

**ICANN
Transcription
GNSO New gTLD Subsequent Procedures PDP WG Work Track 5 (Geographic
Names at the top-level)**

Wednesday, 28 November 2018 at 20:00 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: <https://audio.icann.org/gnso/gnso-new-gtld-subsequent-track5-28nov18-en.mp3> [audio.icann.org]

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Coordinator: Ashley, would you mind starting the recording for us, and let us know once you're done?

Ashley: Recording has started. Please go ahead.

Coordinator: Thanks, Ashley. Welcome, everyone. Good morning, good afternoon and good evening. Welcome to the New gTLD Subsequent Procedures Sub Team Track 5 - Geographic Names at the Top-Level call on the 28th of November, 2018. In the interest of time today, there will be no roll call. We have quite a few participants online. Attendance will be taken via the Adobe Connect Room. If you happen to be only on the audio bridge, would you please let yourself be known now? All right, thank you. As a reminder to all participants, if you would please state your name before speaking for transcription purposes, and please keep your phones and microphones on mute when not speaking to avoid any background noise. With this, I'll hand the meeting back over to Olga Cavalli. Please begin.

Olga Cavalli: Thank you. Thank you very much. Good afternoon for me, it's a sunny day in Buenos Aires. Not very hot, not very cold. I hope that you are doing well and thank you for joining us. We are going to start this call of Work Track 5 meeting. We have online here colleagues from this Work Track, Annebeth Lange and Martin Sutton with me. So I will be leading but they will be also on the call. I hope that you can find this summary that we have prepared useful. Before starting, let's check the agenda for today. Should I change the slides? There. Do we have any statement of interest updates? Okay, I hear none.

So let me just tell you, and please Annebeth, Martin and Javier, add any comment that you want. We have prepared some slides and many, many thanks to staff for their great and fantastic help with our work. We have prepared some slides with discussion sections in the document, in the document that you must have received and checked. If you have seen any, there are some highlights in different colors. So we have some colors in blue which are some text that we think are quite stable and agreed. But there are some comments in yellow in the document and with that information we have prepared some slides. There are 8 different sections from the document. So we will go one by one. In some of them, there are some already proposed text by staff and reviewed by the co-leads, and we would like to hear your reactions to this proposed text. And in some other slides, you will see there are still text to be reviewed by the community, by you. So if you can give us some comments during this call, that would be great.

Also, please note that major changes to the document and major comments will be, should be done in the public comment period. This is the last opportunity that we have to include some edits in it, but then we will have to finalize one section that will go for public comment. Before I start, I don't know if Annabeth, Martin or Javier want to add something to my comments before I go to the slides? Okay, thank you, Javier, fantastic.

Okay. So maybe if we have the document open in another screen that could be useful. What we have done as I said is taking the text that is highlighted in yellow in the main document. And I will go through text and see the different approaches and comments from community. So in page 12 of the report, it states, Recommendation 1. As described in Recommendations 2-9, Work Track 5 recommends, unless or until decided otherwise, maintaining the reservation of certain strings at the top level in upcoming processes to delegate new gTLDs. As described in recommendations 10-13, Work Track 5 recommends, unless or until decided otherwise, requiring applications for certain strings at the top level to be accompanied by documentation of support or non-objection from the relevant governments or public authorities, as applicable. Okay, we have some comments that I will read and then we have some suggested text. The comments that we have are from Greg Shatan and he says, what does applicable refer to? Greg has previously requested adding "some or all" after the word require in the final sentence. And he stated this takes into account the intended use aspect. Some members had expressed discomfort with that edit and suggested adding "as applicable" at the end of the sentence. So, this is the suggestion and we would like to receive your reactions about this suggested text. Remove "as applicable" and add a sentence in this recommendation "non-capital city names only require documentation of support/non-objection if the applicant intends to use the gTLD for purposes associated with the city name".

So, I would like to open the floor and see comments, reactions from colleagues. If you think that the suggested text prepared by staff and reviewed by the colleagues is okay, if you think you have another comment. So I will open the

queue now. I see Kavouss and I see Greg. Kavouss, the floor is yours, and welcome.

Kavouss Arasteh: Yes. Good morning, good afternoon, good evening to everybody. This towards the term "as applicable", "where applicable", "if applicable", this is something to escape from reality. Who decides it is applicable or not applicable? What is the criteria to say it is applicable or it's not applicable? It is one way not to prevent any subsequent changes here if applicable. And when you go on, (inaudible), it's not applicable. Therefore, they don't respect us. So I have a general comment about the use of these words. Similarly with "as appropriate", these are the problems that we have with these words is objective terms. Thank you.

Olga Cavalli: Thank you, Kavouss. Greg, go ahead. The floor is yours, and welcome. Greg, can you hear me?

Greg Shatan: Thank you. Greg Shatan for the record. Yes, I hear you, sorry, it took a minute to get off mute. I support the change that as Kavouss said, gets rid of the words "as applicable" and replaces it with something more concrete and easily understood. So I support the change. Thank you.

Olga Cavalli: Thank you, Greg. And maybe Kavouss, if you have a suggested change, maybe you can send it once the document is published for public comment.

Kavouss Arasteh: I have not heard very well what Greg Said. It was the voice was too slow or too low. I didn't understand what was his comment. Is it possible that we can speak a little bit more louder or closer to phone or microphone or whatever way of communication? I didn't quite hear what he said. Thank you.

Olga Cavalli: If I may, Kavouss, I think, and Greg, correct me if I am wrong, you sounded low, but I did understand what you said. Greg said he was supporting the suggested text at the bottom of the slide. Is that correct, Greg?

Kavouss Arasteh: Yes. My question was, if you say "as applicable", who decides if it is applicable or not? That was my question. Thank you.

Greg Shatan: Get rid of the words "as applicable" and that solves Kavouss' problem. At least this time. Thanks.

Olga Cavalli: So Greg is suggesting to remove "as applicable", is that correct? You sound very, very low, so this is why I am repeating what you are saying.

Kavouss Arasteh: Yes, I agree to that, to remove that. Thank you.

Olga Cavalli: Okay, will that be okay for you Kavouss?

Kavouss Arasteh: Yes, removing that. Yes.

Olga Cavalli: Okay, thank you very much for this. Any other comments? Okay, if staff could capture that suggested change, that will be great.

Annabeth Lange: Olga, it's a comment from Katrin in the chat.

Olga Cavalli: Oh, Katrin says, sorry, I didn't see it. I'm not good at multitasking when in front of the computer. I do not support the change by staff because this has not reflected the discussion of Work Track 5 group. So I will propose that we leave "as applicable" and keep the sentence as it was. I think this is exactly what we have just agreed. So Katrin, if you think that's okay, say it's okay in the chat. Okay, so we have removed "as applicable". Okay, any other comments? Michelle, Greg, you are writing a note. Okay. Greg, if you need a dialogue, just let us know. I see here you're requesting for the floor again. It's a new hand or an old hand?

Greg Shatan: No, this is a new hand. I had -- my earlier comment, I said that I suggested that the -- I supported the staff's addition which does reflect where the discussion went and where the recommendation currently stands. So I disagree with the idea that we should remove the "as applicable" but not take the staff's suggestion.

Olga Cavalli: Okay, I'm confused now. Please help me understanding what, which text are we finally having? So we want to --

Annebeth Lange: It's Annebeth Lange here. The way I have heard it now is that the staff has suggested to write something else as suggested in the slide instead of "as applicable" and remove that. Greg is fine with that, but Katrin is not. She thinks it's fine to remove "as applicable" but she doesn't want it to be subsidized with something else. So it's still seem discrepancies here and we do not agree on everything. That's the way I understood it.

Olga Cavalli: Yes, this is what I got, but I heard we were agreeing in removing "as applicable". Okay, let's cut through all these comments and see how we can re-sect them in documents with different --

Steve Chan: Olga, do you mind if I jump in?

Olga Cavalli: Who's there?

Steve Chan: This is Steve from staff. I have my hand up and you might not see it sitting up at the top there.

Olga Cavalli: Yes, Steve?

Steve Chan: Again, this is Steve Chan from staff. I can hopefully parse through the comments here and discussion here. To note that -- so I guess originally, I think what Greg was trying to differentiate here is that in recommendations 10-13, 3 of the 4 always require support or nonobjection and there is one where it's dependent on usage. And so that's why there is this appended language at the end that says "as applicable". And so I think what the staff suggestion is intended to do is just to remove the ambiguity of something like "as applicable" and to make it clear that this refers to non-capital cities where documentation is only required when

it's intended to be used for the purposes associated with a city name. So I'm not sure what Katrin's concern here might be. I'm hoping she might be able to articulate what the specific concern is. But the staff suggestion is really just to help to try to provide clarity and differentiation between the different types of recommendations in 10-13. Hopefully that's helpful. Thanks.

Olga Cavalli: Thank you, Steve. Katrin, I see Martin is also asking for clarification, if you can clarify what the suggested sentences are referred to in deliberation. She said she is fine. Okay, fantastic. Okay, so if I don't see -- Paul, you want to add something to this slide, to comment in page 12? The floor is yours, and welcome.

Paul McGrady: Thank you. Paul McGrady here for the record. So I think if we're going to change it from "as applicable", which I agree isn't the world's most clear, we've got to be clear on what we're going to change it to. So for example, when we say using it for the purposes of the city, I think we need to figure out what that means, right? So are we taking there about using it for the purposes of pretending to be the city? Like pretending to be the city government? Are we talking about -- or using it for some other purposes that are not related to the official functions of a city, but they may be applicable, it may be a geographic reference, but it's not misleading. So if we're going to make a change like that, and get into the weeds, I think we'd like to, at least I would like to see what the language is that staff proposes so that we make sure that it's sharp enough. Thank you.

Olga Cavalli: Thank you, Paul. Your comment is well taken. Robin, the floor is yours. Welcome.

Robin Gross: Thank you. Can you hear me okay? Great, thanks. Yeah, I just wanted to build upon what Paul had just said. In terms of what we're talking about, what kind of conduct we're talking about, appropriate. I think if we can change it to something that says that prohibits misrepresentation, I think that would really go to the heart of the harm that we're trying to prevent in this case. Thanks.

Olga Cavalli: Thank you very much, Robin. Alan, welcome, the floor is yours.

Alan Greenberg: Thank you very much. I think both of those last suggestions are not doing what the original language was doing. City TLDs come in a lot of different forms. Some of them are run by the city government and are clearly run, clearly part of the formal government. Others are run completely independently as a resource associated with the city. And I don't think we can presume a city TLD is one form or another. So the wording that was proposed is associated with the city name is I think pretty close to what the original intent was. That is, associated with the city name and construed as the city. To use the example I used in the last call, if you want to use .Milano and you're only talking about a rather nice cookie that's available in the US, that's not pretending to be the city name. If you're talking about a resource associated with the city of Milan, whether it's to attract businesses that have TLDs or people that have their own personal ones because they're proud of where they live, then it's a city TLD and it's using the name in association with its meaning as a city name as opposed to having some other

unrelated meaning. So I don't think we can presume a single type of city TLD and associated with it may not be the clearest words, but it's pretty close to what I think our intent was.

Olga Cavalli: Thank you very much, Alan. I think we have to move forward because we won't have that much time. We have covered all your comments and we --

Steve Chan: Olga?

Olga Cavalli: Yes, Steve, go ahead.

Steve Chan: Thanks. This is Steve again from Staff. I guess I just wanted to place a little context around what this recommendation. So this is the very first recommendation in the series of preliminary recommendations and essentially what it is doing is summarizing at a high level the more detailed recommendations that ensue after that. So how about this as a suggestion? So rather than trying to recreate the language related to non-capital city names, what we could do is reference the relevant recommendation which in this case I believe is 11. So either we can specifically reference that recommendation or we can -- or actually that is my suggestion, to actually reference the recommendation rather than trying to recreate it. Because it seems to have stirred up a bit of conversations and hornets' nest here by trying to recreate it. So rather than do that, how about we reference the recommendations? Thanks.

Olga Cavalli: Thank you, Steve. I agree that it's a good recommendation. I see Justine saying let's move on and with that in mind, I suggest that we move forward. Because if not, we will not have enough time to review all the suggested text and have your comments. I have no one -- don't know what happened with the slides, I will go to slide number 6. I am moving it with myself, on top of the page it says, recommendations, page 16. So this is where we are now. So on page 16 of the document it says -- I'm trying to check the Chat. Okay, slide 6 now, in preliminary recommendation 8, there is currently a sentence that says "permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed". So there is a comment from Justine and she suggests changing his sentence to "strings resulting from permutations and transposition of alpha-3 codes listed in the ISO 3166-1 standard should be allowed". And Justine says, after all these will no longer be alpha-3 codes. This is in reference to if we change the permutation it will not be the alpha-3 codes. And then there's a note from staff saying this can be changed in the Work Track if the Work Track group agrees. Know that the original text mirrors the way that 2012 applicant guidebook referred to permutations and transpositions, so this is somehow reflecting what the applicant guidebook referred to in 2012. And let's see if we have comments about this suggested, this comment from Justine. Reactions/comments about this? If we change the order of the letters, they will no longer be alpha-3 codes. I see no hands. I see some comments in the chat in pink, I think it's Robin. I'm trying to follow up something relevant to this now. Okay. Any comments about this? We are in slide 6 and it says recommendation in page 16, if you go to the document, you will see some comments in the right in

yellow. That's copy pasted in this slide. Steve, you have comments? Please go ahead.

Steve Chan: Thanks, Olga, this is Steve Chan from staff again. Just to provide a little more context, and Justine can correct me if I get this wrong, but I believe just for folks on the call to get a better understanding, I believe it's just a technical point to say that once you actually have a permutation of ISO 3166-1 alpha-3 code, permutation or transposition of that code would then no longer be an actual part of the ISO 3166-1 standard. So I don't know if that helps, but just to hopefully provide a little context. And Justine, if I got that wrong, please let me know. Thanks.

Olga Cavalli: Yes, you're correct, Steve. And I see some, a little nodding in the chat. Let's see if there is some opposition and some agreement. Annebeth says, then it will be checked. Another 3-letter combination not from the ISO list. Any comments? Any other comments about slide 6? About recommendations in page 16? It specifically talks about recommendation 8. Okay, I see none, so let's move forward. I will go through Slide 7. And it refers to page 33 in the document and I will read what is in -- sorry? Who's there? Hello? Hello, who is there? Kavouss? Okay, I cannot realize who wants to talk. Okay, we are in slide 7, deliberations, page 33. This part is prefaced by some believe that national and local law providing protection for geographic names does not give governments rights beyond those of other stakeholders in the context of the New gTLD Program, including the application process. National and local laws only apply in the jurisdiction where the applicant is located, therefore Work Track 5 should look [audio lost]

Steve Chan: Sorry, everyone, this is Steve from staff. I actually don't see Olga on the AT Room. We might have lost her. We can give her a moment to try to reconnect and then --

Annebeth Lange: Should I take over, Steve? It's Annabeth here. I can take this page while we're waiting for her to save some time.

Steve Chan: Sure, that would be great. Or staff can also help you and step in as well.

Annebeth Lange: Okay. So we go through page 33 in deliberations that we have a bullet prefaced by some believe that national and local law providing protection for geographic names does not give governments rights -- Olga, are you back again?

Olga Cavalli: I don't know what happened.

Annebeth Lange: Okay, come on, you can continue.

Olga Cavalli: Thank you so much. Apologies for that. So it's slide number 7 and it's on page 33, apologies for that. So we have -- I cannot take my -- so we have a comment from Ann-Catherin Marcussen and she says, the question of jurisdiction -- wait, I will go to another page. The question of jurisdiction and the applicability of national law, is much more complicated than stated in this bullet point, and I

suggest that it should be modified. It is not given that it will always be the national law of the applicant that will be applicable in a possible legal dispute concerning a part of an application of a next round gTLD string. And then we have suggested text from staff added as a footnote in the document which says, some believe that the question of jurisdiction and the applicability of national law is more complicated than stated in this bullet point. From this perspective, it is not given that it will always be the national law of the applicant that will be applicable in a possible legal dispute concerning a part of an application for a new next round gTLD string. So reactions and comments about this suggested footnote that somehow brings clarity to this text on page 33? And I see Paul requesting for the floor. Paul, the floor is yours.

Paul McGrady: Thank you, Paul McGrady here. I'm sorry, but I was talking over someone?

Christopher Wilkinson: Yes, this is Christopher, I'll ask for the floor after Paul.

Olga Cavalli: Thank you.

Paul McGrady: Hi, guys, this is Paul McGrady again. So regarding Ann-Catherin's comment, it's important to see the 3 words in front of that dot where it says, some believe that. I can tell from her comment that she has a different belief. But it's -- but the bullet point specifically predicated on the notion that some believe that national and local laws providing for protection for geographic names, etc. So this is not made as a statement of law or fact, but simply a statement of what some people believe is the case. And so I don't think we need to edit this at the last minute. I think it's fine the way it is because of the way it's predicated. I happen to believe what the bullet point says, but the bullet point isn't written in a way that says that we all believe it to be true or we've conducted some sort of factual analysis and have concluded that it's true. Thanks.

Olga Cavalli: Paul, if I'm understanding you right, you think that this footnote is not needed?

Paul McGrady: That's right, because I think that the concern, the way I'm reading it is Ann-Catherin's concern is that there is a different view that's not contained in the bullet point and the predicate some believe that, that is just above the bullet point makes it clear that there may in fact be a different view. Because we say some believe that instead of everybody believes that, or it's a known fact that, we say some believe that. So clearly, the concern that Ann has I think has already been addressed in the way that we have the draft report phrased. So I wouldn't change anything at this point. Thanks.

Olga Cavalli: Thank you, Paul. I have Christopher, Kavouss, and then Annebeth. Christopher, the floor is yours. And welcome.

Christopher Wilkinson: Thank you. This is going to be rather stumbled because I cannot get through to the Adobe site, so I cannot see the text we're discussing. But it is a fact that in some countries, geographical names are protected by local law. And the staffing point is that ICANN has to respect that. It is -- there is a second level where even in those countries where there is no law protecting them, I think it is

incumbent on ICANN's community to protect the interests of the associations of the populations who live in those areas to recognize their rights to the use of the names of their places. It's as simple as that. We don't need to have anything about believing this or believing that in the final text. The question of jurisdiction is distinct. I've said all along that the registries operating TLDs for geographical names should be registered, should be incorporated in the jurisdictions of that name. What the AGB text said was that a registry should bear responsibility of the country of its incorporation. But we know from history there is a large number of registries are incorporated in places like the United States, like Canada, like Gibraltar, like some European countries. That's irrelevant. Operation has to be in the country of, in the jurisdiction of the name itself. Otherwise, we're going to go straight into the problem that we had years ago with city TLDs which had been incorporated outside the countries for which the name referred. I'm not prepared to go into that whole history again in the gTLD sphere. Incorporation is in the country of the name. Thank you.

Olga Cavalli: Thank you, Christopher. Before giving the floor to Kavouss, Annebeth and Maureen, Katrin wrote a comment. She said I would prefer to add the proposed sentence from Ann-Catrine's comments after the sentence starting with others instead of adding it as a footnote to keep the balance in the discussion. Thank you, Katrin. Kavouss, the floor is yours.

Kavouss Arasteh: Yes. My view is more or less the same as the previous speaker but in the other sense. We are writing something that will be used as a guide for the future. Mentioning something some believe that doesn't help us all. What does it mean, some believe that? Some others may not believe that, so it's not helpful. If we say, as (inaudible) mentioned, that in some countries it's the situation, this is the statement of some countries. But we don't care of this belief of, some believe this, some believe that. It would not be helpful at all. So I am not in favor of this sort of polarization. But if you want to state that in some country or some area (inaudible), I have no problem. If you could give an example, that's better. But some believe that and some does not believe that, would not be helpful at all so I am not in favor of that as inserted.

Olga Cavalli: Thank you very much, Kavouss. And remember that we are trying to have a text that will go for public comments. So Annabeth, the floor is yours.

Annebeth Lange: Annebeth Lange here for the record. I would say the same, that we are here on the last, probably last time now before we send out the initial report. And what we are trying to do now and what staff has suggested is that those comments coming in the last 2 weeks after we sent it out last time, is just put it in footnotes when it's in deliberations. It doesn't make any harm, but we shouldn't discuss all the deliberations now. We have to move on and please let us go through the slides now and then put these comments that we have in as footnotes in the deliberation. Then it can show that some believe one thing and others will believe something else.

Olga Cavalli: Thank you very much, Annebeth, you read my mind. Robin, the floor is yours. Robin?

Robin Gross: Great, thank you very much. I also don't think we need to edit this -- yes, can you hear me okay? Great. Okay. I don't think we need to edit this text. I think this bullet is okay the way it is and I think the suggested text edit, the footnote, actually adds more confusion to the issue and actually seems to be a little bit questionable simply as a statement of law. I mean for us say that the national law of the applicant won't apply seems to be a very dangerous statement for us to be opining and interpreting. It seems to be frankly, incorrect as a matter of law. I think maybe what the point they're trying to make is that the national law may not be the only law that applies. There may be others that apply. But again, I think seeing how this is just adding more confusion about what it is we're trying to say, and I think the way it had originally been written, which was prefaced by some believe that is much more clear and doesn't add this confusion and dangerous statements about what law doesn't apply to people in the TLD process. Thank you.

Olga Cavalli: Thank you, Robin. Greg? Greg, do you want to say something or do you want me to read your comment?

Greg Shatan: It's Greg Shatan for the record. Hopefully that will work better. What I was going to suggest is just trying to revise the footnote slightly which might get rid of some of the confusion that it creates and begin it with some others disagree, and believe, etc. Since while we may not agree with their belief, and I can tell Robin doesn't and I'm really not sure I do either, but again, they're entitled to their beliefs. But again, we have to distinguish between the some believing in the text and some believing in the footnote who are a different some. So that's my suggestion to try to split the baby on this particular point. So that the point gets in there somewhere but is not muddled with the point with which it is disagreeing. Thank you.

Olga Cavalli: Thank you, Greg. And I have some comments in the chat from Paul. Why not encourage the footnote maker to make them as public comments instead? And also, there's another comment, primary concern from Paul also, all the footnotes make it difficult, the document even more difficult to read. It won't be clear to the reader who the footnote maker is. Thank you very much, Paul, for that. Greg, is this a new hand or an old hand? It's maybe an old hand. So I will go through, thank you for that, I will go to page -- okay, I cannot move the slide. I want to go to -- oh, thank you very much.

I want to go to slide 8 and it refers to deliberations in page 34. Remember that these are deliberations, not recommendations. And I'll read the text. Bullet prefaced by some believe that says, monopolization of a city name by private parties is forbidden under laws pertaining to business names and trademark registration in some jurisdictions. On the word monopolization, so there is an issue about this specific term, monopolization. One Work Track member stated that this is a term with a specific meaning in antitrust/competition law, and it is not used properly in this context. Note that the point is written as expressed by another Work Track member, and therefore the initial report seeks to reflect the point as it was raised.

So comments from Justine Chew, Justine said, how about just "Exclusive use of a city name ..."? If change considered too drastic then it's okay with the footnote. And then Ann-Catherin Marcussen, she says, I suggest to add which jurisdiction this word has specific legal meaning, in the text or in the footnote, so that it becomes clear that the word "monopolization" may have another legal meaning in for example European legislation.

So there is a comment, if there is any agreement in the Working Group about what changes should be made to the above text if people want to make any changes at this point. And please remember that we have to be concise so we can agree in a text and send it for public comments. And I'll open the floor now for comments. So the issue is about using the word monopolization. I see no reaction. We want some feedback from you. Greg? Go ahead.

Greg Shatan: Sorry, technical difficulties. Greg Shatan for the record. I just wanted to say that to my knowledge of European competition law, monopolization means the same thing as it means in the competition law of other jurisdictions and the competition laws are fairly well harmonized. Obviously differs from jurisdiction to jurisdiction, but I don't think that there is some example in European legislation where it means something different than it means in European competition legislation. It's too bad that Ann-Catherin isn't here to represent her point of view, but there is nothing here other than some vague claim that it might mean something different in some law. And again, I've practiced antitrust law for a number of years and before I stopped at that point in time, monopolization meant just about the same thing everywhere in the world. So maybe things have changed, but if so, I think the burden is on Ann-Catherin to tell us how it's changed. Thanks.

Olga Cavalli: Thank you, Greg. Any other comments? About using monopolization, Alexander says it isn't about competition law, this isn't about law at all. This is the community needs to be heard. Thank you, Alexander. Paul, the floor is yours.

Paul McGrady: Thanks, Paul McGrady for the record. So this is a great example of taking my own medicine. So for the word monopolization as Greg mentioned has a meaning within competition law, but it may have a meaning outside of competition law. In this particular circumstance, because it doesn't sound like we're talking about cornering a market, but rather imposing some law of some jurisdiction to use of city names as business names or trademark registrations. I've never seen anybody come forward with anything to support this notion. But again, the idea here is that we are trying to elicit responses to this, and this bullet point, even though I disagree with it, is prefaced with the idea, if we look up on the prior page, page 33 at the bottom, some believe that. So I don't think we need to mess with this bullet point. I don't agree with what the bullet point says, but it is prefaced with some believe that. So I don't think we need a bunch of footnotes and comments and other things that are going to confuse the reader. The reader can simply react to the fact that some believe that monopolization of a city name by private parties, etc. And again, rather than trying to cram all this stuff in at the last minute and create a document that's already hard to read, to make it worse by adding all these footnotes, I think really is going to make the

document very difficult to plow thorough. And again, this is not a statement of law, it's not a statement of fact, it's not even a statement that all of Work Track 5 agrees with this, it's just a statement that some of us happen to think that this is an accurate statement, that's all. Thanks.

Olga Cavalli:

Thank you, Paul. I have a comment from Javier. Isn't use of a domain name a monopolization in some sense? Okay, so I will move to the next slide. I cannot move, so please see if you can go to number 9, we have a lot of text to review here. So this is also on page 34 and it says bullet prefaced by some believe that, states, rights granted to geographic locations to protect geographic names are qualitatively different than intellectual property rights. In this view, civil rights are more general in scope and therefore more significant. So there are comments from colleagues. Ann-Catherin Marcussen, she says I am not sure I understand the purpose of adding the last sentence. I suggest that the sentence should be put into a separate bullet point to better separate the meaning of the original statement from the suggested one. And Greg said, suggested edits, "In this view, rights granted to geographic locations to protect geographic names are "civil rights," and civil rights are more general in scope and therefore more significant. So suggested from staff, it's an edit attempting to incorporate both comments that I have just read, so these are the 2 bullet points at the bottom of the slide. Rights granted to geographic locations to protect geographic names are city rights which are qualitatively different than intellectual property rights. And the other bullet point, civil rights are more general in scope than intellectual property rights and therefore more significant. Comments? Reactions? So the new text tried to incorporate the comments about maintaining the original meaning. No reactions, I assume we move on. I take silence as a yes.

Let's go to number 10. It's about page 35 and 36 and there are, if I'm not mistaken, there are 3 slides about the same issue. So original text, TLDs are a unique resource. Some Work Track members have contrasted this unique quality of TLDs with the use of names under trademark law. From this perspective, under trademark law, the principles of specialty and of trademark fair use apply, according to which it is possible for two brands to produce a trademark for the same term in the same jurisdiction, as long as no confusion or infringement pursuant to the law arises. In this view, the DNS is different because "parallel use" is not possible. In other words, if a string corresponding to a geographic term is delegated to one party, others who have an interest in that string are prevented from using it, potentially for a significant period of time or permanently.

So there are some comments. Greg Shatan writes concerns about the accuracy of this text and proposed edits or comparable additional edits to the text. And Greg proposed additional footnote and in the next slide we can show you some suggested text. So see if you can go to 11. So we will be in slide 11. Thank you so much. So this is a continuation of the previous text, so it is amended and it has some footnotes as you can see, 1, 2, 3 and 4. 1 and 2 are in this slide 11 and 3 and 4 are in the slide 12. So I will read again the text and then we will go to the footnotes. The new text says, TLDs are a unique resource. Some Work Track members have contrasted this unique quality of TLDs with the use of names under trademark law. From this perspective, under trademark law, a sign

is always registered in relation to certain goods and/or services (principle of specialty), so it is possible for two brands to register trademarks for the same term in the same jurisdiction, as long as no confusion or infringement pursuant to the law arises. In footnote 1 it says Some Work Track members, this is below in number 1, Some Work Track Members believe that it would be a more accurate reflection of the law to state under trademark law, it is possible for two brands to register trademarks for the same term in the same jurisdiction for unrelated goods and services, as long as no confusion or infringement pursuant to the law arises. In addition, mechanisms exist in domestic trademark law to allow third parties to use restricted terms like for instance geographic terms which are generally descriptive for the origin of goods and services.

So I will read footnotes 2, 3 and 4 now. 2 says, Certain jurisdictions apply a disclaimer on descriptive terms. The "fair use" exception used in certain jurisdictions allows a trademarked word or phrase to be used by a third party in a non-trademark sense, as a descriptor of the third party's goods or services or their geographic origin. Under other jurisdiction, the protection granted by trademark law does simply not extend to descriptive terms. And footnotes 3 and 4 I have printed them here. I don't know if we can show them. Can we go to slide 12 please? 3 and 4 there. 3 says, with regard to the prior footnote, Some Work Track members believe that it would be a more accurate reflection of the law to state "Certain jurisdictions may require a disclaimer in a trademark registration when a descriptive term is used generically as an element of the mark." Also, some Work Track members believe that it would be a more accurate reflection of the law to state: "In other jurisdictions, the protection granted by trademark law does simply not extend to descriptive terms when used in connection with the goods and/or services they describe. However, trademark protection may be extended to a descriptive term when it acquires distinctiveness through use and promotion of the brand." And footnote 4, Some Work Track members believe that it would be a more accurate reflection of the law to state: "In addition, mechanisms exist in domestic trademark laws to allow third parties to use descriptive terms in a non-trademark sense (like for instance geographic terms, which are geographically descriptive when the goods and services originate from that place, the place is generally known to the public, and the public would make an association between the goods or services and the place named in the mark), even if these terms are part of a registered trademark." So these are the 4 footnotes and I will go back to text and the final part of the text that is written in slide 11, it says after all the footnotes, even if the terms are part of a registered trademark, in this view the DNS is different because parallel use is not possible. In other words, if a string corresponded to a geographic term, it is delegated to one party. Others who have an interest in that string are prevented from using it potentially for a significant period of time or permanently. So this is new text with 4 footnotes that are quite descriptive and have somehow around the same concept, different way of expressing them. So I will try to see your reactions, to hear your reactions about this proposed new text. Christopher, the floor is yours.

Christopher Wilkinson: Good evening, everybody. At the 20th attempt, I think I have logged onto Adobe. Thanks to at least one if not two restarts. Sorry. Look, on

this particular question, I don't think this report should enter into an interpretation of trademark law at all. We are not as we would say in French, competent. I'm sure that there are some trademark experts on the call, but frankly the interpretation of trademark law is totally irrelevant in this context. The basic factors we have to deal with is that a top-level domain is unique. That's for technical reasons which some people historically have regretted which as far as I know, nobody has found a technical solution to do things differently. The top-level domain is unique. This incidentally applies to trademarks as well. Whatever the arrangements are for trademarks who subsist in parallel markets, that doesn't work in the DNS. Since the top-level domain is unique, this is the principle reason why nongeographic use of a geographical term needs to have the approval and non-opposition of the geography concerned because it also prevents that community or that region or that country even from using the name for its own geographical purposes in the future. So it is the uniqueness of the DNS TLD structure that imposes upon us that the geographical community concerned must have a say in all uses of its name on the internet. Thank you. But I think you can delete nearly everything that has been said about the attempt to interpret trademark law in this text. It's not relevant to this document. Thank you.

Olga Cavalli: Thank you very much. Any other comments about this new text and the 4 footnotes? Greg Shatan, go ahead.

Greg Shatan: It's Greg Shatan for the record. On one level I agree with Christopher. I think this whole section gets us into the weeds, certainly not my preferred -- the solution in front of me now is not my preferred solution but it's basically the negotiated solution. I just felt that there were factual misstatements about trademark law that were -- couldn't just sit there. But one solution is to follow Christopher's lead and basically cut everything after the first 2 sentences and before the last 2 sentences, so it just reads, TLDs are a unique resource. Some Work Track Members have contrasted the equality of TLDs with the use of names under trademark law. In this view, the DNS is different because parallel use is not possible. In other words, blah, blah, blah. And then we get away from anything about what trademark law actually says. I think that may be preferable to what's here which is if a camel is a horse designed by a committee, this is even a horse. Thank you. And I rode it.

Olga Cavalli: Thank you, Greg, very much. Okay, so we have 2 both making it shorter and to the point. So I hope that staff captured those comments. Okay, so Annebeth agrees with Greg and I somehow agree. But the issue is that the text has been trying to reflect the different views and the different opinions about perhaps the same issues. Okay, so we have now -- we go to slide 13 because 12 we already reviewed. Robin says that she agrees with Greg, so we have some agreement in the comments made by Christopher and Greg, so I hope that staff capture that. Greg, is this a new hand or an old hand? Old hand. Okay, thank you. We have deliberations, page 50 and 51. My document printed, it's slightly different. So these are a few bullet points regarding the future treatment of alpha-3 codes. The report has more details, but I will read the comments and some suggested bullet points in the next slide. Some comments about this issue are, Ann-

Catherin Marcussen says, based on the discussions we have had I suggest to add a separate bullet point something like "A large number of, if not almost all, countries/nations have political, cultural and societal or even legal reasons for the need to be in charge of the use of the alpha-3 codes." I also suggest to reflect somewhere in this section this view taken by some Work Track members that the principle of subsidiarity/sovereignty would/should be applied to a potential use of these 3-letter codes. Even if there are no legal rights, there are other kind of rights, like political, territorial and local needs.

And then the comment from Greg Shatan, if these points are added, the following counterpoints need to be added as well: 1. "Other Work Track members question the validity of this expansive claim, made without evidence, particularly as it regards TLDs." 2. "The "principle of subsidiarity/sovereignty" is not a principle of ICANN policy-making. The question of whether and how these would ever be applied to ICANN policy, and the extent to which they are consistent or inconsistent with ICANN policy-making is beyond the scope of this discussion."

And then we have more comments on the next slide, Steve if you can, since I can't advance the slides, can you go to 14 please? Staff suggestion to add the following bullets to the relevant sections. If you want to see where they are in the report you have to refer to the report. So each of these bullets is prefaced by some believe that, have that in mind when I read. Some believe that "a large number of, if not almost all, countries/nations have political, cultural and societal or even legal reasons for the need to be in charge of the use of the alpha-3 codes." Following, some believe that regarding the point, a large number of, if not almost all, countries/nations have political, cultural and societal or even legal reasons for the need to be in charge of the use of the alpha-3 codes, some Work Track members question the validity of this claim. Particularly as it regards to TLDs. I invite Work Track Members to provide supporting evidence. And then the other one, some believe that the principle of subsidiarity/sovereignty should be applied to a potential use of these alpha-3 codes. And finally, some believe that the principle of subsidiarity/sovereignty is not a principle of ICANN policy-making. The question of whether and how this would be applied to ICANN policy and the extent to which they are consistent or inconsistent with ICANN policy-making is beyond the scope of this discussion. So these bullet points are added in the text, trying to reflect the comments made by colleagues. Comments, reactions? I open the floor for your feedback. I see none, so I take that as a yes. So let's go to slide 15, I think it's the last comment in the document that is marked with yellow. As we said at the beginning, the yellow means that we still need some working with the text. Thank you, Javier, for the original comments.

Okay, so page 17, this is proposal 32 that says, apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly protected is unprotected. I will read that again. Apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly protected is unprotected. No objection or non-consent can be used to stop its delegation. We have comments. Justine Chew: I'm not comfortable with this sentence. Are we not talking only about letters of support/non-objection and application? There are still string confusions etc., to be considered. Suggest replacing it with "A lack of letter

of support/non-objection alone will not be a cause to suspend, hinder or suspend an application for such unprotected term."

And there are comments from Alexander Schubert, suggested altering the proposal to state proposal apply a clear and unambiguous rule that any geographic term that is not explicitly and expressly impacted by geographic name review is unprotected. No objection or non-consent can be used to stop its registration. He claims that the current version of the proposal would eliminate the right to object to non-capital city names used in the application that do not require a letter of non-objection, making it impossible for a (inaudible) city communities to defend their gTLD name space against gTLD squatting, absorption and abuse.

So your feedback about this comment and the other proposal is welcome. Because we should propose edits. I have Christopher in the queue. Christopher, the floor is yours.

Christopher Wilkinson: Thank you, Chair. Christopher Wilkinson for the record. I also commented on this very specifically in email to the list and I'm disappointed that my comments have not been included although I respect and generally agree with Justine's and Alexander's points. But this proposal does not merit being included in this document. On the one hand, I've never seen a reference as to the offer. Although I missed one or 2 calls recently, I never participated in a discussion on the call for such a proposal. And from the point of view of the people and the authorities in very large numbers of geographical places and areas, the proposal is outrageous, ridiculous. You can't tell almost the whole of the world that none of their names are protected unless they happen to be large cities or in the ISO 3166 list. It's absurd. Please don't waste our time about this. This will go down in flames when it's reviewed and revealed to the world at large. Don't make things even more difficult than they are.

Olga Cavalli: Thank you, Christopher. Greg, the floor is yours.

Greg Shatan: Thank you, it's Greg Shatan for the record. I think that this could be changed, although Alexander's change is very opaque that references to the geographic names review. I think we should refer to the strings that are included in the AGB rather than saying, rather than explicitly, expressly protected, let's just say any geographic term that is not protected in the AGB is unprotected for purposes of -- and just leave it there. I don't think any -- this does not preclude legal action, so it's not taking any law, it's not nullifying any outside law, we don't have the power to do that. This is really just about internal processes. So the idea is that there are protected strings and then there is everything else from the point of view of what goes on within the ICANN structure. And I think by pointing back to the strings themselves, we do include the city names that are subject to the intended use carveout no matter what the application is. So I think that would do what Alexander is looking for, but would have less, would be a little more clear. Thank you.

Olga Cavalli: Thank you, Greg. And before giving the floor to Annebeth, Katrin says that she agrees with the proposals expressed. Annebeth, the floor is yours.

Annebeth Lange: Annebeth Lange for the record. I just actually have a question for Greg. Do you mean to say by your suggestion that there should not be any internal objection procedure if you register, someone registers a name that's not in the AGB, there should be no possible way to object within the ICANN system, only external legal systems? Is that what you meant?

Greg Shatan: Thanks for the questions. Probably a little narrower than that. It shouldn't be an objection on geographic grounds, within the ICANN system. If there is some other reason to object, then that's okay, but just not on geographic grounds within the ICANN system.

Annebeth Lange: I suggest, Greg, to have your view visualized so I can see, understand it. Thank you for your answer.

Olga Cavalli: Thank you, Annebeth and Greg. I have comments from Justine in the chat. She says, while I don't necessarily agree with the first sentence in Proposal 32, I know that it is a proposal so I am more concerned with the second sentence because it is not correct. Katrin says she is supporting Justine and also does not properly reflect our debate. Greg, is this an old hand?

Greg Shatan: Yes, old hand, sorry.

Olga Cavalli: No worries. Any other comments? Okay, hearing none, I thank you very much for all the comments about these pending issues to be redrafted. I am sure that staff has taken good notes. I took some notes as well. So we have now any other business. Do we have any comments? Is someone talking?

Annebeth Lange: Olga, Steve has his hand up.

Olga Cavalli: Oh yes, you are right. I was reading my notes. Steve, please, the floor is yours.

Steve Chan: Thanks, Olga. Thanks, Annebeth. This is Steve from staff. I think we might have left some of these sort of open, so I just want to try to run through the various edits and try to see if we are generally in agreement with where we are ending up. Because at least from the staff side, who need to make some of these edits and suggest it to the group, the more clarify the better, of course. So I'm just going to back this up here and walk us through quickly.

So for this one, hopefully I'm remembering context, the discussion about these. This was about removing applicable and adding more clarity. So the suggestion here was to, rather than try to rewrite the text about non-capital cities, we would reference the relevant recommendation which in this case was 11. Any objection to that? Seeing none, or hear none. In this case, there seemed to be agreement with Justine's comment. It's about the adjustment or I guess the technical point that once you have permutation or transposition, it's no longer an ISO 3166-1 code. Seeing no objections.

So there was quite a bit of discussion about this one. Sorry, does someone want to speak? I thought I heard someone trying to get into queue. So for this one, as I was trying to say, there was quite a bit of debate about whether or not as an overall approach I guess we want to try to include counterpoints, especially as footnotes. I think the staff information here is just to actually include the footnote. It seems hopefully less harmful to include it rather than to exclude it. So this is definitely one of the ones where we didn't seem to get agreement on the conversation and discussion here. But at least from staff side, it seems less harmful to actually just include it and let the reader be the judge of what they actually agree with. So this is definitely one I wanted to bring up again and see if there is agreement to just hopefully allow the footnote to remain. Anyone ready to dine and ditch for this one? Okay. Seems that that's okay.

This one I believe we had settled on, at least in the chat, to substitute the word monopolization for the use -- or sorry, for the words exclusive use instead. That would seem to get rid of the issue that Ann-Catherin Marcussen had noted. So I think a simple swap of monopolization for exclusive use could work here. And apologies for the noise in the background, I'm getting a new garage door installed. Is there any objections to that approach? I don't know if we have or not, Greg, I don't know if we've reached that point, but I tried to use our phrase here. Okay, moving on, seeing no objections there.

I have to remind myself which one this was. I don't believe there's any objections to the staff suggested edits here, so I think that we're okay here. In this case, I believe there was suggestion from Greg to cut the middle part of the -- actually, let me just move forward a little bit. Ah, here it is. So there's a suggestion from Greg to cut a substantial amount of the text in front. So I think the first 2 sentences and the last 2 sentences that we would retain. So there was some level of agreement in the chat so I'll just bring it up here verbally. Is there any objections to Greg's suggestion? Seeing and hearing none, moving on. And actually, that would also, just to point out, would remove the footnotes as well.

Page 50, I don't believe there was any objection to this one. And then finally here, I believe there was agreement to amend the second sentence to what Justine suggested. And I think that actually concludes it. Any suggestions, comments or objections? All right, thank you very much.

Olga Cavalli: Thank you very much, Steve. Before we close the call [audio distorted] about the timeline? Steve? Can you hear me?

Steve Chan: Sorry, Olga, there was quite a bit of cross noise I guess. So I think you're -- in this case it --

Olga Cavalli: [audio distorted] some updates about timelines and what are the next steps in terms of when the document will be ready for public comment and all that?

Steve Chan: Sure. So based on -- Thanks, Olga, this is Steve Chan for the record. So based on the summary of edits that we expect, I think we should be able to turn those

around pretty quickly. And then as I think Paul had asked in the AC Room Chat, we'll certainly make those redline edits available to the Work Track to consider and to make sure that they agree with what we have changed and how we have changed it. So the intention is then to try to publish the report some time next week pursuant to there not being any substantive objections to the suggested edits. So those are next steps and anticipated timing. I'm not sure if you want anything else, Olga. Thanks.

Olga Cavalli: Thank you very much, Steve. I don't know if Annebeth, Martin or Javier want to add something? Final comments?

Annebeth Lange: No comment from me, it's Annebeth.

Olga Cavalli: Thank you, Annebeth. I take silence as a no, I don't want to comment. Okay, so any other comments from colleagues? Thank you, Martin. Okay, thank you, Javier. Thank you, everyone. It has been a very intense and productive call. Thank you very much, Steve, and thank you --

Annebeth Lange: Olga, it's Annebeth. Just one more thing that we haven't talked about and that is the additional information request for geographic names panel. I think we should say a few words about that as well. Could you say something about that, Steve?

Steve Chan: Sure, thanks, Annebeth. Thanks, Olga, this is Steve from staff again. So Work Track Members might recall that I believe in Barcelona there was a request to inquire with the geo names panel whether or not they utilize the definition for noncapital city names for the purposes of conducting the geographic names panel review. So as we had noted in the email, and if you guys remember, what our conclusion was, and this was staff research, policy staff in conjunction with discussion with our GDB colleagues, our understanding, as the AGB notes, is that there is not a definition that is used and so we are nearly certain that that is the case. However, there was a request for Jorge to still inquire with the panel whether or not that is indeed the case. So I guess to the extent that there is concern about whether or not staff got that understanding right, we can indeed ask the panel if I guess to confirm our findings. That said, where we are at this point, as noted, our intention at this point is to try to publish the supplemental initial report. And so I think even if we were to reach out at this point, it would not actually impact the initial report. So the suggestion at this point from staff is to simply park this one for now. And we can perhaps revisit after the initial report is published. Thanks.

Olga Cavalli: Thank you very much, Steve. So we are almost finishing the call. Thank you all very much for your participation. Thank you very much to Steve, Julie and Emily for their fantastic support and work and also to Terri. And thank you, colleagues. Thank you to my dear colleagues in the Work Track and see you all somewhere in cyberspace. Bye-bye.

Coordinator: Once again, thank you for joining. If you could please remember to disconnect all remaining lines and have a wonderful rest of your day. Bye.

