



UNIVERSAL POSTAL UNION
INTERNATIONAL BUREAU

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CONTACT Paul Donohoe
SUBJECT .POST Sponsorship Agreement - Information Document

Dear Mr Pritz:

As you are aware, the Universal Postal Union (UPU) and ICANN staffs are finalizing negotiations on the .POST sponsorship agreement with the intention to have the proposed agreement posted for public comment by mid-September, thus allowing the ICANN Board to consider the final contract at the ICANN annual meeting in Los Angeles on 2nd November 2007. During the UPU's discussions with ICANN staff, it has become apparent that changes will be required to the ICANN baseline sTLD agreement, in order to address requirements regarding the UPU's status as an intergovernmental organization (IGO) and a specialized agency of the United Nations, as well as taking into account the innovative proposals for usage of the TLD by the sponsored community represented by the UPU within the application.

Although the UPU is the last remaining applicant from the 2004 sTLD round still engaged in contractual negotiations with ICANN, it is important to note that it was one of only two applications (.POST & .CAT) that were originally approved by all three independent evaluation committees. Since that time, the UPU and its 191 member countries, as well as Designated Operators (DOs) responsible for fulfilling certain responsibilities arising from the Acts of the UPU and private sector members, have been studying the necessary market requirements and institutional infrastructure required to implement the innovations proposed.

Whereas most other registry applicants have created specific commercial entities solely for the purpose of running an sTLD registry, the UPU intends to act as sponsor of an industry specific community and govern the operation of the domain in an oversight function, while allowing the true innovation of services and features to be implemented by its members in cooperation with a commercial registry for which the UPU will issue a RFP as soon as the sponsor agreement is concluded. This model will ensure innovations are influenced not just by postal specialists, but also by Internet experts.

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Given the rather ambitious public intent expressed by ICANN and the UPU to conclude negotiations and sign the contract before the end of this year, the UPU agrees that it is important to engage in an open pre-consultation process with appropriate constituencies, in order to ensure that the final terms consider their specific issues as far as practically possible in such legal negotiations.

/ To this end, the UPU provides the attached information document with the expectation to inform all ICANN constituencies and stakeholders of the issues being discussed in the contract drafting, and to engage those that might have specific questions and/or concerns so that the drafting teams are able to anticipate any remaining changes in the lead up to the public comment period later this month.

However, it is important to note that this information document and associated community consultation should not be misinterpreted as an attempt to publicly negotiate a binding agreement between the UPU and ICANN, nor limit the UPU's ability to raise other procedural and/or substantive issues that might arise during the final stages of negotiations with ICANN. We understand this type of consultation has never been undertaken before in connection with a TLD agreement prior to public posting; however, the UPU believes that this proactive and transparent approach will help the community better understand why ICANN's independent evaluation committees originally ranked the UPU application so high, and facilitate the launch of the .POST sTLD.

We remain available to engage in discussions and foster close cooperation steps between the ICANN and UPU communities to develop this innovative and important sector level domain to the benefit of all Internet users.

Sincerely yours,

Paul DONOHOE
Director of E-services

ANNEX 1 - EXPLANATORY NOTES FOR .POST sTLD AGREEMENT

DISCLAIMER: This document by the UPU is of a purely informational character for which no guarantees or assurances are provided, and shall not be construed or interpreted as creating or implying any obligations and liabilities on the UPU, nor be deemed as a commitment to any formal relationship, binding agreement or future dealing between the UPU and ICANN or between the UPU and any third party. Furthermore, this document shall not be construed as limiting or precluding the ability of the UPU to raise any procedural and/or substantive issues related to current or future negotiations with ICANN or any third party, as the case may be.

I. AN sTLD FOR INNOVATIVE POSTAL SERVICES

The postal industry has been a global facilitator of communication, trade and commerce for hundreds of years supported by the communication, distribution and payment services of post offices around the world. In fact, the postal service forms part of the daily life of people all over the world and remains, even in the digital age, the most accessible means of communication, financial exchange and parcel delivery. The establishment of a .POST sTLD is, thus, deemed as a unique opportunity for creation and management of a dedicated electronic environment for the postal industry, its customers and partners.

Established in 1874, the UPU, with its headquarters in the Swiss capital Bern, is the second oldest international organization after the International Telecommunication Union (ITU). Currently with 191 member countries, the UPU is the primary forum for cooperation between postal-sector players and helps to ensure a truly universal network of up-to-date products and services. In this way, the organization fulfils an advisory, mediating and liaison role, and renders technical assistance wherever needed. It sets the rules for international exchanges and makes recommendations to stimulate growth in postal volumes and improvements in the quality of service for customers. In this context, each member country designates a DO to operate postal services and fulfil the obligations arising from the Acts of the UPU on its territory (including the provision of universal postal services), in line with the decisions taken by the UPU Congress, which meets every four years – the 24th meeting of the UPU Congress is to be held in Nairobi in August 2008. The postal services of the UPU's 191 member countries form the largest physical network in the world. More than five million postal employees work in 665,000 postal outlets to ensure that some 435 billion mail items and some 7 billion parcels are processed and delivered every year to all corners of the globe.

The .POST sTLD will enable the postal sector, under the governance of the UPU, to develop a unique environment with the following features:

- Internet domain policies and processes specific to the sector. These could include enhanced registration processes, as well as improved authentication routines for both individuals and companies;

- .POST domains and sub-domains which create competitive differentiation and unique value by bringing knowledge about physical addressing to the Internet world;
- a global platform with common standards, values and integrity;
- a series of new electronic products and services for the postal sector.

The business idea would generate new revenue sources for the industry in a number of ways, including:

- developing applications related to security and multimedia management which could be enhanced through the .POST environment;
- strengthening the branding identity and market attractiveness of existing applications and services;
- developing geographically enabled electronic direct marketing;
- introducing a wider range of electronic communication and commerce services;
- enabling interconnection of physical and electronic identity processes to secure international commerce and trade.

Such an electronic environment would facilitate the sector's ability to create integrated digital and physical solutions and bring the business values of the postal sector from the physical world into the digital economy.

II. NAMING CONVENTIONS

Historically, both sponsored and unsponsored gTLDs have been given great latitude with regard to naming conventions within their respective TLDs. Understanding the proposed naming convention of the .POST sTLD, as contained in the approved sTLD application, is important for the community to gain a better understanding of some of the proposed changes that the UPU will be seeking in connection with its sponsorship agreement. In its application, the UPU identified the following dual naming convention that would be employed:

The .POST sTLD would be structured into 2 main logical sub-divisions, namely:

1. A sub-domain structure reflecting each country's official DO in accordance with the UPU Acts, so that each sovereign entity will be able to manage the allocation of domains within its territory in order to register postal offices, post codes, national services and physical addresses, among others;
2. A complementary sub-domain structure reflecting local and international commercial organizations as well as any brands and trademarks thereof.

In elaborating on these naming conventions, it is easiest to begin with the second logical sub-division, as it reflects the more traditional naming convention for a TLD. In this naming convention, *qualified* registrants would be permitted to register a domain through an ICANN

accredited registrar. As indicated in its application, the UPU fully intends to use ICANN accredited registrars to support registering names under this naming convention, as an industry standard practice.

However, what is unique and innovative about the .POST sTLD is the first logical sub-division. In this convention, each member country would grant its DOs the possibility to administer the corresponding second-level domains (e.g. FR.POST and FRA.POST) to be used in connection with their postal services (including universal postal service obligations) and their physical address functionalities related to post offices in that country. The specifics of how these domain names will be delegated are discussed in further detail below.

The UPU's original application referenced the use of three-letter domain name strings corresponding to the ISO 3166-1 alpha-3 codes. However, in the same application the UPU noted its intention to engage in a dialog with ICANN regarding the use of the ISO 3166-1 alpha-2 codes for use by its member countries. In fact, the use of two-character second level domains names had been approved in connection with the .AERO sTLD, and recently also with a new registry service proposed by the .JOBS sTLD. Given this more recent "liberal" use of two-letter second level domains, the UPU intends to consult with the ICANN Governmental Advisory Committee (GAC) in order to seek its approval to work with member countries in allocating these two-letter second level domains as well.

III. DOMAIN NAME DISTRIBUTION MODEL:

The UPU has monitored very closely the recent debate in the ICANN community in which MuseDoma has engaged in a dialog with the registrar community to seek changes regarding the distribution of .MUSEUM domain names. Encouraged by the recent compromise that appears to have been brokered in connection with this previous impasse, the UPU proposes the following language to appear in Appendix S of the proposed sTLD agreement with ICANN. These terms are modeled after language already appearing in the .AERO registry agreement, and equally incorporate some of the recently proposed language from the .MUSEUM agreement.

A. Sponsor Registrations:

1. Each member country designates a DO to operate postal services and fulfill the obligations arising from the Acts of the UPU on its territory (including the provision of universal postal services), so as to ensure that people have affordable, secure and reliable access to postal services, either in physical or electronic form. This obligation is consistent with the recognition that the postal sector has received in the WSIS process regarding its role in bridging the digital divide, and the fact that the UPU will offer a GDP-based cost model based on each country's ability to pay as prescribed by standard UN development classifications. The UPU will operate on a not-for-profit basis and will

diligently monitor costs in order to best protect the interests of the global postal stakeholder community it serves.

2. To facilitate these public policy obligations, the UPU, in its capacity as Sponsor of the .POST TLD, may register directly with the Registry Operator a limited number of domain names that will be listed in the sTLD agreement for use in sponsoring the .POST TLD. The total number of domain names listed in this regard at any time shall not exceed 1,000.
3. Specifically enumerated in the sTLD agreement is the ISO-3166 list with the corresponding two-letter and three-letter designation for each country name. These second-level domain names will be administered by a DO selected by each member country. These names will be used by the member country and its selected DO in order to:
 - (i) Facilitate postal services within the corresponding member country;
 - (ii) Enhance the productiveness of the domain naming structure; and
 - (iii) Build an infrastructure and develop specific parts of the namespace where specific functionality or standards need to be in place before domain names can be delegated to third parties.
4. In connection with these ISO-3166 related second-level domains, neither the Sponsor nor the Registry Operator will collect any registration fees from either the member country or DO in connection with any sub-delegations (i.e. third level or higher domain registrations).
5. Registry-level payment of these domain names will be calculated in a manner to be described in the sTLD agreement. The Sponsor will pay to ICANN a variable fee as described in the sTLD agreement for these domain names in which case Registry-level payment will also follow the standard procedures in accordance with the sTLD agreement.

Realizing that this departs from standard ICANN agreements, as a means to comply with the statutory requirements contained in the UPU Acts and the related universal postal service obligations, the UPU believes that this distribution model for deployment of an Internet infrastructure is the most viable one in that it allows the innovative development of a postal TLD infrastructure utilizing the features of the DNS to bridge both physical and electronic postal networks. Nevertheless, the UPU is interested to learn if there are other models proposed that could increase innovation possibilities, while at the same time not imposing legal or operational burdens that would impede the deployment of such infrastructure in the context of .POST.

IV. POTENTIAL REGISTRAR OBJECTIONS

Notwithstanding the UPU's substantial effort to narrowly draft the above referenced provisions, the following explanatory paragraphs are offered on what may be considered areas of concern for the registrar community, based upon recent history regarding registry renewal agreements.

A. ICANN accredited sTLD registries should be required to use ICANN accredited registrars for all sponsored domain name registration services as currently contained in the proposed new gTLD recommendations.

While acknowledging that the draft recommendations contained in the previous section have yet to be adopted by the ICANN Board, there are several distinguishing factors to consider. First, the UPU by the very nature of its agreement with ICANN is seeking only to act as *Sponsor* of the .POST sTLD. This is unlike every other 2004 sTLD registry agreement in which the applicant/signatory is legally recognized by ICANN also as the Registry Operator. Similar to the original 2000 sTLD agreements, the UPU is seeking to serve as a Sponsor while designating a third-party Registry Operator to coordinate the registry infrastructure. This structural separation between Sponsor and Registry Operator is, thus, an important safeguard as regards such potential concern by the registrar community.

Second, the ability of a Sponsor to directly register a small subset of names with its Registry Operator is formally recognized in both the .AERO agreement (1,000 domain names) and the proposed .MUSEUM agreement (4,000 domain names), as per the links below:

<http://www.icann.org/tlds/agreements/aero/sponsorship-agmt-att13-10nov01.htm>

<http://www.gnso.icann.org/mailing-lists/archives/registrars/msg05034.html>.

Third, the majority of these names (approximately 400 names) are second-level domain names (ISO-3166 alpha 2 & 3 lists) that will be delegated upon direct request of a member country in order to advance public policy interests and, via the DOs, to operate postal services and fulfill the obligations arising from the Acts of the UPU on its territory (including the provision of universal postal services), in connection with the global postal system.

Finally, the community of the .POST sTLD is very well defined in the Acts of the UPU and the .POST application. The .POST sTLD will be used for some very specific innovation in the DNS. These two unique characteristics of the sTLD impose strict controls on registrations and eligible registrants.

B. The allocation to member countries of two and three character domain names corresponding to their respective country names will potentially result in billions of sub-delegations being allocated by DOs at no charge.

While the UPU respects the for-profit motive that drives most ICANN accredited registrars, the UPU is not a profit-driven organization, but an intergovernmental organization (IGO) enshrined in treaties to encourage, among other goals, the lasting development of efficient and accessible universal postal services at the highest level of quality to the global community. This constitutes the main reason behind the proposal, by the UPU, to initiate and govern the sponsorship of the .POST sTLD on a not-for-profit basis. The UPU is currently accountable to 191 member countries for its use of financial resources and the non-profit principles mentioned above.

Moreover, the UPU has worked closely with member countries over the years to implement various technical innovations and services. This history has demonstrated that member countries and their DOs, particularly within least-developed and developing countries, need the flexibility to try different models in order to determine what works best for the national and global postal community. Imposing “per domain” name fees on this sub-delegation will only impede potential innovation by member countries and their DOs, and restrict the opportunities for new services to be offered to their respective local inhabitants.

Additionally, ICANN has never imposed fees on entities that register a second-level domain in a gTLD and then provide sub-delegation services. There are numerous examples of businesses that provide sub-delegation registrations below the second level without paying any additional fees to ICANN, such as CentralNic¹, 4U² and New.net³. Indeed, it does not make sense to impose fees on a member country providing a service to its inhabitants that is clearly in the public interest (as is the case with universal postal service obligations).

C. .POST will impede postal industry competition on the Internet.

The sub-delegation of second-level domain names (ISO-3166 alpha 2 & 3 lists) corresponding to the appropriate member country is a necessity attributed to the inherent hierarchy of this new .POST infrastructure. Throughout the evolution of the postal network, DOs have served as a neutral trusted third party to verify the identity of an individual or business with a given legal address. This trust has allowed the world’s economies to grow and prosper, while empowering individuals from around the world to communicate with one another in a non-discriminatory manner – as provided by the universal postal service obligations of a DO. In fact, this level of trust and uniqueness is not unlike the role that ICANN serves in coordinating the naming and numbering of the Internet's system of unique identifiers to ensure global resolution of the Internet’s packets.

Accordingly, in order for the UPU to ensure that implementation of the .POST sTLD is consistent with the statutory requirements contained in the UPU Acts and the related universal postal

¹ <http://www.centralnic.com/names/domains>

² <http://www.4u.com/>

³ <http://www.new.net>

service obligations, the UPU must be able to sub-delegate the second-level domains to the DOs duly designated by each member country. For the .POST initiative to reach its full potential there must be a centralized and coordinated hierarchical infrastructure to converge postal standards and protocols for both physical and electronic postal networks. The UPU, consistent with its mandate of promoting effective technical cooperation within the postal industry, has been doing just that in connection with the following standards and protocols of relevance to the .POST sTLD:¹

- S42 - Post*Code
- S43 - Secured Electronic Postal Services
- S33 - Interoperability Framework for Postal PKI

Finally, any claim that the UPU is simply seeking to impede postal sector competition on the Internet is not only misguided, but also inconsistent with the actual direction that the UPU has been undertaking since the Bucharest Congress in 2004. At this UPU Congress, the member countries agreed to create the Consultative Committee², aimed at representing the interests of the wider international postal sector, and to provide a framework for effective dialogue between postal stakeholders other than DOs and regulators. In this context, ICANN will be invited to join the Consultative Committee in order to ensure open and active dialogue and transparency in the execution of the .POST sTLD.

D. The UPU or the DOs should seek accreditation as ICANN accredited registrars.

First, the UPU is the sponsoring organization and as such will not be involved in the daily operation of the .POST sTLD. It will fulfil its obligations by developing and implementing .POST policy, as well as regulatory and administrative functions.

Second, while becoming an ICANN accredited registrar was proposed in connection with the .MUSEUM impasse, the same problems occur in seeking a separate accreditation for all DOs, as it will result in additional delays and increased costs to the UPU and its member countries – and since neither of these entities is actually a commercial entity offering services to the market, such an approach would not be appropriate.

In addition, many of the legal issues in which the UPU has invested substantial time and energy trying to resolve in the context of the sTLD agreement (as a Sponsoring Organization providing governance of the sTLD) will be duplicated within the context of an ICANN Registrar Accreditation

¹ This is a subset of the 100+ standards that the UPU has put in place for the postal industry, as its representative international standards organization.

² The Consultative Committee consists of non-governmental organizations representing customers, delivery service providers, workers' organizations, suppliers of goods and services to the postal sector and other organizations that have an interest in international postal services, including direct marketers, private operators, international mailers and printers.

Agreement. These additional delays and costs will put even further onerous obligations on important public policies that the UPU, its member countries and the DOs are seeking to advance.

It is also important to note that the UPU is open to the possibility for its member countries to encourage specific DOs to become ICANN accredited registrars, in case there is a legitimate opportunity for these DOs to add value to the ICANN community. As a case in point, the DO for Spain is currently providing domain name registration services through Nominalia, an ICANN accredited registrar. The UPU therefore encourages the ICANN community to consider all innovation possibilities that will result from working flexibly with the UPU member countries and their DOs, including those that may not wish to either seek accreditation or partner with an existing ICANN accredited registrar.

Finally, the potential use of DOs was not hidden from the public in the UPU's application. In fact, there were numerous references to such fact in the public portion of the application:

*A sub-domain structure reflecting each country's officially **designated Operator (DO)** so that each sovereign entity **will be able to manage the allocation of domains within their territory**, to register postal offices, post codes, national services and physical address, etc. (emphasis added)*

*The UPU will introduce its worldwide domain name registration services to the postal community with a number of registrars. Some ICANN accredited registrars **and possibly a number of DOs will act as "specialized community registrars"**. The latter will cover the different geographical areas of the globe to ensure that Post Offices around the world are able to register domains from day one of the launch of .POST, to ensure universal services (emphasis added)*

selection of specialized DOs and ICANN-accredited registrars to act as registrars for .POST and ensure registration performance; (emphasis added)

E. There is a potential fear that the proposed model undermines the registry-registrar dichotomy that has resulted in increased consumer choice and savings.

The UPU respects the cost savings and innovation that ICANN accredited registrars have brought to the domain name marketplace, and look forward to working with said registrars to encourage advancements in certain application services within the .POST sTLD. However, and in connection with the proposed two and three-character second--level domains associated with country names assigned to DOs at the request of a member countries, there are a couple of important points to be emphasized. First, the DO concerned will most probably provide these sub-delegations at no charge to the end-user. Second, these sub-delegations are most likely going to be allocated to users based upon strict sponsored policies and naming schemas adopted by that member country and DO.

Therefore, the arguments of consumer choice and cost savings that are often used to support the incorporation of a registrar distribution chain simply do not apply to the innovative use of the DNS at sub-delegations that will occur under second-level two and three character country designators for .POST.

F. This represents a precedent that other registries will seek to expand upon

The innovations that the UPU, its member countries and DOs are proposing in this regard are unlike any other. The postal network comprises, in fact, a unique network of postal services and universal service obligations with a very distinctive character in comparison with what other IGOs might be able to achieve on a global scale.

While the UPU understands the concerns that the registrar constituency has on the fact that certain provisions in previous sTLD agreements have provided a controversial basis for preferential renewal terms when compared with other unsponsored TLD renewal agreements, the UPU has an obligation to its member countries and the broader global postal community to seek an agreement with ICANN that will mutually respect the core competency and autonomy of each organization.

Even though certain members of the Registrar Constituency may view the UPU proposal as a “glass half-full”, one may outline several potential benefits to the registrar community in case the UPU and its member countries succeed in the .POST initiative. First is the potential opportunity for registrars to bid on projects that individual member countries and their DOs might be launching in connection with .POST. Indeed, those registrars that have already established “best-in-class” services in managing large domain name portfolios will be ideally positioned to provide their services to member countries and DOs.

An additional potential benefit involving trust services that some member countries and their DOs might implement will help minimize fraud, thus increasing overall confidence in e-commerce that will fuel many of the other commercial interests that so many ICANN accredited registrars legitimately have. The UPU also believes that its direct participation within the ICANN community will enable it to work collaboratively with other Internet stakeholders in order to ensure that the Internet remains a secure a stable platform for e-commerce.

V. EVOLUTION OF THE DOMAIN NAME MARKETPLACE

The UPU, since the original filing of its application, has been open and transparent regarding the potential use of DOs in connection with the operation of the .POST sTLD. Furthermore, what the UPU considers interesting is that since the submission of the original application in 2004, market forces have continued to blur the distinction between registries and registrars. The following examples are illustrative of the continued blurring of the lines that separate registries and registrars.

- In August 2007, the registrar constituency elected two representatives to the GNSO Name Council that have ties to entities pursuing or currently involved with registry operations;
- In July 2007, GoDaddy, the world's largest ICANN accredited registrar announced that it had partnered with Afilias Ltd. to form Alliance Registry to bid on the .US RFP;
- Following the recent ICANN San Juan meeting, ICANN accredited registrars and registries formed an informal working group to evaluate removing existing restrictions prohibiting the ownership of ICANN accredited registrars by ICANN accredited registries;
- Mid-Counties Cooperative owns the Registry Operator providing backend infrastructure to the .COOP TLD, while concurrently owning an ICANN accredited registrar providing domain name registration services in the .COOP TLD.

To date, most new gTLD registries have followed the same basic business model that NSI developed in connection with its original operation of the .COM, .NET and .ORG TLD. Simply stated, revenue was directly related to the number of registered domain names multiplied by the "per domain" yearly fixed fee. While the UPU intends to work with ICANN accredited registrars in following this established business model to provide domain name registration services to the private sector, the UPU is seeking the flexibility to work with its member countries and their DOs in order to foster some new and innovative distribution models as demonstrated by other registry operators.

.EDU

The .EDU TLD is a gTLD with approximately 7,000 to 8,000 second level domain names registered, in which the registrants are permitted to directly register domain names with the registry operator. There is no required use of registrars in this registry business model. Although this is a legacy gTLD under the auspices of the United States Government (USG), the current registry operator (EDUCAUSE) and its business model (direct/no registrars) were approved by the USG in 2001¹.

.US

The .US TLD is a ccTLD with over 1.3 million second level domain names registered. The .US registry is currently administered by NeuStar, and primarily utilizes a traditional registrar distribution model for second-level domain name registrations. However, in addition to this traditional registrar distribution model, NeuStar also works with Delegated Managers who serve a valuable role in the management of the .us locality space by providing sub-delegation service (i.e. higher level sub domain name registrations). This hybrid model is highly analogous to the proposed .POST distribution model. Similar to .EDU re-delegation, the approval of this hybrid model was obtained by the USG in 2001.

¹ <http://www.ntia.doc.gov/ntiahome/domainname/educa/index.html>

.DE

The .DE TLD is the most popular ccTLD with over 10 million registrations, and the second most popular TLD behind only .COM. DeNIC is the current registry operator for this TLD and they also employ a hybrid registration model that allows registrants to either choose a registrar or register their domain name directly with the registry (DeDirect). Notwithstanding this hybrid model, the vast majority of names are registered through resellers because of the pricing differential.

.GOV

Another legacy gTLD administered by the USG that permits registrants to register directly with the registry is the .GOV TLD. In this model, potential registrant State governments and Federal agencies must apply directly to the General Services Administration (GSA).

With these examples, the UPU hopes to demonstrate that the hybrid distribution model as originally proposed in its application is consistent with a continued evolution that is taking place within the domain name industry.

VI. POLICY SAFE HARBOR PROVISIONS

The UPU has also monitored very closely the recent debate surrounding the negotiations of DotCooperation, the sponsor of the .COOP TLD in connection with the renewal of their sponsorship agreement. The .COOP Sponsor, during its negotiations with ICANN, had felt that the language contained in the standard agreement did not adequately protect its delegated authority as originally vested in the 2001 Sponsor Agreement. In response, the Sponsor proposed the following section be added to the standard baseline agreement to address its concerns:

In the event that the Sponsor has a reasonable basis to believe that the established Consensus Policy is not relevant, or may represent an unreasonable burden to the Sponsored Community, Sponsor shall have the right to seek an exemption from ICANN. If ICANN declines the exemption, the Sponsor and ICANN shall utilize the process for resolution of disputes set forth in Article 5.

However, in response to last minute concerns raised by the registrar constituency, DotCooperation sought to remove the proposed text to expedite the approval of their contract and to avoid an extensive delay (in excess of six months) as encountered by MuseDoma.

The UPU, in connection with its negotiations with ICANN, has expressed the concern that neither the UPU nor its member countries could be placed in a situation where a potential ICANN policy might conflict with the UPU Acts, UPU Regulations or other UPU policies applicable to the postal sector. In looking for alternative language to address this concern, the UPU turned to the following

safe harbor provision language that the ICANN Board already approved in connection with the .EU registry agreement:

The Registry may not comply with that specification or policy if it can be demonstrate that it is in conflict with the law of the Governmental Authority or the Governmental Communication.

As previously stated, the purpose of this communication is not to negotiate the .POST sTLD agreement in public, but to proactively inform the community regarding potential deviations from the existing baseline sponsorship agreements. Therefore, at this time, while the organization is unable to share with the community the exact text of the proposed safe harbor provision, it is nevertheless willing to discuss the concepts which it believes mutually addresses both the concerns of ICANN and the UPU, while taking into account the community feedback from the previous .COOP proposal.

The first concept is that the UPU safe harbor provision would be modeled after the .EU safe harbor provision in that the trigger event is a government act. It is important to note that the UPU Acts and Regulations are promulgated through an extensive consultative process involving direct inputs and authorizations by a member country. These processes have been developed and refined over the last 130 years of the UPU working in conjunction with its member countries, in order to advance the global postal community's interests. This type of triggering event is much more concrete than the originally proposed .COOP trigger language of "an unreasonable burden" that was ambiguous and potentially open to conflicting interpretations.

The second distinction is the historical background of the UPU in comparison with DotCooperation. While DotCooperation and its parent company, the National Cooperative Business Association, have done a commendable job in helping to advance the concept of an sTLD within the marketplace, the institutional history of the UPU as the second oldest intergovernmental organization in the world, coupled with its close ties with 191 member countries, should afford it a little more discretion along the lines of the .EU registry operator as regards a request for safe harbor exemptions.

The final distinction is that the UPU is willing to narrowly tailor this exemption so as not to interfere with ICANN's obligations to the global Internet community in maintaining the security and stability of the Internet.

In the next couple of weeks, the UPU and ICANN look forward to finalizing the language for such provision, and incorporating it into the final draft proposal that will be published for public comment in mid-September. At this time, the UPU would remain open to additional dialog with the community in order to address any concerns that they may have with regard to this provision.

VII. INDEMNIFICATION/DISPUTE RESOLUTION

As an IGO, the UPU has a number of concerns regarding the specific indemnification and dispute resolution provisions contained in the baseline registry agreements. In an effort to address these concerns, the UPU has advanced provisions contained in other registry agreements that ICANN has executed as a potential way forward. In response to this dialog, it is our understanding that ICANN has retained dedicated counsel to better understand the concerns raised by the UPU, as it is likely that the UPU will not be the last IGO or governmental body to enter into an agreement with ICANN regarding the operation of a TLD.

In order for the community to better understand the concerns that the UPU has regarding the existing indemnification and dispute resolution provisions contained in the baseline registry agreements, it is helpful to underline the legal status of the UPU both within Switzerland and in other nations.

Because of the UPU status as a United Nations specialized agency, the Swiss Government decided on 3 February 1948 that, as from 1 January 1948, the Interim Arrangement on Privileges and Immunities of the United Nations, concluded on 1 July 1946 between the Swiss Federal Council and the Secretary-General of the United Nations and revised in 1963, would by analogy apply to the UPU, its bodies, the representatives of member countries and the UPU's experts and officials. The decision was approved by both Chambers of the Federal Parliament in a Federal Decree dated 29 September 1955.

Outside Switzerland, the UPU's legal status is governed by the Convention on the Privileges and Immunities of the Specialized Agencies - approved on 21 November 1947 by the United Nations General Assembly and accepted by the UPU - in so far as States have acceded to this Convention and undertaken to apply its provisions to the UPU. As of 1 December 1997, 99 countries have acceded to this Convention and have accepted the obligations stipulated therein with regard to the UPU.

Other States are expected to act in the same manner, since there is nothing to prevent them from granting the UPU, either by their own legislation or by a simple unilateral declaration, such privileges and immunities as they may consider desirable. In this context, the President of the United States of America, under the legislation of that country, has recognized the UPU as an international organization entitled to the privileges, exceptions and immunities conferred under the International Organizations Immunities Act (US Code Title 22 S 288).

A. INDEMNIFICATION

Two registry agreements that the UPU thought were very relevant in its discussions with ICANN were the VeriSign .COM agreement and the EurID .EU agreement. This was because neither contained a specific indemnification provision. Instead, ICANN looked to other mechanisms

incorporated into the agreement to guarantee performance. Similarly, the UPU submits that based upon its legal status as a specialized agency of the United Nations, a specific indemnification is not necessary and other suitable mechanisms such as the ones employed in the VeriSign (.COM) and EURid (.EU) registry agreements can be crafted into the .POST sTLD agreement.

Additionally, the need for the special recognition of legal status of IGOs may be seen in connection with the current policy work being undertaken within the GNSO to address modifications of the UDRP to address the legal concerns of IGOs.

B. DISPUTE RESOLUTION

While the UPU fully agree with ICANN on the principle of using binding arbitration to resolve disputes instead of the courts, the UPU does have a number of specific concerns regarding the process for dispute resolutions that are explained in more detail below. The UPU is confident that these procedural issues can be quickly resolved to address the respective concerns of both the UPU and ICANN.

The first concern is that the baseline registry agreement refers all arbitration procedures to “Los Angeles County, California, USA”. The UPU has proposed the selection of a neutral third party venue recognized by the global community for any such arbitration proceedings.

The second concern is with regard to some of the timing notices provided in the registry agreement. The UPU is seeking an expanded period to respond to ICANN notices in case such notices are received during certain organization meetings recognized in the UPU Acts and Regulations.

VIII. CONCLUSION

The UPU hopes that this document will have, in cursory terms, informed all interested ICANN constituencies and stakeholders on the main issues surrounding the current .POST sTLD discussions between the organization and ICANN, as a means to anticipate any relevant points that might be raised during the public comment period that will follow in mid-September, and to facilitate approval and implementation of the sTLD in due course for the benefit of the concerned Internet communities.
