WORK TRACK 5 - Working Document

This document is being developed by staff under the direction of the Work Track co-leaders. The document is intended to summarize perspectives and key points raised in Work Track discussions and on the Work Track mailing list. The document does not attempt to evaluate the level of consensus in support of the different ideas and positions.

This document is a work in progress and will continue to evolve. Additional content will be added as discussions continue. Work Track members are encouraged to insert comments if they feel that an important point raised in the Work Track has been missed or has not been captured sufficiently.

The high-level structure of this document follows the structure of sections included in the New gTLD Subsequent Procedures PDP Working Group Initial Report (including material from Work Tracks 1-4). Headings a - g are the same as the headings used in the SubPro Initial Report.

a. What is the relevant 2007 policy and/or implementation guidance (if any)?

Recommendation 5: Strings must not be a reserved word.
Recommendation 20: An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

In the Final Report - Introduction of New Generic Top-Level Domains, [1] the discussion of Recommendation 5 references language in the Reserved Names Working Group Final Report[2]. The relevant text of Reserved Names Working Group Final Report states:

> *There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.*

> *However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an*

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[1] https://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm
[2] https://gnso.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm

individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.

Reserved Names Working Group Final Report further states:

We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time. Examples include .AU, .DE, .UK.

b. How was it implemented in the 2012 round of the New gTLD Program?

The first two versions of the Applicant Guidebook (AGB) required that strings must consist of three (3) or more visually distinct characters and that meaningful representations of a country or territory name on the ISO 3166-1 standard must be accompanied by a letter of support or non-objection from the relevant government(s) or public authority(ies).

The ICANN Board, at the urging of the ccNSO and GAC, directed staff to exclude country and territory names from delegation in version four of the AGB. Other geographic names, in section 2.2.1.4.2 of the AGB (see below), required a letter of support or non-objection, though for non-capital city names, the need for the letter was dependent upon intended usage of the string.

This implementation, described more fully directly below, was substantially different from the GNSO's policy recommendations.[3]

Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the Applicant Guidebook states, **"Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two- character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard."**

According to Section 2.2.1.4.1 Treatment of Country or Territory Names, the following strings are considered country and territory names and were not available in the 2012 application round:

> i. it is an alpha-3 code listed in the ISO 3166-1 standard.
> ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
> iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
> iv. it is the short- or long-form name association with a code that has been designated as

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[3] For an overview of the background on Geographic Names in the New gTLD Program, see:
https://community.icann.org/display/NGSPP/2017-04-25+Geographic+Names+Webinars?preview=/64077479/64083928/Geo%20Names%20Webinar%20Background%20Paper.pdf

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Commented [4]: Jorge Cancio: Comment: it would be useful to include a reference to the pieces of GAC Advice and GAC Principles on geonames as TLDs referenced by the GAC in its Johannesburg Communique í please see point 4 on page 6, document available under https://www.icann.org/en/system/files/correspondence/gac-to-icann-29jun17-en.pdf

Commented [5]: Added to section b.

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Commented [6]: Adrian Carballo: These lists detailed in 2012 AGB proved not to be enough, there must be an additional mechanism for he applicant to find names that have geographic and cultural significance, so the applicant can be aware of its usage and get in touch in an early stage with the involved parties (government, community, etc).

Estas listas detalladas en el AGB de 2012 no resultaron suficientes, debe existir algun mecanismo adiciona para que el aplicante que pueda consultar si el nombre tiene signifiado geogràfico o cultural, de tal manera de poder ponerse en contacto con su contraparte (gobierno, comunidad, etc) en etapas iniciales de la aplicaciòn.

"exceptionally reserved" by the ISO 3166 Maintenance Agency.

v. it is a separable component of a country name designated on the "Separable Country Names List," or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.

vi. it is a 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."

vii. it is a 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.

Section 2.2.1.4.2 Geographic Names Requiring Government Support states that applications for the following strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. 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.
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.
3. 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.
4. An application for a string listed as a UNESCO region 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.

The Governmental Advisory Committee has produced the following documents addressing the use of geographic names at the top level:

- GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005), paragraphs 4.1.1. , 4.1.2. and 8.3.
- GAC Principles Regarding New gTLDs (2007), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7 and 2.8.
- GAC Nairobi Communiqué (2010): Application of 2007 Principles.
- GAC Durban Communiqué (2013): Future application of 2007 Principles.
- GAC Helsinki Communiqué (2016): 3-letter codes.

This list is non-exhaustive. Additional resources and documents on this topic from the GAC and other sources can be found on the Work Track wiki page.

In reviewing the 2007 Policy and the 2012 Implementation, Work Track members expressed different opinions about whether the Policy or the Implementation should be the starting point discussions in the Work Track, noting that there is a divergence between the two. From one perspective, the Implementation should be considered the status quo and any recommendations for future changes should be built on the 2012 Implementation. From another perspective, the 2007 Policy is the foundation of any future policy work, and the 2007 recommendations should be considered the point of departure for new or modified recommendations.

    c.   What are the preliminary recommendations and/or implementation guidelines?

[This section will be filled in as the WT prepares the Initial Report. Working versions of draft recommendations can be found on the wiki: https://community.icann.org/display/NGSPP/Work+Track+5%3A+Geographic+Names+at+the+Top-Level]

    d.   What are the options under consideration, along with the associated benefits / drawbacks?

[This section will be filled in as the WT prepares the Initial Report]

    e.   What specific questions are the PDP WG seeking feedback on?

[This section will be filled in as the WT prepares the Initial Report]

    f.   Deliberations

1. EXPERIENCES IN THE 2012 ROUND

The Work Track discussed both positive and negative experiences with the treatment of geographic names in the 2012 application round. It was noted that reflection on opportunities and challenges in the 2012 round can help the group identify areas that may require future policy development or implementation guidance. Note that the positive experiences and challenges listed here were identified in relation to the process in general. Additional perspectives related to treatment of specific types of strings are discussed in greater depth later in this document.

1.1 Challenges

Work Track members identified several general issues based on the experience of applicants and other stakeholders in the 2012 round. Some Work Track members shared that many stakeholders wished for greater predictability, transparency and consistency in ICANN's implementation of the Applicant Guidebook. Some Work Track members believe that ICANN caused some of the confusion and uncertainty in the process of integrating GNSO policy recommendations, GAC advice, and concerns from specific stakeholders.

Under the 2012 Applicant Guidebook, certain applications for geographic strings required letters of support on non-objection from the relevant governments or public authorities. Some Work Track members identified challenges with the support/non-objection process. For example, some applicants found it difficult to determine which relevant government/public authority was the appropriate point of contact for a letter of support/non-objection. Work Track members noted that in some cases, applicants reached out to governments to obtain support/non-objection and did not receive a timely response. In addition, some Work Track members noted that there was a perception that some applicants were required to make concessions to governments to obtain support/non-objection. Other Work Track members disagreed with this last point, stating that absent facts supporting this claim, the issue is a matter of hearsay.

For some governments, the process was challenging because some governments and and public authorities were not familiar with ICANN and its processes, and were therefore unsure how to handle requests for support/non-objection from applicants.

Work Track members raised that some applicants experienced outcomes that they felt were inconsistent with the Applicant Guidebook. For example, some applicants faced challenges in applying for strings that were not included as geographic names in the Applicant Guidebook but were considered to be geographic names by other parties involved in the process. Some applicants experienced what they considered to be a de-facto requirement to obtain support/non-objection for strings not included in the Applicant Guidebook.

Some stakeholders expressed that the support/non-objection requirement should have applied to a broader set of geographic terms. Others expressed that it should have applied to a smaller set of terms or should not have been a requirement at all. These perspectives are discussed in greater depth later in this report.

Some Work Track members have expressed that it would be helpful to examine cases where there were perceived problems in the 2012 round to determine the cause of these issues and potential improvements for the future. One Work Track member started a spreadsheet to track applications from the 2012 round that experienced issues with the process and associated mechanisms: https://docs.google.com/spreadsheets/d/1jPa4jdBgo8P2aC6G4pzLoFTfyocIeon8qVD7Q9mlM5A/edit#gid=0.

For proposals put forward by Work Track members on overall process improvements, please see section 6 "General Proposals."

1.2 Positive Experiences

Work Track members discussed areas where they felt the program worked well for applicants and other stakeholders. In particular, several Work Track members pointed to the delegation of city names that continue to operate from the 2012 New gTLD round as success stories. Examples referenced by Work Track members included .tokyo, .london, .paris, .berlin, .amsterdam, .nyc, .hamburg, .koeln, .boston, .vegas, .moscow, .wien, .miami, .istanbul, .sydney, and .quebec. One Work Track members stated that the delegation and operation of these TLDs had positive effects on geographical, cultural and linguistic diversity of the TLD space.

In addition, some Work Track members expressed that they had positive experiences with the requirements included in the 2012 Applicant Guidebook. For example, a Work Track member involved with the application for .Berlin indicated that the system of government support/non-objection worked well for the applicant. A Work Track member involved in the application for .london and the Wales domain shared some positive aspects of the support/non-objection mechanism, for example the fact that the process ensured that there was only a single applicant for these two TLDs. Following the initial work required to obtain the letters, subsequent delegation steps progressed relatively smoothly for these TLDs. Some Work Track members also expressed that governments had positive experiences with the support/non-objection mechanism. This mechanism is discussed in greater depth later in this section.

1.3 Process Review

In order to ensure that all members have a common understanding of process elements that were part of the 2012 round, the Work Track went through an exercise of reviewing and validating a draft map outlining the 2012 process. The process map included five elements:

1. Submitting Application
2. Geographic Names Review
3. Objections Mechanisms
4. String Contention
5. Contractual Elements

The map is available here. The Work Track began to discuss if there might be future opportunities to improve or more effectively leverage elements of the process. Members expressed different opinions about whether the focus of future treatment should be on preventative mechanisms or curative mechanisms, while noting that the two are not mutually exclusive. More information about these different perspectives is included in section 3 "Intended Use" and section 4.2 "Role of National and Local Governments."

Commented [14]: Adrian Carballo: These success stories are related to an early contact and a previuos agreement between parties, cities and applicants

ES: estas historias de exito se relacionan con un contacto temprano y acuerdos logrados entre ambas partes, ciudades y aplicantes.

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One Work Track member supported the idea that a possible avenue of future work is to list the full range of protections and mechanisms available, both existing and hypothetical, for each of the five elements to get a better understanding of which combination will be most appropriate in the future and how to strike the right balance between these elements.

One Work Track member suggested that the group consider the process flow in terms of three parts rather than five: A: application requirements; B: contention objection resolution; C: implementation and compliance with a contract. This approach was explored further during the second Cross-Community Session at ICANN62.

2. OVERARCHING ISSUES

2.1 Predictability

As discussed above, a number of Work Track members raised that predictability was an issue for applicants and other stakeholders in the 2012 round. Some Work Track members have stated that it is essential for the application and delegation process to be predictable for applicants and other parties in subsequent procedures. From this perspective, there should be clear, objective, fair, predictable and fact-based policies and procedures for evaluating applications that all parties can understand and predict.

Work Track members have expressed different perspectives on ways to achieve predictability. For example, in one view, broader application of the support/non-objection mechanism is a means to reduce conflicts later in the application process or after delegation. From this perspective, the mechanism is beneficial for predictability. Supporters of this perspective state that relevant public authorities are bound to the applicable laws and policies in their jurisdictions, and generally subject to due process requirements. In this view, by being able to act on these obligations early through support non-objection mechanisms, governments and other parties may be able to have greater predictability in the process.

From another perspective, the best way to ensure predictability is to have clear, transparent criteria that apply to all applications and to evaluate applications and objections based on objective standards, rather than leaving it up to individual governments to determine if applications are permitted to move forward.

Some Work Track members have expressed that it is important that the process should not be changed once the application window opens to support predictability.

Another suggestion to improve predictability is to establish specific timelines within which different stakeholders must take action in a process. For example, for cases where government support/non-objection is required, there should be a deadline by which the government/public authority must

Commented [15]: Christopher Wilkinson: Predictability: Naturally, one would seek solutions that are as predictable as possible, but not at the expense of denying the right – or even the opportunity – for interested parties to participate in the application process. Applicants for geo-TLDs will find themselves willy nilly in the midst of political processes in the countries and communities concerned. Should that not suit them, then the obvious alternative would be to apply for something else, of which there would still appear to be quite a large pool.
The draft refers to a 'de-facto requirement to obtain support...' (p.5) In future, it would be more predictable if that would become the norm.

Commented [16]: text added later in this section: "One additional perspective is that predictability is important, but this principle should not outweigh other values and priorities that should be adopted in the program, for example the rights of people associated with a geographic name to provide input on the use of a string."

Commented [17]: Adrian Carballo: Some of the conflicts in the first round were related with the use of geographic names which are brands and relevant authorities were not consulted, althoug these geo names were widely known.
One solution to this is having a letter of support or other way could be having a repository of names of geographic and community significance where countries and communities could add their names, so the applicant would have a reference where to consult and avoid conflilcts once the application is presented.

ES: Algunos de los conflictos en la primera ronda se relacionaron con el uso de marcas que son nombres geograficos, y las autoridades relevantes no fueron consultadas, aun siendo estos nombres geograficos mundialmente conocidos.
Una solución es contar con una carta de apoyo, otra manera seria contar con un repositorio de nombres donde el aplicante puede consultar nombres de significado geográfico y de relevancia para comunidades, y de esta manera tener una referencia evitando futuros conflictos una vez que la aplicación se ha presentado.

Commented [18]: Jorge Cancio: suggested adding ", inter alia, also because relevant public authorities are bound to the applicable laws and policies in their jurisdictions, and generally subject to due process requirements."

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respond. Some Work Track members have suggested that with such a requirement, the application should be allowed to proceed if the government/public authority does not respond by the deadline.

One additional perspective is that predictability is important, but the goal of predictability should not outweigh other values and priorities in the program, for example the rights of people associated with a geographic name to provide input on the use of a string. This is particularly important in the case of communities of people who are unfamiliar with ICANN's processes related to the New gTLD Program and associated timelines.

As the Work Track considers options for the treatment of geographic names, the impact on predictability is one factor that the Work Track is considering.

2.2 Competition and Consumer Choice

Some Work Track members have raised that it is important for the New gTLD Program to promote competition and consumer choice. In this view, the New gTLD Program should support the expansion of TLDs and limit barriers to increasing the number of TLDs. From this perspective, ICANN should avoid unnecessary restrictions and only put in place rules or limitations if there is a clear reason to do so.

One Work Track member suggested that if an applicant is required to obtain government support/non-objection, they should first be able to "secure" their position as the first in line applicant and thereby maintain the competitive advantage associated with being a "first mover."

The New gTLD Subsequent Procedures PDP Working Group and Work Track 5 will take into account forthcoming recommendations from the Competition, Consumer Trust, and Consumer Choice Review Team as applicable.

2.3 Security and Stability

From one perspective, it is also important to consider security and stability issues associated with .brands that coincide with geographic terms. From this perspective, governments and law enforcement agencies face challenges in combating fraud and criminal acts on the Internet. In this view, online crimes may be connected to broader criminal networks around the world. According to one Work Track member, trademark holders view the operation of .brands, including .brands that correspond to geographic terms, as a positive means to protect consumers and increase security and stability.

From another perspective, a framework where all interested parties are part of the process from the beginning is most conducive to more stable, sustainable, and legitimate solutions.

2.4 Transparency

Some Work Track members expressed that it is important for processes related to geographic names to be transparent. One Work Track member suggested that any dialogue between parties related to the

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Commented [20]: Christopher Wilkinson: Competition and consumer choice: Reference should be made to the forthcoming CCT- RT report (Section 2.2. p.6)

Commented [21]: added text "The New gTLD Subsequent Procedures PDP Working Group and Work Track 5 will take into account forthcoming recommendations from the Competition, Consumer Trust, and Consumer Choice Review Team as applicable."

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Commented [22]: Jorge Cancio: suggested adding "Some other commenters mentioned that a framework where all interested parties are part of the process from the very start of it is conducive to more stable, sustainable and legitimate solutions."

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delegation of geographic names should be "on the record" so that applicable documentation can be reviewed later.

2.5 Cultural and Historical Interests Related to Geographic Names

Some Work Track members have raised that people and communities associated with a geographic location have a strong interest in the use of terms associated with that place. From this perspective, these interests are rooted in shared culture and history. In this view, the perspectives of people associated with a geographic location are essential in determining how and where a geographic name will be used in different contexts. From this perspective, the use of a string with geographic connotations in the DNS would have effects in the country where that place is located, and therefore there must be a voice in the process that represents the interests of the people.

Some Work Track members have expressed that TLDs with geographic connotations should be locally managed, marketed, and funded where possible. Others questioned the benefits of creating rules requiring such TLDs to be locally managed, marketed, and funded.

One Work Track member noted that there are significant differences between countries and cultures with respect the treatment of geographic names. In some countries and cultures, end users and people connected to a geographic term think the use is very important. In other countries and cultures, this issue is less important. From this perspective, any solutions for future use should take into account the differences between countries and cultures.

Work Track members have noted that in some cases, there is an intersection between groups of people associated with a geographic location and the concept of "community" used in the 2012 application round. For example, one Work Track member stated that if a group of people associated with a geographic term such as a river, a mountain, a valley or a city name, they should have the first "right of refusal" for that string. It was noted that in the 2012 round, an application could be both a community application and a geographic application. If there was a contention set and the community-based application passed Community Priority Evaluation, this community-based application would have priority over other applications in the contention set. The Work Track considered that while there is a potential intersection between concepts of communities and geographic names, the processes and evaluation criteria related to the Community Priority Evaluation and Community Objections are being addressed in Work Track 3.

2.6 Law and Policy

The Work Track discussed different perspectives on the scope and applicability of law related to geographic names. In particular, there were strong disagreements regarding the extent to which national and local legal and public policy protections of geographic terms should be used as a basis for granting rights to governments and other actors in the New gTLD Program.

Work Track members referenced, but had different interpretations of Section 1.2 (a) of the ICANN Bylaws, which states: "In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets."

From one perspective, the rights and responsibilities of national and local governments with respect to geographic names are established in public policy and law instruments in different countries. From this perspective, delegation of TLDs with geographic connotations have impacts within the applicable country, and a legal challenge based on national law would have an impact worldwide. In this view, ICANN is obligated to follow applicable national and local laws and policies that give governments rights and responsibilities over geographic names. One Work Track member cited GDPR as an example of a case where ICANN is making efforts to comply with local law. Work Track members cited additional legal cases where legislation on geographic names was applied to the DNS in different jurisdictions. Please see examples at the end of this section.

One Work Track member expressed that a TLD associated with geography should be incorporated within the jurisdiction of the relevant government and subject to local law.

One Work Track member noted that ICANN policy is not always based in law. This member stated that in the 2012 round, there were program elements, rights, and rules that were created for policy reasons that were not explicitly rooted in law, for example Community Priority Evaluation, background screenings, GAC advice, and reserved names at the top level. From this perspective, it may be appropriate to provide rights to governments related to geographic names for policy reasons.

From another perspective, there is no clear basis to give governments special rights in the New gTLD Program with respect to geographic names. In this view, national and local law providing protection for geographic names does not give governments rights beyond those of other stakeholders in the context of the New gTLD Program, including the application process. From this perspective, national and local laws only apply in the jurisdiction where the applicant is located. In this view, the Work Track should look to international law as a basis for any recommendations related to geographic names. According to some Work Track members, there is no basis in international law for governments to assert that right to provide support/non-objection for certain strings, which some members consider to be a "veto" power over applications for these strings.

One Work Track member submitted for the Work Track's consideration her analysis Applying International Law to the New gTLD Applicant Guidebook and the book she wrote on the topic "Protection of Geographic Names in International Law and Domain Name System."

Some Work Track members have also expressed that the implementation of the New gTLD Program must be consistent with freedom of expression rights provided under international law and reflected in the ICANN Bylaws and Principle G of the 2007 Policy. From one perspective, freedom of expression

rights give applicants the right to apply for strings, including strings with geographic connotations. From another perspective, if a business controls a TLD with geographic connotations, and the people associated with that place later want to use that name as a TLD but are unable to do so, this may impact the free expression rights of of the people connected to the geographic place. From this perspective, the applicant may choose from a large number of possible strings, but the people associated with a place only have a connection to a single string. Different opinions have been expressed about which right should take precedence.

One Work Track member noted that there is ongoing work in UNESCO and WIPO on cultural heritage / geographic names and ways to protect these terms internationally. Another Work Track member noted that there may be international law "in the making" at WIPO and that this work should be taken into account as ICANN develops policy.

Work Track members discussed the role of intellectual property law in relation to the delegation of strings that represent both a brand name and and a geographic term. From one perspective, brand applicants have legitimate interests in a string that corresponds to a brand and is also associated with the name of a city or other geographic location. From this perspective, trademarks may evoke positive associations and have "secondary meaning," which is the association between the mark and the attributes of the source or origin of the products and services. This secondary meaning (or "goodwill") in turn is a key component of the value and strength of the mark. From this point of view, some marks have long histories and significant value. Marks may be used in many countries and may be known by large numbers of people. From this perspective, under trademark law, trademark assets and rights are "owned" and controlled by particular parties.

In support of this view, one Work Track member raised that in order to operate a .brand registry, an applicant must produce a trademark registration certificate which shows consent of at least one government to use that trademark. In this view, an entity with a trademark registration for a term has a right to use that term. From this perspective, the term is used in connection with certain goods and services and has no geographic meaning.

From another perspective, trademarks offer a specific right in a specific jurisdiction for specific goods and services to legally stop another party from imitating a mark or confusing customers. In this view, the right is limited and curative in nature. It is focused on consumer protection and prevention of imitations. From this perspective, geographic names in general and city names specifically are not subject to rights by private parties. According to some Work Track members, "monopolization" of a city name by private parties is forbidden under laws pertaining to business names and trademark registration in a number of jurisdictions.

From one perspective, rights granted to geographic locations to protect geographic names are qualitatively different than intellectual property rights. In this view, civil rights are more general in scope and therefore more significant. In another view, the civil code of one country should not take precedence over the trademark code of another country. In this perspective, the narrower, more focused right should take precedence since it is less limiting of others.

Commented [34]: Adrian Carballo: Freedom of expression of the community related to the geographic name is the one to be considered.

ES: la libertad de expresión de la comunidad a la que pertenece el nombre geográfico es la que se debe tener en cuenta.

Commented [35]: Christopher Wilkinson: Freedom of expression: (p.8) The primary right is the freedom of expression 'of the people connected to the geographic place'. The freedom of expression of the applicant is secondary, notably because she has so many alternatives which do not infringe the freedom of expression of third parties.

Commented [36]: Staff has tried to capture the different perspectives and suggested adding the sentence: "Different opinions have been expressed about which right should take precedence."

Commented [37]: Adrian Carballo: Registered trademarks have different categories and meanings. What happened in the first round with some brands using geographic names is that the same geo name - brand is registered in different countries under the local intellectual property regulations and they are legally registered companies paying taxes etcetc. So the there is a problem with brands taking a TLD on a first come first served basis.
If the geoname is well known in the region or worldwide there will be many other companies who have registered this brand for different purposes (food, tourism, textile, etc).
How these other companies will be treated by the new gTLD program? Just ignored?
From the end users perspective this will cause great confusion.

ES: Las Marcas registradas tienen distintas categorias y significados. Lo sucedido en la primera ronda con alguna de las marcas que son nombres geográficos es que el mismo nombre es usado por otras marcas registradas en distintos paises, son marcas registradas bajo las leyes de propiedad intelectual local y son empresas que pagan impuestos localmente. Por lo tanto hay un problema porque cuando una marca que es un nombre geográfico solicita un TLD, estos son únicos y se otorgan sobre la base de el primero que llega el primero se lo lleva (first come/first served). Como pueden entonces estas otras empresas que usan el nombre geográfico en su marca ser tratadas si una sola usará el TLD? Solo serán ignoradas? Desde la perspectiva del usuario final esto generará una gran confusión.

Commented [38]: This concern appears to refer to potential consumer confusion where multiple brands in different jurisdictions share the same name. Perhaps an issue more generally applicable to discussions in the SubPro working group and not specific to geo names/WT5?

One Work Track member suggested that it could be helpful to consider the treatment of geographic names in terms of the positive impact of brand status. For example, a TLD .perth might help anyone who has an interest in this term to register a name and use it as a way of establishing a geographic presence on the Internet that wasn't necessarily about a single location. Another Work Track member noted that if the group is considering geographic names from the perspective of brands, it is also valuable to consider rights that brands do not have. For example, trademark holders do not have the right to pre-emptively block the use of a word by another party.

Work Track members have referenced the following laws and legal cases:

- According to one Work Track member, cities have rights to protect their names under the Article 29 of the Swiss civil code. Provisions prevent the registration of business names and trademarks that solely consist of city names: "1 If a person's use of his or her name is disputed, he or she may apply for a court declaration confirming his rights. 2 If a person is adversely affected because another person is using his or her name, he or she may seek an order prohibiting such use and, if the user is at fault, may bring a claim for damages and, where justified by the nature of the infringement, for satisfaction."
    - One perspective is that this provision does not provide for prior restraint on speech but instead provides a means for settling disputes through the courts.
    - Another perspective is that the law demonstrates that there is a public interest in protecting geographic names that government authorities can pursue.
        - A case based on Article 29 was referenced.
- One Work Track member mentioned a case regarding the TLD France.com as evidence that governments have rights under national law over the use of geographic names as TLDs.
- One Work Track members shared information about a case from the the High court in Italy related to a geographic name: Cass. n. 16022/2000. According to the Work Track member, under Italian law, the elected body (the mayor, the president of the regional council) of the corresponding name may act to protect the interest of the community it represents.
- A Work Track member shared a link to rules in the UK that prohibit registration of a trademark which may indicate a geographical origin.
- A Work Track member shared UK rules on what may and may not be a company name. According the to the Work Track member, a letter of non-objection is required in situations where an entity is effectively representing itself as associated with a region, government department, or regulated profession. UK laws regarding business names do not allow businesses to use a name or term which denotes (or might be confused with or denote) an official authority or body when there is no connection to that body.
- A Work Track member shared a link from German case law.
- One Work Track member referenced Article 38 of the Statue of the International Court of Justice as an authoritative codification of International Law sources. Art 38 requires the ICJ to apply: (a) international conventions [treaties] whether general or particular, establishing rules expressly recognized by states; (b) international custom, as evidence of a general practice accepted as law by states; (c) the general principles of law recognized by civilized nations; (d) and in some cases

judicial decisions and writings/teachings of the most highly qualified publicists (professors, experts, etc) as subsidiary means for the determination of rules of law. According to this Work Track member, a local rule is an internationally binding norm only if it is also a general principle of law where clear and convincing evidence is provided that a local norm or practice is also a general and consistent practice of states and viewed as legally binding by those states, and thus binding customary law.

3. INTENDED USE

Work Track members discussed whether the intended use of the string should be taken into consideration in the treatment of the application. Intended use was discussed in the context of city names and also in the context of potential geographic terms that were not included in the 2012 Applicant Guidebook. In addition, one Work Track member suggested that the concept of intended use should apply to other categories of geographic names.

The Work Track devoted a significant amount of time to discussing terms that have multiple meanings, for example a word that matches the name of a place or multiple places and also has a generic, dictionary meaning and/or an association with a brand.

Some Work Track members provided examples of strings that could have geographic meaning associated with one or more places as well as brand and/or generic meaning:

City/town names:

- "Mars" is a town in Pennsylvania (USA) and a candy bar company.
- Towns in the United States: Flint, Golden, Granite, and Boulder.
- Cities in the UK: Bath and Ford.
- "Lincoln" is a town in Nebraska (USA), a car company, and a former US president.
- Nokia is company name and also the name of a city.
- There are many towns in the United States with the name Springfield. This is also the name of a rifle company and a musician, Rick Springfield.
- Berlin is a city name, the name an '80s rock band, the last name of composer Irving Berlin, and it is associated with four other live US trademark registrants.
- Sandwich could be a word used in the generic sense and is also the name of towns in the US and the UK.
- Hershey, PA in the United States was named after the chocolate company.
- Rock is the name of a town in Cornwall, England and a town in Australia and is also a dictionary word.
- Delhi is a capital city name (India), a town name (New York, USA), and a brand of bicycles.

- Rivers Murray, Darling, Clarence, and Brisbane in Australia correspond to generic terms.

- New is the name of a river in the United States passing through North Carolina, Virginia, and West Virginia.
- Save is the name of a river passing through Zimbabwe and Mozambique. New and save are also generic terms.

3.1 Does intended use matter?

Different views were expressed about whether intended use of a TLD should be taken into consideration in the application process. From one perspective, TLDs are a unique resource. Some Work Track members have contrasted this unique quality of TLDs with the use of names under trademark law. From this perspective, under trademark law, the principles of specialty and of trademark "fair use" apply, according to which it is possible for two brands to register trademarks for the same term in the same jurisdiction, as long as no confusion or infringement pursuant to the law arises. In this view, the DNS is different because "parallel use" is not possible. In other words, if a string corresponding to a geographic term is delegated to one party, others who have an interest in that string are prevented from using it, potentially for a significant period of time or permanently. In this view, distinctions based on intended use are therefore not helpful. From this perspective, even if the intended use is non-geographic, the word still may have geographic connotations. In this view, it is important for governments or people associated with a place to be "at the table" for decisions about delegation, regardless of use, because of the unique nature of a TLD and the connotations of the word.

From another perspective, the unique nature of a TLD does not give a government primacy over the use of that TLD. From this perspective, if a string is being used in a generic or brand context, there is no basis for a support/non-objection mechanism related to the use of that string. The geographic meaning should not prejudice the use of the string in another context. In support of that position, a Work Track member raised that there is a very large number of potential strings that could be delegated as TLDs. If one string has been delegated, a prospective applicant or other party can apply for an alternate string. For example, if a string matching a city name is delegated for another purpose, a government or other party interested in using <.city>, could apply for citygovernment, citycouncil, or citytourism. Another Work Track member stated that, on the other hand, other applicants could apply for .citybusiness, .citysector or activity, or .citybrandfull name.

3.2 Intended use provisions in practice

In the 2012 round, applicants were required to obtain support/non-objection from the relevant government(s) or public authority(ies) only if they declared that they intended to use the gTLD for purposes associated with the city name. Other applicants for strings corresponding to city names were not required to obtain support/non-objection. No dedicated enforcement mechanism was created in the 2012 round to address potential cases where an applicant did not declare that the TLD would be used primarily in association with a city name, but then operated the TLD as a city TLD. However, the Registry Agreement includes the following language: "All material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this

Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN." This provision provides a possible means for recourse if the applicant misrepresented information in the application.

Different perspectives were expressed with respect to possible mechanisms to ensure that an applicant who applies for a non-geographic TLD operates as a non-geographic TLD. From one perspective it is impractical and challenging to set objective criteria for evaluating intended use in the application process and difficult to enforce distinctions based on intended use. From this perspective, registrants may circumvent limitations on intended use and permit registration of domains that have geographic connotations with limited recourse. Some Work Track members expressed that obligations included in the contract between ICANN and the registry may have limited impact on what registrants do in practice.

From another perspective, it should be possible to establish intended use in the application process, especially in the case of .brands. Some Work Track members expressed that it should be feasible to put in place protections that help to ensure a non-geographic TLD does not mislead end-users or imply that it is an "official" TLD associated with a geographic place. From this perspective, applicants could make and be held accountable to uphold commitments on how the registry will operate and how names will be allocated. Applicants could also demonstrate a willingness to cancel names which are used in a manner outside the way the registry operator intended.

In the case of .Brands, there are strict contractual qualifications included in Specification 13 of the Registry Agreement. If an applicant wants to keep benefits associated with Specification 13, it needs to abide by the terms of Specification 13. From one perspective, .Brands are not likely to change the use of the TLD because that undermines the qualification for Specification 13.

Some Work Track members raised the issue of potential consumer confusion. From one perspective, regardless of the intended use, consumers may be confused about the potential association of a string and a geographic term. From another perspective, it should be possible to create a standard against which to manage risks of confusion, for example by ensuring that the applicant does not represent that it is endorsed by a city or is the "official" TLD of a city when this is not the case. One Work Track member stated that .brands operate in such as manner that there should not be any confusion between a brand and TLD that is being operated in a geographic context. Some Work Track members shared the perspective that the issue of confusion is irrelevant, because each TLD is a unique resource and therefore specific rules should apply (see section 3.1 for additional details on this point of view).

3.3 Questions about Intended Use

Work Track members raised the following questions with respect to intended use:

- Is it feasible to monitor and enforce domain name registrations according to "intended use" after delegation? If so, how?

- What happens when the intended use changes through a modified business plan or the sale of a business?
- Does the system of public interest commitments work for this purpose?
- Is a better Specification 13 the way to solve "intended use" question?
- How could "intended use" obligations be enforced against third parties not party of the ICANN contracts, such as registrants or other users of second and third level domains?

3.4 One TLD, Multiple Uses?

The Work Track discussed that collaboration between different parties with different intended uses for a TLD could be a means of meeting the needs and interests of all groups. For example, one Work Track member suggested that different cities with the same name could collaboratively manage a TLD matching the name of the cities. A shared management model could eliminate contention for the string. If cities were able to cooperatively manage a TLD, they could share the costs, burdens, and risks, and help to ensure that there is sufficient demand for second-level registrations. From another perspective, such a model would be impractical. One Work Track member suggested that if there is more than one geographic location matching a string, these locations can be identified at a sub-level to differentiate.

Work Track members also discussed whether there may be opportunities for governments and applicants to come together and create opportunities for both parties to use the TLD according to their interests. Some Work Track members viewed this as an outcome following the provision of a support/non-objection letter, which some view as a means to allow for different solutions according to the will of the parties involved. Others suggested that it might be possible to create incentives for such collaboration in place of a support/non-objection mechanism.

Questions raised:

- Are there ways to allow the delegation of the TLD and address the concerns of the impacted governments? Could this include agreements to allow the use of second level strings (or the reservation of second level strings) where there is an inherent association with the government / local community?
- For brand TLDs, there is a requirement currently that all registrations be registered to the brands (or their affiliates / licensees) in order to maintain their Specification 13 protections. Can there be an exception granted for ones that coincide with a geographic string where certain second level strings that are inherently geographic can be registered by others?

4. CONSULTATIONS WITH GOVERNMENTS

The Work Track discussed the role of the GAC and the role of national and local governments in the evaluation of TLD applications. In the 2012 application round, the GAC could provide consensus advice on any application to the ICANN Board, as described in Module 3 of the Applicant Guidebook. In

addition to acting collectively through GAC advice, governments had the following roles in the application process with respect to applications for geographic strings:

- A member of the GAC could provide an Early Warning on a New gTLD application, including but not limited to an application for a geographic name. This was a notice that an application was seen as potentially sensitive or problematic by one or more governments. An Early Warning was not a formal objection, nor did it directly lead to a process that could result in rejection of the application.
- For certain types of strings, applicants were required to provide a letter of support or non-objection from the relevant government(s) or public authority(ies).

4.1 Role of the GAC

Work Track members expressed different opinions about the role of the GAC with respect to the application process. From one perspective, the GAC plays a unique role in the ICANN context and governments represented in the GAC have a particular interest and stake in the treatment of geographic terms. From this perspective, the role played by the GAC in the 2012 round was appropriate.

From another perspective, the GAC has an advisory role to the Board and may collectively provide consensus advice, but the GAC does not have an operational role at ICANN. Individual GAC members may have distinct positions on individual applications, but the role of individual governments is different than the GAC acting as a whole through GAC advice. From one point of view, the GAC intervened in the evaluation process in a manner that was problematic and unfair during the 2012 round. From this point of view, the role of the Board and the GAC should be more clear and consistently applied in subsequent rounds of the application process, including with respect to applications for geographic names.

4.2 Role of National and Local Governments

Work Track members expressed different opinions about the role that national and local governments should play with respect to the application process for geographic terms.

From one perspective, geographic terms have political, historical, economic, social, and sometimes religious connotations for populations and communities associated with those terms. In this view, governments are representatives of the public interest and have responsibilities regarding the names of geographic locations as the primary identifiers in social, national, political and economic interactions and as identification of their peoples. The relevant governments/public authorities represent the interests of the people in a geographic region and have a responsibility to uphold the laws of that country. From this perspective, governments should have a special role in determining the use of strings associated with geography in the DNS. See the discussion of law and policy above for additional details related to legal aspects of this discussion.

In line with this view is the position that city names are subject to general/public interests represented by that city government. City governments act according to the laws and policies of the countries in which they are established and accountable under those laws and policies. Therefore, city governments

should be consulted by applicants and the requirement of support/non-objection for applications for city names should be maintained.

While some Work Track members from governments and other participating SO/ACs have expressed support for this point of view, one Work Track member from a government noted that not all governments share concerns about protecting/restricting geographic names in the TLD context.

Some Work Track members have expressed that the rights of governments should be preventative rather than curative in nature. From this perspective, it is a significant burden on governments, some of whom are not aware of ICANN or its activities, to monitor the application process to see if an application of interest has been submitted. This challenge would potentially be even greater in a scenario where applications are accepted at regular intervals or on an ongoing basis in the future and if application volumes are high. It is a further burden to monitor the operation of TLDs and take action if a TLD is not meeting commitments stated in the application.

From one perspective, governments do not always represent the interests of people and communities associated with a geographic location. In this view, there may be instances where the interests and positions of a national or local government diverge from the interests of the people associated with a given geographic location. There may be cases where people or a community associated with a geographic location would like to use a name associated with that place, but a national government does not support that use.

In support of an approach focused on curative rights, one Work Track member stated that ICANN policy has consistently disfavored reservations (other than for technical reasons), blocking rights and other systems that prevent a TLD (or second level domain) from entering the market. From this perspective, any list-based exclusionary right has undergone strict scrutiny and has been applied narrowly. The Work Track member also stated that ICANN policy-making process has traditionally favored curative rights over preventative rights. From this perspective, it is not unusual for different types of stakeholders to conduct monitoring related to gTLDs in which they are interested. In this view, the scale of the gTLD environment is relatively limited, and automated processes can assist with monitoring. From another perspective, preventative rules, such as support/non-objection mechanisms, do not grant rights to governments but rather place requirements on applicants while still allowing any interested parties to apply.

4.3 Distinction Between Support and Non-Objection

The Work Track discussed whether there was a meaningful distinction between a letter of support from a government or public authority and a letter of non-objection. From one perspective, support and non-objection are two different positions that a government may take with respect to an application. Some governments may lack a legal basis to provide support but may have a legal basis not to object. Therefore, it is useful for these concepts to remain distinct. From another perspective, letters of support and non-objection resulted in the same outcome for applicants in the 2012 round. Therefore, the

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Commented [60]: Jorge Cancio: suggested edit "Therefore, city governments should be consulted and the requirement of a support/non-objection letter for applications associated with the names of cities be maintained."

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Commented [62]: Jorge Cancio: suggested edit "While some Work Track members from governments, joined by some members from all participating SO/ACs,"

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Commented [64]: Christopher Wilkinson: Disputed sovereignty and disputed names: There are at least a dozen parts of the world where such disputes might impinge on the geo-TLD application process. It would be appropriate not to cite any one of them in particular.

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Commented [66]: Christopher Wilkinson: Curative Rights vs. Preventative Rights: The Work Track has discussed the idea that 'ICANN policy making has traditionally favored curative rights over preventative rights.' I suggest that this approach will not be workable with geographical names. ICANN cannot expect that all the governments and local authorities world-wide would have the resources to monitor the whole new gTLD process in order to 'catch' each and every application that might concern their interests and eventual rights. 'Curative rights' may have been a valid solution in the past and notably for trademarks where monitoring has been of limited scope, professionally organized and financed. That will never be the case for the next gTLD programme, notably for geo-TLDs. (Bearing in mind that other Work Tracks envisages an application rate of about 1,000 cases per year.) It would be better to qualify the necessary protections as 'a priori rights' as opposed to 'ex post rights'.

Commented [67]: The arguments about the challenges for governments to monitor applications are covered in the above paragraph beginning: "Some Work Track members have expressed that the rights of governments should be preventative rather than curative in nature." If any key points are missing, please let us know and staff will add them.

Commented [68]: Jorge Cancio: suggested adding "Some other members of the working group have clarified that the non-objection letter establishes not a right, but a requirement which is open to any interested parties, be it businesses, brands, community initiatives,"

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distinction is not necessarily meaningful to applicants. From one perspective, if there is going to be a requirement for a government letter, it should be a requirement for a support letter, because the concept of the non-objection letter if vague and difficult to apply.

4.4 Alternative Structures for Consultations

The Work Track discussed whether there might be an alternative means of structuring consultations between applicants and governments. The following questions were raised:

- Can we have consultations where the ultimate outcome is not preordained, but still provide incentives for all of the parties to "come to the table" to express concerns, and also provide ways in which those concerns can be mitigated?
- Are there any other parameters that can be established to help guide consultations to prevent the perception as expressed by some that governments will try to extract payments in exchange for the right to be the registry of the TLD?
    - Some Work Track members objected to this question, stating that it presupposes and takes as fact highly problematic conduct by governments without providing any factual basis to the Work Track.

5. SPECIFIC CATEGORIES OF STRINGS

While some Work Track 5 conversations focused on high-level principles, processes, and other issues related to treatment of geographic names in general, the Work Track also discussed treatment of specific types of strings included in the Applicant Guidebook and additional types of strings not included in the AGB.

5.1 Two-Letter ASCII Strings

The 2012 Applicant Guidebook specified that two-character ASCII strings were not permitted to be delegated, which was consistent with recommendations of the Reserved Names Working Group referenced in the 2007 Policy. This included combinations of two letters, combinations of two numbers, and combinations of a letter and a number. The Work Track noted that Work Track 3 of the New gTLD Subsequent Procedures PDP Working Group is considering single letter and single digit combinations, and generally agreed that two-character codes containing numbers are not geographic names, and therefore focused on letter-letter combinations (for example .yz). One Work Track member noted that if letter digit combinations are available in subsequent procedures, there may be a risk of confusion between certain letter-digit combinations and confusingly similar letter-letter combinations (for example .I0 and .IO). It was noted that in the 2012 round, string similarity processes took into account all existing TLDs, including ccTLDs. If future processes work in the same manner, risk of similarity will be addressed through these processes.

Some Work Track members provided input that there is a longstanding association between two-character ASCII letter-letter combinations and ccTLDs, which is rooted in early Internet Engineering Task Force (IETF) Requests for Comments (RFCs). From one perspective, the current AGB rules restricting two-character ASCII letter-letter combinations as gTLDs has helped to make a clear distinction between the ccTLD space and the gTLD space. Work Track members further commented that reliance on the ISO 3166 Part1 list of alpha-2 codes as a basis for two-letter country codes has historically worked well and offers a predictable system to use as a point of reference.

Work Track members identified additional benefits to leaving two-character letter-letter combinations unavailable as gTLDs:

- Two-letter combinations are available in case new entries are added to the the ISO 3166 Part1 list of alpha-2 codes and new countries established that want a ccTLD. Work Track members noted that according to RFC 1591, the IANA is not in the business of what is and what is not a country.
- End users can see a clear distinction between ccTLDs and gTLDs, which may help to avoid confusion between the two.
- Provides an objective, consistent rule that is easy to apply.

Work Track members identified the following drawbacks to this approach:

- There is a possibility of opportunities lost in the gTLD space, although these are difficult to assess.
- From one perspective, this distinction between ccTLDs being two-characters and gTLDs being three or more characters is meaningless and unnecessary.
- From one perspective, some ccTLDs essentially operate as gTLDs without the restrictions associated with gTLDs, blurring the distinction between ccTLDs and gTLDs. From this perspective, TLDs are taking advantage of the assumption that all 2-letter TLDs are ccTLDs. In this view, it does not make sense to say that 2-letter strings should be reserved for countries when some ccTLDs are not operating in a manner consistent with this approach.
    - One Work Track member pointed out that some ccTLD managers also operate gTLDs, further blurring the distinction between ccTLDs and gTLDs.
    - From another perspective, in most cases ccTLD operators are not-for-profit organizations that work to improve their local Internet ecosystems, give back to their country and represent their country's name in the best possible way.

With respect to the provision of the AGB stating "Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard," one Work Track member asked for clarification whether "to avoid conflicting" referred to concerns about typo variations and misdirected traffic or competition for ccTLD operators.

The Work Track noted that the Cross-Community Working Group of Use of Country and Territory Names as TLDs previously reached preliminary consensus in support of maintaining the 2012 treatment for two-

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character ASCII strings.[4] Some Work Track members expressed support for recommending that 2012 treatment is maintained for two-letter strings. Based on Work Track discussions the Work Track leaders proposed language supporting continued reservation of two-letter strings. Proposed language is included in section c.

5.2 Country and Territory Names

As described in section a. above, no reserved geographic names were anticipated in the 2007 Policy. The 2012 Applicant Guidebook diverges from the policy and lists seven categories of country and territory names that were reserved and unavailable for delegation (see section b. for a list of these categories). The Work Track discussed, in general, the reservation of country and territory names on this list, as well as issues related to specific categories of country and territory names.

As an overarching issue applying to country and territory names, some Work Track members raised that it would be beneficial for countries to have an opportunity to apply for their country and territory names. Some Work Track members expressed that these names should not be delegated through the New gTLD process. From this perspective, delegation of country and territory names should only occur through local policy authorities. From another perspective, moving delegation of these strings to local authorities is inconsistent with the objective to provide clarity, certainty, predictability, and fairness for applicants.

Some Work Track members expressed support for the idea that it is outside of the scope of this Work Track to discuss broad questions about which entity/entities can apply for country and territory names and how these TLDs may be treated (for instance, as a gTLD, a ccTLD or something else). Some Work Track members felt that if these strings are delegated, they should not be gTLDs, although it was not agreed how these TLDs should be categorized. In particular it has been suggested that this topic should be deferred to another ICANN process or vehicle created to specifically to address this topic.

5.2.1 Alpha-3 code listed in the ISO 3166 Part1 (ISO 3166-1) standard

Work Track members identified the following benefits of reserving alpha-3 codes listed on the ISO 3166 Part 1 standard:

- Avoids potential end user confusion related to the geographic connotations of these codes.
- Allows countries to protect codes with which many nations identify strongly.
- Only reserves a small subset of all possible combinations of three letters, leaving plenty of opportunity for applicants to apply for other available strings that are comprised of three letters.

Work Track members identified the following drawbacks to reserving alpha-3 codes listed on the ISO 3166 Part 1 standard:

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[4] https://ccnso.icann.org/sites/default/files/field-attached/ccwg-ctn-final-paper-15jun17-en.pdf

- There are potential missed opportunities for gTLDs comprised of three letters, for example .can, .iot, .idn, .gin, .gum, .fin, .cub, and .pry.
- There is no opportunity for an applicant supported by the relevant country to move forward with an application.
- One Work Track member raised that ISO should not be the source of 3-character strings used by ICANN to identify geographic names.
- From one perspective, there is no clear justification the assertion that governments "own" alpha-3 codes listed on the ISO 3166 Part 1 standard. Therefore, they should be available for delegation as gTLDs.
  - One Work Track member noted that COM is the alpha-3 code for Comoros according to the ISO 3166 Part 1 standard, but .com was delegated long ago, indicating that there is not an established practice of governments "owning" alpha-3 codes listed on the ISO 3166 Part 1 standard.

The Work Track considered that the Cross-Community Working Group on Use of Country and Territory Names (CWG-UCTN) discussed extensively the treatment of alpha-3 codes listed on the ISO 3166 Part 1 standard. An analysis of the different positions on this issue is available in the CWG-UCTN Final Report.[5] The Work Track noted that the CWG-UCTN was unable to reach consensus on the future treatment of these strings.

From one perspective in the Work Track, this has historically been a challenging issue for the community to resolve and absent evidence that a different approach is supported, the 2012 Applicant Guidebook treatment should apply. From another perspective, there is no clear historical justification for maintaining reservation of these strings. Absent such a justification, these strings should be available for delegation.

Some Work Track members expressed support for delegating alpha-3 codes on the ISO 3166-1 standard exclusively to governments, ccTLD managers, and public interest entities. From another perspective, there is no "tradition" of or technological reason for alpha-3 codes on the ISO 3166-1 standard being used for top level domain names connected with the related countries and territories, and therefore there is no reason to exclusively delegate them to governments, ccTLD managers, and public interest entities. There are also three letter strings that correspond to ISO three-letter codes but also have a generic meaning. From one perspective, the future use of these strings should not be determined by countries when other uses are possible.

One Work Track member expressed support for delegating these strings as gTLDs with the requirement of government support/non-objection until a future process is designed specifically for the delegation of three-character codes.

From one perspective, if alpha-3 codes on the ISO 3166-1 standard were open to delegation, they would be considered gTLDs. Some Work Track members view this as an issue, because they do not believe that

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[5] https://ccnso.icann.org/sites/default/files/field-attached/ccwg-ctn-final-paper-15jun17-en.pdf

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these strings should be gTLDs. Some believe they should be ccTLDs or another type of TLD that does not yet exist.

Some support has been expressed for maintaining reservation of alpha-3 codes listed in the ISO 3166-1 standard.

5.2.2 Short-form or Long-form name listed in the ISO 3166-1 standard, or a translation of the short-form or long-form name in any language

Work Track members identified the following benefits of reserving short-form and long-form names listed in the ISO 3166-1 standard:

- The ISO list provided an easy, predictable, and objective standard to follow.

Work Track members identified the following drawbacks to reserving short-form and long-form names listed in the ISO 3166-1 standard:

- There are potential missed opportunities for gTLDs.
- There is no opportunity for an applicant supported by the relevant country to move forward with an application.

The Work Track discussed the implications of the text "in any language" included in this provision. Some Work Track members stated that the text "in any language" is overbroad, results in a very large number of reserved strings, and does not provide a clear, objective, and finite list that can be used as reference. From this perspective, the provision is not predictable or transparent. In this view the "in any language" provision contradicts the overarching policy concept that reserving strings should be done conservatively and must be based on an underlying policy justification. One Work Track member also noted that some languages are spoken by very few people, therefore reserving representations in all languages may not be appropriate. From another perspective, "in any language" should remain in place unless there is a factual basis for limiting the languages covered in this provision. Many languages may be spoken by and relevant to communities within a given country, and the list should therefore not be limited. Work Track members suggested the following possible options as alternatives to "in any language":

- Limit the list to the official UN languages.
    - One Work Track member stated that if the UN languages are included, the text should state "including but not limited to official UN languages."
    - Another WT member stated that there are no "official UN languages." There are "UN working languages."
    - One Work Track member suggested that Portuguese should be added to this list as it is an ICANN language.
- Limit the list to official languages of each country and official UN languages.
    - Some Work Track members stated that it might be difficult to identify the official languages of each country and also noted that some countries may not have official

languages. One WT member asked in the WT would take on the task of creating such a list.

- One Work Track member suggested using as a starting point Working Paper 54 of the UN Group of Experts on Geographical Names (UNGEGN).

○ Another WT member stated that there are no "official UN languages." There are "UN working languages."

○ From one perspective, the list should not be limited in this way. Official UN languages are largely irrelevant in many countries. Also from this perspective, the concept of official languages only appears in certain countries. In this view, the administrations in many countries use languages that are not official. People of the country also use languages that may not be official, and these languages are important to specific communities.

○ Alternate to "official languages" suggested: "official and relevant languages."

- Example used in relation to "relevant languages": "We have more than 25% of foreign-born people living in Switzerland. They refer to Switzerland in their languages and scripts. These are relevant languages/scripts that should be covered."

- From one perspective, the term "relevant languages" is not a category with clear boundaries or definition.

○ Alternate to "official languages" suggested: "official and commonly spoken languages."

- From one perspective, the term "commonly spoken languages" is not a category with clear boundaries or definition.

○ One Work Track member suggested that Portuguese should be added to this list as it is an ICANN language.

- Develop a list using the Expanded Graded Intergenerational Disruption Scale and categorization based on Official Recognition.
- Create an exhaustive repository of all country names in all languages.
- Change "in any language" to "in any script."
- Limit the list to "principal languages" and "official UN languages" where the principal languages are the official or de facto national languages and the statutory or de facto provincial languages of that country. This proposal draws on ethnologue.com as a starting point for definitions.

Some Work Track members expressed support for maintaining the current treatment for long-form and short-form country names listed in the ISO 3166-1 standard, noting that this appeared to be an acceptable outcome in the 2012 round. The Work Track co-leaders put forward a proposal to maintain reservation of short-form and long-form names listed in the ISO 3166-1 standard and translations of the short-form and long-form names in any language, which received some support from the Work Track. Draft recommendations suggest maintaining reservation of short-form and long-form names listed in the ISO 3166-1 standard and ask for community input on the issue of translations.

5.2.3 Short- or long-form name association with a code that has been designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency

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The Work Track discussed benefits and drawbacks associated with reserving names in this category. Work Track members noted that these are similar to benefits and drawbacks identified for short-form and long-form names listed in the ISO 3166-1 standard.

Some Work Track members expressed support for maintaining the treatment included in the 2012 Applicant Guidebook. From another perspective, it may be appropriate to eliminate this category, because the ISO standard does not include a definition for the term "exceptionally reserved." Draft recommendations suggest maintaining reservation of these strings.

5.2.4 Separable component of a country name designated on the "Separable Country Name List", or is a translation of a name appearing on the list, in any language

The Work Track discussed benefits and drawbacks associated with reserving names in this category. Work Track members noted that these are similar to benefits and drawbacks identified for short-form and long-form names.

Some Work Track members expressed support for maintaining the treatment included in the 2012 Applicant Guidebook. It was noted that concerns regarding translation "in any language" that were discussed in relation to short-form and long-form names may also be applicable to this category. Draft recommendations suggest maintaining reservation of Separable components of a country name designated on the "Separable Country Name List" and request community input on the issue of translations.

5.2.5 Permutation or transposition

Work Track members raised several concerns about provisions related to permutations and transpositions in the Applicant Guidebook. According to the Applicant Guidebook, a string is reserved if "it is a 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 members expressed that it is unclear from this text whether reservation of transpositions applied to categories of country and territory names beyond short-form and long-form names. There was general agreement that intent of the text was that only transpositions of short-form and long-form names were not allowed but transpositions of other forms of country and territory names were permitted. However, Work Track members pointed out that the text could also be interpreted to mean that transpositions of three-letter codes and other forms of country and territory names were also reserved.

Several Work Track members suggested that if similar provisions are included in the future, the text should be presented in a way that is easier to understand. One member noted that the terms "transposition" and "permutation" may be difficult for non-native English speakers to understand. Therefore, alternate terms may be more appropriate.

Work Track members further noted that because this provision does not reference a specific list, it may not be clear to applicants and other stakeholders which strings are covered by this provision.

One Work Track member raised that the examples used in the Applicant Guidebook relation to transposition, "RepublicCzech" and "IslandsCayman" do not appear to be terms that anyone would use. From one perspective, the group should consider removing this provision unless there is documented problem that it seeks to solve. Another member stated that "RepublicCzech" and "IslandsCayman" and similar strings are unlikely to be of interest as TLDs, therefore there is little harm in reserving the strings. One member suggested that individual governments should be asked which permutations should be reserved in connection with corresponding country or territory name.

Some Work Track members supported maintaining the treatment included in the 2012 Applicant Guidebook. Draft recommendations suggest maintaining reservation of translations and permutations but modifying the language to clarify which strings are reserved under this provision.

5.2.6 A 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

Work Track members identified the following benefits of reserving names by which countries are commonly known:

- There is some level of predictability associated with this provision because there are specific sources of these terms.
  - At the same time, the Work Track expressed some level of uncertainty about what may or may not be included, indicating that in practice this provision may not be completely straightforward for applicants and other stakeholders.

Work Track members identified the following drawbacks to reserving names by which countries are commonly known:

- There are potential missed opportunities for gTLDs.
- There is no opportunity for an applicant supported by the relevant country to move forward with an application.

One Work Track member suggested that as long as a country can provide substantial evidence that the country is recognized by a name, the term should be included under this category. The member also suggested adding "in any language" to this provision.

Some Work Track members supported maintaining the treatment included in the 2012 Applicant Guidebook. Draft recommendations suggest maintaining reservation of these strings.

5.3 Geographic Names Included in the 2012 Applicant Guidebook

5.3.1 Capital City Names/Other City Name

5.3.1.1 2012 Round

For capital city names and city names, there is divergence between the 2007 Policy and Implementation in the 2012 Applicant Guidebook. The 2007 Policy anticipated that these strings would be available without any special requirements and did not mention a provision requiring support/non-objection. Work Track members recalled in discussions about the 2007 Policy that Recommendation 20 in the 2007 Policy stated: "An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted." In comments, Work Track members also flagged text accompanying Recommendation 5 of the Final Report - Introduction of New Generic Top-Level Domains. Recommendation 5 states "Strings must not be a reserved word." The report's discussion of this recommendation includes text quoted from the Reserved Names Working Group Final Report:

> *However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws . . . Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.*

The 2012 Applicant Guidebook required support/non-objection from relevant governments or public authorities for all representations, in any language, of capital city names of countries and territories listed in the ISO 3166-1 standard and city names where the applicant declares that it intends to use the gTLD for purposes associated with the city name. From one perspective, the 2012 Applicant Guidebook provisions represent a compromise position in which different parties found a middle ground. From another perspective, the 2012 Applicant Guidebook only represents a compromise between the GAC and ICANN staff and therefore does not represent the needs and interests of all parts of the ICANN community.

Work Track members discussed that in the 2012 Applicant Guidebook the term "city" was not defined, which could be a source of uncertainty. At the same time, because support/non-objection was only required if the applicant intended to operate the TLD for purposes associated with the city name, the impact of this lack of precision may have been limited. Work Track members pointed out that there are different definitions of the term "city" and provided the following resources to illustrate this point:

- Black's Law Dictionary: Ill England. An incorporated town or borough which is or has been the see of a bishop. Co. Litt. 10S; 1 Bl. Comm. 114; Cowell. State v. Green, 126 N. C. 103'2, 35 S. E. 4G2. A large town Incorporated with certain privileges. The inhabitants of a city. The citizens. Worcester. In America. A city Is a municipal corporation of a larger class, the distinctive feature of whose organization Is Its government by a chief executive (usually called "mayor") and a legislative body, composed of representatives of the citizens, (usually called a "council" or "board of aldermen,") and other officers having special functions. Wight Co. v. Wolff, 112 Ga. 169, 37 S. E. 395.
- "What is the difference between at city and a town?" (Worldatlas.com)

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Commented [77]: Jorge Cancio: suggested adding ", although recommendation 20 made reference to the role of community opinion and the quoted language from the Reserved Names Final Report drew the attention of applicants on GACs role."

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- "City status in the United Kingdom" (Wikipedia)

Work Track members also raised the issue that some applicants experienced a de-facto requirement to obtain support or non-objection from a government or public authority for a string they did not intend to use for purposes associated with a city name. In the Applicant Guidebook, there was no requirement for applicants to obtain support/non-objection if the applicant intended to use the string in a generic or brand context. The cases of .spa and .bar are examples that were cited by Work Track members. In relation to these examples, some Work Track members expressed the view that relevant government authorities should be consulted to get a full and balanced picture of the facts of these cases.

Work Track members noted that some applicants had difficulty in the 2012 round identifying the relevant governments and public authorities from which to obtain support/non-objection. Many of the proposals for addressing these challenges relate to the program more broadly and are included in sub-section 6 of this document. From one perspective, if such requirements exists in subsequent procedures, it may be helpful to develop methods to assist applicants in connecting with the relevant governments and public authorities. Some Work Track members have suggested that ICANN staff and GAC members could play a facilitative role. An additional proposal, which is discussed in sub-section 6 "General Proposals," suggests establishing an advisory panel or a consultative role for the Geographic Names Panel to help prospective applicants determine if a string is a geographic term.

From one perspective, there were challenges in the 2012 round associated with resolving competing bids for a string associated with a city name, in particular if multiple applications had support or non-objection from relevant governments/public authorities. Some Work Track members felt that this may be any area for future refinement if the support/non-objection mechanism exists in subsequent procedures.

For non-capital city names, government support/non-objection was not required if the applicant intended to use the TLD primarily for purposes not associated with the geographic meaning of the string. Work Track members identified that some stakeholders experienced uncertainty about monitoring and enforcement related to the intended use commitment.

5.3.1.2 Themes

Work Track members considered whether it is beneficial to distinguish between capital city names and city names and whether these should be considered distinct types of geographic names. From one perspective, there is a meaningful difference between capital city names and other city names and these should be treated as two separate categories when considering future use. From another perspective, future treatment of city names should be considered more holistically, and these should not be considered categories with distinct treatment. Because capital city names and other city names were discussed together at various points during the Work Track conversations, the discussions are summarized in aggregate below. This does not indicate that there is consensus to treat all city names as a single category.

Commented [79]: Jorge Cancio: suggested adding "Some members expressed the view that the relevant public authorities should be consulted in order to obtain a full and balanced picture of the facts."

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Commented [81]: Jorge Cancio: suggested adding "ICANN Staff and"

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Commented [83]: Jorge Cancio: suggested edit: "An additional proposal to establish an advisory panel which would help prospective applicants in determining if their intended string is or not a geographic term, which would be especially helpful in hard cases and regarding strings not explicitly covered by lists of geonames covered in the AGB, or consultative role for the Geographic Names Panel is included in sub-section 6 "General Proposals.""

Commented [84]: suggested edit. additional text about the anticipated benefits of the proposal is included in section 6.

Deleted: or consultative role for the Geographic Names Panel is included in sub-section 6 "General Proposals."

During discussions of capital city names and city names, several themes emerged. One major theme was whether law and public policy provided justification for requiring support/non objection by government authorities. The different perspectives on this issue are included above in section 2.5 "Law and Public Policy" and also mentioned briefly in the pros and cons below. Another theme was whether the context of use for a city name should determine whether support/non-objection is required. These points are mentioned briefly below and discussed in greater depth in section 3 "Intended Use." The Work Track also considered that for capital city names, concerns regarding translation "in any language" that were discussed in relation to short-form and long-form names may also be applicable to this category.

Different perspectives were expressed regarding future treatment of capital city names and city names in relation to intended use:

- Some felt that support/non-objection should always be required for capital city names and city names regardless of intended use.
- Some felt that support/non-objection should always be required for capital city names and should only be required for city names if the applicant intends to use the gTLD for purposes associated with the city name (2012 Applicant Guidebook treatment).
- Some felt that support/non-objection should be required for capital city names and city names only if the applicant intends to use the gTLD for purposes associated with the city name.
- Some felt that support/non-objection should never be required for capital city names and city names.

While some of the discussions regarding city names focused on whether or not support or non-objection should be required, the Work Track also discussed that there are a wide range of potential mechanisms to protect city names that could potentially be used in combination. The Work Track considered three phases of the process in which protections could exist: A: application requirements (including reserved names and government support/non-objection requirements); B: contention objection resolution (including objections procedures); C: implementation and compliance with a contract (including dispute resolution procedures and contract enforcement).

An additional issue raised by Work Track members is that a single name may be associated with multiple cities. For example, Sydney is a city name in Australia and also in Canada. There are many towns and cities in the United States named Springfield. Busia is the name of a town in Kenya and also a city in Uganda. Other examples provided include Cleveland, Bingo, Paris, and Madrid. Some Work Track members felt that all cities associated with a name should have the opportunity to provide support/non-objection because they all have a connection with the string, stating that all have the same right to provide input on use of the string. Others favored a requirement for support/non-objection from a city government only if the intended use is in association with that specific city. In support of this position, Work Track members noted that it would be logistically very challenging for an applicant to identify all cities and all relevant governments or public authorities associated with a name. As noted above, some Work Track members oppose support/non-objection requirements.

5.3.1.3 Benefits identified by Work Track members - support/non-objection

- Some governments and Work Track members from other SO/ACs found the mechanism worked well for them in the 2012 round.
- Some Work Track members have expressed that it is the role of governments to protect the public interest, and this mechanism allows government to protect the public interest and the interest of residents/communities.
- Some Work Track members have expressed that public authorities act under applicable laws and are accountable according to their legal systems and the support/non-objection mechanism allows them to act on these responsibilities.
- Some Work Track members have expressed that always requiring support/non-objection for city names, regardless of intended use, is consistent with a government's rights and responsibilities under national and local law and public policy.
- In favor of always requiring support/non-objection for city names, regardless of intended use, some Work Track members have expressed that a TLD is a unique resource. From this perspective, even if a city is being used for a non-geographic purpose, there may be political, historical, economic, religious, and/or social connotations for the populations and communities affected, and this process allows government to act on those concerns. Even if the applicant intends to use the string in a way that is not directly associated with the city, they may still benefit from positive connotations associated with the name of the city.
- From one perspective, the support/non-objection mechanism provides flexibility for different solutions. Some governments may have a "laissez-faire" approach. Other governments may end up participating in governance of the string or pursuing joint initiatives with applicants and other parties. In this view, it is therefore respectful of different legal, cultural and policy approaches, without imposing one single solution to all.
- Where there is a support/non-objection requirement, governments do not need to actively monitor the application process to determine whether ICANN is reviewing an application that the government may consider relevant. From this perspective, the mechanism fairly puts the burden on the applicant to reach out to the relevant public authorities, which, especially in the case of developing countries, may be unaware of ICANN and may lack the resources to actively monitor ICANN's activities.
- From one perspective, 60+ city TLD applications went forward with support/non-objection and there were few cases of objections for such strings in the 2012 round, demonstrating that many applications were able to proceed to delegation using this process. Some applicants expressed that they had a positive experience with the process.
- Some Work Track members have expressed that there are a number of success stories coming out of the 2012 round using the support/non-objection mechanism for example .tokyo, .london, .paris, .berlin, .amsterdam, .nyc, .hamburg, .koeln, .boston, .vegas, .moscow, .wien, .miami, .istanbul, .sydney, and .quebec. From one perspective, the delegation of these strings had positive effects on geographical, cultural and linguistic diversity.
- From one perspective, applicants have a more predictable process through the support/non-objection mechanism. By engaging with governments early in the process, they become aware early of any opposition by governments and therefore prevent conflicts between interested parties.

Commented [88]: Jorge Cancio: suggested adding ", joined by members from all participating SO/ACs, "

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Commented [90]: Jorge Cancio: suggested adding "●→Some work track members have highlighted that public authorities act under applicable laws and are accountable according to their legal systems."

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Commented [94]: Jorge Cancio: suggested adding ". It is therefore respectful of different legal, cultural and policy approaches, without imposing one single solution to all."Also suggested adding the following bullets: "●→Non objection fairly puts the burden on the party with specific interests in the application to reach out to the relevant public authorities, which, especially in the case of developing countries, may be completely unaware of ICANN and lack the resources to actively monitor its activities.
●→It is consistent with ICANNs obligation to act in conformity with applicable local law.
●→It provides for a flexible instrument open to any kind of interested applicant, be it businesses, brands, communities, etc."

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Commented [96]: Jorge Cancio: suggested changing "prevented legal conflicts" to "prevented conflicts between interested parties"

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- Some WT members have expressed that the support/non-objection requirement is a way to promote cooperation between different parties that have an interest in the string.
- Some WT members have expressed that the support/non-objection requirement, if limited to capital cities, offers some degree of predictability because the list of capital city names is based on an objective standard (ISO 3166-1).
- Some WT members have expressed that an open market absent support/non-objection requirements is not sustainable.
- From one perspective, this mechanism is consistent with ICANN's obligation to act in conformity with applicable local law.
- From one perspective, this mechanism is a flexible instrument that allows applications from any kind of interested applicant, including businesses, brands, and communities.

5.3.1.4 Drawbacks identified by Work Track members - support/non-objection

Work Track members identified the following issues with the support/non-objection mechanism in connection with capital city names and city names:

- Some Work Track members have expressed that the support/non-objection mechanism creates financial and logistical burdens for applicants and a lack of predictability.
- From one perspective, it may be difficult to identify the relevant government(s)/public authority(ies) associated with a city.
- There is no definitive list of city names or single definition of the term "city." From one perspective, if support/non-objection is required for city names regardless of use, and a name corresponds to multiple (or many) city names, it can be difficult for an applicant to determine where support/non-objection should be obtained.
- Some Work Track members have expressed that the support/non-objection mechanism causes rent-seeking and distorts markets.
- Some Work Track members have expressed that this process does not sufficiently take into account the rights of intellectual property rights holders.
- Some Work Track members have expressed that is beneficial for there to be more TLDs, regardless of the intended use, and ICANN should eliminate unnecessary barriers to establishing new TLDs absent evidence of harm.
- Some Work Track members have expressed that governments do not have a legal basis for claiming the right to provide support/non-objection, stating that national law and local law on the protection of geographic names is only applicable within the country in which the law exists. From one perspective, if there is a relevant local or national law, it should be enforced by the applicable government, not by ICANN.
- Some Work Track members have expressed that governments should not have special rights or privileges absent explicit justification under international law.
- Some Work Track members have expressed that the support/non-objection process violates the freedom of expression rights of applicants.
- Some Work Track members have expressed that there may be legitimate applications that a

government opposes and that not all government represent the public interest.

- Some Work Track members have expressed that if a string is being used in a generic or brand context, there is no harm or risk of confusion and therefore support/non-objection process is not necessary.
- Some Work Track members have expressed that the application/delegation process can take time and city administrations may change, which could create unstable conditions for the applicant who is required to have government support/non-objection.
- From one perspective, engaging with governments early in the application process many reduce the competitive advantage for an applicant and encourage competing applications for the same string that might not otherwise have been pursued.

5.3.1.5 Principles

The Work Track discussed possible principles against which potential solutions could be evaluated, with a focus on city names. These were first discussed during a Cross-Community Session at ICANN62 and subsequently discussed on a Work Track call:

- In alignment with Principle C from the 2007 GNSO recommendations on new gTLDs, the program should allow for the introduction of new gTLDs.
- In alignment with Principle A from the 2007 GNSO recommendations on new gTLDs, enhance the predictability for all parties.
    - It was suggested by one Work Track member that predictability of timeframes is an essential element of predictability.
- Reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated.
    - Questions were raised about how "conflicts" are defined in this context. Different opinions were expressed about the best way to avoid conflicts. For example, for some, requiring that relevant stakeholders come "to the table" early in the process reduces the chance of conflict. For others, conflicts can be reduced by reducing the number or bases by which conflict can be initiated. Some Work Track members noted that in some cases, it is not a problem for there to be conflicts, if these conflicts help to resolve competing legitimate interests.

Some support was expressed for the above principles in the second Cross-Community Session at ICANN62.

- The principle of simplicity was also proposed. From this perspective, there should be a simple process for applicants that does not involve burdensome requirements. Examples given: An electric company that wants to apply for .EDISON, a university that wants to apply for .DAVENPORT or .ANTIOCH, a geology society that wants to apply for .BOULDER, an accounts receivable firm that wants to .BILLINGS, a cathedral that wants to apply for .WESTMINSTER, a region that wants to break away from an occupying power that wants to apply for

.INDEPENDENCE, a jewelry retailer that wants to apply for .SURPRISE, a car company that wants to apply for .LINCOLN, a Native American tribe that wants to apply for .PUEBLO.

- Some support was expressed for this principle. The question was also raised whether simpler rules might create more conflicts. One Work Track member pointed out that a simple law, for example, may have more room for different interpretations compared to a law that is more complex and detailed. From one perspective, simple, clear rules, should reduce conflicts. From another perspective, simplicity can be a good principle, but it should be balanced with other needs and principles which may require some degree of complexity.

5.3.1.6 Proposals Related to Cities

- **Support/Non-Objection Requirement for Large Cities Only**: Create a list of cities larger than a certain size (for example larger than 500,000 inhabitants) and require support/non-objection, regardless of intended use, if the applied for string matches a name on this list. Variants: Base the support/non-objection requirement on the relative size of the city, for example the 10 largest cities in a country or the 3 largest cities in a sub-national region; apply the support/non-objection requirement only to cities that hold a certain percentage of a country's population. It was noted that a combination of these standards could also apply. The following lists were referenced as possible sources of cities:
  - "World's largest urban areas" (Mongabay)
  - "The world's cities in 2016" (United Nations)
  - "Council of European Muncipalities and Regions comments on ICANN's draft version 3 of the New gTLD Applicant Guidebook" (ccre.org)
  - Worldpopulationreview.com
  - https://esa.un.org/unpd/wpp/
  - http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls
  - http://www.un.org/en/development/desa/population/publications/pdf/urbanization/the_worlds_cities_in_2016_data_booklet.pdf
  - List of cities with airports (International Airport Transportation)
  - https://hifld-geoplatform.opendata.arcgis.com/datasets/c19bfaccfc7c473d861dbbea1ce7aff0_0/data?orderBy=state_alpha
  - https://hifld-geoplatform.opendata.arcgis.com/datasets/c19bfaccfc7c473d861dbbea1ce7aff0_0/data?orderBy=state_alpha&page=14> &page=14
  - http://www.geonames.org/
  - http://un-ggim-europe.org/content/wg-a-core-data
  - http://un-ggim-europe.org/sites/default/files/UN-GGIM-Europe_WGA_Recommandation_Content-GN-v1.0.pdf

One of the benefits identified for this proposal is that by using a single list of cities as a point of reference, there is greater predictability in the process. For those who feel that it is more important to provide rules for areas with larger population, this approach offers such rules while limiting rules on strings that match smaller (to some, less significant) cities and towns. From another perspective larger cities do not inherently have different rights than smaller cities, a point which is particularly important for smaller countries in which places defined as cities may have 10,000 inhabitants or fewer. For example, Paris, France does not inherently have greater rights to the term "Paris" than the city of Paris, Texas. Another Work Track member pointed out that a very small city could have particular cultural and historical significance and be considered more important by some than a larger city with the same name. Some Work Track members considered this type of standard to be arbitrary and without sufficient clear basis.

In discussing concerns about using arbitrary measures as a basis for protections/restrictions, one Work Track member discussed an example from an earlier policy development process. In the policy development process that led to the 2012 AGB the protection of famous and well-known trademarks, a legal right explicitly recognised by the Paris Convention for the Protection of Industrial Property (to which 177 countries are a member), was ultimately not adopted by the GNSO or implemented in the AGB. The protection of famous trademarks through a 'Globally Protected Marks List' (often referred to then as 'GPML') was rejected due to equivalent concerns about the use of quantitative, geographic eligibility criteria for protection. According to the Work Track member, those involved in the PDP at that time found it challenging to determine the criteria for identifying a mark as famous, and thus eligible to be included on the GPML. The inherently arbitrary nature of quantitative, geographical criteria (e.g., the mark being protected by registration in a specified number of jurisdictions in each of the five ICANN regions) was vigorously debated at ICANN35 in June 2009. At United States Congressional oversight hearings on new gTLDs in May 2011, ICANN's then Senior Vice President for Stakeholder Relations cited concerns expressed by WIPO as to the mechanics of such a list and opposition from the GAC as chief obstacles to its implementation in new gTLD policy. He concluded: "The time, commitment and resources (from ICANN and the community) needed to create and maintain such a list would provide only marginal benefits as such a list would apply to only a small number of names and only for identical matches of those names."[6]

One Work Track member stated that if this proposal was adopted, there would need to be a procedure for revising the list of cities and a repository of exceptions to the list. According to the Work Track member, there are small places of significance for tourism, religious, cultural or historical reasons. From this perspective, these terms should require support/non-objection.

One Work Track member expressed that a standard focused on the number of residents would favor larger countries with larger cities. Small island nations with smaller total populations and smaller cities would be disadvantaged.

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[6] https://www.icann.org/en/system/files/files/pritz-to-goodlatte-07jun11-en.pdf

Commented [100]: Jorge Cancio: suggested adding "something which is especially important for the more than 100 small states worldwide, where "cities" may count with 10'000 or even less inhabitants."

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From the perspective that national laws provide governments the right to provide support/non-objection, one Work Track member stated that some national laws provide this right regardless of a city's size, therefore a rule based on relative size is not consistent with these laws.

- **Objections-Based System**: Use a system of objections for all parties to raise issues with an application. In this proposal, the concept of affirmative non-objection is eliminated from the process. Applicants may include evidence of support in an application. Parties, including governments, may file objections to applications. Objections by all parties must refer to international law, domestic law, ISO standards or other objective measures that are relevant to the applicant and the application. Under this proposal, applicants take responsibility for ensuring that they submit applications which address those points and avoid an objection. Objectors pay to make the objection and submit any objections within appropriate time frames. Evaluators take objections into account in the evaluation and may discard objections. Variant: No geographic name gets priority unless it is a name recognized in international law or by some international body of standard setting. No geographic name gets priority if it is held by more than one geographic location.

  In support of this proposal, some Work Track members have expressed that this process would be more fair and predictable for applicants because it uses objective standards for evaluation. Some Work Track members have expressed that it would be a significant burden on governments, in particular those in developing countries, to monitor which strings are being applied for, especially because many city governments are not aware of ICANN or the new gTLD process. Some Work Track members feel that this proposal does not take into account public policy concerns that are not codified in law. Some Work Track members expressed that this proposal increases the risks for conflict between interested parties. At the stage of objections, applicants will have invested significantly in their applications and relevant public authorities will not have been sufficiently involved until up that time, which may increase the probability of an objection against the application.
  One Work Track members stated that requiring objectors to pay to make an objection serves as a significant restriction on the legitimate concerns of third parties regarding the application.

- **Priority for Small Cities:** Give small cities, towns, and geographic communities the first right to apply for a TLD associated with the place. It was noted that in the 2012 round an application could be both a community application and a geographic application. Community applications in contention that passed the Community Priority Evaluation received priority. Community Priority Evaluation and Community Objections are being addressed in Work Track 3.

- **Each Country Decides**: Allow each country to decide what it considers to be a city within its own country based on national laws and policies. If a location is determined to be a city by the country, applicant must obtain support/non-objection from the government.

Commented [102]: Christopher Wilkinson: This paragraph contains the remarkable suggestion that 'Objectors pay to make the objection ... ' Needless to say that would be widely regarded as an extraordinary restriction on the legitimate concerns of third parties regarding the application.

Commented [103]: suggested edit.

Commented [104]: Jorge Cancio: suggested adding ", in particular from developing countries,"

Commented [105]: edited.

Commented [106]: Jorge Cancio: suggested adding "In addition, this proposal increases the risks for conflict between interested parties as applicants will - at the stage of objections - have invested largely in their applications and relevant public authorities will not been involved necessarily until up that time, which may increase the probability of an objection vis-à-vis an application unknown to them. "

Commented [107]: suggested edit.

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- Variant: Each country may designate a set number of cities that they consider to be particularly significant. The resulting list of cities is subject to support/non-objection by the relevant governments/public authorities.

- **Reserve "Global" City Names**: Reserve city names that have "global recognition." If a city wants to have a gTLD it can append the applicable country code to the name of the city, so that more than one city with the same name can have a TLD.

- **Map-Based Definition of Cities**: Use some form of standardized map as a basis to determine which locations can be defined as cities.

- Request for Proposals: If more than one applicant is interested in a city name, the responsible public authority holds a Request for Proposals (RFP) to select an applicant to support.

- Increase Knowledge: Rather than adding new rules and restrictions, focus on raising awareness and increasing knowledge among potential applicants about the opportunity to apply for TLDs. This would help to ensure that potential applicants for "city TLDs" can make informed decision about whether to apply for a string. From one perspective, this approach is more consistent with the overall design of the program compared to proposals focused on reservation and/or support/non-objection.

5.3.1.7 Areas of Convergence Related to Cities

Some Work Track members have expressed support for and others have expressed acceptance of the proposal to continue the support/non-objection requirement for capital city names. Work Track members noted that these are a relatively unique set of terms and a limited list of strings. Work Track members noted that further discussion is still needed on the the issue of which languages would be covered by such a requirement.

5.3.2 Sub-National Place Names, Such as Counties, Provinces, or States Listed in ISO 3166-2

For sub-national place names, there is divergence between the 2007 Policy and Implementation in the 2012 Applicant Guidebook. The 2007 Policy anticipated that these strings would be available without any special requirements and did not mention a provision requiring support/non-objection. The 2012 Applicant Guidebook required support/non-objection from relevant governments or public authorities if a string was an exact match of a sub-national place name, such as a county, province, or state listed in ISO 3166-2.

Work Track members identified the following benefits of requiring support/non-objection for these strings:

- There is some level of predictability, because there are specific sources of terms.

- From one perspective, the approach created incentives for applicants and relevant authorities to arrive at mutually accepted solutions.

Work Track members identified the following drawbacks to requiring support/non-objection for these strings:

- From one perspective, this approach creates a lack of predictability for applicants. It may be difficult for applicants to determine where to seek consent from governments.
- From one perspective, there may be tensions between communities associated with regions and the corresponding governments. In this view, a legitimate applicant could be punished or evaluated negatively because a government entity does not agree with the applicant's position or entitlement.
- One case raised was the example of .tata. From one perspective, a large multinational brand needed to obtain support/non-objection from a small province in Morocco that had not expressed interest in establishing a TLD related to that string. For some Work Track members, this is an indication that there is a problem with this provision.

Work Track members noted that it might be helpful to have additional conversations about future treatment of applications where a regional place name is also a country name. For example, Georgia is a country and a state in the United States.

Some Work Track members expressed support for requiring support/non-objection for these strings in subsequent procedures. Other Work Track members expressed concerns about this approach.

One Work Track member put forward a proposal to require support or non-objection from the relevant government or public authority only in cases where the applicant intends to use the TLD in association with the place in question. One Work Track member proposed eliminating protections on this category, stating that it is full of obscurities.

5.3.3 Strings listed as UNESCO Regions or Appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" list.

For strings in this category, there is divergence between the 2007 Policy and the 2012 Applicant Guidebook. The 2007 Policy anticipated that these strings would be available without any special requirements and did not mention a provision requiring support/non-objection. The 2012 Applicant Guidebook required support/non-objection from at least 60% of the respective national governments in the region and no more than one written statement of objection.

Work Track members identified the following benefits of requiring support/non-objection for these strings:

- There is some level of predictability, because there are specific sources of terms.
- From one perspective, the approach created incentives for applicants and relevant authorities to arrive at mutually accepted solutions.

Work Track members identified the following drawbacks to requiring support/non-objection for these strings:

- From one perspective, there may be tensions between communities associated with regions and the corresponding governments. In this view, a legitimate applicant could be punished or evaluated negatively because a government entity does not agree with the applicant's position or entitlement.
- A Work Track member pointed to the case of .africa as an example of a string in this category that had challenges in the 2012 round using the support/non-objection process.

Some Work Track members expressed support for requiring support/non-objection for these strings in subsequent procedures. Other Work Track members expressed concerns about this approach.

5.4 Terms Not Included in the 2012 Applicant Guidebook

The Work Track discussed categories of strings that were not listed as geographic names in the 2012 Applicant Guidebook. Different perspectives were expressed on this issue.

5.4.1 Principles

The Work Track discussed whether principles considered in the context of city names might also be useful in conversations related to non-AGB terms. Some support was expressed for the following:
- In alignment with Principle C from the 2007 GNSO recommendations on new gTLDs, the program should allow for the introduction of new gTLDs.
- In alignment with Principle A from the 2007 GNSO recommendations on new gTLDs, enhance the predictability for all parties.
  - It was suggested by one Work Track member that predictability of timeframes is an essential element of predictability.
- Reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated.
  - Questions were raised about how "conflicts" are defined in this context. Different opinions were expressed about the best way to avoid conflicts. For example, for some, requiring that relevant stakeholders come "to the table" early in the process reduces the chance of conflict. For others, conflicts can be reduced by reducing the number or bases by which conflict can be initiated. Some Work Track members noted that in some cases, it is not a problem for there to be conflicts, if these conflicts help to resolve competing legitimate interests.

Some support was expressed for the principle of simplicity. Some support was expressed for including a principle that policy should comply with international law. From this perspective, any rules that are not legally compliant will lack credibility/legitimacy.

5.4.2 Definition of the Issue

During conversations on this topic, Work Track members referenced cases from the 2012 round where different parties had different perspectives on whether a term was geographic in nature and the resulting process caused uncertainty and costs for parties involved. These include .Thai, .GCC, .PersianGulf, and .Amazon, and .Patagonia. In further discussions, the Work Track tried to identify the issues, if any, that arose in these and other cases in the 2012 round, and attempted to determine if there is a problem that needs to be solved through policy. The Work Track discovered that the definition of the issue can be highly subjective, and therefore it may be difficult to reach agreement on any possible next steps in the discussion.

From one perspective, there were names with geographic meaning that were not covered by the 2012 Applicant Guidebook definitions and rules and that should be included in the Applicant Guidebook as geographic terms in the future. From this perspective, the issue is that the AGB was not sufficiently clear. In this view, it is desirable to create rules for a greater number of strings, because it will create more predictability in the process and reduce conflicts between different parties. As a starting point for discussion, one Work Track member stated that any term that can be considered geographic in nature should receive special protections and be subject to special rules.

From another perspective, the issue in the above referenced cases is one of government overreach. In this view, the rules in the 2012 Applicant Guidebook were clear. Existing mechanisms, such as objections procedures should be used if there is opposition to an application. Further, existing measures discussed elsewhere in this report may be leveraged, such as .Brands making assurances about the use of the string. As a starting point for discussion, one Work Track member expressed that no additional restrictions or preferences should exist that were not included in the 2012 Applicant Guidebook. On the 2012 examples mentioned above, the Work Track member stated that there is no cause of action and no basis for complaints that were made about these applications. From this perspective, the complaints should not have been allowed to go forward.

5.4.3 Boundaries of the Category

For those Work Track members that supported extending rules/protections to addition types of strings, the following categories of strings were mentioned:
- Geographical features, such as mountains and rivers
- Sub-national and regional terms not included in the 2012 AGB
-
- Non-ASCII geographic terms not included in the 2012 AGB
- See section 5.4.6 for discussion of Geographic Indications

In order to better understand the scope and applicability of potential additional categories, the Work Track discussed hypothetical examples. For instance, Work Track members discussed the example of the term "Apache." Some members felt that this was a geographic term because it is associated with a group of people with a distinct culture, tradition, and history that is also linked to geography. From another perspective, a term can only be a geographic name if the term is associated with a specific

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place. Work Track members noted that there is a county in the United States named "Apache" as well as a town in the United States.

In discussion of this example, one Work Track member noted that the United States has legislation protecting against claims that goods or services are produced by Native Americans when they are not. If someone was using .ApacheHelicopter to claim that the Apache Tribe were making helicopters, there there is legislation to address these issues. From this perspective, the example illustrates that such issues can and handled by national or local legislation. In this view, ICANN should not become the international legislator on these sorts of topics.

5.4.4 Arguments For and Against Protections for Non-AGB Terms

Some Work Track members noted that groups of people who identify with a place have a right to be "at the table" in decisions about the use of an associated term. From this perspective, this right is not limited to the categories of geographic names included in the 2012 Applicant Guidebook. For some Work Track members, these rights are particularly important for minority cultures and peoples and indigenous groups associated with a physical place. From this perspective, it is inappropriate for brands or other groups to use names that belong to a particular group of people.

From another perspective, ICANN's mandate is very narrow. It cannot serve as a "supranational" legislator to "fill in the blanks" that some believe local governments have missed in their legislation to protect indigenous rights.

From one point of view, the best way to ensure predictability is to make sure there are explicit guidelines for applicants and that guidelines, policies, and implementation can be applied to any potential application for any kind of geographic term. From this perspective, applicants should, as the default, be given a path to success. The default should not grant rights to other parties to block applications.

One Work Track member provided the opinion that groups of people associated with a geographic feature or region should have an opportunity to apply for a corresponding TLD without facing unnecessary financial and logistical hurdles. For example, Australian aboriginal communities may wish to apply for relevant geographic terms to sell art in Australia and internationally.

In support of fewer restrictions/protections, one Work Track member noted that objections processes could be used to address cases where a substantial number of people associated with a geographic community opposed an application. In this proposal, the objection would have to be supported by a substantial portion of the geographic community described/implicated by the name and there would need to be a stated public policy reason for the objection.

In conversations about potential additional categories of strings, Work Track members discussed scope and applicability of law. Please see sub-section 3 "Law and Public Policy" for additional information about this discussion.

5.4.5 Proposals for Non-AGB Terms

For those who would like to see rules for additional categories of strings, the support/non-objection mechanism was mentioned as a possible path forward.

In addition to this suggestion, some Work Track members raised proposals that were put forward as general process improvements (see Section 6). From the perspective of some Work Track members, these proposals should also be considered under the discussion of non-AGB Terms. While some Work Track members have expressed support for one or more proposals below, other Work Track members have stated that any concerns related to terms not included in the AGB should be handled through existing objections processes. Where appropriate, other existing mechanisms, such as .Brands making assurances about the use of the string, may also be relevant. The following proposals for process changes were raised:

- Advisory Panel: Provide an advisory panel that applicants can contact to assist in identifying if a string is related to a geographic term as well as any applicable governments and/or public authorities. Could be new panel or additional responsibility for Geo Names Panel.
- GAC Member Input on Geographic Sensitivities: Leverage the expertise of GAC members to help applicants determine if a string is related to a geographic term and which governments and/or public authorities would be applicable.
- Repository of Geographic Names: Maintain a list of geographic names reflecting terms that governments consider sensitive and/or important as geographic names. Countries could contribute terms to this repository.
  - Pros:
    - From one perspective, a repository could help a potential applicant identify if a government feels that a term is sensitive due to its geographic nature
    - From one perspective, this tool could be used a reference resource, providing an opportunity for different parties to work together and make sure the application takes into account different perspectives
    - In this view, by promoting early contact between governments and applicants regarding strings that governments consider sensitive, the repository could help prevent later conflicts related to an application
  - Cons:
    - From one perspective, such a resource would be difficult and expensive to maintain
    - In one view, it is unclear what a term being in the repository actually means/implies, and therefore could have a chilling effect on applications.

- - - From one perspective, if there are no associated protections/rules, it is unclear what purpose the repository serves
    - From one perspective, if there are associated protections/rules, there is no basis to allow governments to nominate terms for protection at their discretion absent a clear, justified and appropriate standard
    - From one perspective, there is a risk that once such a resource exists, people will find a use for it, potentially without sufficient basis
- Application Research Requirement: Require that an applicant demonstrate that it has researched whether the applied-for string has a geographic meaning prior to submitting the application.
- Applicant Contact Requirement: If the applied-for string is a geographic term, the applicant is required to contact/consult with the relevant government authority and provide evidence that it has done so.
- Mediation Related to Support/Non-Objection Letter: If government support/non-objection is required for certain applications, provide mediation services to assist if the applicant disagrees with the response received by a government or public authority.
- Support/Non-Objection Deadline: In any circumstance where a letter of support/non-objection is required from a relevant government authority, establish a deadline by which the government must respond to the request. If no response is received, this is taken as non-objection.
- Notice and Opportunity to Object: In this process, the applicant for a string with geographic meaning would need to provide notice to each relevant gov/public authority (RGPA) that the string was being applied for. The application would go forward, but each RGPA would have a defined opportunity to object based on standards we would define and filed through one of the existing objection processes or a variation on an existing process. The right to object would expire after a set period of time. A letter of support or non-objection would not be required. We could have some minimum standard on what constitutes a RGPA, so that applicants would not be contacting every wide spot in the road.

5.4.6 Geographical Indications

The Work Track discussed whether there should be special rules or protections for geographical indications in subsequent procedures.

- Arguments in support of additional rules/protections for geographical indications:
    - One Work Track member noted that Geographical Indications are a a category with clear boundaries. From this perspective, the boundaries of the category can be documented, therefore increasing predictability.
    - Another Work Track member stated that Geographical Indications are an important component of the economy in many regions, and therefore there protection and use affects the livelihoods of many Internet users.
    - Geographic Indications are generally protected by applicable local laws.

- Arguments against additional rules/protections for geographical indications:
  - One Work Track member stated that is the category without clear boundaries. Protections of geographical indications vary significantly from country to country.
  - One Work Track member stated that there is no standard terminology and there are no treaties in relation to geographical indications. There is no overall common basis for protection.
  - The Work Track member stated that to the extent the geographical indications are protected under local law, the protection varies significantly.

6. GENERAL PROPOSALS

Some Work Track members put forward proposals that do not apply specifically to a category of strings or may apply to multiple categories of strings:

- **Advisory Panel:** Provide an advisory panel that applicants could contact to assist in identifying if a string is related to a geographic term. The panel could consult in "hard cases" where it may be unclear to the applicant if the term has geographic significance, especially in those cases not explicitly covered by lists referenced in the AGB. The panel could also help applicants identify which governments and/or public authorities would be applicable. Alternately, the geographic names panel, used to evaluate whether an applied for string was a geographic TLD in the 2012 round, could be made available to advise applicants before they submit applications.
  - From another point of view, the geographic names panel should have a focused mandate and rules should be sufficiently clear that there are no "hard cases."
- **GAC Member Input on Geographic Sensitivities:** 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.
- **Repository of Geographic Names:** Maintain a list of geographic names reflecting terms that governments consider sensitive and/or important as geographic names. Countries could contribute terms to this repository.
- **Confusing Similarity**: If an applicant applies for a string that is similar to a geographic term, the applicant should be required to obtain government support/non-objection. The Work Track member suggested that an applicant might apply for a string that is similar to geographic name, for example .teheran. The Work Track member expressed concern that if the city of Tehran later wanted to apply for .tehran, they might be prevented from doing so if the applied for string was deemed to be confusing similar to the existing string. This proposal seeks to prevent such a scenario.
- **Online Tool for Applicants**: Develop an online tool for prospective applicants into which a user could type the string for which they were considering applying. The tool would indicate whether the string was eligible for delegation and whether there are issues that require further action (e.g. non-objection letter). The tool would not necessarily be definitive because it would not cover all string similarity issues or public interest/ morals questions, but it could serve as a starting point.

- ○ Variant: technical mechanism in the application system that flags if a term is geographic and has special requirements/restrictions.
- **Application Research Requirement**: Require that an applicant demonstrate that it has researched whether the applied-for string has a geographic meaning prior to submitting the application. Potential point of further discussion: Is this requirement envisioned to replace or supplement the evaluation conducted by the existing Geographic Names Panel?
- **Applicant Requirement to Contact Government**: If the applicant is applying for a geographic name, the applicant is required to contact/consult with the relevant government authority and provide evidence that it has done so.
- **Affirmative GAC Consent Required**: Applicants for geographic names should apply to the GAC to receive permission to apply for the string.
- **Government Involvement at Contract Renewal**: Recognize that registry contracts are for a specified period of time. At the end of the contract period, a government entity may have 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. From one perspective, this would allow for worthwhile private investment (maybe a five or ten-year period) and allow review by any public entity after a period of time if they choose to become involved.
- **Mediation Related to Support/Non-Objection Letter**: If government support/non-objection is required for certain applications, provide mediation services to assist if the applicant disagrees with the response received by a government or public authority.
- **Deadline for Support/Non-Objection Letters**: In any circumstance where a letter of support/non-objection is required from a relevant government authority, establish a deadline by which the government must respond to the request. If no response is received, this is taken as non-objection.
  - ○ From one perspective, this may be a burden on governments, particularly governments with limited staffing resources and those that lack knowledge of or experience with ICANN.
  - ○ One Work Track member suggested that if a deadline is enforced, a reminder letter should be sent to the relevant government/public authority prior to the deadline.
  - ○ From one perspective, absent a tacit-approval requirement, there is not sufficient motivation for governments to assign a single point of contact to address issues related to such requests and little incentive to respond in a timely manner.
- **Notice and Opportunity to Object**: In this process, the applicant for a string with geographic meaning would need to provide notice to each relevant gov/public authority (RGPA) that the string was being applied for. The application would go forward, but each RGPA would have a defined opportunity to object based on standards we would define and filed through one of the existing objection processes or a variation on an existing process. The right to object would expire after a set period of time. A letter of support or non-objection would not be required. We could have some minimum standard on what constitutes a RGPA, so that applicants would not be contacting every wide spot in the road.

- **Expand Intended Use Provisions:** Extend the "non-geo use" provision to other existing geo categories.
- **Notice and Opportunity to Object**: Replace the "letter of consent/non-objection" with a "notice and opportunity to object" in some or all cases.
- **Availability of Variations and Translations**: Once a geo-use gTLD is registered, all other variations and translations are unconditionally available for registration
- **Bright-Line Rule on Protected Terms**: A "bright-line" rule that any geographic term that is not explicitly and expressly protected is unprotected (i.e., no objection or non-consent can be used to stop its registration).
- **Awareness Program for Governments and Other Stakeholders**: A heightened awareness program for governments and others regarding the gTLD program so that they will be more likely to seek (or to back) a registration for the relevant geo-name. This could be accompanied by structured supports and advice to maximize the opportunities for future geo-applicants.

g.   *Are there other activities in the community that may serve as a dependency or future input to this topic?*

[This section will be filled in as the WT prepares the Initial Report]

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Commented [115]: Christopher Wilkinson: Reserved Names at the second level: This has not yet been discussed by WT5. However, other Work Tracks have picked up on the AGB provision that any new gTLD Registry could reserve up to 100 names at the second level, and provisionally an additional number provided the latter were released for registration by ICANN accredited Registrars. There would be some problems with these parameters as applied to new Geo-TLDs.
3.7.1 In the case of a large Geo-TLD such as a small US State, a large English county or a Spanish Provincia, reservation of only 100 names is most likely to prove inadequate. The authority concerned and the Registry should be able to decide how many reserved names are required.
3.7.2 Granted that provision for reservation of additional names is a relief, but the requirement to release them only through ICANN accredited Registrars is a potential problem. (1) The original purpose of the 'vertical integration' proposal was that startup Registries could register new second level domains directly, at least up to a certain threshold. Many new Geo-TLDs will be startups. (2) One would need to look into the contemporary geographical scope of ICANN accredited registrars, bearing in mind that some new Geo-TLDs will be from currently under-served regions. (3) Some of the larger ICANN Registrars are themselves now Registries, including likely candidates for some new GTLDs. This situation gives rise to competition concerns as to the neutrality of such accredited Registrars.

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Commented [116]: Reserved names at the second level is not within the scope of WT5.

Commented [117]: Adrian Carballo: An early contact between the applicant and the related parties (government, community, city, etc) should be considered if possible, in this way both parties could express the interest and the concerns and future conflicts may be avoided.

ES: un contacto previo entre aplicante y las partes involucradas (gobiernos, comunidad, etc) debería ser considerado en la medida de lo posible, de esta manera ambas partespueden expresas sus intereses y preocupaciones y se evitarían conflictos futuros.

There has not been a consensus call on the following potential recommendations, but the following text proposed by the Work Track [1]co-leaders based on discussions on the email-thread, calls and chats, has gone through two readings on Work Track calls:

2- character letter-letter combinations country codes (ISO 3166): The starting point is status quo, but narrowing it to geo-names by reserving all 2 letter-letter ASCII combinations for existing and future country codes. 2 character «letter-digit» are not geo-names and are therefore outside the scope of WT5.

> If 2-char letter-digit combinations were to be recommended (WT2 considering- reserved names), would be subject to string similarity review

Country and Territory Names:

3-character country codes (ISO 3166): Maintain the status quo, i.e. not available, and defer broader questions about which entity/entities can apply for these strings and how they may be treated (for instance, as a gTLD, a ccTLD or something else).

Long and short form of country and territory names (ISO 3166): Maintain the status quo, i.e. not available, and defer broader questions about which entity/entities can apply for these strings and how they may be treated (for instance, as a gTLD, a ccTLD or something else).

Conflicts in the first round related with names with geographic significance but not included in those lists detailed in the AGB.
There must be an additional tool like a repository of names for the applicant to be informed and for governments and communities to indicate those names. This does not mean that the string cannot be applied for but that the parties must get in touch previously.

Los conflictos en la primera ronda se relacionaron con nombres con significado geogràfico no incluidos en las listas del AGB. Debe existir un repositorio de nombres donde el aplicante pueda estar informado y para que gobiernos y comunidad puedan agregar estos nombres. Esto no significa que necesariamente No se puedan usar sino que las partes de deben poner en contacto.

Jorge Cancio: suggested adding "Some other members of the working group have clarified that the non-objection letter establishes not a right, but a requirement which is open to any interested parties, be it businesses, brands, community initiatives, etc."