

Hi Alex,

Thanks for your reply. I'll answer your questions and comment in-line below:

Alexander Schubert alexander@schubert.berlin via icann.org

Jun 25, 2018, 2:06 AM

to gnso-newgtld-wg-wt5

> Dear Joe,

> You are stating that you haven't been actively involved in the past but observed. Have you read all emails and been in all calls?

As stated in my comments, I have followed the thread, read almost all the emails, and perused the document that you have been working on. I also stated that I have not participated in the telephonic discussions with my apologies if I have missed anything or duplicated a point already made.

> I am asking because you also state: ".....the discussions seem to have only mildly addressed the thousands of business names around the world that are trademarked, that already contain geographic names, cities and territories...."

Well: For MONTH on end we did practically nothing else than discussing precisely that topic. In endless email exchanges (probably a thousand) and phone conferences. This topic has been THE priority so far. Let me summarize from my view:

Here, I should have been clearer. While reading the threads, I noticed themes of favoring certain communities over others (generally public over private and vice-versa) that I think will limit the success of a new phase. Specifically, I meant to express my support of the comments from: Robin Gross <robin@ipjustice.org> dated: Thu, May 3, 2018 at 10:04 AM. She said:

*"Govts have yet to show:*

*i) People do not have the legal right to use words with geographic meaning in ways that do not misrepresent their connection to the word, and*

*ii) Govts are the exclusive arbiter of who gets to use words with geographic meaning.*

*So we've already taken quite a leap of logic with the no-objection letter implementation since it takes both those above points entirely for granted.*

*In fact:*

*People have freedom of expression rights, trademark rights, and other legal rights to use words with geographic meanings in ways that govts may not like. That is the law. And ICANN is obligated to follow the law, not invent fantasy rights for governments to control the use of words on the Internet. What a can of worms for us to open!"*

When I read Robin's comments, I agreed, and I was surprised by some of the assumptions that were being put forth. For hundreds of years, businesses, non-profits, and people in all endeavors have used the names of streets, towns, cities, areas, states, countries, and geographic indicators of all sorts, with very little objection whatever for private use in their business names?

So far, ICANN has generally positioned applications for geographic place names in TLDs as businesses although they certainly could be revenue-generating divisions of government entities.

Has something changed in the world?

- US Airlines,
- Chicago (the band - they did get an objection when they were called "Chicago Transit Authority"
- New York Stock Exchange
- Chicago Board of Trade
- Air France
- Swiss Air

I can go on and on... and I think we should study the historical use of place names as parts of business names in a few various types of jurisdictions to understand that aspect of the issues a bit more - This is what I was thinking we had not done unless I missed it. I did this exercise in the US Trademark database for Chicago and found 1461 live trademarks containing the city's name.

- > We work off the 2012 AGB as a base – and try to identify areas of improvement
- > In the 2012 AGB very few geo names have been protected, namely:
- > Unesco regions (irrelevant as all are assigned as gTLD but “.europe”)
- > ISO 3166 Alpha-2 national sub regions (which is why .tata wasn't granted to the Indian TATA and why .bar needed an OK from the region BAR in ME - [https://en.wikipedia.org/wiki/ISO\\_3166-2:ME](https://en.wikipedia.org/wiki/ISO_3166-2:ME))
- > Capital cities
- > All of the above require a letter of non-objection by the responsible Government authority – independent whether or not the applicant claims geo-use intent or not! And so far nobody has really much challenged these rules.
- > The ONLY remaining 2012 AGB geo-name category was “city names” – with “city” not really very precisely defined. In the 2012 AGB applicants for strings identical to a city name needed Government approval (letter of non-objection). The only exception was a declaration of “non-geo name use”. That could be a brand, a generic term, or some “.xyz”-like fun theme: “.heyyou” - which might be an industrial center in China (I made that up).

I'm aware of all of these points. I helped .BAR do their application (I don't want to comment further out of respect for that former client).

- > There are now two main concerns (those of brands vs. those who want to protect the free expression rights of city populations):
- > There are potentially hundreds of thousands qualifying “city names” – and there is (as you mentioned) a sizeable overlap with so called “brands and generic terms!
- > In the same time the citizens of sizeable and or important cities should have their free speech rights preserved: that is being able to express themselves through a domain name based on their

city name – just like in the future most if not all big metropolises will offer that possibility!

Here I must express vehement disagreement. In no way can an application for a geo-TLD or the lack of a geo-TLD for a particular place "protect the free expression rights of a city population..." or "preserve" "free speech rights". We are domain name policy creators, we do not make laws, we do not have police power; we are not some kind of fascist regime that can limit free speech. I do not accept that argument at all. There are other options where free speech can happen, including generic TLDs, newspapers, social networks, public gatherings, etc.

We also should not try to define free speech for the world and for the public in this forum. We're not that important Alex.

I challenge you to go on the streets in any country in the world and ask people to define their free speech and find one person who would answer, "Oh, that's the ability for my city to approve a geographic TLD." This is just making stuff up here. Please, framing the application of a new geo-TLD as a matter of free speech just does not apply.

> So if somebody would apply for “.telaviv” (officially Jerusalem is the capital of Israel) – but claim “non-geo use” (which might be a ruse) – then according to the 2012 AGB they would be assigned the TLD if there was no competition – OR they could drive up the public auction price in a bidding war against a potential city based non-profit that represents the city’s constituents but has no VC cash! Or worse: a financially strong BRAND could simply outbid the city based application and hijack the TLD! I am quite sure that the good people of Tel Aviv would be very unhappy – and I wonder how you would defend the horrible 2012 AGB rules to them?

I've said enough on this except for I don't think the people of Tel Aviv would know much about it nor would they care. The city of New York has a population of 8.5M people, 70K .NYC domain names have been registered (.008 or 1 out of each 125 people) and I imagine that those 75k registered domains are more like 20k or so actual persons or clients (I don't have that exact figure). We shouldn't pretend to be speaking for significant populations here. That is an incorrect assumption.

> Plus: It doesn't really matter what the registry “intends” – the registry is not offering domain names to the public, nor is it the registrant. It is the registrars who will offer it is a city gTLD – and it is registrants who will use it for that purpose – and there won't be any obligation by ICANN to prevent such use!

> Some here claim that “brands” have “rights” – while citizens of cities have none. Others claim that this constitutes a travesty – as most city name based brands are BASED on the connotation with the city – and ICANN's mission is to foster PUBLIC BENEFIT (as in helping citizens executing their right of free expression) and NOT helping “brands” to squat on city resources! What is more important: the “right” of a small brand – or the rights of hundreds of thousands of citizens in a city?

This doesn't make sense to me. Maybe you can clarify? Brand names are registered by people. Brand names are legal rights registered by companies, which are owned by people. Brands are

registered by corporations who have shareholders, who are people. I think the real debate here is more related to preferences given (or preferences not given which was my point) to public or private entities.

- > The entire thing is a question of “culture” – and like in any OTHER culture war both sides are very divided and each is steadfast convinced to have possession of endless wisdom (me included).
- > As this is not an “election” where a “majority” decides what the future culture shall be (essentially picking a “winner” – and creating a big pool of “losers”) – we will need to find an agreeable compromise!
- > The compromise needs to:
  - > Protect as many citizens in as many cities as possible from losing their right of free expression by using city name based domains!
  - > But to not overprotect that category – because it would put too many burdens on brands and generic term based applicants!
  - > I am lobbying for a certain workable solution – and it seems there has been broad support for it:
    - > In order to prevent citizens from losing their free speech and free expression rights permanently we do strike the “non-geo use” clause without replacement! (Don’t get a cardiac arrest – read on).
    - > So if somebody applies for “.telaviv” and claims it would be a new social network like TWITTER or a “.xyz” clone – they would need to get the city’s approval first – to PROTECT the citizens free speech and free expression rights which are very important!
    - > To reduce this new burden there should be a “cutoff” implemented: only if the city meets a certain requirement (e.g. in population size) the “non-geo use” would be replaced. In other words: if a tiny city of no special relevance has a name identical to a generic term – applicants for such generic term do NOT have to approach the city government IF there is no intent for geo use! (The Government of such smaller city will STILL have to be approached if the gTLD is intended to serve the city).
    - > Such cutoff could be a population size – the exact measures would have to be determined! Numbers between 100,000 and 500,000 have been floated, and/or percentages of country size! Once we agree on the cutoff rule; the exact measures could be defined later! First qualifying, then quantifying!

I pretty much agree with your points here except for where you talk about free speech.

- > The outcome would be that brands and generic term based applications have close to zero extra burden to carry; while in the same time the free speech rights and rights of expression for hundreds of Millions of people would be preserved in accordance with ICANN’s mission! In the very rare cases of a brand having deliberately chosen a “big city” name (because they want to profit from the image the citizens of that city have worked hard to create over time) – then sorry: but nobody forced you to piggyback on the city’s fame: your own decision; all legal; but you will still need to meet certain obligations. You are just a “co-brand”; the “real brand” is the city brand; and you are living “off” it. Then go and get their permission! But honestly: if we require only cities with more than e.g. 500k people to be specially extra protected (no “non-geo use

clause”) – what is the number of brands impacted? Could somebody run a brand name database against a big city database? And not every single US \$200 TM registration is a “brand”!

Cities have traditionally played very little of a role in the idea of the creation of brands. That has been done by the private sector. I have hardly seen cities show up at INTA or brand conferences. They do show up at travel promotion conferences and are concerned there.

- > So if the 2012 AGB is the base; the current WT5 suggestion is being floated:
- > Keep everything like it is! It worked and it is fine!
- > In the category “city”: elevate cities that meet a certain requirement into the same status as subnational regions or capital cities! (Meaning: no non-geo-use clause)
- > And indeed: a city with 500,000 people should be AS MINIMUM as important as the average capital or a subnational region! Why should it be LESS protected, makes no sense!
  
- > The disciples of both faiths are requested to reach over the isle and compromise. It doesn’t work in politics in many countries (I am not singling any particular country out) – it doesn’t work in Religions most of the times. We at ICANN could prove that WE can do it. So let’s simply do it. Both sides have ENDLESSLY often explained their views (and I am guilty of having done so one too often: apologies! I am passionate when it comes to rights of people and public benefit!).
- > Now it is time to form the compromise.
- > A simple to implement suggestion has been made. Is it workable?
- > Anyone in?
- > Btw: we are talking CITY names. Once we have a solution for that specific category we can look at geo name categories previously not protected. But that will be a SEPARATE category – and should not be conflated with the city name category!

Thanks,  
Alexander

I generally agree with your proposed compromises Alex and especially not to conflate the various types of geographic name entities. There are differences.

Overall, thank you for all you’ve done. I know my contribution here has been much less. But I felt compelled to at least make a few points. Again my apologies if what I have stated is duplicating something.

Sincerely,

Joe Alagna |