



INTERNATIONAL
OLYMPIC
COMMITTEE

Legal Affairs Department
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Lausanne, 15 May 2011

IOC COMMENTS ON THE DISCUSSION DRAFT OF THE NEW GTLD APPLICANT GUIDEBOOK

Dear ICANN Board of Directors,

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

I. INTRODUCTION

Over the past three years, the IOC has submitted twelve comments to ICANN requesting that the words OLYMPIC and OLYMPIAD be reserved, in recognition of the international statutory protection for these Olympic words and the unique nature of the Olympic Movement.

Only after the IOC submitted comments regarding the "proposed final version" of the Applicant Guidebook on 29 November, 2010 did channels of communication open between our intellectual property counsel and ICANN counsel. As the result of productive discussions held in Cartagena, Colombia, ICANN publicly announced that it "is considering the nature of [international statutory protection] and, if appropriate, might augment the reserved names lists in special cases such as requested by the IOC and International Red Cross, both of which are globally invested in representing the public interest."¹

Through ensuing correspondence and encouraging discussions held during the ICANN meeting in San Francisco, we adduced overwhelming evidence establishing that the words OLYMPIC and OLYMPIAD are unique and that their reservation in the top and second levels of all new gTLDs serves the public interests of the international community.

We have publicly requested reserved names status for the past three years. We have satisfied the requirements set forth by ICANN counsel over the past five months. We therefore urge the ICANN Board of Directors to add the words OLYMPIC and OLYMPIAD to the reserved names lists before approving a final version of the Applicant Guidebook. In support of our position, we offer the following comments for your consideration.

¹ ICANN, *New gTLDs Proposed Final Applicant Guidebook Public Comment Summary*, at p. 42 (21 February 2011), available at <http://www.icann.org/en/topics/new-gtlds/summary-analysis-proposed-final-guidebook-21feb11-en.pdf>.



II. COMMENTS

A. THE WORDS “OLYMPIC” AND “OLYMPIAD” BELONG ON THE RESERVED NAMES LISTS.

Reserving the words OLYMPIC and OLYMPIAD at the top and second levels of an expanded domain name system is consistent with internationally accepted principles of law and the public interest of the international community.

Well over thirty nations—spread across the five ICANN geographic regions—have enacted *sui generis* legislation reserving exclusive use of the words OLYMPIC and OLYMPIAD to the IOC and its National Olympic Committees. A number of these national statutes—as seen in Brazil and Greece—specifically grant the IOC exclusive rights to these words in “domain names on the Internet.” These statutes have been in existence for many years. In the very rare instances where they have been legally challenged, national high courts and intellectual property offices have uniformly upheld their validity.²

In addition, well over sixty nations—also spread across the five ICANN geographic regions—have signed the Nairobi Treaty on the Protection of the Olympic Symbol. The Nairobi Treaty does not specifically protect the words OLYMPIC and OLYMPIAD, but it does establish special protection for the Olympic Movement as an internationally accepted principle of law.

The IOC depends upon its exclusive international rights to use the Olympic words and symbols in serving the public interest—ensuring regular celebration of the Olympic Games and placing sport at the service of humanity; to promote world peace, human development, environmental sustainability, education of youth, HIV/AIDs prevention and gender equality. Like ICANN, the IOC was formed to serve charitable and educational purposes. Just as ICANN strives to close the digital divide, the IOC strives to use sport to support humanitarian causes that benefit millions of people around the world.

We have submitted voluminous materials to ICANN counsel explaining and discussing *sui generis* statutory, treaty and judicial protection, as well as Olympism and the public interest. Our request for reserved names status has met with encouragement and support from ICANN counsel, the Governmental Advisory Committee and the United States Senate. Indeed, the Government Advisory Counsel has thrown its full support behind the initiative to reserve the Olympic words.³ Our request has also received support from responsible members of the domain name industry—who have reserved these Olympic names.⁴

Reserving the words OLYMPIC and OLYMPIAD in the top and second level of all new gTLDs adheres to international legal principles that help preserve the Olympic

² See e.g. *San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522 (1987) (“[T]he language and legislative history of [the Olympic and Amateur Sports Act] indicate clearly that Congress intended to grant the [United States Olympic Committee] exclusive use of the word “OLYMPIC” without regard to whether use of the word tends to cause confusion, and that [the Act] does not incorporate defenses available under the [United States Trademark] Act.”)

³ See attachments in annex.

⁴ See e.g., CentralNIC, *US.ORG Reserves Olympic Trademark and More to Protect Against Cybersquatters and Brand Abuse* (29 April 2011) available at <http://us.org/news/press-release-04-29-11>.



Movement—allowing the IOC and its National Olympic Committees to maintain and expand efforts to benefit the international community through sport.

The final version of the Applicant Guidebook should include these Olympic words in the reserved names lists to help the Olympic Movement to weather the impending release of at least two hundred new gTLDs.

B. RIGHTS PROTECTION MECHANISMS IN THE GUIDEBOOK ARE INSUFFICIENT TO PROTECT THE OLYMPIC MOVEMENT.

We believe that reserving the words OLYMPIC and OLYMPIAD at the top and second levels of all new gTLDs is the only practical way of protecting them amidst an unprecedented expansion of the domain name system.

The objection and rights protection mechanisms identified in the Guidebook are insufficient to protect the Olympic Movement because they are expensive and ineffective. It is unrealistic to expect the IOC to divert funds from its worldwide humanitarian efforts, and toward making entries in a Clearinghouse; validating entries with evidence of use in commerce; filing comments and formal objections against infringing gTLD applications; registering domains defensively in sunrise periods; initiating proceedings to freeze infringing domains; initiating more proceedings to prevent re-registration of the same domains; and renewing defensively held registrations perpetually for each new gTLD that arises.

The IOC recognizes that ICANN and the Governmental Advisory Committee have made progress—in particular, ICANN has removed the cutoff date placed on statutes and treaties that form the basis for access to the Clearinghouse or use of the Suspension System. However, the IOC wishes to offer the following comments on three particular issues pending before the ICANN Board of Directors.

First, Trademark Claims and Sunrise Services should extend beyond exact matches.⁵ If UDRP or Suspension System proceedings determine that there is a “confusing similarity” between a domain name and a trademark, then the trademark owner should be able to place that second-level domain name in the Trademark Clearinghouse, and refer to it in Trademark Claims and Sunrise Services. Otherwise, the same second-level domain name could arise repeatedly in various new gTLDs, even after being cancelled or frozen in successful UDRP or Suspension System proceedings.

Second, ICANN must somehow prevent names frozen by the Suspension System from expiring, dropping back into the pool of registrable names, and being re-registered by another cybersquatter.⁶ We believe that offering transfer as a remedy is an appropriate solution. Another possible solution is mentioned above: placing names that are frozen by the Suspension System in the database of the Trademark Clearinghouse.

Third, there should be no “two-strike” provision against allegedly abusive complaints. If there can be no “five-strike” provision against repeat cybersquatters under the Suspension System because “[d]ue process principles dictate that every registrant should always

⁵ ICANN, *Revised ICANN Notes on the GAC New gTLD Scorecard*, at pp. 14-15, Item No. 6.1.3 (15 April 2011) available at <http://icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-redline-15apr11-en.pdf>

⁶ *Id.* at pp. 20-21, Item No. 6.2.12.



should always have the opportunity to present a defense,” then the same principles of due process dictate that every Complainant should have the opportunity to be heard.⁷

Even if these three issues are adequately addressed, we are convinced that reserving the words OLYMPIC and OLYMPIAD at the top and second levels of all new gTLDs is the only practical way of adhering to international *sui generis* legislation and safeguarding the lifeblood of the Olympic Movement.

III. CONCLUSION

The IOC considers this matter to be of such importance that we have expended considerable time and effort to convince you of the cogency of our arguments.

The IOC hopes that ICANN will take a similar position to that of the US Congress and numerous other parliaments across the world who have enacted national Olympic-related statutory protection, namely, that ICANN will place the words OLYMPIC and OLYMPIAD on the reserved names lists before approval of the final Applicant Guidebook.

As stated in previous correspondence, the IOC reserves its rights.

Yours Sincerely,

A blue ink signature of Christophe de Kepper, consisting of a large, stylized 'C' followed by a horizontal line.

Christophe de KEPPER
Director General

A blue ink signature of Howard M. Stupp, written in a cursive style.

Howard M. Stupp
Legal Affairs Director

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⁷ *Id.* at p. 19, Item No. 6.2.9.