



1 November 2013

**Re: Draft Final Report on Protection of IGO and INGO Identifiers in All gTLDs**

We support the Working Group's efforts to create a policy framework to provide a degree of protection for the names and acronyms of the Red Cross, International Olympic Committee, IGOs, and INGOs. We also welcome the considered Advice of the GAC on this topic.

Like other trademark owners, the burden these entities face in policing abuses of their names in the DNS risks being exacerbated in an expanded DNS. We therefore support the overarching goal of minimizing such abuse, and the consumer confusion that often follows.<sup>1</sup>

It is critical however, that ICANN policies are founded on, and reflect, existing laws.

The Working Group recommends that "an exception procedure should be created for cases where a protected organization wishes to apply for their protected string".

This must be amended to allow legitimate third parties to apply for a protected string. In this way, the recommendation would appropriately reflect co-existence principles recognized in the applicable underlying international laws.<sup>2</sup>

To the extent ICANN policies fail to appropriately reflect relevant existing laws, ICANN risks exposing itself to criticism that it is inappropriately creating new international law.

Thank you for your consideration.

Yours sincerely,

/s/

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<sup>1</sup> To that end, to the extent ICANN considers extending (Trademark) Claims Notifications in perpetuity, this service should be provided to all owners of TMCH-validated rights.

<sup>2</sup> See, e.g., Article 6ter of the Paris Convention ([www.wipo.int/article6ter/en/legal\\_texts/article\\_6ter.htm](http://www.wipo.int/article6ter/en/legal_texts/article_6ter.htm)) "[a prohibition on the use of an IGO name as a mark] shall not be required...when the use or registration...is not of such a nature as to...mislead the public", and USPTO Trademark Manual of Examining Procedure §1205.02 (<http://tmep.uspto.gov/RDMS/detail/manual/TMEP/Oct2013/d1e2.xml#/manual/TMEP/Oct2013/TMEP-1200d1e4645.xml>) "the examining attorney [may] refuse registration [of a mark] on the ground that the mark comprises matter that may falsely suggest a connection with [an IGO]."