
ICANN Transcription
GNSO New gTLD Subsequent Procedures PDP WG Work Track 5 (Geographic Names at the top-level)
Wednesday, 28 August 2019 at 14:00 UTC

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MICHELLE DESMYTER: Hello, I'd like to welcome everyone. Good morning, good afternoon and good evening. Welcome to the new gTLD Subsequent Procedures sub-team, Work Track 5, Geographic Names on the Top-Level call, on 28th August 2019. In the interests of time today, there will be no roll-call, as we have quite a few participants online, so attendance will be taken via the Zoom room. If you happen to be only dialed in on the audio bridge, would you please let yourself be known now?

As a reminder to all participants, if you would 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. With this, I'll turn the meeting back over to Olga Cavalli. Please begin.

OLGA CAVALLI: Thank you very much, Michelle, and good morning from Buenos Aires. Good evening, good afternoon, wherever you are. Thank you for joining us this morning, for me. We have a very packed agenda

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with a lot of issues to discuss, and please take a look at the agenda in [inaudible] to have that in mind. We are hoping to close three of the discussions and a final review of some public comments in this call so we can move forward.

Any statement of interest updates at this point? I see no hands and no comments, so let's move on with the slides. We will talk about, now, the very important issue about what we have been calling non-AGB terms or additional categories of terms not included in the 2012 Applicant Guidebook. We all know that this has been an issue that has been discussed over the years. There are some conflicts still remaining, and the idea has been to review the rules, so maybe avoiding next conflicts, or having more predictability for both parties in the process. Let's see the status, and we will review the two proposals.

This is the present status. We have discussed this extensively. There should be provisions in the Applicant Guidebook to protect or restrict additional categories of terms not included in the 2012 Applicant Guidebook, the non-AGB terms. There has been traffic in the list regarding proposal would require applicants to provide early notice to government or public authorities when the applicants apply for specific strings. There are two core proposals, and I will go in detail about these two proposals, but please have in mind the concept of the two proposals.

Under one of the proposals, the strings triggering this requirement would include terms with geographic meaning identified by GAC member states or other United Nations member states to the ICANN Organization that are protected by national law. The other proposal; the list should be limited to exact matches of the adjectival

forms of country names, as settled in the ISO 3166-1 list in the official languages of the country in question.

Before focusing in detail in these two proposals, have in mind, consider at high level, that we hopefully have some consensus about the core concepts of the proposals, and perhaps we can agree in some text, and move forward. I will not open the floor for comments right now. Let's go to the proposals. Have in mind that we have two slides for each of the proposals, so I will go now to proposal one, and we have slide one and two. Then we go to proposal two, and we have slide one and two. Then we will see the reactions from you all. I heard someone that has the mic open, if you could please close it, it would be great.

The first one: applications of strings regarding terms beyond the 2012 Applicant Guidebook rules with geographic meaning shall be subject to an obligation of the applicant to contact the relevant public authorities in order to put them on notice. Which are the affected strings? We have two types, A and B. A, exact matches of adjectival forms of country names, as set out in the ISO 3166-1 list in the official language, or languages, of the country in question. The adjectival forms of country names shall be found in the World Bank Country Names and Adjectives list. There is a link there, and you can check the link.

The second is B, other terms with geographic meaning at notified by GAC member states, or other United Nations member states, to the ICANN Organization within a deadline of 12 months following the adoption of this proposal. In such notification, the interested countries must provide the source in national law for considering the relevant terms as specially protected. The list of notified terms

shall be made publically available by ICANN Org. This is the proposal, with the two types of affected strings, A and B.

Let's go to the next one that has more explanations and comments. The contact details of interested countries; the countries must provide relevant contact details to ICANN at least three months in advance of the opening of each application window. Obligation to contact interested countries; applicants for such a term will then be under an obligation to contact the relevant country. Said obligation to contact must be fulfilled, at the latest, in the period between applications closing and reveal day, but an applicant may choose to notify earlier than this. Said obligation to put in notice the relevant country may be performed in an automatized fashion by ICANN Org if the applicant so wishes.

This is the last paragraph: no further legal effect. There is no further obligation whatsoever arising from this provision, and it may not be construed as requiring a letter of non-objection from the relevant public authority. Nothing in this section may be construed against an applicant, or ICANN Org, as an admission that the applicant, or ICANN Org, believes that the affected string is geographical in nature, is protected under law, or that the relevant government has any particular right to take the action against an application for the TLD consisting of the affecting string. This is the first proposal that we explained in these two slides.

We will go, now, to the other proposal that also is explained in two slides. Proposal number two. There should be an early reveal process which is an opportunity for national governments to receive early notification about particular applications, so they can take whatever steps they wish to take. Which are the affected strings?

Exact matches for adjectival forms of country names, as set out in the ISO 3166-1, in the official languages of the country in question, shall be subject to the early reveal process, as described below. The adjectival forms of country names shall be found on the World Bank Country Names Adjectives List, which is the same link in the other proposal, as well.

The purpose: the purpose of the early reveal process is to provide early notice to relevant national governments regarding the new gTLDs applications for exact matches to adjectival forms of country names, found in the World Bank list. Notification by national governments: interested national governments must provide relevant contact details to ICANN at least three months in advance of the opening of each application window.

We have another slide about this proposal that gives more explanation, and it says, “notification to national governments as soon as possible after, but never before, the close of each application window, but no later than one month after the close ICANN Org should reveal relevant applied-for terms, and applicant contact information to those national governments who provided contact information.” Sorry.

Notice by ICANN; ICANN Org will provide notice of the affected strings to national governments who timely submit their contact information. There’s no obligation for applicants arising from this early-reveal process to seek a letter of consent or nonobjection from the relevant public authority. No legal effect; nothing in this section may be construed as against an applicant or ICANN Org as an admission that the applicant or ICANN Org believes that the affected string is geographical in nature, is protected under law, or

that the relevant government has any particular right to take action against an application for the TLD consisting of the affected string.

These are the two proposals described in these four slides, two slides for each slide. Let's see, how can we close? There's some comments. Summary of discussion; some members have expressed support for the more limited formulation of this proposal, which focuses exclusively on the adjectival form. Concerns have been raised that this proposal is too limited and does not represent any compromise. Some members have expressed support for the broader proposal that includes requirements for other terms with geographic meaning, which was the first one that I presented. Concerns have been raised about the impact on transparency and predictability of the process if a broader version of the proposal is adopted. Concerns have been expressed also about lack of clear definition of terms with geographic meaning, I think we have discussed this many times in the group, noting that this may be overly broad.

Can we reach some agreement in support of one of the proposals put forward? As you know, if there is no agreement on a proposed change, the status quo will remain. I will open a queue now for comments, and see if we ... We have to close this issue today, and it could be great if we can have agreement on something. I see Susan raising her hand. Susan, you're welcome, and the floor is yours.

SUSAN PAYNE:

Thanks, Olga. I really just wanted to urge people to think about both of these two proposals together, and particularly as compared to

the status quo. Olga has pointed out that if we can't get an agreement on a proposed change, the status quo will remain, and I think that would be a shame because those of us who frankly don't believe that any additional protection is warranted have nevertheless made some movement on this, and we feel that the AGB itself was already a compromise, but we've gone further than that and proposed something further that we think we could move forward with.

If everyone were to say that, because we haven't gone further still, that they reject that proposal too, then actually what we revert to is something less good than that. I do urge people to think about it in that context and not throw out proposal two simply because it doesn't go as far as you wish it went. It says on the slide that people have said that this doesn't represent a compromise. Well, it may not represent the whole compromise that some people wanted, but it is a compromise. Please read it in that context.

OLGA CAVALLI:

Thank you very much, Susan. Before giving the floor to Jorge, you're saying that ... I fully agree that it could be great if we can agree in some adjustment to the rules in trying to have more predictability. So, you think that proposal two does represent compromise, thank you for that. I have Jorge. [inaudible] Jorge, the floor is yours.

JORGE CANCIO:

Hello, do you hear me okay?

OLGA CAVALLI: Yes.

JORGE CANCIO: Hello. I don't know if co-leads have thought about any way of measuring the support and the opposition for the two proposals, apart from the interventions on the call, because that would probably be an interesting piece of information. But before that, I guess that Olga, or any other of the co-leads, may answer that question afterwards.

I would like to react to what Susan said. I agree with what she said in the sense that this is not really a binary decision, at least in my view. The second proposal, so with this I mean the proposal that originally came from Susan, and then was redrafted by Paul, is a step. I wouldn't be against taking that step forward, but at the same time we are now at the moment where I think we should go a bit further in the direction, not only of compromise, but of solving a problem we have seen with the 2012 round.

We have discussed this many times, and I think that proposal one, of course, in my view, is a compromise already, because it's only a contact obligation, and it's very limited in many of the effects or the interpretations anyone could make of this new rule. For instance, that it means no recognition whatsoever of any possible rights of those countries, that it has no other obligation than the contact obligation. It also provides that ICANN Org can perform this notification if the applicant doesn't want to get in touch directly with the public authority. There are lots of limitations. There's also a limitation of 12 months for these countries to notify the terms they

think that, under their laws, are specially protected as geographic terms.

There's a lot, I think, to objectivize this provision, and at the same time, to make it also work to avoid, at least, to a certain extent, the problems we witnessed with the 2012 round. Of course, adjectival forms of country names may be attractive to some applicants, and it's at least a good step to provide for this contact obligation for these kinds of terms, but it's not enough because we know dot-Patagonia, dot-Spa, dot-Amazon wouldn't fall under such kind of provision.

At the same time, it also has a beauty to leaving it to each country to really decide, according to their national law, what is really important to them. Some countries, I guess, with a more free-wheeling approach, won't notify anything, and other countries, who have protective legal frameworks, will notify more things. In the end, it's better for the applicants to know that those terms are important to those countries, than not to know that. I don't really see what is the harm in having this list being assembled with the country notifications. I leave it by that, and I hope that we may work on proposal one. Thank you.

OLGA CAVALLI:

Thank you very much, Jorge, and I think you made an important point about, if those who ... Towards proposal two, could explain what is the harm of proposal one, so maybe we can see which are the problems that they envision in this proposal that is more broad. I take your comment. About how can we measure the support, I work in the GAC, we don't vote in the GAC, so I will defer that to my

colleagues from GNSO, because it's a GNSO process, and see how we can maybe have a sense in the room of which of the proposals has more support.

I have two more hands. I have Christopher and Paul, and then I would like to check some comments in the chat. Christopher, welcome, and the floor is yours.

CHRISTOPHER WILKINSON: Thank you. Good afternoon, everybody. Look, Olga, you've just proposed a procedure which would make the meeting more efficient, so I will reserve my detailed comments for later in the meeting. Just to say that, as I explained in a recent message to Nick of Nominet, in my view the status quo is not acceptable, even as a default, and I think once this issue goes out of WT5, and once it goes out of the PDP, it will become extremely clear that the AGB 2012 is not an acceptable default. Regarding the details of the approximate compromise that is before us, I largely support what Jorge has just explained, but I do have some linguistic points on the text. Thank you.

OLGA CAVALLI: Thank you very much, Christopher. Paul, welcome, the floor is yours.

PAUL MCGRADY: Thank you. I, too, would like to speak in favor of the more limited proposal. The Applicant Guidebook 2012 already contains a bunch of compromises on this particular point. This is yet another

proposed compromise. It wasn't put out there, I don't believe, by Susan, and it wasn't amended by me, because we think it's not necessarily necessary, or even particularly a good idea. We're simply trying to find some common ground, here, with other folks who've been participating in this.

My concern is that this is yet another significant compromise that's being proposed, and we are finding ourselves in a ... Unfortunately, people are taking an all-or-nothing position, insisting on the broader proposal, which would allow governments to put, essentially, whatever they wanted to on this list. There is no definitions around that broader proposal. It essentially would become a list of words that certain governments don't want people using, which inherently will chill free speech. It's simply a bridge too far.

Like Susan, I'd encourage people who want the moon to think about whether or not they really want an all-or-nothing situation. We've got a very nice compromise in the limited adjectival form proposal that is worthy of attention. I do see chat on the list, essentially where people are claiming that there's nothing to fear in the broader proposal because nothing will happen as a result of those words, the "do not use" words, being put onto a list, and governments being informed of them. I think inherently that chills speech, but also if nothing will be done with those notifications, then I don't see the point of notifications at all.

Again, all that does, by claiming that the broader proposal has no harm, really begs the question of, why have the broader proposal? What's the underlying purpose of it? I don't really believe that it will be harmless. I think that governments who are pushing for this ... There are a handful of governments, not every government,

certainly, pushing for this, and they have some plans for those, and they know what they're going to do with those notifications, or else they wouldn't be asking for them. Hopefully we can reach the compromise here that's been put forward on the adjectival forms, and everybody can declare victory and go home. If not, if we refer to the Applicant Guidebook, then so be it, but as Susan said, I think that would be a shame because we really are trying to reach across the aisle here. Thank you.

OLGA CAVALLI:

Thank you, Paul. I do agree that we are all trying to have a good solution. I was thinking about 'no harms'. Maybe there are benefits, not only harms? Maybe there are benefits in one of the two proposals, not only problems. Honestly, this is a personal comment, not as a co-lead: I don't see the big harm, because I see it's just a content that may lead to, perhaps, an agreement, or a negotiation, or something in between, but just a comment. I have Javier next. Javier, [inaudible].

JAVIER RUA-JOVET:

Thank you, gracias. Hi to all. Listening to Work Track members, looking at the chat, and in view of moving forward and procedure, from what I'm hearing, there seems to be no major objections regarding the limited proposal on notifying regarding adjectival forms of country names, demi-names like American, etc. I guess, procedurally, maybe the question to be made now to move forward is whether some Work Track member truly and strongly disagrees, and would like to take a position publically here against this limited position regarding adjectival forms of GeoNames, of country

names. Maybe this is just a question that's out there, and if nobody takes a position against it, I think that would measure a level of at least not disagreement, but perhaps some consensus on this. That's my comment right now, thank you.

OLGA CAVALLI: Thank you. Jorge, this is a new hand, or an old hand? Old. Thank you, Jorge. Alexander, you're next, and welcome.

ALEXANDER SCHUBERT: Yes, hello. I wanted to make a comment on, I think it was Greg or Paul ... I think it was Paul. Sorry, Paul, Paul's comment. First, I do agree with this concern about civil rights, free speech, so on and so forth, and that in theory governments could put names there, whatever. The Turkish government with the Kurds, put names there, buzz words, that they want to be alerted of in order to create countermeasures that nobody else but them think appropriate. I think those countries, who do these things, will monitor the application process anyway.

Why do we want that governments are informed? I think it's not so much about the government itself. When I look, for example, at my Swiss colleagues ... I'm not so sure that the government itself is so super interested in what city is being applied for. It's more about the citizens of a given city, represented by their city government, represented by their federal or state government, that would like to be put on notice if, for example, a brand is applying for their city, and they're of the opinion that this is not okay, and they would like to object.

If we are in big rounds, like the first round, or the second rounds, probably the GAC members, or someone, is looking at the applications. But once we are going into continuous application mode, where at any given time someone could apply for a name ... For example, I don't want to single out brands, but a brand that is matching a big city would apply for their brand name, then how should the city, or the city constituents, ever get aware of it unless they would constantly watch ICANN's application website, or wherever they could see that? Maybe the next round, people could handle it, but in the future, people need to be able to be notified. Thank you.

OLGA CAVALLI:

Thank you, Alexander. I think there's value in one of your comments about 'put on notice'. Not on the government, sometimes it's the community that's important, and we should be thinking about communities and doing good for the community. There are a lot of comments in the chat. I'm trying to follow them. I have no idea how to summarize or read them all. I don't have the time to read them all.

Before moving forward, I would like to have a sense of those that want a limited version of the proposal. To take a comment by Jorge, what is the harm that they see? It's only harm that they see, they don't see any advantages of having a previous contact, and lowering future conflicts. That is a question that I think Jorge tried to do by asking what is the harm. Maybe Susan or Paul could comment on that? What is the harm in having a previous contact that has no further consequences? What would be the harm? Paul, please, the floor is yours. Thank you for commenting.

PAUL MCGRADY:

Sure. I simply don't believe it. I think that if there is in fact ... Nothing is going to be done with this notice, there is no possibility of chilling speech, it's all 100% harmless, then why are we even talking about this? Clearly, the notifications are meant to do a couple of different things. First, I think they will naturally have the effect of chilling free speech. People are naturally conservative, they don't want to waste money applying for a new gTLD. They don't want to waste money developing a business case, going out, getting funding, developing a business plan for innovation. If the TLD string that they want to apply for is on some list that some government somewhere put together, that is going to chill. Jorge's proposal on what can go on that list is very broad. There really are no practical restrictions to that. There will be a chilling effect upfront, that's harm number one.

Harm number two is, whatever it is that these governments are planning on doing with this early notification for this list of terms that we don't know what they are yet, and there's no definition around them, what they possibly could be.

If there is no point in doing anything with those notices, again, why are we talking about this? Clearly, there is some plan to do something with those notifications, that's why people want them early. I don't buy the idea that we should have a notification process that has no effect whatsoever, and nobody does anything with the notifications. If that's the case, then we don't need a notification process.

I do think we have to come clean and say that the reason why a handful of governments want these is because they want as much

ramp-up time as possible to object to strings. Fine, except for what we don't want to do, then, is to create an environment where, again, people are asking permission from governments to speak, to apply for TLD strings, and a broad, wide-open list of possible strings that will end up on the ... Essentially, there'll be pressure not to apply for them. I think that that's really asking a lot here.

I get the idea of the adjectival forms. I think it's more than is necessary. I think the geo-protections in the Applicant Guidebook are more than are necessary, but we're trying to meet our colleagues part of the way, with what we think is a more reasonable ask than an open-ended list that's designed to chill, and will be used in some way. People aren't saying what that will be, but obviously there is some use for these notifications, or else people wouldn't be asking for them. That's a long-winded answer, I'm sorry that was so long-winded. Thanks.

OLGA CAVALLI: No, that's okay, Paul, it was very clear. What comes to my mind is the empty glass and the full glass. What if the early contact leads to an agreement? Jorge, the floor is yours.

JORGE CANCIO: Hello. Do you hear me okay?

OLGA CAVALLI: Yes.

JORGE CANCIO:

Hello. I think I have to take a bit of exception on those comments, trying to imply that there is a secret plan or whatsoever from a handful of governments. There's no secret plan at all. This is something that I at least have been openly explaining and sharing with this Working Group for more than a year. The logic is very simple. GeoNames have implications for people's identities, and for the governments who are responsible for the corresponding territories. There are interests from those people, from those governments, and if those interests are not taken into account from an early point of the process, there might be problems, there might be conflicts.

We have seen this in the 2012 round. Amazon, Patagonia, Spa, other examples where they didn't fit into ... Well, I'm not sure about all these examples, but many of them didn't fit into the AGB rules, and that's why we are trying to look for a solution for non-AGB terms which have geographic significance.

One possible solution would be to say all those geographic terms, as the GAC principles said in 2007, which were adopted by consensus of the whole GAC, by the way, and meet the non-objection of the corresponding country. Okay, we are not going that far, because we have different point of view in this Working Group, so we are trying to find a compromise solution, and the compromise solution doesn't seek to accomplish a secret plan. It does seek to prevent the conflicts that we witnessed in 2012, and which might grow in future rounds.

One of the ways to avoid this is to make potential interests on GeoNames, on terms with a geographic significance, visible. This visibility would be created by this notification by GAC members, or

other UN countries, because as you know, the GAC doesn't cover the whole of the almost 200 members of the United Nations.

By making those claims, those interests visible, we create more predictability for the applicants and also for the corresponding governments. This is limited by different measures in the proposal number one, that this has to be based in national law, that the notification by the country has to happen within the timeframe of 12 months, that this notification, or this inclusion in this list, doesn't mean the recognition of any rights, and so on and so forth.

The underlying interests, the underlying claims of the government are already there, be it that we recognize this or not. If we don't recognize this, we will just have the same situation of 2012, and we might end up with many more hidden problems on applications, where the applicants didn't know, or didn't have notice, that the term they were applying for had a geographic significance important enough for the corresponding country to take the burden to notify that term to ICANN, according to the proposal we are making here. It's to really make interests and potential conflicts that are there already, may we like it or not, visible, and to prevent them as much as possible.

With a notification, we don't create any additional legal rights under the AGB for the corresponding government. We just create a mechanism to put them on notice, and to put them at the table as early as possible, to that the applicant has not made too many investments, so that it's not too late in the process that they cannot find a solution that is amenable to everyone.

Many countries won't care about this, but those countries who really have a big interest in some geographic terms, I think it's better to prevent than to cure. Just to hide, or turn a blind eye, to this reality, that the GeoNames beyond the AGB have implications, and are important for some governments, and that this may create problems if the applications are made without an early contact between the applicant and the government, I think is disingenuous.

This is something that we have been discussing in the Work Track 5 for many months, so I really don't get it when some of the colleagues say that there is a hidden plan. It's not a hidden plan. We want to make interests visible, and prevent conflict. Thank you.

OLGA CAVALLI:

Thank you, Jorge. About the concept of "hidden plan," I don't know about the developed countries. In developing countries, I can tell you that new gTLDs is far from being a hidden plan, or in the plans of any government which have many more urgent problems to care about. Christopher, the floor is yours, and welcome. We are running out of time, so we have to move to the next item.

CHRISTOPHER WILKINSON:

Okay, very quickly. I'll try not to repeat anything that Jorge has already said, because I broadly support his position. May I say, first of all, that these proposals cover a rather narrow group of geographical terms, and I have argued for some time that the actual scope of protection should be enlarged in one direction, towards smaller communities and locations, and on the other direction towards existing legal protections, notably the geographic

implications. I'm quite sure that if the PDP and GNSO do not protect the geographical indications, that this will come up interest eh GAC and the board. I think we're being rather blind and short-sighted to ignore it.

Secondly, vis a vis Paul, and I think also Robin in the chat, your positions presuppose that if names are not specifically protected in this text, that they're free for all. I really don't agree with that. I don't want to go into the question of legal protection or governmental and public policy interests just now, but you cannot possibly argue that such names have no protection whatsoever, and they're free for all worldwide, notably for registries operating outside the jurisdiction concerned.

I've foreseen this issue more than a year ago, and I described my position, and I proposed that this could be significantly alleviated by requiring that the registry for a geographical name should be incorporated in the jurisdiction to which that name refers. This has not yet come back, and I really think that this is an important alleviation if you go in this direction.

Just a minor point, but an important point; in the text of the first slide, there's a reference to GAC member states. The word states should be deleted. GAC members include legal and international entities that are not states in the usual form of the word. I'm also uncomfortable with the repeated use of the word "countries." I hope that's not an escape route whereby an applicant could say, "Oh yes, of course I contacted the country. I talked to some of my friends who live there," or, "I contacted a newspaper, or a university." I think we should usually replace the word "countries" with "responsible authorities," particularly if those are local and regional rather than

national. There may be other points, which I'll cover in the chat or by e-mail, Olga, but that'll be enough for now. Thank you.

OLGA CAVALLI: Thank you very much, Christopher. I have Javier, and I will close the queue now, and ... Yes, Javier.

MARTIN SUTTON: Can I go in the queue, please? I'm not on Zoom.

OLGA CAVALLI: Yes, sorry, I didn't see your hand. I give the floor to Javier, and then you, okay?

JAVIER RUA-JOVET: No, Martin, go ahead, I'll go afterwards.

OLGA CAVALLI: Okay, Martin, go ahead.

MARTIN SUTTON: Thanks, Javier. I'm not sure if this is covered in the chat, or anything that I've missed, there's been intermittent reception here. Just thinking about what the proposals were, and that I seem to get the feeling that everybody's okay to go with the limited version. One thing to contemplate, perhaps, where this other proposal, the wider proposal, has not got tremendous support, is can we think about that being voluntary? I think we have discussed that opportunity in

the past on our Work Track 5 calls. If that is something else that people are willing to consider, that might be bridging the gap between option one and option two. Hope that helps.

OLGA CAVALLI: I'm not sure if I got your comment, because I couldn't hear very well. Maybe Javier, did you get what Martin said, or ...?

JAVIER RUA-JOVET: Yes, I was going to support what he said. Generally, what I think Martin is hearing, and I'm hearing, is that there seems to be support, or nonobjection, to the limited proposal, which is something like prior notice to countries and territories on adjectival forms of country names in the 3166-1 list, and I think those names are also in a World Bank list. That's something that I think we got from this call which is important.

The other part of what Martin, I think, said, and Martin can jump in and correct me, is that in regards to wider proposal two, there seems to be a lot of discussion still, no general line of agreement, but perhaps a way forward before we close, or as we close, is a voluntary version of proposal two. Maybe Martin can jump in again, but less of a commanding control AGB rule, and more of a voluntary process in which notices can happen. Not required, but a good-faith effort. What I wanted to say was just regarding the limited proposal one. I think there is movement on adjectival forms of names in the 3166-1 list, so that's it. Thank you.

OLGA CAVALLI:

Thank you, Javier. Before giving the floor to Christopher, it seems to me that the proposed term, the limited one, is the basic agreement that we may have, but we can enhance it somehow. I like very much the proposal from Martin.

Could we have some volunteers to try to find ... I know that people in the group will kill me, that co-leads and staff will kill me, but maybe we can find a way in the middle, and have a 1.5 proposal, and those interested in redrafting, somehow, the proposal ... That seems to me a possible way forward, because I see some comments against, but I see a lot of, also, support, from the broader proposal in the chat. I cannot say that it doesn't fly, because it has some momentum.

The basic one, the small one, the limited one, seems to be the base for enhancing with some other concepts from the other one, maybe on a voluntary basis, or something that makes it easier, or avoiding that idea of a secret plan from governments or communities. I give the floor ... Christopher should be very short, because we have other things to move on. I would have this proposal for the group, having the base proposal, the limited one, and try to enhance it with some concepts from the broader one. Christopher, very briefly, the floor is yours.

CHRISTOPHER WILKINSON:

Yes, I feel I have to respond to Martin, because first of all the larger and broader proposal has received support, and although the number of voices on this call may be limited, I think Jorge has worked on this proposal in the context of the GAC for some considerable time. I'm speaking in my personal capacity, but I have

more international experience, and experience with geographical terms in the DNS than most people on this call, and furthermore that the ultra-liberal position of reducing the level of protection as much as possible is espoused primarily by the intellectual property, and some of the registry/registrars participants, and that it does not represent the world's interests in their geographical terms. Thank you, I reserve my position on other matters, but I do not accept being pushed into a minority just because there are fewer voices on a particular call. Thank you.

OLGA CAVALLI: Thank you, Christopher. I didn't mean to push into minority, I just want to find ...

CHRISTOPHER WILKINSON: No, no, it wasn't you.

OLGA CAVALLI: Okay.

CHRISTOPHER WILKINSON: It wasn't you, dear.

OLGA CAVALLI: I know that Paul is objecting to my comment about a secret plan, implied that I said, I just ... It's okay. Apologies if I misunderstood your comment. Okay, maybe co-leads can help me. You know we don't vote in the GAC, so I think there is value in trying to find a way

to put the two together. I still think that there is a lot of support to the broader proposal in the chat, and I understand that some colleagues have concerns towards the broader proposal. Could we think about what Martin proposed, making the broader one lighter? Can we have some support for that idea? Christopher, this is an old hand?

CHRISTOPHER WILKINSON: I'd be prepared to work on it with colleagues. Just off the cuff I don't immediately see a solution, because we've noticed that some of our colleagues are entrenched in a liberal position. Thank you.

OLGA CAVALLI: There is a comment from Paul; we don't vote in the GNSO either. You do vote in the GNSO. I was a councilor at the GNSO. We do things by consensus. There is no consensus on the broader. There is no consensus on the smaller one, as well. Robin says she doesn't support the broader proposal. Okay, is Jeff or Cheryl in the call? I honestly think we have to move forward.

CHERYL LANGDON-ORR: I am in the call, Olga.

OLGA CAVALLI: Your experience and advice could be welcome in this moment. I think there is some support for the broader one, but not full consensus, so what's ...?

CHERYL LANGDON-ORR: Well, first of all, we don't need full consensus.

OLGA CAVALLI: Sorry?

CHERYL LANGDON-ORR: Olga? It's Cheryl here. First of all, we don't need full consensus, nor is this a consensus call. A consensus call will be made after any recommendations out of Work Track 5 goes to the full Subsequent Procedure plenary. Let's be really clear on what any temperature taking is or is not. There are a range, and I can ask staff to put the range of definitions of consensus that is used out of the guidelines for policy development processes into the chat. That might help people understand, as well. We can have opposition noted, we can have minority noted. We can have all sorts of things without full consensus, and a recommendation can still go forward, but that is done at the plenary.

From this Work Track's perspective, if you are unable to get significant agreement on one or other of the proposals, then feel free to put both towards the plenary, but realize that when it comes to the plenary, it is not an opportunity for re-litigation from the same particular interest groups or individuals to, if they can't get carriage and sway, to convince people in the full plenary to support, then it will be Jeff and I that look at a consensus call and establish what level of consensus, or not, goes with any of the proposals.

So you don't have to do anything at this stage, Olga. If you can get closer to an agreed outcome, that is great, but you've spent a good amount of today's call on this particular matter. Just to remind you,

it doesn't matter whether you have been forwarding a particular position for a short amount of time, or a long amount of time, it matters that it gets support. Hopefully, that's helped you.

OLGA CAVALLI:

Thank you very much, Cheryl. Thank you very much for the comments. I suggest that we keep the two. If there are volunteers to find a way in between, as proposed by Martin, who is one of the co-leads, maybe enlightening the text, the terms in it, [had asked him like] making it volunteer or something else. I would welcome comments on the e-mail list about that, and I think that we have to move forward to the next ...

And thank you very much for the comments and questions. I know that this issue raises a lot of energy and involvement, which is great, and it's good that we have different positions, but it could be good to enhance the rules to have less conflicts and more predictability for all the parties in the future round.

Let's go to the next item in our agenda, discussion on changes to string condition resolution. There, we have some proposals as well. We have two proposals. One has three slides, and the second proposal has two slides. Let's try to review them.

One proposal is update the Applicant Guidebook, chapter 2.2.1.4.4 with this text; if an application for a string representing a geographic name is in a contention set with applications for identical strings, and have not been identified as geographical names, the string contention will be resolved using the string contention procedures

as described in module four. Let's go to the next slide, where the text is detailed.

This is the second of the first proposal, second slide. The update of the applicant guidebook, module four, says the following: In case there is contention for a string where one application designated the TLD for geographic purposes, preference should be given to the applicant who will use a TLD for geographic purposes if the applicant for the geo TLD is based in a country, or the TLD is targeted to where national law gives precedence to city and/or regional names. In case a community applicant is part of the contention set, and it did not pass the community priority evolution CPE, the geo TLD will be granted priority in the contention set.

If the community applicant passes the CPE, it will be granted priority in the contention set. Examples to this change in the text; United States-based Bagel Inc. and Switzerland-based city of Lausanne apply for .lausanne, the city of Lausanne has priority. United States-based Bagel Inc. and Switzerland-based Lausanne Pharmaceuticals apply for the .lausanne, Lausanne Pharmaceuticals has priority. If Bagel Inc. and Lausanne Pharmaceuticals are not based in Switzerland, there is no priority granted for any. This is a quite interesting example.

Let's go to the third slide, which is comments and reactions about these proposals. The rationale is, this will reflect national law, for example in countries like Switzerland and Germany, where the, for example, city names, have more rights than others. It is not about inventing new rights, or laws. Also, the existing objection procedures do not really allow cities to file objections, resources, lack of knowledge. If a community applicant does not pass the CPE,

it is not a community with better rights, per ICANN definition. Let's go to ... Do we have more about this? Okay.

Additional points, questions that have been raised about this proposal. How would this work if more than one place shares the city name? Another question; are there examples of national laws that provide that cities have priority rights to their names in the domain name space and are meant to affect the California Public Benefit Corporation Right to enter into private contracts under California law? And another question: from discussions of the previous proposal, it did not appear to be agreement to give preference to geographic names in the contention resolution process. Given this fundamental disagreement in the Work Track, it is possible to achieve consensus in proposal in this regard.

We still have ... I'm lost. We are in ... I'm looking at two computers, sorry for that. Where I am. Which is the next slide? I'm lost. I thought we had two proposals for this. No, I'm missing ... Okay, comments, I will open the floor for ... I see a lot of examples in the chat. I know this can be extremely confusing with cities having the same name all over the world. Let me open a queue for this issue, and see if we have some support for this new text, and these changes in the text of the Applicant Guidebook. Susan, I see you say hand? I don't see your hand. I don't see, but the floor is yours.

SUSAN PAYNE:

Thanks, Olga. If whoever is controlling the slides wouldn't mind going back to slide 16, that would be super.

OLGA CAVALLI: Okay, thank you.

SUSAN PAYNE: Thank you so much.

OLGA CAVALLI: I don't control them.

SUSAN PAYNE: No, no, no. It's okay, staff has done it for us. I strongly disagree with this, both the proposal and the rationale that's given. The proponent for this proposal has claimed that this does not invent new rights, or new laws, and that is absolutely false. This is seeking to impose, and in the example given, Swiss law, on any other applicant, anywhere in the world ... Just because, in Switzerland, an applicant from Switzerland may have certain national laws that they have to comply with, that is fine. But to give them priority over an applicant somewhere else, because they are Swiss, is utterly unacceptable, and absolutely is a creation of new rights and new laws. To claim otherwise, and repeatedly claim otherwise, is simply false.

OLGA CAVALLI: Thank you, Susan. I think the reference to Switzerland was an example, but it's a valid point. Christopher, the floor is yours.

CHRISTOPHER WILKINSON: Sorry to come back so quickly, I'll be very brief. I've said this in detail before, and there is a tendency among our colleagues to

carefully ignore it, because it's not comfortable for them. But the fact is that when we were drafting the articles of incorporation of ICANN in 1998, the European Commission required that ICANN should respect applicable national law. I'm sorry, Susan, but that horse has left.

OLGA CAVALLI: Thank you, Christopher. There are some interesting comments in the chat. I will give the floor to Greg, and maybe I can read some of them. There are not so many as the previous issue. Greg, the floor is yours, and welcome.

GREG SHATAN: Oh, thank you. Christopher, you misidentify the horse, here, being as applicable law does not require ICANN to subsume itself to every applicable law of every country. If that were true, we would be adopting the free speech laws of North Korea, for example. This is just picking and choosing, and the applicable law section of the articles of incorporation does not support this attempt at creating a global law out of a national law. I agree with Susan, and I don't see the basis, and I think it's dangerous to try to twist applicable law clauses for purposes they were not intended, and do not mean to support. Thank you.

OLGA CAVALLI: Thank you very much, Greg. I'm trying to check some comments in the chat. I think the Swiss example is an example. It doesn't have to be taken as written in stone, as the only ... I miss so much Adobe Connect, it was much easier. Now I cannot see correctly my screen

... Swiss example should apply to .ch ... And Robin agrees with Susan. Susan responds to Jorge. Paul agrees with Susan and Robin. Paul supports Greg, "Great example. It would be impossible to comply with all laws at the same time. It is impossible to comply with both North Korea laws on free speech, and the United States First Amendment."

Katrin says, at Greg, "Well, why does ICANN then implement GDPR, if they would not be forced to do so?" Greg [responds,] GDPR has specific extra-territorial effect written into the law, and Susan says, "To be clear, just in case, I'm not criticizing Switzerland or its law, just we are not all bound by those national laws," and I think, Susan, your point is well taken. We're just using an example of a country that has some regulations related with those names.

Christopher says, "Applicable law that applies to what ICANN is doing, for example delegating TLDs, otherwise what is EPDP/Whois doing?" Javier says, "GDPR is a bit different, given its specific extraterritorial effect." Jorge says, "Jokes aside, local law is important, and can't be ignored, especially when prevalent in a sizeable number of countries."

I don't know why my screen has totally got crazy. Okay, I suffer with this Zoom thing. I don't think we have consensus. Greg, this is a new hand? You want to comment? It's an old hand, okay. I don't see a lot of consensus. It's hard for me to see the chat, now. Paul, "If a country wants to prevent a new gTLD application from going forward, and they think that they have basis in the law to do so, they are free to sue ICANN and see what happens. There can't be any serious claim that every applicant everywhere is subject to local law

in places.” Robin, “Local law only applies locally, the problem is that Internet goes everywhere.” Okay.

Some questions that were raised: how would this work if more than one place chose a city name? Are there examples of national laws that provided cities? Well, I already read this. I don’t feel that there is consensus for accepting this, so we should ... I have a problem with my screen, of Zoom, for some reason. I cannot see my full screen. Anyway, let’s move on. I don’t see a lot of agreement. Some disagreement, some agreement. If there’s no agreement on any proposed changes in 2012 Applicant Guidebook provision will remain in place, so we’ll stop here. Let’s see, other comments. Katrin says, “we can’t ignore national law,” but it’s difficult for me to check my screen.

Okay, let’s move to the next item, if not, we won’t have time. There’s discussion on noncapital city names. This is quite a long one. It has two proposals as well, so let’s try to review them before closing our call. Two proposals being considered.

The first proposal does not seek to change the rules of 2012, it seeks to provide clarification with respect to a particular type of string, dotBrands. The second proposal, extend the support non-objection requirement to cities with more than 100,000 inhabitants, regardless of intended. Let’s go to the next slide, please. This is proposal one, has three slides, and then proposal two, I think it has two slides more. Let’s go to the first one.

It’s an amended text in the Applicant Guidebook, section 2.2.1.4.2, part two, on noncapital city names. Adding the text in blue, which is shown in the slide, an application for a city name, where the

applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges, because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. However, applicants may find it useful to review the 2017 United Nations Demographic Yearbook, table eight, to find a list of city names with more than 100,000 inhabitants as a reference point, and there's a link there to [\[United Nations stats\]](#) link.

Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired. An application for a city name will be subject to geographic names requirements, for example, will require documentation of support or nonobjection from the relevant government or public authorities. If it is clear from applicant statements with the application that the applicant will use the TLD primarily for purposes as associated with the city name, there's a new text in blue for the avoidance of doubt.

If an applicant declares in their applications that they will operate the TLD exclusively as a dotBrand, then this is not a use of the TLD for purposes associated with a city name, and the applied-for string is a city name, as listed in official city documents. Let's go to the next slide, please. Next slide. Next. Thank you so much.

The rationale for this is the current Applicant Guidebook says, "city names present challenges because city names may also be generic

terms or brand names, and in many cases are not unique.” I think we already read this. Let’s go to the next slide, please.

This is the third part. Questions, comments, and some comments made in the list, and in different documents. Concerns: even if a dotBrand is used in the string exclusively in association with the brand, the brand may be benefitting from an association with the place. We know many examples for this. Why should a brand automatically be exonerated from the targeting of the city? Why single out dotBrands in the Applicant Guidebook text, and provide only this type of string as an example? This proposal does not give applicants clear guidance, and leaves doubt whether the category of TLD application is reflected on the Applicant Guidebook or not.

And some clarifications provided to these concerns: this text targets instances where an applicant is applying for a dotBrand, and quite conceivably does not know about a non-capital city somewhere in the world that happens to match their brand. In many cases, the brand owner will be genuinely unaware of the existence of a city with the matching name. dotBrands share governments, or geo TLD operators, concerned about nefarious actors submitting applications, to be paid off, to withdraw an application. Further, dotBrands applicants share the same concern about having a connection to their brand misrepresented. These are the three slides for proposal one, and let’s see proposal two, that has the amendments in red color, that is shown in the slide.

Proposal two says, “city names present challenges because city names may also be generic terms or brand names, and in many cases, city names are not unique. However, an established list can be used as objective references in the evaluation process. An

application for a city name will be subject to the geographic names requirements. For example, we require documentation of support or nonobjection from the relevant governments or public authorities, if ...” Three options. “A, it is clear from applicant statements with the application that the applicant will use the TLD primarily for purposes as associated with the city name, and/or B1, the applied-for string is a city name as listed on official city documents, or, B2, the applied-for string is a non-capital city name, as defined pursuant to an applicable national legislation, or as listed in the link to the United States list of [demographic] names of countries, and all that.”

So, this is the second, and the second slide about this second proposal, the rationale for this. This list contains capital cities, and cities with 100,000 or more inhabitants, and it is thus very limited in nature. It would give applicants clear guidance, and leaves no doubt whether the category of TLD application is reflected in the Applicant Guidebook or not. If a dotBrand applies and meets the exception, under A, and it has no further obligation. The same goes for any other category of TLD applications. The rule applicable to capital city names remains per the preceding section 2.2.1.4.2-1.

So, for discussion. It was raised that some countries define in their national legislation how a city is defined, and the process should defer to that. The Work Track has previously discussed a proposal to require support and nonobjection for larger cities. Both Work Track discussions and public comments on this proposal have revealed significant division in opinion. Is there new information or factors that indicate that the Work Track might reach on consensus on this version of the proposals?

I think this is the last one of this ... I think we have the last one, which is for closure. Do we have agreement on a path forward in any of the two versions? No agreement? I have Alexander and Sophie. Alexander, the floor is yours.

ALEXANDER SCHUBERT: Hi. I don't want to repeat my concerns, I have done this a lot on the mailing list. If I put myself into the shoes of the brands, then I kind of understand their concern. They are concerned that if their brand name accidentally matches a city name, without them ever having intended it, it's just kind of an accident, like Cleveland Club's Golf Clubs, and the city of Cleveland, where Mr. Cleveland had the last name Cleveland, and that's why he called his company Cleveland, is probably not targeting the city of Cleveland, especially as he's living on the other coast of the United States. If your brand is accidentally matching a city name, then I think the brand consultants are very concerned that the current AGB provision might create a situation where they, anyway, have to get a letter of nonobjection, even if there's no reason for that.

What I would like to say to the brand consultants, or brands: the arbiter of this question, or the one who's decided whether letter is required or not, is not the general public, or an objector or whoever, it's the [inaudible] panel that looks into the application. If you want to make clear that you have no connection with the city whatsoever, then just state so in your application. Say, "We're aware that there's a city," and do a Wikipedia search. Wikipedia is super true, there is no city that is not in Wikipedia, especially not a big city. If you see that there's a city that is matching your brand name, then declare in the application, "We are aware that there is a city. We have

Googled, and we are not in any way connected with that city, or targeting that city.” And you should be fine. Finished.

OLGA CAVALLI: Thank you, Alexander. Sophie, the floor is yours, and welcome.

SOPHIE HEY: I just want to reiterate that when I first put proposal one forward, I did it just to try and improve the clarity of the provision. I think I've made that clear, but I just want to reiterate that. As I understand it, the harm that I'm hearing is that there's going to be a misrepresentation of an affiliation with some kind of government authority. To my mind, and I appreciate other people have different views on this, if there's no affiliation between whether it's the brand, potentially a generic, or whatever else people come up with to apply for in the next round, I'm not quite sure what the harm is that would arise. That's why I propose the idea of clarifying that a brand, which is a dotBrand specifically, which is meant to just operate in that particular space, and has a contractual amendment to make sure that they operate like that, would be an appropriate clarification. That's why there's no additional categories mentioned there.

In terms of the other part of my proposal I put forward last night in the Google Doc, that was in response to Katrin suggesting the UN Stats list of cities with 100,000 or more in there. I moved that up to the preamble, suggesting that might be a reference point. If you look at the rationale and the background on that particular table, which I'm happy to post in the chat, it isn't just exclusive to cities on that list, it also includes agglomerated regions as well.

I'm not quite sure that provides any clarity, however, recognizing the concerns that governments might have about national legislation, I put in the chat just a moment ago suggesting that we expand part two of it to say that it's not just the match of a city name that's listed in an official document, but also to include, as set out in national legislation designating the place as a city, I've also included the phrase "exact match" just to clarify what it is that we're looking for there. Thanks.

OLGA CAVALLI:

Thank you, Sophie. I see your new text suggested in the chat, "The applied-for string is an exact match of a city name, as listed on official city documents, or set out in national legislation designating the place as a city." Thank you for that. Greg, the floor is yours, welcome.

GREG SHATAN:

Thank you. I also wanted to point out what Sophie said, that table eight does not limit itself to cities. It says that, "Since the way in which cities are delimited differs from one country or area to another, the table not only presents data for the so-called 'city proper', but also for the urban agglomeration, if available. The urban agglomeration is the city proper and the suburban fringe, or densely settled territory lying outside of, but adjacent to, the city boundaries." When I put this table into an Excel Spreadsheet it's over 4,000 lines. Not every line is a city, of course, but that's still an awful lot of cities, or cities and agglomerations, with their attendant agglomerations. This is a broad proposal. Going back to the slide, I

don't know if you can go back to the slide, I had asked about the and/or, on the ...

OLGA CAVALLI: This one, I think, is 23.

GREG SHATAN: Katrin has said that that was supposed to be an "and." That's what she said in the chat, if I was understanding what she was saying correctly. It's a completely different ballgame if that's an "or." An "and/or" really has the effect of "or" here. Usually disfavored to use "and/or" in any kind of statement like this, but if we can clarify that that's an "and" and not an "and/or," that would be very helpful. If that's intended to be an "and/or," it'd be helpful to know, but that makes this a very broad proposal. Thank you.

OLGA CAVALLI: Greg, if I understand your comment, for you it could be okay if it's an "and?" Okay?

GREG SHATAN: It's at least worth considering. The second one just doesn't work, because then it's kind of, "any of these three," becomes the trigger, and that's completely off.

OLGA CAVALLI: I see your point. Katrin says in the chat, "it was meant as 'and.'" Are there comments about the "and" or "or? Because I totally agree with

Greg that changes totally there the meaning of the sentence. Susan says, “At the end of eight, and turning it to an ‘and’ to have the effect Katrin suggested,” and it has ... Annebeth says it as an “and,” so let’s agree that it’s an “and,” unless someone strongly disagrees with the second proposal with this suggested amendment. I think that there were some suggested changes by Sophie in the chat, “Would be acceptable.” Alexander, the floor is yours.

ALEXANDER SCHUBERT: Just very quickly, the original text from the Applicant Guidebook has an “and” at this spot, so the applied-for string has to be on the official city documents. Katrin’s addition is a list of city names, and I think it’s just a sub-group of B1. Because of all the city documents, these big cities that are on the list will all be included in B1, so I don’t think that Katrin is in any form or shape extending the number of cities, she just wanted to introduce a means by which it is easier for third parties to identify a city, and especially she wanted to make sure that there’s no applicant ... and again, I don’t want to single out brands, but for example, a brand that doesn’t do any research, they just think, “Oh, we are the big brand. We are the best of the world, we don’t even have to Google whether someone else shares this name.” This way, Katrin kind of forces third parties, for example brands, to look into this list and see, “Oh! There is a big, big city out there, we never knew,” so they cannot say, “Oh, we never knew there is a big city.” Thank you.

OLGA CAVALLI: Thank you. Looking at the chat, Greg says, “I think with an ‘and’, it would be able to support this.” Katrin says, “Alex, exactly. It

provides more clarity and transparency.” Paul McGrady says, “With only three minutes left, I’m not sure we have enough runway to discuss this, much less understand it fully. Can we push this to the list again, and take it up to the next call?” Paul, you’re making an interesting point. There are some suggested changes to the text. I will suggest colleagues to work on that, and see if we can agree on a new text. Time-check on call.

Okay, we have two minutes left. Please, take a look at the next three slides. This is comments about protection, more protections, less protections. We don’t expect to discuss this, but there was a request to have them more clearly put in slides for colleagues to take a look at them. Have that in mind. We are not open to discussion about these issues, but this is input from the public comment period.

We have to close the call now. Any other comments from co-leads or staff? When is the next call, and the time, date and [outlet?] If colleagues from staff can help me with that? Hola? Is someone there? Okay, it will be next Wednesday, I don’t remember the time. I won’t be able to attend, because I’m traveling, but other co-leads will chair the call. The next call is September 4th at 20:00 UTC. Okay, thank you very much, all of you, for your very valuable comments, and comments in the chat, and contributions. Let’s see what happens in this week and next week. Thank you very much, we’ll keep in touch. Bye-bye.

MICHELLE DESMYTER: Thank you, Olga, thank you, everyone. Meeting has been adjourned, have a great remainder of your day.

[END OF TRANSCRIPTION]