

## **Public Comments on Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes**

The measures can be found here:

<https://www.icann.org/en/system/files/files/proposed-measures-two-char-08jul16-en.pdf>

The public comment announcement:

<https://www.icann.org/public-comments/proposed-measures-two-char-2016-07-08-en>

The Non-Commercial Stakeholder Group (NCSG) of the Internet Corporation for Assigned Names and Numbers (ICANN) finds the proposed measures to be unneeded, unduly restrictive, and inimical to the interests of domain name users.

1. We do not find sufficient justification for governments or country-code top-level domains (ccTLD) operators to control the allocation and registration of the second-level domains that happen to correspond to two-letter country codes. For example, we do not believe India should have control over the allocation of “in.love.”

2. The Governmental Advisory Committee (GAC) could not present consensus advice in their Los Angeles Communiqué about the registration of two letters that correspond to country codes at the second level. Public comments were in favor of releasing these two-letter second-level domain names. The Board asked ICANN staff to come up with efficient measures for the release of these domain names:

“Resolved (2014.10.16.14), the proposed registry service for the release of two-character domains in the gTLD [generic top-level domain] namespace does not create a reasonable risk of a meaningful adverse effect on security and stability, and the Board authorizes the President and CEO, or his designee(s), to develop and implement an efficient procedure for the release of two-character domains currently required to be reserved in the New gTLD Registry Agreement, taking into account the GAC's advice in the Los Angeles Communiqué.”

We believe that the measures that ICANN staff took were not efficient,<sup>1</sup> and gave the governments too much control over the registration and allocation of two-character ASCII labels at the second-level, despite the fact that there was no consensus in the end on the issue within the GAC and the public comments were in favor of releasing the domain names.<sup>2</sup>

Further, given that the GAC in its LA Communiqué said, “The GAC recognizes that two-character second-level domain names are in wide use across existing TLDs [top-level domains], and have

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<sup>1</sup> The measures can be found here: <https://www.icann.org/resources/two-character-labels>.

<sup>2</sup> The Board resolution stated that public comments were in favor of releasing the Letter/Letter Two-Character ASCII Labels

not been the cause of any security, stability, technical, or competition concerns,” the proposed measures to avoid confusion instead add complexity (i.e., they are effectively inefficient), are disproportionate to the need, and are, therefore, unwarranted.

3. ICANN stresses that it “takes into consideration the feedback provided by [the] community and creates finalized criteria for approval.” As such, ICANN also said, “The current framework of the Authorization Process, whereby a registry submits an authorization request and relevant governments may submit comments, is not expected to change. However, we believe the finalized criteria for approval will help everyone with a more clearly defined standard with which ICANN can evaluate future requests.”<sup>3</sup>

The fact that ICANN is not going to change the current authorization framework, which gives control to the governments (and even ccTLD operators) for approval of Letter/Letter Two-Character ASCII Labels, is of significant concern. Moreover, it is not acceptable that ICANN will not change its approach despite having no community consensus for its actions.

4. The announcement for public comment said, “From *the individual governments' and registry operators' inputs, and taking into consideration the GAC's advice*, ICANN created a list of measures a registry needs to implement in order to release letter/letter two-character ASCII labels at the second-level. This list, the Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes [PDF, 267 KB], is currently posted for public comment.”<sup>4</sup>

This seems to be a very GAC-oriented process with no consultation with or consensus from other stakeholders and constituencies. Other stakeholders and constituencies should have been consulted as well.

#### 5. The proposed criteria

ICANN has proposed some criteria to avoid confusion in two-letter domain names that [contain letters that correspond to country codes](#) for example (IQ[ccTLD for Iraq].GAME). These criteria are:

1. Exclusive availability pre-registration period;
2. Registration policy; and
3. Post-registration complaint investigation

#### **Exclusive Availability Pre-Registration Period**

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<sup>3</sup> Paragraph 4, Two-Character Letter/Letter Comments Consideration Process:  
<https://www.icann.org/resources/pages/two-character-comments-consideration-2015-10-06-en>.

<sup>4</sup> <https://www.icann.org/public-comments/proposed-measures-two-char-2016-07-08-en> (emphasis added by the authors).

The exclusive availability pre-registration period allows governments and ccTLD operators to register Letter/Letter Two-Character ASCII Labels. NCSG thinks this is an extraordinary measure with no justification. Simply because two letters match a country code does not mean that the governments or the ccTLD operators own the two letters. So, the government of India will own the preposition “in?” It can assert sovereignty, and even in this case, own in.love. Furthermore, some ccTLD operators are private businesses, all are not subject to ICANN rules and yet it is not clear why they will get an exclusive right to register Letter/Letter Two-Character ASCII Labels.

## **REGISTRATION POLICY**

This policy requires that the registrant certify to the registry that it has taken measures to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with the government.

This policy also requires the registry to make sure that the registrant has taken measures to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with the government.

We find this unacceptable. This policy effectively turns registries and registrars into content police. The new ICANN Articles of Incorporation contain language specifically barring ICANN from engaging in content regulation. It is a form of content regulation because a registry cannot ascertain whether a registrant is misrepresenting themselves or posing as a government unless they can see what has actually been posted on the site or how the domain is being used. In other words, this measure cannot be enforced without making judgments about content. This kind of protection is totally unnecessary, anyway, because existing laws against fraud and misrepresentation would allow governments and others to take action against second-level domain registrants ex post (after the fact) under existing laws. There is no justification for trying to force registries to enforce these restrictions ex ante (before the fact).

## **POST-REGISTRATION COMPLAINT INVESTIGATION**

These criteria stipulate that “for reports from governmental agencies regarding conduct that causes confusion with the corresponding country code in connection with the use of a letter/letter two-character ASCII domain, [the] Registry Operator must take steps according to the requirements for handling reports pertaining to illegal conduct as set forth in Section 2.8 of the Registry Agreement. In responding to such reports, [the] Registry Operator will not be required to take any action in contravention of applicable law.”

Section 2.8 of the Registry Agreement says, “...[The] Registry Operator may, as its election, implement additional protections of the legal rights of third parties.” The section then goes on to say, “[The] Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to [the] Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein.”

Section 2 of Specification 7 has considered rights protection mechanisms (RPMs) and dispute resolution mechanisms (DRMs). The Rights Protection Mechanism states, “[The] Registry Operator may develop and implement additional RPMs that discourage or prevent [the] registration of domain names that violate or abuse another party’s legal right.”

Countries usually do not have legal property rights over domain names or the right to exclusively register the domain name. Hence, we request that in the implementation of additional RPMs, Registry Operators consider the law exclusively and do not go out of their way to satisfy the relevant government’s preferences if they are not based on any legal grounds. Overall, we are skeptical that RPMs should apply to this case because we do not think that governments can assert any property rights over the Letter/Letter Two-Character ASCII Label just because it has the same letters as their ccTLDs. Concurrent use of identical strings is a common practice; unless one can prove that the identical strings are used to confuse, deceive, or defraud, there is no grounds for action.

The DRM seems to be an appropriate and effective mechanism if it is conducted fairly.

2.8 Protection of Legal Rights of Third Parties. The Registry Operator must specify, and comply with, the processes and procedures for the launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in Specification 7 attached hereto (“Specification 7”). The Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. The Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. The Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, the Registry Operator will not be required to take any action in contravention of applicable law.

## 6. Conclusion

We think that the already registered Letter/Letter Two-Character ASCII Labels should be released as soon as possible and with no delay. We also reject the criterion number 1 Exclusive Availability Pre-Registration Period, and are concerned about applying the RPMs to Letter/Letter Two-Character ASCII Labels.