

**DRAFT PROBLEM STATEMENT RELATING TO THE PROTECTION OF CERTAIN RED CROSS AND  
RED CRESCENT NAMES AND ACRONYMS  
AT THE SECOND LEVEL IN GENERIC TOP LEVEL DOMAINS  
Updated 9 March 2017**

**The Problem:**

The Governmental Advisory Committee (GAC) public policy advice to the ICANN Board and Generic Names Supporting Organization (GNSO) policy recommendations to the ICANN Board in relation to the protection of the names and acronyms of the International Red Cross and Red Crescent Movement at the second level of all generic Top Level Domains (gTLDs) are in conflict. To assist the respective parties and the community gain a better understanding of the conflicting positions and identify a potential resolution of the conflict that is in the global public interest, this facilitated discussion between designated representatives of the GNSO and the GAC is intended to consider:

- 1) The form and extent of protections considered appropriate in this instance by the GNSO;
- 2) The form and extent of protections considered appropriate in this instance by the GAC as reflected in GAC public policy advice;
- 3) A discussion of the areas of difference between the GAC and the GNSO, with a particular focus on how the original GNSO Policy Development Process (PDP) may have needed to duly take into account additional legal or public policy considerations; and
- 4) A discussion as to how to provide protections in the context of the applicable legal rights framework, mindful not only of ICANN's narrow mission but also of ICANN's commitment to carry out its mission in conformity with relevant principles of international law and international conventions and applicable local law, as encapsulated in ICANN's Bylaws.

**The Scope:**

The allocation, management and operation of gTLDs must take into account the need to ensure that neither the registration of a domain name at the second level, nor the manner in which it is used, infringes the legal protections accorded to the Red Cross and Red Crescent names and acronyms, under relevant principles of international law and international conventions, and applicable local law laws in force in multiple jurisdictions.

Any gTLD policies on this topic should reflect the scope of the legal protections afforded to these terms under international law while balancing any legitimate rights and interests of other domain name registrants.

In addition, where practicable, any protection mechanisms to be developed could take advantage of similar mechanisms that have been created for protecting other legal rights.

### **Proposed Method:**

The GAC and the GNSO are being requested to engage in a dialogue based on this Problem Statement and agreed Briefing Materials, assisted by a facilitator.

### **The Issue in Context:**

On [7 July 2013](#), the New gTLD Program Committee (NGPC) of the ICANN Board confirmed that the interim protections for Red Cross and IGO identifiers pursuant to Specification 5 of the New gTLD Registry Agreement would continue while the GAC, NGPC, ICANN staff and community continue to actively work through outstanding implementation issues. This temporary reservation remains in place and the names can be found at:

<https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>.

On 20 November 2013, the GNSO Council unanimously approved 25 recommendations concerning the Protection of IGO and INGO Identifiers in All gTLDs, which were the result of a GNSO PDP. Seven of these recommendations related to the Movement, which were considered by the PDP WG in two parts:

- Scope 1 Identifiers: “Red Cross”, “Red Crescent”, “Red Lion and Sun” and “Red Crystal” (Language: UN6)
- Scope 2 Identifiers: 189<sup>1</sup> 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)

These recommendations afforded protections at the top level for the exact match, full name of the Red Cross, Red Crescent, Red Lion and Sun and Red Crystal by making them ineligible for delegation in the Applicant Guidebook section 2.2.1.2.3 *Strings Ineligible for Delegation*; it was also recommended that an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the top level.

The recommendations also provided for protection of the exact match, full name of the Red Cross, Red Crescent, Red Lion and Sun and Red Crystal at the second level through Specification 5 of the Registry Agreement as reserved names, with an additional recommendation that an exception procedure be created for cases where a protected organization wishes to apply for their string at the second level.

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<sup>1</sup> Now 190.

The PDP Working Group (WG) did not recommend the same level of protection for the Scope 2 Identifiers. However, acknowledging that some level of protection was desirable the PDP WG<sup>2</sup> recommended that these names be placed into the Trademark Clearinghouse mechanism such that:

- (1) a potential registrant of a second level domain matching one of these names or acronyms would receive a Claims Notice consistent with protections afforded trademark owners via a 90 day claims period; and
- (2) the affected organization would receive a Notice of Registered Name if the registrant nevertheless proceeds with the attempted registration.

On 30 April 2014, the ICANN Board [adopted](#) the GNSO recommendations that were consistent with GAC advice and requested additional time to consider those that were inconsistent with GAC advice, which for the purpose of this facilitated discussion are the recommendations related to the Scope 2 Identifiers.

The GAC's rationale for seeking permanent protection for the terms most closely associated with the International Red Cross and Red Crescent Movement and its respective components is grounded in the protections of the designations "Red Cross" and "Red Crescent" under international treaty law and under multiple national laws. In March 2014, the GAC clarified expressly that such protections should also apply to the 189 (now 190) National Societies' names (in English and the official languages of their respective states of origin), and to the names of the two (2) international components of the Movement (in the 6 official United Nations languages). In respect to the acronyms of the Movement's international components (ICRC, CICR, MKKK, as well as IFRC and FICR), the GAC's advice was for a protection similar to the proposed cost-neutral mechanisms it recommended be developed for International Governmental Organization acronyms.

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<sup>2</sup> The Red Cross submitted a Minority Statement to the PDP Working Group's Final Report: <http://gns0.icann.org/en/issues/igo-ingo-final-minority-positions-10nov13-en.pdf>.

## **ANNEX: Current ICANN Mechanisms Developed to Reflect Existing Legal Protections:**

When registering a gTLD domain, a Registered Name Holder represents that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is to be directly or indirectly used infringes the legal rights of any third party.

Where the allegation concerns infringement of trademark rights, ICANN has an existing consensus policy (the Uniform Domain Name Dispute Resolution Policy (UDRP)) that allows trademark holders to initiate a dispute resolution process where:

- (i) the registered domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; AND
- (ii) the registrant has no rights or legitimate interests in respect of the domain name; AND
- (iii) the domain name was registered and is being used in bad faith.

Examples of bad faith include: (1) instances where a Registered Name Holder intentionally attempts to attract, for commercial gain, Internet users to the Registered Name Holder's website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or of a product or service on the website; or (2) circumstances indicating that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant/mark-holder for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

In addition to the UDRP, the 2012 New gTLD Program incorporated new and additional trademark rights protection mechanisms. For example, entering one's trademark into the new Trademark Clearinghouse database ensures that a trademark holder will be notified when a domain name is registered that matches their trademark, and potential registrants are advised of trademark rights that may exist in a domain name as part of the registration process. A new dispute resolution policy based substantially on the UDRP – the Uniform Rapid Suspension system (URS) - was also introduced for the 2012 New gTLD Program.

The above-mentioned protection mechanisms are based on the existence of legal rights based on numerous national trademark laws and international treaties related to trademarks.