

The Internet Corporation for Assigned Names and Numbers

ICANN

11 March 2012

Legal Counsel of Public International Intergovernmental Organizations (IGOs)
c/o Nicola Bonucci, OECD
Via email (nicola.bonucci@oecd.org)

Dear Legal Counsel,

I write in response to the *Open Letter from Intergovernmental Organizations on the Expansion of Generic Top Level Domains*, sent in December 2011.

Without disregard toward the importance of the work performed by the IGOs represented in the letter, ICANN is not able to unilaterally place any organization's name on a list of names excluded from registration at the top and second level. To date, no marks, names or acronyms of any IGO or other organization have been placed on the reserved names list in response to the request stated in the letter, or in response to prior similar requests. As a result of significant discussion and in response to specific advice from ICANN's Governmental Advisory Committee (GAC), a limited number of names identified by the Red Cross and the Internal Olympic Committee have been prohibited from registration at the top level for only the first round of applications in the New gTLD Program, pending further policy advice from the GAC and ICANN's Generic Names Supporting Organization (GNSO).

Because of that ongoing work, and the status of advice to ICANN to date on these issues, ICANN has formally requested the GAC and the GNSO to provide policy advice on the issues raised in your letter. A copy of that request is attached.

The New gTLD Program does afford protections to IGOs regarding applications for gTLDs as well as second level registrations in new gTLDs. Those protections were developed in response to the IGO/government requests during the community discussion on the New gTLD Program implementation. They are set forth below:

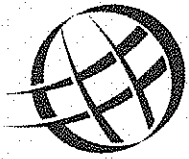
Top-Level Protections

After the close of the application window, information on applied-for strings will be made publicly available. At that time, IGOs will have the ability to review the applied-for strings to determine if any raise concerns contemplated in your letter.

As applicable, IGOs will have the opportunity to avail themselves of the objection processes set out in the Applicant Guidebook, which include:

Washington, DC	1101 New York Avenue NW, Suite 930	Washington, DC 20005	USA	T +1 202 570 7240	F +1 202 789 0104
Brussels	6 Rond Point Schuman, Bt. 5	B-1040 Brussels	BELGIUM	T +32 2 234 7870	F +32 2 234 7848
Marina del Rey	4676 Admiralty Way, Suite 330	Marina del Rey, CA 90292	USA	T +1 310 823 9358	F +1 310 823 8649
Sydney	Level 2, 48 Hunter Street	Sydney NSW 2000	AUSTRALIA	T +61 2 8236 7900	F +61 2 8236 7913

<http://icann.org>



ICANN

- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels.

In addition, an Independent Objector will be appointed with the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the latter two interests listed above. The Independent Objector will act solely in the best interest of the public.

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name.” See Applicant Guidebook, section 3.2.2.2, at <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-11jan12-en.pdf>. Those criteria include:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

In addition, a holder of a word mark that is “specifically protected by statute or treaty” may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP), for use where it appears that a registry (at the top level) is affirmatively infringing the complainant’s mark. More information on the PDDRP is available at Section 6.1 of the Applicant Guidebook.

Second Level

Word marks that are specifically protected by a statute or treaty are eligible for protection through the Trademark Clearinghouse, the Trademark Claims process, and Sunrise protections required in the New gTLD Program.

Through the Trademark Clearinghouse, mark holders will have the opportunity to register their marks in a single repository that will serve *all* new gTLDs. Currently, trademark holders go through similar rights authentication processes for *each separate* top-level domain that launches.



ICANN

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

The Trademark Clearinghouse will increase protections, as well as reduce costs for mark holders such as the IGOs.

The PDDRP, discussed in relation to the top level, also affords protection for activity at the second level. At the second level the PDDRP provides an avenue whereby mark holders can file a dispute against a registry, rather than a registrant, if through a registry's affirmative conduct there is a pattern or practice of registry's bad faith intent to profit from the sale of infringing names and registry's bad faith intent to profit from systematic registration of names infringing the complainant's mark.

The New gTLD Program also affords mark holders a new form of alternative dispute resolution for clear-cut cases of abuse by domain name registrants. The Uniform Rapid Suspension System (URS) is a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, allowing trademark holders a quicker and simpler process through which infringing registrations at the second level can be "taken down."

I encourage the IGOs to remain involved in ICANN as the GNSO and GAC consider the requested policy advice. As expressed in your letter, IGOs represent a wealth of vital causes and issues, and you bring a valuable voice to the ICANN community.

Best regards,

Rod Beckstrom
President and CEO, ICANN