|  |  |  |  |
| --- | --- | --- | --- |
| **What I think IGO’s Are Asking For** | **What I think the Council has told us not to do** | **Where I think I and others at this point** | **How I think all the ingredients are in place to meet in the middle and all it would require is a new footnote in the UDRP** |
| Amend the UDRP to no longer require a trademark right to prevail (this goes beyond the initial concept of “standing” to file)Everyone agreed that “standing” was not the right concept, but we believe that everyone understood that this was to get IGOs “into the funnel” without necessarily having trademark rights. Otherwise, why would we be discussing the 6ter and IGO lists? | No major amendments to the UDRP | This is major surgery to the UDRP and opens the door to all kinds of other “rights” that could be used to take away domain names from registrants.  The UDRP has always been about trademarks.  This is too far.We disagree that this is major surgery and do not believe that such strong fear is justified.We’re not talking about “all kinds of rights”, but protections established by treaty.Also, in order to register a domain name, the registrants is required to warrant that it will not infringe upon or violate “the rights of any third party” or use it “in violation of any applicable laws and regulations.” It is not limited to violating trademark rights. Finally, Article 6ter of the Paris Convention for the Protection of Industrial Property is also about trademarks. It basically states that IGO identifiers cannot be registered or used as trademarks. States may apply absolute protections to the identifiers or limit them to where the trademark use or registration suggests or may mislead the public as to a connection between itself and the IGO.So following that logic, here we’re taking about IGOs identifiers protected by 6ter vs. uses as trademarks by registrants in their domain names. | Resolve misunderstandings about trademark rights.  Specifically: A misunderstanding that in order to have “use in commerce” to unregistered trademark rights, the entity itself must be commercial in nature (many non-commercial entities have registered and unregistered trademarks, e.g. churches, the U.S. Army) Conflating “owning a trademark” with “owning a trademark registration.” The UDRP does not require owning a trademark registration to prevail, only an evident trademark (registered or unregistered)IGOs understand from this discussion that a trademark registration may not be required (in theory), but still question the appropriateness of “owning a trademark” requirement for international organisations. See further discussion below regarding IGO missions.Also, for those who have had experience with UDRP cases, is having a trademark registration certificate really not a requirement for panelists?  |
| Make being on 6ter or GAC list sufficient not only to access the UDRP (standing) but to prevail substantively. IGO never claimed that it would be sufficient. IGOs would still have to convince that the registrant has no legitimate rights/ interests and registers/uses the domain name in bad faith.  Concerns over the evidentiary standard to prevail on unregistered trademark rights. | No major amendments to the UDRP   | This is major surgery to the UDRP and opens the door to all kinds of other “rights” that could be used to take away domain names from registrants.  The UDRP has always been about trademarks.  This is too far. IDEM comments above.GAC list especially unappealing because it is subject to change with no meaningful checks and balances (unlike getting on 6ter which is a rigorous process)IGOs are neutral about what list, but language issue limitation is a concern for either list. If an IGO identifier is translated into a local language or use different alphabet, whether or not official language of the IGO, and abused, a UDRP complaint should still be possible. | Instead of using 6ter to circumvent the UDRP’s trademark requirements (major surgery), consider dropping a footnote in the Section 4.a.(i) of the UDRP informing panelists that: Being on 6ter could be used to lower (but not eliminate) the evidentiary standard of showing unregistered trademark rights.  For example, under a lower standard, 6ter and this link (<https://www.wipo.int/amc/en/events/workshops/2019/20yrs-udrp/index.html>) could be sufficient to evidence WIPO has unregistered trademark rights in conducting conferences since at least 2019. Complainant need not be a commercial entity nor use the name or acronym on 6ter in for-profit ventures in order to have sufficient trademark rights to prevail (panelist already know this, of course, but for comfort of those raising concerns, it might help). IGOs conducting conferences or similar activities are ancillary to IGO missions. It is not their main “trade” if you will for which they could be deemed to hold a common law trademark. A few examples:UN Organisation: maintaining international peace and security, developing relations among nations, working to solve international issues, promoting human rights, and being a central place for harmonizing the actions of nations.WHO: attainment by all peoples of the highest possible level of health. More details here <https://apps.who.int/gb/bd/pdf_files/BD_49th-en.pdf#page=1> Interpol : to ensure and promote the widest possible mutual assistance between all criminal police authorities; to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.FAO: lead international efforts to defeat hunger, to achieve food security for all and make sure that people have regular access to enough high-quality food to lead active, healthy lives.How would these missions be qualified as trademarks, in other words, what goods and/or services (“used in commerce”) under NICE classification would these missions come under? |
| Would prefer a new mechanism separate from the UDRP (an IgoDRP) | No separate mechanisms from the UDRP | Not opposed to this, in principal, but subject to Council extending scope and keeping in mind concerns about unmoored “rights” being used to take away domain names from registrants who have good faith reasons to register them (i.e. criticism, unrelated commercial uses, e.g. WHO v. WHO (the band) | This controversial idea becomes unnecessary if the concepts above in this column are adopted.We do not understand the persistent reference to WHO. WHO couldn’t care less about the use by THE WHO rock group or WHO Magazine of the WHO identifier or any other legitimate use. They, or any other IGO would not spend time and money to pursue such cases. This is a red herring which has been used throughout ICANN discussions to refuse persistent GAC advice. Also, registrants would have the same defences as under current policy, so clearly both the rock band and the magazine could easily show legitimate uses/good faith, etc. In fact they can simply show that they are commonly known by the identifier, they need not show trademark rights to prevail, whereas the claimants would – not very logical and shows that UDRP is not only all about trademarks, but more about legitimate use.  |
| Might be willing to make the above changes limited to situations in which the registrant is clearly pretending to be the IGO in order to perpetrate some sort of financial fraud | Spirit of Council direction seems to be narrow changes, so this particular element seems within that spirit | Very interested in using this narrowing rule as a means to provide greater flexibility on all of the other issues in this Work Track (e.g. immunity, appeals, etc.) | Not necessary if the ideas in this column above are adopted.  If for some reason the good news found in this column is not acceptable to IGOs, keep this concept alive as a means to try to find a resolution with different elements.IGOs are open to discussing more narrow or specific “causes of action” |