

Good morning:

Geographical Names

Allow me to respond to and comment on our recent thread. Much of what I have to contribute today has already been mentioned in recent PDP and WT5 conference calls and related Chats.

The general position is motivated by three fundamental considerations:

- the right to use a geographical name pertains in the first instance to the people who live there, and have often done so for hundreds of years. It is a matter of identity, and to qualify those rights as a fantasy would appear to many people to be quite frivolous.
- the entities exercising those rights need not be central governments, who may yet do so by default. I would prefer to see a system based on subsidiarity and devolution.
 - whatever régime is finally adopted, it should be future-proof. These issues today are not what they were 20 years ago. Nor are they what they will become in 20 years time.

Returning to our recent WT5 thread:

1. **Non-geographic use:** I would regard this as potentially highly problematic, and the idea in 2012 that non-geographic use (whatever that meant in practice) did not require non-objection letters, was not correct, and should not be maintained in the future. It has already been pointed out that peoples' interests in these Names have evolved and will continue to do so. It would be wrong to allow the application system to pre-empt the future geographical use of a name just because the applicant claimed non-geographical use today. In any event, ownership of a TLD may change and use may change. I don't expect ICANN to oversee future use of delegated TLDs indefinitely.
2. **Multiple uses of the same 'string':** Much has been made of the fact that some words have several uses and meanings and that several places may enjoy the same name. But that has to be kept in proportion. When I contemplate the scale of the dictionaries and the atlas gazetteers one has to conclude that those plural uses are the exceptions rather than the rule. It would not be appropriate to design an TLD application system primarily to accommodate the quirks of the English language or some of our post colonial or migratory histories.

Furthermore, if anything has become already clear in this debate, it is that the business and IPR communities should by now have received a clear message as to the hazards – if only in terms of public relations – of choosing in the future to use an unauthorised geographical name as a new trademark or brand.

3. **Business models:** Some of the discussion of the draft WTs' reports has revolved around the propositions that there should be no limits to the number of TLDs that an individual entity could apply for, and that geographical TLDs could be incorporated in jurisdictions outside the area to which the name referred. I would take exception to both propositions.

Regarding multiple applications - which I would have regarded as highly questionable in the 2012 gTLD space - would doubtless engender significant resistance with respect to geographical names in the future. A single company should not be able to accumulate a world-wide portfolio of other peoples' geographical names.

Regarding incorporation and jurisdiction, it may be expected that governments and their local administrations would expect their geographical TLD to be incorporated domestically, subject to local law. Otherwise we risk a re-run of the long standing disputes over some ccTLD Registries which were appropriated and operated beyond the will and policy of the governments concerned.

But nowadays, most governments are much more Internet-savvy than they used to be, and unauthorized use of their geographical names will be called out for what it is.

4. Applicable laws: First, we should recognise that ICANN and the DNS have never been neutral about applicable law, notably regarding trademarks. The DNS regularly converts national, sector-specific trademarks into unique global trademarks. We knew that would happen 20 years ago (which was one of the reasons for establishing the UDRP) as a price to pay for the unique Root and DNS, although personally, I did not anticipate the scale of it today.

Thus, I conclude that in any event, ICANN is going to create new rights, *de facto*. What I do not want is for such new rights to be created over the heads of and in spite of the interests of very large numbers of people who do not yet appreciate what could happen to their geographical names, thus prejudicing their future use.

But in fact, ICANN already goes beyond that and has undertaken to respect **applicable local laws**, as set out in its Articles of Incorporation. The *cause célèbre* today is clearly WHOIS and GDPR.

It is also a salutary notice that certain countries have already protected their city names in national laws. It can be done, even if it should not be necessary for the DNS.

There are other areas where local laws will no doubt become relevant for the DNS. Notably the Geographical Indications.

5. Disputed sovereignty: We should also bear in mind in this context that there are a number of places in the world that currently suffer from disputes over sovereignty in one form or another. There is scope for disagreements as to the legitimacy of future applications for Geographical Names related to those places.

I am sure that we shall continue to discuss these matters in the coming weeks and months.

Regards

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