INTERNATIONAL
OLYMPIC
COMMITTEE

Ref. No 376

Implementation Recommendation Team (ITR)
Internet Corporation for Assigned Names and
Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina Del Ray, CA 90292-6601
USA

Lausanne, 6 May 2009

ICANN's Trademark Protection Draft Report

Dear Sir/Madam,

The International Olympic Committee (the "IOC") submits this letter in response to ICANN's invitation for public comments regarding the Implementation Recommendation Team's preliminary report on trademark protection.

The IOC has previously provided comments to ICANN, on 5th December 2008 and 9th April 2009 (copies attached for easy reference), which emphasized the unique nature of the Olympic Trademarks (including the words OLYMPIC and OLYMPIAD) and detailed the IOC's concerns with your proposed project for generic Top Level Domains.

Subject to the comments noted below, the IOC regards the Implementation Recommendation Team's preliminary trademark protection report as a positive step toward dealing with the serious issues posed by the proposed gTLD system. The IOC also considers the proposed rights protection mechanisms – including the Intellectual Property Clearing House, the Globally Protected Marks List, and strong protection of globally protected marks in second-level domains – as potentially useful enforcement tools.

However, most importantly, for the Globally Protected Marks List, and the other proposed rights protection mechanisms, to be successful, it is vital that famous marks which enjoy an enhanced legal protection be accepted for inclusion. This is because, while marks such as OLYMPIC and OLYMPIAD are universally considered as globally well known and famous, the IOC and other international non-profit organizations may not meet the arbitrary quantitative trademark or domain name registration levels currently proposed by the Implementation Recommendation Team report.

This IOC position is supported by the IOC's further comments below regarding criteria for inclusion in the list:

- **National Legislation Specifically Protecting Trademarks**. International organizations (either governmental such as the United Nations, UNESCO, WIPO, etc., or non-governmental non-profit such as the Red Cross or the IOC) legitimately enjoy an enhanced protection of their marks **by law** through specific national legislation. Olympic Trademarks are protected by national legislation in numerous countries such as in Argentina, Austria, Australia, Canada, China, Belgium, Brazil, Chile, Costa Rica, Czech Republic, Ecuador, France, Greece, Guatemala, Hungary, Lebanon, Luxembourg, Mexico, Poland, Portugal, Puerto Rico, Romania, Russia, Slovak Republic, South Korea, Spain, Turkey, the United Kingdom, the United States Uruguay and Venezuela. Such legislative protection of the Olympic Trademarks illustrates an unparalleled level of strength and fame beyond any mere "final judgments by three

different courts that the [mark] has been found to be famous." Moreover, recognition in the Globally Protected Marks List of such national legislation furthers the Implementation Recommendation Team's policies of "protect[ing] the existing rights of trademark owners" while not creating additional rights and "accommodat[ing] territorial variations in trademark rights."

- **Any "Catch-All" Evidence or Other Indicia that Marks are Famous**. Certain types of evidence – such as worldwide news releases, articles in international journals, website hits, international surveys, etc. – should fall under a "catch-all" provision. For example, the unique global recognition of the Olympic Movement, illustrated by the participation of hundreds of countries and thousands of Olympians over the course of over one hundred and ten years, is represented by the terms OLYMPIC, OLYMPICS and OLYMPIAD, and those marks deserve corresponding recognition in the Globally Protected Marks List.

- **The Number of Successful UDRP and Cybersquatting Actions Initiated by Trademark Owners**. The Implementation Recommendation Team decided against this criterion because it "was neither an acceptable substitute for any of the other criteria nor necessary as an additional criteria." However, if "final judgments by three different courts" are to be considered, there is little reason to ignore *inter partes* UDRP decisions that discuss the fame of a trademark. Many trademark owners rely on the UDRP as an efficient enforcement tool, and should not be discriminated against based on that choice. Moreover, anti-cybersquatting UDRP decisions may yield the very judgments that the Implementation Recommendation Team deems acceptable as evidence of fame.

Subject to the foregoing, the IOC maintains its position that the generic Top Level Domain proposal is inherently flawed and injurious to owners of famous trademarks. The IOC's recommendations should not be taken as a waiver of the IOC's right to proceed against ICANN for damages resulting to the IOC or the Olympic Movement from implementation of the gTLD proposal.

Yours Sincerely,

Urs LACOTTE
Director General

Howard M. STUPP
Legal Affairs Director

Encl.