

Draft of Initial Report Sections c, d, and e.

Initial comments, corrections and suggestions

Christopher Wilkinson

This is a brief reaction and correction to the Draft of Initial Report Sections, of 27 September. I expect that we shall have an opportunity to discuss this at the next conference call on 3 October. Meanwhile I must say that the balance of this initial draft leans too heavily towards maintaining the 2007 and 2012 positions whereas the very creation and cross-community composition of WT5 was designed to correct those previous experiences.

RECOMMENDATION #1

The use of the term 'certain strings' implies prematurely that there will be other strings that are not protected. There is not a consensus on that point.

Remedy: please delete 'certain'.

RECOMMENDATION #11

This text, and elsewhere, omits to refer to the issue of non-geographical use. Whereas that has been a major issue for Work Track 5. The recommendation must address non-geographical use as also requiring prior authorisation.

Use of geographical names for 'generic and brand contexts' has the major Drawback that future geographical use would be prevented, whereas under Proposed Problem **6.1**, (p.16) we have Proposed solution 6.1.2 "... to maximize the opportunities for future applicants for geographic names." (Names that meanwhile have been freely available for non-geographic use. I don't think so!)

This dichotomy must be explained clearly in the text.

Remedy: The only exception to geographic use could be limited to pre-existing trademark rights recognised in the jurisdiction concerned and subject to prior authorisations.

Recommendation #12

In spite of several references in meetings and on the List, there is still no reference to the three letter currency codes in ISO 4217. The currency codes are derived directly from ISO 3166, and consequently in this context are the competence of WT5.

Failure to appropriately protect the currency codes (which are by definition national or regional) could give rise to serious difficulties further down the line. I would argue that this is even more important than the three letter country codes in ISO 3166.

d. What are the options under consideration...

Non-Capital City Names

The text, again, presupposes that non-geographical use is not protected. We know very well by now that this would not be acceptable.

Specifically, the reference to 'curative' measures in this context is unrealistic.

Furthermore the appeal to 'the overall design of the program...' is perplexing. What is this 'overall design' that obliges WT5 to consider unsustainable proposals?

The reference in sub para 3 to 'Objectors pay for the objection...' is so far off-the-wall, that I am surprised that it is still being maintained. Note that in any eventual 'curative' regime for non-geographic use, most of the objectors might be private parties.

Sub para 8 on preventing misrepresentation (p.10) and elsewhere:

This proposal has been made very recently by one WT5 member, several other members have already explained why it falls far short of adequate protection of geographic names and it has not yet been discussed by WT5 as a whole. It is surprising that it has already made it to an 'Option' in this Draft Initial Report. It would be a large step backwards in the existing levels of protection.

N.B. The concept of a 'bright-line rule' (p.11) is not widely used or understood (not included in the OED). Quite apart from the merits of the case, if any, that expression is likely to suffer considerably in translation.

3. Too Little Restriction... (p.14)

The drawbacks to Proposed Solution 3.2.1 should be clearly expressed, including a clear need in such a case for Incorporation in the Jurisdiction concerned.

We know from ccTLD experience that it can be quite difficult and time consuming for a government to 'become engaged' with a misappropriated TLD that is operated outside the national jurisdiction.

Additional Categories or Terms (p.20) – Geographical Indications

One would have thought, after all the time and effort that has been expended on Work Track 5, that there should be a specific Recommendation on Geographical Indications. To find these relegated, again, to an afterthought right at the end of the document, is not correct.

We know from the previous Round that the issue is a live one and must be addressed. Appropriate text is available on the List and in the Transcripts.

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