

Comments from the Universal Postal Union (through its International Bureau's Legal Affairs Directorate):

The Universal Postal Union (UPU), as an intergovernmental organization (IGO) and specialized agency of the United Nations, fully supports the substantive comments submitted by the OECD, MIGA, WIPO and World Bank Group, as well as the associated supporting statements respectively made by the EMBL, EPO, ICAO, ITU, NIT and WHO.

As stressed by the UPU and other IGOs on past occasions, the ICANN Governmental Advisory Committee (GAC) had repeatedly advised that IGOs, as entities created by governments under public international law, are in an objectively different category when compared to other rights holders; therefore, there is a prevailing global public interest to provide special protections for their names and acronyms at both the top and second levels.

In that regard, the UPU would take this opportunity to highlight that this final report, which refers to the "GNSO Policy Development Process on IGO-INGO Access to Curative Rights Protection Mechanisms Policy Recommendations for ICANN Board Consideration", continues to mirror the same legal inconsistencies and flawed recommendations previously identified by the IGO community following the conclusion of the policy development process entitled "Protection of IGO and INGO Identifiers in All gTLDs (PDP) Recommendations for Board Consideration", whose final report was originally issued by the ICANN Generic Names Supporting Organization (GNSO) Council on 27 November 2013.

Recommendation # 1:

In what pertains to recommendation 1(b), the UPU fully concurs with the comments made by the OECD, WIPO and World Bank Group. The GNSO continues to disregard global public policy considerations and the views of those responsible for defending such considerations. Moreover, the UPU would emphasize that the Working Group's stated reasons to avoid recommending the creation of a new and separate dispute resolution procedure for IGOs not only disregard fundamental international law principles associated with the privileges and immunities enjoyed by those IGOs; in fact they are, for the most part, based on convenience considerations which simply reflect pragmatic interests of the commercial stakeholders most closely involved with such GNSO policy discussions.

In particular, the Working Group's assertion that IGOs may file a complaint through assigned third parties (so as to allegedly "avoid" a direct waiver on their privileges and immunities) tenuously assumes that IGOs would be in a position to outsource their responsibilities at no additional cost and without legal implications, as if the mere engagement of a third party would automatically enable them to accept any ruling from domestic courts (not to mention the IGOs' impossibility to accept any measures of execution).

Moreover, the Working Group's statement that registrants have a "longstanding legal right to bring a case to a court of competent jurisdiction" is dismissive of the virtually universal fact that, as enshrined in international treaties and various domestic statutes, IGOs do enjoy immunity from every form of legal process. In issuing this statement, the Working Group overlooks the fact that IGOs are already required to make provision for appropriate alternative modes of settlement (i.e. arbitration) which do not run counter to the above fundamental principle above – needless to say, such alternative modes of settlement have always been used by entities which engage in any sort of legal relationship with IGOs.

As for reasons 2, 4 and 5, these constitute, again, inappropriate attempts at dismissing and relativizing the specific international legal framework under which IGOs are established; therefore, they should not be deemed as legitimate reasons for adopting Recommendation # 1.

Recommendation # 2:

In what pertains to recommendation 2, the UPU also fully concurs with the comments made by the OECD, WIPO and World Bank Group.

In this regard, the UPU may simply recall that ICANN's own founding documents require that organization to carry out its activities in conformity with relevant principles of international law and applicable international conventions, to cooperate with relevant IGOs and to duly take into account governments' and public authorities' recommendations.

Recommendation # 3:

In what pertains to recommendation 3, the UPU equally concurs with the comments made by the OECD, WIPO and World Bank Group. The UPU's remarks concerning Recommendation # 1 also apply, *mutatis mutandis*, to this Recommendation.

Recommendation # 4:

The UPU concurs with the comments made by the World Bank Group. IGOs indeed rely, for the most part, on public funding from their member countries and should only be required to spend those funds on the fulfilment of the public aims and mandates for which they are established. In other words, 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 UPU's remarks concerning Recommendation # 1 would in principle also apply, *mutatis mutandis*, to this Recommendation. Nevertheless, the UPU understands that this specific recommendation has not been adopted by the GNSO Council – therefore, no further comments would be necessary at this point in time.

Concluding remarks:

The UPU stresses that IGO names and acronyms (including the UPU's) have often fallen victim to cybersquatting, phishing attempts and other forms of abuse in the Domain Name System (DNS). Once more, the GNSO Council's continued failure to recommend appropriate protection mechanisms for IGO identifiers would carry a real cost for their public interest missions, particularly when it may be seen that one of ICANN's core values refers to the achievement of "a reasonable balance between the interests of different stakeholders, while also avoiding capture."

In conclusion, the GNSO's recommendations fail completely to take into account public policy concerns, the unique status of IGOs as well as longstanding GAC advice. The UPU thus sincerely hopes that the ICANN Board reject such recommendations and adopt instead the 2016 recommendations issued by the Small Group of IGOs.