

Minority Positions on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process

STATUS OF THIS DOCUMENT

This is the Minority Position Statement for the Final Report on the Protection of IGO and INGO Identifiers in all gTLDs, by the stakeholders within the IGO-INGO WG.

1. RCRC

Minority Statement of the International Red Cross and Red Crescent Movement¹

on the Final Report on the Protection of IGO and INGO Identifiers in all gTLDs Policy Development process

Submitted on 7 November 2013

(1) **Introduction:** 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 Statement 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. It notably expresses the dissent and regret of the respective Red Cross and Red Crescent organizations that the Working Group could not reach consensus on the extension of the permanent protections accorded to the designations of the emblems to the names of the respective components of the Movement (namely the names of the 189 National Red Cross and Red Crescent Societies, of the International Committee of the Red Cross (ICRC) and of the International Federation of Red Cross and Red Crescent Societies (IFRC).

(2) ***Red Cross and Red Crescent position on the respective Final IGO/INGO Report's recommendations:***

- IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 1 and 3 in Section 3.1: 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 2 and 4 in Section 3.1: We support these recommendations, as they would effectively place the Red

¹ See also the Summary of the Red Cross and Red Crescent position in the core of the Final Report, pages 64-65.

Cross and Red Crescent designations that are covered in Recommendations 1 and 3 on a “Modified Reserved Names List” and 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 5, 6, 7 and 8. The Movement repeats its position that the preventive protection mechanisms foreseen under these recommendations (namely the Trademark Clearinghouse) are insufficient in order to fully protect the names or identifiers of the respective Red Cross and Red Crescent organizations. The Trademark Clearinghouse does not provide sufficient relief to the Movement and can not constitute an adequate substitute to an extension of the protections to “Scope 2” (Red Cross and Red Crescent) identifiers. Recommendations 5, 6, 7 and 8 only offer a time-bound early warning and stop short of offering effective and cost neutral relief for the Scope 2 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 organizations to activate the remedies foreseen in the above recommendations would constitute a considerable burden on the Movement in both financial and human terms. The Movement maintains that the same protections afforded to the designations covered under Recommendations 1, 2, 3 and 4 should be extended to the names and identifiers of the respective Red Cross and Red Crescent organizations.

(3) ***Remaining request of the Red Cross and Red Crescent organisations***

It is noted with regret that the proposed recommendations of the Working Group to extend the top and second level protections to the exact match full names and identifiers of the respective Red Cross and Red Crescent organizations (as defined in the Working Group's so-called Scope 2 names or identifiers), as highlighted in Section 3.6 (Red Cross and Red Crescent Movement) of the IGO/INGO Report, did not reach a consensus level of support.

We hence maintain our longstanding understanding and request that the existing protections be duly extended to Scope 2 names, including in particular:

- 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 Cross and 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/MKKK) and the International Federation of Red Cross and Red Crescent Societies (IFRC / FICR / МФКК).

In line with our most recent Public Comment submitted on 17 July 2013 and the Public Comment provided by over 35 National Red Cross and Red Crescent Societies in different regions of the world on 1 November 2013, confirmation is hence sought that these designations be permanently protected from top and second level registration in the current and in all future application rounds. 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.

Conclusion:

In light of the above, we respectively request that the GNSO

- adopt Recommendations 1, 2, 3 and 4 on the International Red Cross and Red Crescent Movement and highlighted in Section 3.1 of the Final Report..
- confirm the unsupported Recommendations 1, 2, 3 and 4 highlighted on in Section 3.6 (Red Cross Red Crescent Movement) of the IGO/INGO Report.

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

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International Committee of the Red Cross (ICRC)

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2. IOC

The IOC did not submit a minority statement. This placeholder is only meant to maintain continuity with the structure by which the organizations seeking protection are presented in the Final Report.

3. 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

4. INGO

International Organization for Standardization (ISO) & International Electrotechnical Commission (IEC) (INGOs):

Joint ISO-IEC Statement on the Final Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process (Final Report)

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 Final Report. 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. 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, and as it appears in the Final Report

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 relevant Final Report Recommendations 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 was originally shown in our 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,

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5. NCSG

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 be adequately studied by this working group; we admit such a discussion is difficult. We 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.

6. ALAC

ALAC Minority Statement on the Final Report on the Protection of IGO and INGO Identifiers in All gTLDs PDP

The ALAC has made a number of statements on the protection of IGO and INGO names, and has participated actively in all GNSO activities related to this topic. Our views on specific outcomes of this PDP are reflected in the Final Report.

Given the wide range of views expressed in this report, and noting that nothing presented has received the unanimous support of the PDP Working Group, the ALAC would like to take this opportunity to comment on the nature of the Recommendations as well as identify the principles that have guided its positions.

The Draft Final Report includes a wide variety of Recommendations some reflecting a WG Consensus (as defined by the GNSO Working Group Guidelines) some with an even weaker level of support. Not a single one was agreed to by all WG members (Full Consensus), a level of support that is more typical of most GNSO PDPs. For many of the recommendations originally considered by the WG and strongly supported by some, the overall participant views were Divergent. The collection of Recommendations with Consensus level or Strong support, taken as a whole, does not form a cohesive and consistent set of policies. Although each individual Recommendation received sufficient support, the net result is a set of Recommendations that may be incomplete and perhaps even conflicting.²

The ALAC is particularly concerned that granting blocking-level protections may prohibit other reasonable uses of the same strings, and is not satisfied that the exception procedure options outlined in the report could meet the targets that the ALAC believes are mandatory.

This being the case, it may be important to consider the principles that guided the ALAC in our participation in the activities that led to this report, and that the ALAC believes should guide ICANN in considering any special protections.

² As an example, there may be cases where a strong protection is not recommended, but the recommendations may be silent on weaker forms of protection.

1. ICANN should grant special protection to organizations that further the public interest and in particular, those with a strong track record of humanitarian activities. However, such protections should only be granted where there is a history or reasonable expectation that the lack of protections would lead to the misrepresentation of the organizations, fraud, deliberate confusion, or other malfeasance.
2. Such protections, when granted, should not unreasonably impinge on the ability of others with a valid right to use the protected string from registering such names for uses which do not negatively impact the protected organization nor use the protected name with the intent to deceive users. Formal trademarks should not be necessary to demonstrate such a right.³
3. The procedures used to grant the protection exceptions identified in number 2 must be both inexpensive and fast.
4. No top level protections are necessary. Existing or new objection processes are sufficient.

³ Although not a gTLD registration, cern.ca is a good example. The Centre d'exposition de Rouyn-Noranda in northern Quebec has no connection or even a vague relationship with the Conseil Européen pour la Recherche Nucléaire, but they do happen to share an acronym. In the gTLD space, Olympic.diy is a prime example of a new registration that might not be allowed under the proposed rules even though the TLD (diy = Do-it-yourself) is a logical registration for Olympic Paints.