

Dear Working Team members:

Thank you for giving us the opportunity to comment on the GNSO IOC/RC Drafting Team's work and the path forward. Please take these comments in the spirit in which they are offered – to assist the Drafting Team in their work.

For background, the Board's 20 June 2011 resolution, states 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, until the GNSO and GAC develop policy advice based on the global public interest, . . .

<http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm>

So while the Board provided some protections at the top level for the first round, it declined to provide protections at the second level.

We understand the Drafting Team (DT) proposal is as follows:

Treat the terms set forth in Section 2.2.1.2.3 as "Modified Reserved Names," meaning:

- 1) 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.
- 2) 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 too similar to a Modified Reserved Name will not pass this initial review.
- 3) If an application fails to pass initial string similarity review:
 - a) 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.
 - b) 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:
 - i) Seeking a letter of non-objection from the IOC or the RCRC, as applicable; or

- ii) If it cannot obtain a letter of non-objection, the applicant must:
 - (1) claim to have a legitimate interest in the string, and demonstrate the basis for this claim; and
 - (2) 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.
- iii) 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.
- iv) 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.

The proposal reflects significant work and thought. We think the path forward should cover two areas: (a) augmenting the written proposal (as we understand it) with the policy reasoning for providing this type (and not other types) of protections; and (b) public review of this significant policy addition. This work might be published at the Drafting Team level or in the GNSO Council.

- I. With regard to the policy reasoning, the Board asked for policy advice and, in any case, it seems from our outside standpoint that the Drafting Team must have arrived at some policy conclusions in order to develop this set of recommendations. In particular, we think that the Drafting Team should state: why protections should be afforded these organizations in particular¹; and how the introduction of strings likely to result in user confusion is acceptable in these cases. Alternatively, this explanation could be left for the Council as it

¹ The proposal appears that some aspects diverge from the GNSO Reserved Names Working Groups (*see* <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>). As guidance, if the current proposal receives the consensus support in the GNSO Council, the GNSO Council could submit its recommendations in accordance with Section 9(d) by Annex A of the Bylaws as a “Supplemental Recommendation” to the Board.

This “Supplemental Recommendation” should expressly state that the recommendation reflects a modification of its prior policy recommendations on reserved names and string similarity, as appropriate, and include an explanation of the new recommendation. Such explanation should provide the policy basis or rationale for the new recommendation for the Board’s consideration. In this case, it would be valuable if the GNSO Council could articulate for the Board whether the DT considered proposing a policy that provided for protections to organization similarly situated to the IOC/RC names and, if so, why no such recommendations were proposed.

considers, and possibly amends the Drafting Team proposal through its own discussions.

In addition, the Drafting Team or the GNSO Council should provide policy reasons for why protections should not be provided at the second level (if that is the conclusion – it may merely be a restatement of current policy); and why other organizations should not be provided protections (or what are the criteria for protections for the IOC, RC other, similarly situated organizations).

- II. With regard to public review, we understand that the IOC/RC DT plans to discuss the Drafting Team proposal with interested GAC members later this week. In addition to that, we think a broader public review should occur if the Drafting Team proposal does have policy and precedent setting implications (as the current draft seems to have). The practice seems to have been that GNSO working groups publish initial versions of reports for comment prior to publishing a version for Council consideration.

Alternatively, the Drafting Team could draw a distinction between itself as a drafting team and working groups that develop policy. Then the public vetting decision could be made after the team submits the report to the Council.

In addition, a public comment forum should be opened prior to a vote by the Board. This is consistent with the approach taken in the GNSO Council's recently adopted PDP Manual (Section 16.2), where the PDP Manual calls for public comment of not less than thirty (30) days for amendments or modifications to approved policies. Seeking public comment is an important step for transparency purposes, and ICANN's obligations under the ATRT recommendations. Public comment would provide guidance with respect to other implementation aspects such as timing and avoiding unintended consequences impacting third parties.

We hope you find this helpful. Any and all members of the ICANN Policy and Service teams are available for discussion and support.

ICANN Staff Members