

NGPC Submission on GAC Beijing Advice

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I. Overview

A. Overview of GAC Advice on New gTLDs in the Beijing Communiqué

The GAC advice from Beijing addressed: (1) the New gTLD Program, (2) the Registrar Accreditation Agreement, (3) Whois, (4) International Olympic Committee (IOC) and the Red Cross/Red Crescent Movement (RCRC), and (5) Public Interest Commitments Specifications. Two annexes to the Communiqué provide guidance on safeguards for new gTLDs and a series of questions related to the public interest commitments specifications. Key points from the Beijing GAC advice on new gTLDs include:

- The GAC has reached consensus against one of the applications for .africa and the application for .gcc;
- Some GAC members believe that .islam and .halal should not proceed due to religious and community sensitivities;
- Safeguard advice applying to broad categories of strings (see Annex I);
- A list of 12 strings where further GAC consideration may be warranted, including consideration at the Durban meeting;
- A request for a written briefing about the ability of an applicant to change the applied-for string in order to address concerns raised by a GAC member; and
- A request for permanent protection for IOC/RCRC names in the Registry Agreement prior to the delegation of any new gTLDs.

B. Requirements for Responding to GAC Advice, and Consultations with the GAC

Accompanying this paper is a separate summary of the requirements relating to responding to GAC advice and consulting with the GAC regarding the advice if necessary (in case the Board decides to take an action not consistent with GAC advice).

As many NGPC members will recall, this is not the first time that the role of GAC advice has been prominent during the course of the New gTLD Program. On 28 February and 1 March 2011, the GAC and the Board met in Brussels to identify the specific differences between the GAC Advice and the then-current implementation of the GNSO's policy recommendations on new gTLDs as embodied in the Applicant Guidebook.

ICANN prepared a series of briefing papers for consideration by the GAC, which outlined the background and history of specific issues and analyzed the remaining areas where there existed a difference between the Board's position and the GAC's position. The Board and the GAC worked with a "scorecard" to assist in the process of resolving the outstanding issues. After the Brussels meeting, a second version of the scorecard was produced describing many areas of accommodation and agreement and also indicating those areas

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where the Board did not adopt GAC advice; see <<http://archive.icann.org/en/topics/new-gtlds/board-notes-gac-scorecard-04mar11-en.pdf>>. The Board-GAC consultation process continued at the ICANN meetings in San Francisco in March 2011, and the process culminated with the June 2011 Board approval of the Applicant Guidebook, which reflected a number of revisions resulting from the intensive collaboration between the GAC and the Board. A comprehensive record of the 2011 Board-GAC consultation process is posted at <<http://newgtlds.icann.org/en/about/historical-documentation/board-gac-consultations>>.

C. Draft Scorecard for NGPC Response to Beijing GAC Advice

Draft superseded by new version

D. Public Comment Forum and Applicant Responses to GAC Advice

On 18 April 2013, ICANN posted the GAC advice and officially notified applicants of the advice, <<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>> triggering the 21-day applicant response period pursuant to the Applicant Guidebook Module 3.1.

On 23 April 2013, ICANN initiated a public comment forum to solicit input on how the NGPC should address GAC advice regarding safeguards applicable to broad categories of new gTLD strings <<http://www.icann.org/en/news/public-comment/gac-safeguard-advice-23apr13-en.htm>>.

The public comment forum on how the NGPC should address GAC advice regarding safeguards is open through 4 June 2013. Both the applicants' responses to the GAC advice and the comments received in the public comment forum will serve as important inputs to the NGPC's consideration of the GAC advice.

E. Items of GAC Advice Potentially Addressed Elsewhere

Some of the topics raised in the GAC advice have already been considered and addressed to an extent by ICANN in the development and implementation of the New gTLD Program. Work is underway on a detailed review of the GAC advice to determine which items are potentially addressed elsewhere. As one example, the GAC advised that ICANN should take into account the opinion of communities that are clearly impacted by new gTLD applications in contention. (GAC Advice §1.e). ICANN has already incorporated this concept in the Community Objection process (Module 3) and in Criterion 4 of the Community Priority Evaluation process (Module 4) in the Applicant Guidebook. Community Objections may be based on "substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted."

Criterion 4 in the Community Priority Evaluation process accounts for "community support and/or opposition to the application" in determining whether to award priority to a community application in a contention set.

Another area of GAC advice already addressed relates to the finalization of the 2013 RAA before any new gTLD contracts are approved. (GAC Advice §2). The new gTLD Registry Agreement, posted for public comment on 29 April 2013, requires all new gTLD registries to only use 2013 RAA registrars. The final draft of the 2013 RAA was posted for public comment on 22 April 2013, and will be finalized before any approved registry operators will sign the new gTLD Registry Agreement.

Other topics of GAC advice are already addressed by existing law. For example, the GAC advised that registry operators should require registrants to comply with all applicable laws including those relating to privacy, data collection, consumer protection, etc. Also the GAC advised that registries should require registrants to implement appropriate security measures (as defined by law) when collecting and maintaining sensitive health and financial data. (GAC Annex I, Items 2, 3 and 4.) It is axiomatic that registries and registrants must follow all applicable laws whether relating to privacy, data collection, or any other matter.

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G. Next Steps

A draft action plan addressing the recommended actions and proposed timeline accompanies this paper.

II. ICANN Board-GAC Advice/Consultation Requirements

The ICANN Bylaws <<http://www.icann.org/en/about/governance/bylaws-XI-2.1j>> provide that:

The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

The New gTLD Applicant Guidebook <<http://newgtlds.icann.org/en/applicants/agb>> addresses the role of GAC advice in application evaluation and objection processes. Section 3.1 of the AGB provides that GAC advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.

II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.

III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

The Guidebook also provides that:

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended

but will continue through the stages of the application process).

The ICANN Board-GAC Recommendation Implementation Working Group (BGRI-WG) has developed a procedure for any consultations that might be needed if the Board determines to take an action that is not consistent with GAC advice. The procedure was approved by the BGRI-WG in Beijing and would be used for any consultation on this GAC advice. The procedure says that the consultation process should conclude within six months, but that the GAC and the Board can agree to a different timetable. The following is a copy of the full consultation process:

Process for Consultations between the ICANN Board of Directors (“Board”) and the Governmental Advisory Committee (“GAC”), including those required pursuant to Article XI Section 2.1.j of the ICANN Bylaws

Proposed Process:

Step 1: Upon receipt of GAC advice (and prior to communicating its final decision), the Board will provide a written response to the GAC indicating:

- whether it has any questions or concerns regarding such advice;
- whether it would benefit from additional information regarding the basis for the GAC’s advice;
- and a preliminary indication of whether the Board intends to take such advice into account.

The Board's response will be subject of an exchange between the Board and the GAC.

Step 2: In the event that the Board determines, through a preliminary or interim recommendation or decision, to take an action that is not consistent with GAC advice, the ensuing consultations will be considered “Bylaws Consultations”. The Board will provide written notice to the GAC (the “Board Notice”) stating, in reasonable detail, the GAC advice the Board determines not to follow, and the reasons why such GAC advice may not be followed. The GAC will be afforded a reasonable period of time to review the Board’s Notice and explanation, and to assess whether there are additional elements of GAC advice that it believes have been rejected by the Board.

Step 3: As soon as possible after the Board Notice is issued (or within such time as otherwise agreed), the Chair of the GAC and the Chair of the Board will confer as to an appropriate time and agenda for a meeting between the GAC and the Board (the “Bylaws Consultation”). It is intended that all issues related to the meeting are identified and agreed upon between the GAC and Board prior to the consultation.

Step 4: Within a timeline agreed to by the GAC Chair and Board Chair, the GAC and/or the Board may prepare written documents setting forth their respective positions on the

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intended Board action for presentation at the Bylaws Consultation. Subject to the agreement to publish documents, such documents should be communicated and will be published at least two (2) weeks prior to the Bylaws Consultation meeting. Where practicable, all communications and notices provided by the Board or GAC shall be posted to ICANN's website. In addition, a written transcript of the Bylaws Consultation meeting shall be posted to ICANN's website.

Step 5: During the Bylaws Consultation meeting, the GAC and the Board will each seek, in good faith and in a timely and efficient manner, to find a mutually acceptable solution to the conflict between the possible Board action and the GAC advice, including by proposing compromise positions with respect to the intended Board action, if feasible and appropriate.

Step 6: After the conclusion of the Bylaws Consultation, the Board will determine whether to reaffirm or reverse the intended Board action, or take mitigating action.

If the Board determines to reverse the intended Board action or take mitigating action based on GAC advice and the outcome of the Bylaws Consultation, the Board may as appropriate: (i) implement any compromise action proposed by or agreed with the GAC during the Bylaws Consultation, in either case without further GAC consultation; or (ii) formally reverse the Board's preliminary or interim decision. The Board's final determination will be communicated to the GAC, providing the GAC an opportunity to comment and/or to raise other issues raised anew by the Board's decision and therefore not addressed in the consultation.

As a general rule, the Bylaws Consultation process should conclude within six months. The GAC and the Board can agree to a different time limit when necessary, taking into account the complexity of the issue and the scope of difference between the GAC and the Board's positions. Either the GAC or Board may initiate a request for expansion of the six-month time limit by providing a written request that sets out a new time-frame for completion and indicating the basis for the request.

Step 7: If the Board determines to take final action in contravention of GAC advice, then the Board will issue a final decision, stating the reasons why the GAC advice was not followed, as required in Article XI section 2.1.k of the ICANN Bylaws. The Board's final decision and explanation will be posted on ICANN's site. (**NOTE: The Board is being presented with proposed Bylaws changes that require 2/3 of the members of the Board that are eligible to vote on the issue to support any final action in contravention of GAC advice.*)

III. Accountability Process Available to Applicants

As part of the New gTLD Program Committee (NGPC) consideration of GAC Advice, the NGPC requested further information about the accountability mechanisms available to applicants. These are the accountability mechanisms set out in Articles IV and V of the ICANN Bylaws. While this document refers to applicants, the accountability mechanisms are available to any impacted person or entity with standing. Regardless of where the applicant is in the New gTLD Program, these are the *only* review or accountability mechanisms that are available.

I. Ombudsman

Applicants that believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly are able to proceed to the Ombudsman to achieve an independent internal evaluation of their complaint. The Ombudsman can also serve as an objective advocate about complaints of unfair or inappropriate treatment by ICANN.

Applicants have already proceeded to the Ombudsman already on various matters relating to the New gTLD Program. We anticipate that this practice will continue.

Timeframe

According to the Ombudsman Framework, complainants should proceed to the Ombudsman within **60 days** of when they become aware (or should have been aware) of the decision, recommendation, act or omission that led to the complaint.

There are no set timeframes for an Ombudsman's consideration of a complaint. The Ombudsman's jurisdiction terminates when a complainant engages in either a formal review process pursuant to Article IV of the Bylaws, or initiates an outside legal process, such as a lawsuit.

II. Reconsideration Process

Applicants may submit a request for reconsideration or review of an ICANN action or inaction ("Reconsideration Request") to the extent that it has been adversely affected by:

- a. one or more staff actions or inactions that contradict established ICANN policy(ies);
or
- b. one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

- c. one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

Within the New gTLD Program to date, there have been two applicants that have been determined ineligible to proceed to further evaluation in the Program, and both of those applicants have sought Reconsideration. We expect that this trend is likely to continue as the Program proceeds. As Reconsideration Requests relate to staff action, the community has already been reminded that the reconsideration process focuses only on process-related issues, and encouraged applicants to make use of the Ombudsman process, which may be more appropriate.

We have not yet had a New gTLD Program-related Reconsideration Request that was based on a viable theory of Board action, however the Board decisions relating to the New gTLD Program (or individual applications) could be subject to this type of challenge.

Timeframe

Requests for reconsideration must be filed within **15 days** of when the requestor became aware (or should have become aware) of the actions underlying the request.¹ The Board Governance Committee (BGC) may summarily dismiss requests that are not well-stated or do not meet the standing requirements. The BGC should strive to make a final determination (in the case of staff action) or recommendation to the Board (or NGPC if applicable) on the request within *30 days of receipt of the request*. The Board (or NGPC) should strive to take action on the recommendation within *60 days of the receipt of the request*. Requestors also have the ability to seek urgent consideration of matters, which require notice to the BGC within **2 days** of the posting of the resolution at issue.

III. Independent Review

Applicants may also file a request for independent review, which allows for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws. Applicants must demonstrate that they have been materially harmed by the action in order to sustain a request for independent review.

Timeframe

Requests for independent review must be filed within *30 days of the posting of the Board (or NGPC) minutes* (and associated briefing materials) that the requestor contends demonstrates the violation of the Bylaws or Articles of Incorporation. Per the Bylaws, the panel hearing the request for independent review shall strive to issue its declaration within

¹ Note that prior to 11 April 2013, the Bylaws allowed for a 30-day timeframe to seek Reconsideration.

six months of the filing of the request. As feasible, the Board will consider the declaration at its next meeting.

**Pages 12/63 through 40/63
removed from document. A
current version of the GAC
Scorecard is publicly available at
[http://www.icann.org/en/groups/
board/documents/new-gtld-
resolution-annex-1-04jun13-
en.pdf](http://www.icann.org/en/groups/board/documents/new-gtld-resolution-annex-1-04jun13-en.pdf).**

V. Beijing GAC Advice Action Plan

This following list of action items reflects the Action Plan anticipated for the New gTLD Program Committee (NGPC) to address GAC Advice presented in the Beijing GAC Communiqué.

	Item	Resp.	Start Date	Compl. Date	Status
1	Publish GAC Communiqué and notified applicants of 21-day GAC Advice Response Period	Staff		18 April	Complete
2	Applicants 21-day response period to GAC Advice	Applicants	19 April	10 May	In process
3	Publish GAC Communiqué to solicit input on how the New gTLD Board Committee should address GAC advice regarding safeguards applicable to broad categories of New gTLD strings	Staff		23 April	Complete
4	Public comment period on how NGPC should address GAC Advice re: Safeguards	Public	23 April	Comment 14 May; Reply 4 June	In process
5	Summarize and analyze applicant responses to GAC Advice	New gTLD Staff	11 May	31 May	In process
6	Summarize and analyze public comments on GAC Advice re: Safeguards	Staff	5 June	12 June	Not Started
7	Review and consider Applicant responses to GAC Advice and Public Comments on GAC Advice re: Safeguards	New gTLD Program Committee	13 June	20 June	Not Started
8	Board formal response to GAC Advice required (8 weeks from entry into register)	New gTLD Program Committee	2 May	27 June	In process

Should the ICANN Board elect to act in contradiction to GAC Advice presented in the Beijing GAC Communique, they are expected to enter into Consultation with the GAC on those portions of the GAC Advice. The following Consultation process and timeline is anticipated.

Process Assumptions:

- NGPC Determination on 20 June that it will act in contravention to GAC Advice
- Maximum time allowable taken at each step;
- One day consultation required;
- No requests for modifications to timeframe, including no modification of timeframe to align with public meeting;
- The GAC will not raise any further issues that require consultation during this process

		Resp.	Start Date	Compl. Date	Status
1	NGPC Determination to Act in Contravention to GAC Advice	New gTLD Program Committee		20 June	Not Started
2	NGPC Notification to the GAC re determination	New gTLD Program Committee /Staff	20 June	20 June	Not Started
3	GAC Response to Notification (max 45 days from step 2)	GAC	20 June	4 August	Not Started
4	Chair of Board and GAC confer on agenda and consultation (max 15 days from step 3)	Chair of New gTLD Program Committee and GAC	4 August	19 August	Not Started
5	Issues identified & agreed upon for inclusion in consultation (max 30 days from step 3)	Chair of New gTLD Program Committee and GAC	4 August	3 September	Not Started
6	Documents published for consultation (min 2 weeks before step 7)	New gTLD Program Committee and GAC	3 September	18 October 2013	Not Started
7	Consultation (max 60 days from step 5)	New gTLD Program Committee and GAC	1 November	1 November	Not Started
8	Board determines Action (max 21 days from step 7)	Board	1 November	22 November	Not Started
9	GAC comments on Board determination (max 21 days from step 8)	GAC	22 November	13 December	Not Started
10	Board completes action or determines further process is needed (no required date)	Board	13 December	13 December	Not Started

VI. Beijing GAC Advice re String Similarity Review

Section 1(f) of the GAC Beijing Communiqué included the following advice to the Board regarding singular and plural versions of an applied-for string:

The GAC believes that singular and plural versions of the string as a TLD could lead to potential consumer confusion.

*Therefore **the GAC advises the ICANN Board** to:*

- i. Reconsider its decision to allow singular and plural versions of the same strings.*

As per the Applicant Guidebook, the String Similarity review that occurs in Initial Evaluation is a visual similarity check to prevent user confusion and loss of confidence in the DNS resulting from delegation of similar strings. The String Similarity Panel makes its assessments using the standard defined in the Applicant Guidebook: *String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.*

The determination of visual similarity was made by a panel of experts from InterConnect Communications working in conjunction with the University College London. This panel utilized its independent expertise, including in linguistics, to perform the review against the criteria in the Applicant Guidebook. ICANN did not provide any instructions to the panel outside of the criteria specified in the Applicant Guidebook, including any pre-judgment of whether singular or plural versions of strings should be considered visually similar. This panel did not include singular and plural versions of strings into contention sets, based on their determination that such strings were not found to be visually similar.

The Applicant Guidebook provides for a mechanism to dispute the results of the expert panel, string confusion objections. The grounds for string confusion objections include all types of similarity, including visual, aural, or similarity of meaning. All new gTLD applicants have standing to file a string confusion objection against another application. By the end of the objection period on 13 March 2013, a total of 67 string confusion objections were filed (see <http://newgtlds.icann.org/en/program-status/odr/filings>)

Based on staff analysis, there are a total of 26 singular/plural applied-for, English language strings. The strings in these pairs had a total of 21 string similarity objections filed against them. The string similarity objections for these pairs are broken down as follows:

	# of Applications for strings in the singular/plural pairs	# of Objections for strings in the singular/plural pairs
Singular Strings	64	5
Plural Strings	42	16

	Singular Set			Plural Set		
	String	App Count	Admissible String Objections	String	App Count	Admissible String Objection
With String Similarity Objections						
1	CAR	1		CARS	3	3
2	FAN	1	1	FANS	1	
3	GAME	5		GAMES	1	1
4	GIFT	2	1	GIFTS	2	
5	HOME	11		HOMES	1	1
6	HOTEL	7		HOTELS or HOTELES	2	2
7	KID	1		KIDS	2	2
8	NEW	1	1	NEWS	7	
9	PET	2	2	PETS	1	2
10	SPORT	2		SPORTS	1	1
11	SUPPLY	1		SUPPLIES	1	1
12	TOUR	1		TOURS	1	1
13	WEB	7		WEBS	2	2
Without String Similarity Objections						
1	ACCOUNTANT	1		ACCOUNTANTS	1	
2	AUTO	4		AUTOS	1	
3	CAREER	1		CAREERS	1	
4	COUPON	2		COUPONS	2	
5	CRUISE	2		CRUISES	1	
6	DEAL	2		DEALS	3	
7	LOAN	1		LOANS	2	
8	MARKET	1		MARKETS	1	
9	PHOTO	1		PHOTOS	1	
10	PROPERTY	3		PROPERTIES	1	
11	REVIEW	2		REVIEWS	1	
12	WATCH	1		WATCHES	1	
13	WORK	1		WORKS	1	

As of the end of the objection period on 13 March 2013, a total of 67 string confusion objections were filed (see <http://newgtlds.icann.org/en/program-status/odr/filings>).

These objections are currently being processed by The International Centre for Dispute Resolution. If a string confusion objection is upheld, the result will be an updated contention set, which will be resolved according to the contention resolution procedures.

Notwithstanding the above, the Board may wish to consider the issue of potential confusion between singular and plural strings.

VII. GAC Beijing Advice re Changing Applied-for String

Section 1(d) of the GAC Beijing Communiqué included the following advice to the Board:

d. The GAC requests:

- i. A written briefing about the ability of an applicant to change the string applied for in order to address concerns raised by a GAC Member and to identify a mutually acceptable solution.*

Allowing an applicant to change the applied-for string at this stage of the Program is problematic for many reasons.

The applied-for string is the cornerstone upon which the entire application is built. Aside from correcting a typo/administrative error, a change in a string name is likely to impact business models. In the best case scenario, a change in a string name with no changes to the business model of the application will cause a re-evaluation of that string by the DNS Stability, String Similarity, and Geographic Names panels. In the worse case scenario where a change in the string name is accompanied by a change in the business model, a re-evaluation by all of these panels and Financial, Technical panels would be required as well.

As the work of all of these panels has for the most part been completed, re-evaluation by these panels has huge cost, timing, and resource implications. From a resource perspective, as the majority of the work is completed, the panels have significantly ramped down and resources have moved on to other projects. It would require time and ramp up the appropriate resources again to perform the work, and there's no guarantee that the previously trained resources would be available. There is also the question of which party will absorb the additional cost incurred for the re-evaluation? ICANN or the applicant?

A re-evaluation would also mean delays to the Program. For those applicants who were not subjected to GAC Advice and do not need to change their applications, they could be unfairly disadvantaged if the delay impacts the Program as a whole.

There are other practical implications if ICANN were to proceed to allow applicants to change their strings for reasons other than typo/administrative errors. Based on fairness, other applicants would likely request the ability to change their strings as well, which would exacerbate the resourcing and delay issue. Moreover, ICANN has already rejected one applicant's request to make such a change on the basis that the applicant failed to meet the criteria for the change request process. Allowing applicants to change strings at this time would require the development of a new set of criteria for the process, which imposes even further delay and subjectivity into the change request evaluation.

Due to the serious nature of a string name change, to-date, ICANN has rejected one request for a string name change and approved 4 string name changes to correct typos/administrative errors.

Approvals:

- 1-1165-42560: Approved request to correct a spelling error (.DotAfrica) to the correct spelling of (.Africa)
- 1-928-31367: Approved request to correct a spelling error (.kerrylogisitics) to the correct spelling of (.kerrylogistics)
- 1-1254-29622: Approved request to correct a spelling mistake (.קום) to the correct spelling of (.קום)
- 1-910-25137: Approved request to correct the appropriate form of the IDN transliteration for (.ORG) from (. 机构体制) to (.组织机构)

Rejection:

- 1-1873-71868: Rejected request to change the applied-for string from (.IDN) to (.INTERNET)

Each of these string name changes was submitted shortly after the close of the application window and had no significant impact on the evaluation schedules.

In summary, allowing one string change would lead to calls to extend the same treatment to all applications. Providing such would essentially mean that the completed application reviews, and in some cases, published results, would be nullified and processing of applications would need to start over again.

VIII. Beijing GAC Advice re IOC/RCRC Protections

Section IV of the GAC Beijing Communiqué included the following advice to the Board regarding protections in the New gTLD Program for IOC/Red Cross names at the second level:

4. International Olympic Committee and Red Cross /Red Crescent

Consistent with its previous communications, **the GAC advises the ICANN Board to:**

- a. amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

Specification 5, Section 5 of the proposed Registry Agreement requires registry operators to restrict second-level registration of certain IOC/Red Cross and Red Crescent Movement names. This provision implements previous Board resolutions, including the most recent NGPC resolution to maintain these protections "until such time as a policy is adopted that may require further action" (2012.11.26.NG03). The NGPC resolution recognized the GNSO's initiation of an expedited PDP "to develop policy recommendations to protect the names and acronyms of IGOs and certain INGOs – including the RCRC and IOC, in all gTLDs." The resolution, as well as the Board's response to the GAC's Toronto Communiqué, confirmed that the creation (or maintenance) of protections to apply to all gTLDs is an appropriate topic for policy development within the GNSO.

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Until such time as the GNSO approves recommendations in the PDP and the Board adopts those recommendations, the Board's resolutions on the protection of IOC/RC names remain in place. During the pendency of the PDP, it would be premature for the Board to take any further action at this point (i.e., there's nothing for the Board to act on).

As it formulates its proposed recommendations, the GNSO Working Group is expected to take into account the advice previously given by the GAC on this issue. If and when any policy recommendations by the PDP WG/GNSO emerge, the ICANN Board will once again be obligated under the ICANN bylaws to take GAC advice into account in deciding whether or not to adopt the policy recommendations.

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Preliminary Draft, unapproved by Board/NGPC. ICANN reserves the right to make additional changes after further discussions and review of public comments.

IX. Background Paper: Protections for the Red Cross and International Olympic Committee Names

EXECUTIVE SUMMARY:

This paper summarizes the background as requested by the NGPC as it analyzes the GAC advice that the protections afforded to the RCRC/IOC in the initial round of applications be made permanent. Staff recommends that the GAC advice be followed, namely, to extend the current protections to future rounds of applications, but subject to any policies that may be adopted by the ICANN Board following the GNSO PDP on this issue.

BACKGROUND:

- The GAC [informed](#) the Board that it supported the request of the RC/IOC seeking protections in the New gTLD Program in May, 2011.
- The Board responded by adopting [2011.06.20.01\(b\)](#) that provided for “incorporation of text concerning protection for specific requested Red Cross and IOC names *for the top level only* during the initial application round, until the GNSO and GAC develop policy advice based on the global public interest.”
- During the development of the Applicant Guidebook for the New gTLD Program, ICANN commissioned research regarding the development of protections for the IOC and the RCRC, following on from the GAC’s statement of strong support for the inclusion on a reserved names list of key words associated with the charters of each of the organizations. That research included a review of other organizations that may satisfy the criteria developed that would allow the IOC and RCRC names to be placed on the reserved names list.
- The GNSO Council responded by approving the recommendations developed by the GNSO’s IOC/RCRC Drafting Team on 26 March 2012. The GNSO Council’s recommended changes to the Board’s implementation for the first round of applications were considered, but not accepted by the NGPC at its 10 April 2012 meeting ([2012.04.10.NG5](#)).
- On a separate, but related issue, on 11 March 2012, the Board sent a [letter](#) to the GNSO and the GAC formally requesting policy advice to ICANN related to a request from IGOs to receive, at a minimum, the same protections in the New gTLD Program as afforded to the RC/IOC.
- The GNSO [responded](#) that there was insufficient time for the GNSO Council to address the IGO issue prior to the close of the application period but noted that this is an issue

that deserves due consideration and a response for future rounds, at both the first and second levels.

- In September 2012, in response to the GAC's [Prague Communiqué](#) seeking clarification as to the status of its pending request for enhanced protections for the IOC and RC/RC names *at the top and second levels*, the NGPC resolution ([NB2012.09.01](#)) sought a response from the GNSO whether it was aware of any reason, such as concerns with the global public interest or the security or stability of the DNS, that the Board should take into account in making its decision about whether to include second level protections for the IOC and RC/RCt names listed in section 2.2.1.2.3 of the Applicant Guidebook by inclusion on a Reserved Names List applicable in all new gTLD registries approved in the first round of the New gTLD Program.
- The GNSO [commenced](#) a policy development process on 17 October 2012 to evaluate special protections for international organization names and acronyms (including the Red Cross, IOC and IGOs) at the top and second level for all gTLDs (new and existing). The IGO WG is currently deliberating the issues and has not yet reached consensus on the policy issues. An initial report will be published once the WG has achieved consensus on proposed recommendations.
- As part of the PDP, the IGO Working Group has requested legal analysis from the ICANN General Counsel's Office related to the legal framework surrounding the issues related to the RC/IOC and IGOs. A draft response has been provided to the IGO Drafting Team, and is attached as **Annex A** to this Paper.
- Simultaneous with the launching of the PDP, the GNSO Council's [resolution](#) also recommended to the Board that ICANN should "temporarily reserve the exact match of IOC and RCRC second level domain names listed in Section 2.2.1.2.3 of the Applicant Guidebook ... pending the outcome of the recently launched policy development process involving International Governmental and Non-governmental Organizations."
- On 26 November, 2012, the New gTLD Committee ([2012.11.26.NG03](#)) adopted protections with regard to the registration of RCRC and IOC names for new gTLDs at the *second level*, to be in place until such time as a policy is adopted that may require further action.
- In its [Beijing Communiqué](#), the GAC advised the ICANN Board to "amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs."

RECOMMENDATION:

Preliminary Draft, unapproved by Board/NGPC. ICANN reserves the right to make additional changes after further discussions and review of public comments.

The draft legal analysis provided to the IGO PDP working group states that “nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names.... While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.”

In light of these broadly understood legal principles as more fully described in **Annex A**, and the GAC’s advice with regard to this issue, Staff recommends that the GAC advice be followed, namely that the protections as described in the Applicant Guidebook for the IOC/RC names be extended to subsequent application rounds for New GTLDs, but subject to any policies that may be adopted by the ICANN Board following the GNSO’s PDP on the IGO issue, or other PDP that may be commenced in the future, pursuant to the ICANN Bylaws. The initial research that supported the development of protections for the IOC and the RCRC as included in the Applicant Guidebook is provided at **Annex B**.

This action is not expected to have an immediate impact on the security, stability or resiliency of the DNS, though the outcomes of this work may result in positive impacts. This action is also not expected to have an impact on financial or other resources of ICANN.

Annex A

To: GNSO Drafting Team on Protection of IGO-INGO Names

From: Office of ICANN's General Counsel

Research Requested from the WG

With respect to the question of securing legal advice regarding the protection of IGO-INGO names, the WG should request from the office of the ICANN General Counsel an answer to the following question:

Is ICANN aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

(a) the assignment by ICANN at the top level, or

(b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization receiving protections under treaties and statutes under multiple jurisdictions (INGO)?

If the answer is affirmative, please specify the jurisdiction(s) and cite the law.

Research Performed

Given our understanding that the WG is looking at the International Olympic Committee (IOC), the Red Cross/Red Crescent Movement (RCRC) as well as intergovernmental organizations (IGO) and other international non-governmental organization (INGOs), it was important to scope the research into a manageable format. Therefore, the research was broken into two parts, one as it related to the IOC and RCRC (as major INGOs that are the most likely to have special protections afforded, based on prior research performed) and the second part on IGOs. For IGOs, the research focused upon whether the jurisdictions afforded heightened protections through recognition of the Paris Convention and its Article 6(1)(b) (the "6ter"). This method seemed to provide a broad and objective measure for identifying protections afforded to IGOs. As requested, the review was not focused on

the potential prohibitions for or liabilities of registrants in domain name registration, rather the broader question of prohibitions that could attach up the registration chain (to registries and registrars). However, the research presented does not discuss ICANN's potential for liability. Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from every geographic region. ICANN interpreted the term "assignment" to mean the approval for delegation of a top-level domain.

Executive Summary

As noted in the interim reporting provided on this research, the trend is that there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains. Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrars are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.

As seen in the survey below, nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names. The exact terms that are protected in each jurisdiction vary, and ICANN has not engaged in an exercise to compare the scope of the protected terms requested by the IOC and the RCRC within the New gTLD Program, as this research was not undertaken to produce a list of names or acronyms recommended for protection. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.

For the names and acronyms of IGOs, ICANN's research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter,

though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform.

In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain. This survey does not assess the likelihood of whether liability would attach in those circumstances. The potential for liability could factor in many issues, such as knowledge of potential infringement or improper use, the location of the registry or registrar, or the familiarity of the jurisdiction with the IGO at issue, as three examples.

Each registry operator and registrar has an independent obligation to abide by applicable laws. If registry operators or registrars have concerns about the potential for liability for its role in the delegation of a top-level domain or in the registration of a second-level domain within a particular jurisdiction, the responsibility for identifying the scope of that liability lies with the registry operator or registrar. Therefore, to avoid any suggestion that ICANN is providing legal advice to any of its contracted parties, the survey provided below notes the areas where the potential for liability could lie, but does not provide an assessment of the likelihood of that liability attaching.

When reviewing this survey, it is important to keep two items in mind. First, the suggestion that a registry or registrar could bear some liability for their role in domain name registrations is a broad concept, and the presentation of this survey is in no way suggesting that registries or registrars are at newfound risk of liability for all domain registrations within their registry or sponsorship. The presentation of this survey is looking at where certain entities (IGOs and INGOs) could be afforded heightened protections from use of associated names or acronyms within domain names because acts and laws already provide for heightened protections for the use of their names and acronyms. Second, the term “liability” is used broadly here. There are many factors that have to be considered for liability to attach to a registry or registrar, including the extent to which a jurisdiction recognizes “accessories” to acts of dilution or infringement, or how a jurisdiction defines a duty of care and the registry or registrar’s role in the registration chain. The term “liability” is not used here to indicate that there is certainty that a registry or registrar will (or should) face any challenge due to the registration of a domain name for which heightened protections may be claimed.

Survey of Jurisdictions

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Australia	<p>While there are no specific prohibitions for the use of names related to the IOC at the top-level or second-level, the <i>Olympic Insignia Protection Act 1987</i> (Cth) provides broad protections for the terms which could extend to domain names. The level of protection afforded to domain names appears to depend on how closely the domain name matches a protected Olympic expression. There may be exclusions based on prior registration of marks using some of the Olympic names.</p> <p>For RCRC names, the <i>Geneva Conventions Act 1957</i> (Cth) prevents any unauthorized use of specific RC related expressions, which would arguably apply to domain names at any level.</p>	<p>The <i>International Organisations (Privileges and Immunities) Act 1963</i> (Cth) gives effect to the 6ter list and prohibits the use of an IGO's name (or acronym) in connection with a trade, business, profession, calling or occupation. The IGO must, however, also be specifically made a subject of legislation or regulations by the Australian Government to be afforded the protections of the Act. For the qualifying IGOs, there is the potential for liability through the registration chain where the use of an IGO name/acronym in a domain name is in contravention of the Act.</p>
Brazil	<p>The Olympic Act, Law No. 12.035/2009 could be used to impose liability for the approval/registration of a TLD or second-level domain name, and explicitly mentions domain web sites as one of the areas of protections for marks related to the 2016 Olympic Games. Prior approval is needed for any usage.</p> <p>Certain Red Cross marks are protected under Decree 2380/1910. The 1910 decree does not mention domain names.</p> <p>Brazilian Civil Law Code could possibly be used as a basis for liability as well.</p>	<p>FIFA has similar protections to the Olympics Law under the “General World Cup Law” (Law no. 12.663/2012), and expressly directs NIC.br to reject “domain name registrations which utilizes identical or similar expressions / terms to FIFA’s trademarks.”</p> <p>More generally, Brazil has ratified the Paris Convention, however there are no specific provisions of law that relate to the protections of abbreviations and names of IGOs in Brazil. However, the fact of ratification could make attempts to bar delegation/registration at the top- or second-level, more successful in the country, however, the</p>

Jurisdiction	IOC/RCRC Protections	IGO Protections (or other INGOs, where applicable)
		success of the challenge would vary from case to case.
Canada	<i>Trade-marks Act</i> , R.S.C., 1985, c. T-13, Subsection (9)(1)(f) protects certain emblems and marks related to the Red Cross. The <i>Olympic and Paralympic Marks Act</i> , S.C. 2007, c. 25 (“OPMA”) protects marks related to the IOC (including translations). Some of the marks are also protected as official marks that are registered in Canada. While the statutes do not mention domain name registration, there is the possibility that the use of a name or acronym associated with these marks at the top-level or second-level could violate Canadian law.	The <i>Trade-marks Act</i> , at Subsections 9(1)(i.3) and 9(1)(m) provides protections for names of organizations appearing on the 6ter list, as well as for the United Nations. For names on the 6ter list, there is a requirement for entities on the 6ter to communicate to the government which names are intended for protection. The use of those protected names or acronyms at the top-level or second-level (each without consent) could be a foul of the <i>Trade-marks Act</i> , though domain names are not specifically mentioned in the law.
China	Certain Olympic-related names and acronyms are provided protection under the Regulations on the Protection of Olympic Symbols (“Regulations”), which require the permission of the owner of the Olympic symbols to provide permission for their use. This is the one area where any heightened potential for liability for the delegation of a top-level domain was identified. Registrations of second-level domains could also be impacted under this provision. The domain name registration policies that exist within TLDs that are administered by CNNIC are subject to modification and broadening. Some second-level registrations for the RCRC are afforded some protections under these policies.	Article 2(2) of the Notice Regarding the Implementation Solution of .CN Second Level Domain Name Registration specifically restricts the registration of the acronyms of 31 Inter-Governmental Organizations (“IGOs”) as second level domain names to entities with the relevant authorities It is unknown how this restriction would be expanded into TLDs outside of the .CN registry.
France	Article L. 141-5 of the French Code of Sports provides protections to certain words and marks	Under French law, the Paris Convention is directly applicable (that is, an action can validly be grounded on

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>associated with the IOC, and has been used with: (i) Article L. 711-3 b) of the French Intellectual Property Code and/or (ii) Article L. 45-2 of the French Code of Posts and Electronic Communications to require cancellation of domain names bearing the protected words.</p> <p>Article 1 of French law dated July 24, 1913, as amended by French law dated July 4, 1939, implementing the provisions of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, dated July 6, 1906, provides protections for certain words and marks associated with the RCRC in France. While domain names are not specifically listed in the law, the broad language of the law has been used to prohibit registration of domain names using the restricted names.</p> <p>The improper delegation/registration or use of these names at the top- or second-level could possibly serve as a basis of liability.</p>	<p>such International treaty). Yet, Article 6ter(1)(b) of the Paris Convention does only provide for the prohibition to “use [IGOs], without authorization by the competent authorities, either as <u>trademarks</u> or as elements of trademarks”.</p> <p>Because of the status of the protection, liability could attach as a result of trademark law violations/unfair use of an IGO’s name or acronym as part of a domain name. There is also the potential for criminal liability based upon the unlawful use of an insignia regulated by a public authority. Notably, some IGOs could be provided with stronger protections than others by virtue of appearance on a list referred to in Article 3 of French Ministerial Order dated February 19, 2010.</p>
Germany	<p>Certain Olympic designations are protected under the Olympic Emblem and Olympic Designations Protection Act (OlympSchG), a national statutory law.</p> <p>According to section 125 OWiG (Ordnungswidrigkeitengesetz - Administrative</p>	<p>There are no statutes that provide protection to IGOs on the basis of inclusion on the 6ter list.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>Offences Act), an administrative offence is deemed committed by any person who has used the symbol of the Red Cross, respectively the designations “Red Cross” or “Geneva Cross”, as well as any symbol or designation confusingly similar without authorization. The same applies to symbols and certain designations representing the Red Cross under provisions of international law (i.e. the Red Crescent).</p> <p>For either of these provisions, while domain name registrations are not specifically identified, those who are on notice of the infringing use of a name or acronym at the top or the second level could be held liable under the laws.</p>	
Japan	<p>The Unfair Competition Prevention Law (hereinafter referred to as “UCPL”) (Law No. 47 of 1993, as amended) prohibits unauthorized use of the names of international intergovernmental organizations (“IGOs”) as trademark (Article 17 of the UCPL). This provision corresponds to Article 6ter (1) (b) and (c) of the Paris Convention for the Protection of Industrial Property (the “Paris Convention”). Specific IGOs that are protected under this statute are defined by ordinance of the Ministry of Economy, Trade and Industry. The IOC has specific names and acronyms protected under this provision.</p>	<p>While there are no direct legal barriers to the delegation of a top level domain or the registration of a second level domain name that matches a mark or acronym of an IGO that is defined under the Ministry of Trade and Industry ordinance, the use of such words in a way that is found to be misleading can serve as grounds for liability, just as the use of IOC names or acronyms would.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>The name and mark of the Red Cross are already protected under the Law Regarding Restriction of Use of Mark and Name, Etc. of the Red Cross (Law No. 159 of 1947, as amended).</p> <p>While the laws do not directly address domain names at the top or the second level, the use of the IOC or the RCRC names or acronyms at the top or second level (by entities other than the IOC/RCRC) could serve as grounds for liability under the laws.</p>	
Mexico	<p>The use of Red Cross and Red Crescent names is covered by 2007 law, which includes domain names.</p> <p>Mexico is a member of the Nairobi Treaty for the Protection of the Olympic Symbol, and affords the rights provided under that treaty.</p>	<p>Under Article 213 VII and IX of the Industrial Property Law and Article 90 VII of the Industrial Property Law, neither of which specifically mention domain names, the use of a name of an IGO in which Mexico takes part could serve as a basis for liability if evidence of authorization for the registration is not received.</p>
South Africa	<p>South African Red Cross has protection under a specific statute, the South African Red Cross Society and Legal Protections of Certain Emblems Act no. 10 of 2007.</p> <p>There is no specific protection in South Africa for IOC names, but the IOC does have registered marks in here that are afford protections under the Trade Mark Act discussed under the IGO section.</p> <p>Unregistered abbreviations may not be subject to protection.</p>	<p>Through the Trade Marks Act no 194 of 1993, Sections 10(8), 34, and 35, well-known marks appearing on the 6ter list are entitled to protection under trademark laws, even without registration, though there is a requirement to apply to South Africa for protection. Comparisons need to be made about the class of service offered.</p> <p>IGO names could also be protected under the Prohibition of the Use of Certain Marks, Emblems and Words published under GN 873 in GG 5999 of 28 April 1978, as well as the Merchandise Marks Act no. 17 of 1941.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	These protections could exist at the top- and second- level for domain names, though not specifically enumerated.	<p>None of these acts specifically mention domain names, though the use of the protected marks in top- or second-level domain names may serve as a basis for liability thereunder.</p> <p>The potential for liability arising out of domain name registrations can be seen in the Electronic Communications and Transactions Act no. 25 of 2002, which is applicable to the .za Domain Name Authority.</p>
South Korea	<p>Article 12(1) of the Korean Internet Address Resources Act (KIARA) states: “No one shall obstruct the registration of any domain name, etc. of persons who have a legitimate source of authority, or register, possess or use domain name for unlawful purposes, such as reaping illegal profits from persons who have a legitimate source of authority. “</p> <p>There are not statutes that appear to protect the top-level delegation or usage of a term related to the IOC/RCRC, unless those terms have the protection of the trademark laws or the protection of the KIARA. Second-level registrations are more likely to pose liability under the trademark laws or the KIARA. The laws do not specifically contemplate that entities other than the registrant would have liability, though there is no guarantee that none would attach.</p>	<p>Article 3(1) of the Korean Unfair Competition Prevention and Trade Secret Prevention Act (KUCP & TSPA) prohibits use of marks of international organizations, and specifically references international organizations and the Paris Convention.</p> <p>For use within a second-level domain name, the general KIARA, combined with the KUCP & TSPA, provide the most likely sources of liability. The delegation of top-level domains containing these names and acronyms is less likely to be viewed as problematic under these statutes.</p>
U.S.	There are two statutes that are relevant to the	The US Patent and Trademark Office is required to refuse

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>protection afforded to names or acronyms of the IOC in the United States: (1) 36 U.S.C. §§ 220501 <i>et seq.</i>, the Ted Stevens Olympic and Amateur Sports Act (the “Stevens Act”); and (2) 15 U.S.C. §§ 1051 <i>et seq.</i> (the Lanham Act). Specific words and combinations related to the Olympics and the Olympic Committee are protected from use, but the use of the word “Olympic” to identify a business or goods or services is permitted if it does not combine with any of the intellectual property references. The scope of protection provided, while it does not directly mention domain name registration at the top- or second-level, could be used as a bar to potentially infringing registration.</p> <p>The Red Cross is also afforded protection under the Lanham Act and is protected pursuant to 18 U.S.C. §§ 706, 706a, and 917. Allowing use of the protected terms at the top- or second- level – while not fully defined in the statutes and not addressing domain name registrations – could be used to impose liability.</p>	<p>registrations of marks that conflict with registered marks of IGOs, so no registration is possible (once the marks are identified to the USPTO by a member country of the Paris Convention). No special protection seems to exist to bar the delegation of top- or registration of second-level domains containing the IGO names or acronyms by ICANN, a registry or registrar.</p>

Annex B

Note: the content of Annex B was not reproduced in the book as provided to the NGPC. The initial research is available with the 20 June 2011 Board Briefing Materials

X. Draft Request for IGO Protections Dialog

Heather Dryden
Chair, Governmental Advisory Committee

Re: Protections for Intergovernmental Organizations

Dear Heather,

In the Beijing GAC Communiqué, the GAC reiterated previous advice that “appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch.” In response to a number of issues raised by the Board, the GAC noted that it is “mindful of outstanding implementation issues” and that it is committed to “actively working with IGOs, the Board, and ICANN Staff to find a workable and timely way forward.”

The Board thanks the GAC for its willingness to engage on this issue. Toward this end, we would like to propose that the GAC and a small number of Board New gTLD Program Committee members and ICANN staff begin a dialogue on the issues raised by the Board. If the GAC is agreeable to this proposal, ICANN staff would be happy to coordinate logistical details with the GAC Secretariat.

Thank you again for providing advice and input to the Board. We look forward to your response.

Best regards,

Steve Crocker,
Chair, ICANN Board