

Work Track 5 meeting



28 August 2018

Agenda

1. Welcome/Agenda Review/SOI Updates
2. Closure of Discussion on Additional Categories of Terms Not Included in the 2012 Applicant Guidebook
3. Closure of Discussion on Changes to String Contention Resolution
4. Closure of Discussion on Non-Capital City Names
5. Final review of public comments - Proposals on Change to Scope of Protections/Restrictions
 - Covered in the public comment summary document beginning on page 32: [https://docs.google.com/document/d/1rsyxCEBd6ax3Rb_w1kms_E9n29XL1_lw3Yp9XQ4TeCY/edit?ts=5ce64d6d# \[docs.google.com\]](https://docs.google.com/document/d/1rsyxCEBd6ax3Rb_w1kms_E9n29XL1_lw3Yp9XQ4TeCY/edit?ts=5ce64d6d# [docs.google.com]).
 - For reference, full text of comments is available at: [https://docs.google.com/spreadsheets/d/1WKSC_pPBviCnbHxW171ZIp4CzuhQXRcv1NR2ruagrxs/edit#gid=543808477 \[docs.google.com\]](https://docs.google.com/spreadsheets/d/1WKSC_pPBviCnbHxW171ZIp4CzuhQXRcv1NR2ruagrxs/edit#gid=543808477 [docs.google.com])
6. AOB

Welcome/Review Agenda/SOI Updates

Agenda Item #1

Closure of Discussion on Additional Categories of Terms Not Included in the 2012 Applicant Guidebook

Agenda Item #2

Status

- ⦿ The Work Track has extensively discussed whether there should be provisions in the Applicant Guidebook to protect/restrict additional categories of terms not included in the 2012 AGB.

- ⦿ There has been traffic on the list regarding proposals that would require applicants to provide early notice to governments/public authorities when the applicants apply for specific strings. There are two core proposals –
 - Under one of the proposals, the strings triggering this requirement would include terms with geographic meaning identified by GAC Members states or other UN Member states to the ICANN Organization that are protected by national law.
 - Under the other proposal, the list should be limited to exact matches of adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question

- ⦿ Before focusing on the specific wording of each proposal, it may be helpful for the group to consider, at a high level, whether consensus may be possible on the core concepts of the proposals.

Proposal 1 (1/2)

Proposal.

Applications of strings regarding terms beyond the 2012 AGB rules with geographic meaning shall be subject to an obligation of the applicant to contact the relevant public authorities, in order to put them on notice.

Affected Strings.

(a) Exact matches of adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question. The adjectival forms of country names shall be found on the World Bank Country Names and Adjectives list ([World Bank List\[siteresources.worldbank.org\]](http://siteresources.worldbank.org)).

(b) Other terms with geographic meaning, as notified by GAC Members states or other UN Member states to the ICANN Organization within a deadline of 12 months following the adoption of this proposal. In such notifications the interested countries must provide the source in national law for considering the relevant term as especially protected; The list of notified terms shall be made publicly available by ICANN Org.

Proposal 1 (2/2)

Contact details of interested countries.

Interested countries must provide relevant contact details to ICANN at least three (3) months in advance of the opening of each application window.

Obligation to contact interested countries.

Applicants for such a term will then be under an obligation to contact the relevant country. Said obligation to contact must be fulfilled, at the latest, in the period between applications closing and reveal day, but an applicant may choose to notify earlier than this.

Said obligation to put on notice the relevant country may be performed in an automatized fashion by ICANN Org, if the applicant so wishes.

No further legal effect.

There is no further obligation whatsoever arising from this provision and it may not be construed as requiring a letter of non-objection from the relevant public authority. Nothing in this section may be construed against an applicant or ICANN Org as an admission that the applicant or ICANN Org believes that the Affected String is geographical in nature, is protected under law, or that the relevant government has any particular right to take action against an application for the TLD consisting of the Affected String.

Proposal 2 (1/2)

Proposal. There should be an Early Reveal Process, which is an opportunity for national governments to receive early notification about particular applications so that they can take whatever steps they wish to take.

Affected Strings. Exact matches of adjectival forms of country names (as set out in the ISO 3166-1 list), in the official language(s) of the country in question, shall be subject to the Early Reveal Process described below. The adjectival forms of country names shall be found on the World Bank Country Names and Adjectives list ([World Bank List \[siteresources.worldbank.org\]](http://siteresources.worldbank.org)).

Purpose. The purpose of the Early Reveal Process is to provide early notice to relevant national governments regarding new gTLD applications for exact matches to adjectival forms of country names found on the World Bank List.

Notification by National Governments. Interested national governments must provide relevant contact details to ICANN at least three (3) months in advance of the opening of each application window.

Proposal 2 (2/2)

Notification to National Governments. As soon as possible after, but never before, the close of each application window , but no later than 1 month after the close, ICANN Org should reveal relevant applied-for terms and applicant contact information to those national governments who provided contact information.

Notice by ICANN. ICANN Org will provide notice of the Affected Strings to National Governments who timely submit their contact information. There is no obligation for applicants arising from this Early Reveal Process to seek a letter of consent/non-objection from the relevant public authority.

No Legal Effect. Nothing in this section may be construed against an applicant or ICANN Org as an admission that the applicant or ICANN Org believes that the Affected String is geographical in nature, is protected under law, or that the relevant government has any particular right to take action against an application for the TLD consisting of the Affected String.

Topic Closure

- ⦿ Summary of previous discussions:
 - Some members have expressed support for the more limited formulation of this proposal, which focuses exclusively on the adjectival forms.
 - Concerns have been raised that this proposal is too limited and does not represent a compromise.
 - Some members have expressed support for the broader proposal that includes requirements for other terms with geographic meaning.
 - Concerns have been raised about the impact on transparency and predictability of the process if the broader version of the proposal is adopted.
 - Concerns have been expressed about lack of clear definition of "term with geographic meaning," noting that this may be overly broad.

- ⦿ At this stage, can the group reach agreement in support of one of the proposals put forward?

- ⦿ If there is no agreement on a proposed change, the status quo will remain.

Closure of Discussion on Changes to String Contention Resolution

Agenda Item #3

Background

- 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 could 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.

Status

- ⦿ A revision of a proposal previously discussed has been circulated on list (see next slide for details).
- ⦿ Like the original proposal, the new proposal suggests that if an application in a contention set is targeting a geographical meaning, this application should get preference.
 - The current proposal indicates that the applicant must be based in a country/or the TLD is targeted to where national law gives precedent to city and/or regional names. It also suggests order of preference where there are community applications in the contention set.

Proposal (slide 1/3)

- ⦿ **Update Applicant Guidebook, Chapter 2.2.1.4.4 with:**

If an application for a string representing a geographic name is in a contention set with applications for identical strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

Proposal (slide 2/3)

- ⦿ **Update Applicant Guidebook, Module 4. with:**

In case there is contention for a string where one application designated the TLD for geographic purposes, preference should be given to the applicant who will use the TLD for geographic purposes if the applicant for the geoTLD is based in a country/or the TLD is targeted to where national law gives precedent to city and/or regional names. In case a community applicant is part of the contention set, and it did not pass the Community Priority Evaluation (CPE), the geoTLD will be granted priority in the contention set. If the community applicant passes the CPE, it will be granted priority in the contention set.

EXAMPLES:

- ⦿ US-based Bagel Inc. and Switzerland-based City of Lausanne apply for .lausanne -> City of Lausanne has priority.
- ⦿ US-based Bagel Inc. and Switzerland-based Lausanne Pharmaceuticals apply for .lausanne -> Lausanne Pharmaceuticals has priority.
- ⦿ If Bagel Inc. and Lausanne Pharmaceuticals are not based in Switzerland, there is not priority granted for any.

Proposal (slide 3/3)

RATIONALE: This would reflect national law e.g. in countries like Switzerland and Germany, where e.g. city names have more rights than others. It is not about inventing new rights or laws. Also, the existing objection procedures do not really allow cities to file objections (resources, lack of knowledge, ...). If a community applicant does not pass the CPE, it is not a community with better rights per ICANNs definitions.

Topic Closure

- ⦿ Summary of additional points/questions raised:
 - Question: How would this work if more than one place shares the city name?
 - Question: Are there examples of national laws that provide that cities have priority rights to their names in the domain name space and are meant to affect a California Public Benefit Corporation's right to enter into private contracts under California law?
 - Question: From discussion of the previous proposal, it did not appear to be agreement to give preference to geographic names in the contention resolution process. Given this fundamental disagreement in the WT, is it possible to achieve consensus on proposals in this regard?

- ⦿ If there is not agreement on any proposed changes, the 2012 Applicant Guidebook provisions will remain in place.

Closure of Discussion on Non-Capital City Names

Agenda Item #4

Status

- ⦿ Two proposals are currently being considered by the group.
 - The first proposal does not seek to change the rules of the 2012 AGB. It seeks to provide clarification with respect to a particular type of string, .brands.
 - The second proposal extends the support/non-objection requirement to cities with more than 100,000 inhabitants regardless of intended use.

Proposal 1 (1/3)

Amend the text in AGB 2.2.1.4.2 part 2 on non-capital city names by adding the [blue text](#).

2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process.

[However, applicants may find it useful to review the 2017 UN Demographic Yearbook Table 8 to find a list of city names with more than 100,000 inhabitants as a reference point](#)

<https://unstats.un.org/unsd/demographic-social/products/dyb/documents/dyb2017/table08.pdf>.

Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

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:

1. It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name. [For the avoidance of doubt, if an applicant declares in their application that they will operate the TLD exclusively as a dotBrand, then this is not a use of the TLD for “purposes associated with the city name”; and,](#)
 2. The applied-for string is a city name as listed on official city documents.
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Proposal 1 (2/3)

Rationale:

The current AGB text states that “city names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique”. This language does not aim to change the position from the AGB 2012, but merely aims to provide greater clarity and certainty for potential applicants. At the same time, it ensures that the relevant authorities are consulted when an applicant intends to use a TLD for purposes associated with a city. If a government or local authority is concerned with an application, they are not precluded from filing an objection (as they could in 2012) or filing their own application. The current rules on resolving contention sets in AGB 2.2.1.4.4 or module 4 will not be impacted by the text.

Proposal 1 (3/3)

Concern/Question raised:

- ⦿ Even if a .brand is using the string exclusively in association with the brand, the brand may be benefitting from an association with the place. Why should a brand automatically be exonerated from targeting of the city?
- ⦿ Why single out .brands in the AGB text and provide only this type of string as an example?
- ⦿ This proposal does not give applicants clear guidance and leaves doubt whether their “category” of TLD application is reflected in the AGB or not.

Clarification provided:

- ⦿ This text targets instances where an applicant is applying for a dotBrand and quite conceivably does not know about a non-capital city somewhere in the world that happens to match their brand. In many cases the brand owner will be genuinely unaware of the existence a city with the matching name.
- ⦿ DotBrands share governments’ or geoTLD operators’ concerned about nefarious actors submitting applications to be paid off to withdraw an application. Further, dotBrand applicants share the same concern about having a connection to their brand misrepresented.

Proposal 2 With Suggested Amendments (1/2)

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. However, established lists can be used as objective references in the evaluation process.

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/or

(b)(i) The applied-for string is a city name as listed on official city documents, or

(b)(ii) The applied-for string is a (non-capital) city name as [defined pursuant to applicable national legislation or as] listed

in <http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls> [unstats.un.org].

Proposal 2 (slide 2/2)

RATIONALE: This list contains capital cities and cities with 100 000 or more inhabitants and is thus very limited in nature. It would give applicants clear guidance and leaves no doubt whether their „category“ of TLD application is reflected in the AGB or not. If a .BRAND applies and **meets the exemption** under (a), **it** has no further obligation; the same goes for any other category of TLD applications. **The rule applicable to capital city names remains per the preceding section 2.2.1.4.2-1.**

For discussion:

- ⦿ It was raised that some countries define in their national legislation how a city is defined, and the process should defer to that.
- ⦿ The WT has previously discussed a proposal to require support/non-objection for larger cities. Both Work Track discussions and public comment on this proposal have revealed significant divisions in opinion. Is there new information or factors that indicate that the WT might reach consensus on this version of the proposal?

Topic Closure

- ⦿ At this stage:
 - Is there agreement on a path forward?
 - If not, are there any new points that need to be raised or items that have not yet been discussed that might lead to agreement?

- ⦿ If there is not agreement on any proposed changes, the 2012 Applicant Guidebook provisions will remain in place.

1. Final review of public comments - Proposals 6, 7, 8, 9, 10, and 37

Agenda Item #5

Public Comments on Proposals to Change Scope of Protections

- In deliberations of the Work Track, members put forward proposals to either increase or decrease the scope of protections in the Applicant Guidebook.
- These were included in the Initial Report when it went out for public comment along with a number of other proposals on other topics.
 - A summary of public comments on these proposals begins on page 32 of the [public comment summary document](#)
- Elements of these proposals have been discussed in the context of revisiting the draft recommendations as well as broader discussions in the Work Track.
- Public comments reflect that there is a mix of perspectives in the community on the different proposals – some in favor and some opposed to each, similar to what the co-leaders have observed in WT discussions.
- At this stage, the co-leaders do not anticipate that re-reviewing the proposals will lead to agreement in the Work Track on specific changes. Members should raise if there are any points that they think need to be considered further in order for the Work Track to reach agreement on recommendations.

Proposals: Increase in Protections

- ⦿ Proposal 8: If an applicant applies for a string that is confusingly similar to a geographic term that requires a letter of government support or non-objection, the applicant should be required to obtain a letter of government support/non-objection. As an example, a common misspelling of a geographic name would be considered confusingly similar.
- ⦿ Proposal 9: At the end of the registry contract period, a government entity has the option of becoming engaged and can add provisions to the contract that specifies conditions rather than there being an assumption that the contract will be renewed.
- ⦿ Proposal 10: A TLD associated with geography should be incorporated within the jurisdiction of the relevant government and subject to local law.
- ⦿ Proposal 37: Require that an applicant demonstrates that it has researched whether the applied-for string has a geographic meaning and performed any outreach deemed necessary by the applicant prior to submitting the application. The proposal would be in addition to the existing measures related to the Geographic Names Panel.

Proposals: Decrease in Protections

- ⦿ Proposal 6: Once a gTLD is delegated with an intended use that is geographic in nature, all other variations and translations of this term are unconditionally available for application by any entity or person. Objection procedures could potentially still apply.
- ⦿ Proposal 7: An applicant for a string with geographic meaning must provide notice to each relevant government or public authority that the applicant is applying for the string. The applicant is not required to obtain a letter of support on non-objection. This proposal relies on curative mechanisms to protect geographic names in contrast with support/non-objection requirements that are preventative in nature. Each government or public authority has a defined opportunity to object based on standards to be established. The right to object expires after a set period of time. Objections are filed through one of the existing objection processes or a variation on an existing process. A set of standards would need to be established to determine what constitutes a relevant government or public authority. This proposal could apply to all or some of the categories of geographic names included in the 2012 Applicant Guidebook.

Any Other Business

Agenda Item #6