



**Australian Government**  
**Department of Communications**

Dr Stephen Crocker  
Chair, ICANN Board  
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USA

Dear Dr Crocker

**AUSTRALIAN GOVERNMENT POSITION ON .WINE AND .VIN**

As foreshadowed in the GAC's advice in the Buenos Aires Communiqué, I am writing to elaborate on the Australian Government's views on the proposals for additional safeguards relating to geographical indications (GIs) in .wine and .vin.

It remains the Australian Government's view that the need for additional safeguards has not been demonstrated, and that the existing safeguards (including those proposed by the GAC in its Beijing Communiqué) are appropriate and sufficient to deal with the potential for misuse of these TLDs.

The current international and national protections for GIs are the outcome of carefully balanced negotiations, and any changes to those protections should be negotiated in the World Intellectual Property Organization and the World Trade Organization. They should not be de facto renegotiated or extended through discussions between a limited subset of the interested stakeholders. For this reason, I want to clearly reiterate that the Australian Government does not support attempts by some stakeholders to progress their interests in this way.

The Australian Government considers that existing international and national arrangements governing the appropriate use of GIs are sufficient to allow the delegation of .wine and .vin. During the Buenos Aires GAC meetings, I delivered a statement outlining the Australian Government's position on this issue, and I have enclosed a copy of this statement for the Board's information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. Maurer'.

Andrew Maurer  
Assistant Secretary  
Spectrum, Treaties & Internet Governance

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## Australian Statement on .wine and .vin

The Australian Government appreciates the sensitivities associated with geographical indications (GIs), particularly in respect of .wine and .vin. We are interested in ensuring that appropriate safeguards are in place. Our position is that the existing safeguards agreed by the GAC in Beijing are sufficient and appropriate, and we are encouraged that the ICANN Board has accepted the GAC's advice on safeguards that should apply to all gTLDs.

It may be useful to clarify what a GI is, and equally what it is not, as this is central to the current discussion. In short, under the widely accepted international standard – the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (or TRIPS Agreement) – a GI is a way to identify that a good originates from a particular geographic location which gives the good a quality, reputation or other characteristic. For example, in Australia, the term 'Champagne' on the label of a wine bottle is reserved for products that originate in the French region of Champagne.

The TRIPS Agreement sets the minimum standards of protection WTO members must provide for GIs. Individual countries provide protection for specific GIs under their own national law according to circumstances in their own territory. In some cases, this means that one country may recognise and protect a term as a GI under its national law, while another country may consider the same term to be generic and descriptive. There is no universally agreed list of GIs.

This legal framework around GIs was developed for, and applies to, *trade in goods*, and particularly relates to a link between *a good* and *a location*. It does not deal with the use of geographical terms more broadly, for example, in a web address, and does not prevent terms protected as GIs in some countries from being used for other purposes not concerned with the subject matter protected. In fact, as a GI often refers to a broad geographic region, it is possible for a wide range of travel, real estate, trade and other community and commercial uses to be appropriately and legitimately associated with these terms. An example of a legitimate use of a term recognised as a GI by some countries could be 'champagnecellar.wine', where the operator is trading in correctly labelled products.

In line with this, the Australian Government does not consider that domain names operate as GIs (as they are not appended directly to any goods), and does not agree that terms associated with GIs (whether in one or more countries) should be exclusively limited for this purpose. The principles underpinning the protection of geographical indications do not translate into the online environment, in that domain names have universal reach while GIs are protected territory by territory and there is no consensus on their international protection. We are concerned that a number of the suggestions from the European Commission overstep the boundaries of current international law and the protection usually afforded to intellectual property rights.

The Australian Government does agree that domain names can be used in confusing or misleading ways, and that there should be appropriate measures to address this risk. The Australian position is that the existing safeguards outlined in the GAC's Beijing Communiqué, particularly 2, 5 and 8, are appropriate and sufficient to deal with the potential for misuse of the .wine and .vin new gTLDs. These safeguards have now been accepted by the ICANN Board, and as a result ICANN's contracts with new gTLD registry operators will provide that:

- terms of use for registrants include a prohibition on trademark or copyright infringement, fraudulent or deceptive use, or otherwise engaging in activity contrary to applicable law, and
- there is a mechanism for making complaints if a domain name registration is being used contrary to the above, and consequences for breaching this requirement

The Australian Government has given careful consideration to the issues associated with .wine and .vin. We believe that the identified concerns are adequately addressed by the existing safeguards which prohibit fraudulent or deceptive use of domain names.

The protective framework governing GIs has been the result of careful thought and mutual agreement from many of our governments over a number of years. It would be of serious concern if positions from the GAC effectively redesigned the concept and protections of GIs as they exist in other fora. We should not be negotiating extensions to the TRIPS agreement in the GAC, especially while the mechanisms for GI protection and infringement are more appropriately the subject of negotiations among experts in the World Intellectual Property Organization and the World Trade Organization.

The GAC has not reached consensus on additional safeguards. Indeed, it has not even reached consensus on why such additional safeguards would be needed. In other cases where consensus was not achieved, the GAC has advised that the applications should be allowed to move forward. The absence of GAC consensus has been conveyed to the ICANN Board, and it is the Australian Government's view that the applications for .wine and .vin should be allowed to proceed.