



REFERENCE:

23 March 2005

Dear Dr. Cerf and Dr. Twomey,

Re: *Unauthorized Registration of Internet Domain Names Incorporating the Names or Acronyms of International Intergovernmental Organizations*

I am writing to inform you about the collective views of the Legal Advisers of the United Nations System, including the Legal Advisers of the international intergovernmental organizations ("IGOs") and subsidiary bodies that are listed in the Annex to this letter ("the Legal Advisers"), on the problem of the unauthorized registration of Internet domain names incorporating the names or acronyms of IGOs.

These Legal Advisers meet annually at the invitation of the Legal Counsel of the United Nations for the purposes of discussing matters of common interest, formulating common positions and approaches, where desirable or appropriate, and providing advice or recommendations in particular instances to various bodies.

During their recent annual meetings, the Legal Advisers have discussed the general question of the protection of the names and acronyms of the various organizations which they represent and the particular question of such protection in the context of the Internet Domain Name System. In this connection, the Legal Advisers have closely followed the Second Internet Domain Name Process of the World Intellectual Property Organization ("WIPO"). In this regard, in May 2002, the Legal Advisers communicated their thoughts on the subject to the Second Special Session on the Report of the Second WIPO Internet Domain Name Process of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications of WIPO.

The Legal Advisers welcomed the recommendation made by the Member States of WIPO in October 2002 to modify the Uniform Domain Name Dispute Resolution Policy ("UDRP") in a way that would allow IGOs to file complaints in respect of the abusive registration of their protected names and acronyms. The Legal Advisers note that this recommendation was made after an open consultation process that, like the First WIPO Internet Domain Name Process, involved States as well as other stakeholders.

Via mail and telefacsimile: (310) 823 8649

Dr. Vinton G. Cerf, Chairman

Dr. Paul Twomey, President and CEO

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The Legal Advisers have been informed that, following the transmission of this recommendation to ICANN by the WIPO Secretariat and the ICANN Governmental Advisory Committee's advice to implement it, the ICANN Board of Directors established a working group composed of representatives of the various ICANN supporting organizations and consultative bodies ("the Working Group") "for the purpose of analyzing the practical and technical aspects of implementing the WIPO recommendations, and notably, the implications for the UDRP." The Legal Advisers have taken note of the Report of the Working Group, which addresses fundamental issues rather than matters of implementation without, however, providing any consensus recommendations. In light of the fact that the Board of ICANN will be reviewing the matter at its upcoming meeting in Mar del Plata in April 2005, the Legal Advisers would like to stress the importance of the issues at stake. In this regard, three issues in particular are worth highlighting.

The first issue is the extent of the abuse involving the names and acronyms of IGOs and the resulting need for protection. The Legal Advisers note that the abusive registration of the names and acronyms of IGOs as domain names by unauthorized parties continues unabated. Recent examples include "wfpnews.com", "unicefnews.com" and "unitednationsnews.com". Such abuse is not only misleading Internet users (thus compromising the addressing function of the domain name system), but also poses a heavy burden on IGOs, which, while relying on these identifiers in order to carry out the work for which they were established, have only limited resources to defend them. It is recalled that the abuse does not affect only IGOs in the United Nations System, but also extends to other organizations, including the Organization for Economic Cooperation and Development ("OECD"), the North Atlantic Treaty Organization ("NATO"), the International Federation of Red Cross and Red Crescent Societies, and the International Committee of the Red Cross ("ICRC").

The second issue is the clear legal basis for protecting the names and acronyms of IGOs. The Legal Advisers are of the view that these identifiers are protected from abusive domain name registrations, pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, as revised ("Paris Convention"), to Article 16 of the Trademark Law Treaty ("TLT") extending the protection afforded by the Paris Convention against registration of the names and abbreviations of IGOs as trademarks to protection against their registration as service marks, and to Article 2 of the WTO's Agreement on the Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), incorporating the protections afforded under the Paris Convention. The proposal to amend the UDRP to take into account the need to protect the names and acronyms of IGOs would therefore constitute a necessary adaptation of existing international intellectual property law to the reality of the Internet Domain Name System. In this regard, the Legal Advisers fully share the view, expressed in paragraph 155 of the Final Report of the Second WIPO Internet Domain Name Process, that "extending the UDRP to protect the identifiers of IGOs would not require the creation of new law, but merely the reflection in the DNS of existing international legal principles for their protection."


The third and final issue that the Legal Advisers wish to draw to ICANN's attention relates to the privileges and immunities enjoyed by IGOs under international law. Such immunity is an essential and indispensable attribute to ensure the independent fulfillment of the respective mandates of IGOs, an attribute that, under international law, States have a legal obligation to respect and protect. Since the names and acronyms of IGOs are essential, not only for their proper recognition and functioning but also for the performance of a number of their institutional activities, measures to protect these identifiers should therefore not require them to waive their immunity. The Legal Advisers are of the view that, in order to respect the unique status of IGOs under international law, the UDRP should be modified to cover abusive registrations of the names and acronyms of IGOs in a manner that would respect the immunity of IGOs and would not require an IGO that is a party to a UDRP proceeding to submit to the jurisdiction of national courts.

The Legal Advisers recognize, however, that with respect to the determination of civil rights and obligations, relevant provisions in existing human rights treaties such as Article 14 of the International Covenant on Civil and Political Rights, Article 6 of the European Convention on Human Rights or Article 8 of the Inter-American Convention provide that everyone is entitled to a fair hearing by a competent, independent and impartial tribunal established by law. The respect for the privileges and immunities of IGOs is without prejudice to the fact that an effective mode of settlement of disputes is always provided by IGOs to an aggrieved party. As indicated above, such mode of settlement must be outside the jurisdiction of the national courts. In this connection, it should be noted that States and contractors recognize the validity of the arbitration procedures as a legally accepted mode of settlement of disputes. It is for this reason that the Legal Advisers support the recommendation made by the Member States of WIPO to require IGOs to submit to a special appeal procedure by way of *de novo* arbitration rather than to the jurisdiction of certain national courts of justice.

I hope this letter serves to provide ICANN with an indication of the importance that the Legal Advisers attach to protecting the names and acronyms of IGOs from abusive registration as Internet domain names. Should you need any further information or assistance in this matter, my colleagues and I are at your disposal.

I wish you fruitful deliberations at your meeting in April 2005.

Sincerely yours,



Nicolas Michel
Under-Secretary-General for Legal Affairs
The Legal Counsel



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REFERENCE:

ANNEX

List of Organizations and Bodies Represented in the Meetings of the Legal Advisers of the United Nations System

The United Nations:

The United Nations is represented by the Under-Secretary-General for Legal Affairs, the Legal Counsel of the United Nations, located at the Headquarters of the United Nations in New York. A number of United Nations offices and subsidiary bodies of the Organization which have legal advisers or legal liaison offices are invited by the Legal Counsel to participate in the meetings, including specifically the United Nations Office at Geneva (UNOG), the United Nations Office at Vienna (UNOV), the International Trade Centre (ITC), the United Nations Compensation Commission (UNCC), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Programme (UNEP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations High Commissioner for Human Rights (UNOHCHR), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations University (UNU) and the World Food Program (WFP).

United Nations Specialized Agencies:

Food and Agriculture Organization of the United Nations (FAO)
International Bank for Reconstruction and Development and the
International Development Association (IBRD/IDA)
International Civil Aviation Organization (ICAO)
International Finance Corporation (IFC)
International Fund for Agricultural Development (IFAD)
International Labor Organization (ILO)
International Maritime Organization (IMO)
International Monetary Fund (IMF)
International Telecommunications Union (ITU)
United Nations Educational, Scientific and Cultural Organization (UNESCO)
United Nations Industrial Development Organization (UNIDO)
Universal Postal Union (UPU)
World Health Organization (WHO)
World Intellectual Property Organization (WIPO)
World Meteorological Organization (WMO)
World Tourism Organization (UNWTO)

***United Nations Related Agencies:***

International Atomic Energy Agency (IAEA)

World Trade Organization (WTO)

Organization for the Prohibition of Chemical Weapons (OPCW)

Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)

Other Organizations and Bodies:

Bank for International Settlements (BIS/BRI/BIZ)

International Organization for Migration (IOM)

Secretariat of the United Nations Convention to Combat Desertification (UNCCD)

Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC).