

Registries Stakeholder Group Statement

Issue: Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes

Date statement submitted: August 16, 2016

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

The Registries Stakeholder Group (RySG) acknowledges the effort undertaken by ICANN to develop the Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion (Proposed Measures) and we are optimistic that we may be close to resolving this longstanding issue. The RySG has reviewed the Proposed Measures recommended by ICANN to avoid confusion and also had the opportunity to discuss the Measures with GDD staff. As a result of our review and interaction with GDD staff we offer the following comments:

Key points:

- To avoid attributing rights to governments and country code managers that do not exist in law, the Exclusive Availability Pre-Registration Period must be **voluntary**.
- In order to satisfy the requirements of Specification 5, Section 2 of the Registry Agreement to avoid confusion, the Registry Operator can select from the following options:
 - A) voluntary Exclusive Availability Pre-Registration Period; or
 - B) Registration Policy + Post-Registration Complaint Investigation; or
 - C) voluntary Exclusive Availability Pre-Registration Period + Registration Policy + Post-Registration Period.
- ICANN will make available to registry operators a contact list for applicable governments and country code managers
- The reference to Section 2.8 of the Registry Agreement in the Post-Registration Complaint Investigation section of the Proposed Measures be removed.

There are no legal or other rights that form the basis for all three measures to be mandatory

Throughout the development of the process that has led to the publication of the Proposed Measures, the RySG has consistently raised one fundamental and overarching concern:

- Neither country code managers, nor governments, own the rights to the letters which constitute the ccTLD.

The RySG first formally raised this with the Board in a letter to Dr. Crocker on 30 September 2014, and we have reiterated this concern on many occasions since by way of correspondenceⁱ, exchanges with the Board, discussions with ICANN staff, and perhaps most notably during the Public Forum at the ICANN meeting in Dublin.

We would also like to take this opportunity to respond to the suggestion by the Italian Government in the public comment forum that “ ... every mitigation plan proposed to avoid

confusion with the corresponding country code, should be subjected to the approval by ICANN **only after being approved by the respective government/ccTLD manager.**" As we stated in our letter of 30 September 2014, to Dr. Crocker, the use of the ISO 3166-1 list as the basis to assign and delegate ccTLDs does not mean that there is no other valid meaning of the two-character labels contained in the ISO 3166-1 list, for example "my", "at" and "us" are words, "IT" and "HR" are commonly understood acronyms, which mean information technology and human resources respectively. There is no sensible basis by which the Italian Government can claim any legal rights to the word "it" or the commonly understood acronym of "IT" for information technology.

Further, the RySG is not the only group within the ICANN community to have expressed concern about the lack of any basis for the restriction on release of letter/letter two-character ASCII labels. By way of example, we refer to the comments of the ALACⁱⁱ, the BCⁱⁱⁱ, and ICANN Accredited Registrar, Blacknight^{iv}, submitted in response to various requests for release of two-character domain names which were published by ICANN for public comment in 2014, and the joint letter from the BRG, BC and IPC of 14 April 2015^v. For comments on the lack of any basis under international law for granting governments the rights to geographic names in the wider sense (which would include letter/letter two-character ASCII terms) see the numerous submissions^{vi} in response to the proposal on geographic names from the sub-working group of the GAC which was published for comment by the community in late 2014, including those of the BC, IPC, International Trademark Association, US Chamber of Commerce and others.

Indeed, the GAC itself in its Los Angeles Communiqué advised:

two-character second level domain names are in wide use across existing TLDs, and have not been the cause of any security, stability, technical or competition concerns. The GAC is not in a position to offer consensus advice on the use of two-character second level domains names in new gTLD registry operations, including those combinations of letters that are also on the ISO 3166-1 alpha 2 list.

Voluntary options adequately address confusion without overreaching:

The requirement that all registry operators (except those subject to Specification 13 or a Code of Conduct exemption) will be obliged to implement an Exclusive Availability Pre-Registration Period as outlined in the Proposed Measures is extremely concerning. It is our strong opinion that by making this a requirement, ICANN is attributing rights to governments and country code managers for two character ASCII domain names that simply do not exist in law and as such has the potential to be extrapolated by governments beyond this process, for example the discussion of geographic names in the New gTLD Subsequent Procedures Policy Development Process.

In making the Exclusive Availability Pre-Registration Period voluntary, registry operators would effectively be able to select from one of three measures to satisfy Specification 5, Section 2 of the Registry Agreement to avoid confusion:

- A) Exclusive Availability Pre-Registration Period; or
- B) Registration Policy + Post-Registration Complaint Investigation; or

C) Exclusive Availability Pre-Registration Period + Registration Policy + Post- Registration Period.

These three measures are consistent, in large part, with the measures to avoid confusion that were submitted by a significant number of registry operators in response to a request from ICANN to do so (date) and as such are acceptable to the RySG.

We have summarized our position on each Proposed Measure below. For ease of reference, we have included a redline of the published Proposed Measures to reflect our proposed changes.

Exclusive Availability Pre-Registration Period

In order to address our concern and ensure that ICANN does not create a mandatory precedent by attributing rights to governments or country code managers as suggested above, the Exclusive Availability Pre-Registration Period as outlined in the Proposed Measures must be **voluntary**. While several registries agreed to have such a period to move this process forward, that is very different than ICANN mandating such a period.

We also request that ICANN provides registry operators who wish to adopt this measure to avoid confusion with a contact list of applicable country code managers and governments.

Registration Policy

The RySG accepts the requirement of a Registry Policy for registry operators that select option B or C.

Post-Registration Complaint Investigation

The RySG accepts the requirement of a Post-Registration Complaint Investigation for registry operators that select option B or C. However, we request that the reference to Section 2.8 of the Registry Agreement in the Post-Registration Complaint Investigation section of the Proposed Measures be removed to avoid any suggestion that there are third party rights attached to a two character ASCII label and also to avoid any suggestion that confusion with a corresponding country code is akin to illegal activity.

Implementation of the Proposed Measures

During a recent RySG call, GDD staff suggested that the existing Authorisation Process would be retired upon adoption of the Proposed Measures that are agreed as a result of the public comment period. We believe there is value in maintaining the Authorisation Process, if only to provide transparency about which governments have concerns regarding confusion. The RySG would welcome clarification from ICANN on the process by which they intend to implement the measures and the status of the Authorisation Process moving forward. In particular, registries that have already been granted authorization to release without any condition, should not have that authorization retracted.

Best regards.

ⁱ http://media.wix.com/ugd/ec8e4c_9fe50be3dc824e66aba05145e8319e7e.pdf
http://media.wix.com/ugd/ec8e4c_f2bbd44727b4486297be739ef7bcc7fe.pdf
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http://media.wix.com/ugd/ec8e4c_b988d2ca94c442a48037e610fbaf225f.pdf

ⁱⁱ see, by way of example, <https://forum.icann.org/lists/comments-two-char-new-gtld-12jun14/pdfhuA4ryxv4V.pdf>

ⁱⁱⁱ <https://forum.icann.org/lists/comments-two-char-new-gtld-12sep14/msg00003.html>

^{iv} See, by way of example, <https://forum.icann.org/lists/comments-two-char-new-gtld-08jul14/msg00002.html>

^v <http://www.brandregistrygroup.org/wp-content/uploads/2014/05/BRG-BC-IPC-letter-to-ICANN-codes-country-4-2015.pdf> at page2-3

^{vi} <https://gacweb.icann.org/display/gacweb/Community+Input+-+The+protection+of+Geographic+Names+in+the+New+gTLDs+process>