

Previous comment on the IOC / ICRC / INGO issue

From various emails sent on the issue over the past few months:

November 18 (to the ALAC list)

It is the Board's massive tactical error in brinksmanship to have forced an "all or none" approach to the IOC and Red Cross, in which case the answer was "if that is the only choice, then the answer is 'none'".

In so easily bowing to pressure from lobbyists and the GAC above the interests of the rest of the community, ICANN's Board has circumvented any thoughtful conversation on how to protect non-trademark names in the public interest. It bears complete responsibility for the embarrassment it has already brought upon the organization in this regard.

(...)

On 18 November 2012 12:07, Adam Peake <ajp@glocom.ac.jp> wrote:

I'd see if there was interest in holding a separate vote on the red cross (etc) and IOC.

This is what many of us in At-Large have been vigorously advocating since the issue first arose, so far on deaf ears.

The Red Cross, an international treaty organization recognized in wartime and during disasters, directly solicits public attention and funds for emergency relief efforts that happen unexpectedly. It often must create ad-hoc domains for co-ordination of such efforts, domains which are primary targets for potential fraud and cybersquatting which present real cost and threat to potential sources of assistance.

The IOC is an international body that co-ordinates athletic events that are well known years (maybe decades) in advance. A fairly small proportion of its revenue comes from short-term emergency appeals to the public. The domains of the IOC, and its associated national affiliates, are fairly well known and stable. Its request for name protection stems less from efforts to protect potential contributors than to maximize licensing revenue directly associated with the word "olympic".

There is no operation in the world legitimately going under the names "red cross", "red crescent", etc which does anything else than humanitarian relief. There are [golf clubs](#), [family restaurants](#), [musical groups](#), [football teams](#) and other organizations around the world using the name "olympic" (or variations) without any direct association to IOC-related athletic events. (The name "[olympic.com](#)" resolves to a paint company!) In some cases these legitimate and non-infringing uses come under intense (and against the public interest) legal pressure, especially in countries about to host IOC-sanctioned events. For the red cross, protecting the name in Internet domain space is about giving end users confidence that their efforts and donations are going to the intended destination. There is no such public trust issue at hand for the IOC.

Others have done [far more detailed analyses](#) of the differences. All of this has been shamefully ignored by the Board. I am not saying that the IOC is totally undeserving of attention, but that the unfortunate forced pairing of these two very disparate cases has rendered ICANN incapable of sane policy making.

The two must be considered independently.

It's unclear what ALAC can say or do about the beyond the message it has consistently delivered from the beginning. Lumping the two together has led to policy chaos. Thich has kept ICANN from creating a necessary broader strategy for dealing with IGOs, NGOs, and non-ICRC charities such as Oxfam and MSF which also (will eventually) demand consideration.

November 28 (to the FCWG list)

I hope I'm not starting a pointless rehashing of issues, but I've been in two ICANN sets of calls recently that truly indicate a sense of confusion, colliding interests and actions that have negative net value both to ICANN's processes and its public respect.

Last week it was Fadi's special group called to address concerns about trademark owners. This week it's to deal with the Red Cross, International Olympic Committee and others International inter-governmental organizations.

While the two sets of proponents protest loudly at suggestions that their actions are more similar than different, I cannot help but find a comparison of the two efforts both fascinating and exasperating.

All are demanding widespread blocking of domains. They are talking wildly variable ways to get there, even though the end result is the same. There is no overarching conversation (let alone policy) on

- What kinds of **strings** -- not brands or IGO acronyms or organization names -- need protection (in some cases, exact matches might be worthy of protection, in others, "strings containing" is indeed reasonable)
- Why do they need protection? ("just because they exist" does not seem to me to be a sufficient answer to bar registration in all TLDs, new or old)
- What protection is possible? We already have mechanisms such as the URS, UDRP and claims based on the trademark clearinghouse. At the most severe extreme is complete blockage provided for free by the TLD owners. Are these suitable? Are they reasonable? Do they properly allow legitimate use?
- Are any of these efforts being co-ordinated with ccTLDs, who are not bound by ICANN policy and may allow some of the strings forbidden by ICANN after all this debate?
- What role for At-Large have to play, as almost all the players involve claim to be acting in the public interest in asserting these restrictions?

Alan tells me that once upon a time, ICANN was considering rights protection mechanisms for names that did not qualify as trademarks but were deserving of protection in the public interest. That effort was deferred, and now ICANN is having to deal with this issue in a panicked and confused manner that seems to be angering everyone.

Do we -- the body in ALAC charged with taking higher level views of things that may overlap specific working groups or issues -- have a role to play here? Is this best dealt with in the new gTLD working group? Or has the time to even constructively debate this long since past

December 2 (to the ALAC gTLD WG list)

Being involved in the both the Trademark Clearinghouse and the Red Cross / Olympic / NGO debate, I'm more than happy to engage here on three recent gTLD initiatives that are relevant to us. All are in the realm of name protection, but trademark owners and non-governmental organisations have taken very different paths to impose their will (using very blunt instruments) on the rest of the community. And the recent shopping list of country objections to TLD applications clearly strikes me as abuse of the intent of the objection process that came out of the "MAPO" debates.

I have strong personal feelings on these events, though my analysis is incomplete. These moves - and the ways they are being dealt with - signal notable shifts in the way ICANN works (some but not all of these changes are positive from the public interest PoV). The GNSO is wailing about ICANN working around it and subverting the MSM. But the GNSO's historic approach to policy making has in very large part been direct cause of the current problems; it is reaping what it has sown.

There are actually multiple related statements that the ALAC could (and IMO should) be making:

1. The issue of blocking domains based on prior use needs more thoughtful and nuanced approaches than are being relentlessly advanced.
2. The current PDP system is too slow and unwieldy for many issues, and a PDP "light" is needed but its design must be balanced and have GAC and ALAC buy-in integral.
3. Lack of clear distinction between policy and implementation, which has suited the GNSO well until now, is now being used against it.

The changes happening are significant, and far too late into the gTLD expansion program for my liking.

My thoughts on these issues are still evolving; I welcome the engagement of other WG members as we consider how to react.

December 5 (to the GNSO's INGO working group list)

Hi Claudia,

This list is a good start, but appears to me to be incomplete from a public interest point of view and in the specific context of domain names.

Other criteria that I believe is important to the issues of public benefit from any such blocking. Some of these, IMO are at least as important as the ones you have listed.

- **What is the charitable status of the organization in the countries in which it operates?**
- **What is the current incidence of fraudulent or misleading domains related to the organization?**
- **Does the organization work and communicate directly to the public, or rather through affiliates, governments and partners?**
- **Does the organization, or its subsidiaries, engage in ad-hoc domain creation to deal with unforeseen needs (ie, disaster relief)**
- **Does the organization currently use a domain under .int?**

I come from the point of view that domain protection is primarily a matter of minimizing public harm and must be applied cautiously. I am un-inclined to support protection of names -- especially acronyms -- that may have other demonstrated legitimate uses. "Olympic" is the name of a paint and an airline. "ISO" is a component of "ISOC" and a term commonly used in photography. Etcetera. As a result, existing domains such as "olympic.com" and "iso.com" exist, and do NOT mislead or defraud the public nor cause harm to the IOC or ISO respectively. Their very existence demonstrates the need for nuanced approaches that -- as you say -- consider multiple criteria, which must be applied with the public interest primarily in mind.

This public interest dictates that strings must not be locked away from potentially legitimate use purely because of the vanity or entitlement fantasy of non-exclusive users. Acronyms especially typically have multiple uses, and must be protected -- if at all -- with care and caution. Most INGOs have stable, well-known domains -- often under .int which cannot be gamed -- and the existence of their acronyms under other TLDs does not diminish the utility and value of those core domains.

The appeal regarding defensive registrations is generally as bogus as the similar complaint coming from trademark holders. Can anyone here, with complete seriousness, state that ISO.XXX could be mistaken or misrepresented as a standards-making body? Is there any evidence to back up such an assertion? What harm -- material or otherwise -- would befall the NGO by someone else's use of that domain?

There should be a dispute resolution process to inexpensively deal with fraudsters, as is being put in place to deal with trademarks. And if national laws and treaties exist to provide protection, than those mechanisms should be used to their fullest. ICANN must not duplicate (or even worse, exceed) that protection except to mitigate demonstrated public harm (ie, to Internet end users) done by domain abuse.

As a member of one of the ISO's constituent bodies, I am fully aware of the need to protect reputations against misuse, especially when they cause harm to the public good. But most of the protection initiatives I have seen of this kind within ICANN fail in achieving that goal while seeking to stifle legitimate use.

Dear Thomas and all,

Please find our attached comments to the SG & C input request template.

We cannot overemphasize the need for identifying objective eligibility criteria for any proposed special protection of international organization names/acronyms. Privileging some without such criteria would be unacceptable for a monopoly operation.

Instead, we would suggest to focus the discussions on identifying the criteria which qualify an international organization as being in a particularly vulnerable position vis-à-vis abuse of their name/acronym in domain names as new gTLDs roll out and why such protection is needed. Additionally, we would suggest that some may be more vulnerable in regards to first and/or second level registrations, and should consider these separately.

To help focus the discussions on objective criteria to be uniformly applied, we include the below discussion draft criteria:

(Draft) Objective Criteria for inclusion of International Organizations for

Protection (Reserved List) in First and Second Level TLDs

- *Number of member countries in the international organization;*
- *Percentage of governmental or public members in the international organization;*
- *Number of countries in which the international organization has operations or provides services and/or products;*
- *Nature and impact of work, services and/or products on an international level;*
- *Nature and extent of collaborations with governments and other international organizations;*
- *Status of international organization under international and/or domestic law;*

- *Duration of international organization's existence;*
- *Status of the international organization as a non-profit institution and/or operating in the public interest;*
- *Recognition/use of name or acronym with/by the international organization;*
- *Number and extent of existing abusive domain name registrations relating to the name or acronym.*

Sincerely,

Claudia

Claudia MacMaster Tamarit, Esq.

Intellectual Property Rights Manager

(ISO) International Organization for Standardization

www.iso.org