

# Initial Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process

## STATUS OF THIS DOCUMENT

This is an Initial Report on the Protection of IGO and INGO Identifiers in all gTLDs, prepared by ICANN Staff and the Working Group for public comment on the policy recommendation proposals currently under consideration by the PDP Working Group (“WG”). This Initial Report has also been submitted to the GNSO Council on 14 June 2013. A draft Final Report, with proposed policy recommendations which take into account community input on this Initial Report and continued WG deliberations will be prepared by the Working Group. An additional public comment period will be provided for the draft Final Report for the WG’s consideration in completing the Final Report prior to submission to the GNSO Council.

## SUMMARY

This report is submitted to the GNSO Council and posted for public comment as a required step in this GNSO Policy Development Process on the Protection of IGO and INGO Identifiers in all gTLDs.

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# 1. Executive Summary

## 1.1 Background

- Providing special protections for the names and acronyms of the Red Cross Red Crescent Movement, (“RCRC”), International Olympic Committee (“IOC”), International Government Organizations (“IGOs”) and International Non-Governmental Organizations (“INGOs”) from third party domain name registrations at the top and second levels of new gTLDs has been a long-standing issue over the course of the New gTLD Program.
- The GAC has advised the ICANN Board to provide special permanent protections for the RCRC and IOC names at the top and second levels of new gTLDs, and special protections against inappropriate third party registration for the names and acronyms of 195 IGOs at the second level of new gTLDs and at the top level in any future new gTLD rounds. In the case of IGOs, the GAC has further stated that the IGO names and acronyms “may not be acquired by any third party as a domain name at either the top or the second level unless express written permission is obtained from the IGO concerned<sup>1</sup>.”
- With regard to the RCRC and IOC names, the ICANN Board has adopted motions to provide indefinite protections following the GAC advice until any policy recommendations from the GNSO would require further and/or different action. With regard to the IGO names, pending final approval of the current draft Registry Agreement posted for comment on 29 April 2013, the 195 IGO names will be protected at the second level until any policy recommendations from the GNSO would require further and/or different action. In particular, the ICANN Board’s New gTLD Program Committee resolution referred to second-level protections for certain IGO names and acronyms by inclusion on a Reserved Names List in section 2.2.1.2.3 of the Applicant Guidebook, applicable in all new gTLD registries approved in the first round of the New gTLD Program.

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<sup>1</sup> See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

- A GNSO Issue Report was assigned to Staff as a result of a recommendation from an IOC/RCRC Drafting Team<sup>2</sup> formed to provide a GAC response about GNSO policy implications for granting protections of names.
- The GNSO Council considered the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and approved a motion to initiate a Policy Development Process (“PDP”) for the protection of certain international organization names and acronyms in all gTLDs. The Working Group (“WG”) was formed on 31 October 2012 and the WG Charter was approved by the GNSO Council on 15 November 2012. The decision was taken in this context to subsume the issues of the IOC and of the Red Cross and Red Crescent designations and names under the new Working Group and PDP process.

## 1.2 Deliberations of the Working Group

- The Protection of IGO, INGO, IOC and RCRC Identifiers in All gTLDs Working Group started its deliberations on 31 October 2012 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.
- Section 4 provides an overview of the deliberations of the Working Group conducted both by conference calls as well as e-mail threads.
- Section 4 also includes a brief summary of the ICANN General Counsel’s survey of the protections provided to certain international organizations under international treaties and a sampling of national jurisdictions, prepared in response to specific questions submitted by the Working Group regarding whether there were any treaties or national laws that would prohibit the domain name registration of RCRC, IOC, IGO and/or INGO identifiers.

## 1.3 WG Preliminary Policy Recommendation Proposals

- The policy recommendation proposals for the protection of IGO and INGO (including RCRC and IOC) identifiers in all gTLDs presented in this Initial Report do not represent a consensus position by the Working Group members; rather, they constitute options being considered by the Working Group. The objective of this Initial Report is to present these proposed

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<sup>2</sup> IOC / RCRC Protection DT Archive: <http://gns0.icann.org/en/group-activities/active/ioc-rcrc>

policy recommendation options currently under consideration to solicit feedback from the community on these specific policy recommendations.

- The proposed policy recommendation options are presented in Sections 4.3-4.6.

#### **1.4 Stakeholder Group / Constituency Statements & Initial Public Comment Period**

- The WG requested input from the GNSO Stakeholder Groups and Constituencies, as well as other ICANN Supporting Organizations and Advisory Committees. Further information on the community input received, as well as a brief summary of the positions of international organizations is available in Section 5.

#### **1.5 Conclusions and Next Steps**

- This Initial Report is being posted for public comment for at least 21 days, plus a 21-day Reply Period, after which the submitted comments will be summarized and analysed. Once the Public Forum is closed, the PDP WG will: 1) take into account the input received, 2) conduct a formal consensus call on the policy recommendation proposals, 3) if consensus is obtained on a set of policy recommendations, redraft the Initial Report into a Final Report which will include the proposed final policy recommendations, 4) open an additional public comment period on the Final Report and proposed final policy recommendations, 5) take into account the additional input received, and 6) draft a Final Report to be submitted and considered by the GNSO Council for further action. The WG would follow the directions of the Council if any additional work is necessary.
- The WG Final Report will include specific recommendations for which there is at least strong WG support and alternative recommendations in other cases.

## 2. Objective

This Initial Report on the Protection of IGO, INGO, IOC and RCRC Identifiers in all gTLDs PDP is being published as required by the GNSO Policy Development Process under the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). As already stated in Section 1 above, the proposed policy recommendation options for the protection of IGO and INGO (including RCRC and IOC) identifiers in all gTLDs presented in this Initial Report do not represent a consensus position by the Working Group members; but rather, are options being considered by the Working Group. The objective of this Initial Report is to present the proposed policy recommendation options currently under consideration to solicit feedback from the community on these recommendations. In addition, the Working Group would welcome comments on the following questions:

- 1) Which recommendation options for the protection of certain IGO and INGO identifiers at the top and/or second levels as listed in Sections 4.3 to 4.7 would you support? Please provide a rationale.
- 2) If you do not support any of the recommendation options, please suggest any reasonable alternatives as delineated between top and second-level protections you may have. Please provide a rationale.

This Initial Report will be open to public comment for at least 21 days, plus a 21-day reply period, after which the PDP Working Group will conduct a formal consensus call on the proposed policy recommendations.

### 3. Background

For a detailed background and history of the issue on whether to protect certain IGO and INGO identifiers including the RCRC and IOC prior to the initiation of this PDP, please see the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs<sup>3</sup> (“Final Issue Report”). The Issue Report was initiated as a result of a recommendation by a 2012 Drafting Team formed to provide a GNSO response on the Protection of IOC and RCRC names<sup>4</sup>. After community review, the scope of the Final Issue Report included an evaluation of whether to protect the names of both international government and non-government organizations at the top level and second level in all gTLDs.

Upon receiving the Final Issue Report, the GNSO Council approved a motion to initiate a Policy Development Process for the protection of certain International Organization Names in all gTLDs. The Working group was formed 31 October 2012 and their Charter was approved by the GNSO Council on 15 November 2012.<sup>5</sup>

At its 26 November 2012 meeting, the ICANN Board New gTLD Committee (“New gTLD Committee”) adopted a resolution to protect, on an interim basis, certain IGO names and acronyms based on .int registration criteria at the second level of the initial round of new gTLDs, by including these names on the Reserved Names list; and for the GNSO to continue its policy development efforts on the protection of IGO names. It also requested advice from the GNSO Council about whether to include second-level protections for certain IGO names and acronyms by inclusion on a Reserved Names List in section 2.2.1.2.3 of the Applicant Guidebook for the initial round of new gTLDs.<sup>6</sup>

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<sup>3</sup> Final Issue Report: <http://gnso.icann.org/en/node/34529>. Further background information in this regard may be found in the various submissions made to the Working Group by various IGOs, the IOC and the RCRC

<sup>4</sup> IOC / RCRC Protection DT Archive: <http://gnso.icann.org/en/group-activities/active/ioc-rcrc>

<sup>5</sup> The GNSO Council Resolution for IGO-INGO PDP initiation:  
<http://gnso.icann.org/en/council/resolutions#20121017-2>

<sup>6</sup> The ICANN Board Resolution and Rationale for the Protection of IGO names are posted at:  
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm>

At the same meeting, the New gTLD Committee also adopted a resolution regarding the protection of RCRC and IOC names. The New gTLD Committee resolved that restrictions on the registration of RCRC and IOC names for new gTLDs at the second level (i.e., the IOC and RCRC names listed in the Reserved Names List under section 2.2.1.2.3 of the Applicant Guidebook applicable in all new gTLD registries approved in the first round of the New gTLD Program) will be in place until such time as a policy is adopted that may require further action.<sup>7</sup>

On 20 December 2012, the GNSO Council adopted a resolution accepting the Drafting Team's recommendation to provide special protection for RCRC and IOC names at the second level of the initial round of new gTLDs in a manner consistent with the Board resolution to protect such names.<sup>8</sup>

In response to the ICANN Board's request for advice on the protection of IOC/RCRC names, the GNSO Council Chair sent a letter<sup>9</sup> on 31 January 2013 to the ICANN Board and GAC with its advice on this issue. Although the GNSO did not dispute the advice provided by the GAC, it also recognized that the issue exceeded the scope of implementation and required further policy development to for a long-term approach/solution.

On 28 February 2013, the GNSO Council sent a letter<sup>10</sup> to the ICANN Board in response to the Board's request for advice on the temporary protection of IGO-INGO names in the first round. The GNSO made reference to the temporary protections of the IOC and RCRC names, and noted that the IGO-INGO PDP had not completed its work. The letter also noted a minority position that the global public interest could possibly be harmed by such temporary protections for IGO identifiers. The Council advised that the Working Group assigned to this issue will maintain its sense of urgency to

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<sup>7</sup> The ICANN Board Resolution and Rationale for the Protection of IOC/RCRC names are posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm#1>

<sup>8</sup> The GNSO Council Resolution for the Protection of IOC/RCRC names: <http://gns0.icann.org/en/council/resolutions#201212>

<sup>9</sup> GNSO Council letter of advice to the ICANN Board and GAC: <http://gns0.icann.org/en/correspondence/robinson-to-dryden-31jan13-en.pdf>

<sup>10</sup> GNSO Council letter of advice to the ICANN Board: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-28feb13-en.pdf>

develop policy recommendations which the GNSO can provide to the ICANN Board with respect to IGOs.

On 22 March 2013, the GAC submitted to the Board a list of 195 IGO names and acronyms to be protected at the second level of the first round of new gTLDs, and also indicated that the scope of languages for the names and acronyms to be protected remained to be determined.<sup>11</sup>

During the ICANN Board/GAC joint session on 9 April 2013 in Beijing, the Board flagged a number of issues still to be addressed with regard to the protection of IGO identifiers, including languages to be protected, the mechanism envisaged for any periodic review of the list. The Board also expressed concern that certain acronyms listed for special protection include common words, trademarked terms, acronyms used by multiple organizations, and acronyms that are problematic for other reasons. The Board requested that the GAC clarify their advice with regard to the specific languages to be protected and the mechanism envisaged for any periodic review of the list, and flagged for consideration the issue of acronyms for which there may be competing claims. The Board indicated that clarification would be required to permit the Board to implement the GAC advice.<sup>12</sup>

In its 11 April 2013 Beijing GAC Communiqué, the GAC reiterated its advice to the ICANN Board that “appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch,” and noted that it “is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward pending the resolution of these implementation issues.”

With regard to the RCRC and IOC names, the GAC advised the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the

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<sup>11</sup> See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>  
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

<sup>12</sup> See Letter from Steve Crocker to Heather Dryden on IGO Name Protection:  
<http://www.icann.org/en/news/correspondence/crocker-to-dryden-01apr13-en.pdf>

protections will be made permanent prior to the delegation of any new gTLDs<sup>13</sup>. The New gTLD Program Committee accepted the GAC advice. The proposed final version of the Registry Agreement posted for public comment on 29 April 2013 includes protection for an indefinite duration for IOC/RCRC names. Specification 5 of this version of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD." The proposed agreement was open for public comment until June 11, 2013.

### **3.1 Protections Available to International Organizations Under the Current Version of the Applicant Guidebook (AGB)**

In addition to the protections adopted by the ICANN Board for the IOC and RCRC names at the top level under section 2.2.1.2.3 of the Applicant Guidebook, there are existing protections available to other entities under the New gTLD Program which may also be available to international organizations.<sup>14</sup> In providing further details below, it is noted that some of these existing protections may not be applicable or satisfactory for all international organizations.

#### **Top-Level Protections**

Information on applied-for strings was made publicly available after the close of the application window for the initial round of new gTLDs. Any party, including international organizations, had the ability to review the applied-for strings to determine if any raise concerns, and had the opportunity to avail themselves of the objection processes if the applied-for string infringed on specific interests set out in the Applicant Guidebook "AGB", which include:

- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and

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<sup>13</sup> Beijing GAC Communiqué:

[https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013\\_Final.pdf?version=1&modificationDate=1365666376000&api=v2](https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2)

<sup>14</sup> The latest Guidebook is posted at: <http://newgtlds.icann.org/en/applicants/agb> Supporting documentation is available through the "New Generic Top Level Domains" button at [www.icann.org](http://www.icann.org)

- Misappropriation of community names or labels.

In addition, an Independent Objector has been appointed, and had the ability to file objections in certain cases where an objection has not already been made to an application that will infringe on the latter two interests listed above. The Independent Objector acts solely in the best interest of the public. The Independent Objector does not, however, have the ability to bring an objection on the grounds of infringement of intellectual property rights.

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO is eligible to file a legal rights objection if it meets the criteria for registration of an .INT domain name. See Applicant Guidebook, section 3.2.2.2<sup>15</sup>. Those criteria include:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting these criteria. In addition, if a holder of a mark can demonstrate that its mark is protected by statute or treaty, the mark holder may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP), for use where it appears that a registry (at the top level) is affirmatively infringing the complainant's mark. It should be noted that IGO names and acronyms may or may not be considered a mark that would meet the eligibility requirements to utilize the PDDRP. More information on the PDDRP is available in the Applicant Guidebook.<sup>16</sup>

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<sup>15</sup> Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

<sup>16</sup> PDDRP Section of Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>

## **Second Level Protections**

Through the Trademark Clearinghouse, mark holders will have the opportunity to register their marks in a single repository that will serve all new gTLDs. Currently, trademark holders go through similar rights authentication processes for each separate top-level domain that launches.

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a “sunrise” period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

Word marks that are protected by a statute or treaty are eligible for protection through the mandatory Trademark Claims process and Sunrise protections in the New gTLD Program under the Trademark Clearinghouse. In addition, any word mark that has been validated through a court of law or other judicial proceeding is also eligible.

The Trademark Clearinghouse is expected to support increased protections, as well as reduce costs for mark holders. In the case of IGOs and INGOs, to the extent they are not considered word mark holders, any such benefits of the Trademark Clearinghouse may not apply. The PDDRP, discussed in relation to the top level, also affords protection for activity at the second level. At the second level the PDDRP provides an avenue whereby mark holders can file a dispute against a registry, rather than a registrant, if through a registry’s affirmative conduct there is a pattern or practice of the registry’s bad faith intent to profit from the sale of infringing names and the registry’s bad faith intent to profit from systematic registration of names infringing the complainant’s mark.

The New gTLD Program also affords mark holders a new form of alternative dispute resolution for clear-cut cases of abuse by domain name registrants. The Uniform Rapid Suspension System (URS) is a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, providing trademark holders a quicker and simpler process through which infringing registrations at the second level can be “taken down.” IGOs, which are in general not “trademark holders”, do not presently generally benefit from access to this mechanism, except in cases where their names are trademarked.

## 4. Deliberations of the Working Group

The Protection of IGO and INGO Identifiers in all gTLDs WG began its deliberations on 31 October 2012 by defining the WG Charter which is included in Annex 1 of this report. The team also prepared a work plan<sup>17</sup>, which was reviewed on a regular basis. It outlines key deliverable work products used in research and analysis of the issues defined in the charter as well as how charter issues were handled. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that was used to provide input in response for the request for constituency and stakeholder group statements (see Annex 3). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process. Section 5 of this report provides the community input responses and a short summary.

### 4.1 Initial Fact-Finding and Research

In addition to soliciting community input, the WG formed five sub-teams to conduct an analysis on the nature of the problem, qualification criteria, eligibility process, admissions, and protections. A matrix<sup>18</sup> was developed to document the attributes of each analysis with comparisons across the four groups of organizations (i.e., IGOs, RCRC, IOC, and other INGOs) seeking protection. In addition, ICANN's General Counsel Office was requested to research and report on possible legal prohibitions with respect to registration of domains using the identifiers of these organizations. The next five sub-sections will provide details of each sub-team's findings.

#### 4.1.1 Nature of the Problem

This sub-team's task was to review the specific problems that would be addressed if any protections were to be implemented. Sub-topics reviewed included costs of combating infringement and abuse, infringement on public good, discussion of existing Rights Protection Mechanisms (RPMs) and/or due process in applicable law. In principle it is understood by all stakeholders that use of domain names with malicious intent is a recognized problem within the DNS. However, views on the degrees of harm suffered by organizations varied in the WG's deliberations. Although the purpose

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<sup>17</sup> IGO-INGO WG Work Plan: <https://community.icann.org/display/GWGTCT/Work+Plan+Drafts>

<sup>18</sup> Analysis Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Work+Package+Drafts>

of requiring harm goes toward the fact that resources otherwise earmarked for an organization's public interest mission are diverted toward dealing with such harms, there were divergent views within the WG as to whether such harm needed to first be proved or if it could be presumed for each organization for which protection is given.

As mandated by the Charter and in order to provide more information to aid the WG's deliberations for this issue of establishing qualification criteria for special protection of international organization identifiers, the WG asked representatives from the IOC, RCRC and IGOs to provide evidence of abuse by third party domain name registrations of their respective organization's identifiers. A series of content sources came from prior policy reports, direct submissions from organizations seeking protection and WG analysis tools. Links to the evidence reviewed can be found at the IGO-INGO Wiki Page<sup>19</sup>. Concurrently, ICANN staff also compiled a sampling of domain name registrations<sup>20</sup> of international organization identifiers.

#### 4.1.2 Qualification Criteria

The Qualification Criteria (QC) sub-team reviewed qualitative and quantitative attributes of how organization(s) may qualify for protections of their respective identifiers. Such attributes include how the organizations in question are protected by treaty or national law, and whether the quantity of jurisdictions providing protection had relevance to the scope and limitations of protection mechanisms. Access to current RPMs, not-for-profit status, nature of public mission, and duration of existence were other attributes explored.

The overall intent of the WG was to establish a set of objective criteria that was also stringent enough to appropriately limit the number of organizations that may qualify. With the GAC advice in its Beijing Communiqué, the scope of special protections for IGOs combined with the special protections previously provided to the IOC and RCRC became much more defined. However, to date, the issue of possible special protections for INGOs other than the RCRC and IOC has not been

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<sup>19</sup> Abuse evidence: <https://community.icann.org/pages/viewpage.action?pageId=40931994>

<sup>20</sup> Sampling of registrations: <https://community.icann.org/display/GWGTCT/IGO-INGO+Registration+Evaluation+Tool>

addressed outside of the PDP WG and so, as mandated by the WG Charter, it is still an area the WG must explore. Section 4.5 of this report provides details of proposed qualification criteria for INGOs.

WG deliberations regarding qualification criteria confirmed that it was not possible to develop a single set of criteria applicable to all four types of organizations that most WG members would support. While being different from each other in many respects, the IOC and RCRC may be differentiated from other INGOs on the basis of the unique legal protections they and their respective designations are afforded under a framework of international treaties and national laws in multiple jurisdictions. IGOs have been differentiated from INGOs on the basis of the types of legal protections they are afforded.

#### **4.1.3 Eligibility Process**

The Eligibility Process sub-team sought to delineate and understand who would be tasked with determining whether an organization seeking special protections would meet the specified qualification criteria, and how this process would take place. Initial discussions leaned toward a neutral entity that would make such determinations, but the sub-group again stressed the importance of an objective set of qualification criteria. Ultimately, eligibility considerations are tightly coupled to qualification criteria. If the WG agrees on policy recommendations to provide special protection for the identifiers of INGOs, the QC framework and who manages it will have to be determined.

#### **4.1.4 Admissions**

Essentially, the Admissions sub-team was tasked to determine if additional criteria to receive protections were needed after an organization met the qualification criteria and eligibility checks. The sub-team was challenged by the idea of additional criteria. Deliberations became a problem of balancing various criteria and categories of criteria. Criteria beyond the type of organization and whether they applied for the status are not additional criteria, but rather necessary components in any decision. The sub-team concluded that admission is a sub-component that falls within qualification criteria and the eligibility process referred to in the previous two sections above.

#### 4.1.5 Protections

The last sub-team was formed to review the types of protections that may be available to IGOs and INGOs. The following preventative and curative protection mechanisms were reviewed:

- Reserved Names list: is classified as a preventative mechanism whereby finite strings are placed on a list from which no such string is available for registration. Existing registry agreements have varying rules of reservation within the Schedules of Reserved Names. The New gTLD proposed Registry Agreement contains a Specification 5, also titled “Schedule of Reserved Names,” that was established to act as a reserved named template for the large quantity of new gTLDs anticipated for delegation. With respect to reservations at the Top-Level, the Applicant Guidebook also contains a series of strings that are reserved or ineligible for delegation.
- Modified Reserved Names list: is essentially the same as the Reserved Names list mentioned above, however, an exemption procedure at both the top and second levels may be required to allow for registration by the organization seeking protection or a legitimate rights holder to the same string. The nomenclature of “Modified Reserved Names list” is a concept not currently implemented as it is used in this context. However, with gTLDs currently delegated and having a Scheduled of Reserved Names, the Registry Services Evaluation Process (RSEP) can be utilized to gain approval for allowing registration of a string. Also, existing registry agreements have an exception procedure for 2-character second-level names.
- Trademark Clearinghouse, Sunrise, and Claims: are a series of new Rights Protection Mechanisms (RPMs) designed for the New gTLD program. They are viewed as preventative measures in protecting word marks. This structure is currently being implemented to support second-level registration of strings upon a new gTLD’s delegation. Note that as part of the recommendation options presented in this Initial Report, the term “Clearinghouse Model” is used in the context of the likely need for similar features of the TMCH, but also available for use by IGOs and INGOs that typically do not have registered trademark names.
- UDRP and URS: are additional RPMs that are considered curative measures.
- Do not sell lists: contain names blocked from registration according to the internally defined policy of the Registry Operator of a given gTLD.

- Limited Preventative Registrations: a proposed mechanism that has been considered for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all gTLD registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

Sections 4.3 to 4.7 of this report outline in detail the proposed policy recommendation options for special protections that the WG is considering.

#### **4.1.6 Summary of ICANN's General Counsel's Office Survey**

Parallel with the activities mentioned above, the Charter required the WG to evaluate the scope of existing protections under international treaties and national laws for IGO, INGO, RCRC and IOC Names. In order to do so, the WG requested ICANN's General Counsel to conduct research and report on whether ICANN is aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- a) the assignment by ICANN at the top level, or
- b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization (INGO) receiving protections under treaties and statutes under multiple jurisdictions

The WG requested the General Counsel to specify the jurisdiction(s) and cite the law if the answer to either of these questions was affirmative.

Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from every geographic region. The trend found in the General Counsel's Research Report is that "there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains. Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrars are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an

unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.”

The research also found that, “nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names. The exact terms that are protected in each jurisdiction vary.... While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.”

“For the names and acronyms of IGOs, ICANN’s research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.”

“In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain.”

A copy of the General Counsel’s Research Report is included in Annex 4.

## **4.2 Working Group Charter Deliberations**

### **Charter Issue 1**

Whether there is a need for special protections at the top and second level in all existing and new gTLDs for the names and acronyms of the following types of international organizations:

International Governmental Organizations (IGOs) protected by international law and multiple domestic statutes, International Non-Governmental Organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC), and as the International Olympic Committee (IOC). In deliberating this issue, the WG should consider the following elements:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/National Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

This issue was first addressed by the request for legal research as noted in Section 4.1 and Annex 4. Secondly, the WG performed the critical task of reviewing the qualification criteria which is documented in the work package mentioned in Section 4.1. It became evident from the WG deliberations that it was not possible to develop a single framework of qualification criteria that most of the Working Group could support given the different nature of IGOs, the RCRC, IOC and other INGOs. Further, the WG determined that the IOC and RCRC did differ from other INGOs given their unique legal standing compared to other INGOs. The scope of the qualification criteria for IGOs became defined and quantified by the list of IGO organizations eligible for protection submitted by the GAC; and for the RCRC and IOC by both the GAC's and ICANN Board's recognition of the international legal protections for the IOC and RCRC (all being temporarily protected by ICANN Board actions). Conversely, as noted in the proposed recommendations below, other INGO organizations have a set of proposed qualification criteria that will be essential for granting any protections for INGOs other than the RCRC and IOC.

### **Charter Issue 2**

If there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to develop policy recommendations for such protections. Specifically, the PDP WG should:

- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for the appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

This charter issue is being addressed by the WG's creation and deliberation of the IGO-INGO Protection Matrix tool<sup>21</sup> which can be found on the ICANN Wiki. Details of the proposed recommendation options can be found in Sections 4.3-4.6 below.

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<sup>21</sup> IGO-INGO Protection Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Protections+Matrix>

### 4.3 Proposed Recommendations Matrix – Top-Level

One goal of the IGO-INGO WG is to evaluate and possibly recommend a series of these protection mechanism options into a single protection framework. The following table is a range of options for possible protection recommendations of IGO-INGO identifiers as discussed by the IGO-INGO PDP WG. Note that in some cases recommendations are mutually exclusive, while others may be made in conjunction with each other. Also note that the Comments/Rationale column contains a mix of comments and/or rationale as provided by different WG members and do not necessarily represent the views of the WG as a whole. Second-Level protection options are listed separately in section 4.4.

#### Identifier Definition:

- The full name or acronym used by the organization seeking protection; its eligibility is established by an approved list or a set of qualification criteria.

#### Scope of Identifiers being considered:

- International Olympic Committee (IOC) - outlined in 2.2.1.2.3 of Applicant Guide Book
- Red Cross Red Crescent Movement (RCRC) - outlined in 2.2.1.2.3 of Applicant Guide Book<sup>22</sup>
- International Governmental Organizations (IGO) – outlined in the GAC List (full name & acronym) submitted to ICANN Board 22 March 2013
- International Non-Governmental Organizations (INGO) – pending any final determination of qualification criteria by the WG

*Please Note: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above in Section 4.1.2 that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.*

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<sup>22</sup> RCRC has requested that the list of designations and names to figure within the modified reserved list of Red Cross and Red Crescent designations and names be extended to include the full list of names of the respective components of the International Red Cross and Red Crescent Movement, including the names of the 188 National Red Cross or Red Crescent Societies be included at a minimum in English, as well as far as possible, in the respective official national languages of the National Societies concerned to also include the names of the two international components of the Movement and their respective acronyms, namely the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) – as a minimum in English and in French.

#	Top-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
1	<p>Top-Level protections of only <a href="#">Exact Match, Full Name</a> identifiers are placed in Applicant Guidebook section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation" (see option #3 for a variation of this)</p>	<p>With regard to the RCRC and IOC, this option is consistent with the ICANN Board actions for the top level of the first round of new gTLDs and GAC advice for permanent protection.</p> <p>It is only partly consistent with GAC advice for IGO names and acronyms. GAC advice provided that <i>both</i> IGO names and acronyms must be protected to preclude inappropriate <i>third party</i> registration of exact match names and acronyms, but would allow registration by the concerned IGO itself, or by a third party with agreement of the concerned IGO. Rendering a string "ineligible for delegation" without a mechanism to remove listed names and acronyms in appropriate circumstances would appear to preclude either such possibility.</p> <p>See also recommendation 3 with respect to a possible mechanism for removal from ineligibility.</p>
2	<p>Top-Level protections of <a href="#">Exact Match, Acronym</a> identifiers are placed in Applicant Guidebook section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation" (see option #4 for a variation of this)</p>	<p>With regard to IGO names and acronyms, see Comments / Rationale in #1. The ICANN Board has expressed concern that certain acronyms listed for special protection include common words, trademarked terms, acronyms used by multiple organizations, and acronyms that are problematic for other reasons.</p>

#	Top-Level Recommendation Options	Comments / Rationale
		<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>
3	<p>IGO-INGO identifiers if reserved from any registration (as in options #1 and/or #2), may require an exception procedure in cases where a protected organization wishes to apply for their protected string at the Top-Level</p>	<p>Addition of identifiers to the strings “Ineligible for Delegation” in the Applicant Guidebook is likely to inhibit organizations from applying for their own top-level domain in the future if they should choose to do so.</p> <p>If agreed upon, an exception process could possibly take the form of the protected organization submitting a request for exemption or removal of the identifier from the Applicant Guidebook.</p> <p>There have been concerns raised (including by the ICANN Board) about the implications of blocking identifiers that have and may be used legitimately and lawfully by other entities (including by other international organizations) and persons.</p>

#	Top-Level Recommendation Options	Comments / Rationale
		<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>
4	<p><u>NO</u> Top-Level protections or reservations for <u>Exact Match, Full Name</u> will be created (i.e., identifiers of IGO-INGOs seeking protection will NOT be added to section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation")</p>	<p>Some suggest the existing objection procedures should suffice for new gTLD applications and could possibly be used if applicable to prevent an unauthorized application of an IGO-INGO's identifier. Otherwise, a modification to existing procedures or a new procedure will need to be crafted.</p> <p>Section 3.2.2.2 "Legal Rights Objection" in the current Applicant Guidebook does contain a procedure that specifically mentions IGOs. The following is an excerpt from the AGB:</p> <p>An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name:</p> <ol style="list-style-type: none"> <li>An international treaty between or among national governments must have established the organization; and</li> <li>The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.</li> </ol> <p>The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.</p>
5	<p><u>NO</u> Top-Level protections or reservations for <u>Exact Match Acronym</u> will be created (i.e., identifiers of IGO-INGOs seeking protection will NOT be added to section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation")</p>	<p>See Comments / Rationale in option #4 above.</p>

#	Top-Level Recommendation Options	Comments / Rationale
		<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>
6	<p>IGO-INGO organizations be granted a fee waiver (or funding) for objections filed to applied-for gTLDs at the Top-Level</p>	<p>The GAC and ALAC have standing to object to any Top-Level domain application via the stated objection processes as defined in the Guidebook, including some subsidization of objection fees<sup>23</sup>. Given cost implications and diversion of funds from IGO-INGO organizations serving the public interest, granting a similar fee waiver may provide these organizations with the ability to object/defend their identifiers without preventing an application for similar strings with potential legitimate use. Other technical assistance from ICANN may be considered.</p>

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<sup>23</sup> Applicant Guidebook in Section 3.3.2: "Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds." With regard to the ALAC, "Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee."

#### 4.4 Proposed Recommendations Matrix – Second-Level

The following table is a range of options for possible protection recommendations of IGO-INGO identifiers as discussed by the IGO-INGO PDP WG. Second-Level options are listed separately in section 4.4. Note that in some cases, the options presented are mutually exclusive, while other options may be made in conjunction with each other. One goal of the IGO-INGO WG is to evaluate and possibly recommend a series of these options into a single protection framework.

It should also be noted that the WG's charter is to consider any possible protections for ALL gTLDs. Thus, if consensus is achieved on any second-level protections, the WG must consider how they should be implemented within the current gTLD environment. To date, the WG has not deliberated how possible consensus policies would impact existing gTLDs. If consensus policy is created, it will impact the existing gTLD environment. The WG will surely discuss the issue of incumbent TLDs in more depth.

##### Identifier Definition:

- The full name or acronym used by the organization seeking protection; its eligibility is established by an approved list or a set of qualification criteria.

##### Scope of Identifiers being considered:

- International Olympic Committee (IOC) - outlined in 2.2.1.2.3 of Applicant Guide Book
- Red Cross Red Crescent Movement (RCRC) - outlined in 2.2.1.2.3 of Applicant Guide Book<sup>24</sup>
- International Governmental Organizations (IGO) – outlined in GAC List (full name & acronym) submitted to ICANN Board 22 March 2013
- International Non-Governmental Organizations (INGO) – pending any final determination of qualification criteria by the WG

*Please Note: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could*

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<sup>24</sup> RCRC has requested that the list of designations and names to figure within the modified reserved list of Red Cross and Red Crescent designations and names be extended to include the full list of names of the respective components of the International Red Cross and Red Crescent Movement, including the names of the 188 National Red Cross or Red Crescent Societies be included at a minimum in English, as well as far as possible, in the respective official national languages of the National Societies concerned to also include the names of the two international components of the Movement and their respective acronyms, namely the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) – at a minimum in English and in French.

*not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.*

#	Second-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
1	2nd-Level protections of only <u>Exact Match, Full Name</u> identifiers are placed in Specification 5 of Registry Agreement	<p>With regard to the RCRC and IOC, this option is consistent with the current Registry Agreement subject to public comment and GAC advice for permanent protection at the second level.</p> <p>It is only partly consistent with GAC advice for IGO names and acronyms. GAC advice covering both IGO names and acronyms would preclude inappropriate <i>third party</i> registration of exact match names and acronyms, but would allow registration by the IGO itself, or by a third party with agreement of the concerned IGO.</p>
2	2nd-Level protections of <u>Exact Match, Acronym</u> identifiers are placed in Specification 5 of Registry Agreement	With regard to IGO names and acronyms, this is partly consistent with GAC Advice: see rationale comment in #1. The ICANN Board has expressed concern that certain acronyms listed for special protection include common words, trademarked terms, acronyms used by multiple organizations, and acronyms that are problematic for other reasons.
3	2nd-Level protections of <u>Exact Match, Full Name</u> identifiers are applied for by the organization requesting protection and placed in a Clearinghouse Model modified to accommodate use by IGOs and INGOs (hereafter referred to as “Clearinghouse Model”) <sup>25</sup>	<p>**Note that if identifiers are placed in Specification 5 of the Registry Agreement, this recommendation may not be necessary.</p> <p>Requirements to post IGO-INGO identifiers to a central repository are similar to the requirements for traditional trademark identifier deposits into the TMCH.</p>

<sup>25</sup> The term “Clearinghouse Model” is not used in reference to the Trademark Clearinghouse designed as an RPM for the New gTLD Program. However, “Clearinghouse Model” is used in the context of these recommendation options given the likely need for a clearinghouse with similar features to the TMCH.

#	Second-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
4	2nd-Level protections of <u>Exact Match, Full Name + Acronym</u> identifiers are applied for by the organization requesting protection and placed in a Clearinghouse Model	See comment / rationale above in #3
5	IGO-INGOs allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	<p>**This recommendation is only relevant if IGO-INGOs can and do submit their identifiers to a Clearinghouse Model.</p> <p>If IGO-INGO protected organization wished to utilize a specific identifier within given new gTLDs, access to the Sunrise process &amp; listing within the Clearinghouse Model will provide them with the capability of registering the name prior to general availability.</p>
6	IGO-INGOs allowed to participate in <u>90 Day Claims Notification</u> phase of each new gTLD launch	<p>**This recommendation is only relevant if IGO-INGOs can and do submit their identifiers to a Clearinghouse Model.</p> <p>After within-scope identifiers of IGO-INGO names are entered into a Clearinghouse Model, the Claims Notification process will be used to inform IGO-INGO organizations about the registration of a protected identifier and possibly use other RPMs where a registration may be in bad faith.</p>
7	IGO-INGOs allowed to participate in <u>permanent Claims Notification</u> of each gTLD launch	See comments/rationale above in #6. Note that this recommendation option does not currently exist in the deployment of RPMs within the New gTLD program.

#	Second-Level Recommendation Options	Comments / Rationale
		<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>
8	Fee waivers or reduced pricing (or limited subsidies, e.g., first 2 entries) for registering into a Clearinghouse Model the identifiers of IGO-INGO organizations	<p><b>**This recommendation is only relevant if IGO-INGOs can and do submit their identifiers to a Clearinghouse Model.</b></p> <p>A concern shared among all IGO-INGO organizations is the costs associated with curative protection mechanisms for names. Primarily, the pursuit of this activity diverts funds used in serving the global public interest where funds are derived from taxes collected by governments or donations.</p>
9	Review and modify where necessary the curative rights protections of the URS and UDRP so that IGO-INGO organizations have access to these curative rights protection mechanisms.	<p>Direct match reservations are only one aspect in the protection of identifiers. Often the malicious registration of keywords+identifiers, typo squats, or other generic phrase combinations are popular among registrants with bad-faith intent. Access to curative Rights Protection Mechanisms can provide IGO-INGO organizations an additional tool to combat malicious use of their identifiers.</p> <p>However, at present, the fact is that IGOs and INGOs in general do not have access to the UDRP (which requires a trademark or service mark), or URS (which requires a TMCH-registered word mark), because IGO and INGO names and acronyms are not necessarily trademarks. At the same time, IGOs and INGOs may be able to register in the TMCH on the basis of protection by statute or treaty, and thus access the URS in this fashion.</p> <p>Therefore, formal changes to the URS and UDRP would be required, which are beyond the scope of this IGO-INGO WG. However, a series of proposed changes could be proposed for a future Working Group to help inform their deliberations.</p>

#	Second-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>• Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>• Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
10	Fee waivers or reduced pricing for IGO-INGOs filing a URS or UDRP action	An issue shared among all IGO-INGO organizations is the costs associated with curative protections of names. Primarily, the pursuit of such remedies diverts funds used in serving the global public interest where funds are derived from taxes collected by governments or donations.

#	Second-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
11	<p>Create a registration exception procedure for IGO-INGOs wishing to register a 2<sup>nd</sup>-Level name or where 3<sup>rd</sup> party, legitimate use of domain may exist</p>	<p>** Note this recommendation is only relevant if IGO-INGO identifiers are placed in Specification 5 of Registry Agreement.</p> <p>A Reserved Names list is an inflexible mechanism that precludes the domain registration of a protected name either by the organization seeking protection or by a third party that may have legitimate rights for the use of the protected name. Currently, the removal of a name from the Reserved Names list can only be performed via the RSEP process. This proposed recommendation would provide quasi-permanent protection of IGO and INGO identifiers by gate-keeping the registration of domain names of said identifiers and allowing their registration only where the prospective registrant is able to meet certain objective criteria demonstrating its right to register the domain name which corresponds exactly to a protected IGO or INGO name or acronym. Such objective criteria may include, for example, pre-existing rights in the relevant identifier, and any agreement of the concerned IGO.</p> <p>An exception procedure would need to be developed, including a process to examine the legitimacy of the prospective registrant and any rights they may have to register a domain corresponding to an exact match of a protected identifier, and if approved, allow that party to register the exact match domain name. Some members of the community have expressed concerns over the delay that such a procedure may create and the possible costs incurred, in particular if the administration of the exception procedure would require an outside third party. Such concerns if realized would be an impractical impediment to legitimate parties. Also, there is a portion of the community that is strongly opposed to the creation of any exception process for names on the reserved list.</p>

#	Second-Level Recommendation Options	Comments / Rationale
	<ul style="list-style-type: none"> <li>Note 1: In some cases recommendations are mutually exclusive, while others may be made in conjunction with each other.</li> <li>Note 2: The Working Group has made a decision during the course of its deliberations that the four types of organizations listed in the scope of identifiers above should be looked at individually in terms of protection for their respective identifiers, due to the fact as noted above that the WG could not agree on a single set of objective qualification criteria for all of them. In the matrix of proposed policy recommendations below, IGO and INGO identifiers are listed together for the sake of simplicity. In the case where the RCRC and IOC are treated the same or listed together, this only reflects the view and actions of the GAC and ICANN Board to date, and does not reflect the approach of the WG. Therefore, with respect to each option, protections of IGO, INGO, IOC and RCRC identifiers may be considered separately from one another.</li> </ul>	
12	<p><u>NO</u> 2nd-Level reservations of an <u>Exact Match, Full Name</u> will be established (i.e., identifiers of IGO-INGOs seeking protection will NOT be added to Specification 5 of the Registry Agreement)</p>	<p>There are views within the community that existing RPMs (including a number to which IGOs in general do not have access to) provide, or could provide, sufficient protection for identifiers at the 2nd-Level.</p>
13	<p><u>NO</u> 2nd-Level reservations of an <u>Exact Match, Acronym</u> will be established (i.e., identifiers of IGO-INGOs seeking protection will NOT be added to Specification 5 of the Registry Agreement)</p>	<p>See comments / rationale in option #12 above.</p>

**4.5 Proposed Recommendations Matrix – Qualification Criteria**

#	Recommendation Options	Comments / Rationale
1	IOC & RCRC Qualification Criteria are based on international and national legal protections as recognized by the GAC and ICANN Board	The scope of identifiers is outlined in 2.2.1.2.3 of Applicant Guide Book
2	IGO Qualification Criteria are defined by a list managed by the GAC	GAC List (full name & acronym) submitted to ICANN Board 22 March 2013, noting that a further GAC response to the Board on language of protection, periodic review of the list, and treatment of potential coexistence claims is pending.
3	<p>INGO Qualification Criteria Proposal:</p> <ul style="list-style-type: none"> <li>i. The INGO benefits from some privileges, immunities or other protections in law on the basis of the INGO’s proven (quasi-governmental) international status;</li> <li>ii. The INGO enjoys existing legal protection (including trademark protection) for its name/acronym in over 50+ countries or in three (of five) ICANN regions or alternatively using a percentage: more than 50%;</li> <li>iii. The INGO engages in recognized global public work shown by;                             <ul style="list-style-type: none"> <li>a. inclusion on the General Consultative Status of the UN ECOSOC list, or</li> <li>b. membership of 50+ national representative entities, which themselves are governmental/ public agencies or non-governmental organizations that each fully and solely represent their respective national interests in the INGO’s work and governance.</li> </ul> </li> </ul>	<p>Some community members believe that INGOs (other than the IOC and RCRC) which have recognised global public missions and have been granted privileges, immunities, or other protections in law on the basis of their quasi-governmental international status and extensive legal protection for their names, should be afforded special protections if found eligible based on an objective set of criteria. The rationale is that such non-profit INGOs with global public missions (including well-known INGOs) are as vulnerable as the RCRC and IOC when it comes to battling the increasing potential and impact of cybersquatting (and such efforts would divert from their global public service and public funds.)</p>

#### 4.6 Proposed Recommendations – Exception Procedure (Option 1)

**Goal:** Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration<sup>26</sup>.

**General Principles:** The procedure must:

- Provide immediate notification to the applicant and the protected organization when a registration request is refused registration because a name is protected.
- Provide a channel of communication between the applicant and the protected organization, including for purposes of any assessment and agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest such that its application should proceed to registration;
- Use existing dispute resolution procedures where possible.

#### Outline of Proposed Procedure:

##### 1. Notification of Conditional Refusal Based on Protected Name.

The applicant and protected organization will receive immediate electronic notification if an applied-for second level domain is conditionally refused registration because of a Protected Name on a Reserved list or in the Clearinghouse if applicable.

##### 2. Declaration of Legitimate Use.

Each protected organization must record and maintain accurate contact information with the Clearinghouse Model (or other coordinating body) designating a recipient and address to be notified electronically.

- Within ten (10) days of receiving a conditional refusal, an applicant may file a declaration with the Registry. The declaration must identify the applicant accurately, provide accurate contact information, and state that the applicant has a good faith, legitimate interest in using the domain name that does not violate any treaties, national laws or other legal entitlement of the protected organization. A standard form will be provided. The protected organization will receive a copy of the declaration electronically at its given address when the declaration is filed with the Registry.

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<sup>26</sup> Some members have expressed concern with the operability of process-heavy exemption procedures that may have a great potential to impede rights and legitimate interests unduly. Further, misuse of licensing opportunities could be a potential issue as well.

- If, within ten (10) days after receipt of the above declaration, the protected organization does not file an objection with the Registry, the subject application will proceed to registration.
- If, within ten (10) days after receipt of the above declaration, the protected organization files an objection with the Registry, the conditional refusal will be reviewed by an independent Examiner.

### **3. Examination.**

The examination procedure (which is under consideration and will be discussed before this section is filled in) must comply with the principles above. It must:

- Be objective;
- Give both parties the opportunity to be heard;
- Be expeditious; and
- Be inexpensive; and
- Use existing procedures whenever possible.

#### **4.7 Proposed Recommendations – Exception Procedure (Option 2)**

**Goal:** Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration.

**General Principles:** The procedure must:

- Provide immediate notification to the applicant and the protected organization when a registration request is refused registration because a name is protected;
- Provide a channel of communication between the applicant and the protected organization, including for purposes of any assessment and agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest such that its application should proceed to registration;
- Use existing dispute resolution procedures where possible.

**Outline of Proposed Procedure:**

An entity with a name in the Clearinghouse Model could be allowed to register that name if it committed to prevent confusion with the corresponding IGO/INGO name.

#### **4.8 Impact of Proposed Recommendations**

Given that the WG is still considering the above options and therefore has not determined a final set of proposed recommendations, the WG is not in a position to provide a statement on the possible economic impact the recommendations would have, or the impact on other areas such as competition, operations, privacy and other rights, scalability and feasibility. The WG will provide an impact statement in the Final Report.

## 5. Community Input

### 5.1 Request for input from GNSO Stakeholder Groups and Constituencies

As required by the GNSO PDP Manual, a request for input was sent to all GNSO Stakeholder Groups and Constituencies at the end of January 2013. Contributions were received from the Non-Commercial Stakeholder Group, Registries Stakeholder Group and Internet Service Providers and Connectivity Constituency. Complete responses can be found at the IGO-INGO WIKI page: <https://community.icann.org/pages/viewpage.action?pageId=40175441>

### 5.2 Request for input from other ICANN Supporting Organizations and Advisory Committees

A request for input was sent to all ICANN Supporting Organizations and Advisory Committees at the end of January 2013. One contribution was received from the At-Large Advisory Committee. Complete responses can be found at the IGO-INGO WIKI page: <https://community.icann.org/pages/viewpage.action?pageId=40175441>

### 5.3 Summary of Community Input

Among the responses received, there was general agreement that there are substantive differences among the RCRC, the IOC, and IGOs and other INGOs, as well as between IGOs and INGOs, which should be taken into account for determining what, if any, type of special protections are necessary and if so, what the qualifying criteria should be. With the exception of the NCSG, the other contributors generally agreed that amendments or modifications to existing Rights Protection Mechanisms (e.g. UDRP, URS) available under the new gTLD Program are probably necessary to adequately protect the interests of IGOs and INGOs in their identifiers. The NCSG believes that the existing RPMs are adequate in regard to demonstrated need.

The ALAC believes in general that if any special protections for IGOs and INGOs are to be provided, there must be real harms if the protections are not provided, and that the protections will actually prohibit help prevent such harms. In its response, the ALAC stated that special protection at the top level is generally not needed, and that if necessary, the current objection process could be modified to provide sufficient protection for IGOs and INGOs. With regard to the second level, the ALAC

believes that any protections at this level must be restricted to organizations that: 1) can demonstrate they have been subject to harms due to bad-faith attempts to use their names at the second level of existing TLDs; and 2) can demonstrate substantive harm to the public interest if their names are not protected in the future.

In its response the RySG stated the basic premise of the majority view that beyond the special protections for the RCRC and IOC adopted by the GNSO in its 20 December resolution, any other special protections are “inappropriate” for any select group of entities, and that existing RPMs along with any necessary modifications to make them available for IGOs and INGOs are sufficient.

The RySG response also included a Minority Position submitted by the Universal Postal Union, an IGO, which reflects and reiterates prior submissions made on behalf of IGOs. The Minority Position believes that special protections should be provided to the names and acronyms of IGOs because in their view: 1) IGOs are protected under international and domestic laws; 2) IGOs have a public mission and are funded by public money – therefore, any abuse of IGO names and acronyms that are remedied by fee-based curative mechanisms rather than preventive, comes at a cost to the public missions of IGOs; 3) existing RPMs which are trademark-based are insufficient in providing adequate protection for IGO identifiers; 4) GAC advice to protect IGO identifiers should be given appropriate weight and consideration.

The NCSG’s position is that special protections should only be provided to those groups that are legitimately entitled to have a preference over other users of a domain name and are not able to protect their interest through existing measures because they lack legal protections. At the time the NCSG submitted its response, it believed that no specific harm has been demonstrated to a group that is unique to that group and therefore, no special protections should be provided.

The ISPCP stated its general position of not being in favour of “special protections,” but recognized the GAC advice and therefore accepts that some type of protection may be granted. The ISPCP believes that no special protections are necessary at the top level. At the second level, the ISPCP’s position is that only the exact match of an identifier in different languages should be protected for IGOs and INGOs created under an international treaty and ratified by a sufficient number of

countries. Such protections should be granted in all gTLDs, and there should be some mechanisms to allow legitimate right holders to register such identifiers.

#### 5.4 Summary of International Organizations' Positions

The RCRC, IOC, and IGOs have well-documented their positions and respective rationales for providing protection to their identifiers in the top and second levels of gTLDs. These positions are summarized in the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and have been further elaborated upon through the mailing list of the PDP WG. Their respective positions are briefly summarized below.

The RCRC<sup>27</sup> cites the protection granted to the Red Cross and Red Crescent designations and names under universally agreed international humanitarian law treaties (the Geneva Conventions of 1949 and their Additional Protocols) and under the domestic laws in force and laws in multiple jurisdictions as establishing a *sui generis* case for permanent protection of the RCRC designations and names from third party registration at both the top and second level in all gTLDs. The RCRC also underlines that the proposed reservations and protections should be made to extend not only to the Red Cross and Red Crescent designations *per se* (as currently listed in the Applicant Guidebook and in Specification 5 of the revised Registry Agreement), but also to the full list of names of the respective components of the International Red Cross and Red Crescent Movement (i.e. the 188 recognized National Red Cross or Red Crescent Societies - e.g. German Red Cross, Afghan Red Crescent, Red Star of David, etc - and of the two international components of the International Red Cross and Red Crescent Movement - the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC). Such reservations should be foreseen as a minimum in English as well as, in regard to National Societies, in their respective national languages).

Lastly, in accordance with the aforementioned international and legal regimes, the Red Cross and Red Crescent have asked that the Red Cross and Red Crescent designations and names from third

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<sup>27</sup> RCRC 19 APR 2013: <http://forum.icann.org/lists/gnso-igo-ingo/msg00555.html>

party registration at both the top and second level in all gTLDs remain available for registration by the appropriate RCRC organizations through a Modified Reserved Names list. In addition:

- Due consideration be given to the establishment of a String Similarity Review at top as well as second levels, as far as technically possible, and thus in line with international law prohibiting not only the improper or unauthorized uses of the Red Cross and Red Crescent designations and related names, but also imitations thereof; and that
- The names and acronyms of the international components of the International Red Cross and Red Crescent Movement, be added to the list of reserved IGO names, and thus, in consideration of the observer status of both organizations in the United Nations General Assembly.

With regard to acronyms, the RCRC supports the modification of existing RPMs and the waiver of fees to allow the RCRC and other qualifying international organizations to utilize them for protecting their respective acronyms.

The IOC<sup>28</sup> also cites the *sui generis* protection granted to IOC identifiers under national laws in multiple jurisdictions (recognized by the GAC and the ICANN Board) as justification for establishing special permanent protection from third party registration of the IOC designations at both the top and second levels in all gTLDs; and that the IOC designations be available for registration by the IOC or its authorized international and national organizations through a Modified Reserved Names list.

The position of IGOs that special protections should be provided for IGO names and acronyms at both the top and second levels is summarized above in the Minority Position of the RySG submission. It is consistent with GAC advice on the need for protection of IGO names and acronyms against inappropriate third party registration, and with the Board's acknowledged need for appropriately implemented interim protection being in place before any new gTLDs would launch. IGOs do not believe finalization of the Working Group's deliberations, or any other Working Group which may be required to consider granting IGOs access to UDRP, URS, TMCH or other ICANN mechanisms would remain on-going.

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<sup>28</sup> IOC 3029 Nov 2012: <http://forum.icann.org/lists/gnso-igo-ingo/msg00133.html>

Some members of the WG have also advocated protections for certain INGOs (other than the IOC and the RCRC) that have recognized global public missions, extensively legally protected names, and protections in law granted on the basis of their (quasi-governmental) international status<sup>29</sup>. The International Organization for Standardization (ISO) has formally advocated that certain INGOs and IGOs with global public missions need special protection to counter the increasing potential for and ongoing impact of cybersquatting; and thus there is a need to establish objective, non-discriminatory criteria for granting special protection which would also avoid unduly restricting rights and legitimate rights and interests.

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<sup>29</sup> ISO Letter to Stephen Crocker 13 May 2013: <http://forum.icann.org/lists/gnso-igo-ingo/msg00616.html>

## 6. Conclusions and Next Steps

This Initial Report is being posted for public comment for at least 21 days, plus a 21-day Reply Period, after which the submitted comments will be summarized and analysed. Once the Public Forum is closed, the PDP WG will 1) take into account the input received, 2) conduct a formal consensus call on the policy recommendation proposals, 3) if consensus is obtained on a set of policy recommendations, redraft the Initial Report into a Final Report which will include the proposed final policy recommendations, 4) open an additional public comment period on the Final Report and proposed final policy recommendations, 5) take into account the additional input received, and 6) draft a Final Report to be submitted and considered by the GNSO Council for further action. The WG would follow the directions of the Council if any additional work is needed.

The WG Final Report will include specific recommendations for which there is at least strong WG support and alternative recommendations in other cases.

## Annex 1 – PDP WG Charter

<b>WG Name:</b>	<b>IGO-INGO Protection PDP Working Group</b>	
<b>Section I: Working Group Identification</b>		
<b>Chartering Organization(s):</b>	GNSO Council	
<b>Charter Approval Date:</b>	15 November 2012	
<b>Name of WG Chair:</b>	Thomas Rickert	
<b>Name(s) of Appointed Liaison(s):</b>	Jeff Neuman	
<b>WG Workspace URL:</b>	<a href="http://gnso.icann.org/en/group-activities/protection-igo-names.htm">http://gnso.icann.org/en/group-activities/protection-igo-names.htm</a>	
<b>WG Mailing List:</b>	gnso-igo-ingo@icann.org	
<b>GNSO Council Resolution:</b>	<b>Title:</b>	Motion on the Initiation of a Policy Development Process on the Protection of Certain International Organization Names in all GTLDs.
	<b>Ref # &amp; Link:</b>	20121017-2 <a href="http://gnso.icann.org/en/resolutions#201210">http://gnso.icann.org/en/resolutions#201210</a>
<b>Important Document Links:</b>	<ul style="list-style-type: none"> <li>• Protection of International Organization Names Final Issue Report (<a href="http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf">http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf</a>)</li> <li>• IOC/RC Drafting Team Recommendations Report (<a href="http://gnso.icann.org/en/issues/ioc-rcrc-recommendations-28sep12-en.pdf">http://gnso.icann.org/en/issues/ioc-rcrc-recommendations-28sep12-en.pdf</a>)</li> <li>• GNSO Working Group Guidelines (<a href="http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-08apr11-en.pdf">http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-08apr11-en.pdf</a>)</li> <li>• GNSO PDP Manual (<a href="http://gnso.icann.org/council/annex-2-pdp-manual-16dec11-en.pdf">http://gnso.icann.org/council/annex-2-pdp-manual-16dec11-en.pdf</a>)</li> <li>• Annex A – GNSO Policy Development Process of the ICANN Bylaws (<a href="http://www.icann.org/en/about/governance/bylaws#AnnexA">http://www.icann.org/en/about/governance/bylaws#AnnexA</a>)</li> </ul>	
<b>Section II: Mission, Purpose, and Deliverables</b>		
<b>Mission &amp; Scope:</b>		
<b>Background</b>		
<p>The ICANN Board has requested policy advice from the GNSO Council and the GAC on whether special protections should be afforded for the names and acronyms of the Red Cross/Red Crescent Movement (“RCRC”), the International Olympic Committee (“IOC”) and/or International Government</p>		

Organizations (“IGOs”).

In September 2011, the GAC sent advice to the GNSO with a proposal for granting second level protections based upon the protections afforded to IOC/RCRC at the first level during the initial round of new gTLD applications, and that such protections are permanent. As a result of the GAC proposal submitted to the GNSO, the GNSO IOC/RCRC Drafting Team was formed and created a set of recommendations for protecting the IOC/RCRC names at the second level of the initial round new gTLDs, including the initiation of an “expedited PDP” to determine appropriate permanent protections for the RCRC and IOC names.

The latest inquiry to examine the issue of protecting IGO names emerged as a result of a request from the ICANN Board in response to letters received from the OECD and other IGOs in December 2011. Specifically, IGOs are seeking ICANN approval of protections at the top level that, at a minimum, are similar to those afforded to the RCRC and IOC in the Applicant Guidebook. In addition, IGOs are seeking a pre-emptive mechanism to protect their names at the second level. On 11 March 2012, the ICANN Board formally requested that the GNSO Council and the GAC provide policy advice on the IGO’s request.

### **Mission and Scope**

The PDP Working Group is tasked to provide the GNSO Council with a policy recommendation as to whether there is a need for special protections at the top and second level in **all** existing and new gTLDs for the names and acronyms of the following types of international organizations: International Governmental Organizations (IGOs) and international non-governmental organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), and (ii) if so, is tasked to develop policy recommendations for such protections.

As part of its deliberations on the first issue as to whether there is a need for special protections for certain international organizations at the top and second level in all gTLDs, the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to:

- Determine the appropriate protection for RCRC and IOC names at the second level for the initial round of new gTLDs.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

The PDP WG is also expected to consider any information and advice provided by other ICANN Supporting Organizations and Advisory Committees on this topic. The WG is strongly encouraged to reach out to these groups for collaboration at the initial stage of its deliberations, to ensure that their concerns and positions are considered in a timely manner.

#### **Objectives & Goals:**

To develop, at a minimum, an Initial Report and a Final Report regarding whether any special protections should be provided for certain IGO and INGO names and if so, recommendations for specific special protections, to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the GNSO PDP Manual.

Possible tasks that the WG may consider:

- establish the bases under which ICANN should expand its reserved names list, or to create a special reserved names list, to include IOC, IFRC, RCRC, IGO, and INGO related names.
- decide on whether the names should be added to the existing reserved names list or a new list(s) should be created.
- develop a policy recommendation on how determinations can be made concerning which organizations meet the bases recommended above.
- perform an impact analysis on each of the recommendations, if any, for rights, competition etc. as defined in the PDP
- determine how incumbent registries should meet the new policy recommendations, if any.

\*\* Given the commitment to expedite the PDP process, the WG will consider the work and documents used by the IOC-RCRC DT with regard to the IOC-RCRC terms.

#### **Deliverables & Timeframes:**

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and

the PDP Manual and, as requested by the GNSO Council in its motion initiating this PDP, shall strive to fulfill this PDP's requirements "in an expedited manner."

Specifically:

- 1) The PDP WG shall assume that the GNSO Council will approve the IOC/RC DT recommendations regarding interim protections of GAC specified IOC/RC second-level names in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs.
- 2) To allow the GNSO Council to meet the ICANN Board's requested deadline of 31 January 2013, the WG shall exert its best efforts to produce interim recommendations with regard to the protection of IGO names at the second level that may meet some to-be-determined criteria for special protection in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs; WG recommendations in this regard should be communicated to the GNSO Council with sufficient lead time before the January 2013 Council meeting to allow the Council to take action in that meeting.
- 3) The WG shall strive to produce final PDP recommendations for all intergovernmental organizations that could result in the implementation of a second level protection policy recommendation before the delegation of new gTLD strings from the initial round, and a top-level policy recommendation before the opening of the second round of new gTLD applications.

As per the GNSO Working Group Guidelines, the WG shall develop a suggested work plan as soon as possible that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in this Charter and consistent with Annex A of the ICANN Bylaws and the PDP Manual; and submit this to the GNSO Council.

### Section III: Formation, Staffing, and Organization

#### Membership Criteria:

The Working Group will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

#### Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other

<p>ICANN Supporting Organizations and Advisory Committees</p> <ul style="list-style-type: none"> <li>- Distribution of the announcement to appropriate representatives of IGOs, the RCRC and IOC.</li> </ul>
<p><b>Working Group Roles, Functions, &amp; Duties:</b></p> <p>The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.</p> <p>Staff assignments to the Working Group:</p> <ul style="list-style-type: none"> <li>• GNSO Secretariat</li> <li>• 2 ICANN policy staff members (Brian Peck, Berry Cobb)</li> </ul> <p>The standard WG roles, functions &amp; duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.</p>
<p><b>Statements of Interest (SOI) Guidelines:</b></p> <p>Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.</p>
<p><b>Section IV: Rules of Engagement</b></p>
<p><b>Decision-Making Methodologies:</b></p> <p><i>{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.</i></p> <p>The Chair will be responsible for designating each position as having one of the following designations:</p> <ul style="list-style-type: none"> <li>• <b>Full consensus</b> - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as <b>Unanimous Consensus</b>.</li> <li>• <b>Consensus</b> - a position where only a small minority disagrees, but most agree. <i>[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]</i></li> <li>• <b>Strong support but significant opposition</b> - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it.</li> <li>• <b>Divergence</b> (also referred to as <b>No Consensus</b>) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.</li> </ul>

- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
  - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
  - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the

Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

- Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
- If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
- In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

**Note 1:** Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

**Note 2:** It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

#### **Status Reporting:**

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

#### **Problem/Issue Escalation & Resolution Processes:**

*{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}*

The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or

their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN’s Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

**Closure & Working Group Self-Assessment:**

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

**Section V: Charter Document History**

Version	Date	Description
1.0	25 October 2012	First draft submitted by staff for consideration by WG

<b>Staff Contact:</b>	Brian Peck, Berry Cobb	<b>Email:</b>	Policy-staff@icann.org
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## Annex 2 – Working Group Members and Attendance

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Wilson Abigagba	NCSG	SOI
Lanre Ajayi	NCA	SOI
Iliya Bazlyankov	RrSG	SOI
Grit-Maren Beer		
Alain Berranger	NPOC	SOI
Jim Bikoff	IPC/IOC	SOI
Hago Dafalla	NCSG	SOI
Rafik Dammak	NCUC	SOI
Avri Doria	NCSG	SOI
Bret Fauset	RySG	SOI
Elizabeth Finberg	RySG	SOI
Guilaine Fournet	International Electrotechnical Commission (IEC)	SOI
Chuck Gomes	RySG	SOI
Alan Greenberg	ALAC	SOI
Catherine Gribbin	Red Cross Red Crescent (Canadian Red Cross)	SOI
Ricardo Guilherme	RySG/UPU	SOI
Robin Gross	NCSG	SOI
Stephane Hankins	Red Cross Red Crescent (International Committee of the Red Cross)	SOI
David Heasley	IPC/IOC	SOI
Debra Hughes	Red Cross Red Crescent (American Red Cross)	SOI
Poncelet Ileleji	NPOC	SOI
Zahid Jamil	CBUC	SOI
Wolfgang Kleinwaechter	NCSG	SOI

Christopher Lamb	Red Cross Red Crescent (Australian Red Cross)	SOI
Evan Leibovitch	ALAC (Vice-chair)/NARALO	SOI
David Maher	RySG	SOI
Kiran Malancharuvil	IPC	SOI
Judd Lauter	IPC/IOC	SOI
Jeff Neuman	RySG	SOI
Osvaldo Novoa	ISPCP	SOI
David Opderbeck	IPC	SOI
Sam Paltridge	OECD	SOI
Christopher Rassi	Red Cross Red Crescent (International Federation of Red Cross and Red Crescent Societies)	SOI
Thomas Rickert	NCA	SOI
Mike Rodenbaugh	IPC	SOI
Greg Shatan	IPC	SOI
Cintra Sooknanan	NPOC	SOI
Ken Stubbs	RySG	SOI
Claudia MacMaster Tamarit	ISO	SOI
David Roache-Turner	WIPO	SOI
Liz Williams	Individual	SOI
Mary Wong	NCUC	SOI
Wendy Seltzer	NCSG	SOI
<b>Observers</b>		
Jonathan Robinson- GNSO Council Chair	RySG	SOI
Wolf-Ulrich Knoblen - GNSO Council vice chair	ISPCP	SOI
Mason Cole - GNSO Council vice chair	RrSG	SOI

<b>Staff</b>		
Marika Konings		
Berry Cobb		
David Olive		
Brian Peck		
Glen de Saint Géry		
Gisella Gruber		
Nathalie Peregrine		
Julia Charvolen		

**\*\* Observer**

- The attendance records can be found at <https://community.icann.org/display/GWGTCT/IGO-INGO+Attendance+Chart>.
- The email archives can be found at <http://forum.icann.org/lists/gnso-igo-ingo/>.

RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

NPOC – Not-for-Profit Operational Concerns Constituency

## Annex 3 – Community Input Statement Request Template

### **[Stakeholder Group / Constituency / Supporting Organization / Advisory Committees] Input Protection of IGO and INGO Identifiers in all gTLDs Working Group**

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PLEASE SUBMIT YOUR RESPONSE AT THE LATEST BY **15 January 2013** TO THE GNSO SECRETARIAT ([gnsso.secretariat@gnsso.icann.org](mailto:gnsso.secretariat@gnsso.icann.org)), which will forward your statement to the Working Group. The GNSO Council has formed a Working Group of interested stakeholders and Stakeholder Group / Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, in order to consider recommendations in relation to the protection of names, designations and acronyms, hereinafter referred to as “identifiers”, of intergovernmental organizations (IGO’s) and international non-governmental organizations (INGO’s) receiving protections under treaties and statutes under multiple jurisdictions.

Part of the Working Group’s effort will be to incorporate ideas and suggestions gathered from Stakeholder Groups and Constituencies through this template Statement. Inserting your response in this form will make it much easier for the Working Group to summarize the responses for analysis. This information is helpful to the community in understanding the points of view of various stakeholders. However, you should feel free to add any information you deem important to inform the Working Group’s deliberations, even if this does not fit into any of the questions listed below.

For further information, please visit the WG Webpage and Workspace:

- <http://community.icann.org/display/GWGTCT/>
- <http://gnsso.icann.org/en/group-activities/protection-igo-names.htm>

#### **Process**

- Please identify the member(s) of your Stakeholder Group / Constituency who is (are) participating in this Working Group
- Please identify the members of your Stakeholder Group / Constituency who participated in developing the perspective(s) set forth below
- Please describe the process by which your Stakeholder Group / Constituency arrived at the perspective(s) set forth below

#### **Below are elements of the approved charter that the WG has been tasked to address:**

As part of its deliberations on the first issue as to whether there is a need for special protections for IGO and INGO organizations at the top and second level in all gTLDs (existing and new), the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities whose names may be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for the IGO-

- INGO organizations concerned;
- Establishing Qualification Criteria for Special Protection of names of the IGO and INGO organizations concerned;
- Distinguishing any Substantive Differences between the RCRC and IOC designations from those of other IGO-INGO Organizations.

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second levels in all existing and new gTLDs for IGO and INGO organization identifiers; the PDP WG is expected to:

- Develop specific recommendations for appropriate special protections, if any, for the identifiers of any or all IGO and INGO organizations at the first and second levels.
- Determine the appropriate protections, if any, for RCRC and IOC names at the second level for the initial round of new gTLDs and make recommendations on the implementation of such protection.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs; if so, determine whether the existing protections are sufficient and comprehensive; if not, develop specific recommendations for appropriate special protections (if any) for these identifiers.

#### Questions to Consider:

1. What kinds of entities should be considered for Special Protections at the top and second level in all gTLDs (existing and new)?  
Group View:
2. What facts or law are you aware of which might form an objective basis for Special Protections under International Treaties/Domestic Laws for IGOs, INGOs as they may relate to gTLDs and the DNS?  
Group View:
3. Do you have opinions about what criteria should be used for Special Protection of the IGO and INGO identifiers?  
Group View:
4. Do you think there are substantive differences between the RCRC/IOC and IGOs and INGOs?  
Group View:
5. Should appropriate Special Protections at the top and second level for the identifiers of IGOs and INGOs be made?  
Group View:
6. In addition, should Special Protections for the identifiers of IGOs and INGOs at the second level be in place for the initial round of new gTLDs?  
Group View:

7. Should the current Special Protections provided to the RCRC and IOC names at the top and second level of the initial round for new gTLDs be made permanent in all gTLDs and if not, what specific recommendations for appropriate Special Protections (if any) do you have?  
Group View:
8. Do you feel existing RPMs or proposed RPMs for the new gTLD program are adequate to offer protections to IGO and INGOs (understanding that UDRP and TMCH may not be eligible for all IGOs and INGOs)?  
Group View:

**For further background information on the WG's activities to date, please see:**

- [Protections of IGO and INGO identifiers in all gTLDs web page](http://gnso.icann.org/en/group-activities/protection-igo-names.htm) (see <http://gnso.icann.org/en/group-activities/protection-igo-names.htm>).
- Protection of International Organization Names Final Issue Report, for insight into the current practices and issues experienced (see <http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf>).
- The IOC/RCRC DT page is also a good reference for how those efforts were combined with this PDP (see <http://gnso.icann.org/en/group-activities/red-cross-ioc.htm>).

## Annex 4 – ICANN General Counsel Office Research Report

**As of 31 May 2013**

**To: GNSO Drafting Team on Protection of IGO-INGO Names**

**From: Office of ICANN’s General Counsel**

### **Research Requested from the WG**

With respect to the question of securing legal advice regarding the protection of IGO-INGO names, the WG should request from the office of the ICANN General Counsel an answer to the following question:

Is ICANN aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- (a) the assignment by ICANN at the top level, or
- (b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization receiving protections under treaties and statutes under multiple jurisdictions (INGO)?

If the answer is affirmative, please specify the jurisdiction(s) and cite the law.

### **Research Performed**

Given our understanding that the WG is looking at the International Olympic Committee (IOC), the Red Cross/Red Crescent Movement (RCRC) as well as intergovernmental organizations (IGO) and other international non-governmental organization (INGOs), it was important to scope the research into a manageable format. Therefore, the research was broken into two parts, one as it related to the IOC and RCRC (as major INGOs that are the most likely to have special protections afforded, based on prior research performed) and the second part on IGOs. For IGOs, the research focused upon whether the jurisdictions afforded heightened protections through recognition of the Paris Convention and its Article 6(1)(b) (the “6ter”). This method seemed to provide a broad and objective measure for identifying protections

afforded to IGOs. As requested, the review was not focused on the potential prohibitions for or liabilities of registrants in domain name registration, rather the broader question of prohibitions that could attach up the registration chain (to registries and registrars). However, the research presented does not discuss ICANN's potential for liability. Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from every geographic region. ICANN interpreted the term "assignment" to mean the approval for delegation of a top-level domain.

## **Executive Summary**

As noted in the interim reporting provided on this research, the trend is that there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains. Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrars are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.

As seen in the survey below, nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names. The exact terms that are protected in each jurisdiction vary, and ICANN has not engaged in an exercise to compare the scope of the protected terms requested by the IOC and the RCRC within the New gTLD Program, as this research was not undertaken to produce a list of names or acronyms recommended for protection. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential

bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.

For the names and acronyms of IGOs, ICANN's research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.

In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain. This survey does not assess the likelihood of whether liability would attach in those circumstances. The potential for liability could factor in many issues, such as knowledge of potential infringement or improper use, the location of the registry or registrar, or the familiarity of the jurisdiction with the IGO at issue, as three examples.

Each registry operator and registrar has an independent obligation to abide by applicable laws. If registry operators or registrars have concerns about the potential for liability for its role in the delegation of a top-level domain or in the registration of a second-level domain within a particular jurisdiction, the responsibility for identifying the scope of that liability lies with the

registry operator or registrar. Therefore, to avoid any suggestion that ICANN is providing legal advice to any of its contracted parties, the survey provided below notes the areas where the potential for liability could lie, but does not provide an assessment of the likelihood of that liability attaching.

When reviewing this survey, it is important to keep two items in mind. First, the suggestion that a registry or registrar could bear some liability for their role in domain name registrations is a broad concept, and the presentation of this survey is in no way suggesting that registries or registrars are at newfound risk of liability for all domain registrations within their registry or sponsorship. The presentation of this survey is looking at where certain entities (IGOs and INGOs) could be afforded heightened protections from use of associated names or acronyms within domain names because acts and laws already provide for heightened protections for the use of their names and acronyms. Second, the term “liability” is used broadly here. There are many factors that have to be considered for liability to attach to a registry or registrar, including the extent to which a jurisdiction recognizes “accessories” to acts of dilution or infringement, or how a jurisdiction defines a duty of care and the registry or registrar’s role in the registration chain. The term “liability” is not used here to indicate that there is certainty that a registry or registrar will (or should) face any challenge due to the registration of a domain name for which heightened protections may be claimed.

### Survey of Jurisdictions

<b>Jurisdiction</b>	<b>IOC/RCRC Protections</b>	<b>IGO Protections (or other INGOs, where applicable)</b>
Australia	<p>While there are no specific prohibitions for the use of names related to the IOC at the top-level or second-level, the <i>Olympic Insignia Protection Act 1987</i> (Cth) provides broad protections for the terms which could extend to domain names. The level of protection afforded to domain names appears to depend on how closely the domain name matches a protected Olympic expression. There may be exclusions based on prior registration of marks using some of the Olympic names.</p> <p>For RCRC names, the <i>Geneva Conventions Act 1957</i> (Cth) prevents any unauthorized use of specific RC related expressions, which would arguably apply to domain names at any level.</p>	<p>The <i>International Organisations (Privileges and Immunities) Act 1963</i> (Cth) gives effect to the 6ter list and prohibits the use of an IGO’s name (or acronym) in connection with a trade, business, profession, calling or occupation. The IGO must, however, also be specifically made a subject of legislation or regulations by the Australian Government to be afforded the protections of the Act. For the qualifying IGOs, there is the potential for liability through the registration chain where the use of an IGO name/acronym in a domain name is in contravention of the Act.</p>
Brazil	<p>The Olympic Act, Law No. 12.035/2009 could be used to impose liability for the approval/registration of a TLD or second-level domain name, and explicitly mentions domain web sites as one of the areas of protections for</p>	<p>FIFA has similar protections to the Olympics Law under the ““General World Cup Law” (Law no. 12.663/2012), and expressly directs NIC.br to reject “domain name registrations which utilizes identical or similar expressions / terms to FIFA’s</p>

<b><u>Jurisdiction</u></b>	<b><u>IOC/RCRC Protections</u></b>	<b><u>IGO Protections (or other INGOs, where applicable)</u></b>
	<p>marks related to the 2016 Olympic Games. Prior approval is needed for any usage.</p> <p>Certain Red Cross marks are protected under Decree 2380/1910. The 1910 decree does not mention domain names.</p> <p>Brazilian Civil Law Code could possibly be used as a basis for liability as well.</p>	<p>trademarks.”</p> <p>More generally, Brazil has ratified the Paris Convention, however there are no specific provisions of law that relate to the protections of abbreviations and names of IGOs in Brazil.</p> <p>However, the fact of ratification could make attempts to bar delegation/registration at the top- or second-level, more successful in the country, however, the success of the challenge would vary from case to case.</p>
Canada	<p><i>Trade-marks Act</i>, R.S.C., 1985, c. T-13, Subsection (9)(1)(f) protects certain emblems and marks related to the Red Cross. The <i>Olympic and Paralympic Marks Act</i>, S.C. 2007, c. 25 (“OPMA”) protects marks related to the IOC (including translations). Some of the marks are also protected as official marks that are registered in Canada.</p> <p>While the statutes do not mention domain name registration, there is the possibility that the use of a name or acronym associated with these marks at the top-level or second-level could violate Canadian law.</p>	<p>The <i>Trade-marks Act</i>, at Subsections 9(1)(i.3) and 9(1)(m) provides protections for names of organizations appearing on the 6ter list, as well as for the United Nations. For names on the 6ter list, there is a requirement for entities on the 6ter to communicate to the government which names are intended for protection. The use of those protected names or acronyms at the top-level or second-level (each without consent) could be a foul of the <i>Trade-marks Act</i>, though domain names are not specifically mentioned in the law.</p>
China	Certain Olympic-related names and acronyms are	Article 2(2) of the Notice Regarding the Implementation

<b><u>Jurisdiction</u></b>	<b><u>IOC/RCRC Protections</u></b>	<b><u>IGO Protections (or other INGOs, where applicable)</u></b>
	<p>provided protection under the Regulations on the Protection of Olympic Symbols ("Regulations"), which require the permission of the owner of the Olympic symbols to provide permission for their use. This is the one area where any heightened potential for liability for the delegation of a top-level domain was identified. Registrations of second-level domains could also be impacted under this provision. The domain name registration policies that exist within TLDs that are administered by CNNIC are subject to modification and broadening. Some second-level registrations for the RCRC are afforded some protections under these policies.</p>	<p>Solution of .CN Second Level Domain Name Registration specifically restricts the registration of the acronyms of 31 Inter-Governmental Organizations (“IGOs”) as second level domain names to entities with the relevant authorities</p> <p>It is unknown how this restriction would be expanded into TLDs outside of the .CN registry.</p>
France	<p>Article L. 141-5 of the French Code of Sports provides protections to certain words and marks associated with the IOC, and has been used with: (i) Article L. 711-3 b) of the French Intellectual Property Code and/or (ii) Article L. 45-2 of the French Code of Posts and Electronic Communications to require cancellation of domain names bearing the protected words.</p>	<p>Under French law, the Paris Convention is directly applicable (that is, an action can validly be grounded on such International treaty). Yet, Article 6ter(1)(b) of the Paris Convention does only provide for the prohibition to “<i>use [IGOs], without authorization by the competent authorities, either as <u>trademarks</u> or as elements of trademarks</i>”.</p>

<b><u>Jurisdiction</u></b>	<b><u>IOC/RCRC Protections</u></b>	<b><u>IGO Protections (or other INGOs, where applicable)</u></b>
	<p>Article 1 of French law dated July 24, 1913, as amended by French law dated July 4, 1939, implementing the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, dated July 6, 1906, provides protections for certain words and marks associated with the RCRC in France. While domain names are not specifically listed in the law, the broad language of the law has been used to prohibit registration of domain names using the restricted names.</p> <p>The improper delegation/registration or use of these names at the top- or second-level could possibly serve as a basis of liability.</p>	<p>Because of the status of the protection, liability could attach as a result of trademark law violations/unfair use of an IGO's name or acronym as part of a domain name. There is also the potential for criminal liability based upon the unlawful use of an insignia regulated by a public authority. Notably, some IGOs could be provided with stronger protections than others by virtue of appearance on a list referred to in Article 3 of French Ministerial Order dated February 19, 2010.</p>
Germany	<p>Certain Olympic designations are protected under the Olympic Emblem and Olympic Designations Protection Act (OlympSchG), a national statutory law.</p> <p>According to section 125 OWiG</p>	<p>There are no statutes that provide protection to IGOs on the basis of inclusion on the 6ter list.</p>

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	<p>(Ordnungswidrigkeitengesetz - Administrative Offences Act), an administrative offence is deemed committed by any person who has used the symbol of the Red Cross, respectively the designations “Red Cross” or “Geneva Cross”, as well as any symbol or designation confusingly similar without authorization. The same applies to symbols and certain designations representing the Red Cross under provisions of international law (i.e. the Red Crescent).</p> <p>For either of these provisions, while domain name registrations are not specifically identified, those who are on notice of the infringing use of a name or acronym at the top or the second level could be held liable under the laws.</p>	
Japan	<p>The Unfair Competition Prevention Law (hereinafter referred to as “UCPL”) (Law No. 47 of 1993, as amended) prohibits unauthorized use of the names of international intergovernmental organizations (“IGOs”) as trademark (Article 17 of the UCPL). This provision</p>	<p>While there are no direct legal barriers to the delegation of a top level domain or the registration of a second level domain name that matches a mark or acronym of an IGO that is defined under the Ministry of Trade and Industry ordinance, the use of such words in a way that is found to be misleading can serve as</p>

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	<p>corresponds to Article 6<sup>ter</sup> (1) (b) and (c) of the Paris Convention for the Protection of Industrial Property (the “Paris Convention”). Specific IGOs that are protected under this statute are defined by ordinance of the Ministry of Economy, Trade and Industry. The IOC has specific names and acronyms protected under this provision.</p> <p>The name and mark of the Red Cross are already protected under the Law Regarding Restriction of Use of Mark and Name, Etc. of the Red Cross (Law No. 159 of 1947, as amended).</p> <p>While the laws do not directly address domain names at the top or the second level, the use of the IOC or the RCRC names or acronyms at the top or second level (by entities other than the IOC/RCRC) could serve as grounds for liability under the laws.</p>	<p>grounds for liability, just as the use of IOC names or acronyms would.</p>
Mexico	<p>The use of Red Cross and Red Crescent names is covered by 2007 law, which includes domain names.</p>	<p>Under Article 213 VII and IX of the Industrial Property Law and Article 90 VII of the Industrial Property Law, neither of which</p>

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	<p>Mexico is a member of the Nairobi Treaty for the Protection of the Olympic Symbol, and affords the rights provided under that treaty. Article 71, General Law of Physical Culture and Sport (Published in the Official Journal of the Federation on February 24, 2003) provides protection for words associated with the Olympics, including Olimpico and Olimpiada.</p>	<p>specifically mention domain names, the use of a name of an IGO in which Mexico takes part could serve as a basis for liability if evidence of authorization for the registration is not received.</p>
<p>South Africa</p>	<p>South African Red Cross has protection under a specific statute, the South African Red Cross Society and Legal Protections of Certain Emblems Act no. 10 of 2007.</p> <p>There is no specific protection in South Africa for IOC names, but the IOC does have registered marks in here that are afford protections under the Trade Mark Act discussed under the IGO section. Unregistered abbreviations may not be subject to protection.</p> <p>These protections could exist at the top- and second-level for domain names, though not specifically</p>	<p>Through the Trade Marks Act no 194 of 1993, Sections 10(8), 34, and 35, well-known marks appearing on the 6ter list are entitled to protection under trademark laws, even without registration, though there is a requirement to apply to South Africa for protection. Comparisons need to made about the class of service offered.</p> <p>IGO names could also be protected under the Prohibition of the Use of Certain Marks, Emblems and Words published under GN 873 in GG 5999 of 28 April 1978, as well as the Merchandise Marks Act no. 17 of 1941.</p>

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	<p>enumerated.</p>	<p>None of these acts specifically mention domain names, though the use of the protected marks in top- or second-level domain names may serve as a basis for liability thereunder.</p> <p>The potential for liability arising out of domain name registrations can be seen in the Electronic Communications and Transactions Act no. 25 of 2002, which is applicable to the .za Domain Name Authority.</p>
<p>South Korea</p>	<p>Article 12(1) of the Korean Internet Address Resources Act (KIARA) states:</p> <p>“No one shall obstruct the registration of any domain name, etc. of persons who have a legitimate source of authority, or register, possess or use domain name for unlawful purposes, such as reaping illegal profits from persons who have a legitimate source of authority. “</p> <p>There are not statutes that appear to protect the top-level delegation or usage of a term related to the IOC/RCRC, unless those terms have the protection of the trademark laws or the protection of the KIARA. Second-level</p>	<p>Article 3(1) of the Korean Unfair Competition Prevention and Trade Secret Prevention Act (KUCP &amp; TSPA) prohibits use of marks of international organizations, and specifically references international organizations and the Paris Convention.</p> <p>For use within a second-level domain name, the general KIARA, combined with the KUCP &amp; TSPA, provide the most likely sources of liability. The delegation of top-level domains containing these names and acronyms is less likely to be viewed as problematic under these statutes.</p>

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	<p>registrations are more likely to pose liability under the trademark laws or the KIARA. The laws do not specifically contemplate that entities other than the registrant would have liability, though there is no guarantee that none would attach.</p>	
<p>U.S.</p>	<p>There are two statutes that are relevant to the protection afforded to names or acronyms of the IOC in the United States: (1) 36 U.S.C. §§ 220501 <i>et seq.</i>, the Ted Stevens Olympic and Amateur Sports Act (the “Stevens Act”); and (2) 15 U.S.C. §§ 1051 <i>et seq.</i> (the Lanham Act). Specific words and combinations related to the Olympics and the Olympic Committee are protected from use, but the use of the word “Olympic” to identify a business or goods or services is permitted if it does not combine with any of the intellectual property references. The scope of protection provided, while it does not directly mention domain name registration at the top- or second-level, could be used as a bar to potentially infringing registration.</p>	<p>The US Patent and Trademark Office is required to refuse registrations of marks that conflict with registered marks of IGOs, so no registration is possible (once the marks are identified to the USPTO by a member country of the Paris Convention). No special protection seems to exist to bar the delegation of top- or registration of second-level domains containing the IGO names or acronyms by ICANN, a registry or registrar.</p>

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	<p>The Red Cross is also afforded protection under the Lanham Act and is protected pursuant to 18 U.S.C. §§ 706, 706a, and 917. Allowing use of the protected terms at the top- or second- level – while not fully defined in the statutes and not addressing domain name registrations – could be used to impose liability.</p>	