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By E-Mail

Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Draft Final Report on Protection of IGO and INGO Identifiers in All gTLDs

Dear ICANN:

I am writing on behalf of the members of the Internet Commerce Association (ICA). ICA is a not-for-profit trade association representing the domain name industry, including domain registrants, domain marketplaces, and direct search providers. Its membership is composed of domain name registrants who invest in domain names (DNs) and develop the associated websites, as well as the companies that serve them. Professional domain name registrants are a major source of the fees that support registrars, registries, and ICANN itself. ICA members own and operate approximately ten percent of all existing Internet domains on behalf of their own domain portfolios as well as those of thousands of customers.

This letter addresses the draft “Final Report on Protection of IGO and INGO Identifiers in All gTLDs” (Report) posted for public comment on September 20th ¹. The Purpose of the comment period is to address the draft Final Report of the GNSO Policy Development Process Working Group (“PDP WG”) on the Protection of International Governmental Organizations (IGO) and International Non-Governmental Organizations (INGO) Identifiers in all gTLDs.

Executive Summary

The primary purpose of our letter is to comment on those provisions of the Working Group Recommendations contained in Section 5.6 of the draft Final Report, titled “Consideration of Recommendations on Incumbent gTLDs”². Those recommendations could affect existing acronym domains held or managed by ICA members and other current registrants at incumbent gTLDs. However, we also address several Report Recommendations relevant to new gTLDs.

In regard to the top level of new gTLDs, we generally favor full protection for exact matches of the full name of all the IGOs and INGOs addressed by the Report by barring their registration by third parties -- but we oppose such blanket, registration-blocking protection of exact matches of their acronyms. We doubt that any party would make the very substantial time and monetary investment to apply for a .acronym registry with the intent of confusing the public in regard to its ownership, sponsorship, or purpose, but in the highly unlikely event that such a situation were to occur it could be readily addressed by existing objection processes for new gTLDs as well as by GAC advice.

In regard to the second level of new gTLDs, we generally favor full protection through registration blocking for exact matches of the full name of all IGOs and INGOs addressed by the Report --but we oppose blanket protection of exact matches of their acronyms as any misuse could be addressed by existing second level arbitration procedures.

In regard to the Trademark Clearinghouse (TMCH), which is only relevant to new gTLDs -- we would support inclusion in the TMCH of exact matches of the full name of all the IGOs and INGOs addressed by the Report in the -- but only if the Trademark Notice generated by an attempt to register such a name differentiates between trademark rights and the “rights” held in such name by an IGO or INGO that has not trademarked its name .

We oppose inclusion in the TMCH of the exact matches of acronyms of all the IGOs and INGOs addressed by the Report. We do not oppose allowing affected organizations to utilize the curative rights of the UDRP (at new or incumbent gTLDs) or URS (only available at new gTLDs at this time) dispute arbitration mechanisms if they believe that a particular domain using such exact match has

¹ <http://www.icann.org/en/news/public-comment/igo-ingo-final-20sep13-en.htm>

² The full text of Section 5.6 is included in Appendix I attached to this letter.

been registered and used in bad faith; that is, in such a manner as to deceive and mislead the public that the particular website is being operated by or has been endorsed by the relevant IGO or INGO. As the UDRP currently exists solely to protect trademark rights, and as the URS is a narrow supplement to the UDRP with a similar focus on trademarks and a higher burden of proof, care must be taken in the implementation of such an expansion of their utilization to precisely define the exact nature and scope of the rights that are eligible for such arbitration actions and the factors to be considered by arbitration panelists.

Finally, in regard to any incumbent gTLD, while we appreciate and support the Recommendation that any currently registered domain matching a protected IGO or INGO identifier “shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.”, we strongly oppose the adoption of any policy that would:

- Define or create a mechanism against the specious and completely speculative possibility of “front-running” of domain registrations of IGO or INGO identifiers.
- Exclude such a domain from any add/drop activities by the registrar in the event it becomes eligible for deletion, or make such deleted domains ineligible for future re-registration.
- In any way sanction the involuntary seizure or deletion of any identifier exact match acronym domain that is registered now or may be in the future at any incumbent gTLD.

Again, as we do not oppose allowing IGOs and INGOs to utilize the UDRP against exact match identifier domains registered at incumbent gTLDs, we believe that any proposed policy going beyond access to such arbitration procedure availability is unnecessary overreach that incorrectly assumes bad faith registration and public confusion where none is likely to exist.

Discussion

The ICA has been monitoring and is fully cognizant of the concerns of the Governmental Advisory Committee (GAC) in regard to the potential registration and misuse of the names of Red Cross/Red Crescent affiliated organizations, the International Olympic Committee, and other IGOs and INGOs at new gTLDs; as well as the consideration of such concerns by the ICANN Board and the Generic Names Supporting Organization (GNSO).

We condemn any registration of the exact match full name of any listed IGO or INGO at any new gTLD by any party other than the particular organization associated with and conducting its activities under such name, and therefore support blocking of exact full name match domains of all the IGOs and INGOs addressed by the Report by any

unaffiliated third party, as well as their inclusion in the TMCH; such support is conditioned on the accompanying requirement that the Trademark Notice generated by an attempt to register such a name differentiates between trademark rights and the “rights” held in such name by such organizations that have not trademarked their official name, so that the potential registrant receives an accurate description of the nature and scope of the rights in question³.

However, we see absolutely no reason to prevent the registration at new gTLDs of exact match acronyms of the hundreds of IGO and INGO acronyms associated with the potentially protected organizations, at either the top or second level. Such acronyms will often also be exact matches for many other companies, organizations, and individuals around the globe who may wish to register them at relevant new gTLDs and may even possess trademark rights in them; and they may also be sought by other registrants for completely legitimate usage that do not suggest any affiliation with or endorsement by the associated IGO or INGO. Such potential registrants have a legitimate right to such registrations and should be able to acquire acronym domains in new gTLDs as long as the registration is not a bad faith attempt to confuse Internet users in regard to the identity of the registrant and the uses of the website. Further, given the hundreds of general registration gTLDs that will be opening for registration in the near future, there is little reason to think that any Internet user would be seeking to find an IGO or INGO website at a gTLD where the name of the string (e.g., .ninja or .cars) has no possible association with the activities of such organization. While IGOs and INGOs should have protection of their full official name, blocking hundreds of acronyms across all new gTLDs cannot be justified.

Further, since we do not oppose allowing affected organizations to utilize the curative rights of the UDRP or URS if they believe that a particular acronym domain using such exact match has been registered and used in bad faith, we believe that providing access to these rights protection mechanisms is more than sufficient to address what we believe will be the rare cases where bad faith registrants attempt to make misleading and harmful use of such acronym domains. The burden placed on such organizations – which in most cases should be able to quickly and successfully suspend an offending domain through a URS filing – is so minimal that a blanket prohibition or warning system for their acronyms would not be justified.

Finally, in regard to incumbent gTLDs, we would note three key points:

- Short acronym domains at .Com and other incumbent registries tend to have very substantial secondary market valuations for legitimate good faith usage by individuals and organizations.

³ While we generally support such exact full name match registration in the TMCH, accompanied by access to the UDRP and URS, we would not support approval of an objection against a domain name incorporating the exact match full name or acronym where the website is engaged in legitimate criticism and public discourse in regard to the activities of the associated IGO or INGO. DNS policy should not be utilized to stifle such legitimate debate and to shield international organizations from reasoned and documented criticism.

- So far as we are aware, the abusive bad faith usage of such domains is infrequent – and to the extent that it does exist, can be adequately addressed by making the UDRP accessible to IGOs and INGOs.
- IGOs and INGOs in all likelihood have already exercised their ability to register full name or acronym domains at existing and appropriate gTLDs, especially .Org and .Int.

Therefore, while we appreciate the Report's recommendation that currently registered acronym domains "shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.", we must oppose any proposed policy that would prevent the registration of any currently unregistered exact match acronym domain at an incumbent gTLD (especially as we also oppose such blanket prohibition at new gTLDs). To label such potential registrations as worrisome "front-running" is to ascribe to them a nefarious purpose without any reasonable grounds for doing so. Similarly, an existing exact acronym match domain that becomes eligible for deletion should not be barred from subsequent re-registration in the future; there is no demonstrated reason to shrink the availability of such second level domains at incumbent gTLDs. Further, the ironic effect of such a re-registration ban would be to prevent acquisition of the domain name by the IGO or INGO with which it is associated.

Finally, while it is not currently being recommended, we would strongly oppose the future adoption of any policy that would in any way sanction the involuntary seizure or deletion of any identifier exact match domain that is registered now or that may be in the future at any incumbent gTLD. Such action would amount to a taking without compensation of a domain constituting a valuable intangible asset. While ICANN is not a U.S. government agency its U.S. origins, non-profit corporate status, and public purposes would make the sanctioning of such expropriation of private property highly inappropriate and controversial.

Conclusion

We hope that ICANN finds our views on this matter to be useful and informative.

Sincerely,

A handwritten signature in black ink that reads "Philip S. Corwin". The signature is written in a cursive, flowing style.

Philip S. Corwin

Counsel, Internet Commerce Association

Appendix I – Relevant language of draft Final Report regarding Incumbent gTLDs

5.6 Consideration of Recommendations on Incumbent gTLDs

This section considers the proposed recommendations from the previous sections and if they were adopted as consensus policy, how the implementation of the policy may impact existing gTLDs delegated prior to 2012. WG deliberations determined that no policy implications existed; however, several aspects should be considered when any such policies regarding IGO-INGO protections are implemented for incumbent gTLDs.

From IGO-INGO Charter:

“...determine how incumbent registries should meet the new policy recommendations, if any.”

Scope and Assumptions:

- Existing gTLDs Only (Delegation pre-2012)
- Only second-level proposed protection recommendations apply
- Assumes that the present WG recommendation proposals are supported and adopted for new gTLDs

Principles of Implementation:

- Any policies adopted for new gTLDs shall apply equally to existing gTLDs to the extent they are relevant (for example second-level IGO-INGO protections utilizing TMCH, sunrise, claims will not apply).
- For clarification purposes, second-level names matching a protected identifier, as identified via any consensus policies defined here, and that are not registered within an existing gTLD, shall be immediately reserved from registration in the same manner as for new gTLDs. Due to the time lag between the date the Working Group and GNSO Council adopts recommendations, and the date the recommendations are implemented, there is a possibility of front-running, whereby some identifiers not previously registered could be registered before the policy is in effect. A mechanism to guard against front-running should be defined, such as establishing the date these recommendations were adopted by the Working Group or GNSO Council as the measurement date that determines how a domain name matching a protected identifier is treated.
- A second-level registration within an existing gTLD matches a protected identifier, as identified via any consensus policies defined here, and the registration of said name, if registered prior to implementation of protections or any such cutoff date as may be

determined, shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.

- If a second-level name that matches a protected identifier, as identified via any consensus policies defined here, and becomes eligible for deletion after defined grace-periods, the name shall not be eligible for any drop/add activities by the Registrar. At the time the name is deleted, the name shall not be reallocated by the Registry and shall be deemed ineligible for registration per the defined policy.
- Where policy changes to recover protected identifiers of registered second-level names within an existing gTLD deviate from current policy, registry & registrar indemnification should be considered.
- For clarification purposes, second-level names matching a protected identifier that are also registered by a party other than the protected organization and bad faith use vis-à-vis the protected organization is suspected, the protected organization may have access to RPMs like the UDRP, pending a PDP to address how the IGO-INGO organizations may access RPMs.