

IOC/RC DRAFTING TEAM STATUS REPORT

February 29, 2012

By: Jeff Neuman, Chair of the IOC/RC Drafting Team¹

BACKGROUND

A) ICANN Board Resolution in Singapore

During its June 20, 2011 meeting in Singapore, the ICANN Board of Directors adopted a resolution providing for “incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest.”²

The ICANN Board resolution directed the GNSO Council and the GAC to work together to develop policy advice for permanently protecting the Olympic and Red Cross names at the top and second levels of an expanded domain name system. Pursuant to the Board resolution, ICANN counsel and staff have implemented *Section 2.2.1.2.3 of the Applicant Guidebook*, which temporarily prevents new gTLD applicants from registering certain Olympic and Red Cross names at the top level during the initial gTLD application round.

B) GAC Proposal

On September 14, 2011, a proposal was sent from the GAC to the GNSO Council regarding a proposal for the protection of certain International Olympic Committee (“IOC”) and Red Cross/Red Crescent (“RCRC”) names.³ The proposal was followed up with a discussion between the GAC and the GNSO during the ICANN meeting in Dakar and a Question and Answer document addressing some of the issues with respect to the protection of these names at the top and second levels. As a result of those discussions, the GNSO Council created an informal drafting team open to both Councilors and interested members of the community to assist the GNSO Council in developing its own set of recommendations. The drafting team has met bi-weekly since December and maintains a publicly-available e-mail archive at <http://forum.icann.org/lists/gnso-iocrc-dt/> (“Drafting Team”). In addition, representatives from the IOC and the RCRC movement have also been actively participating in the group. A full list of participants on the Drafting Team is attached as Appendix 1.

¹ This status report is not an official report from the Drafting Team and represents the Chair’s current understanding of the discussions of the Drafting Team. Each of the recommendations addressed in this report are still under review by the GNSO community, advisory committees, IOC, RCRC and other interested members of the Community. The report is being provided to assist in the discussion between the Drafting Team, interested GNSO Councilors and GAC members on March 2, 2012.

² ICANN Board Resolution (2011.06.20.01(b)), available at <http://www.icann.org/en/minutes/resolutions-20jun11-en.htm> (June 20, 2011).

³ GAC Proposal to the GNSO Council re: Protecting the International Olympic Committee and Red Cross/Red Crescent Names in New gTLDs, available at <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf> (September 14, 2011).

C) Activities of the Drafting Team.

The issues presented to the Drafting Team by the GAC Proposal involved significant questions of implementation both at the top and second levels. Given the fact that the application window for the top-level opened on January 12, 2012 and is set to close on April 12, 2012, if any new protections were to be proposed at the top level, those recommendations need to be approved by the ICANN Board of Directors with sufficient time to provide notice, predictability and transparency to current applicants in this first round. Conversely, although there is a need to evaluate whether to create additional protections at the second level, such protections would not need to be finalized until the first new gTLD Registry Agreement is executed. The earliest this is expected to occur is Q1 2013. Thus, until this week, the Drafting Team decided to focus exclusively initially on protections at the top-level, to be followed by evaluation of the issues pertaining to protections at the second-level.

D) Next Steps

We are currently soliciting feedback from the Drafting Team and GNSO Community regarding the Drafting Team recommendations at the top level and are also seeking to get feedback from the GAC in Costa Rica. Assuming that a consensus is reached in the Drafting Team and Council that is also supported by the GAC, we will strive to hold a GNSO Council vote in Costa Rica on the recommendations to send to the ICANN Board. We are also working on obtaining the definitive list of translations as stated above.

PROTECTIONS AT THE TOP LEVEL

In the current version of the *Applicant Guidebook*, Section 2.2.1.2.3 extends limited protections to identical matches of certain IOC and RCRC terms at the top-level. However, this Section does not provide for protections of the IOC or RCRC in all foreign languages, nor does it invoke “String Similarity Review”, for strings that may be *confusingly similar* at the top level, such as “.olympics, .olympix, .redcross, .redkresent, etc.). In addition, the current Applicant Guidebook would not only prevent third parties from applying for the IOC or RCRC terms, but it would also not allow the IOC or RCRC to obtain these strings should they desire to do so.

The Drafting Team considered a number of different options with respect to protections of both the IOC and the RCRC terms at the top level ranging from recommending no changes to the current implementation mechanisms in the Guidebook, to the adoption of the GAC Proposal as is. Although no option is technically off the table, it is expected that the Drafting Team will reach at least a rough consensus in recommending to the GNSO Council the following, which has been under discussion for the past several weeks.

Recommendation 1: *Treat the terms set forth in Section 2.2.1.2.3 as “Modified Reserved Names,” meaning:*

- a) *The Modified Reserved Names are available as gTLD strings to the International Olympic Committee (hereafter the “IOC”), International Red Cross and Red Crescent Movement (hereafter “RCRC”) and their respective components, as applicable.*

- b) *Applied-for gTLD strings, other than those applied for by the IOC or RCRC, are reviewed during the String Similarity review to determine whether they are similar to these Modified Reserved Names. An application for a gTLD string that is identified as confusingly similar to a Modified Reserved Name will not pass this initial review.*
- c) *If an application fails to pass initial string similarity review:*
 - i. *And the applied-for TLD identically matches any of the Modified Reserved Names (e.g., ".Olympic" or ".RedCross"), it cannot be registered by anyone other than the IOC or the RCRC, as applicable.*
 - ii. *If the applied-for TLD is not identical to any of the Modified Reserved Names, but fails initial string similarity review with one of Modified Reserved Names, the applicant may attempt to override the string similarity failure by:*
 - 1. *Seeking a letter of non-objection from the IOC or the RCRC, as applicable; or*
 - 2. *If it cannot obtain a letter of non-objection, the applicant must:*
 - a. *claim to have a legitimate interest in the string, and demonstrate the basis for this claim; and*
 - b. *explain why it believes that the new TLD is not confusingly similar to one of the protected strings and makes evident that it does not refer to the IOC, RCRC or any Olympic or Red Cross Red Crescent activity.*
 - 3. *A determination in favor of the applicant under the above provision (ii)(2) above would not preclude the IOC, RCRC or other interested parties from bringing a legal rights objection or otherwise contesting the determination.*
 - 4. *The existence of a TLD that has received a letter of non-objection by the IOC or RCRC pursuant to (ii)(1), or has been approved pursuant to (ii)(2) shall not preclude the IOC or RCRC from obtaining one of the applicable Modified Reserved Names in any round of new gTLD applications.*

Recommendation 2: Protect the IOC/RCRC Terms in as many Languages as Feasible

The GAC has proposed that the IOC and RCRC “names should be protected *in multiple languages*—all translations of the listed names in languages used on the Internet... The lists of protected names that the IOC and RC/RC have provided are illustrative and representative, not exhaustive.” Although the Drafting Team agrees with the notion that the lists provided by the IOC and RCRC were illustrative, protecting the terms in every language on the Internet is not a standard that the Drafting Team believes is feasible to achieve. While it is true that the list of languages can be expanded, we recognize that in order to perform a String Similarity Review (as recommended above), a definitive objective list of languages must be created. It is the Drafting Team’s understanding that representatives from the IOC and RCRC are working on the creation of that definitive list and should be able to present that to the Drafting Team by no later than the ICANN Meeting in Costa Rica. If such a list can be produced, the Drafting Team may recommend the use of that list as a substitute to that currently in the Applicant Guidebook.

In addition, the Drafting Team also notes that even in the unlikely event that a third party applies for an IOC or RCRC term in a language that was not contained on the list, the IOC or RCRC, as applicable, may still file an applicable objection as set forth in the Applicant Guidebook.

Recommendation 3: Protections should apply for all future rounds, but may be reviewed after the first round.

In its proposal, the GAC has recommended that the protections for the IOC and RCRC should not just apply during the first round of new gTLDs, but should be a permanent protection afforded for all subsequent rounds. Although, the Drafting Team has not spent a lot of time discussing this topic, it does agree with the notion that it is making this recommendation as one intended to apply in all future rounds, but also recognizes that like all other aspects of the new gTLD program, these protections may be reviewed by the ICANN community should it desire to do so.

FUTURE WORK: PROTECTIONS AT THE SECOND LEVEL

Going into Costa Rica and beyond, the Drafting Team understands that it will need to focus on protections at the second-level to see if it can find consensus within the group on the GAC proposals. With respect to second-level names, it is the Drafting Team’s belief that the GAC requests that ICANN amend the new gTLD Registry Agreement to add a new schedule of second-level reserved names. The new schedule should reserve those terms set forth in Schedule A attached to the GAC proposal and should include that the identical terms be protected in the 6 UN languages with an “encouragement” to registries to provide additional languages.

It is the Drafting Team’s expectation that that the following questions will need to be addressed by the Drafting Team in order to provide recommendations on the second level:

1. Should Olympic and/or Red Cross names be reserved at the second level in all new gTLDs?

2. If the Drafting Team supports the notion of reserving IOC or RCRC names at the second level, what type of reserved name would this be?
 - i. Option 1: The reserved names should be treated as “forbidden names” that can never be registered (not even by those organizations)
 - ii. Option 2: The reserved names should be treated as “modified forbidden names” that can only be registered by the applicable organizations or their component parts.
 - iii. Option 3: Like a 2 letter country code where the Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes. In this case, the Registry Operator may propose release of these reservations based on its implementation of measures to avoid confusion with the IOC or the RCRC as applicable.
 - iv. Option 4: Like Country or Territory Names, which are initially reserved, but the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s). In this case, the IOC/RCRC terms would be initially reserved, but the reservation of the IOC/RCRC terms may be released to the extent that Registry Operator reached agreement with the IOC and/or RCRC as applicable.
3. If the Drafting Team chooses either option ii, iii or iv for Question 2, what would be the mechanism for removing from the reserved list for such option?

It is the goal of the Drafting Team to have its work completed on the second level protections by the ICANN meeting in Prague in order to be able to implement changes, if any, to the new gTLD Registry Agreement prior to any new gTLD Registry Operator having to execute such an Agreement with ICANN.

APPENDIX 1

PARTICIPANTS ON THE DRAFTING TEAM

Jeff Neuman – Drafting Team Chair – GNSO Council Vice Chair
Alain Greenberg - ALAC liaison to GNSO Council
Edmon Chung - ALAC
Zahid Jamil - CBUC
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David Heasley - IPC
Philip Marano - IPC
Kiran Malancharuvil - IPC
Gregory Shatan - IPC
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Lanre Ajayi - NCA
Thomas Rickert - NCA
Rafik Dammak - NCSG
Wolfgang Kleinwächter - NCSG
Joy Liddicoat - NCSG
Wendy Seltzer - NCSG
Mary Wong - NCSG
Chuck Gomes – RySG
Debra Hughes – NCSG
Konstantinos Komaitis – NCUC
Jim Bikoff – representing International Olympic Committee
Stephane Hankins – representing International Red Cross
Christophe Lanord - representing International Red Cross

Stéphane van Gelder - observer - GNSO Council chair
Wolf-Ulrich Knoben - observer - GNSO Council vice chair