

Comments from the United States – New gTLD Subsequent Procedures Initial Report – Work Track 5

The United States of America (United States) welcomes the opportunity to comment on the Supplemental Report on the New gTLD Subsequent Procedures Policy Development Process (Work Track 5 on Geographic Names at the Top Level). The U.S. appreciates the work of the Work Track 5 Co-Leads, as well as the ICANN Staff, for organizing the work of the Working Group and for preparing the Supplemental Report. The United States' submission consists of two parts, a general overview of our position on geographic names, and responses to the specific questions and proposals set forth in Work Track 5 Supplemental Report.

General Overview

The United States is not aware of an international consensus that recognizes inherent governmental rights in geographic names or terms (“geo names”) and we note as a preliminary matter that the phrase “geo names” is unclear. A term can be used in various contexts, including uses unrelated to a use associated with a geographic location, e.g., such as a brand name or a generic use. A gTLD that merely corresponds to a geographic location, but is intended to be used for purposes unrelated to the place, should not be considered a “geographic name.” Since there are no inherent governmental rights in geographic names or terms, the United States does not support the notion of reserving geographic names or terms or requiring documents of individual government support or non-objection. That said, there is a legitimate government interest when any gTLD is used in a false or deceptive manner creating a false association or connection to the government or public authorities. To address these concerns, the United States would support a curative mechanism approach (i.e., public interest commitments in the registry agreement) to ensure that the TLD would not be used in such manner.

Responses to Questions

Question e1: This question seeks parties' experiences, including lessons learned and areas for improvement in subsequent procedures, in connection with the 2012 round. Since there are no inherent governmental rights in geographic names or terms, the United States does not support the notion of reserving geographic names or terms or requiring documents of individual government support or non-objection. That said, there is a legitimate government interest when any gTLD is used in a false or deceptive manner creating a false association or connection to the government or public authorities. To address these concerns, the United States would support a curative mechanism approach (i.e., public interest commitments in the registry agreement) to ensure that the TLD would not be used in such manner.

Question e2: Any definition of “geographic name” should be evaluated within the context or proposed use of the name. If the name or term is not proposed to be used to refer to a place, then it is not a geographic name. As the United States has previously noted, terms that may be considered geographic should not have any special requirements or receive any special treatment in the delegation of TLDs, as there is no international consensus that recognizes inherent government rights in geographic terms.

Question e3: The United States does not generally support a preventative approach requiring reservation of names or letters of support/non-objection. We believe that a curative approach would be an appropriate mechanism, if there is agreement that certain geographic terms should receive special treatment, to address potentially deceptive or fraudulent uses of a TLD. This approach would provide the appropriate balance to all parties by ensuring that the string would not be used in a deceptive or fraudulent way suggesting a false association or connection to the government or public authorities.

Question e4: The United States supports this series of principles that may be used to guide the development of future policy on geographic names. When developing future policy using these principles, the United States also supports taking international law into account and ensuring that no new rights are created.

Question e5: The development of policy should not contravene any existing international law and, more importantly, should not create new international law or rights. Instead, any policy development should merely reflect what current international law allows. National law may play a role, but only when there is a general consensus among various national laws.

Question e6: The United States believes that translations of country and territory names may be reserved only in the UN languages and official languages of the country. We believe that any policy development involving translations should be handled in a strategic, targeted, and limited manner that would create certainty and manage expectations for the TLD applicant and for third parties.

Question e7: The United States believes that a process for delegating 3-letter codes and/or other country and territory names to specific parties is not needed and that 3-letter codes should be available.

Question e8: Regarding translations for capital city names, please see response to Question e6.

Question e9: The United States does not agree with the special treatment accorded to “geo names” in the 2012 Applicant Guidebook. If this category is retained for future rounds, it should be amended to require a letter of support or non-objection only where it is clear from the applicant’s statements in its application that the proposed use of the string would create a false or deceptive association with the government or the public authority. What may be considered “purposes associated with the city name,” without more, is unclear and overly broad and could sweep in uses of a name that have no association or connection with the government or public authorities of a city. It also would be beneficial to insert a curative mechanism (in the form of public interest commitments) that would ensure that the gTLD would not be used in a way that would falsely create a connection with a city governmental authority.

Question e10: See response to Question e9 for our proposal in any future handling of non-capital city names.

Question e11: The United States believes that there should not be any additional categories or strings that receive special treatment in future rounds. Also, as mentioned in the General Overview of these comments, the United States is not aware of any international consensus that recognizes inherent governmental rights in geographic terms.

Responses to Proposals

As noted, the United States does not support the notion of reserving geographic names or terms or requiring documents of individual government support or non-objection, as reflected in the 2012 AGB. That said, we note that some of the following proposals assume that the 2012 AGB remains in place and seek suggestions for changes to some of those provisions. Thus, in answering the following proposals, we have assumed that the protection for gTLDs as set forth in the 2012 AGB remains in place unless otherwise indicated in the proposal.

Proposal 1 – We would welcome an online tool for prospective applicants in relation to geo names that would indicate whether a string is eligible for delegation and whether there are issues that require further action.

Proposal 2 – As to whether GAC members could assist applicants with identifying which governments and/or public authorities would be applicable for those cases where an applicant would require a letter of support or non-objection, we believe this obligation of providing assistance should fall to the affected parties (i.e., applicant and government at issue). See also our response to Proposal 5, regarding a governmental deadline for letters of support/non-objection.

Proposal 3 – Mediation services may offer a useful tool for addressing disagreements with the government or public authority, but who should conduct the mediation and how it should be conducted are issues that would need to be addressed.

Proposal 4 – We support initiatives to heighten the awareness of governments and others regarding the gTLD program.

Proposal 5 – We agree that a deadline should be established by which a government must respond to a request for a letter of support/non-objection, but note the challenges that always have been inherent in this requirement, i.e., trying to identify who speaks on behalf of the government or public authority at issue. This latter issue is one that should be addressed prior to any future rounds.

Proposal 6 – Once a gTLD is delegated with an intended use that is geographic, we agree that other variations and translations could potentially be available for application by anyone.

Proposal 7 – We disagree with this recommendation requiring notice to “each relevant government or public authority” for a string with “geographic meaning.” We do not know what is meant by the “relevant” government authority nor is there agreement within Work Track 5 or the larger community on what is meant by string with “geographic meaning.” We also question

the basis for this proposal in the absence of a requirement of proposed use for purposes associated with the city name. A curative mechanism is preferable.

Proposal 8 – Additional clarity is needed as to who would be making the determination of likelihood of confusion between a proposed string and the geographic term. Also, any such determination would need to take into consideration the two strings as well as the applicants’ proposed uses. We do not agree with the proposed requirement of a letter of support/non-objection for the latter applicant.

Proposal 9 – We do not support this proposal allowing a government entity to review and amend a gTLD registry agreement when it ends, as a condition of renewal. This would create inherent government rights where they do not exist. Investments in TLDs are substantial and often are made in anticipation that the use of the TLD will be indefinite or at least beyond the initial contract period. Moreover, curative mechanisms should be available for any concerns about the operations of the gTLD.

Proposal 10 – We disagree with the proposal that a “TLD associated with geography” or geo name should be incorporated within the jurisdiction of and subject to the local law of a “relevant” government. The nature and meaning of this proposal is far from clear, including what is meant by the “relevant” government. Similarly, the context for this proposal is unclear. Nonetheless, we do not take this proposal to include a reference to any country-code TLDs.

Proposal 11 – The United States believes that a process for 3-letter code delegation is not needed and that 3-letter codes should be available.

Proposal 12 – See our response to Proposal 11; 3-letter codes should be available for delegation.

Proposal 13 – See our response to Proposal 11; 3-letter codes should be available for delegation.

Proposal 14 – We do not agree with the reservation of permutations for country and territory names.

Proposal 15 – We agree that names by which countries are commonly known should be reserved when a country provides substantial evidence that the country is recognized by such name.

Proposal 16 – Translations should be limited, e.g., to the official languages of the UN and of the country. Allowing for “any translation” is indefinite and does not meet the principle of creating certainty and managing expectations relating to any new gTLDs.

Proposal 17 – We agree with the proposal of requiring support/non-objection for capital city names only if the applicant intends to use the gTLD for purposes associated with the capital city name, provided that “purposes associated with the capital city name” refers only to proposed uses, as clearly indicated from the applicant’s statements in its application, that would create a false or deceptive association with the government or the public authority.

Proposal 18 – As noted in our General Overview, we agree with elimination of the requirement of a letter of support/non-objection for capital city names.

Proposal 19 – We agree with a requirement of obtaining letters of support/non-objection for applications for city names where the applicant intends to use the gTLD for purposes associated with the city name, provided there is an additional requirement that “purposes associated with the city name” refer to uses that create a false or deceptive association with the government or public authority.

Proposal 19, variant 1 – We agree, but only in part (specifically, agreeing with the implementation of provisions to prevent misrepresentation); an applicant that does not intend to represent a connection to the authority of a non-capital city name should not be required to insert the proposed contractual requirements “that prevent the applicant from misrepresenting their connection or association to the geographic term.”

Proposal 19, variant 2 – We do not agree with the proposed text revision to substitute a Geographic Names Panel determination “that the foreseeable use of 2nd level domains by registrants will be to a significant degree for purposes associated with the city name.” Support/non-objection applies only when it is clear from applicant’s statements within the application that the applicant proposes to use the TLD to create a false or deceptive association or connection to the city government or public authority.

Proposal 19, variant 3 – We do not agree with this proposal that would require the applicant to confirm that neither the applicant nor its sales channel will use the TLD as a “geographic identifier;” the phrase “geographic identifier” is even more vague than “primarily for purposes associated with the city name.”

Proposal 20 – We agree with the proposal to eliminate preventative protections for non-capital city names and focus instead on curative protections. Also, while we agree in principle that all parties may file objections to applications, we note that any such objections must be principled, with due regard for international law.

Proposal 21 – We do not agree; a letter of support/non-objection should be required only where the applicant for a non-capital city name proposes to use the city name in a manner, as clearly indicated from the applicant’s statements in its application that would create a false or deceptive association with the government or the public authority.

Proposal 22 – We do not agree that small cities, towns, and geographic communities should have the first right to apply for a TLD associated with the place. Generally, everyone should have an equal ability to apply for these types TLD strings, except where, as noted above, that applicant’s use would create a false or deceptive association with the government or the public authority.

Proposal 23 – We oppose the development of a “list of large cities throughout the world,” for which applicants would have to obtain letters of support/non-objection regardless of the applicant’s proposed use.

Proposal 24 – We do not agree that applicants must obtain letters of support or non-objection regardless of the applicant’s proposed use of the gTLD. Similarly, we do not agree to the compilation of lists of cities, for which applicants would have to obtain such letters regardless of proposed use.

Proposal 25 – We do not believe that this proposal to reserve non-capital city names that have “global recognition” is workable; there are thousands of non-capital city names with the same names and we do not know how a “city name with global recognition” could be defined.

Proposal 26 – The United States continues to support the need to raise awareness and increase knowledge among potential applicants about the opportunity to apply for TLDs.

Proposal 27 – We agree with this proposal to eliminate letters of support/non-objection for sub-national place names.

Proposal 28 – In the event that sub-national place names remain reserved in future gTLD rounds, applicants should be required to obtain letters of support/non-objection only where the proposed use of the string, as clearly indicated from statements in the application, would create a false or deceptive association with the government or the public authority.

Proposal 29 – We agree that applications corresponding to sub-national place names, but used for brand or generic purposes, would not require letters of support/non-objection; see our response to Proposal 28.

Proposal 30 – We agree with this proposal to eliminate letters of support/non-objection for UNESCO regions and other groupings.

Proposal 31 – In the event that UNESCO regions and other groupings remain reserved in future gTLD rounds, applicants should be required to obtain letters of support/non-objection only where the string, as clearly indicated from the applicant’s statements in its application, would create a false or deceptive association with the government or the public authorities.

Proposal 32 – We agree that applications corresponding to UNESCO regions and other groupings, but used for brand or generic purposes, would not require letters of support/non-objection; see our response to Proposal 31.

Proposal 33 – We agree that such a proposal for a rule that any geographic term not explicitly and expressly protected is unprotected, could be useful.

Proposal 34 – We do not see the need for any kind of advisory body to identify whether a string is related to a geographic term, as based on our view, letters of support/non-objection are needed only where the string, as clearly indicated from the applicant’s statements in its application, would create a false or deceptive association with the government or the public authorities.

Proposal 35 – The United States does not support a repository of geographic names, as any such term must be evaluated within the context of the proposed use. Also, the United States believes a repository could be perceived as a barrier to potential applicants and possibly have an unintended legal effect in other contexts.

Proposal 36 – We cannot agree with this proposal to leverage the expertise of GAC members to determine if a string is related to a geographic location. Whether a string is a geo name depends on the context in which it is proposed to be used.

Proposal 37 – We do not agree that an applicant must demonstrate that it has researched whether the string has a “geographic meaning” and performed any necessary outreach prior to submitting the application. A proposed gTLD only has “geographic meaning” depending on the applicant’s proposed use and, as noted, there is a governmental interest in the applicant only where the applicant’s proposed use, as clearly indicated in the application, would create a false or deceptive association to the government or public authorities.

Proposal 38 – The United States does not agree that any applicant for a geo name, including any such name outside the 2012 AGB, must consult with the relevant government authority and provide evidence that it has done so. We do not agree that the categories of geo names protected in the 2012 AGB should be expanded, and we also reiterate that whether a term is “geographic” must be considered in light of the applicant’s proposed use.