

UNION POSTALE UNIVERSELLE

Le Directeur général du Bureau international

Weltpoststrasse 4
3000 BERNE 15
SUISSE/SWITZERLAND
Tél.: +41 (0)31 350 31 11
Fax: +41 (0)31 350 31 09

UNIVERSAL POSTAL UNION

Director General of the International Bureau

19 June 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,

I acknowledge receipt of your letter dated 10 July 2009, and welcome your suggestions for moving forward, given our common understanding of the outstanding negotiation issues and our joint willingness to properly address them.

I am particularly pleased to see your statement that ICANN would never seek to breach policies of the UPU, and that nothing in the agreement should require the UPU to violate its own legal requirements as an intergovernmental organisation bound by international treaties. I consider also as a very important step forward your statement that ICANN would properly consider the needs of the UPU or other intergovernmental organisations before setting rules and making recommendations as part of the "bottom-up" development of ICANN Temporary Specifications and Consensus Policies. Indeed, these matters of principle have been exhaustively explained by us to other ICANN constituencies and formally endorsed by the GAC in its Mexico Communiqué of March 2009.

Allow me to state, in this regard, that the UPU has always emphasized that it is ready to accept and apply current ICANN Temporary Specifications and Consensus Policies; however, these cannot conflict with UPU Acts and public international law. In fact, the position of the UPU simply reflects ICANN's acknowledgment, reflected in your letter, that the provisions of the agreement could not prevail over the rules and principles of public international law to which the UPU is bound.

Once more, I underline our fundamental goal to avoid a situation where ICANN unilaterally creates or changes its Temporary Specifications or Consensus Policies in a way that creates a conflict with public international law. As you surely understand, even if this is a theoretical matter with a very small probability of occurrence, it is absolutely imperative for the UPU that this matter be carefully considered and dealt with in legal terms before signature of an agreement between the two organisations.

We have carefully analyzed ICANN's proposed text, and confirm that it is not sufficient to deal with possible policy conflict issues between the Parties. The UPU, as an intergovernmental organisation, is not subject to national laws or domestic jurisdiction (considering that the need for observance of national laws was the main reason for that text in other registry agreements). In fact, the original text simply referred to "applicable law or legal requirements", without any explicit allusion to the UPU Acts or public international law and without providing language that would clearly resolve those conflicts in conformity with the status of the UPU.

Nevertheless, we could present another constructive proposal that would maintain the ordinary provision on ICANN Temporary Specifications and Consensus Policies, while referring to a separate clause elaborated on the basis of the non-violation principles already mentioned in your letter. This proposal, which takes into account principles contained in ICANN's own Articles of Incorporation, would also ensure that the UPU does not breach its own Acts or public international law in case of a conflict with the provisions contained or referred to in the agreement.

Allow me to underscore, yet again, that this mechanism would only be necessary in case of an extremely unlikely conflict between ICANN policies and the UPU Acts or public international law; in the absence of such a conflict, the UPU would continue to apply ICANN Specifications and Consensus Policies as expected for any gTLD.

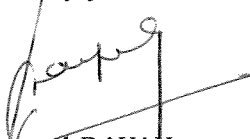
Let me also highlight that the issues painstakingly raised by the UPU to ICANN over the years are no different to those applicable to other treaty-bound intergovernmental organisations. This is also of concern to ICANN as regards the proposed new gTLD Applicant Guidebook, which up to now does not seem to reflect the legal concerns and specific status of intergovernmental organisations as potential gTLD applicants. This is well understood by the GAC, and included in their submission on the new gTLD process.

Finally, I stress that a successful outcome for the negotiations between our two organisations would facilitate future dealings between ICANN and other intergovernmental organisations as potential gTLD applicants.

In the spirit of your positive interest to conclude the agreement and in consideration of your offer to instruct the ICANN staff to re-open the discussions, the staff of the International Bureau are ready to discuss new proposals to finalize our agreement as soon as possible.

After reaching agreement and at your convenience, I am willing to meet with you and sign the agreement, if not in the coming months then possibly at Sharm El Sheikh, at the convening of the Internet Governance Forum in November 2009.

Sincerely yours,



Edouard DAYAN