



UPDATE & CONSULTATION ON New gTLD Subsequent Procedures **Work Track 5**

GEOGRAPHIC NAMES AT THE TOP LEVEL

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Overarching Issues and Lacunae in WT5?

The principle of “absence of a new ‘consensus’ the provisions in the 2012 AGB would continue to apply” is a poison pill.

- ❑ One object of review should have been to undertake substantial reforms that would prevent recurrence of incidences like the .AMAZON case, which – incidentally – was not even determined by the 2012 Geographic Names Panel to be a geographic name at all !

The overarching circumstances

- ❑ Registries shall only be obliged to respect the law of the jurisdiction on their incorporation
- ❑ No limitation on the numbers of applications by a single entity, allows constitution of speculative portfolios of geonames
- ❑ Approval or relevant local authority of non-capital city names only required if a name is to be used for ‘geographical purposes’
- ❑ No protection for Non-AGB Terms even if names have geographic meaning to some stakeholders

Impact?

- ❑ Taken together, these lack of rules/protections have deliberately created a situation where it will become impossible for local authorities and governments to protect the interests of their future users’ communities in many geographical areas around the world
- ❑ Precedent for concerns – recall that numbers of ccTLD Registries were initially and opportunistically registered by individuals and enterprises, who occupied national name spaces against the interests/wishes of relevant public authorities

Which WT5 areas are we keen to review?

During the previous CPWG Calls, two areas in the WT5 Final Report on Geonames were presented for discussion to establish level of divergence from WT5 conclusions:

- (2) Treatment of Non-AGB Terms
 - Non-AGB Terms means categories of terms with geographic meaning but not included in the 2012 AGB
- (3) Stronger protection for Non-Capital City Names

Today, we look at (3) first, then go back and affirm our position on (2)

3. Non-Capital City Names

WT5 Additional Deliberation

- **Should there be changes to rules in 2012 AGB for non-capital city names?**
 - ❖ There was no unified theme in the public comments that pointed to a clear path forward.
- **Proposal #1**: amend AGB s. 2.2.1.4.2 part 2(a) by specifying:
 - ❖ “For the avoidance of doubt, if an applicant declares in their application that they will 1. operate the TLD exclusively as a dotBrand; and 2. not use the TLD primarily for purposes associated with a city sharing the same name, then this is not a use of the TLD for “purposes associated with the city name” in order to provide greater clarity and certainty for potential applicants by elaborating a specific circumstance where support/non-objection requirements would not be applicable.
- **Proposal #2**: revise AGB s. 2.2.1.4.2 part 2 to require letter of support or non-objection
 - ❖ If 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 it is a non-capital city name listed in <http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls>
- WT5 could not establish agreement on either proposal, therefore **NO recommendation on Non-Capital City Names.**

RECAP: Should Non-Capital City Names have stronger protection?

Issues

RECALL that in 2012 AGB:

Non-Capital city names – 2 limb test for preventive protection, i.e. only if

(a) TLD used primarily for purposes associated with the city name; AND

(b) string is city name as listed on official city documents.

- Under current provisions, anyone can apply for a non-capital city name string which would only be subject to preventive protection if applicant states that it will “*use TLD primarily for purposes associated with city name*”; however
 - Applicant not prohibited from then selling TLD to the relevant city authority (or anyone else) at a profit, differing use etc
 - We also don’t really know to what extent policing against SLD registrations which in effect “makes use” of the TLD for geo-purposes, is in effect
 - Need to consider impact on names with current & historic forms, non-ASCII scripts
- Curative protection - GAC Advice/Early Warning, Objections places burden on “aggrieved party” to “establish” harm
- No WT5 recommendation on Non-Capital City Names means no change to current provisions

RECALL that ALAC/At-Large

Had no clear consensus on whether declared use of non-capital city names as a TLD matters or not

Straw Poll on 5 Aug '20 : Should Non-Capital City Names have stronger protection?

Answer: An overwhelming Yes

- So now, we establish what “Yes” means exactly....

HOW should Non-Capital City Names have stronger protection?

Current Rules	Issues Raised	Option 1: Neutral	Option 2: Stronger Protection	Option 3: Even Stronger Protection
2 limb test for preventive protection, i.e. <u>ONLY IF</u>		BECAUSE Use of 2-limb test is sufficient protection	BECAUSE Use of 2-limb test is somewhat sufficient protection	BECAUSE Use of 2-limb test is insufficient protection
(a) TLD used primarily for purposes associated with the city name; <u>AND</u>	#1. Curative protection - GAC Advice/Early Warning, Objections places burden on “aggrieved party” to “establish” harm	(a) TLD used primarily for purposes associated with the city name; <u>AND</u>	Modify (a) - applicability of preventive protection mechanism determined solely by Geoname Panel’s assessment of application (applicant statement of non-use for purposes assoc. with city name, if any, notwithstanding)	Discard (a) so that preventive protection mechanism must apply regardless of applicant’s statement on non-use of TLD for purposes associated with city name
(b) string is city name as listed on official city documents.	#2. Names with current & historic forms, non-ASCII scripts not considered	But expand (b) to include those city names in all relevant current and historic forms, native scripts	But expand (b) to include those city names in all relevant current and historic forms, native scripts	(b) But limit preventive protection to only if string is a city name: <ul style="list-style-type: none"> (i) As listed in an established UN database (eg. of capital cities and cities of 100 000 or more inhabitants; <u>or</u> (ii) As listed by IATA as a city with an airport <u>And</u> includes those city names in (i) or (ii) in all relevant current and historic forms, native scripts
	#3. No notice to authorities / residents of city name use	(c) Allow those city authority to use Notification Tool	(c) Allow those city authority to use Notification Tool	[c] Since preventive protection applies, applicant has to contact relevant city authorities
	#4. SLD registrations could negate “not using TLD primarily for geo purposes”		(d) Expand commitment of non-use for purposes assoc. with city name to as a condition for SL registrations	(d) Insert in RA, any commitments re: use of TLD, including any limits on SL registrations, to be negotiated with parties giving letters of support
	#5. Successful Applicant not prohibited from then re-selling TLD		(e) Insert in RA, as prerequisite for any assignment or disposal of the TLD, the same non-use by new RO for purposes assoc. with city name at both TL and SL	(e) Commitments per (d) to serve as prerequisite for any assignment or disposal of the TLD, unless modified with express agreement of parties which gave letters of support

SUPPLEMENTAL STRAW POLL for (3)

Having indicated that Non-Capital City Names should have stronger protection, which option do you support*?

Option 1:

- (a) Keep 2-limb test with “use” as is;
- (b) String is city name as listed on official city documents, including in all relevant current and historic forms, native scripts
- (c) Allow those city authority to use Notification Tool

Option 2:

- (a) Keep 2-limb test with “use” to be assessed solely by Geonames Panel;
- (b) String is city name as listed on official city documents, including in all relevant current and historic forms, native scripts
- (c) Allow those city authority to use Notification Tool
- (d) Non-use for purposes assoc. with city name to also apply as a condition for SL registrations
- (e) Commitment of non-use for purposes assoc. with city name at TL & SL is prerequisite to assignment or disposal

Option 3:

- (a) Discard 2-limb test, apply preventive protection if ...
- (b) String is a city name:
 - (i) As listed in an established UN database (eg. of capital cities and cities of 100 000 or more inhabitants); or
 - (ii) As listed by IATA as a city with an airportIncluding per (i) or (ii) in all relevant current and historic forms, native scripts
- (c) Preventive protection means must contact city authority
- (d) Conditions of use negotiated with parties giving letter of support / non-objection
- (e) Commitments per (d) is prerequisite for any assignment or disposal of the TLD, unless modified with agreement of parties

* By way of a statement in public comment to the SubPro Draft Final Report [and/or a Minority Statement to the SubPro Final Report]

2. Categories of Terms Not Included in 2012 AGB

WT5 Additional Deliberation

- Should additional categories of terms not included in 2012 AGB be subject to special rules or procedures going forward?
 - ❖ Is there an ideally finite list of additional geographic terms to be protected, including the basis for protections and the proposed protection mechanisms? Previous discussions were broad and ambiguous, could lead to confusion and uncertainty for applicants and the parties seeking to protect geographic terms.
- **Proposal #1:** require applicants for certain strings to contact relevant public authorities to put them on notice that the application was being submitted
 - ❖ Affected strings would include (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 and (b) Other terms with geographic meaning, as notified by GAC Members states or other UN Member states to the ICANN Organization. The country would need to provide the source in national law for considering the relevant term as especially protected. ICANN would publish the list of terms covered in part (b) of the proposal.
- **Proposal #2:** “Early Reveal Process”: where ICANN would reveal to relevant governments if an applicant had applied for an exact match of an adjectival form of a country name (as set out in the ISO 3166-1 list) in the official language(s) of the country in question.
- **Proposal #3:** require a letter of support/non-objection from relevant regional or autonomic authority for an autonomous area/region of a country. It was noted that while there is not a single authoritative list of such regions, it could be possible to create a list from existing resources available.
- WT5 could not establish strong support on any of the proposals submitted, therefore **NO recommendation on Non-AGB Terms.**

RECAP: Should we support concept of notifications for Limited Non-AGB Terms?

Proposal #1:

- Require applicants for **certain strings** to contact the relevant public authorities **to put them on notice** that the application was being submitted
- Affected strings would include
 - (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** and
 - (b) **Other terms with geographic meaning, as notified by GAC Members states or other UN Member states** to the ICANN Organization.
 - ❖ The country would need to **provide the source in national law for considering the relevant term** as especially protected.
 - ❖ **ICANN would publish the list of terms covered in part (b)** of the proposal.

Adapted “Notification Tool” Concept

- **Automated by ICANN Org using a database triggered by exact match application – removes burden from applicant to contact**
- Database populated in 2 ways:
 - (a) Exact matches of adjectival forms of ISO 3166-1 country names, in the official languages of relevant country, AND
 - (b) Other terms with geo-meaning submitted by participating GAC Members (“submitter”) –
 - is entirely optional – *“if you care, use it; if you don’t care, then do nothing”*
 - option exercisable where (a) there exists an official document (eg., of founding/incorporation of an administrative division) giving a geographic place its name, or (b) it is attested that a geographic place or feature has the name from time immemorial
 - ICANN can publish list for “more predictability”
- **Notification does not in itself place any obligation on applicant because purpose of tool is solely to put a submitter on notice**
- **What happens if notification is triggered is entirely up to relevant submitter**
- *Similar in intent to ICANN Org’s implementation of a dedicated webpage for the GAC members to view, download and track 2-char ASCII SLD registration data – exact matches to 2-char CC – for requesting compliance action in the event of perceived misuse*
<https://www.icann.org/en/system/files/files/implementation-memo-two-character-ascii-labels-22jan19-en.pdf>
- Why support a tool that helps GAC? –
 - They are part of the multistakeholder community, and in some countries they actually consult other stakeholders in matters like this.
 - If they aren’t the best party to vet/help ‘safeguard’ strings with geographical meaning, then who is?

RECAP: Should we support concept of notifications for Limited Non-AGB Terms?

Straw Poll on 27 Jul '20 : Should ALAC support the Adapted “Notification Tool” Concept as presented (i.e. slide before)?

- **Answer: Yes, since no objection was recorded**

A subsequent suggestion was made to consider “opening the Notification Tool to anyone” ...

“If it’s just notification, why limit to just GAC Members? Why not make it open to all?”

“Does anyone include those who might want to apply for the string? ... let me know if my competitors are applying so I can object.”

- Answer: To be clear, this Notification Tool was only intended to support GAC Members as acceptable representatives to vet/help ‘safeguard’ **limited Non-AGB Terms** (i.e. strings not protected under AGB but have geographical meaning whether per time immemorial, national law, cultural/historical significance factors). **Why? Because:**
 - It is “Limited” because there is criteria for submitting such Non-AGB Terms pre-application (i.e. connection is not remote)
 - The database is envisaged to be published (i.e. all voluntarily submitted Non-AGB Terms & respective submitter)
 - There is precedent for such a tool being implemented for GAC only (i.e. for 2-char ASCII SLD registrations matching 2-char CC)
 - There is value to distinguish this (limited) Notification Tool from a separate application system feature for anyone to opt-in for notifications to follow progress of any application for any string after all applications are revealed is

SUPPLEMENTAL STRAW POLL for (2)

Regardless of what happens with Treatment of Non-Capital City Names,
should the Adapted “Notification Tool” be limited to GAC?

- NO, it should be open to anyone, and with no limiting criteria

- YES, this specific “Notification Tool” should be limited to GAC Members only, as envisaged, but it should not prevent implementation for a separate, post-application opt-in notification feature to be activated on Reveal Day