

Mr. James Bladel, GNSO Chair (jbladel@godaddy.com)
Ms. Donna Austin, GNSO Council Vice-Chair (donna.austin@neustar.biz)
Dr. Heather Forrest, GNSO Council Vice-Chair (heather.forrest@utas.edu.au)

By email

31 October 2016

Dear Mr. Bladel, Ms. Austin and Dr. Forrest,

We write to you as the legal counsels of the public intergovernmental organizations (“IGOs”) indicated hereunder, and also on behalf of the broader coalition of IGOs that have been seeking protections for IGO names and acronyms in the domain name system (“DNS”). The purpose of this letter is to provide the perspective of IGOs on some of the political, legal and practical considerations associated with the protection of IGO acronyms in the DNS. We also refer to the advice that the Governmental Advisory Committee (“GAC”) has consistently provided to the ICANN Board on this topic.

As you are likely aware, internet fraudsters frequently misappropriate IGO identities as cover. These illicit actors pose as IGOs in order to raise funds for phony campaigns, solicit “application fees” for non-existent jobs, or entice unsuspecting users to install malware on their computers through links to sham websites. These schemes not only spread misinformation, hurt the reputations of IGOs and strain their resources, but they also defraud individuals who are duped into clicking on links or responding to requests which they think are coming from IGOs whose reputations they trust. Even worse, precious resources are diverted from IGOs’ public missions and humanitarian causes. This type of activity usually spikes when IGOs become the focus of the news, as they have recently, for example during the Ebola crisis and now again as the Syrian refugee crisis intensifies. Furthermore, beyond the harm caused to the individually defrauded persons, these schemes waste tax-payer money and the resources of IGOs during crises when our resources are most critically stretched. Unlike sovereign states that are better equipped to address such fraud in their own territories, IGOs are vulnerable to this type of abuse. As Professor Edward Swaine, the legal expert hired by the IGO-INGO Curative Rights Protection Mechanisms Policy Development Process (“PDP”) Working Group has stated, “*IGOs are considered more vulnerable than states, since they have no territory or population, and must conduct their affairs in jurisdictions and through persons not their own*”.¹

IGOs have been accorded immunity from national jurisdictions in order to enable them to exercise their functions independently from any interference by individual governments. As noted, for example, in a 2012 decision of the European court of Human Rights (which reflects the overwhelming understanding of high national courts around the world), “*The attribution of privileges*

¹ Swaine, Edward, Memorandum on IGO Immunity, 17 June 2016, p. 9.

and immunities to international organisations is an essential means of ensuring the proper functioning of such organisations free from unilateral interference by individual governments.”² In other words, immunities allow IGOs to remain independent and to act in the collective interests of all constituent Member States. ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP), which moreover focuses on the protection of nationally-granted trademark rights, requires participants to subject themselves to national jurisdiction, thus making it incompatible with IGOs’ immunities.

The need for adequate protection of the names and acronyms of the IGOs in the DNS was recently highlighted in a letter that the Secretary-General of the United Nations sent, in collaboration with the executive directors of IGOs, to the 193 foreign ministers of the Member States of the United Nations. Additional background on this issue was provided in a memorandum dated 12 July 2016 sent to the aforementioned Working Group by WIPO, OECD and the World Bank to assist the ongoing PDP on Curative Rights Protection Mechanisms for IGOs.

Just as the International Committee of the Red Cross is known primarily by the shorthand “Red Cross”, IGOs are almost universally known by their acronyms. In light of the relatively small number of IGOs in existence (191 in total on the GAC list) as well as their repeated commitment to peacefully co-exist with other registrants when there is no risk of confusion, we initially sought to ensure that the same protections that the GNSO has recommended for the identifier “Red Cross”, would also apply to IGO acronyms, namely, that all such IGO acronyms would be placed on a permanent reserve list, with an exception procedure. In a spirit of compromise on the IGOs’ part, this initial request for a reserve list has been adapted to a proposal for post-registration notification and the availability of a tailored curative rights protection mechanism.

This proposal was formally presented to you in Dr. Stephen Crocker’s letter of 4 October 2016. This compromise proposal follows on years of comprehensive negotiations involving representatives of the ICANN Board, the GAC, IGOs and ICANN staff.

Thus far, we have seen policy-making on this important matter dominated by Internet domain name registration interests. Nonetheless, we firmly believe that we all share the common goal of maintaining a DNS that is free of fraud and abuse of humanitarian causes. Consequently, we respectfully urge you to help advance this shared goal through the GNSO’s recommendations. Such recommendations by the GNSO would send the signal that the post-IANA ICANN community is willing to address policy issues for the greater public benefit.

Thank you for your attention to this matter.

² ECtHR, *Stichting Mothers of Srebrenica and Others v. The Netherlands*. para. 139(c) (application no. 65542/12)

List of signatories (alphabetical order by Organisation)

Nicola Bonucci	Miguel de Serpa Soares	Ricardo Guilherme Filho
Director for Legal Affairs	Under-Secretary-General for Legal Affairs and United Nations Legal Counsel	Director of Legal Affairs
Organisation for Economic Co-operation and Development	United Nations	Universal Postal Union
Anne-Marie Leroy	Derek Walton	Frits Bontekoe
Senior Vice President and General Counsel	Legal Counsel	Legal Counsel
The World Bank	World Health Organization	World Intellectual Property Organization

cc: Thomas Schneider, GAC Chair (thomas.schneider@bakom.admin.ch)
Nigel Hickson, Vice President for IGO Engagement, ICANN (nigel.hickson@icann.org)
Mary Wong, Senior Policy Director, ICANN (mary.wong@icann.org)

Encl: Memorandum on IGO Immunities of 12 July 2016