

GNSO gTLD Registries Stakeholder Group Statement

Issue: Initial Report on Protection of IGO & INGO Identifiers in all gTLDs

Date: 18 June 2013

Public Comment URL:

<http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

This statement on the issue noted above is submitted on behalf of the gTLD Registries Stakeholder Group (RySG). The statement that follows represents a consensus position of the RySG as further detailed at the end of the document. The RySG statement was arrived at through a combination of RySG email list discussion and RySG meetings (including teleconference meetings).

The RySG wants to first thank all of the IGO-INGO PDP WG members for all the time and effort they have put into this effort. And we want to express special thanks to Thomas Rickert as chair as well as Brian Peck and Berry Cobb for their extra contributions in leading and supporting the WG.

General Rationale

The support of the RySG recommendations identified in this statement is generally based on the following two recommendations in the GNSO Final Report on the Introduction of New Top Level Domains approved by the ICANN Board:

- “Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.” (Recommendation 3)
- “There must be a clear and pre-published application process using objective and measurable criteria.” (Recommendation 9)

In reviewing the various options in the Initial Report, the RySG examined the legal basis as provided in the Report regarding legal rights for both IGO and INGO organizations and also evaluated proposed criteria with regard to their objectivity and measurability.

General Rationale # 1. As far as legal rights are concerned, the WG explored conflicting claims, including a communication from the ICANN General Counsel’s office regarding the lack of specific direction relating to the registration of domain names, notwithstanding protections afforded to some IGO names with respect to trademarks. The conclusion of the RySG is that a reasonably strong case can be made for limited protection for the IOC and RCRC names (as

previously recommended by the ICANN Board) and also limited protection for the full names of a limited list of IGO names. Added to this, the RySG values the GAC recommendations for these organizations, recognizing that the role of the GAC is to provide public policy advice and in particular advice related to national and international laws.

General Rationale # 2. Concerning evaluation criteria, the RySG considered the finite and limited lists of IOC, RCRC and IGO names recommended for protection by the GAC to be objective and measurable and hence easy to implement for registries and registrars and easy for registrants to understand. Moreover, they could be implemented in cost-effective and timely ways that would not negatively impact the registration process. In contrast, proposals to establish criteria that would have to be applied to domain name strings are by nature more subjective and hence would likely require the establishment and implementation of evaluation panels that would not only increase costs but possibly add delays to the registration process.

General Rationale # 3. A third general factor that the RySG considered was whether or not categories of names proposed for protection might set precedents for lots of other organizations to request similar protections. We support the view taken by the Reserved Names Working Group (a part of the Introduction of New gTLDs PDP) that the namespace should be kept as open as possible to maximize competition and innovation. We believe that this is consistent with the following excerpt from Principle C of the GNSO Final Report referenced earlier: “. . . the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.” With regard to the risk of setting undesirable precedents, the RySG feels that limited protection for the finite list of full names provided by the GAC for the IOC, RCRC and IGOs minimizes that risk.

RySG Recommendations

The RySG supports the Initial Report options shown in the following tables. We provide some rationale in the Comments column and, after the tables, give a brief explanation why we do not support other options.

Top Level Names (from Section 4.3)

| # | Description | Comments |
|---|--|--|
| 1 | Top-Level protections of only Exact Match, Full Name identifiers are placed in Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation" | The list of full names would be those provided by the GAC for the IOC, RCRC and IGOs. (See General Rationale) |
| 3 | IGO-INGO identifiers if reserved from any registration (as in option #1), may require an exception procedure in cases where a protected organization wishes to apply for their protected string at the Top-Level | Note that an exception procedure would need to be developed and implemented for future new gTLD rounds. We see no reason why organizations whose names are protected should not be able to register their names as TLDs if they so desire. |

The RySG does not support protection of acronyms for IGOs or INGOs at the top level because we believe that there could be multiple organizations that have the same acronym and in some cases the public may be more familiar with the acronym for a commercial or non-commercial organization than they are with the corresponding name of an IGO or INGO. At the same time, we want to point out that any organization, including IGOs and INGOs, would be able to apply for its acronym as a TLD on a first-come, first-served basis.

The RySG does not support additional fee waivers for IGO or INGO organizations in new gTLD application processes because that would mean that other applicants and/or registrants in general would need to subsidize the IGOs or INGOs via application fees and/or registration fees.

Second Level Names (from Section 4.4)

| # | Description | Comments |
|---|---|--|
| 1 | 2nd-Level protections of only Exact Match, Full Name identifiers are placed in Specification 5 of Registry Agreement | The list of full names would be those provided by the GAC for the IOC, RCRC and IGOs. (See General Rationale) |
| 3 | 2nd-Level protections of Exact Match, Full Name identifiers are applied for by the organization requesting protection and placed in a Clearinghouse Model modified to accommodate use by IGOs and INGOs (hereafter referred to as “Clearinghouse Model”) | Note that an exception procedure would need to be developed and implemented for current and future new gTLD rounds. We see no reason why organizations whose names are protected should not be able to register their names as second-level names on a first-come, first-served basis if they so desire. |
| 5 | IGO-INGOs allowed to participate in Sunrise phase of each new gTLD launch | Note that the TMCH would have to be modified to accommodate this option or a separate clearing house would need to be created. The RySG favors the former for cost and efficiency reasons. (See General Rationale) |
| 6 | IGO-INGOs allowed to participate in 90 Day Claims Notification phase of each new gTLD launch | Note that the TMCH would have to be modified to accommodate this option or a separate clearing house would need to be created. The RySG favors the former for cost and efficiency reasons. (See General Rationale) |
| 9 | Review and modify where necessary the curative rights protections of the URS and UDRP so that IGO-INGO organizations have access to these curative rights protection mechanisms. | (See General Rationale) |

| # | Description | Comments |
|----|---|--|
| 11 | Create a registration exception procedure for IGO-INGOs wishing to register a 2nd-Level name or where 3rd party, legitimate use of domain may exist | Note that an exception procedure would need to be developed and implemented for current and future new gTLD rounds. We see no reason why organizations whose names are protected should not be able to register their names as second-level names on a first-come, first-served basis if they so desire. We also see no reason why organizations that have legitimate rights to a name even if they are not an IGO or INGO should not be allowed to register it on a first-come, first-served basis provided they agree to not cause any confusion with the corresponding IGO or INGO. |

The RySG does not support protection of acronyms for IGOs or INGOs at the second level because we believe that there could be multiple organizations that have the same acronym and in some cases the public may be more familiar with the acronym for a commercial or non-commercial organization than they are with the corresponding name of an IGO or INGO. At the same time, we want to point out that any organization, including IGOs and INGOs, would be able to register its acronym as a second-level domain name on a first-come, first-served basis.

The RySG does not support registration fee waivers for IGO or INGO organizations because that would mean that other applicants and/or registrants in general would need to subsidize the IGOs or INGOs via their registration fees. It seems to us though that individual registry operators could provide fee waivers at their discretion.

The RySG does not support a permanent claims notification process for IGOs or INGOs for the following reasons: 1) This would be an ongoing cost for registries and registrars and probably registrants in general because it would not only require registries and registrars to indefinitely support the process but the Clearinghouse would also have to continue operation indefinitely; 2) There is no requirement for a permanent claims service for other rights holders, so offering it to IGOs and INGOs would create an undue precedent (see General Rationale #3).

Qualification Criteria (Section 4.5)

| # | Description | Comments |
|---|--|-------------------------|
| 1 | IOC & RCRC Qualification Criteria are based on international and national legal protections as recognized by the GAC and ICANN Board | (See General Rationale) |

| # | Description | Comments |
|---|---|-------------------------|
| 2 | IGO Qualification Criteria are defined by a list managed by the GAC | (See General Rationale) |

The RySG does not support protection of INGO names (either full names or acronyms) at the top or second level except for the IOC and RCRC (both of which are special cases already treated by the ICANN Board). We do not believe that there is a legal basis for protection of INGO names (see General Rationale #1); further the GAC has not made any recommendations regarding INGOs. Also, criteria proposed by INGO protection are by nature more subjective and hence would likely require the establishment and implementation of evaluation panels that would not only increase costs but possibly add delays to the registration process (see General Rationale #2). We also think that implementing such criteria could set undue precedent for other organizations to propose criteria that fit their situations (see General Rationale #3)

RySG Level of Support

1. Level of Support of Active Members: [Supermajority]

- 1.1. # of Members in Favor: 14
- 1.2. # of Members Opposed: 1
- 1.3. # of Members that Abstained: 0
- 1.4. # of Members that did not vote: 2

2. Minority Position(s): Yes.

The following minority statement was submitted by the Universal Postal Union (UPU):

As per the legal and objective reasons exhaustively presented on past occasions, the UPU CANNOT support the RySG comments to the initial report referred to below, particularly in terms of the following:

1) Under General Rationale #1 - Here we see again the same legally-flawed assumption that the RC and the IOC cases are similar and subject to equivalent legal protections, or that they would be more "deserving" of protections than IGOs themselves. As explained many times before, the IOC, a private non-governmental organization with individuals as members, does not and has never enjoyed any international treaty protection for its names/"Olympic" expressions etc. - this is not a matter of going against one entity or another; it's just a legal fact whose misconstruction has had a direct impact on how such policies and rationales were established in the first place by ICANN; and even if a political decision has been taken in favor of such an entity, this cannot mean that the aforementioned legal fact is suddenly changed;

2) Under General Rationales #2 and #3 - There has never been any legal or objective reason for separation of treatment between, on one side, the names, and on the other side, the acronyms of IGOs - both of them have always been treated in the same way under international laws and dozens/hundreds of domestic jurisdictions around the world. In this regard, our recommendation to the RySG has always been that opinions and policies must be established on objective and legally-sound criteria, and not just on the basis of unspecified "convenience" reasons arising out of a "potential" interest in a limited number of acronyms, particularly when the provided list of IGO names and acronyms is already clearly defined, finite and extremely limited in number.

In conclusion, there is no need to further extend ourselves in explaining our opposition to the remaining part of the document, as such reasons have already been provided through several UPU/IGO submissions over the last years. We can only regret that the advice being provided by the RySG does not seem aligned with the commitments assumed by ICANN under its by-laws and articles of incorporation, as well as with the public policy considerations already voiced by the GAC.

General RySG Information

- Total # of eligible RySG Members¹: 17
- Total # of RySG Members: 17
- Total # of Active RySG Members²: 17
- Minimum requirement for supermajority of Active Members: 10
- Minimum requirement for majority of Active Members: 9
- # of Members that participated in this process: 17
- Names of Members that participated in this process:
 1. Afilias (.info, .mobi & .pro)
 2. CORE Internet Council of Registrars
 3. Donuts, Inc.
 4. DotAsia Organisation (.asia)
 5. DotCooperation (.coop)
 6. Employ Media (.jobs)
 7. Fundació puntCAT (.cat)
 8. ICM Registry LLC (.xxx)
 9. International Domain Registry, Pty. Ltd.
 10. Museum Domain Management Association – MuseDoma (.museum)
 11. NeuStar (.biz)
 12. Public Interest Registry - PIR (.org)
 13. Societe Internationale de Telecommunication Aeronautiques – SITA (.aero)
 14. Telnic (.tel)
 15. Tralliance Registry Management Company (TRMC) (.travel)
 16. Universal Postal Union (UPU) (.post)

¹ All top-level domain sponsors or registry operators that have agreements with ICANN to provide Registry Services in support of one or more gTLDs are eligible for membership upon the “effective date” set forth in the operator’s or sponsor’s agreement (RySG Charter, Article II, RySG Membership, Sec. A). The RySG Charter can be found at http://www.gtldregistries.org/sites/gtldregistries.org/files/Charter_for_RySG_6_July_2011_FINAL.pdf

² Per the RySG Charter, Article II, RySG Membership, Sec.D: Members shall be classified as “Active” or “Inactive”. An active member must meet eligibility requirements, must be current on dues, and must be a regular participant in RySG activities. A member shall be classified as Active unless it is classified as Inactive pursuant to the provisions of this paragraph. Members become Inactive by failing to participate in three consecutively scheduled RySG meetings or voting processes or both. An Inactive member shall continue to have membership rights and duties except being counted as present or absent in the determination of a quorum. An Inactive member immediately resumes Active status at any time by participating in a RySG meeting or by voting.

17. VeriSign (.com, .name, & .net)

- Names & email addresses for points of contact
 - Chair: Keith Drazek, kdrazek@verisign.com
 - Alternate Chair: Paul Diaz, pdiaz@pir.org
 - Secretariat: Cherie Stubbs, Cherstubbs@aol.com
 - RySG representative for this statement: David Maher, dmaher@pir.org