

## **Comment by the GeoTLD Group on the Proposed Measures for the Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes.**

The GeoTLD Group is an Interest Group of the Registry Stakeholder Group (transitioning to an Association Member of the RySG). The group represents 26 Members and 33 Geographic New gTLDs.

Our GeoTLDs are by definition either owned, in contract with or have the backing of their local government. As such they are particularly sensitive to remaining fully compliant with local law. As always, any rule, regulation or requirement that emerges from the ICANN Registry Agreement, its bylaws or any advice from foreign governments, may not be implemented if they are contrary to local, national or nationally supported supra-national laws and regulations.

To this extent we would like to highlight two legal areas which would prevent most of our TLDs from blocking or transferring 2-letter country code domain names in our TLDs:

### **Cartel and Competition Law issues**

The German Cartel and Competition laws impacted the release of 1 and 2-character domain names within the .de zone in 2009. This led the privately operated ccTLD manager DENIC to release all previously reserved domain names on 23 October 2009, making them available on “first come, first served” basis.

The German high court ruled that even if there was a long-standing registration policy the Registry Operator could not withhold domain names as it was deemed discriminatory. This level playing field requirement also applies for the new gTLD registries based in Germany; and may have a similar impact on most European markets.

German courts would regard as discriminatory the practice of withholding on behalf of anyone a given domain name, let-alone on behalf of a foreign ccTLD operator or foreign government, without any legal right to the name in Germany. Should the withholding be legally challenged the Registry Operator would have no choice but to release it.

### **Taxation issues**

The market value of short domain names is high by nature. This fact applies to 2-letter domain names and a benchmark of mature ccTLDs or gTLDs shows that they are exchanged on the after-market for anything between EUR 10,000 and EUR 1,000,000; a valuation that is often exceeded in .com.

Less mature gTLDs may not yet reach 7-figures but several 2-letter domains have already reached 5-figure transaction values.

Should our GeoTLDs be required to register these high value domain names at nominal price, much under their market value; local tax authorities may be liable to apply sales taxes on their potential rather than transacted value. With local sales tax reaching 20% in some of our markets, this would have a 6-figure loss per domain name; a level that is not acceptable to our members.

We would like the pricing clarified in the proposal and to be authorized to set the value of these domain names at our own discretion at Premium Domain Name rates. The value set for the proposed Exclusive Availability Pre-Registration Period would be the same as in General Availability setting the “the applicable country-code manager or government” on par with the rest of the market.

Beyond the purely legal reasons we object on the following grounds:

### **Market Competition issues**

There is an inherent aspect of competition between our GeoTLDs and their local ccTLDs. Even if some of us maybe managing a ccTLD and GeoTLDs, the two have competing imperatives. Giving the ccTLD or its government the ability to seize or lock valuable assets, or to acquire them at a fraction of their cost creates an unfair advantage against our GeoTLD Operations.

### **Lack of Evidence**

Governments represented in the GAC have not proven, let alone offered any evidence, how 2-letter country code domain names are likely to cause confusion with the 2-letter country code top-level domain. We still question why 2-letter labels matching country codes should be considered differently from any other second level 2-character labels.

### **Nexus**

A number of our TLDs include nexus requirements in their registration policies, others may offer language or other content related requirements. We object to any registrant, government or not, being able to by-pass these requirements.

The current wording the Exclusive Availability Pre-Registration Period stipulates that “all registrations will remain subject to compliance with all other requirements in the registry agreement”. We would argue that they should also comply with the TLD’s eligibility and registration policies.

Further, should nexus or other eligibility requirements impede de facto any registrations from foreign governments, we would argue that, as is already the case for Specification 13 signatories, Exclusive Availability Pre-Registration Period be waived.

## **TLD Policies**

In line with the above mentioned Nexus requirements, we would want to ensure that any registrant, including government entities or their representatives under this program, be subject to all existing Registration and other policies within the TLDs. Should the registrant (government entities or their representatives) fail to qualify or fail to maintain their Registration criteria according to the TLD Policy, we would like to reserve the right to remove the registered name.

Having been offered to and lost by the registrant, the TLD should have the right to automatically release the name and make it available to any other eligible registrant.

To conclude, we remain open to the idea of setting protections to avoid the confusion that our 2-letter domain names may represent with their matching ccTLD, and are available to discuss including wording to that effect in our policies.

This said, we object to blocking, freely granting or underselling these names to anyone for the sole purpose of avoiding potential abuse, when they could be of value to legitimate users.

Best Regards,

The GeoTLD Group Executive Committee, on behalf of the GeoTLD Group.