



INTERNATIONAL  
OLYMPIC  
COMMITTEE

Internet Corporation for Assigned  
Names and Numbers ("ICANN")  
4676 Admiralty Way  
Suite 330  
Marina del Rey, CA 90292-6601  
USA

Legal Affairs Department  
Ref. No.

Lausanne, 29 November 2010

## **THE PROPOSED FINAL NEW GTLD APPLICANT GUIDEBOOK.**

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Dear Sir/Madam,

The International Olympic Committee ("IOC") submits this letter in response to ICANN's invitation for public comment on the "proposed final version" of the new gTLD Applicant Guidebook.

### **I. INTRODUCTION**

The IOC has submitted eleven public comments to ICANN opposing its new gTLD program. These comments uniformly request—in the event that ICANN does proceed to launch an unlimited number of new gTLDs—that the Olympic trademarks, including OLYMPIC and OLYMPIAD, be placed on a reserved names list. We have received no response from ICANN to date regarding this request.

Our comments also request adequate rights protection measures necessary to quell an expected unprecedented level of cybersquatting and trademark infringement. Yet these comments have been relegated for consideration by the Generic Names Supporting Organization—a body comprised primarily of registries, registrars and registrants who have no motivation to support effective trademark protection mechanisms and who actively aim to reduce accountability for intermediaries and legitimize cybersquatting.

The IOC agrees with the Governmental Advisory Council that ICANN leadership must pay "more concerted attention ... to mitigate the costs to brand owners of new gTLDs." Accordingly, we recommend that ICANN abandon its current timeline for the launch of the new gTLD program and we submit the following comments for your consideration and action.

### **II. COMMENTS**

#### **A. THE OLYMPIC TRADEMARKS BELONG ON A RESERVED NAMES LIST.**

The IOC is dedicated to its mission of promoting the Olympic Games, which help to promote world peace, ethics in sport, gender equality, education of youth, and a positive legacy for nations participating in the Olympic Games.



The new gTLD program would force the IOC to divert significant time and financial resources away from fulfilling its non-profit mission, and toward preventing infringement, dilution and tarnishment of the Olympic trademarks in a dramatically expanded domain name system. This diversion of much-needed time and financial resources can be prevented by placing the Olympic trademarks on a reserved names list.

Placing the Olympic trademarks on a reserved names list is nothing new. Numerous countries have enacted unique legislation granting enhanced protection to the Olympic trademarks, which effectively place the marks on national reserved lists. Such countries include, Belgium, Brazil, Canada, China, France, Germany, Greece, Mexico, Poland, Portugal, Russia, South Korea, Spain, Turkey, the United Kingdom, and the United States. They recognize the strong public and governmental interest in encouraging and advancing participation of athletes in the Olympic Games. This special statutory protection supersedes ordinary trademark registration by reserving the Olympic trademarks to the IOC and its National Olympic Committees. Because the Olympic trademarks are reserved, they cannot be used by unauthorized third parties for any commercial goods or services, even if third party use is unlikely to cause confusion.

In the United States, the Supreme Court has recognized that Congress—in enacting the Olympic and Amateur Sports Act—had “a broader public interest in promoting, through the activities of the [United States Olympic Committee], the participation of amateur athletes from the United States in ... the Olympic games.” The Act “directly advances these governmental interests by supplying the USOC with the means to raise money to support the Olympics and ... ensuring that it will receive the benefit of its efforts.”<sup>1</sup> In short, such broad protection provides the IOC and its National Olympic Committees with the financial means needed to continue to promote the Olympic Movement.

The unique reserved status of the Olympic trademarks has also been recognized by the Cour de Cassation in France, by the Office for Harmonization in the Internal Market in Spain, by the Handelsgericht de Kantons Zurich in Switzerland and by the Court of Venice, industrial and intellectual property section, in Italy. In addition, specific protection for the Olympic trademarks under the United States Anti-Cybersquatting Consumer Protection Act, as well as numerous judicial and panel decisions under the ACPA and the UDRP, serve as a testament to the special level of protection the Olympic Movement warrants. Moreover, the IOC receives cooperation from numerous domain name merchants (including Network Solutions, eBay.com, HugeDomains.Com, Sedo.Com, GoDaddy.Com, AfterNIC and Nominet) in recognition of the unique nature of the Olympic trademarks.

In our eleven previous public comments to ICANN, we have addressed these points at length. Our comments have consistently recommended placement of the Olympic trademarks on a reserved names list.<sup>2</sup> We have not, however, received any response from ICANN to this specific request.<sup>3</sup>

For all of the foregoing reasons, we reiterate that the OLYMPIC and OLYMPIAD trademarks belong on both the top-level reserved names list (Guidebook Module 2.2.1.2) and the second-level reserved names list (Registry Agreement Specification 5). To be clear, placement on these lists is unrelated to the Globally Protected Marks List or the Trademark Clearinghouse.

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<sup>1</sup> See *San Francisco Arts & Athletics, et al. v. United States Olympic Committee et al.*, 483 U.S. 522, 538-539 (1987).

<sup>2</sup> See Annex A (Schedule of IOC Public Comments) and Annex B (Olympic Trademarks and the Reserved Names List).

<sup>3</sup> We note that ICANN staff recognized our request for placement of the Olympic trademarks on a reserved names list in its analysis and summary of public comments received on the fourth version of the Draft Applicant Guidebook. See ICANN, *New gTLD Draft Applicant Guidebook Version 4 Public Comment Summary and Analysis* at p. 46 (12 Nov. 2010).



Importantly, the IOC and its National Olympic Committees are committed to working with ICANN and the Governmental Advisory Council to implement a reserved list of Olympic trademarks that ensures non-commercial free speech is not negatively affected.

#### **B. THE CLEARINGHOUSE SHOULD INCLUDE OLYMPIC TRADEMARKS PROTECTED BY FUTURE STATUTES AND TREATIES.**

The decision to limit statutory-based inclusion in the Clearinghouse to “only marks under existing treaties” unduly discriminates against future Olympic Games, host cities and corresponding trademark rights.

The justification given by ICANN staff for such discrimination—a purported necessity to “prevent potential abuse”—is without merit. Governments across the world are not in the practice of manipulating legislation and treaties in some senseless attempt to receive unwarranted preferential treatment from the domain name industry. Special statutory protection is primarily reserved for governmental emblems or symbols, as well as a discrete group of famous, not-for-profit organizations such as the IOC and its National Olympic Committees.

Moreover, there is no rational basis for the Clearinghouse to protect all future marks validated through judicial proceedings yet deny protection for future marks validated through legislative proceedings—namely special statutory protection for future Olympic Games. Accordingly, ICANN staff should strike this limiting clause from the criteria for inclusion in the Clearinghouse or should adapt it accordingly.<sup>4</sup>

#### **C. PROPOSED TRADEMARK PROTECTION MECHANISMS SHOULD BE STRENGTHENED TO PROTECT OLYMPIC AND OTHER FAMOUS TRADEMARKS.**

The overall state of proposed trademark protection for new gTLDs is not satisfactory. First, ICANN should not discriminate against owners of presumptively valid European trademark registrations by imposing additional validation requirements—i.e. substantive review—for use in proposed rights protection mechanisms. Second, sunrise and claims services should encompass both confusing similarity and foreign equivalents to address rampant typosquatting.

Third, the Uniform Rapid Suspension System does not offer a meaningful remedy; it includes a draconian “two-strike” policy for abusive complaints and deliberate material falsehoods; and it is unjustifiably mired by obligatory panel review in instances of respondent default, a two-year statute of limitations for filing a *de novo* appeal from default, use of a disjunctive “OR” standard of bad faith, and an unwieldy number of defenses for panelists to consider. Fourth, the Post-Delegation Dispute Resolution Procedure should also target registrars and should instill accountability among registration authorities by adopting a willful blindness standard of liability.

### **III. CONCLUSION**

Subject to the foregoing, the IOC maintains its opposition to the introduction of new gTLDs because it is inherently flawed and injurious to owners of famous trademarks—particularly non-profit rights holders that rely in part on special statutory protection.

These recommendations should not be taken as a waiver of the IOC’s right to proceed against ICANN for damages resulting to the IOC or the Olympic Movement from the implementation of the proposed new gTLD system.

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<sup>4</sup> See Clearinghouse Section 3.2.3 (strike “and that was in effect on or before 26 June 2008”).



If these critical issues are not fully resolved and ICANN chooses not to place the Olympic trademarks on the reserved names list, then the IOC and its National Olympic Committees are prepared to employ all available legislative, regulatory, administrative and judicial mechanisms to hold ICANN accountable for damage caused to the Olympic Movement.

Please rest assured that we prefer a prudent solution, reached by collaborative means, to any of these costlier and more contentious remedies.

The IOC kindly asks that you have the courtesy to respond to the points raised by the IOC, either in a face to face meeting and/or in writing.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'Urs LACOTTE'.

Urs LACOTTE  
Director General

A handwritten signature in blue ink, appearing to read 'Howard M. Stupp'.

Howard M. Stupp  
Legal Affairs Director