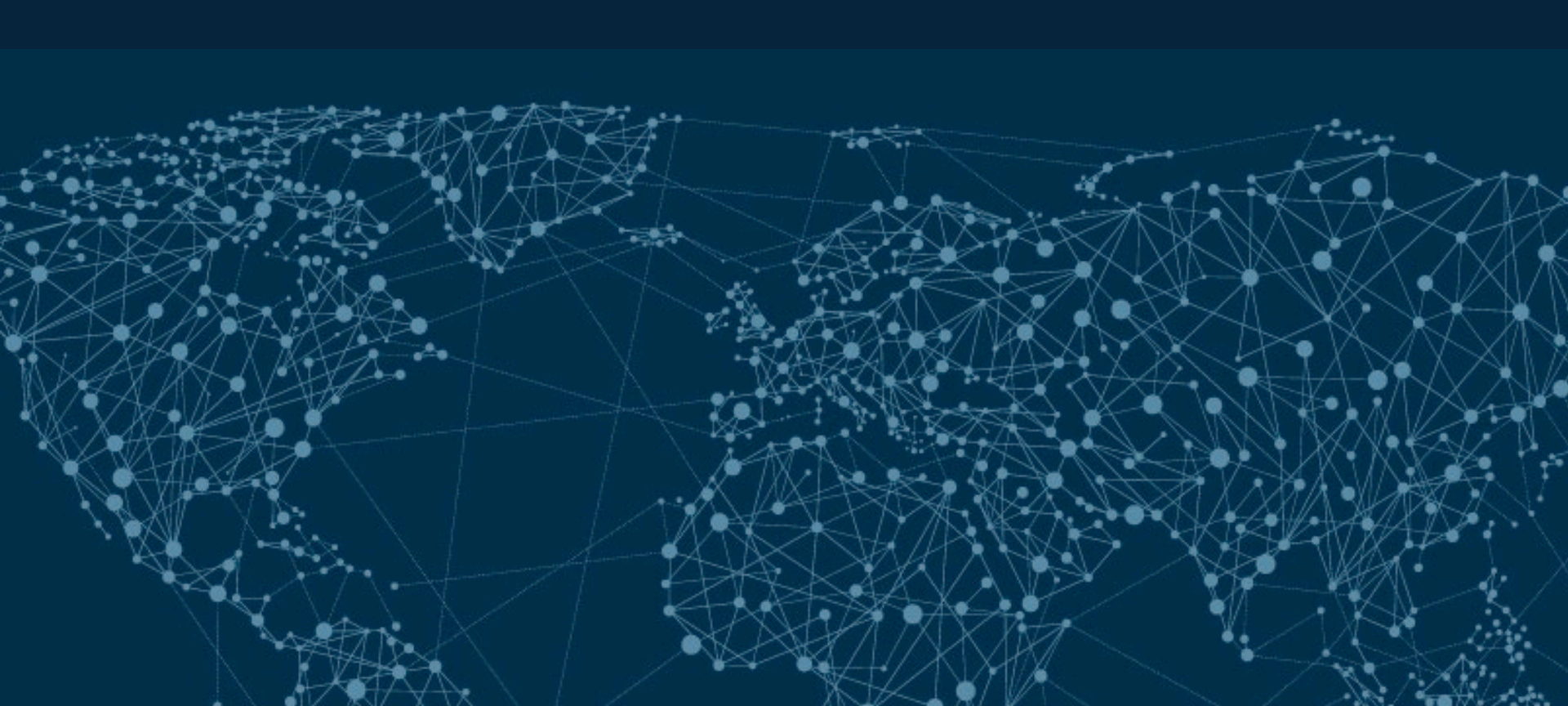


A photograph of the Charminar in Hyderabad, India, at night. The monument is illuminated with warm yellow lights, highlighting its intricate architectural details, including the two prominent minarets and the central archway. The sky is a deep blue, and the foreground shows blurred lights from a busy street. The text 'I CANN|57 HYDERABAD' is overlaid in white on the right side of the image.

I CANN|57 HYDERABAD



IGO-INGO Curative Rights Protections Policy Development Process

Open Working Group Session
7 November 2016

Agenda for the session today

1

Overview of this PDP and status update

2

Where this PDP fits into overall work on IGO/INGO protections

3

Presentation of likely PDP recommendations

4

Comparison of recommendations with recent IGO Small Group Proposal

5

Community discussion & feedback

6

Next steps and timeline to completion of PDP

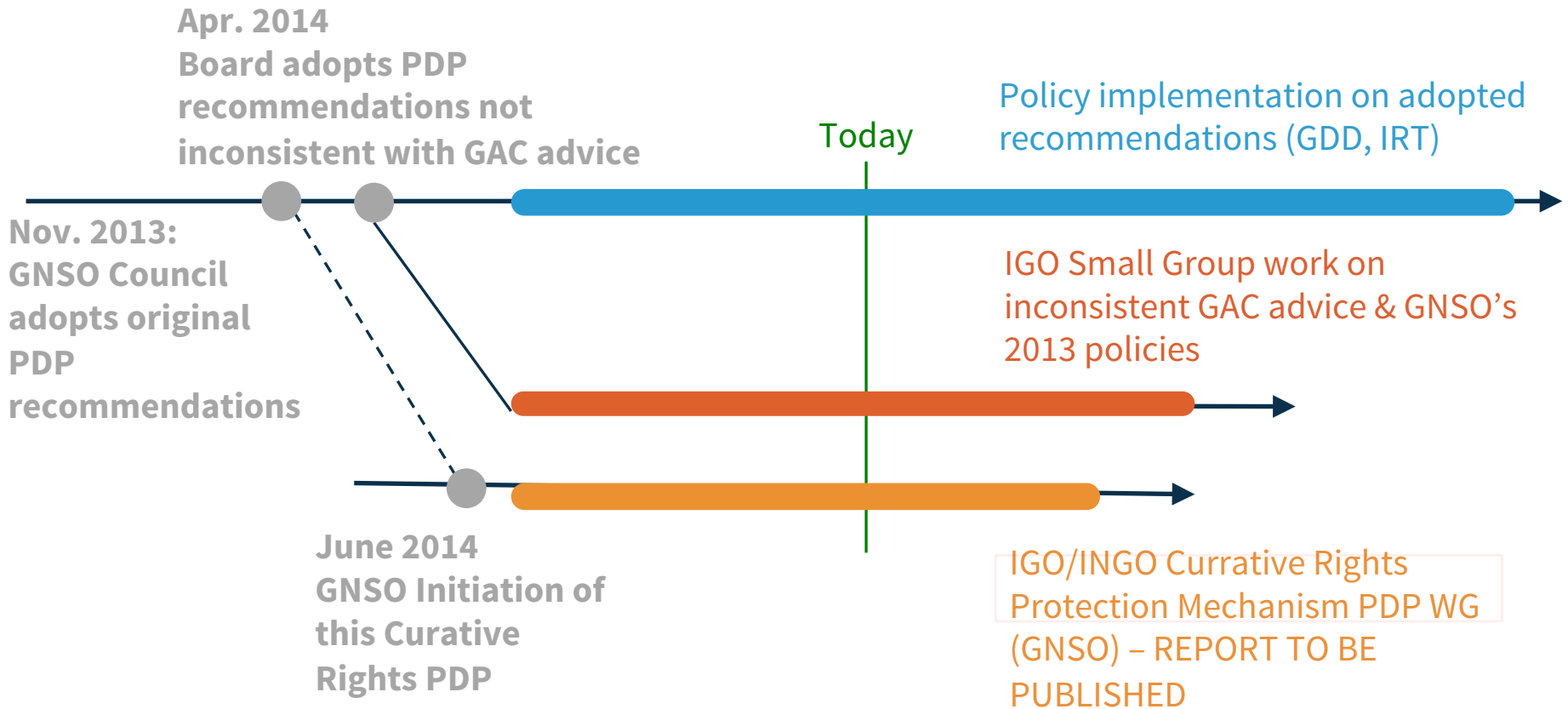
Overview of this PDP

- ⊙ PDP Working Group chartered by GNSO Council to develop policy recommendations regarding ***“whether to amend the UDRP [Uniform Dispute Resolution Policy] and URS [Uniform Rapid Suspension procedure] to allow access to and use of these mechanisms by IGOs and INGOs and, if so, in what respects; or whether a separate, narrowly-tailored dispute resolution procedure at the second level modeled on the UDRP and URS that takes into account the particular needs and specific circumstances of IGOs and INGOs should be developed.”***
 - *IGOs = International Governmental Organizations*
 - *INGOs = International Non-Governmental Organizations*
- ⊙ Working Group agreed early on to exclude INGOs from further analysis
 - *SO/ACs notified of this decision, with no objections*
- ⊙ Working Group then considered issues of IGO “standing” to file under UDRP/URS, and implications of potential IGO jurisdictional immunity in national courts on UDRP/URS filings

Status update

- ⊙ Working Group plans to publish Initial Report for public comment by the **end of this calendar year (2016)**
- ⊙ Two other efforts are ongoing, concurrently with this PDP, relating to IGO & INGO protections:
 1. Implementation of Board-adopted recommendations from original IGO-INGO PDP, mostly regarding preventative protections (e.g. reservation, pre-registration claims) for certain IGO & INGO names
 - ***NOTE: This PDP is not concerned with preventative protections; its scope covers only curative rights (i.e. post-registration dispute resolution)***
 2. Establishment of IGO Small Group, to develop proposal to reconcile inconsistent GAC advice and GNSO-adopted recommendations
 - ***NOTE: Recent IGO Small Group Proposal touches on curative rights to complement to certain other protections (e.g. notice to an IGO of registration of a matching domain name)***

Where this PDP fits into overall ICANN work on IGO-INGO protections

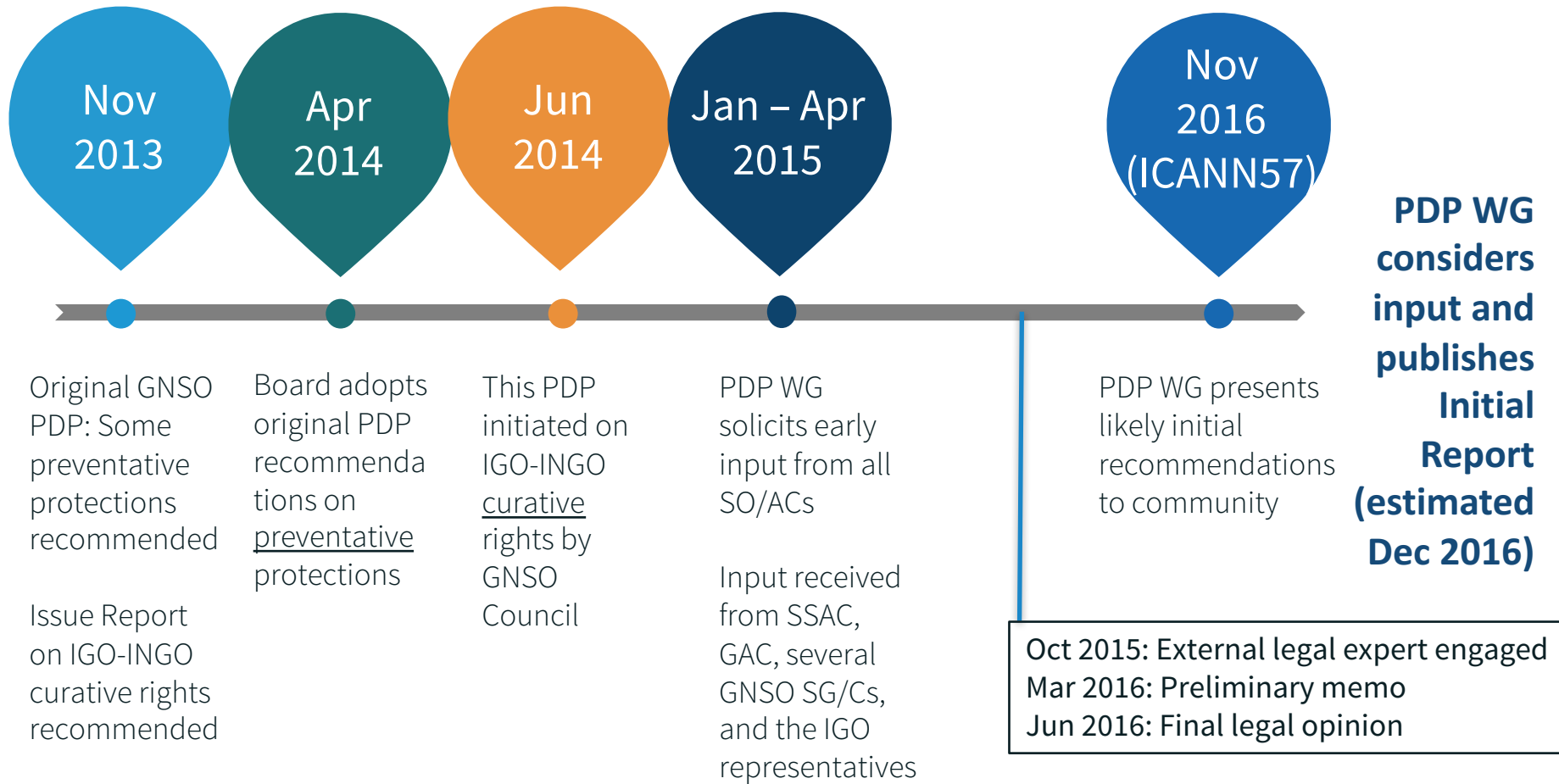


Policy Implementation

Board Consideration

GNSO Policy Development

PDP Timeline – How We Got Here





The Working Group's Likely Preliminary Recommendations

Preliminary Recommendation #1

The Working Group recommends that no changes to the UDRP and URS be made, and no specific new process be created, for INGOs (including the Red Cross movement and the International Olympic Committee). To the extent that the Policy Guidance document referred to elsewhere in this set of recommendations is compiled, the Working Group recommends that this clarification as regards INGOs be included in that document.

Preliminary Recommendation #2

For IGOs, in order to demonstrate standing to file a complaint under the UDRP and URS, it should be sufficient for an IGO (as an alternative and separately from an IGO holding trademark rights in its name and/or acronym) to demonstrate that they have complied with the requisite communication and notification procedure in accordance with Article 6ter of the Paris Convention for the Protection of Industrial Property.

For clarity, the Working Group recommends further that a Policy Guidance document pursuant to the UDRP and URS be prepared and issued to this effect for the benefit of panelists and registrants.

- ⦿ *Under Article 6ter, States “agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of ... armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations ... ”*

Preliminary Recommendation #3

WG does not recommend that any specific changes be made to the substantive grounds under the UDRP or URS upon which a complainant may file and succeed on a claim against a respondent (Section 4(a)(i) – (iii) of the UDRP) as the WG believes that bad faith registration and use concept covers a very broad range of offensive activities, including those covered by scope of Article 6ter protections.

However, WG proposes that the Policy Guidance document (see Recommendation #2) includes a further recommendation that UDRP and URS panelists should take into account the limitation enshrined in Article 6ter(1)(c) of the Paris Convention in determining whether a registrant against whom an IGO has filed a complaint registered and used the domain name in bad faith.

- ⦿ *There is no State obligation when the third party use or registration “is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the ... abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.”*

Preliminary Recommendation #4 (Part 1)

On the issue of jurisdictional immunity, which IGOs may claim successfully in certain circumstances (but not INGOs), WG recommends that:

- (a) no change be made to the Mutual Jurisdiction clause of the UDRP and URS, as ICANN CRPs are in addition to and not a substitute for existing statutory rights and ICANN has no power to extinguish registrant rights to seek judicial redress;**
- (b) the Policy Guidance document initially described in Recommendation #2 (above) also include a section that outlines 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; such that**
- (c) claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will fall to be determined by the applicable laws of that jurisdiction .**

Preliminary Recommendation #4 (Part 2)

Where a losing registrant appeals to a court of mutual jurisdiction and an IGO succeeds in asserting its claim of jurisdictional immunity in a court of mutual jurisdiction, WG recommends that in that case:

Option 1 - the decision rendered against the registrant in the predecessor UDRP or URS shall be vitiated; or

Option 2 - the decision rendered against the registrant in the predecessor UDRP or URS may be brought before the [name of arbitration entity] for de novo review and determination.

- ⦿ *WG has yet to agree on which Option, or another option, is preferred*
- ⦿ *WG relied extensively on the opinion of an external legal expert that the state of international law on the issue of IGO jurisdictional immunity is not uniform, and may vary (e.g. by IGO, treaty, or national court treatment)*
- ⦿ *WG also recommends that the Policy Guidance document (see Recommendation #2) be brought to the notice of the Governmental Advisory Committee (GAC) for its and its members' and observers' information*

Preliminary Recommendation #5

In respect of GAC advice concerning access to curative rights processes for IGOs, the Working Group recommends that ICANN investigate the feasibility of providing IGOs and INGOs with access to the UDRP and URS (in line with the recommendations for accompanying Policy Guidance as noted in this report), at no or nominal cost, in accordance with GAC advice on the subject.

- ⦿ *WG inquired of GAC whether existing administrative fees for URS and UDRP were viewed as "nominal" but GAC did not provide definitive response*

Differences between the Likely Preliminary Recommendations and the Recent IGO Small Group Proposal

Consideration of the Recent IGO Small Group Proposal

- ⦿ Following completion of the original IGO-INGO PDP (end-2013), ICANN Board requested time to consider conflicting GNSO policy and GAC advice (on IGO acronyms and certain Red Cross names)
- ⦿ Board's New gTLD Program Committee requested to develop a proposal for Board consideration – this resulted in the formation of a “small group” of IGO representatives working with Board (NGPC) and GAC representatives to facilitate a proposal for submission to the GAC and the GNSO
- ⦿ IGO Small Group completed its work and final proposal sent to GAC and GNSO in October 2016
- ⦿ IGO Small Group Proposal has not yet been endorsed by GAC or Board
- ⦿ Proposal contains certain suggestions relating to non-curative rights (e.g. notice to an affected IGO if a registrant registers the IGO's acronym) but also includes certain curative rights proposals

IGO Small Group Proposal (1)

- Eligible IGOs = IGOs on GAC list
- **Separate dispute resolution process** for domains registered and used in situations where registrant is pretending to be the IGO or otherwise likely to result in fraud or deception, *and* (a) are identical to an IGO acronym; (b) are confusingly similar to an IGO acronym; or (c) contain the IGO acronym.
- Decisions to be “appealable” through an arbitral process

VS

Likely PDP Recommendations (1)

- Eligible IGOs = IGOs who have fulfilled notification procedure under Article 6ter, Paris Convention, for name and/or acronym, or who have trademarked same
- **No separate dispute resolution process**; UDRP & URS “bad faith” indicated if limitation in Article 6ter (lack of connection or not misleading the public) present
- Right to appeal to national court preserved (but arbitration possible if IGO successfully argues immunity in court)

IGO Small Group Proposal (2)

- Rapid relief mechanism where domain is:
 - (a) identical or confusingly similar to an IGO acronym; and
 - (b) registered and used in situations where the registrant is pretending to be the IGO or that are otherwise likely to result in fraud or deception; and
 - (c) there is obvious risk of imminent harm from the claimed abuse of the domain (e.g. fraudulently soliciting donations in the wake of a humanitarian disaster)

VS

Likely PDP Recommendations (2)

- No change to URS (note clarification that standing, like under the UDRP, can be satisfied with Article 6ter notification)
- Policy Guidance document to be developed clarifying IGO options to file through assignee, licensee, or agent

NOTE:

- External legal expert finding that international law on IGO jurisdictional immunity is not uniform

Next Steps & PDP Completion

Timeline (estimated) following publication of Initial Report

DECEMBER 2016:

- WG publishes Initial Report for public comment

2017, 1Q:

- WG reviews comments received, prepares Final Report

2017, 1-2Q:

Final Report submitted to GNSO Council for review and adoption

2017, 2Q
(estimate):
Adopted
recommendations
sent to Board

2017, 2-3Q
(estimate):
Implementation of
adopted
recommendations

NOTE:
Implementation
to integrate with
previously
adopted
recommendations