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Second Special Session on the Report of the Second WIPO Internet Domain Name Process

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THE STATUS OF COUNTRY NAMES IN THE .INFO TOP-LEVEL DOMAIN

Document prepared by the Secretariat

1. The status of country names in the .INFO Top-Level Domain has been the subject of ongoing discussions at the Internet Corporation for Assigned Names and Numbers (ICANN). With a view to facilitating the discussions on the protection of country names in the Domain Name System (DNS) at the first Special Session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), the Secretariat prepared documents SCT/S1/4 and SCT/S1/4 Add summarizing this ICANN debate. Since the first Special Session there have been further developments at ICANN regarding the issue and these new developments are reflected in the present document.

2. As explained in document SCT/S1/4, following a Communiqué by the ICANN Governmental Advisory Committee (GAC) dated September 8, 2001, the ICANN Board, by resolution of September 10, 2001, “determined that it is appropriate to take temporary steps to prevent the registration of [country names in the .INFO Top-Level Domain] in order to allow [the Board] and the community the time to consider carefully this issue and determine what if any policy should be adopted with respect to it.” Following this determination, ICANN

compiled a list of 329 names, on the basis of the ISO 3166-1 standard (with certain adjustments), which was transmitted to the registry operator for .INFO with the request (1) that the names in question, to the extent they were not already registered in the names of third parties, be registered in the name of ICANN for safekeeping purposes and (2) that any names already registered but successfully challenged and cancelled on the basis of the .INFO Sunrise Challenge Policy also be registered in the name of ICANN. The list in question, which contains names in Latin characters (in English and in the official languages of the countries concerned), is available at http://www.nic.info/whois_search/reserved_names. It may be noted that the list contains the names of territories and entities that would not be considered to be “countries” or States under international law and practice. Following the implementation of these directives by the registry operator for .INFO, 198 of the 329 names were reserved in the name of ICANN (the remaining were already registered in the names of third parties).

3. In the same resolution, the ICANN Board also directed the President of ICANN to devise “an action plan for rapid analysis of the technical and other issues related to the concerns raised by the GAC.” As part of that action plan, the President of ICANN proposed to “[c]onvene a discussion group to explore appropriate ways of addressing the short-term issue of the disposition of the 329 .INFO names” (in other words, whether the names in question should be assigned to the respective governments or returned to the pool of available domain names for registration by the general public). This discussion group (the “.INFO Country Names Discussion Group” or “ICNG”), which consisted of members of the ICANN Board, the ICANN staff, the GAC, the ICANN Domain Name Supporting Organization and WIPO, conducted its work through one face-to-face meeting, four teleconference calls and e-mail exchanges. It concluded its task with the issuance of a draft report recommending that the following actions be taken by the ICANN Board:

“1) The Board should respond to concerns regarding country names in .INFO expressed by the GAC and allow for restricted use of the set of [329] currently reserved in .INFO. In principle, these names should be made available only to governments and distinct economies for their use by means of an approval procedure to be administered by the GAC. The ICNG notes that while it recommends to proceed with restriction of use of the reserved names in .INFO to governments and distinct economies, this solution has limited utility because of the wide variety of ways of spelling country names which may make it difficult for users to distinguish the reserved, official names from non-reserved names. In this context, the ICNG conveys to the Board a second recommendation reflecting discussion on the significant potential utility of a new top level domain (TLD) specifically for use only by governments of countries and distinct economies:

“2) The ICNG strongly recommends that this path be pursued separate from the reservation of [329] names in .INFO, and that the Board invite the GAC to take the lead on determining the level of interest by governments and distinct economies for such a TLD, and if established, what criteria and ground rules are necessary for such a TLD. Assuming this recommendation is adopted, the Board and GAC might also consider relaxing the restrictions in .INFO at some later time, assuming the special TLD proposed in this recommendation proves to be more effective than the reservation of names in .INFO.”

4. After its issuance, the draft ICNG Report was posted on the ICANN site for public comment and submitted to the ICANN Board for consideration and decision at its meeting in

Accra, Ghana on March 14, 2002. At that meeting, the Board adopted the following resolution with respect to the ICNG Report:

“[T]he Board adopts the ICNG recommendation that the 329 country names reserved under resolution 01.92 should be made available for registration by the governments and public authorities of the areas associated with the names and directs the General Counsel to cause those names to be made available to those governments and public authorities according to procedures established by the GAC;

“[I]n view of the second recommendation in the ICNG report, the Board invites the GAC to investigate the level of interest by governments and distinct economies for a TLD to be used internationally for official purposes, and if established, what criteria and ground rules are necessary for such a TLD.”

5. Four features of the ICNG discussions and its Report are of particular relevance to the work of the Special Sessions of the SCT:

(i) The ICNG discussions and Report were concerned solely with the protection of country names in the .INFO Top-Level Domain. The ICNG Report explicitly states in this connection that “the GAC reiterated on several occasions that the request for the reservation of country and distinct economy names was only for .INFO, due to .INFO’s perceived unique nature and the desire of governments to ensure that information about their respective countries is provided on the Internet responsibly and reliably. Repeated statements by the GAC reassured the participants that the concern would not set a precedent for all other TLDs while other appropriate inter-governmental fora address the matter with regard to geographical terms in domain names.”

(ii) The ICNG report makes specific reference to the work of the Special Sessions of the SCT on geographical terms and states, *inter alia*, the following in this regard:

“... [T]he sense of participants was that the assignment of the .INFO country names to governments and distinct economies would not impede current or future discussions within [WIPO] on any general policies for country or distinct economy names other than TLDs. ... [T]he [Report of the Second WIPO Process] and the WIPO SCT are ongoing discussions, addressing a broader issue of “geographical identifiers” which includes country names. A decision taken by ICANN on whether to move forward on a specific reserved list of names in .INFO would not impede international governmental discussions within appropriate inter-governmental organizations such as WIPO.”

In the same connection, the ICNG recognized that “[p]ending the current WIPO work, no general solution is available that addresses the concerns of all parties involved.”

(iii) In terms of scope of protection, the ICNG recommendations should ensure that governments will have the ability to register the names of their countries as domain names in .INFO in a format that is identical to that of the 329 names transmitted by ICANN to the .INFO registry operator. The scope of protection thus offered is narrow, as it does not cover domain names that are variations of the country names concerned. However, in light of what has been witnessed in the area of trade and service marks, the vast majority of abusive practices typically take the form of variations of names. The ICNG report is

sensitive to this issue and states that “ICNG participants expressed a concern that the reserving of names in .INFO would have limited effectiveness because of the enormous numbers of variations in country names.” The ICNG’s second recommendation, namely the consideration of the establishment of a new top-level domain specifically for official use only by governments, in the Secretariat’s view, does not resolve this problem. Such new top-level domain for national governments would be functionally comparable to the already existing .INT for international organizations. As discussed in the Report of the Second WIPO Internet Domain Name Process, the availability of a “clean” space for international organizations in .INT has not prevented the names and acronyms of the organizations in question from being the subject of predatory and parasitical practices in the other, more open domains. The creation of a top-level domain restricted to official use by governments likewise almost certainly would leave unaffected continuing abuse of country names in the other domains.

(iv) A practical problem faced by the ICNG resulted from the fact that there exists no single widely accepted list of country names. Two such lists are referred to in the ICNG Report, namely the United Nations Terminology Bulletin No. 347/Rev. 1 on Country Names and the ISO 3166-1 standard concerning codes for the representation of names of countries and their subdivisions (itself based on the United Nations Terminology Bulletin). The ISO standard traditionally has been relied upon in the Internet context (for instance, the country code Top-Level Domains (ccTLDs) have been derived from it) and also formed the basis for determining the 329 names that the registry operator for .INFO was requested to reserve. Nonetheless, in composing the list of 329 names, ICANN introduced a number of adjustments to the ISO standard, in particular because it exists only in English and French. Countries naturally expect to benefit from protection for their names in their own official languages and the list of 329 names established by ICANN reflects this, but only partially (as it includes country names in the official languages of the countries concerned, but not if such languages are based on non-Latin scripts).

6. *The SCT is invited to note the contents of this document.*

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