

UNION POSTALE UNIVERSELLE

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UNIVERSAL POSTAL UNION

Director General of the International Bureau

11 February 2009

Mr. Peter Dengate-Thrush
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
4767 Admiralty Way, Suite 330
Marina del Rey, CA 90292-6601
UNITED STATES OF AMERICA

Dear Mr. Dengate-Thrush,

A long time has passed since 2004, when ICANN approved, with a unanimous endorsement by ICANN independent evaluators, the application of the UPU to receive delegated authority for the operation of the .post domain. UPU members, comprising 191 governments and their designated postal operators, intend to use .post as an important element in the convergence of physical and digital postal services for long term postal infrastructure development and to support universal service obligations.

Whilst I recognize that the staff of UPU and ICANN have made considerable progress in the contract negotiations which resolves most of the issues described in our letter of September 2007 to ICANN, there still remains one critical barrier to the successful conclusion of our contract and that concerns the UPU's unilateral adherence to ICANN Temporary Specifications and Consensus Policies, as contained in the standard gTLD agreement. We have been informed by ICANN staff that this is a condition that the Board has set on the successful conclusion of the contract. We are seeking your reconsideration of this position.

As a specialised agency of the United Nations system and an intergovernmental organisation bound by international treaties, the UPU is simply not able to accept the standard commercial gTLD contract conditions put forward by ICANN as regards Temporary Specifications and Consensus Policies, particularly if they come into an unlikely conflict with UPU Acts.

Consequently, the UPU has continuously requested, as a matter of principle, recognition of the primacy of national and international laws over ICANN-enacted specifications and policies through the creation of an "exemption" mechanism. This request must also be considered in light of ICANN's own Articles of Incorporation, which clearly state that the corporation shall carry out "its activities in conformity with relevant principles of international law and applicable international conventions and local law", and "cooperate as appropriate with relevant international organizations".

In this context, our situation is similar to the terms already granted to the European Commission in its delegated authority for the .eu ccTLD, through its designated registry EURID. In fact, as a result of this contract, ICANN has been able to enjoy very good growth of .eu domains as a valuable addition to the Internet. The UPU looks forward, thus, to sharing similar successes with ICANN for .post.

Bearing the above considerations in mind, our ambition is to agree on a contract that meets the needs and responsibilities of the UPU and its members, based on two critical elements that are intrinsically connected to the legal issue of Temporary Specifications and Consensus Policies:

- *Stability of the .post infrastructure as a sectoral policy foundation framework* is critical; therefore, the UPU cannot enter a contract that allows the commercial interests of ICANN to take precedence over long term public policy interests for .post.
- *Protection of infrastructure investments* made by UPU members in the development of services within the domain is critical in this difficult economic period. The UPU is not in a position to accept contract instability and possible discontinuity of the right to oversee the .post internet domain, a situation which could risk those investments made by UPU members.

The UPU has consulted a number of legal advisors in the United Nations system, who fully support our position and proposal as a legally-acceptable solution.

Our member governments and designated operators are being informed next week of the current state of affairs with regards to this matter, and we will be consulting Ambassador Janis Karklins, Chairman of the ICANN Governmental Advisory Committee, of the considerations stated herein, so that the GAC is in a position to express their support to the public policy issues that such considerations entail.

I wish to reiterate, once more, our desire to conclude these negotiations as soon as possible this year, and to move forward with the implementation of .post as a new infrastructure for provision of digital postal services, adding unique value to the internet community.

I await your favorable consideration of our request, for the Board to reconsider its position on unilateral adherence to Consensus Policy within the .post contract.

Sincerely yours,


Edouard DAYAN