August 15, 2019

**Comments of the International Bank for Reconstruction and Development (“World Bank”) on the Final Report on the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process**

The GNSO should reconsider its final recommendations regarding Intergovernmental Organizations (IGOs). The World Bank supports the comments filed by other IGOs, including the OECD, reiterates and adds the following comments on its own behalf. We reiterate the sentiment expressed by others that IGOs merit tailored protection in the DNS system commensurate with their unique treaty-based character, and we would request action by the ICANN Board to take appropriate action to protect IGOs.

The International Bank for Reconstruction and Development, known as the World Bank, is a public IGO dedicated to funding and encouraging development activity in its member states. Its twin goals are eliminating severe poverty and boosting global prosperity by 2020. The World Bank is owned and controlled by its 189 member nations, who contribute public funds to its development work. Because the World Bank operates across international borders in its member nations, its member states have agreed to allow it certain privileges and immunities from the application of their national laws in its operations. These immunities are often interpreted and applied by local courts, and may be waived expressly or impliedly by the World Bank.

The World Bank’s name is often misused in frauds and scams, as are the names of other IGOs. These scams can be perpetrated, or assisted, by the misleading registration of domain names with similar or identical names and acronyms to an IGO. Any resources that the World Bank has to expend to address such fraudulent domain name abuse must be diverted from the development assistance the Bank is able to offer to the world’s poorest nations. As a result, the World Bank, along with 196 other IGOs, has long been requesting that ICANN grant to IGOs some basic protections for their names and acronyms under the gTLD program beyond the curative rights proposed by the GSNO.

The GNSO Final Report refuses to make any accommodations for IGOs, and seeks to force the IGOs to choose between protecting their acronyms or protecting the immunities that allow them to operate internationally without the constant threat of lawsuits in every member country. The GNSO obtained a legal opinion that explains the special nature of IGOs and the consequences of their status, which is attached to the GNSO Initial Report as Annex 14, [Annex 14 to Initial Report](https://gnso.icann.org/en/issues/igo-ingo-crp-access-initial-19jan17-en.pdf), but the GNSO largely rejects or contradicts the analysis and recommendations of its own legal expert. Similarly, the GNSO appears to have rejected the input it received from the IGO Small Group on this topic.

*Recommendation #1:*

1(a) The World Bank is not an INGO, and has no comments on this recommendation concerning INGOs.

1(b) The World Bank adopts the OECD’s comments in their entirety on this point. The World Bank reiterates that the privileges and immunities of IGOs are not a simple topic. This is why some deference should be accorded to the IGOs on this issue, who are experts, or at least to the GAC, whose membership consists of government representatives. The GAC’s advice on the IGO issue was long in favor of allowing IGOs to have completely preventative protections for their acronyms, which would have avoided complex immunity issues altogether. Ultimately, in an effort to reach a resolution on this issue, the GAC has accepted and recommended a curative mechanism for IGOs to defend their acronyms, but the GAC’s recommendation still avoids use of national courts altogether.

The World Bank believes that the ICANN Board was correct when it agreed that this issue could be resolved according to the October 4, 2016, Policy Recommendations presented to the GNSO and the Board by the IGO “Small Group.” Annex 12 to the GNSO report contains a copy of these recommendations, which include an arbitral appeal process from any Uniform Dispute Resolution Procedure (UDRP) determination of an allegation of domain name abuse. That method would avoid concerns about immunity waivers completely. Instead of following these recommendations, however, the GNSO’s Interim Report departed from that advice in several key ways, apparently mostly based on a reluctance to make any changes to the existing UDRP and Uniform Rapid Suspension Process (URS) process.

The GNSO continues to dismiss the conclusions and opinions of GNSO’s own legal expert, and attempts to force IGOs to choose between compromising their right to prevent fraud using their acronyms, or to compromise the immunities granted to IGOs by their member states. The World Bank believes the GNSO should acknowledge and apply the legal opinions expressed in Annex 14 to the GNSO’s own Interim Report. (This opinion is necessarily broad stroke and generalized, since it attempts to deal with the different immunities granted to IGOs by their member governments under international and national law. The judicial immunity granted to the World Bank by the World Bank by its member states is unique and has been applied in different ways in different courts around the world. Overall, the World Bank is not agreeing that Professor Swain’s opinion is in any way specifically binding on the World Bank, and is not agreeing that it would waive any immunity in any way by engaging in any action relating to its acronym, including in the UDRP or the URS).

Professor Swaine concludes that “granting Mutual Jurisdiction – via initiation of a complaint, or, for that matter, registration – would likely be understood as a waiver of any immunity the IGO might otherwise assert”. The GNSO has no reasonable basis to ignore this advice, so only by departing from Professor Swain’s analysis and conclusions can the GNSO justify its preliminary recommendations on this issue. The GNSO falsely envisions a world in which IGOs avail themselves of the current UDRP process, including the Mutual Jurisdiction clause, but then will somehow still be able to claim immunity in an appeal of that decision to a national court. This is extremely unlikely, and this counterfactual assumption should not form the basis for any serious recommendations.

The GNSO’s recommendations simply defend the status quo and the existing URDP and URS process, and seek to avoid making any accommodations for IGOs similar to those already granted to the International Committee of the Red Cross and the International Olympic Committee. The GNSO does not adequately consider the actual threat posed to IGOs by being forced to waive their immunities in order to participate in the UDRP, and provides no reasonable options. Since the GNSO is unable to come up with any viable alternative recommendation on this issue, the October 4, 2016, Small Group recommendations should simply be adopted by the ICANN Board.

*Recommendation #2:*

The World Bank reiterates its belief that the GNSO seeks to require too legalistic and technical a test before many IGOs would be able to even access the UDRP or (URS). The UDRP and URS generally require a claimant to prove that it has the right to assert protection for a name or acronym. A convenient shorthand is to require evidence of a valid trademark or service mark in the name or acronym a claimant seeks to protect. For corporations organized under national law, this test makes sense. For IGOs, however, such a requirement is often disqualifying, since IGOs often choose not to register their names as trademarks in all of the nations in which they operate. The World Bank, for example, has 189 member countries. The cost of registering and monitoring trademark applications across 189 countries would consume resources better spent on development assistance. The World Bank, like the OECD, urges the GNSO to allow arbitrators in the URDP and URS systems to apply international law, which may include Article 6ter of the Paris Convention, to evaluate whether an IGO has standing to file a claim. No special restrictions are justified for IGO claims.

Recommendation #3:

The GNSO suggests that an IGO could sidestep any immunity issue by simply filing a complaint before the UDRP and/or URS through an assignee, licensee or agent. This suggestion is of course impossible to implement if a third party brings a case, well founded or not, directly against an IGO, which would be left to defend itself in the UDRP proceeding at the risk of having waived its immunity in any later appeal. In addition, even where an IGO is considering filing a claim itself, the GSNO completely fails to explain how this assignment trick would work in practice. The difficulty and complexity inherent in an attempt to assign name rights are explained in detail by Professor Swaine. For one thing, the assignment may well be rejected by the UDRP or a court. In addition, the assignment might also be ineffective in protecting the IGO’s immunity. The GNSO’s recommendation that an IGO should routinely give control of its name to a third party in order to file a UDRP proceeding to protect its name makes very little sense and continues to threaten the immunities of the IGO. Similar difficulty and complexity apply to the GNSO’s recommendation to have IGOs to contact the registrar of record to address the harms for which the IGOs are seeking to redress prior to filing a UDPR and/or URS complaint. As noted above, “IGOs often choose not to register their names as trademarks in all of the nations in which they operate. The World Bank, for example, has 189 member countries. The cost of registering and monitoring trademark applications across 189 countries would consume resources better spent on development assistance”.

*Recommendation #4*

The World Bank reiterates that IGOs rely on public funds from their member countries and should be allowed to spend those funds on the public missions for which they are established. IGOs should not have to divert those funds to protect their acronyms against fraud and abuse in ICANN’s domain name system.

*Recommendation #5*

The World Bank reiterates its comments above under Recommendation #1(b).