

**Unredacted version of Board Workshop Paper on IOC/Red Cross Protections
Released on 28 August 2012**

Upon request from the ICANN Community, ICANN reviewed the redactions applied to the June 2011 Board Workshop Paper on the IOC/Red Cross to determine if the scope of redaction could be modified. ICANN has determined that the paper can now be published in an unredacted format. The previously redacted portions of the paper largely reflect research and advice provided to ICANN by outside counsel. As noted in the paper, the research was preliminary, and focused on an initial review of the potential for the effectiveness of the proposed protections and the scope of protections across jurisdictions.

Because the legal advice was preliminary and incomplete, ICANN proceeded with caution and determined that it was not appropriate to publish the information when the Board Briefing Material was posted in 2011. Over the past year, however, the discussions on the scope of protections to be afforded to the IOC/Red Cross and other inter-governmental organizations has continued with ICANN. The concepts addressed in the paper have been part of those discussions. The passage of time and the continued development of this issue within ICANN reduce the concerns of releasing this preliminary research. To the extent anyone within the community seeks to rely upon the information within this paper, ICANN reiterates the note that the preliminary work presented is not a substitute for the individual consultation and research that would be required to reach more fulsome opinion or advice.

Response to Board Questions: Red Cross and International Olympics Committee Properties

I. INTRODUCTION

At its meeting in Istanbul, the Board considered the ongoing requests by the International Olympic Committee (IOC) and the Red Cross that certain of their properties be placed on reserved names lists at the top and second levels in new gTLDs.¹ Specifically, the IOC has requested that the English words “Olympic” and “Olympiad” be added to the reserved names lists. The Red Cross has requested reservation of the words Red Cross, Red Crescent, Red Crystal and Red Lion and Sun, each translated into certain of the six UN languages.

The Governmental Advisory Committee (GAC) expressed “strong support of the GAC for the request from the International Olympic Committee and the International Red Cross and Red Crescent Movement for the key words most directly associated with their respective Charters to be added to the Reserved Names list.”^{2 3}

To assist in its consideration of this issue, the Board asked the following questions regarding these specific requests:

- Why did each organization request the particular words they identified as those that should be reserved?
- How will reserving those particular words (at the second level particularly) be effective in protecting the interests of the organization, when so many abuses now concern variations of those words?

The Board also asked staff to answer the following questions:

- What is the history of (or what is the process for) how names were placed on the reserved names list?
- How many other organizations would satisfy the criteria developed that would allow the Red Cross and IOC Properties to be placed on the reserved names lists?

¹ See Attachment A with list of links to all of the letters from the Red Cross and the IOC requesting such protection.

² See Attachment A with link to GAC Advice.

³ The GAC noted in the same 26 May comments that they do not support a GPML or any expanded reservations, they are only supporting IOC and Red Cross requests.

II. QUESTIONS POSED REGARDING THE REQUESTED RESERVATIONS

It was thought that these questions should be posed directly to those requesting the reservation or answered by looking at the documentation they provided. The IOC was able to respond to directly to the questions posed. In light of the other issues with which the Red Cross is presently dealing, it has not been able to directly respond as of yet. Staff will provide an update to the Board if additional information from the Red Cross is received.

A. Why were particular words chosen?

In response to this first question, the IOC stated that:

[T]he words OLYMPIC and OLYMPIAD were chosen for three reasons. First, these two Olympic words are uniformly reserved through special national legislation protecting the Olympic Movement. (See the chart annexed to the IOC's letter of April 4, 2011.) Second, as we have learned through years of enforcement efforts, these words are the two most frequently infringed Olympic words in the domain name system. Third, the words OLYMPIC and OLYMPIAD are the primary and most essential words used to signify the Olympic Games.

In its 5 April 2011 letter to ICANN, the Red Cross noted as follows:

The Movement has used and protected the Red Cross emblem and name since the first Geneva Convention, in 1864. The Movement has used and protected the Red Crescent and Red Lion with Sun emblems and names since at least the 1929 Geneva Convention. The Movement has used and protected the Red Crystal emblem and name since at least the 2005 Geneva Convention.

Moreover, the Movement can show that its names are well-known internationally, and recognized by the various treaties and protocols of the Geneva Convention, which has 194 country parties, and various national statutes.

B. Why will particular words chosen protect the organization?

As part of this question, the parties were asked to describe how reservation of the proposed names would be effective since typographical variations of well-known names are also subject to abuse. In response, the IOC stated that:

[R]eservation at the second level will protect the Olympic Movement by obviating the need for defensive registration of these words in each new gTLD. Premium rates for defensive registration and renewal of these words would rapidly accrue with every new gTLD launch.

At the second level, the IOC proposal merely requests reservation of these two words; the IOC hopes to work with new gTLD registries to protect against

registration and abuse of confusingly similar names at the second level, as we have done with some existing registries.

The Red Cross has not yet had the opportunity to respond.

In addition to the responses above, it is believed that the reservations proposed will be effective for the stated goals of these parties. First, and most importantly, an organization seeks primarily to protect the good will and reputation associated with its own name. In addition, most typosquatting abuses occur in the largest registries. For example, the highest rate of infringement cases resolved using the UDRP has been found in .COM⁴, and a significant percentage of defensive registrations occur in the largest TLDs rather than the newer gTLDs. Entities registering their marks across TLDs tend to register the exact match of the name. Entities registering typographical variations of their name tend to register those names in .COM only or in select largest registries. There would be no need to register all the misspellings of a name if no one is attempting to type in the name on that gTLD. Only if a new gTLD is very popular would there be a significant need for defensive registrations. Therefore, the protections proposed for these names in new TLDs need not include typographical errors to be effective.

III. QUESTIONS POSED TO STAFF

A. What is the History of “Reserved Names” in New gTLDs?

The Board requested background on the development of the lists of reserved names for new gTLDs. There are two separate lists of reserved names: one for the top level and second level.

Top Level Reserved Names

The current draft top-level Reserved Names list appears at section 2.2.1.2 of the Applicant Guidebook:

AFRINIC, ALAC, APNIC, ARIN, ASO, CCNSO, EXAMPLE, GAC, GNSO, GTLD-SERVERS, IAB, IANA, IANA-SERVERS, ICANN, IESG, IETF, INTERNIC, INVALID, IRTF, ISTF, LACNIC, LOCAL, LOCALHOST, NIC, NRO, RFC-EDITOR, RIPE, ROOT-SERVERS, RSSAC, SSAC, TEST, TLD, WHOIS, WWW

This list of reserved strings can be broken roughly into two categories: technical-related reservations and ICANN/IANA-related names.

⁴⁴ See, http://www.circleid.com/posts/20090202_analysis_domain_names_registered_new_gtlds/

Technical-related reservations: (EXAMPLE, INVALID, LOCAL, LOCALHOST, NIC, TEST, TLD, WHOIS, WWW) are based on RFC 2606 and additional outreach and consultation. RFC 2606 <<http://tools.ietf.org/html/rfc2606>> specifies the reservation of TEST, EXAMPLE, INVALID, and LOCALHOST. Afterward, LOCAL and TLD were added to the reserved list based on discussions with IETF and IAB leadership, the root server operators, and other DNS experts. (Note: additional names might be added to this list prior to launch; of note is an Internet-Draft <<https://datatracker.ietf.org/doc/draft-chapin-rfc2606bis/>>.)

The Applicant Guidebook notes that ICANN will reserve translations of “test” and “example” in multiple languages, but the remainder of the strings are reserved only in the form noted above (presumably in ASCII). The reservation of test and example in multiple languages is planned in accordance with ICANN’s “example.test” IDN evaluation program <<http://idn.icann.org/>>.

ICANN/IANA-related names: (AFRINIC, ALAC, APNIC, ARIN, ASO, CCNSO, GAC, GNSO, GTLD-SERVERS, IAB, IANA, IANA-SERVERS, ICANN, IESG, IETF, INTERNIC, IRTF, ISTF, LACNIC, NRO, RFC-EDITOR, RIPE, ROOT-SERVERS, RSSAC, and SSAC) have been reserved at the second level in every ICANN registry agreement since 2001. ICANN’s registry agreements have also included reservations for registry operations, and these names have been incorporated into the top-level reserved list: NIC, WHOIS, and WWW.

The reservation of the ICANN-IANA names at the top level is consistent with the recommendations of the GNSO’s “Reserved Names Working Group.” The RNWG’s 2007 final report is posted at <<http://gns0.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>>.

Second-Level Reserved Names

The second-level reserved names list appears in Specification 5 to the proposed base registry agreement for new gTLDs <<http://www.icann.org/en/topics/new-gtlds/draft-agreement-specs-redline-15apr11-en.pdf>>. The second-level reserved list is narrower; it does not include the ICANN/IANA-related names. The following categories of names are reserved at the second-level:

Country names and two-character strings: these have been reserved based on input from the GAC. Country names at the second level can be released either in agreement with each relevant government for particular strings, or with ICANN’s approval subject to GAC review for all country names in a particular TLD.

Registry operations, and “EXAMPLE”: NIC, WWW, IRIS and WHOIS are reserved at the second level for use by the registry operator, and EXAMPLE is reserved per RFC 2606.

Tagged domain names: labels with hyphens in the third and fourth position may only be registered if they are valid IDNs.

The two reserved names lists have been developed with public input over the course of five or more successive drafts of the Applicant Guidebook and proposed registry agreement. Discussions concerning what should (and should not) be reserved have taken place in the course of consultation with the community on the several drafts of the New gTLD Applicant Guidebook. Staff has conducted outreach and accepted input on issues such as possibly reserving common file extensions <<http://www.icann.org/en/topics/dns-stability-draft-paper-06feb08.pdf>>.

The reservations at the second-level are subject to either expansion or release by ICANN in the future. Specification 5 states, “except to the extent that ICANN otherwise expressly authorizes in writing.” Also, the subject of reserved names is one of the topics on which the ICANN community may establish new “Consensus Policies” binding on gTLD registries; see new gTLD agreement Specification 1, section 1.3.3 <<http://icann.org/en/topics/new-gtlds/agreement-specs-clean-30may11-en.pdf>>.

B. How Many Other Organizations would Satisfy the Identified Criteria?

The brief study, outlined below, concludes that very few, if any, organizations apart from the IOC and the Red Cross could satisfy the proposed set criteria for reservation that are listed below. To date, no others have been identified.

Identified Criteria

As the Board previously discussed, if additions are made to the Reserved Names, such as those requested by the IOC and the Red Cross, the reserved names must satisfy stringent criteria. Criteria must be tailored so that reservation is limited to a few with extraordinary reach and public service.

Specifically, the two organizations that are the subject of the recent GAC advice, meet the following criteria:

- The Movement or Organization requesting that one or more of its Intellectual Properties (“Properties”) be placed on the Reserved Names list must have been well-established long before (such as 50 or 100 years) the new gTLD policy was adopted by the Board on 26 June 2008.⁵
- The names are widely recognized and closely associated with the Movement or Organization.
- One or more Properties of the Movement or Organization must be protected by legislation in at least 30 countries, on at least four continents.

⁵ Note that the IOC and the Red Cross have been in existence for over 100 years.

- One or more Properties of the Movement or Organization must be protected by one or more treaties adopted by at least 60 countries.
- The Movement or Organization must be a non-profit institution (or the equivalent) operating in the public interest *and* the reservations of names must serve the public interest.
- GAC advice must have been received indicating the GAC’s strong support for the Movement’s or Organization’s request to have one or more of its Properties placed on a Reserved Names list.

Other Organizations that might satisfy the Criteria

To make a preliminary determination, without conducting a country-by-country analysis, which would have been prohibitive in terms of financial resources, outside counsel conducted online research in numerous countries for Properties that are specifically protected by national legislation (*i.e.*, potentially satisfying the third criterion above). Since the criteria proposed are cumulative, this particular criterion can serve as a threshold: If a Property is not widely protected by national legislation, it is unnecessary to consider the other criteria.

Counsel conducted online searches for legislation using both national databases of legislation (where accessible) and various search engines, using pertinent search terms. As a means of testing the validity of the search strategies, the search generally began for a particular country by searching for “Olympics” and “Red Cross” (or the equivalents in the relevant language). Such searches often yielded specific national legislation protecting those Properties, as expected. Counsel repeated these same searches using other terms of global organizations, including the following: UN, UNESCO, ITU, WHO, CARE International, Caritas, WWF, Maltese Order, Amnesty International and Médecins Sans Frontières. These latter searches yielded only a few “hits” on national legislation protecting those names. See Attachment 2 for the results of those searches.

Outside counsel noted that while, their research cannot fully substitute for individual consultations with intellectual property lawyers in the all relevant jurisdictions, based upon their research, they anticipate that very few, if any, organizations apart from the IOC and the Red Cross could satisfy the criteria. They have not yet discovered any others that do satisfy the criteria.

Attachment 1

IOC letters:

5 December 08 (AGv1 comment)

<http://forum.icann.org/lists/gtld-guide/msg00053.html>

9 April 09 (AGv2 comment)

<http://forum.icann.org/lists/2gtld-guide/msg00019.html>

20 November 09 (AGv3 comment)

<http://forum.icann.org/lists/3gtld-guide/msg00060.html>

1 April 10 (Nairobi excerpts comment)

<http://forum.icann.org/lists/urs-15feb10/msg00019.html>

21 July 10 (AGv4 comment)

<http://forum.icann.org/lists/4gtld-guide/msg00051.html>

29 November 10 (Proposed Final AG comment)

<http://forum.icann.org/lists/5gtld-guide/msg00008.html>

1 February 2011 letter

<http://www.icann.org/en/correspondence/lacotte-stupp-to-pritz-stathos-01feb11-en.pdf>

4 April 2011 letter

<http://www.icann.org/en/correspondence/stupp-to-pritz-stathos-04apr11-en.pdf>

Red Cross letters:

21 July 10 (AGv4 comment)

<http://forum.icann.org/lists/4gtld-guide/msg00072.html>

9 December 10 (Proposed Final AG comment)

<http://forum.icann.org/lists/5gtld-guide/msg00067.html>

10 May 2011 letter

<http://www.icann.org/en/correspondence/hughes-to-pritz-stathos-10may11-en.pdf>

5 April 2011 letter

<http://www.icann.org/en/correspondence/hughes-to-pritz-stathos-05apr11-en.pdf>

GAC Advice:

13 May 2011 GAC Advice

<http://www.icann.org/en/correspondence/dryden-to-dengate-thrush-12may11-en.pdf>

Attachment 2
Research of Protected Names in Various Jurisdictions

Country	Searches	Properties found to be protected by legislation	Properties not found to be protected by legislation
Argentina	Online searches using various search engines	Olympic symbol, etc.	UN, UNESCO, ITU, Caritas, Amnesty International, WWF, FAO
Austria	Online searches using various search engines. Official website for Austrian statutes: www.ris.bka.gv.at/Bundesrecht	UN and other international organizations (list, including ITU, UNESCO, etc.)	WWF, Amnesty International, CARE International, Caritas, Maltese Order
Azerbaijan	Online searches via WIPO site	UN flag	ITU, UNESCO, CARE International, WWF, Amnesty International, Médecins Sans Frontières
El Salvador	Online searches via WIPO site	UN	ITU, UNESCO, CARE International, WWF, Amnesty International, Médecins Sans Frontières
Brazil	Brazilian law in: www.law.nyu.edu/library/research www.lexml.gov.br	UN	ITU, WWF, CARE International, WHO, UNESCO, Caritas, Maltese Order, Médecins Sans Frontières
China	Online searches via WIPO site www.lawinfochina.com	Olympic symbols, Red	ITU, UNESCO, FAO, WWF,

Country	Searches	Properties found to be protected by legislation	Properties not found to be protected by legislation
		Cross	Caritas, CARE International, Amnesty International
France	French Government website: www.legifrance.gouv.fr	Olympique	UN, UNESCO, ITU, CARE International
Germany	Ministry of Justice website: www.bundesrecht.juris.de	Olympia, Red Cross, Solingen	UN, UNESCO, ITU, WHO, CARE International, Caritas, Maltese Order, Amnesty International
India	Ministry of Justice website: www.indiacode.nic.in	Red Cross, UNESCO	UN, WHO, Olympics, WWF, WHO, Maltese Order, CARE International
Italy	Intellectual Property Code www.dejure.giuffre.it	Red Cross, Olympics (for Turin, 2006, only)	UN, UNESCO, Caritas, FAO, WWF, ITU, CARE International, Amnesty International
Japan	www.japaneselawtranslation.go	Red Cross	Olympics, CARE International, WWF, Maltese Order, Caritas, Miserior
Mexico	Online searches using various search engines	Red Cross	ITU, UNESCO, WHO, Amnesty International
Singapore	Online searches using various search engines	Red Cross	UN, UNESCO, ITU, WHO, CARE International,

Country	Searches	Properties found to be protected by legislation	Properties not found to be protected by legislation
			Caritas, Maltese Order, Amnesty International
Spain	Industrial Property Code (Royal Decree-Law of July 26, 1929, as last amended by Law No. 12/1975 on the Protection of Plant Varieties and by Law No. 17/1975 of May 2, 1975, creating the Autonomous Body, the “Registry of Industrial Property”)	Red Cross	ITU, UNESCO, WWF, Caritas, CARE International, FAO
Switzerland	Swiss Government website: www.admin.ch	Red Cross, UN and numerous other international organizations (list)	CARE International, Caritas, Maltese Order, Amnesty International, WWF
Tunisia	Online searches using various search engines www.juristunisie.com www.tunisie.gov.tn	--	UN, UNESCO, ITU, WWF, CARE International, Amnesty International, Médecins Sans Frontières
UK	Online searches via WIPO site	Olympic symbol	ITU, UNESCO, FAO, WWF, Caritas, CARE International, Amnesty International
USA	LexisNexis search of US Code, Federal Rules Annotated, Code of Federal Regulations, Federal Register and Federal Agency Decisions	Olympics, etc.	UN, UNESCO, ITU, CARE International, Amnesty International