



The Internet Corporation for Assigned Names and Numbers

31 October 2013

Mr. Mike Rodenbaugh
Rodenbaugh Law

Re: GCCIX response to ICANN letter dated September 5, 2013, re rejection of .GCC

Dear Mr. Mike Rodenbaugh:

Thank you for your letter dated 25 September 2013 regarding GCCIX, W.L.L.'s ("GCCIX") application for .GCC, wherein you request "prompt initiation of the Reconsideration Request process described in ICANN's Bylaws, Art. IV, including 'cooperative engagement' with GCCIX as soon as possible." Please note that the Cooperative Engagement Process ("CEP") is a precursor to initiating a request for Independent Review, not a precursor to initiating Reconsideration. (*See id.* at Sec. 3, Para. 14). And as you know, the Reconsideration Request process and the Independent Review process are two entirely different accountability mechanisms as defined in the Bylaws, Article IV, Sections 2 and 3. (*See* Bylaws, Art. IV, Sec. 3, 4, <http://www.icann.org/en/about/governance/bylaws#IV>).

Unfortunately, GCCIX's times to file a Reconsideration Request to the 4 June 2013 and 2 July 2013 NGPC decisions have expired. A Reconsideration Request must be filed within fifteen days after the date of publication of Board or staff action. (*See* Bylaws, Art. IV, Sec. 2, 5, [http://www.icann.org/en/about/governance/bylaws - IV](http://www.icann.org/en/about/governance/bylaws-IV); <http://www.icann.org/en/groups/board/governance/reconsideration>). The NGPC's 4 June 2013 decision was published on 6 June 2013. The deadline to file a Reconsideration Request to this decision expired on 21 June 2013. The NGPC's 2 July 2013 decision was published on 3 July 2013. The deadline to file a Reconsideration Request to this decision expired on 18 July 2013.

Similarly, if the applicant intended to initiate a CEP in advance of filing a request for Independent Review, notification must be provided within 15 days of the posting of the minutes of the Board (and the accompanying Board Briefing Materials, if available) that the requesting party demonstrates that the ICANN Board violated its Bylaws or Articles of Incorporation. (*See* <http://www.icann.org/en/news/irp/cep-11apr13-en.pdf>). The minutes and accompanying briefing materials for the 4 June 2012 and 2 July 2013 NGPC meetings were posted on 26 June 2013 and 14 August 2013, respectively. The deadlines to initiate a CEP for the decisions taken at these meetings expired on 11 July 2013 and 29 August 2013, respectively.



Accordingly, GCCIX cannot proceed with a Reconsideration Request or CEP in advance of an Independent Review for the 4 June 2013 and 2 July 2013 NGPC decisions. For further details, please refer to our Article IV of ICANN's Bylaws and <http://www.icann.org/en/news/in-focus/accountability/reconsideration-review>.

Thank you for your communication and your participation in the New gTLD Program. As a reminder, GCCIX may withdraw its application via the Customer Service Portal at myicann.secure.force.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Christine Willett", is written in a cursive style.

Christine A. Willett
Vice President, gTLD Operations

EXHIBIT B

See Dropbox link: <https://www.dropbox.com/s/tii7195izvlfwka/LRO%20response%20final.zip>

EXHIBIT C

Final Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process

STATUS OF THIS DOCUMENT

This is the Final Report on the Protection of IGO and INGO Identifiers in all gTLDs, prepared by ICANN staff and the Working Group. It contains policy recommendations from the PDP Working Group (“WG”). This Final Report was submitted to the GNSO Council on 10 November, 2013 for their consideration.

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1. Executive Summary

1.1 Working Group Recommendations

This section contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers in all gTLDs. Each recommendation is presented per organization type [i.e. Red Cross Red Crescent (RCRC), International Olympic Committee (IOC), other International Non-Governmental Organizations (INGO), and International Governmental Organization (IGO)]. A set of general recommendations not attributed to any specific organization is also included. Within each organization type, the WG considered varying levels of protection independently. Given the complexity of identifiers and the scope of the protections considered, the recommendations are presented in a chart for ease of review. A set of definitions, consensus scale per Working Group Guidelines, and Consensus Call legends are also listed below and should be considered when reviewing the chart of recommendations.

There are well over 20 total proposed policy recommendations that are presented in detail within Section 3. For each recommendation, the level of consensus agreed upon by the WG is also identified according to the GNSO Working Group Guidelines.

Supplements to this report - Given the amount of content associated with deliberating this issue of protections for international organizations, a series of supplements are provided with this report to minimize the length of the Final Report:

- A - IGO-INGO_Minority_Positions.PDF
- B - IGO-INGO_FinalReport_ConsensusCall_02-Nov-2013.PDF
- C - IGO-INGO_PCRT_FinalReport_08-Nov-2013.PDF
- D - IGO-INGO_Identifier_List_RCRC.PDF

1.2 Deliberations of the Working Group

The Protection of IGO, INGO, IOC and RCRC Identifiers in All gTLDs Working Group started its deliberations on 31 October 2012 where it was decided to continue the work primarily through weekly conference calls, in addition to e-mail exchanges.

Section 4 provides an overview of the deliberations of the Working Group conducted both by conference calls as well as e-mail threads.

Section 4 also includes a brief summary of the ICANN General Counsel's survey of the protections provided to certain international organizations under international treaties and a sampling of national jurisdictions, prepared in response to specific questions submitted by the Working Group regarding whether there were any treaties or national laws that would prohibit the domain name registration of RCRC, IOC, IGO and/or INGO identifiers.

1.3 Background

Providing special protections for the names and acronyms of the RCRC, IOC, other INGOs, and for IGOs and from third party domain name registrations at the top and second levels of new gTLDs has been a long-standing issue over the course of the New gTLD Program.

The GAC has advised the ICANN Board to provide special permanent protections for the RCRC and IOC names at the top and second levels of new gTLDs, and special protections against inappropriate third party registration for the names and acronyms of IGOs at the second level of new gTLDs and at the top level in any future new gTLD rounds. In the case of IGOs, the GAC has further advised that the IGO names and acronyms "may not be acquired by any third party as a domain name at either the top or the second level unless express written permission is obtained from the IGO concerned¹."

A GNSO Issue Report was prepared by staff as a result of a recommendation from an IOC/ RCRC Drafting Team² formed to develop a possible response to the GAC about GNSO policy implications for granting protections of names.

¹ See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

² IOC / RCRC Protection DT Archive: <http://gns0.icann.org/en/group-activities/active/ioc-rcrc>

The GNSO Council considered the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and approved a motion to initiate a Policy Development Process (“PDP”) for the protection of certain international organization names and acronyms in all gTLDs. The Working Group (“WG”) was formed on 31 October 2012 and the WG Charter was approved by the GNSO Council on 15 November 2012. The decision was taken in this context to subsume the issues of the IOC and of the Red Cross and Red Crescent designations and names under the new Working Group and PDP process.

On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG.

Prior to and in parallel to the IGO-INGO WG, the NGPC adopted a series of resolutions to provide protections for the IOC and RCRC identifiers in Specification 5 of the approved Registry Agreement for New gTLDs following the GAC advice until any policy recommendations from the GNSO would require further and/or different action. A temporary placement of IGO identifiers, as supplied by the GAC, was also placed into Specification 5 of the agreement until further deliberations at the Buenos Aires meeting in Nov 2013 can occur.

1.4 Stakeholder Group / Constituency Statements & Public Comment Periods

The WG requested input from the GNSO Stakeholder Groups and Constituencies, as well as other ICANN Supporting Organizations and Advisory Committees. Further information on the community input received, as well as a brief summary of the positions submitted by IGOs and INGOs is available in Section 6.

1.5 Conclusions and Next Steps

This Final Report is being submitted to the GNSO Council for their consideration to determine what further actions to take. The IGO-INGO WG will follow the directions of the Council if any additional work is needed and/or if an Implementation Review Team is formed.

2. Objective

This Final Report on the Protection of IGO, INGO, IOC and RCRC Identifiers in all gTLDs PDP is being published pursuant to the GNSO Policy Development Process set forth under the ICANN Bylaws (see <http://www.icann.org/general/bylaws.htm#AnnexA>). The proposed policy recommendations for the protection of IGO and INGO (including RCRC and IOC) identifiers in all gTLDs presented in this Final Report also contain the Working Group Chair's assessment on the levels of consensus. The objective of this Final Report is to present the policy recommendations to the GNSO Council for further consideration and action.

3. Working Group Recommendations

This section contains the Working Group's (WG) recommendations on the protections of IGO-INGO identifiers in all gTLDs. Each recommendation is presented per organization type [i.e. Red Cross Red Crescent (RCRC), International Olympic Committee (IOC), other International Non-Governmental Organizations (INGO), and International Governmental Organization (IGO)]. A set of general recommendations not attributed to any specific organization is also included. Within each organization type, the WG considered varying levels of protection independently. Given the complexity of identifiers and the scope of the protections considered, the recommendations are presented in a chart for ease of review. A set of definitions, consensus scale per Working Group Guidelines, and Consensus Call legends are also listed below and should be considered when reviewing the chart of recommendations.

Identifier Definitions:

- **Identifier** - The full name or acronym used by the organization seeking protection; its eligibility is established by an approved list.
- **Scope** – the limited list of eligible identifiers distinguished by type (name or acronym) or by additional designations as agreed upon and indicated in the text below; may also include lists approved by the GAC (where this is the case it is expressly indicated as such in the text below).
- **Language** – The scope of languages for which a Latin-script identifier is to be protected.

Consensus Scale:

Each recommendation will include a corresponding level of consensus as agreed to by the WG. The consensus scale documented here is an extract from the GNSO Working Group Guidelines³.

- **Full Consensus** - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus.
- **Consensus** - a position where only a small minority disagrees, but most agree. **
- **Strong Support but Significant Opposition** - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it. **
- **Divergence** (also referred to as No Consensus) - a position where there isn't strong support for any particular position, but many (two or more) different points of view. Sometimes this

³ GNSO WG Guidelines: <http://gns0.icann.org/council/annex-1-gns0-wg-guidelines-08apr11-en.pdf>

is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.**

****Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a Consensus, Strong support but significant opposition, and Divergence (i.e., No Consensus); or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

Note: The WG decided to only include recommendations that received at least ‘strong support but significant opposition’ in its recommendations in Sections 3.1 to 3.5. Unsupported proposals (i.e., those where there was divergence of support or no consensus) are shown in Section 3.6.

Consensus Call Submissions Legend:

The following legend shows the individuals and groups that participated in the WG’s final consensus call. For each recommendation in Sections 3.1 to 3.5, GNSO Groups that did not support the recommendation are names and in some cases their rationale is provided. Consensus call detailed responses can be found in the Consensus Call Supplement (PDF) provided with this report⁴.

- PI (individual): Submitted by Poncelet Ileleji – 27 Aug 2013
- ISO,IEC: Submitted by Claudia MacMaster Tamarit – 28 Aug 2013
- IGOs: Submitted by Sam Paltridge – 3 Sep 2013
- RCRC: Submitted by Stephane Hankins – 3 Sep 2013
- IOC: Submitted by James Bikoff – 3 Sep 2013
- RL (individual): Submitted by Mike Rodenbaugh – 3 Sep 2013
- ALAC: Submitted by Alan Greenberg – 3 Sep 2013
- RySG: Submitted by David Maher – 3 Sep 2013
- NCSG: Submitted by Avri Doria – 3 Sep 2013
- IPC: Submitted by Greg Shatan – 4 Sep 2013
- ISPCP: Submitted by Osvaldo Novoa – 11 Sep 2013
- RrSG: Did not submit
- CBUC: Submitted by Steve DelBianco – 2 Nov 2013

⁴ At the time of writing this report, the final URL for the Final Report had not been established. Additional supplements to this report are also provided in PDF format and can be found in the IGO-INGO webpage: <http://gnso.icann.org/en/group-activities/active/igo-ingo>

Minority Positions:

Several minority statements were filed for this set of recommendations and they can be found as supplement PDFs provided with this Final Report. The minority position statements are provided as supplements⁵ to allow stakeholders additional time in which to submit new statements or revisions due to the deadline for submitting motions and documents to the GNSO Council. Each minority position filed lists the group represented and the person that filed it.

Minority Positions Filed as PDF Supplements to this Final Report:

- A - IGO-INGO_Minority_Positions.PDF

Summary Positions for the four organization types are also included in Section 6.4 of this Report:

- Red Cross and Red Crescent, P.64, 65
- International Olympic Committee P.65
- International Governmental Organizations P.65
- International Non-Governmental Organizations P.65, 66

⁵ At the time of writing this report, the final URL for the Final Report had not been established. Additional supplements to this report are also provided in PDF format and can be found in the IGO-INGO webpage: <http://gns0.icann.org/en/group-activities/active/igo-ingo>

3.1 Red Cross Red Crescent Movement (RCRC) Recommendations⁶

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers⁷: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers⁸: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)^{***} 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG does not support
2	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ⁹	Consensus NCSG does not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement	Consensus NCSG does not support
4	For <i>Red Cross Red Crescent Movement</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹⁰	Consensus NCSG does not support
5	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH)**	Consensus NCSG supports, but with some opposition within the SG

⁶ The RCRC provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "A - IGO-INGO_Minority_Positions.PDF".

⁷ The Scope 1 identifiers for RCRC are already placed on the reserved list:
<http://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>

⁸ The RCRC has provided a list of the Scope 2 identifiers via a supplement to this final report. See the "I - IGO-INGO_Identifier_List_RCRC.PDF"

⁹ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹⁰ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers⁷: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers⁸: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)^{***} 	
6	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are bulk added as a single list to the Trademark Clearinghouse**</p>	<p>Consensus NCSG supports, but with some opposition within the SG</p>
7	<p><i>Red Cross Red Crescent Movement</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch</p>	<p>Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG</p>
8	<p><i>Red Cross Red Crescent Movement</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u>¹¹ phase of each new gTLD launch for Second-Level registrations</p>	<p>Consensus NCSG supports, but with some opposition within the SG</p>

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

*** Scope 2 Identifiers contain both full name and acronyms. The distinction is that Scope 1 identifiers are based on a list provided by GAC advice, while Scope 2 names were additionally requested by the RCRC.

¹¹ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice, as distinct from the Trademark notices, may be required.

3.2 International Olympic Committee (IOC) Recommendations

#	Recommendation	Level of Support
○ Scope 1 Identifiers: olympic, olympiad (Language: UN6, + German, Greek, and Korean)**		
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus ALAC, NCSG do not support
2	For <i>International Olympic Committee</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ¹²	Consensus ALAC, NCSG do not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Olympic Committee</i> are placed in Specification 5 of the Registry Agreement	Consensus ALAC, NCSG do not support
4	For <i>International Olympic Committee</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹³	Consensus ALAC, NCSG do not support

** Note that the IOC did not request protections for acronyms and therefore no recommendations are included within this set.

¹² This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹³ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

3.3 International Governmental Organization (IGO) Recommendations¹⁴

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List¹⁵ (22 March 2013) - Full Name (Language: Up to two languages¹⁶) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG does not support
2	For <i>International Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ¹⁷	Consensus ALAC, NCSG do not support
3	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement	Consensus NCSG does not support
4	For <i>International Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ¹⁸	Consensus NCSG does not support
5	Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse	Strong Support but Significant Opposition NCSG does not support; IPC only support where acronym is primary identifier for the entity

¹⁴ The IGO coalition has provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "C - IGO-INGO_Minority_Positions.PDF".

¹⁵ List of IGO Identifiers from GAC Advice: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

¹⁶ The IGO Representatives collaborating with the GAC shall provide a list of the two languages each organization prefers because ICANN may not be in a position to determine which languages to be reserved for each 190+ organizations. UN6 is the standard scope for which ICANN conducts translations.

¹⁷ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

¹⁸ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

#	Recommendation	Level of Support
<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List¹⁵ (22 March 2013) - Full Name (Language: Up to two languages¹⁶) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 		
6	<i>International Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG
7	<i>International Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> ¹⁹ phase of each new gTLD launch for Second-Level registrations**	Consensus NCSG, IGOs do not support

** Because of support to reserve Scope 1 names at the top and second levels, it is not necessary to list Scope 1 names for any of the TMCH recommendations for second level protections.

¹⁹ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice as distinct from the Trademark notices may be required.

3.4 International Non-Governmental Organizations (INGO) Recommendations²⁰

#	Recommendation	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List²¹ (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>	
1	Top-Level protections of <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"	Consensus NCSG, CBUC do not support
2	For <i>International Non-Governmental Organizations</i> Identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level , an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level ²²	Consensus NCSG does not support
3	For <i>International Non-Governmental Organizations</i> identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level ²³	Consensus NCSG does not support
4	Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 (unless otherwise reserve protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse (TMCH) ²⁴	Consensus NCSG supports, but with some opposition within the SG

²⁰ The INGOs provided a minority position statement regarding recommendations that did not achieve a level of consensus. The statement is provided as a PDF supplement to this report labeled, "D - IGO-INGO_Minority_Positions.PDF".

²¹ The IRT will need to determine how this list is managed as new organizations enter the list. How will ICANN be notified of changes? How is the protection implemented when an organization's string exceeds 63 characters?

²² This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

²³ This recommendation depends on identifiers being reserved. If no support is determined for reservation protection, this recommendation is not required.

²⁴ The concept of bulk addition into the TMCH was to minimize cost associated with entry and validation. However, the Scope 2 names exceed 2000+ organizations. The IRT will need to determine how contact

#	Recommendation	Level of Support
<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List²¹ (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>		
5	<i>International Non-Governmental Organizations</i> Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>Sunrise</u> phase of each new gTLD launch	Strong Support but Significant Opposition RySG, does not support; NCSG supports, but with some opposition within the SG
6	<i>International Non-Governmental Organizations</i> Scope 1 (unless otherwise protected) & Scope 2 identifiers, if added to the TMCH, allowed to participate in <u>90 Day Claims Notification</u> ²⁵ phase of each new gTLD launch for Second-Level registrations	Consensus ISPCP support scope 1 only; NCSG support, but with some opposition within the SG

information required for TMCH forms be acquired and validated for bulk entry. Note that voluntary submission requests into TMCH will require backend validation of eligibility.

²⁵ If IGO-INGO identifiers are to utilize the Claims service, both WG deliberation and public comments noted that a separate claims notice as distinct from the Trademark notices may be required.

3.5 General Recommendations

The following general recommendations are not attributed to any particular organization seeking protection, but rather they are presented to apply to all organizations seeking protection as applicable.

#	Recommendation	Level of Support
1	Top-Level protections of Exact Match, Acronym identifiers are placed in Applicant Guidebook section 2.2.1.2.3, of the Applicant Guidebook, Strings "Ineligible for Delegation"	Consensus Against ²⁶ (refer to rec#4) IGO supports ²⁷ ; BC Supports for RCRC
2	Second-Level protections of Exact Match, Acronym identifiers are placed in Specification 5 of Registry Agreement	Consensus Against (refer to rec#4) IGO supports
3	The WG recommends that the respective policies are amended so that curative rights of the UDRP and URS can be used by those organizations that are granted protections based on their identified designations.	Consensus NCSG supports, but with some opposition within the SG
4	The WG recommends that the GNSO Council task the Standing Committee on Improvements (SCI) to review the Consensus levels as defined in the Working Group Guidelines ²⁸ .	Full Consensus

²⁶ It was decided that this level of designation be used for recommendations 1 & 2 because a specific action will be required to remove acronyms of RCRC and IGO identifiers from the current Specification of 5 of the new gTLD Registry Agreement.

²⁷ The WG participants that supported this proposal represent a number of additional IGOs that favor this position; for further reference, see the IGO's Minority Statement in the Minority Positions supplement A (A - IGO-INGO_Minority_Positions.PDF).

²⁸ This WG experienced a possible limitation in the currently defined Consensus Levels when assigning "Divergence" to recommendations regarding acronym protections (see recs. #1 and #2 of the General Recommendations now assigned with "Consensus Against"). The use of "Divergence" did not adequately represent the lack of support for the proposed recommendation when said recommendation was stated in the affirmative, for example "Do you support..?". The Chair was equally concerned about not adhering to current Working Group Guidelines could introduce risk to the process, because "Consensus Against" is not formally defined. Note this recommendation for an SCI review was not part of the formal consensus call within the WG, but full support was determined via WG conference calls.

3.6 Unsupported Proposals

The following protection proposals did not achieve a sufficient level of support among the WG (i.e., did not receive at least ‘strong support with significant opposition’). A rationale is provided for each.

On the next few pages, the proposals listed per organization seeking protection were originally used during the consensus call and did not receive adequate support to submit as a recommendation. Essentially, any of the proposals that refer to acronym protection are addressed within the first and second General Recommendations (#1 & #2) in Section 3.5. They are placed here as an aid to consider all the protections considered for each organization. The IOC is not listed because their set of recommendations received consensus levels of support.

3.6.1 Red Cross Red Crescent Movement:

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)*** 	
1	<p>Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence²⁹</p> <p>The WG had established the eligibility criteria as based on the GAC advice and thus defined the the Scope 2 names which were not included within GAC advice</p>
2	<p>Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence</p> <p>ISO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Addressed via 3.5 General Recommendations #1&2 with "Consensus Against" on reservation protections of acronyms at top and second levels.</p>
3	<p>Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence³⁰</p> <p>The WG had established the eligibility criteria as based on the GAC advice and thus defined the the Scope 2 names which were not included within GAC advice</p>

²⁹ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

³⁰ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (Language: UN6) ○ Scope 2 Identifiers: 189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (Language: in English, as well as in their respective national languages; ICRC & IFRC protected in UN6)*** 	
4	<p>Second-Level protections of only <u>Exact Match</u>, <u>Acronym</u> Scope 2 identifiers of the <i>Red Cross Red Crescent Movement</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Addressed via 3.5 General Recommendations #1&2 with "Consensus Against" on reservation protections of acronyms at top and second levels.</p>

3.6.2 International Olympic Committee:

All four recommendations for the IOC achieved consensus by the WG

3.6.3 International Governmental Organizations:

#	Proposal	Level of Support
	<ul style="list-style-type: none"> ○ Scope 1 Identifiers: GAC List³¹ (22 March 2013) - Full Name (Language: Up to two languages) ○ Scope 2 Identifiers: GAC List (22 March 2013) - Acronym (Language: Up to two languages) 	
1	<p>Top-Level protections of <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP, CBUC do not support</p> <p>The WG determined that reservation of acronyms would grant a right superior to that of non-governmental organizations or individuals.</p>
2	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 2 identifiers of the <i>International Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement</p>	<p>Divergence ISO, ALAC, RySG, NCSG, IPC, ISPCP, CBUC do not support</p> <p>The WG determined that reservation of acronyms would grant a right superior to that of non-governmental organizations or individuals.</p>

³¹ List of IGO Identifiers from GAC Advice: <http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

3.6.4 International Non-Governmental Organizations:

#	Proposal	Level of Support
<ul style="list-style-type: none"> ○ Scope 1 Identifiers: ECOSOC List (General Consultative Status) (Language: English only) ○ Scope 2 Identifiers: ECOSOC List (Special Consultative Status) (Language: English only) <p>***Note, this list of Identifiers are INGOs other than the RCRC and IOC See http://csonet.org/content/documents/E2011INF4.pdf</p>		
1	<p>Top-Level protections of <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"</p>	Divergence ³²
2	<p>Second-Level protections of only <u>Exact Match, Full Name</u> Scope 1 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement</p>	Divergence RySG, NCSG, IPC do not support
3	<p>Second-Level protections of only <u>Exact Match, Full Name</u> Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are placed in Specification 5 of the Registry Agreement</p>	Divergence ³³
4	<p>Second-Level protections of only <u>Exact Match, Acronym</u> Scope 1 (unless otherwise protected) & Scope 2 identifiers of the <i>International Non-Governmental Organizations</i> are bulk added as a single list to the Trademark Clearinghouse</p>	Divergence RySG, IPC, ISPCP do not support; NCSG supports, but with some opposition within SG The WG had established the eligibility criteria as based on the GAC advice and thus defined the Scope 2 names which were not included within GAC advice

³² This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

³³ This specific recommendation was not a part of the formal consensus call because consensus was gauged from a general recommendation on acronyms and scope 2 identifiers.

Alternative Qualification Criteria for INGOs (not including RCRC and IOC) that was considered but not adopted by the WG:

The following criteria were considered as possible qualification criteria for INGOs which can demonstrate being granted privileges, immunities, or other protections in law on the basis of their quasi-governmental international status, public missions and legal protection for their names.

While there was some support, the WG did not adopt these criteria. Some reasons included issues of potential subjectivity and the need for case-by-case evaluation.

1. The INGO benefits from some privileges, immunities or other protections in law on the basis of the INGO's proven (quasi-governmental) international status;
2. The INGO enjoys existing legal protection (including trademark protection) for its name/acronym in over 50+ countries or in three (of five) ICANN regions or alternatively using a percentage: more than 50% of the countries;
3. The INGO engages in recognized global public work shown by:
 - a. inclusion on the General Consultative Status of the UN ECOSOC list, or
 - b. membership of 50+ national representative entities, which themselves are governmental/ public agencies or non-governmental organizations that each fully and solely represent their respective national interests in the INGO's work and governance.

3.6.5 General Proposals:

#	Proposal	Level of Support
1	IGO-INGO organizations be granted a fee waiver (or funding) for objections filed against applied-for gTLDs at the Top-Level	<p>Divergence RySG, IPC, ISPCP, BC do not support; NCSG supports, but with some opposition with the SG</p> <p>In general, opposition to this proposal recognized that the GAC will be able to file objections on behalf of IGOs, RCRC and IOC. It was also determined that if fee waivers were granted, other stakeholders will still subsidize the cost.</p>
2	Fee waivers or reduced pricing (or limited subsidies) for registering into the Trademark Clearinghouse the identifiers of IGO-INGO organizations	<p>Divergence IGO, ALAC, RySG, IPC, ISPCP do not support; NCSG Support, but with opposition</p> <p>The support for the recommendation(s) to bulk-add protected organizations into the TMCH reduced the need for this recommendation. Further, subsidy of pricing extended an additional right over other TMCH participants.</p>
3	IGO-INGOs allowed to participate in <u>permanent Claims Notification</u> ³⁴ of each gTLD launch	<p>Divergence IGO, ALAC, RySG, NCSG, IPC, ISPCP do not support</p> <p>Many members of the WG felt that extending permanent claims protections to IGO-INGOs granted additional rights.</p>
4	Fee waivers or reduced pricing for IGO-INGOs filing a URS or UDRP action	<p>Divergence ALAC, RySG, IPC, ISPCP do not support; NCSG supports, but with some opposition within SG</p> <p>Subsidy of pricing extended an additional right over other TMCH participants.</p>

³⁴ Present TMCH implementation of the Claims Notification service is defined to last for at least a 90 day period. WG deliberations considered, but eventually reject the notion of a permanent notification service to compensate where a reserved name protection may not be granted. Permanent notification is defined as a notification services that exists indefinitely.

3.7 Implementation Considerations of Recommendations on Incumbent gTLDs

This section suggests some implementation principles for gTLDs delegated prior to 2012 if there are any consensus policies approved from this PDP.

From IGO-INGO Charter:

“...determine how incumbent registries should meet the new policy recommendations, if any.”

Scope and Assumptions:

- Existing gTLDs Only (Delegation pre-2012)
- Only second-level proposed protection recommendations apply
- Assumes that the present WG recommendations are supported and adopted for new gTLDs

Principles of Implementation³⁵:

- Any policies adopted for new gTLDs shall apply equally to existing gTLDs to the extent they are relevant (for example second-level IGO-INGO protections utilizing TMCH, sunrise, claims will not apply) and do not infringe on the existing rights of others.
- An Implementation Review Team (IRT) should be formed to collaborate as required with ICANN staff and the GNSO Community to implement applicable consensus policies for incumbent gTLDs.
- For clarification purposes, second-level names matching a protected identifier, as identified via any consensus policies defined here, and that are not registered within an existing gTLD, shall be immediately reserved from registration in the same manner as for new gTLDs.
- Due to the time lag between the date the Working Group and GNSO Council adopts recommendations, if any, and the date the recommendations are implemented, there is a possibility of front-running, whereby some identifiers not previously registered could be registered by parties before the policy is in effect. A mechanism to guard against front-running should be defined, such as establishing the date these recommendations were adopted by the Working Group or GNSO Council as the measurement date that determines how a domain name matching a protected identifier is treated. This should be implemented as soon as practically possible.
- A second-level registration within an existing gTLD that matches a protected identifier, as identified via any consensus policies defined here, and the registration of said name, if registered prior to implementation of protections or any such cutoff date as may be determined, shall be handled like any existing registered name within the incumbent gTLD regarding renewals, transfers, sale, change of registrant, etc.

³⁵ At the time of this report, the WG awaits specific feedback with regards to the principle of implementation. To make at the specific deadline, the WG agrees to refer these principles to the Implementation Review Team.

- The previous point notwithstanding, if a second-level name that matches a protected identifier, as identified via any consensus policies defined here, it may not be transferred to a new registrant after expiration under registration agreement terms which would otherwise allow a registrar to, on its own accord, auction, sell or otherwise effect a change of registrant. Such registrations, if not renewed by the Registrant at Expiration (as defined in the Expired Registration Recovery Policy) must be deleted by the registrar after the termination of any renewal grace periods. At the time the name completes eligible grace periods and becomes eligible for deletion, the name shall not be reallocated by the Registry and shall be deemed ineligible for registration per the defined policy.
- Where policy changes to recover protected identifiers of registered second-level names within an existing gTLD deviate from current policy, registry & registrar indemnification should be considered.
- For clarification purposes, second-level names matching a protected identifier that are also registered by a party other than the protected organization and bad faith use vis-à-vis the protected organization is suspected, the protected organization may have access to RPMs like the UDRP, pending a PDP to address how the IGO-INGO organizations may access RPMs.

3.8 Proposed Options for Exception Procedure

The WG developed two high-level options for exception procedures that are not necessarily mutually exclusive and requested feedback on these options in the public comment period.

Option 1

Goal: Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration³⁶.

General Principles - The procedure must:

- Provide immediate notification to the applicant and the protected organization when a registration request is refused registration because an identifier is protected;
- Provide a channel of communication between the applicant and the protected organization, including for purposes of any assessment an agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest so that its registration request can proceed to registration;
- Use existing dispute resolution procedures where possible.

Outline of Proposed Procedure:

This procedure had been developed at a time when the WG's recommendations were not formulated. The WG notes that implementation of an exception procedure will require further development that aligns with any adopted recommendations for protection.

1. Notification of Conditional Refusal Based on Protected Name.

The potential registrant and protected organization will receive immediate electronic notification if an applied-for second level domain is conditionally refused registration because of a Protected Name on a Modified Reserved list or in the Clearinghouse if applicable.

2. Declaration of Legitimate Use.

Each protected organization must record and maintain accurate contact information with the Clearinghouse (or other coordinating body) designating a recipient and email address to be notified electronically.

³⁶ Some members have expressed concern with the operability of process-heavy exemption procedures that may have a great potential to impede rights and legitimate interests unduly. Further, misuse of licensing opportunities could be a potential issue as well.

- Within ten (10) days of receiving a conditional refusal, an applicant may file a declaration with the Registry. The declaration must identify the potential registrant accurately, provide accurate contact information, and state that the potential registrant has a good faith, legitimate interest in using the domain name that does not violate any treaties, national laws or other legal entitlement of the protected organization. A standard form will be provided. The protected organization will receive a copy of the declaration electronically at its given address when the declaration is filed with the Registry.
- If, within ten (10) days after receipt of the above declaration, the protected organization does not file an objection with the Registry, the subject application will proceed to registration.
- If, within ten (10) days after receipt of the above declaration, the protected organization files an objection with the Registry, the conditional refusal will be reviewed by an independent examiner (definition and implementation still to be considered).

3. Examination.

The examination procedure must comply with the principles above. It must:

- Be objective;
- Give both parties the opportunity to be heard;
- Be expeditious; and
- Be inexpensive; and
- Use existing processes whenever possible.

Option 2

Goal: Where a potential registrant claims a legitimate interest in a second-level domain name that is reserved from registration in the Registry Agreement, the goal is to provide a procedure for determining whether the application should proceed to registration.

General Principles: The procedure must:

- Provide immediate notification to the potential registrant and the protected organization when a registration request is refused registration because a name is protected;
- Provide a channel of communication between the potential registrant and the protected organization, including for purposes of any assessment an agreement which may be forthcoming from the protected organization itself at first instance;
- Provide an objective, expeditious, and inexpensive process for determining if the applicant has a legitimate interest so that its registration request can proceed to registration;
- Use existing dispute resolution procedures where possible.

Outline of Proposed Procedure:

An entity with a name in the Clearinghouse Model could be allowed to register that name if the entity committed to prevent confusion with the corresponding protected IGO/INGO identifier.

4. Deliberations of the Working Group

The Protection of IGO and INGO Identifiers in all gTLDs WG began its deliberations on 31 October 2012 by reviewing the WG Charter which is included in Annex 1 of this report. The team also prepared a work plan³⁷, which was reviewed on a regular basis. It outlines key deliverable work products used in research and analysis of the issues defined in the charter as well as how charter issues were handled. In order to facilitate the work of the constituencies and stakeholder groups, a template was developed that was used to provide input in response to the request for constituency and stakeholder group statements (see Annex 3). This template was also used to solicit input from other ICANN Supporting Organizations and Advisory Committees early on in the process. Section 5 of this report provides the community input responses and a short summary.

4.1 Initial Fact-Finding and Research

In addition to soliciting community input, the WG formed five sub-teams to conduct an analysis of the nature of the problem, qualification criteria, eligibility process, admissions, and protections. A matrix³⁸ was developed to document the attributes of each analysis with comparisons across the four groups of organizations (i.e., IGOs, RCRC, IOC, and other INGOs) seeking protection. In addition, ICANN's General Counsel Office (GCO) was requested to research and report whether it is aware of possible legal prohibitions with respect to registration of domains using the identifiers of these organizations. The next five sub-sections will provide details of each sub-team's findings followed by a summary from the GCO.

4.1.1 Nature of the Problem

This sub-team's task was to review the specific problems that would be addressed if any protections were to be implemented. Sub-topics reviewed included costs of combating infringement and abuse, infringement on public good, discussion of existing Rights Protection Mechanisms (RPMs) and/or due process in applicable law. In principle, it is understood by all WG members that use of domain

³⁷ IGO-INGO WG Work Plan: <https://community.icann.org/display/GWGTCT/Work+Plan+Drafts>

³⁸ Analysis Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Work+Package+Drafts>

names with malicious intent is a recognized problem within the DNS. However, views on the degrees of harm suffered by the organizations seeking protection varied in the WG's deliberations. One view discussed whether such harm needed to be first proved prior to granting any protections or whether it was sufficient to only presume harm. Conversely, views were expressed that whether the harms exists is not relevant, but when harm is detected, resources that would otherwise be earmarked for an organization's public interest mission are otherwise diverted to deal with such harm.

As mandated by the Charter and in order to provide more information to aid the WG's deliberations for this issue of establishing qualification criteria for special protection of international organization identifiers, the WG asked representatives from the IOC, RCRC and IGOs to provide evidence of abuse of their respective organization's identifiers by third-party domain name registrations. A series of content sources came from prior policy reports, direct submissions from organizations seeking protection and WG analysis tools. Links to the submissions reviewed can be found at the IGO-INGO Wiki Page³⁹. Concurrently, ICANN staff also compiled a sampling of domain name registrations⁴⁰ of RCRC, IOC and IGO identifiers.

4.1.2 Qualification Criteria

The Qualification Criteria (QC) sub-team reviewed qualitative and quantitative attributes of how organization(s) may qualify for protections of their respective identifiers. Such attributes include how the organizations in question are protected by treaty or national law, and whether the quantity of jurisdictions providing protection had relevance to the scope and limitations of protection mechanisms. Access to current RPMs, not-for-profit status, nature of public mission, and duration of existence were other attributes explored.

The overall intent of the WG was to establish a set of objective criteria that was also stringent enough to appropriately limit the number of organizations that may qualify. WG deliberations

³⁹ Abuse evidence: <http://community.icann.org/pages/viewpage.action?pageId=40931994>

⁴⁰ Sampling of registrations: <http://community.icann.org/display/GWGTCT/IGO-INGO+Registration+Evaluation+Tool>

regarding qualification criteria confirmed that it was not possible to develop a single set of criteria applicable to all four types of organizations that most WG members would support. While being different from each other in many respects, the IOC and RCRC may be differentiated from other INGOs on the basis of the unique legal protections they and their respective designations are afforded under a framework of international treaties and national laws in multiple jurisdictions. IGOs have been differentiated from INGOs on the basis of the types of legal protections they are afforded.

With the GAC's advice in its Beijing Communiqué, the scope of special protections for IGOs combined with the special protections previously provided to the IOC and RCRC became much more defined. However, as of the date of the Beijing Communiqué, the issue of possible special protections for INGOs other than the RCRC and IOC had not been addressed outside of the PDP WG and so, as mandated by the WG Charter, it was deliberated on. Entry on the Economic and Social Council (ECOSOC) list was the latest criterion considered for recommendations by the WG; all alternatives are provided later in this report.

4.1.3 Eligibility Process

The Eligibility Process sub-team sought to delineate and understand who would be tasked with determining whether an organization seeking special protections would meet the specified qualification criteria, and how this process would take place. Initial discussions leaned toward a neutral entity that would make such determinations, but the sub-group again stressed the importance of an objective set of qualification criteria. Ultimately it was determined, eligibility for protections was tightly coupled with qualification criteria and, if any special protections were to be implemented, likely exception procedures would have to be created.

4.1.4 Admissions

Essentially, the Admissions sub-team was tasked to determine if additional criteria to be afforded protections were needed after an organization met the qualification criteria and eligibility checks. Deliberations among the sub-team revealed the challenge of balancing various criteria versus categories of criteria defined in the previous sections. The sub-team concluded that admissions are

tightly coupled to qualification criteria and the eligibility process and noted this distinction was not necessary.

4.1.5 Protections

The last sub-team was formed to review the types of protections that may be available to IGOs and INGOs. The following preventative and curative protection mechanisms were reviewed:

- Reserved Names list: is classified as a preventative mechanism whereby predetermined strings are placed on a list from which no such string is available for registration. Existing registry agreements have varying rules of reservation within the Schedules of Reserved Names. The New gTLD Registry Agreement contains a Specification 5, also titled “Schedule of Reserved Names,” that was established as a reserved names template for the large quantity of new gTLDs anticipated for delegation. With respect to reservations at the top-level, the Applicant Guidebook also contains a series of strings that are reserved or ineligible for delegation.
- Modified Reserved Names list: is essentially the same as the Reserved Names list mentioned above, however, an exemption procedure at both the top and second levels may be required to allow for registration by the organization seeking protection or a legitimate rights holder to the same string. The nomenclature of “Modified Reserved Names list” is a concept not currently implemented as it is used in this context. However, for the gTLDs that are already delegated and that have a Schedule of Reserved Names, the Registry Services Evaluation Process (RSEP) can be utilized to gain approval for allowing registration of a string, resulting in this modified list. Additionally, existing registry agreements have an exception procedure for 2-character second-level names, which also utilizes the RSEP.
- Trademark Clearinghouse, Sunrise, and Claims: are a series of new Rights Protection Mechanisms (RPMs) designed for the New gTLD Program. They are viewed as preventative measures in protecting word marks. These are currently being implemented to support second-level registration of strings upon a new gTLD’s delegation. Note that as part of the recommendation options presented in this Initial Report, the term “Clearinghouse Model” is used in the context of the likely need for similar features of the TMCH, but also available for use by IGOs and INGOs that typically do not have registered trademark names.

- UDRP and URS: Uniform Dispute Resolution Process (UDRP) and Uniform Rapid Suspension (URS) are additional RPMs that are considered curative measures and used only after the registration of a domain name. Both RPM mechanisms will be available with the new gTLDs.
- Do not sell lists: contain names blocked from registration according to the internally defined policy of the Registry Operator of a given gTLD. Some applicants are choosing to deploy additional protections for certain types of names, but only as defined by their respective Registry policies.
- Limited Preventative Registrations: a proposed mechanism that has been considered for trademark owners to prevent second-level registration of their marks (exact matches, plus character strings previously determined to have been abusively registered or used) across all gTLD registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

4.1.6 Summary of ICANN's General Counsel's Office Survey

Parallel with the activities mentioned above, the Charter required the WG to evaluate the scope of existing protections under international treaties and national laws for IGO, INGO, RCRC and IOC Names. In order to do so, the WG requested ICANN's General Counsel to conduct research and report on whether ICANN is aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- a) the assignment by ICANN at the top level, or
- b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization (INGO) receiving protections under treaties and statutes under multiple jurisdictions

The WG requested the General Counsel to specify the jurisdiction(s) and cite the law if the answer to either of these questions was affirmative.

Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from all five ICANN geographic regions. The trend found in the General Counsel's Research Report is that "there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar's role in the delegation of top-level domains or in the registration of second-level domains.

Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrar are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.”

The research also found that, “nearly all of the sampled jurisdictions (representing all ICANN geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain names. The exact terms that are protected in each jurisdiction vary. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.”

“For the names and acronyms of IGOs, ICANN’s research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.”

“In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as

a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain.”

A copy of the General Counsel’s Research Report is included in Annex 5.

4.2 Working Group Charter Deliberations

Charter Issue 1

Whether there is a need for special protections at the top and second level in all existing and new gTLDs for the names and acronyms of the following types of international organizations:

International Governmental Organizations (IGOs) protected by international law and multiple domestic statutes, International Non-Governmental Organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC), and as the International Olympic Committee (IOC). In deliberating this issue, the WG should consider the following elements:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/National Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

This issue was first addressed by the request for legal research as noted in Section 4.1 and Annex 5. Secondly, the WG performed the critical task of reviewing the qualification criteria which is documented in the work package mentioned in Section 4.1. It became evident from the WG deliberations that it was not possible to develop a single framework of qualification criteria that most of the WG would support given the different nature of IGOs, the RCRC, IOC and other INGOs. Further, the WG determined that the IOC and RCRC did differ from other INGOs given their unique legal standing compared to other INGOs. The scope of the qualification criteria for IGOs became defined and quantified by the list of IGO organizations eligible for protection submitted by the GAC; and for the RCRC and IOC by both the GAC’s and ICANN Board’s recognition of the international

legal protections for the IOC and RCRC. Conversely, as noted in the proposed recommendations, other INGO organizations have a set of proposed qualification criteria that relate to the ECOSOC list.

Charter Issue 2

If there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to develop policy recommendations for such protections. Specifically, the PDP WG should:

- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for the appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

This charter issue has been addressed by the WG's creation and deliberation about the issues identified in the IGO-INGO Protection Matrix tool⁴¹ and using other work products which can be found on the ICANN Wiki. Details of the proposed recommendation options can be found in Sections 5 below.

⁴¹ IGO-INGO Protection Matrix: <https://community.icann.org/display/GWGTCT/IGO-INGO+Protections+Matrix>

5. Background

This section contains a sequential description of the key events of the IGO-INGO WG. For a detailed background and history of the issue prior to the initiation of this PDP, please see the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs⁴² (“Final Issue Report”). The Issue Report was initiated as a result of a recommendation by a 2012 Drafting Team formed to provide a GNSO response to the GAC request on the Protection of IOC and RCRC names⁴³. After community review, the scope of the Final Issue Report included an evaluation of whether to protect the names of both intergovernmental and non-governmental organizations at the top level and second level in all gTLDs.

Upon receiving the Final Issue Report, the GNSO Council approved a motion to initiate a Policy Development Process for the protection of certain International Organization Names in all gTLDs. The PDP Working Group was formed 31 October 2012 and its Charter was approved by the GNSO Council on 17 November 2012.⁴⁴

At its 26 November 2012 meeting, the ICANN Board’s New gTLD Program Committee (“NGPC”) adopted a resolution to protect, on an interim basis, certain IGO names and acronyms based on .int registration criteria at the second level of the initial round of new gTLDs, by including these names on the Reserved Names list; and for the GNSO to continue its policy development efforts on the protection of IGO names. It also requested advice from the GNSO Council about whether to include second-level protections for certain IGO names and acronyms by inclusion on a Reserved Names List as presented in section 2.2.1.2.3 of the Applicant Guidebook for the initial round of new gTLDs.⁴⁵

⁴² Final Issue Report: <http://gns0.icann.org/en/node/34529>. Further background information in this regard may be found in the various submissions made to the Working Group by various IGOs, the IOC and the RCRC

⁴³ IOC / RCRC Protection DT Archive: <http://gns0.icann.org/en/group-activities/active/ioc-rcrc>

⁴⁴ The GNSO Council Resolution for IGO-INGO PDP initiation:
<http://gns0.icann.org/en/council/resolutions#20121017-2>

⁴⁵ The ICANN Board Resolution and Rationale for the Protection of IGO names are posted at:
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm>

At the same meeting, the NGPC also adopted a resolution regarding the protection of RCRC and IOC names. The NGPC resolved that restrictions on the registration of RCRC and IOC names for new gTLDs at the second level (i.e., the IOC and RCRC names listed in the Reserved Names List under section 2.2.1.2.3 of the Applicant Guidebook applicable in all new gTLD registries approved in the first round of the New gTLD Program) will be in place until such time as a policy is adopted that may require further action.⁴⁶

On 20 December 2012, the GNSO Council adopted a resolution accepting the Drafting Team's recommendation to provide special protection for RCRC and IOC names at the second level of the initial round of new gTLDs in a manner consistent with the Board resolution to protect such names.⁴⁷

In response to the ICANN Board's request for advice on the protection of IOC/RCRC names, on 31 January 2013 the GNSO Council Chair sent a letter with its advice on this issue⁴⁸ to the ICANN Board and GAC. Although the GNSO Council did not dispute the advice provided by the GAC, it also recognized that the issue exceeded the scope of implementation by ICANN and required further policy development for a long-term approach/solution.

On 28 February 2013, the GNSO Council sent a letter⁴⁹ to the ICANN Board in response to the Board's request for advice on the temporary protection of IGO and INGO names in the first round. The GNSO Council made reference to the temporary protections of the IOC and RCRC names, and noted that the IGO-INGO PDP WG had not completed its work. The letter also noted a minority position that the global public interest could possibly be harmed by such temporary protections for IGO identifiers. The Council advised that the Working Group assigned to this issue will maintain its

⁴⁶ The ICANN Board Resolution and Rationale for the Protection of IOC/RCRC names are posted at: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-26nov12-en.htm#1>

⁴⁷ The GNSO Council Resolution for the Protection of IOC/RCRC names: <http://gns0.icann.org/en/council/resolutions#201212>

⁴⁸ GNSO Council letter of advice to the ICANN Board and GAC: <http://gns0.icann.org/en/correspondence/robinson-to-dryden-31jan13-en.pdf>

⁴⁹ GNSO Council letter of advice to the ICANN Board: <http://gns0.icann.org/en/correspondence/robinson-to-crocker-chalaby-28feb13-en.pdf>

sense of urgency to develop policy recommendations which the GNSO can provide to the ICANN Board with respect to the protection of names and identifiers of IGOs.

On 22 March 2013, the GAC submitted to the Board a list of 195 IGO names and acronyms to be protected at the second level in the first round of new gTLDs, and also indicated that the scope of languages for the names and acronyms to be protected remained to be determined.⁵⁰

During the ICANN Board/GAC joint session on 9 April 2013 in Beijing, the Board flagged a number of issues still to be addressed with regard to the protection of IGO identifiers, including languages to be protected and the mechanism envisaged for any periodic review of the list. The Board also expressed concern that certain acronyms listed for special protection include common words, trademarked terms, acronyms used by multiple organizations, and acronyms that are problematic for other reasons. The Board requested that the GAC clarify its advice with regard to the specific languages to be protected and the mechanism envisaged for any periodic review of the list, and flagged for consideration the issue of acronyms for which there may be competing claims. The Board indicated that clarification would be required to permit the Board to implement the GAC advice.⁵¹

In its 11 April 2013 Beijing GAC Communiqué, the GAC reiterated its advice to the ICANN Board that “appropriate preventative initial protection for the IGO names and acronyms on the provided list be in place before any new gTLDs would launch,” and noted that it “is mindful of outstanding implementation issues and commits to actively working with IGOs, the Board, and ICANN staff to find a workable and timely way forward pending the resolution of these implementation issues.”

With regard to the RCRC and IOC names, the GAC advised the ICANN Board to amend the provisions

⁵⁰ See Letter and Annexes from Heather Dryden to Steve Crocker and Cherine Chalaby:
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-22mar13-en>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex1-22mar13-en.pdf>
<http://www.icann.org/en/news/correspondence/dryden-to-crocker-chalaby-annex2-22mar13-en.pdf>

⁵¹ See Letter from Steve Crocker to Heather Dryden on IGO Name Protection:
<http://www.icann.org/en/news/correspondence/crocker-to-dryden-01apr13-en.pdf>

in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs⁵². The New gTLD Program Committee accepted the GAC advice. The proposed final version of the Registry Agreement, adopted 2 July 2013, included protection for an indefinite duration for IOC/RCRC names. Specification 5 of the Registry Agreement includes a list of names (provided by the IOC and RCRC Movement) that "shall be withheld from registration or allocated to Registry Operator at the second level within the TLD."

On 14 June 2013, the IGO-INGO Working Group submitted its Initial Report⁵³ on the protection of IGO-INGO identifiers for a 42 day public comment period. While the Working Group (WG) received several comments on the topic of protections for certain organizations, all the contributions received were from members of the IGO-INGO WG and as such the nature of those comments had already been discussed within the WG. The WG agreed that a review of the submissions, as shown in the public comment review tool, did not add new information to what was already considered by the members. Further, the Initial Report did not contain any formal policy recommendations and it was understood that a public comment period would be opened for the draft Final Report. Therefore, no summary of comments was provided for the IGO-INGO Initial Report. For an accurate reflection of positions submitted by WG members, please see their response in the archive.⁵⁴

In parallel to the public comment period for the Initial Report, the IGO-INGO WG hosted two face-to-face sessions in Durban for the ICANN 47 meeting (mid-July 2013). These WG meetings were used to discuss issues uncovered since the submission of the Initial Report and to also prepare for a session which utilized professional facilitators to conduct a planned interactive session to discuss the remaining critical issues that the WG faced. This session was intended to 1) raise awareness of why this issue is important and provide transparency on WG deliberations/contrasting positions to date;

⁵² Beijing GAC Communiqué: https://gacweb.icann.org/download/attachments/27132037/Beijing%20Communique%20april2013_Final.pdf?version=1&modificationDate=1365666376000&api=v2

⁵³ IGO-INGO Initial Report: <http://gnso.icann.org/en/issues/igo-ingo-initial-14jun13-en.pdf>

⁵⁴ Initial Report – Public Comment Page: <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

and 2) facilitate interactive discussion and solicit feedback from the community on key outstanding issues to help guide the WG in moving forward. However, very few community members participated in the interactive session thus producing little new information or suggestions to advance the WG's deliberations. As a result, the WG continued to refine its recommendations in preparation of the draft Final Report.

Prior to the Durban meeting in July 2013, the NGPC passed a resolution⁵⁵ that confirmed that appropriate preventive initial protection for the IGO identifiers, as a response to the GAC advice will continue to be provided as presented in the New gTLD Registry Agreement. Since then, the Registry Agreement⁵⁶ for New gTLDs has been approved by the NGPC and it can be found on the new gTLD site. The Registry Agreement continues to include a reference in Specification 5 to the reservations of IOC, RCRC, and IGO names, noting that the list of the reserved names is located in the Registries⁵⁷ section of ICANN.org. It should also be noted that the NGPC passed another resolution⁵⁸ extending these initial protections until the first meeting of the NGPC following the ICANN 48 Meeting in Buenos Aires or until the NGPC makes a further determination on the IGO GAC Advice, whichever is earlier.

The NGPC adopted temporary protections for acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR) at its most recent meeting on 10 September 2013. Also at the meeting, the NGPC agreed to accept the GAC's advice to continue working on a mechanism to protect the IGO acronyms. Refer to the [Durban Scorecard](#)⁵⁹.

⁵⁵ NGPC Resolution 2 July 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm>

⁵⁶ New gTLD RA: <http://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting>

⁵⁷ IOC, RCRC, IGO Reservation list: <http://www.icann.org/en/resources/registries/reserved>

⁵⁸ NGPC Resolution 17 Jul 2013: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-17jul13-en.htm>

⁵⁹ Durban Scorecard: <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>

The IGO-INGO WG submitted for [public comment its draft Final Report](#)⁶⁰ which contained the proposed recommendations and the WG's Chair assessment on the levels of consensus. Upon closure of the public comment period (1 Nov 2013), the WG review the public comments and determined changes to the Final Report as approved by the WG.

On 2 October 2013, the NGPC sent a [letter](#)⁶¹ to the GAC Chair regarding the GAC advice on the protection of IGO acronyms. The letter responded to GAC advice about a cost-neutral mechanism that would provide notification to an IGO when a Registrant registered a domain name matching the protected acronym identifier and to allow for a third party review of such a registration request. The draft proposal submitted to the GAC contained reference to designated acronyms being entered into the Trademark Clearinghouse and use of the 90 day Claims Notification Service. The proposal also discussed the use of a dispute resolution mechanism, the URS.

The IGO Coalition sent a [response](#)⁶² to the GAC about the NGPC proposal on 4 November 2013. The letter expressed reservations about the NGPC proposal stating that it did not create a presumption of protection and at best only curative and not preventative.

⁶⁰ IGO-INGO WG Draft Final Report PC: <http://www.icann.org/en/news/public-comment/igo-ingo-final-20sep13-en.htm>

⁶¹ NGPC Letter to GAC Chair: <http://www.icann.org/en/news/correspondence/crocker-to-dryden-02oct13-en.pdf>

⁶² IGO Coalition Letter to GAC: <http://www.icann.org/en/news/correspondence/igo-coalition-to-gac-01nov13-en.pdf>

5.1 Protections Available to IGOs and INGOs Under the Current Version of the Applicant Guidebook (AGB)

In addition to the protections adopted by the ICANN Board for the IOC and RCRC names at the top level under section 2.2.1.2.3 of the Applicant Guidebook, there are existing protections available to other entities under the New gTLD Program which may also be available to international organizations.⁶³ In providing further details below, it is noted that some of these existing protections may not be applicable or satisfactory for all international organizations.

Top-Level Protections

Information on applied-for strings was made publicly available after the close of the application window for the initial round of new gTLDs. Any party, including international organizations, had the ability to review the applied-for strings to determine if any raise concerns, and had the opportunity to avail themselves of the objection processes if the applied-for string infringed on specific interests set out in the Applicant Guidebook “AGB”, which include:

- Infringement of legal rights, particularly intellectual property rights;
- Approval of new TLDs that are contrary to generally accepted legal norms of morality and public order as recognized under principles of international law; and
- Misappropriation of community names or labels.

In addition, an Independent Objector was appointed, and had the ability to file objections in certain cases where an objection was not already made to an application that might infringe on the latter two interests listed above. The goal was for the Independent Objector to act solely in the best interest of the public. The Independent Objector did not, however, have the ability to bring an objection on the grounds of infringement of intellectual property rights.

⁶³ The latest Guidebook is posted at: <http://newgtlds.icann.org/en/applicants/agg> Supporting documentation is available through the “New Generic Top Level Domains” button at www.icann.org

The legal rights objection includes a specific ground for objection that may be applicable to many IGOs. An IGO was eligible to file a legal rights objection if it meets the criteria for registration of an .INT domain name. See Applicant Guidebook, section 3.2.2.2⁶⁴. Those criteria include:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting these criteria. In addition, going forward, if a holder of a mark can demonstrate that its mark is protected by statute or treaty, the mark holder may also avail itself of the Post-Delegation Dispute Resolution Procedure (PDDRP) in cases where it appears that a registry (at the top level) is affirmatively infringing the complainant's mark. It should be noted that IGO names and acronyms may or may not be considered a mark that would meet the eligibility requirements to utilize the PDDRP. More information on the PDDRP is available in the Applicant Guidebook.⁶⁵

Second-Level Protections

Through the Trademark Clearinghouse, mark holders will have the opportunity to register their marks in a single repository that will serve all new gTLDs. Currently, trademark holders go through similar rights authentication processes for each separate top-level domain that launches.

New gTLD registries are required to use the Trademark Clearinghouse in two ways. First, they must offer a "sunrise" period – a pre-launch opportunity for rights holders to register names in the new gTLD prior to general registration. Second, a Trademark Claims service will notify rights holders of domain name registrations that match records in the Clearinghouse for a period of time at the beginning of general registration.

⁶⁴ Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

⁶⁵ PDDRP Section of Applicant Guidebook: <http://newgtlds.icann.org/en/applicants/agb/pddrp-04jun12-en.pdf>

Word marks that are protected by a statute or treaty are eligible for protection through the mandatory Trademark Claims process and Sunrise protections in the New gTLD Program under the Trademark Clearinghouse. In addition, any word mark that has been validated through a court of law or other judicial proceeding is also eligible.

The Trademark Clearinghouse will support increased protections, as well as reduce costs for mark holders. In the case of IGOs and INGOs, to the extent they are not considered word mark holders, any such benefits of the Trademark Clearinghouse may not apply. The PDDRP also affords protection for activity at the second level. At the second level the PDDRP provides an avenue whereby mark holders can file a dispute against a registry, rather than a registrant, if through a registry's affirmative conduct there is a pattern or practice of the registry's bad faith intent to profit from the sale of infringing names and the registry's bad faith intent to profit from systematic registration of names infringing the complainant's mark.

The New gTLD Program also affords mark holders a new form of alternative dispute resolution for clear-cut cases of abuse by domain name registrants. The Uniform Rapid Suspension System (URS) is a streamlined version of the Uniform Domain Name Dispute Resolution Policy (UDRP) process, providing trademark holders a quicker and simpler process through which infringing registrations at the second level can be "taken down." IGOs, which are in general not "trademark holders", do not generally benefit from access to this mechanism, except in cases where their names are trademarked.

6. Community Input

6.1 Request for input from GNSO Stakeholder Groups and Constituencies

As required by the GNSO PDP Manual, a request for input was sent to all GNSO Stakeholder Groups and Constituencies at the end of January 2013. Contributions were received from the Non-Commercial Stakeholder Group, Registries Stakeholder Group and Internet Service Providers and Connectivity Constituency. Complete responses can be found at the IGO-INGO WIKI page: <https://community.icann.org/pages/viewpage.action?pageId=40175441>

6.2 Request for input from other ICANN Supporting Organizations and Advisory Committees

A request for input was sent to all ICANN Supporting Organizations and Advisory Committees at the end of January 2013. One contribution was received from the At-Large Advisory Committee. Complete responses can be found at the IGO-INGO WIKI page: <https://community.icann.org/pages/viewpage.action?pageId=40175441>

6.3 Summary of Community Input

Among the responses received, there was general agreement that there are substantive differences among the RCRC, the IOC, IGOs and other INGOs, as well as between IGOs and INGOs, which should be taken into account for determining what, if any, type of special protections are necessary and if so, what the qualifying criteria should be. With the exception of the NCSG, the other contributors generally agreed that amendments or modifications to existing Rights Protection Mechanisms (e.g. UDRP, URS) available under the new gTLD Program are probably necessary to adequately protect the interests of IGOs and INGOs in their identifiers. The NCSG believes that the existing RPMs are adequate in regard to demonstrated need.

The ALAC believes in general that if any special protections for IGOs and INGOs are to be provided, there must be real harms if the protections are not provided, and that the protections will actually help prevent such harms. In its response, the ALAC stated that special protection at the top level is generally not needed, and that if necessary, the current objection process could be modified to provide sufficient protection for IGOs and INGOs. With regard to the second level, the ALAC

believes that any protections at this level must be restricted to organizations that: 1) can demonstrate they have been subject to harms due to bad-faith attempts to use their names at the second level of existing TLDs; and 2) can demonstrate substantive harm to the public interest if their names are not protected in the future.

In its response the RySG stated the basic premise of the majority view that beyond the special protections for the RCRC and IOC adopted by the GNSO in its 20 December resolution, any other special protections are “inappropriate” for any select group of entities, and that existing RPMs along with any necessary modifications to make them available for IGOs and INGOs are sufficient.

The RySG response also included a Minority Position submitted by the Universal Postal Union, an IGO, which reflects and reiterates prior submissions made on behalf of IGOs. The Minority Position believes that special protections should be provided to the names and acronyms of IGOs because in their view: 1) IGOs are protected under international and domestic laws; 2) IGOs have a public mission and are funded by public money – therefore, any abuse of IGO names and acronyms that are remedied by fee-based curative mechanisms rather than preventive, comes at a cost to the public missions of IGOs; 3) existing RPMs which are trademark-based are insufficient in providing adequate protection for IGO identifiers; 4) GAC advice to protect IGO identifiers should be given appropriate weight and consideration.

The NCSG’s position is that special protections should only be provided to those groups that are legitimately entitled to have a preference over other users of a domain name and are not able to protect their interest through existing measures because they lack legal protections. At the time the NCSG submitted its response, it believed that no specific harm has been demonstrated to a group that is unique to that group and therefore, no special protections should be provided.

The ISPCP stated its general position of not being in favour of “special protections,” but recognized the GAC advice and therefore accepts that some type of protection may be granted. The ISPCP believes that no special protections are necessary at the top level. At the second level, the ISPCP’s position is that only the exact match of an identifier in different languages should be protected for IGOs and INGOs created under an international treaty and ratified by a sufficient number of

countries. Such protections should be granted in all gTLDs, and there should be some mechanisms to allow legitimate right holders to register such identifiers.

6.4 Summary of International Organizations' Positions

The RCRC, IOC, and IGOs have well-documented their positions and respective rationales for providing protection to their identifiers in the top and second levels of gTLDs. These positions are summarized in the Final GNSO Issue Report on the Protection of International Organization Names in New gTLDs, and have been further elaborated upon through the mailing list of the PDP WG. Their respective positions are briefly summarized below.

6.4.1 Red Cross and Red Crescent

The RCRC cites the protection granted to the Red Cross and Red Crescent designations and names under universally agreed international humanitarian law treaties (the Geneva Conventions of 1949 and their Additional Protocols) and under the domestic laws in force in multiple jurisdictions, as establishing a *sui generis* case for permanent protection of the RCRC designations and names from third party registration at both the top and second level in all gTLDs. While expressing appreciation for the work produced by the WG, the RCRC maintain that the recommendations of the WG are insufficient and should be complemented.

The RCRC notably underlines that the existing protections, as currently defined in the Applicant Guidebook and in Specification 5 of the revised Registry Agreement, are not sufficient and should be made to expressly extend to (in the WG's own categorization: Scope 2 names or identifiers):

- the names of the respective components of the International Red Cross and Red Crescent Movement (i.e. the 189 recognized National Red Cross or Red Crescent Societies - e.g. German Red Cross, Afghan Red Crescent, Red Star of David, etc.). This protection is called for in both English and in the national and official languages of the National Societies concerned;
- the names of the two international components - the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC) in the six UN languages, as well as the acronyms of the two Organizations in their commonly used translations.

- In as much, the RCRC have suggested that the recommendations of the Working Group be amended and revised to expressly foresee that
 - Top-Level protections of Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in the Applicant Guidebook section 2.2.1.2.3 as Strings "Ineligible for Delegation";
 - Second-Level protections of only Exact Match, Full Name Scope 2 identifiers of the Red Cross Red Crescent Movement are placed in Specification 5 of the Registry Agreement;
 - For RCRC Scope 2 identifiers, if placed in the Applicant Guidebook or in Specification 5 of the Registry Agreement as strings "Ineligible for Delegation" at top or second levels, an exception procedure be created for cases where a protected organization wishes to apply for a protected string.

While the RCRC have taken note of the proposed recommendation to add the so-called Scope 2 names or identifiers to the Trademark Clearinghouse (TMCH), they have consistently maintained that this would not meet the requirements for protection under the law and would be liable to place an undue burden on the RCRC organisations to monitor and activate existing reactive procedures and mechanisms. They have also underlined that should the TMCH option be considered, a waiver of fees should be duly foreseen and the standing of the RCRC organizations in existing remedial mechanisms confirmed.

Finally, while citing the express prohibition on imitations of the Red Cross, Red Crescent and Red Crystal designations and names under international law and under the laws in force in multiple jurisdictions, the RCRC have expressed their continued support for the establishment of a mechanism or procedure to effectively address the issue of strings confusingly similar or liable to confusion with, or including, either of the RCRC designations or names.

6.4.2 International Olympic Committee

The IOC⁶⁶ also cites the *sui generis* protection granted to IOC identifiers under national laws in multiple jurisdictions (recognized by the GAC and the ICANN Board) as justification for establishing special permanent protection from third party registration of the IOC designations at both the top and second levels in all gTLDs; and that the IOC designations be available for registration by the IOC or its authorized international and national organizations through a Modified Reserved Names list.

6.4.3 International Governmental Organizations

The position of IGOs that special protections should be provided for IGO names and acronyms at both the top and second levels is summarized above in the Minority Position of the RySG submission. It is consistent with GAC advice on the need for protection of IGO names and acronyms against inappropriate third party registration, and with the Board's acknowledged need for appropriately implemented interim protection being in place before any new gTLDs would launch. IGOs do not believe finalization of the Working Group's deliberations, or any other Working Group which may be required to consider granting IGOs access to UDRP, URS, TMCH or other ICANN mechanisms would remain on-going.

6.4.4 International Non-Governmental Organizations

Some members of the WG have also advocated protections for certain INGOs (other than the IOC and the RCRC) that have recognized global public missions, extensively legally protected names, and protections in law granted on the basis of their (quasi-governmental) international status⁶⁷. The International Organization for Standardization (ISO) has formally advocated that certain INGOs and IGOs with global public missions need special protection to counter the increasing potential for and on-going impact of cybersquatting; and thus there is a need to establish objective, non-discriminatory criteria for granting special protection which would also avoid unduly restricting rights and legitimate rights.

6.5 Public Comment Period – IGO-INGO WG Initial Report

⁶⁶ IOC 3029 Nov 2012: <http://forum.icann.org/lists/gnso-igo-ingo/msg00133.html>

⁶⁷ ISO Letter to Stephen Crocker 13 May 2013: <http://forum.icann.org/lists/gnso-igo-ingo/msg00616.html>

The IGO-INGO WG completed its Initial Report and submitted it for [public comment on 14 June 2013](#)⁶⁸. Because consensus within the WG could not be easily determined at the time, the WG sought community input on the possible recommendations options listed in the Initial Report. It was understood that an additional comment period would be required for the WG's Final Report.

A total of ten comments were submitted. However, none of the comments submitted were external to the IGO-INGO WG meaning that the WG did not receive feedback from other stakeholders of the community. Having performed a cursory review of the comments, the WG determined that each comment essentially restated a position that was already well deliberated within the WG and that no new suggestions for protections were offered. A public comment review document was created and the Report of Public Comments was also created.

6.6 Public Comment Period – IGO-INGO WG Draft Final Report

The IGO-INGO WG completed its Draft Final Report and submitted it for [public comment on 20 September 2013](#)⁶⁹. In preparation of the Final Report, a formal consensus call was performed outlining each of the stakeholders support or lack of support for the recommendations, which are presented in Section 3 of this report.

A total of twenty comments and two replies were submitted. The WG reviewed each of the comments extensively, especially with regards to the themes that the community did not generally support protections of acronyms and that deployment of these policies within incumbent gTLDs should not trump existing property rights of others. A Public Comment Review Tool (PCRT) document was created that outlines the WG's dialogue and any recommended actions to take on the Final Report. At the time of publication of this report, the Report of Public Comments was not created, but a link of it will exist within the Public Comment area foot-noted below.

⁶⁸ IGO-INGO Initial Report Public Comment: <http://www.icann.org/en/news/public-comment/igo-ingo-initial-14jun13-en.htm>

⁶⁹ IGO-INGO Draft Final Report Public Comment: <http://www.icann.org/en/news/public-comment/igo-ingo-final-20sep13-en.htm>

7. Next Steps

This Final Report is being submitted to the GNSO Council for their consideration and to determine what further actions to take. The IGO-INGO WG will follow the directions of the Council if any additional work is needed and/or if an Implementation Review Team is formed.

Annex 1 – PDP WG Charter

WG Name:	IGO-INGO Protection PDP Working Group	
Section I: Working Group Identification		
Chartering Organization(s):	GNSO Council	
Charter Approval Date:	15 November 2012	
Name of WG Chair:	Thomas Rickert	
Name(s) of Appointed Liaison(s):	Jeff Neuman	
WG Workspace URL:	http://gnso.icann.org/en/group-activities/protection-igo-names.htm	
WG Mailing List:	gnso-igo-ingo@icann.org	
GNSO Council Resolution:	Title:	Motion on the Initiation of a Policy Development Process on the Protection of Certain International Organization Names in all GTLDs.
	Ref # & Link:	20121017-2 http://gnso.icann.org/en/resolutions#201210
Important Document Links:	<ul style="list-style-type: none"> • Protection of International Organization Names Final Issue Report (http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf) • IOC/RC Drafting Team Recommendations Report (http://gnso.icann.org/en/issues/ioc-rcrc-recommendations-28sep12-en.pdf) • GNSO Working Group Guidelines (http://gnso.icann.org/council/annex-1-gnso-wg-guidelines-08apr11-en.pdf) • GNSO PDP Manual (http://gnso.icann.org/council/annex-2-pdp-manual-16dec11-en.pdf) • Annex A – GNSO Policy Development Process of the ICANN Bylaws (http://www.icann.org/en/about/governance/bylaws#AnnexA) 	
Section II: Mission, Purpose, and Deliverables		
Mission & Scope:		
Background		
<p>The ICANN Board has requested policy advice from the GNSO Council and the GAC on whether special protections should be afforded for the names and acronyms of the Red Cross/Red Crescent Movement (“RCRC”), the International Olympic Committee (“IOC”) and/or International Government</p>		

Organizations (“IGOs”).

In September 2011, the GAC sent advice to the GNSO with a proposal for granting second level protections based upon the protections afforded to IOC/RCRC at the first level during the initial round of new gTLD applications, and that such protections are permanent. As a result of the GAC proposal submitted to the GNSO, the GNSO IOC/RCRC Drafting Team was formed and created a set of recommendations for protecting the IOC/RCRC names at the second level of the initial round new gTLDs, including the initiation of an “expedited PDP” to determine appropriate permanent protections for the RCRC and IOC names.

The latest inquiry to examine the issue of protecting IGO names emerged as a result of a request from the ICANN Board in response to letters received from the OECD and other IGOs in December 2011. Specifically, IGOs are seeking ICANN approval of protections at the top level that, at a minimum, are similar to those afforded to the RCRC and IOC in the Applicant Guidebook. In addition, IGOs are seeking a pre-emptive mechanism to protect their names at the second level. On 11 March 2012, the ICANN Board formally requested that the GNSO Council and the GAC provide policy advice on the IGO’s request.

Mission and Scope

The PDP Working Group is tasked to provide the GNSO Council with a policy recommendation as to whether there is a need for special protections at the top and second level in **all** existing and new gTLDs for the names and acronyms of the following types of international organizations: International Governmental Organizations (IGOs) and international non-governmental organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, specifically including the Red Cross/Red Crescent Movement (RCRC) and the International Olympic Committee (IOC), and (ii) if so, is tasked to develop policy recommendations for such protections.

As part of its deliberations on the first issue as to whether there is a need for special protections for certain international organizations at the top and second level in all gTLDs, the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities to be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for IGO, RCRC and IOC Names
- Establishing Qualification Criteria for Special Protection of International Organization Names
- Distinguishing Any Substantive Differences Between the RCRC and IOC From Other International Organizations

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second level in all existing and new gTLDs for certain international organization names and acronyms, the PDP WG is expected to:

- Determine the appropriate protection for RCRC and IOC names at the second level for the initial round of new gTLDs.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs and if not, develop specific recommendations for appropriate special protections for these names.
- Develop specific recommendations for appropriate special protections for the names and acronyms of all other qualifying international organizations.

The PDP WG is also expected to consider any information and advice provided by other ICANN Supporting Organizations and Advisory Committees on this topic. The WG is strongly encouraged to reach out to these groups for collaboration at the initial stage of its deliberations, to ensure that their concerns and positions are considered in a timely manner.

Objectives & Goals:

To develop, at a minimum, an Initial Report and a Final Report regarding whether any special protections should be provided for certain IGO and INGO names and if so, recommendations for specific special protections, to be delivered to the GNSO Council, following the processes described in Annex A of the ICANN Bylaws and the GNSO PDP Manual.

Possible tasks that the WG may consider:

- establish the bases under which ICANN should expand its reserved names list, or to create a special reserved names list, to include IOC, IFRC, RCRC, IGO, and INGO related names.
- decide on whether the names should be added to the existing reserved names list or a new list(s) should be created.
- develop a policy recommendation on how determinations can be made concerning which organizations meet the bases recommended above.
- perform an impact analysis on each of the recommendations, if any, for rights, competition etc. as defined in the PDP
- determine how incumbent registries should meet the new policy recommendations, if any.

** Given the commitment to expedite the PDP process, the WG will consider the work and documents used by the IOC-RCRC DT with regard to the IOC-RCRC terms.

Deliverables & Timeframes:

The WG shall respect the timelines and deliverables as outlined in Annex A of the ICANN Bylaws and

the PDP Manual and, as requested by the GNSO Council in its motion initiating this PDP, shall strive to fulfill this PDP's requirements "in an expedited manner."

Specifically:

- 1) The PDP WG shall assume that the GNSO Council will approve the IOC/RC DT recommendations regarding interim protections of GAC specified IOC/RC second-level names in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs.
- 2) To allow the GNSO Council to meet the ICANN Board's requested deadline of 31 January 2013, the WG shall exert its best efforts to produce interim recommendations with regard to the protection of IGO names at the second level that may meet some to-be-determined criteria for special protection in the initial round of new gTLDs in case any policy recommendations are not approved in time for the introduction of new gTLDs; WG recommendations in this regard should be communicated to the GNSO Council with sufficient lead time before the January 2013 Council meeting to allow the Council to take action in that meeting.
- 3) The WG shall strive to produce final PDP recommendations for all intergovernmental organizations that could result in the implementation of a second level protection policy recommendation before the delegation of new gTLD strings from the initial round, and a top-level policy recommendation before the opening of the second round of new gTLD applications.

As per the GNSO Working Group Guidelines, the WG shall develop a suggested work plan as soon as possible that outlines the necessary steps and expected timing in order to achieve the milestones of the PDP as set out in this Charter and consistent with Annex A of the ICANN Bylaws and the PDP Manual; and submit this to the GNSO Council.

Section III: Formation, Staffing, and Organization

Membership Criteria:

The Working Group will be open to all interested in participating. New members who join after certain parts of work has been completed are expected to review previous documents and meeting transcripts.

Group Formation, Dependencies, & Dissolution:

This WG shall be a standard GNSO PDP Working Group. The GNSO Secretariat should circulate a 'Call For Volunteers' as widely as possible in order to ensure broad representation and participation in the Working Group, including:

- Publication of announcement on relevant ICANN web sites including but not limited to the GNSO and other Supporting Organizations and Advisory Committee web pages; and
- Distribution of the announcement to GNSO Stakeholder Groups, Constituencies and other

<p>ICANN Supporting Organizations and Advisory Committees</p> <ul style="list-style-type: none"> - Distribution of the announcement to appropriate representatives of IGOs, the RCRC and IOC.
<p>Working Group Roles, Functions, & Duties:</p> <p>The ICANN Staff assigned to the WG will fully support the work of the Working Group as requested by the Chair including meeting support, document drafting, editing and distribution and other substantive contributions when deemed appropriate.</p> <p>Staff assignments to the Working Group:</p> <ul style="list-style-type: none"> • GNSO Secretariat • 2 ICANN policy staff members (Brian Peck, Berry Cobb) <p>The standard WG roles, functions & duties shall be applicable as specified in Section 2.2 of the Working Group Guidelines.</p>
<p>Statements of Interest (SOI) Guidelines:</p> <p>Each member of the Working Group is required to submit an SOI in accordance with Section 5 of the GNSO Operating Procedures.</p>
<p>Section IV: Rules of Engagement</p>
<p>Decision-Making Methodologies:</p> <p><i>{Note: The following material was extracted from the Working Group Guidelines, Section 3.6. If a Chartering Organization wishes to deviate from the standard methodology for making decisions or empower the WG to decide its own decision-making methodology, this section should be amended as appropriate}.</i></p> <p>The Chair will be responsible for designating each position as having one of the following designations:</p> <ul style="list-style-type: none"> • Full consensus - when no one in the group speaks against the recommendation in its last readings. This is also sometimes referred to as Unanimous Consensus. • Consensus - a position where only a small minority disagrees, but most agree. <i>[Note: For those that are unfamiliar with ICANN usage, you may associate the definition of 'Consensus' with other definitions and terms of art such as rough consensus or near consensus. It should be noted, however, that in the case of a GNSO PDP originated Working Group, all reports, especially Final Reports, must restrict themselves to the term 'Consensus' as this may have legal implications.]</i> • Strong support but significant opposition - a position where, while most of the group supports a recommendation, there are a significant number of those who do not support it. • Divergence (also referred to as No Consensus) - a position where there isn't strong support for any particular position, but many different points of view. Sometimes this is due to irreconcilable differences of opinion and sometimes it is due to the fact that no one has a particularly strong or convincing viewpoint, but the members of the group agree that it is worth listing the issue in the report nonetheless.

- **Minority View** - refers to a proposal where a small number of people support the recommendation. This can happen in response to a **Consensus**, **Strong support but significant opposition**, and **No Consensus**; or, it can happen in cases where there is neither support nor opposition to a suggestion made by a small number of individuals.

In cases of **Consensus**, **Strong support but significant opposition**, and **No Consensus**, an effort should be made to document that variance in viewpoint and to present any **Minority View** recommendations that may have been made. Documentation of **Minority View** recommendations normally depends on text offered by the proponent(s). In all cases of **Divergence**, the WG Chair should encourage the submission of minority viewpoint(s).

The recommended method for discovering the consensus level designation on recommendations should work as follows:

- i. After the group has discussed an issue long enough for all issues to have been raised, understood and discussed, the Chair, or Co-Chairs, make an evaluation of the designation and publish it for the group to review.
- ii. After the group has discussed the Chair's estimation of designation, the Chair, or Co-Chairs, should reevaluate and publish an updated evaluation.
- iii. Steps (i) and (ii) should continue until the Chair/Co-Chairs make an evaluation that is accepted by the group.
- iv. In rare case, a Chair may decide that the use of polls is reasonable. Some of the reasons for this might be:
 - A decision needs to be made within a time frame that does not allow for the natural process of iteration and settling on a designation to occur.
 - It becomes obvious after several iterations that it is impossible to arrive at a designation. This will happen most often when trying to discriminate between **Consensus** and **Strong support but Significant Opposition** or between **Strong support but Significant Opposition** and **Divergence**.

Care should be taken in using polls that they do not become votes. A liability with the use of polls is that, in situations where there is **Divergence** or **Strong Opposition**, there are often disagreements about the meanings of the poll questions or of the poll results.

Based upon the WG's needs, the Chair may direct that WG participants do not have to have their name explicitly associated with any Full Consensus or Consensus view/position. However, in all other cases and in those cases where a group member represents the minority viewpoint, their name must be explicitly linked, especially in those cases where polls were taken.

Consensus calls should always involve the entire Working Group and, for this reason, should take place on the designated mailing list to ensure that all Working Group members have the opportunity to fully participate in the consensus process. It is the role of the Chair to designate which level of consensus is reached and announce this designation to the Working Group. Member(s) of the

Working Group should be able to challenge the designation of the Chair as part of the Working Group discussion. However, if disagreement persists, members of the WG may use the process set forth below to challenge the designation.

If several participants (see Note 1 below) in a WG disagree with the designation given to a position by the Chair or any other consensus call, they may follow these steps sequentially:

- Send email to the Chair, copying the WG explaining why the decision is believed to be in error.
- If the Chair still disagrees with the complainants, the Chair will forward the appeal to the CO liaison(s). The Chair must explain his or her reasoning in the response to the complainants and in the submission to the liaison. If the liaison(s) supports the Chair's position, the liaison(s) will provide their response to the complainants. The liaison(s) must explain their reasoning in the response. If the CO liaison disagrees with the Chair, the liaison will forward the appeal to the CO. Should the complainants disagree with the liaison support of the Chair's determination, the complainants may appeal to the Chair of the CO or their designated representative. If the CO agrees with the complainants' position, the CO should recommend remedial action to the Chair.
- In the event of any appeal, the CO will attach a statement of the appeal to the WG and/or Board report. This statement should include all of the documentation from all steps in the appeals process and should include a statement from the CO (see Note 2 below).

Note 1: Any Working Group member may raise an issue for reconsideration; however, a formal appeal will require that a single member demonstrates a sufficient amount of support before a formal appeal process can be invoked. In those cases where a single Working Group member is seeking reconsideration, the member will advise the Chair and/or Liaison of their issue and the Chair and/or Liaison will work with the dissenting member to investigate the issue and to determine if there is sufficient support for the reconsideration to initial a formal appeal process.

Note 2: It should be noted that ICANN also has other conflict resolution mechanisms available that could be considered in case any of the parties are dissatisfied with the outcome of this process.

Status Reporting:

As requested by the GNSO Council, taking into account the recommendation of the Council liaison to this group.

Problem/Issue Escalation & Resolution Processes:

{Note: the following material was extracted from Sections 3.4, 3.5, and 3.7 of the Working Group Guidelines and may be modified by the Chartering Organization at its discretion}

The WG will adhere to ICANN's Expected Standards of Behavior as documented in Section F of the ICANN Accountability and Transparency Frameworks and Principles, January 2008.

If a WG member feels that these standards are being abused, the affected party should appeal first to the Chair and Liaison and, if unsatisfactorily resolved, to the Chair of the Chartering Organization or

their designated representative. It is important to emphasize that expressed disagreement is not, by itself, grounds for abusive behavior. It should also be taken into account that as a result of cultural differences and language barriers, statements may appear disrespectful or inappropriate to some but are not necessarily intended as such. However, it is expected that WG members make every effort to respect the principles outlined in ICANN’s Expected Standards of Behavior as referenced above.

The Chair, in consultation with the Chartering Organization liaison(s), is empowered to restrict the participation of someone who seriously disrupts the Working Group. Any such restriction will be reviewed by the Chartering Organization. Generally, the participant should first be warned privately, and then warned publicly before such a restriction is put into place. In extreme circumstances, this requirement may be bypassed.

Any WG member that believes that his/her contributions are being systematically ignored or discounted or wants to appeal a decision of the WG or CO should first discuss the circumstances with the WG Chair. In the event that the matter cannot be resolved satisfactorily, the WG member should request an opportunity to discuss the situation with the Chair of the Chartering Organization or their designated representative.

In addition, if any member of the WG is of the opinion that someone is not performing their role according to the criteria outlined in this Charter, the same appeals process may be invoked.

Closure & Working Group Self-Assessment:

The WG will close upon the delivery of the Final Report, unless assigned additional tasks or follow-up by the GNSO Council.

Section V: Charter Document History

Version	Date	Description
1.0	25 October 2012	First draft submitted by staff for consideration by WG

Staff Contact:	Brian Peck, Berry Cobb	Email:	Policy-staff@icann.org
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Annex 2 – Working Group Members and Attendance

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Wilson Abigagba	NCUC	SOI
Lanre Ajayi	NCA	SOI
Iliya Bazlyankov	RrSG	SOI
Grit-Maren Beer		SOI
Alain Berranger	NPOC	SOI
Jim Bikoff	IPC/IOC	SOI
Hago Dafalla	NCUC	SOI
Avri Doria	NCSG	SOI
Bret Fauset	RySG	SOI
Elizabeth Finberg	RySG	SOI
Guilaine Fournet	International Electrotechnical Commission (IEC)	SOI
Chuck Gomes	RySG	SOI
Alan Greenberg	ALAC	SOI
Catherine Gribbin	Red Cross Red Crescent (Canadian Red Cross)	SOI
Ricardo Guilherme	RySG / UPU	SOI
Stephane Hankins	Red Cross Red Crescent (International Committee of the Red Cross)	SOI
David Heasley	IPC/IOC	SOI
Debra Hughes	Red Cross Red Crescent (American Red Cross)NPOC	SOI
Poncelet Ileleji	NPOC	SOI
Zahid Jamil	CBUC	SOI

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Wolfgang Kleinwaechter	NCSG	SOI
Christopher Lamb	Red Cross Red Crescent (Australian Red Cross)	SOI
Evan Leibovitch	ALAC (Vice-chair)/NARALO	SOI
Berly Lelievre-Acosta	WIPO	SOI
Claudia MacMaster Tamarit	International Organization for Standardization	SOI
David Maher	RySG	SOI
Kiran Malancharuvil	IPC	SOI
Judd Lauter	IPC/IOC	SOI
Jeff Neuman	RySG	SOI
Osvaldo Novoa	ISPCP	SOI
David Opderbeck	IPC	SOI
Sam Paltridge	OECD	SOI
Christopher Rassi	Red Cross Red Crescent (International Federation of Red Cross and Red Crescent Societies)	SOI
Thomas Rickert	NCA	SOI
Mike Rodenbaugh	IPC	SOI
Greg Shatan	IPC	SOI
Cintra Sooknanan	NPOC	SOI
Ken Stubbs	RySG	SOI
Joanne Teng	WIPO	SOI
Liz Williams	Individual	SOI
Giacomo Mazzone		SOI
Observers		

IGO-INGO Protections Policy Development Process (PDP) WG	Affiliation	SOI
Jonathan Robinson- GNSO Council Chair	RySG	SOI
Wolf-Ulrich Knoeben - GNSO Council vice chair	ISPCP	SOI
Mason Cole - GNSO Council vice chair	RrSG	SOI
Staff		
Marika Konings		
Berry Cobb		
David Olive		
Mary Wong		
Glen de Saint Géry		
Gisella Gruber		
Nathalie Peregrine		
Julia Charvolen		

**** Observer**

- The attendance records can be found at <https://community.icann.org/display/GWGTCT/IGO-INGO+Attendance+Chart>.
- The email archives can be found at <http://forum.icann.org/lists/gnso-igo-ingo/>.

RrSG – Registrar Stakeholder Group

RySG – Registry Stakeholder Group

CBUC – Commercial and Business Users Constituency

NCUC – Non Commercial Users Constituency

IPC – Intellectual Property Constituency

ISPCP – Internet Service and Connection Providers Constituency

NPOC – Not-for-Profit Operational Concerns Constituency

Annex 3 – Community Input Statement Request Template

[Stakeholder Group / Constituency / Supporting Organization / Advisory Committees] Input Protection of IGO and INGO Identifiers in all gTLDs Working Group

PLEASE SUBMIT YOUR RESPONSE AT THE LATEST BY **15 January 2013** TO THE GNSO SECRETARIAT (gnso.secretariat@gnso.icann.org), which will forward your statement to the Working Group. The GNSO Council has formed a Working Group of interested stakeholders and Stakeholder Group / Constituency representatives, to collaborate broadly with knowledgeable individuals and organizations, in order to consider recommendations in relation to the protection of names, designations and acronyms, hereinafter referred to as “identifiers”, of intergovernmental organizations (IGO’s) and international non-governmental organizations (INGO’s) receiving protections under treaties and statutes under multiple jurisdictions.

Part of the Working Group’s effort will be to incorporate ideas and suggestions gathered from Stakeholder Groups and Constituencies through this template Statement. Inserting your response in this form will make it much easier for the Working Group to summarize the responses for analysis. This information is helpful to the community in understanding the points of view of various stakeholders. However, you should feel free to add any information you deem important to inform the Working Group’s deliberations, even if this does not fit into any of the questions listed below.

For further information, please visit the WG Webpage and Workspace:

- <http://community.icann.org/display/GWGTCT/>
- <http://gnso.icann.org/en/group-activities/protection-igo-names.htm>

Process

- Please identify the member(s) of your Stakeholder Group / Constituency who is (are) participating in this Working Group
- Please identify the members of your Stakeholder Group / Constituency who participated in developing the perspective(s) set forth below
- Please describe the process by which your Stakeholder Group / Constituency arrived at the perspective(s) set forth below

Below are elements of the approved charter that the WG has been tasked to address:

As part of its deliberations on the first issue as to whether there is a need for special protections for IGO and INGO organizations at the top and second level in all gTLDs (existing and new), the PDP WG should, at a minimum, consider the following elements as detailed in the Final Issue Report:

- Quantifying the Entities whose names may be Considered for Special Protection
- Evaluating the Scope of Existing Protections under International Treaties/Laws for the IGO-INGO organizations concerned;
- Establishing Qualification Criteria for Special Protection of names of the IGO and INGO organizations concerned;

- Distinguishing any Substantive Differences between the RCRC and IOC designations from those of other IGO-INGO Organizations.

Should the PDP WG reach consensus on a recommendation that there is a need for special protections at the top and second levels in all existing and new gTLDs for IGO and INGO organization identifiers; the PDP WG is expected to:

- Develop specific recommendations for appropriate special protections, if any, for the identifiers of any or all IGO and INGO organizations at the first and second levels.
- Determine the appropriate protections, if any, for RCRC and IOC names at the second level for the initial round of new gTLDs and make recommendations on the implementation of such protection.
- Determine whether the current special protections being provided to RCRC and IOC names at the top and second level of the initial round of new gTLDs should be made permanent for RCRC and IOC names in all gTLDs; if so, determine whether the existing protections are sufficient and comprehensive; if not, develop specific recommendations for appropriate special protections (if any) for these identifiers.

Questions to Consider:

1. What kinds of entities should be considered for Special Protections at the top and second level in all gTLDs (existing and new)?
Group View:
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?
Group View:
3. Do you have opinions about what criteria should be used for Special Protection of the IGO and INGO identifiers?
Group View:
4. Do you think there are substantive differences between the RCRC/IOC and IGOs and INGOs?
Group View:
5. Should appropriate Special Protections at the top and second level for the identifiers of IGOs and INGOs be made?
Group View:
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?
Group View:
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?
Group View:

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)?

Group View:

For further background information on the WG's activities to date, please see:

- [Protections of IGO and INGO identifiers in all gTLDs web page](http://gnso.icann.org/en/group-activities/protection-igo-names.htm) (see <http://gnso.icann.org/en/group-activities/protection-igo-names.htm>).
- Protection of International Organization Names Final Issue Report, for insight into the current practices and issues experienced (see <http://gnso.icann.org/en/issues/protection-igo-names-final-issue-report-01oct12-en.pdf>).
- The IOC/RCRC DT page is also a good reference for how those efforts were combined with this PDP (see <http://gnso.icann.org/en/group-activities/red-cross-ioc.htm>).

Annex 4 – Issue Report Template Request Form

<u>QUESTIONS</u>	<u>ANSWERS</u>
1) Name of Requester:	IGO-INGO WG
2) Enter the name of your Stakeholder Group (SG), Constituency, or Advisory Committee (AC) supporting this request: <i>(Please enter "Not Applicable" if appropriate).</i>	Not Applicable
3) Briefly identify (or name) the Issue:	IGO-INGO Access to Curative Dispute Resolution Mechanisms (i.e. UDRP & URS)
4) Explain how this Issue affects the organization provided in Question #2 above:	Not Applicable
5) Provide rationale for policy development:	The two current domain name dispute resolution mechanisms (UDRP & URS) are premised on the complainant's legally owning trademark rights to the domain name(s) in question. With recommendations that IGOs and INGOs should also be able to utilize these mechanisms, the current UDRP & URS policy needs to be amended to allow these organizations similar access as trademark owners but without creating new or additional trademark or other legal rights.
6) Describe problems raised by the Issue including quantification to the extent known:	<p>Amending UDRP and URS policy to allow IGOs and INGO access to these mechanisms would amount to extending the scope of these dispute resolution processes beyond pure trademark disputes. Care should be taken to not expand their workings beyond what is necessary to ensure IGO and INGO protections tailored specifically to the WG's recommendations.</p> <p>The Council should take note that the scope of any PDP created as a result of this Issue Report will not impact the scope of the RPM (UDRP/URS) Review PDP that is presently on-hold at the GNSO Council. It is likely not to be started until 2015 and that this PDP on access for IGO-INGOs should begin as soon as possible.</p>
7) What is the economic impact of the Issue and/or its effect upon competition, consumer trust, privacy, or other rights:	The WG's recommendations are intended to ensure that costs of engaging in the UDRP and URS curative processes for protected IGOs and INGOs are measurable

	and reasonable, as compared to having to file territorial-based lawsuits in national courts against cyber-squatters.
7-A) Provide supporting evidence for Question #7 to the extent known: <i>(Enter "None" if unavailable)</i>	See documentation and information produced by certain IGOs and INGOs during the WG’s deliberations.
8) How does this Issue relate to provisions of the ICANN Bylaws, Affirmation of Commitments, and/or ICANN Articles of Incorporation:	Per Section 1.3 of the ICANN Bylaws, resolving this issue is “reasonably and appropriately related” to ICANN’s mandate. As the UDRP and URS are mandatory policies to be implemented by contracted registries and registrars, a PDP to resolve this issue will provide a stable and clear framework for the operation of the domain name system, in line with ICANN’s Core Values in Section 2 of the Bylaws.
9) Provide any suggestions you have concerning specific items to be addressed in the Issue Report: <i>(Enter "None" if appropriate)</i>	Existing providers of UDRP and URS providers, as well as registries and registrars who will need to implement the amended policies, will need to be consulted and involved in the PDP. The GNSO Council should also consider to add a request for ICANN staff to produce a draft Charter as part of the Issue Report.
10) Date request is submitted (e.g., 10-Nov-2013):	10-Nov-2013
11) Expected completion date (e.g., 31-Jan-2014):	31-Jan-2014

Annex 5 – ICANN General Counsel Office Research Report

As of 31 May 2013

To: GNSO Drafting Team on Protection of IGO-INGO Names

From: Office of ICANN’s General Counsel

Research Requested from the WG

With respect to the question of securing legal advice regarding the protection of IGO-INGO names, the WG should request from the office of the ICANN General Counsel an answer to the following question:

Is ICANN aware of any jurisdiction in which a statute, treaty or other applicable law prohibits either or both of the following actions by or under the authority of ICANN:

- (a) the assignment by ICANN at the top level, or
- (b) the registration by a registry or a registrar accredited by ICANN of a domain name requested by any party at the second level, of the name or acronym of an intergovernmental organization (IGO) or an international non-governmental organization receiving protections under treaties and statutes under multiple jurisdictions (INGO)?

If the answer is affirmative, please specify the jurisdiction(s) and cite the law.

Research Performed

Given our understanding that the WG is looking at the International Olympic Committee (IOC), the Red Cross/Red Crescent Movement (RCRC) as well as intergovernmental organizations (IGO) and other international non-governmental organization (INGOs), it was important to scope the research into a manageable format. Therefore, the research was broken into two parts, one as it related to the IOC and RCRC (as major INGOs that are the most likely to have special protections afforded, based on prior research performed) and the second part on IGOs. For IGOs, the research focused upon whether the jurisdictions

afforded heightened protections through recognition of the Paris Convention and its Article 6(1)(b) (the “6ter”). This method seemed to provide a broad and objective measure for identifying protections afforded to IGOs. As requested, the review was not focused on the potential prohibitions for or liabilities of registrants in domain name registration, rather the broader question of prohibitions that could attach up the registration chain (to registries and registrars). However, the research presented does not discuss ICANN’s potential for liability. Eleven jurisdictions from around the globe were surveyed, representing jurisdictions from every geographic region. ICANN interpreted the term “assignment” to mean the approval for delegation of a top-level domain.

Executive Summary

As noted in the interim reporting provided on this research, the trend is that there are few, if any, jurisdictions sampled that have specific laws addressing ICANN, a registry or a registrar’s role in the delegation of top-level domains or in the registration of second-level domains. Only one jurisdiction (Brazil) was found to have a statute that placed a direct prohibition on the registration of IOC- or FIFA-related domain names, though the roles of gTLD registries/registrars are not specifically identified in the statute. However, the fact that statutes do not directly mention domain names cannot be taken to mean that ICANN, a registry or a registrar is exempt from liability if there is an unauthorized delegation at the top-level or registration at the second-level of a domain name using the name or acronym of the International Olympic Committee (IOC), the Red Cross/Red Crescent movement (RCRC), or Intergovernmental Organizations (IGOs) that are provided protection within each jurisdiction.

As seen in the survey below, nearly all of the sampled jurisdictions (representing all geographic regions) provide protections to the IOC and/or the RCRC for the use of their names and acronyms, and those protections are often understood to apply to domain

names. The exact terms that are protected in each jurisdiction vary, and ICANN has not engaged in an exercise to compare the scope of the protected terms requested by the IOC and the RCRC within the New gTLD Program, as this research was not undertaken to produce a list of names or acronyms recommended for protection. While it appears rare (other than in the case of Brazil) to have a specific prohibition for domain name registration enumerated, there does seem to be potential bases for challenges to be brought with respect to domain name registration, including potential challenges to registry operators or registrars for their roles in the registration chain.

For the names and acronyms of IGOs, ICANN's research focused on whether any special status afforded to those names and acronyms by virtue of the protection granted by Article 6ter(1)(b) of the Paris Convention could serve as a basis for liability. While this focus of research may not identify if there are individual IGOs for which a country has elected to provide heightened protections (outside of their 6ter status), this research provides insight to the status afforded to IGOs that can be objectively identified by virtue of their inclusion on the 6ter list. Many countries afford special protection to those IGOs listed on the 6ter, though there is often a registration, notice process, or member state limitation required through which each jurisdiction develops a list of the specific IGOs that it will recognize for protection. Therefore, among the jurisdictions where IGOs are provided heightened protection, the list of IGOs eligible for protections may not be uniform. With regard to our research related to IGOs and INGOs other than the RCRC and IOC, the research did not identify any universal protections that could be made applicable for IGOs or INGOs.

In nearly every jurisdiction, whether or not special protection exists for the IOC, RCRC or IGOs, there always remains the possibility that general unfair competition or trademark laws can serve as a basis for challenge to a specific delegation of a top-level name or the registration of a second-level domain name at any level of the registration chain. This survey does not assess the likelihood of whether liability would attach in those

circumstances. The potential for liability could factor in many issues, such as knowledge of potential infringement or improper use, the location of the registry or registrar, or the familiarity of the jurisdiction with the IGO at issue, as three examples.

Each registry operator and registrar has an independent obligation to abide by applicable laws. If registry operators or registrars have concerns about the potential for liability for its role in the delegation of a top-level domain or in the registration of a second-level domain within a particular jurisdiction, the responsibility for identifying the scope of that liability lies with the registry operator or registrar. Therefore, to avoid any suggestion that ICANN is providing legal advice to any of its contracted parties, the survey provided below notes the areas where the potential for liability could lie, but does not provide an assessment of the likelihood of that liability attaching.

When reviewing this survey, it is important to keep two items in mind. First, the suggestion that a registry or registrar could bear some liability for their role in domain name registrations is a broad concept, and the presentation of this survey is in no way suggesting that registries or registrars are at newfound risk of liability for all domain registrations within their registry or sponsorship. The presentation of this survey is looking at where certain entities (IGOs and INGOs) could be afforded heightened protections from use of associated names or acronyms within domain names because acts and laws already provide for heightened protections for the use of their names and acronyms. Second, the term “liability” is used broadly here. There are many factors that have to be considered for liability to attach to a registry or registrar, including the extent to which a jurisdiction recognizes “accessories” to acts of dilution or infringement, or how a jurisdiction defines a duty of care and the registry or registrar’s role in the registration chain. The term “liability” is not used here to indicate that there is certainty that a registry or registrar will (or should) face any challenge due to the registration of a domain name for which heightened protections may be claimed.

Survey of Jurisdictions

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Australia	<p>While there are no specific prohibitions for the use of names related to the IOC at the top-level or second-level, the <i>Olympic Insignia Protection Act 1987</i> (Cth) provides broad protections for the terms which could extend to domain names. The level of protection afforded to domain names appears to depend on how closely the domain name matches a protected Olympic expression. There may be exclusions based on prior registration of marks using some of the Olympic names.</p> <p>For RCRC names, the <i>Geneva Conventions Act 1957</i> (Cth) prevents any unauthorized use of specific RC related expressions, which would arguably apply to domain names at any level.</p>	<p>The <i>International Organisations (Privileges and Immunities) Act 1963</i> (Cth) gives effect to the 6ter list and prohibits the use of an IGO’s name (or acronym) in connection with a trade, business, profession, calling or occupation. The IGO must, however, also be specifically made a subject of legislation or regulations by the Australian Government to be afforded the protections of the Act. For the qualifying IGOs, there is the potential for liability through the registration chain where the use of an IGO name/acronym in a domain name is in contravention of the Act.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
Brazil	<p>The Olympic Act, Law No. 12.035/2009 could be used to impose liability for the approval/registration of a TLD or second-level domain name, and explicitly mentions domain web sites as one of the areas of protections for marks related to the 2016 Olympic Games.</p> <p>Prior approval is needed for any usage.</p> <p>Certain Red Cross marks are protected under Decree 2380/1910. The 1910 decree does not mention domain names.</p> <p>Brazilian Civil Law Code could possibly be used as a basis for liability as well.</p>	<p>FIFA has similar protections to the Olympics Law under the ““General World Cup Law” (Law no. 12.663/2012), and expressly directs NIC.br to reject “domain name registrations which utilizes identical or similar expressions / terms to FIFA’s trademarks.”</p> <p>More generally, Brazil has ratified the Paris Convention, however there are no specific provisions of law that relate to the protections of abbreviations and names of IGOs in Brazil. However, the fact of ratification could make attempts to bar delegation/registration at the top- or second-level, more successful in the country, however, the success of the challenge would vary from case to case.</p>
Canada	<p><i>Trade-marks Act</i>, R.S.C., 1985, c. T-13, Subsection (9)(1)(f) protects certain emblems and marks related to the Red Cross. The <i>Olympic and Paralympic Marks Act</i>, S.C. 2007, c. 25 (“OPMA”) protects marks related to the</p>	<p>The <i>Trade-marks Act</i>, at Subsections 9(1)(i.3) and 9(1)(m) provides protections for names of organizations appearing on the 6ter list, as well as for the United Nations. For names on the 6ter list, there is a requirement for entities on the 6ter to</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>IOC (including translations). Some of the marks are also protected as official marks that are registered in Canada.</p> <p>While the statutes do not mention domain name registration, there is the possibility that the use of a name or acronym associated with these marks at the top-level or second-level could violate Canadian law.</p>	<p>communicate to the government which names are intended for protection. The use of those protected names or acronyms at the top-level or second-level (each without consent) could be a foul of the <i>Trade-marks Act</i>, though domain names are not specifically mentioned in the law.</p>
<p>China</p>	<p>Certain Olympic-related names and acronyms are provided protection under the Regulations on the Protection of Olympic Symbols ("Regulations"), which require the permission of the owner of the Olympic symbols to provide permission for their use. This is the one area where any heightened potential for liability for the delegation of a top-level domain was identified. Registrations of second-level domains could also be impacted under this provision. The domain name</p>	<p>Article 2(2) of the Notice Regarding the Implementation Solution of .CN Second Level Domain Name Registration specifically restricts the registration of the acronyms of 31 Inter-Governmental Organizations ("IGOs") as second level domain names to entities with the relevant authorities</p> <p>It is unknown how this restriction would be expanded into TLDs outside of the .CN registry.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>registration policies that exist within TLDs that are administered by CNNIC are subject to modification and broadening. Some second-level registrations for the RCRC are afforded some protections under these policies.</p>	
<p>France</p>	<p>Article L. 141-5 of the French Code of Sports provides protections to certain words and marks associated with the IOC, and has been used with: (i) Article L. 711-3 b) of the French Intellectual Property Code and/or (ii) Article L. 45-2 of the French Code of Posts and Electronic Communications to require cancellation of domain names bearing the protected words.</p> <p>Article 1 of French law dated July 24, 1913, as amended by French law dated July 4, 1939, implementing the provisions of the Geneva Convention for the Amelioration of the Condition of</p>	<p>Under French law, the Paris Convention is directly applicable (that is, an action can validly be grounded on such International treaty). Yet, Article 6ter(1)(b) of the Paris Convention does only provide for the prohibition to “use [IGOs], without authorization by the competent authorities, either as <u>trademarks</u> or as <i>elements of trademarks</i>”.</p> <p>Because of the status of the protection, liability could attach as a result of trademark law violations/unfair use of an IGO’s name or acronym as part of a domain name. There is also the potential for criminal liability based upon the unlawful use of an insignia regulated by a public authority. Notably, some</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the Wounded and Sick in Armies in the Field, dated July 6, 1906, provides protections for certain words and marks associated with the RCRC in France. While domain names are not specifically listed in the law, the broad language of the law has been used to prohibit registration of domain names using the restricted names.</p> <p>The improper delegation/registration or use of these names at the top- or second-level could possibly serve as a basis of liability.</p>	<p>IGOs could be provided with stronger protections than others by virtue of appearance on a list referred to in Article 3 of French Ministerial Order dated February 19, 2010.</p>
<p>Germ any</p>	<p>Certain Olympic designations are protected under the Olympic Emblem and Olympic Designations Protection Act (OlympSchG), a national statutory law.</p> <p>According to section 125 OWiG (Ordnungswidrigkeitengesetz - Administrative</p>	<p>There are no statutes that provide protection to IGOs on the basis of inclusion on the 6ter list.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>Offences Act), an administrative offence is deemed committed by any person who has used the symbol of the Red Cross, respectively the designations “Red Cross” or “Geneva Cross”, as well as any symbol or designation confusingly similar without authorization. The same applies to symbols and certain designations representing the Red Cross under provisions of international law (i.e. the Red Crescent).</p> <p>For either of these provisions, while domain name registrations are not specifically identified, those who are on notice of the infringing use of a name or acronym at the top or the second level could be held liable under the laws.</p>	
Japan	<p>The Unfair Competition Prevention Law (hereinafter referred to as “UCPL”) (Law No. 47 of 1993, as amended) prohibits unauthorized use of the names of international</p>	<p>While there are no direct legal barriers to the delegation of a top level domain or the registration of a second level domain name that matches a mark or acronym of an IGO that is defined under the Ministry</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>intergovernmental organizations (“IGOs”) as trademark (Article 17 of the UCPL). This provision corresponds to Article 6ter (1) (b) and (c) of the Paris Convention for the Protection of Industrial Property (the “Paris Convention”).</p> <p>Specific IGOs that are protected under this statute are defined by ordinance of the Ministry of Economy, Trade and Industry. The IOC has specific names and acronyms protected under this provision.</p> <p>The name and mark of the Red Cross are already protected under the Law Regarding Restriction of Use of Mark and Name, Etc. of the Red Cross (Law No. 159 of 1947, as amended).</p> <p>While the laws do not directly address domain names at the top or the second level, the use of the IOC or</p>	<p>of Trade and Industry ordinance, the use of such words in a way that is found to be misleading can serve as grounds for liability, just as the use of IOC names or acronyms would.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the RCRC names or acronyms at the top or second level (by entities other than the IOC/RCRC) could serve as grounds for liability under the laws.</p>	
<p>Mexico</p>	<p>The use of Red Cross and Red Crescent names is covered by 2007 law, which includes domain names.</p> <p>Mexico is a member of the Nairobi Treaty for the Protection of the Olympic Symbol, and affords the rights provided under that treaty. Article 71, General Law of Physical Culture and Sport (Published in the Official Journal of the Federation on February 24, 2003) provides protection for words associated with the Olympics, including Olimpico and Olimpiada.</p>	<p>Under Article 213 VII and IX of the Industrial Property Law and Article 90 VII of the Industrial Property Law, neither of which specifically mention domain names, the use of a name of an IGO in which Mexico takes part could serve as a basis for liability if evidence of authorization for the registration is not received.</p>
<p>South Africa</p>	<p>South African Red Cross has protection under a specific statute, the South African Red Cross Society and Legal Protections of Certain Emblems Act no. 10 of 2007.</p>	<p>Through the Trade Marks Act no 194 of 1993, Sections 10(8), 34, and 35, well-known marks appearing on the 6ter list are entitled to protection under trademark laws, even without registration, though there is a</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>There is no specific protection in South Africa for IOC names, but the IOC does have registered marks in here that are afford protections under the Trade Mark Act discussed under the IGO section. Unregistered abbreviations may not be subject to protection.</p> <p>These protections could exist at the top- and second-level for domain names, though not specifically enumerated.</p>	<p>requirement to apply to South Africa for protection. Comparisons need to made about the class of service offered.</p> <p>IGO names could also be protected under the Prohibition of the Use of Certain Marks, Emblems and Words published under GN 873 in GG 5999 of 28 April 1978, as well as the Merchandise Marks Act no. 17 of 1941.</p> <p>None of these acts specifically mention domain names, though the use of the protected marks in top- or second-level domain names may serve as a basis for liability thereunder.</p> <p>The potential for liability arising out of domain name registrations can be seen in the Electronic Communications and Transactions Act no. 25 of 2002, which is applicable to the .za Domain Name Authority.</p>
South	Article 12(1) of the Korean Internet Address	Article 3(1) of the Korean Unfair Competition

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
<p>Korea</p>	<p>Resources Act (KIARA) states: “No one shall obstruct the registration of any domain name, etc. of persons who have a legitimate source of authority, or register, possess or use domain name for unlawful purposes, such as reaping illegal profits from persons who have a legitimate source of authority. “</p> <p>There are not statutes that appear to protect the top-level delegation or usage of a term related to the IOC/RCRC, unless those terms have the protection of the trademark laws or the protection of the KIARA. Second-level registrations are more likely to pose liability under the trademark laws or the KIARA. The laws do not specifically contemplate that entities other than the registrant would have liability, though there is no guarantee that none would attach.</p>	<p>Prevention and Trade Secret Prevention Act (KUCP & TSPA) prohibits use of marks of international organizations, and specifically references international organizations and the Paris Convention.</p> <p>For use within a second-level domain name, the general KIARA, combined with the KUCP & TSPA, provide the most likely sources of liability. The delegation of top-level domains containing these names and acronyms is less likely to be viewed as problematic under these statutes.</p>
<p>U.S.</p>	<p>There are two statutes that are relevant to the protection afforded to names or acronyms of</p>	<p>The US Patent and Trademark Office is required to refuse registrations of marks that conflict with</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	<p>the IOC in the United States: (1) 36 U.S.C. §§ 220501 <i>et seq.</i>, the Ted Stevens Olympic and Amateur Sports Act (the “Stevens Act”); and (2) 15 U.S.C. §§ 1051 <i>et seq.</i> (the Lanham Act). Specific words and combinations related to the Olympics and the Olympic Committee are protected from use, but the use of the word “Olympic” to identify a business or goods or services is permitted if it does not combine with any of the intellectual property references. The scope of protection provided, while it does not directly mention domain name registration at the top- or second-level, could be used as a bar to potentially infringing registration.</p> <p>The Red Cross is also afforded protection under the Lanham Act and is protected pursuant to 18 U.S.C. §§</p>	<p>registered marks of IGOs, so no registration is possible (once the marks are identified to the USPTO by a member country of the Paris Convention). No special protection seems to exist to bar the delegation of top- or registration of second-level domains containing the IGO names or acronyms by ICANN, a registry or registrar.</p>

<u>Jurisdiction</u>	<u>IOC/RCRC Protections</u>	<u>IGO Protections (or other INGOs, where applicable)</u>
	706, 706a, and 917. Allowing use of the protected terms at the top- or second- level – while not fully defined in the statutes and not addressing domain name registrations – could be used to impose liability.	

EXHIBIT D

MOTION ON RECOMMENDATIONS FOR IGO-INGO PROTECTIONS

WHEREAS:

1. At the ICANN meeting in Singapore on 28 June 2011, the ICANN Board passed a [Resolution](#) authorizing the President and CEO to implement the New gTLD program and directing that the Applicant Guidebook (AGB) be amended to incorporate text concerning protection of specific names requested by the International Committee of the Red Cross, the International Federation of the Red Cross and Red Crescent Societies, and the American Red Cross (collectively, the RCRC) and the International Olympic Committee (IOC) for the top level only during the initial application round, until the Generic Names Supporting Organization (GNSO) and the Governmental Advisory Committee (GAC) develop policy advice based on the global public interest;
2. On 14 September 2011 the GAC sent a [Proposal](#) to the GNSO Council recommending that certain RCRC and IOC names also be protected at the second level in a number of specific languages, which proposal was intended to complement the ICANN Board's June 2011 resolution, and which acknowledged the need for further work by the GAC and the GNSO to develop permanent protections for these organizations at the top level;
3. At the ICANN meeting in Dakar in October 2011, the GNSO Council formed a [Drafting Team](#) to develop recommendations relating to both top and second level protections for RCRC and IOC names;
4. On 11 January 2012 ICANN staff published an [updated AGB](#) that prohibited the delegation of certain RCRC and IOC names at the top level during the first round of the New gTLD program;
5. On 26 March 2012 the GNSO Council [adopted](#) three of the Drafting Team's recommendations pertaining to protection of certain RCRC and IOC names at the top level;
6. On 12 April 2012 the ICANN Board, acting through its New gTLD Program Committee (NGPC), [acknowledged](#) receipt of the GNSO's recommendations but decided not to change the AGB then, giving the [Rationale](#) that the public interest would be better served at that time by maintaining the status quo of a temporary moratorium;
7. At the ICANN meeting in Prague in June 2012, the GAC [Communique](#) requested that the ICANN Board provide the GAC with "further clarification as to the status of its pending request for enhanced protections [for RCRC and IOC names] at the top and second levels";
8. On 13 September 2012 the NGPC passed a [Resolution](#) requesting that the GNSO

continue its work on second level protections of RCRC and IOC names and, if this were not concluded by 31 January 2013, that the GNSO advise the ICANN Board if there was any reason not to provide second level protections for those RCRC and IOC names already protected in the AGB at the top level, in light of all gTLDs approved in this first round of the New gTLD program;

9. On 13 December 2011 legal counsel from twenty-eight International Governmental Organizations (IGOs) sent a [letter](#) to the ICANN CEO and Board Chair, requesting that their organizations' names and acronyms be excluded from third-party registration at both the top and second levels in the first round of the New gTLD program and until further policy could be developed for future rounds; in May 2012, these organizations published a [Common Position Paper](#) outlining the possible bases for their requested protections;
10. On 11 March 2012 the ICANN Board [requested](#) that the GAC and the GNSO provide it with "policy advice on the IGOs' request ... [to] inform ICANN in providing a meaningful response to the IGOs";
11. On 12 April 2012 the GNSO Council [requested](#) an Issue Report as a preceding step to a possible Policy Development Process (PDP) to determine the type of international organization that should receive special protection at the top and second levels (if any), as well as the policies that should govern such protections;
12. On 1 October 2012 the [Final Issue Report](#) recommended that the GNSO initiate a PDP to determine, first, whether additional special protections were needed at the top and second levels for the names and/or acronyms of certain international organizations, namely IGOs and International Non-Governmental Organizations (INGOs) - including consideration of further protections of RCRC and IOC names - and if so, to develop policy proposals for such protections; and secondly, to include within the PDP an evaluation of whether such policies should also extend to existing gTLDs;
13. On 17 October 2012 the GNSO Council passed a [Resolution](#) launching an expedited PDP (which would become the IGO-INGO PDP) to address the issues described in the Final Issue Report;
14. On 26 November 2012 the NGPC passed a [Resolution](#) requesting that the GNSO continue its work on top and second level protections for IGOs and INGOs and, if this work were not concluded by 28 February 2013, that the GNSO advise the Board of any reason it should consider in including IGO names and acronyms that satisfy certain specific criteria on a Reserved Names List applicable to all new gTLD registries approved in the first round of the New gTLD program;
15. On 20 December 2012 the GNSO Council [adopted](#) a further set of three of the Drafting Team's recommendations pertaining to protection of certain RCRC and IOC names at the second level, pending the outcome of the recently-launched PDP, and [communicated](#) these decisions to the GAC;

16. On 28 February 2013 the GNSO Council Chair sent a [letter](#) to the NGPC Chair in response to the NGPC's November Resolution, indicating that the GNSO's PDP was addressing the issues raised by the NGPC;
17. On 22 March 2013 the GAC [requested](#) that the ICANN Board provide second level protections of names and acronyms of certain IGOs according to specific criteria;
18. On 14 June 2013 the IGO-INGO PDP Working Group published its draft [Initial Report](#) for public comment;
19. At the ICANN meeting in Durban in July 2013 the GAC through its [Communique](#) further refined its 22 March 2013 request concerning second level protection for IGO acronyms
20. On 20 September 2013 the Working Group published its draft [Final Report](#) for public comment, incorporating feedback received in response to its draft Initial Report;
21. On [__ November 2013] the Working Group published its Final Report and sent it to the GNSO Council, incorporating feedback received in response to its draft Final Report;
22. The Working Group's Final Report includes supplemental documentation in the form of Minority Statements from various Working Group members and their respective constituencies, including IGOs and INGOs who may be affected by the recommendations under consideration.

RESOLVED:

1. The GNSO Council thanks the Working Group for its hard work and for its thorough report, which includes multiple recommendations pertaining to the RCRC, IOC, IGOs and INGOs, and notes the inclusion of the supplemental documentation in the form of the various Minority Statements submitted;
2. The GNSO Council adopts in full the following Consensus recommendations made by the Working Group (including the definitions of Scope 1 and Scope 2 identifiers for all the various types of organizations considered) and recommends their adoption by the ICANN Board:
 - A. *In relation to the RCRC:*
 - **Top Level, Exact Match, Full Name Scope 1** identifiers of the RCRC (as defined in the Final Report to refer to designations of the RCRC emblems protected under the 1949 Geneva Conventions and their Additional Protocols) are to be considered "Strings Ineligible for Delegation" for future rounds of the New gTLD Program, and an exception procedure shall be designed which will allow an RCRC organization with a name protected as a

“String Ineligible for Delegation” to apply for its protected string at the top level;

- **Second Level, Exact Match, Full Name Scope 1** identifiers of the RCRC (as defined in the Final Report to refer to designations of the RCRC emblems protected under the 1949 Geneva Conventions and their Additional Protocols) are to be withheld from registration, and an exception procedure designed that will allow an RCRC organization with a name withheld from registration to register its protected name at the second level. For the current round of New gTLDs, the names subject to this recommendation shall be placed on the Reserved Names List in Specification 5 of the New gTLD Agreement, replacing any names currently listed in Specification 5. For future rounds, the names subject to this recommendation shall be placed on the Reserved Names List associated with each new Registry Agreement.
- **Second Level, Exact Match, Full Name and Acronym Scope 2** identifiers of the RCRC (as defined in the Final Report) are to be subject to any notification services afforded to rights holders during the launch of a new gTLD. For the current round, the names and acronyms subject to this recommendation are to be added to the Trademark Clearinghouse (TMCH), and the related organizations permitted to participate in the 90-day claims notification process developed for the New gTLD Program.

B. In relation to the IOC:

- **Top Level, Exact Match, Full Name Scope 1** identifiers of the IOC (as defined in the Final Report) are to be considered “Strings Ineligible for Delegation” for future rounds of the New gTLD Program, and an exception procedure shall be designed which will allow an IOC organization with a name protected as a “String Ineligible for Delegation” to apply for its protected string at the top level;
- **Second Level, Exact Match, Full Name Scope 1** identifiers of the IOC (as defined in the Final Report) are to be withheld from registration, and an exception procedure designed that will allow an IOC organization with a name withheld from registration to register its protected name at the second level. For the current round of New gTLDs, the names subject to this recommendation shall be placed on the Reserved Names List in Specification 5 of the New gTLD Registry Agreement, replacing any names currently listed in Specification 5. For future rounds, the names subject to this recommendation shall be placed on the Reserved Names List associated with each new Registry Agreement.

C. In relation to IGOs:

- **Top level, Exact Match, Full Name Scope 1** identifiers of the specified IGOs

(as defined in the Final Report) are to be considered “Strings Ineligible for Delegation” for future rounds of the New gTLD Program, and an exception procedure shall be designed that will allow the specified IGO with a name protected as a “String Ineligible for Delegation” to apply for its protected string at the top level;

- **Second level, Exact Match, Full Name Scope 1** identifiers of the specified IGOs (as defined in the Final Report) are to be withheld from registration, and an exception procedure designed that will allow a specified IGO with a name withheld from registration to register its protected name at the second level. For the current round of New gTLDs, the names subject to this recommendation shall be placed on the Reserved Names List in Specification 5 of the New gTLD Registry Agreement. For future rounds, the names subject to this recommendation shall be placed on the Reserved Names List associated with each new Registry Agreement.
- To the extent that in the current round **Second Level, Exact Match Scope 2** identifiers for the **Acronyms** of the specified **IGOs** (as defined in the Final Report) are to be added to the TMCH, and the related organizations permitted to participate in the 90-day claims notification process developed for the New gTLD Program, these identifiers will similarly be subject to any notification services afforded to rights holders during the launch of a new gTLD in future rounds.

D. In relation to INGOs:

- **Top Level, Exact Match, Full Name Scope 1** identifiers of the specified INGOs (as defined in the Final Report) are to be considered “Strings Ineligible for Delegation” for future rounds of the New gTLD Program, and an exception procedure designed that will allow an INGO with a name protected as a “String Ineligible for Delegation” to apply for its protected name at the top level;
- To the extent that **Second Level, Exact Match, Full Name Scope 1** identifiers of the specified INGOs (as defined in the Final Report) are to be withheld from registration, an exception procedure shall be designed that will allow a specified INGO with a name withheld from registration to register its protected name at the second level. For the current round of New gTLDs, the names subject to this recommendation, if approved, will be placed on the Reserved Names List in Specification 5 of the New gTLD Agreement. For future rounds, the names subject to this recommendation shall be placed on the Reserved Names List associated with each new Registry Agreement.
- **Second Level, Exact Match, Full Name Scope 1** identifiers (unless otherwise protected) of protected INGOs and **Scope 2** identifiers of protected INGOs (all as defined in the Final Report) are to be subject to any notification

services afforded to rights holders during the launch of a new gTLD. For the current round, the names subject to this recommendation are to be added to the TMCH, and the protected organizations permitted to participate in the 90-day claims notification process developed for the New gTLD program.

3. The GNSO Council adopts the following Consensus recommendations made by the Working Group that apply to all four categories of identifiers and recommends their adoption by the ICANN Board:
 - At the **top level, acronyms** of the RCRC, IOC, IGOs and INGOs under consideration in this PDP shall not be considered as “Strings Ineligible for Delegation”; and
 - At the **second level, acronyms** of the RCRC, IOC, IGOs and INGO under consideration in this PDP shall not be withheld from registration. For the current round of New gTLDs, the temporary protections extended to the acronyms subject to this recommendation shall be removed from the Reserved Names List in Specification 5 of the New gTLD Registry Agreement.
4. The GNSO Council notes that the Working Group recommends that the following Consensus recommendations also apply to existing gTLD registries, and accordingly the GNSO Council recommends their adoption by the ICANN Board:
 - Existing Registry Agreements shall accommodate **recommended protections adopted for Exact Match, Full Name Scope 1** identifiers of the **RCRC** at the **Second Level** (Section 3.1.3 and 3.1.4 of the Working Group’s Final Report);
 - Existing Registry Agreements shall accommodate **recommended protections adopted for Exact Match, Full Name Scope 1** identifiers of the **IOC** at the **Second Level** (Section 3.2.3 and 3.2.4 of the Working Group’s Final Report);
 - Existing Registry Agreements shall accommodate recommended protections adopted for **Exact Match, Full Name Scope 1** identifiers of **IGOs** at the **Second Level** (Section 3.3.3 and 3.3.4 of the Working Group’s Final Report); and
 - To the extent that **Exact Match, Full Name Scope 1** identifiers of **INGOs** are withheld from registration at the **Second Level** (meaning that in the current round they are placed in Specification 5 of the New gTLD Registry Agreement), existing Registry Agreements shall accommodate recommendations adopted for an exception procedure (Section 3.4.3 of the Working Group’s Final Report) that will allow an INGO with a name withheld from registration to apply for its protected name at the second level.
5. The GNSO Council notes that there are several recommendations and proposals that did not achieve Consensus within the Working Group but obtained Strong Support with Significant Opposition (Sections 3.1.7, 3.3.5, 3.3.6 and 3.4.5 of the

Working Group’s Final Report), and reserves the right to further deliberate on these recommendations and proposals at the appropriate time.

[ALTERNATIVE WORDING INSERTED BELOW IN THE EVENT THAT SSbSO RECOMMENDATIONS ARE DETERMINED TO BE CONSENSUS RECOMMENDATIONS

(in which case this Resolved clause will move up to be inserted between Resolved clauses 2 & 3:

The GNSO Council recommends that:

- (a) To the extent that **Second Level, Exact Match, Full Name Scope 2** and **Second Level, Exact Match, Acronym Scope 2** identifiers for the specified **RCRC** organizations (as defined in the Final Report) are to be added to the TMCH, the specified organizations will be permitted to participate in any sunrise registration process developed for the New gTLD program, and the specified organizations will similarly be eligible to participate in any sunrise registration process developed for the launch of a new gTLD in future rounds.
 - (b) **Second Level, Exact Match, Acronym Scope 2** identifiers for the specified **IGOs** are to be added to the TMCH and the specified organizations permitted to participate in any sunrise registration process developed for the New gTLD program; the specified organizations will similarly be eligible to participate in any sunrise registration process developed for the launch of a new gTLD in future rounds.
 - (c) To the extent that **Second Level, Exact Match, Full Name Scope 2** identifiers of the specified **INGOs** (as defined in the Final Report) are to be added to the TMCH, the specified organizations will be permitted to participate in any sunrise registration process developed for the New gTLD program, and the specified organizations will similarly be eligible to participate in any sunrise registration process developed for the launch of a new gTLD in future rounds.]
6. The GNSO Council requests an Issue Report [**INSERT LINK**] on the Working Group’s Consensus recommendation 3.5.3, which states: “The [Working Group] recommends that the respective policies are amended so that curative rights of the UDRP and URS can be used by those organizations that are granted protections based on their identified designations.” This Issue Report is anticipated as a preceding step toward the possibility of initiating a PDP on this issue, and the Issue Report shall also address how these matters can or cannot be incorporated into the forthcoming review of the UDRP;
 7. The GNSO Council requests the GNSO Standing Committee on Improvements Implementation (SCI) to review the current consensus levels defined and described in the GNSO Working Group Guidelines, and specifically requests the

SCI to review and, if deemed appropriate, recommend revised or additional language to apply to situations where working groups may reach sufficient consensus against a particular proposal such that the appropriate consensus level cannot accurately be described as No Consensus/Divergence.

8. The GNSO Council shall convene an IGO-INGO Implementation Review Team to assist ICANN staff in developing the implementation details relating to the recommendations adopted herein should they be approved by the ICANN Board, including the Principles of Implementation highlighted by the Working Group in Section 3.7 of its Final Report and any Exception Procedures to be developed. The Implementation Review Team will be tasked with evaluating the proposed implementation of the policy recommendations as approved by the ICANN Board and is expected to work with ICANN staff to ensure that the resultant implementation fulfills the intentions of the approved policy recommendations. If the Implementation Review Team identifies any potential modifications to the policy recommendations or any need for new policy recommendations, the Implementation Review Team shall refer these to the GNSO Council for its consideration and follow-up, as appropriate. Following adoption by the ICANN Board of the recommendations, the GNSO Secretariat is authorized to issue a call for volunteers for an IGO-INGO Implementation Review Team to the members of the IGO-INGO PDP Working Group.



November 20, 2013

Dear Members of the Board Governance Committee,

The Reconsideration Request of November 14, 2013 filed with ICANN by GCCIX, W.L.L., gTLD Applicant and Respondent in the terminated Legal Rights Objection proceeding concerning <.gcc> administered by the Arbitration and Mediation Center of the World Intellectual Property Organization (WIPO Center), has come to the WIPO Center's attention.

Without commenting here on any other aspect of GCCIX, W.L.L.'s Reconsideration Request, the WIPO Center notes that the Reconsideration Request is incorrect in asserting that "expert panelist fees [...] have not been refunded."

The WIPO Center refunded the panel fees to GCCIX, W.L.L. on September 17, 2013. (Likewise, the Objector received back the panel fees which it had paid.) At that time, the WIPO Center informed GCCIX, W.L.L. of such refund.

So that the record may reflect the above, the WIPO Center requests ICANN to post the present communication in connection with GCCIX, W.L.L.'s Reconsideration Request. A copy of the present communication is forwarded to the parties in the terminated proceeding.

Yours sincerely,

WIPO Arbitration and Mediation Center

RECOMMENDATION OF THE BOARD GOVERNANCE COMMITTEE (BGC)

RECONSIDERATION REQUEST 13-17

8 JANUARY 2014

The Requester seeks reconsideration of the New gTLD Program Committee's 4 June 2013 resolution accepting the Governmental Advisory Committee's consensus advice to reject the Requester's application for the .GCC string.

I. Brief Summary.

The Requester applied for the .GCC string. The Objector in the underlying proceedings filed a legal rights objection ("LRO") to .GCC. Then, the GAC issued consensus advice that ICANN not approve the .GCC application. The NGPC accepted this advice. As the Requester's application was not permitted to proceed, the objection proceedings were terminated before an expert determination was rendered. The Requester claims that: (1) the GAC failed to provide rationale for its consensus advice on the .GCC application; (ii) the NGPC failed to provide an rationale for accepting this GAC advice; (iii) ICANN has not provided rationale for not allowing the LRO proceedings to conclude; and (iv) ICANN has not provided any rationale for disregarding GNSO input regarding the protection of International Organization identifiers.

In light of these above stated claims, the Requester essentially asks that: (i) the NGPC's decision to accept GAC advice be reversed; (ii) the NGPC request that the GAC provide rationale for its advice; (iii) the NGPC instruct the Expert Panel to render a determination on the terminated LRO proceedings; (iv) the NGPC consider the "forthcoming GNSO Council resolution relating to IGO acronym protection at the top level, and the consequent Board action in response to the Council's resolution"; and (iv) upon receiving the GAC's rationale, the expert

determination on the LRO, and the GNSO Council's resolution, the NGPC reconsider whether to accept the GAC advice to reject Requester's application for the .GCC string.

As a preliminary matter, the Request is untimely and fails on this basis alone. The challenged NGPC resolution was published on 6 June 2013. The Request was received on 14 November 2013, significantly more than the required fifteen days from the date upon which the challenged resolution was first published, thereby rendering the Request untimely under the Bylaws.

With respect to the claim that the GAC failed to provide an explanation/rationale for its consensus advice, reconsideration is available for challenges to staff or Board actions or inactions, not for challenges to advisory committees or any other ICANN bodies.

With respect to the claim that the NGPC failed to provide rationale for its rejection of the .GCC application to the extent the Requester claims that the NGPC acted without considering material information – *i.e.*, without considering either an expert determination on the LRO and the GNSO Working Group's Final Report – the claim does not support reconsideration. The information identified was not available to the NGPC at the time of the 4 June 2013 Resolution. And even if the information was available when the Resolution passed, the Requester has not identified what the information would have provided to the NGPC and how it would have changed the decision taken.

With respect to the remaining claims – that the NGPC failed to explain why the LRO proceedings on the .GCC application were terminated or that the NGPC failure to provide rationale for the alleged disregard of GNSO input - neither constitutes a Board action that is subject to reconsideration. Even if assuming that a Board action could be reconsidered based

upon a claim that the Board violated an established policy or process in taking that action, the Requester has not demonstrated any policy or process violation.

Therefore, the BGC recommends that Request 13-17 be denied.

II. Facts.

A. Background Facts.

The Requester GCCIX, W.L.L. (“Requester” or “GCCIX”) submitted a new gTLD application for the .GCC string.

The GAC issued a GAC Early Warning (<https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>) on 20 November 2012, stating that the governments of Bahrain, Oman, Qatar and UAE and the Gulf Cooperation Council expressed their serious concerns with respect to (1) The applied for new gTLD exactly matches a name of an Intergovernmental Organization, and (2) Lack of community involvement and support. The rationale for their concerns was set out in the GAC Early Warning notice.

On 13 March 2013, the Cooperation Council for the Arab States of the Gulf (“CCASG”) filed a legal rights objection (“LRO”) to the Requester’s application, claiming rights to the GCC acronym.¹

On 11 April 2013, the Governmental Advisory Committee (“GAC”) issued its Beijing Communiqué, which included consensus advice to ICANN that it not approve the Requester’s application for the .GCC string.² Specifically, the GAC advised the Board that, pursuant to

¹ CCASG filed a LRO asserting that the applied-for .GCC string “infringes the existing legal rights of the objector.” (Guidebook, Section 3.2.1.)

² The New gTLD Program includes a procedure pursuant to which the GAC may provide advice to ICANN concerning a specific application for a new gTLD. The procedures are set out in Module 3 of the Applicant Guidebook (“Guidebook”) (<http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>).

Section 3.1 of the Guidebook, the GAC “has reached consensus on GAC Objection Advice” on the application for .GCC.³ (Beijing Communiqué, Pg. 3, available at <http://www.icann.org/en/news/correspondence/gac-to-board-18apr13-en.pdf>.)

On 18 April 2013, ICANN published the GAC advice thereby notifying the Requester and triggering the 21-day applicant response period.⁴ (<http://newgtlds.icann.org/en/announcements-and-media/announcement-18apr13-en>.) Prior to the 10 May 2013 deadline, the Requester submitted to the Board a response to the GAC consensus advice, which referenced the information provided in the GAC Early Warning notice. (<http://newgtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-1936-21010-en.pdf>; *see also* Summary and Analysis of Applicant Responses to GAC Advice, Briefing Materials 3 (“NGPC Briefing Material”) available at <https://www.icann.org/en/groups/board/documents/briefing-materials-3-04jun13-en.pdf>.)

On 15 May 2013, the Requester filed a response to CCASG’s LRO. (Request, Pg. 5; Exhibit B to Request: GCCIX’s Response to Legal Rights Objection and supporting exhibits.)

The NGPC developed a scorecard intended to contain the NGPC’s response to the GAC advice found in the Beijing Communiqué (“NGPC Scorecard”). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-04jun13-en.pdf>.) With respect to the .GCC string, the NGPC Scorecard stated in pertinent part:

³ GAC advice regarding a new gTLD application may include consensus advice: “[T]hat a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.” (Guidebook, Section 3.1.) The GAC reached consensus with respect to only two gTLD applications (.AFRICA and .GCC).

⁴ Where GAC advice is received by the Board concerning an application, ICANN is required to: “[P]ublish the advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.” (Guidebook, Section 3.1.)

The NGPC accepts [the GAC] advice. The [Guidebook] provides that if “GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.”

(NGPC Scorecard, Pg. 2.)

On 4 June 2013, the NGPC adopted the NGPC Scorecard (“4 June 2013 Resolution”). (<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-04jun13-en.htm#1.a>) Staff was therefore directed not to approve the Requester’s application for the .GCC string, and the Requester was invited to either withdraw the application or “seek relief according to ICANN’s accountability mechanisms.” (NGPC Scorecard, Pg. 2.)

Because the Requester’s application was not permitted to proceed, CCASG’s LRO was terminated before a determination could be rendered.⁵

On 19 June 2013, the Requester submitted a letter to the ICANN Board expressing its dissatisfaction with the NGPC’s 4 June 2013 action and the NGPC’s (and GAC’s) purported failure to provide an explanation for the action. (Exhibit A to Response.) Requester was seeking a rationale for the NGPC’s decision and requesting that CCASG’s LRO be allowed to continue.

On 5 September 2013, ICANN responded to the Requester’s 19 June 2013 letter.

On 25 September 2013, the Requester’s counsel responded to ICANN’s 5 September 2013 letter, making similar claims as those asserted in the formal Request and again seeking a rationale for the NGPC’s decision and requesting that CCASG’s LRO be allowed to continue.

⁵ A letter from the Arbitration and Mediation Center of the World Intellectual Property Organization (“WIPO”), the independent dispute resolution provider assigned to administer LROs (Guidebook, Section 3.2.3), was received on 20 November 2013 in response to the Request. The letter noted that the Request was “incorrect in asserting that ‘expert panelist fees [...] have not been refunded’”; WIPO refunded the panel fees to Requester on 17 September 2013. (<http://www.icann.org/en/groups/board/governance/reconsideration/wipo-to-bgc-20nov13-en.pdf>.)

(Exhibit A to Response.)

B. Requester's Claims.

Requester seeks reconsideration on the following grounds:

First, the Requester claims that the GAC failed to provide an explanation/rationale for its consensus advice that the application for .GCC should not proceed and that the NGPC failed to provide an explanation/rationale for its acceptance of the GAC advice on .GCC's application.

(Request, Section 8, Pgs. 7-10.)⁶

Second, the Requester claims that ICANN has not provided any rationale for failing to allow WIPO to render a decision on CCASG's LRO, even though the issues raised in the GAC advice "appear to be pertinent" to CCASG's LRO because CCASG "was the prime instigator of the GAC advice to reject the .GCC application." (Request, Pg. 11.)

Third, the Requester claims that ICANN has not provided any rationale for disregarding GNSO input regarding the protection of International Organization identifiers, and specifically the GNSO Working Group's "Final Report on the Protection of IGO and INGO Identifiers in All gTLDs Policy Development Process" (hereinafter, GNSO Working Group's Final Report).⁷

(Request, Pgs. 12-13; Exhibit C to Request.)

C. Relief Requested.

The Requester asks that the NGPC's decision to accept GAC advice be reversed, pending further investigation by the NGPC. The Requester asks that the NGPC request from the GAC its

⁶ The Requester asserts that it has repeatedly requested (and reiterates its request) for "written documentation of the rationale" for the GAC and the NGPC's rejection of the .GCC application. (Request, Pgs. 7-10; Exhibit A to Request.)

⁷ As suggested in the Request, the GNSO Council has since adopted the Working Group's "Consensus recommendations" that IGO acronyms "under consideration in this PDP shall not be considered as 'Strings Ineligible for Delegation'" at the top level. (<http://gns0.icann.org/en/council/resolutions#201311>.)

rationale for its advice so that the Board may “legitimately evaluate whether to accept” the advice. Requester also asks that the NGPC instruct WIPO to render a decision on the terminated LRO to Requester’s application for the .GCC string. The Requester further asks that the NGPC consider the “forthcoming GNSO Council resolution relating to IGO acronym protection at the top level, and the consequent Board action in response to the Council’s resolution.” Upon receiving the GAC’s rationale, WIPO’s expert determination on the LRO, and the GNSO Council’s resolution, Requester asks that the NGPC reconsider whether to accept the GAC advice to reject Requester’s application for the .GCC string. (Request, Section 9, Pgs. 15-16.)

III. Issues.

As discussed in the foregoing Section, Requester asks ICANN to consider: (i) whether the GAC and the NGPC failed to provide a rationale for its rejection of the .GCC application; (ii) whether ICANN failed to provide a rationale for terminating the LRO process with respect to the .GCC application; and (iii) whether ICANN failed to provide a rationale for disregarding GNSO input regarding the protection of IGO identifiers, and specifically, the GNSO Working Group’s Final Report.

In view of the claims set forth in Request 13-17, the issues for reconsideration are whether the purported failure to provide rationales for the following actions supports reconsideration:

1. The GAC’s and the NGPC’s rejection of the .GCC application;
2. ICANN’s termination of CCASG’s LRO before a determination could be rendered; and
3. ICANN’s alleged disregard of GNSO input regarding the protection of IGO identifiers, and specifically, the GNSO Working Group’s Final Report.

IV. The Relevant Standards for Evaluating Reconsideration Requests.

ICANN's Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with the criteria specified in Article IV, Section 2.2 of the Bylaws.⁸ (Bylaws, Art. IV, § 2.)

Reconsideration requests must be submitted within fifteen days after:

- For requests that challenge Board actions, the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale.
- For requests that challenge staff inaction, the date on which the affected person reasonably concluded (or reasonably should have concluded) that action would not be taken in a timely manner.

(Bylaws, Art. IV, § 2.5.)

To properly initiate a request for reconsideration, the requesting party must complete the Reconsideration Request Form posted on the ICANN website ("Reconsideration Request Form").⁹ The requesting party must also acknowledge and agree to the terms and conditions set forth in the Reconsideration Request Form when filing. (Bylaws, Art. IV, § 2.6.)

When challenging a Board action or inaction, the requesting party must provide a:

[D]etailed explanation of the material information not considered by the Board. If the information was not presented to the Board, provide

⁸ Article IV, Section 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

⁹ See <http://www.icann.org/en/groups/board/governance/reconsideration/request-form-11apr13-en.doc>.

the reasons why [requesting party] did not submit the material information to the Board before it acted or failed to act. ‘Material information’ means facts that material to the decision. ...

Reconsideration requests are not meant for those who believe that the Board made the wrong decision when considering the information available. There has to be identification of material information that was in existence of the time of the decision and that was not considered by the Board in order to state a reconsideration request. Similarly, new information – information that was not yet in existence at the time of the Board decision – is also not a proper ground for reconsideration.

(Reconsideration Request Form, Section 8 “Detail of Board or Staff Action – Required Information”.)

Dismissal of a request for reconsideration is appropriate if the Board Governance Committee (“BGC”) recommends, and in this case the NGPC agrees, that the requesting party does not have standing because the party failed to satisfy the criteria set forth in the Bylaws.

(Bylaws, Art. IV, § 2.9.)

V. Analysis and Rationale.

A. The Request Is Untimely.

The Request is untimely and fails on this basis alone. The challenged NGPC resolution was published on 6 June 2013. The Request was received on 14 November 2013, more than fifteen days from the date upon which the challenged resolution was first published, thereby rendering the Request untimely under the Bylaws.

In a 25 September 2013 correspondence, the Requester asked for the “prompt initiation of the Reconsideration Request process described in ICANN’s Bylaws, Art. IV.” (Exhibit A to Request: 25 September 2013 Letter from GCCIX’s counsel to ICANN.)¹⁰ In a 31 October 2013

¹⁰ Exhibit A to Request consists of a set of correspondence between Requester and ICANN from 4 June 2013 through 31 October 2013. (Request, Pg. 17.)

response, ICANN made it clear to Requester that the time to file a reconsideration request based on the 4 June 2013 NGPC resolution had “expired.” (Exhibit A to Request: 31 October 2013 Letter from ICANN to GCCIX’s counsel.)

In the Request, Requester claims that it was not until ICANN’s 31 October 2013 correspondence that it “became evident” that ICANN would not be providing the requested rationale for the 4 June 2013 NGPC resolution, and thus, the Request is timely because it was submitted within fifteen days of that correspondence. (Request, Pgs. 2 & 14.)

As noted above, reconsideration requests must be submitted within fifteen days after “the date on which information about the challenged Board action is first published in a resolution with an accompanying rationale.” (Bylaws, Art. IV, § 2.5.) Although Requester now appears to be claiming that the Request is timely based on a purported inaction – *i.e.*, the date Requester concluded that staff would not be providing the requested rationale for the 4 June 2013 NGPC resolution – the Request itself does not challenge this alleged inaction. Instead, the Request challenges the 4 June 2013 decision of the NGPC. Accordingly, the “deadline to file a Reconsideration Request to this decision expired on 21 June 2013”; fifteen days after the challenged resolution was published. (Exhibit A to Request: 31 October 2013 Letter from ICANN to GCCIX’s counsel.)

Notwithstanding the foregoing, even if the Request was timely, the BGC finds that the stated grounds for the Request do not support reconsideration.

B. The Purported Failure to Provide Rationales Do Not Support Reconsideration of a Board Action or Inaction.

The Requester contends that the GAC and the NGPC failed to provide a rationale for their respective decisions to reject Requester’s application for the .GCC string. The Requester also claims that ICANN (which presumably refers to the NGPC) failed to provide a rationale for

certain actions that, but for the actions, would have resulted in additional information relevant to the Requester's application. (Request, Section 8, Pgs. 7-13.)

A challenge of a Board action (or inaction) must be based upon the Board taking an action (or inaction) without consideration of material information or as a result of the Board's reliance on false or inaccurate material information.¹¹ (Bylaws, Art. IV, § 2.2.) It is unclear from the Request how the NGPC's purported failure to provide an explanation for certain actions upon request constitutes an action or inaction that is subject to reconsideration.

To state a request for reconsideration of a Board action (or inaction), the Requester must:

- (1) identify the information that the Board had available to it but did not consider; and
- (2) identify that the information would be material to that decision. If the Board did not have the information, the Requester must explain why it did not provide that information to the Board in advance of the decision that is being challenged. The Requester has not alleged or provided any evidence demonstrating that the Board took action without considering material information.¹²

In fact the Board had access to the GAC Early Warning notice, the GAC Advice, and the applicant's response to the GAC advice which referenced the GAC Early Warning notice. The entire Request is instead premised on an alleged failure to provide explanations for Board (through the NGPC) actions. As such, the Requester's claims do not provide a proper basis for reconsideration under ICANN's Bylaws.

¹¹ Requester is not challenging a staff action. (Request, Section 1, Pg. 1.) To challenge a staff action, Requester would need to demonstrate that the staff action violated an established policy or process. (Bylaws, Art. IV, § 2.2.) Requester has made no such claims.

¹² Requester is also not claiming that the 4 June 2013 Resolution was the result of the NGPC's reliance on false or inaccurate material information.

1. The GAC's and NGPC's Alleged Failure to Provide a Rationale for the Rejection of the .GCC Application is not a Proper Basis for Reconsideration.

The Requester contends that reconsideration is warranted because the GAC failed to provide rationale for its consensus advice that the application for .GCC not proceed and that the NGPC failed to explain why it accepted this advice.¹³ (Request, Section 8, Pgs. 7-10.) The Requester's contention is not supported. Reconsideration is not the proper mechanism to challenge this action. First, as noted above, reconsideration is available for challenges to staff or Board actions or inactions, not for challenges to advisory committees or any other constituencies established under ICANN's Bylaws. (Bylaws, Art. IV, § 2.2.)

Second, to the extent the Requester claims that the NGPC acted without considering material information – *i.e.*, the NGPC accepted the GAC's advice to reject Requester's application for the .GCC string without considering WIPO's determination on CCASG's LRO and the GNSO Working Group's Final Report – the claim would still not support reconsideration. The information identified was not available to the NGPC at the time of the 4 June 2013 Resolution. WIPO had not rendered a determination on CCASG's LRO and, thus, there was no expert determination for the NGPC to consider. Similarly, the GNSO Working Group's Final Report was not issued until 10 November 2013 – five months after the challenged resolution.

Even if the information was available at the time of the 4 June 2013 Resolution, the Requester has not identified what the information would have provided to the NGPC and how it would have changed the decision taken. The Requester does not even suggest that a WIPO

¹³ It should also be noted that the 4 June 2013 resolution did include a lengthy rationale stating, among other things, why (and under what authority) the NGPC is addressing the GAC advice, which stakeholders were consulted, what concerns or issues were raised by the community, what significant materials the Board reviewed as part of its deliberations, what factors the Board found to be significant, and whether there was positive or negative community impacts. (4 June 2013 Resolution.)

determination on the LRO would result in a different outcome on its application; rather, Requester suggests only that a determination should have been obtained prior to making a decision on the .GCC application.

2. The NGPC's Alleged Failure to Provide a Rationale for Terminating CCASG's LRO Before a Determination Could be Rendered does not Support Reconsideration.

The Requester claims that the NGPC has not provided any rationale for failing to allow WIPO to render a decision on CCASG's LRO, even though the issues raised in the GAC advice "appear to be pertinent" to CCASG's LRO because CCASG "was the prime instigator of the GAC advice to reject the .GCC application." (Request, Pg. 11.)

For the reasons stated above, the Requester's arguments here likewise do not support reconsideration in that the NGPC's purported failure to provide an explanation for terminating the LRO process with respect to .GCC's application does not constitute a Board action that is subject to reconsideration.

Further, assuming a Board action could be reconsidered based upon a claim that the Board violated an established policy or process in taking that action (although this is not a proper ground for reconsideration), the Requester has not demonstrated any policy or process violation. Requester asserts that the "Applicant Guidebook specifically suggests that the ICANN Board should consider [the WIPO determination on the LRO], or to provide a rationale for the refusal to do so." (Request, Pg. 5.) To be clear, the Guidebook provides only that the "Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure." (Guidebook, Section 3.1 (emphasis added).) This discretionary provision does not require the NGPC to seek the advice of the WIPO-designated experts, nor does it require the NGPC to provide a rationale for deciding not to. While seeking advice from

independent experts is an avenue that the NGPC could have taken when considering the GAC advice on .GCC, the plain language of the Guidebook does not support any suggestion that the NGPC violated an established policy or process, and therefore made a decision without material information, when it did not seek the input of independent experts.

3. The NGPC's Purported Failure to Provide a Rationale for Allegedly Disregarding the GNSO Working Group's Final Report is not a Proper Basis for Reconsideration.

The Requester claims that ICANN has not provided any rationale for disregarding GNSO input regarding the protection of IGO identifiers, and specifically the GNSO Working Group's Final Report. (Request, Pgs. 12-13; Exhibit C to Request.)

For the same reasons stated above, the Requester has not stated a proper basis for reconsideration in that the NGPC's purported failure to provide a rationale for the alleged disregard of GNSO input, including the GNSO Working Group's Final Report, does not constitute a Board action that is subject to reconsideration.

Further, similar to above, assuming a Board action could be reconsidered based upon a claim that the Board violated an established process in taking that action (although this is not a proper ground for reconsideration), the Requester has not identified any policy or process that the NGPC contradicted. There is nothing in the Guidebook that requires the NGPC to wait for or otherwise seek GNSO input before considering GAC advice on new gTLDs, nor is there anything in the Guidebook that requires the NGPC to provide a rationale for deciding not to wait for or seek GNSO input. The Guidebook makes clear that ICANN is required to consider GAC advice "as soon as practicable." (Guidebook, Section 3.1.) Accordingly, there is no support for the Requester's contention that the NGPC should have waited more than five months for the GNSO Working Group's Final Report before accepting the GAC advice on the .GCC application.

VI. Decision.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and we therefore recommend that the Request be denied without further consideration.

REFERENCE MATERIALS TO NEW gTLD PROGRAM COMMITTEE
SUBMISSION 2014.01.30.2c

TITLE: **Reconsideration Request 13-19**

Summary Background

While the full background can be found in the documentation attached to this Reference Materials, Reconsideration Request 13-19 brought by HOTREC (“HOTREC”) seeks reconsideration of the NGPC’s alleged failure (inaction) to stay the Requester’s community objection to the application for .HOTELS following the NGPC’s 25 June 2013 resolution deferring the contracting process for the .HOTELS string pending a dialogue with the GAC¹.

The BGC considered Request 13-19 at its 21 January 2014 meeting and concluded that that HOTREC has not stated proper grounds for reconsideration. As detailed in the Recommendation and the documents attached to this Reference Materials, the BGC concluded that the stated grounds are improper bases for reconsideration under ICANN’s Bylaws because the Board’s purported violations of ICANN policy or procedure is not grounds for reconsideration. The BGC further concluded that, even if these were proper bases for reconsideration, the stated grounds do not support reconsideration because there is no policy or process that requires the NGPC to stay objection proceedings while ICANN considers and/or communicates with the GAC regarding advice on new gTLDs. The BGC recommended to the NGPC that this Request be denied without further consideration

Document/Background Links

The following attachments are relevant to the BGC’s recommendation regarding Amazon’s Reconsideration Request 13-19.

¹ Governmental Advisory Committee.

Attachment A is [Reconsideration Request 13-19](#), submitted on 4 December 2013.

Attachment B is [Annex 1a to Request 13-19](#), submitted on 4 December 2013.

Attachment C is [Annex 1b to Request 13-19](#), submitted on 4 December 2013.

Attachment D is [Annex 2 to Request 13-19](#), submitted on 4 December 2013.

Attachment E is [Annex 3 to Request 13-19](#), submitted on 4 December 2013.

Attachment F is the [BGC's Recommendation on Reconsideration Request 13-19](#), issued on 21 January 2014.

Submitted by: Amy A. Stathos
Position: Deputy General Counsel
Date Noted: 24 January 2014
Email: amy.stathos@icann.org



Nathalie Dreyfus
Dreyfus & associés
78 avenue Raymond Poincaré
75116 Paris, France
contact@dreyfus.fr
Tel. +33.1 44 70 07 04

4 December 2013

ATTN: Bruce Tomkin
Chair, ICANN Board Governance Committee
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536
USA
Sent by email to reconsideration@icann.org

Re: Request for Reconsideration based on ICANN's inaction in the course of Community Objection proceedings (case ICC EXP/385/ICANN/2 & c. EXP/447/ICANN/64).

Dear Sir,

Please find attached a Reconsideration Request submitted on behalf of HOTREC.

This Reconsideration Request is submitted to you in your capacity as chair of the ICANN Board Governance Committee (BGC), within the 15-day deadline allowed to submit such a request.

As a preliminary remark, HOTREC is not seeking to appeal a third-party DRSP (i.e. Expert Determination of 19 November 2013 in the consolidated case ICC EXP/385/ICANN/2 & ICC EXP/447/ICANN/64) and/or to obtain the cancellation of the corresponding proceedings. The Expert determination of 19 November 2013 referred to by HOTREC in its Reconsideration Request should only be viewed as the final stage of ICANN's inaction in the course of the corresponding Community Objection proceedings.

Indeed, the present Reconsideration Request is well being submitted as a reconsideration of a "Board action/inaction".

While HOTREC was fundamentally pleased with ICANN's decision on 25 June 2013 directing ICANN staff to *"to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for "generic strings" to a single person or entity and/or that person's or entity's Affiliates (as defined in Section 2.9(c) of the Registry Agreement), pending a dialogue with the GAC"*, it is HOTREC's view that ICANN failed to take appropriate action subsequent to this decision, i.e. ICANN should have decided to stay all the pending objection proceedings and to instruct the ICC accordingly.

We are more than convinced that this Reconsideration Request meets the requirements defined by ICANN. Should the BGC consider that the Reconsideration Request is not the appropriate procedure, we invite the BCG to inform us which jurisdiction should handle our case. According to the general principle of laws, and in particular fundamental rights such as the right to a fair trial, HOTREC should have the possibility to submit its present claim to ICANN.

Yours sincerely,

A handwritten signature in black ink, consisting of a horizontal line with a vertical stroke intersecting it near the right end, and a small dot at the end of the horizontal line.

Nathalie Dreyfus

Reconsideration Request Form

Version of 11 April 2013

1. Requester Information

Name: HOTREC

Address: Contact Information Redacted

Email: Contact Information
Redacted

C/O:

Name: Dreyfus & associés

Address: 78 avenue Raymond Poincare, 75116 Paris, France

Email: contact@dreyfus.fr

Phone Number (optional): +33.144700704

2. Request for Reconsideration of (check one only):

Board action/inaction

Staff action/inaction

3. Description of specific action you are seeking to have reconsidered.

HOTREC is challenging ICANN's inaction in not stopping or at least suspending the Community Objections proceedings involving applications listed in the GAC Beijing Communique of 11 April 2013, Annex I Safeguards on New gTLDs, Category 2, section 2, "Exclusive Access", and more particularly the Community Objection filed by HOTREC against Booking.com's application for .HOTELS as a closed/exclusive access gTLD (Case No. EXP/447/ICANN/64):

- HOTREC's Community Objection was filed against Booking.com's .HOTELS application as a **closed** gTLD ("exclusive access");
- However, as pointed by the Expert herself in her Decision dated 19 November 2013, "*considerable doubt arose in the course of the proceedings as to whether the Applicant would be able to operate '.HOTELS' as **closed** gTLD, as it has proposed*"; (Cf. Paragraph [...] below for details of events which led to this new situation);
- Since the very subject matter of the Community Objection filed by HOTREC (operation of a TLD on an **exclusive access** registry) was seriously put into question by ICANN itself, the Board should have taken the appropriate measures to avoid that the parties continue proceedings based on an outdated Application which would most probably not be approved as such by ICANN;

ICANN's lack of action at the time (a) forced the parties to continue pointless proceedings, (b) forced the parties to bear the corresponding significant expenses; and more importantly, (c) led to a breach of due process since (i) HOTREC was not given the opportunity to object Booking.com's Application in its final version and (ii) the Expert had to make her determination on the basis of non-reliable facts. In light of the foregoing, HOTREC requests that ICANN:

- Reconsiders and reinstates new Community Objection proceedings for all Applications that were listed in the GAC Beijing Communiqué, once corresponding Applicants – like Booking.com – submit their changes;
- Reimburses HOTREC for all of its expenses (administrative fees, Expert fees, lawyer's fees) in relation to Case No. EXP/447/ICANN/64;
- If no reimbursement takes place, decides and ensures that the new Community Objection proceedings will be available to HOTREC at no cost of any nature whatsoever.

4. Date of action/inaction:

The Expert determinations which represent the final stage of ICANN's inaction in the proceedings were published on 25 November 2013 (<http://newgtlds.icann.org/en/program-status/odr/determination>).

5. On what date did you become aware of the action or that action would not be taken?

The Expert determinations were communicated to HOTREC and the Applicant on 19 November 2013 (Annex 1).

6. Describe how you believe you are materially affected by the action or inaction:

HOTREC is a non-profit international association headquartered in Brussels, Belgium, which brings together 44 national associations representing the interest of the hospitality industry in 27 countries. HOTREC filed a Community Objection against Booking.com B.V. with the support not only of its members, but also numerous hospitality stakeholders all around the world and international organizations (Annex 2).

HOTREC filed a Community Objection against Booking.com's HOTELS Application on 13 March 2013.

On 19 November 2013, the Expert, Mrs. Kirby, dismissed HOTREC's Community Objection basing its determination on the grounds of hypothetical or future events. The Expert was in fact referring to the ICANN decision to modify the new gTLD program framework with:

- The addition and later modification of Specification 11 of the Registry Agreement of 2 July 2013, and

- The Application change request applicable to Booking.com as required by ICANN on 9 October 2013 (<http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>).

HOTREC suffered direct financial harm in that in order to file and then pursue the Objection proceedings, it had to pay administrative and Expert fees in addition to lawyer's fees; being noted the Expert found in favor of Booking which prevented HOTREC from obtaining any sort of refund.

HOTREC also suffered indirect financial harm in that it had to lead studies on the effect and consequence of an exclusive access registry for .HOTELS as well to rally all of its members and more generally inform the international Hospitality Community on the dangers of Booking.com's Application for HOTELS.

HOTREC is also materially affected by the fact that it has suffered a breach of due process in that it was forced to continue Community Objection proceedings against an application on which ICANN had required significant changes; as a consequence, the Expert Determination of 19 November 2013 is devoid of interest and one should consider that, at this stage, HOTREC has not had yet the opportunity to assess Booking.com's application and therefore decide on the opportunity to file an objection or not.

7. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

HOTREC is also affected by the inaction of ICANN in the Community Objection against HOTEL Application from Despegar Online, s.r.l. - Objection ICC EXP/386/ICANN/3 (c. EXP/445/ICANN/62) although as far as these proceedings are concerned, the Expert accepted to suspend them (with the agreement of Despegar Online, s.r.l.).

HOTEL CONSUMER PROTECTION COALITION (HCPC) is directly concerned by the same inaction as HCPC filed four Community Objections respectively against Booking.com's HOTELS Application and Despegar Online's HOTEL, HOTELES and HOTEIS Applications. Furthermore, the Expert rendered a similar determination rejecting HCPC's Community Objection ref. ICC EXP/385/ICANN/2.

Any other third party who filed Community Objections against "Closed generic" TLD Applications may also be affected by ICANN's inaction.

8. Detail of Board or Staff Action – Required Information

All Objection proceedings started on 13 March 2013.

On 10 April 2013, the Board established the New gTLD Program Committee (NGPC) and delegated to the Board New gTLD Program Committee all legal and decision making authority of the Board relating to the New gTLD Program (<http://www.icann.org/en/groups/board/documents/resolutions-10apr12-en.htm>).

On 11 April 2013, the GAC published its Beijing Communique establishing safeguards applicable to all New gTLDs and sorting safeguards by categories. In Category 2, Restricted Registration Policies, the GAC advised the ICANN Board that *“For strings representing generic terms, exclusive registry access should serve a public interest goal”* and gave a non-exhaustive list of strings that it considered to be generic terms, where the applicant was proposing to provide exclusive registry access. This list included the term HOTELS for which Booking.com was the sole applicant. Said Application was subject to two Community Objections.

On 23 April 2013, more than one month after the Community Objection proceedings started, ICANN opened a Public Comment period seeking for community input as to how ICANN should address this GAC advice.

On 24 June 2013, Mrs Kirby was appointed as Expert in the HOTELS Community Objection proceedings.

On 25 June 2013, ICANN published on its website "Approved Resolutions | Meeting of the New gTLD Program Committee". These resolutions included inter

alia *"the NGPC adopts the "Proposed PIC Spec Implementation of GAC Category 2 Safeguards" (20 June 2013) [...] to accept and implement the GAC's Category 2 Safeguard Advice for applicants not seeking to impose exclusive registry access" and "the NGPC directs staff to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for "generic strings" to a single person or entity and/or that person's or entity's Affiliates (as defined in Section 2.9(c) of the Registry Agreement), pending a dialogue with the GAC."*

On 1 July 2013, having noted that ICANN had not drawn the conclusions on the pending objection proceedings of the decision *"to defer moving forward with the contracting process for applicants seeking to impose exclusive registry access for "generic strings" to a single person or entity and/or that person's or entity's Affiliates (as defined in Section 2.9(c) of the Registry Agreement), pending a dialogue with the GAC"*, and therefore suspended such proceedings, HOTREC requested a stay of the HOTELS Community Objection proceedings before the ICC.

On 3 July 2013, the NGPC approved the form of the New gTLD Registry Agreement and authorized ICANN staff to take all necessary steps to implement it and to move forward with the implementation of the New gTLD Program.

On 9 October 2013 (updated on 25 October) Applicant Responses to GAC Category 2 Advice were published. The NGPC stated that:(<http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>)

- *"Applicants of 35 applications indicated that their applications currently state that the applied-for TLDs will be operated as exclusive access registries, but the applicants will not operate them as exclusive access registries."*
- *"Applicants of the 35 applications mentioned above will be asked to submit a change request to align their applications and intent. Once an application change request has been approved by ICANN and the application becomes eligible, these applicants will be invited to the Contracting process in order of priority number."*

Booking.com's application for HOTELS is included in this set of applications.

On 19 November 2013, the Expert, Mrs. Kirby, rendered her determination and rejected HOTREC Community Objection. The Expert especially stated, in her assessment of the likelihood of material detriment that:

"The Objector has similarly failed to prove any likely material detriment to the Hotel Community flowing from the Applicant's proposal to operate ".HOTELS" as a closed gTLD. In this regard, I note that the Objector itself has pointed out that, since it filed its Objection, Specification 11 of the draft New gTLD Registry Agreement has been revised. See Objector's email dated 9 August 2013. Specifically, paragraphs 3(c) and 3(d) of that Specification now provide in pertinent part as follows:

(c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by

establishing, publishing and adhering to clear registration policies.

(d) Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” [. . .].

“Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those others.

Draft New gTLD Registry Agreement dated 2 July 2013. As the Objector has noted, these provisions cast considerable doubt on whether the Applicant would be able to operate “.HOTELS” as a closed gTLD, as it has proposed. See Objector’s email dated 9 August 2013. It is accordingly far from certain that the Applicant would be able to exclude members of the Hotel Community from registering domain names in “.HOTELS” and cause the alleged detriment the Objector foresees.

As of today, Booking.com has not submitted any change request to its application.

A detailed timeline is provided in Annex 3.

HOTREC would like to point out that:

1. The Board of ICANN or the NGPC established by the Board at its 10 April 2012 meeting has continuously considered inputs related to “closed-generic” TLDs Application from the GAC and the Community and taken decisions modifying the conditions under which such TLDs can be operated, up to a change of the Registry Agreement and demanding Applicants to submit Public Interest Commitments and/or change their Application;
2. The Board of ICANN or the NGPC have at no time assessed the consequences of their decisions on ongoing proceedings;
3. The Board of ICANN or the NGPC have not suspended the ongoing proceedings, despite the fact that Applications objected were to be substantially amended;
4. In doing so, the Board of ICANN or the NGPC
 - a. Prevented HOTREC from assessing, during the course of the proceedings, Booking.com’s Application in its amended version; ;
 - b. Therefore, prevented HOTREC from amending or withdrawing its Community Objection after the assessment of the amended Application;
 - c. Let the Experts render decisions based on hypothetical or future facts;
 - d. Forced HOTREC and its members to incur useless significant costs.

HOTREC considers the Board of ICANN, by its actions modifying the Application framework on the one hand, and by its inaction to evaluate and to draw conclusions of its actions on on-going proceedings on the other hand, violated Article 4 of the Articles of Incorporation and Article I, Section 2, 7, 8 and 9 of the Bylaws of ICANN and was the cause of a breach of due process in this legal proceedings.

9. What are you asking ICANN to do now?

HOTREC requests that ICANN:

- Reconsiders and reinstates new Community Objection proceedings for all Applications that were listed in the GAC Beijing Communiqué, Annex I Safeguards on New gTLDs, Category 2, section 2, “Exclusive Access”, once corresponding Applicants – like Booking.com – submit their changes;
- Reimburses HOTREC for all of its expenses (administrative fees, Expert fees, lawyer’s fees) in relation to Case No. EXP/447/ICANN/64.

If no reimbursement takes place, decides and ensures that the new Community Objection proceedings will be available to HOTREC at no cost of any nature whatsoever.

10. Please state specifically the grounds under which you have the standing and the right to assert this Request for Reconsideration, and the grounds or justifications that support your request.

The general principles of law define and frame the right to a fair trial. Said general principles of law applies to any ICANN's decision:

- The Universal Declaration of Human Rights included in the United Nations Charter (<http://www.un.org/en/documents/udhr/>) states in Article 10 that:
“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.
- The European Convention on Human Rights reads as follow in Article 6:
“[...] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]”
- The Fifth Amendment to the United States Constitution, part of the Bill of Rights, contains a similar provision *“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”*

The European Court of Human Rights (ECHR) provides a detailed guidance in its “Guide on Article 6, Right to a fair Trial”

(<http://www.echr.coe.int/Documents/GuideArt6ENG.pdf>).

1. Breach of Adversarial proceedings

The concept of a fair trial comprises the fundamental right to adversarial proceedings. The right to adversarial proceedings means to have knowledge of and comment on all evidence adduced or observations filed. The right to adversarial proceedings must be capable of being exercised in satisfactory conditions. A party to the proceedings must have the possibility to familiarize itself with the evidence, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate timeframe if necessary by obtaining a stay of the proceedings.

The procedure continued while the Board of ICANN was discussing openly the possibility to change the challenged Booking.com’s Application from closed to open registry. As of today, Booking.com has not submitted the mandatory change to the Application requested by ICANN. HOTREC was not in a position to have access to the final version of Booking.com’s Application. Thus, HOTREC was not given the opportunity to comment on said document, which is crucial in this Community Objection.

Accordingly, HOTREC considers the adversarial principle has been violated.

2. Breach of Equality of arms

The principle of “equality of arms” is inherent in the broader concept of a fair trial. Equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis the other party.

The Expert, Mrs. Kirby, considered that the amended version of the Specification 11 of the Registry Agreement prohibited the “closed generic” TLDs and that Booking.com would operate an unrestricted TLD, without knowledge of the HOTELS Application change to be submitted by Booking.com. The Expert almost took this fact as granted while no final decision has been taken by ICANN yet. The Expert even used this argument against HOTREC in her determination to mitigate the likelihood of material detriment.

Accordingly, HOTREC considers the principle of “equality of arms” has been violated.

3. Breach in Administration of evidence.

The proceedings have to be fair in the way evidence is submitted to the parties. It is the Expert’s task to ascertain whether the proceedings as a whole were fair, including the way in which evidence was taken. The Expert must therefore establish whether the evidence was presented in such a way as to guarantee a fair trial.

The Expert, Mrs. Kirby, has rendered her determination based on hypothetical and future facts, using elements provided by HOTREC against it and denying it any possibility to correct ungrounded affirmations. These unfounded affirmations were also based on the hypothetical application of the amended Specification 11 of the Registry Agreement to Booking.com's HOTELS Application.

Accordingly, HOTREC considers the principle of “fairness in the proceedings” has been violated.

The combination of actions resulting from the Board of ICANN implementing the provision included in Beijing GAC Advice, Annex I Safeguards on New gTLDs, Category 2, section 2, “Exclusive Access”, with the inaction of the Board of ICANN in assessing the consequences of its actions has led Mrs. Kirby to render a decision on erroneous grounds. Furthermore, the lack of guidance from ICANN prevented the Center (ICC) to suspend the pending proceedings.

The Expert refused to stay the proceedings and/or asked the parties to complete their submissions in light of this new event. In the end, it was ICANN's responsibility to stay all objection proceedings against “closed generic” TLD Applications while the issue was being decided.

Violation of ICANN Articles of Incorporation

ICANN is supposed to operate for the benefit of the Internet community as a whole, **carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law**

and, to the extent appropriate and consistent with its Articles and Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets (Article 4 of ICANN Articles of Incorporation).

HOTREC has demonstrated a breach of fair trial and in particular a breach of adversarial proceedings, a breach of equality of arms and a breach in administration of evidence, according to the principles of international law.

HOTREC considers ICANN did not comply with the principles of international law. As a result, the Board violated Article 4 of ICANN ARTICLES OF INCORPORATION.

Violation of Bylaws of ICANN

ICANN has established its Bylaws on a set of core values that should guide its decisions and actions, including

- Employing open and transparent policy development mechanisms that (i) **promote well-informed decisions** based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process. (Bylaws Art. I, Section 2, 7)).
- **Making decisions** by applying documented policies neutrally and objectively, **with integrity and fairness**. (Bylaws Art. I, Section 2, 8)).

- **Acting with a speed that is responsive to the needs of the Internet** while, as part of the decision-making process, obtaining informed input from those entities most affected. [...]”. (Bylaws Art. I, Section 2, 9))

Either if the Board of ICANN and the NGPC have largely communicated on their websites on the “closed-generic” matters, they have never informed the ICC nor the Expert of the consequences of their decisions. They failed in their duty to promote well-informed decisions, violating its bylaws Art. I, Section 2, 7.

As stated above, it appears that the combination of actions/inaction related to “closed-generic” TLD Applications misled the Expert in rendering her determination and led to an unfair determination. Bylaws Art. I, Section 2, 8 are therefore violated.

Nine months have elapsed from the start of the objection procedure to the decision of the Expert. During these nine months, the Board of ICANN has not seen fit to inform the ICC of its decisions and their consequences, nor has it taken a decision on the suspension of proceedings. It is difficult to regard the Board as acting with a speed that is responsive to the needs of the Internet. Thus, the Board has violated its bylaws Art. I, Section 2, 9.

Consequently, HOTREC considers the Board violated Article I, Section 2, 7, 8 and 9 of ICANN BYLAWS.

11. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Explain.

Not Applicable

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request.

Note that all documents provided, including this Request, will be publicly posted at <http://www.icann.org/en/committees/board-governance/requests-for-reconsideration-en.htm>.

Terms and Conditions for Submission of Reconsideration Requests

The Board Governance Committee has the ability to consolidate the consideration of Reconsideration Requests if the issues stated within are sufficiently similar.

The Board Governance Committee may dismiss Reconsideration Requests that

are querulous or vexatious.

Hearings are not required in the Reconsideration Process, however Requestors may request a hearing. The BGC retains the absolute discretion to determine whether a hearing is appropriate, and to call people before it for a hearing.

The BGC may take a decision on reconsideration of requests relating to staff action/inaction without reference to the full ICANN Board. Whether recommendations will issue to the ICANN Board is within the discretion of the BGC.

The ICANN Board of Director's decision on the BGC's reconsideration recommendation is final and not subject to a reconsideration request.

Signature

A handwritten signature consisting of a horizontal line on the left, a vertical line in the middle, and another horizontal line on the right.

Date: 4 December 2013

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/447/ICANN/64

HOTREC, HOTELS, RESTAURANTS & CAFES IN EUROPE

(BELGIUM)

vs/

BOOKING.COM B.V

(THE NETHERLANDS)

(Consolidated with case No. EXP/385/ICANN/2

HOTEL CONSUMER PROTECTION COALITION (USA) vs/
BOOKING.COM B.V (THE NETHERLANDS))

This document is a copy of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

HOTREC, HOTELS, RESTAURANTS & CAFES IN EUROPE (BELGIUM)

- V -

BOOKING.COM B.V. (THE NETHERLANDS)

**INTERNATIONAL CENTRE FOR EXPERTISE
OF THE INTERNATIONAL CHAMBER OF COMMERCE**

EXP/447/ICANN/64

CONSOLIDATED WITH CASE EXP/385/ICANN/2
HOTEL CONSUMER PROTECTION COALITION (USA) v. BOOKING.COM B.V. (THE NETHERLANDS)

EXPERT DETERMINATION

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This expert determination is made in expertise proceedings pursuant to Module 3 of the gTLD Applicant Guidebook (“Guidebook”) and its Attachment, the New gTLD Dispute Resolution Procedure (the “Procedure”). These proceedings take place under the International Chamber of Commerce (“ICC”) Rules for Expertise (in force as from 1 January 2003) (the “Rules”), as supplemented by the ICC Practice Note on the Administration of Cases under the Procedure (the “ICC Practice Note”).

1. INTRODUCTION

- 1.1 The Internet Corporation for Assigned Names and Numbers (“ICANN”) has implemented a program for the introduction of new generic Top-Level Domain Names (“gTLDs”). Further to this program, parties may apply for new gTLDs in accordance with the terms and conditions set by ICANN. Procedure, article 1(a).
- 1.2 The program includes a dispute resolution procedure for resolving disputes between a party who applies for a new gTLD and a party who objects to the application – namely, the Procedure. *Id.*, article 1(b). The Procedure provides that dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider (a “DRSP”) in accordance with the Procedure and the applicable DRSP rules identified in article 4(b) of the Procedure. *Id.*, article 1(c).
- 1.3 By applying for a new gTLD, an applicant accepts the applicability of the Procedure and the applicable DRSP rules. An objector likewise accepts the applicability of the Procedure and the applicable DRSP rules by filing an objection to an application for a new gTLD. The parties cannot derogate from the Procedure without the express approval of ICANN and cannot derogate from the applicable DRSP rules without the express approval of the relevant DRSP. *Id.*, article 1(d).
- 1.4 There are four types of objections a party may raise against an application for a new gTLD. *Id.*, article 2(e). One of these is known as a “Community Objection”. A Community Objection is an objection that there is substantial opposition to the application from a significant portion of the community to which the string (i.e., the new gTLD) may be explicitly or implicitly targeted. *Id.*, article 2(e)(iv). HOTREC, Hotels, Restaurants & Cafés

in Europe (the “Objector”) has raised this type of objection against the application of Booking.com B.V. (the “Applicant”) for the new gTLD “.HOTELS” (the “Application”).

1.5 Pursuant to articles 3(d) and 4(b)(iv) of the Procedure, Community Objections shall be administered by the ICC International Centre for Expertise (the “Centre”) in accordance with the Rules, as supplemented by the ICC as needed. The ICC Practice Note is such a supplement to the Rules. In the event of any discrepancy between the Procedure and the Rules, the Procedure shall prevail. *Id.*, article 4(c). In all cases, the expert shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its case. *Id.*, article 4(e).

1.6 The Objector’s contact details are as follows:

HOTREC, HOTELS, RESTAURANTS & CAFÉS IN EUROPE
Attn: Mr. Kent Nyström, President
Contact Information Redacted

1.7 The Objector is represented by:

Ms. Nathalie Dreyfus
DREYFUS & ASSOCIÉS
78 avenue Raymond Poincaré
75116 Paris, France
Email: contact@dreyfus.fr

1.8 The Applicant’s contact details are as follows:

BOOKING.COM B.V.
Attn: Mr. Jaap van den Broek, Corporate Counsel
Contact Information Redacted

1.9 The Applicant is represented by:

Mr. Alfred Meijboom
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Haarlemmerweg 333
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1.10 The Expert in these proceedings is:

Ms. Jennifer Kirby
KIRBY
68 rue du Faubourg Saint-Honoré
75008 Paris, France
Email: jennifer.kirby@kirbyarbitration.com

1.11 The contact details for the Centre are:

Ms. Hannah Tümpel
ICC INTERNATIONAL CENTRE FOR EXPERTISE
33-43 avenue du Président Wilson
750016 Paris, France
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2. PROCEEDINGS

2.1 Below is a summary of the main procedural steps in these proceedings.

2.2 On 13 March 2013, the Objector filed its Community Objection with the Centre (the “Objection”) pursuant to article 7 of the Procedure.

2.3 By letter dated 4 April 2013, the Centre notified the parties that it had conducted an administrative review of the Objection pursuant to article 9(a) of the Procedure and had found the Objection in compliance with articles 5 through 8 of the Procedure. The Centre accordingly registered the Objection for processing in accordance with article 9(b) of the Procedure.

2.4 By letter dated 25 April 2013, and with the agreement of all parties, the Centre informed the parties that it had decided to consolidate this case with case EXP/385/ICANN/2 pursuant to article 12 of the Procedure.

2.5 On 24 May 2013, the Applicant submitted its response to the Objection (the “Response”) pursuant to article 11 of the Procedure. By letter dated 30 May 2013, the Centre confirmed to the parties that the Response was in accordance with the Procedure and the Rules.

- 2.6 On 24 June 2013, the Chairman of the Standing Committee appointed Ms. Kirby as the Expert in the consolidated proceedings pursuant to article 13 of the Procedure, article 9(5) of the Rules and article 3(3) of Appendix I to the Rules.
- 2.7 On 1 July 2013, the Objector sought a stay of these proceedings.
- 2.8 On 9 July 2013, the Applicant opposed any stay of these proceedings.
- 2.9 On 22 July 2013, the Objector sought leave to file an additional submission in reaction to the Applicant's Response.
- 2.10 On 25 July 2013, the Applicant opposed the Objector's request to file an additional submission.
- 2.11 On 6 August 2013, the Centre confirmed the full constitution of the Expert Panel and transferred the file to the Expert. The Centre clarified that, despite the consolidation of this case with case EXP/385/ICANN/2, the Expert was to render a separate determination for each case.
- 2.12 By letter dated 13 August 2013, the Expert denied the Objector's request for a stay of these proceedings. The reasons for the Expert's decision are set forth in her letter and are incorporated here by reference.
- 2.13 Also on 13 August 2013, by way of the same letter, the Expert decided to allow the Objector to file an additional submission pursuant to article 17(a) of the Procedure.
- 2.14 The Objector filed its additional submission on 20 August 2013 ("Additional Submission").
- 2.15 On 27 August 2013, the Applicant filed its response to the Additional Submission ("Additional Response").
- 2.16 By two emails dated 3 September 2013, the Applicant confirmed that it had no objection to the way these proceedings were conducted and agreed that it had been treated with equality and has been given a reasonable opportunity to present its position. By email dated 4 September 2013, the Objector did the same.

- 2.17 Article 21(a) of the Procedure, provides that the Centre and the expert shall make reasonable efforts to ensure that the expert renders her decision within 45 days of the “constitution of the Panel”.¹ The Centre considers that the Panel is constituted when the expert is appointed, the parties have paid their respective advances on costs in full and the file is transmitted to the expert. In this case, the Panel was constituted on 6 August 2013. The Centre and the Expert were accordingly to make reasonable efforts to ensure that her determination was rendered no later than 20 September 2013. Procedure, articles 6(e), 6(f).
- 2.18 Pursuant to article 21(b) of the Procedure, the Expert submitted her determination in draft form to the Centre for scrutiny as to form before it was signed.
- 2.19 Further to paragraph 6 of the ICC Practice Note, the parties waived the requirements for the expert mission as set out in article 12(1) of the Rules.

3. POTENTIAL RELIEF

Article 21(d) of the Procedure provides that the remedies available to an applicant or an objector in these proceedings are limited to the success or dismissal of the objection and the refund by the Centre to the prevailing party of its advance payment of costs pursuant to article 14(e) of the Procedure and any relevant provisions of the Rules.

4. PLACE OF THE PROCEEDINGS

Pursuant to article 4(d) of the Procedure, the place of the proceedings is the location of the DRSP – i.e., the Centre – which is located in Paris, France.

5. LANGUAGE OF THE PROCEEDINGS

- 5.1 English is the language of the proceedings pursuant to article 5(a) of the Procedure. All submissions in these proceedings have been made in English.

¹ All quotations in this determination are set forth “as is”. Any grammatical or typographical errors are in the original documents.

- 5.2 Having said this, the Objector has submitted several exhibits in French, German and Portuguese without providing an English translation. *See, e.g.*, Objection, Appendices 14(A), 14(B), 16(A)-16(F), 18(A)-18(D), 22, 28(A), 40(A), 40(B). The Applicant has raised no objection in this regard. Article 15 of the Rules provides, among other things, that where a party proceeds with the expertise proceedings without objecting to a failure to comply with any provision of the Rules, any direction given by the Centre or the expert, or any requirement related to the conduct of the expertise proceedings, that party shall be deemed to have waived its right to object. In all events, however, none of these documents was material to the Expert's determination.
- 5.3 The Objector also submitted in French a copy of its statutes as they are published in the Official Belgium Bulletin. *See id.*, Appendix 8. While the Objector did not produce a translation of this document per se, it did also submit a copy of its statutes in English. *See id.*, Appendix 7. Again, the Applicant has raised no objection in this regard. *See* Rules, article 15.

6. COMMUNICATIONS

Pursuant to article 6(a) of the Procedure, all communications by the parties, the Expert and the Centre in these proceedings were submitted electronically.

7. STANDARDS AND BURDEN OF PROOF

- 7.1 In determining an objection, the expert shall apply the standards that have been defined by ICANN. Procedure, article 20(a). In this regard, section 3.5 of Module 3 of the Guidebook sets forth "Dispute Resolution Principles (Standards)" for each of the four types of objection that can be raised under the Procedure. The standards applicable to Community Objections are set forth in section 3.5.4 of Module 3 of the Guidebook. In addition, the expert may refer to and base her findings upon the statements and documents submitted and any rules or principles that she determines to be applicable. *Id.*, article 20(b).
- 7.2 The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards. *Id.*, article 20(c).

8. REASONING AND DECISION

- 8.1 This determination is made pursuant to article 21 of the Procedure. Further to paragraph 8 of the ICC Practice Note, the parties are deemed to have agreed that this determination shall be binding upon the parties, as permitted by article 12(3) of the Rules.
- 8.2 Although I have considered all of the allegations, evidence and arguments the parties have submitted to me, I refer in my determination only to those I consider relevant to my reasoning and decisions.

Two-Step Approach

- 8.3 To have its Objection considered, the Objector must have standing. As the first step in making my determination, I accordingly must review the Objection and decide whether the Objector has standing to object. Guidebook, Module 3 § 3.2.2.
- 8.4 To have standing to raise its Community Objection, the Objector must prove that (1) it is an “established institution” and (2) it has an “ongoing relationship with a clearly delineated community”. *Id.* § 3.2.2.4. And the community named by the Objector must be a community “strongly associated” with the new gTLD that is the subject of the Application. *Id.*
- 8.5 If I find that the Objector has standing, my second step is to determine the merits of the Objection in light of the standards set out in section 3.5.4 of Module 3 of the Guidebook applicable to Community Objections. Further to those standards, I am to apply a four-part test for determining whether there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD may be targeted. Specifically, for a Community Objection to be successful, an objector must prove that (1) the community invoked by the objector is a “clearly delineated community”; (2) community opposition to the application is “substantial”; (3) there is a “strong association between the community invoked and the applied-for gTLD”; and (4) the application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.”

Standing

- 8.6 The Objector contends that it has standing to object to the Application for the new gTLD “.HOTELS”. According to the Objector, it is a non-profit international association that brings together 44 national associations representing the interests of the hospitality industry in 27 European countries. Objection § 1; the Objector’s profile, Objection, Appendix 5; the Objector’s list of members, Objection, Appendix 6. Some of these national associations – such as Groupement National des Chaînes Hôtelières – in turn have members (such as Accor) that are among the world’s leading hotel chains and operate in many parts of the world, including Africa, Asia, Europe, Latin America, the Middle East and North America. Objection § 2.5; Accor 2011 Annual Report (operating over 4 400 hotels in 92 countries), Objection, Appendices 14(C)-14(D).
- 8.7 The Objector notes that Europe is the largest tourist destination in the world, with a global market share of over 50%. In 2011, three European countries – France, Italy and Spain – were among the top-five tourist destinations. Objection § 2. The Objector represents the interests of European hotels, restaurants, cafes and similar establishments in the European decision-making process before the European Commission, the Council of Ministers and the European Parliament. *Id.* § 2.2. Since 2007, it has also developed various tools to assist hotel operators across Europe, including the European Hospitality Quality scheme, the Hotelstars Union (a harmonized European hotel classification system), a methodology for improving fire safety in hotels, and benchmarks for fair practices in online distribution. *Id.* § 2.3; information from the Objector’s website on the Hotelstars Union, Objection, Appendix 11; press releases dated 10 February 2010 on the Objector’s guidelines for fire safety in European hotels, Objection, Appendix 12; position paper dated 27 April 2012 on the Objector’s benchmarks of fair practices in online distribution, Objection, Appendix 13. The Objector is also an Affiliated Member of the United Nations World Tourism Organisation (“UNWTO”) and collaborates closely with the International Hotel & Restaurant Association (“IH&RA”), the only international association recognized by the United Nations as representative of the global hotel industry. Objection § 2.2; list of UNWTO Affiliated Members dated 11 March 2013, Objection, Appendix 10(A).
- 8.8 The Objector states that it has been based in Brussels since 1991 and became a non-profit international association in 1994. The Objector is a recognized association listed in the European Transparency Register. It has statutes establishing its governing rules, principles

and procedures. The latest iteration of these was adopted in 2011. The General Assembly is the Objector’s highest decision-making body and brings together representatives of all member associations. The General Assembly elects nine members to an Executive Committee, which is chaired by the President and oversees management of the association. The Objector’s Secretariat, which is led by the Chief Executive Officer, manages the association and its activities on a day-to-day basis. Objection §§ 1, 2.1; the Objector’s statutes adopted 28 October 2011, Objection, Appendix 7; the Objector’s listing dated 10 March 2013 in the European Transparency Register, Objection, Appendix 9.

- 8.9 The Objector considers it axiomatic that the “Hotel Community” – which the Objector defines as the “set of all hotels that meet the definition of ISO 18513:2003” (Objection at 5; International Organization for Standardization 18513:2003 § 2.2.1, Objection, Appendix 3)² – is “strongly associated” with the gTLD “.HOTELS”. *See* Objection §§ 5-5.3.
- 8.10 In light of the above, the Objector considers that it is (1) an “established institution” with (2) an “ongoing relationship with a clearly delineated community” – namely, the Hotel Community (Objection at 6) – that is “strongly associated” with the new gTLD “.HOTELS” that is the subject of the Application, and that it therefore has standing to bring its Objection. For the reasons explained below, I agree.
- 8.11 Section 3.2.2.4 of Module 3 of the Guidebook sets forth a series of non-exclusive factors I may consider in determining whether the Objector is an “established institution”. These non-exclusive factors are (1) the level of global recognition of the institution; (2) the length of time the institution has been in existence; and (3) public historical evidence of the institution’s existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. In all events, however, the institution must not have been established solely in conjunction with the gTLD application process.
- 8.12 That same section also sets forth a series of non-exclusive factors that I may consider in determining whether the Objector has an “ongoing relationship with a clearly delineated community”. These non-exclusive factors are (1) the presence of mechanisms for

² *See also* Objection § 3.1 (explaining that the Hotel Community “includes hotel operators as such, individual hotels, boutique hotels, hotel chains including owned and leased, franchised or managed hotels, and hotel networks or entities that represent the interests of hotels”).

participation in activities, membership and leadership; (2) an institutional purpose related to the benefit of the associated community; (3) the performance of regular activities that benefit the associated community; and (4) the level of formal boundaries around the community.

- 8.13 In determining whether the Objector has standing, I am to “perform a balancing of the factors listed above, as well as other relevant information”. Guidebook, Module 3 at 3-8. It is not expected that the Objector must satisfy each and every factor considered in order to satisfy the standing requirements. *Id.*
- 8.14 Based on the record in this case, I find that the Objector is an “established institution”. The Objector was established in 1991 – more than two decades before the gTLD application process opened for user registration and application submission in January 2012. *See* Guidebook, Module 1 at 1-2. The Objector necessarily enjoys global recognition within the hospitality industry through its membership in UNWTO and by virtue of the international character of its members, who are national associations that represent the interests of the hospitality industry in 27 European countries and, in turn, have as members hotel operators who have thousands of hotels around the globe.
- 8.15 I also find that the Objector has an “ongoing relationship with a clearly delineated community” – namely, the Hotel Community. As noted above (§ 8.9), the Objector has defined the Hotel Community as the “set of all hotels that meet the definition of ISO 18513:2003”. There is no dispute that it is possible to define such a group and label it the Hotel Community. The issue is whether the Hotel Community, thus defined, constitutes a “clearly delineated community” with which the Objector has an “ongoing relationship” for purposes of section 3.2.2.4 of Module 3 of the Guidebook.
- 8.16 Though it is an element an objector must prove to establish standing (Guidebook, Module 3 § 3.2.2.4) and to prevail on the merits of its objection (*id.* § 3.5.4), the Guidebook does not define what constitutes a “clearly delineated community”. When evaluating the merits of an objection, the Guidebook suggests that I could balance a number of factors to determine whether the community at issue can be considered “clearly delineated”. These factors include (1) the level of public recognition of the group as a community at a local or global level; (2) the level of formal boundaries around the community and what persons or entities are considered to form the community; (3) the length of time the community has been in

existence; (4) the global distribution of the community; and (5) the number of people or entities that make up the community. *Id.* § 3.5.4.

- 8.17 The Guidebook does not suggest any factors I could consider when considering what constitutes a “clearly delineated community” for purposes of standing. But there is nothing in the Guidebook that suggests that the words “clearly delineated community” should be given any different meaning when evaluating standing than they are given when evaluating the merits of an objection. In light of this, I consider that the five factors listed above may be helpful to my analysis of whether the Hotel Community is a “clearly delineated community” for purposes of assessing whether the Objector has standing.
- 8.18 In considering these factors, the Objector makes reference to the principles, recommendations and implementation guidelines established by the ICANN Generic Names Support Organization (“GNSO”), which were used as the basis for the new gTLD program. Objection § 3; *see also* Additional Submission at 2. Implementation Guideline P concerns Community Objections and explains that the term “community” should be “interpreted broadly and will include, for example, an economic sector”. Summary of GNSO Principles, Recommendations & Implementation Guidelines, IG P, Objection, Appendix 4; GNSO Final Report dated 8 August 2007, Part A, Objection, Appendix 15.
- 8.19 The Applicant disputes that the GNSO implementation guidelines “can be used to determine the appropriate test set by ICANN” because neither the Guidebook nor the Procedure call for them to be applied in these proceedings. Response at 5. In these circumstances, the Applicant states that I “need to decide on the appropriate tests in line with parties’ reasonable expectations pursuant to the Guidebook and Procedure.” *Id.* The Guidebook, however, gives me broad discretion in this regard by suggesting a number of non-exclusive factors I could take into consideration in determining whether the community at issue can be considered “clearly delineated”. Guidebook, Module 3 § 3.5.4. And the Procedure expressly provides that, in addition to the standards set out in section 3.5.4 of Module 3 of the Guidebook, I may also refer to and base my findings upon the statements and documents submitted and any rules or principles that I determine to be applicable. Procedure, article 20(b). Under these circumstances, I consider it within my discretion to take the GNSO implementation guidelines into account as part of my analysis.

- 8.20 With this approach in mind, I find that the Hotel Community, as defined by the Objector (*see supra* ¶ 8.9), is a “clearly delineated community” composed of people and entities operating hotels. It is common knowledge that this community has many thousands of members around the world and has existed for centuries. The Objector necessarily has an “ongoing relationship” with the Hotel Community because it brings together dozens of national associations that represent the interests of the hospitality industry, including hotel operators, in Europe. The Objector also represents the interests of hotel operators before European bodies and participates in the UNWTO, in addition to spearheading a variety of practical initiatives in Europe for the benefit of the Hotel Community.
- 8.21 That the Hotel Community is “strongly associated” with the gTLD “.HOTELS” cannot be gainsaid. Although it is an element an objector must prove to establish standing (Guidebook, Module 3 § 3.2.2.4) and to prevail on the merits of its objection (*id.* § 3.5.4), the Guidebook does not define what it means for a community to be “strongly associated” with the applied-for gTLD. When evaluating the merits of an objection, the Guidebook suggests several factors I could balance to determine whether there is such a “strong association”. These include (1) statements contained in the application; (2) other public statements by the applicant; and (3) associations by the public. *Id.* § 3.5.4. While these factors could also be potentially helpful in the context of evaluating the term “strongly associated” for purposes of standing, I do not consider a factor-by-factor analysis necessary on the facts presented here, where the applied-for gTLD effectively names the community at issue.
- 8.22 I accordingly find that the Objector has standing to bring the Objection at issue here.
- 8.23 The Applicant resists this conclusion and contends that the Objector does not have standing because the Objection is *ultra vires*, as the Objector’s statutes do not permit it to make the Objection. Specifically, the Applicant notes that the Objector is a Belgian association and that its statutes do not provide that part of its purpose is objecting to applications. In light of this, the Applicant contends that Belgian law does not permit the Objector to file the Objection and that a legal action filed by the Objector would be inadmissible. Moreover, under Belgian law, the directors of the Objector could be held personally liable to the Objector itself or third parties for violating provisions related to the purpose of the association. Response ¶¶ 1.1-1.5; *see also* Additional Response at 1-3; legal opinion dated 23 May 2013 of Stefaan Cnudde, Response, Annex 2. I disagree.

- 8.24 The opinion of Mr. Cnudde, on which the Applicant relies, does not address the issue of the Objector's standing in these proceedings at all. It rather addresses (1) how a Belgian court would consider legal proceedings filed by the Objector and (2) the potential of the Objector's directors to be held liable for having the Objector act *ultra vires* – neither of which is at issue in these proceedings under the Procedure and the Rules. I accordingly consider these arguments inapposite with respect to the issue of whether or not the Objector has standing. This is reason enough to reject them. I also note, however, that Mr. Cnudde's opinion appears to be in tension with the Objector's statutes. *See* Objection, Appendix 7 (contemplating the possibility that the Objector may act as a plaintiff in legal proceedings); *see also* legal opinion dated 22 July 2013 of Philippe Simonart, Additional Submission, Annex 1.
- 8.25 The Applicant also contends that the Objector does not have standing because the Objector's community is not strongly associated with the applied-for gTLD. Response ¶¶ 2.1-2.5. Specifically, the Applicant submits that the Objector's community is what the Applicant calls the "Limited Hotel Operator Community", which it defines as consisting of hotel operators in 27 European countries. *Id.* ¶ 2.2. The Applicant contends that this Limited Hotel Operator Community is not "strongly associated" with the gTLD ".HOTELS", which the Applicant contends is instead strongly associated with something it calls the "Global Hotel Community", which it says the Objector does not represent. *Id.* ¶ 2.3; *see also* Additional Response at 3-4. I cannot follow the Applicant here.
- 8.26 The issue I need to consider in the context of standing is whether the Objector has "an ongoing relationship with a clearly delineated community" that is "strongly associated" with the new gTLD ".HOTELS". For the reasons noted above (¶¶ 8.20-8.21), I consider that the Objector has established that it does. In addition, it is not clear to me on what basis the Applicant considers it can redefine the community the Objector considers to be at issue. The Applicant's position appears to be based on the idea that the Objector cannot represent the interests of a community beyond its membership. The issue here, however, is not whether the Objector *represents* the community at issue, but whether it has an "ongoing relationship" with that community. And in all events, associations frequently have relationships with, and

represent the interests of, communities far larger than their membership. I accordingly do not see any basis for the Applicant's position.³

Merits

- 8.27 Having found that the Objector has standing, I must now turn to the merits of its Objection. As noted above (§ 8.5), with respect to Community Objections, the Guidebook sets forth a four-part test for determining whether there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD may be targeted. Specifically, to succeed, the Objector must prove that (1) the community it invokes – the Hotel Community – is a “clearly delineated community”; (2) community opposition to the application is “substantial”; (3) there is a “strong association” between the Hotel Community and the gTLD “.HOTELS”; and (4) the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the Hotel Community.
- 8.28 In the context of deciding standing, I have already found that the Hotel Community is a “clearly delineated community” and that there is a “strong association” between the Hotel Community and the gTLD “.HOTELS”. *See supra* §§ 8.20-8.21. It therefore remains for me to determine whether the Hotel Community's opposition to the Application is “substantial” and whether the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the Hotel Community.
- 8.29 The Objector contends that the Hotel Community's opposition to the Application is “substantial”. In this regard, the Objector notes that a number of associations has expressed opposition to the Application, including the Objector,⁴ IH&RA, the German Hotel Association, and the Hotel Consumer Protection Coalition (“HCPC”), whose members operate tens of thousands of hotels in about 100 countries around the world. Objection § 4.2; comments dated 26 September 2012 of IH&RA, Objection, Appendix 24(A) (mislabelled Appendix 26); comments dated 26 September 2012 of the German Hotel Association, Objection, Appendix 24(B); comments dated 11 August 2012 of HCPC,

³ I note that the Applicant brings this argument back in several variations when opposing the merits of the Objection. *See, e.g.*, Response ¶¶ 3.1-3.4, 4.1, 5.1, 9.1-9.6. For the reasons explained above, I do not find this line of argument persuasive in any of its iterations.

⁴ The Objector has also submitted letters from 24 of its members expressing individual support for the Objection. *See* Objection, Appendices 32(A)-32(X).

Objection, Appendix 24(C). Several large hotel groups have also individually published negative comments, including Accor, Hilton, InterContinental and Wyndham. Objection § 4.2; comments dated 25 September 2012 of Accor, Objection, Appendix 24(E); comments dated 26 September 2012 by Hilton Worldwide, Inc., Objection, Appendix 24(F); comments dated 11 August 2012 of InterContinental Hotels Group, Objection, Appendix 24(G); comments dated 10 August 2012 of Wyndham Worldwide Corporation, Objection, Appendix 24(H).

8.30 In addition, UNWTO, IH&RA and a variety of associations from different countries have submitted letters formally supporting the Objection. Objection § 4.2; letters dated 12 March 2013 from UNWTO, four Brazilian hospitality associations, French Hospitality in Europe, Fédération Nationale du Tourism of Morocco, and three Australian hospitality associations, Objection, Appendices 25, 28(B), 29(A), 29(C), 30(C), 30(D), 30(E); letters dated 11 March 2013 from the American Hotel & Lodging Association, the Austrian Hotel Association and HCPC, Objection, Appendices 27, 29(B), 31; letter dated 10 March 2013 from Hotel Association Nepal, Objection, Appendix 30(A); letter dated 4 March 2013 from IH&RA, Objection, Appendix 26.

8.31 In light of the above, the Objector contends that it has established that the Hotel Community's opposition to the Application is "substantial". For the reasons set forth below, I agree.

8.32 Section 3.5.4 of Module 3 of the Guidebook suggests that I "could balance a number of factors to determine whether there is substantial opposition" by the Hotel Community to the Application. These factors include (1) the number of expressions of opposition relative to the composition of the community; (2) the representative nature of the entities expressing opposition; (3) the level of recognized stature or weight among sources of opposition; (4) the historical defense of the community in other contexts; and (5) the costs incurred by the Objector in expressing opposition, including other channels the Objector may have used to convey opposition.

8.33 Through the Objector, the Application is opposed by associations representing the hospitality industry, including hotel operators, in 27 European countries. In addition, UNWTO, IH&RA and associations supporting hotel operators in Australia, Brazil, Morocco, Nepal, and the United States formally support the Objection. The Objection is

also formally supported by HCPC, whose members are among the largest hotel operators in the world. The stature and weight of the entities expressing opposition to the Application cannot be overstated. And together, these entities represent the interests of a broad range of Hotel Community members doing business around the globe in Africa, Asia, Europe, Latin America, the Middle East and North America. In light of this, I consider the Hotel Community's opposition to the Application to be "substantial".

- 8.34 The Applicant opposes this conclusion on the grounds that the Objector has failed to quantify the number of expressions of opposition relative to the composition of the community. In light of this, the Applicant notes that it is impossible to compare the number of expressions of opposition to the total number of entities within the community and assess what proportion of the community they represent. Response ¶¶ 6.1-6.4. While the Guidebook suggests that such numbers could be a factor in my analysis, it does not require that they be, and I consider the facts discussed above (¶ 8.33) sufficient to establish the Hotel Community's "substantial" opposition to the Application.
- 8.35 The Applicant likewise contends that the Objector has failed to put on sufficient evidence of the historical defense of the Hotel Community in other contexts and the costs it has incurred in expressing opposition. *Id.* ¶¶ 7.1-8.2. While the Guidebook likewise lists these as factors that could be relevant to assessing whether community opposition is "substantial", in the context of this case, I do not find them so. The Objector's alleged failure to put on sufficient evidence with respect to these factors is accordingly immaterial to my decision. The Applicant also objects to the Objector's reliance on opposition to the Application from entities that are not part of the Hotel Community. *Id.* ¶ 5.2. This, however, I likewise have not relied on in reaching my decision.
- 8.36 This brings me to the last element the Objector must prove to succeed on its Objection – namely, that the Application creates a "likelihood of material detriment to the rights or legitimate interests of a significant portion" of the Hotel Community. Broadly speaking, the Objector contends that it does for two reasons. The first has to do with concerns over intellectual property infringements, and the second with concerns flowing from the Applicant's intention to prevent members of the Hotel Community from registering domain names in ".HOTELS".

- 8.37 With respect to the Objector's first concern, the Objector considers that, if the gTLD ".HOTELS" is delegated to anyone, it would lead to an increase in cybersquatting and the "Hotel Community would have to face tremendous legal costs to remove the infringing domains", while the "advertising revenues from the infringing domain names would simply be stolen from legitimate advertisers causing substantial costs of redress." Objection § 6.3.5; *see also* U.S. Anti-Cybersquatting Consumer Protection Act, Objection, Appendix 48.
- 8.38 Turning to the Application in particular, the Objector contends that the Applicant intends to use ".HOTELS" to "register domain names infringing trademark rights to market its own services." Objection § 6.3.2. Specifically, the Objector contends that the Applicant intends to register descriptive, geographical and branded domain names that refer to the actual day-to-day business activities of the Applicant and its affiliates, subsidiaries and partners. *Id.* § 6.3.1. In doing so, the Objector contends that the Applicant intends to "ignor[e] the rights of third parties". *Id.* In support of this contention, the Objector quotes from a section of the Application that states as follows:
- [The Applicant] shall claim to have a legitimate interest in these domain names, as they are merely descriptive of the activities, products or services of [the Applicant]. So even if one or more of these domain names would be protected by a registered trademark, held by a third party, it is likely that a claim under the Uniform Dispute Resolution Policy or Uniform Rapid Suspension policy will fail.*
- Application, Response, Annex 1 § 18(c); *see* Objection § 6.3.2.
- 8.39 According to the Objector, this means that the "Applicant is attempting to justify free riding, unfair competition or brandjacking by playing the UDRP/URS procedure and diverting the system established to protect rights owners." Objection § 6.3.2. Moreover, "[w]ith the registration of branded domain names," the Objector foresees that the "Applicant will also control the communication and the image associated with the targeted hotels and may either dumb down a hotel's image with a standardized presentation or worse, completely ruin the marketing of hotel owners by not respecting their approach or image." *Id.* § 6.3.6. The Objector also foresees that the Applicant might operate domain names in a way that disrupts an alleged consensus the Hotel Community has reached with respect to mass communication online. *Id.* § 6.3.7.

8.40 With respect to the Objector’s second concern, the Objector contends that the Application would harm the Hotel Community because the Applicant proposes to operate “.HOTELS” as what is known as a “single registrant TLD”. *Id.* §§ 6.1.1-6.1.2. This is explained in section 18(c) of the Application, which states in pertinent part as follows:

At least during the initial months or even years following the delegation of the .hotels gTLD to [the Applicant], this extension is likely going to be a so-called “single registrant TLD” [. . .]. [A] “single registrant TLD” is a TLD where ‘(i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, and (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator.

Therefore, parties who are not [the Applicant] or – insofar and the extent [the Applicant] deems appropriate – an Affiliate within the meaning of the Registry Operator Agreement will not be entitled to register domain names in the .hotels gTLD.

Response, Annex 1 § 18(c). Single registrant TLDs are also sometimes referred to as “closed” gTLDs.

8.41 The Objector states that, if the Applicant were allowed to operate “.HOTELS” as a closed gTLD, hotels that are not affiliated with the Applicant would be unable to register domain names in “.HOTELS”. According to the Objector, this means that the “Applicant, a single stakeholder would control and prevent others from registering domain names within a string representing their own economic sector, thus leading to a monopoly.” Objection § 6.1.2. According to the Objector, such a monopoly would harm consumers and violate the competition laws in the United States and Europe. *Id.* §§ 6.1.2, 6.3.4; *see also* Sherman Antitrust Act, Objection, Appendix 42; Treaty on the Functioning of the European Union, articles 101-102, Objection, Appendix 43.

8.42 The Objector contends that the Applicant’s proposal to operate “.HOTELS” as a closed gTLD shows that it does not intend to act in accordance with the interests of the Hotel Community. Objection § 6.1.3. The Objector further contends that the Hotel Community depends heavily on the domain name system (the “DNS”), as so many consumers now make their travel arrangements online. *Id.* § 6.2; The 2012 Traveler, Google, August 2012, Objection, Appendix 46; Internet Travel Hotel Booking Statistics (research date 23 September 2012), statisticbrain.com, Objection, Appendix 47; Roland Schegg & Michael Fux, The Power of Internet Distribution Systems, March 2012, Objection, Appendix 49. If

the Applicant operates “.HOTELS” as proposed, the Objector contends it “will be positioned to gain advantage in direct navigation and online search to the detriment of the Hotel Community” (Objection § 6.2), as “Internet users will be automatically redirected to a limited choice of hotels in accordance with the Applicant’s interests, and so may be deceived” (*id.* § 6.3.3). In this regard, the Objector states that, as “there is little doubt that Search Engine Optimization (SEO) mechanisms will favor meaningful TLDs, the operation by the Applicant of the TLD HOTELS would exclude *de facto* domains not in the TLD HOTELS namespace from the first results of search engines [. . .] with dramatic economic consequences for the Hotel Community members”. *Id.* § 6.4.

- 8.43 The Objector further contends that, even if the Applicant one day decided to operate “.HOTELS” as an open gTLD, it would not act “in the consumer interests” as a “neutral party”, but rather link registration of domain names in “.HOTELS” to the Applicant’s services. *Id.* § 6.3.8. In this regard, the Objector makes reference to part of the Application which states as follows:

The Applicant may make the .hotels top-level domain available to qualifying domain name registrants at an acceptable cost to them, to be determined if and when the Applicant would decide at its own discretion to allow third parties to register domain names, and – as the case may be – bundle such domain name registrations with additional added-value products and services generally offered by [the Applicant] in the course of its ordinary business activities, like operating the so-called “Bookit button”, which is a tool that can be integrated in websites, and whereby customers can make direct hotel reservations through [the Applicant’s] secure online transaction systems”.

Response, Annex 1 § 18(c); *see* Objection § 6.3.8. According to the Objector, such a “registration policy would increase user confusion and be detrimental to non-eligible members” because the Applicant considers “.HOTELS” a “marketing tool for maximizing its benefit”. Objection § 6.3.8.

- 8.44 In light of the above, the Objector considers that it has proven that the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the Hotel Community. For the reasons set out below, I disagree.

- 8.45 Section 3.5.4 of Module 3 of the Guidebook suggests that I could use several non-exclusive factors in determining whether the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the Hotel Community. These non-exclusive factors are (1) the nature and extent of damage to the reputation of the Hotel

Community that would result from the Applicant's operation of the gTLD ".HOTELS"; (2) evidence that the Applicant is not acting or does not intend to act in accordance with the interests of the Hotel Community or users more widely, including evidence that the Applicant has not proposed or does not intend to institute effective security protection for user interests; (3) interference with the core activities of the Hotel Community that would result from the Applicant's operation of the gTLD ".HOTELS"; (4) dependence of the Hotel Community on the DNS for its core activities; (5) the nature and extent of concrete or economic damage to the Hotel Community that would result from the Applicant's operation of the gTLD ".HOTELS"; and (6) the level of certainty that the alleged detrimental outcomes would occur. In all events, an allegation of detriment that consists only of an applicant being delegated the gTLD instead of an objector will not be sufficient for a finding of material detriment.

8.46 With respect to the Objector's first concern about potential intellectual property infringements, a preliminary remark. To the extent the Objector has concerns that the creation of ".HOTELS" will increase cybersquatting no matter who has the gTLD, I consider this a concern that relates to ICANN's new gTLD program in general, rather than the Application in particular, and that the Community Objection is not the avenue to address such a concern. Turning to the concerns the Objector has raised with respect to the Application specifically, I can find no evidence in the record that suggests that the Applicant considers it can infringe the intellectual property rights of third parties or has any intention of doing so. On the contrary, section 29 of the Application (Response, Annex 1) sets forth the Applicant's commitment to the protection of intellectual property rights and how it intends to implement the mandatory rights protection mechanisms contained in the Guidebook and detailed in Specification 7 of the draft New gTLD Registry Agreement.

8.47 Moreover, the quotation from the Application that the Objector sets forth to support its allegations (*supra* ¶ 8.38) is taken out of context and does not support the Objector's position. In fact, taken in context, the quotation is further evidence of the steps the Applicant would take to minimize the potential for trademark disputes with third parties regarding domain names registered in the ".HOTELS" gTLD:

[E]ven if only [the Applicant] will be entitled to register domain names, this does not exclude the hypothesis that disputes may arise with one or more third parties as regards domain names that are registered in the .hotels gTLD.

In order to avoid these risks, [the Applicant] intends to implement the following policies and processes:

First, the domain names to be registered by [the Applicant] could relate to the following:

- * registered trademarks of [the Applicant];*
- * names of affiliates and/or hotel partners of [the Applicant];*
- * names of departments within [the Applicant], and its subsidiaries;*
- * etc.*

Furthermore, [the Applicant] envisages registering a fair number of generic words that are directly or indirectly related to the day-to-day business activities and operations of [the Applicant] and its Affiliates.

Prior to effectively registering such domain names in the .hotels gTLD, [the Applicant] will require its legal department to review the list of these domain names on a regular basis in order to satisfy itself that they will not infringe the rights of third parties.

In any case, [the Applicant] shall claim to have a legitimate interest in these domain names, as they are merely descriptive of the activities, products or services of [the Applicant]. So even if one or more of these domain names would be protected by a registered trademark, held by a third party, it is likely that a claim under the Uniform Dispute Resolution Policy or Uniform Rapid Suspension policy will fail.

Response, Annex 1 § 18(c).

8.48 The Objector has similarly failed to prove any likely material detriment to the Hotel Community flowing from the Applicant’s proposal to operate “.HOTELS” as a closed gTLD. In this regard, I note that the Objector itself has pointed out that, since it filed its Objection, Specification 11 of the draft New gTLD Registry Agreement has been revised. See Objector’s email dated 9 August 2013. Specifically, paragraphs 3(c) and 3(d) of that Specification now provide in pertinent part as follows:

- (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.*
- (d) Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” [. . .]. “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those others.*

Draft New gTLD Registry Agreement dated 2 July 2013. As the Objector has noted, these provisions cast considerable doubt on whether the Applicant would be able to operate “.HOTELS” as a closed gTLD, as it has proposed. *See* Objector’s email dated 9 August 2013. It is accordingly far from certain that the Applicant would be able to exclude members of the Hotel Community from registering domain names in “.HOTELS” and cause the alleged detriment the Objector foresees.

- 8.49 In addition, the Objector has failed to prove any material detriment the Hotel Community would likely suffer in the (unlikely) event the Applicant were permitted to operate “.HOTELS” as a closed gTLD. Rather, the Objector’s submissions set forth a series of speculative allegations with no evidence to support a finding that any material detriment to the Hotel Community will likely come to pass. This is insufficient to meet the Objector’s burden of proof on this issue.
- 8.50 Specifically, the Objector contends that the Applicant’s operation of “.HOTELS” as a closed gTLD would harm consumers and be a monopoly in violation of US and European competition laws. But the Objector does not even explain, much less prove why this is the case. And its focus on harm to consumers misses the heart of the issue, which is whether the Application creates a likelihood of material detriment to a significant portion of the Hotel Community. The Objector similarly contends that the Applicant’s operation of “.HOTELS” as a closed gTLD will result in online consumers being redirected to a limited choice of hotels in line with the Applicant’s interests that will be favored by SEO mechanisms. Again, however, the Objector provides no evidence to support this alleged dystopian future. Finally, the Objector contends that, even if the Applicant operated “.HOTELS” as an open gTLD, it would do so in a way that was not in keeping with consumer interests, would increase user confusion and would be detrimental to those the Applicant nevertheless still decided to exclude. Again, this allegation is speculative and finds no evidentiary support in the text of the Application or otherwise. And it again places the focus on alleged potential harm to consumers, rather than likely detriment to the Hotel Community.
- 8.51 In closing, I note that the lack of evidence to support the Objector’s allegations of material detriment is striking, particularly in light of the gravity of its allegations and the volume of its submissions. The Objector submitted well over 100 exhibits in this case. Of these, it refers to only nine in its section on material detriment. And of these nine, most are not

documentary evidence. Rather, they are legal exhibits – the Sherman Antitrust Act, the Treaty on the Functioning of the European Union, the Latham Trademark Act, EU Directive 2008/95/EC, the Anti-Cybersquatting Consumer Protection Act. Objection, Appendices 42-45, 48. The only four pieces of documentary evidence on which the Objector relies to support its allegations with respect to material detriment are (1) the Application itself, (2) a study Google commissioned on the role travel plays in the lives of Americans, (3) internet travel hotel booking statistics on statisticbrain.com, and (4) the results of an online survey on hotel distribution in Germany, Austria and Switzerland. Response, Annex 1; Objection, Appendices 46, 47, 49. These materials are insufficient to substantiate the allegations the Objector makes.

8.52 For these reasons, I find the Objector has failed to prove that the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the Hotel Community.

9. COSTS

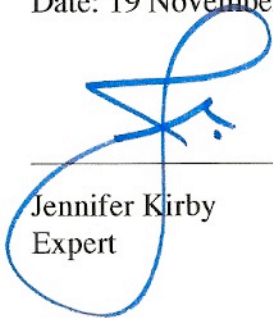
9.1 Pursuant to article 14(e) of the Procedure, upon the termination of the proceedings, after I have rendered my determination, the Centre shall refund to the prevailing party its advance payment of costs. *See also* Procedure, article 21(d).

9.2 As I have decided to dismiss the Objection, the Applicant is the prevailing party in these proceedings. The Centre shall accordingly refund to the Applicant its advance payment of costs.

10. DETERMINATION

- 10.1 For the reasons set out above, the Expert makes the following determination:
- 10.2 The Objection is dismissed and the Applicant accordingly prevails;
- 10.3 The Centre shall refund to the Applicant its advance payment of costs.

Date: 19 November 2013



Jennifer Kirby
Expert

**THE INTERNATIONAL CENTRE FOR EXPERTISE OF THE
INTERNATIONAL CHAMBER OF COMMERCE**

CASE No. EXP/385/ICANN/2

HOTEL CONSUMER PROTECTION COALITION

(USA)

vs/

BOOKING.COM B.V

(THE NETHERLANDS)

(Consolidated with case No. EXP/447/ICANN/64

HOTREC, HOTELS, RESTAURANTS & CAFES IN EUROPE (BELGIUM) vs/
BOOKING.COM B.V. (THE NETHERLANDS))

This document is a copy of the Expert Determination rendered in conformity with the New gTLD Dispute Resolution Procedure as provided in Module 3 of the gTLD Applicant Guidebook from ICANN and the ICC Rules for Expertise.

HOTEL CONSUMER PROTECTION COALITION (USA)

- v -

BOOKING.COM B.V. (THE NETHERLANDS)

**INTERNATIONAL CENTRE FOR EXPERTISE
OF THE INTERNATIONAL CHAMBER OF COMMERCE**

EXP/385/ICANN/2

CONSOLIDATED WITH CASE EXP/447/ICANN/64
HOTREC, HOTELS, RESTAURANTS & CAFES IN EUROPE (BELGIUM) v. BOOKING.COM B.V. (THE NETHERLANDS)

EXPERT DETERMINATION

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This expert determination is made in expertise proceedings pursuant to Module 3 of the gTLD Applicant Guidebook (“Guidebook”) and its Attachment, the New gTLD Dispute Resolution Procedure (the “Procedure”). These proceedings take place under the International Chamber of Commerce (“ICC”) Rules for Expertise (in force as from 1 January 2003) (the “Rules”), as supplemented by the ICC Practice Note on the Administration of Cases under the Procedure (the “ICC Practice Note”).

1. INTRODUCTION

- 1.1 The Internet Corporation for Assigned Names and Numbers (“ICANN”) has implemented a program for the introduction of new generic Top-Level Domain Names (“gTLDs”). Further to this program, parties may apply for new gTLDs in accordance with the terms and conditions set by ICANN. Procedure, article 1(a).
- 1.2 The program includes a dispute resolution procedure for resolving disputes between a party who applies for a new gTLD and a party who objects to the application – namely, the Procedure. *Id.*, article 1(b). The Procedure provides that dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider (a “DRSP”) in accordance with the Procedure and the applicable DRSP rules identified in article 4(b) of the Procedure. *Id.*, article 1(c).
- 1.3 By applying for a new gTLD, an applicant accepts the applicability of the Procedure and the applicable DRSP rules. An objector likewise accepts the applicability of the Procedure and the applicable DRSP rules by filing an objection to an application for a new gTLD. The parties cannot derogate from the Procedure without the express approval of ICANN and cannot derogate from the applicable DRSP rules without the express approval of the relevant DRSP. *Id.*, article 1(d).
- 1.4 There are four types of objections a party may raise against an application for a new gTLD. *Id.*, article 2(e). One of these is known as a “Community Objection”. A Community Objection is an objection that there is substantial opposition to the application from a significant portion of the community to which the string (i.e., the new gTLD) may be explicitly or implicitly targeted. *Id.*, article 2(e)(iv). The Hotel Consumer Protection

Coalition (the “Objector”) has raised this type of objection against the application of Booking.com B.V. (the “Applicant”) for the new gTLD “.HOTELS” (the “Application”).

1.5 Pursuant to articles 3(d) and 4(b)(iv) of the Procedure, Community Objections shall be administered by the ICC International Centre for Expertise (the “Centre”) in accordance with the Rules, as supplemented by the ICC as needed. The ICC Practice Note is such a supplement to the Rules. In the event of any discrepancy between the Procedure and the Rules, the Procedure shall prevail. *Id.*, article 4(c). In all cases, the expert shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its case. *Id.*, article 4(e).

1.6 The Objector’s contact details are as follows:

HOTEL CONSUMER PROTECTION COALITION
Attn: Mr. Michael Menis, InterContinental Hotels Group
Contact Information Redacted

1.7 The Objector is represented by:

Mr. Douglas M. Isenberg
THE GIGALAW FIRM
5555 Glenridge Connector, Suite 200
Atlanta, GA 30342, USA
Email: Contact Information Redacted

1.8 The Applicant’s contact details are as follows:

BOOKING.COM B.V.
Attn: Mr. Jaap van den Broek, Corporate Counsel
Contact Information Redacted

1.9 The Applicant is represented by:

Mr. Alfred Meijboom
Mr. Joran Spauwen
KENNEDY VAN DER LAAN N.V.
Haarlemmerweg 333
1051 LH Amsterdam, The Netherlands
Email: Contact Information Redacted
Email:

1.10 The Expert in these proceedings is:

Ms. Jennifer Kirby
KIRBY
68 rue du Faubourg Saint-Honoré
75008 Paris, France
Email: jennifer.kirby@kirbyarbitration.com

1.11 The contact details for the Centre are:

Ms. Hannah Tümpel
ICC INTERNATIONAL CENTRE FOR EXPERTISE
33-43 avenue du Président Wilson
75016 Paris, France
Email: expertise@iccwbo.org

2. PROCEEDINGS

2.1 Below is a summary of the main procedural steps in these proceedings.

2.2 On 12 March 2013, the Objector filed its Community Objection with the Centre (the “Objection”) pursuant to article 7 of the Procedure.

2.3 By letter dated 28 March 2013, the Centre notified the parties that it had conducted an administrative review of the Objection pursuant to article 9(a) of the Procedure and had found the Objection in compliance with articles 5 through 8 of the Procedure. The Centre accordingly registered the Objection for processing in accordance with article 9(b) of the Procedure.

2.4 By letter dated 25 April 2013, and with the agreement of all parties, the Centre informed the parties that it had decided to consolidate this case with case EXP/447/ICANN/64 pursuant to article 12 of the Procedure.

2.5 On 24 May 2013, the Applicant submitted its response to the Objection (the “Response”) pursuant to article 11 of the Procedure. By letter dated 30 May 2013, the Centre confirmed to the parties that the Response was in accordance with the Procedure and the Rules.

2.6 On 14 June 2013, in reaction to the Applicant’s Response, the Objector submitted an additional submission dated 12 June 2013 (“Additional Submission”).

- 2.7 On 19 June 2013, the Applicant objected to the Objector's filing its Additional Submission.
- 2.8 On 24 June 2013, the Chairman of the Standing Committee appointed Ms. Kirby as the Expert in the consolidated proceedings pursuant to article 13 of the Procedure, article 9(5) of the Rules and article 3(3) of Appendix I to the Rules.
- 2.9 On 2 July 2013, the Objector requested a stay of these proceedings.
- 2.10 On 9 July 2013, the Applicant opposed the requested stay.
- 2.11 On 6 August 2013, the Centre confirmed the full constitution of the Expert Panel and transferred the file to the Expert. The Centre clarified that, despite the consolidation of this case with case EXP/447/ICANN/64, the Expert was to render a separate determination for each case.
- 2.12 By letter dated 13 August 2013, the Expert denied the Objector's request for a stay of these proceedings. The reasons for the Expert's decision are set forth in her letter and are incorporated here by reference.
- 2.13 Also on 13 August 2013, by way of the same letter, the Expert decided to allow in the Objector's Additional Submission pursuant to article 17(a) of the Procedure.
- 2.14 On 27 August 2013, the Applicant filed its response to the Additional Submission ("Additional Response").
- 2.15 By two emails dated 3 September 2013, the Applicant confirmed that it had no objection to the way these proceedings were conducted and agreed that it had been treated with equality and has been given a reasonable opportunity to present its position. By two emails dated 2 and 3 September 2013, the Objector did the same.
- 2.16 Article 21(a) of the Procedure, provides that the Centre and the expert shall make reasonable efforts to ensure that the expert renders her decision within 45 days of the "constitution of the Panel".¹ The Centre considers that the Panel is fully constituted when the expert is

¹ All quotations in this determination are set forth "as is". Any grammatical or typographical errors are in the original documents.

appointed, the parties have paid their respective advances on costs in full and the file is transmitted to the expert. In this case, the Panel was constituted on 6 August 2013. The Centre and the Expert were accordingly to make reasonable efforts to ensure that her determination was rendered no later than 20 September 2013. Procedure, articles 6(e), 6(f).

2.17 Pursuant to article 21(b) of the Procedure, the Expert submitted her determination in draft form to the Centre for scrutiny as to form before it was signed.

2.18 Further to paragraph 6 of the ICC Practice Note, the parties waived the requirements for the expert mission as set out in article 12(1) of the Rules.

3. POTENTIAL RELIEF

Article 21(d) of the Procedure provides that the remedies available to an applicant or an objector in these proceedings are limited to the success or dismissal of the objection and the refund by the Centre to the prevailing party of its advance payment of costs pursuant to article 14(e) of the Procedure and any relevant provisions of the Rules.

4. PLACE OF THE PROCEEDINGS

Pursuant to article 4(d) of the Procedure, the place of the proceedings is the location of the DRSP – i.e., the Centre – which is located in Paris, France.

5. LANGUAGE OF THE PROCEEDINGS

English is the language of the proceedings pursuant to article 5(a) of the Procedure. All submissions in these proceedings have been made in English.

6. COMMUNICATIONS

Pursuant to article 6(a) of the Procedure, all communications by the parties, the Expert and the Centre in these proceedings were submitted electronically.

7. STANDARDS AND BURDEN OF PROOF

- 7.1 In determining an objection, the expert shall apply the standards that have been defined by ICANN. Procedure, article 20(a). In this regard, section 3.5 of Module 3 of the Guidebook sets forth “Dispute Resolution Principles (Standards)” for each of the four types of objection that can be raised under the Procedure. The standards applicable to Community Objections are set forth in section 3.5.4 of Module 3 of the Guidebook. In addition, the expert may refer to and base her findings upon the statements and documents submitted and any rules or principles that she determines to be applicable. *Id.*, article 20(b).
- 7.2 The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards. *Id.*, article 20(c).

8. REASONING AND DECISION

- 8.1 This determination is made pursuant to article 21 of the Procedure. Further to paragraph 8 of the ICC Practice Note, the parties are deemed to have agreed that this determination shall be binding upon the parties, as permitted by article 12(3) of the Rules.
- 8.2 Although I have considered all of the allegations, evidence and arguments the parties have submitted to me, I refer in my determination only to those I consider relevant to my reasoning and decisions.

Two-Step Approach

- 8.3 To have its Objection considered, the Objector must have standing. As the first step in making my determination, I accordingly must review the Objection and decide whether the Objector has standing to object. Guidebook, Module 3 § 3.2.2.
- 8.4 To have standing to raise its Community Objection, the Objector must prove that (1) it is an “established institution” and (2) it has an “ongoing relationship with a clearly delineated community”. *Id.* § 3.2.2.4. And the community named by the Objector must be a community “strongly associated” with the new gTLD that is the subject of the Application. *Id.*

8.5 If I find that the Objector has standing, my second step is to determine the merits of the Objection in light of the standards set out in section 3.5.4 of Module 3 of the Guidebook applicable to Community Objections. Further to those standards, I am to apply a four-part test for determining whether there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD may be targeted. Specifically, for a Community Objection to be successful, an objector must prove that (1) the community invoked by the objector is a “clearly delineated community”; (2) community opposition to the application is “substantial”; (3) there is a “strong association between the community invoked and the applied-for gTLD”; and (4) the application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.”

Standing

8.6 The Objector contends that it has standing to object to the Application for the new gTLD “.HOTELS”. According to the Objector, its members include the world’s leading hotel companies – namely, Accor, Choice Hotels International (“Choice”), Hilton Worldwide (“Hilton”), Hyatt, Intercontinental Hotels Group (“IHG”), Marriott, Starwood Hotels and Resorts (“Starwood”) and Wyndham Hotel Group (“WHG”). By number of rooms, IHG, Marriott, Hilton, WHG, Accor, Choice and Starwood are the top seven hotel companies in the world, and Hyatt is the thirteenth. *See* Special Report: Hotels 325, Hotels Magazine, July/August 2012, Objection, Annex 1 at 2. Together, the Objector’s members provide more than 31,000 hotels offering more than four million hotel rooms in approximately 100 counties around the globe. Objection at 4; profiles of the Objector’s members, Objection, Annex 9. Their hotel brands – e.g., Sofitel, ibis, Comfort Inn, Waldorf Astoria Hotels & Resorts, Hilton Hotels & Resorts, Park Hyatt, InterContinental Hotels & Resorts, Holiday Inn Hotels & Resorts, Ritz-Carlton, Marriott Hotels & Resorts, Le Meridien, Westin, Sheraton, St. Regis, W – are among the most well-known and well-established in the world. Objection at 4-5.

8.7 The Objection is also formally supported by the American Hotel & Lodging Association (“AH&LA”), the only national association representing all sectors and stakeholders in the lodging industry in the United States with over 8,700 properties in membership with over 1.3 million rooms (*see* letter dated 4 March 2013 from AH&LA, Objection, Annex 5), and

HOTREC, the umbrella association of the hospitality sector in Europe, which brings together 44 national associations representing the interests of the hospitality industry in 27 European countries (*see* letter dated 6 March 2013 from HOTREC, Objection, Annex 6).

- 8.8 The Objector states it was established in 2006 – before the establishment of the new gTLD application process – to address “industry-wide problems arising from e-commerce practices that harm or mislead consumers, and in turn damage the reputation of coalition member companies, their brands and the hospitality industry as a whole.” Objection at 4; declaration dated 12 June 2013 of Andrew Kauffman, Additional Submission, Annex B. The Objector’s activities focus on researching and resolving unfair and misleading online practices and marketing-related activities. Objection at 4. The Objector also educates consumers about such practices and how to protect themselves and works with governmental authorities and others to reduce harmful e-commerce related activities. *Id.* Although most of its work is done outside the public arena and has been unrelated to the domain name system (the “DNS”), the Objector has publicly commented on ICANN issues on several occasions. *See, e.g.*, letter dated 22 June 2006 from the Objector to ICANN (regarding the purpose of Whois and the Whois contacts), Objection, Annex 2; letter dated 12 January 2007 from the Objector to ICANN (regarding the Preliminary Task Force Report on Whois Services), Objection, Annex 3.
- 8.9 In light of the above, the Objector considers that it is (1) an “established institution” with (2) an “ongoing relationship with a clearly delineated community” – namely, the “hotel community” (Objection at 5)² – that is “strongly associated” with the new gTLD “.HOTELS” that is the subject of the Application, and that it therefore has standing to bring its Objection. For the reasons explained below, I agree.
- 8.10 Section 3.2.2.4 of Module 3 of the Guidebook sets forth a series of non-exclusive factors I may consider in determining whether the Objector is an “established institution”. These non-exclusive factors are (1) the level of global recognition of the institution; (2) the length

² In its Response, the Applicant attempts to redefine the community at issue as the “Limited Hotel Community”, which it defines as the Objector’s members. *See, e.g.*, Response ¶¶ 3.2-3.4; *see also* Additional Response at 5. It is not clear to me, however, on what basis the Applicant considers it can redefine the community the Objector considers to be at issue. Moreover, the Applicant’s position appears to be based on the idea that the Objector cannot represent the interests of a community beyond its membership. As associations frequently represent the interests of communities far larger than their membership, I do not see any basis for the Applicant’s position.

of time the institution has been in existence; and (3) public historical evidence of the institution's existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. In all events, however, the institution must not have been established solely in conjunction with the gTLD application process.

- 8.11 That same section also sets forth a series of non-exclusive factors that I may consider in determining whether the Objector has an “ongoing relationship with a clearly delineated community”. These non-exclusive factors are (1) the presence of mechanisms for participation in activities, membership and leadership; (2) an institutional purpose related to the benefit of the associated community; (3) the performance of regular activities that benefit the associated community; and (4) the level of formal boundaries around the community.
- 8.12 In determining whether the Objector has standing, I am to “perform a balancing of the factors listed above, as well as other relevant information”. Guidebook, Module 3 at 3-8. It is not expected that the Objector must satisfy each and every factor considered in order to satisfy the standing requirements. *Id.*
- 8.13 Based on the record in this case, I find that the Objector is an “established institution”. The Objector was established in 2006³ and was not created in conjunction with the gTLD application process, which opened for user registration and application submission in January 2012. *See* Guidebook, Module 1 at 1-2. Although the Objector does not have a high public profile, it necessarily enjoys global recognition within the hotel community by virtue of the international character of its members, who operate hotels in over 100 countries in Africa, Asia, Australia, Europe, North America and South America. That both AH&LA and HOTREC – which together represent the hospitality industry in 28 countries in Europe and North America – have formally supported its Objection, also reflects the global recognition the Objector enjoys in the hotel community.⁴

³ The Applicant contends that the Objector has failed to prove that it was in fact established in 2006. Response ¶ 1.3; *see also* Additional Response at 3. I disagree and consider the declaration of Mr. Kauffman (Additional Submission, Annex B) sufficient evidence on this score.

⁴ The Applicant considers that the Objector has failed to prove that it has received a “level of global recognition” and that the Objector has in fact conceded that it is not widely known. Response ¶ 1.4. In making this statement, the Applicant appears to read “global

- 8.14 I also find that the Objector has an “ongoing relationship with a clearly delineated community” – namely, the hotel community. Though it is an element an objector must prove to establish standing (Guidebook, Module 3 § 3.2.2.4) and to prevail on the merits of its objection (*id.* § 3.5.4), the Guidebook does not define what constitutes a “clearly delineated community”. When evaluating the merits of an objection, the Guidebook suggests that I could balance a number of factors to determine whether the community at issue can be considered “clearly delineated”. These factors include (1) the level of public recognition of the group as a community at a local or global level; (2) the level of formal boundaries around the community and what persons or entities are considered to form the community; (3) the length of time the community has been in existence; (4) the global distribution of the community; and (5) the number of people or entities that make up the community. *Id.* § 3.5.4.
- 8.15 The Guidebook does not suggest any factors I could consider when considering what constitutes a “clearly delineated community” for purposes of standing. But there is nothing in the Guidebook that suggests that the words “clearly delineated community” should be given any different meaning when evaluating standing than they are given when evaluating the merits of an objection. In light of this, I consider that the five factors listed above may be helpful to my analysis of whether the hotel community is a “clearly delineated community” for purposes of assessing whether the Objector has standing.
- 8.16 In considering these factors, the Objector has suggested that I take into consideration the views of the Independent Objector (the “IO”) on what constitutes a “clearly delineated community”. *See* Objection at 5; comments of the IO regarding the application for “.WTF”, Objection, Annex 7. For its part, the Applicant has not objected to my doing so, nor taken issue with the views the IO has expressed. Under these circumstances, I consider it appropriate to take the IO’s views into account for purposes of this case.

recognition” to mean global recognition *by the general public*. I do not see any basis to read “global recognition” this way. For purposes of evaluating an objector’s standing to bring a Community Objection, the more pertinent issue would seem to be whether the objector has received a level of global recognition within the community whose interests it purports to serve.

- 8.17 The IO has noted that the “notion of ‘community’ is wide and broad” and can include a community of interests.⁵ *Id.* at 5. It is a group of individuals who have something in common or who “share common values, interests or goals (i.e. the health, legal, internet or ICANN community).” *Id.* “[W]hat matters is that the community invoked can be clearly delineated, enjoys a certain level of public recognition and encompasses a certain number of people and/or entities.” *Id.*
- 8.18 With this approach in mind, I find that the hotel community – like the legal community or the health community – is a “clearly delineated community” composed of people and entities operating hotels. It is common knowledge that this community has many thousands of members around the world and has existed for centuries. The Objector necessarily has an ongoing relationship with the hotel community because its current members include the seven largest hotel companies in the world with tens of thousands of hotels across the globe. And the Objector’s work related to unfair and misleading online practices and marketing-related activities is designed to help protect consumers and the reputation of its members, their brands and the hospitality industry as a whole. That the hotel community is “strongly associated” with the gTLD “.HOTELS” cannot be gainsaid.⁶
- 8.19 I accordingly find that the Objector has standing to bring the Objection at issue here.
- 8.20 The Applicant resists this conclusion on the grounds that the Objector is not an “established institution” and therefore cannot have standing. Response ¶¶ 1.1-1.9. The Applicant’s primary argument in this regard is that the Objector cannot have standing because it does not

⁵ The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who uses the global Internet. The IO may, among other things, file Community Objections against “highly objectionable” gTLD applications to which no Community Objection has otherwise been filed. The IO is granted standing to file Community Objections, notwithstanding the regular standing requirements for such objections. Guidebook, Module 3 § 3.2.5.

⁶ Although it is an element an objector must prove to establish standing (Guidebook, Module 3 § 3.2.2.4) and to prevail on the merits of its objection (*id.* § 3.5.4), the Guidebook does not define what it means for a community to be “strongly associated” with the applied-for gTLD. When evaluating the merits of an objection, the Guidebook suggests several factors I could balance to determine whether there is such a “strong association”. These include (1) statements contained in the application; (2) other public statements by the applicant; and (3) associations by the public. *Id.* § 3.5.4. While these factors could also be potentially helpful in the context of evaluating the term “strongly associated” for purposes of standing, I do not consider a factor-by-factor analysis necessary on the facts presented here, where the applied-for gTLD effectively names the community at issue.

exist as a “legal entity and has no right to be a party in legal proceedings, including these objection procedure”. *Id.* ¶ 1.2; *see also* Additional Response at 2; Bing.com printout dated 1 May 2013, Response, Annex 2; HTTP Request and Response Header, Response, Annex 4; letter dated 21 May 2013 from Hawkins Parnell Thackston & Young to Kennedy Van der Laan, Response, Annex 5. I disagree.

- 8.21 As detailed above (¶ 8.10), Module 3 of the Guidebook sets forth a non-exclusive list of factors that I may consider when evaluating whether the Objector is an “established institution”. None of these factors suggest that an objector may only be an “established institution” if it is a legal entity that can be a party to “legal proceedings”, and I see no reason to import such a requirement here. In this regard, I note that the Applicant has not explained on what basis this expertise procedure under the Procedure and the Rules should be considered “legal proceedings” and I am not aware of any. Moreover, on a practical level, the Applicant’s argument that the Objector must have legal personality might have more appeal if these proceedings could result in a decision directing the Objector to do or refrain from doing something. As noted above (¶ 3), however, they cannot. The remedies available to the Applicant or the Objector under the Procedure are limited to the success or dismissal of the Objection and to the refund by the Centre to the prevailing party of its advance payment of costs. In these circumstances, I see no reason to limit standing to objectors who are legal entities as the Applicant proposes.
- 8.22 The Applicant also contends that the Objector does not have standing because it does not have “an ongoing relationship with a clearly delineated community” that is “strongly associated” with the new gTLD that is the subject of the Application (i.e., “.HOTELS”). *See* Response ¶¶ 2.1-2.2, §§ 4-8, 10; Additional Response at 4. For the reasons noted above (¶ 8.18), I disagree. I also note that the Applicant’s arguments in this regard appear principally to be responding to arguments raised in the Objection (at 5-8), where the Objector conflates itself with the hotel community – arguments I have not adopted in reaching my conclusion that the Objector has standing. Indeed, the Objector conflates itself with the hotel community at numerous points throughout its Objection, a matter I return to when discussing the merits of the Objection below. *See infra* ¶ 8.45.

Merits

- 8.23 Having found that the Objector has standing, I must now turn to the merits of its Objection. As noted above (§ 8.5), with respect to Community Objections, the Guidebook sets forth a four-part test for determining whether there is substantial opposition to a gTLD application from a significant portion of the community to which the gTLD may be targeted. Specifically, to succeed, the Objector must prove that (1) the community it invokes – the hotel community – is a “clearly delineated community”; (2) community opposition to the application is “substantial”; (3) there is a “strong association” between the hotel community and the gTLD “.HOTELS”; and (4) the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community.
- 8.24 In the context of deciding standing, I have already found that the hotel community is a “clearly delineated community” and that there is a “strong association” between the hotel community and the gTLD “.HOTELS”. *See supra* § 8.18. It therefore remains for me to determine whether the hotel community’s opposition to the Application is “substantial” and whether the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community.
- 8.25 The Objector contends, among other things, that the hotel community’s opposition to the Application is “substantial” by virtue of the fact that its members – who provide tens of thousands of hotels offering millions of hotel rooms in approximately 100 countries around the globe – oppose the Application. Objection at 8. In addition, as noted above (§ 8.7), both HOTREC and AH&LA have filed letters formally supporting the Objection, and other travel-related companies have likewise filed comments against the Application. *Id.* at 8-9; new gTLDs application comments dated August/September 2012 (raising concerns about the Application), Objection, Annex 12.
- 8.26 In light of the above, the Objector contends that the hotel community’s opposition to the Application is “substantial”. For the reasons set forth below, I agree.
- 8.27 Section 3.5.4 of Module 3 of the Guidebook suggests that I “could balance a number of factors to determine whether there is substantial opposition” by the hotel community to the

Application. These factors include (1) the number of expressions of opposition relative to the composition of the community; (2) the representative nature of the entities expressing opposition; (3) the level of recognized stature or weight among sources of opposition; (4) the historical defence of the community in other contexts; and (5) the costs incurred by the Objector in expressing opposition, including other channels the Objector may have used to convey opposition.

- 8.28 Through the Objector, the Application is opposed by seven of the world’s top-ten hotel operators. The stature and weight of the Objector’s members in the hotel community cannot be overstated. In addition, both HOTREC (which brings together 44 national associations representing the interests of the hospitality industry, including hotels, in 27 European countries) and AH&LA (which represents both individual hotel property members and hotel companies in the US) formally support the Objection. Together, these entities represent the interests of a broad range of hotel community members doing business in about 100 countries around the globe. In light of this, I consider the hotel community’s opposition to the Application to be “substantial”.
- 8.29 The Applicant opposes this conclusion on the grounds that the Objector has failed to quantify the number of expressions of opposition relative to the composition of the community. In light of this, the Applicant notes that it is impossible to compare the number of expressions of opposition to the total number of entities within the community and assess what proportion of the community they represent. Response ¶¶ 9.1, 9.5, 9.6; Additional Response at 5. While the Guidebook suggests that such numbers could be a factor in my analysis, it does not require that they be, and I consider the facts discussed above (¶ 8.28) sufficient to establish the hotel community’s “substantial” opposition to the Application.
- 8.30 The Applicant likewise contends that the Objector has failed to put on sufficient evidence of the historical defence of the hotel community in other contexts and the costs it has incurred in expressing opposition. *Id.* ¶ 9.2. While the Guidebook likewise lists these as factors that could be relevant to assessing whether community opposition is “substantial”, in the context of this case, I do not find them so, as the facts discussed above (¶ 8.28) are sufficient to establish the hotel community’s “substantial” opposition to the Application. The Objector’s alleged failure to put on sufficient evidence with respect to these factors is accordingly immaterial to my decision. The Applicant also objects to the Objector’s reliance on opposition to the Application from entities that are not part of the hotel community. *Id.*

¶ 9.3. This, however, I have not relied on in reaching my decision. The Applicant also contends that the Objector has failed to put on evidence that each of its individual members objects to the Application. *Id.* ¶ 9.4. As the Objector speaks on behalf of its members, I see no basis to require such evidence. I note, however, that some of its members have in fact directly expressed opposition to the Application in their own names. *See* Objection, Annex 12; Additional Submission at 3-4.

8.31 This brings me to the last element the Objector must prove to succeed on its Objection – namely, that the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community. Broadly speaking, the Objector contends that it does for two reasons. The first has to do with concerns over cybersquatting and similar intellectual property infringements, and the second with concerns that members of the hotel community would not be able to register domain names in “.HOTELS”.

8.32 With respect to the Objector’s first concern, the Objector contends that “ICANN’s gTLD program and its expansion of the number of gTLDs will likely exacerbate the problems that its members have been fighting online for many years, including cybersquatting.” Objection at 9; World Intellectual Property Organization (“WIPO”) statistics dated 18 February 2013 on areas of complaint activity, Objection, Annex 10; WIPO statistics dated 27 February 2013 on decided cases, Objection, Annex 11; WIPO Administrative Panel Decision, Case No. D2009-1661, *Inter-Continental Hotels Corp. v. Kirchhof*, Objection, Annex 15.

8.33 The Objector understands ICANN’s commitment to expand the number of gTLDs, however, and does not object to all applications. Should ICANN decide to approve any of the ten “.HOTEL” or similar gTLD applications that have been filed, the Objector would prefer the application for “.HOTEL” that has been filed by HOTEL Top-Level-Domain SARL (“HTLDS”) because the application proposes to operate “.HOTEL” as a “closed registry limited only to [. . .] the ‘hotel community’”. Objection at 10. The Objector states that HTLDS has assured it that (1) “hotel community” is defined to exclude “‘any entity other than a hotel, hotel chain, or organization or association that is not formed or controlled by individual hotels or hotel chains’”; (2) HTLDS staff will respond immediately to reports of infringement and immediately suspend clear violations, including typosquatting and cybersquatting; and (3) HTLDS will reach out to the Objector’s members to more fully protect their trademarks. *Id.*; *see also* new gTLDs comments dated 11 August 2012 (where

the Objector conditionally supports the application of HTLDS), Objection, Annex 4; GAC Early Warning dated 20 November 2012 from France (proposing that “.HOTELS” and similar strings be reserved to hotel businesses), Objection, Annex 20; letter dated March 2012 from International Hotel & Restaurant Association to ICANN (endorsing the application of HTLDS), Objection, Annex 21; letter dated 20 March 2012 from AH&LA to ICANN (same), Objection, Annex 22.

- 8.34 The Objector contends that, by contrast, the Applicant has taken the “preposterous position” that it “would have the right to engage in cybersquatting on the long-standing and famous hotel brands owned by Objector’s members.” Objection at 12. In support of this contention, the Objector quotes from a section of the Application that states as follows:

[The Applicant] shall claim to have a legitimate interest in these domain names, as they are merely descriptive of the activities, products or services of [the Applicant]. So even if one or more of these domain names would be protected by a registered trademark, held by a third party, it is likely that a claim under the Uniform Dispute Resolution Policy or Uniform Rapid Suspension policy will fail.

Application, Response, Annex 1 § 18(c); see Objection at 12.

- 8.35 With respect to the Objector’s second concern, the Objector contends that the Applicant’s Application would harm the hotel community because the Applicant proposes to operate “.HOTELS” as a “single registrant TLD”. *Id.* at 10. In this regard, the Objector points to a section of the Application that states in pertinent part as follows:

At least during the initial months or even years following the delegation of the .hotels gTLD to [the Applicant], this extension is likely going to be a so-called “single registrant TLD” [. . .]. [A] “single registrant TLD” is a TLD where (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, and (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator.

Therefore, parties who are not [the Applicant] or – insofar and the extent [the Applicant] deems appropriate – an Affiliate within the meaning of the Registry Operator Agreement will not be entitled to register domain names in the .hotels gTLD.

Response, Annex 1 § 18(c); see Objection at 10.

- 8.36 While single registrant TLDs may be appropriate in the case of a “dot-brand” (e.g., “.GUCCI”), the Objector contends that they are inappropriate in the case of generic words – such as “hotels” – because they would make the gTLD “unavailable for the community it should serve, to the community’s detriment.” *Id.* at 10. In other words, if the Applicant were allowed to operate “.HOTELS” as proposed, the Objector and its members would be unable to register domain names such as “sofitel.hotels” or “hyatt.hotels” or “marriott.hotels” and would therefore “be unable to conduct business in the one gTLD that is most directly related and beneficial to its business.” *Id.* at 10-11. *See also* Objection, Annex 12 (raising concerns about the Applicant’s proposal to operate “.HOTELS” as a closed gTLD); GAC Early Warnings dated 20 November 2012 from Australia and Germany (same), Objection, Annex 20. It is for this reason that such “closed” gTLDs have received critical comment. *See* letter dated 31 January 2013 from Microsoft to ICANN (raising concerns with respect to closed gTLDs), Objection, Annex 16; letter dated 15 February 2013 from Retail Council of Canada to ICANN (same), Objection, Annex 18; letter dated 25 September 2012 from Kathryn Kleiman to ICANN (same), Objection, Annex 19.
- 8.37 The Objector contends that the Applicant’s proposal to operate “.HOTELS” as a closed gTLD shows that it does not intend to act in accordance with the interests of the hotel community, but rather only in accordance with its own interests. Objection at 13. The Objector considers that such a situation would damage the reputation of the hotel community. *Id.* at 12. Specifically, the Objector alleges that the Applicant’s operation of “.HOTELS” would “directly damage Objector and its members by excluding them from the most appropriate gTLD for their community, forcing Objector and its members to incur significant additional expenses to properly inform the public about its official Internet presences.” *Id.* The Objector contends that this is especially so as the hotel community depends heavily on the DNS, as so many consumers now make their travel arrangements online. *Id.* at 13; *U.S. Consumer Online Travel Spending Surpasses \$100 Billion for First Time in 2012*, 20 February 2012, comScore.com, Objection, Annex 23; *The Evolution of Online Travel (Infographic)*, 28 February 2012, hotelmarketing.com, Objection, Annex 24; *Top 10 Hospitality Industry Trends for 2012*, 22 December 2011, hotelmarketing.com, Objection, Annex 25.
- 8.38 In light of the above, the Objector considers that it has proven that the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community. For the reasons set out below, I disagree.

- 8.39 Section 3.5.4 of Module 3 of the Guidebook suggests that I could use several non-exclusive factors in determining whether the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the hotel community. These non-exclusive factors are (1) the nature and extent of damage to the reputation of the hotel community that would result from the Applicant's operation of the gTLD ".HOTELS"; (2) evidence that the Applicant is not acting or does not intend to act in accordance with the interests of the hotel community or users more widely, including evidence that the Applicant has not proposed or does not intend to institute effective security protection for user interests; (3) interference with the core activities of the hotel community that would result from the Applicant's operation of the gTLD ".HOTELS"; (4) dependence of the hotel community on the DNS for its core activities; (5) the nature and extent of concrete or economic damage to the hotel community that would result from the Applicant's operation of the gTLD ".HOTELS"; and (6) the level of certainty that the alleged detrimental outcomes would occur. In all events, an allegation of detriment that consists only of an applicant being delegated the gTLD instead of an objector will not be sufficient for a finding of material detriment.
- 8.40 With respect to the Objector's first concern about cybersquatting and the like, there is no evidence in the record that suggests that the Applicant considers it can engage in cybersquatting at all, much less cybersquatting that would infringe the trademarks of the Objector's members. On the contrary, section 29 of the Application (Response, Annex 1) sets forth the Applicant's commitment to the protection of intellectual property rights and how it intends to implement the mandatory rights protection mechanisms contained in the Guidebook and detailed in Specification 7 of the draft New gTLD Registry Agreement – mechanisms that are specifically designed to combat cybersquatting, among other infringements.
- 8.41 Moreover, the quotation from the Application that the Objector sets forth to support its cybersquatting allegation (*supra* ¶ 8.34) is taken out of context and does not support the Objector's position. In fact, taken in context, the quotation is further evidence of the steps the Applicant would take to minimize the potential for trademark disputes with third parties regarding domain names registered in the ".HOTELS" gTLD:

[E]ven if only [the Applicant] will be entitled to register domain names, this does not exclude the hypothesis that disputes may arise with one or more third parties as regards domain names that are registered in the .hotels gTLD.

In order to avoid these risks, [the Applicant] intends to implement the following policies and processes:

First, the domain names to be registered by [the Applicant] could relate to the following:

- * registered trademarks of [the Applicant];*
- * names of affiliates and/or hotel partners of [the Applicant];*
- * names of departments within [the Applicant], and its subsidiaries;*
- * etc.*

Furthermore, [the Applicant] envisages registering a fair number of generic words that are directly or indirectly related to the day-to-day business activities and operations of [the Applicant] and its Affiliates.

Prior to effectively registering such domain names in the .hotels gTLD, [the Applicant] will require its legal department to review the list of these domain names on a regular basis in order to satisfy itself that they will not infringe the rights of third parties.

In any case, [the Applicant] shall claim to have a legitimate interest in these domain names, as they are merely descriptive of the activities, products or services of [the Applicant]. So even if one or more of these domain names would be protected by a registered trademark, held by a third party, it is likely that a claim under the Uniform Dispute Resolution Policy or Uniform Rapid Suspension policy will fail.

Response, Annex 1 § 18(c).

- 8.42 The Objector has similarly failed to prove any likely material detriment to the hotel community flowing from the Applicant’s proposal to operate “.HOTELS” as a closed gTLD. As a preliminary matter, I note that, in trying to prove material detriment, the Objector has contended that the “.HOTEL” application filed by HTLDS is preferable to other applications for identical or similar gTLDs – including the Application at issue here for “.HOTELS” – because the former will better serve the interests of the hotel community. *See supra* ¶ 8.33. A Community Objection, however, is not the avenue for determining the relative merits of different gTLD applications, and nothing in the four-part test set out in section 3.5.4 of Module 3 of the Guidebook suggests that it is. The alleged relative merits of other gTLD applications are accordingly not material to my determination of the Objection at issue here.

8.43 More importantly, since the Objector filed its Objection, Specification 11 of the draft New gTLD Registry Agreement has been revised. Specifically, paragraphs 3(c) and 3(d) of that Specification now provide in pertinent part as follows:

- (c) *Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies.*
- (d) *Registry Operator of a “Generic String” TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person’s or entity’s “Affiliates” [. . .]. “Generic String” means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those others.*

Draft New gTLD Registry Agreement dated 2 July 2013. These provisions cast considerable doubt on whether the Applicant would be able to operate “.HOTELS” as a closed gTLD, as it has proposed. It is accordingly far from certain that the Applicant would be able to exclude members of the hotel community from registering domain names in “.HOTELS” and cause them the alleged detriment the Objector foresees.

8.44 In addition, the Objector has failed to prove any material detriment the hotel community would likely suffer in the (unlikely) event the Applicant were permitted to operate “.HOTELS” as a closed gTLD. The most the Objector has done in this regard is to allege that, if the Objector and its members cannot register domain names in “.HOTELS”, this will force the “Objector and its members to incur significant additional expenses to properly inform the public about its official Internet presences.” Objection at 12. This is insufficient to meet the Objector’s burden of proof on this issue.

8.45 In this regard, it is unclear to me why the Objector contends that the Applicant’s operating “.HOTELS” as a closed gTLD would likely cause material detriment to itself. To make out its Objection, the Objector must prove that the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community, not to itself. And while the Objector serves the interests of the hotel community, it is not synonymous with that community and does not operate any hotels. It is therefore not clear why it would want to register a domain name in “.HOTELS” or how its inability to do so would cause it additional expense. I also note that, although the Objector registered the domain name “hotelconsumerprotectioncoalition.org” in 2006 (*see* Whois

output dated 6 June 2013, Additional Submission, Annex A), the Objector does not seem to use it. Moreover, users trying to access that domain name bounce to “ihg.com” – the website for IHG. *See* Response, Annex 4. In these circumstances, the Objector’s alleged desire to “properly inform the public about its official Internet presences” is far from clear.

8.46 The Objector has similarly failed to prove that the Applicant’s operating “.HOTELS” as a closed gTLD would likely cause material detriment to its members. Again, the issue is whether the Application creates a “likelihood of material detriment to the rights or legitimate interests of a significant portion” of the hotel community. However, even assuming that the Objector’s members themselves constitute a “significant portion” of the hotel community, the Objector has not even explained (much less proven) how their inability to register domain names in “.HOTELS” would cause them to incur additional expense with respect to their Internet presences. The absence of any evidence in this regard is striking, particularly as it would seem that, if anything, the opposite is true: the Objector’s members would incur additional expense if they were to expand their Internet presences by registering domain names in “.HOTELS”.

8.47 Having said this, I agree with the Objector that the Applicant’s proposal to operate “.HOTELS” as a closed gTLD indicates that it intends to act in accordance with its own interests, not those of the hotel community. But the Objector’s members and other members of the hotel community already have many avenues through the DNS to have a presence on the Internet – avenues the Objector’s members and many others in the hotel community already exploit. So while the Objector’s members and others in the hotel community might want to register domain names in “.HOTELS” if it is delegated, it is not clear what the marginal benefit of doing this would be worth to them, if anything.⁷ The Objector has simply put on no evidence of the nature or extent of any concrete or economic damage to the hotel community that would result from the Applicant’s operating “.HOTELS” as a closed gTLD.

8.48 The Objector has similarly failed to offer any evidence to support its conclusory allegation that the Applicant’s operating “.HOTELS” as a closed gTLD would damage the reputation of the hotel industry. Nor has it alleged what the nature and extent of that purported damage

⁷ In this regard, I note that the fact that the Objector would prefer that ICANN not have a new gTLD program suggests that it does not see much benefit to the hotel community in being able to register domain names in new gTLDs. *See* Objection at 9-10.

would be. Similarly, the Objector has also not alleged that the Applicant's operating ".HOTELS" as a closed gTLD would interfere with the core activities of the hotel community, even though the hotel community is increasingly dependent on the DNS.

8.49 For these reasons, I find the Objector has failed to prove that the Application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the hotel community.

9. COSTS

9.1 Pursuant to article 14(e) of the Procedure, upon the termination of the proceedings, after I have rendered my determination, the Centre shall refund to the prevailing party its advance payment of costs. *See also* Procedure, article 21(d).

9.2 As I have decided to dismiss the Objection, the Applicant is the prevailing party in these proceedings. The Centre shall accordingly refund to the Applicant its advance payment of costs.

10. DETERMINATION

- 10.1 For the reasons set out above, the Expert makes the following determination:
- 10.2 The Objection is dismissed and the Applicant accordingly prevails;
- 10.3 The Centre shall refund to the Applicant its advance payment of costs.

Date: 19 November 2013



Jennifer Kirby
Expert



Madrid, 12 March 2013

To whom it may concern,

Subject: « Closed Generic » gTLD Applications for HOTEL, HOTELS, HOTEIS, HOTELES

The World Tourism Organization (UNWTO) is the United Nations agency responsible for the promotion of responsible, sustainable and universally accessible tourism.

As the leading international organization in the field of tourism, UNWTO promotes tourism as a driver of economic growth, inclusive development and environmental sustainability and offers leadership and support to the sector in advancing knowledge and tourism policies worldwide. It also promotes competitive and sustainable tourism policies.

UNWTO's membership includes 155 countries, 6 Associate Members and over 400 Affiliate Members representing the private sector, educational institutions, tourism associations and local tourism authorities.

We have been informed that companies applied for gTLDs consisting on the generic terms like: HOTELS, HOTEL, HOTEIS or HOTELES.

These requests call for our observations, as follows:

- As the main type of accommodation for tourists worldwide, the hotel industry provides several dozen of millions jobs and represents a large part of the US\$ 1,3 trillion generated by the international tourism sector every year.
- There is no question that the Internet has taken centre stage as a hotel reservation method across the world. The use of travel agents and dial-in phone reservations continues to decline. In an increasingly digital world, it is now second nature for most travellers to start their search for a hotel destination from their computer or mobile device.
Online booking is a critical tool for marketing hotels in a global market insofar a large part of the reservations comes from online bookings.
This booking model based on the internet reservation system is used internationally by an extremely large range of accommodation providers, including:

World Tourism Organization (UNWTO) - A Specialized Agency of the United Nations

Capitán Haya 42, 28020 Madrid, Spain. Tel: (34) 91 567 81 00 / Fax: (34) 91 571 37 33 – omt@unwto.org / unwto.org

- o hotel operators
 - o independent hotels & hotel chains
 - o tourist boards, travel agents & travel companies
 - o holiday villas
 - o guest houses
 - o self-catering apartments
- A number of companies have applied for TLDs consisting of generic terms and referring to a particular business or industry category. Some of the applicants for these generic terms have expressed the intent to reserve the name spaces for themselves rather than offering registrations to everyone. These applicants seek to operate these generic TLDs in a closed manner and to capture the exclusive use of these generic terms for their own business. If allowed to register as closed domains, a single player could control the entire domain string related to a generic word and prevent others from registering domain names within such string.
 - Furthermore, certain applicants have chosen to apply for closed control of a generic term designating a particular industry while they are in fact already engaged in the conduct of business activities in that particular industry, thereby increasing the risk that the delegation of a generic term matching an economic sector to one single player could lead to a monopoly by excluding direct and indirect competitors.
 - Some of these generic terms are critical for the conduct of an activity and should not be reserved for, or monopolized by, a single stakeholder in a business category. Generic words used in a generic way cannot be reserved by and in favour of a single organization.
 - Among the applicants seeking to obtain a monopoly on a generic term representing or closely linked to their own economic sector, two companies applied for the generic terms HOTELS, HOTEL, HOTEIS (hotel in Portuguese) and HOTELES (hotel in Spanish):

Consequently, we consider that the responsible organizations delegated by ICANN for the management of such top level domains should:

- Be totally independent and do not run any other activity related to the tourism sector, especially those which deal with hotel booking and/or travel organization and/or travel agencies;
- Guaranty the right of consumers to be sure that every hotel company, should it be an individual hotel or a hotel chain, could use the said TLDs without any restriction or discrimination;
- Guaranty the right of consumers to be sure that a real hotel is behind every ".hotel", ".hotels", ".hoteles" and ".hoteis" domain name.
- Operate the said TLDs in a close relation with the representatives of the hotel industry.

For these reasons, UNWTO fully supports HOTREC in filing formal "community objections" against the new gTLD applications identified by the following Application IDs: 1-1016-75482, 1-1249-36568, 1-1249-1940, 1-1249-87712.



Frédéric PIERRET
Executive Director

cc: Mr Kent NYSTRÖM
President
HOTREC
111, Boulevard Anspach Box 4
B-1000 Brussels
Belgium



INTERNATIONAL
HOTEL & RESTAURANT
ASSOCIATION

Pully, 04 Mars 2013

TO WHOM IT MAY CONCERN

The International Hotel & Restaurant Association (IH&RA), the only Global Business Organization representing the hospitality industry worldwide, estimated at 300,000 Hotels and 7 millions restaurants supports the HOTREC in filing formal “community objections” against the new gTLD applications identified below:

String: .hotels

Applicant name: Booking.com B.V.

Application ID: 1-1016-75482

String: .hotel

Applicant name: Despegar Online SRL

Application ID: 1-1249-36568

String: .hoteles

Applicant name: Despegar Online SRL

Application ID: 1-1249-1940

String: .hoteis

Applicant name: Despegar Online SRL

Application ID: 1-1249-87712

IH&RA is of the opinion that the above mentioned applicants are not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel is behind every “.hotel”, “.hotels”, “.hoteles” and “.hoteis” domain name. Only members of the hotel community described by HOTREC in its objections should be eligible to register domain names under these terms.

IHRA and its members are a part of the hotel community described by HOTREC in its objections and it supports all of the arguments set forth in the HOTREC’s objections. The new gTLD applications by Booking.com B.V.



INTERNATIONAL
HOTEL & RESTAURANT
ASSOCIATION

and Despegar Online SRL create a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicants are not acting and do not intend to act in accordance with the interests of the hotel community.

In the light of the above, IH&RA requests that the objections filed by HOTREC be sustained.

Sincerely Yours,

Dr. Ghassan AIDI

President & Chief Executive Officer

A handwritten signature in blue ink, appearing to read 'Ghassan Aidi', written over a faint, light-colored circular watermark or background.



March 11, 2013

To Whom It May Concern:

The American Hotel & Lodging Association (AH&LA) supports the Hotrec in filing a formal “community objection” against the new gTLD application identified below (the Application):

- String: .hotels
- Applicant Name: Booking.com B.V.
- Application ID: 1-1016-75482

Serving the hospitality industry for more than a century, the AH&LA is the sole national association in the United States representing all sectors and stakeholders in the lodging industry, including individual hotel property members, hotel companies, student and faculty members, and industry suppliers.

As of January 31, AH&LA had 8,755 properties in membership with 1,334,827 rooms. Of these memberships, the following are the larger companies in membership, with their number of properties and rooms:

Name	No. of Rooms	No. of Properties
Hilton Worldwide	183,353	899
Marriott International, Inc.	175,896	857
InterContinental Hotels Group	103,310	679
Starwood Hotels & Resorts	84,040	214
Best Western International, Inc.	52,565	601
Hyatt Hotels Corporation	50,547	101
Wyndham Hotel Group	41,875	479
Choice Hotels International, Inc.	45,923	554
Carlson Hotels Worldwide	20,513	148
LaQuinta Management, LLC	17,885	159

The AH&LA and its members are a part of the hotel community described by Hotrec in its objection, and the AH&LA supports all of the arguments set forth in the Hotrec’s objection.

The new gTLD Application identified above creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the Applicant is not acting and does not intend to act in accordance with the interests of the hotel community.

In light of the above, the AH&LA requests that the objection filed by Hotrec be sustained.

Sincerely,



Pam H. Inman, IOM, CAE, CMHS
Executive Vice President-Chief Operating Officer

Brazilian Association of the Hotel Industry

Brazilian Association of Resorts

Brazilian Federation of Food and Lodging

Forum of Brazilian Hotel Operators

12 March 2013

To whom it may concern:

The representatives of the hotel industry in Brazil, such as (i) Brazilian Association of Hotel Industry (*Associação Brasileira da Indústria de Hotéis*), (ii) Brazilian Association of Resorts (*Associação Brasileira de Resorts*), (iii) Brazilian Federation of Food and Lodging (*Federação Brasileira de Hospedagem e Alimentação*) and (iv) Forum of Brazilian Hotel Operators (*Fórum de Operadores Hoteleiros do Brasil*) (hereinafter called as “**Associations**”), which represent almost all players of the Brazilian hotel industry, support the Hotrec Hospitality Europe, the umbrella association of the hospitality sector in Europe (“HOTREC”), in filing a formal “community objection” against the new closed gTLD application identified below:

- **String:** .hotels
- **Applicant name:** Booking.com B.V.
- **Application ID:** 1-1016-75482

Associations bring together companies (as hotels and similar establishments in Brazil) which employ (directly or indirectly) approximately one million people and involve approximately BRL 36,000,000,000.00 (thirty-six billion Brazilian reais).

Associations are of the opinion that the above closed Application demonstrates the selfish aspirations of the Applicant, who is an online travel agency and does not participate in the hotel market.

Besides the fact that the Applicant does not act on behalf of the community’s interests, it is clear that the Applicant intends to (i) monopolize a notoriously term which is shared by all companies of the hotel industry, (ii) constitute an unfair privilege over all the market players in the hotel market; (iii) restrict the freedom of choice of market players, in exactly the opposite direction of the goal outlined by the *Internet Corporation for Assigned Names and Numbers* (ICANN) and described in the gTLD Applicant Guidebook and (iv) lead consumers to errors, controlling the way in which the gTLD HOTELS would be used.

Associations and their members are a part of the hotel community described by HOTREC in its objection and they support all the arguments set forth in the HOTREC's objection. The closed gTLD application submitted by the Applicant does not work in accordance with the interests of the hotel community and, if approved, would negatively affect the whole hotel market.

In the light of the above, Associations, representing the players of the Brazilian hotel industry, request that the objection filed by HOTREC be sustained.

Yours sincerely



Brazilian Association of the Hotel Industry

Enrico Fermi Torquato



Brazilian Federation of Food and Lodging

Alexandre Sampaio



Forum of Brazilian Hotel Operators

Roberto Rotter



Brazilian Association of Resorts

Dilson Jatahy Fonseca Jr.





Señores

A quienes corresponda

La Federación Empresaria Hotelera Gastronómica de la Argentina - FEHGRA, entidad que es firmante del convenio colectivo de trabajo en la Argentina representa a más de 60.000 empresas hoteleras – gastronómicas, respalda a la HOTREC y a la IH&RA en su presentación de “objeciones formales de la comunidad” en contra de las solicitudes de nuevos dominios de nivel superior genéricos (gTLD) identificadas a continuación:



IH&RA
ASOCIACION INTERNACIONAL
DE HOTELES Y RESTAURANTES

Nombre de dominio: .hotels
Nombre del solicitante: Booking.com B.V.
Número de solicitud: 1-1016-75482

Nombre de dominio: .hotel
Nombre del solicitante: Despegar Online SRL
Número de solicitud: 1-1249-36568



OMT
ORGANIZACION
MUNDIAL DE TURISMO

Nombre de dominio: .hoteles
Nombre del solicitante: Despegar Online SRL
Número de solicitud: 1-1249-1940

Nombre de dominio: .hoteis
Nombre del solicitante: Despegar Online SRL
Número de solicitud: 1-1249-87712



CAT
CAMARA ARGENTINA
DE TURISMO

FEHGRA, considera que los solicitantes mencionados anteriormente no garantizan el acceso sin discriminación para todos los hoteles del mundo al nombre de dominio solicitado; tampoco se promueve la protección al consumidor, ya que no hay garantía alguna de que exista un hotel verdadero bajo el nombre de dominio “.hotel”, “.hotels”, “.hoteles” y “.hoteis”. Únicamente los miembros de la comunidad hotelera descrita por la HOTREC en sus objeciones deberían poder registrar los nombres de dominio anteriores.

objeciones y respaldan los fundamentos indicados en dichas objeciones. Las solicitudes de nuevos dominios de nivel superior genéricos (gTLD) por parte de Booking.com B.V. y Despegar Online SRL generan la posibilidad de que los derechos o intereses legítimos de una parte significativa de esta comunidad hotelera se vean afectados, y cabe destacar que los solicitantes no están actuando ni tienen la intención de actuar en pos de los intereses de la comunidad hotelera.

Teniendo en cuenta las circunstancias mencionadas, FEHGRA solicita que las objeciones presentadas por la HOTREC sean aceptadas.

Cordialmente

11/03/2013

JORDI BUSQUETS CONSEJERO DELEGADO

Fecha, Lugar

Cargo/Sello

Firma



F.H.E.
FRENCH HOSPITALITY IN EUROPE
22 rue d'Anjou
75008 Paris

HOTREC
111, boulevard Anspach – Box 4
B-1000 Bruxelles
BELGIQUE

Paris, March 12th 2013

Support letter to objections sent to ICANN (« .hotel »)

French Hospitality in Europe (FHE), the umbrella organization of the five French associations representing the hospitality industry in Europe, supports HOTREC in filing formal "community objections" against the new gTLD applications identified below:

String: .hotels
Applicant name: Booking.com B.V.
Application ID: 1-1016-75482

String: .hotel
Applicant name: Despegar Online SRL
Application ID: 1-1249-36568

String: .hoteles
Applicant name: Despegar Online SRL
Application ID: 1-1249-1940

String: .hoteis
Applicant name: Despegar Online SRL
Application ID: 1-1249-87712


FHE is of the opinion that the above mentioned applicants are not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel is behind every ".hotel", ".hotels", ".hoteles" and ".hoteis" domain name.

FHE and its members are a part of the hotel community described by HOTREC in its objections and it supports all of the arguments set forth in the HOTREC's objections.

The new gTLD applications by Booking.com B.V. and Despegar Online SRL create a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicants are not acting and do not intend to act in accordance with the interests of the hotel community.

In the light of the above, FHE requests that the objections filed by HOTREC be sustained.

Yours sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'L' followed by several vertical strokes and a horizontal line at the end.

Laurent Duc
President of FHE

Support letter

The Austrian Hotel Association (ÖHV), a voluntary, non-party special interest group who represents the interests of top hoteliers in Austria with more than 1,200 members in the 4 and 5-star category, supports HOTREC in filing formal "community objections" against the new gTLD applications identified below:

String: .hotels

Applicant name: Booking.com B.V.

Application ID: 1-1016-75482

String: .hotel

Applicant name: Despegar Online SRL

Application ID: 1-1249-36568

String: .hoteles

Applicant name: Despegar Online SRL

Application ID: 1-1249-1940

String: .hoteis

Applicant name: Despegar Online SRL

Application ID: 1-1249-87712

The Austrian Hotel Association is of the opinion that the above mentioned applicants are not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel is behind every ".hotel", ".hotels", ".hoteles" and ".hoteis" domain name.

The Austrian Hotel Association and its members are a part of the hotel community described by HOTREC in its objections and it supports all of the arguments set forth in the HOTREC's objections. The new gTLD applications by Booking.com B.V. and Despegar Online SRL create a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicants are not acting and do not intend to act in accordance with the interests of the hotel community.

In the light of the above, The Austrian Hotel Association requests that the objections filed by HOTREC be sustained.

Yours sincerely

11.03.2013, Vienna, Austria

Secretary General



Date, Place

Function

Signature

HOTREC
111, boulevard Anspach – Box 4
B-1000 Bruxelles
BELGIQUE

Paris, March 12th 2013

Support letter to objections sent to ICANN (« .hotel »)

FNT, the major Moroccan association representing the Hospitality Industry, supports HOTREC in filing formal “community objections” against the new gTLD applications identified below:

String: .hotels
Applicant name: Booking.com B.V.
Application ID: 1-1016-75482

String: .hotel
Applicant name: Despegar Online SRL
Application ID: 1-1249-36568

String: .hoteles
Applicant name: Despegar Online SRL
Application ID: 1-1249-1940

String: .hoteis
Applicant name: Despegar Online SRL
Application ID: 1-1249-87712

FNT is of the opinion that the above mentioned applicants are not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel is behind every “.hotel”, “.hotels”, “.hoteles” and “.hoteis” domain name.

FNT and its members are a part of the hotel community described by HOTREC in its objections and it supports all of the arguments set forth in the HOTREC’s objections.



The new gTLD applications by Booking.com B.V. and Despegar Online SRL create a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicants are not acting and do not intend to act in accordance with the interests of the hotel community.

In the light of the above, FNT requests that the objections filed by HOTREC be sustained.

Yours sincerely,



Marc THEPOT
Membre du Bureau

**Support letter**

Hotel Association Nepal, a leading tourism association from its inception which has been able to make its presence felt by making an impact on governmental policy formulation and the setting up of regulations regarding the hotel & tourism industry, supports the HOTREC with IH&RA in filing formal "community objections" against the new gTLD applications identified below:

String: .hotels

Applicant name: Booking.com B.V.

Application ID: 1-1016-75482

String: .hotel

Applicant name: Despegar Online SRL

Application ID: 1-1249-36568

String: .hoteles

Applicant name: Despegar Online SRL

Application ID: 1-1249-1940

String: .hoteis

Applicant name: Despegar Online SRL

Application ID: 1-1249-87712

Hotel Association Nepal is of the opinion that the above mentioned applicants are not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel is behind every ".hotel", ".hotels", ".hoteles" and ".hoteis" domain name. Only members of the hotel community described by HOTREC in its objections should be eligible to register domain names under these terms.

Hotel Association Nepal and its members are a part of the hotel community described by HOTREC in its objections and it supports all of the arguments set forth in the HOTREC's objections. The new gTLD applications by Booking.com B.V. and Despegar Online SRL create a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicants are not acting and do not intend to act in accordance with the interests of the hotel community.

In the light of the above, Hotel Association Nepal requests that the objections filed by HOTREC be sustained.

Yours sincerely

March 10, 2013



Date, Place

Function/Stamp

Signature

11 March 2013

To Whom It May Concern:

The Accommodation Association of Australia support the various organisations including the Hotel Consumer Protection Coalition (HCPC), Hotrec Hospitality Europe, the Brazilian Association of Hotel Industry, Brazilian Association of Resorts, Brazilian Federation of Food and Lodging & Hoteliers Operators Forum in Brazil, in filing a formal “community objection” against the new closed gTLD application identified below:

- **String:** .hotels
- **Applicant name:** Booking.com B.V.
- **Application ID:** 1-1016-75482

The Accommodation Association of Australia (the Accommodation Association) is the national industry body for the Australian accommodation industry. Members of the Accommodation Association include major hotels, resorts, motels, motor inns, serviced and holiday apartments, bed and breakfasts, guesthouses, backpackers and timeshare establishments in metropolitan, regional and rural Australia across all states and territories. The Association’s membership base includes almost 2000 properties and more than 110,000 guest rooms. The Association’s members include major hotel and motel chains, such as Accor Hotels, Hilton Hotels, Toga Hospitality, Mantra Group, Rydges Hotels, Amora Hotels, InterContinental Hotels Group, Best Western Australia and Quest Serviced Apartment.

The Accommodation Association is of the opinion that the above mentioned applicant is not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel service is behind every “.hotel” domain name.

The Accommodation Association is of the opinion that the above closed Application demonstrates an effort to gain an unfair market advantage for the applicant as an online travel agency to the detriment of the community within the hotel market.

The Accommodation Association believes the Applicant does not act on behalf of the community’s interests and will ultimately restrict competition within the market. The Accommodation Association proposes that should the application be successful the outcome would be contrary to the goals outlined by the *Internet Corporation for Assigned Names and Numbers* (ICANN) and described in the gTLD Applicant Guidebook.

The Accommodation Association and its members are a part of the hotel community described by HCPC in its objection and support all of the arguments set forth in the HCPC’s objection. The new gTLD application by Booking.com B.V. creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicant is not acting and does not intend to act in accordance with the interests of the hotel community.

In the light of the above, The Accommodation Association requests that he objection filed by HCPC be sustained.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard Munro', is written over a white background.

Richard Munro,
Chief Executive Officer.

Suite 1, Level 2, 189 Kent Street
Sydney NSW 2000
P 02 8666 9015
F 02 8666 9017
E mail@aaoa.com.au
www.aaoa.com.au

12 March 2013

To Whom It May Concern

Tourism Accommodation Australia (TAA) represents the needs and interests of the substantial operators of Australia's accommodation industry, providing leadership to its members through advocacy, industrial relations and legal support, intelligence, research, education and networking.

TAA currently represents 80% of the hotel chains throughout Australia, many of which are international branded hotels, who are directly affected by the proposed gLTD application identified below:

- **String:** .hotels
- **Applicant name:** Booking.com B.V.
- **Application ID:** 1-1016-75482

TAA is of the opinion that the above closed application does not represent the best interests of the hotel industry, nor does it work in accordance with the interests of the hotel community and, if approved, will have significant and negative impacts on the hotel and tourism market.

In light of the above, TAA requests that the objections filed by HOTREC be sustained and accordingly, the above application submitted by Booking.com B.V. is rejected.

Yours sincerely



Rodger L Powell
Managing Director
Tourism Accommodation Australia

Tourism & Transport Forum (TTF)

A Division of Advocacy Services Australia Ltd | ABN 54 050 036 041

8th Floor | 8-10 Loftus Street | Sydney NSW 2000

PO Box R1804 | Royal Exchange NSW 1225

T +61 2 9240 2000 | F +61 2 9240 2020

E contact@tff.org.au | www.tff.org.au



12 March 2013

To whom it may concern:

Tourism & Transport Forum (TTF) is the peak national advocacy body for the tourism, transport and aviation sectors. It is a CEO forum representing the interests of 200 leading Australian institutions and corporations in the private and public sectors. In particular, TTF represents the largest owners and operators of accommodation product in Australia, including Accor Pacific, InterContinental Hotels Group, Hilton Hotels, Hyatt Hotels & Resorts, Marriott International, Starwood Hotels and Resorts, Toga Hotels and Mantra Group.

The visitor economy, including the hotel industry, plays a critical role to the broader Australian economy. Tourism's contribution to Australian gross domestic product (GDP) totalled \$73.3 billion, including \$34.6 billion in direct GDP and another \$38.7 billion in flow-on indirect GDP, a 5.2% share of the Australian economy. More than 900,000 jobs are supported by visitor expenditure, including 514,000 jobs directly in the tourism industry, and another 393,000 in other related industries, representing 1 in every 12 jobs across the country.

TTF supports Hotrec Hospitality Europe, the umbrella association of the hospitality sector in Europe ("HOTREC"), in filing a formal "community objection" against the new closed gTLD application identified below:

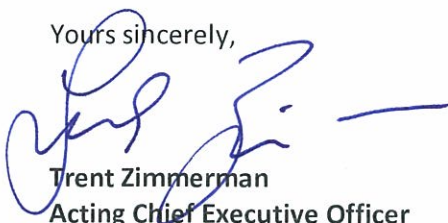
String: .hotels
Applicant name: Booking.com B.V.
Application ID: 1-1016-75482

TTF has significant concerns regarding the proposed application's impact on the hotel market and the potential damage to the reputation of Australia's tourism industry. The applicant is seeking exclusive access to a common term that relates to a broad market sector. TTF is concerned that the failure to provide non-discriminatory access to top-level domains for actual hotel operators will provide a single player with an unfair advantage in a highly competitive market and diminish certainty and competition for consumers in the hotel market.

More broadly, the application by a single online travel agent to monopolise widely used terms within the tourism sector has the potential to damage the reputation of one of Australia's most significant industries. The proposed application would provide no guarantee that a real hotel service is behind every ".hotel" domain name resulting in greater uncertainty and diminishing protections for consumers in the travel market.

In the light of the above, TTF requests that the objection filed by HOTREC be sustained.

Yours sincerely,



Trent Zimmerman
Acting Chief Executive Officer



AUSTRALIAN HOTELS ASSOCIATION

24 Brisbane Avenue Barton ACT 2600 • PO Box 4286 Manuka ACT 2603 • Australia
email: aha@aha.org.au • Facsimile: (02) 6273 4011 • Telephone: (02) 6273 4007
Web: www.aha.org.au

March 12, 2013

To Whom It May Concern:

Re: Support for HOTREC objection to gTLD application

The Australian Hotels Association (AHA) supports the Hotrec Hospitality Europe (HOTREC) in filing a formal "community objection" against the new gTLD application identified below:

- String: .hotels
- Applicant name: Booking.com B.V.
- Application ID: 1-1016-75482

The AHA represents the Australian hotel industry which is a significant contributor to the national economy, both in terms of supporting local suppliers and by employing some 300,000 Australians. Hotels are also ingrained in the nation's social fabric as important meeting places and entertainment venues.

AHA's membership of more than 5,000 licensed hotel businesses includes pub-style hotels plus three, four and five-star accommodation hotels located in each state and territory. The AHA's members are serviced by branches located in every Australian capital city and a Canberra-based national office.

The AHA is of the opinion that the above mentioned applicant is not ensuring the non-discriminatory access for all hotels around the world to the applied for domain name; neither the protection of consumers, as there is no guarantee that a real hotel service is behind every ".hotel" domain name.

AHA and its members are a part of the hotel community described by HOTREC in its objection and support all of the arguments set forth in the HOTREC's objection. The new gTLD application by Booking.com B.V. creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the applicant is not acting and does not intend to act in accordance with the interests of the hotel community.

In the light of the above, the AHA requests that the objection filed by HOTREC be sustained.

Yours sincerely,

Mr Des Crowe
National Chief Executive Officer
Australian Hotels Association (AHA)

March 11, 2013

Three Ravinia Drive
 Suite 100
 Atlanta, GA 30346-2149
 www.ihg.com

To Whom It May Concern:

I am writing in my capacity as chairman of the Hotel Consumer Protection Coalition (“HCPC”). The HCPC was founded in 2006 to address problems arising from unfair, false, misleading, or deceptive practices that harm consumers and, in turn, HCPC’s members and their respective brands.

The HCPC supports HOTREC, the umbrella association of the hospitality sector in Europe, in filing a formal “community objection” against the new gTLD application identified below (the Application):

- String: .hotels
- Applicant Name: Booking.com B.V.
- Application ID: 1-1016-75482

HCPC’s members include the world’s largest hotel companies, namely, Accor; Choice Hotels; Hilton Worldwide; Hyatt; InterContinental Hotels Group; Marriott; Starwood Hotels and Resorts; and Wyndham Hotel Group. Objector’s members represent the top seven hotel companies worldwide, based on number of rooms, according to HOTELS magazine. Objector’s members provide more than 31,000 hotels offering more than 4 million hotel rooms in more than 100 countries.

HCPC’s member’s hotel brands are among the most famous and oldest in the world, including the following trademarks:

HCPC Member	Hotel Brands/Trademarks
Accor	Sofitel, Pullman, MGallery, Grand Mercure, Novotel, Suite Novotel, Mercure, Adagio, ibis, ibis Styles, ibis Budget, Hotel Formule 1, hotelF1 and Thalassa sea & spa

HCPC Member	Hotel Brands/Trademarks
Choice Hotels	CAMBRIA SUITES®, COMFORT INN®, COMFORT SUITES®, CLARION®, QUALITY®, SLEEP INN®, MAINSTAY SUITES®, SUBURBAN EXTENDED STAY HOTEL®, ECONO LODGE®, RODEWAY INN®, and ASCEND HOTEL COLLECTION®
Hilton Worldwide, Inc.	Waldorf Astoria Hotels & Resorts, Conrad Hotels & Resorts, Hilton Hotels & Resorts, DoubleTree by Hilton, Embassy Suites, Hilton Garden Inn, Hampton, Homewood Suites, Home2 Suites by Hilton, Hilton Grand Vacations
Hyatt	Park Hyatt, Andaz, Grand Hyatt, Hyatt, Hyatt Regency, Hyatt Place, Hyatt House, Hyatt Residence Club
InterContinental Hotels Group	InterContinental® Hotels & Resorts, Crowne Plaza® Hotels & Resorts, Hotel Indigo®, Holiday Inn® Hotels & Resorts, Holiday Inn Express®, Staybridge Suites®, Candlewood Suites®, EVEN™ Hotels and HUALUXE™ Hotels & Resorts
Marriott	Bulgari Hotels & Resorts, The Ritz-Carlton, The Ritz-Carlton Destination Club, JW Marriott, Edition, Autograph Collection, Renaissance Hotels, AC Hotels by Marriott, Marriott Hotels & Resorts, Courtyard, Springhill Suites, Fairfield Inn & Suites, Residence Inn, TownePlace Suites, Marriott Executive Apartments, Marriott Vacation Club, Grand Residences by Marriott
Starwood Hotels & Resorts Worldwide, Inc.	Le Meridien, Aloft, Four Points, Westin, The Luxury Collection, W, Sheraton, St. Regis, Element
Wyndham Hotel Group	Wyndham Hotels and Resorts, Wyndham Grand Collection, Wyndham Garden, TRYP by Wyndham, Wingate by Wyndham, Hawthorn Suites by Wyndham, Microtel Inn & Suites by Wyndham, Dream Hotels, Planet Hollywood, Ramada Worldwide, Night Hotels, Days Inn, Super 8, Baymont Inn & Suites, Howard Johnson, Travelodge, Knights Inn



Six Continents Hotels, Inc.
A Member of the InterContinental Hotels Group

The HCPC and its members are a part of the same hotel community as HOTREC, and the HCPC supports HOTREC's objection. The new gTLD Application identified above creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of this hotel community and, notably, the Applicant is not acting and does not intend to act in accordance with the interests of the hotel community.

In light of the above, the HCPC requests that the objection filed by HOTREC be sustained.

FOR THE HOTEL CONSUMER PROTECTION COALITION

Sincerely,



Michael Menis
Vice President, Web & Interactive Marketing, InterContinental Hotels Group
Chairman, Hotel Consumer Protection Coalition



Six Continents Hotels, Inc.
A Member of the InterContinental Hotels Group