

PROGRESS REPORT ON NEW gTLD ISSUES RAISED IN PRAGUE

New gTLD Committee of the ICANN Board

During the public forum in the ICANN meeting in Prague, the Board Committee on New gTLD described the issues raised during the meeting, and made seven commitments described below. One of those was to set a new gTLD program committee call in approximately three weeks' time to assess progress and report back to the community. This is that report. Each of commitments listed below is followed by a description of actions taken to date and plan for future action.

Regarding batching of new gTLD applications:

1. There will be no digital archery.

The New gTLD Committee decided in Prague that the digital archery or secondary timestamp method of ordering TLD applications for evaluation would not be used. We confirm that here.

2. ICANN will evaluate all applications and move them to the next phase as soon as practicable.

Initial evaluation has been underway, effectively beating the published July 12 start date. The Committee has asked staff to maintain regular communications with applicants and the community regarding the status of application processing. Since Prague, ICANN has worked with evaluators to accelerate the schedule (while achieving all consistency and accuracy goals). In the few weeks since then, considerable progress has been made.

Applications are being distributed in a way that keeps evaluation panels busy at an economical rate. Applications are being distributed in a way that takes advantage of similarities among applications, either because applications are from the same applicant or have the same "back-end" providers.

Evaluation service providers believe that they would ultimately be able to process applications at a pace averaging 300 per month without compromising quality. The firms believe that it would take a few months to fully ramp capacity to process 300 applications per month.

Adding some time for ICANN to organize and publish results, this means that initial evaluation results will be published in 11-12 months after the July 12 start date, i.e., May or June 2013. ICANN continues to work with evaluators to gain additional improvement. These will be reported when they are verified as achievable.

3. ICANN will take all of the community ideas into account and build a roadmap.

During the Prague meeting the New gTLD Committee indicated that the committee recorded the comment being made at that meeting but understood that applicants and others in the community who were not attending the Prague meeting might not have had the opportunity to comment. Therefore, it was decided to provide an opportunity for all applicants to comment and that the general community should be given that opportunity also. That applicant comment period has recently been opened. The comment period is limited to three weeks because: interested parties are well informed on the issue and have already commented at an earlier time, therefore time for research / study is not necessary; and those interested in this issue are also interested in timely resolution and suggested a shorter comment period.

The "roadmap" will be an annotated project schedule for the remainder of the applications processing period. It is being developed now; preliminary timelines have already been reviewed. Parts of the timeline, such as application processing times, have already been published in companion documents.

4. The roadmap will:
 - a. Detail the next steps and timelines
 - b. Assess implications to applicants
 - c. Assess risks to the program

The roadmap will show how the separate schedules for evaluation applications, possible dates for GAC input, comment & objection periods, and other program elements fit together. The plan will demonstrate interdependencies, indicate risk areas, describe schedule uncertainty, and indicate how applicants might be affected by changes to the plan.

The roadmap will be released by the week of August 6, 2012.

5. ICANN will open an Applicant Comments Process and provide opportunity for community input.

As described above, the comment period is open (<http://www.icann.org/en/news/announcements/announcement-29jul12-en.htm>). It was not opened immediately after Prague as some time was taken to explore the possibility of accelerating the evaluation schedule and understand the dependencies among the different evaluation steps and their effect on delegation rates.

6. ICANN set a New gTLD Program Committee call in appx. three weeks time to assess progress and report back to community.

Meetings were held on Wednesday 18 July and Friday 27 July. The first meeting assessed progress against each of these items, the Board requested additional work to be done during the next several days and the follow-up meeting occurred. This report is the result of those sessions.

Regarding IOC and Red Cross protections:

7. The Board instructed ICANN staff members to review and report back on all inputs that have been provided on this issue, including:
 - a. Previous public comment period
 - b. Community inputs in Prague
 - c. Additional inputs from IOC and Red Cross
 - d. Status of GNSO work, following Board decision
 - e. GAC inputs (if any).

All recent inputs have been reviewed. The compilation of that material – each of the five types of input – is attached as an appendix.

Review of this material indicates that the appropriate course is for the Board to leave these issues in the hands of ICANN's policy-making bodies. This was the recommendation of the Board in its Singapore resolution when considering protections for the IOC and Red Cross. ICANN staff members are supporting that discussion in the GNSO. The IOC and Red Cross are addressing their comments to the GNSO. The GNSO is properly considering whether to do additional work on these issues.

APPENDIX: Draft Report on IOC / Red Cross Issues

Executive Summary

This report includes requested information on IOC / Red Cross protection issues. It includes:

- Investigation of comments made in a public comment forum on this issue that occurred *after* the Board took its decision on the GNSO Drafting Group report (there were no comments).
- Community input on the issue in Prague. The two comments in the public comment forum stated that: the Board decision in Singapore to provide protections for the IOC and Red Cross was not supported by rationale (it was); and that we, as a community spend a grossly disproportionate amount of time on this issue.
- Additional input from the IOC and RC. One letter from each was sent to the GNSO, indicating that this policy discussion is correctly occurring in a Supporting Organization.
- Status of the GNSO work – the GNSO has taken various inputs and is considering next steps on this and related issues such as protections for IGOs and additional trademark protections at the second level.
- GAC input reflected in a letter dated 12 April 2012 that recommends protections at the top and second levels.

Recommendation:

Analysis of this information indicates that the appropriate course is for the Board to leave the issue in the hands of ICANN's policy-making bodies. This was the recommendation of the Board in its Singapore resolution, and ICANN staff members are supporting that discussion in the GNSO. The IOC and Red Cross are addressing their comments to the GNSO. The GNSO is properly considering whether to do additional work on these issues.

Previous public comment period

The Board made its most recent decision, considering the GNSO Drafting Team's report on IOC / Red Cross protections, four days before the reply period closed. We committed to investigate whether additional comments were made subsequent to the Board decision. There were none.

In the BGC's recommendation to the New gTLD Program Committee denying Reconsideration Request 12-1 filed by the IOC, the BGC also noted as follows: "Though reconsideration is not proper in this instance, the BGC notes the

use of the phrase "at this time" in the 10 April 2012 decision. As a matter of fairness, the BGC invites the New gTLD Program Committee to evaluate whether its decision on the GNSO Recommendations relating to the IOC is now ripe for determination given that the public comment period on the recommendations has now closed."

Ultimately, the public comment Reply period closed on the GNSO Recommendations on 14 April 2012 (<http://www.icann.org/en/news/public-comment/ioc-rcrc-proposal-02mar12-en.htm>), four days after the New gTLD Program Committee determined not to change the Guidebook in furtherance of the GNSO Recommendations (see resolutions at 2012.04.10.NG4 and NG 5 at <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-10apr12-en.htm>).

When the BGC was considering this, the question came up as to whether any further comments needed to be considered after the 10 April 2012 New gTLD Program Committee decision. Notably, during that BGC meeting, we did report that the last comment that was submitted on the public comment period for the GNSO recommendation re: Red Cross and IOC, was on 9 April 2012, so no comments were submitted after the New gTLD Program Committee passed its resolution on 10 April 2012, when it decided "not to change the Application Guidebook at this time."

Community inputs in Prague

In the Prague Public Forum, Jeff Neuman, Chair of the IOC/RC drafting team stated:

...when the Board approved the resolution to provide some protections for the Olympic and Red Cross names. That was the one that the GNSO community believes was a mistake and shouldn't have happened without being first discussed by the GNSO community. So I didn't mean to imply that it was the most recent one. That was the one that we're still waiting for the Board rationale to be posted on why it passed that June resolution in Singapore. All of the rationale is actually privileged, marked privileged and it's redacted from the Board report.

The rationale is posted at: <http://www.icann.org/en/minutes/rationale-gac-response-new-gtld-20jun11-en.pdf>. It is not redacted. (The "Board Briefing Materials" for the 20 June 2011 included some privileged and confidential information <<http://www.icann.org/en/groups/board/documents/briefing-materials-20jun11-en.pdf>>, but the posted rationale for the Board's decision is not redacted.)

The posted rationale states:

The Board agrees that the names requested by the IOC and Red Cross should not be delegated at the top level during the first round until the GNSO and GAC can develop policy advice for future rounds based upon the global public interest. The Board decided that the extraordinary step of blocking the requested names at the second level should not be taken as it would deny those with a legitimate interest or rights in registering those names at the second level, e.g., olympic.taxis and redcross.salt.

The Board asked and received answers on this issue and the topic was discussed. The Board agrees that no other organization (or very few others) would qualify under the proposed criteria. Many organizations face these same issues. There are protections in the Guidebook that both organizations may utilize: objections and GAC Advice at the top level; URS, Sunrise, Trademark Claims, thick Whois, and PDDRP at the second level. Even with the extraordinary recognition these renowned organizations have earned, the Board is not sure a separate set of protections should be afforded them. In addition, such a reservation would unfairly penalize many entities with legitimate interests in these names: Olympic Paint, Olympic Airlines, Red Cross Salt, among many others.

There is a concern that what is being requested is creation of rights protection mechanisms on an ad hoc basis without addressing policy concerns. There has been a tremendous amount of work and community discussion about the rights protection mechanism to be included in the new gTLD program. And, while these two organizations have asked for special reserved protection, no community discussions have involved such a level of protection for special cases.

Also during the public forum in Prague, Paul Foody stated:

The IOC and the Red Cross, aside from my personal bewilderment that IOC is included in the same sort of group as the Red Cross, given that it's predominantly a commercial operation, or it appears to be, if you start giving the protections to those sorts of bodies, or at least to the IOC, where do you stop?

But more than that, the fact that a body with the financial resources and the global governmental influence that the IOC has should think that the new gTLD program is at a stage where they need to get protected not just at the first level but also at the second demonstrates that if the new gTLD program is intended to improve the chances that an individual wanting to go to a site gets there, then that surely demonstrates that you've absolutely got it entirely wrong.

Elliot Noss stated:

And with respect to the IOC and Red Cross, again, I believe that defensiveness or that fear has led to this issue which is not a trivial issue by any means, but it is one that has been elevated both by that fear and defensiveness and by the external connections, perhaps, to take up so much of the oxygen in the community significantly disproportionate to the weight of that matter relative to so many of the other things on the agenda.

The access, the amount of time it takes up at a GAC level, at a board level, at a GNSO level, is really staggering when we step away and look at the issue.

Additional inputs from IOC and Red Cross

There is an email submission from the IOC to the GNSO and a letter from the Red Cross to the GNSO. Both are attached as appendices.

Status of GNSO work, following Board decision

There are two tracks that the GNSO Council has initiated that relate to the IOC/RC issue: a) the Drafting Team's work on responding to the GAC proposal to protect RC/IOC names at the second level in new gTLDs; b) the Council's request for an Issue Report on the protection of international organization names which includes the IOC/RC, as well as IGO names in advance of possibly initiating a PDP. The Preliminary Issue Report was published on 4 June 2012, and the public comment period (reply period) on this report will close on 24 July. The Final Issue Report will likely be published at the end of August.

The GNSO DT working on the RC/IOC issue is currently considering 5 overall approaches for moving forward:

- No change, dropping the issue
- Developing implementation options for the GAC proposal (see below)
- No change in the first round, see what happens for future round consideration
- Consider as part of broader PDP
- Request ICANN to conduct legal analysis to determine if treaties/statutes require registries/registrars to provide protection

GAC inputs

The 12 April GAC letter on this topic can be found here:

[https://gacweb.icann.org/download/attachments/1540128/GAC Board IGO Protection20120412.pdf?version=1&modificationDate=1334338876000](https://gacweb.icann.org/download/attachments/1540128/GAC_Board_IGO_Protection20120412.pdf?version=1&modificationDate=1334338876000)

That letter states: “The GAC reaffirms previous advice that the IOC and Red Cross and Red Crescent should be protected at the first and second top levels, given that these organizations enjoy protection at both the international level through international treaties (e.g. the Nairobi Treaty and the Geneva Conventions) and through national laws in multiple jurisdictions. The GAC considers the existence of such two-tiered protection as creating the criteria relevant to determining whether any other entities should be afforded comparable enhanced protection.”

APPENDIX A – RED CROSS LETTER

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.

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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,

Stéphane J. Hankins
International Committee of the Red Cross
shankins@icrc.org

Debra Y. Hughes
American Red Cross
International Federation of the Red Cross and Red Crescent Societies
debra.hughes@redcross.org

APPENDIX B – IOC EMAIL

Dear all,

In anticipation of tomorrow's telephone conference, here is an updated response to the Discussion Group's four questions about protection of the Olympic names at the second level.

Introduction

On May 10, 2012, the GNSO Council held its monthly teleconference, and determined that this Discussion Group should press forward with its mission of considering protection of the Olympic and Red Cross names at the second level, as recommended by the GAC.

Therefore, we continue to be charged with the mandate of implementing the Governmental Advisory Committee's proposal for protection at the second level of new generic Top Level Domains. Our continuing task is to present a unified, comprehensive package covering second level applications in the first round that will, at the very least, complement the protection provided at the top level through Section 2.2.1.2.3 of the Applicant Guidebook.

At our last Discussion Group teleconference, we began to discuss the answers we have provided about protecting the Olympic names at the second level. The answers demonstrate that it is imperative that the GNSO recommend protection, at the very least, against identical matches in the six United Nations languages.

1. How significant is the problem posed by unauthorized registrations of Olympic domain names at the second level?

Every year, thousands of unauthorized persons register Olympic domain names at the second level. The search reports we sent to the Discussion Group on April 17 and 18, 2012 show hundreds of unauthorized second-level Olympic domain name registrations each week. Attached are more recent reports. Even though this is a violation of national laws protecting the Olympic marks, cybersquatters continue to prey upon the Olympic marks, and the demand for Olympic domain names continues unabated. This infringement is currently taking place in the 22 existing top-level domains. If the number of top-level domains is increased by two thousand, there will undoubtedly be a corresponding increase in unauthorized registrations of Olympic domains at the second level.

These unauthorized registrations--often for pornographic, phishing, gambling or parked sites--dilute and tarnish the Olympic trademarks, and attempt to exploit for

commercial gain the good will created by the Olympic Movement. The unauthorized domains already oblige the IOC and its National Olympic Committees to expend significant amounts of time and money on monitoring and enforcement activities.

2. Why are the existing Rights Protection Mechanisms inadequate to address this harm?

The sheer volume of unauthorized registrations renders the Rights Protection Mechanisms costly, burdensome, and ineffective. In the year 2000, the IOC filed an action under the U.S. Anti-Cybersquatting Consumer Protection Act against 1,800 unauthorized Olympic domain names. (See Complaint circulated with April 17 and 18 emails.) Although the suit resulted in a judgment in the IOC's favor, and almost all of the unauthorized domain names were canceled, the cybersquatters returned, registering hundreds more unauthorized Olympic domains every month. If hundreds or thousands of infringing, unauthorized Olympic domain names are registered at the second level in 2,000 new top-level domains, the cost of monitoring and attempting to curtail the rampant infringement of the Olympic marks would be prohibitive.

The least expensive Rights Protection Mechanism, the Uniform Rapid Suspension system, would cost an estimated \$300 to \$500 per proceeding. This cost is currently being questioned, and may be more expensive. Given the burgeoning number of unauthorized Olympic second level domain names, URS proceedings would cost hundreds of thousands of dollars every year. If one adds the cost of time expended by attorneys and other personnel required to monitor the infringing domains and bring enforcement actions--an undertaking that would require a full-time staff dedicated solely to that task--it becomes apparent that enforcement through this rights protection mechanism would be prohibitively expensive.

The *sui generis* legislation that the GAC has cited single out the Olympic Movement for protection because governments have recognized the Olympic Movement's unique visibility and heightened risk of infringement. Ordinary trademark rights protection mechanisms would divert the Olympic Movement's resources away from its mission of promoting humanitarian goals through sports.

Thus, the volume of infringing second-level Olympic domains would outstrip the Rights Protection Mechanisms; that is why they are inadequate to address the harm.

3. What effect would the limited protection proposed by the GAC have on addressing the harms identified?

We agree that the current proposal, protecting against identical matches of OLYMPIC and OLYMPIAD, would not, at first, cover all infringing second-level domain name registrations. But this initial protection in two thousand new top-level domains would prevent registration of as many as four thousand Olympic domain names. That alone is a great benefit. The scope of protection at the second level could be evaluated and modified based on experience. And new registries can be encouraged to provide broader protection of similar strings and protection in additional languages.

One issue that arose earlier, concerning the top level, was whether the recommendations would lead to licensing by the International Olympic Committee. The answer is no, the recommendations only provide for a letter of non-objection, where the IOC does not oppose the use of similar string in a TLD, not for a license. This is a standard practice which allows similar trademarks to co-exist, but it is not a license. If new registries provide broader protection of similar strings at the second level, letters of non-objection could be provided at that level, as well.

4. To what extent does the IOC have registrations of the OLYMPIC and OLYMPIAD marks in the six United Nations languages?

The table below illustrates protection of the Olympic marks in trademark registrations. We are still working to identify registration numbers in Arabic, and will supplement them below as soon as possible, although this is not strictly necessary.

The Trademark Clearinghouse: Draft Implementation Model provides that any mark is eligible for protection through Sunrise Registration and Notification Services if it meets one of four requirements. One is presentation of a valid trademark registration. Another is proof that a mark is protected by statute or treaty. The International Olympic Committee intends to use *sui generis* national legislation to register their marks in the Trademark Clearinghouse. Transliterations of the words Olympic and Olympiad in Arabic are protected by *sui generis* legislation in Lebanon. For purposes of demonstrating use, the International Olympic Committee holds Arabic character domain name registrations in the United Arab Emirates and the Palestinian Territories.

It should be noted that although the Olympic marks are eligible for protection in

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the Trademark Clearinghouse, this RPM is inadequate to protect the International Olympic Committee, as discussed above, in the answer to question 2. The burden of registering exact matches of the words Olympic and Olympiad in all six UN languages during Sunrise Period in 2,000 plus new TLDs, and the added burden of monitoring Clearinghouse notifications in the same, would defeat the purpose of the unique *sui generis* protections afforded to the International Olympic Committee.

Language Protection Word(s) Protected
English U.S. Trademark Reg. No. 2,777,890 Olympic
New Zealand Reg.No. 810307 Olympiad
U.K. Reg.No. 2340841 Olympiad
Chinese Chinese Trademark Reg.No. 623897 Olympic (奧林匹克)
Chinese Trademark Reg.No. 623896 Olympiad (奧林匹亞)
Chinese Trademark Reg.No. 623898 Olympic Games (奧林匹克運動會)
French Swiss Trademark Reg.No. P408297 Olympique
Swiss Trademark Reg.No. P410106 Olympiade
Spanish Spanish Trademark Reg. No. MO796125 Juegos Olimpicos
Spanish Trademark Reg. No. MO795576 Olimpiada
Arabic TBD TBD
Russian Russian Reg. No. 2006730171 Olympic (ОЛИМПИЙСКИЙ)

Regards,

Jim

James L. Bikoff
Silverberg, Goldman & Bikoff, LLP
1101 30th Street, NW
Suite 120
Washington, DC 20007
Tel: 202-944-3303
Fax: 202-944-3306
jbikoff@sbgdc.com <<mailto:jbikoff@sbgdc.com>>