

Protection of three character currency codes (ISO 4217 list) in the new gTLDs

1. General comment

The current default to the effect that ANY string is not protected unless specifically protected in the 2012 AGB is unsustainable. In the context of the proposed next 'round(s)' of gTLDs, many names under discussion are not 'generic' in any meaningful sense of the word. Many potential names have strong associations with particular meanings, places or functions. In some cases, such names enjoy some legal protection in the jurisdictions concerned, which ICANN is obliged to respect. There are many others which - even in the absence of formal legal protection - represent customary or historical use which clearly infers among Internet users today that they enjoy rights, that should not be expropriated through a globally unique delegation of a gTLD in the DNS.

The alpha-3 currency codes are just one example of strings which are already in general use for specific purposes in the public domain. Were they to become unique gTLDs, affording a global monopoly to the successful Registry/Registrar applicants, those entities would enjoy considerable, foreseeable if unquantifiable scope to conduct financial transactions in the currencies concerned, without reference to national or international regulatory requirements.

2. The geographical scope of ISO 4217 alpha 3 codes

The currency codes are derived strictly from the ISO 3166 alpha-2 codes. Thus *prima facie*, they are as much geographic as the ISO 3166 alpha-3 country codes. Each currency code relates directly and exclusively to the geographic entity which issues the currency in question. Thus, USD, CHF, GBP, MYR etc.

More generally, with a few exceptions, the currency codes are, more widely utilized than even the alpha-3 ISO 3166 country codes. It is rather inconsistent that the country codes are protected, but not the currency codes.

3. Risks, uncertainties and potential abuses

We know from every-day reporting that the public authorities and financial institutions, world-wide, are combating a range of risks and abuses. These include financial fraud, tax evasion, money laundering and speculation.

Furthermore, from the point of view of the typical international tourist or migrant worker sending money back home, foreign exchange rates, and the fees and margins demanded by financial intermediaries, can vary widely from

one transaction to another.

In my view, if these currency codes are not protected by ICANN and become free to open applications and delegation, then there would be an open door to facilitating such abuses in what could become an un-regulated financial environment. These risks are enhanced by the fact that under current practice, ICANN has no rules or principles regarding the jurisdiction of incorporation of a gTLD, including recognised tax-havens.

4. Rights and responsibilities

It will be argued by some that there are no rights inherent to any three letter code, and consequently they cannot be protected. I would disagree:

4.1 ICANN already protects – to varying degrees – codes and names arising from ISO 3166. The economic and financial significance of the currency codes is in most cases of even greater importance.

4.2 However strong or weak the inherent rights to these codes, the candidate applicants from gTLD Registries/Registrars have even fewer rights to these codes.

4.3 In the interests of transparency and predictability, before moving forward with the eligibility or otherwise of the currency codes as gTLDs, ICANN should proactively seek advice and prior agreement from the international and national financial institutions potentially concerned.

At present, these financial and economic institutions are not present in ICANN's multi-stakeholder community. (This is equally true of several other sectors). Accordingly I would foresee (as has happened before in other sectors) that further down the line ICANN would be confronted with questions, delays and even opposition to the delegation of the currency codes as unregulated gTLDs.

5. **In conclusion**, I consider that ICANN should proceed in this area with considerable caution. Although I fear that by highlighting this issue I may have flagged the existence of opportunities however illicit, we should also recognise that some of the potential applicants have funds and aspirations to register large numbers of new gTLD, so...why not just take over the international on-line financial markets? As a previous CEO of ICANN once said to me “Whatever rules we may devise, they will always find ways to 'game' them.” Today, it is incumbent on ICANN to employ its by now vast experience of the DNS to foresee and prevent eventual abuses.

For better or worse, there is still little international appreciation of the scope

and power of the global monopoly that a DNS Top Level Domain potentially confers.

The ICANN community can no longer turn a blind eye to the presence and potential consequences of this general syndrome. It is not enough to argue that since few people understand how the DNS work, it is enough to allow all and sundry to apply for whatever they want and to delegate TLDs indiscriminately on the unlikely grounds of absence of specific legal protection or freedom of speech for the applicant.

In the case in point, at the very least, the currency codes should receive the same level of protection as the alpha-3 country codes. If some of them are to be eventually delegated, this should only be done with the prior authorisation of the national Central Bank concerned including clear rules for its use. *Ex-post-facto* 'curative' procedures or PICs would not be enough.

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Xàbia, 12 June 2019

Disclaimer: I have no interest in or obligation to any financial institution. I am not party to any eventual application for any new gTLD.

I have 40 years' experience working as an international economist with four major international organisations, and twenty years experience with several aspects of the DNS, including ICANN.

Also from users' perspectives, different members of this household have in recent years operated in six major international currencies.

Dare I say it, that we know whereof we speak? CW