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New gTLD Sub. Pro. PDP Work Track 5 on Geographic Names - Update

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Work Track 5 - New gTLD Subsequent Procedures Policy Development Process Working Group

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24 June 2019 - WT5 Face to Face



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Introduction and Current Status

Agenda Item #1

About Work Track 5

- Work Track 5 is a sub-team of the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG).
- The overall WG is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing 2007 Introduction of New Generic Top-Level Domains policy recommendations.
- Work Track 5 seeks to review the existing policy and implementation related to the topic of geographic names at the top level, determine if changes are needed, and recommend revised or new policy and/or implementation guidance, as appropriate.
- Anyone can join Work Track 5 as a member or observer.

Scope of Work

The scope of work includes geographic names at the top-level only:

- Two-character ASCII letter-letter combinations
- Country and Territory Names (alpha-3 on 3166-1, short and long-form in ISO 3166-1, additional categories in section 2.2.1.4.1 of AGB)
- Capital cities in ISO 3166-1, city names, sub-national names (e.g., county, province, state in ISO 3166-2)
- UNESCO regions and names appearing in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings”
- Other geographic names such as geographic features (rivers, mountains, valleys, lakes, etc.) and culturally significant terms related to geography (also known as non-AGB geographic terms)

Current Status

- **Supplemental Initial Report** published for public comment on 5 December 2018, with the (extended) period closing on 1 February 2019.
- A total of 42 comments were received, with many of the GNSO SG/Cs responding, as well as SO/ACs (with some governments and ccTLD managers responding individually).
- Public comments were compiled into the Public Comment Review Tool, attempting to provide an initial assessment of Agreement, Concerns, New Idea, Divergence in relation to WT5's report.
- Work Track 5 categorized every comment, seeking to ensure that it understands the comment and asked questions where it may not be clear.
Transition - now undertaking substantive deliberations to determine if change is needed.
- **Baseline: WT5's Preliminary Recommendations and/or 2012 implementation and Applicant Guidebook.**
- **Change from that baseline requires consensus.**

Preliminary Recommendations Review Status Tracking

Agenda Item #2

Substantive Deliberations of Public Comment

- For substantive deliberations, WT5 Leadership and staff have sought to summarize public comments received, as well as highlight new elements (e.g., new ideas, concepts, concerns, divergence, etc.), to provide a digestible format for information.
- While there may be some level of quantification of support/opposition and consolidation of concepts to highlight themes, this exercise is NOT an assessment of consensus.
- ***Baseline: WT5's Preliminary Recommendations and/or 2012 implementation and Applicant Guidebook.***
- **The purpose of this phase of work is to reach agreement on a set of recommendations** that will be sent to the full WG for their consideration and formal consensus call.

High-Level Themes From Public Comments

Overall - Existing 2012 implementation / Preliminary Recommendations

- Support from most commenters to maintain the existing geographic names protections deployed in the 2012 round (which are largely identical to the preliminary recommendations, with the exception of translations of certain terms). Some of that support is reluctant, in the sense that many commenters do not believe governments have an exclusive legal basis in geographic names, but nevertheless, are willing to support what they believe is a compromise solution. However, there is outright opposition from some commenters, which is discussed in the Outstanding Items - New Ideas/Concerns/Divergence section.

High-Level Themes From Public Comments

Three main groupings for preliminary recommendations

Country and Territory Names (Recommendations 2-9)

- Support from most commenters to maintain the existing geographic names protections deployed in the 2012 round (which are largely identical to the preliminary recommendations, with the exception of translations of certain terms). Some of that support is reluctant, in the sense that many commenters do not believe governments have an exclusive legal basis in geographic names, but nevertheless, are willing to support what they believe is a compromise solution. Exceptions to this general support do exist in this category (e.g., alpha-3 code) and in addition, there is outright opposition from some commenters; both of these elements will be discussed in the Outstanding Items - New Ideas/Concerns/Divergence section

High-Level Themes From Public Comments

Geographic Terms Requiring Letters of Support/Non-Objection (Recommendations 10, 12, 13)

- Support from many commenters to maintain the existing geographic names protections deployed in the 2012 round. While there is still some reluctant support (e.g., commenters do not believe governments have an exclusive legal basis in geographic names), there is more outright opposition from some commenters here, in particular against capital city names and less so against sub-national names and UNESCO and M49 regions; this will be discussed in the Outstanding Items - New Ideas/Concerns/Divergence section

Geographic Terms That Require Letters of Support/Non-Objection Dependent Upon Intended Usage (Recommendation 11)

- Support from some commenters to maintain the existing geographic names protections deployed in the 2012 round. There is still some reluctant support but again, there is more outright opposition from some commenters here. However, the opposition here comes from two very different angles 1) that cities do not have a legal basis and 2) that applicants should always be required to provide a letter of support/non-objection. Again, this will be discussed in the Outstanding Items - New Ideas/Concerns/Divergence section.

Preliminary Recommendations (For Reference)

Preliminary Recommendation 1: As described in recommendations 2-9, Work Track 5 recommends, unless or until decided otherwise, maintaining the reservation of certain strings at the top level in upcoming processes to delegate new gTLDs. As described in recommendations 10-13, Work Track 5 recommends, unless or until decided otherwise, requiring applications for certain strings at the top level to be accompanied by documentation of support or non-objection from the relevant governments or public authorities, as applicable.

Preliminary Recommendation 2: Work Track 5 recommends continuing to reserve all two-character letter-letter ASCII combinations at the top level for existing and future country codes. [additional detail available]

Preliminary Recommendation 3: Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.i:

- *alpha-3 code listed in the ISO 3166-1 standard.*

[additional detail available]

Preliminary Recommendations (For Reference)

Preliminary Recommendation 4: *Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.ii:*

- *long-form name listed in the ISO 3166-1 standard.*

[additional detail available]

Preliminary Recommendation 5: *Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.iii:*

- *short-form name listed in the ISO 3166-1 standard.*

[additional detail available]

Preliminary Recommendations (For Reference)

Preliminary Recommendation 6: *Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.iv:*

- *short- or long-form name association with a code that has been designated as “exceptionally reserved”³ by the ISO 3166 Maintenance Agency. [additional detail available]*

Preliminary Recommendation 7: *Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.v:*

- *separable component of a country name designated on the “Separable Country Names List.” This list is included as an appendix to the 2012 Applicant Guidebook. [additional detail available]*

Preliminary Recommendations (For Reference)

Preliminary Recommendation 8: *Work Track 5 recommends clarifying 2012 Applicant Guidebook section 2.2.1.4.1.vi, which designates the following category as a country and territory name which is reserved at the top level and unavailable for delegation:*

- *permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”*

Work Track 5 recommends clarifying that permutations and transpositions of the following strings are reserved:

- *long-form name listed in the ISO 3166-1 standard.*
- *short-form name listed in the ISO 3166-1 standard.*
- *short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.*
- *separable component of a country name designated on the “Separable Country Names List.” This list is included as an appendix to the 2012 Applicant Guidebook.*

Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed.

[additional detail available]

Preliminary Recommendations (For Reference)

Preliminary Recommendation 9: *Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.vii:*

- *name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization. [additional detail available]*

Preliminary Recommendation 10: *Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:*

- *An application for any string that is a representation of the capital city name of any country or territory listed in the ISO 3166-1 standard. [additional detail available]*

Preliminary Recommendations (For Reference)

Preliminary Recommendation 11: *Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:*

- *An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if: (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and (b) The applied-for string is a city name as listed on official city documents [additional detail available]*

Preliminary Recommendations (For Reference)

Preliminary Recommendation 12: *Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:*

- *An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard. [additional detail available]*

Preliminary Recommendations (For Reference)

Preliminary Recommendation 13: *Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:*

- *An application for a string listed as a UNESCO region⁴ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list. In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.*

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.” [additional detail available]

Status Tracking

Preliminary Recommendation 1	Open - need to revert on completion of WT5 review of preliminary recommendations/public comments.
Preliminary Recommendation 2 (2 character ASCII)	12 June. Complete - no change to recommendation
Preliminary Recommendation 3 (alpha 3 on 3166-1)	12 June. Complete - no change to recommendation
Preliminary Recommendation 4 (long-form name on 3166-1)	19 June. Complete - no change to recommendation
Preliminary Recommendation 5 (short-form name on 3166-1)	19 June. Complete - no change to recommendation
Preliminary Recommendation 6 (short or long form name designated as “exceptionally reserved” by 3166)	19 June. Complete - no change to recommendation
Preliminary Recommendation 7 (• separable component of a country name designated on the “Separable Country Names List.”)	19 June. Complete - no change to recommendation

Status Tracking

<p>Preliminary Recommendation 8 (permutations and transpositions of the following strings are reserved: long-form name, short-form name, “exceptionally reserved”, “Separable Country Names List.”)</p>	<p>Open to feedback from last meeting</p> <p>Suggestion for text change from Justine Chew: "Strings resulting from permutations and transpositions of alpha-3 codes which are themselves not on the ISO 3166-1 list should be allowed".</p> <p>Suggestion to clarify the definition of “permutation” and “transposition.” Is the current definition exhaustive?</p>
<p>Preliminary Recommendation 9 (name by which a country is commonly known)</p>	<p>19 June. Complete - no change to recommendation</p>
<p>Preliminary Recommendation 10 (capital city name of any country or territory listed in the ISO 3166-1)</p>	<p>19 June. Complete - no change to recommendation</p>
<p>Preliminary Recommendation 11 (non-capital city name)</p>	<p>Open for feedback from last meeting. Refer to meeting notes from 19 June.</p>

Status Tracking

Preliminary Recommendation 12 (a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2)	19 June. Complete - no change to recommendation
Preliminary Recommendation 13 (UNESCO region or appearing on the “Composition of macro geographical (continental) regions, geographical sub- regions, and selected economic and other groupings” list)	19 June. Complete - no change to recommendation

Identification and agreement on remaining open issues

Agenda Item #3

Open/Divergent Issues

1. Discuss **operational/incremental (non-substantive) improvements** (e.g., online tools, advisory panels, mediation, etc.)
2. **Non-AGB terms** (e.g., rivers, mountains, etc.)
 - If applicable, introduction of intended-use provision.
3. **Translations** applied to the following categories in 2012:
 - long-form name listed in the ISO 3166-1 standard. (reserved)
 - short-form name listed in the ISO 3166-1 standard. (reserved)
 - separable component of a country name designated on the “Separable Country Names List.” (reserved)
 - capital city names (letter of support / non-objection)

Open/Divergent Issues

4. Possible changes to **string contention resolution** when one or more geographic name is involved.
5. **“Intended use” provision more generally** - some wish to extend to other areas where documentation is always required. Conversely, some wish to eliminate and always require documentation.
6. **Some question the basis for preventative protections.** While a number of commenters were willing to still support the preliminary recommendations, this was contingent upon the scope of geographic names protections not being extended further.
7. Some wish to **increase reliance on curative measures**, or introduce in parallel to existing preventative measures.

Sessions 1 - Wrap-up

Agenda Item #4

Session 2

1

Discussion on Open
Issues

2

Wrap-up

Discussion on Open Issues

Agenda Item #1

Selection of Open Topics

1. **Operational/incremental improvements (e.g., non-substantive changes, like tools, advisory panels, etc.)**
2. **Non-AGB terms and possible subset of intended-use extension for non-AGB terms**
3. **Translations**
4. **Changes to contention resolution for geographic names**

Open Topic #1

Operational/incremental improvements (e.g., non-substantive changes, like tools, advisory panels, etc.)

- Several proposals were put forth in the Supplemental Initial Report that could be considered more operational in nature.
 - These proposals **do not change the scope of protections** (e.g., increase or decrease the protections for geographic terms) and **can potentially be added on top of whatever substantive recommendations are agreed to by WT5**.
 - In addition, the proposals may be able to work in concert with each other, **so agreement to one or more may be possible**.
- These slides capture input on the proposals at a very high level and are intended to merely **provide a sense of the input received** and support conversations during this session.

Open Topic #1

- **Proposal 1:** Develop an online, searchable tool for prospective applicants.
 - Support from a variety of respondents.
 - Concerns about ability to automate and potential cost to do so.
- **Proposal 2:** GAC members could assist applicants in identifying which governments and/or public authorities would be applicable when letter is required.
 - Support from a variety of respondents.
 - Qualified support from those that do not believe letters should be needed at all.
- **Proposal 3:** If letter is needed, provide mediation services to assist if applicant disagrees with response from government or public authority.
 - Support from a variety of respondents.
 - Qualified support, with concerns about cost and who would serve as mediator.
 - Concerns that mediation is non-binding and that it does not necessarily increase the willingness to negotiate.
 - Divergence, believing that the government or public authority should have the final say.

Open Topic #1

- **Proposal 4:** Heighten the awareness of governments and others regarding the gTLD program so that they will be more likely to seek or support a registration for the relevant geographic name.
 - Support from a variety of respondents.
 - Qualified support from those that do believe this awareness building should be a part of regular outreach.
 - Some believe this outreach is the responsibility of the governments.
- **Proposal 5:** Where a letter is required from a relevant government or public authority, establish a deadline for response. If no response, taken as non-objection.
 - Support from a variety of respondents.
 - Qualified support from those that are concerned about the accuracy of information (e.g., contacting the right party, deadline for response).
 - Some believe this recommendation should be considered with Proposal 2.
 - Divergence from some who believe the mechanism could be gamed, by purposely contacting the wrong party.

Open Topic #1

- **Proposal 26:** Raise awareness and increase knowledge among potential applicants about the opportunity to apply for TLDs. Could not require binding action on the part of potential applicants.
 - Support from a variety of respondents.
 - Divergence from a few respondents for unspecified reasons.
- **Proposal 34:** Provide an advisory panel (perhaps Geographic Names Panel) that applicants could contact to assist in identifying if a string is related to a geographic term. The panel could also help applicants identify which governments and/or public authorities would be applicable.
 - Support from a variety of respondents.
 - Qualified support from those that believe this proposal introduces legal issues in terms of liability.
 - Divergence for a number of reasons, including: concerns that if an advisory panel is needed, this means the criteria are ambiguous; concerns that the standard of “related to a geographic term” is a broad expansion.

Open Topic #1

- **Proposal 36:** Leverage the expertise of GAC members to help applicants determine if a string is related to a geographic location. GAC members could also assist applicants in identifying which governments and/or public authorities would be applicable if letter is needed.
 - Support from a variety of respondents.
 - Some support dependent upon this proposal not expanding situations where a letter is needed.
 - Divergence based on a number of reasons, including: concerns about the burden placed on the GAC members, as well as questions about GAC members decision-making ability; determining whether a string is geographic depends on context of use.

Open Topic #2

Non-AGB terms

- In Work Track discussions and in public comments received, divergent views have been expressed about whether additional types of terms should be protected in the Applicant Guidebook beyond those included in the 2012 AGB.
- From the public comments, there were a number of responses in support of increasing the number of terms protected in the AGB, as well as a number of responses opposing this idea.
- For those who support protecting a larger number of terms, there is some support for requiring a letter of support/non-objection from a relevant government authority for additional types of terms.
- For those who support protecting a larger number of terms, the following types of terms have been suggested for inclusion in the AGB:
 - toponyms such as mountains, rivers, that are commonly known
 - names with geographical, national and/or cultural significance
 - geographical indications
 - non-ASCII geographic names

Open Topic #2

In support of protecting additional types of terms:

- Groups of people who identify with a place have a right to be “at the table,” which is not limited to 2012 AGB terms.
- These rights are particularly important for minority cultures and peoples and indigenous groups associated with a physical place.
- Brands or other groups should not use names that belong to a particular group of people without their permission.

In opposition to protecting additional types of terms:

- ICANN’s mandate is very narrow. It cannot “fill in the blanks” to protect indigenous rights not covered in law.
- The best way to ensure predictability is to make sure there are explicit guidelines and consistent implementation and that applicants have a path to success by default.
- Groups of people associated with a geographic place should be able to apply for a corresponding TLD without facing unnecessary financial and logistical hurdles.
- Objections processes could be used to address cases where a geographic community opposes an application.

Open Topic #2

- Several proposals were put forth in the Supplemental Initial Report in relation to this topic.
- These slides capture input on the proposals at a very high level and are intended to merely **provide a sense of the input received** and support conversations during this session.

- **Public comments included a mix of support for and opposition to each of these proposals.**

Open Topic #2

- Proposal 22: Give small cities, towns, and geographic communities the first right to apply for a TLD associated with the place.
 - Concerns: lack of clarity on the definition of “small cities, towns, and geographic communities” and no indication that these groups have an interest in these TLDs.
- Proposal 33: Apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly protected is unprotected. A lack of letter of support/non-objection alone will not be a cause to hinder or suspend an application for such unprotected term.
 - In support: There are potential benefits of increasing clarity and certainty to applicants; Could reduce conflict by creating clear boundaries; May eliminate the chilling effect that objections may cause.
 - In opposition: “Geographic term” cannot be listed or described exhaustively and ICANN has no right to do so; Governments may not be willing to support this proposal; Objection is a fundamental right that should not be limited.

Open Topic #2

- Proposal 35: Maintain a repository of geographic names reflecting terms that governments consider sensitive and/or important as geographic names. Countries and territories could contribute terms to this repository but it would not require binding action on the part of potential applicants.
 - In support: Could help applicants understand government sensitivities; Could act as a resource to bring parties “to the table”; Could prevent conflicts later in the process.
 - In opposition: It is unclear what purpose this list would serve and whether the list could be used to restrict applications in some way; May have a chilling effect; Could decrease predictability and reliability of the application process, increase costs, and cause unintended legal issues elsewhere.

Open Topic #2

- Proposal 38: If the applicant is applying for a geographic name, including terms not listed in the 2012 Applicant Guidebook, the applicant is required to contact/consult with the relevant government authority and provide evidence that it has done so.
 - In support: Brings different parties to the table and could reduce conflicts later in the process.
 - In opposition: Terms can have alternate meanings, therefore it is important to look at proposed use; Proposal may deter applicants and stifle innovation and speech; There are potential logistical challenges with having applicants contact GAC members; There is no legal basis for the proposal.

Open Topic #3

Translations

- In the 2012 Applicant Guidebook, a string was considered unavailable if it was a translation in any language of the following categories of country and territory names:
 - long-form name listed in the ISO 3166-1 standard.
 - short-form name listed in the ISO 3166-1 standard.
 - separable component of a country name designated on the “Separable Country Names List.”
- In the 2012 AGB, applicants were required to obtain letters of support or non-objection from the relevant governments or public authorities for “an application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.”
- The Work Track has discussed whether translations of these strings in all languages should continue to be subject to preventative protections in the future.

Open Topic #3

Translations

- Public comments: Some responses supported maintaining the current standard, others supported reducing the number of languages or eliminating the reservations of translations altogether.
- **In support of maintaining the current standard:** It is unclear if there are any documented problems with the 2012 implementation. If no issues are identified, don't change the rules; Language is an important part of identity for different groups.
 - Are there problems with the 2012 rules and their implementation?
- **In support of reducing the number of languages or eliminating protections for translations:** Existing restrictions are too broad and impractical and reduce predictability; Since there is no finite list, an application could have proceeded in violation of the standard without anyone knowing; Not supported by international law; Restricts consumers' freedom of choice; Increases the likelihood of conflicts between country names and the other potential co-existing uses of the same term in some language which bears no connection with the country in question; Does not accord with the goal of protecting of names that countries use to describe themselves.

Open Topic #3

Translations

- The Work Track has been discussing a proposal to limit reservation of translations to the following:
 - **The official language of the country/territory/capital city name**
 - **Translations of the country/territory/capital city name in UN languages**
- Recent feedback on the proposal:
 - Suggestion to include curative processes, such as an objection procedure, for commonly used languages in the country in question.
 - Suggestion to add to the above list transliterations into ASCII and conversion into DNS labels.
 - However, there is no standard for transliteration.
 - Suggestion to use official and relevant national, regional and community languages since not all countries have official languages.
 - How would relevant national, regional and community languages be defined?

Open Topic #4

Changes to contention resolution for geographic names

- In the 2012 round, the method of last resort for resolving contention between two or more applications was an auction.
- The full Working Group is addressing auctions of last resort between two or more strings that are not geographic names.
- Work Track 5 may want to consider if the 2012 rules are still appropriate for contention sets that include one or more geographic names as defined in section 2.2.1.4.2 of the Applicant Guidebook:
 - If there is more than one application for a string representing a certain geographic name, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants.
 - If a contention set is composed of multiple applications with documentation of support from the same government or public authority, the set will proceed to auction when requested by the government or public authority providing the documentation.
 - If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the set will proceed to auction.

Wrap-Up

Agenda Item #2