



## **GNSO Intellectual Property Constituency (IPC) Comment on Release of Country and Territory Names within the .PIONEER, .FUJITSU, .OBI, .SHARP, .TOYOTA, and .LEXUS TLDs**

June 20, 2017

### **A. Introduction**

The GNSO Intellectual Property Constituency (“IPC”) hereby submits its comments regarding proposed amendment to the Registry Agreements of the .PIONEER,<sup>1</sup> .FUJITSU,<sup>2</sup> .OBI,<sup>3</sup> .SHARP,<sup>4</sup> and .TOYOTA and .LEXUS<sup>5</sup> TLDs (the “Applicable TLDs”) to implement requests submitted through the Registry Services Evaluation Policy (“RSEP”) process to allow the registration of all country and territory names currently required to be reserved by Section 4 of Specification 5 of the Registry Agreement. See <https://www.icann.org/public-comments/ctn-release-tlds-2017-05-08-en>.

### **B. Overarching Comments**

The IPC notes that this request for community input is the latest in a long series of essentially identical public comment periods dating back to the request submitted by Neustar in September 2014. At the time this request for public comment was published, despite the numerous previous public comment periods, no progress appeared to have been made towards addressing the substantive issue of whether new gTLDs may register country and territory names. Indeed, as we have previously commented, the continual publication of such requests may even be detrimental, insofar as it appears to cause confusion to and exacerbate the concerns of some governments who believe that they are being ignored. The IPC respectfully submits that the time of ICANN staff and the wider community would be better spent seeking to break this impasse rather than repeatedly duplicating efforts by putting further such country and territory name requests out for public comment.

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<sup>1</sup> <https://www.icann.org/en/system/files/files/rsep-2017008-pioneer-request-03mar17-en.pdf>.

<sup>2</sup> <https://www.icann.org/en/system/files/files/rsep-2017007-fujitsu-request-03mar17-en.pdf>.

<sup>3</sup> <https://www.icann.org/en/system/files/files/rsep-2017004-obi-request-17feb17-en.pdf>.

<sup>4</sup> <https://www.icann.org/en/system/files/files/rsep-2016022-sharp-request-29apr16-en.pdf>.

<sup>5</sup> <https://www.icann.org/en/system/files/files/rsep-2016021-toyota-et-al-request-29apr16-en.pdf>.

Since this request for public comment was published, we are pleased to note that the ICANN Board has given some consideration to this matter at the Board meeting of 18 May 2017<sup>6</sup> and has issued some directions for ICANN Staff, which can be summarized as follows:

1. To take all necessary steps to approve release of those second level names for which the relevant GAC member has indicated its approval in the GAC's database;
2. To continue to engage with the GAC to (1) collaborate on possible enhancements to the GAC database to document approvals for the release of country and territory names at the second-level, (2) to periodically remind GAC members to update or offer their determination within the GAC's database, and (3) report back to the Board if there is support for a different approach to generally release the second-level country and territory names.

Whilst this is a welcome move in the right direction, for the reasons set out below we believe that more can and should be done to address those names for which GAC approval has not been indicated in the GAC database.

### C. .BRAND Requests

All of the Applicable TLDs are .BRAND TLDs subject to Specification 13 of the Registry Agreement. The IPC maintains its historic position supporting the release of country and territory names within .BRAND TLDs, as previously set out in its comments on the proposed release of country and territory names in other TLDs, including, most recently, the .IKANO, .SAXO, .SCOR, .SANDVIK, .WALTER, .SANDVIKCOMORANT, .VISTA, .VISTAPRINT, .BARCLAYS, .BARCLAYCARD and .HERMES TLDs.<sup>7</sup> For the reasons reiterated below, the IPC extends the same support to the current requests made by the Registry Operators of the Applicable TLDs.

On June 11, 2013, the IPC commented on the Proposed Final New gTLD Registry Agreement (April 29, 2013 version), noting:

Trademark owners already regularly use geographic names to target specific consumers and audiences around the world. .BRAND TLDs are unique in that they will be restricted spaces, i.e., they will exercise a degree of control over domain name registrations within their respective TLDs. Thus, it seems unnecessary to rigidly apply current blanket restrictions against all second-level country codes and country names within restricted .BRAND registries. Consumers would benefit from trusted use of geographic names at the second level (e.g., <canada.brand> or <uk.brand>). It would be inefficient to force .BRANDs to individually reach agreement with ICANN and each respective government and country-code manager. As an alternative to ICANN recognizing an exemption to

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<sup>6</sup> <https://www.icann.org/resources/board-material/resolutions-2017-05-18-en>.

<sup>7</sup> See IPC Comment on Release of Country and Territory Names within the .IKANO, .SAXO, .SCOR, .SANDVIK, .WALTER, .SANDVIKCOMORANT, .VISTA, .VISTAPRINT, .BARCLAYS, .BARCLAYCARD and .HERMES TLDs (24 February 2017), available at <http://bit.ly/2r8Ee1R>. Further, previous comments of the IPC on various country and territory name releases are accessible at <http://www.ipconstituency.org/public-comments>.

Registry Agreement §2.6 and Specification 5, ICANN should define a clear and timely path forward for .BRANDs to release geographic names at the second level.<sup>8</sup>

In addition, on January 9, 2014, the IPC commented generally on the proposed Specification 13 to the ICANN Registry Agreement (December 6, 2013 version), observing that:

.BRAND TLDs offer the potential benefits of:

- Promoting global trade and trust by adapting to various business models of trademark holders;
- Guarding consumers from potential harm through the reduction of phishing and fraud;
- Protecting and honoring intellectual property that conforms to international standards while not expanding any intellectual property right beyond that granted by the national governments issuing such rights;
- Encouraging innovation within the new gTLD namespace; and
- Allowing rights holders (for profit and non-profit) to provide maximum value and choice to their customers and constituencies while maintaining strict quality control standards applicable to maintaining trademarks.<sup>9</sup>

In its November 10, 2014 comment in support of the RSEP change request made in relation to the .NEUSTAR TLD to release country and territory names, the IPC also opined that:

New .BRAND TLDs will own all domains associated with the TLD, which will more tightly and responsibly control the registration and use of such names and thereby significantly minimize the opportunity for confusion, intellectual property violations, and other potential abuse.<sup>10</sup>

Consistent with these and other previous comments, the IPC supports the requests of Registry Operators for the Applicable TLDs, and continues to support more broadly the release of country and territory names in .BRAND TLDs, given the unique nature of these TLDs. The ability to use country and territory names at the second level in these or any .BRAND TLD serves the purposes and goals of new .BRAND TLDs by providing user-friendly, safe and secure geographically-targeted spaces for consumer-brand online interactions, which aligns more

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<sup>8</sup> See IPC Comments on the Proposed Final New gTLD Registry Agreement (June 11, 2013).

<sup>9</sup> See IPC Comments on the Proposal for a Specification 13 to the ICANN Registry Agreement to Contractually Reflect Certain Limited Aspects of “.Brand” New gTLDs (January 9, 2014).

<sup>10</sup> See IPC Comments Regarding the .NEUSTAR RSEP Request to Release Country and Territory Names (November 10, 2014).

broadly with new gTLD program goals of consumer trust, choice, and competition in the online global marketplace.<sup>11</sup>

Furthermore, nearly all legacy and sponsored TLDs, including .COM and .NET, are already permitted to freely register country and territory names at all available levels to any registrant for any purpose. New .BRAND TLDs, including the Applicable TLDs, which will own all domains associated with the TLD, will much more tightly and responsibly control the registration and use of such names and thereby significantly minimize the opportunity for confusion, intellectual property violations, and other potential abuse. These .BRAND TLDs should therefore be afforded the same privilege as legacy TLDs to freely register country and territory names in their respective .BRAND TLDs.

For these reasons, the IPC supports the proposed amendment to the Registry Agreements of the Applicable TLDs.

#### **D. Conclusion**

The IPC supports the proposed amendment to the Registry Agreements of the Applicable TLDs and reiterates its historic support for the ability of all .BRAND TLDs to freely register country and territory names at all available levels. Moreover, the IPC also supports the general ability of generic TLDs to freely register country and territory names at all levels of the DNS, for the reasons previous expressed in earlier IPC comments including those in relation to the .IKANO, .SAXO, .SCOR, .SANDVIK, .WALTER, .SANDVIKCOMORANT, .VISTA, .VISTAPRINT, .BARCLAYS, .BARCLAYCARD and .HERMES TLDs (as referred to above).

Respectfully submitted,

Intellectual Property Constituency

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<sup>11</sup> See New gTLD Applicant Guidebook, Version 2012-01-11, Preamble (stating that one of the primary goals of the new gTLD program is to “foster diversity, encourage competition, and enhance the utility of the DNS”).