

Protection of country names

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1. This submission addresses the question: “2. Taking into consideration the work of the previous WGEC and the Tunis Agenda, particularly paragraphs 69-71, what kind of recommendations should we consider?”

2. The specific proposed recommendation is shown as underlined text in paragraph 9 below.

Background

3. The Tunis Agenda states:

68. We recognize that all governments should have an equal role and responsibility for international Internet governance and for ensuring the stability, security and continuity of the Internet. **We also recognize** the need for development of public policy by governments in consultation with all stakeholders.

69. We further recognize the need for enhanced cooperation in the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues.

4. In 2000, the World Intellectual Property Organization was requested by 20 states to study certain intellectual property issues relating to Internet domain names that had not been considered in the First WIPO Internet Domain Name Process, including protection of geographic identifiers.²

5. WIPO duly studied the issues and, on 21 February 2003, informed ICANN³ that its Member States formally recommended, inter alia, that country names should be protected against abusive registration as domain names. The decision to make that recommendation was supported by all Member States of WIPO, with the exception of Australia, Canada and the United States of America, which dissociated themselves from the decision. Japan also expressed certain reservations. WIPO recommended that the protection of country names should be implemented through an amendment of the Uniform Dispute Resolution Policy (UDRP) and should apply to all future registrations of domain names in the gTLDs.

6. The recommendation was discussed in ICANN, but it was not agreed and, consequently, the UDRP was not modified. Thus, at present, the UDRP does not protect country names.

¹ <http://www.apig.ch>

² <http://www.wipo.int/amc/en/processes/process2/index.html>

³ <http://www.wipo.int/export/sites/www/amc/en/docs/wipo.doc>

7. Following the privatization of ICANN on 1 November 2016, this matter was brought to the attention of the ITU World Telecommunication Standardization Assembly (WTSA) in Addendum 22 to Document 42-E⁴, which states:

There are two main categories of Top Level Domains, Country Code (ccTLDs) and Generic (gTLDs). One of the differences between the administration of the ccTLDs and the gTLDs is the national sovereignty of the administration of the ccTLDs as opposed to the global and ICANN managed administration of gTLDs.

While WTSA focuses on ccTLDs, the recent expansion of generic TLDs initiated in 2012 by ICANN introduced many new applications some that have geographic implications, which require addressing various challenges, including resolution of various conflicts. **Therefore “special attention should be given to the issue of geographic gTLDs as a concept (in generic terms), as they intersect with core areas of interests of any state”.**

The submission to WTSA provides a summary of events relating to the delegation of the gTLD “.africa” and states:

These challenges to delegating a regional geographic Top Level Domain raises important principle concerns for the Africa region and others over the issue of jurisdiction, who should control the delegation of critical regional geographic names like dot Africa, the role of governments and intergovernmental organizations in the ICANN multi-stakeholder model and the effectiveness and reliability of government protection mechanisms for ccTLDs and geographic names related to their distinct regions.

The submission to WTSA proposed, inter alia, to instruct ITU-T Study Group 2:

2 to study necessary measures that should be taken to ensure that country, territory and regional names must be protected and reserved from registration as new gTLDs; and that these names should include but not be limited to capital cities, cities, sub-national place names (county, province or state) and geographical indications;

3 to study, in collaboration with relevant bodies, on ways and means to maintain the right of Member States to request the reservation and to oppose the delegation of any top-level domain (even if it is not included on that list) on the basis of its sensitivity to regional and national interests,

8. The matter was discussed at WTSA, but no agreement was reached on whether ITU-T should study the matter, and if so how⁵.

9. Consequently, it is proposed to recommend that the USA agree to transpose into its national law the WIPO recommendations cited above regarding protection of country names, so that they could be enforced in the US courts that have jurisdiction over ICANN.

⁴ <http://www.itu.int/md/T13-WTSA.16-C-0042/en>

⁵ See DT/60, <http://www.itu.int/md/T13-WTSA.16-161025-TD-GEN-0060/en>