



17 March 2009

Janis Karklins
Chairman of the Governmental Advisory Committee
Ambassador of Latvia to France
via email: janis.karklins@icann.org

Dear Janis

I am writing to you regarding a resolution adopted by the ICANN Board on 6 March 2009, at the recent Mexico City meeting. This resolution, in part, comes from the discussion between the ICANN Board and the GAC about the introduction of new gTLDs, and in particular, the protection of geographic names at the second level. The resolution in full, on the Protection for Geographic Terms for New gTLDs, is as follows:

Whereas, the GNSO's Reserved Names Working Group recommended that an objection mechanism be the sole basis for protection of geographic names. See <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm>.

Whereas, the GAC through the GAC Principles regarding New gTLDs recommended that country, territory, and place names should be protected at the top and second levels in new gTLDs. See http://gac.icann.org/web/home/gTLD_principles.pdf.

Whereas, version 2 of the draft Applicant Guidebook includes a compromise between the GNSO and GAC recommendations, requiring gTLD applicants for certain types of top-level geographical names to provide evidence of support or non-objection from the relevant governments or public authorities. See <http://www.icann.org/en/topics/new-gtlds/draft-evaluation-procedures-clean-18feb09-en.pdf>.

Whereas, the Board has discussed in detail the issues and implementation consequences raised by these various positions.

Resolved (2009.03.06.07), the Board is generally in agreement with the proposed treatment of geographic names at the top-level, and staff is directed to revise the relevant portions of the draft Applicant Guidebook to provide greater specificity on the scope of protection at the top level for the names of countries and territories listed in the ISO 3166-1 standard, and greater specificity in the support requirements for continent names, and post the revised position for public comment.

Resolved (2009.03.06.08), staff is directed to send a letter to the GAC by 17 March 2009 identifying the implementation issues that have been identified in association with the GAC's advice, in order to continue communications with the GAC to find a mutually acceptable solution. The Board would request a preliminary response by 24 April 2009 and a final report by 25 May 2009.



As reflected in the resolution, the Board believes that the treatment of geographic names, at the top level, in the Draft Applicant Guidebook provides a workable compromise between the GAC's advice contained in paragraph 2.2 of the GAC Principles regarding New gTLDs and the GNSO's policy recommendation 20, both are outlined in the table below.

GAC Principles	GNSO Policy Recommendations
<p>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.</p> <p>Paragraph 2.7: Applicant registries for new gTLDs should pledge to:</p> <ul style="list-style-type: none"> 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. 	<p>Recommendation 20. An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.</p> <p>Implementation Guideline P: ... Opposition must be objection based...</p> <p>Reserved Names Working Group Report: There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process (e.g., Recommendations 3 and 20 of the New gTLD Final Report) would allow national or local government to initiate a challenge; therefore, no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the string is not in violation of the national laws in which the applicant is incorporated.</p>

However, the Board does understand from recent meetings between the ICANN Board and the GAC, and the GAC communiqués of Cairo and Mexico City, that the GAC believes that paragraph 2.7 of the GAC Principles has not been adequately addressed in the Draft Applicant Guidebook.

In accordance with resolution, I am writing to you to seek the GAC's members input on possible options to resolve the outstanding implementation issues regarding the protection of geographic names at the second level.

Previous discussions between GAC members and ICANN staff on this issue have been inconclusive. You may recall, that in my letter of 2 October 2008, to the GAC, I advised that the blocking and challenge procedures for gTLD second-level registrations recommended by the GAC were challenging for the following reasons.

Blocking Procedures

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. ICANN will find it difficult 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.



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.

Challenge Procedures

Again, names with national or geographic significance are difficult to define, as is determining what constitutes an 'abuse' of a name. GNSO recommendation 16¹ 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 staff are 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.

While these challenges remain in terms of implementing elements of 2.7, recent discussions suggest that there may be possible mechanisms that offer protections to country and territory names at the second level. The elaboration of possible mechanisms by GAC members is sought, to enable further discussion of the feasibility of such mechanisms with a view to finding a workable solution for resolving this outstanding issue.

Timetable

The Board resolution provides a timeframe for arriving at a mutually accepted solution. This letter is intended as the next step (building upon past consultations and revisions to the Guidebook) toward finding a solution. ICANN staff and the GAC might work together in order to create a response by 24 April 2009 and a final report by 25 May 2009 as indicated in the Board Resolution.

I look forward to working through this issue with you and the members of the GAC.

Yours sincerely

A handwritten signature in black ink that reads "Paul Twomey".

Paul Twomey
CEO & President
ICANN

¹ Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.