

GNSO gTLD Registries Stakeholder Group Statement

30 September 2014

Dr. Steve Crocker
Chairman of the Board
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90004-2536

Re: Release of 2-character labels as second-level domains in new gTLDs

Dear Steve:

We are writing regarding correspondence you received from the Chair of the Governmental Advisory Committee (GAC), dated [8 August 2014](#), informing you the GAC intends to consider requests for the release of two-character labels as second level domains in new gTLDs at the ICANN meeting in Los Angeles. In a follow up letter to you, dated [10 September 2014](#), the GAC advised that their interest was the subset of two-character labels consisting of letter-letter combinations that is of concern to the GAC, and further, regardless of whether they are currently used as ccTLDs or not, the GAC is asking for a pause in granting any exemptions from Specification 5.

We would also like to use this opportunity to raise some issues associated with the implementation of the Registry Service Evaluation Process (RSEP) for the release of two-character labels.

GAC Discussions

Given the likelihood that the Board will have discussions with the GAC about this issue during the LA meeting, we felt it was important to provide another perspective on the use of two-character labels at the second level. As such, we request that the Board take into account the following points during discussions with the GAC on this issue, and particularly, in the event that the GAC advice opposes the immediate release of two-character labels at the second level of new gTLDs, or similarly imposes processing requirements that would add considerable delay and complexity to the use of two-character labels:

- Neither country code managers, nor governments, own the rights to the letters which constitute the ccTLD.
- The use of two-character labels that are also country codes at the second level of a TLD is **not** an issue of sovereignty.
- The use of the ISO 3166-1 list as the basis to assign and delegate ccTLDs does not mean that there are 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 to mean information technology and human resources.
- All other TLDs in operation today, including ccTLDs, can use two-character labels at the second level. There is no indication that this has ever caused meaningful

confusion with country codes. To introduce restrictions on the use of two-character labels at the second level would be anti-competitive and contrary to the intent of the new gTLD program which was to provide for competition and innovation. Some examples include ca.com, my.biz, and tv.net.

- Specification 5, Section 2¹ of the Registry Agreement provides circumstances in which two-character labels can be released for use:
 - Through agreement with the ccTLD manager and relevant government; **or**
 - Through approval by ICANN, based on the implementation of measures to avoid confusion with corresponding country codes.
- The option to seek approval by ICANN was provided in the Registry Agreement so that registry operators would not have to obtain 250+ government approvals.
- ICANN staff advised Registry Operators that submitting an RSEP was the appropriate mechanism to seek ICANN's approval of the use of two-character labels at the second level as proposed in Specification 5 of the RA.
- As noted in the [Report of Public Comments](#) re: the Introduction of Two-Character Domain Names in the New gTLD Namespace, ICANN's preliminary determination of the first batch of RSEPs seeking to use two-character labels concluded that the proposed Registry Service did not raise significant security and stability or competition issues.
- As ICANN determined that the registry service was a material change to the registry agreement, the amendments were posted for public comments. The public comments received, fundamentally supported the use of two-character labels at the second level of new gTLDs.
- No government representatives participated in the Public Comment period.
- The ccNSO was not able to come to any consensus position on this issue during discussions in London and many acknowledged their own use of two-character labels at the second level of their ccTLD.
- A legal [Judgement](#) of Bundesgerichtshof (German Supreme Court) of 29 September 2009 found that it is anti-competitive behaviour of a registry not to release 1- and 2-letter strings in .de domain names. After this decision DENIC immediately released these domain names. The German car manufacturer Volkswagen filed this lawsuit demanding [vw.de](#) and argued that they have a competitive disadvantage while [bmw.de](#) is in existence.
- The ALAC has provided comments on many of the related RSEPs supporting the use of two-character labels noting "... shorter domains are more desirable to potential registrants and two-character ASCII labels can be used for alternative meanings than the one for the ISO 3166-1 alpha-2 standard. For these reasons, absent any DNS-related security or stability issues, the ALAC believes that all the restrictions of two-character ASCII labels at the 2nd level within a TLD should ultimately be removed ..."
- Until the new gTLD program, ICANN had uniformly approved all RSEP requests to release two-character domain names, including certain ISO-3166 two-character domain names corresponding to country codes. Comments submitted by [Google](#)

[Registry](#) to the public comment forum provide a good analysis of precedent in this area.

The Registry Agreement provides a mechanism for Registry Operators to seek the use of two-character ASCII labels at the second level of their TLD. The GAC or its members are not a party to, nor a third party beneficiary of, the registry agreement and therefore should not be able to interfere in its operation.

ICANN has recently announced that more than 500 registry agreements have been signed: no doubt many with the understanding that if they intend to use two-character ASCII labels at the second level of their TLD they would do so according to the provision of Specification 5, Section 2 of the Registry Agreement. The value of two-character labels to registry operators should not be underestimated and attempts by registry operators to seek to use these labels in good faith should not be undermined.

Implementation of the RSEP

The RSEP consensus policy was originally developed to provide Registry Operators with a predictable process for seeking changes to registry services. There has been a significant degradation in ICANN's performance in processing RSEPs since the introduction of new gTLDs have been delegated. Considerable delays have been experienced in processing RSEPs and unexpected interpretation of the policy has led to confusion among registry operators.

The first batch of RSEP requests for two-character labels were approved by ICANN staff as they had determined that there are no security and stability or competition issues. There was an expectation that as a result of this determination, registry operators would be able to move forward and provide the new service as this would be consistent with the treatment of similar RSEPs prior to the launch of the new gTLD program.

However, those affected were surprised to learn that ICANN staff had determined that the additional service is considered a material change to the contract, and as such the amendment to the Registry Agreement would be the subject of a public comment period and approval would be required by the Board.

The first of these public comment periods closed on 1 August 2014, and the Summary and Analysis report was posted on 5 September 2014. This report indicates that the preliminary determination will be referred to the Board along with the summary of comments for consideration, and decision. In discussions with ICANN staff it is understood that no decision will be made by the Board on this issue until they have received input from the GAC.

Registry Operators have followed the process advocated by ICANN staff to seek the use of two-character ASCII labels at the second level of their TLD, a process defined in an ICANN consensus policy and used previously to approve similar requests.

We would ask that the Board take into account all the factors surrounding this issue and give necessary consideration and balancing to the interests of all affected parties, as well as

the established policy for adding registry services. We would also ask that the Board makes a determination on this matter at, or soon after, the GAC has provided their advice in LA.

Yours sincerely

gTLD Registries Stakeholder Group

CC:

Cherine Chalaby, Chair New gTLD Policy Committee, ICANN Board of Directors

Fadi Chehade, President & CEO, ICANN

Akram Atallah, President, Global Domains Division, ICANN

¹**Two-character labels.** All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the TLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than the Registry Operator, provided that such two-character label strings may be released to the extent that RO reaches agreement with the related government or country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard. The Registry Operator may also propose the release of the reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. Upon conclusion of the Registry Operator's designation as operator of the registry for the TLD, all such labels that remain withheld from registration or allocated to Registry Operator shall be transferred as specified by ICANN. Registry Operator may self-allocate and renew such names without use of an ICANN-accredited registrar, which shall not be considered Transactions for purposes of Section 6.1 of the Agreement.