

At-Large's Subsequent Procedures Scorecard: Geographic Names at the Top Level

CPWG SubPro Small Team

At-Large Consolidated Policy Working Group (CPWG) Single Purpose Call
Tuesday, 25 February 2020, 18:00 UTC



At-LARGE CROSS-CUTTING ISSUES

Topic/Area:	[3] GEOGRAPHIC NAMES AT THE TOP LEVEL [WT5]	Priority:		Settled On:	
Related:	<ul style="list-style-type: none"> • Definition of geographic names • Geographic Indicators • Non-AGB Terms • Preventive versus Curative protections • Translations • Geographic Names Panel 				
Key Issues:	<p>Key policy issues for At Large</p> <ul style="list-style-type: none"> • What constitutes a geographic name? • Geographic Names Panel – expertise, lists, source of reference basis etc • Continued reservation of all 2-letter-letter strings as ccTLD • Non-availability of 3-letter strings matching Alpha-3 codes listed in ISO 3166-1standard – make them available with conditions as to who can apply? • Geographic names versus generic terms – should and on what basis can geographic names be prioritized? • Preventive versus curative mechanisms – which is better for public interest? • Treatment of applications for strings matching capital city names versus non-capital city names – requirement for letters of support/non-objection • Treatment of applications for strings confusingly similar to geographic term • Other terms not included in 2012 ABG for increasing predictability – geographic features, additional sub-national and regional places, geographic in nature, geographical indications • Additional ‘geo-related terms’ not included in 2012 AGB – eg. ISO 4217 Currency code <p><u>Key policy goals for At Large</u></p> <ul style="list-style-type: none"> • Geographical-names are recognised by the people who live and work there and identify with that name. Their interest in, and indeed moral right to influence the use of their geo name should be recognised and respected by the ICANN community. In most of the world, the general public is not yet aware of and probably could not afford to participate in the DNS today. This does not justify third parties pre-empting their future interests by registering gTLDs. Contrary to all other uses, a geo-name in the DNS is unique and its registration may prove to be irreversible- 				

	<ul style="list-style-type: none"> In the interests of stable diversity over time, policy for geo names should be consistent across jurisdictions, languages and scripts and relevant communities. In this context, Policy should respect available international law (WIPO) and applicable local law. In the absence of formal legal protections today, ICANN should prevent third parties from pre-empting future local use by registering their names for so-called non-geographical use. This objective applies both to speculative accumulations of geo-names and to applications for .brands There are large numbers of generic terms in all languages that may be applied for new Registries, without pirating other peoples' geo-names. In any event .brand applications have to be based on a pre-existing trademark. 		
Policy Goals:	<ul style="list-style-type: none"> SubPro policy goals, see: Work Track 5 Final Report to the SubPro PDP WG dated 22 October 2019 		
Assigned CCT-RT Rec's:	None		
References:	<ul style="list-style-type: none"> 01. SubPro WT5 Geonames as at 24.09.2019 for CPWG Work Track 5 Final Report to the SubPro PDP WG dated 22 October 2019 ALAC Statement on WT5 Geonames at the TL – SubPro Supplemental Initial Report, 28 January 2019 [AL-ALAC-ST-0119-02-01-EN] 02. SubPro WT-5 SIR ppt 16 January 2019 		
What has SubPro PDP WG concluded?	<u>What will/might SubPro PDP WG recommend?</u>	Is this acceptable? If not, why so?	What else needs to be done and by/with whom?
1. The WT5 report will be integrated into the PDP Final Report, as is, en block. There will be no further discussion of geo-names in the PDP, unless obliged by community pressure or the ICANN Board. This emerges from the report on the ICANN66 (Montreal) session on 2 November 2019. Under the 'Report from WT5' we find: 'No action captured'. Nothing more!	The status quo ante, based on 2007 GNSO 'policy' and the 2012 AGB. Subject to minor updates and clarifications.	No. The WT5 ToR were excessively restrictive. The only rationale for having, exceptionally, a new Cross Community WG was that (a) the 2012 had created pre-conditions for politically unacceptable outcomes (e.g. .amazon) and (b) the ICANN multistakeholder community had evolved significantly since 2012, such that the 2007 and 2012 GNSO positions no longer represented an acceptable status quo.	ICANN Board: When a WG is set up to correct unacceptable antecedents, care must be taken to ensure that no SO/AC can introduce a 'poison pill' preventing consensus on any substantive change. ICANN should not be a captive of its recent past, if it is to evolve towards a relevant future.

		<p>Notwithstanding, GNSO imposed a rule (the ‘mantra’) that in the absence of a new consensus, the 2012 AGB rules would continue to apply. The inevitable result was that those stakeholders who had an interest in the 2012 Policy, had only to talk out (filibuster) the discussion. The WT5 final report provides multiple testimony to the ‘lack of consensus’ for most proposals for change.</p>	
<p>2. Definition of geographic terms / geographic names</p>	<p>No expansion of definition.</p>	<p>The 2012 AGB definition was based only on the ISO 3166 standard. That has been maintained in WT5 notably by virtue of sustained support by CCNSO. However the ISO3166 standard is selective and incomplete, world-wide.</p> <p>The global scope of this issue has not been recognised by WT5, the PDP nor by GNSO. Stable diversity of DNS policy requires recognition of geo-names at all levels and all languages and scripts. Otherwise ICANN would be storing up problems and disputes far into the future.</p>	<p>ICANN should start now to constitute a global database of geographical names, the primary sources are readily available from the Geographical profession. The result will no doubt be daunting from the PDP’s point of view. The solution, which has been presented to WT5 without consensus, is to release geo-names in small batches, whereby ICANN can establish that each application really relates to the locality concerned and that stable political and administrative pre-conditions are in place.</p> <p>ICANN could put in place an agreed procedure to ‘release’ geo-names for purposes previously agreed between Applicants and the</p>

			competent local authorities. WT5 did not discuss that.
3. Non-AGB Terms: WT5 could not establish strong support for any change.	No change.	<p>Nearly all non-AGB terms remain unprotected – is this acceptable?</p> <p>The principal rationale for creating WT5 as a cross community (SO/AC) entity was the absence of any AGB policy which gave rise to several international disputes, notably .amazon</p> <p>This position derives from the unsustainable argument that countries and communities have NO rights to their geographical names. Whereas, absent pre-existing trademarks, applicants would have even fewer rights, if any.</p> <p>Several important categories of geo-names were either ignored or rejected: many place names, regions, geographical features etc.</p>	<p>ICANN should start now to constitute a global, multilingual database of all geo-names.</p> <p>ICANN should create a forum and procedure for cooperation and dispute resolution. Notably for those cases where more than one location uses the same place name.</p> <p>The precautionary principle should apply. In the absence of agreement between the Applicant and the relevant local authorities, or of relevant data, the geo-name should be held in reserve for future consideration.</p>
4. Preventive versus Curative protections:	No change.	<p>The 2012 AGB privileges curative protection. The case for ‘curative rights’ rests essentially on the desire for ‘predictability’ for the applicants.</p> <p>However, in the case of geographical names, predictability for local authorities and communities is even more important. Furthermore exercising</p>	<p>ICANN should accept that local authorities and communities have an intrinsic right to know in advance and to approve the use of their geographical names.</p> <p>ICANN should set up a qualified forum to negotiate and arbitrate the use of the same plural geo-name,</p>

		<p>'curative rights' may become very costly.</p> <p>Relying on curative rights is not acceptable. That would require permanent monitoring, world-wide, including IDNs, which would be impractical beyond the confines of the ICANN community.</p> <p>Much is made of the fact that there are duplicate - or indeed, multiple - uses of certain geographical names. However, these usually derive from post colonial situations, and represent only a very small proportion of the numbers of geo-names, overall.</p>	<p>including solutions, such as joint use.</p> <p>NB: several such geo-TLDs have already been delegated, apparently without disputes arising (.london .paris)</p>
5. Translations: Insufficient consensus to change applicability of "in any language" rule to country and territory names and capital city names	<p>Maintaining rules in 2012 AGB:</p> <ul style="list-style-type: none"> • String unavailable if is translation in any language of existing categories of country and territory names in ISO 3166-1 standard • String is subject to letter of support/non-objection requirement if is a representation in any language of the capital city name of any country of territory in ISO 3166-1 standard 	<p>ALAC does not need to get involved with the translations issue. Current position is that translations in all languages refers back to the 2012 AGB.</p>	<p>ICANN could start to constitute a database of translations of geographical terms. Starting with those names that have actually been applied for. From the users' point of view there is scope for confusion if several translations of the same name are delegated separately, in parallel.</p>
6. Geographic Names Panel	Retaining the Geographic Names Panel	Yes, such an entity is no doubt necessary. The principal issues are the knowledge and expertise of the	Monitor implementation and empanelling of Panels.

		panel members, who should be identified on a case by case basis in the light of the issues arising. The cost of the entity should be included in the new gTLD evaluation budget.	
What has SubPro PDP WG concluded?	<u>What SubPro PDP WG will likely omit?</u>	Is this acceptable? If not, why so?	What else needs to be done and by/with whom?
7. No consensus on what constitutes a geographic name.	WT5 has been unrealistically conservative; most participants favour limiting the definition to the few ISO-3166 names. Some even support even fewer - if any - protected names than in the 2012 AGB.		A database of geonames should be established as a per primary geographical sources (see #4 above)
8. Insufficient support for relevant government and/or local public authorities to receive (early) notice on any applications submitted on strings which exactly match any terms they contribute to a limited pool	While this was discussed by WT5 members, it was subsequently put to a consensus call and deemed to not have received the “requisite level of support”	The idea was referred to the GAC Montreal Communique. Thoughts on whether to support or not? Since advance notice of applications is an essential pre-condition for any reference to curative remedies.	To discuss further specifically with GAC .
9. No consensus on protecting the names of extremely large non-capital cities -- e.g. Shanghai	Any recommendation for non-capital city names	No -- sometimes the rights of citizens must prevail. -- see preventative issues above	A cut off point e.g. 10, 15, 20 million -- should be established as well as a guideline as to how the number is arrived at. The names of the cities which fall within that range should be on a protected list. Could be done by a panel.

<p>10. No consensus on changing rules for resolving contention sets involving geonames</p>	<p>Any recommendation to change rules on string contention resolution</p>	<ul style="list-style-type: none"> • Do we think that preference should be given to an applicant that will use the TLD for geographic purposes if that applicant is based in a country or the TLD is targeted to where national law gives precedent to city and/or regional names? • Are there any circumstances in which we should consider giving priority to an applicant of a geoTLD if it does not pass CPE? 	
<p>11. No tightening of need for Letters of support/non-objection in existing preventive protections</p>	<p>No change - Letters of support from a local administrative body are currently needed when an applicant wants to use a geoname as a geoname but not when it wants to use that name for another reason e.g. a commercial product</p>	<p>Should we care about applicants bypassing preventive protection simply by not asserting that it will use that string as a geoname during the application process but then proceeds to do so or allow SLD registration which to do so after delegation?</p>	<p>Letters of support/non-objection should be necessary whenever an applicant applies for a geoname irrespective of the use to which it is to be put.</p>
<p><u>PENDING ISSUES:</u></p>	<p>SubPro PDP WG reaction</p>	<p>Anything missing?</p>	<p>What else needs to be done and by/with whom?</p>
<p>12. Geographic indicators (GI)</p>	<p>There was no substantive discussion. So, defaults to 2012 AGB: No Protection.</p>	<p>This is not a credible position. Very many Internet users rely on their Geographical Indication to protect their business through their GI Brand. Otherwise the scope for passing off would be an unacceptable risk. Geographic</p>	<p>ICANN should afford protection analogous to trademarks. Failing which the next round will almost certainly be dogged by international disputes. C.f. .wine, .vin etc.</p>

		indicators are recognised Intellectual Property rights. C.f. WIPO STC.	
Position:			

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