



IPC REPLY TO COMMENTS FOR ICANN
On
Proposal to Protect International Red Cross and
International Olympic Committee Names
at the Top Level in new gTLDs

The Intellectual Property Constituency (“IPC”) is a constituency of the GNSO and represents the full range of trademark and other intellectual property interests relating to the DNS. IPC members are international, regional and national intellectual property organizations from around the world, corporate entities with intellectual property interests (often as owners of intellectual property), and individuals with an interest in intellectual property matters. The IPC appreciates this opportunity to provide its comments on the proposal to protect International Red Cross and International Olympic Committee Names at the Top Level in New gTLDs (the “Proposal”) posted for comment on 2 March 2012 at <http://www.icann.org/en/news/public-comment/ioc-rcrc-proposal-02mar12-en.htm> (the “Request for Comments”).

Introduction

This public comment period concerns a Drafting Team proposal to create a reasonable solution to find protection at the top level for the International Olympic Committee (“IOC”) and International Red Cross and Red Crescent Movements (“RCRC”) in the new gTLDs. This specific proposal is a designed to provide a balanced approach for protection on the top level. The Drafting Team’s proposal was a direct response by the GNSO to a letter received by the GNSO from the Government Advisory Committee (“GAC”) on 14 September 2011. (See copy posted at:

<https://gacweb.icann.org/download/attachments/1540128/GAC+advice+on+IOC+and+Red+Cross+Sep.+2011.pdf?version=1&modificationDate=1317031625914>). In its letter, the GAC is very clear that it believes the unique tapestry of International laws that accord the IOC and RCRC with additional protections in the brick and mortar world require that ICANN afford these institutions the same level of unique protections in the implementation of the new gTLD program. Given this specific request by the GAC, the IPC believes it is incumbent upon the GNSO to craft a reasonable solution that will achieve the additional protections proposed in the GAC’s letter.

The IPC representatives on the Drafting Team have advised the IPC membership that the Request of Comments was merely done as a courtesy to some members of the Drafting Team and not because the IPC or the Drafting Team believe that the Proposal, which is an implementation detail, requires any public comment under ICANN and GNSO procedures. The

IPC notes with disappointment that certain constituencies have used the Request for Comments and the informal deferral process at the GNSO Council to delay action on the Proposal. It is unfortunate that the GNSO Council allows a small minority of voices to thwart the smooth functioning of the GNSO Council and its efforts to quickly find solutions to implementation details. The IPC believes the type of procedural brinksmanship demonstrated during the GNSO Counsel meeting in Costa Rica threatens the very credibility of the GNSO Council and ICANN as effective institutions of private sector management of a public resource.

Comments

The IPC reviewed the Proposal posted on 2 March 2012. The IPC believes the Proposal has set out a process whereby the names of the IOC and RCRC will receive the additional protections accorded these names by a tapestry of national and international laws in the brick and mortar world. The IPC notes that the Drafting Team has made every effort to ensure that these additional protections at the top level will not unduly prejudice third parties that may have legitimate rights to use names identical or similar to the names of the IOC and RCRC. The Proposal thoughtfully sets out a reasonable and balanced process for according the IOC and RCRC additional and properly calibrated protections. The IPC notes that some of the public comments posted as of 25 March 2012 assert that the current Applicant Guidebook provides adequate protection to the names of the IOC and RCRC at the top level because it completely removes these names from the pool of available strings. The IPC believes that ICANN Staff interpreted the GAC's original request too broadly. The intention of the GAC in requesting additional protections for the IOC and RCRC was not meant to punish¹ these institutions by removing the opportunity for these organizations to apply in the first round but, rather, to have ICANN develop an appropriate procedure to recognize additional protections for these names. The IPC believe the Proposal achieves the goal of providing the solution requested by the GAC.

In conclusion, the IPC strongly supports the Proposal and supports the GNSO Council's action in adopting the Proposal as soon as it was allowed to do so.

¹ The IPC notes that under the current process, the IOC and RCRC could be prevented from obtaining a string in the second round if a similar string is registered in round one. For example, registration of .olympus by Olympus Cameras would block registration of .olympic since the ICANN process has no provisions to adequately address coexistence of similar strings that peacefully coexist in the brick and mortar world.