**Draft Initial Report on the**

**Protection of IGO and INGO Identifiers in All gTLDs**

**Policy Development Process**

**STATUS OF THIS DOCUMENT**

This is the Initial Report on the Protection of IGO and INGO Identifiers in All gTLDs, prepared by ICANN Staff for submission to the GNSO Council on [Date]. A Final Report will be prepared by ICANN Staff following review of the public comment received on this Initial Report.

**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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#  Executive Summary

**TO BE COMPLETED**

1. **Background**
* Placeholder
1. **Deliberations of the Working Group**
* The Protection of IGO, INGO, IOC and RCRC Identifiers in All gTLDs Working Group started its deliberations on [date] where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.
* Section 5 provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads.
1. **WG Preliminary Recommendations**
*

1. **Stakeholder Group / Constituency Statements & Initial Public Comment Period**
2. **Conclusions and Next Steps**
* The Working Group aims to complete this section of the report in the second phase of the PDP, following a second public comment period.

#  Objective and Next Steps

This Initial Report on the Protection of IGO, INGO, IOC and RCRC Identifiers in all gTLDs PDP is prepared as required by the GNSO Policy Development Process as stated in the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The Initial Report will be posted for public comment for 30 days, minimum, plus a 21-day reply period. The comments received will be analysed and used for redrafting of the Initial Report into a Final Report to be considered by the GNSO Council for further action.

#  Background

1. **Request from the ICANN Board with Regard to IGOs**

Issues regarding whether IGOs should receive special protection for their names have been raised throughout the development of the New gTLD Program. The latest inquiry to re-examine this issue 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.[[1]](#footnote-1) 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 §2.2.1.2.3. In addition, IGOs are seeking a pre-emptive mechanism to protect their names at the second level. The IGOs have reiterated their supporting arguments for these positions and requests through a “Common Position Paper Regarding Protection of IGO Names and Acronyms in the DNS in the Context of ICANN’s GTLD Expansion Plan,” (“IGO Common Position Paper”) sent to the Chairs of both the GAC and the GNSO Council on 4 May 2012.[[2]](#footnote-2)

On 11 March 2012, the ICANN Board formally requested that the GNSO Council and the GAC provide “policy advice on the IGO’s request. [Such] policy advice on the expansion of protections will inform ICANN in providing a meaningful response to the IGOs.”[[3]](#footnote-3) In a response dated 26 March 2012, the Chair of the GNSO Council stated the Council’s position that the IGOs should first work with the GAC in providing any policy advice on this matter to the Board, and that the GNSO Council would review the policy implications of any advice the GAC ultimately provides to the Board, upon the Board’s request to do so.[[4]](#footnote-4)

The GNSO Council did not request an Issue Report in direct response to the Board’s request to the GAC and GNSO on the IGO issue. However, the IGO request was taken into account in the adopted motion requesting this Report along with other comments received from the community related to the GNSO Council-adopted recommendations for the protection of Red Cross and International Olympic Committee names (see Section 3.2 below).[[5]](#footnote-5) As a result, the scope of this Final Issue Report includes an evaluation of whether to protect the names of both international government and non-government organizations at the top level and second level in new gTLDs.

1. **Policy Work With Regard to the Red Cross and Olympic Movements**

During the ICANN Dakar Meeting in October 2011, the GNSO Council convened an informal drafting team to focus on the narrower issue of whether the RCRC and the IOC should receive special protections beyond those currently afforded to them in the Applicant Guidebook. This drafting team, known as the IOC-RC Drafting Team, was convened to respond to the Board’s 20 June 2011 Singapore resolution with regard to the protection of names of the RCRC and the IOC during the first round of applications (the “Singapore resolution”) and in particular, to a subsequent GAC proposal submitted to the GNSO Council on September 14, 2011, to permanently protect the RCRC and IOC names at both the top and second levels (which is described in more detail in Section IV below).

In the Singapore resolution, the Board authorized the President and CEO to implement the New gTLD Program “which includes the following elements:

1. the 30 May 2011 version of the Applicant Guidebook <<http://www.icann.org/en/topics/new-gtlds/comments-7-en.htm>>, subject to the revisions agreed to with the GAC on 19 June 2011, including: …(b) incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest…..”

Prior to the Singapore Resolution, ICANN Staff submitted a June 2011 Board Workshop Paper on IOC/Red Cross Protections to the Board that incorporated research and advice provided by outside counsel.[[6]](#footnote-6) This Paper included a high-level assessment of the legal background for the IOC/RCRC’s request for special protections in the New gTLD Program, and included a survey of the scope of protections across jurisdictions. The Paper notes that although the research described therein could not fully substitute for individual consultations with intellectual property lawyers in each of the relevant jurisdictions, the research supports the conclusion that very few, if any, organizations apart from the IOC and the RCRC could satisfy the same criteria for receiving special protections in new gTLDs. The specific criteria that the IOC and RCRC met included:

* The Movement or Organization requesting that one or more of its Intellectual Properties (“Properties”) be place on the Reserved Names list must have been well established long before (such as 50 or 100 years) the new gTLD policy was adopted by the Board on 26 June 2008.
* The names are widely recognized and closely associated with the Movement or Organization.
* One or more Properties of the Movement or Organization must be protected by legislation in at least 30 countries, on at least four continents.
* One or more Properties of the Movement or Organization must be protected by one or more treaties adopted by at least 60 countries.
* The Movement or Organization must be a non-profit institution (or the equivalent) operating in the public interest and the reservations of names must serve the public interest.
* GAC advice must have been received indicating the GAC’s strong support for the Movement’s or Organization’s request to have one or more of its Properties placed on a Reserved Names list.

The Paper noted that at the time the Paper was written, no other organizations had been identified as having satisfied these criteria.

The IOC-RC Drafting Team produced a set of recommendations[[7]](#footnote-7) supported by a rough consensus of its members that were published for public comment on 2 March 2012, and were subsequently modified in the Costa Rica ICANN Meeting before adoption by the GNSO Council on 26 March 2012. These recommendations, which were forwarded to the ICANN Board for consideration, are described in greater detail on **Annex 3** to this Report. The GNSO Council intended that these recommendations be adopted by the ICANN Board commencing with the first round of new gTLD applications, notwithstanding the fact that application period had already commenced and applications had already been received.

At its 10 April 2012 meeting, the ICANN Board’s New gTLD Program Committee (“Committee”) considered the GNSO recommendations but decided not to change the Applicant Guidebook, at that time.[[8]](#footnote-8) In its rationale for this resolution, the Committee observed that although “the GNSO’s recommendations were well taken; the Committee opted for preserving the status quo. As protections already exist, when balanced with the accountability and operational issues posed by changing the Applicant Guidebook at that time, the Committee noted that ”the public interest will be better served by maintaining the status quo…. Nothing in the Committee's action or this rationale is intended to preclude the consideration of the GNSO recommendations for future rounds of applications within the New gTLD Program.”

On 3 August 2012, the Committee published a Progress Report[[9]](#footnote-9) that provided an update on issues raised in Prague regarding the New gTLD Program, including the protection of RCRC and IOC names. After reviewing input provided by Staff which was requested by the Committee during the Prague Meeting[[10]](#footnote-10), the Committee stated that: “All recent inputs have been reviewed… Review of this material indicates that the appropriate course is for the Board to leave these issues in the hands of ICANN’s policy‐making bodies. This was the recommendation of the Board in its Singapore resolution when considering protections for the IOC and Red Cross. ICANN Staff members are supporting that discussion in the GNSO. The IOC and Red Cross are addressing their comments to the GNSO. The GNSO is properly considering whether to do additional work on these issues.”

On 13 September 2012, the Committee requested that the GNSO consider a proposed solution for the first round to protect at the RCRC and IOC names at the second level, consistent with the GAC advice to the Board which would include specific RCRC and IOC names on the reserved names list. The Committee sought to provide sufficient time for the GNSO to develop its views on this request taking into account the timeline for the first round and so that any adopted protections are in place for the first round.  In view of this timeline, the Committee is seeking the GNSO’s response by January 31, 2013.[[11]](#footnote-11) The GAC and the IOC requested clarification at the ICANN meeting in Beijing whether, in light of the past deadline, the protections detailed in New gTLD Program Committee Resolution NC2012.09.13.01 were finalized. With conclusion of the IOC/RCRC Drafting Team and the submission of their recommendations, the GNSO Council approved a motion to initiate a Policy Development Process for the protection of certain International Organization Names in al gTLDs. The Working group was formed 31 October 2012 and their Charter was approved by the GNSO Council on 15 November 2012.[[12]](#footnote-12)

At its 26 November 2012 New gTLD Committee meeting, the Board also resolved for the GNSO to continue its policy development efforts on the protection of IGO names. It also requested for 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 in section 2.2.1.2.3 of the Applicant Guidebook for the first round of new gTLDs. A response deadline of 28 February 2013 was provided.[[13]](#footnote-13)

In response to the ICANN Board’s advice deadline for the protection of IOC/RCRC names, the GNSO Council Chair sent a letter[[14]](#footnote-14) on 31 January 2013 to the ICANN Board and GAC with its advice on this issue. The essence of the letter is that the GNSO does not dispute the advice supplied by the GAC, but that it does recognize that the issue exceeded implementation and required further policy development to bring closure to the issue.

On 28 February 2013, the GNSO Council also sent a letter[[15]](#footnote-15) to the ICANN Board in regards to their request for advice on the protection of IGO-INGO names for the first round. The GNSO made reference to the temporary protections of the IOC/RCRC and that the IGO-INGO PDP had not completed it work. The letter also noted a minority position that the global public interest could possibly be harmed by such temporary protections. The Council advised that the Working Group assigned to this issue will maintain its sense of urgency to provide final advice to the ICANN Board.

1. **Development of the New gTLD Program & Earlier Issue Report on the Issue of Dispute Handling for IGO Names and Abbreviations**

In 2005, the GNSO undertook a two-year policy development process to consider the introduction of new generic top-level domains, or gTLDs. During this process, the GNSO considered a number of issues, including, whether to create special protections for trademark holders, and specifically IGOs, for the New gTLD Program.

In 2007, Staff published a GNSO Issue Report at the request of the GNSO Council on the issue of dispute handling for IGO Names and Abbreviations,[[16]](#footnote-16) which recommended, in part, that:

* New gTLD agreements could provide for protection of IGO names and abbreviations as a contractual condition for new gTLDs
* Separate Dispute Resolution Procedure be developed for IGO names and abbreviations as domain names at the second or third level in new gTLDs
* A framework be developed for handling objections or challenges related to IGO names and abbreviations in the upcoming application round for new gTLDs

However, the GNSO Council motion to initiate a PDP on the issues and recommendations stemming from the 2007 Issue Report failed to gather the requisite number of votes.[[17]](#footnote-17) As a result, a PDP was not initiated and no specific recommendations were adopted by the GNSO Council with regard to protection of IGO names and abbreviations in new gTLDs at that time.

In 2008, the ICANN Board adopted 19 specific GNSO recommendations to guide the introduction of new gTLDs, in accordance with certain allocation criteria and contractual conditions. Among these 19 GNSO recommendations were the following:

* No. 2- Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.
* No. 3- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.
* No. 5- Strings must not be a Reserved Word.[[18]](#footnote-18)

If a PDP is initiated, these Board-adopted recommendations may need to be evaluated and, it is possible that the PDP could produce policy recommendations on creating additional protections that would require a modification of these GNSO recommendations.

Since the Board’s approval of the new gTLD policy in 2008, ICANN has undertaken an open and transparent implementation process to address stakeholder concerns, including the protection of intellectual property rights and community interests, consumer protection, and DNS stability. Teams of recognized experts were convened in the areas of intellectual property, consumer protection, DNS market economics, registry operations, linguistics and internationalized domain names, and root server stability to address the “overarching issues” raised by the ICANN community. This multi-year public participation process included consultations with governments, businesses, NGOs, law enforcement, and the At-Large Internet community, among others.

Specifically, the Board formed the Implementation Recommendation Team (IRT) comprised of 18 intellectual property experts to develop specific rights protection mechanisms for new gTLDs. The IRT final recommendations were reviewed by a cross-constituency based team (the Special Trademark Issues or STI team) to provide a multi-stakeholder consensus view. These combined efforts produced an enhanced set of trademark protections for new gTLDs (which are described in more detail in Section III.D below). Neither the IRT nor the STI proposed unique protections for the names or acronyms of any international organizations.

These trademark protections have been further improved through the participation of many in the broader Internet community, including a number of national governments via participation in ICANN’s Governmental Advisory Committee (GAC). This led to the Board’s Singapore resolution, which provided for special treatment of certain IOC and RCRC names, at the top level for the first round of applications in the New gTLD Program. No other international organizations were included in the “moratorium” created by the Board.

1. **Protections Available to International Organizations Under the Current Version of the Applicant Guidebook (AGB)**

International organizations – like other entities - may take advantage of several protections afforded under the New gTLD Program[[19]](#footnote-19), including:

**Top-Level Protections**

After the close of the application window, information on applied-for strings has been made publicly available. Any party, including international organizations, has the ability to review the applied-for strings to determine if any raise concerns, and will have the opportunity to avail themselves of the objection processes if the applied-for string infringes 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 has been appointed, and has the ability to file objections in certain cases where an objection has not already been made to an application that will infringe the latter two interests listed above. The Independent Objector will act solely in the best interest of the public. The Independent Objector does not, however, have the ability to bring an objection on the grounds of infringement of intellectual property rights.

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO is eligible to file a legal rights objection if it meets the criteria for registration of an .INT domain name. See Applicant Guidebook, section 3.2.2.2, at http://newgtlds.icann.org/en/applicants/agb/objection-procedures-11jan12-en.pdf. 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 the criteria. In addition, a holder of a word mark that is “specifically protected by statute or treaty” may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP), for use where it appears that a registry (at the top level) is affirmatively infringing the complainant’s mark. More information on the PDDRP is available in Section 6.1 of the Applicant Guidebook.

**Second Level Protections**

Word marks that are specifically protected by a statute or treaty are eligible for protection through the mandatory Trademark Claims process and Sunrise protections in the New gTLD Program, both of which are supported by the Trademark Clearinghouse.

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 separatetop-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.

The Trademark Clearinghouse is expected to support increased protections, as well as reduce costs for mark holders such as IGOs. The PDDRP, discussed in relation to the top level, 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.”

#  Approach taken by the Working Group

The Protection of IGO and INGO Identifiers in all gTLDs WG 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.

The Working Group also prepared a work plan, which was reviewed on a regular basis. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that could be used to provide input in response for the request for constituency and stakeholder group statements (see Annex 2). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process.

1. **Members of the Working Group**

The members of the Working group are:

|  |  |  |
| --- | --- | --- |
| **IGO-INGO Protections Policy Development Process (PDP) WG** | **Affiliation** | **SOI** |
| Wilson Abigagba | NCSG | [SOI](https://community.icann.org/display/gnsosoi/Wilson%2BAbigaba%2BSOI) |
| ~~Donna Austin~~ | ~~AusRegistry\*\*~~ | [~~SOI~~](https://community.icann.org/display/gnsosoi/Donna%2BAustin%2BSOI) |
| Lanre Ajayi  | NCA | [SOI](https://community.icann.org/display/gnsosoi/Lanre%2BAjayi%2BSOI) |
| Iliya Bazlyankov | RrSG | [SOI](https://community.icann.org/display/gnsosoi/Iliya%2BBazlyankov%2BSOI) |
| Jim Bikoff | IPC/IOC | [SOI](https://community.icann.org/display/gnsosoi/james%2Bbikoff%2Bsoi) |
| ~~Lea Bishop~~ | ~~NCSG~~ |  |
| Hago Dafalla | NCSG | [SOI](https://community.icann.org/display/gnsosoi/Hago%2BElteraifi%2BMohamed%2BDafalla%2BSOI) |
| Rafik Dammak | NCUC | [SOI](https://community.icann.org/display/gnsosoi/Rafik%2BDammak%2BSOI) |
| ~~Paul Diaz~~ | ~~RySG\*\*~~ | [~~SOI~~](https://community.icann.org/display/gnsosoi/Paul%2BDiaz%2BSOI) |
| Avri Doria | NCSG | [SOI](https://community.icann.org/display/gnsosoi/avri%2Bdoria%2Bsoi) |
| Bret Fauset | RySG | [SOI](https://community.icann.org/display/gnsosoi/Bret%2BFausett%2BSOI) |
| Elizabeth Finberg | RySG | [SOI](https://community.icann.org/display/gnsosoi/Elizabeth%2BFinberg%2BSOI) |
| Chuck Gomes | RySG | [SOI](https://community.icann.org/display/gnsosoi/Chuck%2BGomes%2BSOI) |
| Alan Greenberg | ALAC | [SOI](https://community.icann.org/display/gnsosoi/Alan%2BGreenberg%2BSOI) |
| Catherine Gribbin | Red Cross | [SOI](https://community.icann.org/display/gnsosoi/Catherine%2BGribbin%2BSOI) |
| Ricardo Guilherme | RySG | [SOI](https://community.icann.org/display/gnsosoi/Ricardo%2BGuilherme%2BSOI) |
| Robin Gross | NCSG | [SOI](https://community.icann.org/display/gnsosoi/Robin%2BGross%2BSOI) |
| Stephane Hankins | NCSG | [SOI](https://community.icann.org/pages/viewpage.action?pageId=38045468) |
| David Heasley | IPC/IOC | [SOI](https://community.icann.org/display/gnsosoi/David%2BHeasley%2BSOI) |
| Debra Hughes | NPOC | [SOI](https://community.icann.org/display/gnsosoi/Debra%2BHughes%2BSOI) |
| Zahid Jamil | CBUC | [SOI](https://community.icann.org/display/gnsosoi/Zahid%2BJamil%2BSOI) |
| Wolfgang Kleinwaechter | NCSG | [SOI](https://community.icann.org/pages/viewpage.action?pageId=30344000) |
| Christopher Lamb | Red Cross | [SOI](https://community.icann.org/display/gnsosoi/Christopher%2BLamb%2BSOI) |
| Evan Lebovitch | ALAC (Vice-chair)/NARALO | [SOI](https://community.icann.org/display/gnsosoi/Evan%2BLeibovitch%2BSOI) |
| David Maher | RySG | [SOI](https://community.icann.org/display/gnsosoi/David%2BMaher%2BSOI) |
| Kiran Malancharuvil | IPC/IOC | [SOI](https://community.icann.org/display/gnsosoi/Kiran%2BMalancharuvil%2BSOI) |
| Jeff Neuman | RySG | [SOI](https://community.icann.org/display/gnsosoi/Jeff%2BNeuman%2BSOI) |
| Jon Nevett | NTAG | [SOI](https://community.icann.org/display/gnsosoi/Jonathon%2BNevett%2BSOI) |
| Osvaldo Novoa | ISPCP | [SOI](https://community.icann.org/display/gnsosoi/Osvaldo%2BNovoa%2BSOI) |
| David Opderbeck | IPC | [SOI](https://community.icann.org/display/gnsosoi/David%2BOpderbeck%2BSOI) |
| Sam Paltridge | OECD | [SOI](https://community.icann.org/display/gnsosoi/Sam%2BPaltridge%2BSOI) |
| Christopher Rassi | Red Cross | [SOI](https://community.icann.org/display/gnsosoi/Christopher%2BRassi%2BSOI) |
| Thomas Rickert | NCA | [SOI](https://community.icann.org/display/gnsosoi/Thomas%2BRickert%2BSOI) |
| Greg Shatan | IPC | [SOI](https://community.icann.org/display/gnsosoi/Gregory%2BS.%2BShatan%2BSOI) |
| Cintra Sooknanan | NPOC | [SOI](https://community.icann.org/display/gnsosoi/Cintra%2BSooknanan%2BSOI) |
| Ken Stubbs | RySG | [SOI](https://community.icann.org/display/gnsosoi/Ken%2BStubbs%2BSOI) |
| Claudia MacMaster Tamarit | ISO | [SOI](https://community.icann.org/display/gnsosoi/Claudia%2BMacMaster%2BTamarit%2BSOI) |
| David Roache-Turner | WIPO | [SOI](https://community.icann.org/display/gnsosoi/David%2BRoache-Turner%2BSOI) |
| Liz Williams | Individual | [SOI](https://community.icann.org/pages/viewpage.action?pageId=14713560) |
| Mary Wong | NCUC | [SOI](https://community.icann.org/display/gnsosoi/Mary%2BWong%2BSOI) |
| Wendy Seltzer | NCSG | [SOI](https://community.icann.org/display/gnsosoi/Wendy%2BSeltzer%2BSOI) |
| Alain Berranger | NPOC | [SOI](https://community.icann.org/display/gnsosoi/Alain%2BBerranger%2BSOI) |
| Poncelet Ileleji | NPOC | [SOI](https://community.icann.org/display/gnsosoi/Poncelet%2BIleleji%2BSOI) |
| Guilaine Fournet | International Electrotechnical Commission (IEC) | - |
| **Observers**   |
| Jonathan Robinson- GNSO Council Chair | RySG | [SOI](https://community.icann.org/display/gnsosoi/Jonathan%2BRobinson%2BSOI) |
|
| Wolf-Ulrich Knoben - GNSO Council vice chair | ISPCP | [SOI](https://community.icann.org/display/gnsosoi/Wolf-Ulrich%2BKnoben%2BSOI) |
|
| Mason Cole - GNSO Council vice chair  | RrSG | [SOI](https://community.icann.org/display/gnsosoi/Mason%2BCole%2BSOI) |  |  |  |
| **ICANN Staff**   |  |  |  |
| Marika Konings | Brian Peck |   |  |  |  |
| Margie Milam | Glen de Saint Géry |   |  |  |  |
| Berry Cobb | Gisella Gruber |   |  |  |  |
| Barabara Roseman | Nathalie Peregrine |   |  |  |  |
| David Olive | Julia Charvolen |   |  |  |  |

* The attendance records can be found at [https://community.icann.org/display/GWGTCT/IGO-INGO+Attendance+Chart](https://community.icann.org/display/GWGTCT/IGO-INGO%2BAttendance%2BChart).
* 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

#  Deliberations of the Working Group

This chapter provides an overview of the deliberations of the Working Group conducted both by conference call as well as e-mail threads. The points below are just considerations to be seen as background information and do not necessarily constitute any suggestions or recommendations by the Working Group. It should be noted that the Working Group will not make a final decision on which solution(s), if any, to recommend to the GNSO Council before a thorough review of the comments received during the public comment period on the Initial Report.

1. **Initial Fact-Finding and Research**

The WG Charter required that the WG evaluate the scope of existing protections under international treaties/laws for IGO, 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:

* + 1. the assignment by ICANN at the top level, or
		2. 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)

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.

In addition, as part of the WG’s deliberations on establishing qualification criteria for special protection of international organization identifiers as mandated by the WG Charter, the WG asked representatives from the IOC, RCRC and IGOs to provide evidence of abuse by third party domain name registrations of their respective organization identifiers. Concurrently, ICANN staff also compiled a sampling of possible unauthorized domain name registrations of international organization identifiers. Reported abuse by the international organizations as well as staff compilation can be found in Annex XX.

1. **Main Findings of ICANN’s General Council Office**

The General Counsel provided its findings in response to the WG request (Annex 5). In summary, the research conducted by the General Counsel indicated that with the exception of two jurisdictions - Brazil and Mexico, there is no international treaty or national law that specifically prohibits the allowing of a domain name registration of an IGO or INGO identifier by a third party. In the case of Brazil, the unauthorized registration of a domain name using the IOC or FIFA name is explicitly prohibited. In Mexico, the unauthorized registration of a domain name using the IOC name is prohibited. Certain international treaties and national laws may provide causes of action to challenge such registrations, e.g., trademark infringement, unfair competition.

1. **Working Group Deliberations**

Essentially by two divergent positions exist:

1. stakeholders that do not believe that any special protections should be afforded because existing RPMs are adequate, or
2. stakeholders that request permanent protections at both the top and second levels to also include an exception process where protected organization may wish to register their respective identifier
3. **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) 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).

*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*

**Proposed Recommendation(s) for Charter Issue 1**

**Preliminary Level of Consensus for This Recommendation**

**Expected Impact of the Proposed Recommendation**

1. **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.

* 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.

**Proposed Recommendation(s) for Charter Issue 2**

**Preliminary Level of Consensus for This Recommendation**

**Expected Impact of Proposed Recommendation**

Position Designations:

* 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 agree3.
* 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.
1. **Proposed Recommendations Matrix – Top Level**

| **Top-Level Identifier Protection Recommendations** | **Rationale** | **Consensus Statement** |
| --- | --- | --- |
| 1) Top-level protections are granted via the Reserved Names list as defined in the Applicant Guidebook in section 2.2.1.2.3 | Essentially this recommendation takes the form of the resolutions adopted by the ICANN Board. | Divergence |
| 2) No additional top-level protections will be created (i.e. identifiers will not be added to the Reserved Names list per Specification 6 of the proposed Registry Agreement) | Existing objection procedures appear to be adequate to protect IGO-INGO identifiers. This is evidenced by the current applications for new gTLDs in that no entity applied for a string that infringes on any of the IGO-INGO organizations. Further, addition of identifiers to the Reserved Names list would prevent said organizations from applying for their own top-level domain in the future if they should choose to do so (or in so much as having to utilize consensus policy to amend future applicant guidebooks). Lastly, implementation of additional top-level protections may infringe on possible legitimate use by other organizations and perhaps encroach upon issues of free-speech.While no applications infringed on IGO-INGO identifiers in the present gTLD round, this is not to assume that the threat cannot exist in future rounds, see recommendations #2 and #3. | Divergence |
| 3) IGO-INGO organizations, based on qualification criteria in recommendation X, shall be granted equivalent standing similar to the GAC and the ALAC for filing objections in the applications for future gTLDs | The GAC and ALAC have standing to object to any top-level domain application via the stated objection processes and without incurring objection fees. Given cost issues and diversion of funds from IGO-INGO organizations serving the public interest, granting similar standing will provide these organizations with the ability to object/defend their identifiers without preventing an application for similar strings with potential legitimate use. | Divergence |
| 4) Conduct review of existing top-level Dispute Resolution processes and modify as necessary to accommodate deficiencies, if any, for protection of IGO-INGO identifiers | A critical component for the new gTLD program and future application rounds is an Affirmation of Commitments review to determine the success of the new gTLD program. In essence two reviews will be conducted. The first is to review how the new gTLD program promoted consumer trust, consumer choice, and competition. The second review focuses on the new gTLD application process and all components from application processing through to delegation. These future review teams should consider, after thorough review of objection procedures and dispute resolution procedures, whether IGO-INGO names qualify for use of the procedures or if they could be dis-advantaged when engaged in the procedure. Any discrepancies identified should force changes to the existing objections framework. | Divergence |

1. **Proposed Recommendations Matrix – Second Level**

| **2nd-Level Identifier Protection Recommendations** | **Rationale** | **Consensus Statement** |
| --- | --- | --- |
| 5) Second-level protections are granted via the Reserved Names list as defined in the Applicant Guidebook in section 2.2.1.2.3 | Essentially this recommendation takes the form of the resolutions adopted by the ICANN Board. | Divergence |
| 6) 2nd-level identifiers of IGO-INGO names will not be added to the Reserved Names list per Specification 6 of the proposed Registry Agreement | Placement of identifiers on the Reserved Names list is not a flexible instrument for organizations seeking protection if they wish to register a name. The removal of a name from the Reserved Names list can only be performed via the RSEP process, which can be burdensome and demand considerable resources. Further, placement of the identifiers on the reserved names list may also prevent the registration of a domain name that may have legitimate use of the protected name. The following recommendations seek to provide a framework for protection of IGO-INGO identifiers that will simulate a permanent protection by gate-keeping the registration of domain names of said identifiers similar to framework of the Trademark Clearing House and its supporting processes.  | Divergence |
| 7) Modify the Trademark Clearinghouse (TMCH) central repository for use by IGO-INGO organizations, based on qualification criteria in recommendation X | Requirements to post IGO-INGO identifiers to a central repository are similar to the requirements for traditional trademark identifier deposits into the TMCH. Therefore, it should be possible to leverage the existing implementation to for the protection if IGO-INGO identifiers. Requirements analysis will be required to ensure seamless implementation. | Strong support but significant opposition |
| 8) Make free or reduce pricing for registering into the TMCH the identifiers of IGO-INGO organizations, based on qualification criteria in recommendation X | This recommendation is dependent on Recommendation #5. An issue shared among all IGO-INGO organizations is costs associated with curative protections of names. Primarily, the pursuit of this activity diverts funds used in serving the global public interest where funds are derived from taxes collected by governments or donations. | Strong support but significant opposition |
| 9) Allow IGO-INGO organizations, based on qualification criteria in recommendation X, access to new gTLD Sunrise activities as they become delegated | If IGO-INGO protected organization wished to utilize a specific identifier within a given new gTLDs, access to the Sunrise process & listing within the TMCH will provide them the capability of registering the name prior to general availability. | Strong support but significant opposition |
| 10) Allow IGO-INGO organizations, based on qualification criteria in recommendation X, access to [permanent or 90 days] Trademark Claims of new gTLDs delegated | After in-scope identifiers of IGO-INGO names are entered into the TMCH, the Trademarks Claims process will be used to inform IGO-INGO organizations and “gate-keep” the registration of said names (see recommendations #9 on an exception procedure). In essence this provides a permanent protection of identifiers without having to list said identifier on the Reserved Names List. However, one difference with this recommendation versus the traditional TM Claims 90 day service is that it will never expire.OrTrademark Claims only follows the defined 90 day claims duration. If recommended, recommendation #9 becomes void. | Strong support but significant opposition |
| 11) Create a registration exception procedure for IGO-INGO permanent Trademark Claims where legitimate use of domain may exist if it becomes applied for. | Initial research in the registration and use of IGO-INGO identifiers within existing gTLDs revealed that legitimate use of like identifiers is possible. If permanent protections for IGO-INGO identifiers were granted and a third party attempted to register a name, a process will be required to examine the intent of legitimate use and if approved, the name could be registered. An entity external to the protected IGO-INGO organization and to ICANN should be established to legislate this exception procedure.If recommendation #8 only defines the 90 Claims period, this recommendation will be removed. | Divergence |
| 12) Review and modify where necessary the curative rights protections of the URS and UDRP such that IGO-INGO organizations, based on qualification criteria in recommendation X, have access to these curative rights protections. This set of recommendations could include pricing/cost conciderations for IGO-INGO organizations. | Direct match registrations of identifiers are only one aspect in the protection of identifiers. Often the malicious registration of keywords+identifiers, typosquats, or other generic phrase combinations are popular among registrants with bad-faith intent. Access to curative Rights Protection Mechanisms can provide IGO-INGO organizations a comprehensive package for the protection of bad-faith registrations. Formal changes to the URS and UDRP are beyond the scope of the IGO-INGO WG.However, a series of proposed changes could be supplied to the future RPM WG to help inform their deliberations. Such modifications could include:* Access to URS and UDRP despite having Trademark registrations within a jurisdiction or not
* Adjustments in price for filing URS/UDRP
* [others]
 | Strong support but significant opposition |

1. **Possible Working Group Outcomes**

The following draft outcomes are only temporarily documented here until the WG deliberates each possible top and second level protection recommendations outline in the tables above.

**Outcome #1:**

No consensus is achieved by the Working Group leaving only what the ICANN Board has posted in the following resolutions:

* first and second level protections for the IOC and Red Cross/Red Crescent names listed in section 2.2.1.2.3 of the Applicant Guidebook by inclusion on a Reserved Names List applicable in all new gTLD registries approved in the first round of the New gTLD Program.
* second level protections for certain IGO names and acronyms by inclusion on a Reserved Names List in 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. The specific IGO names to be protected shall be those names or acronyms that: 1) qualify under the current existing criteria to register a domain name in the .int gTLD; and 2) have a registered .int domain OR a determination of eligibility under the .int criteria; and 3) apply to ICANN to be listed on the reserved names list for the second level prior to the delegation of any new gTLDs by no later than 28 February 2013.

This outcome only provides protections of identifiers at the first and second level domains for the first round only of the new gTLD program thus requiring this issue to be considered via policy development for future gTLD rounds. The WG may consider this outcome as a chance to review harms or abusive registrations to provide further evidence of harm before granting any protections for future rounds of gTLDs (evidence criteria should be developed).

Because the first round gTLD applications have already been filed, no additional actions are necessary. However, second level protections of IGO-INGO names remain in force.

The protected identifiers (to be determined how qualified) will be placed on the Reserved Names with the only available exception process being the established Registry Services Evaluation Process (RSEP). If the protected organizations wish to register their respective second level names, it will require the removal of the name from the Reserved Names list for the particular gTLD of choice. It will require collaboration with the designated Registry Operator to submit a request via the RSEP process that may not be as flexible or a suitable method for granting said exceptions.

Lastly, this outcome does not accommodate two potential gaps. The reservation if IGO acronyms may prevent potential legitimate use registrations of second level domains names. The second gap is that the current resolution does not mention protections of INGOs.

**Outcome #2a:**

The WG achieves consensus that no special protections should be granted or implemented; to include recommendations that remove the temporary protections granted to IOC, RCRC, and IGO organizations for the first round of new gTLDs resolved by the ICANN Board.

**Outcome #2b:**

This outcome is a derivative of outcome #1 building on what the ICANN Board has implemented except the WG achieves consensus on permanent protections of identifiers at the first and second levels for future gTLD rounds. This consensus position would also include certain INGO organizations.

Listing of the protected identifiers will still be populated on the Reserved Names list. Therefore, if a protected organization desired to register their top-level domain, the only exception process vehicle will likely require policy development to remove the names from the Applicant Guidebook (section 2.2.1.2.3) for future gTLD rounds. As listed in Outcome #1, the RSEP is the only available avenue for a protected organization to remove their respective identifier from the target gTLD in which they wish to register. Lastly, this outcome will also require some form of qualification criteria (see table bottom of document) recommendation(s), perhaps more extensive than what the ICANN Board has resolved to date.

**Outcome #2c:**

This is a placeholder for a proposal currently under deliberation within the RySG. The RySG is continuing its position on special protections supporting the prior drafting team outcome protecting the IOC and the Red Cross but no other organizations. In other words, support for the Board position on the top level and the drafting team position on second level.

http://gnso.icann.org/en/issues/ioc-rcrc-recommendations-28sep12-en.pdf

**Outcome #2d:**

This is a placeholder for a proposal suggested by Avri Doria. Voluntary locking vs. ICANN enforced blocking. In summary, no identifiers will be placed on the Reserved Names List. A list of organizational identifiers will be recommended and invite every registry to implement protections of their choice and encourage them to do so where if Registries were to create additional reserved names lists specific to that registry and not require an RSEP if a protected organization chose to register their respective identifier. It would require whatever registry process the registry itself creates. To date, there are all sorts of reserved named lists that they're creating because of GAC comments, or because of other comments. Long lists of names that those registries voluntarily say they will not register. As what Sam said before of every registry, every registrar has an obligation essentially to create that sort of extra list on itself but how something would come off that would be up to the registry and/or registrar.

1. **Proposed Qualification Criteria**

**Goal:** Create a minimum standard of legal criteria for granting IGO-INGO Identifier Protections that is objective, verifiable, and measureable that could be used in case the group ultimately recommends such Protections.

**Working Qualification Criteria Proposals:**

***Model Alpha/Bravo:***

The goal is to protect organizations that are international in scope and operations, that serve the global public interest, and whose primary mission is of such public importance that they receive multilateral or multinational recognition and some form of special protection for their names and acronyms can be justified.

Meeting the following criteria is deemed to be sufficient evidence of the above requirements for an organization to be eligible for protections. The protection encompasses the name and the acronym of the respective organization as well as designations that - as the case may be - are explicitly mentioned in a treaty as a protected designation.

* + International in scope and operations, and
	+ Primary mission of such importance to the public interest
	+ That it receives multilateral or multinational protection,   such as:
		- Protection by treaty; or
		- Protection in multiple national jurisdictions; or
		- Inclusion in the Ecosoc list;
	+ And that some form of special protection for its name and acronym can be justified.

***Model Delta:***

* Being on the list is only 1 criteria, just like having a treaty is just one criteria. The need to prove service to the public interest is another requirement beyond that. That is why I think the criteria for Group Alef should be something like:
* Pick one of:
	+ Treaty
	+ .int list
	+ ECOSOC general consultative list
	+ maybe some other list yet to be discovered
* + Pick one of:
	+ Have protective laws in at least 25 nations
	+ Have protective laws in at 3 countries in 4/5 UN regions
	+ Be doing the work of the global public Interest (or put as admission criteria - Score at least XX points in a global public interest qualification test set up by ICANN based on this group's recommendations)

| **Qualification Criteria Recommendations** | **Rationale** | **Consensus Statement** |
| --- | --- | --- |
| 11) TBD |  | Divergence |
| 12)  |  |  |
| 13)  |  |  |

1. **Proposed Exception Procedure**

**Goal:** Where an applicant claims a legitimate interest in a second-level domain name that is a protected name, our 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 applicant and the protected organization when an application is refused registration because a name is protected.**
* Provide a channel of communication between the applicant and the protected organization;
* **Provide an impartial, expeditious, and inexpensive process for determining if the applicant has a legitimate interest such that its application should proceed to registration;**
* Use existing dispute resolution procedures wherever possible.

**Outline of Procedure:**

***1.*** ***Notification of Conditional Refusal Based on*Protected** ***Name.***  The applicant and protected organization will receive immediate electronic notification if an applied-for second level domain is conditionally refused registration because of a Protected Name in the Clearinghouse.

***2. Declaration of Legitimate Use.***

   2.1  Each protected organization must record and maintain accurate contact information with the Clearinghouse designating a recipient and address to be notified electronically.

 2.2 Within ten (10) days of receiving a conditional refusal, an applicant may file a declaration with the Registry. The declaration must identify the applicant accurately, provide accurate contact information, and state that the applicant has a good faith, legitimate interest in using the domain name that does not violate any treaties, national laws or other legal entitlement of the protected organization. A standard form will be provided. The protected organization will receive a copy of the declaration electronically at its given address when the declaration is filed with the Registry.

   2.3  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.

  2.4. 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.

***3. Examination.***

   The examination procedure (which is under consideration and will be discussed before this section is filled in) must comply with the principles above. It must:

       3.1 Be impartial;

       3.2 Give both parties the opportunity to be heard;

       3.3 Be expeditious; and

       3.4 Use existing procedures whenever possible.

#  Community Input

* 1. **Initial Public Comment Period and Request for Input**

As required by its [charter](https://community.icann.org/display/udrpproceedings/3.%2BWG%2BCharter), the PDP WG was required ………..

* 1. **Request for input from GNSO Stakeholder Groups and Constituencies**

As required by the GNSO PDP, a request for input was sent to all GNSO Stakeholder Groups and Constituencies at the end of January 2013 (see Annex B). Contributions were received from the Non-Commercial Stakeholder Group, Registries Stakeholder Group.

* 1. **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 (see Annex C). One contribution was received from the At-Large Advisory Committee.

#  Conclusions and Next Steps

The Working Group aims to complete this section of the report in the second phase of the PDP, following a public comment period on this Initial Report.

# 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:**  | * 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**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 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 gLTDs.
* 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 specialprotections 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 ICANN Supporting Organizations and Advisory Committees
* Distribution of the announcement to appropriate representatives of IGOs, the RCRC and IOC.
 |
| **Working Group Roles, Functions, & Duties:** |
| 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. Staff assignments to the Working Group: * GNSO Secretariat
* 2 ICANN policy staff members (Brian Peck, Berry Cobb)

The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.  |
| **Statements of Interest (SOI) Guidelines:** |
| Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.  |
| **Section IV: Rules of Engagement** |
| **Decision-Making Methodologies:** |
| *{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}.* The Chair will be responsible for designating each position as having one of the following designations:* **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. *[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.]*
* **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:1. 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.
2. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
3. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
4. 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 where 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:1. Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
2. 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.
3. 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 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](http://www.icann.org/transparency/acct-trans-frameworks-principles-10jan08.pdf) 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** |
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| --- | --- | --- |
| **Version** | **Date** | **Description** |
| 1.0 | 25 October 2012 | First draft submitted by staff for consideration by WG |
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| **Staff Contact:** | Brian Peck, Berry Cobb | **Email:** | Policy-staff@icann.org  |

# Annex 2 – Template for Constituency, Stakeholder Group, & SO/AC Statement Request

**[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 (gnso.secretariat@gnso.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://gnso.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:

1. 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:

1. Do you have opinions about what criteria should be used for Special Protection of the IGO and INGO identifiers?

Group View:

1. Do you think there are substantive differences between the RCRC/IOC and IGOs and INGOs?

Group View:

1. Should appropriate Special Protections at the top and second level for the identifiers of IGOs and INGOs be made?

Group View:

1. 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:

1. 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:

1. 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 (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 3 – GNSO Council Resolution on 23 March 2012

**20120326-1**

**Motion to recommend to the Board a solution to protect certain Red Cross/Red Crescent (RCRC) and International Olympic Committee (IOC) names at the Top Level in New gTLDS**

Whereas, the Board Resolution 2011.06.20.01, authorized “the President and CEO to implement the new gTLD program which includes . . . incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest, . . ." (<http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm>)

Whereas, the IOC/RC Drafting Team established by the GNSO Council has considered a number of different options with respect to protections of both the IOC and the RCRC terms at the top level and has proposed a solution to modify the ICANN staff’s implementation of the Board Resolution as reflected in the Applicant Guidebook dated January 12, 2012 (<http://newgtlds.icann.org/en/applicants/agb>);

Whereas, the IOC/RC Drafting Team has collaborated with the Government Advisory Committee (GAC) during its deliberations in an attempt to identify a solution that addresses GAC concerns;

Whereas, this proposed solution was posted for public comment on 2 March 2012 on an expedited basis as a matter of urgency in order to enable the Board to consider its adoption for the first round of new gTLD applications, which is scheduled to close on 12 April 2012;

Whereas, the GNSO is mindful that implementation of the Board’s resolution is needed to be available before the end of the Application Window;

Whereas, the GNSO intends that these recommendations be solely limited to the IOC and RCRC;

Whereas, the GNSO recognizes that there might be a policy impact of the protection for the IOC/RCRC for future rounds and at the second level;  and

Whereas, therefore, the IOC/RC Drafting Team recommends that the GNSO Council adopt this proposed solution as a recommendation for Board consideration and adoption at its meeting in Costa Rica for the application period for the first round of new gTLD applications’.

NOW THEREFORE, BE IT:

Resolved, that the GNSO Council adopts the following three recommendations of the IOC/RC Drafting Team:

Recommendation

1: **Treat the terms set forth in Section 2.2.1.2.3 as “Modified Reserved Names,”** **meaning:**

a) The Modified Reserved Names are available as gTLD strings to the International Olympic Committee (hereafter the “IOC”), International Red Cross and Red Crescent Movement (hereafter “RCRC") and their respective components, as applicable.

b) Applied-for gTLD strings, other than those applied for by the IOC or RCRC, are reviewed during the String Similarity review to determine whether they are similar to these Modified Reserved Names. An application for a gTLD string that is identified as confusingly similar to a Modified Reserved Name will not pass this initial review.

c) If an application fails to pass initial string similarity review:

i. And the applied-for TLD identically matches any of the Modified Reserved Names (e.g., ".Olympic" or ".RedCross"), it cannot be registered by anyone  other than the IOC or the RCRC, as applicable.

ii. If the applied-for TLD is not identical to any of the Modified Reserved Names, but fails initial string similarity review with one of Modified Reserved Names, the applicant may attempt to override the string similarity failure by:

1. Seeking a letter of non-objection from the IOC or the RCRC, as applicable; or

2. If it cannot obtain a letter of non-objection, the applicant must:

a. claim to have a legitimate interest in the string, and demonstrate the basis for this claim; and

b. explain why it believes that the new TLD is not confusingly similar to one of the protected strings and makes evident that it does not refer to the IOC, RCRC or any Olympic or Red Cross Red Crescent activity.

3. A determination in favor of the applicant under the above provision (ii)(2) above would not preclude the IOC, RCRC or other interested parties from bringing a legal rights objection or otherwise contesting the determination.

4. The existence of a TLD that has received a letter of non-objection by the IOC or RCRC pursuant to (ii)(1), or has been approved pursuant to (ii)(2) shall not  preclude the IOC or RCRC from obtaining one of the applicable Modified Reserved Names in any round of new gTLD applications.

**Recommendation 2:    Protect the IOC/RCRC Terms in as many Languages as Feasible**

The GAC has proposed that the IOC and RCRC “names should be protected in multiple languages---all translations of the listed names in languages used on the Internet…The lists of protected names that the IOC and RC/RC have provided are illustrative and representative, not exhaustive.”  The Drafting Team recommends that at the top level for this initial round, the list of languages currently provided in Section 2.2.1.2.3 of the Applicant Guidebook are sufficient.

In addition, the Drafting Team also notes that even in the unlikely event that a third party applies for an IOC or RCRC term in a language that was not contained on the list, the IOC or RCRC, as applicable, may still file an applicable objection as set forth in the Applicant Guidebook.

**Recommendation 3:    Protections must be reviewed after the first round and that review should include consideration of changing the language to general requirements rather than naming specific organizations.**

In its proposal, the GAC has recommended that the protections for the IOC and RCRC should not just apply during the first round of new gTLDs, but should be a permanent protection afforded for all subsequent rounds. The Drafting Team recognizes that permanently granting protection to the IOC and RCRC may have policy implications that require more work and consultation so that protections may be reviewed.

Resolved, that the GNSO submits this proposed solution for Board consideration and adoption at its next meeting as a recommended solution to implement Board Resolution 2011.06.20.01 for implementation in the first round of new gTLD applications.

# Annex 4 – Placeholder

**As of 11 March 2013**

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

**From: Office of ICANN’s General Counsel**

**Research Requested from the WG**

With

# Annex 5 – ICANN General Council Office Research Report

**As of 11 March 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.

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**

| **Jurisdiction** | **IOC/RCRC Protections** | **IGO Protections (or other INGOs, where applicable)** |
| --- | --- | --- |
| Australia | While there are no specific prohibitions for the use of names related to the IOC at the top-level or second-level, the *Olympic Insignia Protection Act 1987* (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.For RCRC names, the *Geneva Conventions Act 1957* (Cth) prevents any unauthorized use of specific RC related expressions, which would arguably apply to domain names at any level. | The *International Organisations (Privileges and Immunities) Act 1963* (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. |
| Brazil | 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 marks related to the 2016 Olympic Games. Prior approval is needed for any usage.Certain Red Cross marks are protected under Decree 2380/1910. The 1910 decree does not mention domain names.Brazilian Civil Law Code could possibly be used as a basis for liability as well. | 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 trademarks.”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. 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. |
| Canada | *Trade-marks Act*, R.S.C., 1985, c. T-13, Subsection (9)(1)(f) protects certain emblems and marks related to the Red Cross. The *Olympic and Paralympic Marks Act*, 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.  | The *Trade-marks Act*, 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 afoul of the *Trade-marks Act*, though domain names are not specifically mentioned in the law. |
| China | Certain Olympic-related names and acronyms are 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.  | Article 2(2) of the Notice Regarding the Implementation 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 It is unknown how this restriction would be expanded into TLDs outside of the .CN registry. |
| France | 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.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. The improper delegation/registration or use of these names at the top- or second-level could possibly serve as a basis of liability. | Under French law, the Paris Convention is directly applicable (that is, an action can validly be grounded on such International treaty). Yet, Article 6*ter*(1)(b) of the Paris Convention does only provide for the prohibition to “*use [IGOs], without authorization by the competent authorities, either as trademarks or as elements of trademarks*”. 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.  |
| Germany | Certain Olympic designations are protected under the Olympic Emblem and Olympic Designations Protection Act (OlympSchG), a national statutory law.According to section 125 OWiG (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).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. | There are no statutes that provide protection to IGOs on the basis of inclusion on the 6ter list. |
| Japan | 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 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.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).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. | 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 grounds for liability, just as the use of IOC names or acronyms would. |
| Mexico | The use of Red Cross and Red Crescent names is covered by 2007 law, which includes domain names.Mexico is a member of the Nairobi Treaty for the Protection of the Olympic Symbol, and affords the rights provided under that treaty. | Under Article 213 VII and IX of the Industrial Property Law and Article 90 VII of the Industrial Property Law, neither of which 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. |
| South Africa | 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. 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. These protections could exist at the top- and second- level for domain names, though not specifically enumerated. | 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. 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. 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.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. |
| South Korea | Article 12(1) of the Korean Internet Address Resources Act (KIARA) states: “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. “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 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.  | 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.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. |
| U.S. | 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 *et seq*., the Ted Stevens Olympic and Amateur Sports Act (the “Stevens Act”); and (2) 15 U.S.C. §§ 1051 *et seq.* (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.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. | 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. |

1. The IGO letter to the Board is posted at <http://gnso.icann.org/mailing-lists/archives/council/pdfL7aQlrvBqe.pdf> [↑](#footnote-ref-1)
2. The IGO Common Position Paper is posted at: <http://forum.icann.org/lists/prelim-protection-io-names/pdfJrs5WYjSrI.pdf> [↑](#footnote-ref-2)
3. The Board letter to the GNSO and GAC on the IGO issue is posted at: <http://gnso.icann.org/mailing-lists/archives/council/pdfKA1ANE1330.pdf> [↑](#footnote-ref-3)
4. The GNSO Council response to the Board’s letter on the IGO issue is posted at: http://gnso.icann.org/correspondence/gnso-to-board-igo-names-26mar12-en.pdf [↑](#footnote-ref-4)
5. The GNSO Motion requesting this Preliminary Issue Report is posted at: <http://gnso.icann.org/meetings/minutes-council-12apr12-en.htm> [↑](#footnote-ref-5)
6. ICANN published the unredacted June 2011 Board Workshop Paper on IOC/Red Cross Protections on 28 August 2012. It is posted at: <http://www.icann.org/en/groups/board/documents/briefing-materials-unredacted-20jun11-en.pdf>. To the extent that anyone within the community seeks to rely upon the information within this paper, ICANN reiterates the note that the preliminary work presented is not a substitute for the individual consultation and research that would be required to reach a more fulsome opinion or advice. [↑](#footnote-ref-6)
7. No Report was published by the IOC-RC Drafting Team, but the recommendations were supported by a “rough” consensus of the Drafting Team, and subsequently approved by the GNSO Council. [↑](#footnote-ref-7)
8. The resolution and preliminary report of the New gTLD Program Committee’s consideration of the GNSO Council’s recommendations with regard to the RCRC/IOC is posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-10apr12-en.htm> and <http://www.icann.org/en/groups/board/documents/prelim-report-new-gtld-10apr12-en.htm> [↑](#footnote-ref-8)
9. <http://www.icann.org/en/groups/board/new-gtld/report-03aug12-en.pdf> [↑](#footnote-ref-9)
10. The New gTLD Program Committee instructed to review and report back on all inputs provided on this issue including: (a) previous public comment forum; (b) community inputs in Prague; (c) additional inputs from the Red Cross and IOC; (d) status of the GNSO work after the Board decision; and (e) GAC inputs. [↑](#footnote-ref-10)
11. The ICANN Board Resolution and Rationale for IOC/RCRC are posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-13sep12-en.htm>. [↑](#footnote-ref-11)
12. The GNSO Council Resolution for IGO-INGO PDP initiation: <http://gnso.icann.org/en/council/resolutions#20121017-2> [↑](#footnote-ref-12)
13. The ICANN Board Resolution and Rationale for IGO names are posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm> [↑](#footnote-ref-13)
14. GNSO Council letter of advice to the ICANN Board and GAC: <http://gnso.icann.org/en/correspondence/robinson-to-dryden-31jan13-en.pdf> [↑](#footnote-ref-14)
15. GNSO Council letter of advice to the ICANN Board: <http://gnso.icann.org/en/correspondence/robinson-to-crocker-chalaby-28feb13-en.pdf> [↑](#footnote-ref-15)
16. The GNSO Issue Report is viewable at: <http://gnso.icann.org/issues/igo-names/issues-report-igo-drp-15jun07.pdf>. [↑](#footnote-ref-16)
17. See GNSO Council minutes posted at: <http://gnso.icann.org/meetings/minutes-gnso-20dec07.html> [↑](#footnote-ref-17)
18. A footnote to the recommendation clarified that “Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.” [↑](#footnote-ref-18)
19. The latest Guidebook is posted on the ICANN website. Supporting documentation is available through the “New TLDs” button at www.icann.org. [↑](#footnote-ref-19)