



Internet Business Council for Africa (IBCA) Comment on GAC Proposal for Protection of Geographic Names in New gTLDs

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The Internet Business Council for Africa (IBCA), an initiative introduced in 2012, is at the forefront of strengthening and facilitating the commercial relationship between the Developed nations and the African continent. We have analyzed the latest proposal by GAC on the geographic gTLDs and submit our comments below.

The protection of geographic names in the new gTLDs process 2014.

Introduction:

The GAC of ICANN worked several months during 2006 and 2007 in the document called "GAC principles regarding new gTLDs" that was finalized by the GAC during the Lisbon ICANN meeting in 2007.

The Applicant Guidebook as currently written establishes geographic names as: Capital city names, City names where applicants declare that they intend to use the gTLD for purposes associated with the city name, Sub-national place names listed in the ISO 3166-2, Regional names appearing on the list of UNESCO regions, Regional names on the UN's "Composition of macro geographical (continental) regions, geographical sub-regions, selected economic and other groupings.

It may be accurate that "Although these definitions of what is a geo name include approx. 5.000 names, it does not cover all the possible geo names in the world." It is observed that in the current new gTLD round many names have been registered, whereby out of the 1930 applications, Geographic gTLD applications were 66. This raises possibility of more applications in the next round, thus this creates a strong presumption that the names that may be registered may be geographic names yet registered by individuals or businesses who have already invested a great amount of money and strategy building this brand yet that name could possibly be a geographic name, not necessarily registered by that government or authority.

As much as the statement *"governments should keep the right to oppose the delegation of a top level domain (even if it is not included on that list) on the basis of its sensitivity to national interests. Furthermore, that right should be enhanced for future rounds..."*, may count, it should also be considered that it may not be possible to protect all names without jeopardizing the possibility of well developed brand name that relates to a geographic name.

A great example that has been cited by this report is the .amazon application.

GAC mandate and Scope

[Governmental Advisory Committee \(GAC\)](#) has come into sharp focus in the new gTLD program in terms of their role, scope and competence to manage the all emerging issues. GAC has yet to create its own operating principles that define transparency and accountability.

Also the knowledge base of the GAC members needs to be looked into, GAC has to prepare a guidebook on how to recruit and train its new members on the standing rules so that their position is not abused.

Overly broad suggestions

The 'geographic name' is not clearly defined. While the idea is to create a proper database to be used in the next round, it is also probable that this will be overly broad and not carefully defined, there is risk of denying users of these domain names advantage and giving all the authority to governments.

Geographic Names Database

Although potentially technically challenging the GAC should consider producing a comprehensive list of names to be included in the Geographic Names Database or Directory (GND) - which would include, for each data record: name, country(s), location, exact or approximate international grid reference using the Universal Transverse Mercator (UTM) Coordinate System, UTM Zone, etc.; concerned government/public authority, whether transnational or not (for example, a name like the Nile goes through several countries), etc. This GND should then be incorporated into a Geographic Information System that can be accessed by prospective geographic names TLD applicants.

In preparing their applications, the applicants would first of all search this GND, and obtain the essential information on the geoName regarding its availability, and which Government/Public Authority that has to be engaged in providing the required authorization, etc. This way, the process is streamlined and predictable, since there is a reference database that can be consulted. Therefore, applicants can apply for any names that are not in the GND. In short, public authorities dealing with Land Use and environmental planning processes already have methods of restricting the allocation of land (a geographic resource) that is already in use, and similar procedures can be adapted for the implementation of this suggested GND.

Regarding the use of geographical names as trademarks, this practice is already well established globally. Again, using the River Nile as an example, there would be many companies that are either already named as Nile Insurance or Nile Bank or Nile Hilton, Blue Nile Resort, etc. Even so, any of such

names are probably being used in several riparian countries that are associated with the River Nile Basin.

Most of the existing such trademarks or business names are derivatives of geonames rather than direct or near matches. Derivative names should not be treated as geographic.

Direct matches of existing trademarks to geoNames should also be established globally, and linked to the GND, so that existing trademarks that are related to geoNames can be used/allowed in TLD names,

Finally, there is need to be more specific in terms of preparing a comprehensive list of geographic names and putting such in a searchable database, with in-built GIS technology to guide applicants. This proactive method would reduce uncertainty, and also forestall the problem of first applying for a certain name, and then for such a name to receive a GAC Objection Advice, and for this to go through a convoluted process. There should be more predictability of which geographic names are allowed and which would not be allowed, and a reference database can assist in this regard.

Public Interest

Public interest in this new proposal should be properly defined; also care should be taken so as not to reserve to reserve all geographic related domain names at the expense of increasing the domain namespace and infringing on commercial interests which is also part of public interest.

Q. How will Public interest be secured in the instance of disagreements between ICANN and governments, what are the standards of remedy and who determines the roles of the parties?

Awareness

The report suggests that *“All countries should be encouraged to enhancing the ISO 3166-2 list by submitting official requests from national administrations, in a way that regions and sub-regions are included in this important reference list.”* However it must be noted that this could take many years and probably infringe on existing businesses who already registered these names, therefore the criterion of determining these names should be properly documented and thought out to prevent conflicts, also names of geographic locations could change from time to time and although this could be a rare occurrence, what are the steps to mitigate such scenarios.

Awareness is important to build the ISO 3166-2 list but this should be well guided to prevent the governments from violating the rights of businesses which could

border on online-censorship. ICANN's efforts for outreach especially in developing countries has been minimal and ineffective as it is being run by the ICANN insiders without proper introduction to new people, education to new frontiers is still wanting.

Summary:

- IBCA recommends that all applicants' geographic names and brand names that have been classified as geographic names of the current new gTLD process be allowed to give a documented review of their experiences for the particular names they have applied for. Proper questioners regarding the geo-applicant challenges should be developed to guide their input, without their valid input this proposal on protection of geographic names will not be complete.
- A panel of global external experts should be formulated to analyze the implications of the proposed and unprecedented expansion of the scope of protection of names with a geo geographical connotation.
- GAC's manual of roles and competence should be created to prevent the possibility governmental authorities blocking the internet development inadvertently
- The existence and application of international legislative implications should also be looked into to avoid burdening commercial interests and rights.
- Definitions of each clause and terms such as the 'geographic applications' be properly defined to determine implications on the scope.
- After all the policies have been prepared and awareness created a Geographic Names Database or Directory (GND)- which would include, for each data record: name, country, location, exact or approximate international grid reference using the Universal Transverse Mercator (UTM) Coordinate System, UTM Zone, etc should be developed. Derivative names should not be treated as geographic names.

Sincerely

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