

GNSO Issues Report on Dispute Handling for IGO Names and Abbreviations

STATUS OF THIS DOCUMENT

This is the Issues Report on Dispute Resolution for IGO Names and Abbreviations, produced by ICANN staff for submission to the GNSO Council on 15 June, 2007.

SUMMARY

This report is submitted to the GNSO Council in response to a request for an Issues Report on Dispute Resolution for IGO Names and Abbreviations.

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1 Executive summary

1.2 Background

- This report has been prepared at the request of the GNSO Council, in response to a motion of the Council on 24 May 2007 for an Issues Report regarding possible measures in line with the Report of the “Second WIPO Internet Domain Name Process”, commonly known in ICANN policy discussions as WIPO-2, to protect International Intergovernmental Organization (IGO) names and abbreviations as domain names, see <http://gnso.icann.org/mailing-lists/archives/council/msg03533.html>.
- The Council directed staff to prepare an issues report “on the policy issues associated with adequately handling disputes relating to IGO names and abbreviations as domain names. The GNSO Council also requests that the staff liaise with WIPO to utilize its knowledge and experience of WIPO-2.”
- The WIPO-2 report has been reviewed by the GNSO Intellectual Property Constituency (IPC) in connection with the PDP on new gTLDs. Following an initial statement for the new gTLD PDP early in 2006, the IPC put forward a recommendation to the GNSO Council stating that the WIPO-2 findings regarding protection of IGO names and abbreviations as domain names could be seen as consistent with international law and should be subject to an Issues Report in view of a GNSO PDP for a possible consensus policy on such protection. This recommendation is available at <http://www.gnso.icann.org/mailing-lists/archives/council/msg03368.html>. The IPC recommendation was briefly discussed at the GNSO Council meeting 12 April 2007 and approved during the GNSO Council 24 May 2007.
- Prior to the Council vote, the gTLD Registry Constituency provided a position paper against the request for an issues report. See <http://gnso.icann.org/mailing-lists/archives/council/msg03500.html>.

1.3 Possible directions for ICANN community

The protection of IGO names and abbreviations may be addressed in the new gTLD process, with an objections-based approach for strings at the top-level, and a dispute resolution process (DRP) for domain names at the second (and if applicable, third) levels.

The GAC Principles on New gTLDs, issued on 28 March 2007 (see <http://gac.icann.org/web/communiques/gac27com.pdf>), state that:

2.3 The 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 (IGOs).

2.7 Applicant registries for new gTLDs should pledge to:

a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.

b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

The GNSO New gTLD Task Force is in the process of completing its work, and as of the date of this issues report, continues to discuss the incorporation of the GAC Principles related to the protection of IGO names and abbreviations. The GNSO Reserved Names Working Group (RN WG) reviewed the WIPO-2 report and recommendations, but focused primarily on geographic names. The RN WG did not address protection of IGO names and abbreviations in its report published on 23 March 2007 (see <http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.pdf>).

A DRP for the protection of IGO names and abbreviations remains to be established, but there is previous work to draw on in this regard. At this time, modification of the UDRP is not perceived as an acceptable way to proceed, so a separate DRP for new gTLDs is anticipated. This DRP could be developed either by staff in the new gTLD framework or as a part of a PDP. The DRP could also be included as a contractual condition for new gTLDs, without a PDP.

If developed by staff for new gTLDs, a follow-up PDP would be necessary to apply the DRP to existing gTLDs. An alternative may also be to negotiate such application individually with existing gTLD registries.

1.4 Staff recommendation

Under Annex A(2)(e) of the ICANN Bylaws, an issues report must include a staff recommendation on whether the Council should initiate a PDP. "Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO." The staff recommendation is as follows:

- Staff does not recommend a PDP on the protection of IGO names and abbreviations at this time.
- Staff recommends that new gTLD agreements may provide for protection of IGO names and abbreviations as a contractual condition for new gTLDs.
- Staff recommends that a separate Dispute Resolution Procedure be developed for IGO names and abbreviations as domain names at the second or third level in new gTLDs and that a framework be developed for handling objections or challenges related to IGO names and abbreviations in the upcoming application round for new gTLDs.
- Once the DRP has been developed, staff recommends that the GNSO Council consider launching a PDP to investigate its application to existing gTLDs.

- In the alternative, the GNSO Council may consider forming a Working Group or assistance group to collaborate on a DRP for IGO names and abbreviations and conduct a PDP for application of the DRP to existing gTLDs.
- The GNSO Council may also consider extending the work of the Protections of Rights of Others (PRO) Working Group to develop a DRP for IGO names and abbreviations.

1.5 Next steps

- The GNSO Council may choose to discuss the issues report during the 29th ICANN International Public Meeting in San Juan, Puerto Rico in late June 2007, or may choose to discuss the issues report at the next available GNSO Council meeting.

2 Objective

1. This report is submitted in response to the request from the GNSO Council on 24 May, 2007 to provide an Issues Report on Dispute Handling for IGO Names and Abbreviations.
2. The purpose of an issues report is three-fold - to identify the issues involved in a substance matter, to identify whether the scope is within the remit of the GNSO, in particular, within the scope of a Policy Development Procedure of this organization, and to recommend further actions to take.

3 Background

3.1 Process background

- During 2003 and 2004, the Report of the "Second WIPO Internet Domain Name Process", commonly known in ICANN policy discussions as "WIPO-2"¹, was discussed extensively within ICANN. A dedicated Joint Working Group investigated whether these recommendations could be introduced in the UDRP², but this effort did not result in a consensus for doing so. Ensuing discussions have however identified areas in these recommendations that can be addressed separately and have a basis in ratified international treaties, notably the protection of IGO³ names and abbreviations as domain names. A history of the interactions between ICANN and WIPO⁴ on these issues is available as an annex to this paper.
- IGOs are international intergovernmental organizations, established by international treaty, such as the United Nations, World Trade Organization, International Telecommunications Union, and WIPO. IGOs have historically been concerned about the registration and use of domain names identical or confusingly similar to IGO names and abbreviations. Examples include UnitedNations.com, ITU.info, imf.biz, WIPO.TLD.
- IGOs have an existing TLD, .INT (see <http://www.iana.org/int-dom/>). There are currently restrictions on the number of domain names that may be registered in .INT.
- At the ICANN meeting in Vancouver in early December 2005, the GNSO's Intellectual Property Constituency (IPC) was asked by ICANN CEO Paul Twomey to closely examine the individual WIPO-2 Report recommendations and revert with a statement on their findings. The IPC pursued this track and included suggestions regarding protection of IGO names and abbreviations in its Constituency Statement

¹ The Second WIPO Internet Domain Name Process, <http://www.wipo.int/amc/en/processes/process2/report/>.

² Uniform Domain Name Dispute Resolution Policy (UDRP), <http://www.icann.org/dndr/udrp/policy.htm>.

³ International InterGovernmental Organizations, <http://www.wipo.int/amc/en/processes/process2/report/html/report.html#4>.

⁴ World Intellectual Property Organization, <http://www.wipo.int/portal/index.html.en>

for the GNSO PDP on New gTLDs, submitted on 31 January 2006 and available at <http://gns0.icann.org/issues/new-gtlds/ipc-01feb06.pdf> . This statement also covers other policy aspects in addition to protection of IGO names and abbreviations in line with WIPO-2, which is addressed in a separate chapter on pages 6-10.

- The GNSO Council briefly discussed these aspects of the IPC Constituency Statement at the ICANN Wellington meeting, concluding with a request to the IPC to elaborate its findings in a separate report and recommend actions to take for the GNSO. IPC established a drafting group, with support from ICANN staff and WIPO, resulting in a recommendation adopted by the IPC and submitted to the GNSO Council meeting 12 April 2007, see <http://www.gns0.icann.org/mailling-lists/archives/council/msg03368.html>. The recommendation was briefly discussed at this meeting and further discussed at the GNSO Council teleconference on 24 May, , see <http://gns0.icann.org/meetings/agenda-24may07.shtml>, when a motion to follow this recommendation was adopted:

“Motion to request issues report on protecting IGO names and abbreviations

Whereas the GNSO Council requested at its meeting on 12 April 2006 that the Intellectual Property Interests constituency following consultations make a recommendation to the GNSO Council as to whether or not a policy development process is required.

Whereas, the GNSO Council recognizes the recommendation put forward by the IPC Constituency regarding possible measures in line with WIPO-2 to protect International Intergovernmental Organizations (IGO) names and abbreviations as domain names.

Whereas, the GNSO Council notes that measures to protect IGO names and abbreviations are requested in the GAC principles for New gTLDs.

Whereas, the GNSO Council notes that WIPO is the maintenance agency for the authoritative list of relevant IGO names and abbreviations protected under Article 6ter of the Paris Convention (<http://www.wipo.int/article6ter/en/>).

The GNSO Council requests that the staff produce an issues report on the policy issues associated with adequately handling disputes relating to IGO names and abbreviations as domain names.

The GNSO Council also requests that the staff liaise with WIPO to utilize its knowledge and experience of WIPO-2.”

- The GAC Principles for New gTLDs, adopted at the ICANN Lisbon meeting and available at http://gac.icann.org/web/home/gTLD_principles.pdf, also mirror the WIPO 2 recommendations regarding IGO names and abbreviations. These principles specifically state in sections 2.3 and 2.7 that:

“2.3 The process for introducing new gTLDs must make proper allowance for third-party rights, in particular trade mark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).

.....

2.7 Applicant registries for new gTLDs should pledge to:

a) Adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD.

b) Ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.”

- This aspect was discussed in the New gTLD Committee meeting in Lisbon and also in the GNSO Reserved Names Working Group reporting to that Committee, concluding that a challenge procedure for this aspect was appropriate, rather than a blanket coverage of all IGO names and abbreviations in a reserved names list.
- The final report of the Reserved Names Working Group, published on 23 May 2007, examined the WIPO-2 recommendations as part of the recommendations on reserved names at the top level, second level, and if applicable third level, for new gTLDs. See <http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.pdf>.
- The list of IGO names and abbreviations to take into account is relatively stable but the list is dynamic, as such entities come and go and may also change names.

WIPO acts as a repository of current IGO names and abbreviations notified in line with Article 6ter of the Paris Convention.⁵ There are 171 contracting parties to the Paris Convention.⁶ There are currently 132 IGOs (including IGO programs, admissible as a consequence of a 1992 Paris Assembly declaration) that have notified their names and acronyms in line with Article 6ter of the Paris Convention. There are 289 abbreviations and 581 names currently registered, covering different language versions of the same organization name. This data is collected in a searchable database on the WIPO website.⁷ It is not available as a list as yet, but, according to WIPO, the database may soon be made available in list format.

3.2 Issue Background

- There are two distinct aspects relating to the protection of IGO names and abbreviations as domain names, relating to the top-level and the second (and lower) levels, respectively, and calling for different approaches. On the top-level, the protection of IGO names and abbreviations in line with WIPO-2 is foreseen by incorporation of the relevant GAC Principles in the New gTLD Final Report as relevant grounds for objections to a string proposed by an applicant for a new gTLD. This fits into an array of recognized grounds for challenges in the handling of new gTLD applications, calling for specific dispute resolution procedures when such cases arise. The particular dispute resolution procedure for IGO names and abbreviations remains to be defined as an important implementation aspect.
- The second aspect relates to the protection and use of IGO names and abbreviations on the second (and lower) levels in the allocation and assignment of domain names. This aspect needs to be reflected in the contractual conditions for gTLD registries. For new gTLDs, this may occur in the implementation of the relevant GAC Principles, albeit with a similar need for a suitable dispute resolution procedure. For existing gTLDs, however, there is

⁵ Article 6ter of the Paris Convention,
http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#P155_22332.

⁶ http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=2.

⁷ <http://www.wipo.int/article6ter/en/> and <http://www.wipo.int/ipdl/en/search/6ter/search-struct.jsp>.

only one common way to incorporate such provisions in the contractual conditions, notably to establish a consensus policy to that effect. The only vehicle foreseen in the ICANN Bylaws to achieve a consensus policy for gTLD registries is through a GNSO PDP.

- Accordingly, the GNSO Council meeting passed a motion to request an Issues Report from staff with a view to launch a PDP for a consensus policy embodying protection of IGO names and abbreviations with a suitable UDRP-like dispute resolution procedure to handle disputes that may occur. To establish such a consensus policy would further eliminate the confusion that would follow from having different treatment of IGO names and abbreviations between “new” and “existing” gTLDs.
- While the subset of WIPO-2 recommendations relating to IGO names and abbreviations may be seen as relatively well-founded and non-controversial, the earlier WIPO-2 discussions within ICANN resulted in strong debate and little agreement on WIPO-2. It is therefore essential to highlight that the controversial aspects regarding geo-political names, are excluded from the scope of this particular exercise.
- IGOs face two difficulties in using the existing UDRP. Firstly, IGO names and abbreviations are generally not registered as trademarks since IGOs are not engaged in commercial activity.
- Secondly, submitting to the UDRP would require IGOs to submit to the jurisdiction of a national Court, thus waiving their immunity from national jurisdiction. This would present important issues of sovereignty to the international treaty organisations.

3.3 Scale of the problem

- In a 23 March 2005 letter to ICANN, the UN Legal Advisers state that a majority of IGOs have been affected by various forms of domain name abuse, ranging in gravity from cybersquatting to outright phishing schemes.⁸ An example of the latter is that fake emails including the acronym of an IGO program invited third parties to an “international conference”, allegedly with expenses paid for

⁸ <http://www.icann.org/correspondence/michel-to-cerf-23mar05.pdf>.

by the IGO, but calling for “down payments” from the invitees in advance. Since the IGO in question could not use the UDRP and the senders of the fraudulent emails could not be located, it could only issue warning alerts on its website. Similar schemes involve fake job offers in UN organizations sent from official-looking email addresses and also requiring down payments from unsuspecting candidates.

- The UN Legal Advisers also state that “...abusive registrations of the names and acronyms of IGOs continues unabated. Such abuse is not only misleading Internet users....but also poses a heavy burden on IGOs...- ...not only IGOs in the UN system, but also OECD, NATO.....”⁹ As an example, international relief organizations such as the International Red Cross and Red Crescent dealt with large numbers of abusive registrations after the December 2004 Southeast Asian tsunami disaster. These registrations were used in millions of fraudulent e-mail messages to solicit donations from unsuspecting individuals. In February 2006, one such spammer pled guilty before the U.S. District Court of Oregon to sending 800,000 fraudulent e-mail messages for tsunami relief.

3.4 The need for a separate DRP

- The necessary dispute resolution procedure requires particular provisions. For example, there must be an appeals procedure that takes account of the status of IGOs as international treaty organizations, immune to national laws.
- In a 2003 submission to ICANN, WIPO provided a draft model policy and rules for the protection of IGO names and abbreviations expressed as a modified UDRP procedure. This procedure differed from the trade mark UDRP in that it added a unique type of appeals procedure. This procedure is available as Annex 1 to the report at: <http://www.icann.org/committees/JWGW2/final-report/JWGW2-final-report-jul04.pdf> .
- Due to these differences and other considerations, the IPC, as well as other constituencies willing to consider a DRP for IGO names and abbreviation protection, have expressed a strong preference for such protection to be

⁹ Id.

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Authors: Olof Nordling, olof.nordling@icann.org , Patrick Jones, Patrick.jones@icann.org

handled as a separate dispute resolution procedure (DRP) rather than as a modification of the existing UDRP.

- According to WIPO, it is crucial to obtain the protection and an appeals procedure commensurate with the particular status of the IGOs. It is likely that such a separate procedure would be acceptable to WIPO.

3.4 IGO names and abbreviations - a quick reality check

- Testing 13 randomly picked IGO abbreviations using the extensions .com, .net, .biz and .info gave the following result:

TLD\status	Active non-IGO	Ads	Not found	Used by IGO
.com	8	3	1	1
.net	2	6	4	1
.biz	1	7	4	1
.info	1	8	4	1

Although far from exhaustive, this sample gives an indication that most conflicts with existing bona fide registrants would be found under .com, while “cybersquatting” on IGO names and abbreviations for advertisement purposes occur in most gTLDs. It should be noted that most IGOs have web sites under .org and/or .int.

WIPO notes the following examples of IGO names and abbreviations in domain names not appearing to be registered by the IGOs themselves: europeanfreetradeassociation.com, iaea.net, oecd.com, oecd.net, ohim.com, opecfund.com, unaids.com, unhcr.info, unidroit.com, worldfoodprogram.com, worldhealthorganisation.org.

3.5 Previous discussions on this issue

Previous discussions on this issue are documented in Annex 1.

3.7 Community Consultation

Other than the discussion within the GNSO Council and constituencies, there has been very limited community consultation recently on the WIPO-2 recommendations. However, there was abundant consultation with the wider community in the past, as documented in Annex 1.

4 Discussion of possible directions

It should be noted that the GNSO policy development process is one of several ways that the issues might be addressed within the ICANN community. This section describes the various mechanisms for addressing this issue in order to inform the ICANN community of possible directions that may be taken.

Another area of concern expressed by GNSO Council members is that the current workload on GNSO policy development activities is high, prompting a reluctance to take on a new PDP at this point in time. However, this particular endeavour is well focused and can be undertaken with dedicated staff and WIPO support, while utilizing work already undertaken as regards the necessary dispute resolution procedure. The additional load on the constituencies for this effort could thus be kept to a minimum.

While the introduction of protection of IGO names and abbreviations, i.e. in new gTLDs, may still prompt some discussions, the most crucial aspect is likely to be the handling of the same protection in existing gTLDs. In particular, the issue of potential “grandfathering” of existing “IGO conflicting” domain name registrations is expected to arise and possibly call for special treatment.

For the DRP, assuming that a modification of the UDRP is not feasible for reasons mentioned earlier, there are two possible ways to proceed:

- a) to develop the DRP within the framework of implementation of the New gTLD approach, since a DRP will be needed for this purpose; or
- b) to develop the DRP within a PDP for existing gTLDs.

If a DRP for IGO names and abbreviations is developed for the new gTLD process, a PDP could be launched at a later date to apply the DRP to existing gTLDs.

If a DRP is developed for existing gTLDs now, that DRP could be used for the new gTLD implementation, provided the procedure is agreed upon in a very timely fashion.

Regardless which option is chosen, the development of the DRP can draw on available expertise and on work already performed. A possible dispute resolution procedure exists in draft form, which could serve as the basis for an IGO DRP.

It should be noted that the New gTLD implementation will call for development of multiple dispute resolution processes to handle the objections on various grounds that may be filed against applications for new gTLDs. IGO names and abbreviations may be one such ground, calling for a particular DRP, but there may be advantages to develop this in parallel with the other DRPs required in order to mutually draw on good ideas and solutions as they emerge during the development work.

5 Staff recommendation

Under Annex A(2)(e) of the ICANN Bylaws, an issues report must include a staff recommendation on whether the Council should initiate a PDP. The staff recommendation is as follows:

- Staff does not recommend a PDP on the protection of IGO names and abbreviations at this time. If staff was recommending a PDP, it would be within the scope of the GNSO.
- Staff recommends that new gTLD agreements may provide for protection of IGO names and abbreviations as a contractual condition for new gTLDs.
- Staff recommends that a separate Dispute Resolution Procedure be developed for IGO names and abbreviations as domain names at the second or third level in new gTLDs and that a framework be developed for handling objections or challenges related to IGO names and abbreviations in the upcoming application round for new gTLDs. Staff believes that this action will be more efficient than launching a PDP at this time.

- Once the DRP has been developed, staff recommends that the GNSO Council consider launching a PDP to investigate its application to existing gTLDs.
- In the alternative, the GNSO Council may consider forming a Working Group or assistance group to collaborate on a DRP for IGO names and abbreviations and conduct a PDP for application of the DRP to existing gTLDs.
- The GNSO Council may also consider extending the work of the Protections of Rights of Others (PRO) Working Group to develop a DRP for IGO names and abbreviations.

Under Annex A(2)(e), “Each Staff Recommendation shall include the opinion of the ICANN General Counsel regarding whether the issue proposed to initiate the PDP is properly within the scope of the ICANN policy process and within the scope of the GNSO.” The General Counsel’s opinion is as follows:

The General Counsel’s opinion notes that staff has recommended against the launch of a PDP at this time, but that work continue on the development of a separate dispute resolution procedure for IGO names and addresses within the new gTLD process. If a PDP was recommended, the development of policies relating to handling of disputes regarding IGO names and abbreviations would be within the scope of the GNSO and its policy development process. The General Counsel notes that care will need to be taken to ensure that any future PDP on dispute handling relating to IGO names and abbreviations stays narrowly focused on discrete policy questions in line with the limited intended ambit of the policy development process as set forth in the ICANN Bylaws <http://www.icann.org/general/bylaws.htm#AnnexA>, and does not become over-broad and begin to encompass more questions than can be successfully answered in one policy development process. The General Counsel's office will continue to work closely with ICANN's policy development staff and the GNSO on the appropriate scope of the PDP as work on this issue evolves and additional specific policy development tasks are defined.

Whether the issue is within the scope of ICANN's mission statement

The ICANN Bylaws state that:

"The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. Domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and,
 - c. Protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions."¹⁰

Dispute handling relating to IGO names and abbreviations involves the allocation and assignment of unique identifiers (domain names). ICANN is also responsible for policy development reasonably and appropriately related to these technical functions. Under items 1a and 3 above, the issue is within the scope of ICANN's mission statement.

Whether the issue is broadly applicable to multiple situations or organisations

The issue is applicable to multiple situations and organizations, so this condition is fulfilled.

Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates

Completion of policy development work on issues surrounding IGO names and abbreviations would have lasting applicability for gTLDs, registrars, and business or non-commercial entities as registrants. In addition, the work would have lasting value and applicability for the IGOs.

¹⁰ ICANN Bylaws, Article 1, Section 1: <http://icann.org/general/bylaws.htm#l>.

Whether the issue will establish a guide or framework for future decision-making

The outcome of a policy development process will have lasting value as ground rules, although the particular circumstances of the market will continue to evolve, and will thus establish a framework for future decision-making on related issues.

Whether the issue implicates or affects an existing ICANN policy

The issue does not implicate or affect an existing ICANN policy. It is, however, to be seen as a complement to the existing UDRP, which is a consensus policy. A full list of ICANN consensus policies is available at <http://www.icann.org/general/consensus-policies.htm>.

Based on the above, the General Counsel finds that the proposed issue is within the scope of the GNSO and of its Policy Development Process.

Staff recommends that the Council, in due course, move forward on a policy development process, with the following proposed terms of reference:

1. Given a dispute resolution procedure for IGO names and abbreviations, developed for the New gTLD process, investigate the following:
 - a. Are any modifications in the rules or their application essential for the adoption of the DRP as a consensus policy?
 - b. Should existing domain names be treated differently from new ones in relation to the DRP and, if so, in what respects?

Annex 1 - WIPO-2 and ICANN - a brief history

1. The Second WIPO Internet Domain Name Process: Final Report is available at <http://arbiter.wipo.int/processes/process2/report/index.html>. The WIPO-2 archive is <http://arbiter.wipo.int/processes/process2/index.html>.

2. On 21 February 2003, Francis Gurry, Assistant Director General and Legal Counsel of the World Intellectual Property Organization (WIPO), wrote to Vint Cerf, Chairman of the ICANN Board of Directors and then ICANN CEO Stuart Lynn (<http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>), to describing two decisions of WIPO concerning recommendations about domain names that are similar to the names and acronyms of International Intergovernmental Organizations and country names. The recommendations were supported by all WIPO member states, except for Australia, Canada and the United States, see <http://www.wipo.int/amc/en/processes/sct/decision/index.html>. The WIPO member states requested that these recommendations be transmitted to ICANN.

3. On 12 March 2003, the ICANN Board invited all ICANN Supporting Organizations and Advisory Committees to provide, no later than 12 May 2003, any comments that they may formulate, according to their processes, concerning the matters discussed in the WIPO letter.

4. On 7 May 2003, GNSO Council Chair Bruce Tonkin responded to the ICANN Board (<http://www.icann.org/correspondence/tonkin-to-touton-07may03.htm>) as follows. “*The GNSO Council recommends that the ICANN Board*

(1) consider the WIPO recommendations separately from the review of the existing Universal Dispute Resolution Policy (UDRP) which is aimed at trademarks.

(2) consider that the WIPO recommendations associated with Names and Acronyms of International Intergovernmental Organisations and Country Names should be subject to a policy development process to look at how they can be implemented taking into account a thorough examination of the issues surrounding the recommendations.”

5. On 12 May 2003, ALAC Chair Vittorio Bertola provided a response on the WIPO recommendations to ICANN General Counsel Louis Touton

(<http://www.icann.org/correspondence/bertola-to-touton-12may03.htm>).

6. On 15 May 2003, the GNSO IPC community stated

(<http://www.icann.org/correspondence/heltzer-to-touton-15may03.htm>) the following

“The IPC oppose amending the UDRP to accommodate the recommendation that disputes relating to International Intergovernmental Organizations (IGOs) should not be required to submit to the jurisdiction of national courts.” And also “the IPC views the accessibility to a national court as one of the UDRP’s basic underpinnings and a reason for its acceptance as a fair and reasonable dispute resolution procedure. The fact that parties can turn to a court of law serves as a safety valve on the authority of dispute resolution panelists, provides equity, safeguards essential rights of both parties, and properly ensures that the courts are the ones who are ultimately responsible for interpreting the law – both national and international alike.”

7. On 21 May 2003, the GNSO BC constituency stated

(<http://www.icann.org/correspondence/cbuc-to-twomey-cerf-21may03.htm>) the

following “1. *The existing UDRP relating to trademarks and domain names must remain entirely unaffected by the new World Intellectual Property Organisation (WIPO) proposals.*

2. The new WIPO proposals on disputes relevant to international organisations and country names should be evaluated for both the merit of the need and the merit of the proposed solutions.

3. If any action is determined necessary a separate dispute system should be established for international organizations and country names.”

8. On 2 June 2003, the ICANN Board resolved to establish a Joint Working Group on the WIPO-2 issues: “Resolved [03.83] that the President is directed to form, in consultation with the chairs of the GNSO Council, the ALAC, and the GAC, a working group including participants in the GNSO, the ALAC, and the GAC as well as Board members, for the purpose of analyzing the practical and technical aspects of implementing the WIPO recommendations, and notably the implications for the UDRP; and

Further resolved [03.84] that the President and General Counsel are directed to investigate and analyze legal aspects of the relationship between ICANN's mission and the recommendations conveyed by the 12 February 2003 letter from WIPO, and to report to the Board and to the working group formed under resolution 03.83 on the result of that investigation and analysis. Among topics to be considered should be whether implementation of the WIPO recommendations would require ICANN to prescribe adherence to normative rules, not based on established laws, for the resolution of competing third-party claims to rights to register names.”

9. On 10 October 2003, the Joint Working Group was announced (<http://www.icann.org/announcements/announcement-06oct03.htm>), with the following members:

“GNSO Members - Philip Sheppard, Commercial and Business Users Constituency; Michael Fromkin, 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)

The Joint Working Group will be chaired by Jonathan Cohen, a former member of ICANN's Board. ICANN staff support and advice shall be provided by ICANN's General Counsel, John Jeffrey (<jeffrey@icann.org>).

The Joint Working Group will report to the President on a proposed work program by the completion of the ICANN Meeting in Carthage, and will report to the Board at the ICANN Meeting in Rome. The President will consider whether to add members to the Joint Working Group by the close of the ICANN Meeting in Carthage.”

The final report of the Joint Working Group (not dated, but presumably from November 2004) is available at: <http://www.icann.org/committees/JWGW2/final-report/> The report notes a wide divergence of views as well as providing an annex with sample of what implementation might look like. This annex was drafted by a GAC representative in the Working Group. The public comments to the Joint Working Groups final report are available at <http://www.icann.org/committees/JWGW2/>.

10. On 14 January 2004, Francis Gurry wrote to ICANN CEO Paul Twomey and Vint Cerf (<http://www.icann.org/correspondence/gurry-to-icann-14jan04.pdf>) providing an update on work within WIPO related to the protection of country names and IGOs.

11. On 14 July 2004, Francis Gurry wrote to ICANN CEO Paul Twomey (<http://www.icann.org/correspondence/wilbers-to-twomey-14jul04.pdf>).

12. On 1 December 2004, Paul Twomey wrote to GAC Chairman Mohamed Sharil Tarmizi (<http://gac.icann.org/web/docs/twomey-to-tarmizi-01dec04.pdf>) on multiple issues, inter alia on WIPO-2, where it was noted that the Joint Working Group did not reach consensus. The suggestion was to enter into further consultations with WIPO and launch a new public comment period on the issue.

13. In March 2005, GAC Chairman Mohamed Sharil Tarmizi sent a letter (http://gac.icann.org/web/docs/GACChair_ReplytoICANN_letter.doc) to Paul Twomey, responding to ICANN's 1 December 2004 letter regarding the WIPO issue as follows: “ICANN will recall that the WIPO II process was initiated by a GAC meeting in Sydney in

February 2000 and the subsequent letter from the GAC Chair to WIPO arising from that meeting. Following ICANN and GAC's difficult experiences over the registration of country names in .info reflected in the Chair's letter to the GAC Montevideo meeting, September 2001, and subsequent GAC advice and Board action, the GAC continues to support the implementation of the WIPO II recommendations as soon as practicable."

14. On 18 March 2005, Francis Gurry wrote (<http://www.icann.org/correspondence/gurry-to-cerf-18mar05.pdf>) to Vint Cerf, introducing a document addressing intellectual property issues involved in the introduction of new gTLDs. In the letter, WIPO also took the opportunity of expressing hopes that the implementation of the WIPO-2 recommendations in the UDRP would begin.

15. On 23 March 2005, Nichols Michel, Under-Secretary for Legal Affairs at the United Nations sent a letter (<http://www.icann.org/correspondence/michel-to-cerf-23mar05.pdf>) to Vint Cerf providing joint legal advice from a multitude of international governmental organizations (IGOs) concerning unauthorized registrations of domain names incorporating the names or abbreviations of IGOs, emphasizing the existing basis in international law to prohibit such registrations.

16. On 15 November 2005, Francis Gurry wrote to Paul Twomey and Vint Cerf (http://www.icann.org/correspondence/gurry-to-cerf_twomey-15nov05.pdf) requesting information on the status of implementation of the WIPO-2 recommendations in the UDRP.

17. On 13 March 2006, ICANN CEO Paul Twomey wrote to the GAC Chairman Mohamed Sharil Tarmizi (<http://www.icann.org/correspondence/twomey-to-tarmizi-13mar06.pdf>), providing an update on ICANN's consideration of the WIPO-2 recommendations related to IGO names and abbreviations. ICANN also wrote to the UN on 13 March 2006, providing a similar update.

18. On 23 May 2006, the UN sent a letter to ICANN thanking ICANN for the update of 13 March 2006. The letter also states that “there is a clear legal basis for the protection of such names and acronyms in international law and the need for protection remains pressing.”

19. On 15 June 2006, GAC Chairman Mohamed Sharil Tarmizi wrote to Paul Twomey (<http://www.icann.org/correspondence/tarmizi-to-twomey-15jun06.pdf>) offering the following considerations on the WIPO-2 recommendations:

- 1) The GAC notes, according to a proposal from the Intellectual Property Constituency, that there appears to be a potential for a consensus based solution to disputes involving names of IGOs.
- 2) In this regard, the GAC proposes that its members be included in the Task Force referred to in your letter as the means of reaching agreement on implementation. The GAC welcomes the participation in the Task Force by the membership of the GNSO, in particular the Intellectual Property constituency.
- 3) The GAC is also aware that there is a lack of consensus and divergent views with respect to the protection of country names within the ICANN constituencies and will consider the matter further with a view toward engaging in discussions on this issue at some point in the future.