue may lawfully commence again in a competent court: such a dismissal does not adjudicate the merits, although it may carry preclusive consequences on the point actually decided, and limitation or abuse-of-process rules may in some circumstances bar the fresh claim. A contractual rule that forfeits the stay in that situation is stricter than the law it sits beside, and falls hardest on self-represented registrants. *Test:* does the provision punish something the general law expressly permits to be corrected?

9. Identifying proceedings by case number, or evidencing them from the docket. An appeal reliably acquires a new number, often in a different court and under a different title; a case transferred or recommenced in a competent court does the same. A rule that tracks dockets will therefore treat the continuation of a dispute as a fresh proceeding, and — worse — a registrant who has done everything right will appear to the registrar to have abandoned the case it actually won the right to continue. **We fell into this ourselves.** One of the formulations we drafted while developing Point 1.1

identified a pending proceeding by its case number and proposed to evidence continued pendency by a docket extract. It failed on both counts: the number changes on appeal, and the docket of a slow or congested court shows nothing for long periods even where the case is very much alive (see trap 10). We abandoned that approach for the negative, dispute-scoped definition now proposed. *Test:* define a proceeding by its line of proceedings, expressly including appeal, review, rehearing, remand and continuation after transfer, "whether or not it bears a different case number," and evidence it by what a **party** has filed rather than by what a docket displays. Appellate filings identify the decision below on their face, so the linkage remains clerical.

10. Foreign procedural activity used as a proxy for a party's intent. A test keyed to docket inactivity measures the court's speed, not the litigant's diligence: in congested jurisdictions a live case can show nothing for a year, and a case set down for hearing two years ahead shows one entry and then silence. Since Recommendation 3(iii) permits the registrant to sue in its own location, such a test makes the outcome depend on nationality. *Test:* ask what a **party** has done, which is comparable across systems, rather than what a court has done, which is not.

11. Mechanisms that run in one direction only. A provision allowing one party to bring a state to an end, with no counterpart for the other, strands the second party whenever the first does nothing. **We fell into this**: an earlier formulation of ours allowed an IGO Complainant to end a stay by certificate and gave the registrant no means of releasing a lock after winning.

12. Rights to compel a response, without preconditions or limits. Any right to require the other side to answer is a right to impose cost, and will be used that way. *Test:* pair every such right with a documentary precondition, a frequency cap, and a consequence for misuse; ensure that failure to respond produces a rebuttable presumption rather than an irreversible result; and apply the same limits to both parties. **We fell into this**: an earlier formulation of our own Status Request had the frequency cap and neither of the other two, and treated silence as conclusive.

13. Borrowing the vocabulary of the substantive test in a clause that only identifies subject matter. Writing "the registration **or** use of the domain name" in a scope clause risks confusion with the disjunctive formulation long sought in place of the UDRP's conjunctive requirement of registration **and** use in bad faith. It does not alter ¶4(a)(iii) as a matter of law, since the phrase is not attached to the bad-faith element — but a phrase contested for two decades should not be introduced where it does no work. *Test:* say "concerning the domain name(s)," and keep element language for the elements.

14. Defined terms that collide with ordinary usage, and cross-references that confer power on the wrong body. "Provider" and "Arbitral Institution" are both defined as "a dispute-resolution service provider," and draft Policy ¶10(b) is headed "Selection of Provider" although it concerns the Arbitral Institution. Draft Rules ¶20(h)

(ii) confers a redaction discretion by cross-reference to Policy ¶4(j), which gives that discretion to the Administrative Panel and not to the Arbitral Panel. *Test:* read every cross-reference through to the provision it invokes, and confirm that the body named there is the body intended.

15. Directing a party to maintain a state that may not exist. Draft URS §13.2.7.4 directs the Registry Operator to "maintain the suspension of the domain name as instituted pursuant to section 10" following an Arbitral Proceeding in which the IGO Complainant prevails — but where the arbitration preceded any Determination, no section 10 suspension exists to maintain (Point 2.7). *Test:* for each instruction, ask whether the state it presupposes exists on every path that can reach it.

We do not suggest that this list is complete. It is the product of testing our own text as well as the drafts, over a compressed comment period, and it is offered in the expectation that registrars in particular — who would operate these provisions, and who have no member on the Implementation Review Team — will identify further traps that neither we nor ICANN org has caught.

KEY SOURCES

All external documents cited in this submission, with archival fallback links. Sub-grouped for convenience; item numbers are for reference in the Public Comment Summary Report.

A. This proceeding

1. Proceeding page and draft documents (30 June 2026): https://www.icann.org/en/public-comment/proceeding/proposed-implementation-of-the-igo-ingo-curative-rights-policy-recommendations-30-06-2026 [archived]

B. Adopted policy, ICANN governance records, and foundational UDRP documents

1. EPDP Final Report (2 April 2022), including Annex A: https://gnso.icann.org/sites/default/files/file/field-file-attach/epdp-specific-crp-igo-final-report-02apr22-en.pdf [archived]
2. PDP Final Report (17 July 2018): https://gnso.icann.org/sites/default/files/file/field-file-attach/igo-ingo-crp-access-final-17jul18-en_0.pdf [archived]
3. ICANN Board Approved Resolutions 2023.04.30.08-10 (30 April 2023): https://www.icann.org/en/board-activities-and-meetings/materials/approved-resolutions-regular-meeting-of-the-icann-board-30-04-2023-en [archived]
4. ICANN Board Minutes and Rationale, 30 April 2023, section 2.c: https://www.icann.org/en/board-activities-and-meetings/materials/minutes-regular-meeting-of-the-icann-board-30-04-2023-en#section2.c [archived]

5. GNSO Council Resolution, 15 January 2026 (Motion 20260115-2): https://gnso.icann.org/en/council/resolutions/2020-current#202601 [archived]
6. GNSO Council Resolution 20190418-3 (18 April 2019): https://gnso.icann.org/en/council/resolutions/1999-2019 [archived]
7. ICANN Bylaws (including Section 1.2 Commitments and Core Values, Section 3.1, and Annex A, Section 10 on Implementation Review Teams): https://www.icann.org/en/governance/bylaws [archived]
8. ICANN, “Implementation Review Team (IRT) Principles & Guidelines” (Annex L of the GNSO Policy & Implementation Working Group Final Recommendations) — III.B (IRT is not a forum for revisiting policy), V.E (escalation to the GNSO Council), I.C/I.E (recruitment and balanced composition), II.C (open to all interested parties), V.B (transparency), V.G: https://itp.cdn.icann.org/en/files/consensus-policy-implementation/irt-principles-guidelines-23aug16-en.pdf [archived]
9. Uniform Domain Name Dispute Resolution Policy (as of 1 January 2020), including ¶4(a), ¶4(j), ¶4(k) and ¶9: https://www.icann.org/en/contracted-parties/consensus-policies/uniform-domain-name-dispute-resolution-policy/uniform-domain-name-dispute-resolution-policy-01-01-2020-en [archived]
10. ICANN, Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (24 October 1999) — ¶4.1(c) (“minimalist in its resort to mandatory resolution”; disputes otherwise “left to the courts”) and ¶¶4.7-4.8 (parity of appeal; Mutual Jurisdiction and ¶4(k) as an integrated solution): http://archive.icann.org/en/udrp/udrp-second-staff-report-24oct99.htm [archived]

C. IRT records (the IRT’s own public archive)

1. IRT wiki: https://icann-community.atlassian.net/wiki/spaces/ICRIRT/overview [archived]
2. IRT published membership: https://icann-community.atlassian.net/wiki/spaces/ICRIRT/pages/109576836/Members [archived]
3. IRT mailing list archive (March 2025 - August 2026): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/ [archived]
4. ICANN staff to IRT, 17 November 2025 (implementation “serves as a dependency for the release of IGO acronyms currently withheld from registration”; staff rationale for the two-trigger reading): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/Y5APVVOIS4BL6UAABGHURYAHLWF2KQQU/ [archived]
5. ICANN staff to IRT, 6 June 2025 (non-IRT participants restricted to “the final 10 minutes of the session - but not before”): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/ERBGSDHW3N3FW7ZI7G5SFLUXTALPYMMM/ [archived]

6. ICANN staff to IRT, 7 April 2026 (IGO correspondence reposted for the public archive; options paper; an IRT member's proposal to dispense with public comment, opposed by the NCSG): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/E23SNFVPOGXFVJHZHRA42KYQT4ZUXTYR/ [archived]
7. ICANN staff to IRT, 7 April 2026 (meeting materials; "In the absence of a clear IRT consensus on an alternative, ICANN org will proceed on that basis"; public comment discussion): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/KQVI3QTAOL3LVXORQFFYQU42YME2Y2YX/ [archived]
8. GNSO Council liaison to the GNSO Council, 14 April 2026 (IGO objections to the Council's resolution, forwarded to the IRT list): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/U4YH73PZZKDZSEY2W64FF7BZATVIRSJ3/ [archived]
9. ICANN staff to IRT, 10 April 2026 ("Item 2: Additional Proposal regarding IGO Consent to Arbitration" — the origin of the consent carve-out): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/BQFCG2W2IDBDAGQSWY3DVOR2M5VWFWMC/ [archived]
10. ICANN staff to IRT, 24 April 2026 ("although the IRT does not collectively agree on the approach set out in the most recently circulated draft updates…"): https://lists.icann.org/hyperkitty/list/igo-ingo-curative-rights-irt@icann.org/thread/6PMGNHQJFWWE4OZ4KM6VYULTVXEIZSBS/ [archived]

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1. UNCITRAL Model Law on International Commercial Arbitration (Article 34): https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration [archived]
2. UNCITRAL, status of the Model Law on International Commercial Arbitration (legislation based on or influenced by the Model Law in 93 States, 127 jurisdictions): https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status [archived]
3. Arbitration Act 1996 (England), sections 68-69: https://www.legislation.gov.uk/ukpga/1996/23/section/68 [archived]
4. *Jam v. International Finance Corporation*, 139 S. Ct. 759 (2019) — the International Organizations Immunities Act confers only the restrictive immunity available to foreign sovereigns under the FSIA: https://www.supremecourt.gov/opinions/18pdf/17-1011_mkhn.pdf [archived]

E. The record of ICANN-adjacent arbitration

1. ICM v. ICANN (.XXX) IRP documents page (including the Independent Review Panel Declaration of 19 February 2010): https://www.icann.org/resources/pages/icm-v-icann-2012-02-25-en [archived]

2. GCC v. ICANN (.gcc) IRP, Final Declaration as to Costs (15 December 2016): https://www.icann.org/en/system/files/files/irp-gcc-final-declaration-costs-15dec16-en.pdf [archived]
3. Afilias Domains No. 3 Ltd. v. ICANN (.WEB) IRP, Final Decision (May 2021, redacted): https://www.icann.org/en/system/files/files/irp-afilias-final-declaration-redacted-25may21-en.pdf [archived]
4. Afilias (.WEB) IRP, Claimant’s Costs Submission (corrected, 12 October 2020): https://www.icann.org/en/system/files/files/irp-afilias-claimants-cost-submission-12oct20-en.pdf [archived]
5. ICANN Board Approved Resolutions, Special Meeting of 16 January 2022 (Resolution 2022.01.16.13, .WEB IRP reimbursements): https://www.icann.org/en/board-activities-and-meetings/materials/approved-board-resolutions-special-meeting-of-the-icann-board-16-01-2022-en [archived]
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7. Kirikos, “Arbitration costs would be HIGHER than court costs” (22 November 2017, original PDP mailing list): https://lists.icann.org/hyperkitty/list/gnso-igo-ingo-crp@icann.org/thread/WS5OLSN6YT6J76X2B43REERQYNYTVERD/ [archived]

F. Arbitral fraud, corruption, and integrity record

1. The Federal Republic of Nigeria v. Process & Industrial Developments Ltd [2023] EWHC 2638 (Comm) — judgment of Robin Knowles J, 23 October 2023 (awards procured by fraud; s.68(2)(g)): https://www.judiciary.uk/wp-content/uploads/2023/10/Nigeria-v-PID-judgment.pdf [archived]
2. Pinsent Masons summary of the Nigeria v. P&ID judgment: https://www.pinsentmasons.com/out-law/news/uk-judge-overturns-11-billion-award-against-nigeria-corruption [archived]
3. Vento Motorcycles, Inc. v. United Mexican States, 2025 ONCA 82 (CanLII), 4 February 2025 (award set aside for reasonable apprehension of bias): https://www.canlii.org/en/on/onca/doc/2025/2025onca82/2025onca82.html [archived]
4. Blakes summary of Vento Motorcycles v. Mexico: https://www.blakes.com/insights/a-reasonable-apprehension-ontario-court-of-appeal-sets-aside-arbitral-award-due-to-bias/ [archived]
5. Peruvian arbitrators and lawyers ordered into preventive detention in the Odebrecht investigation, and the appellate reversal as to eight of them (Kluwer Arbitration Blog, 10 December 2019): https://legalblogs.wolterskluwer.com/arbitration-blog/mixing-righteous-and-sinners-summary-of-the-odebrecht-corruption-scandal-and-the-peruvian-jailed-arbitrators/ [archived]
6. Chevron Corp. v. Donziger, 833 F.3d 74 (2d Cir. 2016), affirming the district court’s findings that the Ecuadorian judgment was procured by fraud: https://

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8. Chevron and TexPet v. Ecuador (II), PCA Case No. 2009-23, Second Partial Award on Track II (30 August 2018): https://pcacases.com/web/sendAttach/2453 [archived]
9. Chevron and TexPet v. Ecuador (II) — case record at italaw: https://www.italaw.com/cases/257 [archived]
10. ICC Commission on Arbitration and ADR, "Red Flags or Other Indicators of Corruption in International Arbitration" (1 November 2024): https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/red-flags-or-other-indicators-of-corruption-in-international-arbitration/ [archived]
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G. Domain names as property, and domain name valuations (Points 4.9)

1. Tucows.Com Co. v. Lojas Renner S.A., 2011 ONCA 548 (CanLII): https://www.canlii.org/en/on/onca/doc/2011/2011onca548/2011onca548.html [archived]
2. Gannett Co., Inc., Form 10-K for fiscal year 2014 (SEC EDGAR; Cars.com trade name recorded at US$872 million): https://www.sec.gov/Archives/edgar/data/39899/000003989915000006/gci-20141228x10k.htm [archived]
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5. "GetYourDomain.com Brokers the $70 Million Sale of AI.com" (PR Newswire via Yahoo Finance, 9 February 2026): https://finance.yahoo.com/news/getyourdomain-com-brokers-70-million-123000237.html [archived]
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2. ICANN list of approved UDRP dispute resolution service providers: https://www.icann.org/resources/pages/providers-6d-2012-02-25-en [archived]

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