

# Work Track 5 meeting



4 September 2019

# Agenda

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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 Non-Capital City Names
4. 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

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- ⦿ 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 (proposal 1), 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 as well as
    - 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.
  - Under the other proposal (proposal 2), 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
  
- ⦿ There is also the possibility of a proposal “1.5” in which early notice to governments is required for adjectival forms of country names and there is an optional best practice for other strings specified above.

# Proposal 1 (1/2)

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## 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](#)).

(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)

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## 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)

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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](#)).

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)

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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.

# Proposal “1.5” (1/3)

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## Part A:

- ⦿ 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. The adjectival forms of country names shall be found on the World Bank Country Names and Adjectives list (World Bank List <<https://siteresources.worldbank.org/TRANSLATIONSERVICESEXT/Resources/CountryNamesandAdjectives.doc>>).
- ⦿ Requirement for applicants: Applicants will be under an obligation to contact the relevant public authorities. 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 public authorities may be performed in an automatized fashion by ICANN Org, if the applicant so wishes.
- ⦿ Requirement for governments: GAC or UN Members must provide relevant contact details of the relevant public authorities to ICANN at least three (3) months in advance of the opening of each application window.

# Proposal “1.5” (2/3)

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## Part B:

- ⦿ Affected strings: Other terms with geographic meaning, as notified by GAC Members or other UN Members 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.
- ⦿ Best practice for applicants: Applicants are encouraged to consider proceeding with a voluntary notification to the relevant public authorities.
- ⦿ Requirement for governments: Interested GAC or UN Members must provide relevant contact details of the relevant public authorities to ICANN at least three (3) months in advance of the opening of each application window.

# Proposal “1.5” (3/3)

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## Applying to both Part A and Part B:

- ⦿ No further legal effect: There is no further obligation whatsoever arising from these provisions and they may not be construed as requiring a letter of non-objection from the relevant public authority. Nothing in these provisions 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.

# Pros and Cons Raised – Proposal 2

- There does not appear to be any significant opposition to a contact obligation for adjectival forms of country names. The main question appears to be whether there should additionally be rules or best practices for other types of strings.

Pros	Cons
Some members have expressed support for or acceptance of the more limited proposal which focuses on adjectival forms of country names.	Concerns have been raised that this proposal is too limited in scope, and while it is a step in the right direction, it does not go far enough.
Some members have noted that for those who do not believe any additional rules are warranted, this is a compromise proposal on top of a 2012 AGB that was already a compromise.	For those that believe there should be more restrictions, the broader proposal is the the compromise.

# Pros and Cons Raised – Proposal 1

Pros	Cons
<p>From one perspective, the proposal will help communities be “on notice” about an application where they would otherwise not be aware and could reduce future conflicts by bringing parties to the table earlier.</p>	<p>Concerns have been raised about the impact of this proposal on transparency and predictability.</p>
<p>From one perspective, the list of terms will be relatively modest and limited to those terms covered by national law.</p>	<p>Concerns have been raised about lack of clear definition of “term with geographic meaning,” noting that this may be overly broad and open ended.</p>
<p>Some do not believe there would be a chilling effect because there are no obligations for applicants beyond contacting applicable governments. From one perspective, if ICANN is the party notifying the governments, there will be no chilling effect.</p>	<p>From another perspective the existence of a list will have a chilling effect on applications for strings on the list.</p>
<p>From one perspective, governments have no specific plan to take additional action if they are informed about applications for strings on the list. The goal is to increase visibility and therefore improve predictability for all parties. Absent that visibility, the same conflicts that arose in 2012 will come up again.</p>	<p>Those who oppose the proposal express that it is unclear what governments will do once they have been contacted, which may further chill applications.</p>

# Topic Closure

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- ⦿ At this stage, can the group reach agreement in support of one of the proposals put forward: 1, 2, or a possible “1.5”?
- ⦿ If there is no agreement on a proposed change, the status quo will remain.

# Closure of Discussion on Non-Capital City Names

Agenda Item #3



# Status

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- 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 provides a list of city names for which a letter of support or non-objection is required if the applicant intends to use the string primarily for purposes associated with the city name.

# Proposal 1 With Suggested Amendment (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 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”; and,](#)
2. The applied-for string is a city name as listed on official city documents [\[or set out in national legislation designating the place as a city\]](#).

# Proposal 1 (2/3)

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## 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)

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## 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:

- The language in Proposal 1 does not exempt dotBrand applicants from the GeoPanel review, create a priority for dotBrands, or create an opportunity for “gaming” given the language in Spec 13. The language also requires applicants to explicitly state that they will use the TLD as a dotBrand.
- 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 concerns 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

(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.**

Questions/Concern raised:

- It was raised that some countries define in their national legislation how a city is defined, and the process should defer to that (see proposed addition in red on the previous slide).
- The list provided is not exclusive to city names and does not distinguish which localities are cities, urban agglomerations, municipalities or another type of locality.
- UN Demographic Yearbook is not intended to provide a comprehensive list of all cities. Rather, it is part of a publication setting out global statistics. There are limitations on how the information in the publication (including Table 8) can be used. For example, the localities listed are not necessarily the actual name of the locality as where the names are not in the Roman alphabet, the names have been “romanized”.

# Topic Closure

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- ⦿ 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.

# Any Other Business

Agenda Item #4