
BRIEFING PAPER: RECONCILING GAC PUBLIC POLICY ADVICE & GNSO POLICY RECOMMENDATIONS CONCERNING PROTECTIONS FOR INTERNATIONAL GOVERNMENTAL ORGANIZATION ACRONYMS AT THE SECOND LEVEL IN THE DOMAIN NAME SYSTEM

TO: GAC AND GNSO REPRESENTATIVES

FROM: BRUCE TONKIN

DATE: [CLICK TO SELECT DATE]

CC: RED CROSS-IGO DISCUSSION GROUP PARTICIPANTS

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I. SCOPE OF DISCUSSION:

The GAC advice and GNSO policy recommendations in relation to the nature and extent of protections at the second level of the domain name system (DNS) for the acronyms of the 192 International Governmental Organizations (IGOs) that appear on the GAC list of March 2013¹ are not consistent.

¹ The full list of IGOs was provided by the GAC to ICANN on 22 March 2013, and can be found here: <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>. As noted elsewhere in this Briefing Paper, the GAC may elect to update the list either prior to the delegation of additional new gTLDs in a subsequent expansion round, or every three years, whichever first occurs.

IGO representatives had participated in the initial GNSO Policy Development Process (PDP) on this topic that was completed in November 2013 and had submitted a Minority Statement to the Final Report: see <http://gns0.icann.org/en/issues/igo-ingo-final-minority-positions-10nov13-en.pdf>².

Pending final resolution of the issue as to the list of IGO acronyms that are to be protected at the second level of the DNS, and in what form, the acronyms of the 192 IGOs on the GAC list have been withheld from registration on an interim basis, through a Board resolution in October 2014 that also recognized the continuing work in the GAC and GNSO community to resolve the differences between GAC advice and GNSO policy³.

This facilitated discussion will focus on the acronyms of the 192 IGOs on the GAC list, as may be updated from time to time by the GAC.

An IGO's inclusion on the GAC's list of IGOs was based on one or more of the following criteria⁴:

- (a) an international organization established by a treaty and which possesses international legal personality; or
- (b) an "Intergovernmental organization" having received a standing invitation to participate as observer in the sessions and the work of the United Nations General Assembly; or
- (c) a distinct entity, organ or program of the United Nations.

The GAC intends to review the list either prior to the delegation of any new gTLDs in a subsequent round, or every three years, whichever is the earlier to occur.

The GAC's rationale for seeking protections for IGO acronyms is based on the applicable legal framework (as summarized in Annex A and noted in various GAC Communiqués), the public policy issues relating to the public interest missions carried out by IGOs, and the status of IGOs as organizations that are created by treaties, and with governments as their members.

It is important to note that there is concurrent policy work taking place in the GNSO on which the outcome of this facilitated discussion may have an impact, viz., the GNSO PDP on IGO-INGO⁵ Access to Curative Rights Protections. Although the scope of this PDP is limited to considering the availability and usability of existing second-level curative dispute resolution processes to IGOs and INGOs, for purposes of this facilitated discussion it is nevertheless noteworthy that the PDP Charter is not limited to the 192 IGOs on the GAC's list, nor to the gTLDs launched under the 2012 New gTLD Program Round. In addition, the preliminary recommendations that were

² For the full text of the November 2013 GNSO Council resolution adopting all the consensus recommendations of the Policy Development Process Working Group on this topic, see <http://gns0.icann.org/en/council/resolutions#20131120-2>.

³ See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.d>.

⁴ See <https://www.icann.org/en/system/files/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>.

⁵ The acronym "INGOs" refers to International Non-Governmental Organizations, including the Red Cross and the International Olympic Committee.

recently published for public comment by the PDP Working Group are at variance with GAC advice that has been issued on the topic.

II. THE RELEVANT TIMELINE

October 2012: The GNSO Council [launches](#) a Policy Development Process to evaluate: (i) whether there is a need for special protections at the top and second level in all gTLDs for the names of IGOs and INGOs receiving protections under treaties and statutes under multiple jurisdictions; and (ii) if so, to develop policy recommendations for such protections.

July 2013: The GAC's [Durban Communiqué](#) notes that the GAC is interested in working with the NGPC and IGOs to develop "a complementary cost-neutral mechanism" that will "provide notification to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and ... allow for an independent third party to review any such registration request, in the event of a disagreement between an IGO and potential registrant."

Also in July 2013, the Board's New gTLD Program Committee (NGPC) [confirms](#) that interim protections for the names and acronyms of IGOs on the list provided by the GAC in March 2013 will remain in place for the time being.

November 2013: The GNSO Council [adopts](#) the consensus recommendations contained in the Final Report of the PDP Working Group, including for certain protections at the top and second level for the full names and acronyms of the IGOs on the GAC list⁶. For IGO names, they are to be withheld from delegation at the top level (with an Exception Procedure to be designed for the affected IGO), and withheld from registration at the second level (via inclusion in Specification 5 of the New gTLD Registry Agreement). For IGO acronyms, they are to be eligible for a 90-days Claims Notification service provided through the Trademark Clearinghouse (TMCH).

Also in November 2013, the GAC's [Buenos Aires Communiqué](#) states that the GAC remains committed to "a permanent system of notifications to both the potential registrant and the relevant IGO as to a possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO" which will "allow for a final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and "be at no cost or of a nominal cost only to the IGO".

April 2014: The ICANN Board [adopts](#) those of the GNSO's consensus recommendations that are consistent with GAC advice received on the topic⁷, and requests more time to consider the remaining recommendations as they relate to IGO acronyms⁸.

⁶ See the Final Report from the PDP Working Group (November 2013): <https://gns0.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>.

⁷ Note that this section summarizes the main milestones; however, there have been GAC statements and GAC advice on this topic, dating from October 2011: see Annex C for the full compilation.

June 2014: The Board via its New gTLD Program Committee (NGPC) [requests](#) that the GNSO Council consider amending those of its PDP recommendations that are inconsistent with GAC advice, in line with the GNSO's PDP Manual for such an amendment process⁹.

Also in June 2014, the GNSO Council follows up on a recommendation from the original IGO-INGO PDP and [launches](#) a new PDP¹⁰ to assess the specific question of whether existing curative rights processes (i.e. the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension procedure (URS)) should be modified to address the needs of IGOs and INGOs, and if so in what way; or if a new, narrowly tailored process based on the UDRP and URS should be developed.

September 2014: The GNSO Council discusses the type and scope of possible amendments with NGPC representatives and sends a [letter](#) to the NGPC requesting confirmation of the understanding prior to taking further action.

October 2014: The GAC's [Los Angeles Communique](#) notes the ongoing GNSO Curative Rights PDP, and advises that curative mechanisms should be at no or nominal cost to an IGO, and that the UDRP should not be amended.

Around this time, the IGO Small Group was formed, comprising representatives from the GAC, IGOs and NGPC facilitated by ICANN staff. The aim of the group was to develop a proposal for GAC and GNSO consideration so as to facilitate a reconciliation of GAC advice and GNSO policy recommendations on the issue of IGO acronym protections.

December 2014 – April 2015: The GNSO PDP Working Group on IGO-INGO Curative Rights seeks and obtains input from ICANN Supporting Organizations and Advisory Committees on its work, including from the GAC and IGO representatives¹¹. Subsequently, the Working Group consults an external legal expert on the specific question of IGOs' immunity from the jurisdiction of national courts.

⁸ The adopted recommendations relate only to IGO full names. Implementation of the Board-adopted recommendations has commenced, with the formation of an Implementation Review Team that has been meeting regularly since September 2015. The IRT members, meeting logs and draft implementation documents can be viewed here: <https://community.icann.org/x/RJFCaW>.

⁹ See Annex F for the text of the applicable GNSO procedure. It is important to note that this is a different procedure from the one that applies under the ICANN Bylaws where the ICANN Board votes to reject GNSO Supermajority policy recommendations. This other process referred to by the NGPC is found in Section 16 of the GNSO's [PDP Manual](#), and is intended to take place (if initiated) prior to Board vote on a GNSO policy recommendation.

¹⁰ The origin of this new PDP can be traced to one of the consensus recommendations from the original 2012-13 PDP, which called for the GNSO to request an Issue Report on the topic of curative rights for IGOs and INGOs. An Issue Report is a mandatory step preceding the launch of any potential new PDP by the GNSO Council.

¹¹ The requests for input, and responses received, are collected on the Working Group's wiki space: <https://community.icann.org/x/T5gQAaW>.

June 2016: The GAC's [Helsinki Communique](#) states the GAC's view that "notice of a match to an IGO name or acronym to prospective registrants as well as the concerned IGO should be mandated in perpetuity for the concerned name and acronym in two languages and at no cost to IGOs". "[C]oncerning curative protection at the second level, and noting the ongoing GNSO PDP on access to curative rights protection measures" the GAC advised that "any such mechanism should be separate from the existing UDRP, offer parties an "appeal" through arbitration, and be at no or nominal cost to IGOs".

Also in June 2016, the GNSO Council Chairs [write](#) to the ICANN Board, requesting further clarity and specific feedback as to the nature and scope of any potential policy amendments that might be proposed by the ICANN Board.

October 2016¹²: The final form of the IGO Small Group Proposal is submitted to the GAC and the GNSO Council. The IGO-INGO Curative Rights PDP Working Group considers the proposal as part of its finalization of its preliminary recommendation.

November 2016: The GAC's [Hyderabad Communique](#) advises the ICANN Board that the IGO Small Group Proposal would be an appropriate starting point for reconciliation of the differences between GAC advice and GNSO policy on the topic of IGO acronyms, as the GAC considers it a reasonable balance between the rights and concerns of IGOs and legitimate third parties. The GAC also requests that the GNSO Curative Rights PDP Working Group take the Proposal into account.

Also in November 2016, The Board proposes that the GAC and GNSO engage in a facilitated discussion to try to resolve the conflict¹³.

January 2017: The GNSO Curative Rights PDP Working Group [publishes](#) its Initial Report¹⁴ for public comment (to close on 30 March 2017). The group notes that it has considered the IGO Small Group Proposal, although its preliminary recommendations differ from the Proposal. The group also notes that it had consulted an external legal expert on the specific question of IGO jurisdictional immunity.

¹² The full text of the Proposal is set out in Annex E. It can also be viewed, along with the letter to the GNSO Council from the ICANN Board, at <https://gnso.icann.org/en/correspondence/crocker-icann-board-to-council-chairs-04oct16-en.pdf>.

¹³ In December 2016, GAC and GNSO representatives, together with a few Board members and Bruce Tonkin (designated facilitator), follow up on the Board proposal and discuss the scope and timing of the facilitated discussion.

¹⁴ A copy of the Working Group's Initial Report can be viewed and downloaded from <https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf>.

March 2017: Public comments are filed to the PDP Working Group's Initial Report, including by the United States Government and several IGOs¹⁵.

III. NOTES AND QUESTIONS

ICANN's Bylaws specify that ICANN's mission is to ensure the stable and secure operation of the Internet's unique identifier systems¹⁶. Policies for protection of IGO acronyms at the second level of the DNS need to be developed within the context of ICANN's mission. In this regard, the main question that the discussion group may wish to consider may be phrased as follows:

Within the boundaries of ICANN's mission (as encapsulated in the ICANN Bylaws), what is the appropriate form and scope of second level DNS protection for IGO acronyms, considering that:

- The Paris Convention for the Protection of Industrial Property provides that IGO names and acronyms are to be protected against third party registration at national level but does not by itself confer substantive legal rights on such names or acronyms;
- Any second level protections conferred on IGO acronyms will be in addition to, and not dependent on, any national or regional trademark protections that may have been granted to those acronyms;
- IGOs undertake global public service missions, and the GAC has stated that protecting their names and acronyms in the DNS is in the global public interest, given that IGOs are unique treaty-based institutions created by governments under international law;
- The issue of DNS protections for IGO acronyms has been a long standing topic of multilateral discussion;
- The ICANN Board has approved reservations at the top and second levels for the full names of the IGOs on the GAC list; and
- Most of the new gTLDs approved in this 2012 New gTLD Program Round have already been delegated.

¹⁵ See <https://forum.icann.org/lists/comments-igo-ingo-crp-access-initial-20jan17/index.html> for all the public comments that have been received to date.

¹⁶ See Annex F for relevant excerpts from the ICANN Bylaws.

ANNEX A: PROCESS HISTORY AND LEGAL FRAMEWORK FOR DNS PROTECTIONS FOR IGO ACRONYMS

I. Applicability of The Paris Convention for the Protection of Industrial Property:

The Paris Convention for the Protection of Industrial Property is an international treaty that entered into force in July 1884¹⁷. It is widely considered to be one of the first major multilateral treaties concluded for the protection of various types of intellectual property, covering patents, trademarks and the related industrial property of industrial designs, utility models, geographical indications, trade names, and trade secrets within the context of unfair competition. The treaty has been revised a number of times, most recently at the Revision Conference at Stockholm in 1967. For purposes of the present discussion, the provision of the treaty that is of relevant interest is Article 6ter.

The purpose of Article 6ter is to protect armorial bearings, flags and other State emblems of the States party to the Paris Convention¹⁸ as well as official signs and hallmarks indicating control and warranty adopted by them. This protection was extended to armorial bearings, flags, other emblems, and the abbreviations and names of international intergovernmental organizations by the Revision Conference of Lisbon in 1958. The following are the key provisions of Article 6ter:

- Paragraph 6(1)(a): States that are party to the Paris Convention *“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, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.”*
- Paragraph 6(1)(b): Protections described by paragraph (a) *“shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection”*.
- Paragraph 6(1)(c) provides an important clarification: States *“shall not be required to apply the said provisions when the 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 armorial bearings, flags, emblems, abbreviations, and names, or if such use or*

¹⁷ The full text of the most recent version of the treaty (last amended in 1979) can be viewed at <http://www.wipo.int/wipolex/en/details.jsp?id=12633>. For a detailed analysis of the treaty, see Sam Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary* (Oxford University Press, 2015).

¹⁸ As a result of the TRIPS Agreement which came into effect in January 1995, the obligations for States party to the Paris Convention also became applicable to any State that becomes a member of the World Trade Organization, regardless of whether that State also signed up to the Paris Convention individually.

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.”

Article 6ter in and of itself does not suffice to confer substantive legal rights on any of the emblems, signs, names or abbreviations covered by its provisions. As noted in a leading commentary on the treaty, “*The Article concerns trademarks, but its purpose is not to regulate their protection as subjects of industrial property but rather to exclude them from becoming such subjects in certain circumstances*”¹⁹.

States have a certain flexibility in their application of Article 6ter in their domestic laws. For instance, they are not required to grant protection where this would be to the prejudice of trademark owners whose rights were acquired in good faith before the entry into force of the Paris Convention in the country concerned. In addition, as noted above, States are not obliged to grant protection where the attempted third party registration of an IGO name or acronym is not of such a nature as to suggest to the public that a connection exists” or if the 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.” Further, the protections of Article 6ter are available only where the IGO name or acronym in question has been communicated to the States concerned via the notification process set out in Article 6ter, paragraph (3), and under paragraph (4) these notifications are subject to a twelve month period during which any State may file its objections.

The scope of the protection granted by particular States may also vary, as can their mode of implementing their treaty obligations. In the United States, for instance, while there are some cases that seem to indicate otherwise, the prevailing view is that the Paris Convention is not self-executing²⁰ such that, in the absence of implementing legislation, no substantive rights are created under United States law or federal cause of action established beyond what exists in domestic law simply as a result of the United States’ accession to the treaty. In general, Article 6ter is not regarded as self-executing even in those States that employ a more “monist” approach, where a treaty may have the status of domestic law even without implementing legislation²¹, as its wording is not phrased in such a way as to allow for direct application in national laws.

¹⁹ Bodenhausen, *A Guide to the Application of the Paris Convention for Industrial Property* (WIPO Publication N°611 (E) (1969), reprinted 2007): http://www.wipo.int/edocs/pubdocs/en/intproperty/611/wipo_pub_611.pdf (at p. 95). See also *WIPO Intellectual Property Handbook: Policy, Law, and Use*, at para. 5.88, Chapter 5: “The purpose of Article 6ter is not to create an industrial property right in favor of the State or the intergovernmental organization in respect of the distinctive signs concerned, but simply to prevent the use of those signs as trademarks in industrial or commercial activities”: <http://www.wipo.int/export/sites/www/about-ip/en/iprm/pdf/ch5.pdf>.

²⁰ See, e.g. Anne Gilson LaLonde, *Don't I Know You from Somewhere - Protection in the United States of Foreign Trademarks That Are Well Known but Not Used There* (98 Trademark Rep. 1379 (2008)).

²¹ Bodenhausen, *supra*, at p.15. See, generally, David Sloss, *Domestic Application of Treaties* (2011): <http://digitalcommons.law.scu.edu/facpubs/635>.

II. Process History: IGO Acronym Protections in the DNS

(a) 2001 Second WIPO Internet Domain Name Process: The Recognition of Rights and the Use of Names in the Internet Domain Name System:

The September 2001 Final Report on the Second WIPO Internet Domain Name Process (WIPO-2)²² noted that the existing international legal framework contains “*clearly expressed and widely accepted (through applicable constitutional processes) principles prohibiting the unauthorized commercial use, as trademarks, of the names and acronyms of IGOs*”, citing Article 6ter and noting its incorporation into the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights under the World Trade Organization (TRIPS). The Report considered it “*notable that, from the beginning, special status was accorded within the DNS to international organizations. The restricted .int gTLD serves the dual purposes of (i) designating a space in the DNS for the registration of IGOs’ chosen identifiers, and (ii) providing a measure of protection through registration requirements which restrict that space only to those international organizations that qualify (i.e., those that are established by treaty)*”; however, the Report concluded that reliance by IGOs on the .int domain is inadequate, particularly in view of the fact that the restrictions pertaining to a .int registration do not apply to other gTLDs and country-code TLDs (ccTLDs), such that “*predatory and parasitical practices in these domains*” are permissible, which “*raises most concern for IGOs and Internet users in general*”.

IGOs that submitted comments to WIPO-2 “*took the strong position that their names and abbreviations should not be subject to abusive registrations in the DNS, and viewed such registrations as contravening the purpose of the protection granted under existing international law.*” Several commentators suggested that IGOs that followed the Paris Convention and TRIPS procedures should be considered for protection. The Report noted that “*abundant evidence*” had been provided throughout the process that there was a “*sizeable problem of abuse of the names and acronyms of IGOs in the DNS.*” Ultimately, the Report concluded that:

“The existing situation with respect to the names and acronyms of IGOs in the DNS is unbalanced. Any person, without any qualification whatsoever, may register the name or acronym of an IGO in an unrestricted gTLD. Furthermore, they can do so immediately and at an insignificant cost. In contrast, the potential damage that can be inflicted with the use of such a registration is of a different order. The pursuit of protection against such harm not only is distractful to the central missions of IGOs and wasteful of their limited resources, but also may involve questionably unnecessary deviation from the standard principle of immunity of IGOs from jurisdiction.”

The Report goes on to make the following recommendation:

²² The notes, report and recommendations concerning IGO names and acronyms can be found at <http://www.wipo.int/amc/en/processes/process2/report/html/report.html#4>.

It is recommended that this protection be implemented through a special administrative procedure developed and supervised by the constituent members of IGOs, namely, States. The procedure should be available to qualifying IGOs to file a complaint that a domain name registration is the same as, or misleadingly similar to, the name or acronym of the IGO, that the registration has been made without legal justification, and that the registration is likely to mislead users into believing that there is an association between the holder of the domain name registration and the IGO in question.

It is recommended that remedies under the special administrative procedure be limited to the cancellation or transfer of the domain name registration and that the results of the procedure be enforced within the DNS through the ICANN system.

It is recommended that the special administrative procedure should apply to domain name registrations in all gTLDs and in all ccTLDs. It is recognized that the enforcement of the results of such a procedure within the ccTLDs would require the cooperation of the corresponding national authorities.

The Final Report and its recommendations were studied by WIPO's Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) in two sessions held between 2001 and 2002. Following the SCT review, WIPO Member States decided at their October 2002 meeting that, for IGO names and acronyms:

"The General Assembly adopted the recommendation of the SCT with respect to the names and acronyms of IGOs, namely that the UDRP be modified to provide for complaints to be filed by an IGO. The Delegation of the United States of America dissociated itself from this recommendation."²³

(b) 2003 SCT Deliberations and Results

In preparing a paper for the SCT on a possible *de novo* arbitration mechanism that would be applicable to country names, the WIPO Secretariat compared the case of IGO names and acronyms, and noted that there could be a possible conflict between the Mutual Jurisdiction clause in the UDRP and the privileges and immunities of IGOs²⁴. Observing, further, that permitting IGOs to use a *de novo* arbitration mechanism is "*in line with the general legal practice of IGOs which routinely include arbitration clauses in their commercial contracts*", the Secretariat noted that such a mechanism would need to fulfil similar functions as referring a domain name

²³ The SCT had specifically recommended that "*the UDRP be modified to provide for complaints to be filed by an international intergovernmental organization (IGO): A. On the ground that the registration or use, as a domain name, of the name or abbreviation of the IGO that has been communicated under Article 6ter of the Paris Convention is of a nature (i) to suggest to the public that a connection exists between the domain name holder and the IGO; or (ii) to mislead the public as to the existence of a connection between the domain name holder and the IGO; or B. On the ground that the registration or use, as a domain name, of a name or abbreviation protected under an international treaty violates the terms of that treaty.*" The full SCT report is available at http://www.wipo.int/edocs/mdocs/sct/en/sct_s2/sct_s2_8.pdf.

²⁴ The full paper is available at http://www.wipo.int/edocs/mdocs/sct/en/sct_11/sct_11_5.pdf.

dispute to a national court. A *de novo* arbitration mechanism would therefore need to include at least the following elements:

- *“The parties should be able to restate their case completely anew. They should not be confined to claiming that the UDRP panel did not consider certain relevant facts or wrongly applied the UDRP, but should also be able to submit new evidence and new factual or legal arguments;*
- *In order to provide a meaningful “appeal,” conducting a de novo arbitration should, as a general rule, not be more burdensome than conducting litigation in a court of mutual jurisdiction;*
- *The arbitral tribunal should consist of one or more neutral and independent decision makers, who should not be identical or related to the panelists who rendered the UDRP decision; [and]*
- *Either party should be able to present its case in a complete manner. The arbitral tribunal should, for example, have the authority to allow for, or request, additional written submissions, and it should be possible to hold in-person hearings.”*

Additionally:

“the status quo of the domain name should be preserved. The UDRP decision ordering cancellation or transfer of the domain name should not be implemented, provided the de novo arbitration is initiated within a certain deadline, comparable to the ten days deadline of paragraph 4(k) UDRP. Furthermore, for the duration of any such arbitration, the lock on the domain name, which the registrar had placed on the domain name pursuant to the UDRP, should continue, thus preventing the domain name holder from transferring the domain name to another holder.”

Notably, the Secretariat paper seemed to contemplate that it would not be necessary to do away with the UDRP’s Mutual Jurisdiction clause – at least in relation to State complaints regarding country names. The Secretariat recommended that, when filing the complaint, the State should agree to the *de novo* appeal mechanism. It will be for the losing respondent to decide whether or not to initiate such an appeal. However, once he/she does so, then final determination of the case will be resolved through the appeal procedure, and the possibility of challenge in a national court will then be precluded.

At the WIPO General Assembly, while some Member States supported the establishment of a *de novo* arbitration mechanism a few other Member States objected. For example, the United States delegation stated that *“an arbitral appeal mechanism would contribute to eliminating the four most important due process safeguards of the UDRP: the possibility of broad court review, the limitation of the procedure to narrow causes of action, the limitation of available remedies, and the limitation to trademark rights for which there is a firm basis in international law”*. The United States was also concerned about undermining the legitimacy of the UDRP as a whole. In addition to the United States, Australia, Canada and Japan also expressed concerns.

(c) Subsequent Developments

No additional or new recommendations seem to have been further developed at the multilateral level within WIPO. In 2005, Legal Advisers for the United Nations (UN) and its Specialized Agencies as well as a number of IGOs wrote²⁵ to ICANN to support the 2002 WIPO General Assembly recommendation to modify the UDRP to protect IGO names and acronyms, based on a clear legal basis being founded in Article 6*ter*. The letter noted that *“extending the UDRP to protect the identifiers of IGOs would not require the creation of new law, but merely the reflection in the DNS of existing international legal principles for their protection”*. Touching on the issue of IGO jurisdictional immunity, the letter observed that this is an *“essential and indispensable attribute to ensure the independent fulfillment of the respective mandates of IGOs, an attribute that, under international law, States have a legal obligation to respect and protect.”* The Legal Advisers also stated that a *de novo* arbitration mechanism would take into account protections under international civil rights instruments that *“everyone is entitled to a fair hearing by a competent, independent and impartial tribunal established by law”*.

(d) ICANN Work on IGO Acronym Protections Preceding the 2012 New gTLD Program Round

(i) Work by the GNSO:

Following WIPO-2 and discussions within the GNSO, including views from the Business Constituency (BC) and Intellectual Property Constituency (IPC) opposing any modification to the UDRP, in October 2003 ICANN created a President’s Joint Working Group, comprising representatives from the GNSO, GAC and ALAC, which would analyze *“the practical and technical aspects of implementing WIPO-2 Process recommendations in a manner consistent with ICANN’s mission, and the implications for the UDRP”*²⁶. However, the Joint Working Group failed to reach consensus on a way forward. In a letter to the GAC Chair from March 2006, ICANN Chief Executive Officer (CEO) Paul Twomey noted that one *“stumbling block was the resistance by at least some ICANN constituencies to ICANN implementing rules for dispute resolution over geopolitical terms when there was no settled international intellectual property law under which to do so. ICANN is not a legislative body and does not have the power to create such international intellectual property law.”*²⁷

In May 2007, the GNSO Council requested that ICANN staff prepare an Issue Report, as a step preceding a possible PDP, on the policy issues associated with adequately handling disputes relating to IGO names and abbreviations as domain names²⁸. Although the Issue Report did not

²⁵ The letter is available at <http://www.wipo.int/export/sites/www/amc/en/docs/letter.pdf>.

²⁶ See <https://www.icann.org/news/announcement-2003-10-06-en>.

²⁷ The letter also noted comments by the IPC to the effect that the WIPO-2 findings regarding protection of IGO names and abbreviations could be seen as consistent with international law and should be subject to an Issues Report for a possible GNSO PDP, and mentioning a GNSO task force to be set up to consider the matter: <https://www.icann.org/en/system/files/files/twomey-to-tarmizi-13mar06-en.pdf>.

²⁸ The Issue Report is available at <https://gns0.icann.org/en/issues/igo-names/issues-report-igo-drp-15jun07.pdf>, and contains an Annex that documents the correspondence among ICANN, WIPO and the GAC on the topic up to that point.

recommend proceeding with a PDP, it contained a recommendation for a separate dispute resolution procedure for IGO names and abbreviations at the second or third level in new gTLDs, as well as a framework for handling objections or challenges related to IGO names and abbreviations in the next round of new gTLDs. In the Issue Report, ICANN staff further recommended that the GNSO Council consider launching a PDP after the creation of this new dispute resolution process, to investigate its potential application to existing gTLDs.

Due to a lack of votes among the GNSO Council, no PDP was launched at the time by the GNSO, and no further work was undertaken within the GNSO until the 2012-2013 IGO-INGO PDP.

(ii) Work by the GAC:

In March 2007, the GAC issued a set of Principles regarding New gTLDs that, among other objectives, were intended to inform the ICANN Board of the GAC's views regarding public policy issues in new gTLDs. Principle 2.3 stated that “[t]he process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations.”

(iii) Other Developments at ICANN

In December 2011, Legal Counsel for over twenty IGOs wrote to ICANN, requesting a “targeted exclusion of third party registrations of the names and acronyms of IGOs both at the top and second level, at least during ICANN’s first application round and until further appropriate policy could be developed”. The letter noted the harms that could result to IGOs’ missions through abusive third party registrations of their names and acronyms, the serious enforcement burdens that require the diversion of public resources to combat such activity, and the fact that similar rationale had led to protections for the Red Cross and the International Olympic Committee. The letter also cited Article 6ter (as referred to in subsequent treaties such as TRIPS) and highlighted the status of IGOs as having been created by treaties and subject to international law like States²⁹.

The ICANN Board referred the matter to the GNSO, and the GNSO Council responded noting that the closing of the application window for the 2012 New gTLD Program round did not allow adequate time for the GNSO to develop policy advice on the issue³⁰. Nevertheless, in April 2012 the GNSO Council resolved³¹ to request an Issue Report to scope out a “definition of the type of organizations that should receive special protection at the top and second level, if any; and policies required to protect such organizations at the top and second level”.

This Issue Report led ultimately to the initiation of the 2012-2013 IGO-INGO PDP that is referenced in the main body of this Briefing Paper.

²⁹ The letter is available at <https://www.icann.org/en/system/files/files/igo-counsels-to-beckstrom-et-al-13dec11-en.pdf>.

³⁰ See <https://gns0.icann.org/en/correspondence/gns0-to-board-igo-names-26mar12-en.pdf>.

³¹ The full text of the Council resolution is available at <https://gns0.icann.org/en/council/resolutions#20120412-2>.

ANNEX B: DIFFERENCES BETWEEN GAC ADVICE AND GNSO POLICY RECOMMENDATIONS ON IGO ACRONYMS

GAC advice/IGO Small Group Proposal	2012-13 GNSO PDP recommendations (approved by GNSO Council)	GNSO Curative Rights PDP recommendations (ongoing)
<p><u>GAC Advice:</u> The IGO Small Group compromise proposal provides a starting basis for resolution of the differences between GAC advice and GNSO policy (note: prior to the finalization of the proposal, GAC advice had been for Permanent Claims to both potential registrant and affected IGO, plus final and binding third party resolution of disputes, and no amendment to the UDRP)</p> <p><u>IGO Small Group</u>³²: “Preventative” protections:</p> <ul style="list-style-type: none"> • Permanent Claims for the affected IGO only (not potential registrant) <p>“Curative” mechanisms:</p> <ul style="list-style-type: none"> • Separate Rapid Relief Mechanism (where there is imminent harm and no material factual dispute) • Separate dispute resolution process (applicable only to cases where registrant is passing itself off as IGO or other cases of fraud/deception, with arbitral appeal mechanism) 	<p>“Preventative” protections:</p> <ul style="list-style-type: none"> • 90-days Claims to both potential registrant (pre-registration) and affected IGO (post-registration) <p>“Curative” mechanisms:</p> <ul style="list-style-type: none"> • GNSO Council to request Issue Report 	<p>“Preventative” protections:</p> <ul style="list-style-type: none"> • Not applicable (not in scope) <p>“Curative” mechanisms:</p> <ul style="list-style-type: none"> • No change to UDRP or URS • No separate dispute resolution mechanism • Standing under UDRP & URS through compliance with Article 6ter of the Paris Convention • Two options proposed for dealing with IGO jurisdictional immunity concerns

³² The full Proposal is set out in Annex E; it can also be viewed and downloaded from: <https://gns0.icann.org/en/correspondence/crocker-icann-board-to-council-chairs-04oct16-en.pdf>.

ANNEX C: COMPILATION OF GAC ADVICE AND COMMUNICATIONS RELATING TO IGO ACRONYM PROTECTIONS

April 2012 (Letter to ICANN Board)

The GAC has considered the Board's request for policy advice on the expansion of protections to include IGOs, and advises that in the event that additional IGOs are found to meet the above criteria, this would be a consideration in the formulation of GAC advice for IGO protections in future rounds, as well as consideration of protections for IGOs, more generally.

Therefore, the GAC advises that no additional protections should be afforded to IGOs, beyond the current protections found in the Applicant Guidebook, for the current round.

October 2012 (Toronto Communique)

While the GAC continues its deliberations on the protection of the names and acronyms of Intergovernmental Organizations (IGOs) against inappropriate third-party registration;

The GAC advises the ICANN Board that:

- In the public interest, implementation of such protection at the second level must be accomplished prior to the delegation of any new gTLDs, and in future rounds of gTLDs at the second and top level.
- The GAC believes that the current criteria for registration under the .int top level domain, which are cited in the Applicant Guidebook as a basis for an IGO to file a legal rights objection, provide a starting basis for protecting IGO names and acronyms in all new gTLDs.
- Building on these criteria, the GAC and IGOs will collaborate to develop a list of the names and acronyms of IGOs that should be protected. Pending further work with ICANN on specific implementation measures for this initiative, the GAC believes this list of IGOs should be approved for interim protection through a moratorium against third-party registration prior to the delegation of any new gTLDs.

April 2013 (Beijing Communique)

The GAC stresses that the IGOs perform an important global public mission with public funds, they are the creations of government under international law, and their names and acronyms warrant special protection in an expanded DNS. Such protection, which the GAC has previously advised, should be a priority.

This recognizes that IGOs are in an objectively different category to other rights holders, warranting special protection by ICANN in the DNS, while also preserving sufficient flexibility for workable implementation.

The GAC is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.

Pending the resolution of these implementation issues, the GAC reiterates its advice to the ICANN Board that ... appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.

July 2013 (Durban Communique)

The GAC reaffirms its previous advice from the Toronto and Beijing Meetings that IGOs are in an objectively different category to other rights holders thus warranting special protection by ICANN. IGOs perform important global public missions with public funds and as such, their identifiers (both their names and their acronyms) need preventative protection in an expanded DNS.

The GAC understands that the ICANN Board, further to its previous assurances, is prepared to fully implement GAC advice; an outstanding matter to be finalized is the practical and effective implementation of the permanent preventative protection of IGO acronyms at the second level.

The GAC advises the ICANN Board that:

The GAC is interested to work with the IGOs and the NGPC on a complementary cost-neutral mechanism that would:

- a. provide notification to an IGO if a potential registrant seeks to register a domain name matching the acronym of an IGO at the second level, giving the IGO a reasonable opportunity to express concerns, if any; and
- b. allow for an independent third party to review any such registration request, in the event of a disagreement between an IGO and potential registrant.
- c. The initial protections for IGO acronyms confirmed by the NGPC at its meeting of 2 July 2013 should remain in place until the dialogue between the GAC, NGPC, and IGO representatives ensuring the implementation of preventative protection for IGO acronyms at the second level is completed.

November 2013 (Buenos Aires Communique)

The GAC advises the ICANN Board that:

The GAC, together with IGOs, remains committed to continuing the dialogue with NGPC on finalising the modalities for permanent protection of IGO acronyms at the second level, by putting in place a mechanism which would:

- a. provide for a permanent system of notifications to both the potential registrant and the relevant IGO as to a possible conflict if a potential registrant seeks to register a domain name matching the acronym of that IGO;
- b. allow the IGO a timely opportunity to effectively prevent potential misuse and confusion;

- c. allow for a final and binding determination by an independent third party in order to resolve any disagreement between an IGO and a potential registrant; and
- d. be at no cost or of a nominal cost only to the IGO.

The GAC looks forward to receiving the alternative NGPC proposal adequately addressing this advice. The initial protections for IGO acronyms should remain in place until the dialogue between the NGPC, the IGOs and the GAC ensuring the implementation of this protection is completed.

March 2014 (Singapore Communique)

The GAC recalls its previous public policy advice from the Toronto, Beijing, Durban and Buenos Aires Communiqués regarding protection for IGO names and acronyms at the top and second levels and awaits the Board's response regarding implementation of the GAC advice.

June 2014 (London Communique)

The GAC:

- reaffirms its advice from the Toronto, Beijing, Durban, Buenos Aires and Singapore Communiqués regarding protection for IGO names and acronyms at the top and second levels, as implementation of such protection is in the public interest given that IGOs, as created by governments under international law are objectively different rights holders;
- notes the NGPC's letter of 16 June 2014 to the GNSO concerning further steps under the GNSO Policy Development Process while expressing concerns that the process of implementing GAC advice has been so protracted;
- welcomes the NGPC's assurance that interim protections remain in place pending any such process; and
- confirms its willingness to work with the GNSO on outcomes that meet the GAC's concerns.

October 2014 (Los Angeles Communique)

The GAC reaffirms its advice from the [Toronto](#), [Beijing](#), [Durban](#), [Buenos Aires](#), [Singapore](#) and [London](#) Communiqués regarding protection of IGO names and acronyms at the top and second levels, as implementation of such protection is in the public interest given that IGOs, as created by governments under international law, are objectively different right holders; namely,

- i. Concerning preventative protection at the second level, the GAC reminds the ICANN Board that notice of a match to an IGO name or acronym to prospective registrants, as well as to the concerned IGO, should apply in perpetuity for the concerned name and acronym in two languages, and at no cost to IGOs;

ii. Concerning curative protection at the second level, and noting the ongoing GNSO PDP on access to curative Rights Protection Mechanisms, the GAC reminds the ICANN Board that any such mechanism should be at no or nominal cost to IGOs; and further, in implementing any such curative mechanism,

The GAC advises the ICANN Board:

- that the UDRP should not be amended;
- welcomes the NGPC's continued assurance that interim protections remain in place pending the resolution of discussions concerning preventative protection of IGO names and acronyms; and
- supports continued dialogue between the GAC (including IGOs), the ICANN Board (NGPC) and the GNSO to develop concrete solutions to implement long-standing GAC advice.

February 2015 (Singapore Communique)

The GAC will continue to work with interested parties to reach agreement on appropriate permanent protections for names and acronyms for Inter-Governmental Organisations. This will include working with the GNSO PDP Working Group on IGO-INGO Access to Curative Rights Protection Mechanisms; and with IGOs and the NGPC.

June 2015 (Buenos Aires Communique)

Consistent with previous GAC advice in previous Communiqués regarding protection for IGO names and acronyms at the top and second levels, the GAC takes note of the progress made by the informal “small group” towards developing mechanisms in line with previous GAC advice, and calls upon the small group to meet in the near term with a view towards developing a concrete proposal for these mechanisms before the next ICANN meetings in Dublin; and welcomes the preventative protections that remain in place until the implementation of permanent mechanisms for protection of IGO names and acronyms at the top and second levels.

October 2015 (Dublin Communique):

The GAC advises the Board: to facilitate the timely conclusion of discussions of the “small group” and the NGPC in an effort to resolve the issue of IGO protections.

June 2016 (Helsinki Communique):

The GAC remains committed to protections of IGO names and acronyms at the top and second levels, which are in the public interest given that IGOs, as publicly-funded entities created by governments under international law, are objectively unique rights holders.

The GAC recalls its advice since the 2012 Toronto Communiqué in this regard, and remains of the view that: (i) concerning preventive protection at the second level, that notice of a match to an IGO name or acronym to prospective registrants as well as the concerned IGO should be

mandated in perpetuity for the concerned name and acronym in two languages and at no cost to IGOs; (ii) concerning curative protection at the second level, and noting the ongoing GNSO PDP on access to curative rights protection measures, that any such mechanism should be separate from the existing UDRP, offer parties an “appeal” through arbitration, and be at no or nominal cost to IGOs;

The GAC notes the ongoing work of the informal “small group” and the efforts of those involved to develop mechanisms that implement the above-mentioned advice. The GAC remains of the view that the preventive protections for IGO acronyms should be maintained pending the implementation of mechanisms for the permanent protection of IGO names and acronyms at the top and second levels.

November 2016 (Hyderabad Communique):

The GAC takes note of the letter from the Secretary General of the United Nations to Ministers regarding policy development at ICANN related to the potential unauthorized use of IGO names 8 and acronyms in the Internet Domain Name System. In this respect, the GAC reiterates its concern regarding the issue set forth by the UN Secretary General.

The GAC advises the ICANN Board:

I. To take action and engage with all parties in order to facilitate, through a transparent and good faith dialogue, the resolution of outstanding inconsistencies between GAC advice and GNSO recommendations with regard to the protection of IGO acronyms in the DNS and to report on progress at ICANN 58.

II. That a starting basis for resolution of differences between GAC Advice and existing GNSO Recommendations would be the small group compromise proposal set out in the October 4, 2016 letter from the ICANN Board Chair to the GNSO, namely that ICANN would establish all of the following, with respect to IGO acronyms at the second level:

- a procedure to notify IGOs of third-party registration of their acronyms;
- a dispute resolution mechanism modeled on but separate from the UDRP, which provides in particular for appeal to an arbitral tribunal instead of national courts, in conformity with relevant principles of international law; and
- an emergency relief (e.g., 24-48 hours) domain name suspension mechanism to combat risk of imminent harm.

III. That, to facilitate the implementation of the above advice, the GAC invites the GNSO Working Group on Curative Rights Protection Mechanisms to take the small group proposal into account.

IV. That, until such measures are implemented, IGO acronyms on the GAC-provided list remain reserved in two languages.

Rationale:

IGOs undertake global public service missions, and protecting their names and acronyms in the DNS is in the global public interest. IGOs are unique treaty-based institutions created by governments under international law. The small group compromise strikes a reasonable balance between rights and concerns of both IGOs and legitimate third parties. ICANN's Bylaws and Core Values indicate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.

ANNEX D: GNSO CONSENSUS POLICY RECOMMENDATIONS RELATING TO PROTECTIONS FOR IGO NAMES & ACRONYMS

#	International Governmental Organization (IGO) Recommendations
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List (22 March 2013) - Full Name (Language: Up to two languages) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages)
1	<p>Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>
2	<p>For <i>International Governmental Organizations</i> Identifiers placed in the Applicant Guidebook as ineligible for delegation at the Top-Level, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level</p>
3	<p>Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement</p>
4	<p>For <i>International Governmental Organizations</i> identifiers placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level</p>
5	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse</p>
6	<p><i>International Governmental Organizations</i> Scope 2 identifiers added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> phase of each new gTLD launch for Second-Level registrations</p>

ANNEX E: TEXT OF THE IGO SMALL GROUP PROPOSAL

Executive Summary

This Paper sets out a proposal to deal with the protection of IGO acronyms at the second level in the domain name system (the ICANN Board permanently implemented protections for full names at the top and second levels on 30 April 2014). It describes a process whereby an Eligible IGO (as defined in this Paper) may be notified of a third party registration of its acronym in a new gTLD launched under ICANN's New gTLD Program, as well as the proposed establishment of appropriate dispute resolution processes to enable protection of an Eligible IGO's acronym in appropriate circumstances in all gTLDs.

The proposal outlined in this Paper was developed by the "small group"³³ of representative IGOs in conjunction with GAC and Board (NGPC) representatives. ICANN staff assisted with certain aspects of drafting as well as subject matter advice during the process.

It is hoped that this Paper, coupled with further detailed discussions with the GNSO, the GAC and staff as to the feasibility of these proposals and their implementation will lead to an agreed permanent solution for the protection of IGO acronyms in the domain name system.

Background

The IGO-GAC-NGPC small group that has been discussing the topic of appropriate IGO protections, based on the NGPC's initial proposal of March 2014, agree that the following general principles should underpin the framework for any permanent solution concerning the protection of IGO names and acronyms in the domain name system:

³³ This informal IGO "small group" had been formed following the ICANN51 meeting in October 2014, comprising representatives from various IGOs working with GAC and Board (NGPC) representatives to develop this proposal in order to facilitate a reconciliation of GAC advice and GNSO policy recommendations on the issue of IGO acronyms protection. See, e.g., the GAC's ICANN53 Buenos Aires Communique (June 2015) ([https://gacweb.icann.org/download/attachments/28278854/GAC Buenos Aires 53 Communique.pdf?version=1&modificationDate=1436284325000&api=v2](https://gacweb.icann.org/download/attachments/28278854/GAC_Buenos_Aires_53_Communique.pdf?version=1&modificationDate=1436284325000&api=v2)); this January 2015 letter from the NGPC Chair to the GNSO Council (<https://gnsso.icann.org/en/correspondence/chalaby-to-robinson-15jan15-en.pdf>); this July 2015 letter from the OECD Secretary-General to ICANN's CEO (<https://www.icann.org/en/system/files/correspondence/gurria-to-chehade-20jul15-en.pdf>); and the most recent GAC Communique from ICANN56 Helsinki (June 2016) ([https://gacweb.icann.org/download/attachments/27132037/20160630_GAC_ICANN_56 Communique_FINAL%5B1%5D.pdf?version=1&modificationDate=1469016353728&api=v2](https://gacweb.icann.org/download/attachments/27132037/20160630_GAC_ICANN_56_Communique_FINAL%5B1%5D.pdf?version=1&modificationDate=1469016353728&api=v2)).

1. The basis for protection of IGO acronyms should not be founded in trademark law, as IGOs are created by governments under international law and are in an objectively different category of rights-holders;
2. As IGOs perform important global missions with public funds, the implementation of appropriate protections for IGO names and acronyms is in the public interest; and
3. The Eligible IGOs that would qualify for protections under this proposal are those that are named on the GAC List of IGOs (initially submitted to ICANN in March 2013) as may be updated from time to time in accordance with GAC advice issued on 22 March 2013.

Proposals

1. Pre-Registration Protections for IGO Acronyms:

- A process will be established whereby Eligible IGOs will be able to submit to the GAC Secretariat within a defined time period and at no cost to them, up to two acronyms per IGO (representing their names in up to two different languages) to be added to a mechanism functionally equivalent to the Trademark Clearinghouse (TMCH).
- Participating Eligible IGOs shall designate a contact email address (which shall be updated from time to time by the IGO) via the GAC Secretariat and within a defined time period to receive email notifications of domain name registrations corresponding to their submitted IGO Acronyms for the duration of the existence of any mechanism functionally equivalent to the TMCH.
- Where the above proposals differ from the existing GNSO policy recommendations, the GNSO will be requested to consider modifying its recommendations, as envisaged in the 2014 discussion and correspondence between the GNSO Council and the NGPC.

2. Dispute Resolution Mechanism

- ICANN will facilitate the development of rules and procedures for a separate (i.e., separate from the existing UDRP) dispute resolution mechanism to resolve claims of abuse of domain names that are registered and being used in situations where the registrant is pretending to be the IGO or that are 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 resulting from this mechanism shall be “appealable” through an arbitral process to be agreed.

3. Rapid relief mechanism

- ICANN will facilitate the creation of a mechanism through which an Eligible IGO may obtain a rapid temporary suspension of a domain name in situations where it would not be reasonable for it to use the agreed Dispute Resolution Mechanism, as per the specific

conditions defined below. For clarity, this procedure would not be intended for use in any proceedings with material open questions of fact, but only clear-cut cases of abuse.

- To obtain such relief an Eligible IGO must demonstrate that:
 - 1) The subject domain name 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
 - 2) there is an obvious risk of imminent harm from the claimed abuse of such domain name, (*e.g.* such as fraudulently soliciting donations in the wake of a humanitarian disaster).
- Relief under this mechanism will be the same as that provided under the URS.

4. Costs related to the mechanisms referred to in this proposal

- ICANN will work with the IGOs and the mechanism providers to ensure that IGOs are not required to pay filing or any other ICANN-defined fees to access and use those mechanisms unless the examiner finds the case to have been brought in bad faith. Three or more findings of cases brought in bad faith by the same IGO may lead to that IGO being suspended from using the mechanism for a period of one year.

5. Glossary

- *Eligible IGO*: An intergovernmental organisation whose name appears on the list attached as Annex 2 to the 22 March 2013 Letter from Heather Dryden, Chair of the Governmental Advisory Committee to Steve Crocker, Chair, ICANN Board as may be updated from time to time in accordance with the GAC advice issued on 22 March 2013.
- *IGO Acronym*: An abbreviation of the names of Eligible IGOs in up to two languages.

Next Steps

- 1) This proposal will be circulated to and discussed with the larger group of IGOs, and to the GAC and the GNSO, including the Chairs of the Curative Rights PDP WG;
- 2) Subject to advice from the GAC and the GNSO, the GDD will consider adopting the amended proposal and instructing staff to work up the relevant implementation details for subsequent discussion and (as appropriate) approval; and
- 3) Temporary protection for IGO Acronyms will cease when the new process is implemented (as noted above, IGO full names have been accorded protection at both the top and second levels pursuant to the ICANN Board's decision of 30 April 2014).

ANNEX F: EXCERPTS FROM THE ICANN BYLAWS – MISSION, COMMITMENT & CORE VALUES, THE ROLES OF THE GNSO AND THE GAC; AND FROM THE GNSO'S POLICY DEVELOPMENT PROCESS MANUAL

I. BYLAWS

Section 1.1: Mission

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers ...

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations ...

Section 1.2: Commitments & Core Values

(a) In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following ...

(i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN ...

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture ...

(c) ... The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially

competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

Section 11: Description of the GNSO

11.1 - There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**"), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

11.6 - The policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws.

Section 12.2(a): Description of the GAC

(i) The Governmental Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC Consensus Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

(xi) If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

Annex A: The GNSO Policy Development Process (extract)

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.

II. GNSO POLICY DEVELOPMENT MANUAL

Section 16: Amending Approved GNSO Policies Prior to Final ICANN Board Approval

"Approved GNSO Council policies may be modified or amended by the GNSO Council at any time prior to the final approval by the ICANN Board as follows:

- The PDP Team is reconvened or, if disbanded, reformed, and should be consulted with regards to the proposed amendments or modifications;
- The proposed amendments or modifications are posted for public comment for not less than thirty (30) days;
- The GNSO Council approves of such amendments or modifications with a Supermajority Vote of both Houses in favour.

Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue."