



Response of the Intellectual Property Constituency to the Cross-Community Working Group on the Use of Country and Territory Names

The Intellectual Property Constituency (“IPC”) welcomes the opportunity to provide these 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.

The IPC is pleased to support and participate in policy development on this issue and is in particular pleased to support these discussions taking place in a cross-community environment to serve as the potential future basis of a GNSO PDP.

By way of introduction, the IPC highlights and reaffirms its comments of 14 October 2014¹ and 31 December 2014² submitted to the GAC in response to its Proposal on “The Protection of Geographic Names in the New gTLDs Process.”

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?

Three-character top-level domains should be eligible for use as gTLDs and should not be reserved as potential ccTLDs. The IPC acknowledges the work of the CWG-UCTN to date and notes its findings in relation to RFC1591 and the historical, standardized practice relating to the use in the DNS of ISO 3166 alpha-2 2-letter codes arising from the adoption of that standard in the design of the DNS. There is no such practice in the DNS in relation to 3-letter codes. Further, ISO 3166-1 alpha-3 codes are three-letter country codes defined in ISO 3166-1, part of the ISO 3166 standard published by the International Organization for Standardization (ISO), to represent countries, dependent territories, and special areas of geographical interest based upon the alpha-2 codes (there is a third set of codes, which is numeric and hence offers no visual association). As such, the countries and geographic interests represented thereby are wholly represented in ISO 3166 alpha-2. In other words, reservation of 3 letter codes would be completely duplicative, redundant and serve no apparent purpose. Further, no perceived advantage or necessity has been identified by the technical or country code community for such an expansion, and the IPC has been unable to identify any advantage of such a policy.

In contrast, there are extremely significant disadvantages to such a policy. The gTLD space has historically been built on three-character codes, such as .com, .net, and .org, and there is a high degree of consumer comfort and technical comfort with three-character gTLDs. This can be seen in

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<https://gacweb.icann.org/download/attachments/35455403/Summary%20of%20IPC%20Comments%20on%20Geo%20Names%20Proposal%2014%20Oct%202014%5B2%5D.pdf?version=1&modificationDate=1413389084000&api=v2>.

² https://gacweb.icann.org/download/attachments/35455403/12312014%20-%20IPC%20-%20Comments%20on%20GAC%20Sub-Working%20Group%20Proposal%20on%20Geographic%20Names_FINAL.pdf?version=1&modificationDate=1420127610000&api=v2.

the new gTLDs as well; for example, there were several applications for .web and .app, and a significant number of other applications new gTLDs adopted the traditional three-letter format. Such an expansion would (i) remove all three-letter words and acronyms from consideration as gTLDs (as well as all other three-character combinations), (ii) be impractical and effectively extinguish rights in existing 3-letter gTLDs, and (iii) would significantly impinge upon well-established, internationally-recognized private rights without justification, and (iv) remove other opportunities for appropriate and important gTLDs (e.g., .CAT).

More specifically, placing restrictions on 3-character strings effectively results in the exclusion of over 17,000 potential new gTLDs from the DNS, many of which are commonly used words or famous or well-known trademarks. This is inconsistent with many of these countries'/states' own trademark laws and is a significant impediment to the ability of rights holders worldwide to participate in the DNS and engage in e-commerce.

The IPC is opposed to the reservation of all 3-character TLDs as potential ccTLDs.

- 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 regardless of whether they are “in conflict with” the existing alpha-3 codes from the ISO 3166-1 list. As explained in its response to Question 1, there is no existing, standardized practice in the DNS of using 3-letter codes to represent countries and territories. In fact, there is no such practice at all. The purpose of protecting countries and geographic interests is completely achieved by the reservation of the two letter codes contained in ISO 3166 alpha-2. There would be a vast increase in blocked names and words by increasing the prohibition from two letters to three, the IPC is greatly concerned over the impact that such a policy would have on the robust growth of the gTLD space, property rights, free speech and openness. No compelling and legally or technically justified reason for such an exclusionary policy has been articulated.

- 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?**

There should be no “support/non-objection” process for governments and public authorities. As the IPC has highlighted in its previous comments in relation to geographic domain name policy, there is no basis in international law for a support or non-objection requirement. Such a requirement is *de facto* a veto. This introduces significant uncertainty for applicants, in direct contrast to the goals of top-level expansion. Such a process also implies that governments and public authorities have a legal or sovereign right to “their” ISO 3166-1 alpha-3 code. We know of no basis for such an assertion. To the extent that parties have legally recognized rights in 3-character strings, they should submit to binding arbitration in an internationally recognized forum in which objective and reasonable standards apply. The IPC does not support restricting the eligibility of 3-character TLDs on the basis of the ISO 3166-1 alpha-3 standard.

- 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?**

There should be unrestricted use of three-character strings as gTLDs if they are not conflicting with any applicable string similarity rules. The IPC supports unrestricted use of 3-character strings as gTLDs if they are not conflicting with applicable string similarity rules. It should be noted that string similarity rules have applied to strings of any length, so it is unclear why this question is being asked. We would assume that three-character applications would be subject to all of the same rules as any other string (and not to any “special” rules).

- 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?**

The IPC does not support the reservation of IDN 3-character strings for exclusive use as ccTLDs. While restrictions on 3-character ASCII strings effectively results in the exclusion of over 17,000 potential new gTLDs from the DNS, restriction of all IDN 3-character strings would exclude hundreds of thousands of potential new gTLDs from language communities that have already suffered decades of exclusion from the DNS. The IPC can see no basis or reason for such a disruptive exclusionary policy, which would not serve ICANN’s mission to internationalize the DNS.

- 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?**

There should be unrestricted use of IDN three-character strings if they are not in conflict with any applicable string similarity rules. The IPC needs more information on what constitutes “conflict with an existing TLD.” Domain name allocation policy must facilitate, not impede, the need of billions of people to join the internet community. A core goal of the New gTLD Program is to bring new participants into the DNS. The view of the IPC is that this is not achieved by restricting the use of potential new IDN gTLDs unless there is a clear technical or legal justification for doing so. However, the IPC would need to clarify what is meant by a “conflict with [an] existing TLD” before opining on this aspect of the question. Clearly, no one can apply for a TLD that is identical to an existing TLD (i.e., that consists of the same characters in the same order); this is beyond question. This then raises the question of what “conflict with existing TLDs refers to,” if it does not refer to string similarity or an attempt to register a string that is already registered. Does it refer to translations and transliterations of existing TLDs, or to TLDs that are typographically indistinguishable from existing TLDs (i.e., where characters in different scripts look the same or very similar)?

- 7. Do you have any additional comments that may help the CWG-UCTN in its discussion on three-character strings as top-level domains?**

From an intellectual property point of view, the IPC recognizes that it is extremely difficult to reconcile the concerns of governments with the fact that well-established international law prohibits the effective expropriation of rights without due process and/or compensation. A clear and natural tension exists between legally recognized private rights on the one hand and government interests on the other. The IPC notes that the use of geographic names in the Domain Name System (“DNS”) is a long-standing issue and one of the most troublesome issues in domain name allocation policy. The practice of registering geographic names and geographical indications as second- and third-level domain names was expressly noted by the World Intellectual Property Organization in 2001 in its Final Report on its Second Internet Domain Name Process. An important conclusion of the WIPO II

Report was the absence in international law of support for governments' assertions of priority rights in geographic names preventing their use by others as domain names. The IPC reaffirms the comments and conclusions of the GNSO Working Group on Reserved Names, which emphasized the need to "ensure that 'there is a solid and clear basis in existing international law which can be applied so as to prevent erosion of the integrity of geographical indicators and enhance the creditability of the DNS'."³ The adoption of exclusionary policy without clear and credible legal basis creates a danger of appropriating or impinging upon existing rights, to the detriment of the global community's interaction with the DNS.

Respectfully Submitted,

Intellectual Property Constituency

³ GNSO, "Reserved Names Working Group Final Report", quoting WIPO, "WIPO II Report", at para. 238.