

Message on behalf of the IGO Coalition

by the United Nations (UN), the European Organization for Nuclear Research (CERN), the European Space Agency (ESA), the International Labour Organization (ILO), the International Telecommunication Union (ITU), the International Criminal Police Organization (INTERPOL), Organization of American States (OAS), the Organisation for Economic Co-operation and Development (OECD), the International Criminal Court (ICC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Universal Postal Union (UPU), the World Bank (WB), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the World Meteorological Organization (WMO) and the World Trade Organization (WTO), as members of the Coalition and observers to the GAC

Dear members of the Governmental Advisory Committee,

We would like to respectfully express our reservations to and grave concerns with the ICANN Board's October 2nd proposal regarding IGO names and acronyms (the "Proposal").

A number of flaws in the Proposal make it untenable for the IGOs. We have enumerated these flaws in the note we have sent to the Chair of the GAC on October 7th, 2013 and would urge you to reconsider the ICANN Board's position, as these flaws present insurmountable obstacles to our support of the Proposal.

- First and foremost, the ICANN Board's Proposal does not create a presumption of protection to IGO names and acronyms. Thus, the proposed mechanism is, at best, curative rather than preventive.

- the URS is an administratively flawed solution as it does not provide for a final binding determination, is subject to appeal (with again added costs), and does not acknowledge the special status of IGOs, as it provides for the parties to agree that appeals may be made to "a court of competent jurisdiction," which runs counter to IGO immunities.

- the TMCH offers no protection or remedies and only time-limited notification (90 days following the introduction of a new gTLD). This is not a sufficient response to GAC advice;

- Because the process is curative rather than preventive, it shifts the costs for the protection of IGO names from registrants trying to register domain names similar to IGO names or acronyms to the IGOs, *i.e.*, to the tax payers of the member states. And note, in addition to the TMCH and URS fees, IGOs would be forced to waste extensive public funds on internal and legal costs to use these processes, not to mention the costs of monitoring the internet and defensive registrations, as those issues are not solved in any manner by the Proposal;

- the URS "remedy" is of limited application (the URS proceedings can only be initiated where a website has been registered in bad faith, so only in the most egregious cases), thus ignoring the issue of potential risk of confusion which is essential for effective protection of IGO identifiers;

As you remember, the GAC Communiqué adopted in Durban (echoing the content of the Beijing Communiqué) acknowledged that:

- IGOs warrant special protection by ICANN due to the fact that they “are in an objectively different category to other rights holders”; and
- because “IGOs perform important global public missions with public funds ... their identifiers (both their names and acronyms) need preventive protection in an expanded DNS”

The Durban and Beijing Communiqués built on the consensus reflected in the Toronto Communiqué, followed by the Board response and the March 2013 communication from the GAC to the ICANN Board, which affirmed that IGO names and acronyms should receive unconditional protection.

As you know, the GAC and IGOs have since evolved from requiring such absolute protections at the second level because IGOs recognise the interest of finding an acceptable compromise taking into account the concerns of all stakeholders.

The Durban Communiqué, after a series of formal and informal discussions with the NGPC, reflected the minimum level of protections with which the GAC and IGOs -- and we thought the NGPC and the Board -- could be comfortable. These compromises were not ideal for the IGOs, since they would provide a much lower level of protections than those which have been put in place for other reserved names, but nevertheless embodied minimum principles for a workable solution. We are concerned that these compromises are now not being respected and that the current Proposal brings us right back to square one. Ultimately, the ICANN Board’s Proposal does not provide adequate protection for IGOs.

Moreover, the Proposal is inconsistent with the ICANN Board’s decision to grant another international organization, the IOC, presumed protection. We are puzzled as to why the ICANN Board declines to understand the need of other well recognized IGOs, including the UN and its subsidiary bodies such as UNICEF and major agencies such as the World Bank Group, for similar protection.

The IGOs have been and remain willing to create workable rules for coexistence of our acronyms at the second level with private entities which have legitimate rights to use the same acronyms as IGOs, provided there is no risk of confusion. In that spirit, we reiterate our readiness to work from the IGO proposal of 21 June (attached for convenience) as a starting point for discussion. This proposal should be considered in good faith by all stakeholders.

For example, we do agree with the ICANN Board’s fundamental principle that a neutral third party arbiter should resolve domain name disputes involving IGO’s. However, the recourse procedure in respect to potential conflict of identifiers between IGOs and other rights holders must be economic, final, and binding without resort to national courts.

The IGOs sincerely hope that we can continue to count on you as representatives of governments, members of our Organisations, and guardians of global public policy in the context of the governance of the Internet, and that the GAC will stand by its repeated advice to the Board regarding the importance of providing adequate preventive and cost-neutral protections for IGO identifiers.

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Protection of IGO Names and Acronyms in New gTLDs

Response to the implementation issues raised by the ICANN Board

I. Languages

Recognizing the reality that a number of IGOs do use more than one official/working language and that there is a global public policy interest for ICANN to protect IGO names and acronyms in more than one language, the GAC communication to the Board of 22 March 2013 suggested that appropriate provision for protection in additional languages should be made .

At the same time, it is also recognized that there must be reasonable limits, and that the length of any resulting list should be manageable. Therefore, it is proposed that provision be made for the protection of IGO names and acronyms in up to one language additional to that used in the GAC list, as communicated by the concerned IGOs to the GAC, via the IGO coalition, by a set date.

The final list containing the protected IGO names and acronyms in up to two languages will be provided by the GAC to the Board in due course.

II. Process for Future Review of Listed Organizations

The GAC communication to the Board of 22 March 2013 recognizes that there may be an occasional need to update the list of IGO names and acronyms, reflecting real world changes that may occur from time to time.

Accordingly, the list should be reviewed prior to delegation of any new top level domains in a subsequent new gTLD round, or every three years, whichever is earlier.

The review should be conducted using a simple "mailbox" procedure wherein it would be the responsibility of any concerned IGO (or GAC member) seeking an update to the list to submit a request to the GAC for that purpose. Any received request shall be examined by the GAC at the points in time indicated above, on the basis of the 'Criteria for Protection' provided on 22 March 2013 by the GAC.

In the event of a review resulting in a need to update the list, the GAC would advise the Board accordingly.

III. Acronyms for which there may be several claims

It is important to recall that the GAC communication to the Board of 22 March 2013 was founded on a recognition, as also expressed in the GAC's advice in the Toronto and Beijing Communiqués, that IGOs are in a public policy category distinct from that of other rights holders or potential registrants in the Domain Name System (DNS). There is a prevailing global public interest in providing special protection for the names and acronyms of IGOs within the DNS. As entities created by governments under public international law, the names and acronyms of IGOs are a legally distinct class of identifier which should not be equated with trademarks (even though a number of IGOs have also voluntarily registered their names and acronyms as a supplementary means of protection).

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As IGOs have indicated on many occasions, their intention is not to prevent good faith use of their acronyms in the DNS by third parties in absolute terms. Rather, IGOs are looking to pre-empt third-party abuse of their acronyms, and to prevent user confusion and the resulting loss of confidence in both IGOs and the DNS.¹ Indeed, the GAC made allowance for the possibility of legitimate third-party registration of a domain name corresponding to a protected IGO acronym with the agreement of the concerned IGO, and IGOs have given assurances that any such agreement would not be unreasonably withheld.

With due regard to this context, reasonable co-existence principles and a simple and cost-neutral process could be devised that would provide additional clarity on allowing exact matches of IGO acronyms to be registered as second-level domain names by third parties in new gTLDs in appropriate cases.² As part of its secretariat attributions, ICANN would be responsible for publicly informing registries of the relevant process as described below.

Principles:

- IGOs will not object to the second-level registration of their protected acronyms by a third-party potential registrant (hereinafter “prospective registrant”) where the prospective registrant demonstrates that (i) it has been lawfully (e.g. via trademarks) and in good faith using the IGO-protected acronym to identify itself or its products or services and represents that it will continue using the IGO-protected acronym for the same purpose; and (ii) the concerned IGO has no reasons to believe that the intended registration and use would be unlawful, dishonest or potentially mislead the public as to the existence of a connection between the IGO and the registrant or the prospective registrant’s website, activities, products or services (e.g. likelihood of confusion as to the source, sponsorship, affiliation, or endorsement).
- An IGO and a prospective registrant may bilaterally agree on conditions for registration of an IGO-protected acronym at the second level in one or several new gTLDs, which agreement will be stipulated in writing.
- IGOs will not seek any compensation in consideration for the non-objection to the registration of its protected acronym as a domain name by the prospective registrant in new gTLDs.

Process:

- In order to ensure that prospective domain name registrants are aware of protected IGO names and acronyms and know how to contact the relevant IGOs if necessary in connection with any contemplated registration of a domain name corresponding to a protected name or acronym, ICANN should, at minimum, post the GAC list on its

¹ IGOs cannot adequately resort to individual procedures for protecting their names and acronyms in ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP). The UDRP’s procedures are inconsistent with the privileges and immunities of IGOs, including its mutual jurisdiction provisions; resorting to individual protection would be costly to the Member States of IGOs; the UDRP requires a trademark for standing (bearing in mind that the names and acronyms of IGOs are not to be equated with trademarks, even if a number of IGOs may have obtained supplementary protection in the form of trademarks in certain jurisdictions); and the UDRP is curative in the type of protection it provides, whereas IGOs are seeking pre-emptive protection of their names and acronyms in the context of ICANN plans to vastly expand the DNS.

² This mechanism could potentially be revisited in future rounds of the New gTLD Program in light of experience in the first round.

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website, advise all registries accordingly, and all registries will factor the GAC list into their electronic registration systems.

- In the event of the existence of an agreement between the IGO and the prospective registrant as indicated above, the prospective registrant should produce a copy of this agreement to the registry during the domain name registration process in relation to a domain name for which the parties agreed there would be no objection by the IGO.
- In other cases, the prospective registrant will notify the concerned IGO and registry of its desire to register an IGO-protected acronym as a domain name in one or several new gTLDs, providing all relevant information about itself and its intended use, as well as a statement that the provided information is truthful and accurate and that it warrants to use the domain name(s) for the intended use only and not for any dishonest or deceptive purpose.

For this purpose, the contact details for each IGO on the list provided by the GAC will be annexed to this list. It will be the responsibility of each IGO to inform ICANN of any change in its contact information. ICANN will then inform all registries accordingly.

- The IGO may request additional reasonable information or clarifications from the prospective registrant in order to better inform its decision or to confirm the veracity of the prospective registrant's statements. Failure by the prospective registrant to promptly and adequately respond to the IGO's requests may be grounds for objection by the IGO to the registration. This request will not extend the 60 day time period described below.
- The IGO will be under an obligation to communicate its objection (or lack thereof)³, as the case may be, to the registration by the prospective registrant of its protected acronym, within 60 days from the receipt of the prospective registrant's notification, copying the registry. Failure by the concerned IGO to respond within this timeframe will be equivalent to a lack of objection.
- In the event of objection, the IGO will provide the rationale for the objection in its response.
- Compliance with the established timeframe will be assessed, if necessary, by the concerned registry, which will be put on copy of all exchanges between the IGO and the prospective registrant. It will be the responsibility of the IGO and the prospective registrant to put the registry on copy of their correspondence; the consequences of any failure to do so will be borne by the party responsible for such omission. This means that the prospective registrant's failure to put both the concerned IGO and registry on copy of its request will invalidate the process and annul the 60 day IGO response period, without prejudice to the possibility of future requests by the prospective registrant. IGO failure to put both the prospective registrant and concerned registry on copy of its objection will equate to failure to object within the 60 day response period.

³ Template objection and no-objection forms could be developed in order to simplify the process.

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- Lack of objection on the part of the IGO (either through the IGO's express statement to that effect or through its failure to respond to the prospective registrant's notification within the established timeframe) will (provided the registry is satisfied that the concerned IGO was properly copied by the prospective registrant on the initial request) provide the basis for registration of the IGO-protected acronym by the prospective registrant.
- If the IGO, having been appropriately copied on the prospective registrant's request, expressly objects, within the established timeframe, to the use of its protected acronym by the prospective registrant, the registry (via its registrars as may be appropriate) will refuse to register the domain name corresponding to the IGO-protected acronym under the prospective registrant's name. It will simply state as the basis for its refusal the special protection of the concerned IGO acronym by reference to the publicly-posted list by ICANN and timely objection of the concerned IGO.
- The prospective registrant can appeal to the GAC and ICANN for a review of the IGO objection. Their decision will be final and will conclude the present process.⁴
- If the registrant at any time uses the domain name corresponding to the IGO-protected acronym other than for the particular intended use as notified to the IGO during the process, the IGO or any other party can seek relief from the registrar's abuse point of contact.
- Registration and use of an IGO-protected acronym is particular to the specific registrant. The process will have to be carried out again prior to any transfer of the ownership of, or grant of a permission to operate, the domain name to another third party.

Other Considerations:

In the event that an IGO-protected acronym corresponds to another name or acronym reserved or otherwise protected in new gTLDs (e.g. country or territory name), each of those parties shall have the right to register the acronym as a domain name, without having to seek the permission of the other, on the understanding that each will act in good faith and will endeavor to avoid confusion as much as possible. Third parties will have to seek permission from both of the aforementioned parties in order to be able to register the acronym as a domain name.

⁴ This is modeled after the provision of the draft registry agreement regarding country and territory names. It is important that any review process be administratively simple and cost neutral, therefore this process should not be modeled after existing curative dispute mechanisms. For the same reasons, multiple possibilities for appeals should be avoided.