

Red Cross/IOC 2nd Level Names – Possible Approaches

Note that all of the possible approaches listed below relate to:

- **Exact matches** of RCRC and/or IOC names as proposed by the GAC, including translations specified by the GAC
- The **first round** of new gTLDs only (i.e., the one currently underway)
- **Second level** names only.

RCRC: Our position thus remains that all of the red cross, red crescent and red crystal designations and related names listed in the current moratorium, as well as translations thereof in multiple languages as far as possible, should be without delay reserved and treated at second level as "modified forbidden names" that can only be registered by the respective organisations/components of the International Red Cross and Red Crescent Movement (to treat them as Country or Territory Names, initially reserved but liable to release to the extent that the Registry Operator reaches agreement with the RCRC, would also *a priori* be suitable).

While we understand the complexities of implementing such a procedure or mechanism and are conscious of the terms of the request formulated by the Government Advisory Committee to look at exact matches, you will also recall that, based on the prohibition under international humanitarian law of imitations of the designations, confusingly similar strings should also in principle be covered under the protection/reservation.

Lastly, we recommend that the approach of the drafting team and its future recommendations submitted to the GNSO for second level protection be made to extend beyond the gTLD's current round to all future rounds, subject to future review as necessitated.

IOC: The IOC understands that the GAC proposal for protection on the second level is limited to exact matches and is willing to limit the discussion in the Drafting Team to the parameters of the GAC proposal, to which we were asked to respond. However, the rights conferred to the International Olympic Committee and its National Olympic Committees include protection against the use of similar strings.

These words are protected by law in multiple jurisdictions, either by treaty or by statute and therefore, there is no functional difference between this round and other rounds. The words should be protected in all rounds and on all levels.

Also note:

- Only approaches that have been proposed or implied in IOC/RC DT discussions are included.
- Some of the approaches are not mutually exclusive so that it is possible to apply more than one approach in some instances.

Possible Approaches

1. Maintain the status quo and not provide any new special protections for the RCRC/IOC names (i.e., no changes to the current schedule of second-level reserved names in the new gTLD Registry Agreement).

NCSG: (*Avri's email*): overwhelming support amongst responses so far (*comments provided in Avri's email provided in this document are based on opinions in the email thread and not on a poll, vote or judgement by the NCSG policy committee*)

IOC: The IOC does not support this approach

RySG: A somewhat new approach has recently gained quite a bit of traction within the RySG:

- a. Communicate to the GAC that Discussion Group Option 1 is the GNSO's starting position for second-level names in the first round of new gTLDs: "Maintain the status quo and not provide any new special protections for the RCRC/IOC names (i.e., no changes to the current schedule of second-level reserved names in the new gTLD Registry Agreement)."
 - b. Provide a rationale for this position
 - c. Give the GAC the opportunity to address the concerns expressed in the rationale
2. Develop recommendations to respond to the GAC proposal by suggesting extending protection for:
- a. All RCRC and IOC names
 - b. All RCRC names but no IOC names
 - c. All IOC names but no RCRC names
 - d. All RCRC names but only a subset of IOC names
 - e. All IOC names but only a subset of RCRC names
 - f. A subset of RCRC names and a subset of IOC names

RCRC: Option 2 below would best meet our position as outlined in our recent written and oral statements and in the Position Paper submitted to ICANN's Board in advance of the Prague Meeting (*need to clarify if #3 below is also included within this statement*)

IOC: The IOC does support 2(a) of this approach, but believes that 3(a) (below) is a better option.

3. Develop recommendations to respond to the GAC proposal by suggesting extending protection for the following provided there is an exception procedure for allowing names in to-be-defined circumstances:
- a. All RCRC and IOC names
 - b. All RCRC names but no IOC names
 - c. All IOC names but no RCRC names
 - d. All RCRC names but only a subset of IOC names
 - e. All IOC names but only a subset of RCRC names
 - f. A subset of RCRC names and a subset of IOC names

IOC: Option 3(a) is our preference, pending details about what is meant by an "exception procedure" and "to-be-defined circumstances." As evidenced by IOC support of the GNSO-approved recommendations for top-level protection, the IOC does not object to allowing an exception procedure such as letters of non-objection or a showing of legitimate interest in the use of the Olympic words in specific and narrowly defined circumstances.

RySG: "Many in the RySG would not be disappointed if, even without a PDP," the result is a GNSO recommendation of Discussion Group Approach 3.a. "But we believe that justification for doing it based on current information has too many weaknesses at this time."

4. Thomas Rickert's proposal - Do not provide any new protections now and wait to see if any additional protections may be necessary after the delegation of the first round new gTLD strings and:
 - a. Encourage the IOC and RCRC to use existing RPMs including absorbing the full costs of those RPMs
 - b. Encourage the IOC and RCRC to use existing RPMs and consider lowering costs for each organization to utilize RPMs
 - c. Recommendation to new gTLD registries that they respond to requests to voluntarily protect the designations in question

NCSG: Some support amongst responses so far

IOC: The IOC does not support this approach and believes it to be effectively identical to Option 1. Discussion about costs and Rights Protection Mechanisms miss the point that these unique organizations have rights and law establishing protection that should be enforced.

This proposal was based on the premise that the Reserved Names Working Group had discussed these protections previously and had decided affirmatively not to include the IOC or RCRC names on the Reserved Names list. Further research and discussion within the group, and input from a Reserved Names Working Group member indicated that this is not the case. Discussions about protecting the IOC and RCRC names specifically began with the GAC letter on September 14, 2011 and have been exclusive to this Drafting Team.

The "wait and see" approach in this proposal runs afoul of the burden and costs the organizations have the right to avoid in the first place. Monitoring and enforcing cybersquatting across potentially 1,400 new gTLDs would be a huge burden to the IOC, as discussed and demonstrated in previous group submissions.

Additionally, the IOC agrees that pricing of protections provided through the existing Rights Protection Mechanisms is outside the sphere of influence of this group, and lowering costs for these organizations specifically may be unrealistic and difficult to enforce.

5. Consider possible additional protections for the RCRC/IOC as part of a broader PDP initiative on the protection of names for international organizations.

NCSG: Some support amongst responses so far

IOC: The IOC does not support this approach. As others in the drafting team have stated, the PDP process is likely to be prolonged, particularly because of the contentious nature of this debate. Including discussions about protecting these organizations in the broader PDP would, in all likelihood, delay implementation past the delegation of new gTLDs.

Additionally, it is the IOC's position that these two organizations are unique and the protections provided to them are distinct from the protection provided to IGO's, and should be deliberated separately.

6. Ask ICANN General Counsel's office to conduct a legal analysis to substantiate/verify whether there is clear evidence of treaty law and/or statutes that would require registries and registrars to protect IOC and RCRC names by law.

NCSG: Some support amongst responses so far - Suggests tendering an International law firm (consortium of legal scholars) "to conduct a legal analysis to substantiate/verify whether there is clear evidence of treaty law and/or statutes that would require registries and registrars to protect IOC and RCRC names by law," rather than ICANN legal counsel.

RCRC: Should the recommendation formulated under this option be retained (and this may indeed be a useful proposal if it felt to be required) and/or should ICANN's staff engage in a review of the legal protection of the red cross and red crescent designations and related names, we would be available to assist in providing any relevant sources and necessary materials, as well as in identifying eventual contacts in academic or governmental circles (e.g. Swiss Federal Council and Swiss Department of Foreign Affairs in their capacity as Depository of the 1949 Geneva Conventions and their 3rd Additional Protocol, etc.). Considering that the international instruments concerned were negotiated by States, it might in this regard indeed be valuable to request their input, as required, in clarifying the terms and requirements of the international treaties under consideration.

IOC: The IOC has submitted to ICANN a list of all the treaties and statutes that apply to this discussion. The IOC has no objection to legal analysis of the position.