

Final Report on the new gTLD Subsequent Procedures PDP Geographical Names (Annex H)

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Personal Capacity, 18 January 2021

Work Track Five (WT5) was initiated some time after the rest of the PDP had already set up four other Work Tracks. This meant in practice that although WT5 was to deal exclusively with Geographical Names at the Top Level, several conditions affecting geo-names were dealt with elsewhere, and were not open for discussion in WT5. Furthermore there was an underlying assumption that geographical names could be assimilated with Generic Top Level Domains (gTLDs) and that consequently could be treated on the same basis as existing and prospective TLDs. This assumption has proved to be false.

Geographical names are not Generic. They are mostly unique, specific to certain locations, languages, scripts and communities. Those that refer to more than one location (often arising from colonial history and migration) may require special treatment but they are not the general rule. Many geographical names do not refer to cities but to other geographical features. The 2012 AGB provided protection for country names and capital cities, linked to the ISO 3166 standard (which also provides the basis for the ccTLDs.) However, ISO 3166 is quite patchy below the National level, and many well known islands and regions are not recognised. Thus the PDP Report affords a little extra protection to non-capital city names and not much else. Furthermore, there are no rules as to the use of geographical names. If an applicant intends to use a geo-name for non-geographical purposes, that can be done, even without informing the authorities in the place concerned.

The idea that geographical names are Generic and are free for the taking, world-wide, is quite unsustainable, and will give rise to disputes with governments and local authorities that will tarnish ICANN's name.

All geographical names should benefit from preventive protection, prior notification and agreement with the communities and local authorities concerned. We should ensure that these names remain available to be used in the future by the communities and their authorities in the places concerned. The DNS is still at the beginning of the Internet in many parts of the world. We should absolutely ensure that when geographical names are required for their real purpose, that they are still available. Unfortunately, the PDP goes in entirely the opposite direction. If we look beyond the WT5 report (Annex H) to see the consequences of decisions taken by the other Work Tracks (1-4) we find – in a worst case scenario – that has nevertheless been advocated by some members of WT5, to the effect that:

- there is no restriction on the jurisdiction of the Registry, so a community could discover that their domain name is legally out of their reach. (we have been there before with hi-jacked ccTLDs, which took years to restore to their owners);
- if the geo-TLD is to be used for non-geographical purposes (e.g. a .brand), there is no obligation on the applicant to reach agreement with the local authorities, unless the proposed GAC prior notification works particularly well. Recall that prior notification constitutes no formal or legal consequences whatsoever, on the part of the applicant.
- There are no limits on the number of TLDs that a single Registry organization can apply for. Indeed, it has become clear that a few large Registry+Registrar conglomerates have access to internal and external sources of funds to finance 'portfolios' of names, including, eventually, geo-names.
- There is also the resolution of contention sets. The intense interest in the PDP about auctions suggests that certain applicants do indeed anticipate competing financially for their applications for TLDs. In the case of geo-names, this is likely to put the interested national or local authorities in a very awkward position, probably being unable to finance a competing bid to retain their TLD for geographical use.

Taken together, these political and financial risks, already enshrined in the PDP Report, could create a perfect storm for the interests of local authorities and communities planning to use the DNS for their domestic purposes, today or in the future. The ICANN Board should not base its policy regarding geographical TLDs on the WT5 Report (Annex H) because it fails to protect the rights and interests of the communities and localities most concerned.