

Two Character Country Codes at the Second Level in New gTLDs

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Setting the Scene

Framework of the GAC Discussion 1

- ⦿ Specification 5, Section 2 of the Draft new gTLD Registry Agreement (part of the New gTLD Applicant Guidebook developed by ICANN Community and adopted by the Board) specified two different ways to release the 2-character country codes: “The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager, or, The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes”
- ⦿ The objective of this Registry Agreement provision is to **avoid confusion with the corresponding country codes**
- ⦿ confusion is registrants misrepresenting an affiliation with a government or ccTLD, which would likely be about use/content rather than existence.
- ⦿ This provision is part of the adopted New gTLD Registry Agreement

Framework of the GAC Discussion 2

- ⊙ It is crucial to understand from the very outset that:
 - The Registry Agreement is about two parties (the Registry and ICANN Org) and ICANN Org is the sole actor in charge of the enforcement of the provisions related to Registry obligations
 - The provision related to the 2 character code registrations aim to **avoid any confusion** with the the corresponding country codes. That's the **sole objective of this provision**
 - From a legal perspective **ICANN Org is not able to grant any “authorization process” to the GAC without any pre-existent legal background** (International Treaty, ICANN's Policy)

Conclusion

- ⦿ The 2 Character code provisions of the Registry Agreement aim to **avoid any user confusion with the country codes or affiliated government.**
- ⦿ **These provisions can not be perceived as granting any global authorization role for governments** because ICANN is not able to create such legal norm (no pre-existent legal framework International Treaty or ICANN PDP)
- ⦿ The implementation of measures to avoid confusion is the responsibility of ICANN Org

ICANN's Measures to Avoid confusion

ICANN Org's support for governments

- ⊙ **Identification** of potential confusions: 2Character Codes Search Tool
 - This Search Tool allows governments to access online information related to the registrations at the second level of two-character codes that ISO assigned to their country/territories
- ⊙ **Reporting of potential confusion**
 - Governments play an active role here by reporting any potential confusion

Measures to avoid confusion

Measures adopted by ICANN Board during ICANN57 meeting in Hyderabad

- ⦿ **Exclusive Availability Pre-Registration Period** (voluntary): Registry Operators may implement an exclusive availability pre-registration for governments or ccTLD operators to register domain names corresponding to their country codes, before the names are generally available
- ⦿ **Registration Policy**: Registry Operators must include a provision in the registry's registration policy requiring registrants to avoid misrepresenting affiliation with a government or ccTLD; and
- ⦿ **Post-Registration Complaint Investigation**: Registry Operators must investigate and respond to reports of confusion from government or ccTLD operators
- ⦿ ICANN org is responsible for the enforcement of these measures

Focus on enforcement of the Registry Agreement

- ⊙ •The measures adopted by an Registry Operator are a part of its **contractual obligation with ICANN and enforceable by ICANN Compliance**. These measures are in addition to other safeguards related to abusive domains that are already in the registry agreement. There have **been no reports of misuse of a relevant country code at second level to ICANN Compliance department**
- ⊙ If a government or country code operator identifies instances of misuse of a two-character SLD by an RO, the **Registry Operator is obligated to investigate and respond. If there is no satisfactory resolution, the government may utilize the full extent of ICANN's Compliance department to request an investigation.**



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Lack of pre-existent legal background 1

Country Codes - ISO 3166

The International Standard for country codes and codes for their subdivisions.

The purpose of ISO 3166 is to define internationally recognised codes of letters and/or numbers that we can use when we refer to countries and subdivisions. However, it does not define the names of countries – this information comes from United Nations sources (Terminology Bulletin Country Names and the Country and Region Codes for Statistical Use maintained by the United Nations Statistics Divisions).

Using codes saves time and avoids errors as instead of using a country's name (which will change depending on the language being used) we can use a combination of letters and/or numbers that are understood all over the world.

For example, all national postal organizations throughout the world exchange international mail in containers identified with the relevant country code. Internet domain name systems use the codes to define top level domain names such as '.fr' for France, '.au' for Australia. In addition, in machine readable passports, the codes are used to determine the nationality of the user and when we send money from one bank to another the country codes are a way to identify where the bank is based.

Source: <https://unstats.un.org/unsd/methodology/m49/>

Lack of pre-existent legal background 2

Countries or areas / geographical regions

The list of countries or areas contains the names of countries or areas in alphabetical order, their three-digit numerical codes used for statistical processing purposes by the Statistics Division of the United Nations Secretariat, and their three-digit alphabetical codes assigned by the International Organization for Standardization (ISO).¹ In general, this list of countries or areas includes those countries or areas for which statistical data are compiled by the Statistics Division of the United Nations Secretariat.

The names of countries or areas refer to their short form used in day-to-day operations of the United Nations and not necessarily to their official name as used in formal documents. These names are based on the United Nations Terminology Database (UNTERM).² The designations employed and the presentation of material at this site do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Source: <https://unstats.un.org/unsd/methodology/m49/>

Lack of pre-existent legal background 3

- ⦿ Lack of ICANN Policy