

GAC Sub-working group for  
protection of geographic names  
in next rounds of new gTLDs

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BY EMAIL

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Our ref GD\NCB\MH

Dear Sirs

**Comments on GAC sub-working group proposal on "The protection of geographic names in the new gTLDs process"**

We submit these comments in response to the consultation on the GAC sub-working group proposal on "Geo names in new gTLDs" version 3, dated 29 August 2014 (the "Proposal").

The essence of the Proposal is that section 2.2.1.4 of the Applicant Guidebook (entitled "Geographic Names Review") should be amended for future applications for gTLDs to include the following highlighted text:

*"Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names, taking into consideration that, according with the 2007 GAC Principles regarding New gTLDs, ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities."*

It is not necessary for us to repeat the comments already submitted regarding the lack of detail in the Proposal, such as what "national, cultural, geographic and religious" terms might be included within the phrase "country, territory or place names, and country, territory or regional language or people descriptions", or the criteria upon which the Proposal would take effect or indeed be satisfied.

Instead, our comments relate more specifically to the rationale for reversing the ICANN community's negotiation and bargaining over the various principles, recommendations, guidelines and comments which eventually led to the AGB: it is indisputable that if the Proposal were to be adopted, principles which have been rejected by the multistakeholder process would be imposed on future applicants.

**The Proposal would impose on Internet users a perspective which has never been accepted and which the ICANN community has specifically rejected**

As noted in the Proposal, the March 2007 GAC Principles regarding New gTLDs (the "Principles") specifically addressed geographical names. However, as with all position statements at that time, the Principles were only a starting point for consideration by the multistakeholder community, and were subjected to and ultimately rejected via a rigorous process that lasted until 2012 when the final version of the AGB was published.

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The issue of geographical names therefore is not a new one. Indeed, this issue was extensively considered by various parts of the community, and not just the GAC.

It will be recalled that the GNSO Final Report on the Introduction of New Generic Top-Level Domains was finalised in August 2007, i.e. several months after the GAC Principles. That Report can be found at <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>. In the Discussion of Recommendation 5 (which states that "Strings must not be a Reserved Word"), attention is drawn to the **Reserved Names Working Group's** Final Report, available at <http://gns0.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm> and dated May 2007, in which the RN WG rejected reservation of geographical names at the top level, which is what is being put forward (again) in the Proposal: "There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed". The RN WG Final Report also stated that "Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable". Nothing suggests that anything has changed since then.

The NCUC's CIS also considered this issue and is cited in the GNSO Final Report as concluding that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all."

The question of reserving geographical names was also raised throughout the negotiation of the AGB. The various AGB drafts record the evolution of the community's discussions about geographical names, and the output from these discussions can be mapped alongside the development of other areas of the AGB, in particular Module 3, on Objections. At page 95 of their analysis of and response to comments requesting the reservation of "all geographical names" in version 6 of the AGB, dated May 2011 and available at <https://archive.icann.org/en/topics/new-gtlds/summary-analysis-agv6-30may11-en.pdf>, ICANN rejected the notion that the new gTLD program should block an application on the sole basis that the string applied for is also a place name: "Protecting all city names would not be feasible given the number of names potentially included in such categories. Also, names that happen to relate to some city, town, village, or hamlet somewhere might also have other legitimate uses that are not related to that city, town, village, or hamlet."

Therefore looking at the issue of geographical names in the new gTLD program as a whole, and not looking only at the 2007 GAC Principles in isolation, it is clear that the multistakeholder community has intentionally chosen flexibility and an appreciation of context as the preferred means of giving appropriate effect to the myriad interests of stakeholders, and has already rejected the mandatory exclusion of impractically numerous and varied strings without any regard for their intended use or the likely or even possible effects of such use.

#### **The Proposal has the potential to upset the balance of the AGB beyond the issue of place names**

It is also submitted that by reversing one area of compromise found in the AGB, the Proposal puts other areas of compromise at risk, in particular the community objection process, which is closely related to the issue of geographical names and has undergone substantial change from its first iteration as Implementation Guideline P of the GNSO Final Report.

#### **The Proposal penalises the digital economy and suggests a "solution" without providing any evidence that there is a problem to be solved**

Finally, we do not think anyone would disagree that the "misuse" of strings belonging to third parties should



be prevented. However, the Proposal treats all "use" as "misuse", regardless of context, and treats all place names as property, regardless of whether those place names are Protected Designations of Origin or Protected Geographical Indicators or indeed have any protection whatsoever under national or international law. In doing so the Proposal penalises legitimate business practices in general and the digital economy in particular, since there is no precedent for or realistic prospect of offline business being subjected to similar restrictions. The proposed mandatory rejection of certain aspects of legitimate e-commerce is therefore not only disproportionate but it is in direct contradiction to the compromises made in the development of the AGB. Furthermore, the lack of any evidence of harm connected to the use of a place name online, and the ready availability of Module 3 objection processes, suggests that the Proposal embodies a solution that lacks a problem.

**Conclusion**

The current draft of the Proposal would undo years of productive negotiation and compromise by the ICANN community in the formulation of the AGB and would impose on that community (as well as on Internet users at large) a perspective which has never received broad acceptance, without any evidence that the solution is necessary or even desirable.

It is respectfully submitted that a change to naming conventions as fundamental as that put forward in the Proposal would indeed "erode the confidence of global businesses" (Proposal, page 8), since none of these businesses will have ever had reason to avoid the online use of strings for the sole reason that those strings also happen to be place names.

As the final draft of the AGB recognises, context is, and in our view should remain, of paramount importance.

We are grateful for this opportunity to comment on the Proposal and look forward to continuing to engage with the GAC on this and other issues.

Yours faithfully,

*Edwards Wildman Palmer UK LLP*

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