



Comment Supporting the Release of Country and Territory Names at the Second Level

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

Comment:

ICANN opened a public comment period on a proposed amendment to the .NEUSTAR Registry Agreement, to implement a request submitted through the Registry Services Evaluation Policy (RSEP) process to allow the registration of all country and territory names currently required to be reserved by Section 4 of Specification 5 of the Registry Agreement¹.

The BC acknowledges that this application from Neustar is a test case that may have precedential effect on future similar requests from other .BRAND applicants. For the reasons set forth in this comment, the BC strongly supports the release of country and territory names at the second level for the .NEUSTAR registry and for future .BRAND registries.

Geographically-Targeted Domain Names And Content Benefit Both Brands And End Users.

Businesses and end users of the Internet will mutually benefit from easily navigable and geographically-targeted domain names and content. One of the primary goals of the new gTLD program is to “foster diversity, encourage competition, and enhance the utility of the DNS².” A significant aspect of this aim is for the ICANN community to work together to enhance Internet access and online commerce in developing nations.

Studies conducted by the Internet Society in developing nations have found that despite growing connectivity in their nations, Internet usage and electronic commerce have still not achieved their full potential due to a lack of localized content. The release of country and territory names at the second level directly addresses this issue by encouraging .BRAND TLD operators to create customized and relevant localized content for consumers in various countries and regions across the world, especially in developing nations with predominantly non-English-speaking populations³.

In addition to allowing businesses to engage more meaningfully with an increasingly geographically and culturally diverse consumer base, the release of country and territory names also permits businesses to exercise more control over the security and stability of their customized web sites. Business users with jurisdiction-specific web sites on third-party ccTLDs have been at the mercy of registry-wide security

¹ Release of country and territory names within the .NEUSTAR TLD, <https://www.icann.org/public-comments/ctn-release-neustar-2014-09-19-en>

² gTLD Applicant Guidebook, Version 2012-01-11, Preamble.

³ The percentage of English-speaking Internet users as of 2013 is at less than 30%, down from about 80% of Internet users in 1996. See INTERNETWORLDSTATS.COM, [Internet World Stats by Language](#) (last visited 2014).

breaches or volatile political developments⁴. The ability to offer geographically-targeted second-level domains on an entity's own secure .BRAND TLD will reduce the dependency on vulnerable third-party registries and thereby enhance security and trust in online commerce, particularly in the developing world. Creating a precedent that official communications will come from the country-specific domain of a .BRAND TLD will also help mitigate the issue of end user confusion due to the myriad of unauthorized web sites on certain ccTLDs and ccTLD variants (e.g., .com.cc).

Community and Legal Precedent Establishes No Confusion Regarding Country And Territory Names.

For closed registries whose TLD represents the trademark of a private entity and where all usage of the domain is directly tied to branded offerings, there should be no confusion regarding whether a country or territory second-level domain is an official conduit of an affected country. Indeed, the very basis of the .BRAND TLD model is for the brand to serve a unique source identifying function at the top-level, and for geographic names to serve a purely descriptive function at the second level. Thus, especially given the context of the underlying commercial site, consumers directed to COUNTRY.BRAND will instantly be aware that they are engaging with a geographically-targeted version of a company's official web site as opposed to a government property.

This conclusion is supported by a large body of arbitral awards and judicial decisions which have militated against any confusion with respect to country and territory names. For example, see:

City of Hamina v. Paragon Int'l Projects Ltd., WIPO Case No. D2001-0001 (March 12, 2001) (taking "definite exception to the ... view that rights to a unique geographical name should, evidentially as a matter of principle, 'be regarded to belong to the owner of the geographical area in question.'");

City of Aslinas v. Brian Baugh, NAF Claim No. FA0104000097076 (June 4, 2001) (recognizing that "descriptive geographical terms are in the 'public domain' in the sense that every seller should have the right to inform customers of the geographical origin of his goods.");

City of Dearborn v. Dan Mekled, NAF Claim No. FA0108000099602 (November 12, 2001) (observing that "City of Dearborn ... is a geographical designation, not a 'unique source identifier.'");

Stadt Heidelberg v. Media Factory, WIPO Case No. D2001-1500 (March 6, 2002);

City of Myrtle Beach v. Information Centers, Inc., NAF Claim No. FA0112000103367 (March 8, 2002) (holding that "the domain name [MYRTLEBEACH.COM] is not identical or confusingly similar" because "the City of Myrtle Beach has not demonstrated it owns a mark, common or otherwise, protected under the Policy.");

⁴ See e.g. eHacking News, [Pakistani Google, Yahoo, Apple, Microsoft hacked by Turkish group Eboz](#) (November 24, 2012) (High profile ccTLD webpages, including YAHOO, APPLE, HSBC, COCA COLA, SONY, HP and EBAY, were hacked through a combination of SQL injection and Cross Site Scripting employed against PKNIC, reconfiguring the DNS and rerouting legitimate servers to the hacker's server); see also DomainIncite, [IEDR Admits Blame for Hack that Brought down Google and Yahoo](#) (November 9, 2014) (High profile websites [YAHOO.IE](#) and [GOOGLE.IE](#) hacked through malicious PHP scripts and redirected to an Indonesia web site).

City of Lake Worth v. John C. Becker, WIPO Case No. D2003-0576 (September 18, 2003) (concluding that “any number of entities located in Lake Worth, Florida could use that city’s name geographically and descriptively in naming their goods and services.”);

City of Eagan v. Stacey Salberg, NAF Claim No. FA0902001247548 (March 24, 2009) (highlighting a trademark registration disclaimer “presumably mandated by the fact that ‘City of Eagan’ is a geographically descriptive term”).

Finally, several examples already persist where territory and country names are used for geo-targeted domain names in the existing .COM branded web space, absent any user confusion. For example:

[IKEA.COM](#) uses post domain path terms like [IKEA.COM.DO/IKEA-MAPA-REPUBLICA-DOMINICA](#);

COCA-COLA uses second level domains like [COCA-COLAUKRAINE.COM](#);

SONY Computer Entertainment uses subdomains including [ASIA.PLAYSTATION.COM](#);

[APPLE.COM](#) uses post domain path terms like [APPLE.COM/ASIA](#);

[MICROSOFT.COM](#) uses post domain path terms like MICROSOFT.COM.EN-GULF; and

The release of country and territory names at the second level for .BRAND registries is merely a logical extension of this well-established practice.

The BC Has Historically Advocated for the Release of Country and Territory Names for .BRANDS

This comment is consistent with the long-standing BC position that country and territory names should be released at the second level for exclusive, branded TLDs. In the BC’s May 2011 public comments regarding the new gTLD Registry Agreement, we proposed that single-registrant TLDs be exempt from the requirement to obtain express authorization from governments for each country and territory name:

*Single-registrant TLDs will reasonably want to create second level domains for their operating units or chapters in each country or region. (e.g., Canada.Canon or Haiti.RedCross).*⁵

Subsequently, in March 2013, the BC again advocated against strict second-level restrictions for single-registrant TLDs, stating in relevant part:

*The BC believes that the proposed new gTLD Registry Agreement should include an exception or a centralized mechanism for single-registrant TLDs to request release of reserved country and territory names.*⁶

In view of Neustar’s pending application and willingness to serve as a model for future .BRAND requests to utilize country and territory names at the second level, the BC again takes this opportunity to reiterate our position, supporting the ability of single-registrant .BRAND TLDs to register geographically-targeted domains for their diverse markets and operations around the globe.

⁵ 15-May-2011, BC Comments on New gTLD Registry Agreement, p.78 at <http://www.bizconst.org/wp-content/uploads/2014/06/BC+on+Final+App+Guidebook+May+2011+v3.pdf>

⁶ 20-Mar-2013, BC Comments on New gTLD Registry Agreement, p.7, at <http://www.bizconst.org/wp-content/uploads/2014/06/BC-Comment-on-new-gTLD-Registry-Agreement-FINAL.pdf>

Conclusion

For the foregoing reasons, the BC joins the Brand Registry Group in supporting a release of country and territory names at the second level for the .NEUSTAR registry and for future .BRAND registries.

In the alternative, the BC supports ICANN's introduction of a centralized and streamlined mechanism where .BRAND TLDs can request authorization from all governments in a single consolidated request.

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These comments were drafted by Andy Abrams, Martin Sutton, and David Fares, and approved in accordance with the BC charter.