

Public Comment Review Tool – IOC-RCRC Drafting Team

Updated 07 November 2012 – Containing comments received as part of the public comment forum (see <http://forum.icann.org/lists/ioc-rcrc-recommendations/>).

#	Comment	Who / Where	WG Response	Recommended Action
IOC/RCRC Recommendations				
1.	<p>Public Comment from the American Red Cross Regarding Protection of International Olympic Committee (IOC) /Red Cross Names (RCRC) Drafting Team - Recommendations</p> <p>The American Red Cross welcomes the opportunity to provide comments to the Internet Corporation for Assigned Names and Numbers ("ICANN") regarding the proposed recommendations for the protection of the Red Cross/ Red Crescent and IOC names.</p> <p>First, the American Red Cross strongly supports the comment posted on Friday, October 12, 2012 by the British, Australian and Canadian Red Cross Societies and supports the request made by governments to permanently protect the use of the words "Red Cross," "Red Crescent" and related names ("designations") in second level domain names.</p> <p>The designations serve an important purpose. In times of conflict, the designations are a symbol or</p>	<p>Lucy Lindale Brown Sr. Advisor, International Humanitarian Law and Policy American Red Cross / Public Comment</p>		

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	<p>signal that the personnel working under these designations are neutral actors that should be allowed safe passage to operate or transport supplies or equipment within a community in urgent need of medical attention or other assistance. This noble purpose is the heart of the Geneva Conventions and the justification for the permanent protection of the designations without the need for a formal policy development process.</p> <p>As our colleagues explained, American Red Cross, along with more than 186 National Societies and organizations within the Red Cross Movement, uses the designations to execute the Movement's humanitarian mission throughout the world. We acknowledge that there are many worthwhile NGOs, IGOs, and other organizations in civil society that contribute important charitable, humanitarian or educational services. We understand they have concerns about the new gTLD program and our comment is not designed to impact the efforts of these organizations to protect the names they use to identify their organizations.</p> <p>Finally, we take the opportunity to address the issue of the limited right of certain preexisting or</p>			

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	<p>"grandfathered users" to use the designations. Certain entities used the designations before national legislation was passed to protect the designations for the domestic Red Cross or Red Crescent society. Those preexisting uses are permitted, or grandfathered, as of the date of enactment of the national legislation or the entry into force of the first 1949 Geneva Convention for the given State. Grandfathered users may continue to use the designations solely in association with goods or services that they used before the enactment of national legislation. They may not use the designations in any new ways, such as in domain name registration activities or by becoming a new gTLD Registry. Additionally, these grandfathered users may not use the designations - under any circumstances - to supersede the protection provided by the Geneva Conventions or national laws.</p> <p>Thank you for considering our comments on these important issues. We welcome further discussions about the above and are available should you have any questions regarding our comments.</p>			
2.	once more I commenting on this and still come to the personal conclusion, that there should be no special protection for any organization, or at least only the UN +-10 model discussed on Costa Rica.	Marcus Jaeger / Public Comment		

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	<p>I might agree that special protection should be made for humanitarian organizations like the Red Cross, but I can and will agree on commercial Organizations like the IOC/Olympic Committee.</p> <p>I was against the protection on the top level already and I am even more against it on the second level. If these two are granted special protection on the second level domain, than that is what the others will rest their case on want special protection too. Once again we would be treating some more special than others and that is not fair at all to any one. For commercial Organizations, there should be no special treatment as they have trademarks, lawyers, etc. to act accordingly and that's what they should do and not use the general community for their purpose. I am always trying to look at from all views, but till now I have read nor heard anything that would convince me to change point.</p> <p>The domain space and Internet is still for everyone and the strongest should not miss use their powers by "going" through the back door.</p> <p>All these my private opinions on this matter and do not reflect any opinions for the companies I</p>			

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	work for.			
3.	<p>We wish to offer the following comments in relation to the proposed recommendations for the protection of the Red Cross/ Red Crescent and IOC names. Although we work for Red Cross entities, our intention is not to plead a special case for our organisations. Rather, we felt it may be useful to explain, simply in the hope that it will aid understanding, why the protection of the names "Red Cross", "Red Crescent" and those related to them is a unique matter warranting distinct attention.</p> <p>We note the desire expressed by several members to avoid granting protection to individual organisations, and we certainly understand the impetus to create a level playing field. However, we would emphasise that the central reason for seeking protection of "Red Cross", "Red Crescent" and related names lies in their special status under international humanitarian law (namely, the 1949 Geneva Conventions). These names are not only, or even primarily, the titles of individual Red Cross and Red Crescent organisations. Rather, they relate to the distinctive emblems adopted by Governments and displayed during times of armed conflict to indicate the neutrality of, and protection owed to,</p>	<p>Michael Meyer Head of International Law British Red Cross</p> <p>Helen Durham Head, International Law and Principles Australian Red Cross</p> <p>Ilario Maiolo Senior Legal Advisor Canadian Red Cross / Public Comment</p>		

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	<p>the individual, vehicle or building upon which they appear. In particular, the emblems of the red cross and red crescent are used by the Medical Service of the armed forces (as well as by Red Cross and Red Crescent organisations).</p> <p>To preserve this special meaning and purpose, use of the red cross, red crescent and related emblems (as well as their names) is restricted, not only by international law (as described above), but also by national legislation in most countries. This may help to explain why Governments (who are ultimately responsible for regulation of the emblems and their names) have supported their protection in the context of the gTLD process, through the GAC. Similar efforts undertaken by Red Cross and Red Crescent organisations to seek protection for these names is based on our collective responsibility to uphold their special meaning and status.</p> <p>In short, this is not a name, brand or trademark protection exercise for Red Cross/ Red Crescent organisations. While these organisations are privileged to use the distinctive emblems and their associated names (in many instances only with the delegated authority of the State), such emblems/names have a distinct humanitarian</p>			

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	<p>function (in particular in times of armed conflict), confirmed by binding treaty law that is universally endorsed. Protecting these names within the gTLD process (and related processes) would therefore rightly reflect the long-established legal restrictions on their use, and by effect, help to uphold their humanitarian purpose.</p> <p>Finally, regarding the decision-making process, our understanding was that the necessary decisions within ICANN had already been taken to adopt the principle of protection as a matter of policy, and that remaining consultations were to be focused on technical implementation of the policy. However, we also appreciate that a PDP has been recommended by the drafting team (albeit without consensus). In our view, if a PDP is pursued, a temporary moratorium on use of the names is vital to ensure their protected status is upheld in the interim.</p> <p>Thank you all in advance for your consideration: we hope the above comments are clear and helpful. Again, we would emphasise that our intention is not to seek to differentiate Red Cross and Red Crescent organisations from other non-profit and/or humanitarian organisations. Rather, it is simply to ensure that the special humanitarian</p>			

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	purpose and unique status of these names, as well as the existing international and national legal protections on their use, are well understood and upheld.			
4.	We support the development of policy to protect the names and acronyms of governmental international organizations (IGOs) and non-governmental international organizations of wide public interest (such as RC and IOC). This policy should be set up for organizations that meet specific set of abstract criteria and not for specifically named organizations, in order to ensure equity and regular public procedure, and to avoid discretionary/discriminatory decisions. We think the protection for IGOs is more relevant than for non-governmental organization such as RC/IOC, but we think that protection for these two organizations is well deserved and, as their consideration is more advanced at ICANN, that they could be used in the policy definition process as concrete situations to develop appropriate protection policies which could then be also applied to IGOs. The only thing that would remain to be done regarding IGOs would then be the definition of the corresponding eligibility criteria.	Ana Neves, Departament of Information Society / Public Comment		
5.	It is often said that there is nothing so permanent as a temporary solution. A decision in favor of Recommendation 2 creates temporary policy that	Avri Doria / Public Comment		

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	<p>may well become permanent policy. This is not a good thing to do at this time.</p> <p>Whether it is a moratorium as suggested by the Board or a temporary reservation as recommended by the GNSO IOC/RC Drafting Team, it becomes the base on which all other negotiations rest. That is, it is impossible, once the Board puts in place a moratorium, by whatever name, to imagine that any of those included in this moratorium would ever take less. That, by its very nature, limits the PDP with explicit Board fiat, and endangers the bottom-up process.</p> <p>At this point any such moratorium would also be problematic in that it did not consider the position of IGOs as requested by the Board, or UN system organizations and other service/fund-raising NGOs as raised by various participants.</p> <p>The current proposal considers only two of those requesting these special protections. Both RCRC and the IOC claim to have sui generis reasons to support their claims to this special consideration, yet they also argue that they have a reason in common that excludes all others. This problematic set of contradictory claims remains to</p>			

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	<p>be proven. It is only within a PDP that all of the requests can be properly studied, understood and acted upon by the community. To make policy before the PDP is to guess at policy without proper foundation or process.</p> <p>There is also no reason for this rush to policy. The PDP will start soon. While I believe the PDP can be done in time* to have a recommendation before the first new gTLDs are delegated, if the PDP does not succeed against this timing, there will be enough time for a Board temporary solution. The Board is certainly empowered to make such temporary policy. But it would be better if the Board did so based on the work that had been done by that date by the PDP rather than work done out-of-band under the conditions of an undefined process.</p> <p>In terms of the current Drafting Team recommendation, I support the NCSG call for dropping Recommendations 2 and 3b and for proceeding with Recommendation 1 with full alacrity. I suggest the Board delay any action on RCRC/IOC and IGO names until it has GNSO PDP based recommendations or until it is required by exigent circumstances such as readiness for the root by one of the new gTLD applicants.</p>			

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	<p>I also recommend that the various new gTLD applicants decide in the interim on the policies regarding these names that they are willing to adopt voluntarily. If those reaching delegation have voluntarily accepted the request by the RCRC, the IOC and the others looking for special protection, then the Board's need to act before the PDP completes is relieved.</p>			
6.	<p>Donuts recognizes the policy development work currently under way in the GNSO, at the request of the ICANN Board, and acknowledges that work may yield a recommendation to offer protection at the second level of exact match IOC/RC names (as detailed in Section 2.2.1.2.3 of the Applicant Guidebook) in the six official United Nations languages (UN6). The outcome of this work notwithstanding, Donuts further recognizes the two organizations, and use of their respective terms of reference, are the subject of unique protections by international legal instruments and legislation in multiple jurisdictions, protections not afforded to other organizations.</p> <p>Accordingly, after consulting with the GAC and other members of the community, Donuts elects to reserve these names (as listed in Sec. 2.2.1.2.3 of the Guidebook) proactively, on the</p>	Richard Tindal / Public Comment		

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	<p>organizations' behalf. Donuts will place these second-level names on its Domain Protected Marks List, a Donuts service that precludes registration of certain terms when any new gTLD administered by Donuts is made available for end-user registration. Donuts will waive fees for this service for the IOC, Red Cross, and Red Crescent.</p> <p>Donuts will continue to participate in ICANN policy development regarding requests for reservation of second-level names by other organizations.</p>			
7.	<p>For several weeks, at various times, the NCSG position on the IFRC/IOC resolution was discussed in the NCSG Policy Committee list.</p> <p>NPOC has three members on this committee, 2 appointed representatives and the chair of the NPOC, which I believe is Alain himself.</p> <p>This committee gave its approval to the NCSG comments per the NCSG Charter.</p> <p>NPOC could have objected at any point in that process. They did not.</p> <p>The Chair of the NCSG Policy Committee declared the decision of the Policy Committee, which according to charter does not need to be</p>	Avri Doria / Public Comment		

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	<p>unanimous, though in this case it apparently was.</p> <p>I do not know what the NPOC did internally in its discussions, or whether the representatives of the NPOC on the NCSG Policy Committee were tracking this with their members internal structures, but to now say that you were excluded from the decision is just not an accurate reflection of the case within the NCSG or the NCSG Policy Committee.</p> <p>The NCSG position listed in the document is the NCSG position as developed in its Policy Committee according to its charter.</p>			
8.	<p>I support a PDP, (crutchingly!!!). I can only repeat, every exception is opening a floodgate that can only result in unfairness and those who scream loudest and have the most resources will win. I have nothing against the IRC, and it is unfortunate that they have to serve as a test case, but in my opinion no exception should be made that goes further then the UN +- 10 model proposed in Costa Rica. (The Red Cross in this case would be included). I have made several written statements to that respect in ICANN fora. There is no reason then the protection of commercial interests to grand a protection to the IOC and this simply should be taken off the table as it is wasting</p>	Klaus Stoll / Public Comment		

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	everybody's time.			
9.	Fully agree that we should seek protection for all non profits. I am still not in favor of exceptions. Best Caroline	Caroline Figuères / Public Comment		
10.	Dear Jean-Louis I want to Thank You for raising what might be the most important aspect in this debate: protection and a plain playing field for all non-profits. I confess, I think we, including me, got side tracked in the debate by concentrating on the individual and not on the collective. I think it would be great if we could now all, and I include here the IOC and the IRC, move away from seeking protection for individual organizations or not, but close ranks and seek protection and justice for all! Thanks again for your extremely valuable contribution	Klaus Stoll / Public Comment		
11.	I agree and I am in favor of the proposed PDP route. But also want to make it clear that we have to represent the needs of all non-profits, big and small, members and non-members and that while IRC and IOC had the resources to pay attention to the early ICANN texts and hence insert their	Jean-Louis Ecochard / Public Comment		

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	<p>requests for protection by the deadlines, it was not the case of other non-profits who either did not know what was happening (and most still don't) or did not have the resources to request protection.</p> <p>With understanding that the exception process is closed and respecting opinions asking no more exception be made, it is nonetheless unfair and unjust that so many non-profits brands will risk being co-opted at the gTLD level and thus have to potentially spend donor money to making the gTLD right instead of doing good. As NGOs are a substantial part of the public good, it is in the utmost interest of the public good to open this exception process broader than IRC and IOC's brands to the interest of all NGOs and make it a standard for the protection of non-profit brands instead of an exception limited to IRC and IOC.</p>			
12.	Having read the "proposed compromise" I also agree as well.	Poncelet Ileleji / Public Comment		
13.	I also agree.	Lori Schulman/ Public Comment		
14.	I concur with the compromise route proposed.	Amber Sterling /		

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		Public Comment		
15.	I do not recall an NPOC consultation on this. Hence, it is not possible to refer to an NCSG opposition, but I presume only to an NCUC opposition (although I have not followed NCUC on this issue). That said, we at NPOC need to express ourselves on this issue. I for one favor the PDP route as an appropriate compromise. What say you?	Alain Berranger / Public Comment		
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