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STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS

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THE STATUS OF COUNTRY NAMES IN THE .INFO TOP-LEVEL DOMAIN

Document prepared by the International Bureau

1. As explained in document SCT/S1/3, many names of countries and names of places within countries have been registered in .INFO during its Sunrise Registration Period by private persons or entities, in seeming violation of the .INFO sunrise registration conditions. This development has met with disapproval of several governments and action has been taken within the framework of the Internet Corporation for Assigned Names and Numbers (ICANN) to attempt to redress the situation. This memorandum describes those actions with a view to providing background information for the work of the special sessions of the SCT.

2. The problem of the registration of country names in the Domain Name System (DNS) by registrants unconnected to the countries in question predates the entry into operation of the .INFO Top-Level Domain. Many examples of such practices in the .COM, .NET and .ORG Top-Level Domains are referenced in Annex XII to the Report of the Second WIPO Internet Domain Name Process and the Report itself states the following with regard to the phenomenon:

“Current registration policies in the open gTLDs allow persons or entities to appropriate for themselves, as domain names, terms with which they otherwise have no, or only a loose, connection, to the exclusion of countries and peoples whose

history and culture are deeply and inextricably linked to the terms in question. It should come as no surprise that such registrations are a source of concern for these countries and peoples, particularly if the domain names are exploited commercially or used in a manner that is deemed inappropriate or disrespectful. As the number of gTLDs expand, the value of a registration in any one of them may correspondingly decrease, and it is possible that the problem will become less acute. However, as long as domain names are used as a de facto Internet directory, it is unlikely that the problem will disappear completely, particularly in relation to the more visible and popular TLDs.”

(See Chapter 6, paragraph 275)

3. The Report also draws attention to the following characteristics of the debate concerning the appropriateness of the registration of country names as domain names, as they emerged from the Second Process:

- (i) “The question of the appropriateness of the registration of country names in the gTLDs is inextricably linked by some governments to what they perceive to be their national sovereign interest.
- (ii) “Protecting country names in the gTLDs would require or amount to the creation of new law, a function traditionally reserved for States.”

(See Chapter 6, paragraph 286)

4. At the meeting of the ICANN Governmental Advisory Committee¹ (GAC) in Montevideo, Uruguay on September 7 and 8, 2001, several members of the Committee expressed serious concern regarding the registration of country names in .INFO, because of the special nature of this TLD and its emphasis on information provision. Particularly in light of the latter characteristic, these members were of the view that the registration of country names in .INFO should be reserved for governments. However, by the time these discussions were taking place, many names of countries had already been registered by private parties during the .INFO Sunrise Registration Period (which had run from July 25 until August 28, 2001), often (but not always) in seeming violation of the applicable sunrise registration conditions.

5. After debate, the GAC, on September 10, 2001, issued a Communiqué on the issue, which reads as follows:

¹ The Governmental Advisory Committee (GAC) of ICANN is an advisory committee comprising representatives of “national governments, multinational government organizations and treaty organizations, and Distinct Economies as recognized in international fora.” In accordance with the ICANN Bylaws the GAC's role is to “consider and provide advice on the activities of the Corporation as they relate to concerns of governments, particularly matters where there may be an interaction between the Corporation's policies and various laws, and international agreements.”

The GAC operates as a forum for the discussion of government interests and concerns, including consumer interests. It is an advisory committee, and as such has no legal authority to act for ICANN, but reports its findings and recommendations to the ICANN Board.

“The GAC continued its discussions initiated in Marina del Rey, November 2000 on the use of geographical and geopolitical concepts, particularly as second level identifiers. The GAC confirmed that this is an issue of considerable political importance and complexity that merits thorough study by qualified and competent experts. The issue also relates to the overall taxonomy of the DNS and its evolution concerning the expansion of the TLD space. The GAC recalls its communiqué from Marina del Rey, November 2000 to the effect that WIPO member states had asked WIPO to consider and make recommendations in this area.

“The GAC notes the WIPO Report's recommendations concerning the registration of geographical and geopolitical concepts. The GAC looks forward to further consideration of the subject matter by the WIPO Member States, in particular with regard to the possible need for new international rules in this area.

“Meanwhile the GAC considered the situation arising from the current pre-registration of country names in the .info ‘sunrise period’ that had been drawn to its attention by ICANN. The GAC notes that the issue of geographical and geopolitical names is very complex and the subject of ongoing international discussion. Without prejudice to any future discussions, general policy or international rules in this area, and considering the very special nature of .info, and problems that have become apparent with the registration of such names in the sunrise period, the GAC agreed that interim ad hoc measures should be taken by ICANN and the Registries to prevent avoidable conflicts in .info. The GAC agreed that the use of names of countries and distinct economies as recognized in international fora as second level domains in the .info TLD should be at the discretion of the respective governments and public authorities.

“Therefore the GAC recommends that the names of countries and distinct economies, particularly those contained in the ISO 3166-1 standard, as applied by ICANN in identifying ccTLDs, should be reserved by the .info Registry, (or if registered in the Sunrise Period challenged by the Registry and, if successful, then reserved) in Latin characters in their official language(s) and in English and assigned to the corresponding governments and public authorities, at their request, for use. These names in other IDN character sets should be reserved in the same way as soon as they become available.

“The GAC also draws the attention of ICANN and the Registries to the fact that a large number of other names, including administrative sub-divisions of countries and distinct economies as recognized in international fora , may give rise to contested registrations. Accordingly the GAC recommends that Registrars and eventual Registrants should be made aware of this.”

6. Following this GAC Communiqué, the ICANN Board adopted the following resolution on September 10, 2001:

“Whereas ICANN's Governmental Advisory Committee (GAC) has concluded that ‘the issue of geographical and geopolitical names is very complex, and the subject of ongoing international discussion,’ and has stated its belief that these issues are particularly important in the context of the new Top Level Domain .info considering its ‘special nature’;

“Whereas, the GAC has therefore suggested that ‘interim ad hoc measures should be taken by ICANN and the Registries to prevent avoidable conflicts in .info’;

“Whereas, the Board has serious questions about the technical feasibility and practicality of responding to this concern through reservations of specific domain names, but it also appreciates that without some action to maintain the status quo ante, the ‘ongoing international discussion’ referenced in the GAC communication could be preempted by developments in the registration of .info names;

“Whereas, under all these circumstances the Board has determined that it is appropriate to take temporary steps to prevent the registration of such names in order to allow it and the community the time to consider carefully this issue and determine what if any policy should be adopted with respect to it;

“Whereas, the registry operator for .info has informed ICANN staff that it plans to timely challenge any facially unqualified registrations, including registrations of the names of countries and distinct economies contained in the ISO 3166-1 list;

“Whereas, the contract between ICANN and Affilias, the registry operator for .info, provides in Section 3.6.3, that ICANN may instruct the Registry Operator ‘to maintain the registration of up to 5000 domain names within the domain of the Registry TLD for use by ICANN . . .’;

“Whereas, the invocation of this contractual power with respect to (1) the names of countries and distinct economies contained in the ISO 3166-1 list that have not yet been registered during the .info Sunrise Period, and (2), following a successful challenge by the registry operator for .info, any such names returned to the database prior to any further attempt to register those names would have the practical effect of preserving the status quo until the completion of further consideration within ICANN and elsewhere over appropriate treatment of these names;

“Resolved [01.92], the General Counsel is directed to take appropriate action to preserve the Board's ability to take action with respect to the registration in .info of names of countries and distinct economies contained in the ISO 3166-1 list , including exercising ICANN's contractual power to instruct the Registry Operator for .info to maintain the registration of such names that have not yet been registered during the Sunrise Period, and any other such names that are returned to the database following a successful challenge by the Registry Operator, for a period to extend through ICANN's March 2002 meeting, unless that period is shortened or extended by further Board action;

“Further resolved [01.93] that the President is directed to propose to the Board, within the next 30 days, an action plan for rapid analysis of the technical and other issues related to the concerns raised by the GAC.”

7. On October 9, 2001, the President of ICANN proposed his plan of action, as required by the ICANN Board. After summarizing the GAC Communiqué and the Board Resolution, this document first describes how the Board Resolution has been implemented:

“On 21 September 2001, ICANN's General Counsel, Louis Touton, sent Afiliias a letter. The letter requested that Afiliias register all 3166-1 names that had not been registered during the ‘sunrise period’ in the name of ICANN. The letter continued that should any existing ‘sunrise’ registrations of a name on the list be successfully challenged and cancelled, Afiliias should register all such names to ICANN as well for safekeeping, pending consideration by the ICANN community of a longer-range disposition of these names. Attached to the communication was a list of 327 names at issue, to be put on reserve until discussions could proceed regarding whether ICANN should allow the agreed arrangements to proceed or to preclude them. The letter cited subsection 3.6.3 of .info Registry Agreement, which allows the Registry operator to ‘maintain the registration of up to 5000 domain names within the domain of the Registry TLD for use by ICANN and other organizations responsible for coordination of the Internet's infrastructure.’

“The list provided to Afiliias contained both English-language country and distinct economy names, as listed on the ISO 3166-1 standard, and their equivalents in ‘official’ languages. (The name of the ‘European Union’ was also added in light of the Board resolution 00.74.) A series of rules was employed to translate this list of names to a form consistent with the ‘host names’ format used in domain names.

“Afiliias carried out the requested temporary registration with respect to the names that had not previously been registered in the ‘sunrise’ period. Approximately 130 names were registered in this way. Additionally, as requested by ICANN, any cancellations of registrations that result from successful challenges to country names registered in the ‘sunrise’ period will also be temporarily registered in ICANN's name.”

8. In terms of the plan of action required by the ICANN Board Resolution, the President proposed the following:

“1. To allow discussion of the issues raised by the GAC request concerning .info names, maintain reservation of the 327 .info names.

“The interim reservation of country and distinct economy names in .info enables the ICANN community to evaluate the technical and other issues related to the concerns raised by the GAC, and whether the temporarily reserved names in .info should be made available to governments and distinct economies at their request, as requested by the GAC and agreed to by Afiliias. The reservation should be maintained until the March 2002 ICANN meeting in Accra.

“2. Convene a discussion group to explore appropriate ways of addressing the short-term issue of the disposition of the 327 .info names.

“The GAC communiqué and ICANN Board resolutions in Montevideo show a divergence of opinions regarding the GAC's recommendations concerning country names within .info. To help resolve this divergence, a discussion group should be convened consisting of members of the ICANN Board and the GAC. In addition, representatives of Afiliias and WIPO should be invited to join the group. The discussion group should invite input to the specific issue of assignment of these 327 names from the DNSO and other interested parties within the Internet community.

“The discussion group should address at least the following issues as part of its analysis. It should be emphasized that there is now a precise proposed list available that has been derived from ISO-3166 and that this list has been endorsed by GAC, that is, the technical problems of which country lists to select has been superseded by the pragmatic acceptance of a precise list of names.

“(a) Should ICANN prohibit the agreed arrangements for the assignment of up to the 327 of the temporarily “frozen” .info names to governments for use to support official informational websites? Are there considerations that require prohibiting the agreed arrangements?

“(b) Would assignment of these .info country names impede future discussions regarding the general policy for country or distinct economy names in other TLDs?

“(c) Would allowing the agreed arrangement for the .info country names create a precedent that could lead to similar requirements for other TLDs? Is the GAC willing to commit that reservations of country distinct economy names will not be sought in other TLDs at least until the outcome of the WIPO-2 discussions?

“The discussion group's conclusions should be provided to the ICANN Board before the Accra meeting in March 2002.

“3. Encourage the Domain Name Supporting Organization to evaluate possible approaches for longer-term arrangements concerning use of geographic names within the DNS, including having the matter addressed in other fora such as the WIPO-2 process.

“In addition to addressing the short-term issue of .info names as described above, attention should be given to the longer-term issue of how country names should be treated in other TLDs. This longer-term issue was raised in the November 2000 GAC communiqué and is also the subject of discussion within the WIPO-2 process and other intergovernmental fora.

“The Domain Name Supporting Organization should be encouraged to consider this long-term issue. It should include in its consideration whether the issue is better addressed outside the ICANN process, such as the WIPO-2 process and other intergovernmental fora.”

9. Finally, on October 11, 2001 the Names Council of the Domain Name Supporting Organization² issued the following resolution with respect to the reservation of geographical names. In this Resolution, the Names Council advises:

² The Domain Name Supporting Organization (DNSO) is one of three organizations within ICANN, known as “Supporting Organizations,” that develop and recommend policies concerning the Internet's technical management within their areas of expertise. The DNSO advises the ICANN Board on policy issues relating to the domain name system (DNS). The Names Council is responsible for the management of the consensus-building process of the DNSO and consists of representatives selected by each of seven DNSO constituencies, which currently are: (1) ccTLDs; (2) commercial and business entities; (3) gTLD

“1. That while it understands the concerns of the GAC, caution should be exercised to avoid a short-term reaction to a problem that is not inherent to dot info.

“2. That there is not a full understanding of the implications for suppliers and users of retrospective action of the kind GAC seeks.

“3. That, due to the inherent complexity, the best forum for governments to seek solutions to the problems perceived by the GAC is the existing forum of such intellectual property expertise, namely the inter-governmental specialized UN agency, the World Intellectual Property Organization (WIPO) combined with the existing forum for representing the internet community in policy making, the DNSO, and other relevant stakeholders.

“4. That any technical reasons for the reservation of the two-letter country codes in ISO 3166-1 do not extend to country names.

“The Names Council therefore calls upon the ICANN Board:

(a) to recommend to the GAC that it reconsiders its recommendation in this matter in the light of the work already in progress at WIPO following the recent WIPO report *The Recognition of Rights and the Use of Names in the Internet Domain Name System*, and,

(b) to encourage the GAC and all interested parts of the ICANN structure to contribute to WIPO’s work in this respect.

(c) to invite the Names Council to participate in the discussion group on ISO 3166-1 names.”

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[Footnote continued from previous page]

registries; (4) ISPs and connectivity providers; (5) non-commercial domain name holders; (6) registrars; and (7) trademark, other intellectual property and anti-counterfeiting interests.