



2 October 2008

Janis Karklins
Chairman of the Governmental Advisory Committee
Ambassador of Latvia to France

Dear Janis

Thank you for the opportunity to speak with the GAC on 8 September 2008, to discuss the concerns expressed by the GAC that the GNSO Final Report on the Introduction of New gTLDs does not include provisions reflecting important elements of the GAC principles, in particular paragraphs 2.2, 2.6 and 2.7, which the GAC considered were not reflected in the GNSO Final Report.

Given the difference of opinion between the GNSO and the GAC on the treatment of geographic names, I anticipate that this will be the first of a number of discussions necessary to resolve the differences, and that this will be a topic of discussion with the GNSO and the broader community. I would welcome the opportunity to continue dialogue with the GAC during the implementation phase with a view to reaching closure on a workable solution for the treatment of geographic names in the next two months.

I understand that since the call of 8 September 2008, the GAC has moved away from the suggestion that Governments be asked to advise ICANN of geographic and geopolitical names they wish to place on a reference list. Taking this into account, ICANN staff has developed proposed principles to guide a procedure for implementing elements of paragraph 2.2 which are outlined below.

Paragraph 2.2

ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant governments or public authorities.

Country and territory names

With regard to strings which represent a country or territory name, applicants will be required to provide supporting documentation, or evidence of non-objection to the use of the string, from the relevant government or public authority. Where there is no supporting documentation and the string clearly represents a country or territory name the application will be rejected.

It will be the applicant's responsibility to identify if the string represents a country or territory name, and also to determine the relevant government or public authority.

The ISO 3166-1 list has served the ICANN community well in defining country or territory names in the past and this list will be used as a reference list for applicants. However, no list exists for commonly used longer forms of country names (and for IDNs, the translation of those names). The lack of a definitive list might be addressed, for example, by using the work and definitions created by the Internationalised Domain Name Committee Working Group (IDNC WG) on IDN ccTLDs. That work provides a standard for determining whether a string should be considered a meaningful representation¹ of a country or territory name in another script or language.

¹A string is meaningful if it is in the Official Language and: a) is the name of the Territory; or b) a part of the name of the Territory that denotes the Territory in the language; or c) a short-form designation for the name of the Territory, recognizably denoting it in the indicated language.



Place names—counties, states, provinces

Place names are considered those that represent a sub-national geographical identifier such as counties, states, regions or provinces. The ISO 3166-2 provides a list of sub-divisions within a country. This list could be used as a reference list for applicants and a string which represents any of the place names identified on this list will require supporting documentation, or evidence of non-objection, by the relevant government or public authority. ICANN will continue research regarding authoritative lists.

It will be the applicant's responsibility to identify if the string represents a place name, other than city name, and also to determine the relevant government or public authority.

Where the string is a sub-national geographical identifier on this list over which more than one government or public authority claims authority, ICANN will require the applicant to supply supporting documentation, or evidence of non-objection, by all the relevant governments or public authorities claiming such authority. ICANN is a technical coordination body not an arbiter of political or territorial disputes. This requirement is not a statement by ICANN on the rights of any claim, but rather a reflection of ICANN's commitment to the stability of the DNS.

Place names—cities

City names are challenging because a city name can also be a generic term (Orange or Bath), or a brand name (Leyland or Austin), and in many cases no city name is unique, for example Manchester (UK and USA), Newcastle (Australia, Canada, South Africa, the United Kingdom and the USA and others). Reasonable steps will be taken during the assessment of applications to determine if a string represents a city name and applications will be assessed on a case-by-case basis.

An applicant that clearly intends to use the TLD to leverage from the city name, will require supporting documentation, or evidence of non-objection, from the relevant government or public authority. It will not be necessary for an applicant to receive a non-objection from governments or public authorities considered outside the jurisdiction of the city intended to be represented by the applicant.

Applications for the same city name

In the event that more than one application is received for a city name, such as .newcastle, and all the applications have support from the relevant governments or public authorities, and pass all other application requirements, applicants will be placed in contact with each other and asked to resolve the contention. This is consistent with IANA processes regarding contested delegation of ccTLDs.

Regional language or people descriptions

As discussed during the conference call with the GAC it will be difficult to determine the relevant government or public authority for a string which represents a language or people description as there are generally no recognized established rights for such descriptions. By way of example, how would an applicant determine the relevant government or public authority for .English or .aboriginal? Therefore, it is difficult to develop an

Official language is defined as: 'official' language is one that has a legal status in the Territory or that serves as a language of administration (hereafter: Official Language). This definition is based on: "Glossary of Terms for the Standardization of Geographical Names", United Nations Group of Experts on Geographic Names, United Nations, New York, 2002. A language is demonstrated to be an Official Language: a) If the language is listed for the relevant Territory as an ISO 639 language in Part Three of the "Technical Reference Manual for the standardization of Geographical Names", United Nations Group of Experts on Geographical Names (the UNGEGN Manual) (<http://unstats.un.org/unsd/geoinfo/default.htm>); or b) if the language is listed as an administrative language for the relevant Territory in ISO 3166-1 standard under column 9 or 10; or c) if the relevant public authority in the Territory confirms that the language is used in official communications of the relevant public authority and serves as a language of administration.



implementation plan for this element of paragraph 2.2, particularly with respect to obtaining agreement from the relevant government of public authority. Recommendation 20² of the GNSO Final Report provides that an entity can object to a misappropriated community label thereby providing a recourse for affected communities members.

I would appreciate the GAC's feedback on the suggested approach outlined above to elements of paragraph 2.2. I note that city names still provide the biggest challenge for us in implementation primarily due to the fact that very few city names are unique.

I would also note that, while the GAC does not consider the objection process sufficient to protect geographical and geopolitical names, the objection process does provide an additional safeguard to the principles outlined above.

As you are aware our discussions were inconclusive on the issue of geographical and geopolitical terms on the second level. However, I provide the following comments on paragraph 2.7.

Paragraph 2.7

Applicant registries for new gTLDs should pledge to:

- a) adopt, before the new gTLD is introduced, appropriate procedures for blocking, at no cost and upon demand of governments, public authorities or IGOs, names with national or geographic significance at the second level of any new gTLD;
- b) ensure procedures to allow governments, public authorities or IGOs to challenge abuses of names with national or geographic significance at the second level of any new gTLD.

With regard to a)

As discussed on the call, it is anticipated that many multi-national companies will apply for a string that represents their brand name and it is likely that they will use geographic names at the second level to replicate their business operations. As I expressed on the call, ICANN would be reluctant to place blanket restrictions on the use of geographic names at the second level of all new gTLDs as changes in the traditional operations and uses of gTLDs emerge. Members of the GAC on the call recognized that they did not intend to stop the sort of use by brand name holders outlined above.

In addition, the terminology used in this paragraph, "...names with national or geographic significance..." is far too broad to enable the development of a workable process for implementation.

With regard to b)

Again, names with national or geographic significance are difficult to define, as is determining what constitutes an 'abuse' of a name. GNSO recommendation 16³ requires that all new gTLDs would be bound by the existing ICANN consensus policies, this includes the UDRP that protects rights in second-level domains. ICANN is also exploring the implementation of certain post-delegation procedures to address violations of contractual provisions. Other than these, ICANN generally does not have the authority to establish processes to consider challenges outside of pre-existing rights.

³ Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.



Paragraph 2.6

It is important that the selection process for new gTLDs ensures the security, reliability, global interoperability and stability of the Domain Name System (DNS) and promotes competition, consumer choice, geographical and service-provider diversity.

ICANN's new gTLD evaluation process will work to ensure protection of the security, stability and reliability, and global interoperability of the DNS through a number of measures. Specifically, through the gTLD application process, proposed implementations will be evaluated against relevant RFCs to ensure compliance with globally-applicable standards. Applicants' proposed registry services will be reviewed using the existing framework established under ICANN's Registry Services Evaluation Policy and Process, which provides for evaluation by technical and competition experts where ICANN Staff determines a registry service could raise significant security, stability, or competition issues. (See <http://www.icann.org/en/registries/rsep/>.) Additionally, proposed strings will be assessed to ensure consonant introduction to the DNS, through, for example, algorithmic string comparison with other TLDs and rejection of impermissible and confusing strings.

The introduction of new gTLDs to the DNS is being carefully directed to promote competition and consumer choice among an increasingly diverse stakeholder community. In particular, ICANN has conducted and continues to conduct extensive global outreach in preparing to launch the application process for new gTLDs. ICANN has begun reaching out to every government in the world to enhance awareness of both the introduction of new gTLDs and the application process in particular. Great strides have been made in ICANN's Internationalized Domain Name (IDN) program to ensure that the first gTLD application round will allow for submission of non-ASCII strings, a step that is critical to the global diversification of gTLDs and gTLD registry operations. Of course, ICANN Staff will continue its existing international outreach initiatives through its designated regional liaisons and through the regional gatherings held throughout the world between formal ICANN meetings.

Timetable

In terms of process, ICANN intends to publish an initial draft of the Request for Proposal for new gTLDs (also referred to as an "applicant guidebook") prior to the ICANN Cairo meeting. The applicant guidebook will describe, among other things, how an applicant applies for a gTLD and the evaluation process. It is the intention that a section of the RFP relating to the treatment of strings that represent geographical names would be drafted in accordance with the principles outlined above.

As you are aware, the RFP will be subject to public comment and in that context we can come back to the GAC and the GNSO to discuss issues of concern raised during this period.

As we are working to a tight timeframe with regard to publishing the initial draft RFP, I look forward to the GAC's early feedback on elements raised in this letter, and the RFP, during the Cairo meeting.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Twomey", written in a cursive style.

Paul Twomey
CEO & President