



COMMENT OF THE INTELLECTUAL PROPERTY CONSTITUENCY ON THE SUPPLEMENTAL INITIAL REPORT  
ON THE NEW gTLD SUBSEQUENT PROCEDURES POLICY DEVELOPMENT PROCESS

22 January 2019

The GNSO Intellectual Property Constituency (IPC) appreciates the opportunity to provide comments on the Work Track 5 on Geographic Names at the Top Level - Supplemental Initial Report of the New gTLD Subsequent Procedures Policy Development Process Working Group (the “WT5 Initial Report”). See <https://www.icann.org/public-comments/geo-names-wt5-initial-2018-12-05-en>.

The IPC represents the views of the intellectual property community within ICANN, and is focused on trademark, copyright, and related intellectual property rights and their effect and interaction with the DNS. The IPC’s consensus views on the WT5 Initial Report are appended, and are presented in a matrix format consistent with Appendix B (Table of Preliminary Recommendations, Options and Questions for Community Input).

Respectfully Submitted,

**Intellectual Property Constituency**

**Preliminary Recommendations**

<b>Preliminary Recommendations</b>	<b>IPC Draft Comment</b>
Preliminary Recommendation 1	<p>This Recommendation appears to represent the status quo from the last iteration of the Applicant Guidebook. The relevant provisions of the Applicant Guidebook related to geographic terms represents the outcomes of thousands of hours of work by hundreds of individuals over the course of several years to reach a carefully balanced compromise on this topic (the “Applicant Guidebook Geo Terms Provisions”). The Applicant Guidebook Geo Terms Provisions came into being on one hand due to some parties believing that the use of geographic terms should be limited in the DNS even though there is no support for such a notion in law, and on the other hand due to the willingness of some parties, including the IPC, to surgically compromise on this topic as a means of recognizing and promoting the legitimacy of the multistakeholder process. Although neither “side” obtained everything it wanted in the Applicant Guidebook Geo Terms Provisions, the compromises contained therein allowed for the first round of the new gTLD program to proceed. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.</p>
Preliminary Recommendation 2	<p>As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.</p>
Preliminary Recommendation 3	<p>The IPC strongly believes that all 3-letter combinations should be available for delegation as new gTLDs. There is simply no legal or technical reason for continuing to reserve such strings. Indeed, international law and historical practice militate in favor of allowing all three-letter combinations that have not yet been delegated such that they are available for future applications. The fact that there is an ISO list of three-letter codes for countries/territories, which have never been used in practice in the DNS to refer to those countries/territories, is not a sufficient basis for continued reservation of such names. There is no reasonable likelihood of confusion with the country/territory should such names be available for delegation as gTLDs. Most notably, the .COM gTLD has existed for many years with no confusion whatsoever despite “COM” representing the ISO 3166 three-letter code for Comoros. The IPC continues to otherwise generally support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.</p>

<b>Preliminary Recommendations</b>	<b>IPC Draft Comment</b>
Preliminary Recommendation 4	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 5	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 6	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 7	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 8	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to generally support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions. Specifically, we support the permutations of three-letter combinations on the ISO 3166-1 list being released. As indicated above, our preference would be for all three-letter combinations to be available for possible future gTLD applications.
Preliminary Recommendation 9	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 10	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.

<b>Preliminary Recommendations</b>	<b>IPC Draft Comment</b>
Preliminary Recommendation 11	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 12	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.
Preliminary Recommendation 13	As further discussed in our comments on Preliminary Recommendation 1, this Preliminary Recommendation appears to be consistent with the Applicant Guidebook Geo Terms Provisions. The IPC continues to support the Applicant Guidebook Geo Terms Provisions but does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.

**Questions for Community Input**

<b>Questions for Community Input</b>	<b>IPC Draft Comment</b>
Question e1	The IPC notes that this question is addressed to “applicants and other shareholders who were involved in the 2012 round” and requests their input regarding “any positive or negative experiences, including lessons learned and areas for improvement in subsequent procedures” regarding their applications “for terms defined as geographic names in the 2012 applicant Guidebook”. The IPC notes that the Work Track has contemplated a number of examples from the 2012 round. The IPC has interpreted this question as an opportunity for those with problems stemming from the 2012 to contribute their experiences. As such, IPC has reached out to its members and asked them to provide any such feedback to Work Track 5, and to publicise this request for input. The IPC believes that while post-application objection mechanisms to resolve these issues would still involve some level of additional expense, they would at least provide clear and definitive mechanisms for resolving all such disputes without vague and ambiguous channels of governmental intervention and protracted negotiations providing little certainty to any party.

Questions for Community Input	IPC Draft Comment
Question e2	<p>The IPC believes that the definition of “geographic names” as one of the four types of strings listed in Section 2.2.1.4.2 of the Applicant Guidebook should be maintained for the New gTLD Program. As previously and more completely discussed in our comments regarding Preliminary Recommendation 1, the Applicant Guidebook related to geographic terms, including the definition of “geographic names”, represents a carefully balanced compromise resulting from extensive consideration by hundreds of individuals over thousands of hours. We believe this definition is appropriate and addresses the concerns of all portions of the stakeholder community. The Applicant Guidebook Geo Terms Provisions came into being on one hand due to some parties believing that the use of geographic terms should be limited in the DNS even though there is no support for such a notion in law, and on the other hand due to the willingness of some parties, including the IPC, to surgically compromise on this topic as a means of recognizing and promoting the legitimacy of the multistakeholder process. The IPC therefore continues to support the Applicant Guidebook Geo Terms Provisions and “geographic names” definition. It does not, however, support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions.</p> <p>In this last regard, we do not believe there should be any special requirements or implications for terms which are “geographic names”. Specifically, we do not agree that such names should be subject to governmental approval or non-objection but rather any challenges to such applications should be handled through an appropriate objection mechanism. We also do not believe this definition or the types of geographic terms considered “geographic names” should be expanded, nor should a list of additional geographic terms to be considered “geographic names” be established as this would establish new rights in the terms beyond the scope of current legal rights.</p> <p>Finally, we believe the discussion whether “geographic names” is “the appropriate term” to use for terms that are to be considered entitled to requirements of government approval under the Applicant Guide Book does not progress the work of Work Track 5. Indeed, it creates the potential for expanding the types of restrictions and nature of terms for which additional requirements might be put into place for registration. Conversely, by challenging the scope of terms included in the scope of “geographic names” the discussion could reduce their protection. Neither of these results appears warranted. Instead, we support continued use of the term and the existing definition, subject to the alternative proposed implications for strings meeting such definition as noted above (objection mechanism rather than approval/non-objection process).</p>

Questions for Community Input	IPC Draft Comment
Question e3	<p>The IPC believes that the combination of preventive and curative rights mechanisms under the current Applicant Guide Book Geo Provisions strikes an appropriate balance which should be continued in subsequent rounds. Establishing additional preventive rights such as by establishing a list of restricted “geographic names” would create a chilling effect and have the effect of creating new “rights” in the restricted terms that would not be supported by international or local law. On the other hand, curative rights exist in the New gTLD Program which generally provide sufficient means for avoiding over-restriction of geographic terms which have meanings other than their geographic significance. The predictability of a list of reserved terms is outweighed by its threats to valid non-infringing use and registration of similar terms for TLDs.</p>
Question e4	<p>The IPC refers to the principles outlined in this question, namely:</p> <ul style="list-style-type: none"> <li>• Principle C from the <a href="#">2007 GNSO recommendations on new gTLDs</a> (2007 GNSO Recommendations), the program should allow for the introduction of new gTLDs.</li> <li>• Principle A from the 2007 GNSO Recommendations, enhance the predictability for all parties.</li> <li>• Reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated.</li> <li>• Policies and processes should be simple to the extent possible.</li> </ul> <p>The IPC supports these principles particularly in the development of policy for geographic names in the scope of the New gTLD Program, but notes that, as demonstrated in the working group, these principles mean different things to different people. We do not support an interpretation which would see the support/non-objection mechanism applied more broadly as a “means to reduce conflicts later in the application process or after delegation”. Indeed, we specifically support broader use of post-application objection mechanisms as a more predictable means of addressing conflicts, and increasing the simplicity of resolving conflicts concerning applications for new gTLDs including those allegedly matching a geographic name. One of the aims of the New gTLD Program is to increase competition in the DNS in accordance with the ICANN Bylaws (specifically section 1.2(a)). Reserving, or imposing support/non-objection preconditions on, a large number of names undermines this goal by reducing the opportunities for introducing new gTLDs, and fails to recognize that many names have multiple different meanings and uses which co-exist in the real world. Further, while reserving names may be predictable, it is not supported by any basis in law and the IPC is concerned with the potential chilling effect reserving a large quantity of names may have on potential applicants. Finally, the IPC notes curative rights exist in the New gTLD Program and highlights the potential for Public Interest Commitments (or other contractual provisions) to be used by applicants, and the role of objections and public comments for concerns to be raised in relation to a particular application.</p>

Questions for Community Input	IPC Draft Comment
Question e5	<p>The IPC supports relying on international law as a basis for the development of policies regarding geographic names. Principles of national/local law and policy may also be of relevance – those operating within a particular territory must be mindful of local laws - but it is important to bear in mind that one legal system should not be given preference over another in ICANN policy. The WT5 Supplemental Report refers to some examples of national laws which some working group members have identified as addressing, locally, the use of certain names. These national laws, however, do not have global applicability whereas the DNS operates at a global level, and further it is necessary to recognize that many names have multiple different meanings and uses which co-exist internationally in the real world.</p>
Question e6	<p>Since a compromise was established for the 2012 Round which sought to address the concerns of some governments to protect against the use of their country names, the IPC supports reserving exact matches of the long and short form names listed in the ISO 3166-1 standard. The IPC would also support reserving as unavailable translations in the official languages of the country in question, since this would seem to accord with the intention of protecting the names that countries use to describe themselves.</p> <p>The IPC is of the view that reserving translations of long and short form country and territory names in all languages does not accord with the intention of protecting the names that countries use to describe themselves, reduces the predictability of the New gTLD Program, increases the likelihood of conflicts between supposed country names and the other potential co-existing uses of the same term in some language which bears no connection with the country in question. Further, reserving translations in all languages is contrary to Principle C from the 2007 GNSO Recommendations</p>

Question e7	<p>The IPC does not support enabling a process to delegate 3-letter codes and/or other country and territory names to specific parties, such as governments. Offering such names to specific parties, such as relevant governments and public authorities or other entities would appear to treat them as akin to ccTLDs. Although Work Track 5 has a chair and participants from the ccNSO, it would surely be outside of the scope of a GNSO policy development process to create new forms of ccTLD. Making a recommendation to delegate formerly-reserved geographic names to specific entities or classes of entities goes beyond the scope of SubPro.</p> <p>The ICANN Bylaws section 2.3 provide that “ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.” Offering reserved names to specific parties appears to be contrary to section 2.3, especially given one of the purposes of the New gTLD Program is a mechanism to encourage competition.</p> <p>As we have previously commented (for example in respect of the report of the CWG-UCTN) there is a lack of any basis under international law for governments to claim sovereignty and priority of use in relation to these country and territory names and the 3-letter terms.</p> <p>With respect to the 3-letter terms, in particular, any claims to such “sovereign” rights would conflict with existing trademark rights. The existing and proposed future treatment of 2-letter codes is based on the historical, standardized practice relating to the use in the DNS of the externally-managed ISO standard, and arising from the adoption of RFC1591. There is no such practice, based on the reliance on an externally-managed standard adopted from the outset of the DNS, in relation to 3-letter codes. Consequently, there is nothing which supports reserving these terms, either entirely or for use only by specific parties such as governments and public authorities (which would be akin to treating them as ccTLDs).</p> <p>Further, ISO 3166-1 alpha-3 codes are three-letter country codes defined in ISO 3166-1, to represent countries, dependent territories, and special areas of geographical interest based upon the alpha-2 codes. As such, the countries and geographic interests represented thereby are wholly represented in ISO 3166 alpha-2. Consequently, the continued reservation, or allocation as de facto ccTLDs, of these 3-letter codes would be completely duplicative, redundant and serve no apparent purpose.</p> <p>Furthermore, insofar as there have been arguments for allocating these terms to be operated as ccTLDs, no perceived advantage or necessity has been identified by the technical or country code community for such an expansion, save that of providing additional revenue streams for existing ccTLD providers, who have already been allocated what would be considered to be prime internet real estate in the form of the 2-letter codes. This approach would also cut against</p>
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<b>Questions for Community Input</b>	<b>IPC Draft Comment</b>
	<p>existing historical practice permitting the delegation of three-letter strings as gTLDs, including most notably .COM which is also a three-letter code on the ISO 3166-1 list.</p> <p>The IPC has been unable to identify any advantage of such a policy, and sees numerous disadvantages in terms of restricting the availability of many potential 3-character strings as new gTLDs within the DNS, many of which are commonly used words or famous or well-known trademarks. This is inconsistent with many countries'/states' own national trademark laws and is a significant impediment to the ability of rights holders worldwide to participate in the DNS and engage in e-commerce.</p> <p>Subject to our comments on the Preliminary Recommendations, the IPC does not support any restrictions on the use of 3-letter codes as gTLDs, save insofar as certain terms have been reserved for technical reasons, subject of course to any policies designed to protect against the infringement of legal rights and the avoidance of string confusion.</p>

Questions for Community Input	IPC Draft Comment
Question e8	<p>The IPC does not object to requiring a letter of support or non-objection from the relevant governments or public authorities for an application for any string that is an exact match, or translations in official languages of the country or territory in question, of the capital city name of any country or territory listed in the ISO 3166-1 standard. However, the IPC would support introducing the same ‘intended use’ requirement for capital city names that is in place for non-capital city names.</p> <p>The IPC believes that requiring a letter of support or non-objection from the relevant governments or public authorities for exact matches of translations of a capital city name would not improve the predictability of the New gTLD Program. Rather, the range of potential translations expands the scope for future conflicts, could have a chilling effect on applications, and cannot be justified as protecting the names that these cities use to describe themselves.</p> <p>Further, the IPC notes that Recommendation 3 of the GNSO Recommendations provides that:</p> <p style="padding-left: 40px;">Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p style="padding-left: 40px;">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).</p> <p>The IPC is concerned that expanding the scope for potential geographic names will infringe the existing private property rights of trademark owners.</p>

Questions for Community Input	IPC Draft Comment
Question e9	<p>Please see also our comments on the Preliminary Recommendations</p> <p>The IPC supports requiring 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 in their application that it intends to use the gTLD for purposes associated with the city name” (intended use). We underscore that it must be the <i>applicant’s</i> stated intent, and a government cannot choose to impose its own interpretation as to intent on any application. Further, the stated requirement should be subject to the caveat that where the TLD is being applied for as a .Brand then any “association” the public may draw between that Brand and the city (for example because of where the Brand is located or was originally established) shall not serve as a relevant association for these purposes.</p> <p>The IPC would not support any requirement for a letter of support or non-objection in respect of terms which match the name of a city anywhere in the world, where this is not the intended context of use. Many names have multiple different meanings and uses which co-exist in the real world, including:</p> <ul style="list-style-type: none"> <li>• the same term being used as the name of a town, city or geographic feature in multiple countries, and even within a single country;</li> <li>• a term identifying both a geographic place and having a generic (dictionary) meaning;</li> <li>• terms which are used by both geographic places and as brand names/trademarks;</li> <li>• terms which are used by more than one brand owner, for different fields of business or different jurisdictions.</li> </ul> <p>Expanding the scope of any consent/non-objection precondition would infringe on potential trade mark rights and on the use of these terms for other legitimate contexts.</p> <p>The IPC would support leaving the definition of a city as being “as it appears on official city documents”. This limits the scope of a ‘city’ to being an area large and organized enough that warrants a public authority to conduct official business on behalf of people in the area. It also creates predictability for applicants as there will be a readily identifiable authority to contact for a letter of support or non-objection.</p>
Question e10	<p>The IPC’s position on Proposals 19 – 26 (set out in f.2.3.2 of the report) is set out below. We also refer to our overarching comment on the Preliminary Recommendations above. The IPC does not support expanding the scope of censorship of geographic terms in the DNS beyond what is currently in the Applicant Guidebook Geo Terms Provisions.</p>

Questions for Community Input	IPC Draft Comment
Question e11	<p>As set out in our responses to the Preliminary Recommendations, the IPC continues to support the Applicant Guidebook Geo Terms Provisions and does not support expansion of censorship of geographic terms in the DNS further than what is currently in place in the Applicant Guidebook Geo Terms Provisions. Specifically, the IPC does not support the additional censoring of currency codes listed on the ISO 4217 or any other term such as rivers, mountains, that could be considered as geographic in nature, not included in the 2012 AGB restrictions. The IPC does not support the creation of any other categories for terms that may be considered ‘sensitive’ (e.g. religious, historical terms). Many names have multiple different meanings and uses which co-exist in the real world, including:</p> <ul style="list-style-type: none"> <li>• the same term being used as the name of a town, city or geographic feature in multiple countries, and within a single country;</li> <li>• a term identifying both a geographic place and having a generic (dictionary) meaning;</li> <li>• terms which are used by both geographic places and as brand names/trademarks;</li> <li>• terms which are used by more than one brand owner, for different fields of business or different jurisdictions.</li> </ul> <p>Granting primacy to any potential geographic meaning is unsupported in law and would infringe on potential trade mark rights and on the use of these terms in other legitimate contexts.</p>

### Options/Proposals

Options/Proposals	IPC Draft Comment
Proposal 1	<p>The IPC opposes the development of such a tool both because it would be too burdensome (if even possible) to develop and too restrictive to apply. There would be some benefits in enabling potential applicants to search a database of conditions and terms to determine whether a particular term is eligible for delegation or whether there are issues (like the requirement of obtaining a letter of support from the government) that would require further action; this would clearly be useful in determining whether to proceed. However, these benefits would be overshadowed by the threat to the selection of terms for TLDs presented by such a tool. Such a tool would require the creation of restricted-terms lists as well as extensive and strict tests or guidelines that could be applied to determine the registrability of specific terms. Such a list, and such analytic tools are neither authorized by nor supportive of international law. They would, in effect, create new rights whose exercise by governmental entities would be largely uncontrollable. Provided that there is sufficient clarity in defining terms to which geographic restrictions apply (by means of defined lists) there should be no need for such a tool. More importantly, the next iteration of the Applicant Guidebook itself should be sufficient for identifying the appropriate contours of any such restrictions or requirements, and whether a potential new string fits within a definition of a particular type of geographic name.</p>

Options/Proposals	IPC Draft Comment
Proposal 2	The IPC supports the participation of GAC members in developing a means for assisting applicants in this manner. One of the most difficult burdens applicants may face is identifying the government authorities from which they must obtain letters of support. However, unless such means could be readily established and socialized as a document or online listing (and based on feedback we have heard from members of the GAC both in relation to the 2012 Round and during the SubPro process), we do not believe the GAC members have sufficient time or resources to provide continuing support for such a program.
Proposal 3	The IPC notes that mediation services are generally only successful when both parties wish to reach a compromise. In cases where ICANN determines that governmental authorization is required to permit registration of a “geographic name”, it is doubtful that this would be the case. Even if mediation were a realistic possibility, however, it would appear to contradict the policy underlying the enhanced requirements for such terms. Finally, the cost of such proceedings could be substantial and of dubious support by the courts. This demonstrates why post-application objection mechanisms are preferable to support/non-objection letters.
Proposal 4	The IPC supports raising the awareness and understanding of governments of the New TLD program, and establishing structured support and advice for both governments and applicants. Such programs, however, must be conducted by panels of stakeholders to ensure balanced presentation and understanding.
Proposal 5	The IPC would support this proposal. It would encourage government entities to establish policy and respond in a timely fashion, and ensure that possible conflicts be resolved expeditiously. This proposal would require, however, that applicants would be able to obtain correct contact information for relevant government entities in order to ensure their request reaches the correct person or department.
Proposal 6	The IPC does not support this proposal insofar as it would be impossible to apply and impossible to oversee. As stated in our response to the preliminary recommendations, the IPC supports the continuation of the existing compromises. This proposal would vary that. As a matter of principle the IPC would support freeing-up some or all “other variations and translations” once a TLD is delegated with an intended use that is geographic in nature, since this would seem to accord with the intention of protecting the names that countries (and their communities) use themselves. However, we do note as a general point that there can be a myriad of differences in translations and connotations and an indeterminacy of determining what are “variations and translations” of the delegated term that would be unconditionally released. What in one language may be a generic term in another may be an arbitrary term protected under law. This concern applies, however, whether the various variations and translations are to be reserved indefinitely (as per the status quo) or made available for release as in this proposal 6. For this reason, we prefer the approach identified in question e6. The IPC notes that the string confusion rules would still apply to translations/transliterations of strings regardless of the nature of the string.

Options/Proposals	IPC Draft Comment
Proposal 7	The IPC does not support this proposal. Requiring applicants to notify relevant governments of their intent to register TLDs that consist of or include geographic terms presumes that it would be possible to not only create a set of standards to define what are relevant government or public authorities, but to identify those authorities with sufficient certainty to avoid unfairness and uncertainty. We believe this would introduce layers of authority that would be otherwise unsupported. The IPC does note that the GAC has an opportunity to review the applications, submit “Early Warnings”, use other objection proceedings, and issue advice on strings. This window could also be used by GAC members to raise concerns within relevant authorities in their particular country.
Proposal 8	The IPC does not support this proposal insofar as it would establish rights in “geographic names” far beyond the scope of the interests being protected by the Applicant Guidebook Geo Provisions.
Proposal 9	The IPC does not support this proposal insofar as it would establish rights in “geographic names” far beyond the scope of the interests being protected by the Applicant Guidebook Geo Provisions.
Proposal 10	The IPC does not support this proposal insofar as it would establish rights in “geographic names” far beyond the scope of the interests being protected by the Applicant Guidebook Geo Provisions. This also fails to acknowledge the many different co-existing meanings a particular name may have, which may include the use by multiple different countries as a “geographic name” or by entities or individuals with no direct relationship with the geographic area purportedly relating to the term (e.g. a trademark or trade name).
Proposal 11	See our comments on the Preliminary Recommendation.  See also our comments on Question e7. Just as there is there is no basis under international law for governments to claim sovereignty and priority of use in relation to these 3-letter terms, there is similarly no basis for granting governments a right of pre-approval. Accordingly, we oppose this proposal.
Proposal 12	See our comments on the Preliminary Recommendations and Question e7.  To the extent that a decision is made to recommend the release of these 3-letter terms, the IPC supports this proposal as a reasonable compromise. Ideally there would be no requirement for government support/non-objection for the delegation of alpha-3 codes on the ISO 3166-1 list as there is no basis at international law for governments to control or manage the codes in question. Many governments already utilize alpha-2 codes from ISO 3166-1 list for local identification (e.g. .AU, .DE, .UK) or have chosen to delegate for commercial use (e.g. .CO, .TV, .ME). However, to the extent that a 3-letter code is intended to be used an official identifier for a country or territory then we can see that the relevant government or public authority would want to have an input.

Options/Proposals	IPC Draft Comment
Proposal 13	The ISO is an objective standard of geographic terms, including 3-character strings and is supported by a Maintenance Agency to ensure the list remains up to date, and therefore to the extent that 3-letter terms are to be treated as geographic names which are subject to reservation or pre-conditions on use we support the use of the ISO 3166-1 alpha 3 list for this purpose. That said, we do not believe three-letter strings should be considered geographic names at all for purposes of new gTLD applications, except potentially in cases where the applicant specifically intends to use the string in connection with a specific country/territory as a geographical identifier. Please see our response to Question e7 for details.
Proposal 14	The IPC does not support this proposal. The IPC notes Preliminary Recommendation 8 already recommends reserving permutations and transpositions of long and short form names of countries and territories on the ISO 3166-1 list, along with those listed on the “Separable Country Names List”, and those associated with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency. Please see our response to this Preliminary Recommendation 8.
Proposal 15	The IPC notes that Preliminary Recommendation 9 provides for the reservation of 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”, and refers to its comment in relation to the same. The IPC would not object to inserting the word ‘substantial’ before the word ‘evidence’.
Proposal 16	The IPC does not support this proposal. See our answer to question e6, which would also be applicable here.
Proposal 17	The IPC does not object this proposal. See our answer to question e8 [and to Preliminary Recommendations 10 and 11].
Proposal 18	The IPC supports this proposal. See our answer to question e8 [and to Preliminary Recommendations 10 and 11].
Proposal 19	<p>The IPC does not object to this proposal, which appears to reiterate Preliminary Recommendation 11. See our answer to question e9. The IPC would prefer (a) be reworded to “(a) if the applicant declares in their application that it intends to use the gTLD for purposes associated with the city name”.</p> <p>Furthermore, this should be subject to the caveat that where the TLD is being applied for as a .Brand then any “association” the public may draw between that Brand and the city (for example because of where the Brand is located or was originally established) shall not serve as a relevant association for these purposes.</p>

Options/Proposals	IPC Draft Comment
<p>Proposal 19 Variant 1</p>	<p>See response to Proposal 19.</p> <p>The IPC does not support this Proposal as written. There may be a way forward for further discussions on some of the ideas found in this Proposal, but we would need further details and clarifications.</p> <p>In particular, with respect to the proposal that “protections will instead be enhanced by inserting contractual requirements into the Registry Agreement” the IPC believes that it should be a matter for the applicant to determine whether to submit a Public Interest Commitment in their initial application and reiterates that a name may have multiple different meanings and contexts which legitimately co-exist, but in principle the IPC does support the idea that applicants should have the option to meet legitimate concerns identified during formal objection processes by means of contractual modifications such as PICs rather than objections being an “all or nothing” process.</p>
<p>Proposal 19 Variant 2</p>	<p>See response to Proposal 19. The IPC opposes this proposal. There is already an expectation that the Geographic Names Panel would review such applications, and its role will be to determine whether the TLD is likely to be used primarily for purposes associated with the city name, taking the application as a whole into consideration.</p>
<p>Proposal 19 Variant 3</p>	<p>See response to Proposal 19. The IPC does not support this Proposal as written. There may be a way forward for further discussions on some of the ideas found in this Proposal, but we would need further details and clarifications, in particular clarity as to exactly what is meant by “use the TLD as a geographic identifier” and to consider what processes could be put in place to safeguard a registry operator and to allow a registry operator to work with members of its sales channel to cure potential breaches collaboratively.</p>
<p>Proposal 20</p>	<p>The IPC supports this proposal. See our response to Question e5.</p>
<p>Proposal 21</p>	<p>The IPC does not support. See our answer to questions e8 and e9 [and Preliminary Recommendation 11].</p>



Options/Proposals	IPC Draft Comment
Proposal 22	<p>The IPC does not support. There is no evidence that small cities, towns, and geographic communities have any interest in a TLD associated with the place, or that anyone would be willing to operate a TLD on their behalf. If they do wish to apply, they are entitled to do so, in the same way as is any other applicant.</p> <p>The IPC also reiterates its comments that many names have multiple different meanings and uses which co-exist in the real world, including:</p> <ul style="list-style-type: none"> <li>• the same term being used as the name of a town, city or geographic feature in multiple countries, and even within a single country;</li> <li>• a term identifying both a geographic place and having a generic (dictionary) meaning;</li> <li>• terms which are used by both geographic places and as brand names/trademarks;</li> <li>• terms which are used by more than one brand owner, for different fields of business or different jurisdictions.</li> </ul> <p>The IPC notes the challenges that would still arise where more than one small city, town, or geographic community applied for the same term. Irrespective of whether there was any “first right to apply” such small cities, towns and geographic communities could not all register “their” name.</p>
Proposal 23	<p>The IPC does not support the creation of any list of city names for the purpose of the New gTLD Program. Such a list would be onerous to compile and, since populations are constantly changing, onerous to maintain.</p> <p>The IPC would not support any requirement for a letter of support or non-objection in respect of terms which match the name of a city anywhere in the world, where this is not the intended context of use. Many names have multiple different meanings and uses which co-exist in the real world, including:</p> <ul style="list-style-type: none"> <li>• the same term being used as the name of a town, city or geographic feature in multiple countries, and even within a single country;</li> <li>• a term identifying both a geographic place and having a generic (dictionary) meaning;</li> <li>• terms which are used by both geographic places and as brand names/trademarks;</li> <li>• terms which are used by more than one brand owner, for different fields of business or different jurisdictions.</li> </ul> <p>Expanding the scope of any consent/non-objection precondition would infringe on potential trade mark rights and on the use of these terms for other legitimate contexts.</p> <p>Further, any unilateral decision making undermines the consensus approach in the ICANN multi-stakeholder model.</p>

Options/Proposals	IPC Draft Comment
Proposal 24	<p>The IPC does not oppose individual governments relying on their national laws to raise objections to an application. The appropriate place for a government to raise such arguments and rationale would be in a specific objection process opposing a specific application. However, individual national laws should not form the basis of a list that creates rights for all governments and public authorities against any application, regardless of context. The IPC reiterates their concerns with unilateral decision-making by governments and with the expansion of the scope of consent/non-objection, as set out in our response to Proposal 23.</p>
Proposal 25	<p>The IPC does not support the introduction of a “global recognition” test for reserving non-capital city names as it is too subjective. The IPC does not support the reservation of any geographic names, with the few exceptions noted elsewhere in these comments. Please see, for example, our comments on question e9.</p> <p>The IPC does not object to the idea of strings containing the name of a city followed by the applicable country code being delegated to differentiate between multiple cities of the same name. There is nothing in the existing policy which would have prevented an applicant for applying for a TLD in this form.</p>
Proposal 26	<p>The IPC supports raising awareness and increasing knowledge about the New gTLD Program generally.</p>
Proposal 27	<p>The IPC supports this proposal. See also our response to Proposal 29 and comments on the Preliminary Recommendations.</p>
Proposal 28	<p>The IPC does not support this Proposal as written. There may be a way forward for further discussions on some of the ideas found in this Proposal, but we would need further details and clarifications.</p> <p>The IPC does support introducing an ‘intended use’ test to exact matches of sub-national places names listed on the ISO 3166-2 list. This would modify Preliminary Recommendation 12 (note also our comments in respect of that Preliminary Recommendation). With respect to the proposal that “protections will instead be achieved by inserting contractual requirements in the Registry Agreement” the IPC believes that it should be a matter for the applicant to determine whether to submit a Public Interest Commitment in their initial application and reiterates that a name may have multiple different meanings and contexts which legitimately co-exist, but in principle the IPC does support the idea that applicants should have the option to meet legitimate concerns identified during formal objection processes by means of contractual modifications such as PICs.</p>
Proposal 29	<p>The IPC supports introducing an ‘intended use’ test to exact matches of sub-national places names listed on the ISO 3166-2 list. This would modify Preliminary Recommendation 12 (note also our comments in respect of that Preliminary Recommendation).</p>

Options/Proposals	IPC Draft Comment
Proposal 30	<p>The IPC supports this proposal but does not object to maintaining the existing support/non-objection requirements for exact matches of 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. [See our comments on Preliminary Recommendation 13.]</p>
Proposal 31	<p>The IPC does not support this Proposal as written. There may be a way forward for further discussions on some of the ideas found in this Proposal, but we would need further details and clarifications.</p> <p>The IPC would support the introduction of an ‘intended use’ test for exact matches of 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. This would modify Preliminary Recommendation 13 (note also our comments in respect of that Preliminary Recommendation).</p> <p>The IPC notes, however, as a general matter that the proposed requirement of obtaining a letter of support/non-objection for such names is particularly problematic. Not only is there no singular authority governing such regions, there is no internationally recognized method to obtain any such letters.</p> <p>With respect to the proposal that “protections will instead be achieved by inserting contractual requirements in the Registry Agreement” the IPC believes that it should be a matter for the applicant to determine whether to submit a Public Interest Commitment in their initial application and reiterates that a name may have multiple different meanings and contexts which legitimately co-exist, but in principle the IPC does support the idea that applicants should have the option to meet legitimate concerns identified during formal objection processes by means of contractual modifications such as PICs.</p>
Proposal 32	<p>Subject to our comments on the Preliminary Recommendations, the IPC would support there being no requirement for a letter of support/non-objection where the use is to be in a generic or brand context – we repeat our comments on proposal 31.</p>
Proposal 33	<p>The IPC agrees in principle with this Proposal, but would need to see what is meant by “explicitly and expressly protected.” For example, would this require the existence of a national law calling out specific strings? If so, would the laws of a singular government work to prohibit delegation of a string instead of resolution of that string within the specific jurisdiction? If the reference to “not explicitly and expressly protected” is intended as a reference to terms as set out clearly within a future AGB (as per the final recommendations of this WT5), then this likely would be something the IPC supports. More detail is needed in order to determine the IPC’s level of support for this Proposal.</p>

Options/Proposals	IPC Draft Comment
Proposal 34	This proposal represents an expansion of censorship of geographic terms beyond what is currently in place in the Applicant Guidebook Geo Terms Provisions in the sense that it implies that the fact that a string for which an applicant may apply could be hindered merely because it is “related to a geographic term”. Restricting applications for strings which could be “related to a geographic term” is a broad expansion of the censorship of geographic terms in the DNS well beyond the compromise positions found in the Applicant Guidebook Geo Terms Provisions. Therefore, the IPC opposes this Proposal. Further, the IPC questions the benefit of an “advisory panel”. This would seem to impose an additional layer of bureaucracy, subjectivity, and cost and we would question how such panel members could be identified in order to create a panel which has any authoritative standing.
Proposal 35	This proposal represents an expansion of censorship of geographic terms beyond what is currently in place in the Applicant Guidebook Geo Terms Provisions in the sense that it either implies (1) that the sensitive/important terms list could be used to restrict applications or (2) is work for work’s sake without having any genuine value and which would impose a very heavy financial and administrative burden having no effect. Therefore, the IPC opposes this Proposal.
Proposal 36	So long as this Proposal is not meant to expand the situations in which an applicant would need to obtain a letter of support / non-objection beyond what currently exists in the Applicant Guidebook Geo Terms Provisions, the IPC has no problem with this Proposal so long as consultation with GAC members does not become mandatory or binding. As a practical matter, we understand from GAC membership that they are overwhelmed with work, so making a consultation with a GAC member mandatory could result in censorship for failure to meet the formalities of consultation.
Proposal 37	The IPC opposes this Proposal as it constitutes an expansion of the censorship of geographic terms beyond what is already contained in the Applicant Guidebook Geo Terms Provisions. Further, it adds unnecessary ambiguity into the application process – how much evidence of research is required? This Proposal works against the principle of predictability and should be rejected.
Proposal 38	This proposal represents an expansion of censorship of geographic terms beyond what is currently in place in the Applicant Guidebook Geo Terms Provisions. Therefore, the IPC opposes it. Without limiting the generality of the above, the IPC finds the proposed requirement of contact/consulting to be especially problematic. Firstly, some GAC members do not even publish contact information on the GAC website. Also, as a practical matter, we understand from GAC membership that they are overwhelmed with work, so making a consultation with a GAC member mandatory could result in censorship for failure to meet the formalities of consultation.