



IPC COMMENTS FOR ICANN ON THE NEW gTLD RECOMMENDATION #6 CROSS-COMMUNITY WORKING GROUP REPORT

The Intellectual Property Constituency ("IPC") is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the Report published on 21 September 2010 by the New gTLD Recommendation #6 Cross-Community Working Group ("Re6 CWG"). The conclusion of the Report is that "Rec6 is flawed in certain respects and can be improved." The Report goes on to identify several recommendations that the Rec6 CWG believes would improve the implementation of Rec6.

Rec6 is one of the recommendations included in the GNSO Final Report. Specifically, it states that:

Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.

The GNSO Final Report further explains that:

Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

As an initial matter, the IPC agrees that Rec6 is flawed. As stated in its July 20, 2009 comments on the Draft Applicant Guidebook version 3 and explanatory memoranda, the IPC remains skeptical that Rec6 in its current form would be subject to abuses through frivolous challenges and could be used to chill free speech.

The IPC supports the consensus that there is not an internationally agreed upon definition of "morality and public order." As such, ICANN is urged to continue to work on developing language for Rec6 that further defines what is meant by "specific principles of international law as reflected in relevant international instruments of law". To this end, the IPC understands that this "principles of international law" is a term of art and believes that definition ought to be included in text of Rec6. Furthermore, the IPC requests that a measurable criteria for deeming whether an "international instrument of law" is relevant be developed. In addition, the IPC requests that a definition of "international instruments of law" is set forth that, at a minimum, references widely adopted international treaties as a non-exhaustive list of such "international instruments of law".

The IPC also supports the consensus that there ought to be standards set to determine what constitutes a frivolous or abusive objection and that ICANN should implement sanction and other safeguards to discourage frivolous claims.