

# Geographic Names at the Top Level

ICANN

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This report summarizes the history and background of the geoTLD issue; the goals, process and proceedings of the ICANN59 cross-community public sessions; and CBI's substantive observations and process options for consideration.

## History and Background

**ICANN policy development and advice on the use of geographic names as TLDs:** There is a substantial ICANN history regarding the use of geographic names as top-level domains (geoTLDs).<sup>1</sup> During the early development of the Internet in the mid-1980s, Jon Postel at ARPA established the use of the ISO 3166-1 list of two-letter country codes as the source for country-code TLDs (ccTLDs) in countries outside the US. In the first and second rounds of TLD expansion in 2000 and 2003, geoTLDs were not expressly prohibited, and two were created (.asia and .cat).

In the process of establishing the Applicant Guidebook (AGB) for the third round of gTLD expansion, during the years 2007-2012, the Generic Names Supporting Organization (GNSO) and the Governmental Advisory Committee (GAC) proposed different guidelines for the use of geographic names, including but not limited to country and territory names.

In 2007, the GNSO Reserved Names Working Group recommended that – with the sole exception of all two-character TLDs, which were reserved for ccTLDs – geographic names should not be excluded, but that governmental interests be protected via challenge mechanisms in the application process. This recommendation was adopted by the GNSO-led Policy Development Process (PDP) on the Introduction of New Generic Top-Level Domains.

In the same year, the GAC provided advice in the form of Principles Regarding New gTLDs. Among those principles was a statement that “ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.” The GAC Principles also advised against creating any new 2-letter gTLDs, to avoid confusion with the existing and reserved ccTLDs.

**Development of guidance on geoTLDs for third gTLD expansion round:** Over the next five years, the ICANN Board, staff, and SOACs, particularly GNSO and the GAC, engaged in a series of revisions to the draft guidance on the use of names with geographic significance. Initial AGB drafts did not exclude all country and territory names, but did require

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<sup>1</sup> This brief summary is drawn from “Cross-Community Working Group -Framework for use of Country and Territory Names as TLDs (CWG - UCTN), Final Paper, June 2017,” Annex B; GNSO Subsequent Procedures PDP, “Geographic Names at the Top Level, Webinar Background Paper, 20 April 2017,” and GAC, “GAC and Geographic Names at the Top Level,” June 2017.

government support for applicants seeking to use country or territory names; they also envisioned the possibility that other names with geographic significance could be used, with non-objection by government authorities. In 2009, the GAC advised the Board that all country and territory names, representations and abbreviations should be excluded.

In the final 2012 version of the AGB, all country and territory names, representations and abbreviations were excluded. Capital city names (included in the ISO 3166-1 list), sub-national jurisdiction names (included in the ISO 3166-2 list), and regional names (included in the UNESCO or UN Statistical Office lists) were permitted only if the applicant demonstrated relevant governmental support or non-objection. Non-capital city names (for which no list was referenced) required government non-objection if the applicant intended to make geographic (not generic) use of the name. Other names with potential geographic significance were allowed without a requirement for governmental consent or non-objection. The full guidance can be found in AGB Section 2.2.1.4.

**Challenges in implementing the AGB guidance on geoTLDs:** In the 2012 round of the New gTLD Program, 63 applications fell within the Applicant Guidebook criteria for a geographic name, 56 of which had acceptable documentation of support or non-objection from the relevant governmental authority. In addition, 18 strings were the subject of one or more GAC Early Warnings that mentioned concerns related to the geographic nature of the string. Some of the strings that were the focus of GAC early warnings did not appear to correspond to any of the geographic term definitions or lists in the AGB. Among those which the Geographic Names Review Panel identified as needing governmental non-objection, there were several instances where applicants stated that the intended use was either brand-specific or otherwise generic (i.e. intended to be used in a non-geographic sense).

Some of the contested TLD applications whose strings had potential geographic significance were permitted to move forward; some were only permitted where an arrangement could be reached with the government(s) in question; and others were either withdrawn or are still the subject of dispute.

In the process of seeking to resolve concerns about these contested applications, confusion arose over

- the rationale and process for governments to provide or withhold non-objection with regard to applicants seeking to make generic use of strings (.bar, .spa, .africa);
- the basis for determining whether an applicant's string should be considered to be a geo name as defined in the AGB (.amazon, .patagonia);
- use of ICANN dispute resolution procedures and other means for attempting to resolve disputes.

**Ongoing ICANN deliberation and policy development:** Within the ICANN community there have been ongoing efforts, with varied focus and scope, to resolve outstanding questions regarding future applications for geoTLDs. The Cross-Community Working Group: Framework for Use of Country and Territory Names as TLDs (CWG-UCTN), jointly chartered by the ccNSO and GNSO, recently concluded without reaching agreement. GAC continues to provide advice on the use of geographic terms (or strings) as domains, including geoTLDs. The current GNSO New gTLD Subsequent Procedures PDP (SP PDP) is explicitly chartered to produce policy recommendations on geoTLDs.

GNSO tasked the SP PDP to review and recommend possible changes to GNSO principles, recommendations, and implementation guidance included in the 2007 GNSO PDP Final Report on the Introduction of Generic Top-Level Domains. The topic of geographic names at the top level is within the scope of work for this PDP as described in the PDP Working Group's Final Issue Report and WG charter, and therefore should be resolved in order for the PDP to meet its objectives.

**Addressing geoTLD issues through the GNSO Subsequent Procedures PDP:** In this context, the PDP Working Group, led by co-chairs Avri Doria and Jeff Neuman, is seeking to facilitate a dialogue that allows the full ICANN community to collaborate, understand the various needs, and discuss proposals to revise the current AGB guidance on geoTLDs.

The rationale for seeking broad and deep community input is clear: without consensus for change, there is a high risk of continued confusion and disputes, with unpredictable results. Therefore, the co-chairs are seeking to consolidate work and collaborate with the ICANN community to reach a consensus solution on the issue of geoTLDs.

In response to the diversity of views within the ICANN community on the topic of geoTLDs, the range of initiatives related to this topic in the ICANN community, and the complexity of the subject matter, the PDP Working Group leadership team organized the following activities to facilitate a community-wide dialogue on geoTLDs to feed into the SP PDP:

- April 25, 2017 - Two **webinar sessions** to explore different ideas and seek common ground on the topic of geoTLDs, as a pre-cursor to ICANN59 cross-community sessions ([view webinar materials](#)).
- June 27 and 29, 2017 - Two **cross-community sessions** at ICANN59 in Johannesburg, to work through the ideas presented in the webinars and seek common ground on a way forward (view [Session 1 materials](#) and [Session 2 materials](#)).

The PDP Working Group aims to create a fair, predictable process for allocating strings that match geographically significant terms. The co-chairs aim to ensure that all voices are heard as policy recommendations are developed for geographic names. To this end, the co-chairs engaged the Consensus Building Institute (CBI), a non-profit collaboration and dispute resolution organization, to provide independent, third-party neutral

facilitation to assist in preparing and facilitating the two Johannesburg ICANN59 cross-community sessions on geoTLDs. The goals of the cross-community sessions were to i) clarify key geoTLD policy issues, ii) build a shared understanding of community interests and concerns, iii) develop elements of a broadly-supported solution for geographic names in subsequent New gTLD procedures, and iv) clarify the process post-Johannesburg for addressing and resolving outstanding issues.

## **ICANN59 Cross-Community Public Sessions**

### **Pre-Meeting Interviews**

In advance of ICANN59, CBI facilitators David Fairman and Julia Golomb conducted 12 interviews with 14 members of the ICANN community who expressed diverse interests and concerns with regard to geoTLDs. Several of the interviewees had presented during the April 25 webinar sessions on geoTLDs. The PDP co-chairs referred the facilitators to a diverse group of interviewees, in an effort to represent a broad spectrum of interests and perspectives. The facilitators developed the interview questions in advance, with input from ICANN staff and the PDP co-chairs. The questions served as a guide, with some interviewees focusing on only a few questions. Interviews focused on drawing out the interviewee's interests and concerns regarding ICANN's current policy and practice on geoTLDs, including what is currently working; areas in need of improvement or clarification; significant areas of disagreement; areas of potential agreement; and process suggestions for the ICANN59 cross-community sessions. Interviews were conducted by phone or Skype on a non-attribution basis to foster candor and support preparation for the cross-community sessions. A list of the interviewees and the interview protocol is included in the appendices.

### **Overview: Cross-Community Sessions and Informal Meetings**

During ICANN59, the PDP Working Group co-chairs led two cross-community sessions on geoTLDs, moderated by CBI facilitator David Fairman. The facilitators used input from the interviews to design the first ICANN59 session, in collaboration with the PDP Working Group co-chairs. CBI also created a preliminary design for the second session at ICANN59.

Between the two sessions, Fairman and Golomb held a full day of informal private and open-table meetings with more than 30 stakeholders from a broad range of backgrounds, perspectives and roles within the ICANN community. The objective of the Wednesday meetings was to i) solicit feedback on the content and process of Session 1, ii) receive input on the proposed content and process for Session 2, and iii) consider process recommendations for moving forward on the issue of geoTLDs beyond ICANN59. The design of the second session at ICANN59 reflected this input.

## Cross-Community Session 1 on GeoTLDs – June 27, 2017

At the first cross-community session on geoTLDs, moderated by David Fairman, the PDP Working Group co-chairs provided a brief history of the ICANN policy on geoTLDs and outlined GNSO's New gTLD Subsequent Procedures PDP, including the process for addressing policy issues related to geoTLDs. They identified several key criteria to guide the PDP's work on geoTLDs (see box at right).

### Key criteria to consider:

- Legal Protections
- National Interests
- Predictability
- Competition + Choice
- Public Interest

The facilitator presented CBI's understanding of key stakeholder interests and concerns regarding geoTLDs (see below).

### Stakeholder Interests and Concerns (as presented by D. Fairman)

#### Governments

- Protect **national identity** and important **subnational** places
- **Avoid confusion** between government/national TLDs and gTLDs
- Maintain **consent/non-objection authority** on important strings

#### Country-Code TLDs (ccTLDs)

- **Avoid confusion** with ccTLDs
- Maintain **market for ccTLDs**

#### geoTLDs (current and potential)

- Expand range of **potentially available geo names** to support geographically identified groups and uses
- Maintain **positive relationships with governments**
- Ensure a **clear, fair, predictable and timely decision-making process**

#### Generic TLDs (gTLDs)

- Expand **range of potentially available strings** that could be valuable for non-geographic commercial and non-commercial users
- Ensure a **clear, fair, predictable and timely decision making process**

#### Brand TLDs

- **Enable, protect and use strings** that support brand identity, including those that coincidentally match geographically significant terms
- Ensure a **clear, fair, predictable and timely decision making process**

The Co-Chairs then presented a “strawperson” set of options for addressing concerns about geoTLDs, intended as a starting point for discussion. From past ICANN community conversations on geoTLDs, and as evidenced by the April SP PDP geoTLDs webinars, there are divergent views within the community on how geographic names at the top-level

should be addressed. The co-chairs wanted the community to examine and give feedback on a set of options that incorporated several of the proposals and observations from the April webinars. To this end, they developed a strawperson that melded ideas and concepts presented in the webinars. The strawperson was not the co-chairs' proposal, but rather a document intended to promote conversation (see below).

### **Main Components of Strawperson (as presented by co-chairs)**

#### **Unchanged Elements from 2012 AGB**

- 2-char ASCII not allowed
- Country and territory names (on ISO lists) not allowed
- Capital city names of countries or territories require support or non-objection
- City names used in geographic capacity require support or non-objection
- UNESCO regions require support or non-objection from at least 60% of respective national governments

#### **These elements of the 2012 AGB would change:**

Applications for all three character strings (including those that match ISO 3166-1 alpha-3 codes) would be allowed

- *Unless* the applicant desires to use the three-character string that matches one contained in the ISO 3166-1 alpha-3 code in its geographic capacity.
- *If* the string is contained within the Repository of Geographic Names ("RGN" described subsequently), then provisions related to the RGN apply.
- Applications for strings that exactly match a sub-national place name on the ISO 3166-2 list (county, province, state) would be allowed
- *Unless* the applicant desires to use the string in its geographic capacity; in which case, the process set forth in Section 2.2.1.4.2 of the Applicant Guidebook would apply.
- *If* the string is contained within the RGN (described subsequently), then provisions related to the RGN apply.

#### **Repository of Geographical Names (RGN)**

- Any government can add a term as long as there is basis to protect under government's existing law.
- Applicants would consult RGN prior to applying.
- If there is an exact match and applicants intend to:
  - **Use geographically** - Must get letter of consent/non-objection
  - **Not use geographically** - Get letter of consent/non-objection or submit a Geo-PIC (states that Applicant will not use TLD in a manner that falsely suggests to the public that connection exists with geo term. Geo-PIC included in Registry Agreement and enforceable by Contractual Compliance and via post-delegation DRP).

*If government believes Geo-PIC is inadequate:*

1. **Formal mediation** (involving ICANN as observer) to seek additional or different measures, which could result in amendments to application.
2. **If agreement cannot be reached**, hearing from a geographic names panel of experts to:
  - Determine if proposed use may mislead public to assume connection between TLD and geo term
  - Recommend any additional measures to address concerns
  - **Absent extraordinary circumstances, additional measures shall not include blocking the TLD's delegation.**

Participants then had the opportunity to respond to the following questions. Please note that the points listed below after each question are not meant as a full transcript, which is available [here](#). They are the facilitators' summary, in some cases combining similar comments made by several participants.

### 1. What are the primary strengths of the strawperson?

*Key participant input:*

- Useful as a conversation starter;
- Attempts to balance interests and suggests some opportunities for compromise;
- Maintains some important elements of the Applicant Guidebook;
- Attempts to introduce and maintain predictability and certainty in the process;
- Grounded in an existing legal framework;
- Distinguishes between geographic and non-geographic use.

### 2. What elements of the strawperson seem unclear or problematic?

*Key participant input:*

- Some participants questioned why the issue of geoTLDs is being reopened. They asked how significant or widespread the challenges of implementing the AGB guidance on geoTLDs had been since 2012.
  - It was noted that some applicants for geoTLDs who wanted to make geographic use of the term for their communities had been quite comfortable working with government authorities to secure non-objection.
- Some felt that in order to reconcile interests and concerns on geoTLDs, it is critical to balance governmental authority, responsibility, and legitimacy with applicant opportunity and predictability.
  - Some participants think that some elements of the strawman (such as the need to generate lists of names for the repository and to monitor applicant geoPICs) would place an increased burden on governments.



- There are unanswered questions about how several elements of the strawman could be implemented:
  - On the definition of “geographic names,” even the ISO 3166 lists are not static, because countries are still being created and occasionally renamed. There is a risk associated with use as a geoTLD of any reserved term on these lists: the term would then be lost to a future national government that might have wanted to use that term to identify itself.
  - There should be early contact between potential applicants for names that could have geographic significance and relevant authorities. This should ideally happen in advance of an application. However, early contact would require clarity about what terms could have geographic significance and who the relevant authorities would be for each such term.
  - The need for clarity about which terms have geographic significance raised questions about the strawman element called “repository of geographic names (RGN)” ; some participants questioned whether it would be feasible or advisable for ICANN to maintain it and fund its management. It was also noted that multiple governments could deposit the same name in the repository, creating ambiguity about who has authority over the name.
  - With regard to the “Geo Public Interest Commitment” (geoPIC) element, concerns were raised that adherence to such commitments by registries would be hard to monitor. There is both legal and territorial ambiguity around the definition of “geographic use,” which seems challenging to manage through either a review of applications or a dispute resolution process.
  - As a related point, it was noted that even if the TLD is generic, second-level domain registrants could make confusing use of the TLD as a *de facto* geographic term. Such second-level use could be difficult to police, either by the registry or by relevant government authorities.
  - Concerns about the dispute resolution element focused on how it would operate, what authority it would have, and whether governments and applicants would accept it. Another viewpoint expressed was that a government veto would be simpler and more effective for dispute resolution.

**3. In light of responses to the first two questions, what could be done to make the strawperson more responsive to the full range of interests and concerns that have been expressed?**

*Key participant input:*

- Some participants expressed the view that the strawperson was not particularly helpful as a starting point for cross-community discussion. They noted that there was a long history of concern in the ICANN community about the use of geographic names as TLDs, and substantial previous advice by the GAC and policy development effort by ccNSO as well as GNSO on the geo names issue. Rather than continue working with the strawman, it was suggested to set aside the strawperson and begin by developing a crisp problem statement, in an effort to establish a shared understanding of the issues.
- Other participants stressed the importance of reviewing the existing legal framework for protection of geographic names. In their view, ICANN should not create new rights in geographic names beyond existing legal regimes, and should be careful to balance the full range of interests and concerns, including those of applicants who seek to make generic use of terms that might also have geographic significance.
- Whatever the approach taken to the geoTLD issue, it must clearly differentiate between country names, territory names, and country codes.

**4. How can the PDP process on these issues be managed to maximize the chances for community consensus?**

*Key participant input:*

- Bring all of the GNSOs and the ICANN stakeholder interests they represent to the table, including the ccNSO, GAC, and ALAC, as well as GNSO.

**Cross-Community Session 2 on GeoTLDs – June 29, 2017**

The objectives of the second cross-community session on geoTLDs were to

- i) clarify key challenges arising from implementation of geographic names provisions of 2012 AGB;
- ii) develop a plan for cross community leadership of the process for addressing geo names issues; and
- iii) explore underlying geo names issues and options for addressing them.

At the session, David Fairman presented his understanding of 2012 AGB challenges with regard to geoTLDs, including development of AGB guidance on geoTLDs, AGB implementation, and unmet interests regarding the AGB's rules. Fairman's presentation on 2012 AGB geoTLD challenges was based on stakeholder interviews conducted in advance of ICANN59, participant comments during the first cross-community session, and a day of conversations between CBI and more than thirty stakeholders on the Wednesday between the two cross-community sessions. Following Fairman's presentation,

participants had the opportunity to share questions, comments, and responses. The co-chairs then shared a proposal for cross-community leadership of a process to address the geoTLD issue, and finally Fairman and the co-chairs presented on key geoTLD issues to address in the PDP and options for addressing each of the issues.

### Applicant Guidebook Challenges That Stakeholders Have Named

<p><b>Development of AGB guidance on geo names</b></p> <p>Some stakeholders believe that in the process of integrating GNSO policy recommendations, GAC advice, and concerns from specific stakeholders, ICANN caused <b>confusion</b> and <b>uncertainty</b>.</p>
<p><b>AGB implementation</b></p> <p>Some stakeholders believe that ICANN <b>did not fairly and/or predictably implement the rules</b> laid out in the AGB in all cases:</p> <ul style="list-style-type: none"><li>➤ Some applicants experienced <b>de facto requirement for consent</b> on non-geo use of city names and region names</li><li>➤ Some governments experienced <b>uncertainty about monitoring and enforcement of non-geo use commitment</b> of gTLDs once registered</li></ul>
<p><b>Unmet interests regarding the AGB's rules</b></p> <ul style="list-style-type: none"><li>• Some governments <b>wished that AGB non-objection requirement</b> (and/or early consultation) had <b>extended</b> beyond cities to other strings with possible geographic significance</li><li>• Some potential applicants wished that <b>3-char strings</b> on the ISO 3166-1 list had been made available for non-geo or geo use (with government non-objection)</li><li>• Many applicants, potential applicants and other stakeholders wished for <b>greater predictability, transparency and consistency</b> in ICANN's implementation of the AGB rules</li></ul>

### Participant Input - AGB Challenges that Stakeholders Have Named

Participants shared the following input in response to Fairman's presentation on AGB challenges that stakeholders have named.

#### Overarching principles

- It is important for the PDP process to support **principles in ICANN bylaws**, including international law, good faith, fairness and transparency.
- There are also concerns around **freedom of expression**, and the need to ensure that ICANN does not limit freedom of expression with regard to geographic names.

- Any restrictions on use of geographic terms should be **based in international law**.

#### Substantive issues

- Both applicants and governments experienced **challenges** in 2012 AGB implementation.
- Greater **predictability, transparency** and **consistency** in the geoTLD application and decision process would be good.
  - What happens when **two or more applicants** seek the same string?
- Currently there is no consensus regarding country codes, 3-char ISO codes and territory names.
  - The **distinction between the gTLD** and **ccTLD** space is currently unclear
  - Applicants for potential **3-char strings** may want to make generic use the 3-char string (e.g. brand acronyms).

#### The ICANN process to address geoTLD issues

- There is a need to distinguish between issues of **substance** and **process** in responding to the geoTLD issue.
- The **framework** for discussing issue should support **equal participation** across the community.
- Should the SP PDP be the **sole responsibility of GNSO** and **solely a GNSO PDP process**?
  - Issues with significant cross-community implications should not be led by GNSO.
  - The GNSO process is and should be **open** to cross-community participation.
- **There is need for a unified forum**. The cross-community working group concluded that its scope wasn't useful and that multiple geoTLD efforts across the community caused the effort to fail.
- On the one hand, there are **known problems and details**; on the other hand, it is **daunting to reinvent the book** (i.e. the AGB).
  - The process needs to look at **concrete examples** of geoTLD issues, to ensure that it is addressing the main challenges.

#### **Co-Chairs' Proposal for Cross-Community Leadership**

The Co-Chairs shared the following proposal for moving forward on the geoTLD issue with cross-community leadership:

1. Create **Subsequent Procedures PDP "Work Track 5" on geographic names**, with a clear mandate to address key geo names issues and seek consensus resolution
2. Request **joint leadership of Track 5** by 4 representatives, selected by
  - ALAC
  - ccNSO

- GAC
  - GNSO
3. 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

### Participant Input - Co-Chairs' Proposal for Cross-Community Leadership

- The proposal gives cause for hope; it is in the spirit of the community.
- A **cross-community led effort** to address these issues **could be a good idea**.
  - However, it is not enough to say that the PDP is open to everyone; the **process needs community ownership**, which this proposal supports.
  - There are still outstanding questions about whether some geo names issues, particularly regarding country and territory names, should be addressed through a cross-community process led by ccNSO.
- There are questions about the **best format, forum, and process** for a cross-community effort, including whether it should be organized as a GNSP PDP, a cross-community working group, or a novel approach, such as a “jointly chartered” PDP or some other mechanism to ensure formal alignment of policy development and advice from all four SOACs on this issue.
- Some non-GNSO stakeholders raised concerns about **GNSO’s commitment to accept consensus recommendations** from a cross-community working group within a GNSO PDP:
  - Is there a commitment that consensus recommendations from a cross-community working group on geoTLDs within the SP PDP would be honored when they go to the PDP Plenary?
  - The GNSO Council would also need to accept consensus recommendations of this working group; the role of the council should not be to filter or review the recommendation, simply to ensure that appropriate processes were followed.
- Overall, it will be **important for the process to reflect cross-community alignment** on i) the overarching mandate and forum, ii) effective and balanced participation, and iii) substantive issues to be addressed.
- Given the importance of the issue and the process, **each SOAC will need further consultations before responding formally** to the co-chairs’ proposed process.

### Key geoTLD Issues to Address in the PDP

*David Fairman highlighted the following key geoTLD issues to address in the PDP. These key issues were surfaced in the April geo names webinar, CBI’s pre-ICANN59 interviews,*

*the first Cross-Community Session, and the day of CBI meetings with stakeholders following the first Cross-Community Session. The Co-Chairs then described how each issue is addressed in the 2012 AGB and Fairman outlined other options that were suggested.*

### **What makes a string a “geographic name”?**

#### 2012 AGB:

- 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

#### Some other options suggested:

- 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

#### Participant Input:

- While the 2012 AGB serves as a starting point, there is need for greater **clarity** regarding what constitutes a term of geographic significance.
- Some participants expressed that **context** should make a difference in defining whether a string is a geo name. If a string will be used in a geographic context, it is a geo name; if a string is not used in a geographic context, it is not a geo name – with the exception of country codes contained on the ISO 3166-1 list.
  - It may be useful to **differentiate between a closed brand and an open registry**, as an open registry cannot control the context in which a string will be used at the second level.
- It may be useful to **differentiate between types of geographic names** (such as political entities, landscape features, etc.) and treat these categories differently.
- Should non-governmental parties be able to submit geographic terms into the **repository**?
- It is important to consider names in local languages and to avoid Anglo-centric definitions of geo names.

### **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)

Participant Input:

- There is general support for reserving all **2-character strings** for existing or future country codes.
- The treatment of **3-character strings** prompted several responses.
  - Some participants expressed support for opening 3-character strings with a government non-objection requirement.
  - It may be useful to make 3-character strings available for closed brands while unavailable for open registry.
- When there is no conflict with national or international law, applicants holding a matching trademark should not face restrictions on the use of geoTLDs (including 3-character strings).
- Additionally, there should not be barriers to delegating a geo name when there is agreement between political authorities and an applicant.

**When can a geographic 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.*

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 time bound steps

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

#### Participant Input:

- Consider extending the governmental non-objection requirement to 3-character codes and geo names.
- It could be useful to address the elements of the non-objection rule that caused difficulty and to develop procedures to ensure that the non-objection mechanism works smoothly for all parties.
  - Some participants expressed that while it can be difficult for applicants to contact governments for **non-objection**, applicants should make a fair effort to do so, as the relevant community should have the opportunity to provide **non-objection** before a TLD is put into permanent use. As such, non-objection is an important mechanism; without it there will be increased conflict.
  - On the other hand, some participants expressed concern that the non-objection requirement creates the potential for government overreach.
- Some participants questioned why geoTLD use by a geographic community should have primacy over use of the same name by a brand.
- If differentiating between contexts of TLD use (brand, open registry, etc.), it would be important to clearly define what constitutes a **brand** (i.e. requires a national trademark) and for the brand to agree to closed use of the TLD.
- How would a multi-party conflict between indigenous people and a government be resolved?

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

##### 2012 AGB:

- Negotiation (with or without government consent)
- Where government consent is not required:
  - a) Auction if negotiation does not resolve the issue
- Where government consent is required:
  - b) Suspension of the applications if negotiation does not resolve the issue; or
  - c) Use of contention procedures, if requested by government that has supported multiple applicants

##### Some other options suggested:

- 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

##### Participant Input:

- It is important for ICANN to resolve competing applications in a way that avoids creating rights that do not exist in the analog world (e.g. trademark rights).



## 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

### 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.)

### Participant Input:

- The context of use impacts whether a TLD is geographic or generic.
- Communication between parties is an important step in determining whether use is geographic or non-geographic; a non-objection mechanism would support this.
- Different countries have different legal rights to city names and other geographic terms.
- How would a registrar or registry monitor and enforce geoPIC compliance?

## How can commitments to restrict a TLD to non-geographic use be monitored and 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

### Some other options suggested:

- 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 geoTLD(s) of interest

### Participant Input:

- Brand use would be straightforward to enforce, as brand TLDs are completely closed and involve a single registrant with a contracted party.
- It could be relatively straightforward to enforce use in instances when a non-objection letter is required, as there is a contractual relationship between a government and an applicant.
  - It could be useful for a contractual agreement with the TLD registrar to outline that the use of a second level domain in any way that breaches the agreement would in turn lead to revocation of the TLD; this creates incentive for applicant to monitor and enforce non-geographic use.
- In other instances, it would be difficult and potentially murky to differentiate between geo and non-geo use without looking at the second level and without looking at content.
  - It is outside of ICANN’s scope to monitor and control online content; nor would governments want to do so.

## Next Steps Following the ICANN59 Cross-Community Sessions

Members of the ICANN community have an ongoing opportunity to **comment** on substance and process related to geo names at [geo-names-session@icann.org](mailto:geo-names-session@icann.org). Additionally, 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 the geo names issues, with the goal of developing recommendations for ICANN61 in March 2018.

## Facilitators' substantive observations and process principles and criteria for consideration

Following are the facilitators' primary observations on the substantive issues and interests regarding geoTLDs, based on our interactions with ICANN stakeholders during the public consultation. We also suggest several process principles and criteria that could guide the creation of a cross-community working group on geoTLD issues, grounded in the Subsequent Procedures PDP, with joint SOAC leadership and accountability.

**Substantively, it may be possible to make wise trades across issues to satisfy the core interests of different constituencies. Without suggesting what package might best satisfy these interests, we want to call attention to a number of ICANN stakeholder interests that are not necessarily in conflict.**

- **ccNSO** members are especially concerned about reserving 2-letter country codes and limiting use of 3-letter country codes to avoid confusion.
- **GAC** members are especially concerned about reserving 2-letter country codes, reservation or non-objection authority over 3-letter country codes, country and territory names, and capital cities. Some governments are also concerned to have non-objection authority over geographic names of high national or cultural significance, while other governments are inclined to allow generic or community use of other geoTLDs without government non-objection.
- **Brands** are especially concerned to have the opportunity for closed use of TLDs that are identical to the brand name and coincidentally are also terms of geographic significance.
- **Geographic community stakeholders** are especially concerned that applicant geographic communities that wish to make use of geo GTLDs have priority over non-geographic applicants.
- **Other gTLD stakeholders** are especially concerned that reservation and non-objection requirements for geographic names do not unduly or arbitrarily limit the number or variety of names available for generic use; especially important for words that are in common non-geographic use and coincidentally are also terms of geographic significance (e.g. .bar, .spa).
- **Many stakeholders** across the community wish strongly for there to be a high degree of clarity and consistency in the rules regarding applications for geoTLDs and procedures for decision making on those applications. Specifically, many stakeholders:
  - are skeptical about the feasibility of using detailed reviews of stated intent and context for individual applications, to determine whether an applicant would be making geographic or generic use of a geo name.
  - are skeptical about the ability of governments or ICANN to ensure non-geographic use of geo names, with the possible exception of closed gTLDs.

- instead, want to have a pre-defined set of geo names that are either reserved or available on a government non-objection basis, potentially in the form of a list or group of lists that are fixed for an application round or other period of time (as already established in the 2012 AGB for several categories of geo strings and names); conversely, any name not listed would not be considered a geo name.
- want to have clear procedures and time frames for non-objection requests and government decisions, with clear criteria that can serve as the basis for governments to object, and clear procedures and time frames for resolution in instances where an applicant seeks review of a government objection that the applicant believes is inconsistent with the agreed criteria

**The process used to address geoTLD issues is also a concern for most stakeholders, because they have different views and interpretations of the manner in which particular SOACs should be leading, should be involved, and/or should have influence or decision making authority over geoTLD issues. We note the following process interests and concerns:**

- **Some ccs and some governments** believe that ccNSO is the appropriate lead for all decisions involving country codes and country names, while others have expressed openness to engaging with the GNSO PDP to ensure that guidance on generic use respects the distinction between these terms and strings and others with potential geographic significance.
- **Some governments** believe that longstanding GAC advice to avoid the use of geographic names as gTLDs should be fully respected by the ICANN board, and that having a GNSO-led PDP address geoTLDs undermines that advice.
- There is a perception among **some non-GNSO community members** that even with a good-faith effort by GNSO leadership to open a GNSO-led PDP to all community members, there will be an imbalance in participation that will lead to disproportionate influence by GNSO stakeholders in the process and its outcomes.
- **Some brands and IP community members** believe that in the absence of a clear international legal basis for governmental authority over the use of geo names, ICANN's internal governance and decision making process over geoTLDs should not give undue deference to governments, and that GNSO is the legitimate lead entity for addressing use of geoTLDs.

**Despite their differences in view, it appears that significant numbers of stakeholders in each of ICANN's SOACs could agree in principle on the following process principles and criteria. These principles and criteria could guide the creation of a cross-community working group under the auspices of the Subsequent Procedures PDP:**

- There are important outstanding questions with regard to geoTLDs that ICANN does need to resolve.

- To the fullest extent possible, those questions should be addressed in a forum that is not only open to the full community, but also ensures effective, balanced representation and voice for all of the SOACs.
- In order to ensure that a consensus reached in this forum is effective in resolving issues and setting ICANN policy, any such consensus should be carried forward through an agreed PDP mechanism to the ICANN Board for final review and approval.
- As with any other PDP, each of the SOACs should maintain its ability to raise concerns formally in the PDP review process.
- The SP PDP co-chairs' proposal for a "geo names" working group with co-leadership from all 4 SOACs, and mechanisms for effective participation and consultation with all interested ICANN stakeholders, appears promising, though there are outstanding concerns about basing the working group within a GNSO-led PDP.
- It may be possible to address outstanding concerns about the grounding of this working group within the GNSO subsequent procedures PDP by generating full clarity and agreement across the SOACs and with the Board on these points:
  - Joint working group leadership by representatives of all 4 SOACs
  - Effective and balanced representation of the full range of community interests and concerns during the working group process
  - Consensus decision making procedures for the working group, ensuring that all SOACs have effective voice and influence in the formulation of the working group's recommendations
  - Clarity about how a consensus recommendation from such a balanced working group would proceed to the Board, including clarity about the roles of the SP PDP co-chairs, GNSO Council, GAC, ccNSO and ALAC in the approval process
  - Clarity about how the set of geoTLD issues will be addressed if the working group does not reach consensus
  - Resolution of any other procedural questions needed to ensure effective cross-community participation in the working group

## Appendix: List of Persons Interviewed

In advance of ICANN59, the Consensus Building InSTITUTE conducted interviews by Skype and telephone individually and in small groups. The list is alphabetized by the interviewees' last names.

1. Phil Corwin and Andrew Mack, Business Constituency Chair
2. Tom Dale and Thomas Schneider, GAC Chair
3. Chris Disspain, ICANN Board Member
4. Sebastien Ducos, geoTLD Chair
5. Heather Forrest, IPC Council Rep & Co-Chair of CCWG-UCTN
6. Chuck Gomes, Former Chair of Reserved Names Working Group in 2007
7. Carlos Gutierrez, Co-chair of CCWG-UCTN, Member of CCT-RT
8. Annebeth Lange, ccNSO, Co-Chair of CCWG-UCTN
9. Paul McGrady, Proponent of Original Geo-PIC
10. Alexander Schubert, Proposed New TLD Applicant
11. Lori Schulman, International Trademark Association
12. Martin Sutton, BRG

## **Appendix: Pre-Meeting Interview Protocol**

### **Introductions**

How have you been involved in the development of ICANN's approach to geo names at the top level to date? In which groups working on this issue have you participated?

### **Issues**

How would you describe ICANN's current policy and practice on geo names at the top level?

From your perspective, what is good and clear in current policy and practice, and what could be improved or clarified?

When you consider the interests and concerns that community members have expressed with regard to geo names at the top level (please see the attached background paper and summary of proposals, and the co-chairs' draft proposal), where do you see the biggest disagreements, and what do you see as potential areas of agreement?

### **Process**

The goals of the Johannesburg sessions are to clarify the issues related to geo names at the top level; to develop widely-supported options that meet community concerns; and to lay out a path to a consensus resolution. What could be done within and between the sessions to help accomplish those goals?

### **Conclusion**

Do you have any other comments or suggestions?