



The Internet Corporation for Assigned Names and Numbers

4 October 2016

Dr. Stephen D. Crocker, Chair
Board of Directors
ICANN

Donna Austin, GNSO Council Vice-Chair (Contracted Parties House)
Heather Forrest, GNSO Council Vice-Chair (Non-Contracted Parties House)
James Bladel, GNSO Chair

NEXT STEPS IN RECONCILING GAC ADVICE AND GNSO POLICY RECOMMENDATIONS WITH RESPECT TO THE PROTECTION OF IGO ACRONYMS IN THE DOMAIN NAME SYSTEM

Dear Donna, Heather and James,

I write on behalf of the ICANN Board of Directors, in response to the GNSO Council's letter to the Board of 31 May 2016 concerning next steps in the reconciliation of GAC advice with GNSO policy recommendations relating to the protection of certain Red Cross identifiers and International Governmental Organizations (IGO) acronyms (<https://www.icann.org/en/system/files/correspondence/gnsocouncilchairs-to-crocker-31may16-en.pdf>). We note the GNSO Council's request for specific input from the Board on this topic, and wish to record our appreciation to the Council for the discussion that we had at ICANN56 in Helsinki.

As we mentioned at the time, staff and Board representatives continue to work with a small group of representatives from the GAC and the IGOs to finalize a proposal regarding IGO acronym protection to be sent to the GAC and the GNSO for consideration. In this regard, I am pleased to inform you that the Board has been notified that the small group has reached consensus on a proposal for a number of general principles and suggestions that it hopes will be acceptable to the GAC and the GNSO. I attach that proposal to this letter for the GNSO's review.

The Board's understanding is that those aspects of the proposal that concern curative rights protection may be referred by the GNSO Council to the GNSO's Working Group that is conducting the ongoing Policy Development Process (PDP) on IGO-INGO Access to Curative Rights Mechanisms. We understand further that the Working Group is currently discussing preliminary recommendations that it intends to publish for public comment soon, in the form of an Initial Report. We therefore hope that the presentation of the attached proposal is timely, and will be fully considered by the Working Group regarding the specific topic of enabling



The Internet Corporation for Assigned Names and Numbers

adequate curative rights protections for IGO acronyms, and in conjunction with the GNSO Council's management of the overall process for possible reconciliation of GNSO policy with GAC advice. We also acknowledge, in line with prior correspondence between the Board's New gTLD Program Committee and the GNSO Council, that the Board will not take action with respect to GAC advice on curative rights protections for IGOs prior to the conclusion of the GNSO's PDP.

Similarly, the Board hopes that the other elements of the attached proposal will be helpful to the GNSO in its deliberations over considering possible amendments to its previously adopted policy recommendations on preventative protection for IGO acronyms. We have acknowledged previously the process in the GNSO's PDP Manual that will apply to the consideration of any such amendment prior to Board consideration of the policy recommendations (<https://gnso.icann.org/en/correspondence/chalaby-to-robinson-16jun14-en.pdf>).

On behalf of the Board, I wish to reiterate our belief that the most appropriate approach for the Board in this matter is to help to facilitate a procedural way forward for the reconciliation of GAC advice and GNSO policy prior to the Board formally considering substantive policy recommendations. We note that the attached proposal concerns only the matter of protection for IGO acronyms, and does not also cover the outstanding issue of protection for Red Cross national society names and the identifiers of the international Red Cross movement. We hope to continue discussion on this topic with the GNSO and the GAC, and anticipate a fuller discussion amongst all affected parties concerning resolution of the issue of protections for the Red Cross and IGOs at the upcoming ICANN57 meeting in Hyderabad in early November. We will direct ICANN staff to coordinate the Hyderabad scheduling for each of our groups accordingly.

We continue to appreciate the GNSO's hard work in developing policy recommendations and look forward to working together with you on this matter. In the meantime, we note that the temporary protections afforded to IGO acronyms remain in place while we continue our discussions.

Thank you.

Sincerely,

Dr. Stephen D. Crocker
Chair, ICANN Board of Directors

IGO “SMALL GROUP” PROPOSAL FOR DEALING WITH THE PROTECTION OF IGO ACRONYMS AT THE SECOND LEVEL OF THE DOMAIN NAME SYSTEM

4 October 2016

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”¹ 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

¹ 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%20Buenos%20Aires%2053%20Communique.pdf?version=1&modificationDate=1436284325000&api=v2>); this January 2015 letter from the NGPC Chair to the GNSO Council (<https://gns0.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%20ICANN%2056%20Communique_FINAL%20%5B1%5D.pdf?version=1&modificationDate=1469016353728&api=v2).

concerning the protection of IGO names and acronyms in the domain name system:

- (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:
 - 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
 - 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).