

GeoTLD – Internet vs. Community?

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(comments are made by Dirk Krischenowski)

In the light of an expected new round of gTLD introductions into the Internet root, the issue of so called GeoTLD have become the subject of a sometimes heated debate between supporters and critics. On the pro- as well as on the con-side, the discussion has already led to remarkable cross-constituency coalitions. Especially after the lively debate around the failed .xxx application, many observers believe that the GeoTLD challenge does have the potential to end up in landmark decisions for the ten year old ICANN framework. The GeoTLD concept touches many of the traditional core questions of Internet Governance: The relationship between an – often self-defined - Internet community and society at-large, between private and public stakeholders, and between local and international decision making bodies. Unfortunately, the discussion around the delegation and re-delegation of ccTLD have not been a sufficient training camp for the GeoTLD debate, due to the fact RFC 1591 and the reference to an already existing ISO 3166 list happened at a very early stage of the Information Society, and two letter codes usually don't touch people emotions the way full geographic and geopolitical names do.

Let's ignore for a moment the decreasing importance of domain names due to the widespread use of search engines and look at some simple facts and considerations:

1. Every single website can be accessed by all computers with unrestricted connection to the Internet. The online supply of content linked to geographic and geopolitical entities does therefore not depend on specific domain names.
2. Up to now, there are two main categories of TLD: Country Code Top Level Domains (ccTLD) and Generic Top Level Domains (gTLD). The ccTLD concept is limited to those two letter codes that are mentioned in the ISO 3166 list. All other TLD – regardless if “sponsored” or not - fall into the gTLD category; this does include the procedures for application, the introduction into the root, and the legal requirements regarding the relationship between the registry and ICANN. Non-cc TLD using geographic identifiers can therefore more precisely be categorized as Geo-gTLD³.
3. Unfortunately, two completely different concepts are often being discussed under the Geo-gTLD headline, maybe for strategic reasons: a) the proposed string is fully identical with a geographic identifier (“full Geo-gTLD”), e. g. .berlin, .paris, .bavaria, and b) the string only represents a geographic entity without using its precise name (“semi Geo-gTLD”), for example .cat, .nyc. or .berlinfriends. The discussion on Geo-gTLD should be focussed on the first case, because the nearly unlimited variety of abbreviations and artificial combinations of

¹ This is an individual Internet user statement and must not be mistaken as statement of any public or commercial entity.

² Michael Leibrandt claims that his article is written on his own capacity. In fact the article was issued on the basis of a Microsoft Word document used in the German Ministry of Economics and Labour (now Ministry of Economics and Innovation). This seems to be confusing, since Michael Leibrandt is still employed by this ministry, but he's not anymore responsible for the Internet topics.

³ As I presented at the 33th CENTR meeting in Helsinki in June 2007 this may change in the future. The GeoTLDs are in many characteristics much more equal to ccTLDs than to gTLDs, especially in terms of local legislation. By this in the future, when GeoTLDs outpace the number of ccTLDs by by numbers, the GeoTLDs may either become part of the ccTLD space or form an own name supporting organisation (NSO).

letters doesn't raise serious public policy questions and therefore doesn't deserve special protection. Local and regional authorities as well as the GAC should remain silent on those proposals that do not use the precise name of a geographic entity. It's not the role of ICANN to base gTLD decisions on the expected content behind a particular string. Only the string itself should be the criterion for the evaluation; this is what makes the .xxx decision so problematic. Contrary to the sensitive trademark area, even those combinations of letters that are very similar to the name of the geographic entity (e.g. .berln or .baerlin) should be evaluated and approved in the same way as, for example, .biz or .info⁴. As long as the general conditions for running a TLD like financial and technical stability of the operator are met, there is no reason to put such proposals into question.

4. The success of a TLD does not depend on the letters used, but a) on the meaning that users assign to the code, b) how the TLD is managed and c) how the TLD is marketed. There is no better proof for this than the success stories in the ccTLD area⁵. With few exceptions like .uk, the two letter strings from the ISO 3166 list had been unknown to consumers before the Internet age. Mostly these codes are not even used as the national identifier on the car licence plate. Nevertheless, many ccTLD do receive a lot of attention today. Just take the case of Germany: In more than 11 Mio cases commercial as well as non-commercial users have obviously come to the conclusion that the strange .de code does offer the national Internet identity they are looking for. Taking into account registration figures of other ccTLD, it's hard to imagine that a .deutschland or .germany TLD would have attracted even more costumers than .de.
5. The by far most misleading argument for the introduction of Geo-gTLD is the one of increased competition. For technical reason, every TLD can only be assigned once. Once a registry has taken over responsibility for a gTLD, nobody else will be able to operate the same gTLD. And the registry usually also controls the conditions for reselling registrars. Without any doubt and well known in the Internet community, every additional TLD does therefore establish a new economic monopoly. This makes the introduction of new TLD a public policy issue, e. g. with regard to the economic pressures on small and medium sized companies to opt for defensive registration. But the problems grow even bigger if we think of gTLD strings using the full name of geographic entities which are, by nature, unique⁶. At the

⁴ Abbreviations like NYC, CYM, CAT, SFO are sometimes protected by trademarks of public authorities because of the lack to protect place names as trademarks. Sometimes the abbreviations may be seen as public property. Additionally ICANN always evaluates the string in combination with the purpose the string is intended to be used for. We should also have a look to the ccTLD discussion where .fra, .france, .french might not be allowed if the ccTLD manager does disagree. Following these points the "abbreviation GeoTLDs" should be seen in the same row than the full place name.

⁵ We have seen that the artificial scarcity of many name space have created a massive misuse of ccTLDs als identifiers for other purposes. I would like to draw attention to .tv, .to, .la (used by Los Angeles), .by (used by Bavarians) and others. For sure ccTLDs are short, but I believe if the history had been a different, more intuitive country TLDs like .usa, .esp, .deu (or .ger) would have had the same success than the ccTLD 2-letter codes. With GeoTLDs there's not much discussion space which string should be used by the community, because the community has already chosen long before the TLD exists. BAIREs is the term people in Buenos Aires use for their city, PAULISTA is the term the people call themselves in Sao Paulo and NYC is the preferred identifier for the New Yorkers.

⁶ Names of geographic entities are in most cases not unique! Place names have their roots, often centuries ago, in names of local conditions, derive from peers namings (e.g. princes, kings), names of saint or just describe the place. In the case the Berlin the oldest place with the Berlin has its roots in the name of the prince Berolin which lived around 1215 in the northern part of Germany. The name origin of Germanys capital Berlin is some 30 years younger and derives from the Slavic word Berl, which means "swamp". The Berlins in the US have been founded in most cases by people immigrated some centuries ago from Berlin to the US or by people which had the surname Berlin. Most of the place names are not unique worldwide, it is common that a place name is used many time in many countries.

second level, every geographic identifier can be placed under a three digit number of TLD; at the top level, there is no competition at all. Someone might consider .biz to be an alternative to .com, but no company or public institution from Hamburg will seriously consider a Domain Name under the Geo-gTLD .munich to be a second best option. It's one of the core lessons of economics that monopolies should be avoided wherever possible. And if the Geo-gTLD road is taken, the highest standards of external monitoring and control – regarding performance, not content! - need to be applied in the public interest.

6. One of the most discussed issues with regard to the “traditional” type of GeoTLD, the ccTLD, has always been the relationship between the local community and the relevant global decision making bodies. The core question continues to be the competence for the delegation and, even more delicate, the possible re-delegation of a ccTLD string. Though differently transferred into national institutional and legal frameworks, **today's mainstream assumption is that ccTLD are embedded in a trilateral relationship between the registry, ICANN, and the relevant national community**⁷. The ICANN board should not decide who runs a particular ccTLD, but follow the decisions made at the national level. If a given registry does no longer have the support from the national community, than ICANN should follow a clearly formulated re-delegation request.

Regarding gTLD including Geo-gTLD, the situation is a completely different one. The gTLD concept is based on a bilateral legal relationship between ICANN and the relevant registry. The contractual link between these two actors does not recognize the role of a local or regional Internet community. By its very nature, the gTLD concept is not tailored to respond to local or regional needs including the early termination and re-delegation of a Geo-gTLD. In other words: If your local Geo-gTLD operator goes nuts, even letters send to ICANN by every single citizen would not help to change the situation. What is sold by some as a strategy to strengthen the local Internet community will, regarding that particular Geo-gTLD, generally result in a significant dependency of the local users from the registry operator. This is especially the case in those countries where the regulatory framework on telecommunications does not include legislation regarding the Internet addressing system and therefore wouldn't allow legal action on behalf of the local community. As in other sectors of industry, consumer protection can never be done satisfactory from inside commercial entities alone. None of the potential applicants for a Geo-gTLD has so far offered an opt-in for an analogous application of the GAC ccTLD principles regarding the management and re-delegation of a locally focussed TLD. Finally, looking at experiences made with the traditional gTLD, even re-delegations after the gTLD contract with ICANN terminates often do not end to the satisfaction of the Internet community.

All what has been said above doesn't necessarily mean that there shouldn't be Geo-gTLD. **But a local or regional decision to support a possible introduction should always be an educated one, taking into account all aspects of the complex global Internet Governance regime. If, after thoughtful consideration, taking into account the opinion of the Internet Community as well as other important local/regional stakeholders, the relevant authorities come to the conclusion that it's the right time and the right setting to move forward, than it's also the right moment to start thinking about who should be the one running the registry. “First come, first served” might be**

⁷ In fact the most successful ccTLDs (like .de, .uk, .it) are not subject to such trilateral relationships or contract, they are managed completely by private organisations. Moreover especially governmental influence has lead to many disappointing ccTLD stories as we've seen in .fr, .es or .au where governmental driven regulation have lead to the fact that the country's Internet users have registered much more domains with gTLDs (.com/.net) than the respective ccTLD.

the right solution for registration policy, but not for choosing those people who take over important parts of the responsibility regarding how a city or region is going to be presented to the world. As with other important elements of public infrastructure, an open and transparent public bidding process would therefore be the method of choice⁸.

If at the relevant local or regional level the answer is “no” regarding the use of a particular geographical identifier as full Geo-gTLD, this doesn’t mean that presenting local or regional content by using an attractive virtual platform is out of reach. The Internet domain name system is an extremely flexible tool that offers billions of options to cover specific demands of individual user groups, including those at the local and regional level. A wide range of semi Geo-gTLD is always available for every geographic entity. As long as there isn’t full consensus within the relevant community, it is therefore not a bad idea to keep unique and history-loaded geographical identifiers out of the Internet root. Even in the information age, for many people the names of cities and regions continue to have a very special meaning much beyond economic rationality.

⁸ According to leading telecommunication, trademark and other law experts in Germany (Prof. Koenig/Prof. Holznagel/Prof. Hoeren etc.) the administration of TLDs like .berlin, .köln (Cologne) or .bayern (Bavaria) by private sector entities or entities of the local Internet community complies with the national legal requirements. Domains and TLDs are considered „numbers“ under German’s Telecommunications Act. In principle, all regulatory functions related to numbering are in the field of responsibility of the German Federal Regulatory Authority for Telecommunication affairs, the so called Federal Network Agency (“Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen”). According to Section 66 (1) 4 of the German Telecommunications Act (Telekommunikationsgesetz TKG), the administration of domains and TLDs is explicitly exempt from the responsibilities of the Federal Network Agency. Thus, the German Legislator has deliberately left the management of TLDs as a whole to the self-regulatory bodies of the private sector and the Internet Community. Neither the German Regulatory Authority, nor the Federal German Government or Berlin’s State Government are therefore competent for the creation of new TLDs or the allocation of concrete domains or TLDs. Any economic activity falls within the area of protection of constitutional rights. The administration of TLDs by the private sector is subject to the area of protection of the occupational freedom according to Article 12 (1) of the German Basic Constitutional Law (Grundgesetz). This means that any economic activity is allowed as long as there is no opposing legal provision, which itself has to comply with the constitution. Consequently, anyone is free to administer TLDs, if this is done in compliance with general legal requirements. Public interests with regard to the prohibition of a private administration of a certain name space have to be put in an adequate relation to the legitimate interests of concerned registry organisation. It is not appropriate to schematically apply the requirements which have been devised with regard to typical rules for the practice of an occupation. The market for the administration of TLDs is extremely small. The chance to administer a certain name space is therefore of essential importance for the registry operator. In its practical consequences, a prohibition would come close to a regulation concerning the choice of occupation. The interests of a registry operator regarding the private administration of a certain TLD outweigh the competing public interests. This is due to the fact that, ultimately, the access to the market for the administration of TLDs is at stake for the registry operator on the one hand, while the competing public interests are characterised by a high degree of uncertainty and a not particularly high relevance for the common good, on the other. A prohibition therefore would be unconstitutional. Both, the City and the State Berlin have a right in the name “Berlin” under German laws. These rights can also be enforced as regards the choice of Second-Level-Domains according to former court rulings (e.g. Heidelberg.de). Contrarily, the use of names as TLD’s cannot be prevented on the basis of rights to a name, if the TLD is used as a label of geographic origin and provided that the respective local and national governments are offered the opportunity to reserve or block Second-Level-Domains within the TLD-Zone prior to their public allocation (e.g. Senate.berlin, Bundestag.berlin). A name is only unlawfully arrogated when the interests of its holder are violated. The addressed part of the public therefore would have to assume that there is a direct or indirect connection between the TLD and a certain governmental authority. In contrast, section 12 of the German Civil Code (Bürgerliches Gesetzbuch) does not protect the holder of a name against other uses of this name which do not lead to a confusion of correlation. TLDs do not indicate the service or web site of an individual. They rather identify respectively constitute name spaces. The relevant part of the public does not expect a governmental administration of TLDs (see .de). As a consequence, a local TLD like .berlin will not lead to a confusion of correlation with regard to the federal capital of Berlin. The federal capital does not enjoy a legal protection against a dilution of its name that goes beyond the danger of confusion. The German Trade Mark Act (Markengesetz) accepts third parties’ – fair – use of city names.