

## Report of Public Comments

<b>Title:</b>		<b>Proposal to Protect International Red Cross and International Olympic Committee Names at the Top Level in New gTLDs</b>	
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<b>Prepared By:</b>	Staff		
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<b>Staff Contact:</b>	Brian Peck, Policy Director	<b>Email:</b>	brian.peck@icann.org
<b>Section I: General Overview and Next Steps</b>			
<p>The GNSO International Olympic Committee/Red Cross Drafting Team (“DT”) sought public comment on its proposal to extend certain protections to the Red Cross/Red Crescent (RCRC) and the International Olympic Committee (IOC) names at the top level, to be effective commencing with the first round of applications in the New gTLD Program. Due to the pendency of the application period for new gTLDs (which at the time this public comment period was commenced was scheduled to close on April 12), this public comment forum was treated as a matter of urgency in order to present a solution for consideration by the ICANN Board at its Costa Rica meeting.</p> <p>The DT developed this proposal to implement the ICANN Board's 20 June 2011 resolution, stating that: "Resolved (2011.06.20.01), the Board authorizes the President and CEO to implement the new gTLD program which includes . . . incorporation of text concerning protection for specific requested Red Cross and IOC names for the top level only during the initial application round, <i>until the GNSO and GAC develop policy advice based on the global public interest, . . .</i>" [emphasis added]</p> <p>The original proposal posted for this public comment recommended replacing the current temporary moratorium on the registration of the RCRC and IOC names in the first round by extending special protection to the RCRC and IOC names in the following manner: 1) Establish the specified RCRC and IOC names as “modified reserved names” which would also allow the IOC and RCRC to register such strings; and also authorize a string similarity review for these modified reserved names and, in certain cases allow delegation of a similar string when the applicant can obtain a non-objection letter or otherwise, have a legitimate interest in the string. 2) Protect the RCRC and IOC names in as many languages as feasible. 3) Extend these special protections to all future rounds but provide the possibility for review after the first round.</p> <p>At the time of the opening of this public comment forum, this proposal had not yet received consensus support among the members of the DT, or the Government Advisory Committee (GAC), but a revised version of the proposal received rough consensus in the DT during the Costa Rica meeting .<sup>1</sup> Prior to</p>			

<sup>1</sup> The proposed recommendations adopted by the GNSO Council were modified from the recommendations posted for this public comment. Specifically: 1) With regard to the second recommendation to protect the

Costa Rica, the DT collaborated with the GAC during its deliberations in an attempt to identify a solution that addressed GAC concerns, and informally briefed the GAC on the details of its revised proposed solution in Costa Rica. The GAC expressed its support for this revised proposal in Costa Rica.

On the 26<sup>th</sup> of March, 2012, the GNSO Council adopted the modified version of these recommendations to send to the Board to protect the RCRC and IOC names at the top level. The GNSO Council also recommended that the Board adopt these special protection recommendations prior to the scheduled closing of the initial round of applications on 12 April 2012.

The ICANN Board’s New GTLD Committee declined to adopt the GNSO recommendations at this time at its 10 April 2012 meeting. In its rationale for doing so, the Board stated that although the substantive “recommendations of the GNSO are well taken,” it had concerns about timing—such as making changes during the first round of top-level applications. It pointed out that this comment period had not closed, that implementation details had not yet been worked out, and that the first round application window for top-level domains had already been open for three months.

**Section II: Contributors**

*At the time this report was prepared, a total of twenty-four (24) community submissions had been posted to the Forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor’s initials.*

**Organizations and Groups:**

<b>Name</b>	<b>Submitted by</b>	<b>Initials</b>
RySG	David Maher	DM
Red Cross/Red Crescent	Debra Hughes	DH
ALAC	Olivier MJ Crepin-Leblond	ALAC
Legal Counsels of IGOs	Patricia DeLaunoy	PD
NCSG	Mary Wong	MW
IPC	J. Scott Evans	JSE
Societies in Eleia	Giannos Papaioannou	GP

**Individuals:**

<b>Name</b>	<b>Affiliation (if provided)</b>	<b>Initials</b>
Avira Doria		AD
Klaus Stoll		KS
Andrew Allemann		AA
Andrew Adams		AnD
Alex Gakuru		AG

RCRC and IOC names in as many languages as possible, that at the top level for the initial round, the illustrative list of languages currently provided in Section 2.2.1.2.3 of the Applicant Guidebook are sufficient; and 2) with regard to the third recommendation that the special protections should be extended to all future rounds, that the GNSO recognizes that permanently granting protection to the IOC and RCRC may have policy implications that require more work and consultation so that protections may be reviewed. See

<http://gns0.icann.org/resolutions#20120326-1>

Nuno M. Garcia		NG
Konstantinos Komaitis		KK
Robin Gross		RG
Nicolas Adam		NG
Marcus Jaeger		MJ
Christina Spirelli		CS
McTim		McT

### Section III: Summary of Comments

*General Disclaimer: This section is intended to broadly and comprehensively summarize the comments submitted to this Forum, but not to address every specific position stated by each contributor. Staff recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).*

The public comments submitted in relation to the GNSO RCRC/IOC Drafting Team's (DT) proposed recommendations to provide special protection of certain RCRC and IOC names can be classified into two overall areas: 1) the substantive issue of whether such names should be protected at the top level of new gTLDs; and 2) the process by which the proposal was developed and adopted by the DT.

#### **Comments Reflect Significant Opposition to the DT Proposal**

Of the 17 commentators submitting comments on the DT proposal to protect the RCRC/IOC names at the top level in new gTLDs, there were 14 submissions opposed to the proposal, including two constituency groups: ALAC and the NCSG. There were 3 submissions in support of the DT proposal including two constituency groups, the RySG and IPC, as well as the Red Cross, which participated on the DT. .

#### **Comments Opposing the DT Proposal to Provide Special Protection for the IOC/RCRC Names**

The majority of submissions in opposition did so on the basis that either: 1) these names are already adequately protected at the top level by the current Applicant Guide Book (AGB) or, by the Objections Process and other existing RPMs, domestic trademark laws and international treaties; or 2) providing special protection for the RCRC and IOC names would set a bad precedent that would invite similar requests from numerous other organizations.

Lack of Clear Legal Basis or Proper Rationale for DT Proposal: The NCSG noted the absence of a legal basis for extending special protection for these two entities (as opposed to other possibly legitimate organizations). One commentator pointed out that these recommendations are "immature" due to the lack of a proper rationale to support the DT recommendations..

Existing Protections for the Red Cross and IOC Names are Sufficient: Several commentators raised the general point that international treaties and national trademark laws already protect the names of these organizations. One commentator stated that any protection for IOC names is unjustified because the case

of the IOC is based upon an international treaty which only protects their graphical trademark and not the words “Olympic” or “Olympics,” while the Red Cross names are already protected by existing international treaties. Another commentator believes the existing Objection Process is sufficient to protect the RCRC/IOC names but proposes a fee waiver for these two organizations and for those they file against.

Substantive Concerns over DT Recommendations: Two commentators expressed specific substantive concerns with respect to the treatment of reserved names in that no other entity has the same exception of allowing certain limited entities to register the reserved name, and that allowing third parties to obtain a non-objection letter would in effect allow the Red Cross and IOC to license their name to certain parties. Also, expanding the list of protected names to as many languages as possible would expand the protection beyond the scope of what is actually afforded to these names by international law and treaties. These commentators also suggested that any protections granted should be reviewed before the second round of new gTLD applications.

Proposal Not in Global Public Interest due to Effect on Legitimate Uses and the Perceived Expansion of Protections on Similar Organizations: ALAC believes that in the case of protecting IOC names, the global public interest is not served given that there are already several legitimate uses of the term “Olympic” and its variants in businesses, and that any additional restrictions would unnecessarily harm those businesses currently using those terms and not causing any confusion with the Olympic movement. A few commentators also believe that the DT recommendations providing special protection for these two entities only are not in the global public interest because there are other similar organizations that should also benefit from any special protections granted to the RCRC and IOC.

The Red Cross and IOC are Distinguishable and Should be Treated Differently: Several commentators believe that the Red Cross and IOC are two different types of organizations namely, that the Red Cross is a humanitarian organization while the IOC is not, and that the Red Cross has a “quasi-diplomatic” status; and that therefore, they should be treated differently for the purposes of affording protection.

Changes to AGB After Initiation of Application Period is Unfair: ALAC believes that changes to the AGB at such a late date in the application process would reduce public confidence and destabilize the application process. A few commentators agreed with ALAC’s perspective that changing the AGB after the application period had started was unfair to those potential applicants whose decision was based on the current AGB.

### **Comments Supporting Special Protections for the RCRC/IOC Names**

The RySG and the Red Cross believed that special protections for the RCRC/IOC names were justified by international law and the criteria established by the GAC (i.e, organization names protected by both international treaties and domestic laws), while the IPC believes that the proposal provides a reasonable and balanced process for according the IOC and RCRC additional and properly calibrated protections.

The IPC believes that the ICANN staff “interpreted the GAC’s original request too broadly,” and that the GAC did not have the intention to prevent the Red Cross or IOC from being able to apply in the first round. The IPC believes that the DT proposal achieves the goal of providing the solution requested by the GAC, which was to develop additional protections for the RCRC/IOC names.

### **Other Humanitarian and Treaty-Protected Organizations Should Have Similar Special Protections**

A group of legal counsels from several IGO's believe that they should be afforded the same protections available to the RCRC and IOC based on protections required under international IP-related treaties and also, that IGO's provide humanitarian and other services that are in the global interest. Another commentator questioned why the criteria established by the GAC - protection under international law and protection under national law, does not apply to other IGOs.

### **Criticisms of the DT's Processes**

Six out of the seven process related submissions expressed concerns about the process adopted by the DT, while one commentator was critical of those opposing the process.

Undermining the Multi-stakeholder Bottom-up Process: Several submissions shared the view that the multi-stakeholder bottom-up process of ICANN was being undermined through the way in which the DT's recommendations were developed and then placed before the GNSO for approval. Another commentator believes that the "unreasonable" pressure compelling the GNSO to make its decision without having appropriate input from the community within and outside of ICANN, would be something that can potentially undermine any of its future work.

The RySG stated that the manner in which the Board made its decision in precluding the registration of these names at the top level, and the way that the staff implemented this decision in the AGB without proper community input basically "short-circuited" ICANN's policy development process.

In a reply comment on the process issue, the IPC stated their position that the recommendations were an implementation and not a policy issue, and that therefore, a public comment period under ICANN and GNSO procedures is not required but was done so as a courtesy to some members of the Drafting Team. The IPC also expressed concern that the "procedural brinkmanship" which was demonstrated during the GNSO Council meeting in Costa Rica threatens the credibility of both the GNSO and ICANN to manage a public resource.

Faulty Process Creates Bad Precedent: ALAC believes that the process leading to these recommendations established several bad precedents, including placing the GNSO in a position of having to legitimize a Board directive that a large number of the community found objectionable, and overriding community consensus for political expediency.

Consideration of Recommendations is More Appropriate After the Initial Round of Applications: The NCSG and other commentators believe that given the existing protection for these names during the initial round, it would be more appropriate and conducive for community input and consideration to consider the DT recommendations between the initial and second round of new gTLD applications. Another commentator called for an issues report to determine what if any special protections should be provided to the Red Cross and IOC, as well as to possibly other eligible IGOs and/or charitable NGOs.

GNSO Policy Process Not Properly Followed: One commentator believes that it is improper and illegitimate for a DT to create a policy recommendation and not establishing a Working Group for this

issue was a transgression of the GNSO policy process. This commentator recommended that the issue of the powers of a Drafting Team be sent to the GNSO Standing Committee on Improvements Implementation for further discussion.

#### **Section IV: Analysis of Comments**

General Disclaimer: This section is intended to provide an analysis and evaluation of the comments received along with explanations regarding the basis for any recommendations provided within the analysis.

#### **Opposition to the DT Proposal to Provide Special Protection for the RCRC/IOC Names**

The NCSG Policy Committee strongly recommended that the motion on the DT Proposal either be significantly amended or rejected by the GNSO Council given the strength of opposition to the motion among the ICANN community, on both substantive and procedural grounds. Although the NCSG PC believes that the DT's recommendations conceptually represent "a well-considered effort that involved many sectors in the GNSO community," it believes these recommendations are inappropriate for the first round of the new gTLD program, and would provide "an excellent basis" for the GNSO to consider for the second round of new gTLDs. *MW, on behalf of the NCSG PC*

Andrew Allemann believes that there should not be any special protection for any individual groups including the IOC and RC names at either the first or second level in the new gTLDs. In his view, protections for the top level are not necessary because no one would be willing to spend the large amount of money to infringe on either organization's name. *AA*

Alex Gakuru, Africa Representative for the Non-Commercial Users Constituency, urged the ICANN Board to decline granting special protection to "regardless of any powerful stakeholder and/or special interests pushing for preferential treatment of Red Cross and IOC." Mr. Gakuru believes that granting such special protection is contrary to the principle upon which the new gTLD program was established to "Democratise the domain names by widening allowed name types thereby increasing innovation, consumer choice and an equitable participation by all people of the world." *AG*

Nicolas Adam's primary concern is the lack of a sound rationale or basis for the DT's recommendations. He urged the GNSO not to seriously consider this "immature proposition" for several reasons, including: 1) Given the amount of opposition to the proposal within the DT at least by the NCSG, the Council has the responsibility not to ignore what other policy-advice there could logically be with regard to the task that the Board entrusted the gNSO. 2) "The substantive proposal puts forward an unprecedented level of control over potentially legitimate applications in the hands of IOC and RCRC...." *NA*

#### **The Red Cross and IOC Should be Treated Differently**

Klaus Stoll sees a distinction between the Red Cross' important humanitarian role and quasi-diplomatic status and IOC's less important-humanitarian role and the fact that an international corporation controls it. In his view, establishing an exception for the IOC creates a bad precedent under which "thousands of other organizations" which are global nonprofits could "rightfully demand" the same treatment. *KS*

Professor Adams believes that the two organizations are very different and should be treated as such.. He

believes any protection for IOC names is “unjustified and expansionary,” because the basis of the IOC’s rights is an international treaty which only protects their graphical trademark and not the words Olympic or Olympics. For the Red Cross, Mr. Adams believes that existing international treaties offer protections of their names from actual use and therefore no added protection is needed. *AnD*

Marcus Jaeger stated that although he acknowledges that protection for the Red Cross should be considered given it is “a big humanitarian organization,” he questioned protections for the IOC, because in his view “they are just a normal organization that has trademarks, copyrights etc. and does not need special protection as they do enforce their rights already in every way possible.” *MJ*

### **Existing ABG Protections for the Red Cross and IOC Names are Sufficient**

ALAC believes that there is no reason to provide additional protections to the RCRC and IOC that are not available to other rights holders, because the substantial objection procedures in place for the gTLD program are capable of addressing all concerns about confusion and misuse. These include the “hard-won” objection mechanisms put in place by ICANN’s Governmental Advisory Committee (GAC), which has raised the concerns about these names. *ALAC*

The NCSG PC believes that the current AGB protections are sufficient and do not prevent the IOC and RCRC from engaging in their missions in the global public interest because under the current AGB, no one can apply for their names in a number of stated languages. *MW, on behalf of the NCSG PC*

Dr. Nuno M. Garcia believes that the pre-protection of the RCRC/IOC names is not appropriate, given that such names are already under protection by trademarks and commerce registration rules and laws, and also when there are mechanisms that safeguard the holders of such brands and trademarks. *NG*

Several commentators agreed that the AGB already provides adequate processes for these and other similar types of organizations and therefore, neither the IOC or Red Cross should be provided any special protection. *McTim, AD*

### **Propose Fee Reductions in Lieu of Additional Protections**

The NCSG stated that if it would be a hardship for either group to mount a legal rights objection, the appropriate solution would be to find ways to alleviate the hardship such as lowering fees, rather than implementing a wholesale change to the system of protections already in place and on which applicants have already relied on. *MW, on behalf of the NCSG PC, AD*

### **Concerns over Precedent Set by Recommendations**

Mr. Adams noted that if provided, such limited and clearly exceptional protections must be clearly constrained to prevent other organizations seeking to bypass the bottom-up processes and force their own restrictions without proper balance being considered in a measured and true consensus manner.” *AnD*

Dr. Garcia noted that such a new pre-protection mechanism would create a bad precedent that will lead to further requests for protection from other organizations. *NG*

Mr. Gakuru believes that granting special protection for these names would “spark” endless name disputes and litigation for ICANN. *AG*

Dr. Komaitis believes that these recommendations “set a very dangerous precedent and send a bad message,” because if these recommendations are implemented, other international entities and institutions will have valid claims to demand the same levels of protection.” *KK*

### **Concerns Over Changing Applicant Guidebook After Initiation of Application Period**

Ms. Doria questioned the appropriateness of changing the AGB in such a significant way after the application period has already started without resetting the start date, and believes that making such changes on what can and cannot be applied for would be unfair for applicants that have already made application decisions based on the current AGB. *AD*

### **Specific Substantive Concerns Over DT Recommendations**

Dr. Konstantinos Komaitis expressed concerns with regard to: Recommendation 1, in that terms such as “confusingly similar” to “Modified Reserved Names” are vague, thus their meaning can easily be twisted. In his view, Recommendation 2 seeks to re-interpret international treaties and expand the rights traditionally afforded for the RCRC and IOC terms. Since, ICANN is not a legislator, Dr. Komaitis believes it should not accept a ‘definitive list’ of languages that constitute an arbitrary compilation of national laws. Dr. Komaitis also believes that considering the novelty, the time constraints and the controversial nature of these recommendations, in the likelihood that these recommendations pass, ICANN should call for a review after the first round of delegation of the new gTLDs has occurred in an attempt to reassess them. *KK*

While Ms. Doria agrees with the Recommendation 1 that strings similar to the modified reserved names should fail a string similarity review because this “seems to contribute” to the protection of the RC and IOC names, she opposes providing the RCRC and IOC an exemption to the general prohibition on the delegation of these names because no other reserved name has been given the same exemption. Ms. Doria disagrees with allowing an applicant to appeal a failed string similarity review because it allows these organizations to license some names while rejecting others, and because in terms of implementation, the ICANN Board and staff have already rejected several GNSO policy recommendations for an appeals mechanism for the similarity review. Ms. Doria believes this Recommendation 2 allowing the Red Cross and IOC to create exhaustive lists of applicable special modified names should be deleted and instead, proposes an exemption from the objection process fee for these organizations as well as those they file against. Ms. Doria disagrees with extending the special protections for the Red Cross and IOC to all future new gTLD application rounds and calls for an issues report on special protections, including the breadth of these protections and whether they should be applied to other IGO and NGO charitable entities at both the top and second levels. *AD*

### **Concerns Over Negative Impact on Community of Olympia, Greece**

Dr. Komaitis commenting as a “a Greek citizen,” stated that the idea that the Greek community of Olympia (the place which marks the ceremony of the lighting of the Olympic flame) will have to ask permission from the International Olympic Committee to use a term that is part of its cultural heritage is highly

problematic, illegitimate and goes against how the Applicant Guidebook views communities.” *KK*

Mr. Giannos Papaioannou, as the Representative of the local watch of Societies in Eleia, on behalf of several organizations - both for profit and non-profit - having their business and establishment in Ancient Olympia, expressed their great concern “about the potential impact these recommendations may have upon the communities within Ancient Olympia and Greece in general.” *GP, on behalf of Societies in Eleia*

### **DT Recommendations Are Not in the Global Public Interest**

ALAC stated that specially entrenched protection of Olympic-related names is against the global public interest. ALAC notes that “many legitimate uses of the word “Olympic” and its derivatives are used for airlines, cameras, restaurants, paint, and numerous businesses around the world with no connection to the Olympic athletic movement or the IOC.” ALAC believes that needless restriction on these names - beyond what already exists - is publicly harmful because these businesses are not currently seen to be confusing with the Olympic movement. ALAC believes that the DT recommendations would damage the credibility of the multi-stakeholder model “without providing substantial end-user benefit, but has the effect of creating new potential sources of public confusion and instability.” ALAC requests the Board to “reconsider” its directions with regard to the Red Cross and IOC names as “being ultimately against the global public interest,” and advised the Board to leave the AGB unmodified. *ALAC*

### **Comments In Support of Special Protection for the IOC/RCRC Names**

The RySG expressed support for the DT proposal for top level names because the GAC did a thorough job in its 14 September 2011 letter in addressing their concerns by pointing out the uniqueness of the two categories of names in international law; and that the requests by other organizations confirmed the special status of the RCRC and IOC therefore minimizing the risk of an undesirable precedent. *DM, on behalf of the RySG*

The International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the American Red Cross (collectively, the “RCRC”) strongly supported the DT’s recommendations. The legal basis for protecting the RCRC designations is founded in the 1949 Geneva Conventions ratified by 194 states, which protect the RCRC designations to uphold the protection of victims of war and of those caring for them on the battlefield. In the view of the RCRC, the GAC’s and DT’s recommendations to protect the RC/RC designations are justified by: 1) the protection awarded to the RCRC designations does not result from a trademark registration; 2) in view of the global public interest, primary stakeholders are this States that are parties to the 1949 Geneva Conventions, which carry under the international humanitarian law the obligation and responsibility to enforce the protection of the said denominations in their own domestic jurisdiction and legal orders. *DH, on behalf of the RCRC*

The IPC strongly supports the DT proposal, believing that it sets out a “reasonable and balanced process for according the IOC and RCRC additional and properly calibrated protections.” In response to comments that the current AGB already provides adequate protection to the RCRC/IOC names, the IPC believes that ICANN staff “interpreted the GAC’s original request too broadly,” and that it wasn’t the GAC’s intention to prevent the Red Cross or IOC from being able to apply in the first round. The IPC believes that the DT proposal achieves the goal of providing the solution requested by the GAC, which was to develop an

appropriate procedure to recognize additional protections for the RCRC and IOC names. *JSE, on behalf of the IPC*

### **Concerns Over the Processes by Which the RCRC/IOC Issue was Handled by the Board, Staff and the DT**

ALAC believes that the Board's establishment of special protections for the Red Cross and IOC names and the development of this proposal to provide special protection of these names have established several bad precedents: 1) The scope of the DT precluded it from rejecting the changes to the AGB which Staff made to implement the Board directive. As a result, the DT "was left in a position of refining – indeed legitimizing – a Board directive that many community members thought to be objectionable outright." 2) The trust in ICANN's multi-stakeholder model is questioned when the "community consensus can be so easily overridden due to perceived political expediency." 3) If the DT's recommendations were to be adopted, the necessary changes to the final version AGB at such a late date in the application process would reduce public confidence and destabilize the application process. *ALAC*

The debate on such policy to protect the RCRC and IOC names should not be limited to the GNSO as it affects top-level domains such as .com as well. ALAC believes that the uneven and unequal application of such a demand is the source of both instability and confusion. *ALAC*

The RySG believes that when the Board made changes to an already approved policy or already adopted policy implementation details without broader community input, "it short circuits the policy development process," which was true in this case, where the board action required ICANN staff to make changes in the Guidebook and the GNSO to initiate work as directed by the Board motion. The RySG believes that the actions by the Board and by staff put the GNSO into a difficult position: if the DT followed the well defined policy process timelines, that would delay the decision on how to handle RCRC/IOC names at the top level until after the end of the application period. The RySG stated that "in the extremely dynamic environment in which all of us operate there needs to be enough flexibility to make adjustments in procedural time constraints while at the same time making best efforts to maintain the integrity of the bottom-up, multi-stakeholder process." *DM, on behalf of the RySG*

Ms. Doria expressed her view that any vote by the GNSO council before a full and proper review "will be improper and diminish the stature of the GNSO and the by-laws basis on which its work depends." *AD*

Dr. Komaitis believes that ICANN has departed significantly from its "long-fought and established bottom-up processes," in that ICANN's Board decision to prohibit the "delegation [of these names] as gTLDs in the initial application round" went against the bottom-up establishment within ICANN and undermined GNSO which is its main policy multi-stakeholder body. In Dr. Komaitis' view, there was "unreasonable pressure" placed upon the DT to come up with its recommendations that was manifested by the rush and the urgency of this public comment period; and that such a situation where the GNSO would be making its decision without having appropriate input from the community within and outside of ICANN would be something that can potentially undermine any of its future work. *KK*

Robin Gross, on behalf of IP Justice, expressed her "personal disappointment" in the way the ICANN "mishandled" the request of the IOC and Red Cross to afford special protection for their respective names.

IPC representatives on the DT advised the IPC membership that the Public Comment period “was merely done as a courtesy to some members of the Drafting Team and because the IPC or the Drafting Team believe that the Proposal, which is an implementation detail, requires any public comment under ICANN and GNSO procedures.” The IPC also expressed its disappointment “that certain constituencies have used the Request for Comments and the informal deferral process at the GNSO Council to delay action on the Proposal,” and believes that “the type of procedural brinksmanship demonstrated during the GNSO Council meeting in Costa Rica threatens the very credibility of the GNSO Council and ICANN as effective institutions of private sector management of a public resource.” *JSE, on behalf of the IPC*

*Consideration of Recommendations is More Appropriate After the Initial Round of Applications:* In the view of the NCSG PC, it would be a more rational exercise to conduct a more thorough and comprehensive discussion and consideration of the issue between the first and second round of new gTLD applications, because this would be more “likely to yield a more widely-acceptable and in-depth set of criteria for any additional protections for any organization or entity,” and likely strengthen the credibility of the GNSO. The recently completed process which was a “post-launch” scrambling to respond to a GAC request and to amend Board actions, is likely to damage the GNSO’s credibility. *MW, on behalf of the NCSG PC*

*GNSO Policy Process Not Followed:* Ms. Doria believes that “it is improper and illegitimate” for a Drafting Team to create a policy recommendation. Ms. Doria states that “the mandate of an ad-hoc drafting team should not extend beyond the creation of the charter for a Working Group as there are no by-laws or GNSO procedural bases for granting such powers to a drafting team. To not have immediately created a Working Group for this recommendation, when the task was first proposed, is a transgression of the GNSO policy process.” Ms. Doria recommends that the issue of the powers of a Drafting Team be sent to the GNSO Standing Committee on Improvements Implementation for further discussion. *AD*

### **Other Organizations Seeking Special Protections**

Legal Counsels of International Intergovernmental Organizations (“IGOs”) stated their position that any special protection for the RCRC/IOC must be based on objective criteria. They believe that if such criteria are based on the extent to which names are protected internationally and nationally then, not extending the same special protections given to the RCRC/IOC names to IGOs does not “stand up to scrutiny.” The Legal Counsels point out that like the Red Cross and IOC, IGOs represent a wide range of vital causes such as public health, labor practices, food security, peace-keeping operations, and that abusive registration of IGO names and acronyms would harm these causes by imposing a serious enforcement burden which would divert public resources. The IGO Legal Counsels believe that their names and acronyms are protected by Article 6ter of the Paris Convention for the Protection of Industrial Property. They note that the “GAC Principles Regarding New gTLDs” call on ICANN “to make proper allowance for IGO protection in the domain name system.” IGOs request the same consideration for any special protection given to the Red Cross and IOC organizations. *PD, on behalf of IGO Legal Counsels*

The NCSG PC questions the legal basis upon which the GAC made its recommendation to afford special protection for the Red Cross and IOC because it has to date not been made public. Given that a number of IGOs have officially requested for similar special protection, the NCSG PC believes that it is absolutely necessary to publicly disclose the legal basis for providing exceptional treatment for just these two organizations, so that it can be fully vetted. It is the GNSO Council’s responsibility to vote only after it has

been given the full legal background to the RCRC and IOC protections. *MW, on behalf of the NCSG PC*

Ms. Doria notes that the GAC advised that only the RCRC and IOC met the GAC's criteria for special protection. She notes that the NPOC has suggested that these criteria were too narrow and that they excluded other organizations that had an "equal claim" of protection based on the value they brought to the world. Ms. Doria believes that if the GAC and GNSO believe that the Objection Process doesn't provide sufficient protection for the RCRC and IOC, then it is also insufficient for other organizations such as Mediciens sans Frontiers, Amnesty International, the Human Rights Campaign, and others. *AD*

Mr. Jaeger, believes that if special protection is granted to these two organizations, then the same protection will need to be granted to others that deserve special protection as well. It would be discriminatory towards organizations and "would of violate the "all equal" status for the new gTLD program." *MJ*