ICANN
Transcription
GNSO New gTLD Subsequent Procedures PDP WG Work Track 5 (Geographic Names at the top-level)
Wednesday, 31 July 2019 at 14:00 UTC

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MICHELLE DESMYTER: Welcome to the new g TLD Subsequent Procedures subteam Work Track 5 Geographic Names at the Top Level call on the 31st of July 2019.

In the int4erest of time, there will be no roll call. Attendance will be taken via the Zoom room. If you happen to be only dialed in on the phone bridge, would you please let yourself be known now for attendance purposes?

Thank you. As a reminder to everyone, if you would please state your name before speaking for transcription purposes, and please keep your

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phones and microphones on mute when not speaking to avoid any background noise.

With this, I will hand the meeting back over the Annebeth Lange. Please begin.

ANNEBETH LANGE: Thank you, Michelle, and welcome to everyone. Are there any comments to the agenda that has been sent out or updates on statement of interest before we begin? Hearing none.

On today's call, we hope to reach conclusion on topics that had been discussed extensively. Languages/translations, and additional categories of terms not included in the 2019 AGB. We also aim to conclude the discussion on contention resolution f or contention sets that include one or more geographic names.

Let's start with the language question. I know that this will be a repetition for many of you, but since this call aims to be the last discussion in Work Track 5 on this issue, I think it is necessary once again to go through the background.

In the 2012 applicant guidebook, a string was considered unavailable if it was a translation in any language of the following categories of country and territory names, longform name, listed in the ISO 3166-1 standard, shortform name, and separable component of the country name designated in the separable country names list.

In the 2019 round, applicants were required to obtain letters of support or nonobjection from the relevant governments or public authorities for

an application for any string that is a representation in any language of the capital city name of any country or territory listed in the ISO 3166-1 standard.

Just to make sure that we all understand what we are now proposing, I will ask Steve to change the document so we have an example that he staff has made, because where we are today after having discussed this issue extensively, we are trying to agree on another solution. The following proposal appears to be something that might be acceptable to most Work Track members at this stage.

Steve, I would like you to find that other document. Yes, thank you. That's what I meant. So what we're trying to propose now is change "in any language," change to "UN and official languages." For those countries that have no official language, include de facto official languages supplemented with a curative mechanism that allows for objections in the case of commonly used languages in the respective country.

And the staff has made this example of how this can be for Singapore. They have English, Malay, Tamil and Chinese as their official language. Here is short name and [full name.] And in the UN official languages, which is English, French, Spanish, Russian, Chinese and Arabic. This will be the names. Some of them might already be included in the national official languages, but not all.

It was another option being raised on the call several times also in the last meeting; protection for a certain number of the most widely spoken

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languages in the world, for example 10 or 20, but the UN solution is what we have discussed most.

So to change from the baseline in the AGB 2012, there should be a rationale in place. The reason why a change has been discussed this extensively is the fact that there are more than 7000 languages in the world, and it would be more manageable and more predictable if a defined list could be in place, and justification for the proposed solution has also been discussed. Official languages is a defined list that protects the key languages most important to each country. De facto official languages provides additional protections to the countries that do not have an official language. UN languages is a defined list already used for translation and interpretation in several parts of ICANN. And the most widely spoken languages in the world is also, if we choose that, a defined list available.

Combined with curative measures, so that should be available for additional languages, not covered by preventative measures. If we can agree that this is the way forward, a combination of reservation, protection and curative objective methods, we have to go deeper into how the curative mechanism should be set up.

This is where we are now, so comments, please, discussion. Anyone? I can't see any hands. I hope you hear me.

ALEXANDER SCHUBERT: Yeah. I think we hear you all.

ANNEBETH LANGE: Oh, good. Hi, Alexander.

ALEXANDER SCHUBERT: I haven't raised my hand, but as you want to have feedback, when you mentioned 7000 languages, or maybe just 2500 depending on how you count it, the main problem I see here is first it doesn't really make any sense to have the capital of whatever, Zambia, to be protected in Finnish. In my view that doesn't make any sense. Plus, it would be absolutely impossible for any applicant to check their string for potential violation of those rules, because how do you want to even find out whether your string – and it could be a three-letter string like IBM or SONY or whatever – how do you know that SONY is not the Finnish translation of the capital of Nigeria?

ANNEBETH LANGE: Exactly. Yeah.

ALEXANDER SCHUBERT: So this is the main problem that any applicant for any string, could be a brand, could be another city somewhere, would have no means to check that and there would be abuse potential. And the abuse potential is that maybe nobody bothers that SONY or let's say IBM – those are bad examples, but that a string that nobody would ever affiliate with a capital somewhere, that a country could essentially block the application and demand kind of a ransom. It's probably not going to happen by European countries, but there's always a chance that some smaller country or someone in a small country says, "Okay, great,

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actually this is our language. If they don't finance a new school – or whatever, as it happened in one occasion – then we're going to stop this application."

ANNEBETH LANGE: Thank you, Alexander. So what we are trying to find out now in this call is if it's a strong opposition of changing it from the AGB that had any language to the proposals that's been on the table. I see that Nick Wenban-Smith from Nominet has his hand up. Nick, go ahead.

NICK WENBAN-SMITH: Hi. Thank you. Just to respond to Alexander's point, I think that's precisely the issue, is that otherwise legitimate and sensible applications might be inadvertently blocked because for some reason they didn't realize it was the translation into some completely different language of a capital city somewhere in the world.

But I think the question we've got to ask ourselves is whether this proposal is an improvement on the existing language in the 2012 applicant guidebook, which is much wider. I would say that anything we can do to narrow it down to what strictly speaking needs to be protected is to be encouraged. So this seems to me a positive development from that perspective, although I take the point that it could still be a translation into one of the UN languages somewhere, but that's a much narrower subset of languages than all languages worldwide, which is the current wording.

So if we can converge around something which is more limited and specific and directed towards I suppose prevention of abuse in the sense of people who shouldn't be applying for capitals applying for them, then I think we should try to get behind it. Thanks.

ANNEBETH LANGE: Thank you, Nick. I see that Katrin Ohlmer has commented in the chat here to Alexander. Why has it been bad? We did not have any issues with the language rule that we had.

This has been raised several times now among others by Yrjö if I remember correctly. What has been said then that we didn't know if it was a problem, because since it was reserved in any language, it could easily have been someone not applying for that name because they already knew that it was reserved through that any language rule. So we don't know.

Any more comments? I see no more hands. So I think we go on to the next on the agenda. We continue with the next issue that is additional-categories of terms not included in the 2012 AGB. Some Work Track members believe that –

MARTIN SUTTON: Sorry, Annebeth, I'm struggling on my mobile to –

ANNEBETH LANGE: Okay. I can't see your hand. So go ahead, Martin, please.

MARTIN SUTTON: I'm struggling to get through the different stages to ...

ANNEBETH LANGE: Just interrupt me. That's okay. Go ahead.

MARTIN SUTTON: Just going back to the comments on the languages and noting Alexander's comments and Nick's, as well as Katrin's comment in the chat, and noting that Katrin also offered some language to try and refine the language requirement, I'm just wondering, are we in a position now having discussed it so many times to just check – has anybody got any really strong concerns of us moving forward with the suggestions that have been put forward which restrict the languages somewhat to a more practical and reasonable spread of language restrictions?

Because if we can say that on the call, then that might be useful to put out in the summary for those that didn't attend to pick up and close this off for the next call. Because I think we have played around with the languages for some time now, and if we could just get a sense of whether Work Track 5 members feel that this is a reasonable approach and it is an acceptable way forward that we could then start to train the language to make the recommendation to the full working group on the language element.

So before you moved on to the next one, I just wanted to check, is there anybody on the call from Work Track 5 that has severe objections and

can't see their way forward to accepting the suggestions put forward on the languages? Thanks.

ANNEBETH LANGE: Thank you, Martin. The plan now is that after this call, the coleads would send out an e-mail to the group as a very last opportunity for you to send input if they have some new things that we could agree on. But I agree with you, Martin. We have been discussing this for so many meetings now, and this is a compromise. If we can't agree on a compromise here, it will go back to the AGB rule for any languages.

But this seems quite reasonable, and it seems to me that we haven't had very strong opposition, but still an opportunity to raise that opposition. I see that there are some comments here in the chat from Katrin at Martin. "As far as I remember, we had no real opposition against recommendation to limit it to the official UN languages and the addition put forward by the Geo TLD group."

Great. And Justine, "So it is the proposal to narrow the scope translation meant to apply to all country and territory names and capital city names?" And yes, that is the proposal.

"Agree that the 2012 AGB treatment was overly broad with regards to any languages, and this proposal seems to go into a positive direction" from John Rodriguez.

And Steve answers also at Justine, "It would apply to these terms: longform name listed in the ISO 3166 standard, shortform name listed

in the ISO 3166 standard of a country name designated on the separable country names list and capital city names."

So Martin, to everyone, "As long as there is no objection on the call, would be good to make clear in a follow-up to the Work Track 5 members." And yes, that is the plan.

From Susan Payne, "Is the second bullet in the Zoom screen the end of the proposal, or does it go over the page?" Susan, do you mean this ... It's more. Steve, can you please move it a little up? If that's the document Susan is questioning about. This is it. It's just an example here from the capital city name. It uses Brussels as an example.

Okay. Yes. Alexander, a new hand?

ALEXANDER SCHUBERT: Yes, it's a new hand. Just a question, have we also covered the vast amount of presumably tens of thousands of strings that are protected through the [inaudible] national places, like the US states?

ANNEBETH LANGE: This is not covered here.

ALEXANDER SCHUBERT: Because I think in the 2012 applicant guidebook, all those protected names had the same protection. So I would also assume that the [inaudible] national place names will also be protected in all languages. Right or wrong?

ANNEBETH LANGE: I'm not quite sure.

ALEXANDER SCHUBERT: You should simply check, so if they were protected in all languages, then we have to treat them in the same way like ...

ANNEBETH LANGE: The same way. I agree. And there's a hand here from Nkem Nweke.

NKEM NWEKE: Hi. I hope everyone can hear me. I really couldn't follow properly, but I would like [it to be on the] record that I really do not support the new proposal, because take for instance my language is not on that list. I'm [inaudible] from the eastern part of Nigeria. Is it protected? [Why would anyone want me think I should] consent to the new proposal when my own language is not even on the list?

Same applies to others too whose languages are not on that list. They're not happy about it, because we are a proud people too. We also want to be known and recognized in the world.

ANNEBETH LANGE: Thank you, Nkem. The way the proposal is now is that the national language of the country, that is protected. It's not only the UN languages. It's also the language of the country.

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NKEM NWEKE: Yes, I understand. But we have three main languages, accepted languages in my country, if not even four.

ANNEBETH LANGE: Are they official languages or de facto official languages?

NKEM NWEKE: Yeah.

ANNEBETH LANGE: Yes? But then it will be just like Singapore we see on the screen here, that they have four different languages, and it will be protected in all those languages in the country.

NKEM NWEKE: Well, that's fine, but still, I feel for those whose languages may not be protected from the new proposal. I may not belong to that, but it's also good to protect the [inaudible] minority. We have four main languages in Nigeria. If you asked me what they were, Yoruba, Hausa, and English. Are all these going to be protected? Then what about the [supposed – the seeming] minority languages? Will they be happy [inaudible] when they get to know that? Because they're not on this call and they're probably not in this group, when some day they eventually get to know, how will they feel? That means someday we're likely to revisit this issue again and again.

ANNEBETH LANGE: That might be so. We know that if we can't make a compromise and agree on a change, it will be any languages in the future as well. Even if that is very little manageable and confusing, this is an attempt to find a better, more manageable, more defined list. But of course, there are [inaudible] directions here. And that's what we're trying to seek out now.

So [inaudible] language here from Cheryl, "Your language would be national or common use and de facto language so it's covered." Jim says, "India has 19 official languages." And Cheryl again asks, "As are the 25 or more languages in India, etc."

So [inaudible] languages are complicated, we know that, and that's why we are discussing it and we are asking if it's the group that decides whether we should change it or not. It's not the coleads, it's not the staff, it's the group. So that's why we're trying to ask you here: is it a strong opposition, or not?

So we will send this out again on the list after this discussion. We have all the comments coming in today. So then we'll see what the development will be. Nick, is that a new hand?

NICK WENBAN-SMITH: I think it probably was an old hand, but you made the point very well that we've discussed this issue again and again, and at some point we've got to stop discussing it. If there isn't a sort of consensus that we could limit the protections to just the languages of the countries concerned,

plus the UN languages for everybody, then keep it as all languages everywhere, then let's just decide that and move on, because at some point we've got to stop going around in circles discussing the same thing. And although it's inelegant, I think, because of the sheer number of languages worldwide which in theory ought to be checked, in practice I don't think there was a major issue in the 2012 round in terms of there were controversies and still ongoing some controversies, but actually, the languages question wasn't one of them. So let's not waste any more time on it. That's all.

ANNEBETH LANGE: It's a comment here from Jim, "To support the predictability principle of SubPro, any list of languages has to be authoritative. I'm not sure who keeps such a list."

And if we go down this route, we have to combine it with a kind of curative mechanism and we haven't gotten to the details of that discussion yet. So I think, Nick, that I agree with you. We have discussed it so long now that we will send out something after this meeting, and we have to move on.

Justine says, "I personally still do not think there is a need to change the AGB 2012 in respect of translations." Okay. We hear you all, and we'll continue now with the next issue on the agenda.

Additional categories of terms not included in the 2012 AGB, and that is another difficult issue. Some Work Track members believe that additional categories of terms should be protected beyond those listed in the 2012 applicant guidebook, and other members believe that the

protection in place in 2012 already is more than enough. And this issue has also been discussed extensively, but it has been very difficult to find a solution that is manageable.

While many different proposals have been put forward by several members and have been included in the initial report, at this stage it seems that none of the proposals have widespread support from the Work Track after extensive discussion in many meetings. If there are no new proposals or positions that members believe, we will have sufficient support to become a Work Track recommendation. It seems now that the time has come to park this issue.

But I remind you that unless there is agreement to make a change, we are back to the status quo from 2012, that is no additional protection. So it's your turn to comment now. Any hands? Very quiet, nothing in the chat, no hands. Okay.

Next issue we hope to conclude today is proposals for changes to string contention resolution rules. To repeat, in the 2012 round, the method of last resort for resolving contention between two or more applications was an auction. The full working group is addressing auctions of last resort between two or more strings that are not geographic names, and Work Track 5 could consider if the 2012 rules are still appropriate for contention sets that include one or more geographic names as defined in section 2.2.1.4.2 of the applicant guidebook, and that is if there is more than one application for a string representing a certain geographic name and the applications have the needed government approvals, the applications will be suspended pending resolution by the applicants.

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If a contention set is composed of multiple applications with documentation of support from the same government or public authority. The set will proceed to auction when requested by government or public authority, providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the set will proceed to auction. There have been no proposals put forward at this point to change the existing rules. So please, you have the chance now. Are there any proposals? I see no hands. Nothing in the chat. So this will be parked as well.

So then we go on with discussion of substantive –

CHERYL LANGDON-ORR: Annebeth, you do have a hand.

ANNEBETH LANGE: Yeah, I see. Hi, Christopher. Go ahead.

CHRISTOPHER WILKINSON: Hello. Good afternoon. Apologies for joining late. I had a previous appointment. Is this the last opportunity we may have to deal with this question, or will it come back to us when we know what the PDP position is on auctions in general? Because my recollection is that in the PDP, there's still a fairly substantial voice against auctions. Is this going to be discussed again, or is this the last opportunity?

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ANNEBETH LANGE: I think that perhaps Cheryl could give an answer on that, because since we don't have any proposals here, we will send it to the full group and then it will be discussed further there. But I see that Katrin has a comment here that the Geo TLD opposes that contention sets including a geo name goes to auction, and they will provide a proposal.

So that's perhaps the answer of your question as well, that there will be a proposal we can discuss.

CHRISTOPHER WILKINSON: Thank you very much. And thank you, Katrin. I look forward to that.

ANNEBETH LANGE: Katrin says, "Sorry, I meant the Geo TLD group." Okay. Thank you, Christopher.

CHRISTOPHER WILKINSON: Thank you. And apologies again for arriving late.

ANNEBETH LANGE: That's okay. Anyone else? Then we go on with the discussion of substantive review of comments in response to initial report questions. I think we will start with question E4. We started a week ago, we got started with it but we had to stop in the middle, so I think we go from the – it's easier to understand if we take it from the beginning.

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Question E4, and that is about proposed principles to guide policy development. We ask if the principles listed were supported, and the principles were in alignment with principle C from the 27 GNSO recommendations on new gTLDs, the program should allow for the introduction of new gTLDs. And in alignment with principle A from the 2007 GNSO recommendations on new gTLDs, enhance the predictability for all parties, reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated. Policies and processes should be simple to the extent possible.

All principles supported by BRG, BC, [Honduras,] DOTZON GmbH, Registries Stakeholder Group, DotBERLIN GmbH & Co. KG, Hamburg Top Level Domain GmbH, geoTLD Group, INTA, IPC, Registries Stakeholder Group, United States – again, Group of Registries and [inaudible].

And some supported some of the principles. They support the principle of simplicity, special cases should be eliminated to the extent possible. Some conflicts will be inevitable, therefore policy should ensure that all voices are heard through curative processes. Noncommercial Stakeholder Group.

General comments appear to support predictability and reduction of conflicts. Some governments – there is a full list there that can be found – Swiss Federal Institute of Intellectual Property, SWITCH, oriGin, European Broadcasting Union, Association of European Regions for Origin Products.

There's a caveat warning regarding principle on the introduction of new gTLDs, notes that supporting the introduction of new gTLDs does not

mean that all TLDs should be allowed. Comment by CENTR, [AFNIC,] ccNSO. Notes that there has yet to be a discussion about whether or not another gTLD round or even an expansion of the gTLDs is needed or desirable. Support the other principles. ALAC.

Additional principles suggested, supports including in principle internationally recognized human rights, including those expressed in the universal declaration of human and the implementation of the human rights impact assessment. Noncommercial Stakeholder Group.

Commentary on the use of principles notes that principles may be interpreted differently by different parties, supports an interpretation of the principles that favor curative or preventive rights, coming from IPC.

Principles should be used only for overarching guidance and may lead to undesirable outcome if overapplied. Registries Stakeholder Group- and Group of Registries.

When developing policy using principles, international law should be taken into account to ensure that no new rights are created. United States. Principles [set about] should be aligned with the GAC general public policy, GAC principles regarding new gTLDs from 2007, related to geographic names as well as principles of international law, international conventions and applicable local law, from the Portuguese government.

Principles should be aligned with previous GAC advice, from governments of Argentine, Chile, Colombia and Fundación Incluirme.

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Principles depend on the policy objectives for the new gTLD program, a comment from Tom Dale.

Are there any comments to this? Have all comments been properly represented by us? Comments, please, before we go on. Any hands? I see there is a comment from Justine here, at Steve. "I forgot to check the highlighted text in the comment attributed to ALAC. What does other principles in support the other principle refer to, please?"

And Steve answers, "It means that the ALAC stated it supported the four principles identified in the initial report." From Steve to everyone, "Here is the text from the ALAC. In the event such expansion is found to be necessary or desired, the ALAC supports the application of principle A and notes that predictability, avoiding of conflicts and simplification of processes and policies are best facilitated by preventative measures known to all before the process starts rather than curative ones that make uncertainty prevail long into the process.

A hand from Christopher Wilkinson. Christopher, please.

CHRISTOPHER WILKINSON: Thank you, chair. You asked for observations about the comments. I just recall that in relation to the IPC point, that there has been substantial discussion in the past that resulted in a strong preference for preventative rights for geographical names and concerns about the cost and delays arising from curative rights. I'll say no more at this stage, but I just wanted to recall that that discussion has taken place and as far as I can see has not yet been resolved.

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Another point, I love the United States comment about no new rights. This actually could prove to be rather problematic. First of all, there are some countries which have laws protecting their geographical names and thus giving rights to the communities and cities who are protected by those laws, but mutatis mutandis exactly the same circumstances can arise in other countries which have not yet protected those names formally in national law. So this puts ICANN in a rather awkward position that some countries have created rights and other countries have not, and it's not quite sure what they would do if we followed o the letter the United States' position to ensure that no new rights are created.

There's also a branch of trademark law which I actually strongly agree with, that trademark law does not create a right to a monopoly worldwide for all sectors of a particular trademark. Trademark rights are very important, but they refer normally to the jurisdiction and to the sector of the economy to which they apply. And it would be wrong, and here I agree strongly with the United States' position. It would be wrong for ICANN to proceed in a way which would create a new right to a global monopoly trademark by virtue of acquiring a gTLD.

So there may be some work to be done in this area, and particularly vis a vis our trademark and intellectual property colleagues. Thank you.

ANNEBETH LANGE: Thank you, Christopher. It's duly noted. Any more comments here? I see none. So let's go on to the next question, question E5. What should be the basis for the development of policies regarding geographic names?

Basis should be international law first. Principles on national, local law and policy may be relevant as those operating within the particular territory must be mindful of local laws.

One legal system should not be given preference over another in ICANN policy. National laws do not have global applicability whereas the DNS operates at a global level. This comment is by IPC, BRG, Group of Registries.

Many names have multiple different meanings and uses which coexist internationally in the real world. National laws, policies, norms and values are highly variable. Requiring applicants to adhere to a [subset] of national law could unduly restrict the release of TLDs that are noncontroversial in the jurisdiction of the applicant and have a chilling effect on speech. Group of Registries and some registry stakeholder members.

Geographic names or any other domain names with geographical relevance are not protectable under international law unless they fit into a legal category or protection. It is not feasible for national laws or policies to serve as the basis for the development of policies regarding geographic names as countries cannot dictate the enforcement of their national laws.

Despite the need to respect applicable local laws, the eventual protection imposed to geo names are not binding to ICANN once they are only to be considered at a local level. Noncommercial Stakeholder Group.

Some registry stakeholder members believe that while the basis should be international law, national laws should be respected. Next views on this is that basis should be international and national local law. Basis should be international law and national local law, international law and national law recognized trademark rights, and balance them against other interests which are codified in the law and international treaties.

Governments do not have a legal basis to claim exclusive rights to geographic names. Any objection to the use of a geographic term that is determined to be of either national, cultural, geographic or religious significance to a country or region has no legal basis. INTA.

Basis should be international law and applicable national and local law. ICANN should respect national legislation. Comment by DotBERLIN GmbH & Co. KG, Hamburg Top-Level Domain GmbH, geoTLD group, DOTZON GmbH.

Next basis should be international law, national local law and public policy input from the GAC. Basis should be international law, national law and relevant public policy input from GAC and governments. National legislations provide for protections of geo names that they are applied and enforced regarding domain names.

Some governments – the full list exists here – Swiss Federal Institute of Intellectual Property, SWITCH, oriGin, European Broadcasting Union, Association of European Regions for Origin Products. Basis should be international law, national local law, norms and values and/or other sources.

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Norms, culture and values should be considered, Portuguese government. Basis should be international law, national local law and policy, norms and values such as cultural [names] as well as immemorial usage, that is usage of a name extends beyond the reach of memory. Comment from ALAC.

Preventative measures should be based on international law, national law, and multinational treaties. Curative measures may be designed with other sources as a basis. Business Community.

Additional comments here, GAC cited GAC principels regarding new gTLDs for guidance, comment from GAC, and depends on the goals of the new gTLD program, comment from Tom Dale.

As we see, this is a lot of different views on what should be the basis of the rules. So, are there any comments to this? Have we covered it all? Any hands here? Christopher, please go ahead.

CHRISTOPHER WILKINSON: Thank you. I just want to recall in response to those comments which wish to be highly restrictive in terms of international law. In 1998, when the draft ICANN Articles of Incorporation were being negotiated internationally, the European Commission specifically asked and obtained that the Articles of Incorporation would specify that ICANN would respect applicable local law.

Now, in relation to this problem that we're dealing with, I recognize that that doesn't solve all the problems, but it does put a flaw under what can be respected or denied. This is quite important. It was negotiated at

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the highest level between the European Union ambassador in Washington and Ira Magaziner in the White House, and it is in the Articles of Incorporation for that purpose.

And the reason why legal staff dealing with this question at the time proposed this addition to the Articles of Incorporation was precisely that we foresaw perhaps dimly through a glass, [darkly,] but we foresaw that there was a potential problem arising from ICANN's global reach.

I just wanted to put that back on the record. I've said it before, but I just – and this means that in terms of ICANN's application of international and local law, it puts a flaw under what can be done or what needs not to be done, and some of the comments that you have just referred to tend to seek to deny the existence of that international agreement. Thank you.

ANNEBETH LANGE: Thank you, Christopher. Nkem, your hand is up. Go ahead. Nkem, do you hear me? Are you on mute? Okay. Greg, go ahead. We can take Nkem afterwards.

GREG SHATAN: Thanks. I'd look at the applicable law question a bit differently, Christopher. I don't think that any of the proposals that we've heard here are at odds with what's in the Articles of Incorporation and the bylaws. The responsibility to respect applicable law is not the responsibility to look to every local law at every time regardless of the facts and where things are happening and who's involved.

So the applicable law provision should not swamp every other – and is not meant to swamp every other aspect of this process, and what's in the ICANN articles is actually fairly standard for articles of incorporation of such an entity. So I think we need to be careful in avoiding overapplication of that particular aspect of this. Thanks.

ANNEBETH LANGE: Thank you, Greg. Nkem, do you hear me now?

NKEM NWEKE: Yes, I hear you.

ANNEBETH LANGE: Okay, go ahead.

NKEM NWEKE: [No, my take is that] the comments you've just read through, like that of the noncommercial stakeholders, ALAC, Hamburg, gTLDs, if you look at it closely, you realize that they're almost all saying the same thing, that these names should be protected. That is my take from what majority of comments you've just run through is simply saying.

And if you ask me, I will say this should be the basis on which we should look at – I think they've given us a good landing point. If you look at all these [inaudible] comment, aggregate them and see how we can now get into what's been said from these constituencies, and this should form the basis forward for us. That's just my take.

ANNEBETH LANGE: Thank you very much, Nkem. It's a comment before I give the floor to Taylor Bentley. It's a comment from Alexander Schubert here. "I think the basis should be [the natural needs] of the members of geo communities, namely to protect their ability to register, use domain names based on geo name gTLDs to identify themselves. I don't think we specifically need to protect governments, but instead more the Internet users of a certain geo location." Thank you, Alexander. And then we have Taylor Bentley next in line here.

TAYLOR BENTLEY: Hi, everybody. This is Taylor Bentley from the government of Canada. So I guess looking down the road a little bit and what might help this discussion, perhaps maybe staff or for our co-chairs, can you explain where agreed language on this would be reflected in either like an applicant guidebook or in something a little bit more concrete? Perhaps – what we're hearing is a lot of calls to consider certain pieces, and I don't think ICANN or any of us would say that certain pieces should not be considered. But it's more about how that consideration is operationalized.

So, is the thinking that this would form some kind of chapeau for the applicant guidebook or that it would actually form the basis of a framework that staff or the board would take into consideration with dealing with any other orphan issues or any kind of subjective decisions that they need to make?

So if we can just understand where this language and where this question is leading to in terms of concrete language in the outcome document, that would be much appreciated. Thank you.

ANNEBETH LANGE: Thank you very much, Taylor, for that question. I think I will leave the word here to Steve first, and then perhaps Cheryl can chime in here and give an answer to you. Steve?

STEVE CHAN: Sure. Thanks, Annebeth. It's actually a timely question, thanks, Taylor. I was actually intending to interject and provide a little context about why I recall this question was asked originally. The context for the asking for the basis of protection was from the perspective of trying to establish some sort of test that could be applied against when considering additional terms to be added for protections.

So I think if you look at it, at this question in a vacuum, it probably becomes overbroad and beyond the scope of this PDP to try to determine the scope for ICANN for instance, just trying to look back in the past about why this question was originally asked. It was more about if we're considering additional terms to be added for protecting – could there be a basis that could be agreed upon when thinking about whether those names should be added?

So from that perspective, this question is maybe asked a little bit out of order. We've already sort of reached a preliminary conclusion as Annebeth stated that it seems that there doesn't seem to be

widespread support for adding any new additional terms. So if we look at actually the next question too, it's on the three-letter codes, which is also a topic that's really been covered quite extensively so far.

So I guess I'd just finish by saying that some of these questions are probably going to be a little bit redundant in terms of the content [inaudible] and I guess sort of order in a sense as well. So hopefully that helps. Thanks.

ANNEBETH LANGE: Thank you, Steve. I hope this was answering some of your questions, Taylor. Or is this a new hand?

CHERYL LANGDON-ORR: Yeah, I was going to say. Taylor, is there anything else that we can answer on that?

ANNEBETH LANGE: He's put his hand down. Okay. Greg, go ahead.

GREG SHATAN: Thanks. Just briefly, I don't read the proposals here the way Nkem does. I don't think they are some sort of manifesto for protecting geographic names, especially considering that there may be little basis in international law for many of the protections that some have advanced. And if the idea is that we're going to put some sort of particular

viewpoint in, then I think we need to understand exactly what it is, because there are certainly a variety of views represented here.

Also, while I agree with Alexander that the interests of end users need to be considered in the interest of end users and using geographically-based domains, end users are not only organized by geography, they're organized by profession, they're organized by leisure interests and sports, and other such things. So the idea that the geographic meaning somehow overruns every other meaning or purpose for a top-level domain, it's not one I can support either from an end user perspective or from any other perspective. It needs to be balanced against other interests. Thanks.

ANNEBETH LANGE: Thank you, Greg. I see on the chat it's been discussion about this with the end users' interests here, and a lot of comments on that. And Alexander answers Marita. "Thanks. In the end of the day, we do all of this to further the evolution of the DNS in a way that improves the ability for registrants and Internet users to find each other. And in a geo community, they have [one shot at their geo name gTLD.]"

So, any more discussion on the basis of law here? Then we go on.

Then the next question here is some Work Track members have expressed that there should be a process in place to delegate three-letter codes and/or other country and territory names to specific parties such as relevant governments and public authorities or other entities. That's been raised. And the question was, do you believe that this is an issue on which Work Track 5 should make a recommendation?

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So it's a lot of discussion down here, but the Work Track 5 should develop policy to delegate three-letter ISO 3166-1 codes, comment from BRG, BC, ALAC, United States, NCSG, Group of Registries and some Registries Stakeholder Group members.

These strings should be available to government, public authorities or others by support, nonobjection. There should be prequalification procedures in advance of the next application round. Comment from ALAC.

Policy should be developed in cooperation with GAC, comment from some Registries Stakeholder Group members.

Policy should uphold 2007 policy recommendations, from the Noncommercial Stakeholder Group.

These strings should be generally available to applicants, comment from BRG, NCSG, some Registries Stakeholder Group members, IPC and INTA.

Some Registries Stakeholder Group members, there is no basis for countries or country code operators to claim sovereignty or ownership rights of three-character codes. Using three characters or more for gTLDs and reserving two characters for ccTLDs is consistent with current practice of the domain name system. There exist several three-character gTLDs while there are no examples of three-character strings that are used as ccTLDs, and reserving three-character strings for use by governments, public authorities or other entities risks creating confusion.

Comment from IPC, making a recommendation to delegate formally reserved geographic names to specific entities or classes of entities goes beyond the scope of SubPro and appears to be contrary to bylaws. Claims of sovereign rights to these strings conflict with existing trademark rights. Countries and geographic interests are already represented by two-character codes. No perceived advantage or necessity has been identified by the technical or country code community for such an expansion. Many of these strings are commonly used words or famous or [well-known]trademarks.

Next comment, Work Track 5 should not develop policy to delegate three-letter ISO 3166-1 codes. Comment from ccNSO, DotBERLIN GmbH & Co KG, Hamburg Top-Level Domain GmbH, geoTLD group, CENTR, AFNIC, Uninet Norid, DOTZON GmbH, some governmetns, SWITCH, Swiss Federal Institute of Intellectual property Rights, SWITCH, oriGin, European Broadcasting Union, Association of European Regions for Origin Products, Registrar Stakeholder Group, Fundación Incluirme, and GAC.

Separate processes should be set up later, comment from ccNSO, CENTR, AFNIC, Uninet Norid and DOTZON GmbH.

Process should take place after the next new gTLD round. Suggest a change in the bylaws to establish a new category for these strings to be delegated under the policy authority of the respective national communities similar to ccTLDs. CENTR, AFNIC, Uninet Norid AS.

Separate PDP should be launched in the future to develop process to delegate these strings to specific parties. Comment by DotBERLIN GmbH & Co KG, Hamburg Top-Level Domain GmbH, geoTLD group.

The current reservation of three-letter codes should be maintained. Some governments, Swiss Federal Institute of Intellectual Property, SWITCH, oriGin, European Broadcasting Union, Association of European Regions for Origin Products, Foundación Incluirme, some Registries Stakeholder Groups, and GAC.

Cites GAC principles on new gTLDs, Portuguese Government. Reservation is consistent with the fact that such names are not generic TLDs and should be under the policy authority of the respective national communities in analogy to ccTLDs. Some governments, Swiss Federal Institute of Intellectual Property, SWITCH, oriGin, European Broadcasting Union, Association of European Regions for Origin Products.

The status quo may be acceptable compromise. Some Registries Stakeholder Group members.

Country names and their variations should be used under the authorities of each country, like ccTLDs, a comment from Georgia.

That was it under this chapter. Are there any comments to this? And have all comments been properly represented? Comments, please. Susan Payne.

SUSAN PAYNE:	Hi, Annebeth. Thank you. Yes. If we could go back up just to the first bullet point, I'm noting in the chat that John Rodriguez is saying that he thinks the US comment is in the wrong place, and I think that first group of comments there in the first sort of set of a sentence and then three bullets to me seems really misleading as well. It sort of seems to be suggesting that all of those – to me, it's reading as all of those groups are kind of along the same lines or saying the same sort of things. And I just don't believe that's correct.

I think a number of those comments were saying that they think those names should be generally available to applicants, and so it is part of the second set of comments. But groups like the BRG – and forgive me, I don't have it in front of me, but I don't really think they're in any way in agreement with comment which are suggesting that names should be allocated to a specific party.

I'm sort of doing this on the hoof. I'm not quite sure how to suggest this should be changed, but I'm just not sure that this truly reflects the grouping and the kind of – where particular comments are in sort of general agreement with each other. I just don't think they are.

ANNEBETH LANGE:	Thank you, Susan. I agree. I think there's some confusion here, and also, about the question. Because if I remember this correctly, we had a discussion, I think it was in San Jose, about should there be a process that treated the three articles on the ISO 3166 list differently. So they should not be ccTLDs and not be gTLDs, but in the future, something else.

And I think that that is what we tried to ask, but the answers in this chapter have been answering a lot of things that had to do with the three-letter codes. So it is quite a lot of confusion here.

So we should take some time and go through it, and also be sure that the comments from the different commenters like John Rodriguez says that it's United States placement was misplaced and actually should be placed in the second group, strings should be generally available to applicants. And Steve says here, "Note that question E7 has a direct relation to preliminary recommendation three which seeks to protect alpha-3 codes listed in the ISO 3166-1 standard. That preliminary recommendation appears to have the support of Work Track 5 which seems to make this question less relevant at this stage."

And that's why what I said, I think we ask for something else. But let's see how this develops. Justine says, "Yes, because there's no consensus to allow application/delegation of ISO 3166-1 three-letter codes, these comments are effectively rendered academic."

John Rodriguez," Yes to Susan. Thanks for pointing out my comment in the chat."

Okay, so this is where we are now. Are there any more hands before we go on? And I'm sure that Steve and Emily will go through this so we have things in the right place.

I see no more hands. Then we go on with options, proposals, general measures proposed to improve the new gTLD program, and new proposals presented in comments, E10.

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If a category of geographic names is included in the AGB for future rounds, it should be amended to require a letter of support or nonobjection only where it is clear from the applicant's statements it's an application that the proposed use of the string would create a false or deceptive association with the government or the public authority. Suggest adding a PIC that would ensure the gTLD would not be used in a way that would falsely create a connection with a city governmental authority. Input from United States, variant on proposal presented in the initial report.

If individual governments and regions are motivated to reserve noncapital city names, such preventative reservation should occur on the ccTLD level, not the gTLD level, a comment from INTA.

In case there is contention for a string for which one application intends to use the string as a noncapital city name, preference should be given to applicant who will use the TLD for geographic purposes. Business Community.

Comments, please. Any hands? None? And no comments either as far as I can see.

Other changes in the scope of protections, proposals.

CHERYL LANGDON-ORR: You do have a hand.

ANNEBETH LANGE: Yeah, I see. Nkem. Thank you, Cheryl. Nkem, go ahead.

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NKEM NWEKE: Please, can you revisit the [full] statement? I want to be on the same page with them. The full statement from United States.

ANNEBETH LANGE: The first comment?

NKEM NWEKE: Yeah, the first comment.

ANNEBETH LANGE: If a category of geographic names is included in the AGB for future rounds, it should be amended to require a letter of support or nonobjection only when it is clear from the applicant's statements in its application that the proposed use of the string would create a false or deceptive association with a government or the public authority.

NKEM NWEKE: I think I agree with that statement, because we have a lot of fraudulent people all over the world, especially online, that want to take advantage of such opportunities. I think I want to be on the same page with that statement. Thank you.

ANNEBETH LANGE: Thank you, Nkem. Alexander, your hand is up.

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ALEXANDER SCHUBERT: The last comment from the BC that there should be a preference treatment to the applicant that has obviously the local government's support, that makes a lot of sense, because if someone applies for a noncapital city name and they indicate geographic purpose, then the prerequisite is to get government support, and if someone manages to get government or local government support, then it makes great sense to give them preference over other applicants who are not intending to use this for the geographic purpose. So I support the BC statement here.

And that makes especially sense because the gaming issue that we likely face here is that – and I like the case of Shanghai for example, that there's a local initiative in Shanghai, they get all the government support, they get all the associations behind them like [we did in Berlin back then] and they apply, and then there's another one who's applying for Shanghai and they just don't indicate it's for a geographic purpose trying to circumvent the [routes,] then obviously, we should give preference to the one who did all the work. Thank you.

ANNEBETH LANGE: Thank you, Alexander. Before I give the floor to Susan, it's a comment from Greg Shatan here at Alexander. "If they have one shot, that would seem to argue against protecting variations on their one shot geo names. Also, that seems to show a lot of shots, not just one."

While you think about that, Alexander, I give the floor to Susan.

SUSAN PAYNE.	Thank you. Hi. Comments on both of those bullets that others have just referred to. I'll do the second one first since that's kind of live in people's minds.

I note what Alexander says, and I can see that that has some potential merit if we're talking here about an applicant who's not indicated that they intend to operate as a brand. If there were some sort of scenario where an applicant has not indicated that they're intending to run the TLD as an official site for the city and therefore they haven't sought the letter of consent or nonobjection, and it was going to be a TLD where names were just freely sold, then perhaps I can see some merit to what Alexander has just said. But I don't see merit in the case where the alternate applicant is a brand applicant. Those names aren't going to be sold to the public, and their proposal to operate therefore is not to provide a space which is going to be a city space. And I don't see any reason – and indeed we've talked about this obviously at great length, and haven't reached agreement that here should be some kind of primacy to the city use over other types of use.

So that was one thing. I disagree with that element of what Alexander says. Regarding the bullet from the US that we also just looked at, actually, I think that this is a sensible proposal from the US which has never really had a great deal of air time. And it's not proposing a change to when consent or nonobjection is required specifically, but it is proposing that if we have scenarios where we've concluded that there should be consent or nonobjection, that it's in the circumstances where the string would cause deception or confusion rather than the current test which just talks about in the example of a city name – application

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for a city name where the applicant declares it intends to use it for the purposes associated with the city.

And some of the people who submitted or some of the groups who submitted public comments did flag concerns about that notion of association, just in the sense that it is quite a wide term, and there could be scenarios where for example a particular company is very well-known to be from a city and therefore the use of the brand is going to be associated with the city even though it's not in any way being used to suggest that it's a TLD being operated as an official site.

So I think the proposed tweaking of the language that the US has proposed in tehri comment is actually a really sensible tweak, and I don't think we've really discussed it in any great detail.

ANNEBETH LANGE: Thank you, Susan.

ALEXANDER SCHUBERT: Can I quickly respond to Susan?

ANNEBETH LANGE: Yes, do that, Alexander.

ALEXANDER SCHUBERT: Okay. Just very quickly, because I had already a lot of time. Susan, yeah, I agree with you that if there would be a brand Shanghai and they would apply for the Shanghai and they would use it just for their brand

purposes, this will not create any user confusion because they're not trying to create an affiliation with the city or the like.

But that would still deny the people living in Shanghai to create domain names that affiliate themselves with the city of Shanghai. So we have 20-25 million people living in Shanghai. They want to identify themselves with the geo name, they cannot anymore register the Shanghai domain name because it belongs to a brand and that brand is maybe a small whatever, handbag brand somewhere in the United States. Why should they have more power than 24 million in Shanghai? Finished.

ANNEBETH LANGE: Thank you, Alexander. It's a comment here from Katrin to everyone, "The proposal of the US does not reflect that the applicant has no control how the TLD would be perceived. Since the sales channel – AKA registrars – decide autonomously how to market the TLD."

And Steve has posted the US comment as asked by Nkem, and Katrin again, "A PIC could not solve the issues as it would require the registry to enforce it vis-à-vis all registrars."

It's a hand from Christopher, and I think that must be the last word because we're running out of time and we have to go to any other business as well. So we'll stop after his comment here. Christopher?

CHRISTOPHER WILKINSON: Hello again. Thank you, chair. Just very briefly, this discussion of a brand obtaining dot-Shanghai flies absolutely in the face of my interpretation

of international trademark law. If a brand, whether it's got a trademark or not, but especially if it has got a trademark in Timbuktu, can obtain the gTLD for Shanghai. Then my god, you're creating a massive new right for which, to my mind, there is no basis for international law. Thank you.

ANNEBETH LANGE: Thank you, Christopher. Are there any more comments now on this issue? Robin Gross has posted the US proposal recognizes that we must balance between competing legitimate interests, including freedom of expression, in determining our policy.

And from Greg Shatan at Alexander –

MARTIN SUTTON: Annebeth, sorry, I can't [inaudible].

ANNEBETH LANGE: Yes, go ahead, Martin.

MARTIN SUTTON: So I'd just restate something that we've probably done umpteen times. I don't think this is – so the last comments I heard again they just thought that there is some kind of priority order given. I don't think that's been put forward here at all. I think what was being stated is that it is open and that there are no priorities. So just to be clear, there is nothing that I've heard through the comments today and before that actually says

there's a priority over one over the other. it means that it is open and free to those that have a good opportunity to go forward and proceed with an application and all the rigorous stuff that gets applied to that application process, all the evaluations, and what we're saying from the comments here is that there isn't a priority. So whether it's geographic or not, whether it's generic or whether it's a brand, there's no priority. So just wanted to make that clear.

ANNEBETH LANGE: Thank you, Martin. And then the comment from Greg Shatan here is to Alexander, "Since the beginning of the DNS, registrants have found options when their first choice is not available. And also, we have all those protected variations."

From Alexander, plus one to Katrin, "Domains are sold by registrars, not by registries. The intentions for [inaudible] absence of the registry are virtually irrelevant. Greg, this would be true for brands as well."

From Greg to Alexander, "Correct, which is why the default rule should continue to be first come, first served."

At Greg, "On the second level, not on the top level."

Okay. I think that we have to stop there. It's only five minutes left, and just to conclude, we have gone through quite a lot today and after this call, the coleads will send out an e-mail on the list with a last opportunity for you to send input on the three issues discussed about the languages, non-AGB terms and contention sets.

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And we will then only be looking for new ideas that might receive support from the Work Track as a whole or can at least be acceptable to a large number of members.

I see that Susan had a comment to Martin. "I think this is a feature of the document's structure. If I understand, this section we are going through now are all proposals which haven't got support." Yes. Susan, this is something that we asked in the initial report about suggestions and kind of making things better. So it's not exactly – so it's right, as Martin said, it's correct.

Is there anyone that has something to raise under Any Other Business today? Staff, have you something to add? Steve, Michelle?

STEVE CHAN: No, nothing for me. Thanks.

ANNEBETH LANGE: Next call, Wednesday 7th of August at 20:00 UTC. Thank you, everyone, and thank you for all your comments and participation. We'll talk in a week. Bye.

MICHELLE DESMYTER: Thank you, Annebeth. The meeting has been adjourned. Have a great day, everyone.

[END OF TRANSCRIPTION]