
ICANN73 | Virtual Community Forum - GAC Discussions on IGO Matters
Tuesday, March 8, 2022 - 12:30 to 13:00 AST

GULTAN TEPE:

This session will now begin, thank you. Welcome to the ICANN73 GAC discussion on IGO matters session followed by WHOIS and data protection session and Tuesday 8th of March at 16:30 UTC. Will we will not be doing a roll call for the sake of time, but GAC members' attendance will be available in the annex of the GAC communique and minutes.

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Finally, this session like all other ICANN activities is governed by the ICANN Expected Standards of Behaviour. You may find the 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 everyone. The coming 90 minutes will be split into two. We have 30 minutes allocated for an update on IGO matters and then 60 minutes for RDS and WHOIS and data protection. Starting by the IGO protections allow me to welcome Brian Beckham of WIPO. Thank you, Brian, for always being there to update the GAC on IGO and handing the floor to you.

BRIAN BECKHAM:

Thank you very much, Chair, and good afternoon and good evening, colleagues, and thank you for the opportunity to provide this update briefly before I begin just a small reminder of the background on this topic.

There are roughly 200 IGOs in existence today and about 40 of those have been working in a coalition on this topic on the ICANN DNS topic over almost the past decade now, so for about the past decade the GAC has been engaged on this important topic notably including by way of advice to the Board through communiquees and exchanges with the GNSO council and, of course, through participation in various working groups.

Examples of IGOs include in the area of health, the World Health Organization, in the area of humanitarian disasters and refugee assistance, UNHCR and the World Food Program, in the area of labor standards, the International Labor Organization, in the area of children's rights, UNICEF, and in the area of economic development, UNCTAD, the World Bank and the OECD, the latter two of which have been assisting this present effort. Of course, that's merely a representative list, but just to remind the types of organizations that are seeking protection of their identifiers in the domain name system.

So the GAC has stressed in terms of protection of IGO identifiers and that includes both full names and acronyms in the domain names and identifier system, and for the most part IGOs are known by their acronyms so I just mentioned examples, UNICEF, UNHCR, WHO. Others are known more by full name; the World Bank or the World Food Program, but the request for protection has largely focused on the acronyms and the full names have also been included in that.

So, again, by way of background the GAC has stressed to ICANN in its – in advice to ICANN Board and in its communication was the GNSO council that IGOs are publicly funded institutions which perform important global public and humanitarian missions for people around the world and are therefore in a unique category of rights holders. They are treaty-based institutions created by governments under international law, and it is well recognized that the privileges and immunities of IGOs uniquely granted to them in recognition of the need

to avoid undue influence from any one state are central to facilitating their functions on the ground to fulfilling their public missions.

And therefore, in the public interest the GAC has taken the position that IGO names and acronyms warrant special protection in the DNS to minimize consumer harm and, of course, diversion of funds intended to aid the beneficiaries of IGOs' humanitarian work. In more practical terms, given that as I mentioned IGOs are – tend largely to be known by acronyms it's important to note here that IGOs and the GAC have recognized that there is legitimate co-existence with IGO identifiers particularly in the form of acronyms with other entities around the world, trademark owners, small businesses etcetera, and in addition to a limited block of full IGO names in two languages and a related notification system, more recent focus has been on a curative rights protection dispute resolution mechanism.

Many of you will know the UDRP (uniform domain name dispute resolution policy) which is a dispute resolution system designed to allow trademark owners to resolve disputes involving infringement of their rights in the domain name system outside of the courts and because of the status of IGOs and their status under international law namely that privileges and immunities from submission of jurisdiction to court that presented a problem in IGOs being able to utilize the UDRP. If we could just move to the next slide, please.

Going back some years, an ICANN GNSO Working Group looked to address this issue of IGOs being able to access if not the UDRP a system

like the UDRP that respected their status under international law and still allowed them to access the system. A report was produced in 2021 and in particular one recommendation which recommendation 5 you see there on the screen, really fundamentally it was recognized that it left the core issue of this immunity from court jurisdiction question somewhat unresolved. So in recognition of that the GNSO council formed a new work track under the rubric of the rights protection mechanism working group to address this recommendation 5 dilemma.

If we could move to the next slide, please. So in practical terms some of the issues that this new work track – I believe it's now called an EPDP which is merely a procedural formality, looked at in essence defining what is an IGO complainant and the idea there was to provide a degree of predictability to potential users of the system, both IGOs and registrants of domain names who may find themselves defending a case brought by an IGO, so to define what was an IGO for purposes of bringing a UDRP or a URS case.

The working group draft report suggested to effectively reject or override, or take the place of, the old recommendation 5, which I mentioned left this court jurisdiction question somewhat unresolved. The preliminary report recommended that IGOs should be exempt from a clause which is in the existing UDRP which would require a rights holder who invokes the UDRP system to agree to submit to a court jurisdiction for purposes of any appeal of a UDRP case in its favor.

This has been the focus of a lot of the working group activity, and IGOs have gone to some length to explain the nature of privileges and immunities under international law, how that works in a normal commercial contractual setting. How disputes are resolved between an IGO and a commercial entity or an individual, and so the working group recognized there was a need to effectively over-write this particular clause of the UDRP that would otherwise be seen as an IGO waiving its privileges and immunities under I will law which from IGOs' perspective was not a compromise that was available to IGOs.

And the preliminary report also allowed for appeals from any UDRP case under arbitration which is how IGOs do resolve disputes, outside of courts in lieu of going to court.

Next slide, please. So, probably a core point to highlight for the GAC's attention the definition of an IGO complainant. The rejection of recommendation 5 from the old working group, the exemption of IGOs to submit to the jurisdiction of a court are all recommendations from the initial report of the current working group that IGOs feel assist in resolving this issue. One area where there was a need to make some compromises was around the suggestion from IGOs and the GAC that arbitration should be the sole means of resolving any appeal. I use that term kind of roughly. It's strictly speaking – it's a different case where new evidence can be introduced but for purposes of this update we can call it an appeal.

The GAC and IGOs had suggested in any appeal from a UDRP case in an IGO's favor should be resolved exclusively through arbitration. That's the norm for resolving commercial and other types of disputes between IGOs and either private citizen, staff employment matters, commercial contracts, that is used regularly around the world. It's actually even accounted for in the ICANN Applicant Guidebook and there is even a carve out in the ICANN Registry Agreement for IGOs in recognition of the need to use arbitration in lieu of court jurisdiction, most notably in the case of the .post new top-level domain applied for and held by the Universal Postal Union.

So but nevertheless there was concern in the working group around registrants' ability to go to court, which is the norm under the UDRP which is the norm for commercial transactions involving registrants and so it was necessary to agree to strike a compromise whereby the registrant to have the option to attempt to file any appeal in court but if the Court would decline jurisdiction, which IGOs have asserted should normally be the case given that it's actually in the hands of the IGO to waive its privileges and immunities rather than for a court to determine whether it would have jurisdiction over the IGO, apologies this can get a little bit into the details -- but in effect the compromise was that the working group would leave open the option for a registrant to go to court, and they would actually be provided, if they sought to invoke that option, with a sort of FAQ or informational sheet that would try to inform them on how a court may look at this on what privileges and immunities for IGOs mean under international law and to allow the

parties to opt to go at first instance to an arbitration appeal mechanism.

But, that option was left open and then if the Court would decline jurisdiction, which IGOs believe that should be the case, then the option for the parties to still invoke an arbitration and arbitral appeal option is still on the table. So this was a compromise that was necessary in the context of the working group. And I would say -- and I believe there are IGO colleagues and working group members on the call -- that was a compromise that was ultimately necessary to hopefully bring this work to a conclusion. We have received last week a draft final report from ICANN staff and from the working group leadership which we are consulting on as we speak, and so the plan is over the course of I believe the next month or so for the working group to iron out any, can't live with, or needed technical clarifications on the final report, but as it stands we are not quite across the finish line in terms of the final report itself.

As I mentioned there were a number of compromises that had to be made along the way, but ultimately we believe that the final report should be in a state which IGOs and GAC could accept and hopefully we can bring a positive conclusion to this working group.

Next slide. So shifting gears somewhat, as I mentioned earlier one of the -- so there are sort of two sides of protecting IGO identifiers in the domain name system. One which we've just been focusing on is what we call the curative side, so that's once an alleged infringement occurs

there's possibility to resolve that dispute through the UDRP process or otherwise, and so we've been focusing on that curative side.

The other side is preventing disputes from happening in the first place. Some of you may recall going back some years there were discussions around the possibility of blocking IGO names and acronyms from the possibility of registration in the DNS, but in recognition of the co-existence principle which I mentioned earlier, it was agreed that blocking particularly acronyms from being registered so these are -- they could be 3 and 4 and 5 letter domain names which correspond to the acronyms of an IGO, that was something that wasn't possible in the context of the domain name registration system.

What was possible was the ability to block the full names of IGOs in up to two languages of their choosing, and so for that purpose a list of IGOs was created and that's a list that would be maintained by the GAC. We've made very good progress, the IGOs and GAC leadership, on the practicalities of how that list would be managed, how an IGO would get on to the list, how an IGO would get off the list if, for example, it wished to itself register a domain name that corresponded to its full name, it would have to be removed from the list so that the block at the registry level would be removed.

And so, we have been in the run-up to this ICANN meeting exchanging some drafts which get into some of the more technical and finer historical points about you know, at which ICANN meeting seven years ago did idea of the list get created. Were the conditions? Etcetera. So

it's been necessary to retrace a little bit of history to make sure we get all of the details right before this list is ready to be presented to the full GAC, but I can say with confidence we've made good progress and we are ironing out a few of the particular historical and technical terminology details and hope to be able to provide that process for either an IGO coming to the list. Being removed from the list, how the list would be maintained by the GAC leadership with ICANN organization assistance to the full GAC list in relatively short order.

So with that that concludes my update to the GAC on the state of the request for protection of IGO identifiers in the DNS, and, of course, happy to answer any questions.

MANAL ISMAIL, GAC Chair:

Thank you very much, Brian, and thank you for the background at the beginning. I think it is very timely since we continue to have new GAC members every meeting. Thank you very much for the background information of the update on the EPDP process and update on where we stand on the proposed mechanism to update the IGO list.

I'm pausing to see if there are any questions or comments from GAC colleagues. Any requests for the floor? Okay, yes, Brian.

BRIAN BECKHAM:

Maybe one thing to mention. There will be -- so I mentioned we have this EPDP working group, and we are near the finish line with the final report. It will be necessary, of course, for that final report, assuming it's agreed amongst the working group, and it's voted on positively by the council and the ICANN Board, for implementation work to occur down the road and one of the things that would occur in terms of the implementation are the actual specific procedural and legal substantive details of the arbitration process.

Of course, we will remain actively involved in that implementation work, but just to mention that it will be necessary to continue even once the working group wraps up its final report with the implementation side, assuming the report is approved according to the ICANN process.

MANAL ISMAIL, GAC Chair:

Thank you very much, Brian. Indeed, implementation is equally important, of course, and I see Nigel's hand up. U.K., please go ahead.

U.K.:

Yes, thanks very much. Nigel Hickson at U.K. GAC. Thanks, Brian, for the update, and as I mentioned in the chat this has been a long haul and you know we've worked together on this in various guises for, you know, a good many years, so you know not trying to be too optimistic, but you know congratulations for getting where you've got so to speak.

I just really have a couple of questions I suppose in relation to this. When we you know set out on this a number of years ago, one of the,

one of the issues was the notification requirements, which I -- which I recall you know was worked through, and agreed, so I mean perhaps you can just sort of satisfy the -- well, perhaps you can just outline what these notification requirements are now as I understand it if someone does register an acronym then you know, the relevant, the relevant IGO would be informed, so that was the first point.

The second point was on the -- does the, when the IGO uses the UDP in the case of a dispute, what the funding mechanisms are, whether, whether -- what the payment requirements are for that. Thank you very much.

BRIAN BECKHAM:

Yeah, thank you, Nigel. In terms of the notification that's a good reminder that initially the idea was that when a registrant would seek to register a domain name which corresponded to an IGO name or acronym they do get a notice that said are you aware that your registration may conflict with an IGO identifier very similar to the trademark claims notices that are submitted during the launch period of new gTLDs.

That was ultimately considered to be not something that would work. Maybe for one practical reason, that new gTLD launches had sort of by and large passed us by. Albeit there still is a moratorium on registrations of domain names in new gTLDs which correspond to IGO names or acronyms, but -- the idea is that moratorium would be lifted, and registrations would be possible.

So rather than a notice to a potential registrant, the agreement was that after the registration would actually take place -- and I believe it's limited to the full name -- apologies I would have to retrace my notes if it also touches on the acronyms -- but once the registration is undertaken then the IGO would receive a notification that that registration had been undertaken for purposes of monitoring any activity related to that particular domain name.

In terms of your question about fees, indeed that's a good reminder, GAC advice had been that the -- any process whether it's the UDRP or another process, should be at no or minimal cost to IGOs. To be candid, that's a particular topic which we haven't focused in on significant detail at the working group level. That may be something for implementation work that may be something for ICANN org to consider. You know whether -- and given that it's a reasonably limited number of IGOs around the world, whether that might be something where there may be some sort of an assistance possible but it's something that the working group hasn't I think taken a position on.

MANAL ISMAIL, GAC Chair:

Thank you very much, Brian. I see Nigel also thanking you in the chat saying this is very useful, so I'm assuming you've addressed both questions.

And, Nigel, I'm assuming this is an old hand, right? So any further questions or comments? And, please, stay tuned for the proposed draft that will be circulated soon on the mechanism to update the IGO list,

your feedback is important so that we can adopt and finalize, and also mindful of our new GAC colleagues, please feel free to ask questions if you need to.

The topic may be new to some, and not to others. I know we might not all be on the same page but we're trying so please don't hesitate to ask any questions you may have.

And seeing no further requests for the floor, I'm thanking you again very much, Brian, much appreciated, very informative, concise and to the point. Yeah, please, I see you --

BRIAN BECKHAM:

Yeah, thank you, Manal. I should just -- should say of course IGOs are very appreciative of GAC support on this file. It's an issue of importance obviously for IGOs to be able to especially nowadays, you know the Internet is such a core function of our daily lives and it's important that IGOs are able to manage how information is shared and how donations are solicited on-line so it's something that's very much appreciated by IGOs as some GAC members may know. Some years back the topic was the subject of a letter from the former U.N. Secretary-General to member states so it's an issue of deep importance and so IGOs are very appreciative of GAC support on this file over these years.

MANAL ISMAIL, GAC CHAIR:

Thank you very much, Brian, and also David Satola in the chat thanking Brian for mentioning the essential support of the GAC to the subject. Indeed, much appreciated, and Ian Sheldon, Australia thanks, Brian,

looking forward to seeing the draft update mechanism. And echoing everyone's thanks, Brian, and looking forward to having this longstanding issue resolved to the satisfaction of everyone hopefully. So thank you very much.

BRIAN BECKHAM: Thank you.

MANAL ISMAIL, GAC Chair: This concludes our update on the topic.

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