

## Drafting Team Recommendation to Protect Red Cross and IOC Names at the Top Level of new gTLDs

### What is the GNSO Council expected to consider?

Following the work of the GNSO Drafting Team (“DT”) in reaching a non-unanimous consensus on a proposal to protect the Red Cross/Red Crescent (“RCRC”) and International Olympic Committee (“IOC”) names at the top level of new gTLDs during the current round of new gTLD applications, the GNSO Council is now expected to consider whether or not to adopt the proposal as a GNSO recommendation to the Board to implement the Board’s Resolution on this matter. Approval requires an affirmative majority vote in each House.

### Why is this important?

In Singapore, the ICANN Board of Directors adopted a resolution (Resolution 2011.06.20.01(b)), providing 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.” Pursuant to the Board resolution, ICANN counsel and staff have implemented Section 2.2.1.2.3 of the Applicant Guidebook, by placing a temporary moratorium on new gTLD applicants from registering certain Olympic and Red Cross names during the initial gTLD application round. On September 14, 2011, the GAC sent a proposal to the GNSO Council to provide permanent protection for certain RCRC/IOC names at both the top level and second level for new gTLDs.

Section 2.2.1.2.3 of the Applicant Guidebook extends limited protection to identical matches of certain RCRC and IOC terms at the top-level only. However, this Section does not provide for protections of the IOC or RCRC in all foreign languages, nor does it invoke “String Similarity Review”, for strings that may be confusingly similar at the top level, such as “.olympics, .olympix, .redcross, .redkresent, etc.. In addition, the current moratorium does not allow the IOC or RCRC to apply for or obtain these strings should they desire to do so.

Given the fact that the application window for the top-level of new gTLDs is scheduled to close on April 12, 2012, if any new protections are to be implemented at the top level, the recommendations for protection need to be approved by the ICANN Board with sufficient time to provide notice to current applicants in this first round, i.e., at the Board’s meeting in Costa Rica.

### The Drafting Team’s Proposed Recommendations

Recommendation 1: Treat the terms set forth in Section 2.2.1.2.3 as “Modified Reserved Names,” meaning:

- a) The Modified Reserved Names are available as gTLD strings to the International Olympic Committee (hereafter the “IOC”), International Red Cross and Red

Crescent Movement (hereafter "RCRC") and their respective components, as applicable.

b) Applied-for gTLD strings, other than those applied for by the IOC or RCRC, are reviewed during the String Similarity review to determine whether they are similar to these Modified Reserved Names. An application for a gTLD string that is identified as confusingly similar to a Modified Reserved Name will not pass this initial review.

c) If an application fails to pass initial string similarity review:

i. And the applied-for TLD identically matches any of the Modified Reserved Names (e.g., ".Olympic" or ".RedCross"), it cannot be registered by anyone other than the IOC or the RCRC, as applicable.

ii. If the applied-for TLD is not identical to any of the Modified Reserved Names, but fails initial string similarity review with one of Modified Reserved Names, the applicant may attempt to override the string similarity failure by:

1. Seeking a letter of non-objection from the IOC or the RCRC, as applicable;  
or
2. If it cannot obtain a letter of non-objection, the applicant must:
  - a. claim to have a legitimate interest in the string, and demonstrate the basis for this claim; and
  - b. explain why it believes that the new TLD is not confusingly similar to one of the protected strings and makes evident that it does not refer to the IOC, RCRC or any Olympic or Red Cross Red Crescent activity.
3. A determination in favor of the applicant under the above provision (ii)(2) above would not preclude the IOC, RCRC or other interested parties from bringing a legal rights objection or otherwise contesting the determination.
4. The existence of a TLD that has received a letter of non-objection by the IOC or RCRC pursuant to (ii)(1), or has been approved pursuant to (ii)(2) shall not preclude the IOC or RCRC from obtaining one of the applicable Modified Reserved Names in any round of new gTLD applications.

## Recommendation 2: Protect the IOC/RCRC Terms in as many Languages as Feasible

The GAC has proposed that the IOC and RCRC "names should be protected in multiple languages—all translations of the listed names in languages used on the Internet...The lists of protected names that the IOC and RC/RC have provided are illustrative and representative, not exhaustive." Although the Drafting Team agrees with the notion that the lists provided by the IOC and RCRC were illustrative, protecting the terms in every language on the Internet is not a standard that the Drafting Team believes is feasible to achieve. While it is true that the list of languages can be expanded, we recognize that in order to perform a String Similarity Review (as recommended above), a definitive objective list of languages must be created. It is the Drafting

Team's understanding that representatives from the IOC and RCRC are working on the creation of that definitive list and should be able to present that to the Drafting Team by no later than the ICANN Meeting in Costa Rica. If such a list can be produced, the Drafting Team may recommend the use of that list as a substitute to that currently in the Applicant Guidebook.

In addition, the Drafting Team also notes that even in the unlikely event that a third party applies for an IOC or RCRC term in a language that was not contained on the list, the IOC or RCRC, as applicable, may still file an applicable objection as set forth in the Applicant Guidebook.

Recommendation 3: Protections should apply for all future rounds, but may be reviewed after the first round.

In its proposal, the GAC has recommended that the protections for the IOC and RCRC should not just apply during the first round of new gTLDs, but should be a permanent protection afforded for all subsequent rounds. Although, the Drafting Team has not spent a lot of time discussing this topic, it does agree with the notion that it is making this recommendation as one intended to apply in all future rounds, but also recognizes that like all other aspects of the new gTLD program, these protections may be reviewed by the ICANN community should it desire to do so.

## **Background**

The Drafting Team held an informal meeting with interested members of the GAC on 2 March; participating GAC members supported the DT's proposal and timeline for approval and implementation during the initial round of new gTLD applications.

On 1 March, staff provided a written response to the DT request for staff input on the proposal and implementation timeframe. In its response, staff expressed its view that the proposal in some aspects appears to diverge from the GNSO Reserved Names Working Group Final Report, and therefore, recommended that 1) the written proposal should be augmented with the policy reasoning for providing this type of protections for the RCRC/IOC names, and 2) a public comment forum on the proposal should be opened prior to a vote by the Board.

On 2 March, the DT's proposal was posted for a public comment period which closes on 23 March, in accordance with the new public comment policy implementing the ATRT recommendations that took effect on January 2012. A subsequent minimum 21 day Reply Period is also required, since there have been substantive public comments submitted in opposition to the DT proposal.

## **Where can I find more information?**

- Relevant Board Resolution: <http://www.icann.org/en/minutes/resolutions-20jun11-en.htm>
- GAC Proposal: <http://gns0.icann.org/correspondence/dryden-to-van-gelder-red-cross-14sep11-en.pdf>



# GNSO Council Background Briefing

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- Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb>
- Staff Memorandum to the IOC-RC Drafting Team: <http://forum.icann.org/lists/gnso-iocrc-dt/docMN8LgUY3df.doc>

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