

**IGO COMMON CONSOLIDATED POSITION PAPER FOR THE DURBAN ICANN MEETING
REGARDING PROTECTION OF IGO NAMES AND ACRONYMS IN THE DNS**

Principle of IGO protection in the DNS

The special status and functions of International Intergovernmental Organisations (IGOs) clearly warrant the implementation of appropriate measures for the protection of their names and acronyms in an expanding Domain Name System (DNS). This special is supported by both critical policy considerations and international legal norms.

IGOs represent a wide range of essential global public interests and enjoy a special status under public international law, which clearly places them in a different category than other DNS stakeholders:

- IGOs work towards cooperation between governments on vital issues and humanitarian causes.
- IGOs are subjects of international law, as is the case for States. They are established by treaty and are conferred international legal personality as well as legal personality in the legal systems of their Member States.
- IGOs are funded primarily by public funds provided by their Member States.
- IGO and the public interests which they represent, are particularly vulnerable to misuse, fraud and confusion with respect to their identities on the Internet.
- IGOs enjoy certain immunities from legal process in order to protect their neutrality and impartiality from national influence.

The names and acronyms of IGOs are protected by international treaties within the scope of Article 6*ter* of the Paris Convention for the Protection of Industrial Property, as further extended by Article 16 of the Trademark Law Treaty and Article 2 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights. As a result, an overwhelming majority of jurisdictions in the world protect the names and acronyms of IGOs either by direct application of their treaty obligations or by enacting national legislation. The governing bodies of some IGOs have also adopted decisions requesting their Member States to protect the identifiers of those organizations from unauthorized use.

Protection of the names and acronyms of IGOs is also consistent with ICANN's mission, which includes, *inter alia*, protecting consumers from abuse in connection with the new gTLD program. Furthermore, ICANN's founding documents require ICANN to carry out its activities in conformity with relevant principles of international law and applicable international conventions and to cooperate with relevant international organizations (Articles of Incorporation, Article 4) and to duly take into account governments' and public authorities' recommendations, recognising that public authorities are responsible for public policy (By-Laws, Article 11).

Recognition and implementation of the principle

The ICANN Governmental Advisory Committee (GAC) represents national governments within the ICANN governance structure. The GAC has endorsed special protections for IGO names and acronyms on several occasions, most recently in its Beijing Communiqué of April 2013, whereby it acknowledged that *“IGOs are in an objectively different category to other rights holders”,* that they *“perform an important global public mission with public funds, [that] they are the creations of government under international law, and [that] their names and acronyms warrant special protection in an expanded DNS.”*

The full endorsement by the GAC of the principle of IGO protection actually goes back to its Toronto Communiqué of October 2012, in which the GAC *“advise[d] the ICANN Board that: in the public interest, implementation of such protection [of the names and acronyms of Intergovernmental Organizations (IGOs)] 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”.*

On this basis, the GAC and IGOs actively worked together to develop a set of objective criteria for protection and the corresponding list of protected IGO names and acronyms.

The ICANN Board expressly recognized the joint effort of the GAC and IGOs in its response to the GAC Toronto Communiqué in January 2013, by requesting that the GAC provide a list of protected IGO names and acronyms, for inclusion in the Reserved Names list. The GAC Chair submitted the GAC consensus criteria and list to the Board on 22 March 2013.

Solutions to remaining implementation issues

On 1 April 2013, the Board, responding to the 22 March submission from the GAC, requested clarification of the following specific implementation issues:

- how to determine the languages in which IGO names and acronyms would be protected;
- how the list of protected IGO names and acronyms would be updated when necessary;
- how to address in the context of second level domain name registrations, potential “competing claims” by other rights holders to the use of a protected IGO acronym.

In response to these queries, the IGO Coalition produced a paper “Protection of IGO Names and Acronyms in New gTLDs - Response to the implementation issues raised by the ICANN Board” which was submitted on 21 June 2013 to the GAC, which subsequently transmitted it to the Board New gTLD Program Committee (NGPC). In this paper, IGOs devised objective, realistic and cost-neutral solutions to resolve each of the above-mentioned issues as follows:

- IGO names and acronyms would be protected in up to two languages, as communicated by the concerned IGOs to the Board, via the GAC, by a set date.
- The list would be reviewed prior to delegation of any domains in a subsequent new gTLD round, or every three years, whichever is earlier. A simple request would be addressed by any concerned IGO or GAC member to the GAC, who would review the request on the basis of the agreed criteria for protection of IGOs and advise the Board accordingly.
- IGOs expressly undertake not to object to the second-level registration of their protected acronyms by rights holders acting in good faith where there is no risk of confusion. A specific co-existence mechanism is detailed in the paper, which puts the onus on the relevant IGO to react in a timely manner and further provides an option for review of any objections by neutral third parties.

Latest developments and final considerations

In respective letters dated 6 June 2013 in response to the GAC Beijing Communiqué, both the ICANN Board and the NGPC proposed that a small number of NGPC members and ICANN staff begin a dialogue with the GAC on outstanding implementation issues with respect to the GAC advice on IGO protection.

Against the above background, IGOs trust and expect that this dialogue will focus on and give due consideration to the pragmatic mechanism proposed by IGOs to tackle the remaining implementation issues, in particular potential conflicts of identifiers between those of IGOs and other rights holders (noting that this requirement has not been asked from or offered by any other reserved identifiers).

Still, IGOs cannot help but be concerned by the resolution recently passed by the NGPC on 2 July 2013, prior to holding any discussion with the GAC and IGOs as previously proposed, in which the NGPC for the first time suggested to protect only IGO full names if the discussion regarding implementation measures for the protection of IGO acronyms is not rapidly finalised.

The principle of protection of IGO identifiers has clearly been recognized by the GAC and by the Board as a priority in the DNS and, at this stage, the dialogue should focus on how such protection can best be implemented (not on whether both IGO full names and acronyms should be protected). To consider otherwise, would be to reject the GAC's clear and repeated public policy advice, would ignore the Board's previous reactions thereto, and indeed be contrary to ICANN's own By-laws which require it to take actions which benefit the public interest and to give due consideration to governments' positions on matters of public policy.

There can be no possible justification for limiting protections to IGO full names, particularly when a vast majority of IGOs are far better known by their acronyms. These acronyms are a quintessential part of the visibility and functions of our institutions and of the trust that our Member States, other stakeholders and the general public place in our activities and products. As such, and as has been demonstrated on various occasions in various ICANN fora, IGO acronyms are more often subject to cyber squatting and other domain name abuses than full names. Fraudulent schemes typically use the commonly-known acronyms of IGOs, for example "UNICEF," "UNESCO," or "IMF," rather than the full legal names. Therefore, limitation of protection only to full names would effectively defeat the very purpose of the envisaged protection and would carry a real cost for vital public missions, especially when campaigns for education and funding are today heavily reliant on the Internet.

IGO acronyms must be protected, regardless of how "business-friendly" some of them also might be. Instead of considering denying protection to IGO acronyms, ICANN bodies should rather look to implementation of reasonable co-existence measures, as timely proposed by IGOs themselves, which would allow for registration and use of IGO acronyms by other bona fide rights holders where appropriate.

Protection for IGO identifiers (names and acronyms) in the DNS remains a critical issue. IGOs will continue to respond to good-faith comments and queries and are ready to work with the GAC, the NGPC and the Board in order to work out the practical implementation issues for IGO protection, provided that the aim of the exercise is and remains the implementation of appropriate protective measures for both the names and acronyms of IGOs and not re-opening an issue of global public policy which has been long settled.

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