

**I C A N N**  
**ANNUAL GENERAL**

**63**

**BARCELONA**

20-25 October 2018



# Face to Face Sessions: Work Track 5 on Geographic Names at the Top-Level

Work Track 5 Co-Leaders: Olga Cavalli (GAC), Annebeth Lange (ccNSO), Javier Rúa-Jovet (ALAC), Martin Sutton (GNSO)



ICANN63  
20 October 2018

# Agenda

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## **Session 1: 09:00-10:15**

- ⦿ WT5 scope and mandate
- ⦿ Update on WT5 status and next steps
- ⦿ Approach to Initial Report

## **Session 2: 10:30-12:00**

- ⦿ Focused discussion on topics that need additional input at this stage. Participants will pick discussion topics.

## **Session 3: 12:15-13:15**

- ⦿ Discussion of recent Board resolutions

## Session 1: 9:00 – 10:15

- WT5 scope and mandate
- Update on WT5 status and next steps
- Approach to Initial Report

# Welcome

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Facilitators for this session:

- ⦿ Olga Cavalli (GAC co-leader of Work Track 5)
- ⦿ Annebeth Lange (ccNSO co-leader of Work Track 5)
- ⦿ Javier Rúa-Jovet (ALAC co-leader of Work Track 5)
- ⦿ Martin Sutton (GNSO co-leader of Work Track 5)

# About Work Track 5

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- ⦿ Work Track 5 is a sub-team of the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG).
- ⦿ The overall WG is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing 2007 Introduction of New Generic Top-Level Domains policy recommendations.
- ⦿ Work Track 5 seeks to review the existing policy and implementation related to the topic of geographic names at the top level, determine if changes are needed, and recommend revised or new policy or implementation guidance, as appropriate.
- ⦿ Anyone can join Work Track 5 as a member or observer.

# Scope of Work

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The scope of work includes geographic names at the top-level only:

- ◉ Two-character ASCII letter-letter combinations
- ◉ Country and Territory Names (alpha-3 on 3166-1, short and long-form in ISO 3166-1, additional categories in section 2.2.1.4.1 of AGB)
- ◉ Capital cities in ISO 3166-1, city names, sub-national names (e.g., county, province, state in ISO 3166-2)
- ◉ UNESCO regions and names appearing in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings”
- ◉ Other geographic names such as geographic features (rivers, mountains, valleys, lakes, etc.) and culturally significant terms related to geography

# Status and Next Steps

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- ⦿ WT5 has been meeting regularly for nearly a year
- ⦿ Substantive deliberations have taken place on all topics within WT5's scope of work
- ⦿ The Work Track is now considering a draft Initial Report, which includes preliminary recommendations, options, and questions for community input
- ⦿ The Work Track plans to refine the Initial Report over the coming month
- ⦿ Target for publication of the Initial Report – late November 2018
- ⦿ Public comment period will run a minimum of 40 days
- ⦿ During the public comment period, all are encouraged to provide feedback



# Initial Report (1/2)

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High-level structure will be similar to the Initial Report published by the full WG earlier this year. The core of the report will include the following:

- a. *What is the relevant 2007 policy and/or implementation guidance (if any)?*
- b. *How was it implemented in the 2012 round of the New gTLD Program?*
- c. *What are the preliminary recommendations and/or implementation guidelines?*
- d. *What are the options under consideration, along with the associated benefits / drawbacks?*
- e. *What specific questions are the PDP WG seeking feedback on?*
- f. *Deliberations*
- g. *Are there other activities in the community that may serve as a dependency or future input to this topic?*

## Initial Report (2/2)

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- ⦿ As was the case with the Initial Report of the full WG, no consensus calls will be taken prior to publication of the WT5 Initial Report.

Reasons for this approach:

- Taking consensus calls at this stage could have the unintended consequence of locking Work Track members into positions of support or opposition prior to soliciting public comment from the community on those recommendations; and
  - To form such definitive positions at this early of a stage could have the adverse effect of being less open to modifications to those positions as a result of community input.
- ⦿ After a comprehensive review of public comments received on the Work Track 5 Initial Report, the Work Track will deliberate further on the preliminary recommendations.
  - ⦿ The full WG will conduct a formal consensus call on all recommendations before the recommendations are integrated into the Final Report.

# Questions?

## Session 2: 10:30 – 12:00

Focused discussion on topics that need additional input at this stage. Participants will pick discussion topics.

# Objectives

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- ⦿ The Initial Report covers a number of topics related to geographic names at the top level.
- ⦿ Some of these topics may benefit from additional input from the broader community prior to publication of the Initial Report.
- ⦿ In this session, the participants will choose the topics they want to discuss further.
- ⦿ Focus: sharing ideas, proposals, and benefits/drawbacks not yet discussed or identified.
  - If you are a Work Track member who has previously shared your position or idea on a topic, please make space for others to provide input.

# Possible Topics for Discussion

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- ⦿ Alpha-3 code listed in the ISO 3166-1 standard at the top level
- ⦿ Non-capital city names at the top level
- ⦿ Terms not included in the 2012 Applicant Guidebook (“non-AGB terms”) at the top level
- ⦿ Other suggestions?

The group will prioritize topics to discuss.

# Session 2 Annex – Possible Discussion Points for Selected Topics

Discussion of recent Board resolutions

# Alpha-3 Codes Listed in the ISO 3166 Standard

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Possible discussion points:

- ⊙ Perspectives on draft preliminary recommendation #3 to maintain treatment from the 2012 Applicant Guidebook – reserved, unavailable for delegation.
- ⊙ Alternatives raised:
  - Available for delegation to specific parties
  - Available for delegation with support or non-objection of the relevant governments or public authorities
  - Available for delegation to any applicant
- ⊙ To what extent is it appropriate for WT5 to address the following?
  - If available for delegation, would a special process be needed? Under what circumstances?
  - Should these strings be gTLDs, ccTLDs, or something else?



# Non-Capital City Names

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Possible discussion points:

- ⦿ Perspectives on draft preliminary recommendation to maintain treatment from the 2012 Applicant Guidebook - An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if: (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and (b) The applied-for string is a city name as listed on official city documents
- ⦿ Proposals put forward by WT members, benefits and drawbacks of these proposals
- ⦿ “Intended use” provisions more generally: benefits and drawbacks

# Terms Not Included in the 2012 Applicant Guidebook

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Possible discussion points:

- ⦿ Are there any problems that we need to solve with policy/implementation?  
Specific examples?
- ⦿ Should additional types of strings have special treatment/rules in the Applicant Guidebook?
  - If so, which ones and on what basis? Can the scope of the category be effectively established and limited? Boundaries of the category?
  - If not, why not?
  - As opposed to preventative restrictions, would any changes to objections, post delegation mechanisms, contractual requirements, etc. mitigate issues?
- ⦿ To the extent that problems are identified, what treatment/rules would be proportionate?
- ⦿ Proposals put forward by WT members, benefits and drawbacks.

## Session 3: 12:15 – 13:15

Discussion of Recent Board Resolutions

# Objectives

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- ⦿ Review recent Board resolutions related to geographic names at the top level.
- ⦿ Gain insight into WT and community perspectives on takeaways, issues raised, and implications for future policy and implementation.
- ⦿ Resolutions:
  - Further Consideration of .AMAZON Applications (16 Sep 2018):  
<https://www.icann.org/resources/board-material/resolutions-2018-09-16-en#2.d>
  - Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations (3 Oct 2018):  
<https://www.icann.org/resources/board-material/resolutions-2018-10-03-en#1.a>

# Further Consideration of the .AMAZON Applications (1/5)

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*Whereas, in 2012, Amazon EU S.à r.l. ("the Amazon corporation") applied for .AMAZON and two Internationalized Domain Name (IDN) versions of the word 'Amazon' ("the .AMAZON applications"). The .AMAZON applications were the subject of Governmental Advisory Committee (GAC) Early Warnings filed by the governments of Brazil and Peru (with the endorsement of Bolivia, Ecuador and Guyana), which put the Amazon corporation on notice that these governments had a public policy concern about the applied-for strings.*

*Whereas, in July 2013, in the Durban Communiqué, the .AMAZON applications were the subject of consensus GAC Advice that stated that the .AMAZON applications should not proceed. On 14 May 2014, the New gTLD Program Committee accepted that advice and directed ICANN org to not proceed with the .AMAZON applications.*

*Whereas, in October 2015, the Amazon corporation submitted a proposal to the Amazon Cooperation Treaty Organization (ACTO) member states in an attempt to come to a solution that could benefit both parties. This proposal was rejected.*

*Whereas, in July 2017, the Amazon corporation prevailed in an Independent Review Process (IRP) filed in 2016. The IRP declaration recommended that the Board "promptly re-evaluate Amazon's applications" and "make an objective and independent judgment regarding whether there are, in fact, well-founded, merits-based public policy reasons for denying Amazon's applications."*

*Whereas, on 29 October 2017, the Board asked the GAC for additional information regarding the GAC's advice on the .AMAZON applications. In its November 2017 Abu Dhabi Communiqué, the GAC advised the Board to "[c]ontinue facilitating negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation with a view to reaching a mutually acceptable solution to allow for the use of .amazon as a top level domain name."*

# Further Consideration of the .AMAZON Applications (2/5)

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*Whereas, on 4 February 2018, the ICANN Board accepted the GAC advice and directed the ICANN org President and CEO "to facilitate negotiations between the Amazon Cooperation Treaty Organization's (ACTO) member states and the Amazon corporation."*

*Whereas, the Amazon corporation presented the GAC and ACTO with a new proposal in October 2017. After the Amazon corporation submitted a further updated proposal in February 2018, the ACTO member states issued a statement 5 September 2018, declaring that "...[t]he Amazon countries have concluded that the proposal does not constitute an adequate basis to safeguard their immanent rights relating to the delegation of the '.amazon' TLD." The ACTO member states also stated the delegation of .AMAZON "requires consent of the Amazon countries" and that they "have the right to participate in the governance of the '.amazon' TLD."*

*Whereas, the ACTO member states affirmed in October 2017 "...that the name Amazon, in any language, is part of the cultural heritage and identity of the Amazon countries, and that its use as a first level domain name, unless otherwise agreed by the Amazon countries, shall be reserved for the promotion of the interests and rights of the Amazon peoples and their inclusion in the information society."*

*Whereas, the Board is sensitive to and appreciates the ACTO member states work to serve the public interest of the Amazon region, including the promotion and protection of the Amazon region's natural and cultural heritage.*

# Further Consideration of the .AMAZON Applications (3/5)

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*Resolved (2018.09.16.13), the Board directs the ICANN President and CEO or his designee(s), if possible, to provide a proposal to the Board, on the .AMAZON applications to allow the Board to take a decision on the delegation of the strings represented in the .AMAZON applications.*

*Resolved (2018.09.16.14), the ICANN President and CEO or his designee(s), is directed to provide regular and detailed updates to the Board on the status of the .AMAZON applications.*

# Further Consideration of the .AMAZON Applications (4/5)

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## Rationale for Resolution:

*This action supports the ICANN Board's consideration of the outcome of the Independent Review Process (IRP) filed by the Amazon corporation, as well as consideration of advice from the Governmental Advisory Committee as it relates to the .AMAZON applications. The Board is taking this action today to further the possibility of delegation of the .AMAZON applications as contemplated in the declaration of the IRP Panel, while recognizing the public policy issues raised through GAC advice on these applications.*

*The Board takes this action today to support further work that could result in a solution that would allow the .AMAZON applications to move forward in a manner that would align with GAC advice and inputs on this topic.*



# Questions for Discussion: .AMAZON Resolution

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- ⦿ What are the takeaways for this group?
- ⦿ What issues does this raise? Does it raise any problems that this Work Track should seek to solve?
- ⦿ How can we improve policy and implementation for subsequent procedures to address the problems identified?

## Further Consideration of the *Gulf Cooperation Council v. ICANN Independent Review Process Final Declarations (1/6)*

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Whereas, ICANN organization received the Final Declaration as to the merits (Final Declaration) and the Final Declaration As To Costs (Costs Declaration) in the Gulf Cooperation Council (GCC) v. ICANN Independent Review Process (IRP).

Whereas, among other things, the IRP Panel declared that "the GCC is the prevailing Party," and ICANN shall reimburse the GCC its IRP costs. (Final Declaration, pg. 45; Costs Declaration, pg. 6, V.2.)

Whereas, the IRP Panel recommended that the "Board take no further action on the '.persiangulf' gTLD application, and in specific not sign the registry agreement with Asia Green, or any other entity, in relation to the '.persiangulf' gTLD." (Final Declaration, pg. 44, X.2.)

Whereas, in accordance with Article IV, section 3.21 of the applicable version of the Bylaws, the Board considered the Final Declaration and the Costs Declaration at its meeting on 16 March 2017, and determined that further consideration and analysis was needed.

Whereas, at its 15 March 2018 meeting, the Board accepted that the IRP Panel declared the GCC as the prevailing party, directed the President and CEO to take all steps necessary to reimburse the GCC its IRP costs, and directed the Board Accountability Mechanisms Committee (BAMC): (i) to follow the steps required as if the Governmental Advisory Committee(GAC) provided non-consensus advice to the Board pursuant to Module 3.1 (subparagraph II) of the Applicant Guidebook (Guidebook) regarding .PERSIANGULF; (ii) to review and consider the relevant materials related to the .PERSIANGULF matter; and (iii) to provide a recommendation to the Board as to whether or not the application for .PERSIANGULF should proceed. (Resolutions 2018.03.15.12-2018.03.15.14, <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.b.>)

## Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations (2/6)

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Whereas, the BAMC followed the steps pursuant to Module 3.1 (subparagraph II) of the Guidebook by engaging in a dialogue with the concerned members of the GAC regarding .PERSIANGULF, and conducted the requested further review and consideration of the relevant materials.

Whereas, the BAMC has recommended that the Board adopt the portion of the IRP Panel's recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed; the Board agrees.

Whereas, the BAMC has also recommended that the Board not prohibit potential future applications (by any applicant) for .PERSIANGULF given that new rules and criteria might be established for a future gTLD application round that have not been considered; the Board agrees.

Whereas, the BAMC has recommended this action based not only on the IRP Panel's Declaration and the BAMC's extensive review of all relevant materials, but also on its consideration of and commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD; the Board agrees.

Resolved (2018.10.03.01), the Board adopts the portion of the IRP Panel's recommendation that the application for .PERSIANGULF submitted in the current new gTLD round not proceed and directs the President and CEO, or his designee(s), to take all steps necessary to implement this decision.

## Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations (4/6)

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Excerpt from Rationale for Resolution (1/3):

*. . . Under these circumstances, taking the decision to not proceed with the pending .PERSIANGULF application, after reviewing, considering, and discussing the objections raised by the countries and entities representing a large portion of the community most impacted by this proposed gTLD, is in the public interest, is in accordance with the Guidebook provisions that confer upon the Board the discretion to consider individual applications and whether they are in the best interest of the Internet community, and reflects the Board's commitment to ICANN's Mission and core values set forth in the Bylaws, including ensuring that this decision is in the best interest of the Internet community and that it respects the concerns raised by a large portion of the community most impacted by the proposed .PERSIANGULF gTLD.*

*Specifically, Section 5.1 of the Guidebook provides: "ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC advice on New gTLDs or the use of an ICANN accountability mechanism." (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.) Moreover, in applying for the gTLD, the applicant acknowledged and agreed that the Board has the discretion to make such a decision – "Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more gTLDs and to delegate new gTLDs after such approval is entirely at ICANN discretion." (Guidebook, Section 5.1, <https://newgtlds.icann.org/en/applicants/agb>.)*

## Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations (5/6)

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Excerpt from Rationale for Resolution (2/3):

*This decision is also in keeping with ICANN's core values as set forth in the operative Bylaws, in particular those mentioned below, in that it takes into consideration the broad, informed participation of the Internet community and those members most affected, it respects ICANN's accountability mechanisms, and it recognizes the concerns expressed by the countries and entities representing a large portion of the affected community (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>; and similarly reflected in the current Bylaws, <https://www.icann.org/resources/pages/governance/bylaws-en>):*

- ⦿ *Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
- ⦿ *Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*
- ⦿ *Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*
- ⦿ *While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.*

## Further Consideration of the *Gulf Cooperation Council v. ICANN* Independent Review Process Final Declarations (6/6)

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Excerpt from Rationale for Resolution (3/3):

*While the Board strives to follow all the core values in making its decisions, it is also the Board's duty to exercise its independent judgment to determine if certain core values are particularly relevant to a given situation. And, in fact, the operative Bylaws anticipate and acknowledge that ICANN may not be able to comply with all the core values in every decision made and allows for the Board to exercise its judgment in the best interests of the Internet community: "...because [the core values] are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values." (Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>). . .*

# Questions for Discussion: GCC vs. ICANN IRP Final Declaration

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- ⦿ What are the takeaways for this group?
- ⦿ What issues does this raise? Does it raise any problems that this Work Track should seek to solve?
- ⦿ How can we improve policy and implementation for subsequent procedures to address the problems identified?



# AOB

# Engage with ICANN – Thank You and Questions



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