

**Recommendations regarding Geographic & Geopolitical Reserved Names
Top Level (ASCII and Unicode strings):**

In order to approve the introduction of new gTLDs using geographic identifiers, ICANN shall require the solicitation of input from GAC members(s) and/or government(s) associated with the potential geographic string (ASCII and/or Unicode).

Additionally, Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.), or have other related applicable national laws must take appropriate action to comply with those guidelines and those national laws. Registries incorporated under the laws of those countries that have not expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Non-Member States.) must take appropriate action to comply with any related applicable national laws.

Second Level (ASCII and Unicode strings):

Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

Third Level (ASCII and Unicode strings):

Registries that register names at the third level and are incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

If any of the above recommendations are not supported by the community, it is recommended that further consultation with WIPO, the ccNSO and the GAC be conducted. Proposed questions for such consultation can be found in Section 5, Consultation with Experts, in the Geographic and Geopolitical Reserved Names Report in Appendix G.

Recommendations regarding 3-Character Reserved Names at the 3rd-Level

We do not recommend any change in the treatment of .prohibited third level labels. and .patterns of names staying with the registry.. While recognizing the right of registries to reserve names for a variety of technical, security and/or business reasons, the registry operators should provide some documentation for the basis of these reservations. The ICANN and IANA reserved names at the third level should be harmonized with the recommendations regarding those names at the second level.

If these or other registries reserving names at the third level are considering offering IDNs, the registry may wish to reserve IDN versions of the registry's reserved names, except where those name are abbreviations or acronyms.

APPENDIX H -- GEOGRAPHIC & GEOPOLITICAL RESERVED NAMES

Prepared by Mike Palage, Avri Doria, Jon Nevett

1. Background

Geographic and geopolitical domain name reservations are a relatively new class of reservations that were first incorporated into the ICANN registry contracts in connection with the 2004 sTLD round. However, the genesis for this type of reservation can be specifically tracked back to ICANN Board resolution 01-92²¹ involving issues surrounding the rollout of the .INFO gTLD. This topic has also received significant attention in other International fora, most notably the World Intellectual Property Organization's Second WIPO Internet Domain Name Process (hereinafter WIPO II Process).²²

As the WIPO II Process notes, "[t]his is a difficult area on which views are not only divided, but also ardently held."²³

It is important to note at the outset that geopolitical domain name reservations is a term that has not been widely used within the broader geographical identifier discussion. In fact, the term is only used once in a parenthetical in the entire WIPO II Process final report.²⁴

Given the lack of any legal construct involving the term geopolitical domain names, it is most prudent to use the terminology contained in the WIPO II Process final report as a framework for discussion. Specifically, geographical identifiers should serve as an umbrella term that includes not only country names, but names of places within countries²⁵

geographical indications²⁶

and names of indigenous peoples²⁷

The first action by ICANN to seek protection for this class of names was in connection with ICANN Board Resolution 01-92. This action was taken by the ICANN Board in response to the 9 September 2001 Government Advisory Committee (GAC) communiqué²⁸

sent by Dr. Paul Twomey acting in his capacity as GAC Chair, which states in relevant part: The GAC confirmed that this is an issue of considerable political importance and complexity that merits thorough study by qualified and competent experts. The issue also relates to the overall taxonomy of the DNS and its evolution concerning the expansion of the TLD space.

The GAC notes that the issue of geographical and geopolitical names is very complex and the subject of ongoing international discussion. Without prejudice to any future discussions, general policy or international rules in this area, and considering the very special nature of *.info*, and problems that have become apparent with the registration of such names in the sunrise period, the GAC agreed that interim *ad hoc* measures should

be taken by ICANN and the Registries to prevent avoidable conflicts in **.info**. The GAC agreed that the use of names of countries and distinct economies as recognised in international fora as second level domains in the **.info** TLD should be at the discretion of the respective governments and public authorities. It is important to note that the GAC communiqué was limited to just the **.INFO** top-level domain (TLD) citing the very special nature of that TLD. Also noteworthy is the fact that none of the other six proof of concept TLDs had formerly launched.²⁹

Notwithstanding the narrow construct of the GAC communiqué and the corresponding board action, the new registry contract language resulting from the 2004 sTLD round included several provisions dealing with geographic and geopolitical names which are summarized below.

E.Geographic and Geopolitical Names. All geographic and geopolitical names contained in the ISO 3166-1 list from time to time shall initially be reserved at both the second level and at all other levels within the TLD at which the Registry Operator provides for registrations. All names shall be reserved both in English and in all related official languages as may be directed by ICANN or the GAC.

NOTE: This is the exact provision contained with the **.ASIA** registry contract. The other 2004 sTLD registry contracts (**.CAT**, **.JOBS**, **.MOBI**, **.TEL** and **.TRAVEL** include the same language with the exception of **.as** may directed by ICANN or the GAC. which has been excluded in these contracts. There is no such corresponding provision in the **.AERO**, **.BIZ**, **.COM**, **.COOP**, **.INFO**, **.MUSEUM**, **.NAME**, **.NET**, **.ORG** or **.PRO** registry contracts.

In addition, Registry Operator shall reserve names of territories, distinct geographic locations, and other geographic and geopolitical names as ICANN may direct from time to time. Such names shall be reserved from registration during any sunrise period, and shall be registered in ICANN's name prior to start-up and open registration in the TLD. Registry Operator shall post and maintain an updated listing of all such names on its website, which list shall be subject to change at ICANN's direction. Upon determination by ICANN of appropriate standards and qualifications for registration following input from interested parties in the Internet community, such names may be approved for registration to the appropriate authoritative body.

NOTE: This is the exact provision contained with the **.ASIA** registry contract.

The other 2004 sTLD registry contracts (**.CAT**, **.JOBS**, **.MOBI**, **.TEL** and **.TRAVEL** include the same language but **.geographic locations** is replaced by **.economies**.. There is no such corresponding provision in the **.AERO**, **.BIZ**, **.COM**, **.COOP**, **.INFO**, **.MUSEUM**, **.NAME**, **.NET**, **.ORG** or **.PRO** registry contracts

2. Role for Geographic and Geopolitical Reservations

Protection afforded to Geographic indicators is an evolving area of international law in which a one-size fits all approach is not currently viable. The proposed recommendations below are designed to ensure that registry operators comply with the national laws for which they are legally incorporated/organized.

3. Recommendation of the Group

Top Level (ASCII and Unicode strings):

In order to approve the introduction of new gTLDs using geographic identifiers, ICANN shall require the solicitation of input from GAC members(s) and/or government(s) associated with the potential geographic string (ASCII and/or Unicode). Additionally, Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.), or have other related applicable national laws must take appropriate action to comply with those guidelines and those national laws. Registries incorporated under the laws of those countries that have not expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Non-Member States.) must take appropriate action to comply with any related applicable national laws.

Second Level (ASCII and Unicode strings):

Registries incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

Third Level (ASCII and Unicode strings):

Registries that register names at the third level and are incorporated under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly (.Member States.) must take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.

If any of the above recommendations are not supported by the community, it is recommended that further consultation with WIPO, the ccNSO and the GAC be conducted as described in the following section, Consultation with Experts.

4. Consultation with Experts

Because this topic has been discussed extensively in various international fora, the use of experts could prove beneficial. However, the scope of the expert involvement would likely be limited toward confirming the existing divided and ardently held views.³⁰

The reason that these experts are unlikely to assist in the advancement of any consensus position is rather articulately stated in Paragraph 287 of the WIPO II Process Final Report in which it states:

Both points lead us to conclude that we have reached the limits of what can be achieved legitimately through consultation processes, such as WIPO Internet Domain Name Processes or any similar ICANN processes. In other words, we agree with those commentators who are of the view that this particular question is one more appropriately dealt with by governments.

To date there are one-hundred and seventy-five WIPO Member States that have supported the protection of country names within the domain name system (DNS). Therefore, a representative from WIPO would be one potential expert to articulate the views held by these countries. However, the Delegations of Australia, Canada and the United States of America have opposed this protection.³¹ Therefore a representative from one of these Delegations would potentially constitute a second expert. A possible third expert would be a representative from the International Trademark Association (INTA) that has a standing committee on geographic identifiers. In addition to this consultation, the answers to the following questions would also be very beneficial to the working group.

Question #1 to WIPO:

In Francis Gurry's correspondence to ICANN dated 21 February 2003³², in Annex 2 Paragraph 7 (iv) states in relevant part that .the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs). citing the Summary by the Chair of the SCT dated 15 November 2002.³³

This appears to be a narrowing of the scope of protection originally sought during the second Special Session of the SCT in May 2002, where the chair concluded that .the protection should be extended to all top-level domains, both gTLD and ccTLDs..

However, in document WO/GA/30/2³⁴

prepared for the WIPO General Assembly and dated 7 August 2003, Paragraph 14 cites the original May 2002 report affording protection of country names in both gTLDs and ccTLDs.

Are WIPO Member States seeking protection for country names in just gTLDs as noted in Summary of the Chair dated 15 November 2002, or protection for country names in both gTLDs and ccTLDs as noted in the May 2002 and August 2003 documentation?

Question #2 to WIPO

If WIPO Member States are only seeking protection for country names in gTLDs, can WIPO point to any interventions or documentation following the May 2002 report that lead to the narrowing of this protection to just gTLDs?

Question #3 to GAC:

Paragraph 2.12 of the Draft GAC Principles and Guidelines on Public Policy Issues Regarding the Implementation of New gTLDs states in relevant part that .[e]ach government should have the right, without cost, to reserve or block its geographical name(s) in its' official language(s) in any new gTLD..

The scope of this protection on its face appears to represent an expansion of the protection documented through the WIPO Member States in the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications which calls for the following protection:

- (i) protection should be extended to the long and short names of countries, as provided by the United Nations Terminology Bulletin;
- (ii) the protection should be operative against the registration or use of a domain name which is identical or misleadingly similar to a country name, where the domain name holder has no right or legitimate interest in the name and the domain name is of a

nature that is likely to mislead users into believing that there is an association between the domain name holder and the constitutional authorities of the country in question;

(iii) each country name should be protected in the official language(s) of the country concerned and in the six official languages of the United Nations; and

(iv) the protection should be extended to all future registrations of domain names in generic top-level domains (gTLDs).

Can the GAC provide a basis for the broadened scope of protection they are seeking under Paragraph 2.12 of the draft GAC principles that call for an absolute right of denial/registration of a country's name while apparently abandoning the SCT recommendations that call for legal determination based on a number of factors.

Question #4 to the GAC and the ccNSO:

Paragraph 261 of the WIPO II Report cites eight ccTLD administrators that have adopted policies for .excluding the names of places in their countries from registration as domain names, at least under certain conditions.. Is the GAC or ccNSO aware of any ccTLD administrator that has provided protection for geographic indicators from another county, if so which ones?

Question #5 to the GAC and the ccNSO:

Is the GAC or ccNSO aware of any ccTLD administrator that has provided the protection sought by the GAC in Paragraph 2.12 of the draft GAC principles, if so which ones?

²¹ <http://www.icann.org/minutes/minutes-10sep01.htm>. It is also noteworthy that the passage of the resolution by the ICANN Board was far from unanimous (11 in favor, 7 in opposition).

²² <http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

²³ Paragraph 237, Second WIPO Internet Domain Process

²⁴ See Paragraph 55,

²⁵ As the Second WIPO Internet Domain Process acknowledges .the list of names of places in the world that may have been registered as domain names is virtually limitless. See Paragraphs 256, Second WIPO Internet Domain Process.

²⁶ Geographical indications refer to .indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.. See Paragraph 217, Second WIPO Internet Domain Name Process. Examples of Geographical Indicators include Champagne, Napa Valley, Cognac etc.

²⁷ See Paragraphs 262 thru 263 of the WIPO II Process.

²⁸ See <http://gac.icann.org/web/communiques/gac10com.htm>

²⁹ Although other proof of concept registry strings had already been added to the root, i.e. .BIZ, no other proof of concept registries were allowing domain name registrants to register resolving names at the time of the GAC communiqué.

³⁰ Paragraph 237 WIPO II Process Final Report.

³¹ Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Ninth Session, Geneva, November 11 to 15, 2002. SCT/9/8 Date 15 November 2002.

³² <http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

³³ http://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_8.pdf

³⁴ www.wipo.int/documents/en/document/govbody/wo_gb_ga/doc/wo_ga_30_2.doc

5. Summary of Relevant Information Sources

Second WIPO Internet Domain Name Process

<http://www.wipo.int/amc/en/processes/process2/report/html/report.html>

Q. WIPO GENERAL ASSEMBLY, TWENTY-EIGHTH (13TH EXTRAORDINARY) SESSION;
GENEVA, SEPTEMBER 23 TO OCTOBER 1, 2002

R. [HTTP://WWW.WIPO.INT/DOCUMENTS/EN/DOCUMENT/GOVBODY/WO_GB_GA/INDEX_28.HTM](http://www.wipo.int/documents/en/document/govbody/wo_gb_ga/index_28.htm)

S. [HTTP://WWW.WIPO.INT/EDOCS/MDOCS/SCT/EN/SCT_9/SCT_9_8.PDF](http://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_8.pdf)

WIPO Presentation to the GAC on GIs and WIPO II

<http://gac.icann.org/web/meetings/mtg15/RioPresentations/WIPOSecondProcess/WIPOSecondProcess.ppt>

Letter from WIPO to ICANN

<http://www.icann.org/correspondence/gurry-letter-to-cerf-lynn-21feb03.htm>

GAC Communiqué:

<http://gac.icann.org/web/communiques/gac10com.htm>

ICANN Board Resolution:

<http://www.icann.org/minutes/minutes-10sep01.htm>

ICANN Country Name Action Plan w.r.t. Afilias (.INFO)

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>

DNSO Resolution on Geographical Identifiers

<http://www.dns0.org/clubpublic/council/Arc06/msg00202.html>

GAC Commentary to DNSO Resolution:

<http://www.icann.org/committees/gac/names-council-resolution-commentary-26oct01.htm>

.COOP Community Names Program involving country names

<http://www.icann.org/tlds/agreements/coop/>

<http://www.nic.coop/information.asp>

www.coop/downloads/registrars/RegistrarBackgroundInfo.doc

<http://www.australia.coop>

<http://www.icann.org/montevideo/action-plan-country-names-09oct01.htm>