29 November 2017

Responses and Clarifications to conditions and comments raised by the ccNSO Council, Government Advisory Committee (GAC) and At-Large Advisory Committee (ALAC) regarding involvement and engagement with Work Track 5 (Geographic Names) within the GNSO's Subsequent Procedures for new gTLDs Policy Development Process Working Group.

Ref:

1. ccNSO Letter to GNSO Council (sent via correspondence: https://gnso.icann.org/en/correspondence/sataki-to-bladel-01sep17-en.pdf)
2. ALAC email to WG chairs (https://community.icann.org/download/attachments/60490848/ALAC%20WT5%20Participation%2027%20October%202017.pdf?version=1&modificationDate=1511893397577&api=v2)
3. GAC email to WG chairs (https://mm.icann.org/pipermail/council/2017-October/020519.html)

To (via email):
Chairs of the ccNSO katrina@nic.lv,
ALAC alan.greenberg@mcgill.ca and
GAC manal@tra.gov.eg c.c. tom@acig.com.au

Dear Katrina, Alan and Manal,

Thank you for willingness to participate in Work Track 5 (WT5) of the New gTLD Subsequent Procedures PDP WG, which will be dedicated solely to the topic of geographic names at the top level.

We acknowledge receipt of your concerns and requirements for participation in WT5. As outlined in various meetings held during the recent ICANN60 meeting in Abu Dhabi, we are confident that the GNSO Policy Development Process by and large accommodates and hopefully mitigates the majority of your concerns.

The New gTLD Subsequent Procedures PDP WG was chartered by the GNSO and is therefore subject to the GNSO Policy Development Process as defined in Annex A[1] of the ICANN Bylaws, which directly references the PDP Manual.[2] Fortunately, the GNSO's PDP is extremely flexible, and by design ensures that only truly consensus-based recommendations are adopted and presented to the ICANN Board. All Working Groups are open to anyone wishing to participate, including those in the GNSO, ALAC, GAC, ccNSO or any person / entity that is not part of one of those organizations. Unless otherwise explicitly stated by a participant, it is assumed that each person participates in their individual capacity. An entity, constituency, regional body or Supporting Organization may, but is certainly not required, to designate specific representatives to speak on its behalf in order to participate in a PDP.

Decision making within GNSO Working Groups is also a unique aspect of the ICANN multi-stakeholder model. Established processes apply to each of the sub-teams of the Subsequent Procedures PDP Working Group (within Subsequent Procedures, these are called "Work Tracks"). The GNSO's PDP Manual incorporates the

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[1] See https://www.icann.org/resources/pages/governance/bylaws-en/#annexA
[2] See https://gnso.icann.org/en/council/annex-2-pdp-manual-01sep16-en.pdf

Working Group Guidelines,[3] which discourage the use of formal voting to determine the level of support (or lack thereof) for particular positions and recommendations. In fact, all final reports of Working Groups are required to explicitly set out the level of support for and/or objections to particular recommendations as well as the report as a whole. The determination of whether there is Consensus is guided by the specific definitions of "Full Consensus", "Consensus", etc. described in the PDP Manual.

These procedures state that in the event that there is strong disagreement by any one or more Working Group participants, the Chair(s) of the Working Group cannot find Full Consensus support for any particular position. In such a situation, at most it could be said that there is Rough Consensus for a position or recommendation. In addition, all dissenting opinions (whether from one person or a group of persons or entities) must be documented in the final report. Therefore, there is little possibility that if the GNSO, ALAC, GAC, ccNSO, or any other person or organization disagrees strongly with a position taken by the Work Track, that the Chair(s) could declare Full Consensus for that position. In addition, if more than one group were to express strong disagreement to a position taken by the Work Track, it would also be difficult for the Chairs to declare a Rough Consensus for that position, which generally serves as a minimum level of Consensus needed for the GNSO Council to adopt a PDP WG's recommendations. Although there is no "veto right" for any one person, entity or organization, there are built-in layers of protection for all participants and their views.

There are also processes built into the GNSO PDP and documented in the PDP Manual for formally disputing the Working Group Chair's designation of the level of Consensus (or lack thereof). Finally, even if the Working Group Chairs were to declare Consensus, and if the GNSO Council adopted the recommendations set out in the Working Group's Final Report, nothing in the GNSO's processes or procedures precludes the GAC, ccNSO or ALAC from providing separate policy and/or advice to the Board. Stated differently, participating in the GNSO process does not (and cannot) in any way waive any rights for any Supporting Organization or Advisory Committee to later object to the output of a GNSO process.

We believe that the processes described above address and incorporate the concerns that have been stated. Any changes to the PDP processes as defined in the ICANN Bylaws, including those in the PDP Manual, are subject to a formal Bylaws Amendment process or, in the case of the PDP Manual, public comment and Board oversight and review. Therefore, absent any formal amendments, the New gTLD Subsequent Procedures PDP WG must act in accordance with those documents. Working within this framework, the Terms of Reference for WT5 will seek to innovate, as well as to integrate many of the processes the community has determined are beneficial, including those that have been applied in Cross Community Working Groups. This includes having multiple readings prior to considering positions adopted, rotating conference call schedules, and inviting leadership participation from each of the SO/ACs. The Terms of Reference for WT5 will be mutually agreed by the WT5 Co-Leads and ultimately the members of WT5 and the full PDP Working Group. If any of the Co-Leads of WT5 wishes to consult with their individual Supporting Organizations and/or Advisory Committees, he or she may do so, provided, however, that substantive work on the issues may still continue while the Terms of Reference are being considered.

We consider WT5 an opportunity to better engage the broader ICANN community in the GNSO's PDP work and look forward to working with you and the wider community in a collaborative and inclusive manner. We believe that challenging issues such as these, in which many have strong interest, are best suited to full participation from the ICANN multi-stakeholder community.

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[3] See https://gnso.icann.org/en/council/annex-1-gnso-wg-guidelines-01sep16-en.pdf

If, at any stage, during the course of WT5 operating, you would like to clarify or discuss procedural issues, we would most certainly welcome that conversation.

Best regards,

Cheryl Langdon-Orr and Jeff Neuman (PDP WG Co-Chairs)