ANNEX VIII

APPLICATION OF RECOMMENDATIONS TO ccTLDs

1. Chapter I of the Report (paragraphs 38 to 43) discusses the scope of the WIPO Report and the relevance of its recommendations to ccTLDs. It is recognized in that discussion that the recommendations of the WIPO Report are limited to gTLDs and that it is for the administrators of ccTLDs to decide what, if any, consideration they may wish to give to the recommendations. There are a number of reasons why the application of the WIPO recommendations in unrestricted TLDs would be beneficial, including the uniform protection of intellectual property and the avoidance of the creation or existence of intellectual property piracy havens. In view of these reasons, and in response to the specific request of the administrators of certain ccTLDs, this Annex provides guidance on which WIPO recommendations we consider that it would be beneficial for the administrators of ccTLDs to consider adopting.

Best Practices for Registration Authorities (Chapter 2 of the Report)

2. It is recognized that, as indicated in the Report on the ccTLD Questionnaire and Responses contained in Annex IX, the administrators of many ccTLDs have already implemented many of the recommendations contained in Chapter 2 of the Report on best practices for registration authorities.

3. The recommendations in Chapter 2 on registration practices are design to establish clearly the respective rights and obligations of the domain name applicant in relation to the domain name registration. Paramount amongst the concerns of intellectual property owners in this regard is the availability of accurate and reliable contact details of the domain name holder. We consider that the following recommendations concerning registration practices could be profitably applied by administrators of unrestricted ccTLDs, namely:

(i) the use of a formal domain name registration agreement, as recommended in paragraph 57;
(ii) the provision of contact details of domain name holders, as recommended in paragraph 66, corresponding to the details recommended in paragraph 73, with the requirement of keeping the contact details up-to-date;
(iii) the availability in real-time of contact details of domain name holders, as recommended in paragraph 81;
(iv) the notification to domain name holders of the purposes for which contact details are collected and used and the consent of the domain name holder to those uses, as recommended in paragraph 90;
(v) where a fee is charged, the pre-payment of the registration fee, as recommended in paragraph 96;

(vi) the registration of domain names for limited periods and the payment of a re-registration fee, as recommended in paragraph 98;

(vii) the requirement of representations by the domain name holder with respect to non-infringement of intellectual property rights and accuracy of information, as recommended in paragraph 109;

(viii) the adoption of reasonable automated procedures to verify data submitted by domain name applicants, as recommended in paragraph 116;

(ix) the requirement that inaccurate and unreliable contact details should constitute a material breach of the domain name registration agreement and should be a ground for cancellation of the registration, as recommended in paragraph 119; and

(x) the availability of a notification and take-down procedure for the cancellation of a domain name registration where contact details are inaccurate or unreliable and contact cannot be established with the domain name holder, as recommended in paragraph 123.

4. The suggestion that administrators of unrestricted ccTLDs apply the recommendations specified in the previous paragraph is subject to the following qualifications:

(i) the administrator of an unrestricted ccTLD should obtain legal advice on the compliance of any practice with local law and, in particular, local contract and privacy law; and

(ii) the recommendations need to be reviewed in the light of any practices adopted by the administrator of an unrestricted ccTLD in relation to differentiation in sub-domains, which may cause particular recommendations not to be applicable.

5. It should be pointed out that the recommendations against waiting periods, in paragraph 102, and compulsory prior searches, in paragraph 105, are not intended to apply to unrestricted ccTLDs where waiting periods or compulsory searches are practiced, or where the administrators consider that they could be feasibly adopted. Those recommendations are fashioned to the practices that have prevailed in the open gTLDs and the consequent expectations of users of those gTLDs.

6. The recommendation on submission to jurisdiction and to alternative dispute-resolution procedures in paragraph 111 should be applied by the administrators of unrestricted ccTLDs in accordance with their own requirements of submission to jurisdiction and the policy that they apply for alternative dispute resolution (which is discussed in the next section).

Administrative Procedure Concerning Abusive Registrations of Domain Names (Chapter 3)

7. It is recognized that, as indicated in the Report on the ccTLD Questionnaire and Responses in Annex IX, many administrators of unrestricted ccTLDs have adopted a dispute-resolution policy.

8. It would be open to the administrators of ccTLDs to subscribe to and adopt the Policy on Dispute Resolution for Abusive Domain Name Registrations that it is recommended in Chapter 3 be adopted by ICANN for uniform application in open gTLDs. There would be two major advantages to this:

(i) it would assure the uniform application throughout all participating unrestricted TLDs of a policy directed at suppressing the bad faith, abusive registration of domain names and contribute to the elimination of such registrations; and

(ii) it would reduce transactional costs for intellectual property owners in defending their rights since complaints concerning abusive registrations in a participating unrestricted ccTLD could be consolidated, under the circumstances specified in paragraph 193 (principally, the identity of parties), with complaints concerning abusive registrations in gTLDs.

9. An administrator of a ccTLD that wishes to subscribe and to adopt the Policy on Dispute Resolution for Abusive Domain Name Registrations would have two options for so doing:

(i) first, the administrator could adopt the Policy as its exclusive Policy on dispute resolution by means other than resort to court litigation; or

(ii) alternatively, the administrator could adopt the Policy in conjunction with an independent policy for dispute resolution in the relevant ccTLD. In this event, the two policies would need to be reviewed and modified so as to make the relationship between dispute-resolution procedures under the policies clear and to avoid multiple procedures and forum-shopping. This can be achieved procedurally without difficulty (for example, a procedure commenced by a complainant under one policy could preclude resort to any procedure under the other policy).

Exclusions for Famous and Well-known Marks

10. In Chapter 4 it is recommended that a Policy for Domain Name Exclusions be adopted whereby the owner of a mark that is famous or well-known across a widespread geographical area and across classes of goods or services could obtain an exclusion for the mark which would prohibit any third party from registering the mark as a domain name in a gTLD. Since an exclusion would thus be available only for an internationally famous mark we consider that it would be desirable for administrators of unrestricted ccTLDs to subscribe to and adopt the Policy. That Policy allows for exclusions to apply only in some TLDs (either because the owner of the mark has applied for the exclusion only in some TLDs, or because a third party has been successful in obtaining a partial cancellation of a complete exclusion). If a mark were not famous or well-known in a country where the administrator of the ccTLD has adopted the Policy, the exclusion should not therefore apply in the ccTLD. We consider that the adoption of the Policy by the administrators of unrestricted ccTLDs is an appropriate reflection of the international protection established for famous and well-known marks.

11. The administrator of a ccTLD may wish also to consider the adoption of its own exclusion mechanism for marks that are famous or well-known only in the country of the ccTLD and which would not, therefore, qualify for an exclusion under the Policy for gTLDs. The administrator of a ccTLD wishing to do this could seek the cooperation of its national industrial property authorities in the administration of the local exclusion mechanism, as well as the cooperation of WIPO, if it so desires.

12. We consider that it would be appropriate also for the administrators of unrestricted ccTLDs to consider means of dealing with the abusive registration of the names and acronyms

of international intergovernmental organizations and of International Nonproprietary Names, which is discussed in paragraphs 292 to 303 of Chapter 4. As mentioned in those paragraphs, we consider that this question warrants very serious consideration and attention. The possible means of dealing with the question are discussed in those paragraphs. Which means an administrator of an unrestricted ccTLD may wish to adopt depends also on which other recommendations in this Report it subscribes to, as well as on the eventual formulation of a policy by ICANN on the question.

[Annex IX follows]