GAC WG Protection
of Geographic Names in new gTLDs

ICANN 57 Hyderabad

3 November 2016

Background and objectives of WG

- GAC Durban Communique - July 2013: work with ICANN to refine the rules for next gTLD round

- Lower uncertainty and conflicts for the applicant, for countries, regions and communities in the next new gTLD round.

- Prevent / Avoid misuse of names which are relevant for communities, regions, countries, etc.

- Give background information which can be useful to ICANN in the definition of the next round of new gTLDs rules.

- WG started in Oct 2013 during the Buenos Aires meeting.

- Activities: First work plan / Background document + public comments / Review of "Pubic Interest" concept / Review of "Draft Best Practices" for use of geographic names in new rounds of new gTLDs

Agenda
WG meeting in ICANN 57 Hyderabad

- WG comments about best practices document – Next steps before sending it to the GAC

- Define next steps:
  - Refine Best Practice focument with comments from GAC
  - Continue working on Draft Document "About Public Interest"

- AOB

Initial proposed draft Best Practices

Concile Interests of applicants in having legal certainty and a clear environment Vs Interests of governments, public authorities and communities

Applicant:

✓Previous research and investigation about different meanings of the applied for string

✓In the case of doubts, encourage the applicant to establish contact previous to the application with the relevant authorities / community of the country – city – region – subregion.

ICANN:

✓Enhance outreach efforts

✓Governments / communities should have an appropriate way to raise concerns about the use of geographic names associated with their territories.

✓Establish clear steps / way forward for both the applicants and government in reaching consensus with the applied gTLD

Summary of the proposal from Switzerland
Geographic significance
(see point 2.1. GAC Principles on new gTLDs of 2007)

Current Applicant Guidebook (AGB, 2012): categories of names (as e.g. country names or some geographic names) which count with specific rules.

However, certain terms with geographic significance, may always fall out of such categories.

This is why these draft principles are being proposed: on one hand, they could serve as inspiration in drafting the rules for possible new categories of terms with "geographic significance", and, on the other hand, they could serve as well as inspiration for establishing a framework governing terms not fitting in any new specific category to be established but still having such a "geographic significance".

Both applicants and interested parties linked to such geographic significance terms would benefit from a more predictable framework of rules, and, therefore, the need for last-minute interventions would be minimized.

Draft best practices
Rules and obligations

Default rule principle:

These principles would apply on a default basis, e.g. whenever there is no specific rules-framework governing a concrete type/category of new gTLDs.

This set of rules would not substitute other existing general procedures (such as objection procedures) already provided for in the 2012 AGB.

Due diligence search obligation:

All applicants would be obliged to undertake a due diligence search directed to checking whether the string subject of the application matches or is confusingly similar to a name or acronym with "geographic significance" (2.1. GAC Principles 2007).

This due diligence obligation would be considered to have been fulfilled if the repository of terms mentioned in the next point had been consulted.

Repository of Terms with Geographic Significance

Repository of terms with geographic significance:

Search applicants should at least check the terms contained in a repository of databases to be maintained by ICANN, compiling relevant lists of terms and discrete terms with geographic significance.

Governments, public authorities and interested (public/private) communities would be eligible to request the addition of such lists and/or terms to the repository.

The initial sources feeding this repository would be established in a community wide discussion process.

Effective public consultation requirement:

The strings would bealso subject to an effective public consultation period, in order to give governments, public authorities and (public/private) communities an effective opportunity to raise any concerns about any such strings.

Such requirement may also entail targeted consultations to previously identified stakeholders with a potential interest in the "geographic significance" terms" at issue.

Obligations for applicant and non objection

Contact obligation:

In case of a match or a confusingly similar name with a name contained in the repository, or the filing of any concerns within the named public consultation period, the applicant would be obliged to contact the relevant government, public authority or (public/private) community, inform them about their application and answer relevant questions.

No objection requirement:

In such cases, the applicant would be required to obtain a non-objection statement from the relevant government, public authority or (public/private) community (subject to the possibility of a dispute resolution as mentioned below).

As in the case of the specific geographic names subject to the 2012 AGB, if there are multiple legitimate governments, public authorities or (public or private) communities, the applicant would need a non-objection from all of them (see section 2.2.1.4.2. of the 2012 AGB: "In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities.")

Dispute resolution and Documentation

Dispute resolution in cases that a non-objection is not obtained:
In cases a non-objection statement is not obtained or cannot be obtained after having effectively contacted and requested the relevant government, public authority or (public or private) community, or in cases that such a relevant government, public authority or (public or private) community cannot be identified after a bona fide effort to do so, the applicant may bring his case before the independent review panel (IRP) (or a specific, neutral and independent panel).

The IRP (or panel) will study the case and make a recommendation to ICANN Board, which in light of the global public interest will decide whether the application may nonetheless be presented.

Documentation obligation:
The former steps and requirements shall be documented in the application form and be subject to control by ICANN as a compulsory requirement before presenting and processing any application.

Comments recieved from WG members

Avoid overlaping processes: repository + public consultation
Repository: difficult to create + maintain - Choose between either

- A solution based on a repository where the strings in the repository cannot be delegated and where the rules for string similarity applies
- Or a solution based on a public consultation with the possibility of objection to delegation of a string

The repository is (the) key:

- Provides the applicant with a "bona fide" protection and guarantee to proceed.
- Consultation allows to integrate those with a good claim that may have missed the opportunity of feeding the repository.
- If there is disagreement, ICANN, through the independent panel, would decide, with binding effect on all parties, based ultimately on what is established in its Articles of Incorporation and Bylaws.
- If all these steps are streamlined, both applicants, governments and the like and ICANN would see their legal certainty increased and would all have a fair say in the process of delegating new strings with a potential "geographic significance".

Proposed next steps

- Draft best practices: WG to include comments from GAC plenary

- **Expected outcome: WG define final version of best practices to share with the GAC before the next ICANN meeting in Dennmark**

- Review importance of a relevant discussion of this issue within the ICANN community

- WG continue working on the draft document "About Public Interest"

- Other ideas?

Many thanks!
Muchas gracias!

Questions?
Preguntas?

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