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Submitted to: comments-geo-names-wt5-initial-05dec18@icann.org

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Steve Chan
GNSO Policy Director
ICANN
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Re: Work Track 5 on Geographic Names at the Top Level - Supplemental Initial Report of the New gTLD Subsequent Procedures Policy Development Process - January 22, 2019

Dear Mr. Chan:

The International Trademark Association (INTA) welcomes this opportunity to present its views on the “Supplemental Report on the new gTLD Subsequent Procedures Policy Development Process (Work Track 5 on Geographic Names at the Top Level)” dated December 5, 2018 which was prepared by the Sub-Working Group Track 5 for the GNSO New gTLD Subsequent Procedures (SubPro) Working Group. INTA welcomes ICANN’s efforts to seek a dialogue on the potential issues arising out of the use of terms that have a geographic connotation in future gTLD applications rounds. INTA’s comments will address the Preliminary Recommendations, Questions for Community Input, and Options/Proposals.

I. General Overview

Names that relate to geographic areas are understandably politically sensitive since they involve national pride and history. For more than 130 years, since the Paris Convention for the Protection of Industrial Property in 1883, through the WTO TRIPS Agreement of 1994, the global community has debated how to best balance these national concerns with legitimate protection of trademarks, many of which have some form of geographical significance. Through the long line

of global treaties, national statutes, bilateral and multilateral investment agreements, and court decisions since 1883, a vast body of international law has developed on how best to balance the sometimes-competing interests of trademark owners and governments in this area of the law.

INTA reiterates its position that any objection to the use of a geographic term that is determined to be of either national, cultural, geographic or religious significance to a country or region has no legal basis, whether under agreed principles of international law or national sovereignty. The express recognition of private legal ownership rights in trademarks, trade names and geographical indications by sovereign states and by international treaties contradicts any governmental claim to exclusive rights in geographic domain names. No interpretation of the public interest as it relates to ICANN policy provides justification for disregarding the established international legal framework as it applies to trademarks and geographical indications of origin. Such an approach is inconsistent with the legal obligations of the 176-member states of the Paris Convention under Article 6 and in this regard would not be upheld by the national courts of those countries. Moreover, ICANN has acknowledged its obligations to operate within this body of law.

In 2008, ICANN's Board of Directors adopted the relevant 2007 GNSO Policy Recommendation on new gTLDs, stating:

Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

Furthermore, ICANN's Bylaws require it to carry out its Mission:

in conformity with relevant principles of international law and international conventions and applicable local law.

Thus, any proposal dealing with the treatment of geographic names at the top level must recognise and abide by established legal principles and cannot infringe or supersede existing rights of trademark owners in their currently protected trademarks both under national and international law. Any proposals which seek to grant governments and local authorities rights of

approval or veto over letter strings which may have any possible geographic meaning or offend local sensibilities, go far beyond current legal norms and undermine a carefully crafted system of balancing the rights and interests of public and private entities. The established legal framework must be recognized and adhered to by ICANN's policies as its development and implementation have been determined to be in the public interest by national governments across the globe.

Notwithstanding this position, INTA recognises that the 2012 Applicant Guidebook (AGB) was the result of a compromise carefully developed through the multistakeholder process, seeking to weigh interests such as trademark rights and principles of openness and freedom of expression against the concerns expressed by some governments, in order to arrive at a fair balance and to create certainty for all applicants (and potential objectors) by means of lists of specific terms. INTA may not agree with all the restrictions set out in the 2012 AGB but supports the multistakeholder process by which they were developed and cautions against expanding them unless they comport with the established international legal framework as it applies to trademarks and geographical indications of origin.

INTA appreciates the hard work undertaken by the members of this working group and remains concerned that many of the proposals are attempting to provide solutions to hypothetical problems that have not been encountered in practice and fail to give proper respect to established legal norms. There are ample curative protections in place allowing interested parties to raise issues with applications through objections.

These overarching comments should be read into INTA's responses in respect of each of the preliminary recommendations, questions and proposals below.

II. INTA Responses to Recommendations and Questions

a. *Recommendations*

Preliminary Recommendation 1

As described in recommendations 2-9, Work Track 5 recommends, unless or until decided otherwise, maintaining the reservation of certain strings at the top level in upcoming processes to delegate new gTLDs. As described in recommendations 10-13, Work Track 5 recommends,

unless or until decided otherwise, requiring applications for certain strings at the top level to be accompanied by documentation of support or non-objection from the relevant governments or public authorities, as applicable.

INTA Comment: INTA did not agree with restrictions imposed in the first round (which are essentially reproduced in recommendations 2-9) due to concerns that they conflicted with established law at the international and domestic level. However, INTA supports the multi-stakeholder process and acknowledges that some compromises were necessary in order to open the gTLD space.

Notwithstanding INTA's position on matters of legal principle, as expressed in the overarching comments, it recognizes that the 2012 AGB was the result of a compromise seeking to weigh interests such as trademark rights and principles of openness and freedom of expression against the concerns expressed by some governments, in order to arrive at a fair balance and to create certainty for all applicants (and potential objectors) by means of lists of specific terms. While INTA may not agree with all the restrictions set out in the 2012 AGB, it recognizes the multistakeholder process by which they were arrived-at and cautions against expanding the; them unless they comport with the established international legal framework as it applies to trademarks and geographical indications of origin.

If, and to the extent that, the working group considers proposing additional restrictions on the use of terms which have a geographic meaning, INTA's position on the preliminary recommendations (and existing AGB restrictions) is as follows: INTA supports maintaining recommendations 2, 4, 5, 6 and 9. INTA partially supports recommendations 7 and 8. INTA does not support recommendations 3, 10, 11, 12 or 13.

Preliminary Recommendation 2

Work Track 5 recommends continuing to reserve all two-character 2 letter-letter ASCII combinations at the top level for existing and future country codes.

- The starting point of this recommendation is Section 2.2.1.3.2 String Requirements, Part III, 3.1 of the 2012 Applicant Guidebook, which states, "Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard."

- Work Track 5's recommendation specifically addresses letter-letter combinations because the focus of Work Track 5 is on geographic names. Work Track 5 considers letter-letter combinations to be within the scope of this subject area.
- Work Track 5 notes that Work Track 2 of the New gTLD Subsequent Procedures PDP Working Group is considering two-character letter-number combinations and two-character number-number combinations.

This recommendation is consistent with the GNSO policy contained in the Introduction of New Generic Top-Level Domains policy recommendations from 8 August 2007. It is also consistent with provisions in the 2012 Applicant Guidebook.

INTA Comment: INTA recognizes the limitation on two-character ASCII strings is consistent with the longstanding IETF RFC 1591, which has provided a stable and predictable policy to date of treating 2-letter codes as ccTLDs. It is also, consequently, consistent with the provisions of the 2012 Applicant Guidebook despite the fact that the limitation of all two-character ASCII characters is contrary to established trademark law.

Preliminary Recommendation 3

Work Track 5 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.i: alpha-3 code listed in the ISO 3166-1 standard. Work Track 5 is not proposing to remove from delegation any 3-letter codes that have already been delegated.

INTA Comment: INTA disagrees with this recommendation as it creates confusion and is unnecessary; ICANN has already reserved two-character codes and country names (both short and long form). Any limitation of three-character ASCII strings is an overly-broad preventative option that is unnecessary and should not be adopted.

Unlike the 2-letter codes, there is no historic precedent for retaining 3-letter codes for use to designate countries at the top level, and internet users are accustomed to three letter strings being used for non-country specific gTLD registries, such as .com, .net, and .org. Many 3-letter terms within the ISO 3166-1 alpha 3 list have another meaning, whether a generic term, and acronym or a brand. There is no justification for assuming that the primary meaning is to designate a country – it is a matter of context.

Preliminary Recommendation 4

Work Track 5 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.ii: long-form name 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 were reserved in the 2012 Applicant Guidebook. Please see questions for community input in section e.

INTA Comment: INTA recognizes the limitation of long-form names listed in the ISO 3166-as being consistent with the compromises set out in the provisions of the 2012 Applicant Guidebook.

Preliminary Recommendation 5:

Work Track 5 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.iii: short-form name 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 were reserved in the 2012 Applicant Guidebook. Please see questions for community input in section e.

INTA Comment: INTA recognizes the limitation of the short-form names listed in the ISO 3166-1 standard as being consistent with the compromises set out in the provisions of the 2012 Applicant Guidebook.

Preliminary Recommendation 6

Work Track 5 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” 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.

INTA Comment: INTA recognizes the limitation of the “exceptionally reserved” list as being consistent with the compromises set out in the provisions of the 2012 Applicant Guidebook.

Preliminary Recommendation 7

Work Track 5 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.

INTA Comment: INTA recognizes the limitation of the names listed in Class A and B of the Separable Country Names List on the basis that the names listed in Class A and B are equivalent to country names. However, the names listed in Class C refer to synonyms of the country name, or sub-national entities, and so are not separable components of country

names. Consequently, they do not require preventative protection, should not be reserved, and this should be clarified in this recommendation 7.

Preliminary Recommendation 8

Work Track 5 recommends clarifying 2012 Applicant Guidebook section 2.2.1.4.1.vi, which designates the following category as a country and territory name which is reserved at the top level and unavailable for delegation:

- 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.”

Work Track 5 recommends clarifying that permutations and transpositions of the following strings are reserved:

- 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.” This list is included as an appendix to the 2012 Applicant Guidebook.

Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed. 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 clarifies the text from the 2012 Applicant Guidebook and updates the policy to be consistent with Work Track 5’s interpretation of 2012 Applicant Guidebook section 2.2.1.4.1.vi.

INTA Comment: INTA views this recommendation as an unnecessary and overbroad preventative solution. While the inclusion of permutations, such as the removal of spaces, addition of punctuation and addition or removal of grammatical articles, may be a reasonable additional safeguard in respect of country and territory names, the inclusion of transpositions seems unnecessary and capable of adequate protection (if necessary) by means of the curative

measures already in place. For these reasons, INTA recommends deleting the section regarding transpositions from the AGB

If this recommendation is retained in full, INTA supports the sensible clarification that strings resulting from permutations and transpositions of alpha-3 codes are not intended to be covered.

Preliminary Recommendation 9

Work Track 5 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.vii:

- 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.

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.

INTA Comment: INTA recognizes this as being consistent with the compromises set out in the provisions of the 2012 Applicant Guidebook.

Preliminary Recommendation 10

Work Track 5 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.

INTA Comment: INTA recognizes that this is current practice with ICANN but objects to this recommendation as it conflicts with established law. A more balanced approach would be to apply an intended use standard in respect of names which match capital cities – see our comments on recommendation 11.

Preliminary Recommendation 11

Work Track 5 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.

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.

INTA Comment: INTA recognizes that this is current practice with ICANN but objects to this recommendation as it conflicts with established law. To the extent that there are preventative measures relating to non-capital city names, then INTA agrees that it is important to continue to bear in mind the intended use. Many city names have multiple legitimate uses and meanings, including:

- the same term may be used as a geographic name multiple times across different countries, or even within the same country;

- the same term may be both a geographic name and have other generic meanings;
- in some cases, the geographic name may have been adopted because the other generic meaning describes a characteristic of the place itself;
- many companies share their brand names, which are protected as registered or unregistered trademarks, with terms which are also used as a geographic name; and
- many companies share their brand names with other companies, sometimes used in respect of similar goods or services but in different legal jurisdictions, sometimes even in the same legal jurisdictions but in respect of different goods or services.

It is important when balancing competing interests to acknowledge and allow for these multiple meanings. In addition, if this requirement is retained, INTA believes that it should be modified. Even if a gTLD corresponds to a city name and will be associated with that city, that does not necessarily mean it is a cause for any concern. Many companies are named after cities and have their head office in that city so that a gTLD for the company name would be “associated” with the city. INTA recommends this requirement be modified so that letters of support or non-objection will not be required where the applicant has trademark rights in the gTLD string and will use the TLD for purposes associated with the Brand.

Preliminary Recommendation 12

Work Track 5 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.

INTA Comment: INTA does not support this recommendation and views it as an example of preventative creep whereby groups seek solutions to speculative problems that have not

arisen. It is unnecessary, burdensome and in violation of established international law to grant governments property rights in a sub-national place name thereby giving said governments the power to prevent others throughout the world from applying for a new gTLD which happens to share that name but intended for a purpose unconnected with the geography.

To the extent that preventative measures continue to apply in respect of these names, there should be an intended use element. Our comments with respect to preliminary recommendation 11 would apply equally here.

Preliminary Recommendation 13

Work Track 5 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 region or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” 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 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.

INTA Comment: INTA supports the multi-stakeholder process and recognizes this as being consistent with the compromises set out in the provisions of the 2012 Applicant Guidebook.

INTA does not support this recommendation and views it as an example of preventative creep whereby groups seek solutions to speculative problems that have not arisen. It is unnecessary, burdensome and in violation of established international law to grant governments property rights in these names thereby giving said governments the power to prevent others throughout the world from applying for a new gTLD which happens to share that name and is intended for a purpose unconnected with the geography.

To the extent that preventative measures continue to apply in respect of these names, there should be an intended use element. Our comments with respect to preliminary recommendation 11 would apply equally here.

b. Questions

Question 1

Work Track 5 encourages feedback from applicants or other stakeholders who were involved in the 2012 round. Work Track 5 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.

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 36-41 for context on this question.

INTA Comment: While the questions may be applicable to some INTA members, INTA as an association did not apply for nor object to any new gTLD applications. Therefore, we do not have any substantive comments to contribute.

Question 2

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”? Is “geographic name” the appropriate term to use in this context, as opposed to, for example, “term with geographic meaning”? Why or why not? Please see deliberations section f.1.2.4 on pages 34-36 for context on this question.

INTA Comment: The term “geographic name” is, in and of itself, insufficiently specific to provide clarity in the New gTLD application process, and in the context of the Work Track 5 working group the lack of clarity has resulted in a lack of uniformity among individual members of the working group. It is also important to bear in mind that the specific rules applied to classes of a geographic name are, perhaps, more important than the actual definition, and that not every so called “geographic name” warrants the same treatment. This is the reason why the 2012 AGB tried to define the term by reference to specific third-party lists and why the definition was tied-in to the treatment to be applied (i.e., reservation, requirement for consent/non-objection, or no restrictions). The specific delineated items covered by the definition of “geographic name” can be debated, but it is imperative that the term be expressly defined so that all parties are aware of its limitations. The use of lists, as in the 2012 AGB, seems the most clear and practical way to deal with this. This will create much-needed predictability for applicants and governmental bodies alike.

One option would be to use the term “Geographic Name” for any name that requires reservation of the name or an obligation to obtain consent/non-objection irrespective of the proposed manner of use. For example: any name that is (1) a UNESCO region, (2) a region appearing on the United Nations “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list, and/or (3) names identified as a country and territory names and codes, as set out in the ISO 3166-1 [to be more specifically delineated when the recommendations are finalised]. Conversely, “term with geographic meaning” could be used for terms like city names, where restrictions are dependent on the intended use.

Question 3

Work Track 5 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 objection 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 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.

INTA Comment: The discussions regarding mechanisms that can be used to protect geographic names has resulted in what can be called a “debating society” in which various parties seek solutions to unrealized problems. Subject to our comments in the preliminary recommendations section, the current preventative and curative measures are appropriate at this time. Giving governments prospective property rights at the gTLD level for geographical terms beyond country names is unnecessary, burdensome and in violation of established international law. If governments object to a new gTLD string, they should utilize the curative measures already established in the original Applicant Guidebook.

To the extent that the protection of additional geographic terms is contemplated, INTA disagrees with this and considers neither mechanism to be appropriate – but if there is to be such protection then it must be curative rather than preventative. Further, INTA supports the application of contractual provisions which can be incorporated into the Registry Agreement as a means of seeking to address objections, rather than the outcomes of an objection process being limited to “all or nothing.”

It has been said in the working group that it is difficult to enforce contractual restrictions based on intended use. Whether or not this may be the case for other registry models, INTA contends that it is not so for .Brand Registries subject to Specification 13. Spec 13 contains clear restrictions over who may hold and use a name, and thus the Registry Operator retains very clear control and (to the extent that they are not the registrant themselves in any event) is readily able to take action should a registrant be using a domain in a manner which would breach the use restrictions.

Question 4

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:

- In alignment with Principle C from the 2007 GNSO recommendations on new gTLDs, the program should allow for the introduction of new gTLDs.
- In alignment with Principle A from the 2007 GNSO recommendations on new gTLDs, enhance the predictability for all parties.
- Reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated.
- Policies and processes should be simple to the extent possible.

Do you support these principles? Why or why not? Are there additional principles that Work Track 5 should consider? Please explain. Please see deliberations section f.1.3 on pages 42-43 for context on this question and additional discussion of these principles.

INTA Comment: These principles make sense generally, but over-regulating creates confusion. Curative measures can address the edge cases.

Question 5

To what extent should the following serve as a basis for the development of policies regarding geographic names?

- International law
- National/local law and policy
- Norms and values (please specify)

- 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 29-34 for context on this question.

INTA Comment: International law and national/local law should serve as a basis. In this regard, international law and national law recognize trademark rights and balance them against other interests which are then codified into law and international treaties.

Names that relate to geographic areas are understandably politically sensitive since they involve national pride and history. For more than 130 years, since the Paris Convention for the Protection of Industrial Property in 1883, through the WTO TRIPS Agreement of 1994, the global community has debated how to best balance these national concerns with legitimate protection of trademarks, many of which have some form of geographical significance. Through the long line of global treaties, national statutes, bilateral and multilateral investment agreements, and court decisions since 1883, a vast body of international law has developed on how best to balance the sometimes-competing interests of trademark owners and governments in this area of the law.

Any objection to the use of a geographic term that is determined to be of either national, cultural, geographic or religious significance to a country or region has no legal basis, whether under agreed principles of international law or national sovereignty. The express recognition of private legal ownership rights in trademarks, trade names and geographical indications by sovereign states and by international treaties contradicts any governmental claim to exclusive rights in geographic domain names. No interpretation of the public interest as it relates to ICANN policy justifies disregard for the established international legal framework as it applies to trademarks and geographical indications of origin. Such an approach is inconsistent with the legal obligations of the 176-member states of the Paris Convention under Article 6 and in this regard would not be upheld by the national courts of those countries. The established legal framework must be recognized and adhered to by ICANN's policies as its development and implementation have been determined to be in the public interest by national governments across the globe.

Question 6

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:

- long-form name listed in the ISO 3166-1 standard.
- short-form name listed in the ISO 3166-1 standard.
- separable component of a country name designated on the “Separable Country Names List.”
- In developing recommendations for future treatment of country and territory names, Work Track 5 has considered several alternatives related to translation:
 - continue to reserve as unavailable translations in any language
 - reserve as unavailable translations in UN languages
 - reserve as unavailable translations in UN languages and the official languages of the country
 - reserve as unavailable translations in official languages of the country
 - reserve as unavailable translations in official and commonly used languages
 - reserve as unavailable translations in official and relevant national, regional, and community languages
 - 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
 - a combination of two or more categories above.

In your view, which alternative is the best option? Please explain. Do you have suggestions for alternatives not included in the list above? Please see deliberations section f.2.2.1.2 on pages 46-48 for context on this question.

INTA Comment: With respect to these specific categories of names, if they are to continue to be reserved then INTA recommends reserving the official languages of the country. This sets an appropriate level of balance in protecting the interests of the relevant associated country.

Question 7

Some Work Track members have expressed that there should be a process in place to delegate 3-letter codes and/or other country and territory names to specific parties, such as relevant governments and public authorities or other entities. Do you believe that this is an issue on which Work Track 5 should make a recommendation? Please see deliberations section f.2.2.1.1 on pages 45-46 for context on this question.

INTA Comment: INTA is strongly opposed to this recommendation as it creates uncertainty for new gTLD applicants and is contrary to established international and national trademark law. INTA views this proposal as another example of preventative creep resulting from groups seeking preemptive solutions to speculative and unrealized problems. Any such issues that may arise are properly addressed through the curative measures already established in the original Applicant Guidebook. See also our comments on preliminary recommendation 3.

Question 8

In the 2012 round, applicants were required to obtain letters of support or non-objection from the relevant governments or public authorities for “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” (emphasis added). In developing recommendations for future treatment of capital city names, Work Track 5 has considered several alternatives related to the “in any language” standard:

- translations in UN languages
- translations in UN languages and the official languages of the country
- translations in official languages of the country
- translations in official and commonly used languages
- translations in official and relevant national, regional, and community languages
- 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

- a combination of two or more categories above

In your view, which alternative is the best option? Please explain. Do you have suggestions for alternatives not included in the list above? Please see deliberations section f.2.3.1 on pages 56-59 for context on this question.

INTA Comment: Regarding capital city names, if they are to continue to be subject to a consent/non-objection obligation, INTA recommends applying this to names in the official languages of the country in which the city is located. This sets an appropriate level of balance in protecting the interests of the relevant city, which is the perceived concern.

Question 9

In the 2012 round, applicants were required 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 applied 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.” Do you think that this requirement should be kept, eliminated, or modified in subsequent procedures? Please explain. Please see deliberations section f.2.3.2 on pages 59-69 for context on this question.

INTA Comment: INTA believes this requirement should be modified. Even if a gTLD corresponds to a city name and will be associated with that city, that does not necessarily mean it is a cause for any concern. Many companies are named after cities and have their head office in that city so that a gTLD for the company name would be “associated” with the city. INTA recommends this requirement be modified so that letters of support or non-objection will not be required where the applicant has trademark rights in the gTLD string and will use the TLD for purposes associated with the Brand.

Question 10

Section f.2.3.2 of this report outlines a series of proposals that Work Track members have put forward for the future treatment of non-capital city names. What is your view of these proposals? Are there any that you support Work Track 5 considering further? Do you have alternate proposals you would like Work Track 5 to consider? Please explain. Please see deliberations section f.2.3.2 for context on this question.

INTA Comment: The discussions regarding mechanisms that can be used to protect geographic names have resulted in a debating society in which various parties seek solutions to unrealized problems. The current preventative measures are appropriate at this time. If individual governments and regions are motivated to reserve non-capital city names, such preventative reservations should occur on the ccTLD level not the gTLD level. Giving governments prospective property rights at the gTLD level for geographical terms beyond country names is unnecessary, burdensome and in violation of established international law. If governments object to a new gTLD string, they should utilize the curative measures already established in the original Applicant Guidebook. Every effort should be made to make sure the number of reserved names is as small as possible, as is the number of names which are subject to consent/non-objection, and that this should only be applied in circumstances where the TLD is to be used to represent the city.

See also our response to preliminary recommendation 11.

Question 11

In the 2012 round, the Applicant Guidebook listed categories of terms that were considered geographic names and had specific rules (see section b for additional information about these categories).

- Some Work Track members have expressed support for protecting/restricting additional categories of geographic names in future versions of Applicant Guidebook.
- Some Work Track members have expressed that no additional types of terms should be protected/restricted beyond those included in the 2012 Applicant Guidebook.
- Some Work Track members have expressed that compared to the 2012 round, fewer types of terms should be protected/restricted in subsequent procedures.

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

- Geographic features (rivers, mountains, etc.)
- Names of additional sub-national and regional places not included in the 2012 Applicant Guidebook

- Non-ASCII geographic terms not included in the 2012 Applicant Guidebook
- Any term that can be considered geographic in nature
- Geographical Indications

Two Work Track members stated that currency codes listed 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.

INTA Comment: The discussions regarding mechanisms that can be used to protect geographic names have resulted in a debating society in which various parties seek solutions to unidentified problems. The current preventative measures are appropriate at this time. If individual governments and regions are motivated to reserve geographical names, such preventative reservations should occur on the ccTLD level not the gTLD level. Giving governments prospective property rights in gTLD level for geographical terms beyond country names is unnecessary, burdensome and in violation of established international law. If governments object to a new gTLD string, they should utilize the curative measures already established in the original Applicant Guidebook. Every effort should be made to make sure the number of reserved names is as small as possible, as is the number of names which are subject to consent/non-objection.

c. *Proposals*

Proposal 1

Develop an online tool for prospective applicants. The searchable tool indicates whether a string is eligible for delegation and whether there are issues that require further action (for example obtaining a letter of support or non-objection from relevant governments or public authorities). This could be a stand-alone tool, or a function integrated into the application system that flags if a term is geographic and has special requirements/restrictions.

INTA Comment: This is an unnecessary requirement and the possible cost and complexity seems likely to outweigh any value. Currently, if an applicant wants to apply for a gTLD that contains a city name and will be geared towards that city the applicant must get approval from said city. If an applicant is considering applying for a new gTLD that will have nothing to do with a city, it should not have to seek approval from far away governments or public authorities. It would seem a better use of resources to ensure that any restrictions or requirements that do apply, and the names to which they apply, are sufficiently clear that any potential applicant can readily identify whether they are applicable or not.

Proposal 2

GAC members could assist applicants in identifying which governments and/or public authorities would be applicable in cases where an applicant must obtain a letter of government support or non-objection.

INTA Comment: INTA questions whether such a recommendation would be effective in practice. To the extent that there are obligations of consent/non-objection INTA would support measures which assist potential applicants in identifying the point of contact. This seems unlikely to provide a solution to the difficulties previous applicants have encountered. It could only do so if all governments were under an obligation to make such contact information available and if, in the absence of any response, there were deemed consent.

Proposal 3

If government support/non-objection is required for an application, provide mediation services to assist if the applicant disagrees with the response received by a government or public authority.

INTA Comment: In principle, INTA approves of a procedure which helps parties mediate potential disagreements. However, this proposal does not appear to have been fully thought out. INTA opposes the proposal because it is incomplete and not address the fact the support/nonobjection is within the discretion of the government. There is nothing to stop the parties from engaging in a mediation should they choose that mechanism to resolve the conflict, with or without having it prescribed for them.

Proposal 4

Establish a program to heighten the awareness of governments and others regarding the gTLD program so that they will be more likely to seek or support a registration for the relevant geographic name. This could be accompanied by structured support and advice to maximize the opportunities for future applicants for geographic names.

INTA Comment: This proposal does not appear to have been fully thought out. Therefore, INTA opposes the proposal because it is incomplete. For example, who is supposed to run this program and how will it be determined to be a success? This is something that can be done by the GAC (or its members) themselves and does not require the wider participation of the ICANN community.

Proposal 5

In any circumstance where a letter of support or non-objection is required from a relevant government authority, establish a deadline by which the government must respond to the request. If no response is received, this is taken as non-objection.

INTA Comment: INTA is in favor of this proposal so long as there are clear means of identifying to whom such requests should be addressed and clear procedures in place. For example, it would seem appropriate that the relevant government authority should be notified at least twice and that the time to seek such approval is built-in to the timeline for an application.

Proposal 6

Once a gTLD is delegated with an intended use that is geographic in nature, all other variations and translations of this term are unconditionally available for application by any entity or person. Objection procedures could potentially still apply.

INTA Comment: INTA is in favor of this proposal subject to string confusion analysis by ICANN and the usual objection procedures.

Proposal 7

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 or 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.

INTA Comment: This is an unnecessary requirement. Currently, if an applicant wants to apply for a gTLD that contains a city name and will be geared towards that city the applicant must get approval from said city. If an applicant is considering applying for a new gTLD that will have nothing to do with a city or geographic name it should not have to seek approval from far away governments or public authorities. If a government or undefined public authority objects to a newly applied for gTLD string it can utilize the already established objection procedures.

This proposal is not sufficiently thought out and, on its face, appears completely unworkable. It is unrealistic for an applicant to know all possible geographic uses of a term around the world in order to identify relevant public authorities, let alone who the contact person within them might be. The impact of inadvertently failing to contact one of them is not clear especially given that this is not a requirement to obtain “support or non-objection”. Trademark systems operate under processes whereby applications are published (generally online) and, in many jurisdictions, there is a period of opposition. The 2012 Round processes were akin to this – applications were published, and third parties were provided with an objection period.

Proposal 8

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.

INTA Comment: INTA strongly opposes this proposal because it will create confusion and uncertainty for new applicants. The basis of the proposal is not clear. Is it addressing a new gTLD that will target a specific city? If so, then there are already procedures in place. INTA is opposed to terms that may be arbitrarily designated as misspellings of geographic terms being off-limits to new applicants absent consent. If governments or public authorities are concerned about reserving local geographic terms, they should work with their ccTLDs to ensure these names are reserved on the country level.

Proposal 9

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.

INTA Comment: The ramifications of this proposal have not been fully thought out and as such INTA opposes. As it is currently written this proposal could allow for the taking of property without compensation for both the registry operator and the registrants. There is no justification in law for according governments such rights.

Proposal 10

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

INTA Comment: INTA opposes this proposal. This proposal is uncertain and unworkable. Many geographical features (e.g. mountain ranges, rivers, lakes, oceans) span multiple countries. Further, many geographical names can refer to a number of different places (e.g. multiple cities in the world have the same name).

Proposal 11

Delegate alpha-3 codes on the ISO 3166 Part 1 standard as gTLDs with the requirement of government support/non-objection until a future process is designed specifically for the delegation of three-character codes.

INTA Comment: INTA strongly opposes this proposal as it creates uncertainty for new gTLD applicants and is contrary to established law. INTA views this proposed recommendation as another example of preventative creep resulting from groups seeking solutions to non-existent problems. See also our comments on 3-letter codes generally in preliminary recommendation 3.

Proposal 12

Delegate alpha-3 codes on the ISO 3166 Part 1 standard as gTLDs with the requirement of government support/non-objection only in cases where the applicant intends to use the TLD as it relates to the geographic meaning of the term. For all other cases, the TLD should be available with no letter of support/non-objection.

INTA Comment: See our comments on 3-letter codes generally in preliminary recommendation 3. Subject to this, if there were to be a consent/non-objection obligation then it ought to be limited as proposed.

Proposal 13

The ISO should not be the source of 3-character strings used by ICANN to identify geographic names.

INTA Comment: INTA opposes this proposal as it is unnecessary; ICANN has already reserved two-character codes and country names. Any limitation of three-character ASCII strings is an overly-broad preventative option and should not be adopted.

Proposal 14

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

INTA Comment: INTA opposes this proposal. Individual countries should not be given worldwide rights to geographic terms as that goes against legal norms. This applies to permutations as well. As previously stated, no interpretation of the public interest as it relates to ICANN policy justifies disregard for the established international legal framework as it applies to trademarks and geographical indications of origin. Further, there is already a preliminary recommendation dealing with permutations of country and territory names so this proposal seems unnecessary.

Proposal 15

If a country can provide substantial evidence that the country is recognized by a name, the term should be included under the reserved names category “A name by which a country is commonly known.”

INTA Comment: See our comments on preliminary recommendation 9. To the extent that this proposal extends that then INTA views this as an unnecessary and overbroad preventative solution. There are already curative measures in place.

Proposal 16

Add translations “in any language” to the category of reserved names “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.”

INTA Comment: INTA opposes this proposal as it is overly broad. The point of a “commonly known” provision is surely to address governmental concerns to protect the name a country applies to itself, not names in other languages which it does not so apply.

Proposal 17

Require support/non-objection for capital city names only if the applicant intends to use the gTLD for purposes associated with the capital city name.

INTA Comment: See our comments on Preliminary Recommendation 10.

Proposal 18

Eliminate support/non-objection requirements for capital city names.

INTA Comment: See our comments on Preliminary Recommendation 10

Proposal 19

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.” As with other applications, curative measures available include objections processes, use of Public Interest Commitments, contractual provisions and enforcement, and post-delegation dispute resolution.

INTA Comment: Subject to our comments on Preliminary Recommendation 11, INTA would support this proposal if it were modified. Simply because a gTLD corresponds to a city name and will be associated with that city does not necessarily cause any concern. Many companies are named after cities and have their head office in that city, such that a gTLD for the company name would be “associated” with the city. INTA recommends this requirement be modified such that letters of support or non-objection will not be required where the applicant has trademark rights in the gTLD string and will use the TLD for purposes associated with the brand.

Variant 1 of Proposal 19

Implement provisions to prevent misrepresentation. Applicants who intend to represent a connection to 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.

INTA Comment: Subject to our comments on Preliminary Recommendation 11 INTA supports this proposal. Although we are not aware of this having been an issue in practice in the 2012 Round, it does not seem unreasonable to reflect the intended use in the contract when this has been the basis for not requiring a letter of support/non-objection.

Variant 2 of Proposal 19

Change the text of part (a) describing when support/non-objection applies. Change the text “(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” to “(a) The Geographic Names Panel

determines that the foreseeable use of 2nd level domains by registrants will be to a significant degree for purposes associated with the city name.”

INTA Comment: INTA opposes this proposal as it creates an additional level of bureaucracy which would be unnecessary if Variant 1 of Proposal 18 is adopted.

Variant 3 of Proposal 19

Change the text of part (a) describing when support/non-objection applies. Change the text “(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” to “(a) The applicant is able and will confirm that neither he nor his sales channel will use the TLD as a geographic identifier.”

INTA Comment: INTA opposes this variant as it deems Variant 1 stronger and clearer to all parties.

Proposal 20

Eliminate preventative protections for non-capital city names and focus instead on curative protections. All parties may raise issues with an application using objections. No letters of support or non-objection are required from governments or public authorities. Applicants may include evidence of support in an application. Groups, individuals, and other parties, including governments, may file objections to applications. Objections by all parties must refer to international law, domestic law, ISO standards or other objective measures that are relevant to the applicant and the application. Applicants take responsibility for ensuring that they submit applications which address those points and avoid an objection. Objectors pay to make the objection and submit any objections within appropriate time frames. Evaluators take objections into account in the evaluation and may discard objections. Work Track 5 has not yet discussed whether this proposal could rely exclusively on existing objections mechanisms, or if it would require change to existing objections mechanisms or addition of new objections mechanisms.

INTA Comment: INTA supports this proposal and reiterates that if governments or public authorities are concerned about reserving local geographic terms they should work with their ccTLDs to ensure these names are reserved on the country level. See also our general comments on preventative vs curative measures in question e3.

Proposal 21

Always require a letter of support or non-objection from the relevant governments or public authorities for non-capital city names regardless of intended use.

INTA Comment: INTA strongly opposes this proposal and reiterates that if governments or public authorities are concerned about reserving local geographic terms they should work with their ccTLDs to ensure these names are reserved on the country level. Many trademarks correspond to city names and are protected by trademark registrations issued by the corresponding national government. To require permission in cases where the gTLD will not be used for purposes associated with geography is unfair, arbitrary and conflicts with international and national trademark law. By way of example, in some cases, the trademark predates the city name and the city was named after the company. See also our comments on Preliminary Recommendation 11.

Proposal 22

Give small cities, towns, and geographic communities the first right to apply for a TLD associated with the place.

INTA Comment: INTA opposes this proposal. The terms “cities, towns and *geographical communities*” are not universally defined, leading to uncertain, arbitrary and potentially unfair results. If governments or public authorities want to encourage small cities, towns and geographic communities to apply for a gTLD they are entitled to do so, but such use is no more “deserving” than any other proposed use and does not warrant primacy.

Proposal 23

Develop a list of large cities around the world and require that applicants obtain letters of support or nonobjection from the relevant governments or public authorities for strings on this list, regardless of the way the applicant intends to use the string. The list of large cities could be developed based on one of the following standards or a combination of these standards:

- Absolute population of the city: the city has a certain minimum population, for example 500,000 residents or 1,000,000 residents.
- Relative population of the city: the city is relatively large by population compared to other cities in the country or sub-national region, for example it is one of the 10 largest cities in a country or 3 largest cities in a sub-national region.

· Percentage of a country's population: The city holds a certain minimum percentage of the country's population.

INTA Comment: INTA strongly opposes this proposal for being overly complicated. Currently, if an applicant wants to apply for a gTLD that contains a city name and will be associated with that city, the applicant must get approval from said city. If an applicant is considering applying for a new gTLD that will have nothing to do with a city or geographic name it should not have to seek approval from far away governments or public authorities. If governments or public authorities are concerned about reserving local city names, they should work with their ccTLDs to ensure these names are reserved on the country level. See also our comments on Preliminary Recommendation 11.

Proposal 24

Each country decides what it considers to be a city within its own country based on national laws and policies. If the country determines that a place fits in the "city" category, the applicant must obtain support/non-objection from the government. A variant on the above proposal proposes that each country designates a set number of cities that they consider to be particularly significant. City names on the resulting list are subject to support/non-objection by the relevant governments or public authorities.

INTA Comment: INTA strongly opposes this proposal because it presumes that one government may have priority over another government when it comes to a city name and does not recognize that there are many overlaps in city names. Currently, if an applicant wants to apply for a gTLD that contains a city name and will be associated with that city, the applicant must get approval from said city. If an applicant is considering applying for a new gTLD that will have nothing to do with a city or geographic name it should not have to seek approval from far away governments or public authorities. If governments or public authorities are concerned about reserving local city names, they should work with their ccTLDs to ensure these names are reserved on the country level. See also our comments on Preliminary Recommendation 11.

Proposal 25

Reserve non-capital city names that have "global recognition." If a city wants to apply for a gTLD, it can apply for a string containing the name of the city followed by the applicable country

code. This would allow multiple cities with the same name located in different countries to obtain a gTLD.

INTA Comment: INTA opposes this proposal. See our comments Proposals 22 and 23 above.

Proposal 26

Raise awareness and increase knowledge among potential applicants about the opportunity to apply for TLDs. This proposal does not impact the level of protection/restriction and could supplement any of the above proposals.

INTA Comment: INTA supports this proposal in principle. Awareness raising was dealt with in the Initial Report on Overarching Issues and WTs1-4.

Proposal 27

Eliminate support/non-objection requirements for sub-national place names, such as counties, provinces, or states listed in ISO 3166 Part 2 standard.

INTA Comment: INTA supports this proposal. See our response to Preliminary Recommendation 12.

Proposal 28

Applicants who intend to represent a connection to the authority of a sub-national place 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.

INTA Comment: INTA supports this proposal. See also our response to Preliminary Recommendation 12.

Proposal 29

If the string corresponds to a sub-national place name, such as a county, province, or state listed in ISO 3166 Part 2 standard, 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.

INTA Comment: INTA supports this proposal. See our response to Preliminary Recommendation 12.

Proposal 30

Eliminate support/non-objection requirements for strings listed as UNESCO Regions or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.

INTA Comment: INTA supports this proposal. See our response to Preliminary Recommendation 13.

Proposal 31

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.

INTA Comment: INTA approves this proposal. See also our response to Preliminary Recommendation 13.

Proposal 32

If the string corresponds to a name 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 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.

INTA Comment: INTA approves this proposal. See also our response to Preliminary Recommendation 13.

Proposal 33

Apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly protected is unprotected. A lack of letter of support/non-objection alone will not be a cause to hinder or suspend an application for such unprotected term.

INTA Comment: INTA approves this proposal. Applicants and other stakeholders require certainty.

Proposal 34

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.

INTA Comment: INTA opposes this proposal as it creates an additional layer of bureaucracy and is unnecessary based on the contractual requirements of the Registry Agreement.

Proposal 35

Maintain a repository of geographic names reflecting terms that governments consider sensitive and/or important as geographic names. Countries and territories could contribute terms to this repository, but it would not require binding action on the part of potential applicants.

INTA Comment: INTA opposes this proposal. If governments or public authorities are concerned about reserving local city names, they should work with their ccTLDs to ensure these names are reserved on the country level. Our comments on proposal 1 would seem to be also applicable to this proposal.

Proposal 36

Leverage the expertise of GAC members to help applicants determine if a string is related to a geographic location. GAC members could also assist applicants in identifying which governments and/or public authorities would be applicable in cases where an applicant must obtain a letter of government support or non-objection.

<p>INTA Comment: INTA opposes this proposal. If governments or public authorities are concerned about reserving local city names, they should work with representatives of the GAC and their ccTLDs to ensure these names are reserved on the country level. Our comments on proposal 2 would seem to be also applicable to this proposal.</p>
<p>Proposal 37</p> <p>Require that an applicant demonstrates that it has researched whether the applied-for string has a geographic meaning and performed any outreach deemed necessary by the applicant prior to submitting the application. The proposal would be in addition to the existing measures related to the Geographic Names Panel.</p>
<p>INTA Comment: INTA strongly opposes this proposal for the reasons set out throughout these comments, including the overarching comments, and those on question 3 and proposal 7.</p>
<p>Proposal 38</p> <p>If the applicant is applying for a geographic name, including terms not listed in the 2012 Applicant Guidebook, the applicant is required to contact/consult with the relevant government authority and provide evidence that it has done so.</p>
<p>INTA Comment: INTA strongly opposes this proposal and repeats its response to proposal 36.</p>

III. Conclusion

In conclusion, INTA’s position remains unchanged, that any objection to the use of a geographic term that is determined to be of either national, cultural, geographic or religious significance to a particular country or region has no legal basis, whether under agreed principles of international law or national sovereignty; and no interpretation of the public interest as it relates to ICANN policy justifies disregard for the established international legal framework as it applies to trademarks and geographical indications of origin.

However, INTA recognizes that the 2012 Applicant Guidebook (AGB) was the result of a compromise carefully developed in a multistakeholder process, seeking to weigh the various competing interests, in order to arrive at a fair balance and to create certainty for all applicants

(and potential objectors). The 2012 AGB restrictions against using particular terms, either at all or without governmental approval, have no basis in law and consequently conflict with INTA's stated position, but are a compromise which was accepted for the 2012 Round. Attempts to expand these restrictions further, however, would be countered by those who consider that they already go too far, and justify opening-up all 2012 Round restrictions.

Sincerely,

A handwritten signature in black ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo
Chief Executive Officer

About INTA and the Internet Committee

INTA is a 140-year-old global not for profit association with more than 7,200-member organizations from over 191 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last decade, INTA has also been the leading voice of trademark owners within the Internet Community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN).

INTA's Internet Committee is a group of over 200 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.