

Staff Report of Public Comment Proceeding

Work Track 5 on Geographic Names at the Top Level – Supplemental Initial Report of the New gTLD Subsequent Procedures Policy Development Process

Publication Date:	1 March 2019
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Public Comment Proceeding	
Open Date:	5 December 2018
Close Date:	1 February 2019 (extended from 22 January 2019)
Staff Report Due Date:	22 February 2019

Important Information Links
Announcement
Public Comment Proceeding
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Section I: General Overview and Next Steps

This public comment proceeding was opened in order to obtain input on Work Track 5's Geographic Names at the Top-Level - Supplemental Initial Report of the New generic Top-Level Domain (gTLD) Subsequent Procedures (SubPro) Policy Development Process Working Group (PDP WG). The PDP WG is chartered to evaluate what changes or additions need to be made to existing new gTLD policy recommendations and Work Track 5, a sub team of the PDP WG, is dedicated to the singular topic of geographic names at the top-level.

The PDP WG has also published an Initial Report and a Supplemental Initial Report on all other subjects identified in its Charter.

Section II: Contributors

At the time this report was prepared, a total of forty-two (42) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
APTLD	Leonid Todorov	APTLD
Government of Spain	Jose M. Lucea Anaya	GS
Swiss Federal Institute of Intellectual Property	Nicolas Guyot	SFIIP
ccNSO Council	Katrina Sataki	ccNSO
Singapore	QUEH Ser Pheng	SING
SWITCH	Urs Eppenberger	SWITCH
Iceland	William Freyr Huntingdon-Williams	ICE
Georgia	Mzia Gogilashvili	GEOR

German GAC	Bernd Neujahr	GGAC
Communications and Information Technology Commission	International Affairs	CITC
dotBERLIN GmbH & Co. KG	Dirk Krischenowski	DB
Hamburg Top-Level-Domain GmbH	Dirk Krischenowski	HTLD
Organization for an International Geographical Indications Network	Massimo Vittori	origin
CENTR	Peter Van Roste	CENTR
The Finnish Transport and Communications Agency (Traficom)	Sanna Sahlman	FTCA
Portugal	Charlotte simões	PORT
Brand Registry Group	Martin Sutton	BRG
European Broadcasting Union	Giacomo Mazzone	EBU
Honduras	Alicia Paz	HON
Business Constituency	Steve DeIBianco	BC
MARQUES	Alessandra Romeo	MAR
UNINETT Norid AS	Hilde Thunem	NORID
Dotzon GmbH	Katrin Ohlmer	DG
Registrar Stakeholder Group	Zoe Bonython	RrSG
Governments of Argentina - Chile - Colombia	Olga Cavalli	ACC
Fundación Incluirme	Adrián Carballo	FI
Government of France	Ghislain de SALINS	GF
geoTLD.group	Katrin Ohlmer	GG
International Trademark Association	Lori Schulman	INTA
Intellectual Property Constituency	Brian Scarpelli	IPC
At-Large Advisory Committee	ICANN Policy Staff	ALAC
association of European regions for origin products	Laurent GOMEZ	AREPO
Brazil	Thiago Braz Jardim Oliveira	BR
Association Française pour le Nommege Internet en Coopération	Marianne GEORGELIN	Afnic
Registries Stakeholder Group	Samantha Demetriou	RySG
Governmental Advisory Committee	Fabien Betremieux	GAC
Group of registry operators: Uniregistry Minds + Machines Group Top Level Design Amazon Registry Services Employ Media LLC	Kristine Dorrain	GRO
United States Government	Ashley Heineman	USG
Non-Commercial Stakeholder Group	Rafik Dammak	NCSG
Republic of Peru	Carmen Rocio Echevarria Sierra	RP

Individuals:

Name	Affiliation (if provided)	Initials
Christopher Wilkinson		CW
Tom Dale		TD

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

As the Work Track 5 (WT5) Supplemental Report is structured similarly to the Initial Report, in that it provides a collection of preliminary recommendations, specific questions for community input, and various proposals, there is a great deal of input received to the various aspects of the WT5's report. Many comments chose to submit an over-arching sentiment (e.g., an overall opinion on the preliminary recommendations and the 2012 implementation for geographic names), as well as a response to each and every preliminary recommendation, question, and proposal.

Specifically, WT5 sought feedback on 13 preliminary recommendations, 11 questions, and 38 proposals. Most commenters provided feedback on every single element, while others were more selective in where they provided their feedback.

In total, 42 unique comments were received and they have been parsed and assigned to the respective topic (e.g., Preliminary Recommendation 1, Question 8, etc.) for consideration by WT5. As is customary for GNSO Policy Development Process Working Groups, WT5 will duly consider each and every comment received, with an emphasis on identifying and subsequently considering new information that may impact deliberations. WT5 is leveraging a Google sheet to help serve as the vehicle for the public comment review process, which can be found here:

https://docs.google.com/spreadsheets/d/1WKSC_pPBviCnbHxW171ZIp4CzuhQXRCV1NR2ruagrxs/edit?usp=sharing

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

As noted in the summary section above, a large number of respondents chose to provide an overview statement about the preliminary recommendations (which are in large part consistent with the 2012 round of the New gTLD Program, with translations of certain strings serving as an undetermined element). Those overview statements generally fell into three categories:

1. Are generally supportive of the continuation of the 2012 implementation (and therefore the preliminary recommendations).
2. 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).
3. 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.

While these three categories made up a fair amount of the overall sentiments received, there were others that opposed preventative protections 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.

The preliminary recommendations 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 enumerated themes above.

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).

WT5 also asked a number of questions, the answers to which are expected to facilitate deliberations. By way of example, a non-exhaustive list of some of the elements WT5 sought feedback on are as follows:

- Preference for preventative (e.g., reservations, letters of support / non-objection) or curative (e.g., objections, contractual requirements) protections, or if there is a proper balance of the two - There were a wide range of opinions.
- The basis for the development of protections for geographic names – Some cited international law, multinational treaties, public policy, national law, and/or local law.
- Whether the provision that allowed for translations, in any language, for long and short-form names on ISO 3166-1 and separable components of a country name designated on the “Separable Country Names List” should be maintained or limited in some fashion – Here, several commenters questioned if there was evidence of an issue, but stated they would be willing to consider some limitation. Several commenters stated that relying on translations into official languages and commonly used languages seemed like an appropriate limitation in scope.
- Whether WT5 should be able to develop a policy recommendation to make 3-letter codes and/or other country and territory names available to certain parties – Here, the opinions were widely divergent.

- Whether additional categories of names should be considered geographic names under the New gTLD Program – Some commenters believe that the intended use provisions should be extended, while others are opposed to extending protections. For several commenters, support of the preliminary recommendations is contingent upon there being no additional names protected as geographic names.

WT5 included 38 proposals as well, which are of varying levels of impact. Some seek to extend protections while others seek to limit preventative protections (e.g., in relation to reservations and letters of support / non-objection). However, there are a number of proposals that seek to make more incremental adjustments, and many of them are compatible with the preliminary recommendations. WT5 will consider the input received to the 38 proposals as it continues towards reaching consensus.

This summary and analysis does not seek to draw any conclusions from the public comment as that is the sole remit of the PDP WG. WT5 members will have to assess the arguments brought forward and integrate them into their final recommendations as appropriate. As noted, WT5 will consider each and every comment and complete its public comment working document, available in Section III. WT5 will consider whether the comment expresses concerns, divergence, agreement, and/or new ideas and accordingly, determine what effect the comment will have.