

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

On behalf of Adrián Carballo, President of “Fundación Incluirme”, ALS member of the LAC RALO, we send the following comments and also would like to thank you for the opportunity to comment on the WT5 supplemental report.

1. General comments.

Rules of the 2012 Applicant Guidebook (AGB) generated some important conflicts but also worked well in several aspects, especially those related with those names which were not allowed to be requested as tlds.

Country names and variations should not be allowed as tlds. These names must be used under the authorities of each country, same as ccTLDs.

The “**non-objection**” framework established e.g. for capital city names, subnational and supranational regions, etc. **worked well and should be maintained.**

Extending the “intended use” must not be allowed to any category of geonames, as it can generate confusions among final users. If implemented, applications may ignore or avoid the non-objection of relevant authorities. This applies for example to **the case of non-capital city names, and to other categories as well.**

Those geonames used as TLDs which were not covered by the limitations in 2012 AGB and not included in those lists generated several conflicts in the first round, some of them still are unsolved.

In this sense it is important that these geonames should be treated correctly by:

- Request “non-objection” from relevant authorities
- Establishing a geonames advisory panel
- Establishing a mediation process when public authorities do not accept the request of the tld
- Create a database where applicants can consult in the case of doubts about a string

2. Comments to preliminary recommendations, questions and proposals:

- Preliminary recommendations 1 to 13: support.
- Question e1:
 - Process for filing objections for governments was not easy; it was expensive and required skilled knowledge of legal issues in English language.
 - This constitutes a barrier for a clear understanding of the issue and for governments and other stakeholders to fill objections.
 - Objections had to be filled in different jurisdictions outside the own country.

- There were geographic names of high relevance for countries and regions that were not included in any of the lists included in the 2012 AGB of strings that were not available for application or were somehow restricted (Sections 2.2.1.4.1, 2.2.1.4.2)
- Question e2:
 - A geographic name for the purposes of the New gTLD Program should be any term that has a geographic meaning or connotation according to a government or community associated with that term. Rights, rules, and or requirements should exist to ensure that these interested stakeholders “have a say” in the process for any application of this type.
 - TLDs are a unique resource and are different from the use of names under trademark law.
 - Even if the intended use is non-geographic, the word still may have geographic connotations, and the applicant may benefit from these geographic associations.
 - Governments or and communities related with the name of a place, river, mountain, city, etc must be involved in any decision made related to this geographic name.
 - Regardless of the intended use, consumers may be confused about the potential association of a string and a geographic term.
 - Even where there is no risk of confusion, the same rules should apply due to the unique nature of the string.
 - Defining „intended use“ will be challenging and confusing.
- Question e3:
 - Mechanisms to protect geographic names in the New gTLD Program should have two categories, used always together:
 - 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, in all cases.
 - 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.
 - If the preventative measures are not sufficient, or not respected, then curative measures should be applied.
- Question 4: Apart from comments in this document, all GAC Advice related with this issue should be considered:
 - GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005), paragraphs 4.1.1. , 4.1.2. and 8.3.

- GAC Principles Regarding New gTLDs (2007), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7 and 2.8.
- GAC Nairobi Communiqué (2010): Application of 2007 Principles.
- GAC Beijing Communiqué (2013): GAC Objections to Specific Applications.
- GAC Durban Communiqué (2013): Future application of 2007 Principles.
- GAC Helsinki Communiqué (2016): 3-letter codes.
- Question e5: ICANN must respect applicable local law. ICANN also has to consider the public policy advice from the GAC. International law, national law and relevant public policy input from GAC and Governments should be considered.
- Question e6: Rules must protect all official and relevant national, regional and community languages.
- Question e7: Restrictions to delegate 3-letter codes and/or other country and territory names to specific parties should remain.
- Question e8: as explained in question e6.
- Question e9: When the “intended use” is non-geographic should be suppressed as it can cause confusion among the end users.
- Question e10: as explained in question e9.
- Question e11: Proposals 1 to 5 are the answer for this question.
- Proposal 1: support.
- Proposal 2: support.
- Proposal 3: support.
- Proposal 4: support.
- Proposal 5: support.
- Proposal 6: not supported.
- Proposal 7: not supported.
- Proposal 8: support.
- Proposal 9: support.
- Proposal 10: support.
- Proposal 11: not supported.
- Proposal 12: not supported.
- Proposal 13: not supported.
- Proposal 14: support.
- Proposal 15: support.
- Proposal 16: support.
- Proposal 17: not supported.

- Proposal 18 not supported.
- Proposal 19 and variants: not supported.
- Proposal 20: not supported.
- Proposal 21: support.
- Proposal 22: support.
- Proposal 23: support. ICANN must defer to applicable local laws and policies.
- Proposal 24: support.
- Proposal 25: support.
- Proposal 26: not supported.
- Proposal 27: not supported.
- Proposal 28: not supported.
- Proposal 29: not supported.
- Proposal 30: not supported.
- Proposal 31: not supported.
- Proposal 32: not supported.
- Proposal 33: not supported.
- Proposal 34: support.
- Proposal 35: support.
- Proposal 36: support.
- Proposal 37: support.
- Proposal 38: support.

Adrián Carballo
22 January, 2019.