

Letter to ICANN Board by 9 Members of the IGO-INGO Working Group

Via Email: Correspondence@icann.org
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August 16, 2018

ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, California
90094-2536, USA

Attn: Board of Directors

Dear ICANN Board of Directors:

Re: PDP-IGO-INGO Access to Curative Rights Protection Mechanisms

We write to you on as members of the IGO-INGO Access to Curative Rights Protection Mechanisms Working Group (the “Working Group”) who worked diligently for four years to develop sound and reasoned policy recommendations as set out in the Final Report.

We have reviewed the letter dated July 27, 2018, which was sent to you by Mr. Stephen Mathias on behalf of the United Nations in connection with the Final Report.

We believe that the Board should be aware of the following:

1. The Working Group operated for four years and was open to all stakeholders. None of the groups that Mr. Mathias writes on behalf of, namely the Universal Postal Union, the World Bank, and the World Health Organization, participated in the Working Group as members. The OECD and WIPO, two of the other groups that Mr. Mathias writes on behalf of, did not actively participate except for WIPO earlier on in an observer capacity. Sending comments during the public comment period is not a substitute for participation in the Working Group.
2. The Working Group included a cross-section of members from various constituencies. There were two members from the Registry Stakeholder Group, 1 member from the Registrar Stakeholder Group, several members from the Business Constituency, one from the IPC, one from the NCUC, and three non-aligned individuals, all of whom supported the strong consensus for Recommendation #5 contained in the Final Report.
3. IGOs encounter legal conflicts with third parties for many disputes that are not always subject to private commercial arbitration, such as trademark, copyright, or patent

infringement, for example. The Working Group determined that IGOs *could access the UDRP without* waiving any jurisdictional immunity by using an agent or nominee to bring the UDRP proceeding, as was done in a case involving UNITAID.¹

4. Professor Swaine in his memorandum to the Working Group, (Page 118, Footnote 5 of the Final Report) pointed out that, “Indeed, several IGOs—including the International Mobile Satellite Organization (INMARSAT), the International Bank for Reconstruction and Development (IBRD), and the Bank for International Settlement (BFIS) have prevailed in UDRP complaints”.
5. Mr. Mathias and the GAC have requested that ICANN create a brand new, untested and cumbersome system when there is no compelling reason that such is necessary. The existing framework for the past nearly 20 years is sufficient, and no one has successfully raised any compelling rebuttal to this conclusion.

Yours truly,

Jay Chapman, President, Digimedia.com, LP
(Member of BC)

Nat Cohen, President, Telepathy, Inc.
(Member of BC)

Paul Keating, Law.es
(Member of NCUC)

George Kirikos, President, Leap of Faith Financial Services Inc.
(Member of At-large)

Alex Lerman, Individual

Reg Levy, Director of Compliance, Tucows,
(Member of Registrars Constituency)

David Maher, Senior Vice-President for Law and Policy, Public Interest Registry
(Member of Registry Stakeholder Group)

Zak Muscovitch, General Counsel, Internet Commerce Association
(Member of BC)

Mike Rodenbaugh, Rodenbaugh Law
(Member of IPC)

cc: Heather Forrest, Susan Kawaguchi, Mary Wong, Petter Rindforth

¹ See; <http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2012-1922>