

**Issue: Proposal for protection  
of red cross and red crescent names at top level**

**Public Comment from the Red Cross/Red Crescent**

Date: 12 March 2011

***Introduction***

On behalf of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the American Red Cross (collectively, the “Red Cross/Red Crescent”), we want to express our strong support for the Drafting Team's proposal and recommendations, in which we participated.

We are aware that some within the ICANN community expressed reservations regarding the proposal for a special protective regime and the reaffirmation and extension of the current moratorium on the registration of the red cross and red crescent names and related denominations (hereafter “designations”). The purpose of this comment is to address some of those concerns and to reiterate the legal justification and rationale for the protective regime due to the designations.

Reference is also made herewith to the GNSO Council Board Resolution adopted in Singapore on 20 June 2011, as well as to the advisory memorandum submitted by the Chair of the Government Advisory Committee Chair to the Chairman of the GNSO Council on 14 September 2011, which provides a thorough analysis of the legal protections awarded the designations under international humanitarian law and under the domestic law of a wide number of countries.

The GAC memorandum also included the recommendation that the new gTLD Registry Agreement add a new schedule of second level reserved names. The following speaks to the current proposal of the Drafting Team pertaining to top level gTLDs, but it is indeed felt that the legal and policy considerations defining the protection of the designations under international humanitarian law should be made to extend this regime to the second level under conditions to be defined by ICANN in the future. Red Cross/Red Crescent looks forward to actively participating in this important discussion.

Practice shows that misuse of the red cross/red crescent designations is not a theoretical question and that misuse or fraudulent use of the denominations is common occurrence, and thus very often with adverse consequences for the operations of the Red Cross and Red Crescent in the field. While such instances often occur on the internet at the second level for ccTLDs as well as existing gTLDs, we have no reason to believe that such abuses would not occur at the top level, absent sufficient preventive procedures.

While the proposal set forth by the Drafting Team relates to both the IOC and Red Cross and Red Crescent names, the following relates only to the Red Cross/Red Crescent designations (i.e., red cross, red crescent, red crystal, red lion and sun, Magen David Adom).

***On the primary function of the Red Cross/Red Crescent designations: protecting the wounded and sick in times of armed conflict and those who care for them***

The protection awarded to the designations of the Red Cross/Red Crescent finds its legal foundations in universally ratified international treaties – namely the 1949 Geneva Conventions, today ratified by 194 States. These distinctive designations sit at the very heart of international humanitarian law and the protection of victims of war. The emblems enjoy two distinct purposes:

- to serve as the emblem of protection of the medical services of armed forces on the battlefield;
- to serve as the emblem of identification of the respective components of the International Red Cross and Red Crescent Movement.

It is therefore logical that States in the GAC are today mobilised in order to uphold the protection of those designations. If one were to refer here to language of the gTLD Applicant Guidebook, one could say that the global public interests at stake here rest primarily in a concern to uphold the protection of victims of war and of those caring for them on the battlefield. Any misuse or misrepresentation of those protected designations is liable due to the confusion it creates within the community as well as in the mind of combatants on the battlefield, to undermine both the protection of victims and the access of the Red Cross and Red Crescent to situations of humanitarian crises.

The above carries the following two conclusions:

- the protection awarded to the Red Cross/Red Crescent designations does not result from any trademark registration;
- due to the global public interest highlighted above, primary stakeholders are the States that are parties to the 1949 Geneva Conventions, which therefore carry under international humanitarian law the obligation and the responsibility to enforce the protection of the said denominations in their own domestic jurisdiction and legal orders - as shown by the GAC advisory note and the list of domestic laws in force in many jurisdictions worldwide.

The Red Cross / Red Crescent have of course a strong vested interest in upholding the protection of their designations, primarily as they are themselves entitled to display the designations and to use their names for indicative purposes.

***On the entitlement of the Red Cross and Red Crescent to use its designations for indicative purposes***

The Red Cross / Red Crescent enjoy an international entitlement under the 1949 Geneva Conventions to use the designations as a means of identification (what international humanitarian law refers to as the “indicative use” of the emblems and their names). Again, this indicative use flows from international law and not from a legal rights’ argument, which would be grounded, for example, in domestic trademark laws.

As indicated above, the Red Cross/Red Crescent has a vested interest in ensuring the protection of the designations from all forms of misuse or misrepresentation. In this regard, it should be recalled:

- the role and mandates of the Red Cross and Red Crescent actors were defined by States in international treaties and under the Statutes of the Movement (adopted by States on the occasion of the Movement’s International Conference). These include a unique status and specific mandates to act in situations of crises, be they armed

conflicts and other situations of violence, natural disasters and other humanitarian emergencies.

- the role and responsibilities devolved upon the components of the Red Cross and Red Crescent in support of their national authorities to monitor and to undertake appropriate démarches in the event of misuse of the emblems and their names in any all form, including on the internet, and thus, in support of public authorities. The ICRC enjoys in this respect a particular mandate as guardian or curator of international humanitarian law, including international rules on the protection of the emblems and their denominations. National Red Cross and Red Crescent Societies, often with the support of the International Federation, enforce the protection of the emblems and the designations.
- as for its emblems of Red Cross/ Red Crescent, its designations must at all times be protected from misuse or misrepresentations. These misuses bring risks and potential damage to the perception in the community of the Red Cross/Red Crescent and to their operations in favour of vulnerable persons and communities affected by armed conflict, natural disasters and other humanitarian emergencies. Any misuse of the designations at any time erodes the respect that belligerents and civilians have for the Red Cross / Red Crescent, thus compromising its ability to fulfil its humanitarian mission. This is in particular the case if one considers that the Red Cross/Red Crescent's emblems and designations are often the object of misuse by private companies including on the internet. To refer to the wording of the Applicant Guidebook, these are designations, which are particularly vulnerable to internet fraud and abuse, as illustrated inter alia by the numerous instances of fraudulent use witnessed in recent humanitarian crises, such as the earthquake in Haiti or the tsunami and ensuing nuclear crisis which affected Japan last year.

This would again constitute another global public interest to be upheld, considering the respective humanitarian roles and mandates conferred upon the components of the Movement, under both international humanitarian law and the Statutes of the Red Cross/Red Crescent adopted by the international community of States.

#### ***On the Red Cross/Red Crescent's support for the Drafting Team's recommendations***

As a result of the above, we wish herewith to express full support and endorsement for the recommendations proposed by the Drafting Team and our appreciation for the important work which has been accomplished by the Drafting Team, of which ICRC, the International Federation and the American Red Cross participated. It is important in light of the above to align the gTLD system with the strict existing legal regime flowing from international law. This protection should also apply to the second level and the Red Cross/Red Crescent looks forward to participating in the development of procedures for such protection.

Therefore the current prohibition on the registration of the Red Cross/Red Crescent designations should be extended:

- Beyond the first round of applications, to all future rounds.

While the importance of allowing for a review of the prohibition to be carried periodically in order to allow all constituencies to comment as required appears legitimate, it is recommended that the purpose and conditions under which such a review may be conducted be further specified or qualified, (e.g. in time, such as for example after the completion of given rounds of applications; and in substance, for example to ascertain any difficulties encountered in implementing the protection of the designations.

- To the respective designations protected under the original top\level moratorium created by the 20 June 2011 ICANN Board Resolution (with the notable addition of the denomination "red lion and sun" equally protected under the first Geneva Convention of 1949) and to their translations in any language.

The names are protected under the above-mentioned international treaties and States have a legal obligation under those international instruments to both implement and enforce the protection in their domestic legal systems. This includes through the provision of appropriate criminal sanctions and penalties in the event of misuse.

At the request of the Drafting Team, the Red Cross/Red Crescent were asked jointly with the IOC to reflect on the list of translations of the protected denominations in other languages for consideration in the context of the future String Similarity Review. After consultation with the IOC representatives, the decision was taken to limit the languages submitted for String Similarity Review on the top-level and for the first round to those set forth in the Applicant Guidebook in Section 2.2.1.2.3. This solution was decided in the spirit of cooperation and for purposes of expediency and under the understanding that, in congruence with the terms of the Applicant Guidebook, the list provided is only illustrative and that the denominations have broader protections in other languages that may be asserted in future rounds and at the second level. Finally, it is noted here that the Red Cross/Red Crescent is not claiming exclusive protection to any given segment or words within the said designations, such as "cross", "crescent", or "crystal."

- To allow gTLD applicants to contest a string similarity review determination or to seek a letter of non-objection;
- To allow the Red Cross / Red Crescent to register a gTLD that includes any of its designations should they require to do so in the future.

In conclusion, Red Cross/Red Crescent thanks the Board for this opportunity to comment on this important issue.

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