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

STATUS OF THIS DOCUMENT

This is a draft Final Report on the Protection of IGO and INGO Identifiers in all gTLDs, prepared by ICANN staff and the Working Group for public comment on the policy recommendations currently under consideration by the PDP Working Group (“WG”). This draft Final Report has also been submitted to the GNSO Council on 20 Sept, 2013. The Final Report, with consensus policy recommendations will take into account community input on this draft and continued WG deliberations will be prepared by the Working Group. The Final Report will be submitted to the GNSO Council for their consideration.

SUMMARY

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

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1. Executive Summary

1.1 Background

- Providing special protections for the names and acronyms of the Red Cross Red Crescent Movement, (“RCRC”), International Olympic Committee (“IOC”), International Government Organizations (“IGOs”) and International Non-Governmental Organizations (“INGOs”) from third party domain name registrations at the top and second levels of new gTLDs has been a long-standing issue over the course of the New gTLD Program.
- The GAC has advised the ICANN Board to provide special permanent protections for the RCRC and IOC names at the top and second levels of new gTLDs, and special protections against inappropriate third party registration for the names and acronyms of IGOs at the second level of new gTLDs and at the top level in any future new gTLD rounds. In the case of IGOs, the GAC has further advised that the IGO names and acronyms “may not be acquired by any third party as a domain name at either the top or the second level unless express written permission is obtained from the IGO concerned¹.”
- A GNSO Issue Report was prepared by staff as a result of a recommendation from an IOC/RCRC Drafting Team² formed to develop a possible response to the GAC about GNSO policy implications for granting protections of names.
- The GNSO Council considered the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and approved a motion to initiate a Policy Development Process (“PDP”) for the protection of certain international organization names and acronyms in all gTLDs. The Working Group (“WG”) was formed on 31 October 2012 and the WG Charter was approved by the GNSO Council on 15 November 2012. The decision was taken in this context to subsume the issues of the IOC and of the Red Cross and Red Crescent designations and names under the new Working Group and PDP process.

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

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

- On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG.
- Prior to and in parallel to the IGO-INGO WG, the NGPC has adopted a series of resolutions to provide indefinite protections for the IOC and RCRC identifiers into Specification 5 of the approved Registry Agreement for New gTLDs following the GAC advice and until any policy recommendations from the GNSO would require further and/or different action. A temporary placement of IGO identifiers, as supplied by the GAC, was also placed into Specification 5 of the agreement until further deliberations at the Buenos Aires meeting in Nov 2013 can occur.

1.2 Deliberations of the Working Group

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

1.3 Working Group Recommendations

- Section 5 contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers. Each recommendation is presented per organization type (RCRC, IOC, IGO, INGO). Within each organization type, varying levels of protection were considered independently and distinct recommendations were developed. Given the complexity of identifiers considered for protection either based on context, full name and/or acronym, or

language scope, a structure to make these distinctions was created. Definitions used in this structure are provided below; when reviewing the recommendations chart, please note the specific definition (I.e. Scope of identifier) that corresponds to a specific recommendation or level of protection.

- There are well over 20 total proposed policy recommendations that are presented in detail within Sections 5. For each recommendation, the level of consensus agreed upon by the WG is also identified according to the GNSO Working Group Guidelines.

1.4 Stakeholder Group / Constituency Statements & Initial Public Comment Period

- The WG requested input from the GNSO Stakeholder Groups and Constituencies, as well as other ICANN Supporting Organizations and Advisory Committees. Further information on the community input received, as well as a brief summary of the positions submitted by IGOs and INGOs is available in Section 6.

1.5 Conclusions and Next Steps

- This draft Final Report is being posted for public comment for at least 21 days, plus a 21-day reply period (in the event comments are received in the initial period), after which the submitted comments will be summarized and analysed. Once the public comment forum is closed, the PDP WG will take into account all comments received, and complete the Final Report to be submitted and considered by the GNSO Council for further action. The WG would follow the directions of the Council if any additional work is needed.

2. Objective

This draft Final Report on the Protection of IGO, INGO, IOC and RCRC Identifiers in all gTLDs PDP is being published pursuant to the GNSO Policy Development Process set forth under the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The proposed policy recommendations for the protection of IGO and INGO (including RCRC and IOC) identifiers in all gTLDs presented in this draft Final Report also contain the Working Group's Chair assessment on the levels of consensus. The objective of this draft Final Report is to present the policy recommendations currently under consideration to solicit feedback from the community on these recommendations.

3. Background

This section contains a sequential description of the key events of the IGO-INGO WG. For a detailed background and history of the issue prior to the initiation of this PDP, please see the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs³ (“Final Issue Report”). The Issue Report was initiated as a result of a recommendation by a 2012 Drafting Team formed to provide a GNSO response to the GAC request on the Protection of IOC and RCRC names⁴. After community review, the scope of the Final Issue Report included an evaluation of whether to protect the names of both intergovernmental and non-governmental organizations at the top level and second level in all gTLDs.

Upon receiving the Final Issue Report, the GNSO Council approved a motion to initiate a Policy Development Process for the protection of certain International Organization Names in all gTLDs. The PDP Working Group was formed 31 October 2012 and its Charter was approved by the GNSO Council on 17 November 2012.⁵

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

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

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

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

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

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

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

In response to the ICANN Board's request for advice on the protection of IOC/RCRC names, on 31 January 2013 the GNSO Council Chair sent a letter with its advice on this issue⁹ to the ICANN Board and GAC. Although the GNSO Council did not dispute the advice provided by the GAC, it also recognized that the issue exceeded the scope of implementation by ICANN and required further policy development for a long-term approach/solution.

On 28 February 2013, the GNSO Council sent a letter¹⁰ to the ICANN Board in response to the Board's request for advice on the temporary protection of IGO and INGO names in the first round. The GNSO Council made reference to the temporary protections of the IOC and RCRC names, and noted that the IGO-INGO PDP WG had not completed its work. The letter also noted a minority position that the global public interest could possibly be harmed by such temporary protections for IGO identifiers. The Council advised that the Working Group assigned to this issue will maintain its

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

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

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

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

sense of urgency to develop policy recommendations which the GNSO can provide to the ICANN Board with respect to the protection of names and identifiers of IGOs.

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

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

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

With regard to the RCRC and IOC names, the GAC advised the ICANN Board to amend the provisions

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

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

in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs¹³. The New gTLD Program Committee accepted the GAC advice. The proposed final version of the Registry Agreement, adopted 2 July 2013, included protection for an indefinite duration for IOC/RCRC names. Specification 5 of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."

On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report¹⁴ on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG. The WG agreed that a review of the submissions, as shown in the public comment review tool, did not add new information to what was already considered by the members. Further, the Initial Report did not contain any formal policy recommendations and it was understood that a public comment period would be opened for the draft Final Report. Therefore, no summary of comments was provided for the IGO-INGO Initial Report. For an accurate reflection of positions submitted by WG members, please see their response in the archive.¹⁵

In parallel to the public comment period for the Initial Report, the IGO-INGO WG hosted two face-to-face sessions in Durban for the ICANN 47 meeting (mid-July 2013). These WG meetings were used to discuss issues uncovered since the submission of the Initial Report and to also prepare for a session which utilized professional facilitators to conduct a planned interactive session to discuss the remaining critical issues that the WG faced. This session was intended to 1) raise awareness of why this issue is important and provide transparency on WG deliberations/contrasting positions to date;

¹³ Beijing GAC Communiqué: https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

¹⁴ IGO-INGO Initial Report: <http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf>

¹⁵ Initial Report – Public Comment Page: <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

and 2) facilitate interactive discussion and solicit feedback from the community on key outstanding issues to help guide the WG in moving forward. However, very few community members participated in the interactive session thus producing little new information or suggestions to advance the WG's deliberations. As a result, the WG continued to refine its recommendations in preparation of the draft Final Report.

Prior to the Durban meeting in July 2013, the NGPC passed a resolution¹⁶ that confirmed that appropriate preventive initial protection for the IGO identifiers, as a response to the GAC advice will continue to be provided as presented in the New gTLD Registry Agreement. Since then, the Registry Agreement¹⁷ for New gTLDs has been approved by the NGPC and it can be found on the new gTLD site. The Registry Agreement continues to include a reference in Specification 5 to the reservations of IOC, RCRC, and IGO names, noting that the list of the reserved names is located in the Registries¹⁸ section of ICANN.org. It should also be noted that the NGPC passed another resolution¹⁹ extending these initial protections until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the IGO GAC Advice, whichever is earlier.

The NGPC adopted temporary protections for acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR) at its most recent meeting on 10 September 2013. Also at the meeting, the NGPC agreed to accept the GAC's advice to continue working on a mechanism to protect the IGO acronyms. Refer to the [Durban Scorecard](#)²⁰.

¹⁶ NGPC Resolution 2 July 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm>

¹⁷ New gTLD RA: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting>

¹⁸ IOC, RCRC, IGO Reservation list: <http://www.icann.org/en/resources/registries/reserved>

¹⁹ NGPC Resolution 17 Jul 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-17jul13-en.htm>

²⁰ Durban Scorecard: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>

3.1 Protections Available to IGOs and INGOs Under the Current Version of the Applicant Guidebook (AGB)

In addition to the protections adopted by the ICANN Board for the IOC and RCRC names at the top level under section 2.2.1.2.3 of the Applicant Guidebook, there are existing protections available to other entities under the New gTLD Program which may also be available to international organizations.²¹ In providing further details below, it is noted that some of these existing protections may not be applicable or satisfactory for all international organizations.

Top-Level Protections

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

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

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

²¹ The latest Guidebook is posted at: <http://newgtlds.icann.org/en/applicants/agb> Supporting documentation is available through the “New Generic Top Level Domains” button at www.icann.org

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO was eligible to file a legal rights objection if it meets the criteria for registration of an .INT domain name. See Applicant Guidebook, section 3.2.2.2²². Those criteria include:

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

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting these criteria. In addition, going forward, if a holder of a mark can demonstrate that its mark is protected by statute or treaty, the mark holder may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP) in cases where it appears that a registry (at the top level) is affirmatively infringing the complainant's mark. It should be noted that IGO names and acronyms may or may not be considered a mark that would meet the eligibility requirements to utilize the PDDRP. More information on the PDDRP is available in the Applicant Guidebook.²³

Second-Level Protections

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

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

²² Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

²³ PDDRP Section of Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>

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

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

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

4. Deliberations of the Working Group

The Protection of IGO and INGO Identifiers in all gTLDs WG began its deliberations on 31 October 2012 by reviewing the WG Charter which is included in Annex 1 of this report. The team also prepared a work plan²⁴, which was reviewed on a regular basis. It outlines key deliverable work products used in research and analysis of the issues defined in the charter as well as how charter issues were handled. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that was used to provide input in response to the request for constituency and stakeholder group statements (see Annex 3). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process. Section 5 of this report provides the community input responses and a short summary.

4.1 Initial Fact-Finding and Research

In addition to soliciting community input, the WG formed five sub-teams to conduct an analysis of the nature of the problem, qualification criteria, eligibility process, admissions, and protections. A matrix²⁵ was developed to document the attributes of each analysis with comparisons across the four groups of organizations (i.e., IGOs, RCRC, IOC, and other INGOs) seeking protection. In addition, ICANN's General Counsel Office (GCO) was requested to research and report whether it is aware of possible legal prohibitions with respect to registration of domains using the identifiers of these organizations. The next five sub-sections will provide details of each sub-team's findings followed by a summary from the GCO.

4.1.1 Nature of the Problem

This sub-team's task was to review the specific problems that would be addressed if any protections were to be implemented. Sub-topics reviewed included costs of combating infringement and abuse, infringement on public good, discussion of existing Rights Protection Mechanisms (RPMs) and/or due process in applicable law. In principle, it is understood by all WG members that use of domain

²⁴ IGO-INGO WG Work Plan: <https://community.icann.org/display/GWGTCT/Work+Plan+Drafts>

²⁵ Analysis Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Work+Package+Drafts>

names with malicious intent is a recognized problem within the DNS. However, views on the degrees of harm suffered by the organizations seeking protection varied in the WG's deliberations. One view discussed whether such harm needed to be first proved prior to granting any protections or whether it was sufficient to only presume harm. Conversely, views were expressed that whether the harms exists is not relevant, but when harm is detected, resources that would otherwise be earmarked for an organization's public interest mission are otherwise diverted to deal with such harm.

As mandated by the Charter and in order to provide more information to aid the WG's deliberations for this issue of establishing qualification criteria for special protection of international organization identifiers, the WG asked representatives from the IOC, RCRC and IGOs to provide evidence of abuse of their respective organization's identifiers by third-party domain name registrations. A series of content sources came from prior policy reports, direct submissions from organizations seeking protection and WG analysis tools. Links to the submissions reviewed can be found at the IGO-INGO Wiki Page²⁶. Concurrently, ICANN staff also compiled a sampling of domain name registrations²⁷ of RCRC, IOC and IGO identifiers.

4.1.2 Qualification Criteria

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

The overall intent of the WG was to establish a set of objective criteria that was also stringent enough to appropriately limit the number of organizations that may qualify. WG deliberations

²⁶ Abuse evidence: <https://community.icann.org/pages/viewpage.action?pageId=40931994>

²⁷ Sampling of registrations: <https://community.icann.org/display/GWGTCT/IGO-INGO+Registration+Evaluation+Tool>

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

With the GAC's advice in its Beijing Communiqué, the scope of special protections for IGOs combined with the special protections previously provided to the IOC and RCRC became much more defined. However, as of the date of the Beijing Communiqué, the issue of possible special protections for INGOs other than the RCRC and IOC had not been addressed outside of the PDP WG and so, as mandated by the WG Charter, it was deliberated on. Entry on the Economic and Social Council (ECOSOC) list was the latest criterion considered for recommendations by the WG; all alternatives are provided later in this report.

4.1.3 Eligibility Process

The Eligibility Process sub-team sought to delineate and understand who would be tasked with determining whether an organization seeking special protections would meet the specified qualification criteria, and how this process would take place. Initial discussions leaned toward a neutral entity that would make such determinations, but the sub-group again stressed the importance of an objective set of qualification criteria. Ultimately it was determined, eligibility for protections was tightly coupled with qualification criteria and, if any special protections were to be implemented, likely exception procedures would have to be created.

4.1.4 Admissions

Essentially, the Admissions sub-team was tasked to determine if additional criteria to be afforded protections were needed after an organization met the qualification criteria and eligibility checks. Deliberations among the sub-team revealed the challenge of balancing various criteria versus categories of criteria defined in the previous sections. The sub-team concluded that admissions are

tightly coupled to qualification criteria and the eligibility process and noted this distinction was not necessary.

4.1.5 Protections

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

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

- UDRP and URS: Uniform Dispute Resolution Process (UDRP) and Uniform Rapid Suspension (URS) are additional RPMs that are considered curative measures and used only after the registration of a domain name. Both RPM mechanisms will be available with the new gTLDs.
- Do not sell lists: contain names blocked from registration according to the internally defined policy of the Registry Operator of a given gTLD. Some applicants are choosing to deploy additional protections for certain types of names, but only as defined by their respective Registry policies.
- Limited Preventative Registrations: a proposed mechanism that has been considered for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all gTLD registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

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

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

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

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

Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from all five ICANN geographic regions. The trend found in the General Counsel's Research Report is that "there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains.

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

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

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

“In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as

a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain.”

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

4.2 Working Group Charter Deliberations

Charter Issue 1

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

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

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

This issue was first addressed by the request for legal research as noted in Section 4.1 and Annex 4. Secondly, the WG performed the critical task of reviewing the qualification criteria which is documented in the work package mentioned in Section 4.1. It became evident from the WG deliberations that it was not possible to develop a single framework of qualification criteria that most of the WG would support given the different nature of IGOs, the RCRC, IOC and other INGOs. Further, the WG determined that the IOC and RCRC did differ from other INGOs given their unique legal standing compared to other INGOs. The scope of the qualification criteria for IGOs became defined and quantified by the list of IGO organizations eligible for protection submitted by the GAC; and for the RCRC and IOC by both the GAC’s and ICANN Board’s recognition of the international

legal protections for the IOC and RCRC. Conversely, as noted in the proposed recommendations, other INGO organizations have a set of proposed qualification criteria that relate to the ECOSOC list.

Charter Issue 2

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

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

This charter issue has been addressed by the WG's creation and deliberation about the issues identified in the IGO-INGO Protection Matrix tool²⁸ and using other work products which can be found on the ICANN Wiki. Details of the proposed recommendation options can be found in Sections 5 below.

²⁸ IGO-INGO Protection Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Protections+Matrix>

5. Working Group Recommendations

This section contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers. Each recommendation is presented per organization type. Within each organization type, varying levels of protection were considered independently. Given the complexity of identifiers considered for protection either based on context, full name and/or acronym, or language scope, a structure to make these distinctions was created. Definitions used in this structure are provided below; when reviewing the recommendations chart, please note the specific definition (I.e. Scope of identifier) that corresponds to a specific recommendation or level of protection.

Identifier Definitions:

- Identifier - The full name or acronym used by the organization seeking protection; its eligibility is established by an approved list.
- Scope – the limited list of eligible identifiers distinguished by type (name or acronym) or by additional designations as agreed upon and indicated in the text below; may also include lists approved by the GAC (where this is the case it is expressly indicated as such in the text below).
- Language – The scope of languages for which a Latin-script identifier is to be protected

Consensus Scale:

Each recommendation will include a corresponding level of consensus as agreed to by the WG. The consensus scale documented here is an extract from the GNSO Working Group Guidelines²⁹.

- **Full Consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus.
- **Consensus** - a position where only a small minority disagrees, but most agree. **
- **Strong Support but Significant Opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it. **
- **Divergence** (also referred to as No Consensus) - a position where there isn't strong support for any particular position, but many (two or more) different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.**

²⁹ GNSO WG Guidelines: <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-08apr11-en.pdf>

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

Several minority statements were filed for this set of recommendations and they can be found in section 5.7. Each minority position filed lists the group represented and the person that filed it.

5.1 Red Cross Red Crescent Movement (RCRC) Recommendations³⁰

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)^{***} 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus
2	Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Divergence
3	Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Divergence
4	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level	Consensus
5	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement	Consensus
6	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement	Divergence
7	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement	Divergence

³⁰ The RCRC has provided a minority position statement regarding recommendations that did not achieve a level of consensus at the end of this recommendations section.

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)*** 	
8	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level	Consensus
9	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH)**	Consensus
10	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse**	Consensus
11	<i>Red Cross Red Crescent Movement</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> phase of each new gTLD launch for Second-Level registrations	Consensus

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

*** Scope 2 Identifiers contain both full name and acronyms. The distinction is that Scope 1 identifiers are based on a list provided by GAC advice, while Scope 2 names were additionally offered by the RCRC.

5.2 International Olympic Committee (IOC) Recommendations

#	Recommendation	Level of Support
○ Scope 1 Identifiers: olympic, olympiad (Language: UN6, + German, Greek, and Korean)**		
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus
2	For <i>International Olympic Committee</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level	Consensus
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in Specification 5 of the Registry Agreement	Consensus
4	For <i>International Olympic Committee</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level	Consensus

** Note that the IOC did not request protections for acronyms and therefore no recommendations are included within this set.

5.3 International Governmental Organization (IGO) Recommendations³¹

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List (22 March 2013) - Full Name (Language: Up to two languages) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus
2	Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Divergence
3	For <i>International Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level	Consensus
4	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Consensus
5	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Divergence
6	For <i>International Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level	Consensus
7	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse**	Strong Support but Significant Opposition

³¹ The IGO coalition has provided a minority position statement regarding recommendations that did not achieve a level of consensus at the end of this recommendations section.

#	Recommendation	Level of Support
○	Scope 1 Identifiers: GAC List (22 March 2013) - Full Name (Language: Up to two languages)	
○	Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages)	
8	<i>International Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> phase of each new gTLD launch for Second-Level registrations**	Consensus

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

5.4 International Non-Governmental Organizations (INGO) Recommendations³²

	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus
2	Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Divergence
3	For <i>International Non-Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level	Consensus
4	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Divergence
5	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Divergence
6	For <i>International Non-Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level	Consensus
7	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 (unless otherwise reserve protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH)	Consensus

³² Representatives of INGOs have provided a minority position statement regarding recommendations that did not achieve a level of consensus at the end of this recommendations section.

	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>	
8	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 1 (unless otherwise protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse</p>	Divergence
9	<p><i>International Non-Governmental Organizations</i> Scope 1 (unless otherwise protected) & Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> phase of each new gTLD launch for Second-Level registrations</p>	Consensus

Alternative Qualification Criteria for INGOs (not including RCRC and IOC) that was considered but not adopted by the WG:

The following criteria were considered as possible qualification criteria for INGOs which can demonstrate being granted privileges, immunities, or other protections in law on the basis of their quasi-governmental international status, public missions and legal protection for their names. While there was some support, the WG did not adopt these criteria. Some reasons included issues of potential subjectivity and the need for case-by-case evaluation.

1. The INGO benefits from some privileges, immunities or other protections in law on the basis of the INGO’s proven (quasi-governmental) international status;
2. The INGO enjoys existing legal protection (including trademark protection) for its name/acronym in over 50+ countries or in three (of five) ICANN regions or alternatively using a percentage: more than 50% of the countries;
3. The INGO engages in recognized global public work shown by:
 - a. inclusion on the General Consultative Status of the UN ECOSOC list, or
 - b. membership of 50+ national representative entities, which themselves are governmental/ public agencies or non-governmental organizations that each fully and solely represent their respective national interests in the INGO’s work and governance.

5.5 General Recommendations

The following general recommendations are not attributed to any particular organization seeking protection, but rather they are presented to apply to all organizations as applicable.

#	Recommendation	Level of Support
1	The WG recommends that the respective policies are amended so that curative rights of the UDRP and URS can be used by those organizations that are granted protections based on their identified designations.	Consensus
2	IGO-INGO organizations be granted a fee waiver (or funding) for objections filed against applied-for gTLDs at the Top-Level	Divergence
3	IGO-INGOs allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	Strong Support but Significant Opposition
4	Fee waivers or reduced pricing (or limited subsidies) for registering into the Trademark Clearinghouse the identifiers of IGO-INGO organizations	Divergence
5	IGO-INGOs allowed to participate in <u>permanent Claims Notification</u> ³³ of each gTLD launch	Divergence
6	Fee waivers or reduced pricing for IGO-INGOs filing a URS or UDRP action	Divergence

³³ Present TMCH implementation of the Claims Notification service is defined to last for at least a 90 day period. WG deliberations considered, but eventually reject the notion of a permanent notification service to compensate where a reserved name protection may not be granted. Permanent notification is defined as a notification services that exists indefinitely.

5.6 Consideration of Recommendations on Incumbent gTLDs

This section considers the proposed recommendations from the previous sections and if they were adopted as consensus policy, how the implementation of the policy may impact existing gTLDs delegated prior to 2012. WG deliberations determined that no policy implications existed; however, several aspects should be considered when any such policies regarding IGO-INGO protections are implemented for incumbent gTLDs.

From IGO-INGO Charter:

“...determine how incumbent registries should meet the new policy recommendations, if any.”

Scope and Assumptions:

- Existing gTLDs Only (Delegation pre-2012)
- Only second-level proposed protection recommendations apply
- Assumes that the present WG recommendation proposals are supported and adopted for new gTLDs

Principles of Implementation:

- Any policies adopted for new gTLDs shall apply equally to existing gTLDs to the extent they are relevant (for example second-level IGO-INGO protections utilizing TMCH, sunrise, claims will not apply).
- For clarification purposes, second-level names matching a protected identifier, as identified via any consensus policies defined here, and that are not registered within an existing gTLD, shall be immediately reserved from registration in the same manner as for new gTLDs. Due to the time lag between the date the Working Group and GNSO Council adopts recommendations, and the date the recommendations are implemented, there is a possibility of front-running, whereby some identifiers not previously registered could be registered before the policy is in effect. A mechanism to guard against front-running should be defined, such as establishing the date these recommendations were adopted by the Working Group or GNSO Council as the measurement date that determines how a domain name matching a protected identifier is treated.
- A second-level registration within an existing gTLD matches a protected identifier, as identified via any consensus policies defined here, and the registration of said name, if registered prior to implementation of protections or any such cutoff date as may be determined, shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.
- If a second-level name that matches a protected identifier, as identified via any consensus policies defined here, and becomes eligible for deletion after defined grace-periods, the name shall not be eligible for any drop/add activities by the Registrar. At the time the name

is deleted, the name shall not be reallocated by the Registry and shall be deemed ineligible for registration per the defined policy.

- Where policy changes to recover protected identifiers of registered second-level names within an existing gTLD deviate from current policy, registry & registrar indemnification should be considered.
- For clarification purposes, second-level names matching a protected identifier that are also registered by a party other than the protected organization and bad faith use vis-à-vis the protected organization is suspected, the protected organization may have access to RPMs like the UDRP, pending a PDP to address how the IGO-INGO organizations may access RPMs.

5.7 Proposed Options for Exception Procedure

The WG developed two high-level options for exception procedures that are not necessarily mutually exclusive and requests feedback on these options in the public comment period.

Option 1

Goal: Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration³⁴.

General Principles - The procedure must:

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

Outline of Proposed Procedure:

1. Notification of Conditional Refusal Based on Protected Name.

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

2. Declaration of Legitimate Use.

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

- Within ten (10) days of receiving a conditional refusal, an applicant may file a declaration with the Registry. The declaration must identify the potential registrant accurately, provide accurate contact information, and state that the potential registrant has a good faith, legitimate interest in using the domain name that does not violate any treaties, national

³⁴ Some members have expressed concern with the operability of process-heavy exemption procedures that may have a great potential to impede rights and legitimate interests unduly. Further, misuse of licensing opportunities could be a potential issue as well.

laws or other legal entitlement of the protected organization. A standard form will be provided (likely an ICANN function, but to be determined). The protected organization will receive a copy of the declaration electronically at its given address when the declaration is filed with the Registry.

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

3. Examination.

The examination procedure must comply with the principles above. It must:

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

Option 2

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

General Principles: The procedure must:

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

Outline of Proposed Procedure:

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

5.8 Minority Position Statements

This section contains a series of minority position statements where certain Working Group Members and stakeholders did not agree with the levels of consensus designated per recommendations by the Chair.

5.7.1 International Red Cross and Red Crescent Movement:

Minority Position
of the International Red Cross and Red Crescent Movement

Submitted on 20 September 2013

The International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the 189 National Red Cross and Red Crescent Societies (hereafter the “Movement”) provide this “minority position” to the soon to be released IGO/INGO Report. After several months of fruitful discussions within the Working Group, in which several representatives of the Movement have been active and regular participants, the recommendations and level of support identified in the IGO/INGO Report do not reflect the legal protections accorded to the Red Cross and Red Crescent and related designations and names under universally recognised international treaties (the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005) and under the domestic law in force in multiple national jurisdictions.

This “minority position” assesses the recommendations listed in the IGO/INGO Report and provides further clarification to complement previous comments and submissions made throughout the GNSO PDP Working Group process.

IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 1 and 5: We support these recommendations, as they make permanent the temporary reservations of the Red Cross and Red Crescent designations at the top and second levels, as previously confirmed by ICANN's Board, and as set out in the Applicant Guidebook and in Annex 5 to the revised Registry Agreement.

IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 4 and 8: We support these recommendations, as we believe they would effectively place the Red Cross and Red Crescent designations that are covered in Recommendations 1 and 5 on a “Modified Reserved Names List”. This would preserve the entitlement of Movement components to register relevant domain names should they require to do so in the future.

IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 2, 3, 6, and 7 that did not achieve a level of consensus: The Movement repeats its position made throughout the WG process that Recommendations 2, 3, 6, and 7 should be granted. We appreciate the work produced by the WG, but nonetheless maintain that the existing protections, as currently defined in the Applicant Guidebook and in Specification 5 of the revised Registry Agreement, are not sufficient and should be made to expressly extend to the “Scope 2” names or identifiers as set forth in Recommendations 2, 3, 6, and 7.

Further to discussions and conversations held in Durban, we have reduced our asks with the hope that this will facilitate approval and implementation of the protections that are called for. These are also set forth in our

most recent Public Comment of 17 July. The Movement hence requests that the following names also benefit from permanent protection as outlined for Scope 1 Red Cross and Red Crescent designations and names, and as further stated below:

the names (official and usual) of the 189 National Red Cross and Red Crescent Societies in English and in the respective national languages of the National Society concerned;

the names of the International Committee of the Red Cross and International Federation of Red Crescent Societies in the six UN languages;

the acronyms (initials) of the two international organizations within the Movement, namely the International Committee of the Red Cross (ICRC/CICR/CICV/MKCK) and the International Federation of Red Cross and Red Crescent Societies (IFRC / FICR / МФКК).

Confirmation is hence sought that these designations be permanently protected from top and second level registration in the current round and in all future rounds of application. Our request is based on international law and the domestic law in force in multiple jurisdictions. It conforms to the universally approved requirements of the 1949 Geneva Conventions and their Additional Protocols, which specifically protect the Red Cross and Red Crescent designations in both their protective function (as the designations of the protective emblems in times of armed conflict) and indicative function (to indicate a link to the Movement or any of its components).

Defining the protections to cover only the designations per se (“red cross”, “red crescent” or “red crystal”) and not the names of the organizations (e.g. “British Red Cross”, “Croix-Rouge française”, or “Afghan Red Crescent”) would fail the requirements of international law and of the laws in force in multiple jurisdictions, which protect the designations at all times. It would also defeat the global public interest in preserving the names of the respective Red Cross and Red Crescent organizations from misuse, including fraud (a major risk, as witnessed in recent disasters during which websites were frequently and notoriously set up to divert donations to Red Cross and Red Crescent operations in favour of affected persons and communities). The adjectives composing the names of National Red Cross or Red Crescent Societies and indicating the latter's national affiliation (e.g. the word American in the name American Red Cross) cannot be considered as a simple pre- or suffix. These form a full-fledged part of the names of the respective National Red Cross and Red Crescent Societies. It is noted in this regard that, under the 1991 Regulations on the use of the emblem by National Red Cross or Red Crescent Societies which have been adopted and approved by States, National Societies are required to use their full name for the purposes of identification.

The request to protect not only the designations per se, but also the names of the respective Red Cross and Red Crescent organizations is also consistent with the objective and scope of the WG and the latter's mandate to consider the names and identifiers of relevant organizations.

IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 9, 10, and 11: The TMCH does not provide sufficient relief to the Movement and can not constitute an adequate substitute to Recommendations 2, 3, 6 and 7 mentioned above. Recommendations 9, 10 and 11 only offer a time-bound early warning and stop short of offering effective and cost neutral relief for the “Scope 2” (Red Cross and Red Crescent) identifiers. In addition, as the Movement has consistently put forward in its successive submissions to the process over the past two years, requiring the Red Cross or Red Crescent organisations to activate the remedies foreseen in the above recommendations would constitute a considerable burden on the Movement in both financial and human terms.

In conclusion, we respectively request that the GNSO also adopt Recommendations 2, 3, 6, and 7.

We remain available to provide any further clarification on the above.

Stéphane J. Hankins
International Committee of the Red Cross (ICRC)

Christopher M. Rassi
International Federation of Red Cross and Red Crescent Societies (IFRC)

5.7.2 International Standards Organization & International Electrotechnical Commission (INGO):

Joint ISO-IEC Statement Regarding IGO-INGO Working Group Recommendations of 2013-08-21

This serves as a joint Statement on behalf of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) with respect to the IGO-INGO Working Group Recommendations of 2013-08-21.

ISO and IEC are non-profit international non-governmental organizations (INGOs) that develop and publish international standards. Our respective national members represent standardization efforts in over 150 countries and we have published thousands of international standards used on a worldwide basis.

Our standards aim to level the playing field for developing countries, facilitate free and fair global trade, and help companies to access new markets. They also help to ensure that products and services are safe, reliable and of good quality.

From the beginning of our participation in the IGO-INGO Working Group, we have advocated for not only INGOs but all international organizations that face the almost certain risk of increased abuse of their names/acronyms as more top-level domains enter the domain name system.

We cannot overemphasize that non-profit INGOs with global public missions are particularly vulnerable when it comes to facing this mounting risk of cybersquatting. This is because INGOs often lack the mandate, funds, expertise and resources to do so. And when they do, the fight can come at the cost of diverting (often public) resources away from serving the global community, including helping to make technology and communication, the Internet and the domain name system easier and safer for all to use.

When discussing the need for special protections for the names/acronyms of international organizations in top and second-level domains, we should not ignore INGOs.

1. Universal Objective Criteria.

From the start of the Working Group's deliberations, we have emphasized the importance of finding one set of objective criteria for granting international organizations special protection. We were concerned that otherwise, tailor-made qualification criteria would effectively match certain *organizations* instead of describing the select *category* of international organizations that should be granted special protection based on the legal and policy rationale for doing so.

The current Recommendations however split international organizations into two categories and set apart two specific international organizations. We do not support this distinction.

To be clear, we support a set of universal objective criteria for all international organizations that would receive special protection in second and top level domains.

2. International Non-Governmental Organizations (INGO) Recommendations.

Absent a set of universal objective criteria, in the first place, we continue to support the criteria proposed by ISO and IEC as it appeared in the "Initial Report on Protection of IGO and INGO Identifiers in All gTLDs" of June 14, 2013.

The INGO Qualification Criteria follow;

- i. The INGO benefits from some privileges, immunities or other protections in law on the basis of the INGO's proven (quasi-governmental) international status;
- ii. The INGO enjoys existing legal protection (including trademark protection) for its name/acronym in over 50+ countries or in three (of five) ICANN regions or alternatively using a percentage: more than 50%;
- iii. The INGO engages in recognized global public work shown by;
 - a. inclusion on the General Consultative Status of the UN ECOSOC list, or
 - b. membership of 50+ national representative entities, which themselves are governmental/public agencies or non-governmental organizations that each fully and solely represent their respective national interests in the INGO's work and governance.

The current Working Group Recommendations of 2013-08-21 rely on reference to the United Nations Economic and Social Council's (ECOSOC) list of non-governmental organizations in consultative status with the ECOSOC.

While we believe this list is neither as narrowly tailored nor as flexible as the proposed ISO-IEC criteria, we do believe that it provides a way forward for granting protection of INGO names in second and top level domains.

As such, we fully support the current Recommendations for special protections of INGO names and acronyms as shown in our accompanying response to the Consensus Call.

3. Recommendations Not Receiving Support for All Organizations.

We strongly oppose any recommendation to block the acronyms of international organizations, or to place any permissions-based or inappropriate and burdensome delays or process on the application and registration of acronyms as second or first top level domains by trademark owners of such acronyms.

See [Letter from Mr. Rob Steele to Dr. Stephen D. Crocker of May 13, 2013](#). And subsequent request from the International Sugar Organization to change its GAC-provided acronym "ISO" to "ISOSUGAR" for these protections, [Letter from James Lowe to Steve Crocker and Fadi Chehadé of May 29, 2013](#).

Respectfully submitted,

Ms. Guilaine Fournet
Head of Sales and Business Development
International Electrotechnical Commission (IEC)

Ms. Claudia MacMaster Tamarit, Esq.
Intellectual Property Rights Manager
International Organization for Standardization (ISO)

5.7.3 Non-Commercial Stakeholder's Group:

On reserved names:

There appears to be a consensus in the IGO-INGO WG to provide special protections for IGOs, INGO, the RCRC and even the IOC at the second level. While we believe this is unfortunate, it does seem to be the accepted. This means that the reserved names list will grow exponentially by 1 or possibly 2 orders of magnitude.

Buried within this increase in the size of the reserved name list is the recommendation for an exemption that would allow for these reserved names to be registered under some circumstances, such as by the organization to whom it is related or by someone who gets permission to register from the relevant IGO or IGNO.

We believe that this notion of an exemption is a fertile ground for abuse that has not been adequately studied by this working group; we admit such a discussion is difficult. I also believe that any such exemption procedure essentially creates a new kind of reserved name that has not been adequately understood and for which there are no policy recommendations on how it should be implemented.

Our minority opinion is that exceptions for the registration of the reserved names be postponed until such time as there has been a PDP on reserved names and the process by which exceptions might be made. In the meantime, our minority recommendation is that these names be treated as names currently on the reserved names are treated, i.e. the only way for such names to be registered as domain names, at the second level is through the Registry Service Evaluation Process (RSEP) process.

On the treatment of reserved names already registered by incumbent registries:

The recommendations extend the expanded reserved names list to the incumbent registries. Quite reasonably registrants who already have these names will be allowed to keep them and for any abuse to be handled under the enhanced RPMs as recommended by WG. Our minority view extends to what happens when the registrant of such a reserved names wishes to sell or otherwise transfer the name to another registrant. Allowing such a transfer goes against the nature of the reserved names list and opens an avenue for abuse.

Our recommendation is that all names added to the reserved names list be blocked from sale/transfer to a new registrant at least until such time as a PDP on reserved names has considered the issue in the light of their possible changes to the nature of reserved names.

5.7.4 International Governmental Organization (IGO):

Minority Statement on the GNSO IGO-INGO PDP Working Group Recommendations

This statement is being made on behalf of a consortium of over 40 Public International Organizations and 15 United Nations Funds and Programs (together, IGOs).

With regard to the question of the principle and extent of any envisaged protection for certain non-governmental entities, even if of comparative relevance to IGO protection, IGOs will not provide additional observations on this question in the more limited context of the present document.

Effective protection for IGO identifiers remains a critical priority for our organizations in the exercise of our public mandate.

IGOs have been actively engaged in good faith with diverse ICANN bodies and advisory committees, including with the PDP Working Group, on the issue of obtaining necessary preventative protections for IGO identifiers (names and acronyms) at the top and second level. IGOs have provided extensive documentation and comments to inform and facilitate the various processes, including this PDP. The PDP Working Group has been informed of IGO views on many occasions via its IGO delegates (UPU, WIPO and OECD).

The PDP Working Group has now reached the point where members of the Working Group have been asked to make responses to selected recommendations on the issue of IGO and INGO protections. As a preliminary observation, the IGO coalition wishes to express three concerns about this approach.

First, the structure of the recommendation matrix is such that it presents recommendations in separate components. This creates the risk that comments made or support indicated may be read out of context to apply only to an individual component, rather than the broader combination thereof.

Second, as indicated above, the IGOs participating in this Working Group represent a broad consortium of Public International Organizations and United Nations Funds and Programs. Through their membership of governments and through their activities, these in turn represent a global scope of stakeholders in recognized public causes. In light of this, should IGOs remain alone in items of opposition, such opposition should not be masked by a qualifier of “consensus” (as defined on ICANN’s scale as “a position where only a small minority disagrees, but most agree”). A far more accurate description of such scenario on ICANN’s scale would be

“strong support but significant opposition”. We trust that the Working Group’s leadership will work to avoid any misrepresentations in this regard.

Third, IGOs are concerned that the presentation of the recommendation matrix, with a final page of “Recommendations Not Receiving Adequate Support For All Organizations”, may result in the latter recommendations not receiving equal weight in the presentation of outcomes. Although naturally not every potential recommendation could be included, the IGO’s position is of fundamental relevance to the issue of IGO protection. This is all the more so when the need to provide preventative protection to IGO names and acronyms in new gTLDs, at both the top level in future rounds and the second level in all rounds, has unequivocally been recognized by ICANN’s Governmental Advisory Committee (GAC) as a matter of global public policy.

IGOs are extremely concerned that the recommendations proposed by the PDP Working Group to the GNSO Council are not fully in line with such GAC advice, which has been accepted by the Board, subject to clarification of certain implementation issues for second level protection of acronyms on which a dialogue is currently in progress.

In particular, IGOs are vehemently opposed to any recommendations which propose protections for IGO full names, but not acronyms. As already expressed on many occasions, the majority of IGOs are best-known by their acronyms and it is these which have suffered and will time and again suffer misuse in the DNS. Therefore a proposal to protect full names only would practically equate to proposing no protection at all. Such an unreasonable proposal would not only disregard GAC advice, international treaties and national laws, but also defy reality and common sense. Furthermore, any acronym protection that would not be preventative would ignore the legal status of IGOs as distinct from other entities, and would merely put IGOs in the position of being informed as to any prospective or actual abuse, without a far more appropriate option to prevent such abuse in the first place.

The enclosed IGO Common Consolidated Position Paper, which was addressed to the Chairs of the ICANN Board, New gTLD Program Committee, Governmental Advisory Committee, and President and CEO, as well as to the PDP Working Group during the public consultation process, summarizes the essential considerations for the protection for IGO identifiers. We refer all interested parties to this document.

Sincerely yours,

(OECD) (WIPO) (UPU)

On behalf of the IGO Coalition

6. Community Input

6.1 Request for input from GNSO Stakeholder Groups and Constituencies

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

6.2 Request for input from other ICANN Supporting Organizations and Advisory Committees

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

6.3 Summary of Community Input

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

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

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

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

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

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

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

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

6.4 Summary of International Organizations' Positions

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

Red Cross and Red Crescent

The RCRC cites the protection granted to the Red Cross and Red Crescent designations and names under universally agreed international humanitarian law treaties (the Geneva Conventions of 1949 and their Additional Protocols) and under the domestic laws in force in multiple jurisdictions, as establishing a *sui generis* case for permanent protection of the RCRC designations and names from third party registration at both the top and second level in all gTLDs. While expressing appreciation for the work produced by the WG, the RCRC maintain that the recommendations of the WG are insufficient and should be complemented.

The RCRC notably underlines that the existing protections, as currently defined in the Applicant Guidebook and in Specification 5 of the revised Registry Agreement, are not sufficient and should be made to expressly extend to (in the WG's own categorization: Scope 2 names or identifiers):

- the names of the respective components of the International Red Cross and Red Crescent Movement (i.e. the 189 recognized National Red Cross or Red Crescent Societies - e.g. German Red Cross, Afghan Red Crescent, Red Star of David, etc.). This protection is called for in both English and in the national and official languages of the National Societies concerned;
- the names of the two international components - the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) in the six UN languages, as well as the acronyms of the two Organizations in their commonly used translations.

- In as much, the RCRC have suggested that the recommendations of the Working Group be amended and revised to expressly foresee that
 - Top-Level protections of Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in the Applicant Guidebook section 2.2.1.2.3 as Strings "Ineligible for Delegation";
 - Second-Level protections of only Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in Specification 5 of the Registry Agreement;
 - For RCRC Scope 2 identifiers, if placed in the Applicant Guidebook or in Specification 5 of the Registry Agreement as strings "Ineligible for Delegation" at top or second levels, an exception procedure be created for cases where a protected organization wishes to apply for a protected string.

While the RCRC have taken note of the proposed recommendation to add the so-called Scope 2 names or identifiers to the Trademark Clearinghouse (TMCH), they have consistently maintained that this would not meet the requirements for protection under the law and would be liable to place an undue burden on the RCRC organisations to monitor and activate existing reactive procedures and mechanisms. They have also underlined that should the TMCH option be considered, a waiver of fees should be duly foreseen and the standing of the RCRC organizations in existing remedial mechanisms confirmed.

Finally, while citing the express prohibition on imitations of the Red Cross, Red Crescent and Red Crystal designations and names under international law and under the laws in force in multiple jurisdictions, the RCRC have expressed their continued support for the establishment of a mechanism or procedure to effectively address the issue of strings confusingly similar or liable to confusion with, or including, either of the RCRC designations or names.

International Olympic Committee

The IOC³⁶ also cites the *sui generis* protection granted to IOC identifiers under national laws in multiple jurisdictions (recognized by the GAC and the ICANN Board) as justification for establishing special permanent protection from third party registration of the IOC designations at both the top and second levels in all gTLDs; and that the IOC designations be available for registration by the IOC or its authorized international and national organizations through a Modified Reserved Names list.

International Governmental Organizations

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

International Non-Governmental Organizations

Some members of the WG have also advocated protections for certain INGOs (other than the IOC and the RCRC) that have recognized global public missions, extensively legally protected names, and protections in law granted on the basis of their (quasi-governmental) international status³⁷. The International Organization for Standardization (ISO) has formally advocated that certain INGOs and IGOs with global public missions need special protection to counter the increasing potential for and ongoing impact of cybersquatting; and thus there is a need to establish objective, non-discriminatory criteria for granting special protection which would also avoid unduly restricting rights and legitimate rights.

³⁶ IOC 3029 Nov 2012: <http://forum.icann.org/lists/gnso-igo-ingo/msg00133.html>

³⁷ ISO Letter to Stephen Crocker 13 May 2013: <http://forum.icann.org/lists/gnso-igo-ingo/msg00616.html>

7. Next Steps

This draft Final Report is being posted for public comment for at least 21 days, plus a 21-day Reply Period, after which the submitted comments will be summarized and analysed. Once the Public Forum is closed, the PDP WG will take into account all comments received, and complete a Final Report to be submitted and considered by the GNSO Council for further action. The WG would follow the directions of the Council if any additional work is needed.

Annex 1 – PDP WG Charter

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

Organizations (“IGOs”).

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

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

Mission and Scope

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

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

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

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

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

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

Objectives & Goals:

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

Possible tasks that the WG may consider:

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

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

Deliverables & Timeframes:

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

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

Specifically:

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

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

Section III: Formation, Staffing, and Organization

Membership Criteria:

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

Group Formation, Dependencies, & Dissolution:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Status Reporting:

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

Problem/Issue Escalation & Resolution Processes:

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

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

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

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

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

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

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

Closure & Working Group Self-Assessment:

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

Section V: Charter Document History

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

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

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

	(Australian Red Cross)	
Evan Leibovitch	ALAC (Vice-chair)/NARALO	SOI
Berly Lelievre-Acosta	WIPO	SOI
David Maher	RySG	SOI
Kiran Malancharuvil	IPC	SOI
Judd Lauter	IPC/IOC	SOI
Jeff Neuman	RySG	SOI
Oswaldo Novoa	ISPCP	SOI
David Opderbeck	IPC	SOI
Sam Paltridge	OECD	SOI
Christopher Rassi	Red Cross Red Crescent (International Federation of Red Cross and Red Crescent Societies)	SOI
Thomas Rickert	NCA	SOI
Mike Rodenbaugh	IPC	SOI
Greg Shatan	IPC	SOI
Cintra Sooknanan	NPOC	SOI
Ken Stubbs	RySG	SOI
Claudia MacMaster Tamarit	ISO	SOI
Joanne Teng	WIPO	SOI
Liz Williams	Individual	SOI
Giacomo Mazzone	Individual	SOI
Observers		
Jonathan Robinson- GNSO Council Chair	RySG	SOI
Wolf-Ulrich Knoben - GNSO Council vice chair	ISPCP	SOI
Mason Cole - GNSO Council vice chair	RrSG	SOI

Staff		
Marika Konings		
Berry Cobb		
David Olive		
Mary Wong		
Glen de Saint Géry		
Gisella Gruber		
Nathalie Peregrine		
Julia Charvolen		

** Observer

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

RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

NPOC – Not-for-Profit Operational Concerns Constituency

Annex 3 – Community Input Statement Request Template

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

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

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

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

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

Process

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

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

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

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

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

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

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

Questions to Consider:

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

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

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

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

Annex 4 – ICANN General Counsel Office Research Report

As of 31 May 2013

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

From: Office of ICANN’s General Counsel

Research Requested from the WG

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

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

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

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

Research Performed

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

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

Executive Summary

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

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

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

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

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

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

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

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

Survey of Jurisdictions

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

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

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

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

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

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

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

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

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

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