

**ICANN
Transcription
GNSO New gTLD Subsequent Procedures PDP WG Work Track 5
(Geographic Names at the top-level)
Wednesday, 09 May 2018 at 14:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <http://audio.icann.org/gns0/gns0-new-gtld-subsequent-track5-09may18-en.mp3> Attendance of the call is posted on agenda wiki page: https://community.icann.org/x/_BIFBQ

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gns0.icann.org/en/group-activities/calendar>

Coordinator: Recording has started.

Julie Bisland: Great, thanks. Well good morning, good afternoon and good evening, everyone.

((Crosstalk))

Julie Bisland: Welcome to the New gTLD Subsequent Procedures Sub Team Track 5 Geographic Names at the Top Level call held Wednesday, the 9th of May, 2018. In the interest of time, there will be no roll call. Attendance will be taken via the WebEx room. If you're only connected to the audio bridge would you please let yourself be known now?

Annebeth Lange: It's Annebeth, I'm only on phone.

Julie Bisland: Okay, Annebeth, thank you.

(Nicole): This is (Nicole), also only on phone.

Julie Bisland: (Nicole) and I know Cheryl as well. Was there anyone else?

Jeff Neuman: Jeff Neuman...

((Crosstalk))

Annebeth Lange: ...on the bridge.

Carlos Raúl Gutiérrez: Thank you.

Julie Bisland: Thank you.

Olga Cavalli: Okay.

Jeff Neuman: And you got – this is me, Jeff Neuman.

Julie Bisland: And Jeff, okay thank you, Jeff.

Olga Cavalli: Okay.

Julie Bisland: Well hearing no names I just want to remind all to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid any background noise. And with this I'll turn it back over to you, Olga, thank you.

Olga Cavalli: Thank you. Thank you very much. And welcome, good morning for us in the Americas and good afternoon or night in the rest of the world and thank you very much for joining us in this call today. My name is Olga Cavalli, I'm one of the cochairs of this Work Track 5 about geographic names. And with me there are the cochairs, Martin Sutton from the GNSO...

((Crosstalk))

Olga Cavalli: ...ALAC and Annebeth Lange from the ccNSO. Someone should mute the line please. I don't know who that is. So thank you for joining us. The agenda for today we have the regular welcome and review of statements of interest and we will do that in a second. And then you might have seen extensive exchange of emails and ideas and the continued discussion of about city names, not capital city names besides the other city names. And the idea is to review summarize somehow the ideas and inputs that have been shared in the email list and make some questions to you and listen to the proposals from the attendees of this call.

It will be recorded for those of you not able to join us and then we'll have some time for any other business. And let me tell you that this discussion is somehow helpful for other discussions that we will have in the near future about those names which are not in any list and not precisely city but I think the general concepts may apply to those names which are not city names. Could all of you please mute your lines because there is a lot of noise in the call.

So I will ask you if there are any updates of statements of interest? Okay, I hear none. So if staff can go to the next slide please? So as I said, the idea for the call is to continue the discussion that has been very, very lively in the email list and so we have seen that some of us have been following that very closely. And there are different positions. Somehow we know which are the different positions. The purpose of this work in this Work Track 5 is try to find ways to solve the problems that may arise to solve the different descriptions that we may have.

There is a lot of noise in the call. It's quite difficult for me to talk if I hear such a lot of noise. If you can mute your mics please? I don't know who that is.

So the key areas of this agreement who has the right in which applications with the connection to a city name can go forward? So from one perspective rights granted to the application process should be based on international

law. This is something which is understood. If no international law exists, granting special rights to governments or other parties, local responding rights should exist through mechanism in new gTLD program.

So the international law is important but from another perspective, then you have national laws, you have public policy, history and public interest and public – and the community with considerations to provide a basis for granting rights to governments through mechanisms in the new gTLD program. So we said that in the first round, some applications were names or strings which were very important for some communities and for some countries. Those names were not in lists whether cities or regions or sub regions, so that how to handle those cases and how to give clear perspective for the applicant and also the right to the community to protect their names.

There are also different perspectives on the scope and applicability of trademark law in this discussion relative to the context of other laws, so we have been following – the coleads have been following all the discussion and we want to summarize very high level the discussions. And here are your comments.

Can we go to the next slide? So after I present the slides I will open the floor for your comments and reflections on these issues. So we had several opportunities to hear different things about this geographic – the use of geographic terms, in this case cities but I think we can apply it as a general level in different occasions, I myself, many times at the working group in the GAC, which has open meetings and we have participation of the whole community in ICANN, also in the geographic name session in ICANN 59 and also there were two webinars last year that were very useful.

So we have identified some key interests for different groups. So I would present them briefly now. The governments, governments want to protect identity, the national identity, name of cities, apart from the capital city that are important, or cities, national places. Also the governments want to avoid

confusion between the governments and the national and the TLD and the gTLD, what means, a TLD with a name of a city or a sub region of a country.

And of course might obtain non objection from the authority on important strings. So I would say that the governments would like to be informed before – I think that's something which is – could be understandable for any party that could be at least informed if a string that it's relevant for their community or for their country is going to be used as applied for TLD.

Then we have another perspective which is the ccNSO one, the ccNSO expect to avoid confusion between the ccTLDs and gTLDs amongst the markets that already exist for the ccTLDs, which also has – was a linkage to the national interests and the national identity because a CC is really related with a national identity.

And then you have the new gTLD applicants who want to expand the range of potential available strings, which is understandable as well. And they also want some clear rules. They want clear and fair and predictable and timely decision making process, which is also understandable. So brand applicants enable protect and use strings that support brand identity including those that coincidentally match geographically in significant terms.

So I think that we all agree that all three parties have their rights and their reasons. The thing is how we can find a way to prepare rules that avoid conflict and make the process of requesting a TLD and applicants and communities a way for all of them to express their interests and the rules avoid conflict.

Can we go to the next slide? Oh, 39 attendees. This is interesting and some others in the phone bridge. There is still some attendees that have not mute their mics and I would appreciate if you can do that because then if not it's quite difficult to hear or talk.

Emily Barabas: Olga?

Olga Cavalli: Yes.

Emily Barabas: Hi, this is Emily. This is Emily from staff. I just wanted to note that Martin had his hand up on this slide. Thanks.

Olga Cavalli: Oh I can – oh yes, Martin, my apologies to all of you, I (unintelligible) as much as Adobe Connect so you will forgive my – perhaps – thank you for letting me know. Martin, please go ahead and sorry for not seeing your hand up.

Martin Sutton: That's okay. Thanks, Olga. And after me – sorry if I don't pronounce this right, it's Arielle that is also

Javier Rúa-Jovet: It's Arielle. Arielle is next after you, Martin.

Martin Sutton: Okay thank you. So just on this particular slide, before we move forward, the question at the top is are these still accurate? I did send an email account – so this is from a personal basis, not as a work track leader, colead, but I'm not sure it's actually hit the list at this stage. But I just wanted to point out that on the new applicant side, particularly where it referenced the brand applicants that this is – the other component to this, which is really important is that brand applicants see the operation of their registries either in security and stability for Internet users.

So the points that I have made in the comment on the email is that governments and law enforcement agencies do find it difficult to combat fraud and criminality across the global Internet, and something that – which that may be hindered further by GDPR, at least this month, and brands have had to consider new ways to combat counterfeiting, fraud and these other criminal activities to safeguard their customers.

These criminal activities are often a component of a much larger criminal network that have a significant impact around the world. So in this context there is a public interest provided to potentially millions of Internet users on an international and global basis. And we should not ignore that either. So I think when I read this particular point on the slides here it's probably too narrow in respect of the brand applicants and I just wanted to make clear these aspects as well. Thanks, Olga.

Olga Cavalli: No, thanks to you, Martin. And I think it's your comment is perhaps wider than the brand market itself; I think it applies to the whole Internet, the whole Internet ecosystem. So maybe we can add that to our document, I think it's a very important comment. I hear no sound. Can you hear me well?

Javier Rúa-Jovet: Yes, we can hear you, Olga.

Olga Cavalli: Fantastic.

Javier Rúa-Jovet: Arielle is next and then Jorge.

Olga Cavalli: Okay thank you so much. Arielle, go ahead please.

Arielle Jaffe: Yes, this is Arielle Jaffe. Since you are listing the interests of the various groups, I just want to say from the At Large perspective without speaking officially for the ALAC, but in a way I think that this is what is the primary thing for At Large and ALAC is that we should avoid confusing the end users, avoiding confusion for the end users would be that main thing for us. Thank you.

Olga Cavalli: Thanks to you, Arielle. And I think your comment is relevant because it remind me some comments in the email list about – and this is a personal comment, not as a cochair, for example the relevance of contacting the authorities in the case that the string is not using a geographic significant

then in my modest opinion, that may cause some confusion for the end user, so that's something that it's important to also to consider.

So are these still accurate? Do we have more comments about this slide? Thank you, Martin and thank you, Arielle. Javier, you told me there was someone else? I cannot see that from here.

Javier Rúa-Jovet: Jorge Cancio. Jorge Cancio.

Olga Cavalli: Hola Jorge. (Unintelligible). Go ahead. Jorge, can you hear me? Jorge? Okay, in the meantime then Jorge, maybe he's on mute. I see Ashley wants to say something. Ashley, welcome to the call and you want to give us your comments?

Ashley Heineman: Yes, thank you. I've already put some comments in the chat but for those of you who aren't reading it or unable to read it, I just wanted to make one thing clear on this slide with respect to the views of governments, that this is the view of some governments and not all governments. For example, the United States doesn't have these concerns. So I just wanted to make that clarification just so there's no misunderstanding as to what's being represented here. Thanks.

Olga Cavalli: Thanks to you, Ashley. And yes, yes, it's a very relevant comment is the view of some governments. Jorge, are you there? Can you hear me? Jorge?

Julie Bisland: Jorge's line – he does not have audio at this time. I'm trying to work with him on that.

Olga Cavalli: Okay maybe he can send us some comments in the chat. I have Robin and then Ali Kassim. Robin, you want to make your comments no? Robin, can you hear me?

Robin Gross: Can you hear me okay?

Olga Cavalli: Yes. Welcome.

Robin Gross: Thank you. Yes, I just wanted to comment on this particular slide which I think is a good start but it seems to be missing a few key components and one in particular would be consumers in particularly the interests the non consumer or excuse me, that noncommercial users are concerned about in this effort and that is this ever expanding government power over the Internet and what people can do and the kinds of words they can use on the Internet.

And our main concern in this has to do with freedom of expression rights and so I don't see that interest or objective anywhere on this slide. And so I think that while this is a good start it isn't by all – by any means comprehensive.
Thanks.

Olga Cavalli: Thank you very much, Robin. As I said at the beginning, this is only high level summary of some of the ideas that we have been releasing to the – reading in the list. So I take your comment and so we have then comments about avoiding confusion to the end users and noncommercial users, that's it the idea of some governments and also consider freedom of expression in this idea.

I have Ali Kassim: next. Ali Kassim:.

Ali Kassim: Hello, do you hear me?

((Crosstalk))

Olga Cavalli: Yes, we can hear you very well. Welcome.

Ali Kassim: Thank you very much, Olga and everyone. It's Ali Kassim: in Sengali. I just wanted to support what Robin said, the slide doesn't really speak to the noncommercial users and specifically communities that would have a say in

(unintelligible) for example if you check my home country of Kenya, (unintelligible) geographic names that have a direct link to communities. And as a member of a fellow, you know, I would really like to ensure that some of these issues are taken into consideration.

I would also want to add something else, I don't know whether it was discussed – I'm coming a bit late into the discussion so I may have missed – I may have missed some conversations. However, I would like to apologize if I'm repeating anything that somebody has already said but just to put it on record I would like to say that maybe we would need to really consider a multistakeholder model when – and give credence and support to those who come to the table, you know, with multistakeholder model when they are making these applications which can involve both commercial and noncommercial players and in some cases may involve governments too. That is my contribution for this afternoon. Thank you so much.

Olga Cavalli: Thanks to you, Ali Kassim:. I'm not sure if I understood the multistakeholder concept that you explained but maybe you can explain that further in the email list with more detail so maybe we can add that to our document.

((Crosstalk))

Olga Cavalli: Do we have – thank you very much. Javier, can you see any relevant comments that I should say that you read in the chat? I cannot – for some reason I cannot...

Javier Rúa-Jovet: We have Jorge on audio so maybe he could be next.

Olga Cavalli: Jorge, can you hear us? Can you speak now? Jorge?

Jorge Cancio: Hello. Do you hear me?

Olga Cavalli: Yes, Jorge.

Jorge Cancio: Hello. This is Jorge Cancio for the record. And sorry for the issues with the audio but I think I wasn't connected the first time. I think that this slide and the preceding slide would need some updating in the light of the discussions we have had on the list. And I really think that the discussions on list have been very rich. There has been participation from many people. I have counted at least 23 or 24 different members of this work track who usually don't speak so some of them in these calls. So it's a bit coming to fulfilling the wish expressed during the last call that there should be more discussion on list.

So now I think that we have had that from a more than 20 people. And we have seen I think two schools of thought in the end. On one side those who think that the letter of a non objection is the framework that is a useful compromise, we used on the 2012 AGB, and that there might be improvements to that framework and as far as I've seen this opinion has been shared across the board of the different SOs and ACs, that's also why I think that the slide on Slide 5 is obsolete because it opposes governments (unintelligible) to applicants.

Because as a matter of fact, we're seeing that this letter of non objection framework has been supported by people from the GNSO, and people from the ccNSO, by people from the GAC, by people from ALAC. So I think that's very important to take into account. It's also very important to take into account and to reflect the reasons why that framework is a useful and workable compromise. And that all that is reflected in the documentation because I don't really think that we need to go back to slides, going back to some months ago because the positions and the thinking have evolved and we've seen all of this very rich discussion.

I of course think that the analysis of the issues related to (unintelligible) I shared with the list. I'm very grateful for all the support and all the people and members that have taken their time to read it through and to support it on list, as I said, from all SOs and ACs, which participate in this work track. And I

think that it's time to look forward, to improvements, to improve how this framework works.

And some ideas that I think were very useful and could help in making the system better, have been shared such as better defining the scope of what we mean by cities, the idea of advisories for the applicants to help them understand when they are thinking about a string with a city name, and the support and information from ICANN and if needed from the GAC in identifying the public authorities when they have to talk to also the idea of highlighting different types of agreements in areas between applicants, be it France, be it differences, be it communities, and the relevant public authorities so that we could show how this has – where it's successfully in previous rounds.

We could even think about an advisory panel composed by independent people who could advise the prospective applicants on difficult cases where they aren't sure whether their name is matching a geo name and so on so forth. So I hope that's really getting to that line of thinking and in that line of work because we have had the long and useful fruitful discussion on list with many, many people who usually don't speak in these calls, also because of reasons that Annebeth mentioned language barrier, time barrier, resources barriers. And we should really take that into account and get to work and improving the system we have. So I leave it by that, so for the moment and thank you very much for the attention.

Olga Cavalli: Thanks to you, Jorge, for your comments. And I agree that it has been a very interesting exchange of information in the email list. Perhaps we open the floor for comments a little bit earlier because we have this other slide that I want to share with you. It's about some ideas that we have tried to summarize in this light. I can see this is an old hand or you want to say something before I explain the content of this slide?

Martin Sutton: No I'm good for now, thanks.

Olga Cavalli: Okay, thanks to you. Okay, following up from what Jorge was saying, we have summarized here some examples of proposals made by members. But this should be not limited to this and the idea is that we should be creative to find ways to create rules that help us going through this process with as much – as less conflict as possible. So one of the things that Jorge mentioned and we saw in the list is there should be a requirement for – required for governments to support a non objection when used – when the term is used in the geographic context, which is how it's now established in the Applicant Guidebook.

On the other side, there is this requirement – the possible requirement for governments to support a non objection letter even when the intended use is not related to geographic. I think this is an important issue especially for those who are concerned about the impact of the consumers, confusing and noncommercial use of the TLD. So thinking about a name that could have a geographic name or a city, and it's used in another way, could be confusing. So do we need the governments support the non objection or we don't need it? That's something that we have to think about.

And another issue that we have is talk about many times, many times, it goes back and forth for – in the GAC and in other debate spaces is creating a list of cities or geographic names greater than a certain size. This was proposed in the list so small cities, no, but certain size of cities, to be updated in the list and reserve those cities for use by the people of that city. There is a variant also offered required consent or non objection from top big cities in a country by population, say for example in some countries the capital city is smaller than the most important city in the country and that also made this city as the relevant target for the TLD so maybe you require some consent or non objection from the government of the city or the community so that's a variant.

Other option is handle the third party concerns with an application using objection processes. Objection processes must refer to international law, domestic law, ISO standards or other objective measures. And here we have a challenge because sometimes some names are not protected by international law but are do protected by local law and national law so that's also challenging because the TLD is global, it's not national, it has no boundaries.

And the final point here is create incentive to bring all parties to the table. When intended use is not geographic, for example, agreements to allow the use of the second level string or reservations of second level strings where there is an inherent association with the government and local community. One thing that we have been discussing also and somehow related with this is a previous contract in between parties. That could warn the government or the community about the intentions of an applicant of applying for a TLD for a certain geographic name or regional name as TLD.

The problem with that is that sometimes when someone is making a project for applying for a TLD maybe they want some secrecy and strategically they don't want to – they don't want others to know about their project, which is somehow understandable, so that's something to have in mind.

So these are some proposals we have taken from the email list. How can we expand this? How can we be creative in trying to use these elements combined or not? How can we handle this? And I will open the floor for more comments and happy to listen to you.

Javier Rúa-Jovet: This is Javier for the record. Let me – perhaps I can go back through the chat for...

((Crosstalk))

Javier Rúa-Jovet: ...interesting comments we have there. And if anybody wants to chime in and expand of what they said they're welcome to. We have earlier on Alexander Schubert commenting, "Governments act for their citizens. If the governments do not act that doesn't (unintelligible) that the people do not have concerns." That's one comment. Later we have – we have a comment by Nick Wenban-Smith, I think expanding a little bit of – on what Robin said. "I think the point about freedom of expression is a good one to add to the record. Of course once a particular term is registered as a gTLD by a public body for its exclusive use, then it will be blocked in perpetuity for use by any communities to which it might relate. Difficult balancing required."

Later we have a comment by – we have an interesting comment by Jeff here. He says, "Can we establish whether there is general agreement on the principle that if an applicant decides to use a string that has geographic significance whether on a list or not, in a matter that corresponds to the geographic significance, then they need a letter of non objection or consent." That comment by Jeff, I don't know if he's on the line and he wants to expand but it had a reply by Robin saying that it's perhaps too expensive. If any of these participants want to expand on the comments please do so, thank you.

Olga Cavalli: I think Jeff wants to say something. Jeff, can you – are you in the call? Yes. Jeff. Jeff, can you hear me? So in...

((Crosstalk))

Jeff Neuman: Can you guys hear me now?

Olga Cavalli: Yes. Yes, we can hear you. Yes, welcome.

((Crosstalk))

Jeff Neuman: I had to unmute by star 6 and that took a second. Yes, I wasn't expressing a viewpoint but just trying to ask a pointed question just to see if there was

agreement or not just to see if we can narrow down the circumstances. So the question I'd asked was that if someone wanted to use a term that could have geographic significance, in a manner that is associated with that geographic significance, then some form of non objection or consent would be required. But it appears that that's not necessarily I guess from some of the responses it doesn't seem that that's yet an agreed upon point.

I tried to push a little bit further to see if there were ways that that could be narrowed down and Robin had posted that, you know, should be based on a notion of confusion and so I guess kind of the follow up to that would be if someone takes a term that has geographic significance, says they want to use it to relate to that geographic significance, then I guess the question back to Robin and others, what would be some of the elements that could be used to determine whether confusion would exist.

I guess just – right now people – people seem pretty planted on one side or the other and I'm just trying to help think sort of creatively on what potential solutions we could have other than, you know, right now it seems to be an all or nothing approach that most people are taking, right? Some, you know, Jorge's position is that if it's got geographic significance a letter of non objection is the way to go but others view that, you know, letter of non objection is a mechanism for a government to extract or could be used as a mechanism to extract money or extract, you know, other kind of commitments that may or may not be related or fair to that top level domain.

So there's pros and cons on every side. And I'm just trying to get people away from the extremes to just start thinking about okay, if there are certain circumstances that we all agree that a consent or letter of non objection apply, then let's do that. If there are certain situations where nothing will be required and we all agree on that, then let's get that down on paper and then let's try and move in towards the middle on all the types of gray areas.

So to me, on the list and I guess I misread it, but on the list no one seemed to have an issue with let's say requiring cities that intended to use their strings as cities to get a letter of non objection or consent so, you know, like New York City, someone wanted and they did – apply for NYC, they should go to the city of New York to use it. But apparently some don't agree with that principle so that's what I was trying to do, not necessarily expressing a viewpoint but just trying to see if we can narrow things down a bit. Thanks.

Carlos Raúl Gutiérrez: Olga, please, this is Carlos, when I have a chance. Thank you.

Olga Cavalli: Yes, please go ahead, Carlos. Go ahead. And welcome.

Carlos Raúl Gutiérrez: Thank you. Thank you very much, Olga. This is Carlos Gutiérrez for the record. Thank you very much for this view of the government's role, Jeff. I would like to add that some governments also view the role as a role of promoting competition, promoting choice and promoting trust. This goes back to the Affirmation of Commitments of course but I see that the role of the authorities could be also expressed in a positive form and of course some people won't like that, that governments come into the market and try to promote more options, more choice and more trust. I just wanted to add this let's say, historical view of the role of opening the markets to Jeff's comments. Thank you very much.

Olga Cavalli: Thanks to you, Carlos, and thanks to Jeff. We have still some comments. Just before giving the floor to the other colleagues, I would like to mention that we have thought about different options, one was this list where the applicants could consult and not necessarily be a veto power from a government but have a place for the applicant to check if the string is relevant to the community or not. And somehow make it binding in the process.

And I think it's interesting what Carlos said about some governments promoting choices. The only comment that I would like to add is that some governments are not aware of this process that we are talking about and

some cities perhaps, midsize or small cities that have made – could be interesting for applicants, they have no idea of what we are talking about. So just have that in mind. I have a list – I think Ali Kassim, this is an old hand? I have Jorge and Susan. Ali Kassim, this is an old hand? Can you confirm? Okay, Jorge, go ahead.

Ali Kassim: Sorry, (Ali) here.

Olga Cavalli: You want to – it's a new hand? It's a new hand?

Ali Kassim: Yes.

Olga Cavalli: Oh sorry, apologies. Apologies for that. So Ali Kassim, go ahead.

Ali Kassim: No worries, I was speaking and my speaker was on mute, my apologies.

Olga Cavalli: Okay Jorge. Oh sorry, (Ali).

Ali Kassim: I'm just looking at the slide and I'm a bit – I'm slightly concerned, I'm sure we can make the changes required. Number 1, I think we need to define what government means here because in certain parts of the world we have a lot of governments and we have – then you have the central government. I think, you know, we put together a proposal we need to define that.

My other comment would be on Point Number 3, we say (unintelligible) list of cities (unintelligible) on a certain size and we resolve (unintelligible) for that city. I'm just curious the thinking around that because what would be the size of the city and why would we discriminate around size of city? I think we'd need to be more clear on that.

Last but not least, I would like us to really start thinking around considering encouraging consortiums of noncommercial users and commercial user applicants especially in Africa where, you know, the new TLDs uptick has

really been quite low. Thank you. Those are my interventions on that point.
Thanks.

Olga Cavalli: Thanks, (Ali). And I agree with you that some regions – as I said before, are not aware of all this process, in Latin America is also the case. Jorge, you're next in the queue.

Jorge Cancio: Hello. Do you hear me okay?

Olga Cavalli: Yes, Jorge, welcome again.

Jorge Cancio: Hello. Thank you for giving me the floor again. This is Jorge Cancio for the record. I think that it's very important to stress one thing, and this is that here we are talking about top level domains and this is a unique resource. When a top level domain with a name of a city is delegated, it's given away. It's delegated to that specific applicant. And if you didn't have the public authorities at the table before that delegation, you run a very big risk of getting into trouble, of getting ICANN into trouble because that city may be unaware of that delegation now but may be will be interested in having that delegation or at least having the say in how that TLD is run some years after.

So I think it's very, very important to stress and to be mindful that TLDs are unique resources and if there's point (unintelligible) and it's delegated, it's a way for the city and for the community for the rest of the interested parties. I think that the letter of non objection really gets the applicant to get into contact with the relevant public authorities and I think the GAC and ICANN and we can think about better methods to help them to identify those relevant public authorities. It helps them to get at the table.

And that table they can work out different kinds of solutions. The solutions will depend on the law, on the policies, on the culture of the region and the country where that city is based. We can have no (unintelligible) and I won't say the country where they really don't care and they would for – as of before

give non objections to that applications for non objection letter because it's not in their policy to get involved into such a business.

But you have other countries where they might be interested in participating in the governance of the TLD. You may have other countries who may want to set some conditions to protect the reputation of the city name. There might be all types of solutions and the non objection letter really has a duty to leave it to the subsidiary of that public authority and that applicant to reach the agreement that is really mutually accepted to them.

And I really take issue with the notion that governments are here to extract rents from applicants. I don't think that we have seen any example of that happening. If we see such an example I would be very interested in seeing also the opinion of the relevant public authorities. To the contrary, public authorities normally – normally in general, the vast majority, will be interested in the wellbeing of their communities. And that means that normally they also will not be interested in running the TLD themselves.

But we have to recognize that they have a legitimate interest in how that TLD is run and that interest may turn out as I said before, in when reaching to the non objection letter and to a complete laissez-faire approach to participate in some way or the other in the operation of a TLD. So I think that that is a very important aspect to take into account.

And if there have been instances of abuse that are not legitimate, let's – that really have a factual basis behind them, we should really look into those cases and look that can be improved in this framework of letter of non objection. Thank you.

Olga Cavalli: Thank you, Jorge. Before giving the floor to Susan, and this is a comment from my personal perspective, not as a colead, I think that you make a relevant point in relation with this letter of consent because it brings the parties together to talk and dialogue. And that may bring also to creative

solutions among parties. I think the community should not see it as a veto power from the governments but instead of that see as an opportunity for perhaps if they agree and I think Jorge mentioned it very well that maybe the government is not interested in running the TLD but maybe they're interested in somehow have some names for the city or some creative solutions to share it, I don't know, that can be negotiated.

But I think it's an opportunity and not seen as a veto power but as an opportunity to enhance the project. And in the end, if the government is not willing to not allow, that will become an objection at the end, and that will become a problem. And we have seen this conflict going on for years. So that we should have that in mind and this is of course a personal comment.

And now I have Susan in the queue. Susan, can you hear us? You're welcome to give your comment.

Susan Anthony: Thank you very much, Olga. I – this is Susan Anthony from the US Patent and Trademark Office. I have said this before on our last call or the call before but I came in at the very end when we were all rushing to shut down the webinar so the observation I made then I think is important for me to receive today. And that is that it is very important to keep in mind the context or proposed use of a new gTLD and throughout so much of our work on these webinars and intercessionally, and between our calls, we have overlooked that context or proposed use in too many of these discussions. And I'm very concerned about that.

Perhaps the problem comes in in our reference to geographic term or term with geographic significance. The point that I made a couple – or that I was trying to make a couple sessions ago was if the proposed – if the gTLD is proposed to be used for a context unrelated to a geographic – it may be identical to, it may be very similar to, a geographic name or a term of geographic significance to some government or community somewhere in the world, if that's the case, then file for a gTLD. But if it is intended to be used for

I don't know, shoes, Berlin for shoes, I appreciate Berlin is taken but perhaps that is a good example. There's a Berlin, Pennsylvania, I pass it routinely in my travels.

And Berlin, Pennsylvania would never have been interested in the Berlin city application, I'm confident (unintelligible) but if I am seeking to use the word "Berlin" for shoes, then the term is no longer a geographic term or a term of geographic significance, it comes off the table. That's the point that I wanted to make. And I also wanted to remind everyone that as was noted implicitly at least in the GAC's 2007 guidelines, a proposed term for a gTLD that also happens to be identical or similar to a geo name, may not have any geographic or territory meaning, and I think that's a principle that we continue to lose sight of. Thanks.

Olga Cavalli: Thank you, Susan. I agree the example you use for Berlin is – it's interesting, Berlin has no relationship with shoes, there may be shoe companies in Berlin. There are other city or region names that are really related with brand. I think it depends in case by case but I think your comment is very interesting.

Paul, you're next in the queue. Welcome.

Paul McGrady: Thank you. Paul McGrady for the record. So I appreciate Jeff's attempt to get us to start thinking about the middle ground and where we can get there. But I do think that some of the positions need to be anchored in facts that we can objectively look at. So for example, on the dotBrand side in order to get a dotBrand registry, you have to produce a trademark registration certificate which shows consent of at least one government to your use of that trademark. And to Susan's point, there are terms that when used in conjunction with various goods and services have no geographic meaning whatsoever, they relate to those goods or services.

On the other hand, there's been lots of talk about national law and local – international law and I suppose national laws that somehow give

governments a right to either consent or not to the use of certain terms in the top level. But we've been talking about this I think for about 12 years now and I've yet to see a citation that any such international law or even to a national law that essentially says, you know, our government has the right to object or not to a term being used in a top level domain name.

And so I would like to see that part of the slide anchored in some sort of factual citation that those of us who are interested in this topic can go out, put those citations into, you know, search mechanisms and come back and actually read those laws. I think that would be very helpful to help us understand where some of the governments are coming from and to the – to Ashley's point, we do recognize that it's only some governments, not all governments.

So if there's a way to get that part of this beefed up where there's actual international law, a treaty that gives, you know, that conveys this right to object to terms in top level domain names or national laws that you know, indicate a particular national government's right to object to terms in top level domain names, I think that would be super helpful. Thank you.

Olga Cavalli: Thanks to you, Paul. Thank you for your comments. Javier, do – can you help me with the chat if there are some...

Javier Rúa-Jovet: Yes.

((Crosstalk))

Javier Rúa-Jovet: Yes. I'd actually like to chime in on something myself, Javier Rúa for the record. And following up on Jeff's comment on trying to think creatively and try to leave entrenched, you know, historical positions, you know, we've seen in this call, you know, that the letter of non objection and that type of process doesn't have to – should not be seen as a veto.

So maybe a question that can be put out there and maybe it could be, you know, developed in the mail is that for people to start thinking about, you know, other ways of bringing governments to the table and having, you know, having a say besides what's already in the policies or in the Applicant Guidebook, I mean, I think we can all agree that early conversations are always good I mean, there could be some pros and cons but if anybody can chime in right now on things they have thought about creative ways of getting – of getting, you know, everybody to the table early and if not, if that – if – I urge, you know, I encourage people to discuss that and see if we can come up with a better policy than what's on the books right now. Thanks.

((Crosstalk))

Greg Shatan: This is Greg Shatan, can I get in the queue?

Olga Cavalli: Yes, sure. I couldn't hear your name. Can you repeat it please?

Greg Shatan: It's Greg Shatan.

Olga Cavalli: Oh Greg, yes please go ahead, Greg. Sorry, I didn't hear your name.

Greg Shatan: Thanks. Just briefly and following on Javier's comment which is interesting, if we shouldn't look at it as a veto, are there ways that we can make sure it doesn't work as a veto? I think that's part of what's objectionable about the letters of objection or non objection. So – and I've heard it said repeatedly that they shouldn't be looked at as veto rights, they're not veto rights, but yet it seems that they can operate in a way that is indistinguishable from being a veto right.

If we could take that concern and issue off the table and make it more of a true consultation as opposed to a disposition decision that, you know, fits unique in the hands of the geo and not any other legitimate claimant to the same string, that would be a big hurdle. I can't say I have any well framed

ideas on how to accomplish that, but that at least I think would get us over a very – that would bridge a very big gap that we currently have. Thank you.

Olga Cavalli: Thanks to you, Greg. I have Martin, Ali Kassim, Jorge Cancio and Alan Greenberg in the list, is that correct? So I will ask you, we have three minutes to go and I will ask you to comment and be brief. Martin, go ahead please.

Martin Sutton: Thanks, Olga. Martin Sutton. I did pop a note in the chat but it's quickly passed by, but it's probably along similar points and it's an open question really to decide that if it's an application for a legitimate use which is using a term which it matches a city name that is not being used for a geographical purpose, how – what ways can issues be avoided whereby getting around a table with a local authority doesn't end up as a tip off to that local authority that uses it inadvertently to encourage an alternative application to compete at the same time? So I think – I'm just raising the issue here that even if there was a non geographic use case that was legitimate, there could still be issues and concerns and risks involved with entertaining discussions in advance of processing the application. Thanks.

Olga Cavalli: Yes, very important point. I mentioned that before we discussed that yesterday. Yes, you're right, Martin, that's something to have in mind. I have Ali Kassim, Jorge, and Alan. Ali, I will put you – I will give the floor to Alan who has not spoken before and then Jorge and then Ali if that's a good idea.

Alan Greenberg: Thank you very much. It's Alan Greenberg speaking. Just a couple of quick comments. As we've gone through this discussion there's a number of things that haven't been mentioned or at least not focused on well enough that I think we need to add to our to-do list as we go forward. Whatever we come up with has to really be implementable. And some of the things I've been hearing, although in theory they can be done, in practice they're rather difficult especially for some geographic names given the large number of instances, you know, we talk about sit down with the jurisdiction or with the

authorities and yet in many cases there are multiple authorities and how do you do that?

If we're going to have use applications, and I strongly support that, that is if you say, you're going to use a geographic name but not in a geographic sense, we have to make sure that we have provisions in the whole process for ICANN to be able to enforce that. And that's, you know, that's something – we've avoided to a large extent going forward.

Lastly, we talk about letters of non objection, I believe we also need to have provisions that if there is no letter issues within a certain amount of time, that is deemed to be a non objection, because silence could be used effectively as a close to a veto if we're not careful. So as we go forward I think we have to make sure that we're really building an implementable process, not just one that in theory is elegant. Thank you.

Olga Cavalli: Thank you. Thank you for this (unintelligible) it's interesting to have in mind. I still have Jorge and Ali Kassim. We have – we are running out of time so if you can be brief. Ali, go ahead please. Jorge, can you go ahead?

Jorge Cancio: Hello? Do you hear me okay?

Olga Cavalli: Yes. Yes.

Jorge Cancio: Okay, thank you so much. Yes, I just wanted to stress again that we are talking here about a string which is (unintelligible) and that's why you need everyone who is relevant before the delegation takes place on a table. And the non objection takes the city and the city governments to the table. It's – I don't think we should talk about hypotheticals, about different potential problems. We should really look into what happened in the AGB 2012 because these rules were already there.

We had the rule on the non objection letter and we had the rule that you would need the non objection letter from all the public authorities related to that term, for instance to different cities with the name – with the same name for the application to proceed. So I would be very interested in seeing what were the problems in those applications, if any, and not to discuss purely hypothetical situations.

And the other thing which I think is very important to be stressed and which was in the summary which I circulated and which as I said, was supported by people from all the SOs and ACs participating in this discussion, is that the intended use with a unique resource is really very – very little help because you cannot control what the registrants will do at the (unintelligible) level for instance on the one side.

And on the other side, if you have given the – you have delegated that TLD for instance of a city in an African country which for the time being is unaware of ICANN, is unaware of its proceedings and has still not a very developed digital economy, and if you take that TLD away you give it to some applicant who has just a business case, and they haven't really reached out to that city government, if in five years' time, that city government wants to use that TLD, it will have been delegated and it will be lost for that community, so that's really – and I think we have to avoid those cases.

And that's why the letter of non objection is very good instrument that allows for solutions – that work for the communities for the public authorities and for the applicant. Thanks.

Olga Cavalli: Thank you, Jorge, especially about stressing the fact that a TLD is global and unique. Ali Kassim, you want to say something? You're the last in the queue. Are you there? Hello?

Christopher Wilkinson: Olga, this is Christopher. I have asked for the floor several times.

Olga Cavalli: Oh I'm sorry, I don't see the – I only partially the chat. Please go ahead, Christopher, and apologies for not seeing you – your hand up.

Christopher Wilkinson: Thank you. For the staff, may I just say this is Christopher Wilkinson, I'm on the bridge. I have been for the past half hour. The WebEx password that we were supplied with was rejected. I just want to say a quick word in response to Paul's question, he asked about the legal basis for the interests of – in this particular case governments in their names particularly if there have been supported by national legislation. Let us please all be quite clear, we are in the ICANN context; we're not looking to international treaties and international agreements.

The ICANN articles of incorporation oblige ICANN to respect applicable local law. That was introduced as a specific clause and a requirement on the basis of which the European Union and the United States agreed to create ICANN. We don't need to look further. And those of our colleagues present who constantly try and refer back to some nonexistent international treaty are whistling in the wind. The agreement since 20 years ago was and still is that ICANN will respect applicable local law.

I'm sorry to have to say this in quite such a forcible tone, but we have several interested parties who are constantly trying to deny this fact. Dear friends, if you don't like it, leave ICANN. That is the basis on which ICANN was created. Thank you.

Olga Cavalli: Thank you, Christopher. And I agree that the respect for the national regulations and laws is very important as well. Okay, we are seven minutes past the hour. I will have to close the queue because of the time and are there any comments as any other business? Okay, I hear none. These comments are extremely valuable for us for the cochairs, we will work with all this material and try to enhance our documents and process .

And we will meet in the email list and in the next call and thank you very much for all your comments, all your active participation and have a nice day, afternoon or night. Bye-bye and thank you for your attention.

Christopher Wilkinson: Thank you, Olga. Thank you, everybody.

Olga Cavalli: Bye-bye. Ciao.

Julie Bisland: Thanks, everyone for joining today. (Cassandra), can you please stop the recordings and disconnect all remaining lines? Everyone have a good rest of your day.

END