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## New gTLD Subsequent Procedures Policy Development Process Work Track 5 on Geographic Names at the Top Level

### Block 4 - GAC New gTLDs Policy

#### Session 4.1 - New gTLD Subsequent Procedures

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### Session Objective

Assess progress of PDP WG Work Track 5 deliberations on issues of importance to the GAC

## Background

Policy discussions on the use and protection of Geographic Names at the Top level of the DNS have [significant history](#) at ICANN<sup>1</sup>. On 27 March 2007, in the context of future expansion of the gTLD namespace, the GAC Principles Regarding New gTLDs recognized that “*New gTLDs should respect: [...] The sensitivities regarding terms with national, cultural, geographic, and religious significance*” (§2.1).

In light of challenges posed by contested applications in the 2012 New gTLDs round, the GAC established a [Working Group to Examine the Protection of Geographic Names in any Future Expansion of gTLDs](#) during ICANN47 in Durban (18 July 2013).

This GAC Working Group was mandated to clarify the rationale for such protections, review their implementation, and develop policy options for their improvement.

After submitting initial [proposals](#) (29 August 2014) for [community discussion](#), and subsequently developing possible [best practices](#) (29 January 2016), the Working Group has been focusing on community debates and ongoing GNSO policy development for future expansions of new gTLDs.

On 17 December 2015, the GNSO initiated the New gTLD Subsequent Procedures PDP (Sub Pro PDP) to determine whether changes to existing policy recommendations on the introduction of new gTLDs were needed. It assigned the discussion of Geographic Names as gTLDs to a dedicated group: the so-called [Work Track 5](#), formed on 17 January 2018, including formal GAC [participation and co-leadership](#).

In the meantime, an intensive cross-community effort was undertaken to prepare and build consensus through:

- An initial [webinar](#) (25 April 2017) which sought to facilitate a broad dialogue and presented the wide range of views held in the community on this topic
- A [series of cross community meetings](#) during ICANN59 (27-29 June 2017), including a [report](#) from independent facilitators summarizing current challenges, policy options and stakeholders positions, and highlighting certain “*stakeholder interests that are not necessarily in conflict*” (p.19)
- Two Cross Community Sessions during ICANN62 ([25 June](#) and [28 June 2018](#))

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<sup>1</sup> As summarized in a [webinar](#) (8 February 2018) and reference documents from the ccNO, GNSO and GAC: [GNSO Geographic Names at the Top Level Webinar Background Paper](#) (20 April 2017), [Cross-Community Working Group -Framework for use of Country and Territory Names as TLDs \(CWG - UCTN\) Final Paper](#) (June 2017), and [GAC and Geographic Names at the Top Level: Advice to the Board and other inputs to end of ICANN 60](#) (November 2017)

## Issues

To date, the [deliberations](#) of Work Track 5 reflected in its [Initial Report](#) (8 December 2018) indicate a continued divergence of views on new policy options, beyond maintaining the status quo of protections as established for the 2012 round of New gTLDs (per section 2.2.1.4 of the [New gTLD Applicant Guidebook](#)):

- Unavailability for application as New gTLD of country and territory names in various forms (including ISO 3166-1 alpha-3 codes)
- Required support or non-objection from relevant governments or public authorities for capital city names in any language, city name if intended use as such, ISO 3166-2 sub-national place names, and other regional groupings)

Areas of disagreement include<sup>2</sup>:

- Modifications in the definition of geographic names (inclusion of new categories of terms, or exclusions of terms previously protected)
- Allowing or continuing to reserve the use of 3-letter country codes as gTLDs
- Protecting geographic names in various languages
- Allowing the use of a protected geographic name for a distinct purpose (“intended use” debate)
- Choosing (and balancing) between preventive protections (required support or non objection) and curative protections (applicant commitments associated with enforcement/dispute mechanisms)
- Legal justifications for protections and consequences on rights of parties
- Role of the GAC in future rounds of new gTLDs, including through new instruments such as a government-maintained Repository of Geographic Names

Within the GAC, there also exist a variety of views on a number of these areas, beyond the consensus established in the GAC Principles Regarding New gTLDs (28 March 2007) or subsequent GAC Advice on specific issues (see [Current Positions](#) and GAC Geonames WG documentation below).

## Leadership Proposal for GAC Action

1. **Review current GAC consensus on public policy objectives and policy options** to support an effective GAC participation in the finalization of the WT5 policy recommendations (expected in the coming months).
2. **Discuss the need for coordinating the GAC’s participation in Work Track 5** in light the recent Work Track 5 Team’s shift towards substantive deliberations

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<sup>2</sup> See [Annex B](#) of Work Track 5 Initial Report for the a complete list of open questions and policy options being discussed

## Relevant Developments

- On 17 January 2019, a [GAC webinar](#) was hosted by the GAC co-leader of the GNSO Sub. Pro. PDP Work Track 5 (Olga Cavalli, Argentina) to assist in the development of comments on the [Initial Report](#) by the GAC and interested GAC Members.
- This was followed, on the [GAC Mailing List](#), by discussions of the GAC's approach to possible comments and contributions (see [GAC Chair email](#) on 21 January 2019 and ensuing thread), leading to the [finalization](#) of the GAC [Comment](#) (1 February 2019)
- The [Public Comment period](#) on the Work Track 5 Initial Report attracted significant interest (42 contributions), including comments from 15 individual GAC Members or Observers (see [report of Public Comments](#)).
- While the Work Track 5 team initially focussed on the [triage of comments](#), it has now shifted to deliberating substantively on the public comments received, towards developing its final recommendations. This is reflected in a new [Summary Document](#) that is being updated progressively to reflect deliberations.
- Currently, as agreed by the WT5 co-leads (and reflected in the WT5 [Current Status Document](#)), the 13 preliminary recommendations included in the [Initial Report](#) are being considered the baseline, and default outcome, unless the Work Track Team reaches consensus<sup>3</sup> on deviating from them.
- In practice, this means that unless new policy is agreed upon in Work Track 5, the outcome of this track of policy development for future rounds of New gTLDs will be the confirmation of existing policy regarding the protection of:
  - Country and Territory Names (Prelim. Recommendations. 2-9)
  - Geographic terms requiring letters of support or non-objection (Preliminary Recommendations 10, 12, 13)
  - Geographic terms requiring letters of support or non-objection depending on Intended Use (Preliminary Recommendation 11)
- It is expected that Work Track 5 aligns with the wider New gTLD Subsequent Procedures PDP WG in terms of timeline for issuance of its Final Recommendations.

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<sup>3</sup> As defined in section 3.6 of the [GNSO Working Group Guidelines](#)

## Current Positions

### GAC Contributions and deliberations

- GAC [Comment](#) on WT5 Initial Report (1 February 2019) indicated that *“The GAC has not had an opportunity to discuss or agree on responses to the specific proposals and questions in the Initial Report. We note there are different views within the GAC on these specific proposals and questions. However, the GAC continues to take a close interest in these issues and, for information, we would like to reiterate relevant existing GAC advice”*, and went on to recall the relevant GAC Principles Regarding New gTLDs and prior GAC Advice (as listed below)
- [GAC Panama Communiqué](#) (28 June 2018) noted (in Section IV “Other Issues”) that *“Several GAC members expressed concern that the timeline for this work should allow for the complexity and sensitivity of many of the issues.”*
- [GAC San Juan Communiqué](#) (15 March 2018) noted (in Section IV.1 regarding “New gTLD Policies: Geographic Names” as part of “Section IV. Other Issues”) that *“discussions in Work Track 5 should take into account any material available or being produced outside the ICANN context relating to names with geographical significance”*

### GAC Members and Observers comments on WT5 Initial Report (Jan-Feb. 2018)

- [Spain](#) provided general comments that the rules of the 2012 round *“worked generally well and [...] should be maintained”* including the preventative measures (*“non-objection framework”*), which it advised should be extended to geographic names not covered by 2012 rules, with potential improvements in the interest of applicants to avoid the type of conflicts experienced with the 2012 round. It also addressed questions (1-11) and stated its position on the policy proposals succinctly (1-38). These comments were endorsed and reiterated by: [European Broadcasting Union](#), [France](#), [Iceland](#), [Peru](#) and [Switzerland](#) (Federal Institute of Intellectual Property). Several countries reiterated these comments with modifications;
  - [Argentina-Chile-Colombia](#) provided explicit support for recommendation 1-13, input on Questions 1-4 and variations in answers to other questions and Proposals 9, 10, 14, 15, 22, 23, 25, 26
  - [Germany](#) provided explicit support for recommendation 1-13
  - [Portugal](#) provided additional general comments (pertaining to applicable law and legitimate international venues for discussions of geographical names) and further specific input (question 2 to 5, 7, 9, 11 and Proposals 5). It diverged from Spain on Proposal 3, 4, 9, 14, 34, 37)
- [Singapore](#) expressed support for selected recommendations (2, 3, 4, 5, 7, 9, 10, as well as part of recommendation 8). expressed a preference for preventive rather than curatives protection (question 3), explicitly supported Proposals 1, 8 and 14, while not supporting Proposals 3, 5 and 7.

- [Georgia](#) commented on recommendation 11(a), expressed non support for proposals 6,7, 11-13, 17-20, 26-33, and full support for all other proposals
- [Brazil](#) drew attention of WT5 to findings of an [ACTO Working Group report](#) (27 August 2017) as relevant public information that must be taken into account; provided rationale for requiring approval of the relevant public authorities for TLD names with geographical and cultural significance or “*associated with identifiable relevant communities, e.g. cities, provinces, states, countries, recognizable regions from individual countries or a group of countries*”, as well as a rationale for maintaining the objection procedure to New gTLD applications based on GAC Advice. It provided input on questions 2, 5, 9, 11.
- [United States](#) provided a general overview of their position on geographic names (“*Since there are no inherent governmental rights in geographic names or terms, the United States does not support the notion of reserving geographic names or terms or requiring documents of individual government support or non-objection*” while supporting “*a curative mechanism approach (i.e., public interest commitments in the registry agreement) to ensure that the TLD would not be used in [a false or deceptive] manner*”) and provided responses to all questions and proposals.

#### **GAC Advice and Principles**

- [GAC Helsinki Communiqué](#) (30 June 2016) addressed the issue of 3-letter codes as gTLDs in future rounds, by advising the ICANN Board to:
  - encourage the community to continue in depth analyses and discussions on all aspects related to a potential use of 3-letter codes in the ISO-3166 list as gTLDs in future rounds, in particular with regard to whether such a potential use is considered to be in the public interest or not.*
  - keep current protections in place for 3-letter codes in the ISO-3166 list in place and not to lift these unless future in depth discussions involving the GAC and the other ICANN constituencies would lead to a consensus that use of these 3-letter codes as TLDs would be in the public interest.*
- [GAC Durban Communiqué](#) (18 July 2013) the GAC recommended regarding Geographic Names that “*ICANN collaborate with the GAC in refining, for future rounds, the Applicant Guidebook with regard to the protection of terms with national, cultural, geographic and religious significance, in accordance with the 2007 GAC Principles on New gTLDs.*”
- [GAC Nairobi Communiqué](#) (10 March 2010) addressed the need for agreement with relevant government and mechanisms to resolve post-delegation deviation from condition of approval or non objection, by stating in its “Annex B - GAC Comments on New gTLDs”:
  - *The GAC interprets para 2.2 of the GAC gTLD principles that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the [then] forthcoming ccTLD PDP, and other geographical strings*

could be allowed in the gTLD space if in agreement with the relevant government or public authority.

- *The GAC urges that mechanisms be established for the resolution of post-delegation deviation from conditions for government approval of or non-objection to the use of a geographical name. The GAC is of the view that this could be achieved with the inclusion of a clause in the registry agreement requiring that in the case of a dispute between a relevant Government and the registry operator, ICANN must comply with a legally binding decision in the relevant jurisdiction. However, in case of the need for approval or non-objection from multiple governments, proper mechanisms for resolving post delegation disputes must be detailed.*
- [Letter from GAC Chair to ICANN Chairman of the Board](#) (18 August 2009) which stated that “Strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space” (see Paragraph. II.3)
- [GAC Principles Regarding New gTLDs](#) (28 March 2007). Relevant extracts:

2. *Public Policy Aspects related to new gTLDs*

*When considering the introduction, delegation and operation of new gTLDs, the following public policy principles need to be respected:*

*Introduction of new gTLDs*

2.1. *New gTLDs should respect:*

a) *The provisions of the [Universal Declaration of Human Rights](#) which seek to affirm "fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women".*

b) *The sensitivities regarding terms with national, cultural, geographic and religious significance.*

2.2. *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.*

2.3. *The process for introducing new gTLDs must make proper allowance for prior third party rights, in particular trademark rights as well as rights in the names and acronyms of inter-governmental organizations (IGOs).*

2.4. *In the interests of consumer confidence and security, new gTLDs should not be confusingly similar to existing TLDs. To avoid confusion with country-code Top Level Domains no two letter gTLDs should be introduced.*

*Delegation of new gTLDs*

2.5. *The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation*

*of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.*

2.6. *It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service provider diversity.*

- [GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains](#) (5 April 2005) included as part of ‘Guidelines For a Communication Between The Relevant Government or Public Authority and ICANN’: *“Recognising ICANN’s responsibilities to achieve consensus in the creation of any new generic TLDs, ICANN should avoid, in the creation of new generic TLDs, well known and famous country, territory or place names; well known and famous country, territory or regional language or people descriptions; or ISO 639 Codes for representation of languages unless in agreement with the relevant governments or public authorities.”* (§8.3)

## Key Reference Documents

- [Initial Report](#) (12 December 2018)
- [Work Track 5 Summary Document](#), summarizing comments received and deliberations on an ongoing basis
- [Work Track 5 Triage of Public Comments](#)
- [Work Track 5 Current Status Document](#) (as of 5 June 2019)

## Further Information

Related ICANN65 Sessions and Briefings

- [Agenda item 2.2 Two-Characters Country Codes at the 2nd Level](#)
- [Agenda Item 4.1 New gTLDs Subsequent Procedures](#)
- [Agenda Item 5.2 .AMAZON](#)

Documentation of GAC Working Group on Geographic Names

- [Proposals](#) on the protection of geographic names in the new gTLD process (29 August 2014) including discussion of:
  - The rationale for protection of geographic names
  - Differences between trademarks and New gTLDs
  - Suggestions to avoid misuse of geographic names in future gTLD rounds (including best practices for future rounds and suggested changes to the Applicant Guidebook)
- [Community Input](#) on the GAC WG Proposal, which were [summarized](#) (February 2015)
- [Work Plan](#), draft version 4 (19 May 2016)
- [Working Paper](#) on Best Practices for future rounds (29 January 2017)

- [Presentation](#) during the Cross Community Webinar (25 April 2017) including a status on proposals for “*a future agreed framework for terms with geographic significance*” and divergent views in the GAC on the matter.

Ressources on Work Track 5 and the GNSO PDP on New gTLDs Subsequent Procedures

- <https://gac.icann.org/activity/new-gtlds-subsequent-rounds>
- <https://gac.icann.org/activity/new-gtlds-subsequent-rounds-geographic-names-as-tlds-wt5>
- <https://gnsso.icann.org/en/group-activities/active/new-gtld-subsequent-procedures>

## Document Administration

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