

Current Results for Election 1876ca1df15

Election ID: 1876ca1df15

Title: Motion for Initiation of Policy Amendment Process on Specific Red Cross and Red Crescent Names

Start: 2017-05-03

End: 2017-05-07

Status: closed

Total Ballots Cast (including duplicates): 20

Ballots Counted (excluding duplicates): 19

Voters Who Haven't Voted: 1

Ballot with added tally (using weights, if any):

Initiation of Policy Amendment Process on Specific Red Cross and Red Crescent Names - deferred to electronic vote.

Submitted by: James Bladel

Seconded: Rubens Kuhl, Michele Neylon

WHEREAS, in November 2013, the GNSO completed a Policy Development Process (PDP) which resulted in a number of consensus recommendations for protecting the identifiers of International Governmental Organizations and International Non-Governmental Organizations, including the International Red Cross and Red Crescent Movement (Movement), at the top and second level in all generic top-level domains (gTLDs) (PDP Working Group Final Report: <https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>, with Minority Statements: <https://gnso.icann.org/en/issues/igo-ingo-final-minority-positions-10nov13-en.pdf>);

WHEREAS, the GNSO Council approved all the PDP consensus recommendations on 20 November 2013 (<http://gnso.icann.org/en/council/resolutions#20131120-2>) and, following a mandatory public comment period on the final PDP recommendations, sent its Recommendations Report to the ICANN Board on 23 January 2014 (<https://gnso.icann.org/en/issues/council-board-igo-ingo-23jan14-en.pdf>);

WHEREAS, on 30 April 2014 the Board adopted those of the GNSO's PDP recommendations that were consistent with GAC advice on the topic, which in relation to the Movement were for the terms "Red Cross", "Red Crescent", "Red Crystal", and "Red Lion & Sun" (referred to as "Scope 1 Identifiers" by the PDP Working Group) to be reserved at the top and second levels, with an Exception Procedure to be designed for the affected organization (<http://www.icann.org/en/groups/board/documents/resolutions-30apr14-en.htm#2.a>);

WHEREAS, between June 2014 and January 2015 the Board and the GNSO Council engaged in discussions of the remaining inconsistencies between GAC advice and GNSO policy, which in relation to the Movement concerned the names of the then-189 National Red Cross and Red Crescent Societies, and the names and acronyms of the International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies (referred to as "Scope 2 Identifiers" by the PDP Working Group);

WHEREAS, at ICANN57 in November 2016 the Board proposed that the GAC and the GNSO engage in a facilitated, good faith discussion to attempt to resolve the remaining inconsistencies between GAC public policy advice and GNSO consensus policy recommendations regarding the "Scope 2 Identifiers" of the Movement;

WHEREAS, representatives from the GAC and the GNSO engaged in such a facilitated, good faith discussion at ICANN58 in March 2017 during which the following matters were noted:

- (1) The public policy considerations associated with protecting the Movement's identifiers in the domain name system (DNS);
- (2) The GAC's rationale for seeking permanent protection for the terms most closely associated with the Movement and its respective components is grounded in the protections of the designations "Red Cross", "Red Crescent", "Red Lion and Sun", and "Red Crystal" under international treaty law and under multiple national laws;
- (3) The list of names of the Red Cross and Red Crescent National Societies is a finite, limited list of specific names of the National Societies recognized within the Movement (http://www.ifrc.org/Docs/ExcelExport/NS_Directory.pdf);
- (4) There are no other legitimate uses for these terms; and
- (5) The GAC had provided clarification following the completion of the GNSO PDP, via its March 2014 Singapore Communique, on the finite scope of the specific list of Movement names for which permanent protections were being requested (<https://gacweb.icann.org/download/attachments/28278854/Final%20Communique%20-%20Singapore%202014.pdf?version=1&modificationDate=1397225538000&api=v2>);

WHEREAS, following the GAC-GNSO discussion, the Board passed a resolution on 16 March 2017 requesting that the GNSO initiate its process for Amendments or Modifications of Approved Policies, as described in Section 16 of the GNSO PDP Manual (<https://gns0.icann.org/en/council/annex-2-pdp-manual-01sep16-en.pdf>), to consider amending the GNSO's approved policy concerning the specific names of the Red Cross and Red Crescent National Societies and the specific names International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies (collectively, Recommendation 5 in Section 3.1 of the PDP Working Group Final Report): and

WHEREAS, the GNSO Council agrees that the aforementioned set of exceptional circumstances provides a justifiable basis for the Council to take this extraordinary step to reconsider the policy recommendation and that this is not to be viewed as the Council's consent to reopen PDP recommendations in all cases where GNSO-developed policy is in discord with GAC advice:

RESOLVED,

1. The GNSO Council hereby initiates the process described in Section 16 of the GNSO PDP Manual; accordingly, the GNSO Council requests that the PDP Working Group be reconvened for the purpose of consultation by the GNSO Council on the following proposed amendment to Recommendation 5 in Section 3.1 of the PDP Working Group Final Report:

(a) The full names of the now-190 Red Cross National Societies and the full names of the International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies are to be placed into Specification 5 of the Base gTLD Registry Agreement, with an exception procedure to be created for cases where the relevant Red Cross Red Crescent Movement organization wishes to apply for their protected string at the second level;

(b) In placing the specified identifiers into Specification 5 of the Registry Agreement, this should apply to an exact match of the full name of the relevant National Society recognized within the International Red Cross and Red Crescent Movement (in English and the official languages of its state of origin), the full names of the International Committee of the Red Cross and of the International Federation of Red Cross and Red Crescent Societies (in the six official United Nations languages) and a defined limited set of variations of these names; and

(c) In considering the proposed amendment, account is to be duly taken of the matters noted during the GAC-GNSO facilitated discussion at ICANN58 as well as of the GAC's public policy advice to reserve the finite list of names of the Red Cross and Red Crescent National Societies, as recognized within the International Red Cross and Red Crescent Movement, in all gTLDs.

2. In accordance with Section 16 of the PDP Manual, the GNSO Council directs ICANN staff to post the recommendations of the reconvened PDP Working Group, and its proposed amendment(s) to Recommendation 5, if any, for public comment for a period of 30 days following the conclusion of the PDP WG.

3. In accordance with Section 16 of the PDP Manual, the GNSO Council intends to put the proposed amendment to a vote following consultation with the PDP Working Group and the conclusion of the requisite public comment period. The GNSO Council notes that approval of the proposed amendment requires a Supermajority Vote of both Houses in favour of the amendment.

4. The Council thanks all of those who participated in the talks at ICANN58 in Copenhagen, and in particular Bruce Tonkin for moderating the discussion.

Mark ONE choice below:

Choice:

- 1: 18 votes In favour
- 2: 0 votes Not in favour
- 3: 1 vote Abstain

This text box allows you to note reason for abstention or any other comment you wish to register:

4: [=]

Ballots Received:

Ballot ID f288aebbdefca8b Received at 2017-05-07 21:00:21 UTC **(counted)**

- 1:
- 2:
- 3:
- 4:

Ballot ID 8808bbe4a0dcd67 Received at 2017-05-07 18:58:12 UTC **(counted)**

- 1:
- 2:
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Ballot ID eab85768d9d84fb Received at 2017-05-07 15:27:54 UTC **(counted)**

- 1:
- 2:
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Ballot ID 3a829c0d47035e7 Received at 2017-05-07 14:40:59 UTC **(counted)**

- 1:
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Ballot ID a49f7f6d2f0ff08 Received at 2017-05-07 09:28:02 UTC **(counted)**

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Ballot ID 9c90bb07528c35d Received at 2017-05-07 06:11:55 UTC **(counted)**

1: [X]
2: []
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Ballot ID bb1d5cd8cb84bac Received at 2017-05-06 15:54:51 UTC **(counted)**

1: [X]
2: []
3: []
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Ballot ID 6a41bf6071c4b8b Received at 2017-05-06 09:40:06 UTC **(counted)**

1: [X]
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Ballot ID 0a469a4b1faaf36 Received at 2017-05-06 02:26:19 UTC **(counted)**

1: []
2: []
3: [X]
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INTELLECTUAL PROPERTY CONSTITUENCY ABSTENTION STATEMENT

The IPC has significant concerns regarding this Motion ("Initiation of Policy Amendment Process on Specific Red Cross and Red Crescent Names") and the events leading up to this Motion. This is the latest step in a troubled process that began with the IGO-INGO Working Group recommendations being approved by Council in November 2013 and sent to the Board in January 2014.

These recommendations differed from GAC advice in two areas: (1) Protection of IGO acronyms and (2) Protection of the Red Cross "Scope 2 Identifiers" (189 National Red Cross and Red Crescent Society names, and the names and acronyms of the International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies). The GNSO recommended that the IGO acronyms and Red Cross Scope 2 Identifiers be "bulk added" to the TMCH for second level protection with no protection at the top level; GAC advice sought permanent reservations of all of these identifiers at the top and second level.

In April 2014, the ICANN Board adopted the GNSO recommendations that were consistent with GAC advice. The Board did not adopt or reject either the GAC advice or the GNSO recommendations inconsistent with GAC advice. Instead, the Board essentially adopted the GAC position for the New gTLD Program by electing to continue "temporary reservations" of the IGO acronyms and the Scope 2 Identifiers at the top and second level. These "temporary reservations" have continued throughout the entire implementation of the New gTLD Program.

Since that time, the ICANN Board, the GAC, and IGO and International Red Cross representatives have conferred regarding these inconsistencies. Other than correspondence with the Board between June 2014 and January 2015, the GNSO was not involved until November 2016. Then, as a result of these earlier discussions without the GNSO, the Board invited the GNSO Council to take part in a "facilitated discussion" with the GAC. The IGO acronym issue was not raised at this time.

The "facilitated discussion" on Red Cross Scope 2 Identifiers took place at ICANN58 in mid-March 2017. Initially intended to resolve differences between GNSO recommendation

and GAC advice (solely with regard to the Red Cross Scope 2 Identifiers), the "facilitated discussion" instead became more of a "level-setting" exercise, so that they participants would be equally informed.

While at ICANN58, the Board passed a resolution requesting that the GNSO commence the process in Section 16 of the PDP Manual ("Amendments or Modifications of Approved Policies"), solely with regard to the Red Cross Scope 2 Identifiers. Section 16 gives the GNSO Council the power to start a process intended to amend previously approved policy recommendations before final Board approval; it does not expressly contemplate the Board invoking Section 16 through a Board-approved "request" to the Council.

Section 16 says that the Council should reconvene the Working Group and "consult" with the WG regarding amendments and modifications; it is unclear whether this contemplates that the amendments will be prepared by the Working Group or the Council. While it is not expressly stated in Section 16, the general concept of the GNSO is that GNSO Working Groups develop policy recommendations while the Council manages the process. In this context, this means that a Working Group needs to be able to exercise its function of deliberating on and developing the amendments (regardless of where prior drafts came from).

In this case, Section 16 was invoked at the behest of the Board, and the Board specified the exact amendments the GNSO was expected to "consider." These proposed amendments (along with much of the Board's resolution) were then adopted nearly verbatim for the Motion. The effect of these amendments would be to permanently reserve the Scope 2 identifiers at the second level (which would be consistent with GAC advice, but a change from the GNSO recommendations). The amendments do not deal with the IGO acronyms.

As drafted, the Motion reconvenes the PDP WG, but solely for the purpose of "consultation by the GNSO Council" on the proposed amendment. It's unclear what being "consulted by the GNSO Council" would entail. Typically, in a "consultation" the views being solicited are merely advisory. The Motion does not state that WG will be able to engage freely in deliberations, nor does it say that the GNSO Council will need to vote on the WG's recommendations.

Given the context, with the Board handing an amendment to the Council, which in turn hands it to the WG, concerns are raised - specifically, that the WG will be cast in a limited and subservient role and used as a "rubber stamp" for the Board's amendment, rather than being allowed to engage in free deliberations. This concern is underscored by the statement in the Motion that the GNSO Council intends to put "the proposed amendment" to a vote following consultation with the PDP Working Group and the public comment; this seems presumptuous at best.

Given these concerns, the IPC is not entirely comfortable supporting the Motion, particularly as written. We appreciate the improvements recently made to the Motion, which (along with statements on the Council list) allay our concerns to an extent. However, our concerns regarding the entire process of the last three years, along with continuing concerns about the Motion as drafted, don't allow us to support the Motion wholeheartedly. Therefore, we have directed Councilor Paul McGrady to abstain and enter this statement into the record. Councilor and Vice-Chair Heather Forrest has been directed to support the Motion.

It is our hope that this statement will serve as a reminder that (1) the Working Group should be allowed to engage in free deliberations regarding the proposed amendment, (2) the amount of time it took the Board to deal with the "policy collision" between GNSO policy recommendations and GAC advice was unacceptable, particularly since the GAC advice was in force during this entire time, (3) the overall process adopted by the Board was deeply flawed (though we wish to expressly recognize the sterling efforts of Bruce Tonkin in leading the facilitated discussion process), and (4) while the GNSO Council can agree to a process, it cannot agree to a result.

Ballot ID bd9a8b5036b3b86 Received at 2017-05-05 17:09:09 UTC **(counted)**

- 1: [X]
- 2: []
- 3: []

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Ballot ID 8de330c9002f77d Received at 2017-05-05 15:18:01 UTC **(counted)**

1: [X]
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Ballot ID 75e814eb57a2efd Received at 2017-05-04 23:59:03 UTC **(counted)**

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Re-iterating that this initiates the PDP review process, but does not guarantee that the WG will arrive at any particular outcome.

Ballot ID e6d30f7281bf61b Received at 2017-05-04 20:18:01 UTC **(counted)**

1: [X]
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Ballot ID d3bb2c85deb38c9 Received at 2017-05-04 18:55:08 UTC **(counted)**

1: [X]
2: []
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Ballot ID 3f39f39d1d66d81 Received at 2017-05-04 12:17:19 UTC **(counted)**

1: [X]
2: []
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Ballot ID d79a9556a014e09 Received at 2017-05-04 09:12:26 UTC **(counted)**

1: [X]
2: []
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Ballot ID d79a9556a014e09 Received at 2017-05-04 08:38:41 UTC **(duplicate; not counted)**

1: [X]
2: []
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Ballot ID 95cb191c2ce6355 Received at 2017-05-04 07:27:41 UTC **(counted)**

1: [X]

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Ballot ID ec3212098c5ec31 Received at 2017-05-04 01:26:43 UTC **(counted)**

1: [X]
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Ballot ID 981985511ab286b Received at 2017-05-04 00:18:08 UTC **(counted)**

1: [X]
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