

ICANN | GNSO

Generic Names Supporting Organization

Supplemental Report on the new gTLD Subsequent Procedures Policy Development Process (Work Track 5 on Geographic Names at the Top Level)

Status of This Document

This is a Supplemental Report ([the “Work Track 5 Supplemental Report”](#)) to the Initial Report of the GNSO New gTLD Subsequent Procedures (SubPro) Working Group ([the “Initial Report”](#)), which covers the topic of geographic names at the top level addressed by the Working Group’s Work Track 5. [The Work Track 5 Supplemental Report](#) is being posted for public comment.

Commented [A1]: Staff note: text adjusted slightly for clarity following suggestion from Greg Shatan.

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Preamble

The objective of this Supplemental Report to the Initial Report is to document Work Track 5’s deliberations, [potential options for recommendations](#), and [\(where applicable\)](#) preliminary recommendations, as well as specific questions for which the Work Track is seeking input. These topics have not yet been considered by the SubPro Working Group as a whole.

Commented [A2]: Small adjustment suggested to the text in response to comment from Greg Shatan.

Commented [A3R2]: Greg Shatan: Greg Shatan: Given the Initial nature of this report and the significant divergence on key concepts, we should not over-emphasize the “potential recommendations.”

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The Work Track 5 Supplemental Report is structured similarly to the Initial Report, especially in that it does not contain a “Statement of level of

This Final Report may be translated into different languages; please note that only the English version is authoritative.

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1 consensus for the recommendations presented in the Initial Report.” As
2 with the Initial Report, the Co-Chairs of the Working Group continue to
3 believe that it is premature to measure the level of consensus of Work
4 Track and Working Group members, and that doing so could have the
5 unintended consequence of locking Work Track and Working Group
6 members into positions of support or opposition prior to soliciting public
7 comment from the community on those recommendations. To form such
8 definitive positions at this early a stage could have the adverse effect of
9 being less open to modifications to those positions as a result of
10 community input. The Co-Leaders of Work Track 5 support this approach
11 and, after discussion with Work Track members, have adopted it for Work
12 Track 5.

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14 After a comprehensive review of public comments received on the Work
15 Track 5 Supplemental Report, the Work Track 5 will deliberate further on
16 the preliminary recommendations and potential options for
17 recommendations contained herein. Once that is completed, the full
18 Working Group will deliberate and conduct a formal consensus call on all
19 recommendations before the recommendations are integrated into the
20 Final Report.

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Commented [A4]: Suggested addition from Greg Shatan

21
22 Therefore, comments on any preliminary recommendations, options
23 and/or questions presented are welcomed and encouraged. In addition, in
24 some cases the Working Track was unable to reach preliminary
25 recommendations. The community, therefore, should not limit itself to
26 commenting on only the preliminary recommendations, options, and
27 questions specifically identified in the Work Track 5 Supplemental Report,
28 but on any other items that may not have been adequately addressed. For
29 example, if there is an option you believe the Work Track should consider,
30 but that option is not presented or even discussed in the Work Track 5
31 Supplemental Report, please provide detailed information about that
32 option, along with any background, context and supporting documents.

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1 Executive Summary

1.1 Introduction

On 17 December 2015, the GNSO Council initiated a Policy Development Process and chartered the New gTLD Subsequent Procedures Working Group. The Working Group (WG) was 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 Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007.

As the original policy recommendations adopted by the GNSO Council and ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains," those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council decides to modify those policy recommendations via a policy development process. The Working Group is chartered to develop new policy principles, recommendations, and implementation guidance or to clarify, amend, or replace existing such elements.

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1 A Call for Volunteers to the Working Group (“WG”) was issued on 27 January 2016. The
2 WG held its first meeting on 22 February 2016 and has met regularly since that time.
3 With over 250 members and observers in the SubPro Working Group, and dozens of
4 issues to address regarding the 2012 New gTLD Program, the SubPro Co-Chairs divided
5 up the work into a set of “Overarching Issues” and five Work Tracks. Each of the five
6 work tracks covered a number of related issues with the help of one or more Co-
7 Leaders. The WG issued its first Initial Report, containing the output of the Working
8 Group on the Overarching Issues as well as preliminary recommendations and questions
9 for community feedback from Work Tracks 1-4, on 3 July 2018.

10
11 The topic of geographic names at the top level is one of the issue areas included within
12 the charter of the New gTLD Subsequent Procedures PDP Working Group (PDP) and in
13 order to fulfill the terms of the charter, the PDP needs to address this issue. With the
14 GAC, ccNSO, ALAC, and GNSO all having a strong interest in this topic, the PDP is seeking
15 to ensure that the community’s work related to geographic names at the top level,
16 specific to gTLDs, takes place in a single forum, to avoid the conflicting or contradictory
17 efforts and outcomes that have taken place in the past.

18
19 Therefore, the PDP WG Co-Chairs established a fifth Work Track that focuses exclusively
20 on the topic of geographic names at the top level. It is structured to encourage broad
21 and balanced participation from different parts of the community and includes joint
22 community Work Track leadership. WT5 leadership is coordinated by the PDP WG Co-
23 Chairs [and Work Track Co-Leaders from the ALAC, ccNSO, GAC, and GNSO](#).

24
25 Per the Work Track 5 [Terms of Reference](#) document, Work Track 5’s focus is on
26 developing proposed recommendations regarding geographic names at the top level,
27 including both ASCII and IDN forms. WT5 is tasked with (i) considering what constitutes
28 a geographic name in the specific context of the New gTLD Program; (ii) analyzing (a)
29 2007 GNSO Policy Recommendations on the Introduction of New Generic Top-Level
30 Domains; and (b) relevant rules contained in the 2012 Guidebook, such as the
31 Geographic Names Review procedure, Geographic Names Extended Evaluation, and
32 Objection Procedures; and (iii) taking into account previous work related to geographic
33 names that the community may have completed. Broader discussions about the remit of
34 SOs and ACs, as well as the allocation of second and third level geographic domains are
35 specifically out of scope for this Work Track.

36
37 A Call for Volunteers to the Work Track was issued on 22 October 2017. The Work Track
38 held its first meeting on 15 November 2017 and has met regularly since that time.
39

40 1.2 Preliminary Recommendations

41 As noted in the Preamble, the Work Track 5 Supplemental Report does not contain a
42 “Statement of level of consensus” for the recommendations presented in the Initial

1 Report. In addition, in some circumstances, the WT did not reach agreement on
2 preliminary recommendations and instead, [has](#) provided options for consideration
3 and/or questions to seek input for further deliberations. Similar to the Initial Report,
4 rather than including the set of preliminary recommendations, options, and questions in
5 the Executive Summary, they will be made available in a table in Annex [?].
6

Recommendations Summary

Continue to reserve as unavailable at the top level:

- All two-character letter-letter ASCII combinations
- Alpha-3 code listed in the ISO 3166-1 standard
- Short or long-form name listed in the ISO 3166-1 standard *
- Short or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency
- Separable component of a country name designated on the “Separable Country Names List.” *
- Permutations and transpositions: The Work Track preliminary recommendation suggests clarifying that permutations and transpositions of the following are reserved. This is an adjustment to the 2012 AGB:
 - Long-form name listed in the ISO 3166-1 standard
 - short-form name listed in the ISO 3166-1 standard
 - short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency
 - separable component of a country name designated on the “Separable Country Names List.”
 - Name by which a country is commonly known
 - Permutations and transpositions of alpha-3 code listed in the ISO 3166-1 standard should be allowed

* For these items, translations in any language were reserved in the 2012 AGB. The Work Track has not yet agreed on whether translations should be reserved in the future, and if so, in which languages.

Continue to require a letter of support or non-objection from the relevant governments or public authorities for the following strings at the top level:

- capital city name of any country or territory listed in the ISO 3166-1 standard **
- city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name (see specific language from the 2012 AGB for details)
- An application for any string that is an exact match of a sub-national place name,

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such as a county, province, or state, listed in the ISO 3166-2 standard.

- 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.

** For this item, translations in any language were reserved in the 2012 AGB. The Work Track has not yet agreed on whether translations should require support/non-objection in the future, and if so, in which languages.

1
2 Please see Annex [??] for the consolidated table of preliminary recommendations,
3 options, and questions.

4
5 In addition, this report seeks to record key discussions in the Work Track, including
6 issues raised, proposals put forward, benefits and drawbacks identified, and positions
7 held by Work Track members. Please see Part 2, section f of this report for details. Part
8 2, section f includes discussion of specific categories of terms and also reflects high-level
9 discussion on broader issues, such as:

- Who owns a string? Who has rights to a string? What is the appropriate role of geographic communities and governments? (see f.1.2.1)
- What types of mechanisms should exist to exercise rights or establish roles in the process? (see f.1.2.2)
- What law and policy considerations should be taken into account? Which should take precedent? (see f.1.2.3)
- What is a geographic name for the purposes of the New gTLD Program? Does the intended use of the string matter? (see f.1.2.4)
- What are the key takeaways from the 2012 round for the purposes of future policy development and implementation? (see f.1.2.5)
- Are there alternate methods of consultations or collaborations in the application process that could satisfy all stakeholders? (see f.1.2.6)

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24 During the public comment period, feedback is welcome on all aspects of the report,
25 including ideas, positions, and proposals discussed in Part 2, section f.
26

27 1.3 Deliberations and Community Input

28 The full Working Group formally sought community input through public comment on
29 three occasions: (1) conducted outreach to all ICANN Supporting Organizations (SOs)
30 and Advisory Committees (ACs) as well as GNSO Stakeholder Groups (SGs) and

2 Deliberations of the Working Group

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,⁵ the discussion of Recommendation 5 references language in the Reserved Names Working Group Final Report.⁶ 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 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.

⁵ <https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

⁶ <https://gns0.icann.org/en/issues/new-gtlds/final-report-rn-wg-23may07.htm>

1
2 **b. How was it implemented in the 2012 round of the New gTLD**
3 **Program?**
4

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

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

15 This implementation, described more fully directly below, was substantially different
16 from the GNSO's policy recommendations.⁷
17

18 In the final version of the 2012 Applicant Guidebook, Section 2.2.1.3.2 String
19 Requirements, Part III, 3.1 states, "Applied-for gTLD strings in ASCII must be composed
20 of three or more visually distinct characters. Two- character ASCII strings are not
21 permitted, to avoid conflicting with current and future country codes based on the ISO
22 3166-1 standard."
23

24 According to Section 2.2.1.4.1 Treatment of Country or Territory Names, the following
25 strings are considered country and territory names and were not available in the 2012
26 application round:
27

- 28
- 29 i. it is an alpha-3 code listed in the ISO 3166-1 standard.
 - 30 ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the
31 long-form name in any language.
 - 32 iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the
33 short-form name in any language.
 - 34 iv. it is the short- or long-form name association with a code that has been
35 designated as "exceptionally reserved" by the ISO 3166 Maintenance Agency.
36

⁷ 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%20Backgroud%20Paper.pdf>

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.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

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.⁸

⁸ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a

- 1
- 2 3. An application for any string that is an exact match of a sub-national place name,
- 3 such as a county, province, or state, listed in the ISO 3166-2 standard.
- 4 4. An application for a string listed as a UNESCO region⁹ or appearing on the
- 5 “Composition of macro geographical (continental) regions, geographical sub-
- 6 regions, and selected economic and other groupings” list.¹⁰ In the case of an
- 7 application for a string appearing on either of the lists above, documentation of
- 8 support will be required from at least 60% of the respective national
- 9 governments in the region, and there may be no more than one written
- 10 statement of objection to the application from relevant governments in the
- 11 region and/or public authorities associated with the continent or the region.
- 12 Where the 60% rule is applied, and there are common regions on both lists, the
- 13 regional composition contained in the “Composition of macro geographical
- 14 (continental) regions, geographical sub-regions, and selected economic and
- 15 other groupings” takes precedence.

16

17 The Governmental Advisory Committee has produced the following documents

18 addressing the use of geographic names at the top level:

- 19
- 20 ● [GAC Principles and Guidelines for the Delegation and Administration of Country](#)
 - 21 [Code Top Level Domains](#) (2005), paragraphs 4.1.1. , 4.1.2. and 8.3.
 - 22 ● [GAC Principles Regarding New gTLDs \(2007\)](#), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7
 - 23 and 2.8.
 - 24 ● [GAC Nairobi Communiqué \(2010\): Application of 2007 Principles.](#)
 - 25 ● [GAC Beijing Communiqué \(2013\): GAC Objections to Specific Applications.](#)
 - 26 ● [GAC Durban Communiqué \(2013\): Future application of 2007 Principles.](#)
 - 27 ● [GAC Helsinki Communiqué \(2016\): 3-letter codes.](#)
- 28

29 This list is non-exhaustive. Additional resources and documents on this topic from the

30 GAC and other sources can be found on the Work Track wiki [page](#).

string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁹ See <http://www.unesco.org/new/en/unesco/worldwide/>

¹⁰ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>

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In the 2012 round of the New gTLD Program, there were 66 applications that self-identified as geographic names pursuant to Section 2.2.1.4.3 of the Applicant Guidebook.¹¹ The Geographic Names Panel determined that 6 of these 66 did not fall within the criteria for a geographic name as defined in Section 2.2.1.4 of the Applicant Guidebook (VEGAS, ZULU, RYUKYU, SCOT, IST, FRL). The Geographic Names Panel identified 3 applications that did not self-identify as geographic names but the applied-for string fell within the criteria for geographic names, requiring relevant support or non-objections (TATA, BAR, TUI). Of the 63 that fell within the Applicant Guidebook criteria for a geographic name, 56 had acceptable supporting documentation of support or non-objection from the relevant applicable governmental authority, and of those, 54 have been delegated.

In addition, there were 18 strings which were the subject of one or more GAC Early Warnings that mentioned concerns related to the geographic nature of the string ((ROMA, AFRICA, SWISS, PERSIANGULF, PATAGONIA, CAPITAL, CITY, TOWN, VIN, YUN, 广州 [GUANGZHOU], SHANGRILA, 香格里拉 [SHANGRILA], 深圳 [SHENZHEN], ZULU, AMAZON, DELTA, INDIANS).¹²

Most of these strings were not contained on any of the lists in Section 2.2.1.4 of the Applicant Guidebook. Although some members of the GAC considered these strings to match geographic or geopolitical terms, these strings also corresponded to either generic terms or actual brand or company names. In almost all cases, the intended purposes for use of these applications as contained in the applicable Applicant’s response related to generic or brand use. Treatment of these strings was inconsistent. Some of these TLDs were permitted to move forward, some were only permitted where an arrangement could be reached with the geographic territory in question, and others were either not allowed to proceed or are still the subject of dispute. For those cases where an arrangement with the geographic territory was reached, no further information is publicly available on the details of such arrangement.

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

Where recommendations reference the provisions of the 2012 Applicant Guidebook below, they refer to the text of the Applicant Guidebook as written and do not refer to any subsequent application of the Applicant Guidebook.

Commented [A5]: Greg Shatan: I think this should be “Most” as I believe only two of these strings were on the lists (Roma and Africa).

Commented [A6R5]: Text edited.

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Commented [A7]: Greg Shatan: Inserted this sentence to clarify the message of the next sentence.

Commented [A8R7]: Text edited

Commented [A9]: Paul McGrady: Text should specify that recommendations refer to the AGB as written, and not as applied.

Commented [A10]: Suggested text for Work Track review.

¹¹ <https://gtldresult.icann.org/applicationstatus/viewstatus>

¹² <https://gacweb.icann.org/display/gacweb/GAC+Early+Warnings>

PRELIMINARY RECOMMENDATION #6:

The Work Track recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.iv:

- short- or long-form name association with a code that has been designated as “exceptionally reserved”¹⁴ by the ISO 3166 Maintenance Agency.

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

PRELIMINARY RECOMMENDATION #7:

The Work Track recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.v:

- separable component of a country name designated on the “Separable Country Names List.” This list is included as an appendix to the 2012 Applicant Guidebook.

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation. As currently written, the recommendation does not address the issue of translations of these strings, which were reserved in the 2012 Applicant Guidebook. Please see questions for community input in section e.

¹⁴ The definition of “exceptional reservations” in Section 7.5, Reservation of Code Elements in the current standard, (ISO 3166-1:2013(E/F)): “7.5.4 Exceptional reserved code elements: Code elements may be reserved, in exceptional cases, for country names which the ISO 3166/MA has decided not to include in this part of ISO 3166, but for which an interchange requirement exists. Before such code elements are reserved, advice from the relevant authority must be sought.”

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Commented [A25]: Jaap Akkerhuis: There is no “exceptionally reserved” list designated by ISO 3166 at this time.

Commented [A26R25]: Additional Input by Jaap Akkerhuis: I’m really pressed for time so this will be very short. But since you asked, here is my thinking.

I observe that the exceptional reservations is only on alpha-2 and alpha-3 codes. (and the exceptional reserved alpha-3 codes are not considered in the AGB). Alpha-2 and -3 codes are already covered by other rules in the AGB, I’m wondering why they need to be discussed at all in the AGB.

Furthermore, the 3166 is under review and noise have been made that the current use of reserved codes might be changed in this process.

I do think that there are more important things to spend energy on ... [1]

Commented [A27R25]: Christopher Wilkinson: I also do not know whether the exceptionally reserved codes are associated with short or long form names. However, it is clear that should <.europeanunion> not y[2]

Commented [A28R25]: The 2012 Applicant Guidebook reserved any string that is a “short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance. [3]

Commented [A29]: Staff note: staff has suggested adding a question about this issue for community input. I addition, staff is reviewing this issue with GDD and reaching out to ISO for additional clarification.

Commented [A30]: Footnote updated based on feedback from Jaap that the definition in Section 7.5 of the standard is more authoritative than the glossary.

Commented [A31]: Revision based on feedback from Paul McGrady and Alan Greenberg.

Commented [A32]: Revision based on feedback from Paul McGrady and Alan Greenberg.

Commented [A33]: Paul McGrady: Suggestion to change “drafted” to “written”

Commented [A34]: Staff note: edited

Deleted: The glossary for ISO 3166 defines *exceptionally reserved codes* as “codes that have been reserved for a particular use at special request of a national ISO member body, governments or international organizations. For ... [4]

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

PRELIMINARY RECOMMENDATION #10:

The Work Track recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- An application for any string that is a representation of the capital city name of any country or territory listed in the ISO 3166-1 standard.

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation. As currently written, the recommendation does not address the issue of translations of these strings, which required support/non-objection in the 2012 Applicant Guidebook. Please see questions for community input regarding translations in section e.

PRELIMINARY RECOMMENDATION #11:

The Work Track recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. 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

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Commented [A36]: Revision based on feedback from Paul McGrady and Alan Greenberg.

Commented [A37]: Paul McGrady: Suggestion to change "drafted" to "written"

Commented [A38]: Staff note: edited

Commented [A39]: Christopher Wilkinson: This text, and elsewhere, omits to refer to the issue of non-geographical use. Whereas that has been a major issue for Work Track 5. The recommendation must address non-geographical use as also requiring prior authorisation.

Use of geographical names for 'generic and brand contexts' has the major Drawback that future geographical use would be prevented, whereas under Proposed Problem 6.1, (p.16) we have Proposed solution 6.1.2 "... to maximize the opportunities for future applicants for geographic names." (Names that meanwhile have been freely available for non-geographic use. I don't think so!)

This dichotomy must be explained clearly in the text.

Remedy: The only exception to geographic use could be limited to pre-existing trademark rights recognised in the jurisdiction concerned and subject to prior authorisations.

Commented [A40]: Staff note: See section f for further discussion of non-geographical use and the different perspectives in the WT on this issue.

Commented [A41]: Robin Gross: I disagree with recommendation number 11 as it ignores free expression rights to use words with geographic meaning in lawful ways.

Commented [A42]: Jorge Cancio: Preliminary recommendation 11: as "intended use" has been and is hotly debated in the work track, I feel it is premature to include this preliminary recommendation as it stands.

Commented [A43]: Christopher Wilkinson: Recommendation 11: I do not support deleting the recommendation. However, I request that it be amended to remove the distinction between geo-use and non-geo-use thus requiring prior non-objection for all non-capital city names.

Commented [A44]: Greg Shatan: 1. We now have two participants objecting to Rec. 11 because it doesn't go far enough (i.e., it doesn't put non-geographic uses under the rule of support/non-objection letters) and one participant objecting because it goes too far (i.e., no uses should be put under the rule of ... [5])

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

PRELIMINARY RECOMMENDATION #12:

The Work Track recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- 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.

The 2012 Applicant Guidebook provisions related to this category are inconsistent with the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

PRELIMINARY RECOMMENDATION #13:

The Work Track recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- An application for a string listed as a UNESCO region¹⁵ or appearing on the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings"¹⁶ 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

¹⁵ See <http://www.unesco.org/new/en/unesco/worldwide/>

¹⁶ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>

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Commented [A45]: Revision based on feedback from Paul McGrady and Alan Greenberg.

Commented [A46]: Christopher Wilkinson: In spite of several references in meetings and on the List, there is still no reference to the three letter currency codes in ISO 4217. The currency codes are derived directly from ISO 3166, and consequently in this context are the competence of WT5.

Failure to appropriately protect the currency codes (which are by definition national or regional) could give rise to serious difficulties further down the line. I would argue that this is even more important than the three letter country codes in ISO 3166.

Commented [A47]: Staff note: This is included in the deliberations section and the questions for community input.

Commented [A48]: Revision based on feedback from Paul McGrady and Alan Greenberg.

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Commented [A49]: Greg Shatan suggested changing this to "An application for a string listed as a UNESCO region¹ or appearing as a "geographic region," "sub-region," "intermediary region" or "other grouping"¹ on the "Standard country or area codes for statistical use"¹ list maintained by the United Nations Statistical Commission and commonly referred to as the M49 standard."

Commented [A50R49]: Staff comment: The original text is pulled directly from the 2012 AGB. The Work Track may want to discuss whether it wants to change the text.

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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 2012 Applicant Guidebook provisions related to this category are inconsistent the GNSO policy recommendations contained in the Introduction of New Generic Top-Level Domains from 8 August 2007. This recommendation makes the policy consistent with the 2012 Applicant Guidebook, and therefore represents a change to the existing policy recommendation.

Commented [A51]: Revision based on feedback from Paul McGrady and Alan Greenberg.

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

Given the large volume of proposals and options put forward by Work Track members and noting the importance of providing context for each of these proposals, all options and proposals are included under the appropriate sub-sections of the deliberations in section f.

Commented [A52]: Based on feedback from Work Track members that the structure and content of this section lacked clarity and had the potential to cause confusion for readers, staff is proposing to integrate proposals into the deliberations text where they are presented in the context of related discussions. All comments that apply to text previously included in section d are now addressed in the relevant sub-sections of the deliberations text (section f).

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

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Overarching Issues

- e1: The Work Track encourages feedback from applicants or other stakeholders who were involved in the 2012 round. The Work Track is particularly interested in hearing about the experiences of the following groups and individuals:
 - Applicants who applied for terms defined as geographic names in the 2012 Applicant Guidebook, as well as those who considered applying for such strings but chose not to apply.
 - Applicants who applied for terms not defined as geographic names in the 2012 Applicant Guidebook but who had experiences in the process related to the geographic connotations of the applied-for string.
 - Other parties who raised objections to an application, provided support for an application, or otherwise engaged during the course of the application process for applications in the two categories above.

Commented [A53]: Added based on suggestion by David McAuley on 7 November call.

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Please share any positive or negative experiences, including lessons learned and areas for improvement in subsequent procedures. Please see deliberations section f.1.2.5 on pages 37-42 for context on this question.

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- e2: The definition of the term “geographic name” could impact development of policy and implementation guidance, as well as program implementation details, such as guidance for the Geographic Names Panel in the New gTLD application process. In your view, how should the term “geographic name” be defined for the purposes of the New gTLD Program? Should there be any special requirements or implications for a term that is considered a “geographic name”? Why or why not? Please see deliberations section f.1.2.4 on pages 34 - 36 for context on this question.

Commented [A54]: Added based on feedback from Justine Chew on the 7 November call.

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- e3: The Work Track has discussed different types of mechanisms that can be used to protect geographic names in the New gTLD Program. These mechanisms fall broadly into two categories, noting that the categories are not mutually exclusive and measures from both categories can be used in combination:

- o Preventative: Measures in this category include reserving certain strings to make them unavailable for delegation or requiring letters of support/non-objection from relevant governments or public authorities, either in all cases or dependent on intended usage of the TLD.
- o Curative: Measures in this category include objection mechanisms, contractual provisions incorporated into the registry agreement, enforcement of those provisions, and post-delegation dispute resolution mechanisms.

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In your view, what is the right balance or combination of preventative and curative rights mechanisms in relation to protection of geographic names in the New gTLD Program? Please see deliberations section f.1.2.2 on pages 28-29 for context on this question.

Commented [A55]: Questions e3, e4, and e5 reordered for clarity based on feedback from Martin Sutton on 7 November call.

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- e4: Work Track members have considered a series of principles that may be used to guide the development of future policy on geographic names. The principles were discussed in the context of city names and terms not included in the 2012 Application Guidebook, but they may be applicable more broadly. Proposed principles include:
 - o In alignment with Principle C from the 2007 GNSO recommendations on new gTLDs, the program should allow for the introduction of new gTLDs.
 - o In alignment with Principle A from the 2007 GNSO recommendations on new gTLDs, enhance the predictability for all parties.

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- o Reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated.
- o Policies and processes should be simple to the extent possible.

Please see the deliberations section of this document for additional discussion of these principles. Do you support these principles? Why or why not? Are there additional principles that the Work Track should consider? Please explain. [Please see deliberations section f.1.3 on pages 42-43 for context on this question.](#)

- e6: To what extent should the following serve as a basis for the development of policies regarding geographic names?
 - o International law
 - o National/local law and policy
 - o Norms and values (please specify)
 - o Another basis not categorized above (please specify)

Please explain. [Please see deliberations section f.1.2.1 on pages 25-28 and section f.1.2.3 on pages 30-34 for context on this question.](#)

Country and Territory Names

- e6: In the 2012 Applicant Guidebook, a string was considered unavailable if it was a translation **in any language** of the following categories of country and territory names:
 - o long-form name listed in the ISO 3166-1 standard.
 - o short-form name listed in the ISO 3166-1 standard.
 - o separable component of a country name designated on the “Separable Country Names List.”

In developing recommendations for future treatment of country and territory names, the Work Track has considered several alternatives related to translation:

- o continue to reserve as unavailable translations in any language
- o reserve as unavailable translations in UN languages
- o reserve as unavailable translations in UN languages and the official languages of the country
- o reserve as unavailable translations in official languages of the country
- o reserve as unavailable translations in official and commonly used languages
- o reserve as unavailable translations in official and relevant national, regional, and community languages
- o reserve as unavailable translations in “principal languages” where the principal languages are the official or de facto national languages and the statutory or de facto provincial languages of that country

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Deleted: <#>e4: The Work Track has discussed different types of mechanisms that can be used to protect geographic names in the New gTLD Program. These mechanisms fall broadly into two categories, noting that the categories are not mutually exclusive and measures from both categories can be used in combination:¶

<#>Preventative: Measures in this category include reserving certain strings to make them unavailable for delegation or requiring letters of support/non-objection from relevant governments or public authorities, either in all cases or dependent on intended usage of the TLD.¶

<#>Curative: Measures in this category include objections mechanisms, contractual provisions incorporated into the registry agreement, enforcement of those provisions, and post-delegation dispute resolution mechanisms.¶

In your view, what is the right balance or combination of preventative and and curative rights mechanisms in relation to protection of geographic names in the New gTLD Program?¶

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Commented [A56]: Based on suggestion by David McAuley on 7 November call.

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Commented [A57]: Based on suggestion by Justine Chew on 7 November call.

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1 o a combination of two or more categories above
2 In your view, which alternative is the best option? Please explain. Do you have
3 suggestions for alternatives not included in the list above? [Please see](#)
4 [deliberations section f.2.2.1.2 on pages 46-48](#) for context on this question.

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- 5
- 6 • e7: Some Work Track members have expressed that there should be a process in
7 place to delegate 3-letter codes and/or other country and territory names to
8 specific parties, such as relevant governments and public authorities or other
9 entities. Do you believe that this is an issue on which Work Track 5 should make
10 a [recommendation](#)? Please see [deliberations section f.2.2.1.1 on page 46](#) for
11 context on this question.

Commented [A58]: Edited based on feedback from Justine Chew on 7 November call.

Commented [A59]: E8 has been removed – Upon further clarification with Jaap Akkerhuis who raised the issue, this question does not accurately capture the underlying concern. There is an open question on the mailing list about whether additional content (question or option) is needed on the topic of “exceptionally reserved” codes.

13 **Geographic Names Requiring Government Support in the 2012 Applicant** 14 **Guidebook**

- 15
- 16 • e8: In the 2012 round, applicants were required to obtain letters of support [or](#)
17 non-objection from the relevant governments or public authorities for “An
18 application for any string that is a representation, **in any language**, of the capital
19 city name of any country or territory listed in the ISO 3166-1 standard”
20 (emphasis added). In developing recommendations for future treatment of
21 capital city names, the Work Track has considered several alternatives related to
22 the “in any language” standard:

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Deleted: <#>e8: The 2012 Applicant Guidebook reserved any string that is a “short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.” Some Work Track members have stated that an “exceptionally reserved” list does not exist under the ISO 3166 standard, and therefore it is unclear what this provision references. Do you agree or disagree? Please explain.¶

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- 23 o translations in UN languages
- 24 o translations in UN languages and the official languages of the country
- 25 o translations in official languages of the country
- 26 o translations in official and commonly used languages
- 27 o translations in official and relevant national, regional, and community
28 languages
- 29 o translations in “principal languages” where the principal languages are
30 the official or de facto national languages and the statutory or de facto
31 provincial languages of that country
- 32 o a combination of two or more categories above

33 In your view, which alternative is the best option? Please explain. Do you have
34 suggestions for alternatives not included in the list above? [Please see](#)
35 [deliberations section f.2.3.1 on pages 57-58](#) for context on this question.

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- 36
- 37 • e9: In the 2012 round, applicants were required to obtain letters of support [or](#)
38 non-objection from the relevant governments or public authorities for “An
39 application for a city name, where the applicant declares that it intends to use

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1 the gTLD for purposes associated with the city name.” The requirement applied
2 if: “(a) It is clear from applicant statements within the application that the
3 applicant will use the TLD primarily for purposes associated with the city name;
4 and (b) The applied-for string is a city name as listed on official city documents.”
5 Do you think that this requirement should be kept, eliminated, or modified in
6 subsequent procedures? Please explain. [Please see deliberations section f.2.3.2](#)
7 [on pages 59-69 for context on this question.](#)

- 8
- 9 ● [e10](#): Section [f.2.3.2](#) of this report outlines a series of proposals that Work Track
10 members have put forward for the future treatment of non-capital city names.
11 What is your view of these proposals? Are there any that you support the Work
12 Track considering further? Do you have alternate proposals you would like the
13 Work Track to consider? Please explain. [Please see deliberations section f.2.3.2](#)
14 [and specifically pages 62-69, for context on this question.](#)

15 ●

16 **Additional Categories of Terms**

- 17
- 18
- 19 ● [e11](#): In the 2012 round, the Applicant Guidebook listed categories of terms that
20 were considered geographic names and had specific rules (see section b for
21 additional information about these categories).
 - 22 ○ Some Work Track members have expressed support for
 - 23 protecting/restricting additional categories of geographic names in future
 - 24 versions of Applicant Guidebook.
 - 25 ○ Some Work Track members have expressed that no additional types of
 - 26 terms should be protected/restricted beyond those included in the 2012
 - 27 Applicant Guidebook.
 - 28 ○ Some Work Track members have expressed that compared to the 2012
 - 29 round, fewer types of terms should be protected/restricted in
 - 30 subsequent procedures.

31 Work Track members who support including additional terms in the Applicant
32 Guidebook have proposed protecting/restricting the following categories:

- 33 ○ Geographic features (rivers, mountains, etc)
- 34 ○ Names of additional sub-national and regional places not included in the
- 35 2012 Applicant Guidebook
- 36 ○ Non-ASCII geographic terms not included in the 2012 Applicant
- 37 Guidebook
- 38 ○ Any term that can be considered geographic in nature
- 39 ○ Geographical Indications

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Commented [A60]: Christopher Wilkinson: Additional Categories or Terms (p.20) – Geographical Indications

One would have thought, after all the time and effort that has been expended on Work Track 5, that there should be a specific Recommendation on Geographical Indications. To find these relegated, again, to an afterthought right at the end of the document, is not correct.

We know from the previous Round that the issue is a live one and must be addressed. Appropriate text is available on the List and in the Transcripts.

Commented [A61]: Staff note: See text on Geographical Indications in the deliberations section of this report (section f). It is also included in the questions section (section e).

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Two Work Track members stated that [currency codes listed in under ISO 4217](#) should be protected as geographic names. A number of other Work Track members responded that they do not view these codes as geographic names, and believe that such codes are therefore out of scope, [noting that the broader issue of reserved names is in scope for the full New gTLD Subsequent Procedures PDP Working Group](#).

Should additional types of strings have special treatment or rules in the Applicant Guidebook? If so, which ones and on what basis? Can the scope of the category be effectively established and limited? What are the boundaries of the category? If not, why not? As opposed to preventative restrictions, would any changes to objections, post-delegation mechanisms, or contractual provisions mitigate concerns related to these strings? [Please see deliberations section f.2.4 on pages 72-78](#) for context on this question.

f. Deliberations

f.1 PART I - ISSUE OVERVIEW

f.1.1 INTRODUCTION

Work Track 5 was launched in November 2017 and has worked for nearly a year to review the policy and implementation from the 2012 round and develop preliminary recommendations on the future treatment of geographic names at the top-level in the New gTLD Program. Given the diversity of views on this topic and the fact that the ICANN has been debating related issues for many years, finding an agreed path forward has been a challenging task.

The Work Track used a number of different strategies to gather input from the diverse set of participants in the group. The Work Track revisited the 2007 policy and did a deep dive into understanding the rules and procedures as implemented in the 2012 application round. It mapped and analyzed the different elements of the 2012 process with respect to geographic names to ensure that there is a common understanding of the different program elements. [It reviewed recent resolutions by the ICANN Board regarding specific cases from the 2012 round](#).¹⁷ The Work Track reflected on both

¹⁷ Specifically, the Work Track reviewed and discussed the following resolutions: [Further Consideration of .AMAZON Applications \(16 September 2018\)](#); [Further Consideration of Gulf Cooperation Council v. ICANN Independent Review Process Final Declarations \(3 October 2018\)](#).

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Commented [A62]: Edited based on feedback from Christopher Wilkinson on 7 November call.

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Commented [A63]: Edited based on comment by Christopher Wilkinson on 7 November call.

1 positive and negative experiences from the 2012 application round and considered
2 issues experienced by applicants and other parties. It worked to develop principles that
3 may guide the evaluation of options for future treatment of geographic names. The
4 Work Track considered “pros” and “cons” of existing treatment from the 2012 Applicant
5 Guidebook, as well as “pros” and “cons” of alternatives proposed by Work Track
6 members. Finally, the Work Track sought to find convergence on areas where there
7 might be agreement regarding future treatment.

8
9 Deliberations uncovered some areas of possible compromise where members tended to
10 either support or accept the existing terms in the 2012 Applicant Guidebook. Noting
11 that no official consensus calls have been taken prior to publication of the Initial Report,
12 all preliminary recommendations are for discussion purposes at this stage and may
13 change based on community input received through public comment, as well as further
14 deliberations by the Work Track.

15
16 In those areas where the Work Track put forward preliminary recommendations, the
17 preliminary recommendations tended to support either maintaining or making minor
18 adjustments to the existing provisions contained in the 2012 Applicant Guidebook.
19 Some Work Track members noted that it may be difficult to move away from the 2012
20 Applicant Guidebook terms, because these provisions already represented a form of
21 compromise. As there was no clear legal foundation upon which to base
22 protections/restrictions, the 2012 treatment was the result of negotiation between the
23 GAC, the ccNSO, and the ICANN Organization based on public policy and public interest
24 considerations.

25
26 In other topic areas, there is not yet a clear path forward. For these issue areas, the
27 report includes options in section f and questions for community input in section e. The
28 Work Track looks forward to receiving input from the community through public
29 comment on preliminary recommendations, options, and questions that may help to
30 inform further refinement of the Work Track’s outputs.

31 **f.1.2 KEY ISSUES AND POINTS OF VIEW**

32
33
34 Through the deliberations process, it was apparent that there are different views in the
35 Work Track about which issues need to be addressed through policy and which
36 corresponding mechanisms should exist in the implementation of the New gTLD
37 Program. This section summarizes high-level themes that emerged in the discussions
38 and outlines some of the points of view held by Work Track members.

39 **f.1.2.1 Who owns a string? Who has rights to a string? What is the appropriate role of 40 geographic communities and governments?**

41
42
43 The 2012 Applicant Guidebook sought to address these questions by putting in place a
44 combination of preventative and curative measures. Preventative measures included

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1 With respect to the role of the GAC, some believe that:

- 2 ● The GAC plays a unique role in the ICANN context and governments represented
- 3 in the GAC have a particular interest and stake in the treatment of geographic
- 4 terms.
- 5 ● The role played by the GAC in the 2012 round was appropriate.
- 6 ● There may be opportunities to expand the role of the GAC to support
- 7 predictability in the process.

8
9 Some believe that:

- 10 ● The GAC has an advisory role to the Board and may collectively provide
- 11 consensus advice, but the GAC does not have an operational role at ICANN.
- 12 ● Individual GAC members may have distinct positions on individual applications,
- 13 but the role of individual governments is different than the GAC acting as a
- 14 whole through GAC advice.
- 15 ● The GAC intervened in the evaluation process in a manner that was problematic
- 16 and unfair during the 2012 round.
- 17 ● The role of the Board and the GAC should be [clearer](#) and consistently applied in
- 18 subsequent rounds of the application process, including with respect to
- 19 applications for geographic names.

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20
21 **f.1.2.2 What types of mechanisms should exist to exercise rights or establish roles in**
22 **the process?**

23
24 As discussed in section f.1.2.1, the 2012 Applicant Guidebook sought to answer this
25 question by implementing a set of preventative measures specific to certain types of
26 geographic names, and a number of curative measures that applied to the program
27 more broadly.

28
29 Work Track members expressed different views about how rights should be exercised
30 and roles established for stakeholders in the New gTLD Program in relation to
31 geographic names. The Work Track discussed two possible categories of mechanisms,
32 noting that [it](#) is possible to use a combination of different types of mechanisms in
33 program implementation. Preventative mechanisms in the Applicant Guidebook include
34 1) adding certain strings to lists of reserved names to make them unavailable for
35 delegation and 2) requiring letters of support or non-objection from relevant
36 governments or public authorities for certain types of applications. Curative
37 mechanisms include objections processes, use of Public Interest Commitments,
38 contractual provisions and enforcement, and post-delegation dispute resolution. Some

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1 in the Work Track believe that preventative and curative protections could be combined
2 for creative solutions.

3
4 Some believe that protections in the New gTLD Program should focus on curative
5 mechanisms, or at a minimum, believe that no additional preventative mechanisms
6 should be adopted. More specifically, some believe that:

- 7
- 8 ● ICANN policy has consistently disfavored reservations other than for technical
9 reasons, blocking rights and other systems that prevent a TLD from entering the
10 market.
- 11 ● In the past, any list-based exclusionary right has undergone strict scrutiny and
12 has been applied narrowly.
- 13 ● The ICANN policy-making process has traditionally favored curative rights over
14 preventative rights.
- 15 ● It is not unusual for different types of stakeholders to conduct monitoring
16 related to gTLDs in which they are interested so that they may exercise curative
17 rights. The scale of the gTLD environment is relatively limited, and automated
18 processes can assist with monitoring. It should be possible for governments and
19 other entities to effectively use curative mechanisms.

20 Some believe that there should be greater reliance on preventative mechanisms
21 compared to the 2012 round, or at a minimum, believe that existing preventative
22 mechanisms should remain in place. More specifically, some believe that:

- 23
- 24 ● Reliance on curative rights presents a significant burden on governments, some
25 of whom are not aware of ICANN or its activities, to monitor the application
26 process to see if an application of interest has been submitted.
- 27 ● Curative rights may present a particular burden for governments in developing
28 countries with limited resources.
- 29 ● Reliance on curative rights also presents a significant burden communities of
30 people associated with a place.
- 31 ● This challenge would potentially be even greater in a scenario where applications
32 are accepted at regular intervals or on an ongoing basis in the future and if
33 application volumes are high.
- 34 ● It is a further burden to monitor the operation of TLDs and take action if a TLD is
35 not meeting commitments stated in the application.

36
37 There are differences of opinion about whether preventative mechanisms grant rights
38 to parties, for example whether requiring applicants to obtain a letter of support/non-

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- There is no basis in international law for governments to assert the right to provide support/non-objection for certain strings, which some members consider to be a "veto" power over applications for these strings.
- ICANN should not set policy by anticipating what international law may exist in the future.

With respect to international law, some believe that:

- Ongoing work at UNESCO and WIPO on geographic names is international law "in the making" and should be reflected in policy.

There was discussion on the specific issue of rights to freedom of expression rights under international law. Some believe that:

- Freedom of expression rights give different types of applicants the right to apply for strings, including strings with geographic connotations.

Some looked at freedom of expression from the standpoint of potential registrants or constituents in a geographical location and believe that:

- Freedom of expression rights give rights to people associated with a place. 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 the people connected to the geographic place.

The Work Track discussed the applicability of national law in relation to the use of geographic names as TLDs. Some believe that:

- 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.
- 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.
- ICANN is obligated to follow applicable national and local laws and policies that give governments rights and responsibilities over geographic names.
- GDPR provides an example of a case where ICANN is making efforts to comply with local law.

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1 Some believe that:

- 2 ● National and local law providing protection for geographic names does not give
3 governments rights beyond those of other stakeholders in the context of the
4 New gTLD Program, including the application process.
5 National and local laws only apply in the jurisdiction where the applicant is
6 located, therefore the WT should look to international law as a basis for any
7 recommendations related to geographic names.
- 8 ● GDRP is a poor example in this case, as GDPR contains specific extraterritorial
9 effects and, by its terms, applies only to entities outside the EU that process the
10 data of persons located in the EU.

Commented [A66]: Additional text suggested by Greg Shatan.

12 The Work Track discussed the role and applicability of intellectual property law in the
13 context of the New gTLD Program. Some believe that:

- 14 ● Trademark holders have legitimate interests in a string that corresponds to a
15 brand and is also associated with the name of a city or other geographic location.
16 In order to operate a .brand registry, an applicant must produce a trademark
17 registration certificate which shows consent of at least one government to use
18 that trademark. In this view, an entity with a trademark registration for a term
19 has a right to use that term. From this perspective, the term is used in
20 connection with certain goods and services and has no geographic meaning.
- 21 ● Trademarks may evoke positive associations and have "secondary meaning,"
22 which is the association between the mark and the attributes of the source or
23 origin of the products and services. This secondary meaning (or "goodwill") in
24 turn is a key component of the value and strength of the mark.
- 25 ● Some marks have long histories and significant value. Marks may be used in
26 many countries and may be known by large numbers of people.

Commented [A67]: Greg Shatan suggested to remove "From this perspective, under trademark law" and begin the following sentence with a new bullet.

Deleted: From this perspective, under trademark law, trademark assets and rights are "owned" and controlled by particular parties.

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.

- Trademark assets and rights are owned and controlled by particular parties.
- 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.

Some believe that:

- Trademarks offer a specific right in a specific jurisdiction to use the mark in connection with specific goods and services, and, where that right is infringed, to legally stop another party from imitating a mark or confusing customers.
- The right is limited and curative in nature. It is focused on consumer protection and prevention of imitations.
- “Monopolization” of a city name by private parties is forbidden under laws pertaining to business names and trademark registration in some jurisdictions.
- 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.

Work Track members discussed the role of public policy in the context of the New gTLD Program. Some believe that:

- ICANN policy is not always based in law. 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. It is appropriate to provide rights to governments related to geographic names for policy reasons.

f.1.2.4 What is a geographic name for the purposes of the New gTLD Program? Does the intended use of the string matter?

In the 2012 Applicant Guidebook, there were specific lists provided to define which terms were eligible for special rules. This included a definition of country and territory names that were considered unavailable for delegation, and a definition of geographic names that required governments support or non-objection from relevant governments or public authorities.

Work Track members had different perspectives on what constitutes a geographic name for the purposes of the New gTLD Program. For example, some believe that:

- For the purposes of the program, geographic names should be clearly defined in the Applicant Guidebook along with any corresponding rules or requirements for

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Commented [A68]: Suggested edit from Greg Shatan: "In this view, these rights are "civil: rights are more general in scope and therefore more significant."

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1 those strings. Any strings not listed in the Applicant Guidebook are not
2 geographic names for the purposes of the program and should have no special
3 rules, requirements or restrictions.

4
5 However, some believe in a broader definition that:

- 6
7 ● A geographic name for the purposes of the New gTLD Program should be any
8 term that has a geographic meaning or connotation according to a government
9 or community associated with that term. Rights, rules, and or requirements
10 should exist to ensure that these interested stakeholders "have a say" in the
11 process for any application of this type.
- 12 ● Some Work Track members suggested that the WT should draw on the Manual
13 for the national standardization of geographical names by United Nations Group
14 of Experts on Geographical Names as a resource. The Manual defines a
15 geographical name as the proper name (a specific word, combination of words,
16 or expression) used consistently in language to refer to a particular place,
17 feature or area having a recognizable identity on the surface of the Earth
- 18 ● Another suggestion was to use the [U.S. Board on Geographic Names](#) as a
19 resource to define what constitutes a geographic name.
20

21 Work Track members discussed whether the intended use of the string, as presented in
22 an application for a TLD, should be taken into consideration in the treatment of the
23 application. In other words, is a string with a geographic connotation in addition to
24 other meanings always a geographic name regardless of the way it is used? Alternately,
25 is it only a geographic name if it is used in association with its geographic meaning? The
26 Work Track discussed that a term corresponding to a geographic location could
27 correspond to the names of other geographic locations, and could also correspond to a
28 generic word or a brand. Numerous specific examples of such strings were discussed.

29 From one perspective, the same rules should apply for terms that correspond to
30 geographic terms, regardless of how the applicant intends to use the string as a TLD.
31 Some believe that:

- 32 ● TLDs are a unique resource. Some Work Track members have contrasted this
33 unique quality of TLDs with the use of names under trademark law. From this
34 perspective, under trademark law, **the principles of specialty and of trademark**
35 **"fair use" apply, according to which it is possible for two brands to register**
36 **trademarks for the same term in the same jurisdiction, as long as no confusion or**
37 **infringement pursuant to the law arises. In this view, the DNS is different**
38 **because "parallel use" is not possible. In other words, if a string corresponding to**

Commented [A69]: **Greg Shatan suggested deleting this phrase.**

Commented [A70]: **Greg Shatan suggested inserting "they are used for unrelated goods and services and"**

1 a geographic term is delegated to one party, others who have an interest in that
2 string are prevented from using it, potentially for a significant period of time or
3 permanently.

- 4 ● Even if the intended use is non-geographic, the word still may have geographic
5 connotations, and the applicant may benefit from these geographic associations.
- 6 ● It is important for governments or people associated with a place to be “at the
7 table” for decisions about delegation, regardless of use, because of the unique
8 nature of a TLD and the connotations of the word.
- 9 ● Regardless of the intended use, consumers may be confused about the potential
10 association of a string and a geographic term.
- 11 ● Even where there is no risk of confusion, the same rules should apply due to the
12 unique nature of the string.
- 13 ● It is impractical and challenging to set objective criteria for evaluating intended
14 use in the application process and difficult to enforce distinctions based on
15 intended use.
- 16 ● Obligations included in the contract between ICANN and the registry may have
17 limited impact on what registrants do in practice. Therefore, an applicant may
18 claim that they intend to use a term in a generic manner but the TLD may in
19 practice be used in association with its geographic meaning, possibly without
20 sufficient recourse.

21
22 However, some believe that:

- 23 ● The unique nature of a TLD does not give a government primacy over the use of
24 that TLD.
- 25 ● If a string is being used in a generic or brand context, there is no basis for a
26 support/non-objection mechanism related to the use of that string. The
27 geographic meaning should not prejudice the use of the string in another
28 context.
- 29 ● The Registry Agreement includes the following language: “All material
30 information provided and statements made in the registry TLD application, and
31 statements made in writing during the negotiation of this Agreement, were true
32 and correct in all material respects at the time made, and such information or
33 statements continue to be true and correct in all material respects as of the
34 Effective Date except as otherwise previously disclosed in writing by Registry
35 Operator to ICANN.” This provision provides a possible means for recourse if the
36 applicant misrepresented information in the application.
- 37 ● It should be possible to establish intended use in the application process,
38 especially in the case of .brands. It should be feasible to put in place protections

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1 group to progress to agreeing on possible solutions to address the problems identified.
2 Nonetheless, some Work Track members proposed solutions to problems they believe
3 exist.

4
5 Some of the issues that Work Track members identified from the 2012 round include
6 the following. Some believe that:

- 7
- 8 ● There was insufficient predictability, transparency and consistency in ICANN's
9 implementation of the Applicant Guidebook.
- 10 ● It was not always clear to an applicant if special rules were applicable to a
11 particular string.
- 12 ● Some applicants found it difficult to determine which relevant government or
13 public authority was the appropriate point of contact for a letter of support or
14 non-objection.
- 15 ● Some applicants were unable to obtain a timely response when they reached out
16 to a relevant government or public authority to obtain a letter of support or non-
17 objection.
- 18 ● Governments, public authorities, and other stakeholders are unaware of ICANN
19 and the New gTLD Program, which may make it difficult for them to raise
20 objections and, in the case of governments, respond effectively and quickly to
21 requests for support/non-objection.
- 22 ● Stakeholders may not be familiar with ICANN and its processes
- 23 ● There was a perception that some applicants were required to make concessions
24 to governments to obtain support/non-objection. Other Work Track members
25 strongly opposed this point, stating that there are not facts to support this claim.
26 Some Work Track members suggested that additional facts should be gathered
27 about specific cases. At the time of publication, the Work Track had not
28 undertaken this additional fact finding work.
- 29 ● Applicants faced challenges in applying for strings that were not included as
30 geographic names in the Applicant Guidebook but were considered to be
31 geographic names by other parties. For example, some applicants experienced
32 what appeared to be a de-facto requirement to obtain support/non-objection
33 for strings not included in the Applicant Guidebook.
- 34 ● There were cases where an applicant was required to obtain a letter of
35 support/non-objection, the relevant government or public authority did not
36 provide a letter of support/non-objection, and the applicant disagreed with this
37 decision.
- 38

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1 **relevant government authority, establish a deadline by which the government**
 2 **must respond to the request.** If no response is received, this is taken as non-
 3 objection.
 4

Benefits	Drawbacks
Some believe that this requirement provides greater predictability for applicants.	Some believe that this may be a burden on governments, particularly governments with limited staffing resources and those who lack knowledge of ICANN or experience with ICANN's processes.
Some believe that without this type of deadline 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.	

Commented [A71]: Jorge Cancio: page 14: the meaning of the first bullet under point 2 is unclear, e.g. what means "unconditionally" "available"? to whom?

Commented [A72]: Christopher Wilkinson: I do not support this proposal. (Actually I have no recollection of it having been discussed by the WT);

(a) I expect that the ICANN community will discover that in multilingual countries, there is usually no formal hierarchy of language versions of the same geo-name. Thus all versions of a name – at least in official and local languages and scripts – would have to be treated equally. There is likely to be no basis in local law or practice for awarding any priority to any one language version of a particular name.

(b) There is scope for 'gaming' the proposal. I leave that to your imaginations!

Commented [A73]: Greg Shatan: 2. I'm not sure who brought this up, but I do recall discussing it. I support this concept. We have been told that the reason to subject geographic terms to a support/non-objection requirement (or to reserve them outright) is one of preservation: It preserves these options so that someday a public authority or the relevant citizenry (or perhaps, a "supported" private, for-profit company) can eventually apply for and operate a gTLD that matches that geographic term. Then the people, businesses and public authorities will be able to register and use domain names in that gTLD. However, once any one of the potential options is registered as a gTLD, this reason simply evaporates. The place has its gTLD. There's no longer any need to reserve all these variations and translations. "Unconditionally available" seems self-explanatory — any entity or person can apply for these variations and translations, no strings attached. (Conceivably, it could still be subject to objection procedures later in the process, but we haven't really discussed that (or objections, generally).

5
 6
 7 Work Track members expressed different perspective on the scope of
 8 protections/restrictions from the 2012 round. Some believe that
 9 protections/restrictions were too strong, while others felt they were too weak. Work
 10 Track members put forward proposals to change the level of protection/restriction in
 11 the program overall. For proposals relating to specific categories of strings, please see
 12 the relevant sub-sections.

13 The following proposals were put forward by Work Track members who believe that
 14 existing protections/restrictions included in the 2012 Applicant Guidebook should be
 15 reduced:
 16

- 17 • **Once a gTLD is registered with an intended use that is geographic in nature, all**
 18 **other variations and translations of this term are unconditionally available for**
 19 **registration by any entity or person. Objection procedures could potentially**
 20 **still apply**

Benefits	Drawbacks
<u>Some believe that this proposal addresses the underlying concern that serves as a basis for the support/non-objection requirement -- that options should be preserved so that</u>	<u>Some believe that in multilingual countries, there is usually no formal hierarchy of language versions of the same geo-name. Thus all versions of a name – at least in</u>

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<p><u>someday a public authority or the relevant citizenry (or perhaps, a “supported” private, for-profit company) can eventually apply for and operate a gTLD that matches that geographic term. From this perspective, once any one of the potential options is registered as a gTLD, this reason no longer exists. The place has its gTLD. There’s no longer any need to reserve or create requirements for other variations and translations.</u></p>	<p><u>official and local languages and scripts – would have to be treated equally. There is likely to be no basis in local law or practice for awarding any priority to any one language version of a particular name.</u></p>
	<p><u>Some believe that this proposal could encourage gaming.</u></p>

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- **An applicant for a string with geographic meaning must provide notice to each relevant government or public authority that the applicant is applying for the string.** The applicant is not required to obtain a letter of support on non-objection. This proposal relies on curative mechanisms to protect geographic names in contrast with support/non-objection requirements that are preventative in nature. Each government or public authority has a defined opportunity to object based on standards to be established. The right to object expires after a set period of time. Objections are filed through one of the existing objection processes or a variation on an existing process. A set of standards would need to be established to determine what constitutes a relevant government or public authority. This proposal could apply to all or some of the categories of geographic names included in the 2012 Applicant Guidebook.

The following proposals were put forward by Work Track members who believe that existing protections/restrictions included in the 2012 Applicant Guidebook should be increased:

- **If an applicant applies for a string that is confusingly similar to a geographic term that requires a letter of government support or non-objection, the applicant should be required to obtain a letter of government support/non-objection.** As an example, a common misspelling of a geographic name would be considered confusingly similar.

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- At the end of the registry contract period, a government entity has 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.

Benefits	Drawbacks
Some believe that this proposal would allow for worthwhile private investment for a limited period while also allowing review by any public entity after a period of time if they choose to become involved.	Some believe that this proposal would require TLDs to be incorporated in the local jurisdiction under local law.

Commented [A74]: Christopher Wilkinson: The drawbacks to Proposed Solution 3.2.1 should be clearly expressed, including a clear need in such a case for Incorporation in the Jurisdiction concerned.

We know from ccTLD experience that it can be quite difficult and time consuming for a government to 'become engaged' with a misappropriated TLD that is operated outside the national jurisdiction.

Commented [A75]: Staff note: added the proposed drawback to the appropriate section under deliberations. Additional input from WT members on the Drawbacks is welcome.

- Applicants for geographic names must apply to the GAC to receive permission to submit an application for the string.

Commented [A76]: Jorge Cancio: what is the sense of the proposed solution? what is its scope? How does it play with other requirements?

Commented [A77]: Christopher Wilkinson: I would defer to the GAC members of WT5 on this point. I suggest that it would be more appropriate to say that 'applicants should apply to the GAC member concerned....' It is not necessary to presume on a GAC consensus in such cases.

Benefits	Drawbacks
	It is unclear on what basis this authority would be provided.

Commented [A78]: Greg Shatan: I'm not entirely clear what the intent of this is. Is it to avoid GAC Early Warnings? Or is it to cast the GAC as a Clearinghouse for support/non-objection letters? Or is to create a second level of permissions needed for some or all geographic terms? Since the intent is unclear and the authority for this "permission" is unclear, I would recommend deleting it.

- A TLD associated with geography should be incorporated within the jurisdiction of the relevant government and subject to local law.

Work Track members discussed positive experiences in the 2012 round, with a focus on "city TLDs" or TLDs for which the applicant intended to use the string in association with its geographic meaning as a city name. Some believe that:

- Rules in the 2012 Applicant Guidebook worked well for these applicants.
- Requirements to obtain letters of support or non-objection from relevant governments or public authorities helped to ensure that subsequent steps in the process were relatively smooth for applicants.
- The delegation and operation of these TLDs had positive effects on geographical, cultural and linguistic diversity of the TLD space.

Commented [A79]: Greg Shatan suggested adding: "Work Track members discussed negative experiences in the 2012 round, with a focus on TLDs for which the applicant intended to use the string in association with a meaning other than its geographic meaning. Some believe that:

- Rules in the 2012 Applicant Guidebook worked poorly for these applicants.
- Requirements to obtain letters of support or non-objection from relevant governments or public authorities imposed an arbitrary and unfair burden without any basis other than coincidence. These requirement created great difficulties, delays and expense for these applicants.
- The inability to timely delegate and operation these TLDs had negative effects on diversity, innovation and competition in the TLD space."

... [6]

f.1.2.6 Are there alternate methods of consultations or collaborations in the application process that could satisfy all stakeholders?

Commented [A80R79]: Staff note: Could these points be integrated into the list of issues identified on page 38?

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1 The Work Track discussed whether there might be circumstances where different
2 stakeholders with different interests could be incentivized to work together to meet the
3 needs of each group. One example of a potential area of collaboration is joint ventures
4 between different applicants with different intended uses for a TLD, for example
5 multiple cities with the same name. Some believe that such joint ventures could:

- 6
- 7 ● Eliminate contention for the string.
- 8 ● Allow different cities with the same name to share the costs, burdens, and risks.
- 9 ● Help ensure that there is sufficient demand for second-level registrations.

10 Some believe that such a model would be impractical to implement.

11
12 Work Track members also considered possible tools for governments and applicants to
13 come together and create opportunities for both parties to use the TLD according to
14 their interests. These include:

- 15
- 16
- 17 ● Agreements to allow the use of second level strings (or the reservation of second
18 level strings) where there is an inherent association with the government or local
19 community.
- 20 ● For brand TLDs, there is a requirement currently that all registrations be
21 registered to the brands (or their affiliates / licensees) in order to maintain their
22 Specification 13 protections. An exception could be granted for ones that
23 coincide with a geographic string where certain second level strings that are
24 inherently geographic can be registered by others.

25
26 Work Track members asked if there might be alternatives to the support/non-objection
27 requirement that would bring applicants, governments, and other parties “to the table”
28 to express and address concerns. No specific proposals were put forward in this regard.

29 **f.1.3 PRINCIPLES AND VALUES**

30
31
32 The Work Track discussed potential principles that may be used to guide the
33 development of future policy on geographic names. The principles were discussed in the
34 context of city names (see section [f.2.3.2](#)) and additional types of terms not included in
35 the 2012 Application Guidebook (see section [f.2.4](#)), but they may be applicable more
36 broadly. Proposed principles include:

- 37
- 38 ● In alignment with [Principle C](#) from the 2007 GNSO recommendations on new
39 gTLDs, the program should allow for the introduction of new gTLDs.
- 40 ● In alignment with [Principle A](#) from the 2007 GNSO recommendations on new
41 gTLDs, enhance the predictability for all parties.

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1 combinations of two letters (for example .yz), combinations of two digits (for example
2 .12), and combinations of a letter and a digit (for example .a1 or .1a). The Work Track
3 noted that Work Track 2 of the New gTLD Subsequent Procedures PDP Working Group is
4 considering single letter and single digit combinations. Members generally agreed that
5 two-character codes containing digits are not geographic names and therefore focused
6 on letter-letter combinations.

7 With respect to letter-digit combinations, some Work Track members believe that:

- 8 ● If letter-digit combinations are available in subsequent procedures, there may be
9 a risk of confusion between certain letter-digit combinations and confusingly
10 similar letter-letter combinations (for example .IO and .IO).

11
12 Some believe that:

- 13 ● In the 2012 round, string similarity processes took into account all existing TLDs,
14 including ccTLDs. If future processes work in the same manner, risk of similarity
15 will be addressed through these processes.

16
17 This issue will be explored further by the full Working Group as it considers public
18 comments on the full Working Group's Initial Report.

19 Different perspectives were raised about the treatment of two-letter ASCII strings. Some
20 Work Track members identified benefits to maintaining current treatment contained in
21 the 2012 Applicant Guidebook. Specifically, some believe that:

- 22 ● There is a longstanding association between two-character ASCII letter-letter
23 combinations and ccTLDs, which is rooted in early Internet Engineering Task
24 Force (IETF) Requests for Comments (RFCs).
- 25 ● The current AGB rules restricting two-character ASCII letter-letter combinations
26 as gTLDs has helped to make a clear distinction between the ccTLD space and the
27 gTLD space.
- 28 ● Reliance on the ISO 3166 Part 1 list of alpha-2 codes as a basis for two-letter
29 country codes has historically worked well and offers a predictable system to use
30 as a point of reference.
- 31 ● Two-letter combinations are available in case new entries are added to the ISO
32 3166 Part 1 list of alpha-2 codes and new countries are established that want a
33 ccTLD. According to RFC 1591, the IANA is not in the business of deciding what is
34 and what is not a country.
- 35 ● End users can see a clear distinction between ccTLDs and gTLDs, which may help
36 to avoid confusion between the two.

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- 1 • Provides an objective, consistent rule that is easy to apply.
2 • Is consistent with preliminary outcomes of the Cross-Community Working Group
3 of Use of Country and Territory Names as TLDs. The CCWG reached preliminary
4 consensus in support of maintaining the 2012 treatment for two-character ASCII
5 strings.²³

6 Work Track members also identified drawbacks to maintaining treatment in the 2012
7 Applicant Guidebook. Some believe that:

- 8 • There is a possibility of opportunities lost in the gTLD space, although these are
9 difficult to assess.
10 • The distinction between ccTLDs being two-characters and gTLDs being three or
11 more characters is meaningless and unnecessary.
12 • Some ccTLDs essentially operate as gTLDs without the restrictions associated
13 with gTLDs, blurring the distinction between ccTLDs and gTLDs. TLDs are taking
14 advantage of the assumption that all 2-letter TLDs are ccTLDs. It does not make
15 sense to say that 2-letter strings should be reserved for countries when some
16 ccTLDs are not operating in a manner consistent with this approach.
17 o Others believe that in most cases ccTLD operators are not-for-profit
18 organizations that work to improve their local Internet ecosystems, give
19 back to their country and represent their country's name in the best
20 possible way.
21 • Some ccTLD managers also operate gTLDs, further blurring the distinction
22 between ccTLDs and gTLDs.

23
24 There was no clear agreement to change the terms included in the 2012 Applicant
25 Guidebook. Therefore, the Work Track is putting forward a preliminary
26 recommendation for community feedback to maintain reservation of two-letter ASCII
27 strings, consistent with provisions in the 2012 Applicant Guidebook.

28 **f.2.2 COUNTRY AND TERRITORY NAMES**

29 As described in section [a](#), no reserved geographic names were anticipated in the 2007
30 Policy. The 2012 Applicant Guidebook diverges from the policy and lists seven categories
31 of country and territory names that were reserved and unavailable for delegation (see
32 section [b](#) for a list of these categories). The Work Track discussed, in general, the

²³ <https://ccnso.icann.org/sites/default/files/field-attached/ccwg-ctn-final-paper-15jun17-en.pdf>

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1 reservation of country and territory names on this list, as well as issues related to
2 specific categories of country and territory names.

3 **f.2.2.1 Themes**

4 **f.2.2.1.1 Delegation of Country and Territory Names**

5 As an overarching issue applying to country and territory names, there are different
6 opinions about whether these strings should be available for delegation, and if they
7 should be delegated, which parties should be eligible to apply. Some believe that these
8 strings should be widely available for delegation to different parties. Some believe they
9 should simply remain reserved. Some believe that countries should have an exclusive
10 opportunity to apply for their country and territory names. Among those who support
11 delegation of these strings to countries and territories exclusively, there are different
12 perspectives about how this delegation should occur. Some believe that:

- 13 ● These names should not be delegated through the New gTLD process.
- 14 ● Delegation of country and territory names should only occur through local policy
15 authorities.
- 16 ● These strings should be delegated as something other than a gTLD, for example a
17 ccTLD or a new category of TLD.

18
19 Some believe that:

- 20 ● Moving delegation of these strings to local authorities is inconsistent with the
21 objective to provide clarity, certainty, predictability, and fairness for applicants.
- 22 ● If these strings are delegated, the delegation should occur through the New gTLD
23 Program.

24
25 There are different perspectives in the Work Track about whether it is within the scope
26 of Work Track 5 to answer broad questions about which specific entities can apply for
27 country and territory names and how these TLDs may be treated (for instance, as a
28 gTLD, a ccTLD or something else). It has been suggested that this topic should be
29 deferred to another ICANN process or vehicle created to specifically to address this
30 topic.

31 **f.2.2.1.2 Reservation of Translations “In Any Language”**

32 In the 2012 Applicant Guidebook, a string was considered unavailable if it was a
33 translation **in any language** of the following categories of country and territory names:

- 34 ● long-form name listed in the ISO 3166-1 standard.
- 35 ● short-form name listed in the ISO 3166-1 standard.

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- separable component of a country name designated on the “Separable Country Names List.”

Some Work Track members raised points in support of maintaining the “in any language” standard. Some believe that:

- This provision 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.
- To reduce uncertainty, ICANN could produce an exhaustive list of all translations in all languages.

Some Work Track members raised points against maintaining the “in any language” standard. Some believe that:

- The provision 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.
- It is not predictable or transparent.
- It contradicts the overarching policy concept that reserving strings should be done conservatively and must be based on an underlying policy justification.
- Some languages are spoken by very few people, therefore reserving representations in all languages may not be appropriate.

In developing recommendations for future treatment of country and territory names, the Work Track has considered several alternatives related to translation:

- continue to reserve as unavailable translations in any language
 - Variant: “in any script”
- reserve as unavailable translations in UN languages
 - Variants: “including but not limited to official UN languages,” UN languages plus Portuguese
 - Points in support: clear, finite list
 - Points against: official UN languages are not necessarily the most important languages in many countries
- reserve as unavailable translations in official languages of the country
 - Points in support: [Working Paper 54](#) of the UN Group of Experts on Geographical Names (UNGEGN) could be used as a starting point for this list, [Expanded Graded Intergenerational Disruption Scale and](#)

- 1 [categorization based on Official Recognition](#) could be used as a starting
2 point for this list
- 3 ○ Points against: difficult to identify the official languages of each country,
4 some countries may not have official languages, administrations in many
5 countries use languages that are not official, people of the country also
6 use languages that may not be official but are important to specific
7 communities
- 8 ● reserve as unavailable translations in UN languages and the official languages of
9 the country
- 10 ○ See above for relevant points in support and against
- 11 ● reserve as unavailable translations in official and commonly used languages
- 12 ○ Points in support: this category would cover languages used by people in
13 the country that are important to specific communities
- 14 ○ Points against: This is not a category with clear boundaries or definition
- 15 ● reserve as unavailable translations in official and relevant national, regional, and
16 community languages
- 17 ○ Points in support: this category would cover languages used by people in
18 the country that are important to specific communities
- 19 ○ Points against: This is not a category with clear boundaries or definition
- 20 ● reserve as unavailable translations in “principal languages” where the principal
21 languages are the official or de facto national languages and the statutory or de
22 facto provincial languages of that country
- 23 ○ Points in support: this category address some of the concerns raised
24 about the limitations of “official languages,”_draws on existing
25 categorization from [ethnologue.com](#)
- 26 ○ Points against: Additional work would be needed to ensure this category
27 has clear boundaries
- 28 ● a combination of two or more categories above

29

30 The Work Track welcomes community feedback on these alternatives. Please see
31 section [e](#) for a specific question for community feedback on this topic.

32 **f.2.2.2 Alpha-3 code listed in the ISO 3166-1 standard**

33

34 The Work Track considered that the Cross-Community Working Group on Use of
35 Country and Territory Names (CWG-UCTN) discussed extensively the treatment of

1 alpha-3 codes listed on the ISO 3166 Part 1 standard. An analysis of the different
2 positions on this issue is available in the CWG-UCTN Final Report.²⁴ The Work Track
3 noted that the CWG-UCTN was unable to reach consensus on the future treatment of
4 these strings.

5 Work Track members raised points in support of continuing to reserve alpha-3 codes
6 listed on the ISO 3166 Part 1 standard. Some believe:

- 7 ● This has historically been a challenging issue for the ICANN community to resolve
8 and absent evidence that a different approach is supported, the 2012 Applicant
9 Guidebook treatment should apply.
- 10 ● Avoids potential end user confusion related to the geographic connotations of
11 these codes.
- 12 ● Allows countries to protect codes with which many nations identify strongly.
- 13 ● Only reserves a small subset of all possible combinations of three letters, leaving
14 plenty of opportunity for applicants to apply for other available strings that are
15 comprised of three letters.

16

17 Work Track members raised points against continuing to reserve alpha-3 codes listed on
18 the ISO 3166 Part 1 standard. Some believe:

- 19 ● There is no clear historical justification for maintaining reservation of these
20 strings. Absent such a justification, these strings should be available for
21 delegation.
- 22 ● There is no clear justification to the assertion that governments “own” these
23 strings. COM is the alpha-3 code for Comoros according to the ISO 3166 Part 1
24 standard, but .com was delegated long ago, indicating that there is not an
25 established practice of governments “owning” alpha-3 codes listed on the ISO
26 3166 Part 1 standard.
- 27 ● There are potential missed opportunities for gTLDs comprised of three letters,
28 for example .can, .iot, .idn, .gin, .gum, .fin, .cub, and .pry.
- 29 ● There is no opportunity for an applicant supported by the relevant country to
30 move forward with an application.

31 The Work Track discussed the issue of whether alpha-3 codes listed on the ISO 3166 Part
32 1 standard should be delegated exclusively to governments, ccTLD managers, and public
33 interest entities. Some believe that:

²⁴ <https://ccnso.icann.org/sites/default/files/field-attached/ccwg-ctn-final-paper-15jun17-en.pdf>

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- 1 • Governments, ccTLD managers, and public interest entities have a strong
2 association with these strings and should have the opportunity to use them.

3
4 Some believe that:

- 5 • There is no "tradition" of or technological reason for alpha-3 codes on the ISO
6 3166 Part 1 standard being used for top level domain names connected with the
7 related countries and territories, and therefore there is no reason to exclusively
8 delegate them to governments, ccTLD managers, and public interest entities.
9 • There are three letter strings that correspond to ISO three-letter codes but also
10 have a generic meaning. The future use of these strings should not be
11 determined by countries when other uses are possible.

12
13 The following additional proposals have been put forward by Work Track members with
14 respect to this category:

- 15 • Delegate these strings as gTLDs with the requirement of government
16 support/non-objection until a future process is designed specifically for the
17 delegation of three-character codes.
18 • The ISO should not be the source of 3-character strings used by ICANN to identify
19 geographic names.

20 There was no clear agreement to change the terms included in the 2012 Applicant
21 Guidebook. Therefore, the Work Track is putting forward a preliminary
22 recommendation for community feedback to maintain reservation alpha-3 codes listed
23 on the ISO 3166 Part 1 standard, consistent with provisions in the 2012 Applicant
24 Guidebook.

25 **f.2.2.3 Short-form or Long-form name listed in the ISO 3166-standard, or a translation**
26 **of the short-form or long-form name in any language**

27 Work Track members raised points in support of continuing to reserve short-form and
28 long-form names listed in the ISO 3166-1 standard. Some believe that:

- 29 • The ISO list provided an easy, predictable, and objective standard to follow.
30 Work Track members raised points against continuing to reserve short-form and long-
31 form names listed in the ISO 3166-1 standard. Some believe:

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

35 For discussion of provisions reserving translations "in any language," including points in
36 support and against, as well as alternatives proposed, please see section [f.2.2.1.2](#). For

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1 discussion about the delegation of country and territory names to governments, please
2 see section [f.2.2.1.1](#).

3 There was no clear agreement to change the terms included in the 2012 Applicant
4 Guidebook. Therefore, the Work Track is putting forward a preliminary
5 recommendation for community feedback to maintain reservation of short-form and
6 long-form name listed in the ISO 3166-standard, consistent with provisions in the 2012
7 Applicant Guidebook. It is not making a preliminary recommendation at this time
8 regarding translations of these names and is instead seeking community input.

9 **f.2.2.4 Short- or long-form name association with a code that has been designated as**
10 **"exceptionally reserved" by the ISO 3166 Maintenance Agency**

11 The Work Track discussed points in support of and against continuing to reserve names
12 in this category. Work Track members noted that these are similar to benefits and
13 drawbacks identified for short-form and long-form names listed in the ISO 3166 Part 1
14 standard.

15 One Work Track member raised the following points about exceptionally reserved
16 codes:

- 17 • They are not officially reserved code points, although data about these codes is
18 available at the ISO's Online Browsing Platform,²⁵ and the definition of
19 "exceptional reservations" is included in the current standard, (ISO 3166-
20 1:2013(E/F) Section 7.5, Reservation of Code Elements.
- 21 • The list may be out of date.
- 22 • Not all exceptionally reserved codes have a short and long form name associated
23 with them.
- 24 • Some exceptionally reserved codes do not refer to a country or territory (for
25 example "UN" for United Nations).
- 26 • Some places may have more than one code associated with their name, for
27 example Tristan da Cunha has both an assigned 2-letter code (SH) and an
28 exceptionally reserved code (TA).

Commented [A81]: Added based on feedback from Jaap Akkerhuis

29 There was no clear agreement to change the terms included in the 2012 Applicant
30 Guidebook. Therefore, the Work Track is putting forward a preliminary
31 recommendation for community feedback to maintain reservation of short- and long-
32 form names association with a code that has been designated as "exceptionally
33 reserved" by the ISO 3166 Maintenance Agency, consistent with provisions in the 2012
34 Applicant Guidebook.

²⁵ The decoding table is available at <https://www.iso.org/obp/ui/#iso:pub:PUB500001:en>

1 **f.2.2.5 Separable component of a country name designated on the "Separable Country**
2 **Name List", or is a translation of a name appearing on the list, in any language**

3 The Work Track discussed points in support of and against continuing to reserve names
4 in this category. Work Track members noted that these are similar to benefits and
5 drawbacks identified for short-form and long-form names listed in the ISO 3166-1
6 standard.

7 For discussion of provisions reserving translations "in any language," including points in
8 support and against, as well as alternatives proposed, please see section **f.2.2.1.2.**

9 There was no clear agreement to change the terms included in the 2012 Applicant
10 Guidebook. Therefore, the Work Track is putting forward a preliminary
11 recommendation for community feedback to maintain reservation of separable
12 components of a country name designated on the "Separable Country Name List,"
13 consistent with provisions in the 2012 Applicant Guidebook. It is not making a
14 preliminary recommendation at this time regarding translations of these names and is
15 instead seeking community input.

16 **f.2.2.6 Permutation or transposition**

17 Work Track members raised several concerns about provisions related to permutations
18 and transpositions of country and territory names in the Applicant Guidebook.
19 According to the Applicant Guidebook, a string is reserved if "it is a permutation or
20 transposition of any of the names included in items (i) through (v).²⁶ Permutations
21 include removal of spaces, insertion of punctuation, and addition or removal of
22 grammatical articles like "the." A transposition is considered a change in the sequence
23 of the long or short-form name, for example, "RepublicCzech" or "IslandsCayman"."

24 Work Track members expressed that it is unclear from this text whether reservation of
25 transpositions applied to categories of country and territory names beyond short-form
26 and long-form names. There was general agreement that intent of the text was that
27 only transpositions of short-form and long-form names were reserved but
28 transpositions of other forms of country and territory names were permitted. However,

²⁶ In the 2012 Applicant Guidebook, items (i) through (v) referred to: (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 "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.

1 Work Track members pointed out that the text could also be interpreted to mean that
2 transpositions of three-letter codes and other forms of country and territory names
3 were also reserved. Work Track members further noted that because this provision does
4 not reference a specific list, it may not be clear to applicants and other stakeholders
5 which strings are covered by this provision.

6 Work Track members raised points in support of continuing to reserve names in this
7 category. Some believe that:

- 8 • Absent a clear reason to eliminate this category, existing provisions should stay
9 in place.
- 10 • Examples of transposition used in the Applicant Guidebook “RepublicCzech” and
11 “IslandsCayman” and similar strings are unlikely to be of interest as TLDs,
12 therefore there is little harm in reserving the strings.

13 Work Track members raised points against continuing to reserve names in this category.
14 Some believe that:

- 15 • The examples used in the Applicant Guidebook related to transposition,
16 “RepublicCzech” and “IslandsCayman” do not appear to be terms that anyone
17 would use. The group should consider removing this provision unless there is
18 documented problem that it seeks to solve.

19 The following additional proposals have been put forward by Work Track members with
20 respect to this category:

- 21 • Individual governments should be asked which permutations should be reserved
22 in connection with a corresponding country or territory name.

23 The Work Track is putting forward a preliminary recommendation for community
24 feedback to maintain reservation of permutations and transpositions but clarify that
25 only permutations and transpositions of the following strings are reserved:

- 26 • long-form name listed in the ISO 3166-1 standard.
- 27 • short-form name listed in the ISO 3166-1 standard.
- 28 • short- or long-form name association with a code that has been designated as
29 “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- 30 • separable component of a country name designated on the “Separable Country
31 Names List.” This list is included as an appendix to the 2012 Applicant
32 Guidebook.

33
34 Permutations and transpositions of alpha-3 code listed in the ISO 3166-1 standard
35 should be allowed. This recommendation would result in a revision to 2012 Applicant
36 Guidebook section 2.2.1.4.1.vi.
37

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1 **f.2.2.7 A name by which a country is commonly known, as demonstrated by evidence**
2 **that the country is recognized by that name by an intergovernmental or treaty**
3 **organization**

4 Work Track members raised points in support of continuing to reserve names in this
5 category. Some believe that:

- 6
 - There is some level of predictability associated with this provision because there
7 are specific sources of these terms.

8 Work Track members raised points against continuing to reserve names in this category.
9 Some believe that:

- 10
 - There are potential missed opportunities for gTLDs.
 - Work Track members expressed some level of uncertainty about what may or
11 may not be included in this category, indicating that in practice this provision
12 may not be clear for applicants and other stakeholders.
 - There is no opportunity for an applicant supported by the relevant country to
13 move forward with an application.

14 The following additional proposals have been put forward by Work Track members with
15 respect to this category:

- 16
 - As long as a country can provide substantial evidence that the country is
17 recognized by a name, the term should be included under this category.
 - Add translations “in any language” to this provision.

18 There was no clear agreement to change the terms included in the 2012 Applicant
19 Guidebook. Therefore, the Work Track is putting forward a preliminary
20 recommendation for community feedback to maintain reservation of names by which a
21 country is commonly known, as demonstrated by evidence that the country is
22 recognized by that name by an intergovernmental or treaty organization, consistent
23 with provisions in the 2012 Applicant Guidebook.

24 **f.2.3 GEOGRAPHIC NAMES REQUIRING GOVERNMENT SUPPORT FROM THE 2012**
25 **APPLICANT GUIDEBOOK**

26 The Work Track discussed points in support of and against provisions requiring a letter
27 of support or non-objection from government authorities for certain types of strings.

28 Some Work Track members raised points in support of either maintaining the
29 support/non-objection standard or expanding the standard. Some believe:

- 30
 - The mechanism worked well for different groups in the 2012 round.

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- 1 ● The 2012 Applicant Guidebook provisions represent a compromise position in
- 2 which different parties found a middle ground.
- 3 ● It is the role of governments to protect the public interest, and this mechanism
- 4 allows government to protect the public interest and the interest of
- 5 residents/communities.
- 6 ● Public authorities act under applicable laws and are accountable according to
- 7 their legal systems and these rules allows them to act on these responsibilities.
- 8 ● These rules are consistent with a government’s rights and responsibilities under
- 9 national and local law and public policy.
- 10 ● A TLD is a unique resource. Even if a string is being used for a non-geographic
- 11 purpose, there may be political, historical, economic, religious, and/or social
- 12 connotations for the populations and communities affected. This process allows
- 13 governments to act on those concerns. Even if the applicant intends to use the
- 14 string in a way that is not directly associated with the place, they may still
- 15 benefit from positive connotations associated with the name of the place.
- 16 ● Provides flexibility for different solutions. Some governments may have a
- 17 “laissez-faire” approach. Other governments may end up participating in
- 18 governance of the string or pursuing joint initiatives with applicants and other
- 19 parties. It is therefore respectful of different legal, cultural and policy
- 20 approaches, without imposing one single solution to all.
- 21 ● Governments do not need to actively monitor the application process to
- 22 determine whether ICANN is reviewing an application that the government may
- 23 consider relevant. The mechanism fairly puts the burden on the applicant to
- 24 reach out to the relevant public authorities, which, especially in the case of
- 25 developing countries, may be unaware of ICANN and may lack the resources to
- 26 actively monitor ICANN’s activities.
- 27 ● Applicants have a more predictable process. By engaging with governments early
- 28 in the process, they become aware early of any opposition by governments and
- 29 therefore prevent conflicts between interested parties.
- 30 ● The requirement is a way to promote cooperation between different parties
- 31 that have an interest in the string.
- 32 ● An open market for these TLDs absent support/non-objection requirements is
- 33 not sustainable.
- 34 ● This mechanism is consistent with ICANN’s obligation to act in conformity with
- 35 applicable local law.
- 36 ● This mechanism is a flexible instrument that allows applications from any kind of
- 37 interested applicant, including businesses, brands, and communities.
- 38

1 Some Work Track members raised points supporting elimination of the support/non-
2 objection standard or reduction of its scope. Some believe:

- 3
- 4 ● The 2012 Applicant Guidebook only represents a compromise between the GAC
5 and ICANN staff and therefore does not represent the needs and interests of all
6 parts of the ICANN community.
- 7 ● These requirements create financial and logistical burdens for applicants and a
8 lack of predictability. It may be difficult for applicants to determine where to
9 seek consent from governments.
- 10 ● Support/non-objection mechanism may cause rent-seeking and distort markets.
- 11 ● This process does not sufficiently take into account the rights of intellectual
12 property rights holders.
- 13 ● It is beneficial for there to be more TLDs, and ICANN should eliminate
14 unnecessary barriers to establishing new TLDs absent evidence of harm.
- 15 ● Governments do not have a legal basis for claiming the right to provide
16 support/non-objection. National law and local law on the protection of
17 geographic names is only applicable within the country in which the law exists. If
18 there is a relevant local or national law, it should be enforced by the applicable
19 government, not by ICANN.
- 20 ● Governments should not have special rights or privileges absent explicit
21 justification under international law.
- 22 ● This process violates the freedom of expression rights of applicants.
- 23 ● There may be legitimate applications that a government opposes and that not all
24 government represent the public interest.
- 25 ● Engaging with governments early in the application process may reduce the
26 competitive advantage for an applicant and encourage competing applications
27 for the same string that might not otherwise have been pursued.
- 28

29 Additional points in support of and against the support/non-objection mechanism are
30 included in the following subsections to the extent that these points are specific to
31 particular category.

32 **f.2.3.1 Capital City Names**

33 For capital city names, there is divergence between the 2007 Policy and Implementation
34 in the 2012 Applicant Guidebook. The 2007 Policy anticipated that these strings would
35 be available without any special requirements and did not mention a provision requiring

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1 support/non-objection.²⁷ The 2012 Applicant Guidebook required support/non-
2 objection from relevant governments or public authorities for an application for any
3 string that is a representation, **in any language**, of the capital city name of any country
4 or territory listed in the ISO 3166-1 standard.

5 In considering positions in support of and against maintaining the current treatment,
6 Work Track members raised arguments that relate more broadly to discussions of
7 geographic names. These include the applicability of and relevance of law and public
8 policy, the issue of whether the intended use of the TLD matters. These issues are
9 covered in greater depth in section [f.1](#) of the deliberations section.

10 The Work Track considered that rules for capital city names applied to representations
11 “in any language.” Some Work Track members raised points in support of maintaining
12 the “in any language” standard. Some believe that:

- 13 ● This provision should remain in place unless there is a factual basis for limiting
14 the languages covered in this provision.
- 15 ● Many languages may be spoken by and relevant to communities within a given
16 country, and the list should therefore not be limited.
- 17 ● To reduce uncertainty, ICANN could produce an exhaustive list of all translations
18 in all languages.

19
20 Some Work Track members raised points against maintaining the “in any language”
21 standard. Some believe:

- 22
23 ● The provision is overbroad, results in a very large number of strings with
24 additional requirements, and does not provide a clear, objective, and finite list
25 that can be used as reference.

²⁷ 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.

- 1 ● It is not predictable or transparent.
- 2 ● It contradicts the overarching policy concept that special rules must be based on
- 3 an underlying policy justification.
- 4 ● Some languages are spoken by very few people, special rules in all languages
- 5 may not be appropriate.

6
7 In developing recommendations for future treatment of capital city names, the Work
8 Track has considered several alternatives related to translation:

- 9
- 10 ● continue the current standard: translations in any language
 - 11 ○ Variant: “in any script”
- 12 ● translations in UN languages
 - 13 ○ Variants: “including but not limited to official UN languages,” UN
 - 14 languages plus Portuguese
 - 15 ○ Points in support: clear, finite list
 - 16 ○ Points against: official UN languages are not necessarily the most
 - 17 important languages in many countries
- 18 ● translations in official languages of the country
 - 19 ○ Points in support: [Working Paper 54](#) of the UN Group of Experts on
 - 20 Geographical Names (UNGEGN) could be a starting point for this list,
 - 21 [Expanded Graded Intergenerational Disruption Scale and categorization](#)
 - 22 [based on Official Recognition](#) could be used as a starting point for this list
 - 23 ○ Points against: difficult to identify the official languages of each country,
 - 24 some countries may not have official languages, administrations in many
 - 25 countries use languages that are not official, people of the country also
 - 26 use languages that may not be official but are important to specific
 - 27 communities
- 28 ● translations in UN languages and the official languages of the country
 - 29 ○ See above for relevant points in support and against
- 30 ● translations in official and commonly used languages
 - 31 ○ Points in support: this category would cover languages used by people in
 - 32 the country that are important to specific communities
 - 33 ○ Points against: This is not a category with clear boundaries or definition
- 34 ● translations in official and relevant national, regional, and community languages
 - 35 ○ Points in support: this category would cover languages used by people in
 - 36 the country that are important to specific communities
 - 37 ○ Points against: This is not a category with clear boundaries or definition

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- 1 ● translations in “principal languages” where the principal languages are the
- 2 official or de facto national languages and the statutory or de facto provincial
- 3 languages of that country
- 4 ○ Points in support: this category address some of the concerns raised
- 5 about the limitations of “official languages,”_draws on existing
- 6 categorization from [ethnologue.com](#)
- 7 ○ Points against: Additional work would be needed to ensure this category
- 8 has clear boundaries
- 9 ● a combination of two or more categories above

10
11 The Work Track welcomes community feedback on these alternatives. Please see

12 [section e](#) for a specific question for community feedback on this topic.

13
14 The Work Track reviewed the general points in support of and against the use of the

15 support/non-objection requirement in the New gTLD Program. See section [f.2.3](#) for

16 details.

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17
18 In addition, Work Track members raised specific points in support of continuing to

19 require support or non-objection for names in this category. Some believe that:

- 20 ● 60+ city TLD applications went forward with support/non-objection and there
- 21 were few cases of objections for such strings in the 2012 round, demonstrating
- 22 that many applications were able to proceed to delegation using this process,
- 23 including a number of capital city names. Some applicants expressed that they
- 24 had a positive experience with the process.
- 25 ● Some Work Track members have expressed that there are a number of success
- 26 stories coming out of the 2012 round using the support/non-objection
- 27 mechanism for capital cities. Examples include .tokyo, .london, .paris, .berlin,
- 28 .amsterdam, .moscow, and .wien. The delegation of these strings had positive
- 29 effects on geographical, cultural and linguistic diversity.
- 30 ● This requirement offers some degree of predictability because the list of capital
- 31 city names is based on an objective standard (ISO 3166-1).

32
33 Work Track members raised specific points against continuing to require support or

34 non-objection for names in this category in some or all cases. Some believe that:

- 35 ● The application/delegation process can take time and city administrations may
- 36 change, which could create unstable conditions for the applicant who is required
- 37 to have government support/non-objection.
- 38 ● If a string is being used in a generic or brand context, there is no harm or risk of

1 confusion and therefore support/non-objection process is not necessary in these
2 cases.

3
4 The following proposals have been put forward by Work Track members with respect to
5 this category:

- 6 ● Require support/non-objection only if the applicant intends to use the gTLD for
7 purposes associated with the capital city name.
- 8 ● Eliminate support/non-objection requirements.

9
10 There was no clear agreement to change the terms included in the 2012 Applicant
11 Guidebook. Therefore, the Work Track is putting forward a preliminary
12 recommendation for community feedback to continue to consider this category a
13 geographic name requiring government support at the top level. Applications for these
14 strings must be accompanied by documentation of support or non-objection from the
15 relevant governments or public authorities, consistent with provisions in the 2012
16 Applicant Guidebook.

17 **f.2.3.2 Non-Capital City Names**

18 For non-capital city names, there is divergence between the 2007 Policy and
19 Implementation in the 2012 Applicant Guidebook. The 2007 Policy anticipated that
20 these strings would be available without any special requirements and did not mention
21 a provision requiring support/non-objection.²⁸ The 2012 Applicant Guidebook required
22 support/non-objection from relevant governments or public authorities for city names
23 where the applicant declares that it intends to use the gTLD for purposes associated
24 with the city name. Please see section [b](#) for a full summary of applicable provisions.

²⁸ 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.

1 The Work Track discussed the implementation of the support/non-objection mechanism
2 in the 2012 round with respect to non-capital city names. Some Work Track members
3 identified potential issues with the 2012 implementation of rules for non-capital city
4 names. Some believe that:

- 5 ● The term “city” was not defined, which could be a source of uncertainty. At the
6 same time, because support/non-objection was only required if the applicant
7 intended to operate the TLD for purposes associated with the city name, the
8 impact of this lack of precision may have been limited. Work Track members
9 pointed out that there are different definitions of the term “city.”²⁹
- 10 ● Some applicants experienced a de-facto requirement to obtain support or non-
11 objection from a government or public authority for a string they did not intend
12 to use for purposes associated with a city name.
- 13 ● In the Applicant Guidebook, there was no requirement for applicants to obtain
14 support/non-objection if the applicant intended to use the string in a generic or
15 brand context. The cases of .spa and .bar are examples that were cited by Work
16 Track members. In relation to these examples, some Work Track members
17 expressed the view that relevant government authorities should be consulted to
18 get a full and balanced picture of the facts of these cases.
- 19 ● From one perspective, there were challenges in the 2012 round associated with
20 resolving competing bids for a string associated with a city name, in particular if
21 multiple applications had support or non-objection from relevant
22 governments/public authorities. Some Work Track members felt that this may be
23 any area for future refinement if the support/non-objection mechanism exists in
24 subsequent procedures.
- 25 ● Work Track members identified that some stakeholders experienced uncertainty
26 about monitoring and enforcement related to the intended use commitment.

²⁹ The following examples were provided to demonstrate that there are different definitions for the term “city”:

- 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)
- [“City status in the United Kingdom”](#) (Wikipedia)

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The following proposals have been put forward by Work Track members as possible options for the future treatment of city names that are not capital city names:

- **Maintain provisions included in the 2012 Applicant Guidebook that require applicants to obtain letters of support or non-objection from the relevant governments or public authorities for “An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.”** The requirement applies 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.” See the deliberations section of this paper for pros and cons associated with maintaining the treatment included in the 2012 Applicant Guidebook. As with other applications, curative measures available include objections processes, use of Public Interest Commitments, contractual provisions and enforcement, and post-delegation dispute resolution.

- **Variant 1: Implement provisions to prevent misrepresentation.**
Applicants who intend to represent a connection the authority of a non-capital city will need to provide a letter of support/non-objection. However, if the applicant does not intend to represent a connection to the authority of non-capital city names, protections will be enhanced by inserting contractual requirements into the Registry Agreement that prevent the applicant from misrepresenting their connection or association to the geographic term. This proposal changes the standard for when a letter is needed for non-capital city names from usage associated with the city name to usage intended to represent a connection to the authority of the non-capital city name. This proposal increases contractual requirements and therefore enhances protections for geographic places.

Commented [A82]: Jorge Cancio: As to section d) it seems that it focuses on “non-capital city names” (pages 6-11). This should probably be made even clearer if it is the case, in order to avoid any confusion. Under the proposals reflected in this section it is surprising that intended use appears two times: first under 1 and then under 8. Proposal 8 is a variation of the “intended use” approach and should be presented in connection with 1. It is also surprising that the many arguments pro and con “intended use” (which are on the record) are not properly summarized in a box, as is being done for other proposals. It is as well surprising that proposals to eliminate the “intended use” rule for non-capital city names are not listed as an option. This should be done and presented as an option. Such proposals also have been accompanied by suggestions to improve the letter of non-objection system (deadlines, mediations etc.), which should be included under that option.

Commented [A83]: Staff note: Staff has restructured the paper to integrate proposals into the appropriate parts of section f, so they can be viewed in context of deliberations and are consistently presented throughout the paper.

Proposals on city names (now in section f) have been restructured to show that the proposal on misrepresentation is a variant of intended use.

The deliberations section goes into an extensive discussion of intended use and the associated pros and cons. The proposals are now integrated into the section that presents these options.

Staff added the elimination of intended use as a distinct option.

Proposals regarding improvements to the letter of non-objection have been moved a relevant section of the part f, as have the other proposals.

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Benefits of Variant 1	Drawbacks of Variant 1
Some believe that this standard would be more fair and clear to applicants.	Some believe that this proposal only provides protections against specific types of misrepresentations, and does not address

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Benefits	Drawbacks
Some believe that this process would be more fair and predictable for applicants because it uses objective standards for evaluation.	Some believe 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 believe that this process does not assume a preventative existing legal right and consider this a benefit.	Some believe that this proposal does not take into account public policy concerns that are not codified in law.
	Some believe 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.
	Some believe that requiring public authority <u>or community group</u> objectors to pay to make an objection creates a substantial financial burden and serves as a significant restriction on the legitimate concerns of third parties regarding the application.
	<u>Some believe that proposal would serve as an impediment to freedom of expression.</u>

Commented [A86]: Added based on feedback from Justine Chew on 7 November call.

Commented [A87]: Added based on comment from Christopher Wilkinson on 7 November call.

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- 3 ● **Always require a letter of support or non-objection from the relevant**
- 4 **governments or public authorities regardless of intended use.**
- 5 ○ For general arguments in favor and against intended use provisions,
- 6 please see section **f.2.3**. The following are points that specifically address
- 7 this proposal.
- 8

Benefits	Drawbacks
Some believe that this would be consistent	Some believe that there is no legal basis for

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Some believe that this would help to ensure that potential applicants for “city TLDs” can make informed decisions about whether to apply for a string.	There are potential costs associated with awareness raising campaigns.
Some believe that this approach is more consistent with the overall design of the program compared to proposals focused exclusively on reservation and/or support/non-objection.	

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Summary of Proposals - Relative to the 2012 AGB

Proposal	Level of Protection/Restriction	Focus
Maintain 2012 AGB	Status Quo	Preventative and Curative
Variant 1 of maintaining 2012 AGB: Prevent Misrepresentation	Increased in some respects and decreased in other respects	Preventative and Curative
Variant 2 of maintaining 2012 AGB: Edited AGB Text	Increased	Preventative
Variant 3 of maintaining 2012 AGB: Edited AGB Text	Increased	Preventative
Focus on Objections Mechanisms	Decreased	Curative
Always Require Support/Non-Objection	Increased	Preventative
Small Cities - First Right to Apply	Increased	Other means/tools
Support/Non-Objection for Large Cities	Increased	Preventative
Each Country Selects Cities Requiring Support/Non-Objection	Increased	Preventative

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Reserve Names of “Global Cities”	Increased	Preventative
Raise Awareness	Does not impact level of protection	Other means/tools

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 2 There was no clear agreement to change the terms included in the 2012 Applicant
 3 Guidebook. Therefore, the Work Track is putting forward a preliminary
 4 recommendation for community feedback to continue to consider this category a
 5 geographic name requiring government support at the top level where the applicant
 6 declares that it intends to use the gTLD for purposes associated with the city name.
 7 Applications for these strings must be accompanied by documentation of support or
 8 non-objection from the relevant governments or public authorities, consistent with
 9 provisions in the 2012 Applicant Guidebook.

10 **f.2.3.3 Sub-National Place Names, Such as Counties, Provinces, or States Listed in ISO**
 11 **3166 Part 2**

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

19 Please see section **f.2.3** for general arguments in support of and against the
 20 support/non-objection mechanism in general.

21 Specifically in relation to sub-national place names, Work Track members raised points
 22 in support of continuing the 2012 Applicant Guidebook treatment for this category.
 23 Some believe that:

- 24 ● There is some level of predictability, because there are specific sources of terms.
- 25 ● This approach creates incentives for applicants and relevant authorities to arrive
 26 at mutually accepted solutions.

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 28 Specifically in relation to sub-national place names, Work Track members raised points
 29 against continuing the 2012 Applicant Guidebook treatment for this category. Some
 30 believe that:

- 31 ● There may be tensions between communities associated with regions and the
 32 corresponding governments. In this view, a legitimate applicant could be

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1 For strings in this category, there is divergence between the 2007 Policy and the 2012
2 Applicant Guidebook. The 2007 Policy anticipated that these strings would be available
3 without any special requirements and did not mention a provision requiring
4 support/non-objection. The 2012 Applicant Guidebook required support/non-objection
5 from at least 60% of the respective national governments in the region and no more
6 than one written statement of objection to the application from relevant governments
7 in the region and/or public authorities associated with the continent or the region.

8 Please see section [f.2.3](#) for general arguments in support of and against the
9 support/non-objection mechanism.

10 Specifically in relation to this category, Work Track members raised points in support of
11 continuing the 2012 Applicant Guidebook treatment. Some believe that:

- 12 ● There is some level of predictability, because there are specific sources of terms.
- 13 ● This approach creates incentives for applicants and relevant authorities to arrive
14 at mutually accepted solutions.

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16 Specifically in relation to this category, Work Track members raised points against
17 continuing the 2012 Applicant Guidebook treatment. Some believe that:

- 18 ● There may be tensions between communities associated with regions and the
19 corresponding governments. In this view, a legitimate applicant could be
20 punished or evaluated negatively because a government entity does not agree
21 with the applicant's position or entitlement.
- 22 ● The case of .africa was provided as an example of a string in this category that
23 had challenges in the 2012 round using the support/non-objection process.
- 24 ● If a string is being used in a generic or brand context, there is no harm or risk of
25 confusion and therefore support/non-objection process is not necessary in these
26 cases.

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28 The following proposals have been put forward by Work Track members with respect to
29 this category:

- 30 ● Eliminate support/non-objection requirements.

³¹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

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- Applicants who intend to represent a connection the authority of a UNESCO region, or region appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list will need to provide a letter of support/non-objection. However, if the applicant does not intend to represent a connection to the authority of the geographic terms listed above, protections will instead be achieved by inserting contractual requirements into the Registry Agreement that prevent the applicant from misrepresenting their connection or association to the geographic term.
- If the string corresponds to a geographic name but the applicant intends to use the string in a generic or brand context, there is no requirement for a letter of support or non-objection from any governments or public authorities.

Commented [A90]: Jorge Cancio: page 16: proposed solution 4.4.1. seems to repeat the “intended use” idea – this approach, as said above, should be consolidated under one single point.

Commented [A91]: Staff note: Suggest moving the proposal under the specific categories within the deliberations where it is being proposed since it applies to a specific subset of all categories (not capital city names).

There was no clear agreement to change the terms included in the 2012 Applicant Guidebook. Therefore, the Work Track is putting forward a preliminary recommendation for community feedback to consider this category a geographic name requiring government support at the top level, consistent with the 2012 Applicant Guidebook.

f.2.4 ADDITIONAL TYPES OF TERMS NOT INCLUDED IN THE 2012 APPLICANT GUIDEBOOK

The Work Track discussed additional categories of strings that were not listed as geographic names in the 2012 Applicant Guidebook. Perspectives on this issue surfaced through conversations on specific applications from the 2012 round. Work Track members referenced examples 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.

Some believe that:

- 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.
- The issue is that the AGB was not sufficiently clear.

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- 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.
 - These rights are particularly important for minority cultures and peoples and indigenous groups associated with a physical place.
 - It is inappropriate for brands or other groups to use names that belong to a particular group of people.

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11 Work Track members raised points against establishing rules for additional categories of
12 strings. Some believe that:

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- 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.
 - 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. Applicants should, as the default, be given a path to success. The default should not grant rights to other parties to block applications.
 - 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.
 - Objections processes could be used to address cases where a substantial number of people associated with a geographic community opposed an application. 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.

33 In addition the proposed categories discussed above, some Work Track members
34 advocated for special rules or protections for Geographical Indications in subsequent
35 procedures. Other Work Track members opposed this proposal. Some believe that:

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- This is a category with clear boundaries that can be documented, therefore increasing predictability.

- Geographical Indications are an important component of the economy in many regions, and therefore their protection and use affect the livelihoods of many Internet users.
- Geographic Indications are generally protected by applicable local laws.

Some believe that:

- This category does not have clear boundaries. Protections of geographical indications vary significantly from country to country.
- There is no standard terminology and there are no treaties in relation to Geographical Indications. There is no overall common basis for protection.
- To the extent the Geographical Indications are protected under local law, the protection varies significantly.
- The topic of Geographical Indications is being discussed as a trade issue in many other fora, and has become a sensitive political issue. Individuals and groups with in-depth expertise are currently debating these issues elsewhere. Therefore, Work Track 5 should be very cautious about attempting to address this issue.

In conversations about potential additional categories of strings, Work Track members discussed scope and applicability of law. Please see section [f.1.2.3](#) for additional information about this issue.

Work Track members put forward proposals related to terms not currently listed in the Applicant Guidebook as having special rules or restrictions.

Some believe that it may be unclear to an applicant if a government, public authority, or other party considers a string to be a geographic term, and therefore conflicts may arise later in the process.

Some suggest that the best way address this problem is to ensure that the rules are explicit and therefore clear for all parties, which will prevent conflicts from arising later in the process:

- Proposal: Apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly protected is unprotected. No objection or non-consent can be used to stop its registration.

Benefits	Drawbacks
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Commented [A95]: Christopher Wilkinson: N.B. The concept of a 'bright-line rule' (p.11) is not widely used or understood (not included in the OED). Quite apart from the merits of the case, if any, that expression is likely to suffer considerably in translation.

Commented [A96]: Christopher Wilkinson: I do not support this proposal. ICANN and the Community have no grounds for determining which geo-names are 'explicitly and expressly' (sic) protected, and which are not. I think it would depend very much on who you ask! Would ICANN's outreach include going round the world telling folk that the names of the places where they live are not protected?

Commented [A97R96]: Jorge Cancio: I broadly support Christopher's points.

Commented [A98]: Alexander Schubert: The rule does LITERALLY make no sense at all. Why would we eliminate the opportunity to object? On what basis? That's entirely bonkers – and the GAC should keep an eye on this one: this is the attempt to silence countries on both; the Governmental and the civil society level. No. Just: NO! The right to object is a fundamental civil liberty right and there can't be ANY policy limiting it in ANY way. This is how dictatorships silence opposition. Not at ICANN.

Commented [A99]: Greg Shatan: A "bright-line" rule is one "providing an unambiguous criterion or guideline" according to Merriam-Webster. It's a fairly common term in the US, particularly in law, legislation and regulation. The idea is to have a distinction that is clear and unambiguous; you are on one side of the line or the other. But the exact word choice is unimportant. The term "bright-line" could be replaced by unambiguous, or simply deleted entirely, with no significant loss in meaning.

... [8]

Commented [A100]: Alexander Schubert: If there was just ONE applicant for ".shanghai". And if from their application one couldn't derive that "they intend to use this gTLD PRIMARELY for issues related to the city". Then you are telling us that neither the city of Shanghai

Commented [A101]: Jorge Cancio: (1) page 12: proposed solution 1.2.1.: it is unclear what the "bright-line" intends to apply to (scope?). It is also unclear what could be the basis for protection (law, policy, administrative act?). Unless these elements are clarified

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<p><u>Some believe that this proposal would increase predictability for applicants by ensuring that the Applicant Guidebook defines the entire universe of geographic privileges and protections, and that there are no other processes by which a claimed privilege or protection could be asserted.</u></p>	<p><u>Some believe that this proposal would not be acceptable to governments and public authorities.</u></p>
<p><u>Some believe that this proposal would reduce conflicts and disputes by creating a recognizable boundary between terms with geographic meaning that are subject to third-party processes and those that are not.</u></p>	<p><u>Some believe that ICANN and the community have no grounds for determining which geo-names are 'explicitly and expressly' (sic) protected, and which are not.</u></p>
<p><u>Some believe that this proposal would eliminate the chilling effect caused by allowing objections to any application.</u></p>	<p><u>Some believe that that right to object is a fundamental right that should not be limited by policy.</u></p>

Commented [A102]: Added based on comments by Christopher Wilkinson on 7 November call.

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Others suggest that the relevant governments and public authorities should “have a say” in the process if they consider a string to be geographic in nature. Some believe that this role for governments should exist regardless of whether the term is included as a geographic name in the Applicant Guidebook. From this perspective, involving relevant governments or other parties, such as experts, earlier in the process will create clarity and reduce conflicts. Several proposals suggest an informational role:

- **Proposal: Provide an advisory panel that applicants could contact to assist in identifying if a string is related to a geographic term.** 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.

Benefits	Drawbacks
<p>Some believe that an advisory panel could create greater clarity for applicants about which strings are geographic names and which governments or public authorities are applicable, therefore reducing potential future conflicts.</p>	<p>Some believe that the geographic names panel should have a focused mandate and rules should be sufficiently clear that there are no “hard cases.”</p>

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From one perspective, this enhanced role for the GAC members could create greater clarity for applicants about which strings are geographic names and which governments or public authorities are applicable, therefore reducing potential future conflicts.	From one perspective, the rules should be clear and unambiguous regarding what constitutes a geographic name and the which rules apply for these strings.
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Commented [A103]: Jorge Cancio: 2) page 13: text in the box should read "From one perspective, this enhanced role for the GAC members..."

Commented [A104]: Edited.

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2 Additional proposals from this perspective suggest creating new requirements for
3 applicants:

- 4 ● Proposal: **Require that an applicant demonstrates that it has researched**
5 **whether the applied-for string has a geographic meaning and performed any**
6 **outreach deemed necessary by the applicant prior to submitting the**
7 **application.** The proposal would be in addition to the existing measures related
8 to the Geographic Names Panel.
- 9 ● Proposal: **If the applicant is applying for a geographic name, including terms**
10 **not listed in the 2012 Applicant Guidebook, the applicant is required to**
11 **contact/consult with the relevant government authority and provide evidence**
12 **that it has done so.**

Commented [A105]: Jorge Cancio: page 14, first and second bullets: these proposed solutions have been made in relation to non-AGB terms. This should be clarified. They would not replace the evaluation by the GNP.

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

Commented [A106]: Staff note: Proposed clarification to this text.

- 18 ● New gTLD Subsequent Procedures PDP Working Group - outputs of full Working
19 Group and Work Tracks 1-4
- 20 ● Recommendations of the Competition, Consumer Trust, and Consumer Choice
21 Review Team
- 22 ● GAC Geographic Names Working Group
- 23 ● Cross-Community Working Group on the Use of Country and Territory Names
24 (completed)
- 25
- 26
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4 Background

4.1 Process Background

On 25 June 2014, the GNSO Council created the New gTLD Subsequent Procedures Discussion Group. On 1 June 2015, the Discussion Group delivered its final deliverables with the GNSO Council.

- In response to the deliverables of the Discussion Group, on 24 June 2015, the GNSO Council resolved to request an Issue Report. In the Final Issue Report, ICANN staff recommended that the GNSO Council commence a PDP on New gTLD Subsequent Procedures.
- On 4 December 2015, ICANN staff published a Final Issue Report for the GNSO Council to consider the commencement of a Working Group.
- On 17 December 2015, the GNSO Council initiated a Policy Development Process and chartered the New gTLD Subsequent Procedures Working Group.
- On 21 January 2016, the GNSO Council resolved to adopt the charter of the Working Group.
- On 27 January 2016, a Call for Volunteers was issued for the Working Group and the WG held its first meeting on 22 February 2016.
- On 22 October 2017, a Call for Volunteers was issued for Work Track 5 and the WT held its first meeting on 15 November 2017.
- On 3 July 2018, the WG published its Initial Report for public comment³².

³² See public comment proceeding here: <https://www.icann.org/public-comments/gtld-subsequent-procedures-initial-2018-07-03-en>

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4.2 Issue Background

The New gTLD Subsequent Procedures PDP Working Group was tasked with determining what, if any changes may be needed in regards to the existing GNSO's *Final Report on Introduction of New Generic Top-Level Domains*³³. As the original policy recommendations as adopted by the GNSO Council and the ICANN Board have "been designed to produce a systemized and ongoing mechanisms for applicants to propose new top-level domains," those policy recommendations remain in place for subsequent rounds of the New gTLD Program unless the GNSO Council would decide to modify those policy recommendations via a policy development process. The work of the PDP follows the efforts of the New gTLD Subsequent Procedures Discussion Group (DG), which identified a set of subjects for this PDP to consider in their deliberations. The DG anticipated that the WG might complete its work by:

- Clarifying, amending or overriding existing policy principles, recommendations, and implementation guidelines;
- Developing new policy principles, recommendations, and implementation guidelines

4.2.1 Related Work by the GNSO and the Community

Several efforts within the community have connections to the work of this Work Track:

- New gTLD Subsequent Procedures PDP Working Group overarching issues and Work Tracks 1-4
- Competition, Consumer Trust & Consumer Choice Review Team (CCT-RT)
- GAC Geographic Names Working Group

³³ See the Final Report – Introduction of New Generic Top-Level Domains here: <https://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>

5 Approach Taken by the Working Group

5.1 Working Methodology

The New gTLD Subsequent Procedures PDP WG's Work Track 5 began its deliberations on 15 November 2017. It conducted its work primarily through regular conference calls, in addition to email exchanges on its mailing list, with further discussions taking place during scheduled sessions at ICANN Public Meetings. All the WT's meetings are documented on its Wiki (<https://community.icann.org/x/YASbAw>). The Wiki also includes mailing list archives (<https://mm.icann.org/pipermail/gnso-newgtld-wg-wt5/>), draft documents, and background materials.

5.1.1 WG Membership

The members of the New gTLD Subsequent Procedures Work Track 5 are below:

	Group / Name	Affiliation
1	Abdul Saboor Malik	NCUC
2	Abdullah K. Al-Rubaan	Individual
3	Adarsh B U	NCUC
4	Aderonke Adeniyi	GAC
5	Adrian Carballo	At-Large
6	Ahlam Abu-Jadallah	Government
7	Alan Greenberg	At-Large
8	Alberto Soto	At-Large
9	Alexander Schubert	RySG
10	Alfredo Calderon	At-Large

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11	Alfredo Santos	RySG
12	Ali Hussein Kassim	At-Large
13	Andrei Kolesnikov	At-Large
14	Ann-Cathrin Marcussen	ccNSO
15	Annebeth Lange Co-Leader	ccNSO
16	Ashley Heineman	GAC
17	Aslam Mohamed	Individual
18	Avri Doria	Individual
19	Aziz Hilali	At-Large
20	Barrack Ongondo Otieno	ccNSO
21	Bernd Neujahr	GAC
22	Bonnie Mtengwa	ccNSO
23	Bram Fudzulani	At-Large
24	Brian Scarpelli	IPC
25	Brian Winterfeldt	IPC
26	Bruna Martins dos Santos	NCSG
27	Carlos Dionisio Aguirre	At-Large
28	Carlos Raul Gutierrez	RySG
29	Charles Semapondo	GAC

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30	Cheryl Langdon-Orr (Co-chair new gTLD Subpro WG)	At-Large / ccNSO
31	Ching Chiao	RySG
32	Chris Casavale	IPC
33	Christa Taylor	Individual
34	Christopher Wilkinson	At-Large
35	Colin O'Brien	IPC
36	Cristina Monti	GAC
37	Daniel Anthony	Individual
38	Dave Kissoondoyal	Individual
39	David Cake	NCUC
40	David McAuley	RySG
41	Delia Belciu	IPC
42	Demi Getschko	ccNSO
43	Dessalegn Mequanint Yehuala	Individual
44	Dev Anand Teelucksingh	At-Large
45	Edmon Chung	RySG
46	Ejikeme Egbuogu	NPOC
47	Elsa Saade	NCUC
48	Erich Schweighofer	At-Large
49	Farzaneh Badii_(Badiiei)	NCUC
50	Francis Olivier Cubahiro	GAC

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51	Francesco Vinci	GAC
52	Fulvia Menin	GAC
53	Ghislain de Salins	GAC
54	Giacomo Mazzone	GAC
55	Giovanni Seppia	ccNSO
56	Gnanajeyaraman Rajaram	NCUC
57	Greg Shatan	IPC
58	Goma Serge Parfait	Individual
59	Griffin Barnett	IPC
60	GZ Kabir	ISPCP
61	Hadia Elminiawi	At-Large
62	Hamzah Haji	At-Large
63	Harish Chowdhary	NPOC
64	Harold Arcos	At-Large
65	Heather Forrest	IPC
66	Hempal Shrestha	At-Large
67	Iliya Bazlyankov	Individual
68	Ines Hfaiedh	NCUC
69	Isha Suri	Individual
70	Jaap Akkerhuis	Individual
71	Jaifa Margarita Mezher Arango	GAC
72	Janvier Ngnoulaye	Individual
73	Javier Rúa-Jovet Co-Leader	At-Large
74	Jeff Neuman (Co-chair new	Individual

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	gTLD Subpro WG)	
75	Jelena Ozegovic	ccNSO
76	Jessica Flores	Individual
77	Jessica Hooper	RySG
78	Jim Prendergast	Individual
79	Joe Alagna	Individual
80	John Rodriguez	GAC
81	Jon Nevett	RySG
82	Jonathan Agmon	IPC
83	Jorge Cancio	GAC
84	Juan Manuel Rojas	NPOC
85	Judy Song-Marshall	RySG
86	Justine Chew	At-Large
87	Katrin Ohlmer	Individual
88	Kavouss Arasteh	GAC
89	Kerim Begliyev	GAC
90	Kiran Malancharuvil	IPC
91	Krishna Seeburn (Kris)	NCUC
92	Kristina Rosette	RySG
93	Leonard Obonyo	ccNSO
94	Liz Orembo	At-Large
95	Liz Williams	GNSO
96	Luca Barbero	IPC
97	Marcelo Ferreira dos Santos	Individual

Deleted: ccNSO

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98	Marita Moll	At-Large
99	Maritza Agüero Minano	At-Large
100	Martin Sutton Co-Leader	RySG
101	Mason Cole	RySG
102	Matthew Johnson	IPC
103	Maureen Hilyard	At-Large
104	Michael Flemming	IPC
105	Miguel Ignacio Estrada	ccNSO
106	Mike Rodenbaugh	
107	Mirjana Tasic	ccNSO
108	Narine Khachatryan	Individual
109	Neli Marcheua	Individual
110	Nelson Imoa Kaunda	Individual
111	Nick Wenban-Smith	ccNSO
112	Olga Cavalli - Co-Leader	GAC
113	Pascal Bekono	At-Large
114	Paul McGrady	IPC
115	Paul Rosenzweig	NCSG
116	Pedro Huichalaf Roa	Individual
117	Peter Van Roste	ccNSO
118	Phillip Vincent Marano	IPC
119	Philippe Fouquart	ISPCP
120	Poncelet Ileleji	NPOC
121	Rahman Khan	Individual

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122	Rahul Gosain	GAC
123	Ramet Khalilinasr	RSSAC
124	Raymond Selorm Mamattah	Individual
125	Renata Aquino Ribeiro	NCUC
126	Ricardo Holmquist	At-Large
127	Robin Gross	NCSG
128	Rosalia Morales	ccNSO / ccTLD
129	Salanieta Tamanikawaiwaimaro	NCSG
130	Samantha Demetriou	RySG
131	Sanna Sahlman	ccNSO
132	Sarah Langstone	RySG
133	Sophia Feng	RySG
134	Sophie Hey	Individual
135	Statton Hammock	CBUC
136	Stephen Jadie Coates	RySG
137	Subhash Dhakal	GAC
138	Susan Anthony	GAC
139	Susan Payne	IPC
140	Svitlana Tkachenko	ccNSO
141	Syed Iftikhar Hussain Shah	GAC
142	Tatiana Tropina	NCUC
143	Taylor R.W. Bentley	GAC
144	Thiago Jardim	GAC
145	Thongchai Sangsiri	GAC

1 7 Annex A – Charter

- 2
- 3 The full Working Group charter is available here: <https://community.icann.org/x/KAp1Aw>
- 4
- 5 The Terms of Reference document developed by the Work Track is available here: <https://community.icann.org/x/RgS8B>

Additional Input by Jaap Akkerhuis: I'm really pressed for time so this will be very short. But since you asked, here is my thinking.

I observe that the exceptional reservations is only on alpha-2 and alpha-3 _codes_ (and the exceptional reserved alpha-3 codes are not considered in the AGB). Alpha-2 and -3 codes are already covered by other rules in the AGB, I'm wondering why they need to be discussed at all in the AGB.

Furthermore, the 3166 is under review and noise have been made that the current use of reserved codes might be changed in this process.

I do think that there are more important things to spend energy on than this very specific case (and I repeat, might already been covered by a more general rule). So adding more rules to the ADB about this (what the current proposal is), is to my (pragmatic) taste an overkill.

Christopher Wilkinson: I also do not know whether the exceptionally reserved codes are associated with short or long form names. However, it is clear that should <.europeanunion> not yet be clearly reserved, it will have to be so.

Neither do I know whether the exceptionally reserved alpha2 codes all have an alpha3 buddy.

This is not an issue for .EUR since that is, unusually, the SAME as the ISO 4217 currency code for the €.

(That is not the only reason for which I consider that ALL the ISO4217 alpha3 codes must be protected.)

With regard to Nick's draft text, please recall that <.eu> was delegated well before the 2012 Round.

There never was any question of .EU being a gTLD:

1. the restriction on two character codes already applied for gTLDs

2. the European Commission applied for .EU as a ccTLD, for policy reasons. There never was an application for a gTLD.

3. in those days ICANN was still applying a highly restrictive policy with respect to creating new gTLDs.

I suggest that we delete the bit about exclusions from gTLDs in the 2012 Round.

Page 15: [3] Commented [A28R25] Author

The 2012 Applicant Guidebook reserved any string that is a “short- or long- form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency”. Upon more detailed advice and examination of those “exceptionally reserved” codes it has been highlighted that the effect of reserving the short- or long- form names associated with the “exceptionally reserved” codes in the 2012 Applicant Guidebook is unclear. For example in the case of EZ which is exceptionally reserved as referring to OTC derivatives, and whether or not this resulted in the exclusion of ‘United Nations’ and ‘European Union’ from being allowed as new gTLDs in the AGB2012 since those terms are not country names. This provision should be clarified for the next round of new gTLDs.

Page 15: [4] Deleted Author

The glossary for ISO 3166 defines *exceptionally reserved codes* as “codes that have been reserved for a particular use at special request of a national ISO member body, governments or international organizations. For example, the code UK has been reserved at the request of the United Kingdom so that it cannot be used for any other country.” See <https://www.iso.org/glossary-for-iso-3166.html>.

Page 17: [5] Commented [A44] Author

Greg Shatan: 1. We now have two participants objecting to Rec. 11 because it doesn't go far enough (i.e., it doesn't put non-geographic uses under the rule of support/non-objection letters) and one participant objecting because it goes too far (i.e., no uses should be put under the rule of support/non-objection letters).

I support the recommendation as it stands and believe it should remain. However, if I had to choose one of the two opposing positions above, I would choose the “it goes too far” position. It's hard to know which (if any) of the three positions have the most support in the Working Group. If none have sufficient support, perhaps it should be deleted. Another possibility is to lay out these 3 options for comment (status quo, removal of the intended use limitation, or removal in its entirety).

Page 42: [6] Commented [A79] Author

Greg Shatan suggested adding: “Work Track members discussed negative experiences in the 2012 round, with a focus on TLDs for which the applicant intended to use the string in association with a meaning other than its geographic meaning. Some believe that:

- Rules in the 2012 Applicant Guidebook worked poorly for these applicants.
- Requirements to obtain letters of support or non-objection from relevant governments or public authorities imposed an arbitrary and unfair burden without any basis other

than coincidence. These requirements created great difficulties, delays and expense for these applicants.

- The inability to timely delegate and operation these TLDs had negative effects on diversity, innovation and competition in the TLD space.”

Page 77: [7] Commented [A101]

Author

Jorge Cancio: (1) page 12: proposed solution 1.2.1.: it is unclear what the “bright-line” intends to apply to (scope?). It is also unclear what could be the basis for protection (law, policy, administrative act?). Unless these elements are clarified this “proposed solution” seems unfit to be presented as such.

Page 77: [8] Commented [A99]

Author

Greg Shatan: A “bright-line” rule is one “providing an unambiguous criterion or guideline” according to Merriam-Webster. It’s a fairly common term in the US, particularly in law, legislation and regulation. The idea is to have a distinction that is clear and unambiguous; you are on one side of the line or the other. But the exact word choice is unimportant. The term “bright-line” could be replaced by unambiguous, or simply deleted entirely, with no significant loss in meaning.

As to substance — we have been looking for rules that would limit or eliminate disputes, and for ways to make the application process more predictable. This would seem to accomplish both objectives. I believe we’ve heard mention of the opposite extreme — that objection or non-support should apply to every term that has a geographic meaning. Perhaps both of these extremes are “bonkers.”

But at least this proposal answers the question “What happens to geographic terms that are not expressly protected under the AGB?” I don’t really think it’s “bonkers” — this would mean that the AGB defines the entire universe of geographic privileges, protections, etc., and that there are no other processes by which a claimed geo-based privilege or protection could be asserted.

I support this proposal. This in many ways would be a more manageable regime, with a more defined set of options. As a matter of fact, when it comes to “permissions” this essentially states the current rule. When it comes to objections, this may go further than the current rule, but it does eliminate the possibility that every term that has a geographic meaning is potentially open to objection, which tends to have a chilling effect. In short it creates a recognizable boundary between terms with geographic meaning that are subject to a third party process, and those that are not.

If governments seek (or believe they have) the power to object or to require permission for geographic terms that are not protected by the AGB, there should be a much greater definition of what these powers are, how they are applied, what their limits are, etc. The current situation goes against predictability, against eliminating disputes, and against freedom

of speech. As it stands now, every applicant can be targeted by Big Brother, and they won't know how, when, or why. That seems pretty "bonkers."

Page 77: [9] Commented [A100]

Author

Alexander Schubert: If there was just ONE applicant for ".shanghai". And if from their application one couldn't derive that "they intend to use this gTLD PRIMARELY for issues related to the city". Then you are telling us that neither the city of Shanghai nor constituents from the city can object? Because "bright line"? Maybe I am misunderstanding you. Somebody applies for ".shanghai"; simply AVOIDS talking about the city altogether; and that's it: he is through? No "curative rights" anymore?