

Comments submitted by Dr. Konstantinos Komaitis regarding the “Proposals for protection of International Olympic Committee and Red Cross/Red Crescent names at the top-level”

I would like to thank the Internet Corporation for Assigned Names and Numbers (ICANN) for this opportunity to submit comments in relation to the “Proposals for protection of International Olympic Committee and Red Cross/Red Crescent names at the top-level” domain names.

First of all, I would like to mention that I am the current chair of ICANN’s Non-Commercial Users Constituency (NCUC) and one of the members of the Drafting Team (DT) that has submitted these recommendations for consideration by the wider Internet Community. In this particular instance, however, I am speaking in my own personal capacity as an academic and a Greek citizen.

My concerns over these recommendations relate to issues of process, substance and effectiveness. In particular, I feel that this whole process takes a path that goes contrary to the idea of the bottom-up normative assessment the ICANN community has strived to develop over the years and opens a Pandora’s Box with ramifications that will be impossible to reverse.

The primary flaw of this process that led to these proposals is that it has failed to distinguish between the requests made by the International Olympic Committee (IOC) and the Red Cross/Red Crescent movement and treat them as two separate issues. These are two organizations, which engage in completely different and unrelated activities, are currently being offered different levels of protection through traditional international and national legal instruments and their contribution to society differs significantly. In particular, the fact that the Red Cross/Red Crescent movement is involved in promoting and ensuring humanitarian relief in times of national and international catastrophes offers, at a preliminary level, a more sound foundation for the potential protection of its names and terms in the Domain Name Space (DNS); on the contrary, IOC is an organization, which receives a great amount of sponsorship deals which ensures “more than 40% of Olympic revenues”¹ (some of its commercial partners include SAMSUNG, COCA COLA, GENERAL ELECTRIC (GE) MCDONALDS, VISA and PANASONIC) and its role, albeit significance within the sports industry, should not be mixed with humanitarian or public interest values.

On the issue of process, it has been obvious that ICANN departed significantly from its long-fought and established bottom-up processes. ICANN’s Board decision to prohibit the “delegation [of these names] as gTLDs in the initial application round”² went against the bottom-up establishment within ICANN and undermined its main policy multistakeholder body – the Generic Names Supporting Organization (GNSO) Council. (At this stage, it is important to clarify that a decision has already been made concerning the protection of these terms in the first round). This new set of recommendations seek to go beyond and re-enforce the Board’s decision by creating a

1 <http://www.olympic.org/sponsorship>

2 2.2.1.2.3 of the Applicant Guidebook

panoply of various protections and safeguards that, one can argue, re-interpret international law.

What is even worse is the unreasonable pressure that has been placed upon the Drafting Team to come up with these recommendations, which is manifested by the rush and the urgency of this public comment period and the likelihood that the GNSO Council may be asked to vote on this recommendation during the 43rd ICANN meeting in Costa Rica and only a week after the public comment period has opened. This means that the GNSO, when making its decision, will, most likely, not have the appropriate input of the community, within and outside ICANN; this is something that can potentially undermine any of its future work.

On the issue of substance the recommendation of the Drafting Team enters a dangerous territory. Under recommendation 1 - *“Treat the terms set forth in Section 2.2.1.2.3 as “Modified Reserved Names”* – terms like ‘confusingly similar’ are vague, thus their meaning can easily be twisted, whilst there is also an obvious attempt to disincentivize even legitimate rights holders from engaging in any type of registration at the top-level name [paragraph c (ii) 3 of recommendation 1].

Even more problematic is recommendation 2, which seeks to re-interpret international Treaties and expand the rights traditionally afforded for these terms. This is particularly obvious in the case of the Olympic mark, which seeks to protect the names in multiple languages, including those of States that have not signed the Nairobi Treaty on the Protection of the Olympic Symbol. The Nairobi Treaty is the only standard that can be used by an international organization like ICANN in order to comply with the rule of law. ICANN is not a legislator and should not accept a ‘definitive list’ of languages that constitute an arbitrary compilation of national laws.

Finally, there is no clear justification regarding recommendation 3. Considering the novelty, the time constraints and the controversial nature of these recommendations, in the likelihood that these recommendations pass, ICANN should call for a review after the first round of delegation of the new gTLDs has occurred in an attempt to reassess them.

Considering effectiveness, these recommendations set a very dangerous precedent and send a bad message. Although reassurances have been made that this process is meant to address only the names of these two international bodies, it is the case that, should they be implemented, other international entities and institutions will have valid claims to demand the same levels of protection.³ If pressure from these other international bodies intensifies, ICANN will have no option but to succumb. Accepting these recommendations leaves the ICANN community with no grounds against other international organizations and sets a dangerously flawed practice for the new gTLD program.

³ <http://www.komaitis.org/1/post/2011/12/we-dont-accept-any-more-reservations-icann-pressured-to-reserve-names.html>

Being a Greek citizen, I am particularly troubled by the levels of protection these recommendations seek to provide to the terms 'OLYMPIC', 'OLYMPIAD' and their variations in multiple languages. Greece is the place that gave birth to the Olympic games and promoted the Olympic spirit that the world currently enjoys. The idea that the Greek community of Olympia (the place which marks the ceremony of the lighting of the Olympic flame) will have to ask permission from the International Olympic Committee to use a term that is part of its cultural heritage is highly problematic, illegitimate and goes against how the Applicant Guidebook views communities.

I hope the ICANN community takes a much closer look to these recommendations and think carefully about the potential multifaceted impact they may have.

Respectfully submitted,

Dr. Konstantinos Komaitis,
Senior Lecturer in Law