

Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs

STATUS OF THIS DOCUMENT

This is the Final Issue Report on the protection of names and acronyms of certain international organizations including, International Governmental Organizations (IGOs) and Non-Governmental Organizations such as the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC). This report is published following the closure of the public comment forum on the Preliminary Issue Report on 26 July 2012, which was published on 4 June 2012.

SUMMARY

This report is submitted to the GNSO Council in response to a request received from the GNSO Council pursuant to a motion submitted and carried during the 12 April 2012 GNSO Council teleconference meeting.

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I. Executive Summary

This Final Issue Report is published in response to a Generic Names Supporting Organization (GNSO) Council request on the issue of evaluating whether to protect the names of international organizations at the top level and second level in the New gTLD Program. As described in greater detail below, this topic is considered within the scope of the GNSO's policy development authority under the ICANN Bylaws.

Although the issue of whether to grant additional trademark protections in New gTLDs was considered in the GNSO's initial policy recommendations for the New gTLD Program, this issue continues to be widely debated and discussed among a broad range of ICANN stakeholders, including within the Governmental Advisory Committee (GAC) and the GNSO. In light of this interest, Staff recommends that the GNSO Council initiate a Policy Development Process (PDP), at a minimum, to determine whether there is a need for additional special protections at the top and second level in new gTLDs for the names and acronyms of *certain* international organizations, namely International Government Organizations (IGOs) and International Non-Government Organizations (INGOs), (which would include the the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the American Red Cross (collectively, the "RCRC") and the International Olympic Committee ("IOC")), and if so, to develop policy proposals for such protections. In structuring the PDP, the GNSO Council is strongly encouraged to: (1) formally invite the representatives of IGOs, the RCRC and IOC to participate in the PDP Working Group; and (2) expanding the scope of the PDP to evaluate the need for a policy to provide such protections in *all* gTLDs (*existing* gTLDs (e.g., .com, .net, info,) and new gTLDs).

Staff suggests that the GNSO Council should consider the minimum time to complete a PDP, and the extra resources that may be necessary to produce policy recommendations that could be acted upon by the ICANN Board in a timely fashion

prior to the delegation of the initial round of new gTLD strings and before any registry begins accepting any form of registration.

A Public Comment Forum was opened on the Preliminary Issue Report. The submitted comments were considered and where relevant, incorporated into this Final Issue Report. Following the review by the GNSO Council of this Final Issue Report, the Council will consider whether to commence a PDP on this issue.

II. Objective

This Final Issue Report is published in response to a request by the GNSO Council as a required step before a PDP may be commenced on the topic of whether ICANN should approve additional protections for names of certain international organizations at the first and second levels in the New gTLD Program. In its motion requesting this Issue Report, the GNSO Council specified that the Issue Report should:

- Define the type of organizations that should be evaluated in any related PDP for any such special protection at the top and second level; and
- Describe how the PDP could be structured to analyze whether ICANN should adopt policies to protect such organizations at the top and second level.

A Preliminary Issue Report on whether to provide special protections for international organizations in new gTLDs was published for public comment to allow for the ICANN community to provide feedback on the analysis and recommendations contained therein. A summary of the comments submitted on the Preliminary Issue Report is included as **Annex 6** to this Report.

III. Background

A. Request from the ICANN Board With Regard to IGOs

Issues regarding whether IGOs should receive special protection for their names have been raised throughout the development of the New gTLD Program. The latest inquiry to re-examine this issue emerged as a result of a request from the ICANN Board in response to letters received from the OECD and other IGOs in December 2011.¹ 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. The IGOs have reiterated their supporting arguments for these positions and requests through a “Common Position Paper Regarding Protection of IGO Names and Acronyms in the DNS In the Context of ICANN’s GTLD Expansion Plan,” (“IGO Common Position Paper”) sent to the Chairs of both the GAC and the GNSO Council on 4 May 2012.² This Paper is included as **Annex 5** to this Report.

On 11 March 2012, the ICANN Board formally requested that the GNSO Council and the GAC provide “policy advice on the IGO’s request. [Such] policy advice on the expansion of protections will inform ICANN in providing a meaningful response to the IGOs.”³ In a response dated 26 March 2012, the Chair of the GNSO Council stated the Council’s position that the IGOs should first work with the GAC in providing any policy advice on this matter to the Board, and that the GNSO Council would review the policy

¹ The IGO letter to the Board is posted at <http://gns0.icann.org/mailling-lists/archives/council/pdfL7aQlrvBqe.pdf>

² The IGO Common Position Paper is posted at: <http://forum.icann.org/lists/prelim-protection-io-names/pdfJrs5WYjSrl.pdf>

³ The Board letter to the GNSO and GAC on the IGO issue is posted at: <http://gns0.icann.org/mailling-lists/archives/council/pdfKA1ANE1330.pdf>

implications of any advice the GAC ultimately provides to the Board, upon the Board's request to do so.⁴

The GNSO Council did not request this Issue Report in direct response to the Board's request to the GAC and GNSO on the IGO issue. However, the IGO request was taken into account in the adopted motion requesting this Report along with other comments received from the community related to the GNSO Council-adopted recommendations for the protection of Red Cross and International Olympic Committee names (see Section B below).⁵ As a result, the scope of this Final Issue Report includes an evaluation of whether to protect the names of both international government and non-government organizations at the top level and second level in new gTLDs.

Policy Work With Regard to the Red Cross and Olympic Movements

During the ICANN Dakar Meeting in October 2011, the GNSO Council convened an informal drafting team to focus on the narrower issue of whether the RCRC and the IOC should receive special protections beyond those currently afforded to them in the Applicant Guidebook. This drafting team, known as the IOC-RC Drafting Team, was convened to respond to the Board's 20 June 2011 Singapore resolution with regard to the protection of names of the RCRC and the IOC during the first round of applications (the "Singapore resolution") and in particular, to a subsequent GAC proposal to permanently protect the RCRC and IOC names at both the top and second levels (which is described in more detail in Section IV below).

In the Singapore resolution, the Board authorized the President and CEO to implement the New gTLD Program "which includes the following elements:

⁴ The GNSO Council response to the Board's letter on the IGO issue is posted at:
<http://gns0.icann.org/correspondence/gns0-to-board-igo-names-26mar12-en.pdf>

⁵ The GNSO Motion requesting this Preliminary Issue Report is posted at:
<http://gns0.icann.org/meetings/minutes-council-12apr12-en.htm>

1. the 30 May 2011 version of the Applicant Guidebook
<<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>>, subject to the revisions agreed to with the GAC on 19 June 2011, including: ...(b) 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.....”

Prior to the Singapore Resolution, ICANN Staff submitted a June 2011 Board Workshop Paper on IOC/Red Cross Protections to the Board that incorporated research and advice provided by outside counsel.⁶ This Paper included a high-level assessment of the legal background for the IOC/RCRC’s request for special protections in the New gTLD Program, and included a survey of the scope of protections across jurisdictions. The Paper notes that although the research described therein could not fully substitute for individual consultations with intellectual property lawyers in each of the relevant jurisdictions, the research supports the conclusion that very few, if any, organizations apart from the IOC and the RCRC could satisfy the same criteria for receiving special protections in new gTLDs. The specific criteria that the IOC and RCRC met included:

- The Movement or Organization requesting that one or more of its Intellectual Properties (“Properties”) be placed on the Reserved Names list must have been well established long before (such as 50 or 100 years) the new gTLD policy was adopted by the Board on 26 June 2008.
- The names are widely recognized and closely associated with the Movement or Organization.

⁶ ICANN published the unredacted June 2011 Board Workshop Paper on IOC/Red Cross Protections on 28 August 2012. It is posted at: <http://www.icann.org/en/groups/board/documents/briefing-materials-unredacted-20jun11-en.pdf>. To the extent that anyone within the community seeks to rely upon the information within this paper, ICANN reiterates the note that the preliminary work presented is not a substitute for the individual consultation and research that would be required to reach a more fulsome opinion or advice.

- One or more Properties of the Movement or Organization must be protected by legislation in at least 30 countries, on at least four continents.
- One or more Properties of the Movement or Organization must be protected by one or more treaties adopted by at least 60 countries.
- The Movement or Organization must be a non-profit institution (or the equivalent) operating in the public interest and the reservations of names must serve the public interest.
- GAC advice must have been received indicating the GAC's strong support for the Movement's or Organization's request to have one or more of its Properties placed on a Reserved Names list.

The Paper noted that at the time the Paper was written, no other organizations had been identified as having satisfied these criteria.

The IOC-RC Drafting Team produced a set of recommendations⁷ supported by a rough consensus of its members that were published for public comment on 2 March 2012, and were subsequently modified in the Costa Rica ICANN Meeting before adoption by the GNSO Council on 26 March 2012. These recommendations, which were forwarded to the ICANN Board for consideration, are described in greater detail on **Annex 3** to this Report. The GNSO Council intended that these recommendations be adopted by the ICANN Board commencing with the first round of new gTLD applications, notwithstanding the fact that application period had already commenced and applications had already been received.

⁷ No Report was published by the IOC-RC Drafting Team, but the recommendations were supported by a "rough" consensus of the Drafting Team.

At its 10 April 2012 meeting, the ICANN Board’s New gTLD Program Committee (“Committee”) considered the GNSO recommendations but decided not to change the Applicant Guidebook.⁸ In its rationale for this resolution, the Committee observed that although “the GNSO’s recommendations were well taken, the Committee opted for preserving the status quo. As protections already exist, when balanced with the accountability and operational issues posed by changing the Applicant Guidebook at that time, the Committee noted that “the public interest will be better served by maintaining the status quo.... Nothing in the Committee's action or this rationale is intended to preclude the consideration of the GNSO recommendations for future rounds of applications within the New gTLD Program.”

On 3 August 2012, the Committee published a Progress Report⁹ that provided an update on issues raised in Prague regarding the New gTLD Program, including the protection of RCRC and IOC names. After reviewing input provided by Staff which was requested by the Committee during the Prague Meeting¹⁰, the Committee stated that: “All recent inputs have been reviewed... Review of this material indicates that the appropriate course is for the Board to leave these issues in the hands of ICANN’s policy-making bodies. This was the recommendation of the Board in its Singapore resolution when considering protections for the IOC and Red Cross. ICANN staff members are supporting that discussion in the GNSO. The IOC and Red Cross are addressing their comments to the GNSO. The GNSO is properly considering whether to do additional work on these issues.”

⁸ The resolution and preliminary report of the New gTLD Program Committee’s consideration of the GNSO Council’s recommendations with regard to the RCRC/IOC is posted at:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-10apr12-en.htm> and

<http://www.icann.org/en/groups/board/documents/prelim-report-new-gtld-10apr12-en.htm>

⁹ <http://www.icann.org/en/groups/board/new-gtld/report-03aug12-en.pdf>

¹⁰ The New gTLD Program Committee instructed to review and report back on all inputs provided on this issue including: (a) previous public comment forum; (b) community inputs in Prague; (c) additional inputs from the Red Cross and IOC; (d) status of the GNSO work after the Board decision; and (e) GAC inputs.

On 13 September 2012, the Committee requested that the GNSO consider a proposed solution for the first round to protect at the RCRC and IOC names at the second level, consistent with the GAC advice to the Board which would include specific RCRC and IOC names on the reserved names list. The Committee sought to provide sufficient time for the GNSO to develop its views on this request taking into account the timeline for the first round and so that any adopted protections are in place for the first round. In view of this timeline, the Committee is seeking the GNSO's response by January 31, 2013.¹¹

B. Development of the New gTLD Program & Earlier Issue Report on the Issue of Dispute Handling for IGO Names and Abbreviations

In 2005, the GNSO undertook a two-year policy development process to consider the introduction of new generic top-level domains, or gTLDs. During this process, the GNSO considered a number of issues, including, whether to create special protections for trademark holders, and specifically IGOs, for the New gTLD Program.

In 2007, Staff published a GNSO Issue Report at the request of the GNSO Council on the issue of dispute handling for IGO Names and Abbreviations,¹² which recommended, in part, that:

- New gTLD agreements could provide for protection of IGO names and abbreviations as a contractual condition for new gTLDs
- Separate Dispute Resolution Procedure be developed for IGO names and abbreviations as domain names at the second or third level in new gTLDs
- A framework be developed for handling objections or challenges related to IGO names and abbreviations in the upcoming application round for new gTLDs

¹¹ The Resolution and Rationale are posted at:

<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13sep12-en.htm>.

¹² The GNSO Issue Report is viewable at: <http://gns0.icann.org/issues/igo-names/issues-report-igo-drp-15jun07.pdf>.

However, the GNSO Council motion to initiate a PDP on the issues and recommendations stemming from the 2007 Issue Report failed to gather the requisite number of votes.¹³ As a result, a PDP was not initiated and no specific recommendations were adopted by the GNSO Council with regard to protection of IGO names and abbreviations in new gTLDs at that time.

In 2008, the ICANN Board adopted 19 specific GNSO recommendations to guide the introduction of new gTLDs, in accordance with certain allocation criteria and contractual conditions. Among these 19 GNSO recommendations were the following:

No. 2- Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.

No. 3- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

No. 5- Strings must not be a Reserved Word.¹⁴

If a PDP is initiated based upon this Issue Report, these Board-adopted recommendations may need to be evaluated and, it is possible that the PDP could produce policy recommendations on creating additional protections that would require a modification of these GNSO recommendations.

Since the Board's approval of the new gTLD policy in 2008, ICANN has undertaken an open and transparent implementation process to address stakeholder concerns, including the protection of intellectual property rights and community interests, consumer protection, and DNS stability. Teams of recognized experts were convened in

¹³ See GNSO Council minutes posted at: <http://gns0.icann.org/meetings/minutes-gns0-20dec07.html>

¹⁴ A footnote to the recommendation clarified that "Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round."

the areas of intellectual property, consumer protection, DNS market economics, registry operations, linguistics and internationalized domain names, and root server stability to address the “overarching issues” raised by the ICANN community. This multi-year public participation process included consultations with governments, businesses, NGOs, law enforcement, and the At-Large Internet community, among others.

Specifically, the Board formed the Implementation Recommendation Team (IRT) comprised of 18 intellectual property experts to develop specific rights protection mechanisms for new gTLDs. The IRT final recommendations were reviewed by a cross-constituency based team (the Special Trademark Issues or STI team) to provide a multi-stakeholder consensus view. These combined efforts produced an enhanced set of trademark protections for new gTLDs (which are described in more detail in Section III.D below). Neither the IRT nor the STI proposed unique protections for the names or acronyms of any international organizations.

These trademark protections have been further improved through the participation of many in the broader Internet community, including a number of national governments via participation in ICANN’s Governmental Advisory Committee (GAC). This led to the Board’s Singapore resolution, which provided for special treatment of certain IOC and RCRC names, at the top level for the first round of applications in the New gTLD Program. No other international organizations were included in the “moratorium” created by the Board.

C. Protections Available to International Organizations Under the Current Version of the Applicant Guidebook (AGB)

International organizations – like other entities - may take advantage of several protections afforded under the New gTLD Program¹⁵, including:

¹⁵ The latest Guidebook is posted on the ICANN website. Supporting documentation is available through the “New TLDs” button at www.icann.org.

Top-Level Protections

After the close of the application window, information on applied-for strings has been made publicly available. Any party, including international organizations, has the ability to review the applied-for strings to determine if any raise concerns, and will have the opportunity to avail themselves of the objection processes if the applied-for string infringes 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
- Misappropriation of community names or labels.

In addition, an Independent Objector has been appointed, and has the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the latter two interests listed above. The Independent Objector will act 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, at <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-11jan12-en.pdf>.

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 the criteria. In addition, a holder of a word mark that is “specifically protected by statute or treaty” 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. More information on the PDDRP is available in Section 6.1 of the Applicant Guidebook.

Second Level Protections

Word marks that are specifically protected by a statute or treaty are eligible for protection through the mandatory Trademark Claims process and Sunrise protections in the New gTLD Program, both of which are supported by the Trademark Clearinghouse.

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.

The Trademark Clearinghouse is expected to support increased protections, as well as reduce costs for mark holders such as IGOs. 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."

IV. Advice from ICANN Advisory Committees

A. Statement from the At-Large Advisory Committee (ALAC)

In its Statement dated 25 July 2012,¹⁶ the ALAC stated that it is “particularly sympathetic” to granting additional protection to prevent the use of domain names to defraud unsuspecting consumers, phishing, or other illicit activities. The focus of the ALAC’s concern is on charitable organizations such as the Red Cross and UNICEF; and it is also sympathetic to extend special protection for other charities, while acknowledging that implementing such protections “is unclear.” The ALAC also “sees the benefit” to extend protection at the second level to include protections for similar strings to such organizations’ names. The ALAC notes the “potential difficulty” of implementing such protections and expressed its intent to work with any group that is formed to address this issue. In supporting such protection, the ALAC also expressed its concern over the impact that these protections would have on the fair use of names.

With regard to protection at the top-level, the ALAC “does not see any great need” for protection because of the various comment and objection mechanisms available. In addition, the ALAC “strongly advocates” that all new TLDs be contractually required to adhere to the general use of the proposed TLD outlined in their application in future TLD rounds.

The ALAC’s position on protection for certain charitable international organizations at the second level indicates a shift from its original position provided in its Statement dated 23 March 2012,¹⁷ which noted the ALAC’s concerns with regards to the reservation of domain names related to the Olympic and Red Cross movements. In its

¹⁶ The full text of the ALAC Statement submitted for the public comment forum on the Preliminary Issue Report is posted at: <http://forum.icann.org/lists/prelim-protection-io-names/msg00013.html>

¹⁷ The full text of the ALAC Statement is posted at:
<http://www.atlarge.icann.org/correspondence/correspondence-23mar12-en.htm>

23 March Statement, the ALAC saw no substantial reason to afford to the Red Cross and the International Olympic Committee protections not available to other rights holders, and “specifically advises and requests the ICANN Board to reconsider its directions regarding the Red Cross and Olympic names as being ultimately against the global public interest.” It observed that substantial objection procedures were put in place in the New gTLD Program, well capable of addressing all concerns about confusion and misuse. The ALAC further observed that the GAC, which has raised the concerns about these names, has its own objection and advice mechanisms in place within the New gTLD Program.

The 23 March Statement reported that moreover, there are many in the At-Large Community who believe specifically that specially entrenched protection of olympic-related names is against the global public interest. The ALAC noted that many legitimate uses of the word "olympic" and its derivatives are used for airlines, cameras, restaurants, paint, and numerous businesses around the world with no connection to the Olympic athletic movement or the IOC. These businesses are not currently seen to be confusing with the Olympic movement, and the ALAC believes that needless restriction on these names -- beyond what already exists -- is publicly harmful.

B. GAC Correspondence on the topic of IGOs

In its response to the New gTLD Program Committee’s 10 April 2012 decision not to adopt the GNSO recommendations to provide special protection for the IOC and RCRC names at the top level,¹⁸ the GAC reaffirmed “its previous advice that the IOC and Red Cross and Red Crescent should be protected at the top and second levels, given that these organizations enjoy protection at both the International level through international treaties (e.g. the Nairobi Treaty and the Geneva Conventions) and through

¹⁸ The GAC letter is posted at: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-icann-board-12apr12-en.pdf>

national laws in multiple jurisdictions. The GAC considers the existence of such two-tiered protection as creating the criteria relevant to determining whether any other entities should be afforded comparable enhanced protection.” The GAC “advises that in the event that additional IGOs are found to meet the above criteria, this would be a consideration in the formulation of GAC advice for IGO protections in future rounds, as well as consideration of protections for IGOs, more generally.” However, it is the GAC position that “no additional protections should be afforded to IGOs beyond the current protections found in the Applicant Guidebook, for the current round.”

The OECD gave a presentation to the GAC during the Prague Meeting on behalf of 38 IGOs, advising the GAC that the IGOs are treaty-based organizations recognized under international law, and that the IGO names and acronyms are protected under Article 6*ter* of the Paris Convention as well as in multiple national jurisdictions.

In response to this presentation the GAC stated in its 28 June 2012 Prague Meeting Communique that it “[m]indful of its previous GAC advice to the Board on protection of names and acronyms of international organizations enjoying protection at both the international level through international treaties and through national laws in multiple jurisdictions, such as Red Cross/Red Crescent and IOC, and recognizing the importance of assuring equal treatment qualifying international organizations under the same criteria, the GAC is carefully considering the issue, with a view to providing further advice to the Board at a time suitable to the GNSO consideration of this issues expected in July.”¹⁹ As of the date of this Final Issue Report, no additional information has been received from the GAC clarifying its position on this issue.

¹⁹https://gacweb.icann.org/download/attachments/4817665/FINAL_GAC_Communique_20120628.pdf?version=1&modificationDate=1341180014000

C. Communications from the GAC with respect to the RCRC/IOC

In correspondence dated May 26, 2011,²⁰ the GAC stated:

“The Reserved Names List

Following the GAC’s exchange with the Board on 20 May regarding the requests from the International Olympic Committee (IOC) and the International Red Cross and Red Crescent Movement for the key words most directly associated with their respective Charters and unique humanitarian missions to be added to the Reserved Names list, the GAC emphasizes that it would not support the extension of the reserved list into a de facto ‘Globally Protected Marks List’ (GPML). In fully supporting these two specific requests, the GAC recognizes that they are made by two global, non-profit, humanitarian organizations whose property is protected by special legislation in many countries, in the IOC’s case over thirty nations representing over 4.5 billion people which is approximately sixty-five percent of the world’s population. The GAC supports ICANN’s continued application of very tightly drawn criteria for inclusion on the reserved names list and the GAC is unaware of any other international non-profit organization that enjoys the level of special legislative protection across the world afforded to the IOC and the Red Cross and Red Crescent movement that justifies inclusion on the Reserved Names List.”

In response to the Board’s Singapore resolution allowing for the protection for specific RCRC and IOC names until the GNSO and GAC develop policy advice based on the global

²⁰ <http://archive.icann.org/en/topics/new-gtlds/gac-comments-new-gtlds-26may11-en.pdf>

public interest, the GAC forwarded the following proposal²¹ to the GNSO Council for its consideration:

“Proposal: ICANN should amend the new gTLD Registry Agreement to add a new schedule of second-level reserved names. The new schedule should reserve those terms most directly associated with the International Olympic Committee (IOC) and the International Red Cross and Red Crescent Movement - terms that are protected in international legal instruments and, to a large extent, in legislation in countries throughout the world. These reserved names are provided in the attached Schedule A.²² This proposal is intended to complement the permanent protection of Olympic and Red Cross words to be implemented at the top level.”

At the Prague Meeting, the GAC advised the Board in its Communiqué that “it requires further clarification as to the status of its pending request for enhanced protections for the IOC and Red Cross/Red Crescent names at the top and second levels, in light of the Board's rejection of the GNSO's recommendations intended to refine the means of enhanced protection at the top level in April, 2012.”²³

²¹ The GAC Proposal is posted at:

<https://gacweb.icann.org/download/attachments/1540128/GAC+advice+on+IOC+and+Red+Cross+Sep.+2011.pdf?version=1&modificationDate=1317031625914>

²² The schedule of names is posted in the GAC proposal at:

<https://gacweb.icann.org/download/attachments/1540128/GAC+advice+on+IOC+and+Red+Cross+Sep.+2011.pdf?version=1&modificationDate=1317031625914>

²³ The GAC Communiqué from the Prague Meeting is posted at:

https://gacweb.icann.org/download/attachments/4817665/FINAL_GAC_Communique_20120628.pdf?version=1&modificationDate=1341180014000

V. Community Input

A public comment forum on the Preliminary Issue was opened on 4 June 2012 and the Reply Period closed on 26 July 2012.

Ten of the 12 public comment submissions supported the initiation of a PDP to consider the issue of whether International Organization names should be protected in new gTLDs; one commentator opposed the initiation of a PDP.

Nine of the 12 public comment submissions were from International Government Organizations (“IGOs”), which unanimously called for additional special protections for IGO names and acronyms at the top and second levels of new gTLDs; and which also unanimously supported the initiation of a PDP. All the IGO Commentators²⁴ supported the 4 May 2012 “Common Position Paper Regarding Protection of IGO Names and Acronyms in the DNS In the Context of ICANN’s GTLD Expansion Plan”²⁵ and the accompanying Appendix which provides a non-exhaustive list of protections granted to IGOs under treaties and national laws²⁶ (collectively referred to as “IGO Common Position Paper”). In addition, all the IGO Commentators expressed several concerns over the Preliminary Issue Report, which are further outlined below.

Initiation of a PDP

All the IGO Commentators generally supported the initiation of a PDP, provided that such PDP would be completed in time for any additional protections to be properly in place for the designation of new gTLDs from the first round, and that the PDP “be carried out on a basis of fair, objective and justified criteria and a proper evaluation of fact and law.”

²⁴ “IGO Commentators” consists of all the individual IGO’s which submitted comments during the public comment forum.

²⁵ <http://forum.icann.org/lists/prelim-protection-io-names/pdfJrs5WYjSrl.pdf>

²⁶ <http://forum.icann.org/lists/prelim-protection-io-names/pdfD51lIsBKIL.pdf>

The other supporting commentator believed it is essential to initiate a PDP in order to serve the public interest to prevent fraud and the diversion of donations from IGOs.

One commentator opposed the initiation of a PDP to protect the names of the Red Cross Movement, IOC and IGO's, on the grounds that providing special protection for these names would be creating in effect, exclusive global licensing rights which cannot be justified given that "robust" mechanisms to protect these organizations' interests and rights are already in place.

Proposal to protect IGO Names and Acronyms on the Top Level of New gTLDs

The IGO Common Position Paper proposes the Applicant Guidebook be amended so that the IGO names and acronyms protected under Article 6*ter* of the Paris Convention be treated as "Reserved Names," with identical strings available exclusively to the respective IGOs. Similar gTLD strings would be subject to a string similarity review and an applicant for such string could apply for the string either by: (1) obtaining a letter of non-objection from the respective IGO; or (2) demonstrate that the applicant has a legitimate interest in the string.

In response, one commenter asserts the risk of abuse claimed by these organizations is "overblown and unsubstantiated" since a review of the applications submitted in the first round reveals that there were no applications containing the names of such international organizations.

Proposal to protect IGO Names and Acronyms on the Second Level of New gTLDs

The IGO Common Position Paper proposes to amend the Applicant Guidebook so that the IGO names and acronyms protected under Article 6*ter* of the Paris Convention be treated as reserved names at the second level, which can only be registered by the respective IGO. Under this proposal, these names would be treated as "forbidden names," meaning that any registrar receiving a request for registration of a second-level

domain containing an IGO name or acronym would have an automatic system that would raise a red flag, requiring the registry to automatically prevent the registration of such name by third parties.

In response, one commentator states that creating special protections at this level would be departing from longstanding ICANN policy and would require serious consideration, as it would be a “dramatic” shift in the burden and responsibility for the content of domain names onto third parties. In supporting this position the commentator notes that the GNSO voted against special protections for IGOs in 2007, as did various reserved names working groups over the past several years.

Comments on Preliminary Issue Report

All of the IGO Commentators expressed concerns about the Preliminary Issue Report, specifically, their belief that the report “contains certain legal and factual inaccuracies, and is at times selective and inconsistent.”

Failure to Incorporate the IGO Common Position Paper

The IGO Commentators noted that the Preliminary Issue Report did not include any discussion or reference to the IGO Common Position Paper and Appendix that was sent to both the Chair of the GAC and Chair of the GNSO Council on 4 May 2012. The IGO Common Position Paper provided an explanation of the existing legal protections for IGO names and acronyms, as well as the IGOs’ proposal for special protections for IGO names and acronyms at both the top and second levels of the new gTLDs (which are summarized above under the relevant headings).

In response, Staff has incorporated relevant points and positions from the IGO Common Position Paper as appropriate in this Final Issue Report, and has included the Paper as **Annex 6** to this Report.

Distinguishing The Red Cross Movement and International Olympic Committee from IGOs

While not taking any position regarding possible protections granted to the RCRC and IOC names, the IGO Commentators believe that the Preliminary Issue Report did not provide “a complete factual picture nor a fair assessment of the status and legal protection” enjoyed by the names of the IGOs, RCRC and IOC.

The IGO commentators believe that the Preliminary Issue Report “accepted a liberal” application of the GAC criteria to the RCRC and IOC names, while “disregarding” the specific status of IGO names under the international treaties identified in their submissions. Specific comments are referenced in Section VII.C below.

The IGO commentators also challenge the statement that “to date, there has been no information submitted to demonstrate that IGOs suffer the level of unauthorized or fraudulent use of their names as the RCRC or IOC do, or to demonstrate the need for a time-sensitive remedy for the misuse or abuse of their names,” and provided citations to several reports which are referenced in Section VI.A below.

Suggested Criteria Under Which an Organization May Qualify for Special Protection

The IGO Commentators criticize most of the Preliminary Issue Report’s six proposed criteria to determine an organization’s qualification for special protection in new gTLDs as having legally and factually questionable relevance. The IGO Commentators also express concern over criteria they believe are “noticeably” missing: the status of the organizations under public international law, privileges and immunities enjoyed by the organizations, the principle source of financing for those organizations, the protection of common goods including market principles, the rule of law, and freedom of expression. The IGO Commentators believe that these considerations “are arguably more important” than the criteria proposed in the Preliminary Issue Report. The specific IGO concerns and alternative proposed criteria are discussed further in Section VII.F below.

In noting that the prohibitive cost of defense is one of the primary cited reasons to support special protection, the IGO Commentators raise the point that the question of an organization's principle source of funding should be "quite pertinent;" and that IGOs are essentially funded with public funds, through contributions from member states, which are used to achieve "the important public interest missions of the IGOs."²⁷ The IGO Commentators also believe that the proposed rights protection mechanisms for the new gTLD program "are inconsistent with the privileges and immunities and in particular the principle of immunity from legal process as enjoyed by IGOs," and thus further highlights the need to provide special protections for IGO names and acronyms.

Other Comments

The ALAC finds the estimated number of 5,000 IGOs and 35,000 other non-profits reported in the Preliminary Issue Report which might be considered for special protection eligibility to be "troubling," and expressed its concern over the lack of resources and ability to judge eligibility or even list such groups.

²⁷ The IGO Common Position Paper states that IGOs are for a that work towards cooperation between governments on vital issues and humanitarian causes, including public health, food security, labor practices peace-keeping operations, containment of weapons proliferation, sustainable economic and social development and reconstruction, trade and commerce standards, children's rights, refugees disaster relief, fundamental scientific research and transportation.

VI. Impact of Expanded Protections on International Organizations

A. Impact on IGOs

In their letter to the ICANN Board,²⁸ several representatives from the IGO community expressed concerns related to the increased potential for the misleading registration and use of IGO names and acronyms in new gTLDs.

The letter notes that:

“IGOs represent a wide range of vital causes such as public health, labor practices, food security, peace-keeping operations, containment of weapons proliferation, sustainable economic and social development and reconstruction, trade and commerce standards, children’s rights, refugees, disaster relief, fundamental scientific research and other public policies. Abusive registration of IGO names and acronyms harms these causes. It also imposes a serious enforcement burden on IGOs, which should not have to divert their public resources for this purpose.”

In their public forum submission on the Preliminary Issue Report, the IGOs cited further sources to demonstrate the need for a time-sensitive remedy for the misuse or abuse of their names, by citing the WIPO-2 Report (3 September 2001) and documents submitted by various IGOs to the Second Special Session of the Standing Committee on the Law of Trademarks which provide extensive examples of abuse of IGO names and acronyms.

In stating that the problems of cybersquatting and other domain name abuses of IGO names and acronyms have not diminished “and are likely to be exacerbated once the many new gTLDs become operational,” the IGO commentators also cite as support the

²⁸ The letter from several IGOs to the ICANN Board is posted at:
<http://www.icann.org/en/news/correspondence/igo-counsels-to-beckstrom-et-al-13dec11-en.pdf>

Draft Final Report of ICANN’s Joint Working Group on the WIPO-2 Process – V3 (posted April 19, 2004), and the 15 June 2007 GNSO Issue Report on Dispute Handling for IGO Names and Abbreviations.

B. Impact on the RCRC and the IOC

The IOC-RC Drafting Team requested both the RCRC and the IOC to provide information with regard to how significant the problem of unauthorized domain name registrations of their respective terms is at the second level of current gTLDs, and why each organization believes that the existing rights protection mechanisms in the New gTLD Program are inadequate. The full responses submitted by the RCRC and IOC are in **Annex 4**. A brief summary is provided below.

With regard to how significant the current problem is with unauthorized or abusive use of their respective names, both the RCRC and IOC gave specific examples of unauthorized use of their names at the second level, with the IOC providing evidence that there were “hundreds” of such unauthorized registrations often for illegal and/or illicit purposes within a representative two-month period in 2011. The RCRC reported that recent humanitarian crises have demonstrated both an increase in and the ease of abusing the RCRC names for fraudulent purposes.

Both the RCRC and IOC also believe that the current rights protection mechanisms in the New gTLD Program are inadequate to protect their names from unauthorized or fraudulent use primarily because of what they believe would be the “prohibitive” cost of using these mechanisms versus having their names precluded from registration at the second level. Both organizations specifically raised the Uniform Rapid Suspension System (URS) as an example, with the IOC estimating that with the expected hundreds or even thousands of new registrations at the second level of new gTLDs, using the URS proceedings would cost “hundreds of thousands of dollars every year,” citing its current estimated cost of \$300 to \$500 per proceeding, and taking into account attorney fees,

staff and time resources for monitoring and enforcing their rights. Both the RCRC and IOC believe that this increased burden will take away valuable resources needed for their respective good will missions. In addition, the IOC believes that the sheer volume of cases would “outstrip” the existing rights protection mechanisms, making them inadequate to address the harm brought about by infringement.

C. Impact on Legitimate Users of the Names of International Organizations

Several public comments in opposition to the IOC-RC Drafting Team proposals highlighted concerns that expanding protections could adversely affect legitimate uses of the names of international organizations. The ALAC notes that many legitimate uses of the word "olympic" and its derivatives are used for airlines, cameras, restaurants, paint, and numerous businesses around the world with no connection to the Olympic athletic movement or the IOC. These businesses are not currently seen to be confusing with the Olympic movement, and the ALAC believes that needless restriction on these names -- beyond what already exists -- is publicly harmful.

For example, the ALAC notes that “Olympic” and “Olympic” have long been used as or in commercial brands (for example, Olympic Wine, Olympic Paints & Stains), entity names (for example, Olympic Medical Corp.), place names (for example, the Greek town of Olympia, the Olympic National Park in the U.S.) or even ship names (for example, RMS Olympic). In fact, several organizations - both for profit and non-profit - having their business and establishment in Ancient Olympia Greece, expressed their great concern about the potential impact the GNSO Drafting Team’s proposed recommendations may have upon the communities within Ancient Olympia and Greece in general. Therefore, ALAC believes that any prohibition on the use of the Olympic names and words similar to “Olympic”, especially at the second domain level, may infringe upon a great number of legitimate users’ right to use these terms.

D. Impact on International Organizations generally.

The concerns related to the risk of trademark infringement in new gTLDs are not unique to IGOs and INGOs, and have been also expressed by for-profit international organizations and multinational corporations. Indeed, ICANN continues to receive correspondence in support of reexamining the rights protection mechanism for all trademark holders, as they are perceived to be impacted in a manner similar to IGOs. Staff recommends that the GNSO Council consider revisiting the issue of the adequacy of trademark protections in new gTLDs through a separate PDP or other implementation related process.

Many rights holders outside of IGOs, the RCRC and IOC have expressed concern that additional protections to protect trademark owners at the second level of new gTLDs are necessary in order to address the perceived need for defensive registrations at the second level. A group of 27 brand owners and several industry associations stated in a 28 August 2012 letter to U.S. Dept. of Commerce Assistant Secretary for Communication and Information Lawrence Strickling that “ICANN’s receipt of over 1900 applications for over 1400 unique gTLD strings, and the associated expected scope of defensive second-level registrations in these gTLDs, warrant” additional protections.²⁹ Earlier this year the community utilized a public comment forum on defensive registrations at the top level in new gTLDs to express deeper concerns at the second level. The Report on Public Comments noted that: “A number of comments indicated that concerns about defensive registrations at the second level were more significant than top-level issues.”³⁰

²⁹ Brand Owner Summit Letter to Assistant Secretary Strickling and Undersecretary Kappos:
<http://domainincite.com/docs/Brand-Owner-Summit-Letter-to-Strickling-and-Kappos-August28-2012.pdf>

³⁰ Public Comment Summary Report on Defensive Applications in New gTLDs:
<http://www.icann.org/en/news/public-comment/report-comments-new-gtlds-defensive-applications-14mar12-en.pdf>

Among the concerns is the cost involved with any necessity for defensive second-level registrations give the number of new gTLDs. This concern was highlighted in a letter from the Chairs of the U.S. Senate and House Judiciary Committees to ICANN Interim CEO and President Atallah: “A further rights protection mechanism ICANN highlights is the availability of a ‘sunrise period’ when certain trademark holders may reserve names in a new gTLD before it opens. Some are concerned that registries may use strategic pricing to take advantage of businesses and individuals who feel compelled to defensively register their names.”³¹

The impact on international organizations generally include the costs of registering strings in gTLDs that correspond to their trademarks solely for the purpose of preventing cybersquatters from registering and using those strings in an infringing manner. For example, a recently completed survey among corporations revealed that over 90% of corporate portfolios consist of defensive registrations. Fifty-five percent of the respondents expressed concern that the new gTLDs will create opportunities for brand harm or confusion, while over 50% stated that their online policing efforts will need to increase.³²

This issue continues to be debated in the ICANN community, including at a recent event hosted by Melbourne IT entitled “*Trademarks and New GTLDs: Minimizing the Need for Defensive Registrations at the Second Level of New Generic Top Level Domains.*” In advance of this event, Melbourne IT published a proposal entitled “Minimizing Harm” for high at-risk marks, as a proposed solution to the need for defensive registrations.³³ Given this interest in the ICANN community, the GNSO Council should consider whether

³¹ Letter from Senate and House Judiciary Chairmen to Akram Atallah:

<http://www.icann.org/en/news/correspondence/leahy-et-al-to-atallah-07aug12-en.pdf>

³² MarkMonitor Survey of Corporate Client Base reported blog:

<https://www.markmonitor.com/mmblog/top-level-domain-survey-findings-not-surprising-but-still-concerning/>

³³ For more information on the issue and the proposed solution, see http://www.melbourneit.info/news-centre/Releases/Minimizing_HARM_Aug_2012.pdf

it would be appropriate to address the issue of trademark holders generally, in another GNSO process, such as another PDP or implantation type effort, that would be separate from any PDP resulting from this Issue Report.

VII. Issues to Explore in a PDP

In light of the Board Request for policy advice on whether IGOs should be afforded the same special protections as provided for the RCRC and IOC at either the top level and/or second level, Staff suggests that a PDP, if initiated, should consider the following issues to help determine such policy advice.

A. Definition of “International Organizations”

The GNSO Council requested that this Issue Report address the protection of names of “international organizations.” Although there is no universal definition, Wikipedia defines “International Organizations” as an organization with an international membership, scope, or presence.

According to Wikipedia, there are two main types:

“International nongovernmental organizations (INGOs): non-government organizations that operate internationally. There are two types:

1. International non-profit organizations. Examples include the World Organization of the Scout Movement, International Committee of the Red Cross and Médecins Sans Frontières.
2. International corporations, referred to as multinational corporations. Examples include The Coca-Cola Company and Toyota.

Intergovernmental organizations, also known as international governmental organizations (IGOs): the type of organization most closely associated with the term 'international organization', these are organizations that are made up primarily of sovereign states (referred to as member states). Notable examples include the United Nations (UN), Organization for Security and Co-operation in

Europe (OSCE), Council of Europe (CoE), European Union (EU; which is a prime example of a supranational organization), and World Trade Organization (WTO).

In determining the scope for this PDP, the GNSO Council should clarify which of these definitions (or any other) should apply to the term ‘international organization’ in the context of the PDP.

B. Quantifying the Entities to be Considered For Special Protection

In evaluating whether to grant special protections to all or a subset of “international organizations,” research should be conducted to quantify the number of potential entities that could benefit from any new policies in this regard. Specifically, the PDP Working Group should seek to identify how many International Organizations, IGOs, INGOs, or other applicable subsets exist, and whether creating a policy that benefits these groups will adversely affect other legitimate applicants and domain-name registrants.

For example, limited research on this topic reveals that, according to the Union of International Associations,³⁴ the number of IGOs alone may exceed 5,000 entities, while the number of active non-profit non-governmental entities exceeds 35,000 entities.³⁵

C. Scope of Protections under International Treaties/Laws for RCRC/IOC Names

In its correspondence dated 14 September 2011, the GAC lists various treaties in its rationale for its support of special protections of specific RCRC and IOC names. In

³⁴ The Union of International Associations (UIA) is a research institute and documentation centre, based in Brussels. Non-profit, apolitical, independent, and non-governmental in nature, the UIA has been a pioneer in the research, monitoring and provision of information on international organizations, international associations and their global challenges since 1907. The UIA is best known for the Yearbook of International Organizations, the Encyclopedia of World Problems and Human Potential, the International Congress Calendar, and its former journal Transnational Associations. The compilation of the *Yearbook* by the UIA has received the full approval and support of the Economic and Social Council of the United Nations. For more information, see: <http://www.uia.be/yearbook>.

³⁵ See: <http://www.uia.be/yearbook-international-organizations-online>.

addition, both the RCRC and the IOC have submitted documentation to the IOC-RC Drafting Team in support of special treatment of their names.

Should the GNSO Council initiate a PDP on this topic, Staff recommends that the breadth and scope of protections granted under these treaties and international laws should be further evaluated.

For example, the Olympic symbol is specifically protected by the Nairobi Treaty on the Protection of the Olympic Symbol;³⁶ Article 1 of the Treaty provides that,

Any State party to this Treaty shall be obliged, subject to Articles 2 and 3, to refuse or to invalidate the registration as a mark and to prohibit by appropriate measures the use, as a mark or other sign, for commercial purposes, of any sign consisting of or containing the Olympic symbol, as defined in the Charter of the International Olympic Committee, except with the authorization of the International Olympic Committee. The said definition and the graphic representation of the said symbol are reproduced in the Annex.

Over 80 countries have signed the Nairobi Treaty, among which 31 countries have enacted laws to protect the Olympic emblems and names.³⁷ Although the Nairobi Treaty only provides protection to the Olympic Symbol, the PDP-WG should evaluate whether protection should nevertheless be extended to certain Olympic names, which may serve the same identifying function or have the same indicative value as the protected symbol.

Staff notes that protection of certain IOC terms exists under some national laws with regard to certain Olympic-related words. The practice among some Treaty Member States in protecting the Olympic symbol and names as inclusive of each other may demonstrate state recognition of the indicative value of the Olympic names and that

³⁶ WIPO Nairobi Treaty Protection of the Olympic Symbol, September 26, 1981 at http://www.wipo.int/treaties/en/ip/nairobi/trtdocs_wo018.html

³⁷ See Schedule B in GAC proposal to protect Red Cross and IOC names at: <https://gacweb.icann.org/download/attachments/1540128/GAC+advice+on+IOC+and+Red+Cross+Sep.+2011.pdf?version=1&modificationDate=1317031625914>

state's belief in the necessity of protecting the Olympic names in order to maintain the integrity and reputation of the Olympic organizations. The IGO commentators disagree with this extension of the scope of the Nairobi Treaty to cover not only the Olympic symbol, but also the Olympic names.

For example, a cursory review of the U.S. law³⁸ cited by the GAC reveals that the U.S. Olympic Committee appears to be granted *limited* exclusive rights, with certain exceptions, to the use of the following words: "United States Olympic Committee", "Olympic", "Olympiad", "Citius Altius Fortius", "Paralympic", "Paralympiad", "Pan-American", "America Espirito Sport Fraternalite", or any combination of those words.

The exceptions to the exclusivity under U.S. law identifies certain legitimate uses of these words by parties other than the IOC, including certain pre-existing uses of these words and certain geographic reference rights to the use of the word "Olympic" as a trademark for businesses, goods and services related to the naturally occurring mountains or geographical region in the State of Washington.³⁹ Staff recommends that

³⁸ See the Ted Stevens Olympic and Amateur Sports Act. 36 U.S.C. 220501 et seq. (September 21, 1950, posted at: <http://uscode.house.gov/download/pls/36C2205.txt>, which provides:

(a) Exclusive Right of Corporation. - Except as provided in subsection (d) of this section, the corporation has the exclusive right to use -

(1) the name "United States Olympic Committee";

(2) the symbol of the International Olympic Committee, consisting of 5 interlocking rings, the symbol of the International Paralympics Committee, consisting of 3 TaiGeuks, or the symbol of the Pan-American Sports Organization, consisting of a torch surrounded by concentric rings;

(3) the emblem of the corporation, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with 5 interlocking rings displayed on the chief; and

(4) the words "Olympic", "Olympiad", "Citius Altius Fortius", "Paralympic", "Paralympiad", "Pan-American", "America Espirito Sport Fraternalite", or any combination of those words.

³⁹ The exception under U.S. law provides states:

"d) Pre-Existing and Geographic Reference Rights. - (1) A person who actually used the emblem described in subsection (a)(3) of this section, or the words or any combination of the words described in subsection (a)(4) of this section, for any lawful purpose before September 21, 1950, is not prohibited by this section from continuing the lawful use for the same purpose and for the same goods or services.

(2) A person who actually used, or whose assignor actually used, the words or any combination of the words described in subsection

(a)(4) of this section, or a trademark, trade name, sign, symbol, or insignia described in subsection (c)(4) of this section, for any lawful purpose before September 21, 1950, is not prohibited by this section from continuing the lawful use for the same purpose and for the same goods or services.

the PDP Working Group explore exceptions such as these that exist under current laws, as this may inform the policy development on ways to reduce impact on legitimate uses of these terms.

Protection of the RCRC emblems and names has long been recognized by the international community. With regard to the Red Cross names, the Geneva Convention specifies protections related to the Red Cross, Red Crescent, Red Crystal, and Red Lion and Sun emblems, and the use of the words "Red Cross" and "Geneva Cross." Articles 38, 44, 53, and 54 of the Treaties of the Geneva Conventions provide that,⁴⁰

Article 38: " As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the Medical Service of armed forces. Nevertheless, in the case of countries which already use as emblem, *in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.* "

Article 44: With the exception of the cases mentioned in the following paragraphs of the present Article, *the emblem of the Red Cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters.* The same shall apply to the emblems mentioned in Article 38, second paragraph, in respect of the countries which use them. The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

(3) Use of the word "Olympic" to identify a business or goods or services is permitted by this section where - (A) such use is not combined with any of the intellectual properties referenced in subsection (a) or (c) of this section; B) it is evident from the circumstances that such use of the word "Olympic" refers to the naturally occurring mountains or geographical region of the same name that were named prior to February 6, 1998, and not to the corporation or any Olympic activity; and (C) such business, goods, or services are operated, sold, and marketed in the State of Washington west of the Cascade Mountain range and operations, sales, and marketing outside of this area are not substantial."

⁴⁰ Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention No.I), Aug. 12, 1949, 6 UST 3114, TIAS No.3362, 75 UNTS 31.

Article 53: The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation 'Red Cross' or 'Geneva Cross' or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.

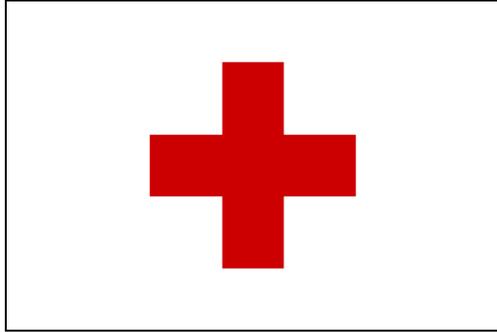
Article 54: The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

The Treaties of the Geneva Conventions have been ratified by 194 countries.⁴¹ In addition, the Red Cross emblems and names are protected by national law in multiple jurisdictions.⁴² Although the words “Red Crescent” “Red Crystal” and “Red Lion and Sun” are not universally protected under the Geneva Convention, they are offered protections in countries that recognize those words.

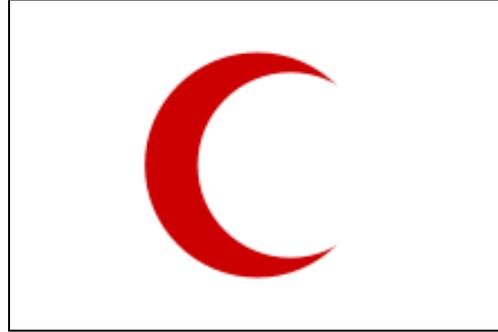
The IGO commentators also contest this suggestion that the mere fact that the Red Crescent, Red Crystal and Red Lion and Sun are offered protections in countries that recognize those terms is sufficient to justify their protection in new gTLDs, because in their view, these terms are not universally protected under the Geneva Convention. In this regard, they point out that “national recognition does not equate to treaty protection and should not be considered as a substitute thereof.”

⁴¹ <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>

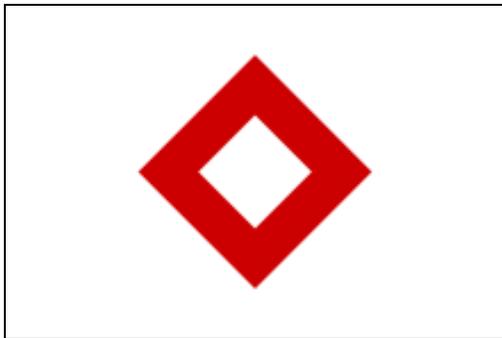
⁴² See Schedule B in GAC proposal to protect Red Cross and IOC names at: <https://gacweb.icann.org/download/attachments/1540128/GAC+advice+on+IOC+and+Red+Cross+Sep.+2011.pdf?version=1&modificationDate=1317031625914>



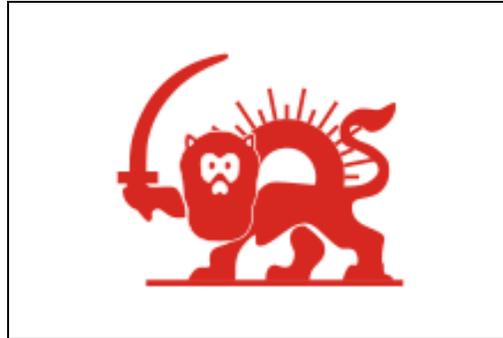
Red Cross Emblem



Red Crescent Emblem



Red Crystal Emblem



Red Lion and Sun Emblem

In addition, national legislation, such as in the United States,⁴³ specifies penalties for using the Red Cross emblem except for the American Red Cross, the sanitary and hospital authorities of the Armed Forces, and those uses which were lawful on the date the law was enacted. Examples of such prior use include Johnson & Johnson's (J&J) trademark of the Red Cross emblem on its products, which J&J asserts were not invalidated by the U.S. statute. According to a statement filed by J&J in connection with its lawsuit filed against the American Red Cross,

⁴³ <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title18/html/USCODE-2010-title18-part1-chap33-sec706.htm>

“J&J began using the Red Cross design and “Red Cross” word trademarks in 1887, predating the formation of the American Red Cross. The Company has had exclusive rights to use the Red Cross trademark on commercial products within its longstanding product categories for over 100 years.”⁴⁴

These examples highlight the need for a PDP to fully examine the legal basis for extending special protections for the RCRC/IOC, specifically, and, possibly a broader group of international organizations, to include IGOS, and INGOs, should the working group propose to broaden the scope of the already existing protections in the AGB.

D. Scope of Protections under International Treaties/Laws for IGO Names

With regard to existing legal protections for IGO names and acronyms, the IGO Common Paper addresses the criteria utilized by the GAC to recommend special protection for the RCRC and IOC names: (1) the names are protected by international treaty; and (2) the names are also protected by domestic laws in multiple jurisdictions; by providing information which IGOs believe meet these two criteria established by the GAC.

Specifically, the IGO Common Paper notes that the GAC and ICANN acknowledge that IGO names and acronyms enjoy treaty protection under Article 6^{ter} of The Paris Convention for Protection of Industrial Property, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the Trademark Law Treaty. The substantive basis upon which the IGOs believe their names and acronyms are protected by international treaty is provided in the provisions of Article 6^{ter} of the Paris Convention:

Marks: *Prohibitions concerning State Emblems, Official Hallmarks, and Emblems of Intergovernmental Organizations*

(1)

(a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the

⁴⁴http://www.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20070808006213&newsLang=en

competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of [subparagraph \(a\)](#), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.

However, Article 6ter also limits the scope of protection for IGO names and acronyms:

(1)

(c) No country of the Union shall be required to apply the provisions of [subparagraph \(b\)](#), above, to the prejudice of the owners of rights acquired in good faith before the entry into force, in that country, of this Convention. The countries of the Union shall not be required to apply the said provisions when the use or registration referred to in [subparagraph \(a\)](#), above, is not of such a nature as to suggest to the public that a connection exists between the organization concerned and the armorial bearings, flags, emblems, abbreviations, and names, or if such use or registration is probably not of such a nature as to mislead the public as to the existence of a connection between the user and the organization.

(2) Prohibition of the use of official signs and hallmarks indicating control and warranty shall apply solely in cases where the marks in which they are incorporated are intended to be used on goods of the same or a similar kind.

(3)

(a) For the application of these provisions, the countries of the Union agree to communicate reciprocally, through the intermediary of the International Bureau, the list of State emblems, and official signs and hallmarks indicating control and warranty, which they desire, or may hereafter desire, to place wholly or within certain limits under the protection of this Article, and all subsequent modifications of such list. Each country of the Union shall in due course make

available to the public the lists so communicated. Nevertheless such communication is not obligatory in respect of flags of States.

(b) The provisions of [subparagraph \(b\) of paragraph \(1\)](#) of this Article shall apply only to such armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations as the latter have communicated to the countries of the Union through the intermediary of the International Bureau.

In addition, the IGO Common Paper states its position that the second criteria that the names are protected by domestic law in multiple jurisdictions is also met, because “it is safe to assume that States respect their treaty obligations, so as 181 States have undertaken by treaty to protect the names, acronyms and emblems of IGOs, then these are protected in 181 States.” As further support for their position, the IGOs submitted as an Appendix to the IGO Common Paper a non-exhaustive list of specific national laws which demonstrate that at least 130 national laws expressly protect IGO names and acronyms.⁴⁵

As with the claimed protections for RCRC and IOC names, Staff recommends that the breadth and scope of protections granted to IGO names under these treaties and international laws should be evaluated should the GNSO Council initiate a PDP on this topic.

E. Distinguishing between the RCRC/IOC From Other International Organizations

IGOs assert that they should be afforded the same special protections provided for the RCRC and IOC at the top and second levels. The IGOs also claim that given they are recognized to have the capacity to enter into agreements with states and also amongst themselves under the 1986 Vienna Convention, they should be treated to have the same legal status as states, which implicates a right to exclusive use of its names for top level and second level domain names.

⁴⁵ <http://forum.icann.org/lists/prelim-protection-io-names/pdfD51IIsBKIL.pdf>

Given the Board request to provide policy advice as to whether IGOs should be provided special protections at the top level and/or second level, Staff suggests that a PDP would need to consider whether IGOs or other international organizations are distinguishable from the RCRC and IOC which were afforded special protections at the top level at least for the initial round of new gTLD applications.

A preliminary comparison of IGOs with the RCRC and IOC demonstrates some basic similarities and differences between them:

Similarities:

(1) Certain IGOs, for example, the United Nations, have the same level of international influence and reputation as the Red Cross Movement and the Olympic Movement.

(2) Although the IGOs are established to serve different functions and objectives, they are all non-profit entities for public interest purposes and can be easily distinguished from corporations in this aspect.

(3) Some IGOs, especially the well-known ones, to a greater or lesser extent, have had their names misused or abused in domain names.

Differences:

(1) There are specific treaties to protect the Red Cross emblems and names and to protect the Olympic Symbol, but, according to the GAC, no other entities have similar treaty and national law protections in multiple jurisdictions. As noted above in Section VI.D, the IGOs have submitted information demonstrating/supporting their argument that IGOs actually do in fact meet this GAC criteria. It will be useful for the PDP Working Group to independently confirm whether any other entities have similar treaty & multi-national-type protections.

(2) The IGO names have different levels of international recognition, depending on how long the IGO has been in existence; the number of its member states; how frequently its symbols and names are utilized in public media; and the number of countries in which it has offices and operations. Many IGOs have a much lower level of international recognition than the Red Cross Movement and the Olympic Movement.

F. Criteria Under Which International Organizations Qualify for Special Protection

Given the number of entities that qualify as IGOs as well as INGOs and which may request special protections at the top level of new gTLDs and/or the second level, the potential for case-by-case reviews by the GNSO to extend special protections would be overwhelming. A PDP, if initiated, should consider establishing a set of objective criteria that would determine whether an international organization would qualify for special protection. Such criteria could include, but not be limited to:

1. **GAC Proposal:** the criteria that the GAC established for proposing special protection for the RCRC and IOC, i.e. non-profit, humanitarian organizations whose names are currently protected by existing international treaties and national laws in multiple jurisdictions.

2. **.INT Criteria: the criteria for an international organization to register a .INT domain name:**
 - 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;

3. Staff Proposal in Preliminary Issue Report:

- a. the duration of an international organization's existence;
- b. the number of member states in the international organization;
- c. how frequently its symbols and names are utilized in public media;
- d. the number of countries in which the international organization has offices and operations.

With regard to the Staff proposal, the IGO Commentators believe that the specific criteria for the duration of an organization's existence, the number of its member states, the number of countries in which the organization has offices and operations and the frequency at which its symbols and names are utilized in public media "would be near impossible to set a fair and objective standard and would be complicated and inefficient to implement." The IGO Commentators also noted that the relevance of popular recognition through the public media has never been considered for statutory protection of IGO names and acronyms under international treaties or even national jurisdictions. The IGO Commentators raised a concern that the acceptance of these criteria in conjunction with the GAC criteria "would surely lead to subjective value judgments which run completely counter to established principles and rules of international law" with regard to the protection of IGO names and acronyms, "not to mention similar subjective considerations on the 'humanitarian' character of IGOs.

In response, the IGO Commentators proposed the following alternative criteria to be considered:

4. IGO Commentator Proposal:

- 1) the status of the organizations under public international law;
- 2) privileges and immunities enjoyed by the organizations;

- 3) the principle source of financing for those organizations;
- 4) the protection of common goods including market principles, the rule of law, and freedom of expression.

5. Staff Singapore Proposal:

The Board Workshop Paper in support of the Singapore Resolution included the following set of criteria:

- The Movement or Organization requesting that one or more of its Intellectual Properties (“Properties”) be placed on the Reserved Names list must have been well established long before (such as 50 or 100 years) the new gTLD policy was adopted by the Board on 26 June 2008.
- The names are widely recognized and closely associated with the Movement or Organization.
- One or more Properties of the Movement or Organization must be protected by legislation in at least 30 countries, on at least four continents.
- One or more Properties of the Movement or Organization must be protected by one or more treaties adopted by at least 60 countries.
- The Movement or Organization must be a non-profit institution (or the equivalent) operating in the public interest and the reservations of names must serve the public interest.
- GAC advice must have been received indicating the GAC’s strong support for the Movement’s or Organization’s request to have one or more of its Properties placed on a Reserved Names list.

VIII. STAFF RECOMMENDATION

Scope

In determining whether the issue is within the scope of the ICANN policy process and the scope of the GNSO, staff and the General Counsel's office have considered the following factors:

Whether the issue is within the scope of ICANN's mission statement

The ICANN Bylaws state that:

“The mission of The Internet Corporation for Assigned Names and Numbers ("ICANN") is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of the Internet's unique identifier systems. In particular, ICANN:

1. Coordinates the allocation and assignment of the three sets of unique identifiers for the Internet, which are
 - a. domain names (forming a system referred to as "DNS");
 - b. Internet protocol ("IP") addresses and autonomous system ("AS") numbers; and,
 - c. protocol port and parameter numbers.
2. Coordinates the operation and evolution of the DNS root name server system.
3. Coordinates policy development reasonably and appropriately related to these technical functions.”

Evaluating whether to grant additional protections in new gTLDs to international organizations is within the scope of ICANN's mission in that the proposed policy is reasonably and appropriately related to the technical function relating to the manner in which domain names are allocated.

Whether the issue is broadly applicable to multiple situations or organizations.

The issue is broadly applicable to all international organizations (including, IGOs, INGOs, and for-profit international organizations) that have names that could receive the benefit of additional rights protection mechanisms in the New gTLD Program.

Whether the issue is likely to have lasting value or applicability, albeit with the need for occasional updates

The resolution of this issue is likely to have lasting value or applicability with respect to any new TLDs approved in the New gTLD Program and second level domains.

Whether the issue will establish a guide or framework for future decision-making

Any policy developed on this issue will serve as a guide or framework for future decision-making for those international organizations that are similarly situated.

Whether the issue implicates or affects an existing ICANN policy

The issue directly implicates the implementation of the New gTLD Program, which resulted from a series of policy recommendations developed by the GNSO Council and approved by the ICANN Board. Specifically, the PDP work may re-evaluate the following GNSO Council Policy recommendations as described in the Final Report on the introduction of new gTLDs:⁴⁶

⁴⁶ The GNSO's Final Report on the Introduction of New Generic Top Level Domains dated 8 August 2007 is posted at: <http://gns0.icann.org/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

No. 2: Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.

No. 3: Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.

No. 5: Strings must not be a Reserved Word. This recommendation is accompanied by a footnote stating: “Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.”

Although the GNSO Council initially suggested a more limited scope of inquiry, the issue could reasonably be expanded if the GNSO Council chooses to include an analysis of protections for International Organization in existing gTLDs in addition to new gTLDs, since the problems faced by international organizations are not unique to the New gTLD program, and may be more prevalent due to the internet traffic associated with certain gTLDs. Indeed, it unclear why the GNSO Council would not consider the merits of addressing the issue holistically (including new and existing gTLDs) in any PDP emerging from this effort, since policies are usually intended to apply across the board to all TLDs. Should the GNSO Council adopt this approach, the PDP could evaluate whether to “grandfather” existing registrations that might otherwise be affected by a policy emerging from the PDP.

Recommended action

ICANN Staff has confirmed that the question of whether to provide special protections for the names of international organizations at the top level and second level of new gTLDs are within the scope of the ICANN policy process and the GNSO.

Currently there is a moratorium on the use of Red Cross and IOC names at the top level of new gTLDs during the initial round only; and there is no protection afforded to these names at the second level. Initiating a PDP at this time is recommended in light of the pending request of the ICANN Board to the GNSO Council for policy advice on whether

to provide additional special protections for the Red Cross and IOC names at the top and/or second levels and whether to provide similar special protections to IGOs, and the recent interest in second level protections, as highlighted in the Defensive Registrations Briefing Paper requested by the ICANN Board⁴⁷. In addition, in the absence of policy advice from the GNSO Council, the current moratorium on the use of the Red Cross and IOC names at the top level is set to expire for any subsequent application rounds.

The level of public comments submitted with regard to this issue as described in this Final Issue Report as well as the number of submissions from various organizations reflects the significant attention being focused on this issue by the Board, the GAC and members of the ICANN Community. These comments highlight the complexity and breadth of the considerations involved in determining whether additional protections for certain international organization names are necessary.

Given these circumstances, it is recommended that the GNSO Council initiate a PDP to determine: (i) whether there is a need for special protections for certain international organizations including, IGOs, INGOs receiving protections under treaties and statutes under multiple jurisdictions, the Red Cross/Red Crescent Movement and the IOC at the top and second level in new gTLDs, and (ii) if so, to develop recommendations for such protections. It is also recommended that in structuring the PDP, the GNSO Council: (1) formally invite the representatives of IGOs, the Red Cross/Red Crescent Movement and IOC to participate in the PDP Working Group; and (2) consider expanding the scope of any additional protections for IGO names and acronyms developed for the top and second levels in new gTLDs to existing gTLDs.

⁴⁷ The Defensive Registrations Briefing Paper is posted at: <http://gnso.icann.org/en/node/32287>

IX. Conclusion and Next Steps

Staff recommends that the GNSO Council initiate a PDP on an expedited basis to evaluate the need for additional protections for: (i) the names and acronyms of certain types of international organizations in new gTLDs, namely IGOs, and INGOs that also have been afforded protections under international treaties and national laws in multiple jurisdictions, and (ii) possibly expand the scope of approaches to address the needs for such protections in both new and existing gTLDs.

It may be beneficial for the GNSO to review its existing projects to determine if there should be a prioritization of pending activities in order to enable this work to be performed as expeditiously as possible. Ideally, the GNSO Council should strive to adopt a timeline of PDP deliverables to produce recommendations that could be acted upon by the ICANN Board's requested deadline of 31 January 2013. Specifically, the GNSO Council should strive to adopt a work plan 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.

Upon consideration of this Final Issue Report, the GNSO Council is expected to vote on whether to initiate a PDP on this topic, as well as the scope of any resulting PDP.

Annex 1- GNSO Council Resolution on 12 April 2012

Motion to request an Issue Report on the protection of names and acronyms of IGOs

Whereas on September 7, 2007 the GNSO Council approved by supermajority vote a PDP on new gTLDs with a number of recommendations, none of which afforded special protection to specific applicants;

Whereas the GNSO Council passed a resolution approving new protections for the first round of the new gTLD program as recommended by the GNSO's International Olympic Committee (IOC) and Red Cross/Red Crescent (RC) Drafting Team;

Whereas this resolution indicated that further discussions were required on associated policies relating to protections for certain international organizations at the second level, if any;

Whereas comments have been received coincident with the motion that included requests from international governmental organizations requesting the same protective rights as those for the IOC/RCRC for the current and future rounds of the new gTLD program;

And whereas various possible criteria for the grant of protective rights to such organizations was suggested at the ICANN meeting in Costa Rica.

Now therefore be it resolved,

The GNSO Council requests an issue report to precede the possibility of a PDP that covers the following issues:

- Definition of the type of organizations that should receive special protection at the top and second level, if any; and
- Policies required to protect such organizations at the top and second level.

Annex 2- Excerpts of Board Resolutions Pertaining to the IOC and the RCRC

From the Singapore Meeting:

- E. Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD program which includes the following elements:
- a. the 30 May 2011 version of the Applicant Guidebook [<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>](http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm), subject to the revisions agreed to with the GAC on 19 June 2011, including: (a) deletion of text in Module 3 concerning GAC advice to remove references indicating that future Early Warnings or Advice must contain particular information or take specified forms; (b) 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.....

From New gTLD Committee on 13 September 2012:

Whereas, the GAC Communiqué issued in Prague states that the GAC, "requires further clarification as to the status of its pending request for enhanced protections for the [International Olympic Committee] and Red Cross/Red Crescent names at the top and second levels, ..."

Whereas, earlier GAC letters of 11 June 2011 and 12 April 2012 expressed the same advice that "the IOC and Red Cross and Red Crescent [names] should be protected at the first and second top levels, given that these organizations enjoy protection at both the international level through international treaties (e.g. the Nairobi Treaty and the Geneva Conventions) and through national laws in multiple jurisdictions. The GAC considers the existence of such two-tiered protection as creating the criteria relevant to determining whether any other entities should be afforded comparable enhanced protection."

Whereas, the GNSO is actively engaged in policy discussion regarding second-level protections for the IOC and Red Cross/Red Crescent names, and has convened a drafting team that is

working on this issue, and is further considering initiating a PDP on the broader issue of whether to protect the names of international organizations in new gTLDs.

Whereas, protections for the IOC and Red Cross/Red Crescent names at the top-level are in place for the current round of new gTLDs.

Whereas, the protections for the second level, if they are provided and if they are to be effective, should be in place before the delegation of the first new gTLDs.

Whereas, the Board favors a conservative approach, that restrictions on second-level registration can be lifted at a later time, but restrictions cannot be applied retroactively after domain names are registered.

Resolved, the Board thanks the GNSO for its continued attention and ongoing work on this topic, and requests that the GNSO continue its work on a policy recommendation on second-level protections for the IOC and Red Cross/Red Crescent names on an expedited basis.

Resolved (NG2012.09.13.01), if it is not possible to conclude the policy work prior to 31 January 2013, the Board requests that the GNSO Council advise the Board by no later than that date if it is aware of any reason, such as concerns with the global public interest or the security or stability of the DNS, that the Board should take into account in making its decision about whether to include second level protections for the IOC and Red Cross/Red Crescent names listed in section 2.2.1.2.3 of the Applicant Guidebook by inclusion on a Reserved Names List applicable in all new gTLD registries approved in the first round of the New gTLD Program.

Annex 3- GNSO Council Resolution on 23 March 2012

20120326-1

Motion to recommend to the Board a solution to protect certain Red Cross/Red Crescent (RCRC) and International Olympic Committee (IOC) names at the Top Level in New gTLDs

Whereas, the Board Resolution 2011.06.20.01, authorized “the President and CEO to implement the new gTLD program which includes . . . 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, . . .”

(<http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm>)

Whereas, the IOC/RC Drafting Team established by the GNSO Council has considered a number of different options with respect to protections of both the IOC and the RCRC terms at the top level and has proposed a solution to modify the ICANN staff’s implementation of the Board Resolution as reflected in the Applicant Guidebook dated January 12, 2012 (<http://newgtlds.icann.org/en/applicants/agb>);

Whereas, the IOC/RC Drafting Team has collaborated with the Government Advisory Committee (GAC) during its deliberations in an attempt to identify a solution that addresses GAC concerns;

Whereas, this proposed solution was posted for public comment on 2 March 2012 on an expedited basis as a matter of urgency in order to enable the Board to consider its adoption for the first round of new gTLD applications, which is scheduled to close on 12 April 2012;

Whereas, the GNSO is mindful that implementation of the Board’s resolution is needed to be available before the end of the Application Window;

Whereas, the GNSO intends that these recommendations be solely limited to the IOC and RCRC;

Whereas, the GNSO recognizes that there might be a policy impact of the protection for the IOC/RCRC for future rounds and at the second level; and

Whereas, therefore, the IOC/RC Drafting Team recommends that the GNSO Council adopt this proposed solution as a recommendation for Board consideration and adoption at its meeting in Costa Rica for the application period for the first round of new gTLD applications’.

NOW THEREFORE, BE IT:

Resolved, that the GNSO Council adopts the following three recommendations of the IOC/RC Drafting Team:

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.” The Drafting Team recommends that at the top level for this initial round, the list of languages currently provided in Section 2.2.1.2.3 of the Applicant Guidebook are sufficient.

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 must be reviewed after the first round and that review should include consideration of changing the language to general requirements rather than naming specific organizations.

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. The Drafting Team recognizes that permanently granting protection to the IOC and RCRC may have policy implications that require more work and consultation so that protections may be reviewed.

Resolved, that the GNSO submits this proposed solution for Board consideration and adoption at its next meeting as a recommended solution to implement Board Resolution 2011.06.20.01 for implementation in the first round of new gTLD applications.

Annex 4 - Submissions by RCRC and IOC in Response to GNSO IOC/RC Drafting Team Questions

Issue: Proposal for protection of red cross and red crescent names at second level

Questions and answers

Submitted by International Committee of the Red Cross
17 April 2012

1. Introduction

On behalf of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the American Red Cross (collectively, the “Red Cross/Red Crescent”), the purpose of the present document is to provide some elements of response to the questions put by the Drafting Team’s pertaining to the protection of the red cross, red crescent and red crystal denominations and related names from registration as Second Level Domain names.

We take note with regret of ICANN’s recent Board decision of 10 April to maintain the Applicant Guidebook unchanged, and thus despite the GNSO’s recommendation to extend the protection of the Red Cross/Red Crescent names in new gTLD’s. We nevertheless hope that the recommendation by the GNSO for the reaffirmation and extension of the current moratorium on the registration of the red cross and red crescent names and related denominations (hereafter “designations”) will be endorsed in the nearest future and thus in due consideration for the global public interest which the protection of these denominations constitutes.

2. What is the legal justification and rationale for the protective regime due to the designations?

Reference is made herewith to the GNSO Council Board Resolution adopted in Singapore on 20 June 2011, as well as to the advisory memorandum submitted by the Chair of the Government Advisory Committee to the Chairman of the GNSO Council on 14 September 2011, which provides a thorough analysis of the legal protections awarded to the designations under international humanitarian law and under the domestic law of a wide number of countries.

The GAC memorandum also included the recommendation that the new gTLD Registry Agreement add a new schedule of second level reserved names. The following speaks to the current proposals and options put forward to the Drafting Team pertaining to

second level gTLDs. It is indeed felt that the legal and policy considerations defining the protection of the designations under international humanitarian law should be made to extend this regime to the second level and that the denominations should be designated in the future as reserved or "forbidden" names at the second level in all new gTLD's. The Red Cross/Red Crescent looks forward to actively participating in this important discussion.

As highlighted in our past communications to the Drafting Team, practice shows that misuse of the red cross/red crescent designations is not a theoretical question and that misuse or fraudulent use of the denominations is common occurrence, and thus sometimes with adverse consequences to the image and humanitarian operations of the International Red Cross and Red Crescent Movement and its respective components in the field. Practice shows that such instances often occur on the internet at the second level for ccTLDs as well as existing gTLDs and that this poses a significant burden on the Red Cross/Red Crescent to address and put a stop to such abuses.

While the proposal set forth by the Drafting Team relates to both the IOC and Red Cross and Red Crescent names, the following relates only to the Red Cross/Red Crescent designations (i.e., red cross, red crescent, red crystal, red lion and sun, Magen David Adom).

3. *What is the primary function of the red cross/red crescent designations ?*

The protection awarded to the designations of the Red Cross/Red Crescent finds its legal foundations in universally ratified international treaties – namely the 1949 Geneva Conventions, today ratified by 194 States. These distinctive designations sit at the very heart of international humanitarian law and the protection of victims of war. The emblems enjoy two distinct purposes:

- to serve as the emblem of protection of the medical services of armed forces on the battlefield;
- to serve as the emblem of identification of the respective components of the International Red Cross and Red Crescent Movement.

It is therefore logical that States in the GAC are today mobilised in order to uphold the protection of those designations. If one were to refer here to language of the gTLD Applicant Guidebook, one could say that the global public interests at stake here rest primarily in a concern to uphold the protection of victims of war and of those caring for them on the battlefield. Any misuse or misrepresentation of those protected designations, or any imitations thereof, are liable due to the confusion they create within the community as well as in the minds of combatants on the battlefield, to undermine both the protection of victims and the access of the Red Cross and Red Crescent to situations of humanitarian crises and to affected communities.

The above carries the following two conclusions:

- the protection awarded to the red cross, red crescent or red crystal designations or related denominations does not result from any trademark protection or registration;

- due to the global public interest highlighted above, primary stakeholders are the States that are parties to the 1949 Geneva Conventions, which therefore carry under international humanitarian law the primary obligation and the responsibility to enforce the protection of the said denominations in their own domestic jurisdiction and legal orders - as shown by the GAC advisory note and the list of domestic laws in force in many jurisdictions worldwide.

The Red Cross / Red Crescent have of course a strong vested interest in upholding the protection of their designations, primarily as they are themselves entitled to display the designations and to use the latter for indicative purposes.

4. Besides those persons and services which may use the emblems and their denominations in their protective function, who else is entitled to use of the names of the red cross or the red crescent for indicative purposes?

The respective components of the International Movement of the Red Cross and Red Crescent Movement enjoy the entitlement under the 1949 Geneva Conventions to use the designations as a means of identification (this is referred to under international humanitarian law as the “indicative use” of the emblems and their names). Again, this indicative use flows from international law and not from a legal rights' argument, which would be grounded, for example, in domestic trademark laws.

As indicated above, the Red Cross/Red Crescent has a vested interest in ensuring the protection of the designations from all forms of misuse or misrepresentation. In this regard, it should be recalled:

- the role and mandates of the components of the International Red Cross and Red Crescent Movement (namely the International Committee of the Red Cross - ICRC, the International Federation of Red Cross and Red Crescent Societies and the 188 National Red Cross and Red Crescent Societies recognised within the Movement) are defined in international treaties and under the Statutes of the Movement (adopted by States on the occasion of the Movement's International Conference). These include a unique status and specific mandates to act in situations of crises, be they armed conflicts and other situations of violence, natural disasters and other humanitarian emergencies.
- the role and responsibilities devolved upon the components of the Red Cross and Red Crescent in support of their national authorities to monitor and to undertake appropriate *démarches* in the event of misuse of the emblems and their names in any all form, including on the internet, and thus, in support of public authorities. The ICRC enjoys in this respect a particular mandate as guardian or curator of international humanitarian law, including the latter's protective legal regime on the emblems and their denominations. National Red Cross and Red Crescent Societies, often with the support of the ICRC and the International Federation, enforce the protection of the emblems and the designations.
- as it is the case for the emblems of the red cross and red crescent themselves, the latter's denominations and designations must at all times be protected from

misuse or misrepresentations. Such misuses also represent risks of potential damage to the reputation and perception of the Red Cross/Red Crescent and to their operations in favour of vulnerable persons and communities affected by armed conflict, natural disasters and other humanitarian emergencies. Any misuse of the designations at any time erodes the respect that belligerents and civilians have for the Red Cross / Red Crescent, thus compromising its ability to fulfil their humanitarian mission. This is in particular the case if one considers that the red cross and red crescent emblems and their denominations are frequently the object of misuse by private companies on the internet, and thus often with malversative aims. To refer to the wording of the Applicant Guidebook, these are designations, which, in practice, are particularly vulnerable to internet fraud and abuse, as illustrated inter alia by the numerous instances of fraudulent use witnessed in recent humanitarian crises, such as the South-East Asian tsunami, the earthquake in Haiti or the tsunami and ensuing nuclear crisis which affected Japan last year.

Considering the distinct humanitarian roles and mandates of the respective components of the International Red Cross and Red Crescent Movement, preserving and protecting the red cross and red crescent denominations hence represents another central dimension of the global public interest that the protection of these names represents.

5. Are the denominations red cross and red crescent and related denominations particularly at risk of abuse on the internet and what is the practice of the respective components of the International Red Cross and Red Crescent Movement in addressing such instances ?

Under the Geneva Conventions of 1949 and their Additional protocols, States have clear obligations and enjoy the primary responsibility to prevent and repress the misuse of the red cross and red crescent names. In the implementation of these duties, Governments are generally assisted by the Red Cross and Red Crescent actors, which enjoy a statutory responsibility to act. Such a role is in particular devolved upon the ICRC in its role as guardian of international humanitarian law and to National Red Cross or Red Crescent Societies in support of their respective public authorities.

In accordance with international humanitarian law, the protection of the denominations must be implemented and instances of misuse repressed on the Internet as in any other context.

Practice in this regard demonstrates that the red cross, red crescent and red crystal denominations are frequently abused and that this is increasingly happening. Recent humanitarian crises of a global scope demonstrate the ease with which scams making use of the denominations for fraudulent aims can be set up.

The components of the International Movement of the Red Cross and Red Crescent frequently encounter instances of misuse and infringements of the denominations whether the use of e-mail addresses or domain names and are faced with the challenge of tackling such misuse in support of competent authorities.

While misuse or fraud on the Internet is typically perpetrated by people using e-mail addresses, the use of domain names is common. Such examples include:

- websites of organisations making use of the denominations without entitlement.

As an example of a recent instance of misuse we may cite the case of an Italian based organisation by the name "Garibaldi Red Cross". Due to the engagement of the said organisation in community projects in different countries around the globe (e.g. in Peru and other countries in South-America) and the risk of confusion between the said organisation and its activities and the local Red Cross or Red Crescent Societies in the countries concerned, a sustained strategy was developed to address the issue both in the countries concerned and in Italy, where the organisation is incorporated. The issue has not yet been settled despite sustained efforts on the part of the Italian Red Cross to put an end to this misuse and to convince the said organisation to opt for a different emblem and name. (<http://redcrossgaribaldi.org>).

- websites espousing a Red Cross or Red Crescent identity for fraudulent or malversative aims.

One among a range of very recent instances included for example an organisation claiming to be operating in various conflict theatres under the name "European Red Crescent", including of press reports of its activities in a number of Middle Eastern and African countries, and including a donation link. Subsequent efforts the Red Cross and Red Crescent to locate the organisation in the field or by the French Red Cross to contact the organisation at its alleged Paris Headquarters proved unsuccessful. The website of the "European Red Crescent" is today no longer accessible online (<http://www.croissant-rouge-européen.org>).

National Societies are hence frequently faced with instances of scam e-mails and websites, thus absorbing many resources in tracing perpetrators and achieving appropriate remedy – hence resources which could have otherwise reached the vulnerable persons and communities the Red Cross and Red Crescent is intended to serve. The American Red Cross is currently compiling illustrations of misuse on the Internet, which it has recently faced, including the approximate cost of filing and pursuing UDRP complaints or other enforcement actions to stop the abuse. Further data is also currently being collected from other National Red Cross and Red Crescent Societies and will be submitted as soon as possible.

It is further highlighted that the International Committee of the Red Cross is already disbursing large sums of money annually to maintain ownership and supervise over 250 names under the existing gTLD system. Furthermore, certain domain names related to the denominations and to the International Red Cross and Red Crescent Movement and its components have also been purchased in the past by third parties and the process to recover these names has in some instances proven burdensome.

6. Why are existing mechanisms enshrined in the Applicant Guidebook deemed "insufficient" to ensure the protection of the denominations from registration at the second level ?

The elements provided above pertaining to the frequent abuse and misuse of the red cross, red crescent and red crystal names and related denominations represent a key argument to the effect that these names require to be reserved and duly protected from registration at both first and second level, and thus as a preventive measure.

Should the new top level domain names offer the possibility to register the red cross/red crescent denominations and result in the registration of hundreds of unauthorised new second level domains, the costs involved for the Red Cross and Red Crescent in monitoring and effectively addressing unauthorized domain names could rapidly become prohibitive. Such expenses would also have to be taken from the budgets of the respective Red Cross and Red Cross organisations and prove difficult to justify to our donors.

While we have only partial information on the rights protection mechanisms foreseen for intervention at the second level, in particular the Uniform Rapid Suspension system, it is understood that the initiation and conduct of such proceedings will represent a substantial investment in human and financial resources, which could once again become prohibitive under the multiplication of the new gTLD's.

This, it is felt requires that the protection of the denominations be duly foreseen and enshrined within ICANN's rules and procedures in advance of registration, through the definition of the red cross, red crescent and red crystal names and related denominations as reserved names, the consideration of these names under a String Similarity review and, as regards second level domain names, the adoption of a new schedule of second level reserved names to the new gTLD Registry Agreement.

7. *What is the Red Cross/Red Crescent's view of the respective proposals put forward, further to the GAC's recommendations, to support the protection of the red cross, red crescent and red crystal names and related denominations at the second level ?*

As a result of the above, we wish herewith to express our support and endorsement for the following propositions and options stipulating in particular that

- The red cross and red crescent names should be reserved at the second level in all new gTLDs and that the schedule of second level reserved names in the new gTLD Registry Agreement should be made to include all of the red cross and red crescent denominations set forth in Schedule A in the 6 UN languages (Section 2.2.1.2.3 of the Applicant Guidebook);(in line with Question 1, Option 2(a)(1) of the Q & A received on 25 February);
- The reserved names should be treated as "modified forbidden names" that can only be registered by the applicable organisations or their component parts (namely the respective components of the International Red Cross and Red Crescent Movement: the International Committee of the Red Cross, National Red Cross and Red Crescent Societies and their International Federation) (in line with Question 2, Option 2 of the Q & A received on 25 February).

- The Red Cross and Red Crescent also strongly recommends that the protection of the reserved/forbidden names be extended to cover not only identical terms or matches, but also strings similar or liable to confusion with the reserved names, and therefore be subjected to any future String Similarity review to be implemented at the second level. This is in our view indispensable to preserve the denominations from misuse and imitations. New registries should also be encouraged and supported to broaden the protection, not only against similar strings and imitations of the denominations ("confusingly similar strings"), but also to the translations of the reserved ("forbidden names") in additional languages. As had been discussed in the past, a list of translations of the reserved names in respective languages is being developed and could be provided in this view.

In conclusion, Red Cross/Red Crescent wishes to thank the Drafting Committee for this opportunity to comment on this important issue.

NB: For a full overview of the protective regime of the red cross, red crescent and red crystal names and related denominations under international humanitarian law, see *inter alia* the Study on the use of the emblems: Operational and commercial and other non-operational issues. See in particular Question 50: "How should misuse of the emblem and the name on the Internet be dealt with?" (pp. 309-313). The Study is accessible at <http://www.icrc.org/eng/resources/documents/publication/p4057.htm>.

+++++

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17 April IOC Submission

Dear all,

Introduction-- The ICANN Board recently resolved to leave unchanged the protections it has provided to the Olympic and Red Cross names at the top level in Section 2.2.1.2.3 of the Applicant Guidebook. That Section of the Applicant Guidebook is based on the ICANN Board's Singapore resolution to protect the Olympic and Red Cross names, and will govern the first round of generic Top Level Domain applications, soon to be revealed. It may be modified in the future, based upon experience.

The Drafting Team's present task is to implement the Governmental Advisory Committee's proposal for protection at the second level of new generic Top Level Domains. This proposal, as implemented, should complement the protection at the top level.

At our last Drafting Team teleconference, the group members identified four key questions, the answers to which will inform our discussion about protecting the Olympic names at the second level of new gTLDs.

How significant is the problem posed by unauthorized registrations of Olympic domain names?

Every month, hundreds of unauthorized persons register Olympic domain names at the second level. The attached search reports, taken from two representative months in 2011, show hundreds of unauthorized second-level Olympic domain name registrations. Even though this is a violation of national laws protecting the Olympic marks, cybersquatters continue to prey upon the Olympic marks, and the demand for Olympic domain names continues unabated. This infringement is currently taking place in the 22 existing top-level domains. If the number of top-level domains is increased by 500 to one thousand, there will undoubtedly be a corresponding increase in unauthorized registrations of Olympic domains at the second level.

These unauthorized registrations--often for pornographic, gambling or auction sites--dilute and tarnish the Olympic trademarks, and attempt to exploit for commercial gain the good will created by the Olympic Movement. The unauthorized domains already oblige the IOC and its National Olympic Committees to expend significant amounts of time and money on monitoring and enforcement activities.

2. Why are the existing Rights Protection Mechanisms inadequate to address this

harm?

The sheer volume of unauthorized registrations renders the Rights Protection Mechanisms costly, burdensome, and ineffective. In the year 2000, the IOC filed an action under the U.S. Anti-Cybersquatting Consumer Protection Act against 1,800 unauthorized Olympic domain names. (See attached Complaint.) Although the suit resulted in a judgment in the IOC's favor, and almost all of the unauthorized domain names were canceled, the cybersquatters returned, registering hundreds more unauthorized Olympic domains every month (see the attached monthly monitoring reports). If hundreds or thousands of infringing, unauthorized Olympic domain names are registered at the second level in 500 to 1,000 new top level domains, the cost of monitoring and attempting to curtail the rampant infringement of the Olympic marks would be prohibitive.

The least expensive Rights Protection Mechanism, the Uniform Rapid Suspension system, would cost an estimated \$300 to \$500 per proceeding; given the burgeoning number of unauthorized Olympic second level domain names, URS proceedings would cost hundreds of thousands of dollars every year. If one adds the cost of time expended by attorneys and other personnel required to monitor the infringing domains and bring enforcement actions--an undertaking that would require a full-time staff dedicated solely to that task--it becomes apparent that enforcement through this rights protection mechanism would be prohibitively expensive.

The *sui generis* legislation that the GAC has cited single out the Olympic Movement for protection because governments have recognized the Olympic Movement's unique visibility and heightened risk of infringement. Ordinary trademark rights protection mechanisms would divert the Olympic Movement's resources away from its mission.

Thus, the Rights Protection Mechanisms would be outstripped by the volume of infringing second-level Olympic domains; that is why they are inadequate to address the harm.

3. What effect would the limited protection proposed by the GAC have on addressing the harms identified?

We agree that the current proposal, protecting against identical matches of OLYMPIC and OLYMPIAD, would not, at first, cover all infringing second-level domain name registrations. But this initial protection in 500 to one thousand new top-level domains would prevent registration of as many as two thousand Olympic domain names. That alone is a great benefit. The scope of protection at the second level could be evaluated and modified based on experience. And new registries can be encouraged

to provide broader protection of similar strings and protection in additional languages.

4. To what extent does the IOC have registrations of the OLYMPIC and OLYMPIAD marks in the six United Nations languages?

The table below illustrates protection of the Olympic marks in trademark registrations. We are still working to identify registration numbers in Arabic and Russian, and will supplement them below as soon as possible.

Language	Protection	Word(s) Protected
English	U.S. Trademark Reg. No. 2,777,890	Olympic
	New Zealand Reg.No. 810307	Olympiad
	U.K. Reg.No. 2340841	Olympiad
Chinese	Chinese Trademark Reg.No. 623897	Olympic (奧林匹克)
	Chinese Trademark Reg.No. 623896	Olympiad (奧林匹亞)
	Chinese Trademark Reg.No. 623898	Olympic Games (奧林匹克運動會)
French	Swiss Trademark Reg.No. P408297	Olympique
	Swiss Trademark Reg.No. P410106	Olympiade
Spanish	Spanish Trademark Reg. No. MO796125	Juegos Olimpicos
	Spanish Trademark Reg. No. MO795576	Olimpiada
Arabic	TBD	TBD
Russian	TBD	TBD

Annex 5 – IGO Common Position Paper

04 May 2012

COMMON POSITION PAPER REGARDING PROTECTION OF IGO NAMES AND ACRONYMS IN THE DNS IN THE CONTEXT OF ICANN'S GTLD EXPANSION PLAN¹

International Intergovernmental Organizations (IGOs) are subjects of international law, as is the case for States. IGOs are established by treaty, signed and ratified by sovereign States and are conferred international legal personality. IGOs play a vital role in public international law. They are created in order to achieve objectives that their Member States cannot fulfil individually, in the interest of the international community at large.

IGOs are fora that work towards cooperation between governments on vital issues and humanitarian causes, including public health, food security, labor practices, peace-keeping operations, containment of weapons proliferation, sustainable economic and social development and reconstruction, trade and commerce standards, children's rights, refugees, disaster relief, fundamental scientific research and transportation. IGOs also provide the forum for States to improve international relations, to find solutions to conflicts and to create international law, notably by providing the medium for negotiation of international agreements (treaties). Moreover, they provide important and accurate data, analysis and advice to States, their instrumentalities and to the public.

Protection of the reputation of IGOs and their credibility as sources of information and policy, are critical requirements for their functioning. As the GAC represents the governments of their Member States, these should be fundamental concerns for the GAC.

IGOs are funded essentially with public funds, through contributions to their budgets from their member States. Given this source of financing, it is particularly important that IGO funds be used efficiently and with transparency, primarily on achieving the important public interest missions of the Organizations.

The unique international legal protections which have been accorded to IGOs so as to permit their proper functioning, obviate the need to divert public funds from their missions to protect their names and acronyms as trademarks. These protections should also obviate the need for diverting inordinate amounts of such public funds towards registering and maintaining gTLDs (estimated to run to approximately USD 500,000) for solely defensive reasons or towards resource intensive and uncertain, curative mechanisms such as the legal rights protection. More generally, IGOs should not have to expend considerable resources towards monitoring/policing the Internet, defensive registrations and combating cybersquatters and fraudulent activities using their names and acronyms.

Until now, the number of available gTLDs has been limited, so the problems faced by IGOs from the misuse of their names and acronyms have been contained to the second level. With the

¹ This position paper is supported by all of the Organizations which signed the Open Letter to ICANN of 19 December 2011, as well as by the Bank of International Settlements (BIS), the International Civil Aviation Organization (ICAO), the International Criminal Court (ICC) and the International Institute for the Unification of Private Law (UNIDROIT).

future expansion, not only will the gTLD possibilities be unlimited, but this will also exponentially increase the domain name possibilities at the second level.

For these reasons, we consider it essential that the GAC, as the ICANN body charged with representing the interests of governments of States, and by extension the interests of the IGOs of which they are members, propose to the ICANN Board appropriate policy measures calculated to mitigate these potential threats and harms. Those measures should consist of the exclusion from third party registration of the names and acronyms of IGOs both at the top and second levels and in all rounds of gTLD applications.

In her letter dated 12 April 2012 to the ICANN Board, the Chair of the GAC expressed the position that the GAC would consider formulating advice regarding enhanced protection for IGO names and acronyms in the event that they meet the criteria of a two-tiered protection test, consisting of protection at both the international level through international treaties and through national laws in multiple jurisdictions. Notwithstanding the fact that the international treaties referred to above would already constitute a sufficient degree of protection in most jurisdictions², the names and acronyms of IGOs, including but not limited to those mentioned in the first footnote, meet this test, as established below and in the annex to the present position paper.

International law protection

By virtue of the special status and functions of IGOs, their names and acronyms are protected at the international level within the scope of Article 6*ter* of the Paris Convention for the Protection of Industrial Property, with 174 contracting parties, as further extended by Article 16 of the Trademark Law Treaty and Article 2 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)³. Currently, the Paris Convention is in force in 180 States and the European Union.

It is noteworthy that, other than States, the only names to enjoy treaty protection are those of IGOs, as well as the terms “Red Cross” and “Geneva Cross” (under the Geneva Convention).

Clearly, the Internet was not a consideration at the time of the drafting of the Paris Convention, but the principles enacted by this treaty and the reasons for protection provided by the Paris Convention for States (also protected under Article 6*ter*) and IGOs for the physical world are just as valid, if not more so, for the boundless DNS. Special protections have been provided for

² In what pertains to the process of incorporation of international law, this varies depending on whether States follow the so-called “monist” system of incorporation (i.e., ratified international treaties directly become domestic law) or the “dualist” system whereby States require a more detailed process for treaties to be formally incorporated into their own national legal systems (for instance, through the enactment of specific federal legislation) before they can have domestic legal effects.

³ Article 6*ter*(1)(b) of the Paris Convention reads: “The provisions of subparagraph (a) above [regarding the protection of States], shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection.” The text of the Paris Convention may be consulted at <http://www.wipo.int/treaties/en/ip/paris> the text of the Trademark Law Treaty at <http://www.wipo.int/treaties/en/ip/tl> the text of TRIPS at http://www.wto.org/english/docs_e/legal_e/27-trips.pdf

names of States in the DNS. As IGOs are subjects of international law like States, they merit the same protections.

National law protection

A treaty is an international agreement concluded between States in written form, creating binding obligations for States, which must be performed in good faith. International law provides that the States cannot invoke the legal procedures of their domestic system as a justification for not complying with international rules set by the treaty (Article 27 of the Vienna Convention on the Law of Treaties).

Article 25 of the Paris Convention, states that:

“(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country deposits its instrument of ratification or accession, it will be in a position under its domestic law to give effect to the provisions of this Convention.”

This may, but not necessarily, be done through the enactment of specific legislation.⁴ Indeed, since in many jurisdictions the force of the treaty provisions is the same as if they were written in national law, this alone would justify that the second tier of GAC’s criteria be considered to be met.

Furthermore, many States have enacted legislation protecting the names and acronyms of IGOs. In fact the overwhelming majority of jurisdictions in the world have enacted such legislation, thus providing additional support to meeting the second set of criteria devised by the GAC.

The attached Annex provides a non-exhaustive table setting out the protections granted to IGOs under treaties and national legislations.

Proposal

The following is a proposal for the exclusion of the IGO names and acronyms from registration by third parties in the DNS.

Top level

At the top level, the Applicant Guidebook should be amended so that IGO names and acronyms protected under Article 6ter of the Paris Convention, as included in the “6ter Express” database maintained by the International Bureau of World Intellectual Property Organization (WIPO), be treated as “Reserved Names”. The “6ter Express” database contains all IGO names and acronyms which have been duly communicated in accordance with the Paris Convention⁵. It is fully accessible and searchable online at <http://www.wipo.int/ipdl/en/6ter> and is free of charge.

⁴ See footnote 2 above.

⁵ The protection of names, acronyms and emblems of intergovernmental organisations under Article 6ter is subject to communication to States party to the Paris Convention and the WTO TRIPS Agreement – through the intermediary of the WIPO International Bureau – of the names, acronyms and emblems for which protection is sought. This communication is made electronically twice a year.

Updated versions of the database are also being made available on CD-ROM, and can be ordered from WIPO.

This may be done by introducing a new category of Reserved Names in section 2.2.1.2 of the Applicant Guidebook (*Reserved Names and Other Unavailable Strings*), by means of a new section 2.2.1.2.4 as follows:

“The names and acronyms of intergovernmental organizations protected under article 6ter of the Paris Convention for the Protection of Industrial Property, as included in the World Intellectual Property Organization “6ter Express” database will be treated as IGO Reserved Names.

The IGO Reserved Names will be available exclusively to the respective intergovernmental organizations.

If any applied-for gTLD string identically matches any of the names or acronyms contained in the WIPO “6ter Express” database, it cannot be registered by anyone other than the respective intergovernmental organization.

In addition, applied-for gTLD strings will be reviewed during the String Similarity review to determine whether they are similar to these IGO Reserved Names. An application for a gTLD string that is too similar to an IGO Reserved Name will not pass this review.

The applicant may attempt to override a string similarity failure by either (i) seeking a letter of non-objection from the respective intergovernmental organization; or (ii) demonstrating that the applicant has a legitimate interest in the string, that the new TLD is not confusingly similar to one of the protected strings and that it does not refer to the intergovernmental organization or the intergovernmental organization’s activity. A determination in favor of the applicant will not preclude the respective intergovernmental organization from bringing a legal rights objection or otherwise contesting the determination.”

Second Level

The permanent protection at the top level should be complemented through the amendment of the new gTLD Registry Agreement, so that IGO names and acronyms included in the “6ter Express” database be treated as names reserved at the second level.

This may be done by introducing a paragraph 6 in “Specification 5-Schedule of reserved names at the second level in gTLD Registries” (page 285 of the Applicant Guidebook) as follows: “The names and acronyms of intergovernmental organizations protected under article 6ter of the Paris Convention for the Protection of Industrial Property, as included in the World Intellectual Property Organization “6ter Express” database will be treated as Reserved Names and can only be registered by the respective intergovernmental organization”.

Reserved Names are treated as “forbidden names”. This means that any registrar receiving a request of registration of a second-level domain would have an automatic system by which the

request for registration of any denomination from the *6ter* Express database would raise a red flag, requiring the registry to automatically prevent their registration by third parties.

Conclusion

The expansion of gTLDs will likely exacerbate the already existing problems faced by IGOs with regard to the misuse of their identities in the DNS and potentially give rise to new ones. This will bring further harm to the important international public interest causes represented by IGOs and a significant waste of public funds, unless steps are taken ahead of time to protect IGO names and acronyms, by excluding them from the possibility of third party registration at both the top and second levels. Given the apparently high number of first round gTLD applications, for such exclusion to be meaningful, it should also cover the first application round. There is ample opportunity to implement such exclusions given the length of the examination process, which is yet to begin.

It must be emphasized also that, while this common position paper includes the specific proposal outlined above, IGOs would consider alternative ways to effectively address the issues raised herein.

The IGOs supporting this position paper are convinced, thus, that finding an appropriate solution is extremely important to maintaining the credibility of GAC's policy advice on issues of international concern and are ready to enter into a direct dialogue with GAC.

Annex 6 – Summary Report of Public Comments on Preliminary Issue Report

Report of Public Comments

Title:		Preliminary GNSO Issue Report on the Protection of International Organization Names in New gTLDs	
Publication Date:		August 14, 2012	
Prepared By:		Staff	
Comment Period:		Important Information Links	
Open Date:	4 June, 2012	Announcement	
Close Date:	(Reply Period) 26 July, 2012	Public Comment Box	
Time (UTC):	23:59 UTC	View Comments Submitted	
Staff Contact:	Brian Peck, Policy Director	Email:	Policy-staff@icann.org
Section I: General Overview and Next Steps			
<p>This Preliminary Issue Report was published in response to a request by the GNSO Council for an issue report as a required preliminary step before a PDP may be commenced on the topic of whether ICANN should provide additional protections to the names of certain international organizations (i.e., International Governmental Organizations (IGOs) and Non-Governmental Organizations such as the Red Cross/Red Crescent (RCRC) and the International Olympic Committee (IOC) at the top and second levels for names introduced through the New gTLD Program. In its motion⁴⁸ requesting this Issue Report, the GNSO Council specified that the Issue Report should:</p> <ul style="list-style-type: none"> • Define the type of organizations that should be evaluated in any related PDP for any such special protection at the top and second level; and • Describe how the PDP could be structured to analyze whether ICANN should adopt policies to protect such organizations at the top and second level. <p>The Preliminary Issue Report will be updated to reflect the information submitted through this Public Comment Forum in the form of a Final Issue Report to be presented to the GNSO Council. The GNSO Council will then consider whether to commence a PDP on this issue following the publication of the Final Issue Report.</p>			

⁴⁸ The GNSO Motion requesting this Preliminary Issue Report is posted at: <http://gns0.icann.org/meetings/minutes-council-12apr12-en.htm>

Section II: Contributors

At the time this report was prepared, a total of twelve (12) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials.

International Government Organizations (“IGOs”):

Name	Submitted by	Initials
European Bank for Reconstruction and Development#	Emmanuel Maurice	EBRD
United Nations*#		UN
Organization for Economic Cooperation and Development*#		OECD
World Intellectual Property Organization*#		WIPO
World Bank Group*#		WB
World Health Organization*#		WHO
European Space Agency*#		ESA
North Atlantic Treaty Organization*#		NATO
Bank for International Settlements*#	Diego Devos	BIS
International Labor Organization*#		ILO
European Organization for Nuclear Research*#		CERN
International Institute for Unification of Private Law*#		UNIDROIT
Universal Postal Union+#	Ricardo Guilherme	UPU
International Organization for Migration +#	Johan Rautenbach	IOM
International Bureau of Weights and Measures+#	Sigred Arlen	BIPM
Nordic Investment Bank+#	Heikki Cantell	NIB
International Criminal Court+#`	Roeland Stouthart	ICC
Bank for International Settlements+#	Diego Devos	BIS

#Submission supporting IGO Common Position Paper proposing special protections at top and 2nd Levels

*IGO Commentator in 25 June 2012 “Joint Submission”

+Supports IGO 25 June 2012 Joint Submission

Groups and Individuals:

Name	Affiliation (if provided)	Initials
ALAC		ALAC
Philip Sheppard		PS
Roberto Gaetano		RG

Robin Gross	IP Justice	RobinG
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Section III: Summary of Comments

General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

10 of the 12 public comment submissions supported the initiation of a PDP to consider the issue of whether International Organization names should be protected in new gTLDs; one commentator opposed the initiation of a PDP. The ALAC supports protecting IGO internationally recognized names comparable to the protections of trademark owners, and additional protections for charitable organizations at the second level.

9 of the 12 public comment submissions were from International Government Organizations (“IGOs”), which unanimously called for additional special protections for IGO names and acronyms at the top and second levels of new gTLDs; and which also unanimously supported the initiation of a PDP. All the IGO Commentators⁴⁹ supported the 4 May 2012 “Common Position Paper Regarding Protection of IGO Names and Acronyms in the DNS In the Context of ICANN’s GTLD Expansion Plan” <http://forum.icann.org/lists/prelim-protection-io-names/pdfJrs5WYjSrl.pdf> and the accompanying Appendix which provides a non-exhaustive list of protections granted to IGOs under treaties and national laws <http://forum.icann.org/lists/prelim-protection-io-names/pdfD51llsBKIL.pdf> (collectively referred to as “IGO Common Position Paper”). Key points and proposals raised in the Paper are incorporated in this Summary Report. In addition, all the IGO Commentators expressed several concerns over the Preliminary Issue Report which are further outlined below in this Summary Report.

Initiation of a PDP

All the IGO Commentators generally supported the initiation of a PDP, provided that such PDP would be completed in time for any additional protections to be properly in place for the designation of new gTLDs from the first round, and that the PDP “be carried out on a basis of fair, objective and justified criteria and a proper evaluation of fact and law.”

Philip Sheppard believes it is essential to initiate a PDP in order to serve the public interest to prevent fraud and the diversion of donations from IGOs.

Robin Gross, representing IP Justice, opposes the initiation of a PDP to protect the names of the Red Cross Movement, IOC and IGO’s. Ms. Gross stated in her submission that providing special

⁴⁹ “IGO Commentators” consists of all the individual IGO’s which submitted comments during the public comment forum: please refer to the entire list of IGOs under Contributors in Section II.

protection for these names would be creating in effect, exclusive global licensing rights which cannot be justified given that “robust” mechanisms to protect these organizations’ interests and rights are already in place.

Protection on the First Level of New gTLDs

The IGO Common Position Paper presents a proposal to amend the Applicant Guidebook so that the IGO names and acronyms protected under Article 6ter of the Paris Convention be treated as “Reserved Names,” with identical strings available exclusively to the respective IGOs. Similar gTLD strings would be subject to a string similarity review and an applicant for such string could apply for the string either by: 1) obtaining a letter of non-objection from the respective IGO; or 2) demonstrate that the applicant has a legitimate interest in the string.

ALAC “does not see any great need” for protection at the top level because of the various comment and objection mechanisms available. In addition, ALAC “strongly advocates” that all new TLDs be contractually required to adhere to the general use of the proposed TLD outlined in their application in future TLD rounds.

With regard to the first level, Ms. Gross points out that there were no applications containing the names of such international organizations and thus, the risk of abuse claimed by these organizations is “overblown and unsubstantiated.”

Protection on the Second Level of New gTLDs

The IGO Common Position Paper proposes to amend the Applicant Guidebook so that the IGO names and acronyms protected under Article 6ter of the Paris Convention be treated as reserved names at the second level, which can only be registered by the respective IGO. Under this proposal, these names would be treated as “forbidden names,” meaning that any registrar receiving a request for registration of a second-level domain containing an IGO name or acronym would have an automatic system that would raise a red flag, requiring the registry to automatically prevent the registration of such name by third parties.

ALAC is “particularly sympathetic” to granting additional protection to prevent the use of domain names to defraud unsuspecting consumers, phishing, or other illicit activities. The focus of ALAC’s concern is on charitable organizations such as the Red Cross and UNICEF; and it is also sympathetic to extend special protection for other charities, while acknowledging that implementing such protections “is unclear.” ALAC also “sees the benefit” to extend protection at the second level to include protections for similar strings to such organizations’ names. The ALAC notes the “potential difficulty” of implementing such protections and expressed its intent to work with any group which is formed to address this issue. In supporting such protection, the ALAC also expressed its concern over the impact that these protections would have on the fair use of names.

With regard to the second level, Ms. Gross states that creating special protections at this level would be departing from longstanding ICANN policy and would require serious consideration as it would be a “dramatic” shift in the burden and responsibility for the content of domain names onto third parties. In supporting this position Ms. Gross notes that the GNSO voted against special protections for IGOs in 2007, as did various reserved names working groups over the past several years. Ms. Gross also raises the concern over ICANN’s resources and believes that there are “far more important and pressing issues” that need attention rather than creating special privileges for these international organizations.

Comments on Preliminary Issue Report

All the IGO Commentators expressed concerns about the Preliminary Issue Report, specifically, their belief that the report “contains certain legal and factual inaccuracies, and is at times selective and inconsistent.” The specific concerns of the IGO Commentators are summarized below:

Failure to Incorporate the IGO Common Position Paper

The IGO Commentators noted that the Preliminary Issue Report did not include any discussion or reference to the IGO Common Position Paper and Appendix which was sent to both the Chair of the GAC and Chair of the GNSO Council on 4 May 2012. The IGO Common Position Paper provided an explanation of the existing legal protections for IGO names and acronyms, as well as the IGOs’ proposal for special protections for IGO names and acronyms at both the top and second levels of the new gTLDs (which are summarized above under the relevant headings).

With regard to existing legal protections for IGO names and acronyms, the IGO Common Paper addresses the criteria utilized by the GAC to recommend special protection for the Red Cross Movement and International Olympic Committee names: 1) the names are protected by international treaty; 2) the names are also protected by domestic laws in multiple jurisdictions; and provides information which IGOs believe meet these two criteria established by the GAC. Specifically, the IGO Common Paper notes that the GAC and ICANN acknowledge that IGO names and acronyms enjoy treaty protection under Article 6*ter* of The Paris Convention for Protection of Industrial Property, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the Trademark Law Treaty. In addition, the IGO Common Paper states its position that the second criteria is also met, because “it is safe to assume that States respect their treaty obligations, so as 181 States have undertaken by treaty to protect the names, acronyms and emblems of IGOs, then these are protected in 181 States.” As further support for their position, the IGOs submitted as an Appendix to the IGO Common Paper a non-exhaustive list of specific national laws which demonstrate that at least 130 national laws expressly protect IGO names and acronyms.

Distinguishing The Red Cross Movement and International Olympic Committee from IGOs

While not taking any position regarding possible protections granted to the Red Cross/Red Crescent (“RCRC”) and International Olympic Committee (“IOC”) names, the IGO Commentators believe that the Preliminary Issue Report did not provide “a complete factual picture nor a fair

assessment of the status and legal protection” enjoyed by the names of the IGOs, RCRC and IOC.

The IGO commentators stated their position that the Preliminary Issue Report “accepted a liberal” application of the GAC criteria to the RCRC and IOC names, while “disregarding” the specific status of IGO names under the international treaties identified in their submissions. With regard to the treatment of IOC names, the IGO commentators take issue with the Preliminary Issue Report’s legal rationale that extends the scope of the Nairobi Treaty to cover not only the Olympic symbol, but also the Olympic names by affirming that “the practice among some Treaty Member States in protecting the Olympic symbol and names as inclusive of each other may demonstrate state recognition of the indicative value of the Olympic names and that state’s belief in the necessity of protecting the Olympic names.” With regard to the RCRC names, the IGO commentators take issue with the Preliminary Issue Report’s suggestion that the mere fact that the Red Crescent, Red Crystal and Red Lion and Sun are offered protections in countries that recognize those terms is sufficient to justify their protection in new gTLDs, because the IGO commentators note that these terms are not universally protected under the Geneva Convention, and state that “national recognition does not equate to treaty protection and should not be considered as a substitute thereof.”

The IGO commentators also counter the statement in the Preliminary Issue Report that “to date, there has been no information submitted to demonstrate that IGOs suffer the level of unauthorized or fraudulent use of their names as the RCRC or IOC do, or to demonstrate the need for a time-sensitive remedy for the misuse or abuse of their names,” by citing the WIPO-2 Report (3 September 2001) and documents submitted by various IGOs to the Second Special Session of the Standing Committee on the Law of Trademarks which provide extensive examples of abuse of IGO names and acronyms.

In stating that the problems of cybersquatting and other domain name abuses of IGO names and acronyms have not diminished “and are likely to be exacerbated once the many new gTLDs become operational,” the IGO commentators also cite as support the Draft Final Report of ICANN’s Joint Working Group on the WIPO-2 Process – V3 (posted April 19, 2004), and the 15 June 2007 GNSO Issue Report on Dispute Handling for IGO Names and Abbreviations.

Suggested Criteria Under Which an Organization May Qualify for Special Protection

The IGO Commentators criticize most of the Preliminary Issue Report’s six proposed criteria to determine an organization’s qualification for special protection in new gTLDs as having legally and factually questionable relevance. In particular, the IGO Commentators believe that the specific criteria for the duration of an organization’s existence, the number of its member states, the number of countries in which the organization has offices and operations and the frequency at which its symbols and names are utilized in public media “would be near impossible to set a fair and objective standard and would be complicated and inefficient to implement.” The IGO Commentators also note that the relevance of popular recognition through the public media has never been considered for statutory protection of IGO names and acronyms under international

treaties or even national jurisdictions. The IGO Commentators raise a concern that the acceptance of these criteria in conjunction with the GAC criteria “would surely lead to subjective value judgments which run completely counter to established principles and rules of international law” with regard to the protection of IGO names and acronyms, “not to mention similar subjective considerations on the ‘humanitarian’ character of IGOs (which, in line with their public common good mandates, are to be deemed as humanitarian by definition.)”

The IGO Commentators also express concern over criteria they believe are “noticeably” missing: the status of the organizations under public international law, privileges and immunities enjoyed by the organizations, the principle source of financing for those organizations, the protection of common goods including market principles, the rule of law, and freedom of expression. The IGO Commentators believe that these considerations “are arguably more important” than the criteria proposed in the Preliminary Issue Report.

In noting that the prohibitive cost of defense is one of the primary cited reasons to support special protection, the IGO Commentators raise the point that the question of an organization’s principle source of funding should be “quite pertinent;” and that IGOs are essentially funded with public funds, through contributions from member states, which are used to achieve “the important public interest missions of the IGOs.”⁵⁰ The IGO Commentators also believe that the proposed rights protection mechanisms for the new gTLD program “are inconsistent with the privileges and immunities and in particular the principle of immunity from legal process as enjoyed by IGOs,” and thus further highlights the need to provide special protections for IGO names and acronyms.

Other Comments

ALAC finds the estimated number of 5,000 IGOs and 35,000 other non-profits reported in the Preliminary Issue Report which might be considered for special protection eligibility to be “troubling,” and expressed its concern over the lack of resources and ability to judge eligibility or even list such groups.

Philip Sheppard in supporting the initiation of a PDP believes that the rationale for special protection for the names of IGOs refers only to protection at the top level; and suggests a possible objective rule to determine which IGOs would qualify for special protections: a treaty organization of sovereign member states; protection under international law such as the Paris Convention.

Roberto Gaetano’s main point in his submission is that there is a serious distinction between the Olympic symbol which is protected by the Nairobi Convention, and the “plain use” of the natural

⁵⁰ The IGO Common Position Paper states that IGOs are fora that work towards cooperation between governments on vital issues and humanitarian causes, including public health, food security, labor practices peace-keeping operations, containment of weapons proliferation, sustainable economic and social development and reconstruction, trade and commerce standards, children’s rights, refugees disaster relief, fundamental scientific research and transportation.

language word “olympic”. Mr. Gaetano believes that any infringement of the word Olympic should be determined on a case-by-case basis.

Section IV: Analysis of Comments

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

The Final Issue Report will take into account as appropriate the comments received during this public forum. The GNSO Council will be responsible for considering the Final Issue Report which will incorporate these comments in deciding on any next steps to address the issue of whether special protections should be provided for any international organization names at either the top and/or second level in the new gTLDs.