

## ALAC replies to questions posed by the IGO/INGO PDP WG

05-10 January 2013

### 1. What kinds of entities should be considered for Special Protections at the top and second level in all gTLDs (existing and new)?

The ALAC believes that special protection at the top level is generally not needed. The current objection processes should be sufficient to ensure that there be no conflict between any TLD, IGOs and INGOs. Should that prove incorrect, in future rounds, a new objection process could be added to explicitly cover this situation. Moreover, this would allow an organization that wants to deploy a TLD which does technically overlap with an IGO/INGO name to demonstrate that such deployment would cause no harm to the IGO/INGO or Internet users. That being said, if it is clear that NO exceptions could reasonably be allowed, the ALAC is open to allowing such top level protection to set reasonable expectations among applicants and to minimize needless overhead. The Red Cross Red Crescent Movement names are the only ones mentioned to date where such a case could be made. The existence of corporate marks such as Olympic Airlines and Olympic Paints makes the case for the IOC marks far more tenuous.

The situation at the second level is more complex in that there is normally not a comment, objection and evaluation process for 2<sup>nd</sup> level names prior to registration. The community challenge here is to provide protection for names that truly need it, while at the same time not overly restricting the names that are available for general registration.

The ALAC believes that any 2<sup>nd</sup> level special protections should be restricted to organizations that:

- Can demonstrate that they have been subject to harms due to bad-faith attempts to use their names at the 2<sup>nd</sup> level in existing TLDs;
- Can demonstrate substantive harm to the public interest if their names are not protected in the future.

Since the above criteria cannot be judged en masse, this implies that organizations must apply and have their merits evaluated individually.

The ALAC further believes that treaty and national laws may provide sufficient reasons for a name to not be legally used in certain jurisdictions, but is not a sufficient reason to for ICANN to ban its use universally unless applicable treaties explicitly protect the name(s), and the specific names are similarly protected in a significant number of jurisdictions. To do otherwise would be to unjustly limit the registration options for many registrants in jurisdictions where their use is not prohibited.

As a particular example, the ALAC notes that Olympic.com has been the registered domain of Olympic Paints for over 14 years. There is no evidence presented to date which demonstrates harm done to the International Olympic Committee, nor to Internet end users, caused by this registration. To prohibit Olympic Paints from registering its trademark in TLDs dedicated to décor, renovations, home repair or general retail products is unreasonable.

## 2. What facts or law are you aware of which might form an objective basis for Special Protections under International Treaties/Domestic Laws for IGOs, INGOs as they may relate to gTLDs and the DNS?

The ALAC is not a body of legal experts, but the last paragraphs of the answer to question 1 does summarize our position. Our focus is on minimizing end-user confusion, potential for fraud and bad-faith misrepresentation. Moreover, we are concerned that ICANN itself should not create new protection regimes far in excess of those provided by existing treaty and law.

The ALAC does note that the protection under treaty of the RCRC names does seem to be significant. The ALAC also notes that the treaty protection for IOC is reportedly limited to just the Olympic symbols and that the names are only protected under national legislation, and moreover, such national protection of some of the terms is only in a very limited number of countries.

In the general case, an IGO is defined as a body that has a secretariat and is established by a formal treaty among three or more nation states. For ICANN to grant special protection to an IGO, there must be a much higher threshold. Specifically, a MUCH higher number of countries. There also must be explicit language in the treaty controlling the use of the names which are to be protected.

## 3. Do you have opinions about what criteria should be used for Special Protection of the IGO and INGO identifiers?

As noted above, the criteria which are relevant to the ALAC are:

- The organization must be able to demonstrate that they have been subject to harms due to bad-faith attempts to use their names at the 2<sup>nd</sup> level in existing TLDs;
- The organization must demonstrate that substantive harm to the public interest if their names are not protected in the future.

Organizations that could meet the second criteria would need to demonstrate that they are:

- Not for profit
- International in scope (perhaps with some pre-defined number of countries involved)
- Perhaps they or their national arms are recognized as a charity by N governments
- Have a record of humanitarian or socially beneficial activities
- Have a track record of using xx% (or some similar measure) of its funds for above activities
- Have significant end-user fundraising or other user engagement in its Internet website(s) or can otherwise demonstrate the harms if other entities masquerade as the IGO/INGO.

The last three criteria would need to be carefully defined and then evaluation by a qualified panel under contract to ICANN.

The ALAC also notes that a number of IGO names or acronyms are either common words or are an acronym shared by possibly many other organizations throughout the world, and to ban their use in all TLDs does not seem appropriate.

#### 4. Do you think there are substantive differences between the RCRC/IOC and IGOs and INGOs?

As indicated by the above answers, the ALAC does believe there are substantive differences between the RCRC and the IOC, and again with IGOs and INGOs. Although the ALAC does not support special protection for the IOC names, it does acknowledge that there are many 2nd level registrants who have and will register RCRC names with an intent to defraud or otherwise misrepresent themselves to Internet users. The ALAC has seen no such evidence to date that this is a widely occurring situation with IGOs. We are, however, concerned about the fraudulent registration of domains to divert money from legitimate humanitarian INGOs. We are of the position that global non-treaty charities such as Oxfam and Médecins Sans Frontières are worthy of protection, far more so than IGOs and INGOs which do not engage in public-facing activities.

In this regard, the ALAC is particularly sympathetic to the needs of INGO humanitarian organizations (including many who are not protected by treaty) who can meet the criteria specified in Question 3.

#### 5. Should appropriate Special Protections at the top and second level for the identifiers of IGOs and INGOs be made?

Already addressed.

#### 6. In addition, should Special Protections for the identifiers of IGOs and INGOs at the second level be in place for the initial round of new gTLDs?

Only to the extent discussed above in relation to all rounds. To provide protections in the first round that are deemed to not be warranted in future grounds would put the first round TLD at a competitive disadvantage.

#### 7. Should the current Special Protections provided to the RCRC and IOC names at the top and second level of the initial round for new gTLDs be made permanent in all gTLDs and if not, what specific recommendations for appropriate Special Protections (if any) do you have?

No, the current special protections in some cases well exceed the protection granted to the respective organizations under current law and should not be continued unless the organizations meet the specified criteria.

8. Do you feel existing RPMs or proposed RPMs for the new gTLD program are adequate to offer protections to IGO and INGOs (understanding that UDRP and TMCH may not be eligible for all IGOs and INGOs)?

There is no question that under current ICANN policy, organizations whose names are protected under treaty are not eligible for all RPMs available to trademark holders, and that needs to be fixed. Moreover it needs to be fixed in ways that are usable by international organizations that may not operate under the laws of particular national legislation. To the extent that existing RPMs may not be sufficient for all rights owners, they should be examined by the GNSO with the understanding that the outcomes should be applicable to general rights holders as well as IGOs and INGOs.

Over and above this, the ALAC believes that any special protections should be implemented solely as described in earlier answers in the statement.

#### Other issues

The ALAC understands that ICANN cannot control the policies of ccTLDs, but feels that should any special protections be approved for names within gTLDs, that ICANN should make a non-binding recommendation that similar protections be offered by ccTLDs.