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ICANN71 | Virtual Policy Forum - GAC Discussions: IGO Protection Matters  
Wednesday, June 16, 2021 – 10:30 to 11:15 CEST

GULTEN TEPE: This session will begin. May I ask the tech team to start the recording, please.

Welcome to the ICANN71 GAC discussion and IGO protection session on Wednesday 16th of June. We will not be doing the roll call for the sake of time but GAC members attendance will be available in the annex of GAC communique and minutes. May I remind GAC representatives in the attendance to indicate their presence but updating the participants name to reflect the full name and affiliation.

If would you like to ask a question or make a comment type it by starting and ending your sentence with question or comment to allow all participants to see your request. Your microphone will be muted for the duration of the session unless you get into the queue to speak. If you wish to speak, please raise your hand in the Zoom room.

When speaking please state your name for the record and the language you will speak if speaking a language other than

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English. Please speak clearly and at a reasonable pace to allow for accurate interpretation. And also make sure to mute all your other devices. This session is governed by the ICANN Expected Standards of Behavior. You will find a link in the chat for your reference.

With that, I would like to leave the floor to GAC Chair, Manal Ismail. Over to you Manal.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulden, and welcome back. This is 90 minute session divided between 2 discussions, 45 minute each. One on IGO protections and the other you on subsequent rounds, and we will be starting by the IGO protections to discuss recent developments on the GNSO IGO work track consultation with ICANN Board and potential process to manage the GAC IGO list.

I would like to note the presence of Chris Disspain, former Board GAC member, but joining us today in his new capacity as the chair of the GNSO IGO work track so thanks for joining and for your kind offer to help with any updates if needed. So without any further ado I will hand over to our topic lead, Brian Beckham from WIPO, and just noting that the slides are meant to bring everybody up to speed. They have the background and all the historical

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information, so I hope you find it useful, and it brings everyone up to speed. Shall I hand over to you Brian.

BRIAN BECKHAM: That's great. Thanks, Manal, and can I just do a quick audio check?

MANAL ISMAIL, GAC CHAIR: I can hear you well.

BRIAN BECKHAM: Fantastic. Fantastic. Thank you so much, Manal. Thank you. Good morning good afternoon good evening colleagues. So I will be providing hopefully brief update on the somewhat longstanding topic of the protection of IGO identifiers in the DNS. And if it's okay I'm going to go a little out of order from the 1, 2, 3 points on the slide. I think that might make sense. We'll see.

And instead of going through -- there's a lot of detail on some of the subsequent slides, what that really does is to walk us through the history so I understand those are -- will remain available for colleagues to look at for a more historical view on some of the process and discussions that have led us here to today. But I think it's not necessary to go through the full history of each and every discussion. Maybe if I could just ask to go to the next slide, I can

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help situate a little bit and then we can look at where we are here today.

I should mention, of course, Manal mentioned that I'm here from WIPO, the World Intellectual Property Organization, we are an IGO. We are a specialized agency of the United Nations. IGOs they are entities that are doing a lot of humanitarian and public work around the world, organizations that have been in the public news like the World Health Organization. The WHO, Interpol, UNHCR and UNICEF and we're just shy of 200 and that number hasn't really changed substantially over the years. Organizations that are conducting humanitarian and public activities for governments, and citizens around the world.

And so the question came up back in the early days of the Internet, WIPO can be tasked with creating a means for addressing the conflict between trademarks and domains when -- back in the late 90's that process was turned over to ICANN and became what we know at the UDRP procedure where trademark owners can address bad faith registration use of their domain names. Alongside that there were another -- a few other identifiers such as IGO names and acronyms, country names, INN names that were considered in the WIPO process. And since then there's been an effort under way to reflect protection for IGO identifiers in the DNS primarily through a UDRP like mechanism

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and we will get to why the UDRP can't be used or hasn't been historically attractive for use by IGO versus trademark owners in the past.

In the new gTLD principles back in 2007 the GAC of course recognized the need for a process to take account of IGO identifiers in the context of the new gTLD application procedure that was captured in the ability for an IGO to object to a new gTLD application should there be a risk of confusion that the applied FO TLD would have potentially caused confusion in the mind of consumers. I'm not aware of any objections being undertaken on that grounds, however.

If we could go to the last slide, I think that probably is really the most relevant thing for us here today basically what I wanted to cover maybe if we can go in order of if I can say simplicity, at the bottom the process for establishing a list of IGOs was undertaken a few years back with ICANN and a few IGOs. We weren't able to get every IGO on that list. We had in some cases difficulty finding good contact information for the responsible person at that organization. So despite best effort the list is still somewhat incomplete. And then, of course there's the possibility I will all it be slightly thank you he rhetorical but the possibility that the state could come together, in the future to create an IGO to undertake public services on their behalf around the world.

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The question came up, what happens if an IGO catches wind of these ICANN processes at some point down the road and asking to be added to that list and that list by the way was for the... of the full name of the IGO in up to 2 languages from a registration as the domain name. Then there was also the discussion of the possibility of a notification to an IGO should a registrant in a new gTLD register a domain name that corresponds to their identifier to their acronym so should someone register Unicef.Web then UNICEF would get a notification that that registration had been undertaken. It's not an opportunity to stand in the way of or block that registration, but just to notice it's been undertaken.

So the task before us -- and I've gone back and looked at some of my historical notes -- there were at some points some questions about who would be responsible, some resourcing questions but the upshot is that it seems over all we had agreed -- the GAC had agreed that it would be the maintainer of that list. It would create a process, something that could be as simple as a dedicated e-mail address or a contact point for the event that an IGO who -- it wasn't possible to contact in the past, reached out and wanted to be added to that list or for the event -- a new IGO would be created there would be a possibility to add to that list.

So its teams in terms of management and resources a relatively minimal effort. Something that just needs to be agreed, if you will,

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on a more normal level that the GAC would manage this list and be responsible for making any potential changes to that list based on previously agreed criteria. So that's one item that would be useful to tackle during, if not during this meeting in the near term, again something that should be relatively straightforward.

That brings me to my next point. I mentioned the possibility of a registration is undertaken and the new gTLD that corresponds at that an IGO acronym so one exam some the WHO. The WHO which also as many people know is a famous rock band and, of course, because of the nature of trademark law and terms, there's what we call co-existence, and as long as there's no consumer confusion then the registration of a WHO something new gTLD would it be possible? That -- the genesis of this is under the, under the Paris Convention whereby it states that were signatories, which is effectively all nations, are obliged to prevent trademark registrations would cause potential consumer confusion in the event there would be an allied for trademark that would correspond to the identifier of an IGO. And different trademark offices implement that treaty obligation differently and so that because of that, it wasn't seen as appropriate to the block the possibility of a registration of an IGO name or acronym as a domain name, but it was agreed that there would be a notification to the IGO once that registration would take place.

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Now that's in the future. As it stand today there's moratorium on these registrations and that moratorium has been in place pending work on the next topic, we will cover which is the curative rights protection mechanism side. So over the past year especially there have been a few good conversations with the Board and the back on this topic, and there has been a little bit of confusion around whether the moratorium should stay in place pending the outcome of the curative side of the rights protection work, or whether it's possible to lift that moratorium lot of and we are anticipating working on GAC advice to provide a little bit of clarity around that topic for the Board and going forward. And the upshot is that -- and in particular because the work is meant to wind up during the course of this year, also because when we look at this practically because there's no ability to block the domain name from being registered in the first place, and that's of course going back to the principles of the co-existence under international trademark principles.

Then the question comes up, well what happens if somebody registers, Unicef.Web and starts taking advantage of that on-line presence to defraud the public. As it stands today IGOs are in a bit of a bind because under the UDRP first of all geared towards trademark owners and because of the Paris convention treaty typically IGO's haven't been in the practice of obtaining trademarks in offices around the world because of the treaty



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obligation by states to prevent the registration of third party trademark applications or registration that is would potentially confuse the public as to their source.

So there's an initial threshold issue of if IGOs don't have trademark registrations as many trademark owners around the world would, that presents what we've called as a standing or getting into the funnel issue in terms of the UDRP. And we've been working in the working group on ironing out some ways to get through that. The other side of it's slightly more complicated actually and that concerns the internationally recognized consents of privileges and immune it's that are granted to IGOs by states in their formation. And the reason that's an issue in the UDRP context is that by submitting to the UDRP process which is an out of court administrative process a trademark owners agrees that if they prevail in the UDRP case and the registrant is not happy with that result the registrant can go to a national court to have a court look at the issue and opine on the matter.

As so because of, because of the -- because of the recognition of privileges and immunities under international law for IGOs that is in direct conflict with the agreement to submit to a court jurisdiction that's required by parties to an EDRP proceeding so that's another issue that the working group has been trying to unlock.

And the reason I mentioned that in the context of the lifting, the potential lifting or the stalling of the lifting of the moratorium, will be requested in the GAC advice coming out of meeting is that if a registration is undertaken that will potentially take unfair advantage of a name or acronym and defraud the public the IGO would be in a tricky situation where they would have to either have to risk lifting the privileges and immunities -- than gets us into fairly complicated areas of international law that aren't necessary to go into here -- but suffice to say it puts the IGO in an untenable position of either lifting this human rights privileges and immunities, which is itself within the IGO, not a simple process, or not being able to avail itself of the UDRP processes that available for trademark owners.

So, because the notice wouldn't actually allow the IGO to take action on a bad faith infringing domain name registration, the request is that the moratorium stay in place until the work on this curative side, the access to a UDRP like system side is completed, and again that should be completed during the process of this year.

I know that Chris Disspain, who as Manal mentioned, is formerly with the ICANN Board and is now happily helping us work through this curative rights protection mechanism issue for agencies is on

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the call. I would be certainly happy for Chris to come in if it's useful to provide a little more detail. From me, I think that's, that's it in a nutshell. We have before us the task to agree on a process for potential clean up or additions to a list which is primarily administrative and straightforward procedure on the GAC level.

We have the question of the potential lifting of a moratorium which will be undertaken in the advice coming out of this ICANN meeting, and that relates to the third topic which is the possibility of IGO to access a UDRP like mechanism and the 2 court issues that the working group has been addressing is access to the process on a standing level, and the privileges and immunities versus court jurisdiction issue.

The working group is looking at basically a way to allow an IGO to have access to the system while preserving the right of a registrant to have readdress if something went the wrong direction. We've been talking about whether it would be possible to have some sort of an internal appeal mechanism obviously the details to be worked out whether it would be possible to use the known arbitration model, which is used for many, many commercial contracts. Not only involving IGOs but involving many, many parties around the world, so we're very hopeful that the working group will be able to come out with a proposal that

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everybody is happy with. So far, I think I can say that there's been a lot of good will.

It hasn't always been easy. These are complicated issues. International law jurisdiction privileges immunities, so they are definitely issues that need some attention but there's tremendous amount of good will in that work track led by Chris Disspain and we are optimistic throughout course of this year we will see our way through to a positive conclusion there. That's all for me and I'm happy to answer questions or -- and I've just noted in the chat that I think Chris was happy to leave the update there. Certainly happy to answer questions either now or offline and I will turn it over to Manal. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brian, for this informative presentation. I'm just looking at the queue to see if we have any hand up. I see no requests for the floor, so just to reiterate where we stand today -- and thanks for the excellent historical background. As I said to bring everybody up to speed, we're now at the two points highlighted in red on the last slide. The GAC -- the new work track to address recommendation 5 regarding a curative mechanism and the GAC's request that repose the consultation and maintain the post recommendation, post registration notification until the work track finishes its work, and indeed this is what's in the

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communicate right now. So this comes very timely to -- for everybody to understand where the advice is coming from, and to have sort of rationale behind this advice.

On the second issue which is establishing a process to consider updates to such IGO list, as and when necessary so the GAC worked this list once, and it's out there but we had a couple of requests, which triggered this discussion, a couple of requests to be added to the list, and other requests to be removed from the list. So we need to have some sort of a process, who says whether there is legitimate IGO to be added to the list or not, and how can we add it? Is it how can we maintain the list if there are any immediate reactions, or suggestions, please raise your hand. Otherwise, the GAC leadership along with the topic leads may be working on something and coming back with a proposal for GAC's adoption but please if there are any immediate comments that could help our work, please let us know.

I see no requests for the floor, so in lack of any, anything else, Brian, before we conclude?

BRIAN BECKHAM:

No, thank you, Manal, just to say that of course I remain available, and I'm here on behalf of many, many IGOs who are unable for different -- whether time zone or resource issues to be here with

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us today. But this is, this is very much an effort on Pacific of many, many IGOs who are supportive of the good work here.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Brian, for noting this, and also for being our focal point with other IGOs. You've been always reaching out and coordinating and maintaining an interface with the GAC so thanks very much. I see Jorge hand up. So, Jorge, please go ahead.

SWITZERLAND: Thank you, thank you so much, Manal. Jorge Cancio, Switzerland for the record, and I just wanted to thank Brian, and the colleagues both from the GAC. The IGOs and other parts of the community who are doing excellent work, and the IGO work track I used to listen to the recordings, are and it's good to hear how good, all of a sudden atmosphere good to working relationship they have established there so thanks also to Chris Disspain for making that possible, and to support staff of course for briefing and for preparing the meetings.

And I just wanted to go so on the record to support what Brian was mentioning on the need to develop GAC advice on the interconnection between this IGO work track on the GAC Board consultations on the shift to a post registration moat education. I think it's very timely proposal that we have seen on the

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communiqué, so I just wanted to go public with this, and thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jorge, and I see thanks already in the chat as well from Chris, and Yrjo being on the good atmosphere. Nigel, please I see your hand is up please.

UNITED KINGDOM: Yes, thank you very much. And good morning, good afternoon, Nigel Hickson U.K. GAC just to support the excellent work being taken forward. I mean clearly there's been a lot of work previously on this between the GAC and other community members etcetera so it's really positive that we might be seeing a resolution to some of these issues.

On the updating of the list of IGO names I think clearly that's important. There was this exercise I was involved in over the last couple of years to update the list, and -- but clearly, it's an ongoing issue, as names change, and indeed on the -- on the current list although nearly all of the IGOs were communicated with, not all of them identified the languages that they would like their names protected in and, of course, this is quite important in terms of the policy allows the protection of the name in its 2 languages. So I think that is work that we in the GAC could carry

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forward with ICANN org and others to ensure we have a process for taking this forward. So thank you very much.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Nigel. Indeed we went through this exercise together with you in a different capacity, but yeah, thank you very much for, for the reminder. And Kavouss, please, I see your hand is up.

IRAN: Yeah, thank you very much. I don't want to take much of the time of the meeting. What was said by the previous -- said by colleagues I agree with that. At the very, very beginning of this work I sent a message to Chris Disspain and asked him that we expect all efforts in order that we have a good result of that, and I see the atmosphere like others very, very-- who have, and I think he's doing his utmost effort in offered to find a solution although there are some resistance from some other colleagues in the group, but I also am you know optimistic this this at the could get something. Still there are a lot of obstacles but I hope that we will get something. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss, and indeed we all hope this ends to satisfaction to all involved parties, and glad to hear about the



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progress and the spirit of the group so in lack of other requests for the floor, I thank you again very much Brian for guiding us throughout this discussion. And I look forward to in the final satisfactory of the work of this working group. Has been a long something... on everybody's agenda.

So I'm just asking whether we can start the subsequent procedures 15 minutes earlier, or do we need to wait for the scheduled time? And thank you, Gulden, for flagging that we need to wait for the scheduled time, and this is why I asked. So please be back in the room for the subsequent procedure's discussion in 15 minutes and enjoy a short break for now. Thanks.

**[ END OF TRANSCRIPTS ]**