

**QUESTIONS AND ANSWERS RE:  
PROTECTING THE OLYMPIC AND RED CROSS/RED CRESCENT NAMES  
IN ALL NEW GTLDS**

**Introduction:**

Since the beginning of ICANN’s New gTLD Program, the International Olympic Committee (IOC) and the International Red Cross/Red Crescent Movement (RC/RC)<sup>1</sup> have asked that their Olympic and Red Cross names—such as Olympic and Olympiad, and Red Cross and Red Crescent—be protected against registration in the top and second levels of an expanded domain name system.<sup>2</sup> The GAC endorsed these proposals and communicated its support to the ICANN Board.<sup>3</sup>

In response, the ICANN Board of Directors adopted a resolution during its June 20, 2011 meeting in Singapore providing for “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.”<sup>4</sup>

As ICANN counsel have made clear, the ICANN Board resolution directs the GNSO Council and the GAC to work together to develop policy advice for permanently protecting the Olympic and Red Cross names at the top and second levels of an expanded domain name system.<sup>5</sup>

Pursuant to the Board resolution, ICANN counsel and staff have implemented *Section 2.2.1.2.3 of the Applicant Guidebook*, which temporarily prevents new gTLD

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<sup>1</sup> The International Red Cross and Red Crescent Movement consists of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, and the 186 individual National Red Cross and Red Cross Societies, such as the American Red Cross and the Afghan Red Crescent.

<sup>2</sup> See e.g. Comments of the IOC on the Fourth Version of the Draft Applicant Guidebook, available at <http://forum.icann.org/lists/4gtld-guide/msg00051.html> (July 21, 2010); Comments from the IOC on the Proposed Final Version of the Applicant Guidebook, available at <http://forum.icann.org/lists/5gtld-guide/msg00008.html> (November 29, 2011); IOC Public Comments on the “Discussion Draft” of the New gTLD Applicant Guidebook, available at <http://forum.icann.org/lists/6gtld-guide/msg00032.html> (May 15, 2011).

<sup>3</sup> Letter from Heather Dryden to Peter Dengate Thrush, available at <http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-12may11-en.pdf> (May 12, 2011).

<sup>4</sup> ICANN Board Resolution (2011.06.20.01(b)), available at <http://www.icann.org/en/minutes/resolutions-20jun11-en.htm> (June 20, 2011).

<sup>5</sup> Letter from Kurt Pritz to Heather Dryden, available at <http://gns0.icann.org/correspondence/pritz-to-dryden-11aug11-en.pdf> (August 11, 2011).

applicants from registering certain Olympic and Red Cross names during the initial gTLD application round.<sup>6</sup>

Also pursuant to the Board resolution, on September 14, 2011, the GAC issued a proposal to Stéphane Van Gelder, Chairman of the GNSO Council, noting the request for both top and second level protection.<sup>7</sup> The GAC understands that the GNSO Council has reviewed the proposal and will be developing questions to raise with the GAC during the GAC-GNSO meeting in Dakar.

### **Questions and Answers:**

- **How should the GNSO Council confer with the GAC?**
  - ICANN Senior Policy Counselor Margie Milam consulted with ICANN Counsel and answered this question: “The Bylaws ... note that the advice of the Governmental Advisory Committee on public policy matters is to be duly taken into account, both in the formulation and adoption of policies. Therefore, the GNSO is encouraged to take the opinions of the GAC very seriously, just as the GNSO would advice from the ALAC or SSAC.”<sup>8</sup>
  - The ICANN Board has asked both entities, the GAC and the GNSO Council, to work together to develop advice on the proper scope of permanent protection. Both the GAC and the GNSO Council are acting in their respective capacities and each should therefore take full account of the other’s views in order to formulate a single proposal for submission to the Board.
  
- **Why should the Red Cross and Olympic names be protected?**
  - The International Red Cross and Red Crescent Movement and the Olympic Movement are unique, international, nonprofit, and humanitarian movements that have been accorded special legal protection by international legislation and treaties.<sup>9</sup>

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<sup>6</sup> Updated gTLD Applicant Guidebook, Module 2, available at <http://www.icann.org/en/topics/new-gtlds/evaluation-procedures-clean-19sep11-en.pdf> (September 19, 2011).

<sup>7</sup> GAC Proposal to the GNSO Council re: Protecting the International Olympic Committee and Red Cross/Red Crescent Names in New gTLDs, available at <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf> (September 14, 2011).

<sup>8</sup> Email correspondence from Margie Milam, ICANN Senior Policy Counselor, available at <http://gns0.icann.org/mailling-lists/archives/council/msg12136.html> (Oct. 5, 2011).

<sup>9</sup> Representative listings of the nations providing special legislative protection to the Red Cross and International Olympic Committee are attached as Schedule B to the GAC’s September 14, 2011 proposal to the GNSO Council. *See Id.*

- In recognition of this unique international status, the ICANN Board has approved *Section 2.2.1.2.3 of the Applicant Guidebook*, which temporarily prevents registration of certain Red Cross and Olympic names during the initial gTLD round.
- Providing permanent protection to the Olympic and Red Cross names at the top and second level of an expanded Internet naming system will advance the global public interest of assisting the RC/RC and IOC in fulfilling their humanitarian missions.<sup>10</sup>

● **What levels of the domain name system should be considered?**

- Both the top and second levels.
- The ICANN Board has asked for the GNSO Council and GAC's advice as to both levels.<sup>11</sup>
- The IOC and RC/RC have sought protection at both the top and second levels of an expanded domain name system.<sup>12</sup>
- The September 14, 2011 GAC proposal to the Chairman of the GNSO Council recommended protection at both the top and second levels.<sup>13</sup>

● **How should the Red Cross and Olympic names be protected at the top level?**

- At the top level, the Olympic and Red Cross names should be protected in multiple languages—all translations of the listed names in languages used on the Internet. It is the global Internet, and the IOC and RC/RC organizations have unique global rights, so all languages used on the Internet should be covered. The lists of protected names that the IOC and RC/RC have provided are illustrative and representative, not exhaustive.

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<sup>10</sup> Letter from Urs LaCotte and Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/lacotte-stupp-to-pritz-stathos-01feb11-en.pdf> (February 1, 2011); Letter from Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/stupp-to-pritz-stathos-04apr11-en.pdf> (April 4, 2011).

<sup>11</sup> [Letter from Kurt Pritz to Heather Dryden](http://gns0.icann.org/correspondence/pritz-to-dryden-11aug11-en.pdf), available at <http://gns0.icann.org/correspondence/pritz-to-dryden-11aug11-en.pdf> (August 11, 2011).

<sup>12</sup> Letter from Urs LaCotte and Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/lacotte-stupp-to-pritz-stathos-01feb11-en.pdf> (February 1, 2011); Letter from Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/stupp-to-pritz-stathos-04apr11-en.pdf> (April 4, 2011).

<sup>13</sup> GAC Proposal to the GNSO Council re: Protecting the International Olympic Committee and Red Cross/Red Crescent Names in New gTLDs, available at <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf> (September 14, 2011).

- At the top level, the Olympic and Red Cross names should be entitled to string similarity review under Applicant Guidebook Section 2.2.1, so they are protected against confusingly similar strings, such as:
  - ●OLYMPICS
  - ●OLYMPIK
  - ●OLYM-PIC
  - ●RED-CROSS
  - ●REDKROSS

That would prevent circumvention of the legal protections given to the Olympic and Red Cross names.

● **How should the Olympic and Red Cross names be protected at the second level?**

At the second level, the Olympic and Red Cross names should be protected:

- Against registration of identical matches; and
- In the six UN languages with an encouragement to registry operators to extend to other languages (e.g. those providing protection either via international legal instrument or national law).

● **How does reservation of the Olympic and Red Cross words serve the global public interest?**

- Worldwide legislative and treaty protection provided to the Olympic and Red Cross names and symbols reflects the global consensus that their protection is in the public interest. Reserving the Olympic and Red Cross words at the top and second levels of an expanded domain name system is consistent with this well-established global pattern of unique protection, and will further serve the public interests of the international ICANN community.
- First, reserving these Olympic and Red Cross words provides protection for top and second-level domain name applicants. It protects them from applying for Olympic strings that are legally preempted by international *sui generis* legislation. Thus, reservation will protect innocent infringers while also substantially diminishing intentional violations of law.
- Second, reserving these Olympic and Red Cross words optimizes top and second level application processes by adding expediency and efficiency. Augmenting string confusion reviews to include a discrete number of Olympic

and Red Cross words removes those words from the pool of registrable names. Thus, application processes will not necessitate string contention, legal rights objection, or implementation of rights protection mechanisms in instances where the strings applied for violate international legislation.

- Third, reserving these Olympic and Red Cross words helps protect Internet users against intentional infringers who would divert them from officially authorized Olympic websites.
  - Finally, by reserving the Olympic and Red Cross words at the top and second levels, ICANN will serve the intent of international, special statutory and treaty protection for these organizations—preserving exclusive commercial use of these words and the lifeblood of the Olympic and Red Cross movements. This will allow the IOC and RC/RC to maintain and expand efforts to benefit the international community through sport by making the world a better and more stable and peaceful place.
- **Why is the Nairobi Treaty on Protection of the Olympic Symbol Important?**
    - As the IOC has stated to ICANN counsel, "[T]he Nairobi Treaty on Protection of the Olympic Symbol obligates all participating nations to protect the Olympic Symbol--the five interlocking rings--against any commercial use without the express authorization of the IOC. The Nairobi Treaty demonstrates that sixty-five signatory nations, including forty eight contracting parties, are dedicated to protecting the Olympic rings—and also the Olympic properties generally—in recognition of the unique nature of the Olympic movement."<sup>14</sup>
    - "The Nairobi Treaty protects the Olympic Symbol—the five interlocking rings—rather than the words OLYMPIC or OLYMPIAD. The Treaty demonstrates the international breadth of legal protection enjoyed by the Olympic movement. The treaty shows that unique protection for the Olympic words and symbols is an internationally accepted principle of law that should be applied to the domain name system."<sup>15</sup>
  - **Why not provide similar protection to names of other organizations?**
    - No other international non-profit, non-governmental organizations have been afforded the same level of international and national protection.

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<sup>14</sup> Letter from Urs LaCotte and Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/lacotte-stupp-to-pritz-stathos-01feb11-en.pdf> (February 1, 2011).

<sup>15</sup> Letter from Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/stupp-to-pritz-stathos-04apr11-en.pdf> (April 4, 2011).

- No one else has come forward seeking the same protection. Independent legal research by the IOC, the RC/RC and ICANN staff reveals that no other organizations meet the same threshold for special, global legal protection.

● **Do other organizations have the right to use these names?**

- Registering the gTLD dot-RedCross or dot-Olympic, in any language, would signify to the general public that the registrant was the RC/RC or IOC.
- The Olympic and Red Cross names are reserved respectively to the International Olympic Committee and its National Olympic Committees, as well as the International Red Cross and Red Crescent Movement, by international legislation.<sup>16</sup> A few grandfathered entities may continue using ‘Olympic’ or ‘Red Cross’ as very limited exceptions, but cannot expand their commercial use to something new, like operating a registry or buying and selling domain name registrations.<sup>17</sup>

● **Is this the Globally Protected Marks List (GPML) all over again?**

- This is a unique carve-out solely for IOC and RC/RC. As established to the satisfaction of ICANN counsel and the ICANN Board of Directors: (1) the IOC and RC/RC are unique, international, nonprofit, and humanitarian movements that have been accorded special legal protection by global legislation and treaties; and (2) reservation of the Olympic and Red Cross words promotes the global public interest.<sup>18</sup> No other organizations meet such stringent criteria.

● **Why can’t the IOC and RC/RC protect themselves by registering new gTLDs?**

- The IOC and ICRC should not have to divert hundreds of thousands of dollars from their global humanitarian missions to establish and maintain domain name registries in their own names.
- The Olympic and Red Cross names are already protected internationally by special statutes.

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<sup>16</sup> [GAC Proposal to the GNSO Council re: Protecting the International Olympic Committee and Red Cross/Red Crescent Names in New gTLDs](http://www.icann.org/en/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf), available at <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf> (September 14, 2011).

<sup>17</sup> See e.g. *O-M Bread, Inc. v. United States Olympic Comm.*, 65 F.3d 933 (Fed. Cir. 1995).

<sup>18</sup> Letter from Heather Dryden to Stephane van Gelder, available at <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf> (September 14, 2011); Letter from Urs LaCotte and Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/lacotte-stupp-to-pritz-stathos-01feb11-en.pdf> (February 1, 2011); Letter from Howard M. Stupp to Kurt Pritz and Amy Stathos, available at <http://www.icann.org/en/correspondence/stupp-to-pritz-stathos-04apr11-en.pdf> (April 4, 2011).

• **Why can't the RC/RC and IOC rely on other rights protection mechanisms, such as Legal Rights Objections?**

- The RC/RC and IOC have been accorded special international and national legal protection in order to protect their unique missions and obviate the need for diverting inordinate funds toward legal rights protection.
- Protecting the Olympic and Red Cross names during the initial evaluation of applications obviates the necessity for expensive legal rights protection.

• **What if the IOC and RC/RC want to register their own Olympic or Red Cross domain names?**

- This is a *reservation* of rights. Both the IOC and RC/RC should have the right to register domains at the top and second level for their own names. The words IANA and ICANN are reserved, yet [www.icann.org](http://www.icann.org) and [www.iana.org](http://www.iana.org) have both been registered for authorized use.

• **Did the GNSO Reserved Names Working Group already decide this issue?**

- The GNSO Reserved Names Working Group Final Report from May 23, 2007 engaged in a comparison of the existing gTLD Registry reserved name requirements of the then sixteen gTLD registry agreements, and then divided the reserved names in those agreements into eight categories and subgroups. None of the categories covered trademarks or names protected by international treaties or national laws. There is no evidence that the Group considered whether new categories should be added, such as trademarks or names or emblems protected by treaty or national laws. Thus, the Group does not appear to have considered whether trademarks and/or names protected by international treaties or national laws should be placed in any reserved status in the new gTLD program.<sup>19</sup>
- An older draft from this working group from March 2007 was submitted to the GNSO Council for consideration. In Section F of that report, entitled “Reserved Name Topics Not Considered by the RN-WG”, the Report stated “It should also be noted that the RN-WG did not consider whether trademark names should have any reserved status because it was assumed that the Protecting the Rights of Others Working Group (PRO-WG) recently formed by the GNSO Council will cover this area.”<sup>20</sup>

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<sup>19</sup> Final Report of the Reserved Names Working Group, available at <http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm> (May 23, 2007).

<sup>20</sup> Draft Report of the Reserved Names Working Group, available at <http://gns0.icann.org/drafts/rn-wg-fr19mar07.pdf> (March 19, 2007).

- The Protecting the Rights of Others Working Group's Final Report from June 26, 2007 also did not address the issue of placing trademarks or names protected by international treaties or national laws in a reserved status.<sup>21</sup> Accordingly, these GNSO working groups do not appear to have previously researched or provided analysis on this issue.
  
- It is believed that the reserved names lists in Section 2.2.1.2.1 of the Applicant Guidebook and Specification 5 to the New gTLD Registry Agreement cover technical names, or names that were reserved for functional purposes by the architects of the domain name system. Strings ineligible for delegation in Section 2.2.1.2.3, and in a corollary section of the New gTLD Registry Agreement, are names that are reserved for legal reasons to the benefit of the global public interest.

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<sup>21</sup> Protecting the Rights of Others Working Group's Final Report, available at <http://gns0.icann.org/drafts/pro-wg-final-report-26jun07.pdf> (June 26, 2007).