

At Large Advisory Committee
Appointed member report on the activity of the
WIPO2 Assistance Group



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At Large Advisory Committee

Public Meeting

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FACTS

- On 21 February 2003, WIPO sent to ICANN a letter providing recommendations about domain names that are similar to the names and acronyms of International Intergovernmental Organizations (IGOs) and country names.
- WIPO member states recommended that the names and acronyms of IGOs and country names (being one particular type of geographical identifier) should be protected against abusive registration as domain names, and requested that these recommendations be transmitted to ICANN.
- The Board ask for comments to interested constituencies, receiving them from the GAC, ALAC, GNSO and the GNSO/IPC
- The GAC recommended the establishment of a joint working group including both the GAC and affected constituencies to evaluate the practical and technical implications of the WIPO-2 recommendations.

WIPO 2 Proposals

- **IGOs** acronyms need to be protected (on the .com sphere) against abusive registration as domain names.
- **Country names** (being one particular type of geographical identifier) should be protected against abusive registration as domain names, too.

Other Issues discussed in the report, without concrete proposals :

Protection of Pharmaceuticals Non Proprietary names (INNs), personal names and other geographical identifiers. These issues were dropped from the formal recommendation letter, acknowledging the inexistence of an international consensus on these matters.

WIPO 2 Proposals

“Solutions” proposed by the WIPO in order to protect IGOs acronyms and country names vary from :

- Exclusionary lists
- Amendments to UDRP
- A whole new system like the UDRP
- Sunrise Provisions
- An International Treaty



A system whereby trade mark owners had a chance to register corresponding domain names in a new TLD before it officially opened to the public in order to reduce the opportunity for 'bad faith registration'

WIPO 2 Assistance Group

- Appointed by the president on Oct 10th 2003, following the recommendations of the GAC.

MEMBERS :

Chairman – Jonathan Cohen (former ICANN Board member)

Advisor – John Jeffrey (ICANN General Counsel)

GNSO Members - Philip Sheppard, Commercial and Business Users Constituency; Michael Froomkin, Non-Commercial Users Constituency; David Maher, gTLD Registries Constituency; Mike Heltzer, Intellectual Property Interests Constituency; Robert F. Connelly, Registrars Constituency; and Maggie Mansourkia, Internet Service and Connectivity Providers Constituency

GAC Members - Vanda Scartezini (BR), Christian Wichard (WIPO). Lena Carlson (SE). Jean-Christophe Chouvet (FR), Olive Chikankheni (Malawi), Richard Hill (ITU) and Martin Boyle (UK)

ALAC Members - Sebastian Ricciardi (Argentina) and Wendy Seltzer (USA)

WIPO 2 Assistance Group

There was a substantive discussion on the real task of the group : Is it to provide the board advice on whether WIPO2 recommendations should be implemented OR NOT, or is it to provide advice on HOW these recommendations WILL BE implemented.

“...The Joint Working Group is tasked with analyzing the practical and technical aspects of implementing WIPO-2 Process recommendations in a manner consistent with ICANN's mission, and the implications for the Uniform Dispute Resolution Policy (UDRP)...”

WIPO 2 Assistance Group

There has been discussions and debate about the WIPO-2 proposals focusing on such subjects as ICANN's mandate, the origins and purpose of the UDRP, the right, and extent of the right, of ICANN to amend the UDRP and also about the basis, or lack thereof, in international law, of the proposals of WIPO endorsed by the GAC.

“ I believe it would be unfair, based on the significant differences of opinion within the committee, to make many recommendations to the Board. Rather, what we are presenting to the Board is an organized canvas of the issues that took place in the committee teleconferences, with reasonably complete summaries of the different positions taken, and the basis for such positions ... ” Jonathan Cohen remarks.

Where we stand ?

Does this recommendations exceed ICANN's scope ?

By analyzing the substance of these recommendations, are we (the WIPO2AG) exceeding our mandate ?

Should ICANN implement any recommendation coming from an international process ?

By implementing WIPO2 recommendation, would be ICANN creating international law ?

Are IGOs names Intellectual Property, and therefore should they be protected like trademark in the UDRP.

ALAC Position on the Matter

We believe that it would be inappropriate for ICANN to assume the role of an international legislator, and to try to establish such new law through its contracts and policy processes. For this reason, any policy-making processes which are based upon WIPO's recommendations in the areas of the protection of IGOs' and countries' names must pay close attention to staying within the confines of supporting existing, internationally uniform law.

There is already a .INT name space, dedicated to IGOs

it seems more appropriate to give each country control of its name (and any other character strings it chooses) in its unique ccTLD, not to grant it monopoly rights in strings across all TLDs.

Any implementation of these rights should be done through a PDP

Where we stand ?

- A summary of the discussions (prepared by Jonathan Cohen, Richard Hill and Christian Wilchard) will be presented to the board in 3 or 4 weeks, after review it with all members of the group.
- The summary reflects very well the ongoing discussions, and the different points of views and concerning about this matter.
- The deadline of the WIPO2AG for present a report is Cape Town.
- The report is being aimed for Kuala Lumpur.