

Staff Report of Public Comment Proceeding

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

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Section I: General Overview and Next Steps

General Overview:

As per Section 2 of Specification 5 of the New gTLD Registry Agreement, "All two-character ASCII labels shall be withheld from registration or allocated to Registry Operator at the second level within the gTLD. Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and 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 these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN."

With input from governments and registry operators, ICANN has developed the document [Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes](#) (Proposed Measures) which was posted for public comment to gather community feedback in order to establish the list of measures a registry must implement in order to release, from reservation at the second-level of the domain name system, letter/letter two-character ASCII labels not otherwise reserved pursuant to other sections of the Registry Agreement.

The Proposed Measures for Letter/Letter Two-Character ASCII Labels are intended to address confusion concerns submitted by governments regarding two-letter domain names and corresponding country codes. Registry operators were asked to submit measures to avoid those government concerns, and from the various measures registry operators submitted, ICANN produced the Proposed Measures.

From 8 July 2016 through 17 August 2016, ICANN posted the Proposed Measures for Letter/Letter Two-Character ASCII Labels for public comment, which resulted in forty-three comments.

Next steps

Taking into consideration the feedback provided by the community during the public comment period, ICANN will establish a list of measures registries must implement in order to release from reservation letter/letter two-character ASCII labels not otherwise reserved pursuant to other sections of the Registry

Agreement.

Section II: Contributors

At the time this report was prepared, a total of forty-three community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
Connecting.nyc Inc.	Thomas Lowenhaupt	CNI
Commonwealth of Dominica	Bennette Thomas	DM
GAC Representative - Swaziland	Andreas Dlamini	SZ
Former GAC Representative - Côte d'Ivoire	Assoko Héraclès Maye	AHM
GAC Representative - Spain	Gema M. Campillos González	ES
GAC Representative - Cambodia	Rapid Sun	KH
World Intellectual Property Organization	Brian Beckham	WIPO
Alternate GAC Representative – Hong Kong	Tony Wong	HK
ccTLD Manager - Jordan	Ahlan Abu-Jadallah	JO
Brand Registry Group	Martin Sutton	BRG
GAC Representative – Italy	Rita Forsi	IT
GAC Representative - Singapore	Ser Pheng Queh	SG
Saudi Arabian Government	Sultan M. Al-Malik	SA
GeoTLD Group	Martin Bugla & Sebastien Ducos	GEO
Registries Stakeholder Group	Stéphane Van Gelder	RySG
punkt.wien GmbH	Ronald Schwarzler	PW
InternetNZ	Debbie Monahan	INZ
GAC Representative - China	Pei Wei	CN
Rightside Registry	Alan Woods	RR
Vietnam Internet Network Information Center	Ph. Quan ly tai nguyen Internet	VNNIC
.IQ Department - Communications and Media Commission	Saif Ahmed Mohamed	IQ
Dot Global Domain Registry Limited	Su Wu	DG
Bayern Connect GmbH	Caspar Veltheim	BCG
Donuts Inc.	Mason Cole	DI
Valideus Ltd	Susan Payne	VI
GAC Representative - Egypt	Manal Ismail	EG
Non-Commercial Stakeholder Group	Tatiana Tropina	NCSG
The Mexican Administration	Miguel Angel Munoz Petrichole	MX
Google Registry	Stephanie Duchesneau	GR
NIC Mexico	Manuel Haces Aviña	NICMX
Neustar, Inc.	Donna Austin	NSR
GAC Representative – New Zealand	Nicola Treloar	NZ
Latin American and Caribbean Top Level Domain Association	Andres Piazza	LACTLD
LiveMelbourne	Eamon McGrath	LM

GetCourses	Eamon McGrath	GC
Neustar, Inc. (on behalf of International Domain Registry Pty Ltd)	Eamon McGrath	IDR
IconicSydney	Eamon McGrath	IS
GetStudy	Eamon McGrath	GS
Intellectual Property Constituency	Gregory S. Shatan	IPC
Stable Tone Limited	Jason Du	ST
Amazon Registry Services	Stacey King	ARS
dotBERLIN GmbH & Co. KG	Dirk Krischenowski	DB
AC Webconnecting B.V.	Anja Schoneveld	ACW

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN has received various comments from the community on the Proposed Measures for Letter/Letter Two-Character ASCII Labels. Overall, ICANN notes there is support for release of two-character labels reserved pursuant to Specification 5, Section 2 of the new gTLD Registry Agreement; there is moderate support for the Proposed Measures to the extent the Proposed Measures allows for the release of two-character labels. ICANN additionally notes the comments that seem to generally support the Proposed Measures made specific suggestions about how the framework could be improved and how the process should work going forward.

ICANN notes some commenters take the position that governments do not have special rights to two-character labels that correspond with country codes, and that the labels should be released as soon as possible. However, it should also be noted some governments and ccTLD managers object to the release of two-character labels that correspond with country codes and take the position that government and/or ccTLD manager approval is required.

The comments submitted generally fall into the following categories, each of which is explained in more detail below. The categories are as follows:

- 1. The effectiveness of the Proposed Measures to avoid confusion with corresponding country codes**
 - 1.1. Comments specific to Measure 1, Exclusive Availability Pre-Registration Period**
 - 1.2. Comments specific to Measure 2, Registration Policy**
 - 1.3. Comments specific to Measure 3, Post-Registration Complaint Investigation**
 - 1.4. Other comments on the Proposed Measures**
 - 2. Concerns about government approval in relation to the release of two-character labels**
 - 3. Comments regarding the process used to develop the Proposed Measures**
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- 1. The effectiveness of the Proposed Measures to avoid confusion with corresponding country codes**
 - 1.1 Comments specific to Measure 1, Exclusive Availability Pre-Registration Period**

Measure 1 states: *Registry Operator must implement a 30-day period in which registration of letter/letter two-character ASCII labels that are country codes, as specified in the ISO 3166-1 alpha-2 standard, will be made exclusively available to the applicable country-code manager or government. All registrations will remain subject to compliance with all other requirements in the registry agreement, such as community TLD policies pursuant to Specification 12, or the Trademark Clearinghouse Rights Protection Mechanism Requirements. The Registry Operator commits to affirmatively reaching out to those country-code managers and governments to provide notice of the Exclusive Availability Pre-Registration Period, including dates and registration process.*

NOTE: *TLDs with an executed Specification 13 or Exemption from Specification 9 - Code of Conduct are not obligated to implement this measure based on the fact that all registrations in the TLD must be registered exclusively to Registry Operator, its Affiliates or, if applicable, its Trademark Licensees.*

Comments submitted generally expressed conditional support or concerns for ICANN requiring registry operators to implement an Exclusive Availability Pre-Registration Period (EARP) as a condition to release letter/letter two-character labels. Commenters expressed concerns about implementing this measure for various reasons including: (a) the burden such a measure might impose on governments to purchase two-character domains corresponding to their country codes, (b) the possibility that requiring this measure creates an assumption that governments and ccTLD managers have priority rights in two-character labels corresponding with country codes that are not found in international laws, (c) the potential negative impacts the proposed measure could have on competition, and (d) whether the measure would actually be effective to mitigate user confusion. Additionally, some commenters made suggested edits and recommendations to clarify or modify the proposed implementation of the EARP measure. Suggestions included making the measure voluntary instead of mandatory, as well as clarifying what would happen if a government and ccTLD manager have a contradicting view on the two-character label. Examples of specific comments on Measure 1, Exclusive Availability Pre-Registration Period include the following:

- ES “commend[ed] ICANN in particular for including phased allocation periods as one of those measures, since in our judgment [sic], it is the most effective one of the set.”
- RYSG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI and NSR suggested Measure 1 should be made voluntary rather than mandatory.
- INZ, IT, NICMX, LACTLD, MX, VNNIC, SG and NZ expressed concerns the EARP will create a burden on governments and ccTLDs, potentially forcing governments and ccTLD managers to buy every two-character country code whose release they want to prevent.
- “They focus on requiring governments and ccTLD managers to register the country code themselves to manage this risk. [...] Governments should not have to purchase potentially expensive second level domains themselves in order to avoid confusion.” (NZ)
- Measure 1 should “...only apply to the letter/letter labels that have not yet been authorized for release.” (DI)
- SG suggested the measure should apply to brand TLDs as well so country-codes would be able to retain the “first-right of refusal”.
- The IPC suggested the EARP should occur after Sunrise or concurrently with End-Date Sunrise provided that names are allocated first to Sunrise applications before being allocated to governments.
- GEO raised concerns this measure would allow ccTLDs or governments to seize or lock valuable assets, creating competition issues.
- IPC, RySG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI, NSR and BRG worried Measure 1 would create an assumption that governments and ccTLD managers have priority rights in two-character labels corresponding with country codes that are not found in international law, some raising further concerns that this assumption may be later extrapolated to apply to topics such as geographic names or three-letter codes (BRG, RYSG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI, NSR).

- The "... proposed exclusive availability pre-registration period is inconsistent with recommendations of the World Intellectual Property Organization (WIPO) Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indication. [...] The proposed exclusive availability pre-registration period is also inconsistent with the conclusions of the GNSO's Reserved Names Working Group ('RNWG')." (IPC)
- Additionally, some comments expressed the EARP did not prevent user confusion (IPC, GR) and has "no justification." (NCSG)
- Several comments expressed concern regarding what would happen if a government and ccTLD manager have a contradicting view on the two-character label. (INZ, NICMX, LACTLD, AHM, ES)
- SG raised a question regarding pricing of labels.

1.2 Comments specific to Measure 2, Registration Policy

Measure 2 states: *Registry Operator must include a provision in its publicly available registration policy requiring a representation that the registrant of a letter/letter two-character ASCII label will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with a government or country-code manager if such affiliation, sponsorship or endorsement does not exist.*

Comments received regarding Measure 2 expressed general levels of support. One comment noted, however, that implementing this requirement would inappropriately burden registry operators and registrars with regulating the content of websites. Some examples of the comments include the following:

- GR and IPC stated this measure has a clear nexus with avoiding confusion.
- "This requirement has clear conceptual roots in laws restricting unfair competition. [...] The IPC believes that the proposed registration policy requirement is not inconsistent with the basic principles or purposes of unfair competition law or with the lawful exercise of trademark owners' rights." (IPC)
- The BRG considered this measure "acceptable."
- The RySG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI and NSR "...accepts the requirement" if adopted in conjunction with Post-Registration Complaint Investigation or Post-Registration Complaint Investigation and EARP.
- "Registration policies should make the registrant or its business accountable for confusability the use of the domain name in websites raises with the country code, even when the domain name holder has contracted (or otherwise consented to) the use of the domain name to third parties." (ES)
- The NCSG expressed concern this measure would turn registries and registrars into "content police."
- ES stated that if this measure were to be retained, they "... would recommend directing all registrants of such names to display a clear notice on their websites (or the websites identified by the domain name in question) disassociating themselves from the corresponding national public authorities or ccTLD managers."

1.3 Comments specific to Measure 3, Post-Registration Complaint Investigation

Measure 3 states: *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, 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, Registry Operator will not be required to take any action in contravention of applicable law.*

Most of the comments received regarding Measure 3 recommended changes to the language. The recommended changes include: (a) removing references to Section 2.8 of the Registry Agreement in order to avoid the implication that complaints regarding confusion with country codes are similar to the rights

protections referenced in Section 2.8, and (b) requiring registry operators to handle complaints if submitted by ccTLD managers in addition to the relevant governments. Specific examples of these comments are as follows:

- GR noted this measure meets the “standard” of “preventing and addressing identifiable areas of potential confusion with ccTLDs.”
- RySG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI, NSR, BRG and IPC suggested the removal of reference to Section 2.8 in order to avoid suggestion of third party rights attached to a two-character ASCII label and that confusion with a corresponding country code is akin to illegal activity.
- NCSG noted that Section 2.8 refers to Section 2 of Specification 7, which pertains to Rights Protection Mechanisms (RPMs) and Dispute Resolution Mechanisms (DRMs); further stating 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. [...] The DRM seems to be an appropriate and effective mechanism if conducted fairly.”
- SG stated that it is unclear how Section 2.8 (protection of legal rights of third parties) can be utilized once a government lodges a complaint against an inappropriate content or manner of use domain name that may not be necessarily illegal.
- ES suggested Registry Operators should investigate complaints at the request of the relevant ccTLD manager in addition to governments.

1.4 Other comments on the Proposed Measures

In addition to providing specific comments on the three measures proposed to mitigate confusion with country codes, many commenters also provided general comments on the authorization process to release two-character labels and the Proposed Measures. For example, the BRG stated, “Overall, the BRG supports the proposal in so far as it is workable for Specification 13 Brand TLDs, with obligations that are not overly onerous to implement. [...] Subject to minor changes to the ‘post registration complaint’ requirement, the BRG recommends that ICANN proceeds to adopt this proposal for Specification 13 Brand TLDs without delay.”

Some commenters expressed overall concern about the Proposed Measures. For example, CN commented that “[w]hen it comes to releasing the Chinese two-letter country code at the second level, we think the proposed measures cannot fully deal with the concern.”

Additional suggestions and concerns on the Proposed Measures are summarized below, including: (a) future of current Authorization Process for Release of Two-Character ASCII Labels, (b) scope of requests to which Proposed Measures applies, (c) allowing more choice of measures to avoid confusion, (d) sufficiency of Proposed Measures, (e) GAC advice, and (f) conflict between Registry Agreement and local law.

Several commenters suggested that ICANN should not retire the Authorization Process for Release of Two-Character ASCII Labels as suggested in the public comment announcement. Others stated it was “not acceptable” for ICANN to continue with the current framework because it gives governments control of whether two-character labels are released. Some examples of these comments include the following:

- “We believe there is value in maintaining the Authorisation Process, if only to provide transparency about which governments have concerns regarding confusion” (RySG). PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI and NSR had given the RySG their full support on its comments.
- “We further recommend that ICANN maintain the existing authorization process. [...] To do away with the authorization process once ICANN finalizes its proposed framework would raise several concerns” (GR)

- “Doing away with the authorization process prevents governments that have specific confusion concerns regarding a not-yet-authorized TLD from bringing their concerns forward...” (GR)
 - “Several governments have indicated that they do not wish to be notified of further developments related to two-character labels.” (GR)
 - “Lastly, on multiple occasions ICANN has communicated that the authorization process would be retained. Doing away with the process at this late stage would break this commitment and create unpredictability and inequity across applicants.” (GR)
- “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.’ 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.” (NCSG)

ES, RR, NSR and VI requested clarification regarding the scope of TLDs or requests to which the Proposed Measures would apply, and NSR and VI suggested the proposed measures should not be retroactively applicable.

The RySG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI and NSR suggested registries should have the option of implementing one or more of the Proposed Measures given that there is no legal basis for all three measures to be mandatory.

The IPC stated, “[T]he IPC does not support the ‘Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes’ if these are not explicitly identified as an exhaustive list of requirements, satisfaction of which equates to compliance with the third sentence of Section 2 of Specification 5 of the New gTLD Registry Agreement.”

Commenters also discussed the Proposed Measures in relation to advice from the GAC in the Helsinki Communiqué regarding the release of two-character labels corresponding to country codes. While one comment requested that ICANN consider removing language included in the Proposed Measures to address the concerns raised in the Helsinki Communiqué, some governments stated that the Proposed Measures are not consistent with the GAC’s advice. Examples of comments submitted regarding GAC advice include the following:

- NSR suggested Helsinki GAC advice be removed from the proposed measures as the original planned date for publication of measures was in June and Helsinki GAC advice was issued in July.
- IT, CN and EG expressed that measures are not in line with GAC advice.
- “[I]t would be necessary to synchronize the assessment of comments submitted and GAC advice so as to avoid that effectiveness of GAC advice is preempted by a decision made only on the merits of the proposed measures and public comments received (with the exclusion of GAC Advice).” (ES)

Some commenters stated that any rule, regulation or requirement may not be implemented if it is contrary to local, national or nationally supported supra-national laws and regulations, and raised potential taxation issues, market competition issues, and cartel and competition law issues. (GEO, DB)

2. Concerns about government approval in relation to the release of two-character labels

Various comments raised during the public comment period raised concerns about whether approval from the relevant government is or should be required to permit registry operators to make available for registration two-character labels corresponding to country codes. Some comments from governments suggest that the two-character label corresponding to their country code should not be released, even if the Proposed Measures are implemented. In one case, the commenter objecting to the release of these labels raise concerns about the release in specific TLDs, while others object generally to the release in any TLD. On the other hand, various commenters raised concerns that the authorization process seems to inappropriately give a veto right to governments. Some of these commenters suggest that governments do not have rights to the letter/letter two-character labels and should not be required to be reserved. Some examples of comments raising the noted concerns are as follows:

- HK reiterated its views that the “...following two categories of new gTLDs, that they SHALL NOT be released for ALL requests: (a) New gTLDs associated with Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions and Inherently Governmental Functions as set out in ICANN NGPC Resolution No. 2014.02.05.NG01; and (b) New gTLDs falling within the category of Geographic gTLDs referred to in ICANN’s New gTLD Program (i.e. the gTLD string is a geographic name as provided in the ICANN’s gTLD Applicant Guidebook), and .capital, .city, .country, .town, and .world.”
- “We consider that a constructive and good-faith relationship between the Registry Operator and the GAC member is the most appropriate way of resolving any concerns, and that ICANN should not put in place a process which bypasses that relationship.” (NZ)
- “It is recommended that ICANN develop a table/list to identify the position of each country/economy in regard to releasing corresponding two-letter territory/country code at the second level.” (CN)
- IT recommended every mitigation plan be subject to approval by respective government/ccTLD manager.
- DM, SZ, KH, IT, SG, SA, CN, VNNIC, IQ, and EG expressed their objections to the release of two-character labels without approval of the related government and ccTLD manager, with SA, CN, IQ and EG asserting that the release of such label would lead to user confusion and would mislead the Internet users.
- Examples of comments regarding the confusability are:
 - o JO, LACTLD, NICMX, and MX claimed releasing letter/letter two-character labels creates complexity and may confuse users.
 - o GEO and DB commented that governments represented in the GAC have not proven or provided evidence how “2-letter country code domain names are likely to cause confusion with the 2-letter country code top-level domain.”
- DI stated that the Registry Agreement allow two paths for Registries to release two-character country codes and that there is no language in RA that gives “veto power” to any government.
- RySG, PW, DG, BCG, ARS, ACW, RR, DI, GR, LM, GC, IDR, IS, GS, ST, VI, NSR and NCSG provided comments indicating governments nor ccTLD managers do not control or own the rights to allocation of two-character country codes.
- IPC expressed the measures should be developed to avoid confusion rather than protecting government interests and stated, “In conclusion, the IPC reiterates its standing objection to restrictions on the use of country codes for the purpose of protecting governments’ interests in those codes or geographic names more broadly.” (IPC)
- “We think that the already registered Letter/Letter Two-Character ASCII Labels should be released as soon as possible and with no delay.” (NCSG)
- “This does not contribute to the objective of this round for new gTLDs, in which it sought to increase the available options only at the root level, taking into account that other options of registration already were available and covered by other top level domains (TLDs).” (MX)

3. Comments regarding the process used to develop the Proposed Measures

NZ, INZ, and NCSG submitted comments regarding the process of developing these Proposed Measures expressing concern that other stakeholders and constituencies should have been consulted. Additionally, BRG commented that many of the suggested measures from registry operators were not taken into account and that only a single solution has been offered.

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

ICANN appreciates all the comments added to the public forum for Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes and also acknowledges the suggestions and concerns expressed about the Proposed Measures.

1. Proposed Measures

1.1. Measure 1, Exclusive Availability Pre-Registration Period

ICANN notes minimal support for the mandatory implementation of this measure, as it creates unnecessary and unwanted burden on governments and raises concerns of government rights for registry operators. However, some commenters did see value in making this measure voluntary.

ICANN notes that, if the EARP were made voluntary, Registry Operators would still be able to implement the measure, among others, at their discretion. As the Proposed Measures document states, "Registry Operators may implement additional measures at their discretion."

With respect to the burden placed on governments and ccTLD operators, ICANN notes the measure is intended to address confusion and is not intended to create additional burden or work for governments and ccTLD operators. The EARP was not intended to be implemented as a stand-alone measure and would have been required to be implemented alongside the other proposed measures. As a result, if a government chose not to register a two-letter code during EARP, then it could rely on the other proposed mandatory measures required to be implemented by registry operators to guard against confusion with its corresponding country code. In its analysis of confusion avoidance measures proposed by Registry Operators, ICANN took into account measures that could be invoked through the lifecycle of a domain to avoid confusion. The Proposed Measures include pre- and post-registration measures that were to be implemented concurrently so that confusion could be avoided through the lifecycle of a letter/letter two-character domain.

With respect to requiring the EARP measure for gTLDs with Specification 13, also known as .BRAND gTLDs, ICANN notes that per Specification 13 Section 9.1(ii), "[O]nly Registry Operator, its Affiliates or Trademark Licensees are registrants of domain names in the TLD and control the DNS records associated with domain names at any level in the TLD." As such, EARP would be inconsistent with the Registry Agreement for .BRAND gTLDs. Additionally, ICANN notes the EARP does not necessarily equate to a "first-right of refusal"; the EARP is a limited registration period made exclusive to particular parties.

ICANN notes the EARP measure states, "All registrations will remain subject to compliance with all other requirements in the registry agreement, such as community TLD policies pursuant to Specification 12, or the [Trademark Clearinghouse Rights Protection Mechanism Requirements](#)." Registry Operators are still required to comply with all Rights Protection Mechanisms, including the Sunrise Period. Additionally, the measure is not intended to supersede registry operators' registration policies. Similar to Sunrise periods as specified in the RPMs, Registry Operator may continue to enforce its registration policies.

With respect to comments about WIPO and GNSO Recommendations and government rights, ICANN notes the EARP, and the Proposed Measures in general, were not intended to attribute rights to any particular party or allow any party to “seize” assets; instead, the measure was intended to provide an efficient mechanism to address confusion and respond to requests from registry operators to release reserved names, while balancing concerns expressed by governments and ccTLD managers about the possibility of confusion with ccTLDs. As provided in Specification 5 Section 2 of the New gTLD Registry Agreement, “[t]he Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN.” In accordance with the Registry Agreement, the measures were evaluated and proposed with the intention to address confusion. Moreover, the Registry Operator may choose how to implement the EARP within the set requirements of the measure.

With respect to potential conflicts between governments and ccTLD operators who both wish to register a label, ICANN leaves implementation of the EARP to the discretion of Registry Operators and their registration policies. Additionally, governments and ccTLD operators could choose to work through such conflicts on their own.

Pricing for the sale of domain names in new gTLDs, including two-character labels, is at the discretion of the Registry Operator and is not something ICANN typically stipulates.

1.2. Measure 2, Registration Policy

ICANN takes note of the general support for this measure.

With respect to the comment that registration policies make the registrant accountable for confusion, ICANN notes the proposed measure already requires the Registry Operator to incorporate the following provision in its Registration Policy, which mandates a “publicly available registration policy requiring a representation that the registrant of a letter/letter two-character ASCII label will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with a government or country-code manager...”. With respect to regulating content, ICANN does not regulate web content, including requirements of disclaimers on websites.

Additionally, ICANN notes this measure would be implemented in tandem with the Post-Registration Complaint Investigation measure, at a minimum, to avoid confusion. If a case of confusion arises, a government would be able to submit a complaint to the Registry Operator, and under the Post-Registration Complaint Investigation measure, the Registry Operator would take reasonable steps to investigate and respond to reports of confusion.

1.3. Measure 3, Post-Registration Complaint Investigation

ICANN notes general support for this measure.

ICANN notes the intention of the reference to Section 2.8 of the Registry Agreement is for Registry Operator to take reasonable steps to investigate and respond to reports of confusion and is not intended to equate confusion with illegal activity. ICANN will consider additional clarifying language for this measure as it works to finalize the Proposed Measures.

ICANN notes the suggestion to include complaints from ccTLD managers, in addition to governments, and will take it into consideration as we work to finalize the Proposed Measures.

1.4. Proposed Measures in General

ICANN acknowledges the comments received pertaining to the current Authorization Process. While it is understood there is value in maintaining the current Authorization Process, such as continuing to provide a mechanism for governments to lodge their concerns relative to specific requests for two-character labels, retiring the Authorization Process in favor of the Proposed Measures will increase efficiency for the release of two-character labels, create better predictability related to these labels, and reduce operational burden on both registries and governments to create, submit, review and comment on requests for two-character labels. Authorization for release of letter/letter two-character labels currently reserved under Specification 5, Section 2 could be provided to Registry Operators upon implementation of the finalized measures to avoid confusion. Moreover, the retirement of the process will allow for consistency across gTLDs as Registry Operators adopt a standardized set of measures to avoid confusion. ICANN will take these things into consideration when finalizing the path forward.

ICANN acknowledges the suggestion that Registry Operators be allowed various options of measures. During its analysis of registries' proposals when developing the Proposed Measures, ICANN took into account measures that could be invoked throughout the lifecycle of a domain to avoid confusion. The Proposed Measures include pre- and post-registration measures that were to be implemented in tandem so that confusion could be avoided. The Proposed Measures set the baseline Registry Operators must adopt. As stated in the Proposed Measures, "Registry Operators may implement additional measures at their discretion."

ICANN notes the intention of these Proposed Measures is to establish a framework by which current and future requests for labels may be authorized. The Proposed Measures are not intended to apply to previously authorized labels, but instead to those labels currently reserved under Specification 5, Section 2. However, two-character labels previously authorized for release resulted from a request submitted by the registry operator; as part of the request, the Registry Operator must have had committed to implementing measures to avoid confusion, and ICANN took into account this commitment before issuing the authorization for the release.

With respect to whether the Proposed Measures satisfy the third sentence of Section 2 of Specification 5 of the New gTLD Registry Agreement, which states, "The Registry Operator may also propose the release of these reservations based on its *implementation of measures to avoid confusion with the corresponding country codes*, subject to approval by ICANN" (emphasis added), the Proposed Measures explain, "If adopted, all gTLD Registry Operators who implement these measures would be authorized to release all reserved two-letter second-level domains (except those otherwise reserved pursuant to Specification 5 Section 6)." The intent is that the Proposed Measures would establish a minimum set of measures that would avoid confusion satisfy the requirement as set forth in Specification 5, Section 2. It is intended that the implementation of the Proposed Measures will have clarity about the satisfaction of these requirements.

With respect to comments pertaining to GAC advice issued in the Helsinki Communiqué, the reference to Helsinki GAC advice was included in the Proposed Measures so that it would be noted and taken into account for those viewing the Proposed Measures. ICANN notes Article XI Section 2(1)(i-j) provides that:

The Governmental Advisory Committee may put issues to the Board directly, either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision to existing policies.

The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the ICANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow that advice. The

Governmental Advisory Committee and the ICANN Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution.

With respect to possible conflicts between the Registry Agreement and local law, Section 7.13 of the Registry Agreement states, “If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.” The Proposed Measures do not negate this provision or any other provisions of the registry agreement.

2. Concerns about government approval in relation to the release of two-character labels

Specification 5 Section 2 of the Registry Agreement states:

Such labels may not be activated in the DNS, and may not be released for registration to any person or entity other than Registry Operator, provided that such two-character label strings may be released to the extent that Registry Operator reaches agreement with the related government and 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 these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN.

The Registry Agreement provides two paths for Registry Operators to obtain authorization for release from reservation of such labels: 1) agreement with the related government and country-code manager of the string as specified in the ISO 3166-1 alpha-2 standard and 2) the Registry Operator may also propose the release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes, subject to approval by ICANN. The list of Proposed Measures was developed to create a standard set of measures to avoid confusion with corresponding country codes, in accordance with the second option provided by the Registry Agreement (i.e., ICANN approval), and allow for the release of letter/letter two-character ASCII labels.

While it is understood there might be potential confusion resulting from the release of two-character ASCII labels that correspond with country codes, ICANN notes the Registry Agreement accounts for potential confusion by requiring Registry Operators to “propose the release of these reservations based on its *implementation of measures to avoid confusion* with the corresponding country codes” (emphasis added). The intention of developing the list of Proposed Measures is to create a standard set of measures Registry Operators can adopt to avoid confusion.

ICANN notes the Proposed Measures are intended to address contractual provisions permitting registries to propose the release of certain reserved names in accordance with Specification 5 Section 2 of the Registry Agreement, and are not intended to attribute rights or “veto power” to any particular party.

With respect to the deviation from the objective of the last round of new gTLDs, ICANN notes the objective of the last round of new gTLDs did not preclude registering labels that corresponded with country codes at the second level. The possibility for release of such labels was contemplated during the drafting of the 2014 Registry Agreement in Specification 5 Section 2, which included conditions under which such labels could be released.

3. Process used to develop the Proposed Measures

On 11 August 2015, ICANN published a blog post, "[Resolving the Release of Two-Character ASCII Labels with Comments](#)," and on 6 October 2015, ICANN [announced](#) the launch of the [Two-Character Letter/Letter Comments Consideration Process](#). This process outlined the steps ICANN would take to develop a framework of measures to avoid confusion, now known as Proposed Measures.

During the process, ICANN reached out to governments who previously submitted comments to submit clarifications from comments and later reached out to registry operators to submit measures to avoid confusion if they previously submitted a two-character label requests. In its analysis of the measures proposed by registry operators, ICANN noted that a number of the measures were similar enough in purpose and function that they could be combined, and some proposed measures were redundant as they were already required by the Registry Agreement. ICANN also took into consideration which measures would be universally applicable to gTLDs equally as opposed to measures that were applicable only to one or a very limited set of gTLDs.

With these considerations, ICANN created the Proposed Measures for Letter/Letter Two-Character ASCII Labels to Avoid Confusion with Corresponding Country Codes with a provision stating, "Registry Operators may implement additional measures at their discretion," and published the Proposed Measures for community feedback. The intention of multiple publications, consultations, feedback solicitations, and this public comment forum has been to seek community input and work in conjunction with the community to develop a standard set of measures that would avoid confusion while allowing registry operators to release two-character labels.

Next steps

Taking into consideration the feedback provided by the community during the public comment period, ICANN will establish a list of measures registries must implement in order to release from reservation letter/letter two-character ASCII labels not otherwise reserved pursuant to other sections of the Registry Agreement.