



BC Comment on GAC Proposal for Protection of Geographic Names in New gTLDs

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment

The ICANN Business Constituency (BC) welcomes this opportunity to comment on the draft document, “The Protection of Geographic Names in the New gTLDs Process,” developed by the Governmental Advisory Committee (GAC) Sub-group on Geographic Names.

The BC has four main objections to the draft document at this time.

First, the proposal that business users applying for new gTLDs must perform a search to determine if a new string is any type of geographic name is impractical.

Second, the proposal that an applicant should get agreement or non-objection from the relevant governments and public authorities before submission of an application sets an unclear burden for business users applying for new gTLDs.

Third, the proposals in the draft document are not compatible with current law.

Fourth, the draft document is not clear on the definition of “public interest,” and what authority will determine the public interest in the event of a disagreement over a new gTLD.

The proposal that business users applying for new gTLDs must perform a search to determine if a new string is a geographic name is impractical.

As a best practice for future rounds of new gTLDs, the draft document proposes that once an applicant has selected a string to request as a new gTLD, “a thorough search should be undertaken to determine whether the string is a geographic name, including but not limited to cities, countries, regions, sub-regions or other geographic spaces.” Sources for the applicant to use in these searches include, “the Internet, embassies, regional organizations, international organizations, national, regional and city governments, among others.”

Requiring business users applying for new gTLDs to search for geographic meanings of requested strings beyond the list of prohibited strings in the Applicant Guidebook is an impractical proposal. The draft document does not give a complete list of where the applicant is required to search, which makes it

impossible for a business user to know when it has fulfilled the requirement. The best practices also do not include definite standards for which names will be considered geographic, which makes the process unpredictable and inconsistent for business users.

The best practices also say that the applicant should consider “previous research and investigation about different meanings of the applied for string, considering also the notion of protection of a name even if it is being translated to another language.” Requiring business users to consider different meanings of the applied for string could create a limitless number of objectionable strings.

The draft document also states that the list of prohibited strings included in the Applicant Guidebook “should be considered as a general reference for the applicant and not as a strict and only criteria to determine whether a name is geographic or not.” If business users are required to look beyond the list of prohibited strings in the Applicant Guidebook, then the purpose of such a list becomes unclear and potentially confusing. For these reasons, the proposed requirements for a gTLD applicant’s search for geographic meaning are impractical.

The proposals set an unclear burden for business users applying for new gTLDs in getting approval for a geographic string

The draft document’s proposals set an unclear burden for a business user applying for a new gTLD to get approval of a geographic string. As a best practice, the draft document says that when a string is related to a country, city, region, subregion, or other geographic related spaces, “the relevant authorities related with these denominations should be contacted.” However, it is unclear which or how many relevant authorities the business user is required to contact.

Furthermore, the suggested changes to the Applicant Guidebook includes the following language:

“ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.”

This language creates such broad categories of potential geographic strings, ranging from country names to “regional language,” that it will be very difficult for business users to predict what strings may be included.

This is further complicated if the proposal is deemed to include not just the “Official” short form names (also referred to as “formal” or “principal” name used for administrative purposes). There are also the other commonly used abbreviations or acronyms, names in the six official languages of the United Nations, and commonly used or local names in minority or indigenous languages.

Furthermore, the language does not specify what “relevant governments or public authorities” are, making it impossible for a business user to know when it has contacted all of the necessary parties for approval.

“Nevertheless, in the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to the application...”

Once again it is unclear what “relevant governments and public authorities” includes. Furthermore, the language “support or non-objection” creates an unclear burden for a business user applying for a new gTLD. There is no way for the business user to know whether it needs the affirmative support of the relevant governments or just the absence of an objection from the governments. This language also contradicts the previous language, which says ICANN should not use geographical names “unless in agreement with the relevant governments.” It is unclear whether the business user needs “agreement,” “support,” or “non-objection” from the relevant governments.

These suggested changes set inconsistent burdens that a business user applying for a string must meet, and setting such an unclear burden is inappropriate for this process.

The proposals in the draft document are incompatible with current law.

The proposals in the draft comment require “agreement with the relevant governments or public authorities” before ICANN awards a string with a geographic name, but there is no legal basis for this in the Internet Domain Name System, trademark law, or international law.

According to the GAC Operating Principles, the GAC is to consider and provide advice on “matters where there may be an interaction between ICANN’s policies and various laws and international agreements and public policy objectives.” International law and agreements do not give governments exclusive rights to geographic names because international law recognizes trademarks with geographical indicators, so these proposals are beyond the scope of the GAC’s purpose in ICANN.

Furthermore, international law does not protect sovereign names and geographic identifiers outside of a sovereign’s borders. Therefore, there is no basis in international law to give governments priority on the use of geographic names in the Internet DNS.

It is unclear how “public interest” is defined, and what authority will determine the public interest in the case of a disagreement

The draft document states that if an agreement between the relevant governments and applicants cannot be reached, “the public interest should be priority.” However, public interest is not defined, and the document does not say what entity will make such a decision in the event of a disagreement.

Furthermore, the draft seems to presume that the public interest will generally be the same as the interest of the objecting government. However, when local or regional issues conflict with the interests

of global users, ICANN should not presume that the public interest is always the same as the interests of a government.

The suggested changes to the Applicant Guide Book state that the applicant should consult with relevant governments and public authority to “enlist their support or non-objection prior to submission of the application, in order to preclude possible objections,” but once again, it is unclear what authority makes the final decision if there are eventual objections to the string. Until these terms are defined, this process is too uncertain for business users applying for new gTLDs.

Furthermore, the range of public interests referenced by this draft document is very broad, and the GAC could use such broad authority to intervene in areas besides geographic names.

For instance, the draft document references “national sensitivities regarding terms with national, cultural, geographic and religious significance.” A proposed paragraph to be included in the Applicant Guidebook references “country, territory or regional language or people descriptions.” Overly broad terms like “religious significance” and “people descriptions” could be used for the GAC to intervene beyond geographic names into areas like race, gender, and religion. Such an expansive grant of authority could be damaging to business users trying to apply for new gTLDs.

We hope the above explanations are sufficient to understand BC objections to the GAC draft policy. The BC thanks the GAC for inviting public comments, and we stand ready to engage further with GAC members on this matter.

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These comments were approved in accordance with the BC charter.