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Work Track 5 - New gTLD Subsequent Procedures Policy Development Process Working Group

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9 March 2019 - WT5 Face to Face



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Introduction and Current Status

Agenda Item #1

About Work Track 5

- Work Track 5 is a sub-team of the New gTLD Subsequent Procedures Policy Development Process (PDP) Working Group (WG).
- The overall WG is tasked with calling upon the community's collective experiences from the 2012 New gTLD Program round to determine what, if any changes may need to be made to the existing 2007 Introduction of New Generic Top-Level Domains policy recommendations.
- Work Track 5 seeks to review the existing policy and implementation related to the topic of geographic names at the top level, determine if changes are needed, and recommend revised or new policy and/or implementation guidance, as appropriate.
- Anyone can join Work Track 5 as a member or observer.

Scope of Work

The scope of work includes geographic names at the top-level only:

- Two-character ASCII letter-letter combinations
- Country and Territory Names (alpha-3 on 3166-1, short and long-form in ISO 3166-1, additional categories in section 2.2.1.4.1 of AGB)
- Capital cities in ISO 3166-1, city names, sub-national names (e.g., county, province, state in ISO 3166-2)
- UNESCO regions and names appearing in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings”
- Other geographic names such as geographic features (rivers, mountains, valleys, lakes, etc.) and culturally significant terms related to geography (also known as non-AGB geographic terms)

Current Status

- Work Track 5 met regularly and published its **Supplemental Initial Report** for public comment on 5 December 2018, with the (extended) period closing on 1 February 2019.
- A total of 42 comments were received, with many of the GNSO SG/Cs responding, as well as SO/ACs (with some governments and ccTLD managers responding individually).
- Staff has compiled all of the public comments into the Public Comment Review Tool, attempting to provide an initial assessment of Agreement, Concerns, New Idea, Divergence in relation to WT5's report.
- As is customary of GNSO PDPs, Work Track 5 is reviewing every comment and seeking to ensure that it understands the comment and ask questions where it may not be clear.

Public Comments On Preliminary Recommendations

Agenda Item #2

Reviewing Public Comment

- Since the close of the public comment period, Work Track 5 has conducted two meetings, both of which focused on reviewing public comment received.
- Work Track 5 has considered **General Comments** (many of which reflect on the 2012 round and the implementation for geographic names)
- Work Track 5 has also considered comments received to its **Preliminary Recommendations**
- Work Track 5 must still consider comments received to its **11 questions and 38 proposals**.

Themes From Public Comment Thus Far

- *Without seeking to foreclose additional discussion that may arise from review of public comment to questions and proposals*, the co-leads believe that there are some instructive preliminary findings.
- From the **General Comments**, many reflected on the geographic names implementation from 2012. The majority of comments fell into three buckets:
 - **Are generally supportive of the continuation of the 2012 implementation** (and therefore the preliminary recommendations).
 - Are generally supportive of the continuation of the 2012 implementation, **with the exception of the intended use provision assigned to non-capital city names** (e.g., wish to see support / non-objection extended, and thus required in all circumstances).
 - **Have concerns about the basis for preventative protections afforded governments, but nonetheless, are willing to support the continuation of the 2012 implementation**, viewing it as a reflection of the compromise reached through the multistakeholder model. Many of the commenters that fell into this category also stated that they **did not believe that preventative protections should be extended** beyond the existing categories from 2012.

Themes From Public Comment Thus Far

- While most of the General Comments fell into those three main buckets, it is important to note that not all comments did. For instance, **there were some that opposed the preventative protections in the preliminary recommendations and believe that curative measures (e.g., objections, contractual requirements, etc.) are more appropriate**, given their understanding of the international law as it relates to governments' rights in geographic names.
- Some noted that in particular, .Brand TLDs usage is unlikely to be confused with the geographic application.

Themes From Public Comment Thus Far

- From the public comments on **Preliminary Recommendations**, there again seemed to be some convergence around the three themes identified. In looking at the Preliminary Recommendations in more detail, they can be considered as two relatively distinct categories. **Recommendations 2-9 are considered reserved and unavailable to any party. Recommendations 10-13 require support /non-objection from the relevant government or public authority** (with non-capital names only requiring that approval when the gTLD is intended to be used in association with the geographic meaning).
- **For recommendations 2-9, there were a number of comments that expressed support, or at least a willingness to accept the recommendation**, generally on the basis of the three themes identified.

Themes From Public Comment Thus Far

- **For recommendations 10-13 however, the views were more diverse.** For instance, a number of comments suggested that for the categories where a letter of support / non-objection from the relevant government or public authority is always needed, regardless of usage, **that the recommendation be amended to integrate an intended use provision**; one of the arguments in that regard is that preventative protections are inconsistent with the level of rights provided to governments to geographic names under international law. **Conversely**, there are comments from those that wish to **eliminate the intended use provision for non-capital city names and instead require support / non-objection in all circumstances**; one of the arguments in that regard cites the unique nature of a TLD and that the intended use provision creates disincentives for applicants to seek support / non-objection (e.g., claiming intended use will not be associated with the non-capital city name).
- *Now, we will look at the individual Preliminary Recommendations...*

Preliminary Recommendation 1

As described in recommendations 2-9, Work Track 5 recommends, unless or until decided otherwise, maintaining the reservation of certain strings at the top level in upcoming processes to delegate new gTLDs. As described in recommendations 10-13, Work Track 5 recommends, unless or until decided otherwise, requiring applications for certain strings at the top level to be accompanied by documentation of support or non-objection from the relevant governments or public authorities, as applicable.

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - Some divergence for recommendations 3 and 10-13
 - Two comments oppose recommendation
- Themes
 - Some are opposed to reservations for geo names in general but are still willing to support the recommendation
- New Ideas/Concepts for Deliberations
 - None

Recommendations 2-9

Terms that are reserved at the top-level and unavailable for registration by any party

Preliminary Recommendation 2

*Work Track 5 recommends continuing to reserve all two-character letter-letter ASCII combinations at the top level for existing and future country codes.
[additional detail available]*

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - Some do not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - One comment opposes recommendation
- Themes
 - Opposition to allowing 1 letter/1 digit strings (note: this was determined to be out of scope for WT5 since these combinations are not geographic names)
- New Ideas/Concepts for Deliberations
 - None

Preliminary Recommendation 3

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.i:

- *alpha-3 code listed in the ISO 3166-1 standard.*

[additional detail available]

Public Comment Summary:

- Level of support
 - Many commenters support (Also, see Summary Input From General Comments above)
 - Some do not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - Several comments oppose recommendation and believe alpha-3 codes on the ISO 3166-1 list should be available
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - None

Preliminary Recommendation 4

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.ii:

- *long-form name listed in the ISO 3166-1 standard.*

[additional detail available]

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - One comment opposes recommendation and believes long-form name on the ISO 3166-1 list should be available
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - None

Preliminary Recommendation 5

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.iii:

- *short-form name listed in the ISO 3166-1 standard.*

[additional detail available]

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - One comment opposes recommendation and believes short-form name on the ISO 3166-1 list should be available
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - None

Preliminary Recommendation 6

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.iv:

- *short- or long-form name association with a code that has been designated as “exceptionally reserved”³ by the ISO 3166 Maintenance Agency. [additional detail available]*

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - One comment opposes recommendation and believes the short or long-form name association with a code designated as "exceptionally reserved" by ISO 3166-1 list should be available
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - None

Preliminary Recommendation 7

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.v:

- *separable component of a country name designated on the “Separable Country Names List.” This list is included as an appendix to the 2012 Applicant Guidebook. [additional detail available]*

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - One comment opposes recommendation and believes the separable component of a country name designated on the “Separable Country Names list should be available

Preliminary Recommendation 7, continued

Public Comment Summary:

- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Suggestion that "the names listed in Class C refer to synonyms of the country name, or sub-national entities, and so are not separable components of country names. Consequently, they do not require preventative protection, should not be reserved, and this should be clarified in this recommendation 7."

Preliminary Recommendation 8

Work Track 5 recommends clarifying 2012 Applicant Guidebook section 2.2.1.4.1.vi, which designates the following category as a country and territory name which is reserved at the top level and unavailable for delegation:

- *permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”*

Work Track 5 recommends clarifying that permutations and transpositions of the following strings are reserved:

- *long-form name listed in the ISO 3166-1 standard.*
- *short-form name listed in the ISO 3166-1 standard.*
- *short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.*
- *separable component of a country name designated on the “Separable Country Names List.” This list is included as an appendix to the 2012 Applicant Guidebook.*

Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed.

[additional detail available]

Preliminary Recommendation 8, continued

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above), in particular the clarification related to alpha-3 codes
 - One comment opposes transpositions and permutations
 - One comment opposes transpositions
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Reserve permutations and transpositions of alpha-3
 - Ensure that Executive Summary is consistent with allowing permutations and transpositions of alpha-3
 - Revisit for additional clarity the sentence "Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed." Perhaps add the highlighted phrase to make it "Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard and which resulting strings themselves are not listed in the ISO 3166-1 standard should be allowed."

Preliminary Recommendation 9

Work Track 5 recommends continuing to consider the following category a country and territory name which is reserved at the top level and unavailable for delegation, as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.vii:

- *name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.*
[additional detail available]

Public Comment Summary:

- Level of support
 - Majority of commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - Two comments oppose recommendation and believes that a name by which a country is commonly known should be available
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Establish a dedicated procedure to detect and demonstrate respective evidence.

Recommendations 10-13

Terms that require support /non-objection from the relevant government or public authority (with non-capital names only requiring that approval when the gTLD is intended to be used in association with the geographic meaning).

Preliminary Recommendation 10

Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- *An application for any string that is a representation of the capital city name of any country or territory listed in the ISO 3166-1 standard. [additional detail available]*

Public Comment Summary:

- Level of support
 - Many commenters support (Also, see Summary Input From General Comments above)
 - One comment does not believe that governments have an exclusive legal basis in geographic names, but are still willing to support the recommendation
 - Several commenters oppose the recommendation and believe that no letter of support or non-objection should be needed.

Preliminary Recommendation 10, continued

Public Comment Summary:

- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Suggested change in text: "Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities, independent from the intended use:"
 - If capital city names continue to be protected, they should be subject to intended use requirements.

Preliminary Recommendation 11

Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- *An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if: (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and (b) The applied-for string is a city name as listed on official city documents [additional detail available]*

Public Comment Summary:

- Level of support
 - Several commenters support (Also, see Summary Input From General Comments above)
 - Several comments are opposed but are still willing to support the recommendation nevertheless

Preliminary Recommendation 11, continued

Public Comment Summary:

- Level of support
 - Several comments oppose the recommendation, believing that cities do not have a legal basis in the name and therefore no letter of support or non-objection should be needed.
 - Several comments oppose the recommendations for a different reason, believing the intended usage requirement should be removed.
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Substitute support or non-objection with informed consent.
 - Do not require support or non-objection when use is associated with city, but applicant has trademark rights.
 - Amend the recommendaton as follows: "An application for a string which is a representation of a city name of any country or territory according to the list at <http://unstats.un.org/unsd/demographic/products/dyb/dyb2015/Table08.xls>. An application for such a string will be subject to the geographic names requirements..."

Preliminary Recommendation 12

Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- *An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard. [additional detail available]*

Public Comment Summary:

- Level of support
 - Several commenters support (Also, see Summary Input From General Comments above)
 - Several comments are opposed but are still willing to support the recommendation nevertheless
 - Several comments oppose the recommendation, believing that governments do not have a legal basis in the name and therefore no letter of support or non-objection should be needed.

Preliminary Recommendation 12, continued

Public Comment Summary:

- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Amend text, "Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities, independent from the intended use:"
 - If sub-national place names listed in the ISO 3166-2 standard continue to be protected, they should be subject to intended use requirements.

Preliminary Recommendation 13

Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

- *An application for a string listed as a UNESCO region⁴ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list. In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.*

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.” [additional detail available]

Preliminary Recommendation 13, continued

Public Comment Summary:

- Level of support
 - Several commenters support (Also, see Summary Input From General Comments above)
 - Several comments are opposed but are still willing to support the recommendation nevertheless
 - Several comments oppose the recommendation, believing that governments do not have a legal basis in the name and therefore no letter of support or non-objection should be needed.
- Themes
 - None
- New Ideas/Concepts for Deliberations
 - Add intended use element to require letter of support or non-objection
 - Amend text, "Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authorities, **independent from the intended use:**"

Open Issues

Agenda Item #3

Open Issues

- The matter of **translations** applied to the following categories in 2012:
 - long-form name listed in the ISO 3166-1 standard. (reserved)
 - short-form name listed in the ISO 3166-1 standard. (reserved)
 - separable component of a country name designated on the “Separable Country Names List.” (reserved)
 - capital city names (letter of support / non-objection)
- **The AGB rule was translations “in any language”**
- The primary reason for examining this rule is that some believe that it be overly broad and difficult to execute. Several comments do not believe there is evidence of an issue.
- To the extent there is a limitation, suggestions focused on UN 6 and official languages. Some suggested relevant national, regional and community languages.

Divergent Issues In PC From Prelim Recs

- *While it was determined to be out of scope, since they are not geographic names, many noted **concerns with WT2's proposal to lift restrictions on 2-character letter/number and number/letter combinations.***
- Several comments stated that **alpha-3 codes listed in the ISO 3166-1 standard should be made available for registration**, with some supporting general availability to any applicant or only with approval with the government or public authority.
- For terms that in 2012 **always** required support / non-objection, there are those that wish to **extend the “intended use” provision.**
- However, for **non-capital city names**, there are those that wish to **require support / non-objection in all cases.**
- **Many question the basis for preventative protections.** While a number of commenters were willing to still support the 2012 implementation, others were not.

Next Steps

Agenda Item #4

Any Other Business

Agenda Item #5