Cross-Community Session 2
Geographic Names at the Top-Level

ICANN59

29 June 2017

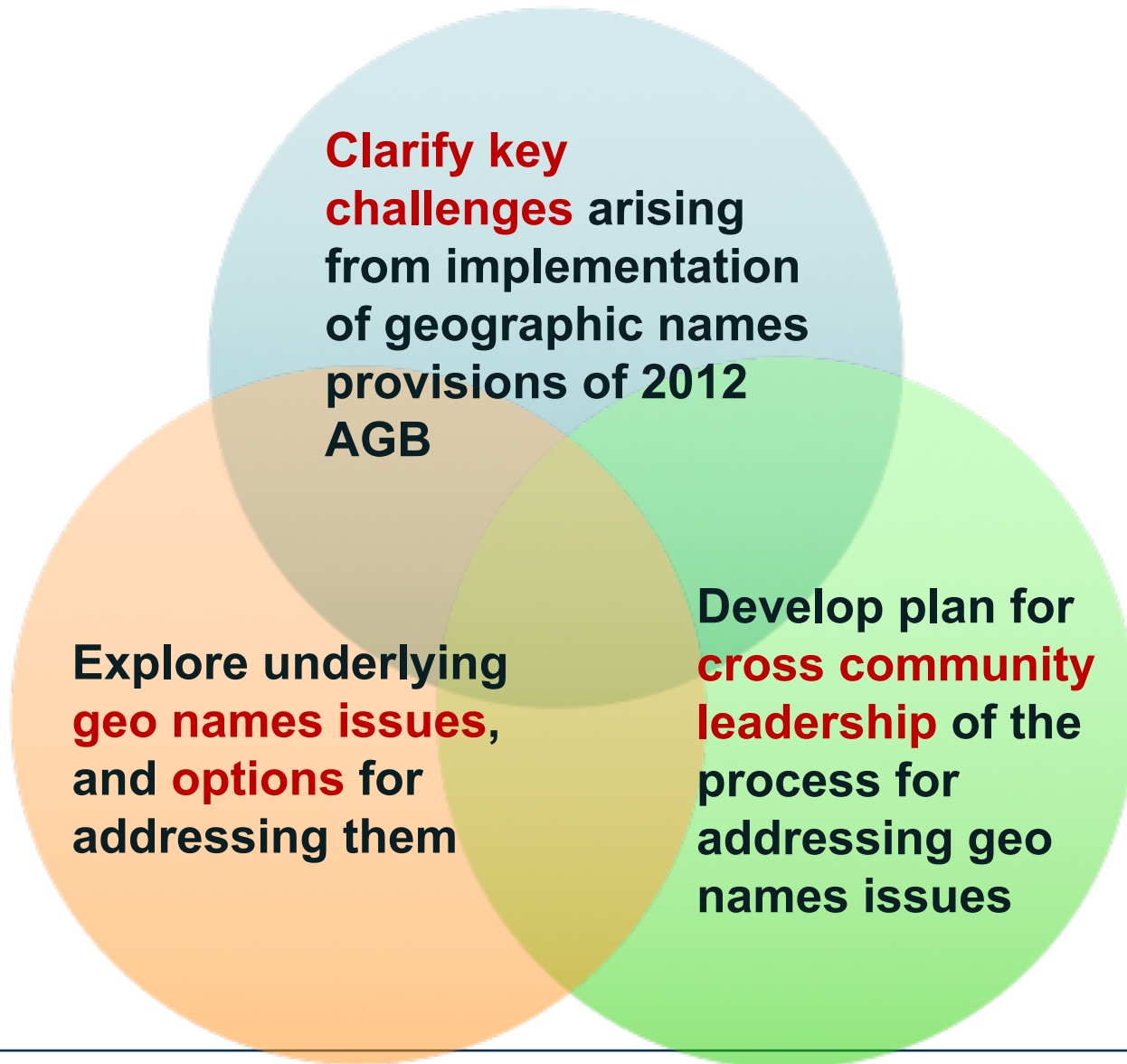ICANN

Welcome

Avri Doria + **Jeff Neuman**

New gTLD
Subsequent Procedures
PDP WG **Co-Chairs**

David Fairman (moderator)
+ **Julia Golomb**

Consensus Building Institute

Goals for Session

Clarify key challenges arising from implementation of geographic names provisions of 2012 AGB

Explore underlying geo names issues, and options for addressing them

Develop plan for cross community leadership of the process for addressing geo names issues

Agenda

1 Welcome, Goals, Agenda and Ground Rules	**2** AGB Challenges on Geo Names	**3** Cross-Community Leadership of the Process
4 Key Geo Names Issues to Address in the PDP	**5** Options for Addressing the Issues	**6** Next Steps

Discussion Ground Rules

Once again, we hope we will all be:

Curious about where the conversation will go

As eager to listen as to speak

Able to suspend the need to be right

Open to hearing things we doubt or disagree with, without immediately reacting

Motivated to suggest possibilities that might work for ourselves and for others

Discussion Ground Rules

Process:

- After each brief presentation, participants respond with questions, comments, concerns and/or suggestions

- Roving mics in the room, staff for on-line participants, 2 minute limit

- Moderator may intervene to clarify whether the intervention is focused on the topic at hand.

- Please do not repeat responses made by others except to endorse very briefly. Moderator may intervene on repetitive responses.

- At several junctures, co-chairs and moderator will aim to summarize key points

AGB Challenges on Geo Names

Agenda Item 2

AGB challenges that stakeholders have named

➢ **Development of AGB guidance on geo names**: some stakeholders believe that in the process of integrating GNSO policy recommendations, GAC advice, and concerns from specific stakeholders, ICANN caused **confusion** and **uncertainty**

➢ **AGB implementation**: some stakeholders believe that ICANN **did not fairly and/or predictably implement the rules** laid out in the AGB in all cases:

    ➢ Some applicants experienced *de facto* **requirement for consent** on non-geo use of city names and region names

    ➢ Some governments experienced **uncertainty about monitoring and enforcement of non-geo use commitment** of gTLDs once registered

AGB challenges (cont.)

- **Unmet interests regarding the AGB's rules**
  - Some governments **wished that AGB non-objection requirement** (and/or early consultation) had **extended** beyond cities to other strings with possible geographic significance
  - Some potential applicants wished that **3-char strings** on the ISO 3166-1 list had been made available for non-geo or geo use (with government non-objection)
  - Many applicants, potential applicants and other stakeholders wished for **greater predictability, transparency and consistency** in ICANN's implementation of the AGB rules

Cross-Community Leadership of the Process

Agenda Item 3

Co-chairs' Proposal for Cross-Community Leadership

- Create **Subsequent Procedures PDP "Work Track 5" on geographic names**, with a clear mandate to address key geo names issues and seek consensus resolution

- Request **joint leadership of Track 5** by 4 representatives, selected by
  - ALAC
  - ccNSO
  - GAC
  - GNSO

- Jointly ensure **strong, balanced cross-community participation** in the process, with a commitment to clear, well structured
  - meetings and other opportunities for dialogue and input
  - drafting processes and documentation
  - consensus seeking

Key Issues to Be Addressed

Agenda Item 4

Key Issues (framed as questions)

➢ What makes a string a "geographic name"?

➢ When can a geographic name
  - Be applied for;
  - Be delegated to a particular applicant?

➢ If there are simultaneous applications for a geographic name, how should this be resolved?

➢ How could "geographic use" be distinguished from "non-geographic use"?

➢ How can commitments to restrict a TLD to non-geographic use be monitored and enforced?

Options for Addressing the Issues

Agenda Item 5

What makes a string a "geographic name"?

<u>2012 AGB:</u>

- **2-char ASCII** on ISO 3166-1 list

- **3-char ASCII** on ISO 3166-1 list

- **Country and territory names** on ISO 3166-1 list and as commonly known

- **Subnational places** on ISO 3166-2 list

- **Capital city names** of countries or territories

- **City names**

- **Regions on UNESCO list** or **UN Statistical Division Regions list**

What makes a string a "geographic name"?

<u>Some other options suggested:</u>

⊙ Use **only non-ICANN, finite, periodically updated global lists** as the set of geographic names

⊙ Specific to the **non-capital cities** category in 2012 AGB, for which there was no referenced list: maintain the category but designate one or more **non-ICANN, finite, periodically updated lists of cities that qualify** (e.g. UN Stats. Div. list of cities with more than 100,000 population; UNESCO World Heritage cities, etc.)

⊙ Create a **single repository of geographic names** into which governments may place **any geographic term**, as long as there is **basis to protect the term under government's existing law**; this list could be maintained by ICANN

What makes a string a "geographic name"?

⊙

When can a geographic name be applied for?

2012 AGB **prohibited** applications for these categories of geo names:

- ⊙ **2-char ASCII** on ISO 3166-1 list (also reserved all other ASCII 2-chars)

- ⊙ **3-char ASCII** on ISO 3166-1 list

- ⊙ **Country and territory names** on ISO 3166-1 list and as commonly known

Some other options suggested:

- ⊙ **All names with possible geographic significance** should be **open** for application except 2-char

- ⊙ **Open 3-char ASCII** for application

- ⊙ Governments should be able to **reserve any string with potential geographic significance** (variant: with basis in law)

When can a geographic name be applied for?

- ⊙

When can a geo name be delegated to a particular applicant?

2012 AGB:

- **Capital cities** + **subnational places** on ISO 3166-2 list by **express non-objection or consent** of government

- **Other cities by non-objection** of government, if intended **use is geographic**

- UNESCO/UN Stats. Div. **regions by 60% of respective regional governments**

- **All other terms of potential geographic significance**: **open without government non-objection requirement**

  Note: GAC may provide Advice on any application

  Note: Rejected applicants have access to ICANN's accountability mechanisms.

When can a geo name be delegated to a particular applicant?

Some other options suggested:

- ⊙ **Expand non-objection requirement** to **non-geo** (generic/brand) **intended uses of non-capital city names**

- ⊙ **Expand non-objection requirement** to other **strings with potential geographic significance**

- ⊙ **Remove non-objection requirement for one or more of**: capital cities, non-capital cities, sub-national places on ISO 3166-2 list

- ⊙ In cases where applicant for geo or generic use believes that there is not a valid basis for government to object, create a **process of mediation and arbitration** within the application process, with **clear criteria** for objections and with **fair, clear, and timebound** steps

- ⊙ **Remove non-objection requirement** for brand TLDs that commit to **brand use only**

When can a geo name be delegated to a particular applicant?

⊙

Resolving simultaneous applications for a geographic name?

2012 AGB:

- **Negotiation** (with or without government consent)

- Where government consent is <u>not</u> required:
    a) **Auction** if negotiation does not resolve the issue

- Where government consent <u>is</u> required:
    a) **Suspension of the applications** if negotiation does not resolve the issue; or
    b) **Use of contention procedures**, if requested by government that has supported multiple applicants

Resolving simultaneous applications for a geographic name?

<u>Some other options suggested:</u>

- ⊙ **Priority** to those who have **government consent**

- ⊙ **Priority** to applicants who propose **geo use** over those who propose generic use

- ⊙ **Negotiation** → **Mediation** → **Arbitration** based on **clear criteria**

Resolving simultaneous applications for a geographic name?

◉

How could "geographic use" be distinguished from "generic use"?

2012 AGB:

- Applicant **declares intended use**

- ICANN **Geographic Names Panel** reviews and determines whether the applied-for gTLD string is a geographic name requiring government support (using AGB section 2.2.1.4.2)

- Applicants for geographic names requiring government support **specify intended use to relevant government(s)**

- Government(s) must state **non-objection** for intended use

- For non-capital city names, if (a) it is clear from applicant statements within the application that the applicant will use the TLD primarily for **purposes associated with the city name**; and (b) the applied-for string is a city name as listed on official city documents, then the string is considered a geographic name

How could "geographic use" be distinguished from "generic use"?

Some other options suggested:

- ⊙ **Assume that this distinction cannot be made**, and therefore all geographic names (as defined by AGB) will have geographic use, regardless of applicant's intent

- ⊙ Explicitly **treat all "generic" words** that are also used as geographic names (e.g. a place named "Albatross" in Canada), that the applicant commits to use as generic, **as generic**

- ⊙ Assume that a **.brand** applying for a string that has possible geographic significance will make only "generic use" of the string, (variant: also require the brand to commit to generic use)

- ⊙ Allow applicants to make **"geo Public Interest Commitments"** (geo-PICs), with binding commitments to non-geographic use only (including enforceability on second-level registrants)

- ⊙ Create a set of **second-level "reserved strings" for geo TLDs** that can only be used by governments (e.g. ".police.geoname," ".mayor.geoname," etc.)

How could "geographic use" be distinguished from "generic use"?

- ⊙

How could commitments to restrict a TLD to non-geographic use be monitored + enforced?

2012 AGB:

- Government or other geographically-identified "harmed established institution" may bring its claim to **ICANN Contract Compliance**

- Government or other geographically-identified "harmed established institution" may use **Registry Restrictions Dispute Resolution Procedure** to claim gTLD registry operator violated terms of Registry Agreement, including commitment to non-geographic use

- Government that has supported an application for non-geo use of a capital city string or sub-national place string listed in ISO 3166-2, and is in dispute with a registry operator may obtain a legally binding **order from a court in its jurisdiction to stop harm**; ICANN will comply

How could commitments to restrict a TLD to non-geographic use be monitored + enforced?

<u>Some other options suggested:</u>

- gTLD operator makes **geo-PIC**, with **terms enforceable in registry agreement** and **transferrable to registrars and registrants**

- Governments and/or ICANN use "**watch services**" to monitor registration of second level domains under geo gTLD(s) of interest

How could commitments to restrict a TLD to non-geographic use be monitored + enforced?

⊙

Next Steps

Agenda Item 6

Opportunities for further input and participation

- Ongoing opportunity to **comment** on geo names (substance and process) at geo-names-session@icann.org

- PDP co-chairs will engage in dialogue with leaders of ALAC, ccNSO, GAC and GNSO to move forward **on cross community leadership of a process** to resolve geo names issues
  - Goal of developing recommendations for ICANN61, March 2018