**ICANN’s Policy for Special Protection of the Names and Acronyms of International Organizations in the Domain Name System**

Version: 7 January 2012

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Note: This document provides an input to ALAC’s discussion on the protection of names of international inter-governmental organisations (IGOs) and international non-governmental organisations (INGOs). The document is based on the academic paper “Identity of international organisations in the Internet space” which will be published in March 2013. The document contains policy formulations, and commentary in *italics*.

**Background**

Names of international organisations have become a policy issue in Internet governance (IG) discussion spaces. The introduction of new domain names brought additional challenges to the protection of names of international organisations, both IGOs (inter-governmental organisations) and INGOs (international non-governmental organisations).

The Red Cross/Red Crescent movement (RCRC) and the International Olympic Committee (IOC) were the first IGOs to request special protection in the new top level domains. ICANN’s decision to grant temporary protection for these two IGOs has triggered criticism, mainly due to ICANN's bypassing its own carefully designed procedures. Later, other INGOs joined with similar requests for special protection of their respective names in the new top level domains.

In this situation, the question of special protection of names of international organisations can no longer be properly addressed by *ad hoc* solutions. There is a need to develop an ICANN policy on this matter, which will address legitimate requests for special protection of appropriate names/acronyms of IGOs, and ensure that this protection does not undermine ICANN’s overall policy in the field of new domain names. The core architecture of this new policy should be based on a two-track approach:

* special protection (reserved for international inter-governmental organisations)
* use of the Rights Protection Mechanisms (RPMs) for IGOs and INGOs.

**Guiding principles for special protection**

ICANN’s policy for granting special protection for the names and acronyms of intergovernmental organisations (IGOs) in the domain name system (both first and second levels) should be guided by the following principles:

1. Each request for special protection by IGOs should be evaluated individually.

*Given the high diversity of IGOs in their status and function, it is not appropriate to treat them as a unified group. For example, special protection should be only considered for universal IGOs, given the global coverage of new gTLDs. The problem of grouping different IGOs was already evident in the case of the International Red Cross/Red Crescent, and the International Olympic Committee.*

1. Granting of special protection should be based on existing international and national laws.

*A new policy should not introduce additional protections for names of IGOs. It should follow existing provisions in international and national laws.*

1. Special protection should be granted in order to protect the global public interest and humanitarian values.

*Special protection should be aimed at protecting recognised global public interests and humanitarian values as recognised in the core international documents (e.g. UN Charter) as the pillars of these values.*

1. Special protection should increase the robustness of the domain name policy space and reduce the financial and operational burden on actors involved in domain name management

*The special protection regime should synchronise domain name regulation with international law. It should also spare actors operating in this field – e.g. registrars, ISPs, and domain name companies – from the risk of costly litigations.*

*For example, the Geneva Convention (articles 53 and 54)*[[1]](#endnote-1) *authorises the RCRC national societies in all 193 member states to take “‘measures necessary for the prevention and repression, at all times” to protect the Red Cross/Red Crescent names and acronyms. Practically speaking, national societies can request that national authorities close down a website or remove a domain from the registration if it, for example, uses the name ‘Red Cross’. One can also argue that all necessary measures would include the removal of such websites from search engines. It is important to highlight that the United States, with the highest concentration of Internet industries, and special links to ICANN, is a party to the Geneva Convention, and a very prominent promoter of the protection of Red Cross and humanitarian values globally.*

1. ICANN should establish criterion for granting special protection.

*Criterion should introduce predictability and reduce discretion in granting special protection. The initial list of criterion is established further down in this text.*

1. The evaluation process for special protection should be public and transparent.

*Given the initial controversies surrounding the Red Cross/IOC requests, there is a need to ensure full transparency of the evaluation process. This will increase the trust and support of this policy by the wider ICANN community.*

**Criterion for granting special protection**

Each request for special protection should be evaluated by the following criterion:

1. Special protection should be granted to international intergovernmental organizations (IGOs) with global participation.

*The IGOs are defined as bodies with a permanent secretariat and established by a formal treaty among three or more nation states. Special protection should be granted only to IGOs with global participation – e.g. universal organizations such as the UN and specialized agencies.*

1. The protection of the name of an INGO should be **explicitly** regulated by international **public** law through an international treaty.

*Given the exceptional nature of special protection, it should be ensured through strict legal requirements. Firstly, the special protection should be explicitly regulated in international public law (not implied through contextual interpretation). Secondly, the special protection should be based on international public law. The justification based on trademark regulation (international private law) is not sufficient for granting special protection for names of IGOs.*

1. The international treaty must require that participating governments provide protection for the name of the international organisation under national law.

*An additional legal requirement for special protection should explicitly stipulate in international treaties, that names of specific IGOs should be protected under national law. This additional requirement goes beyond the usual procedure of integration of international treaties into national legal systems through ratification.*

*This is an optional criterion since it considerably restricts the number of organisations that may apply for special protection.*

1. A potential misuse of the names and acronyms of IGOs would cause serious harm to the core function of the IGO (e.g. halting operations, misappropriation of funds).

*The functional criterion for evaluation of needs for the special protection should focus on the previous experience and future risks for the harmful actions. In describing the previous experience, each applicant should be asked to provide a summary of cases when their names/acronyms were misused. For example, when referring to Red Cross/Red Crescent, almost every newsworthy disaster is now followed quickly by Internet fraud. There are many examples including the Indian Ocean tsunamis of 2004, Hurricane Katrina in the USA in 2005, the Szechuan earthquake in China in 2008, the 2010 Haiti earthquake,*[[2]](#endnote-2) *bushfires in Australia in 2010, and the Christchurch earthquake in New Zealand in 2011.*

*The analysis of future risks for harmful actions should also include practical considerations. For example, most scams in the humanitarian field take place a few days after a major humanitarian crisis, when it is in the focus of the public and media, and when people are more inclined to donate funds for various relief actions. This makes it virtually impossible to require a lengthy procedure to take down a fraud. Special protection has a high preventive relevance.*

**Rights Protection Mechanism RPM Track**

If the requesting IGO does not fulfill the criterion for special protection, it can use the RPM track. The RPM track will also be open for INGOs with special consultative status with the United Nations. In the RPM procedure, both IGOs and INGOs should be treated as holders of trademarks, even in the case they do not have registered trademarks.

*While the RPM special protection track will be highly exceptional, a new policy should ensure easy access of IGOs and INGOs to the rights protection mechanisms. In accordance with the ICANN Application Guidebook, IGOs and INGOs will be able to use the following RPMs: the Trademark Clearinghouse (particularly important during the sunrise period), the Uniform Rapid Suspension System, the Post-Delegation Dispute Resolution Procedure, and the Uniform Domain Name Dispute Resolution Policy.*

1. #  The exact title of the convention is The UN Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. The full text is available at: <http://www.hrweb.org/legal/geneva1.html>.

 Article 53. The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation ‘Red Cross’ or ‘Geneva Cross’ or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.
Article 54. The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under [Article 53](http://www.hrweb.org/legal/geneva1.html#Article53) [↑](#endnote-ref-1)
2. [↑](#endnote-ref-2)