

I C A N N
POLICY FORUM

62

PANAMA CITY

25–28 June 2018



Cross-Community Session: Geographic Names at the Top-Level

Work Track 5 Co-Leaders: Olga Cavalli (GAC), Annebeth Lange (ccNSO), Javier Rúa-Jovet (ALAC), Martin Sutton (GNSO)



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Agenda 1 Slide

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Welcome and
Introductions (5
mins)

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Background on the
Sessions and Work
Track 5 (5 mins)

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Progress Update
(20 mins)

4

Discussion on
Treatment of City
Names that are Not
Capital City Names
(55 mins)

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Wrap-Up and Next
Steps (5 mins)

Welcome and Introductions

Agenda Item #1

Welcome

Facilitators for this session:

- ◉ Olga Cavalli (GAC co-leader of Work Track 5)
- ◉ Annebeth Lange (ccNSO co-leader of Work Track 5)
- ◉ Javier Rúa-Jovet (ALAC co-leader of Work Track 5)
- ◉ Martin Sutton (GNSO co-leader of Work Track 5)

Background on the Sessions and WT5

Agenda Item #2

What is 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 Working Group 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 or implementation guidance, as appropriate.
- ⦿ Anyone can join Work Track 5 as a member or observer.

Cross-Community Sessions

- ⦿ Purpose of these sessions:
 - Provide information about the Work Track 5's status and next steps.
 - Get input from across the community about some of the key topics within Work Track 5's scope.
 - Hear new perspectives from individuals and groups that are not currently participating in Work Track 5.

Please also join us for Session 2 on **Thursday 28 June at 15:15.**

Your input is important!

Progress Update

Agenda Item #3

Issues Discussed in Work Track 5

- ⦿ Work Track 5 has discussed all of the topics within its scope of work, which is limited to 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 on 3166-1, additional categories in section 2.2.1.4.1 of AGB)
 - Capital Cities in 3166-1, city names, sub-national names (e.g., county, province, state on 3166-2)
 - UNESCO regions and names appearing on 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
 - The extent to which additional languages receive protection

- ⦿ Key issues and arguments are collected in a working document for further input and review.

Preliminary Convergence

- The Work Track Co-Leaders are beginning to see convergence in support of the following:
 - Continue reservation at the top-level for these **country and territory related terms**:
 - **Two-character ASCII letter-letter** combinations.
 - **3-character country codes** on the International Organization for Standardization (ISO) 3166-1 list.
 - **Long-form** and **short-form country and territory names** on the International Organization for Standardization (ISO) 3166-1 list.
 - Defer broader questions about which entity/entities can apply for these strings and how they may be treated (for instance, as a gTLD, a ccTLD or something else).
 - **Continue** requirement that an applicant must obtain a **letter of consent/non-objection** from the relevant government or public authority when applying for a **capital city name**.

Discussion on Treatment of City Names that are not Capital City Names

Agenda Item #4

Non-Capital City Names: Policy and Implementation

- ⦿ **Policy (2007 PDP):** Available, but challenge mechanism to governments to initiate an objection. Applicants should be aware of GAC Principles. Applicants must represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.

- ⦿ **Implementation (2012 AGB):** Requiring documentation of support/non-objection from relevant governments or public authorities, where the applicant declares that it intends to use the gTLD for purposes associated with the city name. An application for a city name is subject to the geographic names requirements 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.

(see Applicant Guidebook Section 2.2.1.4.2)

Non-Capital City Names: Process

- ⦿ Suggested by a WT Member: May be useful to consider the 2012 process in **separate parts**.
 - 1 – Eligibility, requirements, and evaluation procedures
 - 2 – Challenge mechanisms within the process
 - 3 – Contractual requirements and compliance

- ⦿ Why is this potentially helpful? Serves as a reminder that there are a number of points in the process, **which can be adjusted to establish a holistic set of rules that balance the needs of the various parties**.

Non-Capital City Names: Part 1

1 – Eligibility, requirements, and evaluation procedures (from 2012)

- ⦿ Unlike the other geographic names categories, there were no universal protections for non-capital city names. Protections were **dependent upon the intended usage** of the string.
- ⦿ **Letter(s) of support/non-objection** from relevant governments or public authorities **only needed if determined to be a geographic name** by the Geographic Names Panel.
- ⦿ **All strings**, regardless of designation by the applicant, **were reviewed by the Geographic Names Panel**.

Non-Capital City Names: Part 2

2 – Challenge mechanisms within the process (from 2012)

- ⊙ How could parties express concern about an application and in some cases, potentially stop it from proceeding?
 - **Application comment** – submit comments about an application, taken into account in some processes
 - **GAC Early Warning** – a mechanism for a government to provide a warning to an applicant (no GAC consensus needed)
 - **GAC Advice** – Delivered against a particular application creates strong presumption for ICANN Board that application should not proceed (GAC consensus required)
 - **Objection Procedures**
 - String Confusion Objection
 - Legal Rights Objection
 - **Limited Public Interest Objection**
 - **Community Objection**

3 – Contractual requirements and compliance

- ⦿ For **ALL** applicants - There are general provisions in the Registry Agreement that hold the registry operator responsible for the statements made in the application (e.g., section 1.3.a.i on Representations and Warranties in the RA, Specification 11– Article 2 (on Public Interest Commitments)).
- ⦿ For **geographic names** (in this context, non-capital city names being used in a manner associated with the city name) – **support/non-objection can be withdrawn**. ICANN will comply with a legally binding order from a court in the jurisdiction of govt/public authority that provided support.
- ⦿ **Post-delegation** dispute resolution processes are available and in particular, the Public Interest Commitment Dispute Resolution Process (**PICDRP**)

Non-Capital City Names: Part 1 – Question 1

1 – Eligibility, requirements, and evaluation procedures (from 2012)

- ⊙ Most focus of WT5 has been on preventative protections (rather than the more curative focused elements in “Part 3”)

- ⊙ **Q1 - Should there be some form of universal protections for non-capital city names? Why or why not?**
 - If so, on what basis? International law? Local law? Public policy? Other?

Non-Capital City Names: Part 1 – Question 1: Discussion

- ⦿ **Some arguments raised in favor of universal protections:**
 - Allows people associated with a place to have a voice about use of “their” name.
 - Allows government to protect the public interest and the interest of residents/communities.
 - Enables public authorities to act under applicable laws and be accountable according to their legal systems and is consistent with ICANN’s obligation to act in conformity with applicable local law.

- ⦿ **Some arguments raised against universal protections:**
 - Governments should not have special rights or privileges absent explicit justification under international law. ICANN does not have the obligation to follow every national and local law.
 - Curative rights have traditionally been favored in ICANN processes, objections processes should provide sufficient means to address concerns about an application.
 - Contrary to ICANN’s commitment to supporting free expression rights of applicants and enabling competition and open entry in Internet-related markets. ICANN should eliminate unnecessary barriers to establishing new TLDs absent evidence of harm.

Non-Capital City Names: Part 1 – Question 2

1 – Eligibility, requirements, and evaluation procedures (from 2012)

- ⊙ Many non-capital city names are not unique:
 - **Q2.1 - How would the applicant and/or panel determine which government or public authority is the proper relevant party? Would the applicant have to seek approval from all cities sharing the name?**
 - **Q2.2 - Is it possible to establish a definitive list of protected terms, to help in predictability for all parties?**
 - **Q2.3 - For approval, do letter(s) of support/non-objection from relevant governments or public authorities make sense?**

Non-Capital City Names: Part 1 – Question 2: Discussion 1

Q2.1 - How would the applicant and/or panel determine which government or public authority is the proper relevant party? Would the applicant have to seek approval from all cities sharing the name?

⦿ **Some arguments that have been raised:**

- It is a significant financial and logistical barrier for applicants to identify the appropriate government or public authority to obtain approval. What if they don't respond in a timely manner?
- There is no easy way to identify all potential cities that share a common name, for example "Springfield."
- It should be possible with support of the GAC and ICANN Org for applicants to find the relevant government or public authority – other suggestions include creating a database of strings with restrictions, leveraging the geographic names panel to advise applicants, or creating a new entity to help applicants connect with the correct governments/public authorities.
- All cities sharing the name should have the opportunity to provide letters of support/non-objection because they all should have rights to "have a say" about use of the name.

Q2.2 - Is it possible to establish a definitive list of protected terms, to help in predictability for all parties?

- ⦿ **Some arguments that have been raised:**
 - Applicants should be able to draw on existing online resources to determine whether a string is a city name.
 - Existing online resources could be supplemented by the use of experts (from the GAC, ICANN Org, new/existing panel or advisory group).
 - An exhaustive list could be created utilizing some objective measures (e.g., cities with a population > 500,000, top xx number of cities by population per country, etc.)
 - There is no single definition for the term “city” and even if there was a single definition, places and populations are constantly changing. It would be impossible to create and maintain a single, definitive list.
 - Processes must be transparent and predictable. Unless there is an objective list to use as a reference, implementation would be messy and unfair to applicants.

Q2.3 - For approval, do letter(s) of support/non-objection from relevant governments or public authorities make sense?

- **Some arguments that have been raised in support:**
 - Brings all concerned stakeholder “to the table” early in the process. This process worked well for some parties in the 2012 round and resulted in some successful city TLDs.
 - Provides flexibility for different solutions. Some governments may have a “laissez-faire” approach while other governments may end up participating in governance of the string or pursuing joint initiatives with applicants and other parties.
 - Governments do not need to actively monitor the application process to determine whether ICANN is reviewing an application that the government may consider relevant.

- **Some arguments that have been raised against:**
 - Requirements for support/non-objection letters created a lack of predictability for some applicants, results in financial and logistical burdens.
 - Serves as a de-facto government “veto” for applications without sufficient legal justification.
 - Other parties need to monitor the application process and raise concerns about applications that impact their rights and interests. Governments should be able to do this as well.

Non-Capital City Names: Part 1 – Questions 3

1 – Eligibility, requirements, and evaluation procedures (from 2012)

- ⊙ **Q3 - Should usage of the proposed string still matter?**
 - Should it still serve as the determining factor for needing approval?
Why or why not?

Non-Capital City Names: Part 1 – Question 3: Discussion

Q3 - Should usage of the proposed string still matter? Should it still serve as the determining factor for needing approval? Why or why not?

- ⦿ **Some arguments that have been raised in support (usage matters):**
 - If a string is being used in a generic or brand context, there is no harm or risk of confusion and therefore support/non-objection process is not necessary.
 - Unique nature of a TLD does not give a government primacy over the use of that TLD.
 - Brand owners have rights to use names under trademark law.

- ⦿ **Some arguments that have been raised against (usage doesn't matter):**
 - TLDs are a unique resource. If a string is delegated to one party, others who have an interest in that string are prevented from using it.
 - Regardless of use, there are political, historical, economic, religious, and/or social connotations for the populations and communities affected and relevant governments/public authorities.
 - Even if the intended use is non-geographic, the word still may have geographic connotations and the applicant may benefit from positive associations related to the place.

Non-Capital City Names: Breakout Session

- ⦿ Reviewing questions 1-3 in the slides (now unsynced)
- ⦿ New input is welcome!
- ⦿ Support for existing arguments is also welcome
- ⦿ For those in the room, visit the station you are interested in and use the post-it notes
- ⦿ For those participating remotely, submit your input to the question in Adobe Connect chat using this format:
 - [Q1] your input [Q1], [Q2.1] your input [Q2.1], [Q2.3] your input [Q2.3], etc.

Wrap-up and next steps

Agenda Item #5

Work Track 5 Timeline – Current Estimates



Next Steps

Name of Agenda Item

Agenda Item #

Engage with ICANN – Thank You and Questions



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