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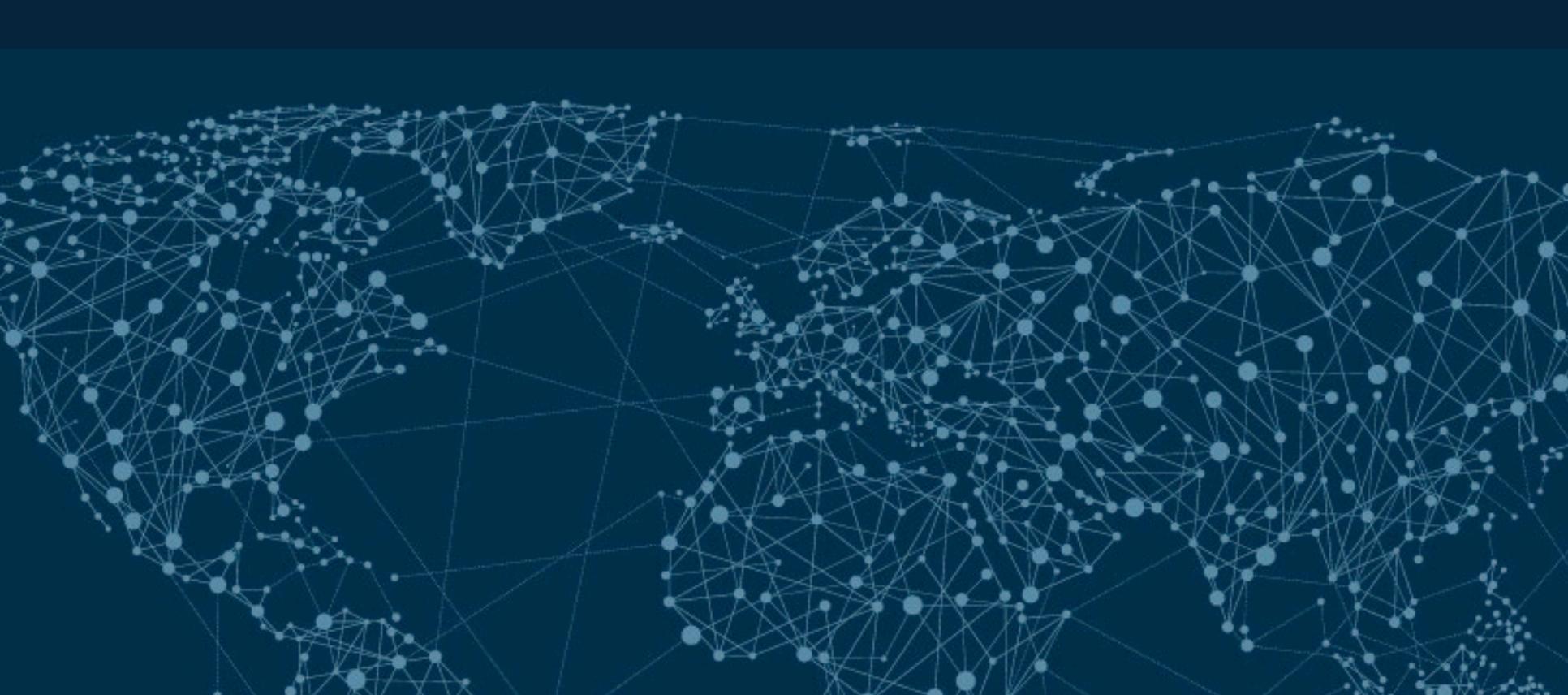
COMMUNITY FORUM

58

COPENHAGEN

11-16 March 2017





GAC-GNSO Facilitated Dialogue on IGO Protections

Open Community Session
12 March 2017

Agenda for the session today

1

ICANN Context to help guide the discussion

2

Reservation

3

Notice

4

Dispute Resolution

5

Appeal Mechanisms

ICANN Mission as it relates to this issue

- Ensure the stable and secure operation of the Internet's unique identifier systems
 - coordinates the development and implementation of policies concerning the registrations of second level domain names in gTLDs
 - For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS

ICANN Commitments as it relates to this issue

- In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the **benefit of the Internet community as a whole**, carrying out its activities in conformity with **relevant principles of international law and international conventions and applicable local law**
 - Employ open, transparent and **bottom-up, multistakeholder policy development** processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), **while duly taking into account the public policy advice of governments and public authorities**. These processes shall:
 - A. seek input from the public, for whose benefit ICANN in all events shall act,
 - B. promote well-informed decisions based on expert advice, and
 - C. **ensure that those entities most affected can assist in the policy development process**

ICANN Core Values as they relate to this issue

- Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to **ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest** and that those processes are accountable and transparent;
- **Operating with efficiency and excellence**, in a fiscally responsible and accountable manner and, where practicable and not inconsistent with ICANN's other obligations under these Bylaws, **at a speed that is responsive to the needs of the global Internet community**;
- While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), **recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities**;

ICANN Consensus Policies - scope

- Apply to gTLD registrars and gTLD Registries through the terms of their agreements with ICANN
- Consensus policies limited to narrow scope – “picket fence”
- Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, **a consensus of Internet stakeholders**, including registrars. Consensus Policies shall relate to one or more of the following:
 - **issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability** of the Internet, Registrar Services, Registry Services, or the Domain Name System ("DNS");
 - **resolution of disputes regarding the registration of domain names** (as opposed to the use of such domain names, but including where such policies take into account use of the domain names)

Dispute mechanisms in gTLD agreements

- Registrar shall comply with the **Uniform Domain Name Dispute Resolution Policy ("UDRP")** identified on ICANN's website (www.icann.org/general/consensus-policies.htm), as may be modified from time to time. Registrar shall also comply with the **Uniform Rapid Suspension ("URS")** procedure or its replacement

Domain name registrant commitment

- When registering a gTLD domain, a Registered Name Holder represents that, to the best of the Registered Name Holder's knowledge and belief, **neither the registration** of the Registered Name **nor the manner in which it is to be directly or indirectly used** infringes the legal rights of any third party.
- The registration of the Registered **Name** shall be **subject to suspension, cancellation, or transfer** pursuant to any Specification or Policy, or pursuant to any registrar or registry procedure not inconsistent with any Specification or Policy,
 - 1) to correct mistakes by Registrar or the Registry Operator in registering the name or
 - 2) **for the resolution of disputes concerning the Registered Name.**

Article 6ter of the Paris Convention

- **Article 6ter** of the **Paris Convention for the Protection of Industrial Property** protects the **names and abbreviations** of International interGovernmental Organizations (IGOs) **against unauthorized registration and use as trademarks.**
- Only applicable to trademarks - the purpose of Article 6ter is to prohibit the registration and use of trademarks which are identical to, or present a certain similarity with the above-mentioned emblems or official signs.
- Countries are not required to apply the said provisions when the use or registration is not of such a nature as to suggest to the public that a connection exists between the organization concerned , or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.
- To take advantage of Article 6ter an IGO must communicate to the International Bureau of WIPO, which will then communicate it to the other States party to the Paris Convention

IGO concerns

- IGOs are concerned about the reputational risks associated with fraud in the DNS and minimizing risks to members of the public who are often targeted by individuals posing as IGOs or IGO officials.

Problem statement

- The allocation, management and operation of gTLDs must take into account the need to ensure that neither the registration of a domain name at the second level, nor the manner in which it is used, infringes the legal rights of International interGovernmental Organizations (IGOs).
- The development of any gTLD polices in relation to the registration of domain names matching IGO acronyms at the second level of gTLDs, and the resolution of disputes concerning these names, should **include consideration of the legitimate rights and interests of other domain name registrants**, and to the extent applicable and relevant, be based on applicable international law principles.
- The GAC **public policy advice** to the ICANN Board and GNSO **policy recommendations** to the ICANN Board in relation to the protection of the **names and acronyms** of the **International** at the second level of all generic Top Level Domains (gTLDs) **are in conflict**.

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1

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discussion

2

Reservation

3

Notice

4

Dispute
Resolution

5

Appeal
Mechanisms

1) Reservation

- Related to PDP on IGO-INGO Access to Curative Rights Protection Mechanisms Policy recommendations

2) Notice

- Related to PDP on IGO-INGO Access to Curative Rights Protection Mechanisms Policy Recommendations

3) Dispute resolution

- Subject to current PDP on IGO-INGO Access to Curative Rights Protection Mechanisms – Initial Report stage

4) Appeal mechanisms

- Subject to current PDP on IGO-INGO Access to Curative Rights Protection Mechanisms – Initial Report stage

(1) Reservation

- The ICANN Board has approved permanently withholding from registration, at the second level in **new gTLDs delegated under the 2012 New gTLD Program**, the **full names** of those **IGOs** on the list provided to ICANN by the GAC in March 2013
- The full names are unique and there is no other legitimate purpose for using this full names for other purposes.
- The ICANN Board approved interim protections for IGO acronyms for new gTLDs
- No protections for gTLDs registered prior to 2012
- Unlike full names, IGO acronyms in many cases are not unique and have other legitimate uses, e.g.
 - AU (African Union) is also the country code for Australia
 - PAM (Programme Alimentaire Mondial) is a common person's name
 - WHO (World Health Organization) is a common English word

(2) Notice

- **GNSO Policy recommendations**
 - 90-days Claims to both potential registrant (pre-registration) and affected IGO (post-registration)
- **GAC Public Policy Advice**
 - A procedure to notify IGOs of third party registration of their acronyms

(3) Dispute Resolution

- **GAC Public Policy Advice**
 - a dispute resolution mechanism modeled on but separate from the UDRP, to include the possibility of appeal to an arbitral tribunal instead of national courts, in conformity with relevant principles of international law
 - An emergency relief (e.g., 24-48 hours) domain name suspension mechanism to combat risk of imminent harm to an IGO.
- **GNSO Initial Report DRAFT recommendations**
 - No change to the Uniform Domain Name Dispute Resolution Policy ("**UDRP**") and Uniform Rapid Suspension ("**URS**") procedure
 - For IGOs, in order to demonstrate standing to file a complaint under the UDRP and URS, it should be sufficient (as an alternative to and separately from an IGO holding trademark rights in its name and/or acronym) to demonstrate that it has complied with the requisite communication and notification procedure in accordance with Article 6*ter* of the Paris Convention for the Protection of Industrial Property

UDRP Dispute Resolution standard

- The complainant must show that:
 - the registered domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; **AND**
 - the registrant has no rights or legitimate interests in respect of the domain name; **AND**
 - the domain name was registered and is being used in bad faith.

UDRP Bad Faith examples

- instances where a Registered Name Holder intentionally attempts to attract, for commercial gain, Internet users to the Registered Name Holder's website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or of a product or service on the website; or
- circumstances indicating that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant/markholder for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

(4) Appeals

GAC Public Policy Advice

- a dispute resolution mechanism modeled on but separate from the UDRP, to include the **possibility of appeal to an arbitral tribunal instead of national courts**, in conformity with relevant principles of international law

GNSO Initial Report DRAFT recommendation

- In relation to the issue of jurisdictional immunity, which IGOs (but not INGOs) may claim successfully in certain circumstances, the WG recommends that:
 - (a) no change be made to the Mutual Jurisdiction clause of the UDRP and URS;
 - (b) the Policy Guidance document initially described in Recommendation #2 (above) also include a section that outlines the various procedural filing options available to IGOs, e.g. they have the ability to elect to have a complaint filed under the UDRP and/or URS on their behalf by an assignee, agent or licensee; such that
 - (c) claims of jurisdictional immunity made by an IGO in respect of a particular jurisdiction will be determined by the applicable laws of that jurisdiction.

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1

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2

GNSO recommendations

3

GAC public policy advice

4

How the GNSO has taken into account the public policy advice

5

Facilitated dialogue to resolve the conflict