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Partridge & Garcia (P&G) is a boutique IP firm located in Chicago, Illinois with a global practice focused on trials, appeals and transactions involving IP, technology and the Internet. We specialize in protecting brands, content and ideas in court, online and in the boardroom. P&G welcomes the opportunity to provide responses to the questions raised by the Cross-Community Working Group on the Use of Country and Territory Names ("CWG-UCTN") in relation to future policy on the use of three-letter TLDs. In this response P&G also specifically addresses the comments raised by Norway.

## QUESTIONS

1. In future, should all three-character top-level domains be reserved as ccTLDs only and be ineligible for use as gTLDs? What would be the advantage or disadvantage of such a policy?

**Yes, three-character top level domains should be eligible for use as gTLDs by any qualified party, and should not be reserved as potential ccTLDs.** The countries and geographic interests represented in the ISO 3166-1 alpha-3 codes are wholly represented by the ISO 3166 alpha-2 codes that they are based upon. Therefore, reservation of 3 letter codes would be completely redundant and serve no apparent purpose.

Since the gTLD space has historically been built on three-character codes, such as .com, .net, and .org, there is a high degree of consumer comfort favoring new three-character gTLDs. A reservation of all new three-character top-level domains would:

- a) Disallow all three-letter words, acronyms, and combinations from consideration as *new* gTLDs (see chart in response to question 2, below, for examples), severely hampering businesses right to enter into the technological space;
- b) Be impractical and effectively extinguish rights in *existing* 3-letter gTLDs; and
- c) Would significantly impinge upon well-established, internationally-recognized private rights without justification.

Any effort to eliminate any future use of three-character top-level domains should be rejected. This option is a solution in search of a problem which does not exist.

2. In future, should all three-character top-level domains be eligible for use as gTLDs as long as they are not in conflict with the existing alpha-3 codes from the ISO 3166-1 list; i.e. the three-character version of the same ISO list that is the basis for current ccTLD allocation? What would be the advantage or disadvantage of such a policy?

**All three character top level domains should be eligible for use as gTLDs even those that are identical to existing alpha 3 codes from the ISO 3166-1 list.** Countries are currently protected by the two letter codes contained in ISO 3166. Codes on the ISO 3166-1 list also serve as acronyms for large

organizations, airport codes, names of companies, and words in the English language. Here are many examples of uses of gTLDs that would unnecessarily be impinged upon should this proposed policy be adopted:

Three Letter Code	Country	Other potential Uses
ABW	Aruba	ABW Medical, Anti-Bullying Week, Australian Business Week
AFG	Afghanistan	American Financial Group, Assistance to Firefighter Grant, Advanced Fitness Group, Al-Futtaim Group (UAE), AFG Arena (Switzerland), Allco Financial Group, Alliance Financial Group
AIA	Anguilla	American Insurance Association, American Institute of Architects, Aerospace Industries Association, AIA Group Limited (China)
BES	Bonaire, Sint Eustatius and Saba	British Ecological Society
BRA	Brazil	Lingerie products: VictoriaSecret.BRA
CAN	Canada	Canned goods companies
COD	Democratic Republic of Congo	Call of Duty – online gaming site
COM	Comoros	Millions domain names currently use .com
CUB	Cuba	Zoos, wildlife reserve, Chicago baseball
DOM	Dominican Republic	Dom Perignon
EST	Estonia	Established, Eastern Standard Time
FIN	Finland	The end, sushi restaurants, Vancouver Canucks mascot
GEO	Georgia	National Geographic, GEO groups, geo news
GIN	Guinea	Tanqueray.GIN
GRL	Greenland	Products geared towards girls

Three Letter Code	Country	Other potential Uses
GUM	Guam	Wrigley.GUM
GUY	Guyana	Common term for men
IRL	Ireland	In Real Life, IndyCar Racing League
JAM	Jamaica	Jelly or jam products: Blueberry.JAM
KAZ	Kazakhstan	2002 FIFA Mascot
LUX	Luxembourg	Luxury items, clothing company, restaurant
MAC	Macau	Cosmetics, mac and cheese, computers
NOR	Norway	Norfolk Orbital Railroad (UK), Noranda Aluminum Holding, Corp., Navy Outdoor Recreation, NATO Operational Requirement, Norman, OK Railroad (US)
PAN	Panama	Cookware: lecreuset.PAN
PSE	Palestine	PSE Archery, Paris School of Economics, Stock Exchanges (Pacific, Palestine, Philippines, Prague, and Pune)
RWA	Rwanda	Romance Writers of America
SAU	Saudi Arabia	St. Ambrose University, Shenyang Aerospace University, South Asian University
SEN	Senegal	Senators, Space Exploration Network, Sony Entertainment Network; Sociedad Española de Neurología; Submerged Entry Nozzle
SGP	Singapore	Secret Garden Party music festival, Stability and Growth Pact; Skills Gap Program
SGS	South Georgia and the South Sandwich Islands	SGS S.A. (Swiss Company); School of Graduate Studies; Singapore Government

Three Letter Code	Country	Other potential Uses
		Securities; Shell Global Solutions
SWE	Sweden	Society of Women Engineers; Software Engineer; Sea World Enterprises
SXM	Sint Maarten (Dutch Side)	Sirius XM Radio
UGA	Uganda	University of Georgia
VAT	Vatican City	Value Added Tax

3. In future, should three-character strings be eligible for use as gTLDs if they are not in conflict with existing alpha-3 codes from the ISO 3166-1 list and they have received documentation of support or non-objection from the relevant government or public authority? What would be the advantage or disadvantage of such a policy?

**No, there is no recognizable advantage to there being a “support/non-objection” process for governments and public authorities.** There is no basis in international law for governments or public authorities having this type of power over the determination of trademark rights. The proper forum for this type of determination best handled via binding arbitration in an internationally recognized forum in which objective and reasonable standards apply. The relevant governments and public authorities should have no right of reservation for three-character ccTLDs, nor should they be given authority to reject three-character strings that conflict with existing alpha-3 codes from the ISO 3166-1 list.

4. In future, should there be unrestricted use of three-character strings as gTLDs if they are not conflicting with any applicable string similarity rules? What would be the advantage or disadvantage of such a policy?

**Yes, there should be unrestricted use of three-character strings as gTLDs if they are not conflicting with any applicable string similarity rules.** This has been the status quo with the DNS for almost 20 years. During the recent round of gTLD allocations ICANN approved numerous three-character strings as gTLDs .ADS, .BBC, .FAN, .CFD, .XIN, .GOO, .GDN, .NTT, .IFM, .JCB, .ONE, .FIT, .LAT, .DEV, .IWC, .SEW, .SKY, .LDS, .CRS, .RIP, .IBM, pyc (Russian), TUI, FLY, GLE, ZIP, CAL, WME, GMX, BOO, DAD, DAY, FRL, ING, NEW, MOV, EAT, ESQ, HOW, OOO, UOL, SCA, TOP, ONG, KRD, NGO, NRA, NRW, SCB, BMW, OVH, BZH, NHK, BIO, VET, HIV, RIO, GMO, WTC, TAX, WTF, FOO, SOY, GAL, EUS, GOP, MOE, REN, AXA, DNP, INK, opr (Russian), BID, BAR, PUB, XYZ, WED, KIM, RED, CEO, ONL, CAB, SEX and UNO. Based on our research, of these new gTLDs only one was objected to as being confusingly similar to a ccTLD which resulted in a decision. See *SE Registry SA BV, v. Internet Marketing Solutions, Limited* (Case No. 50-504 T00304 13) (Independent arbitrator found .SX and .SEX were not confusingly similar).

5. In future, should all IDN three-character strings be reserved exclusively as ccTLDs and be ineligible as IDN gTLDs? What would be the advantage or disadvantage of such a policy?

**No, for the reasons listed above.**

6. In future, should there be unrestricted use of IDN three-character strings if they are not in conflict with existing TLDs or any applicable string similarity rules? What would be the advantage or disadvantage of such a policy?

**Yes, for the reasons listed above.**

## **RESPONSE TO NORWAY COMMENTS**

For the following reasons, Partridge & Garcia disagree with the points raised by Norway with regard to three-letter characters.

Norway's only reasoning for the reservation of the 3-letter country codes from use as gTLDs is that doing so would create end user confusion. However, Norway does not provide any evidence that this confusion exists, or would exist in the future. There is no evidence of end user confusion existing between countries and similar current 3-letter gTLDs. For example, end users are not confused that .COM represents Comoros, that .BIZ represents Belize, or that .NET represents the Netherlands. These countries'—and all other countries with ISO 3166 alpha-2 codes—interests are currently completely protected by their 2-letter country codes (.CO, .BZ, and .NL, respectively).

ICANN's gTLD Applicant Guidebook reasons how it would be unlikely for there to be confusion between a 3-character string and a 3-letter country code, due to the high "probable" standard for String confusion to exist:

String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probably, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another to mind, is insufficient to find a likelihood of confusion.

Guidebook, Section 3.5.1.

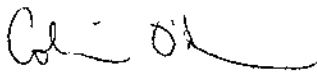
Contrary to Norway's claim, it is not probable that all new three-letter gTLDs, or potential ccTLDs, will cause end user confusion. Furthermore, there is already a well-established, internationally-recognized forum that exists that is able to determine whether a gTLD application is likely to cause string confusion: ICANN String Confusion Dispute Panel. This body, rather than a blanket reservation of all three-letter country codes for gTLD use, is the best mechanism to examine potential user confusion on a case-by-case basis.

A blanket ban on new three-character gTLDs is not a favorable policy due to the convenience of three-character gTLDs for Internet users and lack of proof that new codes will cause confusion. Presently, there are over 130 three-character gTLDs. These codes are easy for Internet users to remember and type. There is no proof that adding new three-character gTLDs will create end user confusion.

A significant reason that potential three-letter gTLD codes should not be denied because they are the same as existing alpha-3 codes from the ISO 3166-1 list is it would prevent many private and public entities from entering into the technological space and asserting their intellectual property rights. There is no persuasive reason why this basic legal right should be hampered. The existing alpha-3 country codes would be in conflict with many companies and organizations that should have the right to be eligible for gTLDs. These codes serve as acronyms for large organizations, airport codes, names of companies, and words in the English language, as exemplified in the chart above. (there are undoubtedly numerous other acronyms based on non-English terms as well). It would exclude many companies and organizations from applying for gTLDs as a business strategy.

The entities applying for a gTLD are not akin to a cybersquatters seeking to make a quick dollar off of consumer confusion. The new applicant's will not be frivolously occupying domain name space on the internet. Applying for a gTLD is a very robust, expensive process. Before application, a conscious organizational decision must be made, in advancement of a legitimate interest. Therefore, there should not be a blanket restriction on the use of three-letter domain names that identical to three-letter country codes.

Yours truly,

A handwritten signature in black ink, appearing to read "Colin T.J. O'Brien". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Colin T.J. O'Brien