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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. Since the publication of document SCT/S1/4 on the status of country names in the .INFO top-level domain, the Government Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) issued, on October 26, 2001, a Commentary on the Names Council Resolution of October 11, 2001. In its Commentary the GAC states as follows:

“GAC has comments and reservations about the Names Council resolution. In the interests of a transparent and informed discussion, and hopefully with a view to a resolution of any outstanding difficulties, GAC submits this commentary for the consideration of ICANN and all other parties concerned.

“GAC would also recall that this is not the first time that it has addressed this issue. In its November 2000 Marina del Rey opinion on new gTLDs, GAC stated that:

“3.5. The GAC discussed geographical, geopolitical, and ethnic concepts in relation to new gTLDs. These discussions will continue in subsequent meetings of the GAC.

“3.6. The GAC notes that WIPO Member States have asked WIPO to consider and make recommendations on issues related to bad faith, abusive, misleading or unfair use of personal names, International Non-proprietary Names (INNs) for Pharmaceutical Substances, names of international intergovernmental organizations, geographical indications, indications of source or geographical terms, and trade names.

“3.6.1. WIPO’s report may lead to the development of policies in these areas. In these circumstances, the registration policies for new gTLDs, as approved by ICANN, could make reference to the WIPO 2nd Domain Name Process and provide for ready adoption of any ICANN policies resulting from this process. Accordingly, should registration policies initially implemented by new gTLDs allow for registrations of names in any of these categories, registrants should be made aware that the adoption of such policies may have potential impact on registrations.

“Had this advice been taken at the time, any registrant in the new TLDs registering a name in any of the categories of names addressed by the WIPO report would have done so in the full knowledge that a policy development process arising from the WIPO report could put at risk those registrations. GAC’s attention was drawn to the registration of large numbers of country names in .info during the sunrise period and upon further investigation it was evident that a large number of these registrations had not met the necessary criteria. In the circumstances, and in light of its previous statements, the GAC advised ICANN to take steps to reserve country names in .info and assign them to the corresponding governments and public authorities, at their request.

“Such action provides an option, within a small part of the DNS, for many countries that have expressed serious concerns about this issue. The GAC’s recommendation in Montevideo is a focused response to an issue that is of great concern to many countries.

“GAC is also aware that many governments that may have a concern about the registration of their country names in .info are not yet aware of these developments. Furthermore, registration of a domain name tends to create expectations of continuing use by Registrants. In the circumstances, the GAC’s advice sought to avoid conflict between such expectations and the expressed interest of a number of countries to ensure that country names are used in the interests of the general public in the country concerned.”

2. Specifically with regard to the Names Council Resolution of October 11, 2001, the GAC Commentary states as follows:

“It follows that the resolution that has been adopted by the Names Council raises several specific problems from GAC’s point of view. In general, the debate within the DNSO appears not to recognise the major effort made by GAC members to circumscribe and limit their requirement for reservation of the names of countries in

.info according to ISO 3166-1, as well as actively seeking cooperation with Afiliás regarding the approach.

“The GAC, provides the following comments in relation to aspects of the Names Council’s resolution:

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.

The GAC acknowledges that the problem is not inherent to dot info, however, the GAC made the recommendation to the ICANN Board because of the ‘special nature of .info’ and in response to significant concerns raised with the GAC prior to the Montevideo meeting. It has not suggested that the reservation be applied to any other gTLD.

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

The GAC discussed their proposal with Afiliás staff during the Montevideo meeting. The reservation as recommended by the GAC, does not hinder Afiliás in the administration of their registration process of names in .info and as such, there are no retrospective implications for suppliers and users.

It should also be remembered that the GAC first flagged concerns about the use of geographical and geopolitical names as an issue in November 2000. In particular, the GAC specifically recommended that the issues under consideration in the WIPO 2 report and the possible impact of ongoing policy discussions be raised with registrants.

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 specialised 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.

WIPO is a member of the GAC and as such, the GAC is aware of the work being undertaken by WIPO in this area. WIPO has referred the question back to its member governments who have decided on the immediate follow-up.

It must also be acknowledged that as the domain name system operates in a dynamic environment, the GAC is aware that it may be called on to provide advice in specific areas that may precede the work of inter-governmental organisations such as WIPO. In this vein, ICANN is to be commended for taking action, as it has done.

“In response to the request to 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.

The GAC supports the notion that all interested parts of the ICANN structure contribute to WIPO’s work not only in respect to geographic identifiers , but in relation to the work of WIPO more generally. Many members of the GAC are also Member States of WIPO and as such are well-informed on the work being undertaken.

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

The GAC welcomes the opportunity to discuss the issue with the DNSO on the understanding that the interested parties, including governments can participate effectively.

“In conclusion, the GAC would welcome further discussion with the DNSO and Names Council members in order to clarify the arguments on both parts. However, the GAC disagrees with some of the arguments and conclusions in the Names Council Resolution of 11 October 2001. GAC members will be glad to participate in the Action Plan recently announced by ICANN in this respect.”

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