



Internet Corporation for Assigned Names and Numbers

13 March 2006

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VIA EMAIL: chair@gac.icann.org

Dear Sharil and GAC Members,

In view of the interest and support that the GAC has expressed regarding the WIPO-2 recommendation, I wish to give you an update on recent developments following my re-introduction of this matter within the ICANN organization.

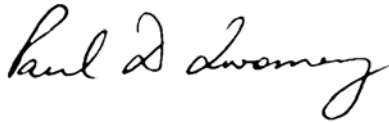
As you are aware, the initial ICANN effort with a dedicated Joint Working Group investigating whether the WIPO-2 recommendations could be introduced in the UDRP did not result in a consensus for doing so. The stumbling block was the resistance by at least some ICANN constituencies to ICANN implementing rules for dispute resolution over geopolitical terms when there was no settled international intellectual property law under which to do so. ICANN is not a legislative body and does not have the power to create such international intellectual property law. I trust you also recognize that ICANN is dependent through its Bylaws on its bottom-up consensus-seeking procedures to introduce new policies or modify existing ones. Under the present circumstances, it is difficult to foresee how a re-launch of such a procedure for the WIPO-2 recommendations as a whole would result in a consensus policy to move forward.

However, there are areas in these recommendations that can be addressed separately, notably the protection of names and acronyms of IGOs, since such protection appears to have an established basis in ratified international treaties. During the ICANN meeting in Vancouver in early December 2005, I asked the Intellectual Property constituency within ICANN to closely examine the individual WIPO-2 Recommendations and report back with a statement on their findings. On 31 January, the Intellectual Property constituency, in a statement on the broader topic of new Generic top level Domains, stated a position which confirms the above approach and lays a basis for progress on this matter. The statement is attached for your information; particularly pages 6-10.

For the sake of expedience, the WIPO-2 aspects of this statement will be addressed separately by a Task Force of ICANN's relevant policy-formulating body, the Generic Names Supporting Organization, to agree final wording and prepare for implementation. A formal decision to this effect is imminent.

I will keep you informed on the further developments and I look forward to future contacts with you on this and other matters.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Twomey". The signature is written in a cursive, flowing style.

Paul Twomey
President and CEO

Comments of the Intellectual Property Constituency

Terms of Reference for New gTLDs

January 31, 2006

The Intellectual Property Constituency (IPC) is responding to the request for comment (RFC) issued by ICANN in connection with the PDP on “Terms of Reference for New gTLDs. See <http://www.icann.org/announcements/announcement-06dec05.htm>. The IPC’s comments are broken down in accordance with the four items listed in the RFC:

1. Should new generic top level domain names be introduced?
2. Selection Criteria for New Top Level Domains
3. Allocation Methods for New Top Level Domains
4. Policy to Guide Contractual Conditions for New Top Level Domains

In addition, the IPC is also providing comments on WIPO 2 at the suggestion of ICANN’s president.

As a general matter, IPC re-affirms its support for the White Paper on Internet Domain Name Expansion which it co-authored with the Business and ISP Constituencies in June 2005 (White Paper). See

http://www.onlineaccountability.net/IPC/PDFs/2005_June_DN_Expansion_White_Paper.pdf.

1. Should New gTLDs Be Introduced

The Memorandum of Understanding (MoU) between ICANN and the U.S. Department of Commerce (DoC) calls for ICANN to “Define and implement a predictable strategy for selecting new TLDs using straightforward, transparent, and objective procedures that preserve the stability of the Internet” See, MoU between DoC and ICANN, Amendment 6, September 17, 2003, at <http://www.icann.org/general/amend6-jpamou-17sep03.htm>. Considering whether new gTLDs should be introduced at any given time is the sine qua non of such a strategy. In this regard, the following facts are among those that should be taken into account.

While the December 5, 2005 GNSO Issues Report suggests that the market for domains shows continued signs of growth, nowhere in the report is there evidence to substantiate the cause for such growth. Statistics say that 80% of the registrants of the already introduced new open gTLDs (.name, .biz, .info) were not new to the market, and many were new registrations made solely for defensive purposes to prevent bad faith use by others. Summit Strategies International, Evaluation of the New gTLDs: Policy and Legal Issues, p. 100, at http://www.onlineaccountability.net/IPC/PDFs/2005_June_DN_Expansion_White_Paper.pdf.

Nevertheless, assuming new gTLDs will be introduced, one must consider their introduction in the context of ICANN’s core values. See, <http://www.icann.org/general/archive-bylaws/bylaws-25feb03.htm#I>. In particular, core value 6 states “[i]ntroducing and promoting competition in the registration of domain names *where practical and beneficial in the public interest.*” In other words, new gTLDs should be introduced only to the extent that there is a public interest in the

competitive benefits of different types of gTLDs than those currently in existence, and in a way that maximizes beneficial impacts of that public interest.

It has long been and continues to be the IPC's position that new gTLDs should be introduced in a slow and controlled manner in order to ensure the public interest is not adversely affected. For technical and policy reasons, it is both necessary and desirable to take a slow and controlled approach to the introduction of new gTLDs. A free-for-all process where many undifferentiated gTLDs are launched – “let a thousand flowers bloom” – has significant downsides – several hundred flowers can be expected to die. In keeping with ICANN's core values, they should create added value. Where there is added value there will be user demand, which in turn will enhance competition and choice, all in the public interest, and all in fulfillment of ICANN's core values. The introduction of unsponsored gTLDs such as .info and .biz added little if anything to competition at the registry level, and because they were undifferentiated from the existing market of domain names, had little or no added value to Internet users. Thus, any new gTLD should create a new and clearly differentiated space and satisfy needs that cannot reasonably be met through the existing gTLDs.

The IPC, with the support of both the Business Constituency and the Internet Connectivity and Service Providers, have agreed upon five principles that should guide the determination of all future expansion of the gTLD name space. These principles include:

- (1) differentiation – a gTLD must be clearly differentiated from other gTLDs;
- (2) certainty – a gTLD must give users confidence that it stands for what it purports to stand for;
- (3) good faith – a gTLD must avoid increasing opportunities for bad faith entities who wish to defraud Internet users;
- (4) competition – a gTLD must create value-added competition; and
- (5) diversity – a gTLD must serve commercial and non-commercial users.

In light of past history with the addition of unsponsored gTLDs, and in light of these principles, it is the IPC's position that ICANN's efforts in this area should be focused on sponsored gTLDs. To begin with, ICANN must be careful not to allow gTLDs to masquerade as sponsored gTLDs. Rather, sponsored gTLDs must represent communities that can be defined in absolute terms, and must be specifically tailored to a discrete and identifiable group of Internet users. In addition, any sponsored gTLD must have mechanisms for ensuring that all registrants comply with the particular eligibility requirements at issue, and for addressing violations thereof.

2. Selection Criteria for New Top Level Domains

If new gTLDs are to be introduced, the selection criteria currently used by ICANN should be updated based on the experience gained in the 2000 and 2005 assignment processes. Currently, the criteria can be categorized in the following areas: technical, financial and business, legal and regulatory, community expectations, application process and external factors. Each of these categories is critical to the proper selection of new gTLDs, however, experience shows that the emphasis should be shifted and a new criterion be added - that of “market differentiation.”

Without diminishing the ongoing importance of the existing criteria, at this stage of maturity in the name space, it can be assumed that any credible application for a new gTLD will comply

with the technical and legal criteria established by ICANN. Similarly, while a review of an applicant's financial and business plans are important to evaluate the long term viability of a registry, experience proves that, without "market differentiation," gTLDs will not fulfill the applicant's stated (and sometimes inflated) financial plans.

Therefore, in order to best serve the Internet community as a whole, the delegation of new gTLDs should be limited to names that add value to the Internet community and create a "market differentiation" from existing gTLDs. The 2000 introduction of .biz and .info, which had the intention of creating competition for the .com and .net name spaces, reinforces this. The lack of differentiation between .biz and .info, on the one hand, and .com and .net, on the other hand, is seen as a major factor in the limited use and value of these new gTLDs, and not enough to overcome .com and .net's entrenched advantage; nor did it create any additional competition to the established gTLDs. Both registrants and Internet users did not perceive these names as adding any value to the name space, as evidenced by the high level of defensive registrations in these gTLDs and the lack of long term decrease in new .com and .net registrations.

Registrant demand will only be created as a result of the Internet users' perceived value in and acceptance of a new gTLD. In a global market economy, as noted above, added value can be characterized as "market differentiation" and a practical way to achieve this "differentiation" can be based on five principles: differentiation, certainty, good faith, competition and diversity. Adherence to these principles will create a taxonomic or directory-style domain name structure, ensuring that certainty and confidence are part of the user experience and that registrants will find a name space where they want to be and in which they can easily be located. The addition of further unsponsored gTLDs dramatically diverts from these principles.

A key component of any market differentiated gTLD is a sponsorship by a well-defined community, such as .museum or .aero. Sponsorship will create gTLDs that set registrants apart from the confusion associated with current gTLDs – users will know exactly what can be found there. The requirement for a well-defined community to be associated with a sponsored gTLD ensures that registrants will be accurately authenticated as being a part of the community and users will have confidence in the legitimacy of the participants. The size of the community should be reasonable to make certain that strict enforcement of registrant eligibility is present. Accurate verification of registrant eligibility must be a hallmark of any sponsored gTLD. In addition, if a community is too large and the registration requirements too easily met, the name space will by default become unsponsored and divert from the principles suggested herein. ICANN must reject any application that does not meet the conditions of a genuine sponsor from a well-defined sponsoring community.

The use and enforcement of eligibility requirements for sponsored TLDs also greatly reduces the problems of cybersquatting and fraud which have become prevalent in unsponsored gTLDs. Creation of industry exclusive spaces (and the enforcement of this exclusivity) also vastly mitigates the need for defensive registrations. Armed with the comfort that only qualified registrants will be accepted in these name spaces, a trademark owner can decide whether to register based on true economic value of the domain, not out of fear of a bad faith registration.

All new gTLDs should be sponsored. So long as the applicant for a new gTLD has fully complied with the ICANN guidelines and the principles of sponsorship, the application should be accepted. ICANN should not dictate the sponsored gTLD names but rather let the market determine which sponsoring communities deem the need for a defined TLD appropriate. As long as the sponsor applicant is able to enforce the requirements for registrability, even small sponsored name spaces will create value to the Internet community.

The IPC also notes the growing demand for TLDs in non-ASCII scripts. This is an important feature of the process of introducing Internationalized Domain Names (IDNs) generally. The issue is growing more urgent, and much is at stake, both for the security and stability of the domain names system and for the credibility of ICANN. Introducing new TLDs in new languages and scripts poses many challenges, technical, managerial and political. Meeting these challenges will require significant attention and resources from ICANN constituencies and from ICANN staff. These resources are finite. For this reason, ICANN should consider according priority to new sponsored Top Level Domains in non-ASCII characters before taking other steps to expand what we will call, for lack of a better phrase, the gTLD ASCII name space.

3. Allocation Methods for New Top Level Domains

In the past, ICANN has used comparative evaluation methods to allocate new gTLDs. In 2000, ICANN used a comparative hearing process conducted by ICANN staff and the ICANN Board. In 2004, ICANN engaged a project manager, assisted by three review panels, to determine whether the selection criteria were fulfilled. The intention was to insulate the process from lobbying pressure and to avoid criticism regarding subjectivity in the process. Allocation was to be conditional only upon fulfillment of the selection criteria. The .org and .net reassignments were conducted as a competitive tender process based on an open RFP. The .org evaluation was conducted by consultants, constituents and ICANN staff, while the .net reassignment was conducted by an outside consultant.

The terms of reference mention auctions, ballots, “first-come first-served,” and comparative evaluation as potential allocation methods. ICANN has considerable experience with comparative evaluation methods and, so far, this has served the user community reasonably well. ICANN does not have experience with any of the other methods.

Based on experience with the “land rush” effect in domain name registration, it is apparent that first-come first-served simply does not work when many valid applications are received at the same time. The selection of a new gTLD is an important decision with far-reaching consequences. Swiftiness in the process is not a particularly critical criterion for success. ICANN should not leave the allocation process to chance.

Similarly, an auction process could have serious problems. Without knowing how the auction process would work, it is difficult to evaluate it. The following questions would need to be considered:

- What would be auctioned? The auction could be for gTLDs or merely for slots. If gTLDs are auctioned off, how would these gTLDs be chosen? How would this relate to the selection process?

- How to control for dominance? If slots are auctioned among bidders who met the selection process, the playing field would be tilted toward the best-financed prospective registries and would disadvantage prospective registries that met the financial selection criteria but did not have the deepest pockets.
- How to control for bias? Similarly, if the gTLDs were proposed by the first potential registry and then bid on by others, the latter bidders would be handicapped regarding preparedness and their ability to calculate an appropriate bid – in essence, they would be betting against the “house.”
- Does the auction process add value? An auction model has no inherent ability to add value, and leaves ICANN open to criticisms regarding profiteering.
- Could an auction become a lottery? Auctions have the potential, depending on how they are structured and what is auctioned, to become lotteries, and lotteries are highly regulated - if not entirely prohibited - in many countries.
- Would “market hype” distort the market? If prospective bidders grossly overbid due to hype, this could undermine the winners’ finances, create unrealistic expectations regarding return on investment, and ultimately hamper the ability to operate and succeed with the new gTLD.

Finally, a ballot process has superficial appeal. It appears to be founded on democratic principles and, arguably, the winners would have broad-based support. However, the decision to allow certain qualified gTLDs to go forward and not others, involves complex and nuanced judgments and far-reaching policy concerns. This does not easily lend itself to an “election” process, especially when the result is essentially perpetual and as a practical matter cannot be undone. Furthermore, it is unclear who the voters would be and how the process would work. Finally, the ICANN Board has the ultimate responsibility for gTLD allocation and it is in the best position to consider, evaluate, debate and decide among the competing domains and competing concerns that surround the process. It should not abdicate that responsibility.

In the opinion of the IPC, the comparative evaluation process will best meet ICANN’s goals of fostering competition in registration services and encouraging a diverse range of registry service providers. We say this even though we have often disagreed with key aspects of the evaluations that have been made under this process in the past. We believe that comparative evaluation can and must be improved, but that it is the best alternative available for allocating new gTLDs.

4. Policy Guide to Contractual Conditions for New Top Level Domains

(a) General Considerations

Based on the experience of intellectual property owners during previous rounds of TLD application processes and the recent amendments to registry services, the IPC recommends policies to guide contractual criteria which are publicly available and go beyond the technical aspects of the DNS. Policies should be developed to ensure enhancement of competition in the provision of registration services and enhancement of the utility of the DNS, together with adequate protection of legitimate intellectual property, consumer, and non-commercial interests, not to mention the overriding interest in maintaining the security and stability of the DNS. These policies should include the maintenance of the UDRP, and a robust database, publicly accessible in real-time and without cost to those querying it, of contact details of registrants in new gTLDs.

From the perspective of intellectual property owners, only vigilant oversight by the registry operator and ICANN, particularly in the area of contract enforcement, can lead to the security, stability and reliability of registry services, one of ICANN's core values. For example, in the case of sponsored gTLDs, which as stated above, the IPC views as the preferred course, strict enforcement of the sTLD's charter is essential. Any new registry must be required to provide concrete evidence of both the funding and resources it will commit to such enforcement efforts.

With respect to a contractual compliance program for registry services, self-regulation is not the complete answer. Rather, ICANN must continue to increase staffing and funding resources to its contractual compliance section in the event registries fail to meet their contractual obligations. Only with this two-level approach to contract enforcement can the security and stability of the DNS be maintained. ICANN should also work to develop a graduated sanctioning system for confirmed contractual violations by registries, eliminating the scheme used in the current registrar compliance efforts, which provides for only one sanction – revocation of accreditation. Rather, sanctions should be based on the severity of the violation, number of occurrences, and the failure to comply.

(b) WIPO 2

Determinations regarding the roll-out of any gTLDs must take into consideration dispute resolution mechanisms. It was therefore in connection with the GNSO's PDP on new gTLDs that the ICANN president suggested that the IPC consider the implementation of the WIPO 2 report. See <http://arbiter.wipo.int/processes/process2/report/html/report.html#4>; see also <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm#ANNEX1>. The report, completed in September 2001, recommended that the UDRP be amended to address disputes involving names of countries and names belonging to international intergovernmental organizations (IGOs). The ICANN presidential working group formed shortly after the receipt of the WIPO 2 report by ICANN, see <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>, failed to reach consensus on whether the recommendations contained therein were capable of implementation. See <http://www.icann.org/committees/JWGW2/final-report/>. As a result, no progress has been made to date. The GAC has on a number of occasions asked ICANN to respond. The IPC was encouraged by ICANN's president at ICANN's meeting in Vancouver and subsequent to that event by ICANN staff to recommend a potential consensus-based solution.

After consideration of the WIPO 2 recommendations and the background material, including the report of the ICANN presidential task force, it is the opinion of the IPC that there is potential for a consensus-based solution to disputes involving names of IGOs, but not disputes involving country names. In sum, in line with WIPO's own comments, the IPC finds that there is insufficient international law on which to base a dispute resolution procedure for country names. It is the IPC's belief that the matter of the legal status of country names is not yet ripe for consideration by ICANN and requires more discussion and consensus within the confines of governments and appropriate international accords. It is the IPC's recommendation that ICANN make an effort to proceed with a new, community accepted IGO dispute resolution policy (DRP) and refer the matter of country names back to governments and other appropriate parties for further discussion.

(i) IGOs

The potential for consensus on IGOs lies in the language of Article 6ter(1)(a) and (b) of the Paris Convention, which provide that member states shall “refuse or invalidate” a national trademark registration “and ... prohibit by appropriate measures the use” of the name of an international intergovernmental organization “either as a trademark or as elements of trademarks without authorization by the competent authorities.” See

http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#P155_22332. It should be noted that on its face, Article 6ter deals solely with the registration of IGO names and acronyms as trademarks. Protection of IGO names and acronyms as domain names is not mentioned. In the interest of moving this process forward, however, the IPC recognizes that there may be sufficient international legal consensus in the principles of Article 6ter that ICANN may proceed with a process of implementation of a UDRP-like mechanism that would address IGO name disputes. Notwithstanding, as a measure of reassurance to the community, ICANN could ask WIPO to provide a substantive opinion to confirm the applicability of Art. 6ter in non-trademark related areas.

The IPC specifically uses the phrase “UDRP-like,” because it is the IPC’s strong opinion that the existing UDRP should not be amended to address problems involving IGOs. And, indeed, the IPC notes that the WIPO 2 report also appears to call for a separate mechanism, referring to “an administrative procedure, similar to the UDRP.”

<http://arbiter.wipo.int/processes/process2/report/html/report.html#4>, at Paragraph 162(iv); see also, Remarks of Jonathan Cohen, chair, Joint Working Group on WIPO 2 Process Issues, July 2004, at <http://www.icann.org/committees/JWGW2/final-report/cohen-remarks-jul04.htm> (Referring to “a separate (*sic*) UDRP where the rules etc can be worked out away from current UDRP” as a possible compromise.); and WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographic Indications (SCT): Second Special Session on the Report of the Second WIPO Internet Domain Name Process, at Paragraph 42, March 29, 2002, at http://www.wipo.int/sct/en/documents/special_session/pdf/sct_s2_3.pdf.

The background and history of the UDRP also supports the position for a separate DRP for IGOs. The existing UDRP was set up for a single, very important reason – to deal with the rampant registration and trafficking of Internet domain names with the bad-faith intent to benefit from another's trademark. And, by most accounts, including those of past ICANN presidents and the current chairman of the ICANN Board, the UDRP has done its job extremely well. See, e.g., Testimony of M. Stuart Lynn Before U.S. Senate Committee on Commerce, Science, and Transportation, Subcommittee on Science, Technology, and Space, June 12, 2002, at <http://www.icann.org/correspondence/lynn-testimony-12jun02.htm> (“The UDRP ... stands as a truly major accomplishment for which ICANN deserves great credit.”); and Testimony of Vint Cerf Before U.S. House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, February 8, 2001, at <http://www.icann.org/correspondence/cerf-testimony-08feb01.htm> (“The UDRP is, I would submit, another very positive accomplishment of ICANN during its short existence to date.”). The IPC submits that the UDRP’s success is due to its being tailor-made to only the most clear cut trademark-related disputes involving registration in bad-faith. The trademark-based UDRP has a firm basis in internationally accepted legal principles and texts, is easy to use, and, it

utilizes arbitrators who specialize in the trademark field. Finally, the IPC notes the existence of other parallel track DRPs that are based to a certain extent on, but not part of the UDRP. For example, the .info Sunrise Challenge Policy, at http://www.afilias.info/register/dispute_resolution/sunrise_challenge_policy, and the .biz Restrictions Dispute Resolution Policy, at http://www.neulevel.biz/ardp/docs/dispute_policies.html. See also ccTLD DRPs, some of which are based on the UDRP, but modified to suit local needs, e.g. .ca DRP, at <http://www.cira.ca>.

Another reason for a separate DRP for IGOs are the complications arising from the request of IGO's to retain their immunity from suit in national courts in light of the Convention on the Privileges and Immunities of the United Nations (adopted by the General Assembly of the United Nations on 13 February 1946) and the Convention on the Privileges and Immunities of the Specialized Agencies (adopted by resolution of the General Assembly on 21 November 1947), see Report of the Second WIPO Internet Domain Name Process, Paragraphs 94 and 157, September 3, 2001, at <http://arbiter.wipo.int/processes/process2/report/html/report.html> Report. A major underpinning of the UDRP and, indeed, one of the reasons for its wide acceptance within the ICANN community at the time of its adoption, was the guarantee of access to national courts for a *de novo* review of the dispute. See Section 4(k) of the UDRP, at <http://www.icann.org/udrp/udrp-policy-24oct99.htm>. Often this access is viewed as an avenue of appeal by losing parties in a UDRP dispute. But, as noted above, IGOs immunity status would presumably prevent this *de novo* review by a national court. Instead, as suggested in the WIPO 2 report, there should be *de novo* review through binding arbitration. <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm#ANNEX1>.

Assuming that consensus is reached on the implementation of an IGO DRP, ICANN should make clear that the contractual requirement of binding arbitration (presumably stated in a revised Registrar Accreditation Agreement) for the resolution of domain name disputes involving IGOs is an exception due to the existence of international convention, rather than the rule, and does not represent a precedent. Furthermore, removing access to a national court for *de novo* review of IGO DRP decisions would place a respondent in such a proceeding at an unfair disadvantage compared to a similarly situated respondent in a UDRP action. In order to offset the risks associated with the loss of access to a national court for *de novo* review, the IPC therefore recommends that, should the respondent in an IGO DRP case request three panelists, the IGO bringing the DRP action should bear the full costs associated with the three panelists. Three panelists should also be utilized at the binding arbitration (or appellate stage), and these costs should also be carried by the IGO. The panelists for the IGO DRP should have special training or background in the laws and treaties associated with IGOs.

Indeed, the laws and treaties governing the use of the few (approximately 72, see <http://www.un.org/Depts/los/Links/IGO-links.htm>) and highly specialized IGOs may very well necessitate additional specificities not relevant to the trademark UDRP. This is a third important reason for a separate IGO DRP, rather than amending the trademark UDRP, which is designed to address cases that involve the tens of thousands of trademarks that exist in the world today. These matters should be explored during the implementation phase with the appropriate experts.

Notwithstanding specificities relating to IGO laws and treaties, like the UDRP, the IGO DRP should be a mechanism that deals exclusively with the bad-faith registration and use of the name(s) and abbreviations of an IGO. See <http://www.icann.org/udrp/udrp-policy-24oct99.htm>, at Section 4(a)(i)-(iii). The IGO DRP should have no other purpose and not be applicable to any other types of alleged violations, *e.g.* between two parties who claim to have a legitimate right to the name, questions of first use, etc. The IPC notes the obvious, that, the wording of the "trademark" UDRP could be used as a platform on which the IGO DRP can be based, with amendments to accommodate references to IGOs. For example, Section 4(b)(i) of the UDRP could be amended to read, "circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the name of the IGO as recognized by the United Nations, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name."

In addition, there should be appropriate defenses to an IGO DRP claim. These defenses should be based on those that exist in Section 4(c) of the UDRP. There will be a need to revise these defenses due to the narrow scope of the IGO DRP, *e.g.* the good faith use of the name of an IGO as a trademark.

In conclusion, provided that there is consensus within the ICANN community to proceed with the implementation of an IGO DRP, the IPC looks forward to working with its colleagues to develop a workable, fair, and efficient system. Such a system should be a required feature (alongside the existing UDRP) of all ICANN contracts with future gTLD registries. The IPC does recommend that, should an IGO DRP be put in place, ICANN appoint a study group to monitor its caseload and ensure that decisions are issued in a fair and efficient manner.

(ii) Country Names

Conversely, the IPC believes that ICANN is not in a position at this time to implement the WIPO 2 recommendation that the UDRP be amended to address country name disputes. As the interim WIPO 2 report stated, "it must be recognized that any protection offered in the DNS to geographical terms as such may amount to the creation of new law, at least from the international intellectual property perspective. A recommendation to adopt such measures consequently would be a departure from one of the fundamental principles underlying the Report of the first WIPO Process, namely, the avoidance of the creation of new intellectual property rights or of enhanced protection of rights in cyberspace compared to the protection that exists in the real world." Interim Report of the Second WIPO Domain Name Process, April 12, 2001, at <http://arbiter.wipo.int/processes/process2/rfc/rfc3/report.html>; see also, WIPO SCT, Second Special Session on the Law on the Report of the Second WIPO Internet Domain Name Process, The Protection of Country Names in the Domain Name System, March 29, 2002, at Paragraph 34, at http://www.wipo.int/sct/en/documents/special_session/pdf/sct_s2_3.pdf ("the legal entitlement of a country to its corresponding name ... at the international level, is not firmly established"). The IPC very much agrees with these statements. Indeed, were ICANN to amend the UDRP to administer country name disputes, it would be facilitating "the creation of new law," which goes far beyond its mandate of security and stability of the DNS. The IPC further notes that, whereas in its February 21, 2003 letter to ICANN WIPO refers to the existence of Article 6ter as a basis for resolving IGO disputes, it does not cite similar or any international law

for the protection of country names. <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>. Therefore, it is the opinion of the IPC that ICANN refer the matter back to WIPO with the recommendation that, before any action is taken by ICANN, governments must first reach some official accord on the protection of rights in country names.

This concludes the IPC's comments. The constituency looks forward to further discussions on new gTLDs within the GNSO and the larger ICANN community.