

## ICANN Prague Meeting

### Statement to the GNSO

*Saturday, 23 June 2012*

Dear GNSO members,

(1) We would like first of all on behalf of the International Red Cross and Red Crescent Movement and its components to express our appreciation to the GNSO for its continued efforts and commitment to achieve a suitable and sustainable solution to the question of the protection of the red cross, red crescent and red crystal designations and related names (designations) in the new gTLD program.

As the first round of application is still in process and as work on the protection of the designations at second level begins, it is of utmost importance that ICANN's stakeholders not lower their guard.

(2) Our submission today to the GNSO is to clarify the unique status of the designations and why permanent protection at the top and second levels is a requirement in legal terms, based on universally agreed norms of international law, which are binding upon all States within the International Community, and as such committing upon ICANN under its own Articles of Incorporation. This founds the distinctiveness of the designations and also requires that the said designations be reserved.

- A. The Geneva Conventions specifically reserve use of the designations to protect armed forces medical services and those assisting affected persons and communities in times of war and armed conflict.

The first Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 provides equal protection to the emblems of the red cross, red crescent and red lion and sun. Article 44 provides that “[...] *the emblem of the red cross on a white ground and the words “Red Cross, or “Geneva Cross” may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the other emblems mentioned in Article 38, paragraph 2, in respect of the countries that use them [the red crescent, the red lion and sun]*”. The third Protocol additional to the Geneva Conventions extends that protection to the red crystal emblem and designation.

Therein lies the paramount global public interest for the reservation of the red cross, red crescent and red crystal designations.

- B. The protection of these designations does not hence primarily stem from their affiliation to any particular organisation within the International Red Cross and Red Crescent Movement.

The third point relates to the rationale for the protection of the designations of the protective emblems of armed forces medical personnel in times of armed conflict. The protection of these designations does not hence primarily result from their affiliation or association to any particular organisation within the International Red Cross and Red Crescent Movement. These names are thus first and foremost the designations of the protective emblems of

armed forces medical services. The global public interest at stake stems from the concern that any use by those not duly authorised to use the designations, notably by the corporate sector, is liable to undermine the perception and the protection the emblems and their designations represent and symbolize. The international protection of the designations does not stem either from their protection under trademark laws.

The designations are also used by the respective components of the International Red Cross and Red Crescent Movement, but this remains their secondary use. As such the claim for protection of the designations must be distinguished from that made in regard to names of international governmental organizations, not-for-profit or non-governmental organizations.

C. The Geneva Conventions provide clear obligations to be undertaken by States to ensure and implement the protection.

States that are parties to the 1949 Geneva Conventions, currently 194, have an obligation to protect as well as to repress any forms of misuse of the designations in their own domestic legal orders. This is consistent with the letter by the Government Advisory Committee (GAC) of 11 September 2011 requesting permanent protection for the Movement's designations in both top and second level domain names. It is also exemplified in the extensive list of national legislation existing in multiple jurisdictions to protect the designations from unauthorised and fraudulent use.

D. ICANN's own Articles of Incorporation provide that ICANN shall conduct "its activities in conformity with relevant principles of international law and applicable international conventions and local law."

This forms the commitment and legal requirement for ICANN and its Board of Directors to permanently protect the designations. It should also be recalled that the Geneva Conventions and their Additional Protocols, together with relevant national implementing legislation (such as in the United States, 18 U.S.C. §706, Red Cross (Geneva Distinctive Emblems) and 18 U.S.C. §917, Red Cross members or agents) are applicable to ICANN, and that their provisions should be duly implemented by ICANN in accordance with its own Articles of Incorporation.

(3) As highlighted above, the primary nature of these designations and the rationale for their protection would therefore command that protection for these designations fall outside the scope of the recommendations raised in Preliminary Issues Report or any eventual future actions resulting from such.

The objectives of our request as further explained in our recent submission and position paper to ICANN's Board is therefore that the Board duly :

- implement and perform without delay all actions necessary, such as those listed below, to permanently reserve ***in top as well as second level domain names*** the designations red cross, red crescent and red crystal and related denominations, as well any imitations thereof;
- instruct ICANN Staff to implement and make all modifications necessary in all agreements with registries and registrars and in the new gTLD Application Guidebook (including all templates, agreements and annexes to the same) in order to :
  - Permanently protect the Movement's designations at the first and second levels in multiple languages;

- Allow the Movement and its respective components to register a top or second level domain name that includes any of the designations, should they require to do so in the future.
- Ensure that a string similarity review is duly implemented at first, and as far as possible at the second level, in order to prohibit and prevent the registration of domain names constituting an imitation of the designations or which are confusingly similar therewith.

Thank you for your attention.

Respectfully submitted,

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