MARRAKECH – GNSO - New gTLD Subsequent Procedures PDP WG (1 of 4)
Monday, June 24, 2019 – 09:00 to 10:15 WET
ICANN65 | Marrakech, Morocco

JAVIER RUA-JOVET: Good morning to all. Welcome to Marrakech. Welcome to this Work Track 5 session, Work Track 5 of the GNSO PDP on Subsequent Procedures. My name is Javier Rua-Jovet, I'm with the ALAC, one of the co-leaders of this great team. To my right, Olga Cavalli with the GAC. To my left, Annebeth Lange from ccNSO. And to my far left, the extreme left, Martin Sutton. We're also accompanied here by Jeff, overall co-leader for the PDP. I think we have other people online and we have our great staff also with us. Welcome to all.

We have a short presentation that covers our work today. Bear with us. We're going to do an introduction. Some of you might find it a little bit – you might know this stuff already but it's going to be of great use to some of you also and some of our members are online in the Zoom room, so let's just get on to it.

Slide 3, please. And before we start, if you can raise your hand of how many of you are actually Work Track 5 members? Okay. Around the table, we have Work Track 5 members. Nobody in the audience. Okay, great. So, about 10-15 Work Track 5 members. Very good.

In terms of the agenda today we have, as I have mentioned, an introduction and status of where we are. Then we're going to preliminary recommendations and review of the status tracking and

then move on to identification and agreement on remaining open issues, and then we'll finish up.

So Agenda #1, slide 5. To refresh, slide 5, about Work Track 5. Please move on two slides please, to slide 5 to move on. Work Track 5 is a sub-team of the New gTLD Subsequent Procedures Policy Development Process Working Group. The overall working group is tasked with calling up on the community collective experiences from the 2012 New gTLD Program round to determine what if any changes may need to be made to the existing 2007 introduction of new generic TLDs policy recommendations. Work Track 5 seeks to re view the existing policy and implementation related to the topic of geographic names at the top level, determine if changes are needed and recommend revised or new policy and/or implementation guidance, as appropriate. And of course, this work track is open to anybody to join, but also be cognizant that we're pretty far along in the process already and if you're going to join at this stage, there's a lot of catching up to do and reading and documents. We have great documents, very well organized but it's a lot, but welcome to join definitely.

So what's our scope? Work Track 5, its remit is two character ASCII letter combinations. Country and territory names, alpha 3 on 3166-1, short and long form in ISO 3166-1, additional categories in section 2.2.1.4.1 of AGB. Again, in terms of acronyms, for those online, ISO (International Standard-setting Organization), AGB (Applicant Guide Book, 2012). Capital cities in ISO 3166-1, city names, sub-national names (e.g., country, province, state in ISO 3166-2). UNESCO regions

and names appearing in the composition of macro geographical continental regions, geographical sub-regions and selected economic and other groupings. And, other geographic names such as geographic features (rivers, mountains, valleys, lakes) and culturally significant terms related to geography, also known as non-AGB terms. We'll delve into all these things as we move along.

Quickly, Martin, do want to add anything? Any other member want to add anything? Okay. So, we're moving along.

The current status. A supplemental initial report was published for public comment on December 5, 2018 with an extended comment period closing on February 1, 2019. 42 comments were received with many from the GNSO, also the different SO/ACs, also government and ccTLD commenters in the record. Public comments were compiled in a great comment review tool put together by a staff and co-leaders, attempting to provide a view on initial agreement, concerns, new ideas, divergence in relations to the report. Work Track 5 categorize every comments, seeking to ensure that it understands the comment and ask questions whether it may or may not be clear. So, we wanted to make sure that we got the comments right from the commenters. And now, we're moving towards substantive deliberations to determine if changes needed. So, get the comment right and then move into substance.

And what's our baseline? Work Track 5's preliminary recommendations and/or 2012 implementation and AGB (Applicant

Guidebook). And note that change from the baseline requires consensus.

Any comments, questions? Let's move along. Agenda item #2 quickly. Preliminary recommendations, review status tracking. Substantive deliberations of public comment. For substantive deliberations, Work Track 5 and staff have sought to summarize public comments received as well as highlight new elements, new ideas, concepts, concerns, divergence, etc., to provide a digestible format for information. While there may be some level of quantification of support or opposition and consolidation of concepts to highlight themes, this exercise is not an assessment of consensus. Work Track 5 preliminary recommendations and/or 2012 implementation and Applicant Guidebook is the baseline again.

The purpose of this phase of work is to reach agreement on a set of recommendations that will be sent to the full working group for the consideration and formal consensus call. In general, some takeaways at the high level from the public comments. First, existing 2012 implementation preliminary recommendations. We've seen support from most commenters to maintain the existing geographic names protections deployed in 2012 which are largely identical to the preliminary recommendations with the exception of translations of certain terms. Some of that support is reluctant in the sense that many commenters do not believe governments have an exclusive legal basis in geographic names but nevertheless are willing to support what they believe is a compromise solution. However, there's outright

opposition from some commenters which is discussed in the outstanding items – new ideas, concerns, divergence, section.

Other takeaways. Three main groupings for preliminary recommendations. Country and territory names (Recommendations 2-9). We've seen support from most commenters to maintain the existing geographic names protections deployed in 2012 which are largely identical to the preliminary recommendations with the exception of translations of certain items. Some of that support has been reluctant in the sense that many commenters do not believe governments have an exclusive legal basis to geo names but nevertheless are willing to support what they believe is a compromise. Exceptions to this general support do exist in this category, for example, alpha-3 code. And in addition, there is outright opposition from some commenters, both of these elements will be discussed in the outstanding items etc., section.

Other takeaways. Geographic names requiring letters of support, none objection (Recommendations 10, 12, 13). We've seen support from many commenters to maintain the existing geo names protections deployed in 2012. While there is still some reluctant support, for example, commenters do not believe governments have an exclusive legal basis in geo names, there is more outright opposition from some commenters, in particular, against capital city names and less so against sub-national names and UNESCO and M49 regions. M49 is the UN statistics. This will be discussed in the outstanding items, new ideas, concerns, divergence section.

Geographic terms that require letters of support/non-objection dependent upon intended usage (Recommendation 11). We've seen support from some commenters to maintain the existing geo names protections deployed in 2012. There is still some reluctant support but again there is more outright opposition from some commenters here. However, the opposition here comes from two very different angles. Number one, that cities do not have a legal basis – maybe we're missing something there. And two, that applicants should always be required to provide a letter of support/non-objection. Again, this section – this will be discussed in the outstanding etc., section. And I'll hand it off to Annebeth on slide 13.

ANNEBETH LANGE: Thank you, Javier. Hello, everyone. Just to remind everyone what the preliminary recommendations are, since we're talking about that all the time, I think we need to fresh up the memory sometimes. So, a quick going through these recommendations, so we you have it fresh in mind.

The preliminary 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 re-applications for certain strings at the top level to be accompanied by documentation of

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support or non-objection from the relevant governments or public authorities as applicable.

#2. Work Track 5 recommends continuing to reserve all two character letter ASCII combinations at the top level for existing and future country codes. And here we have additional details available.

Recommendation 3, Work Track 5 recommends continuing to consider the following category of country and territory names which is reserved at the top level and unavailable for delegation as stated in the 2012 Applicant Guidebook section 2.2.1.4.1.i – alpha-3 code listed in the ISO 3166-1 standard. Next slide please.

#4. The same here goes for long form name listed in the ISO 3166-1 standard. And, #5, for short form name listed in the same standard. Next slide please.

#6. Work Track 5 recommends continuing to consider etc., short or long form name association with a code that has been designated as exceptionally reserved by the ISO 3166 maintenance agency.

#7. Separable component of a country name designated on the separable country names list. This list is included at an appendix to the 2012 Applicant Guidebook. Next slide please.

#8. Work Track 5 recommends clarifying 2012 Applicant Guidebook section 2.2.1.4.1.vi which designates the following category as a country and territory name which is reserved at the top level and unavailable for delegation. Permutation or transposition of any of the names included in items 1-5. Permutations include removal of spaces,

inserting of punctuations and addition or removal of grammatical articles like "the." A transposition is considered a change in the sequence of the long and short form name, for example, "RepublicCzech" or "IslandsCayman." Work Track 5 recommends clarifying that permutations and transpositions of the following strings are reserved. Long form name, short form name, short or long from name in association with the code that has been designated as exceptionally reserved, separable component of a country name, etc. This list is included as an Appendix to the 2012 Applicant Guidebook. Strings resulting from permutations and transpositions of alpha-3 codes listed in the ISO 3166-1 standard should be allowed.

#9. Work Track 5 recommends continuing to consider the following category of a country and territory name which is reserved at the top level and unavailable for delegation as stated in the 2012 Applicant Guidebook section [inaudible]. Name by which a country is commonly known as demonstrated by evidence that the country is recognized by that name by intergovernmental or treaty organization.

#10. Same here for an application for any string that is a representation of the capital city name of any country or territory listed in the ISO 3166 standard. It should be requiring a government support. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant government or public authorities. Next slide please.

#11. Work Track 5 recommends continuing to consider the following category of a geographic name requiring government support at the

top level. Applications for these strings must be accompanied by documentation of support or non-objection from the relevant governments or public authority. An application for city name where the applicant declares that it intends to use the gTLD for purposes associated with the city name. An application for city name will be subject to the geographic names requirements, that is we'll require documentation of support or non-objection from the relevant government or public authorities, if (a) it is clear from the applicant's statement within the application that the applicant will use the TLD primarily for purposes associated with that city, and (b) the applied-for string is a city name as listed on official city documents. As Javier said, this is one of the recommendations have been discussed quite a lot. We'll come back to that.

#12. Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation, etc. An application for any string that is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard. Next slide please.

#13. Work Track 5 recommends continuing to consider the following category a geographic name requiring government support at the top level. Applications for these strings must be accompanied by documentation, etc. An application for a string listed as a UNESCO region or appearing on the "Composition of macro geographical (continental) regions, geographical sub- regions, and selected economic and other groupings."

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the "Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings" takes precedence.

These were the recommendations that were sent out and as Javier has said, we have gone through all the comments that had been sent in and tried to be sure that we have understood the comments in the way they were meant from the commenters. What we have done in the last months is to go through all these different recommendations and see are there outstanding elements here. How were the comments? Are they really solved? Could we find and change that was substantive agreement on some other things than what we already have?

That is quite difficult to find in most cases because as we all know, we are from different parts of the community and we have different background and different interests, and we try to find something that can be good for all of us. If we can't find a better solution then we will have what we have.

So what we have done in the two last weeks, we have tried to make a status tracking document. As we have tried to explain is that when we

have finished all the different issues that we should discuss in Work Track 5, it will be sent on to the full group for more discussion and then consensus calls. So what we recommend – you can't say that it's consensus but it's the best thing that we can find out from the comments we have had in the discussion we have had. So the Tracking document that Martin kindly made for us I think that gives a quite good overview of where we are, and so we should concentrate on the most difficult discussion issues and the outstanding questions. If we have to move ahead, that's the best way to do that.

So if you see that on the next slide, we have taken all the preliminary recommendations and tried to say, are there comments that – if we could find some common ground for something else and where we haven't then it will be no change to recommendation.

#1. It is still open, need to revert on completion of Work Track 5 review of preliminary recommendations and public comments. Until further, we have the rest of the recommendations on this page – 2, 3, 4, 5, 6, and 7 – we so far view them as completed. Next slide.

Preliminary Recommendation #8 about the permutations and transpositions – open to feedback. Suggestion for text change from Justine Chew: "Strings resulting from permutations and transpositions of alpha-3 codes which are themselves not on the ISO 3166-1 list should be allowed." Suggestion to clarify the definition of "permutation" and "transposition." Is the current definition exhaustive?

#9 Complete. #10 Complete. #11 Open for feedback. Refer to meetings, notes from 19th of June. Next slide please.

The two last, #12 and #13 we consider so far as completed.

So then I leave the word to you. It's [your turn] or was it Olga that should take over?

JAVIER RUA-JOVET: I'll be doing the next session.

ANNEBETH LANGE: You're doing the next session? Okay. Then we continue.

JAVIER RUA-JOVET: Any comments, questions, observations? Or shall we keep on moving along? Hearing none. Staff, if anybody on the Zoom flags anything out, please kindly inform us. Very good. So we shall keep on moving.

Slide 24. Identification and agreement on remaining open issues. Agenda Item #3.

Slide 25. Open/divergent issues. What are the open/divergent issues?

1. Discuss operational/incremental (non-substantive) improvements (for example, online tools, advisory panels, mediation, etc.). That is not controversial.

2. Non-AGB terms (examples, rivers, mountains, etc.). If applicable, introduction of intended-use provision. Non-AGB terms, of course, a topic of great interest.

3. Translations applied to the following categories in 2012: (1) long-form name listed in the ISO 3166-1 standard (reserved), (2) short-form name listed in the ISO 3166-1 standard (reserved), (3) separable component of a country name designated on the "Separable Country Names List" (reserved), (4) capital city names (letter of support / non-objection).

Other open/divergent issues.

4. Possible changes to string contention resolution when one or more geographic name is involved.

5. "Intended use" provision more generally – some wish to extend to other areas where documentation is always required. Conversely, some wish to eliminate and always require documentation.

6. Some question the basis for preventative protections. While a number of commenters were willing to still support the preliminary recommendations, this was contingent upon the scope of geographic names protections not being extended further.

7. Some wish to increase reliance on curative measures, or introduce in parallel to existing preventative measures.

Any comments? Questions?

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I'd like to recommence the presence in the audience of Board member Lito Ibarra, good friend, Rafael. Annebeth?

ANNEBETH LANGE: This section was really … Alan?

JAVIER RUA-JOVET: I see Avri Doria also. Hello.

ANNEBETH LANGE: Alan, please go ahead.

ALAN GREENBERG: I was just going to comment if we're targeting this discussion at people who may not have been fully involved all the way, things like "possible changes to string contention resolution" is a rather cryptic statement that has no meaning, unless you give us some idea what kind of possible changes were being discussed. Thank you.

MARTIN SUTTON: Thanks, Alan. Let me put some context around this. This is recent discussion as we've been going through the comments for preliminary recommendations, and so what this creates is sometimes some open questions to further explore. So in terms of this one, there is a set of recommendations to [inaudible] the initial report that reflected the fact that if there was an intended use that was non-geographic then

fine, it can proceed that route. But if it's geographic, it has to get a letter of approval or non-objection.

But then the question was raised as to what if there is a contention set that arises whereby there is two or more applicants for the same term, and should there be a precedent over which proceeds. So if there is one that has an intended use that is non-geographic and one that has a geographic intention, should there be any change to that process to prioritize one or the other. Does that help?

ANNEBETH LANGE: Could I add something? You could also think that some cities exist in different countries, the same name. So we could have an instance where two applicants, they have both letters, they are both intending to use them for their city, and they both have a letter of support from their relevant government. What then?

So there might be some instances that we haven't thought about. That's the meaning of that that we tried to think a little further if we can find a solution.

EDMON CHUNG: On that, what are the suggestions in terms of the alternative ways to resolve contention then? Expanding on what Alan just mentioned, some of the others seem not clear what exactly but we can go one by one. But, first of all, on this specific topic what are some of those things that have been discussed? Or is it just maybe we can find another one and let's start the discussion now?

ANNEBETH LANGE: We had some different suggestions but I think that this is in the area that we have not discussed enough. So it's kind of more thoughts about it. This is the problem and we should try to fix it if it's possible. And I think that we have something on the block here for the next session that we should go further down into that. But should we take one by one? Or should we go back to the Tracking document there?

MARTIN SUTTON: I'm thinking that we've got this time to go through some of these discussion points. So for Work Track 5, it's a great opportunity to continue some of these discussions. We have the next session probably two or three chunks that we're going to focus in on which is largely related to the previously slide I think. If we go to the previous slide here … let me go back one.

In the next session, we'll be looking at operational and incremental improvements. So these were some of the proposals that came out from Work Track 5 members that were included in the initial report that we have not had substantive discussions on yet. So that's an area that we'll focus on in the next session after the break. Similarly, non-AGB terms.

This is where sections of the initial report that were not focused in on the actual preliminary recommendations, we need to now explore. That's the stage where we're at. What we wanted to clarify here is just to make sure everybody's understanding is the same, so are these the

open and divergent issues that we should be focusing on going forward now for this work, or have we missed anything? It's an opportunity for Work Track 5 members to identify anything that they still feel is a gap in our approach for running through the remainder of the initial report information and having deliberations on that.

If we do get a chance through the next session to get down to item #3, we'll go back to "translations" which has been a topic for the last couple of meetings that we've had prior to ICANN65. I hope that makes it clear as to where we are and what we're doing. It would be interesting for any feedback from Work Track 5 members if you agree this is where we are and these are the items that we've got to still cover as well the open items on the preliminary recommendations that were just run through prior to this section as well.

UNIDENTIFIED FEMALE: Hi. I just wanted to note that we have a question from a remote participant in the chat. It's actually in French. It's about cities with the same name and the prioritization, so I don't know if any of our co-leaders speak French well. I don't think I'm going to do it justice if I read it out loud but maybe someone else could whose French accent is a little bit more discernible and if anyone is able to translate and then perhaps answer it, that would be great.

MARTIN SUTTON: I'm unable to translate it but I can do a gap filler in the meantime while somebody does. This came up on the call in terms of the

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scenario where to geographic places are applied for. There is already something in the Guidebook that references this so this is quite different. The example that I gave you earlier is where there is one for geographic purpose and one for non-geographic purpose in a contest, and that's where we need to explore further. Certainly for the example of two geographic places applying, there is an opportunity for them to work together to decide how they will proceed. And if they cannot come to some agreement then nothing will proceed. So that's the current status. Thanks.

UNIDENTIFIED FEMALE: I will do my best. French is not my … oh, you want to do it? Okay, Google Translate. Okay.

UNIDENTIFIED FEMALE: I know some French and it seems pretty close I think. "My question for cities with the same name. Can we create a hierarchy according to whether it is a capital or based on the size of the city?"

ANNEBETH LANGE: Actually, for a capital, there's already precedence for a capital. But of course for two cities, small cities, no capital then we have to find something. That perhaps is a good suggestion that the largest city [wins]. But I think that what you said, Martin, those two could work together to find a way that it can be used for both cities.

Since we still have time in this section, so we should just go on and try to do some proper work. This has been a recapitalization of what we have been doing to bring people up to speed, but I think we should just go on and we can go on to the next slides to discuss it or we could just open up this back to the Tracking document. What do you think?

MARTIN SUTTON: Okay. As we've got unexpected time I think to focus in on some of the other items, could we go back to the preliminary recommendations? I think #8 was the first one that was still open.

ANNEBETH LANGE: The first is #1 but that is –

MARTIN SUTTON: Yes, #1 is sort of we have to go back to once we've gone through all of the other recommendations because it will have an impact if there's anything different.

On #8, if we could have a look at some of the text proposed here from Justine and whether we can say if there's any problems that people foresee with using that or if there is support to include that adjustment. I'll put that out to Work Track 5 members. It's up to the Work Track 5 to work these things through. Is that a welcome amendment?

Silence. No objections. Okay. So, can we then say that we'll incorporate Justine's text within the recommendation on there?

ANNEBETH LANGE: I can read it. It's "Suggestion from text change from Justine Chew: 'Strings resulting from permutations and transpositions of alpha-3 codes which are themselves not on the ISO 3166-1 list should be allowed.'"

The reason behind this clarification is that three letters normally are allowed of course because they are generic words that we've been using for a long time. Permutation of a three-letter code that is not in the transposition being another 3166 code. All the others should be allowed. I think that is the meaning behind it.

Any objection? Accepted.

JAVIER RUA-JOVET: [Christopher]? Come in if you can. Can you hear us?

[CHRISTOPHER]:   Can you hear me?

JAVIER RUA-JOVET: Yes. We do clearly.

[CHRISTOPHER]:   That is miraculous. First of all, I have taken my hand down but since you've given me back the floor, first of all, I agree with Justine's text. I think it's a reasonable part of a real compromise. Since I have the

floor, I would just say and remind people that there are lots of geographical terms, notably islands and subsections of large countries which are not in the ISO 3166 of standard and I believe that we should not be discriminating against countries who didn't get into the ISO 3166 code's subdivisions in favor of only those who are. If you look at the Atlas, you will see that some islands are in and many other islands are not. Thank you.

JAVIER RUA-JOVET: Thank you, [Christopher].

MARTIN SUTTON: Just to point out, I don't think it's a compromise scenario on here. This is an extra clarification for text on this particular recommendation. So I just wanted to make sure that's understood. If there's no further questions on that one, we can move to the next point here which is a suggestion to clarify the definition of "permutation" and "transposition." Is the current definition exhaustive? I can't remember if there was anybody –

ANNEBETH LANGE: Permutations include removal of spaces, insertion of punctuations, and addition or removal of grammatical articles like "the".

A transposition is considered a change in the sequence of the long- or short-form name, for example, "RepublicCzech" or "IslandsCayman".

So the question is, is this understandable? Is it exhaustive? Is there something else that could make this even clearer? Suggestions received with thanks.

JUSTINE CHEW: I shouldn't have a problem with what's in the AGB currently. This suggestion was raised by Greg Shatan if I'm not mistaken. Unfortunately, he has left the room.

ANNEBETH LANGE: Thank you, Justine. Well, then we will ask Greg if he has some clarification to come with and then we go to the next point.

MARTIN SUTTON: Thanks, Annebeth. If the co-leads are happy with that, I think we can leave that open for just another week for any further comments or really for any suggestion for text that could be considered by the group. Otherwise, if there isn't any further suggestions coming forward for that, we may need to just drop that. But at least we'll give an opportunity for Greg or others to comment on and we may be able to get something if joins us on the next session if we have time to go back to it.

Moving on to Steve.

STEVEN CHAN: Thanks, Martin. This is Steven Chan from staff. I just wanted to try and provide a little bit more context around with that suggestion was intended to do. From what I recall from the meeting, that list that Annebeth read, part of what Greg I think wanted to make sure was clear is that whether or not that was a suggestive list or if it was indeed exhaustive, that's the full list of things that should be transpositioned or permuted – I'm not sure if there's such a word or not – but transposition or permutation. I think he wanted to clarify whether or not that was an exhaustive list that was captured in the Applicant Guidebook. Thanks.

ANNEBETH LANGE: I don't read this as a list in the Applicant Guidebook. We have the three-letter codes – that is a list. But then every other combinations of three-letter that is not a match of one of the codes in ISO 3166 three letters, that will be kind of a permutation because you change the letters. So I'm not sure if I see this as a list. Martin, comments on that?

MARTIN SUTTON: No. Steve, yes, please.

STEVEN CHAN: Thanks, Martin. Let me try clarify my clarification. There's a list of what permutation or transposition is supposed to mean in the Applicant Guidebook. It talks about permutations include removal of spaces, insertion of punctuation, and addition or removal of grammatical articles like "the." Transposition is considered a change to the

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sequence of the long- or short-form name, for example, "RepublicCzech" or "IslandsCayman."

So there's a list in definition of what's that supposed to entail or include. I think the idea from Greg was, is this exhaustive or is there more exemplary of a list? Thanks.

ANNEBETH LANGE: Yes, now I understand what you meant with list. It's a kind of example of what can be a transposition or a [inaudible]. But let's ask him if he has some other suggestions. In my view, I think that it's fairly clear that if you change the order or change the letters or you change [inaudible] strokes or conflation or whatever, then it will be in that category. But let's leave that for the moment.

Any more questions on this issue? Or should we try to use the rest of this section for #11? That is also an open issue on what we have been discussing, and that is a difficult one. That is the non-capital city names. We already discussed a little with intended use or non-intended use depending on how to use it. There is a lot of different opinions there. Some want to remove the intended use that it should have a letter of support or non-objection anyway. The reasoning behind it in the discussions have been that it's easy to change it afterwards and then it will be very complicated if you do that. Even if you're perhaps in a breach of contract, it's difficult to take things afterwards. But on the other hand, it's so many names in that is both city and generic and [inaudible] so that it makes sense. So that discussion is not finished.

So now we're on the #11, Martin?

MARTIN SUTTON: Thanks, Annebeth. I think it might be sensible if we try and revert back to our Summary document that we've been running with on the calls, because I think that summarizes a lot of the comments around non-capital. Would it be possible to put that up, Steve? No?

STEVEN CHAN: We're contemplating on how to do that because this is the presentation laptop and the links are not easily typed.

MARTIN SUTTON: Right. Okay.

UNIDENTIFIED FEMALE: We can put the link in the chat to the Summary document.

MARTIN SUTTON: That'd be great. Thank you. Then everybody can have a look at that.

UNIDENTIFIED FEMALE: We won't be able to display it but people could see it for themselves. And then it's better too because they can scroll themselves, which we're not able to do if we put it in the presentation computer.

MARTIN SUTTON: Let's do that then. Then we can focus probably … have we got 20 minutes left for this session? We can focus in on that.

So this starts on page 14 of the document – those that have been able to link into the Summary document. For those that haven't, I'll just give some of the high-level summary a bit here. Okay, just for the benefit of those that may not have access to the document, the summary feedback is on page 3 for Recommendation #11.

This is: "Geographic Terms That Require Letters of Support/Non-Objection Dependent Upon Intended Usage. Support from some commenters to maintain the existing geographic names protections deployed in the 2012 round. There is still some reluctant support but again, there is more outright opposition from some commenters here. However, the opposition here comes from two very different angles 1) that cities do not have a legal basis and 2) that applicants should always be required to provide a letter of support/non-objection."

That was the high-level assessment of the feedback that we got from the initial report. So if we – page down through to – was it 14 I think I said? Bottom of page 14. It does provide here information about the actual recommendation again so I won't read that out. But in there, you'll find listed down a variety of comments that we got back in just for reference points here and to give it a bit more context so it delves a bit deeper.

Overall, we've got a spread of comments back in. It's really out to the Work Track 5 members to be discussing this and considering does this warrant any change to the preliminary recommendation that was put

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forward in the initial report. I'm not going to read through all of the comments on here. That would just not be necessary I don't think. We've gone through some of that already in previous meetings. So I think it has really opened the floor to the Work Track 5 to discuss it. Edmon?

EDMON CHUNG: I wonder if there has been discussion about if an applicant does not identify the name as primarily used for the city, whether there's any burden on the applicant to explain that they have done the research that there is potentially a city name and how their operations will not create confusion because I think that kind of recommendation would eliminate some of the concerns especially on confusion, especially on smaller cities. I don't know whether that has been thought about and perhaps, maybe part of the recommendation in short basically that any applicant, even if they identify it's not primarily used for city name, they should do some research and say, "Hey, we know there's this city and this is the reason why we don't think our operations would create confusion."

MARTIN SUTTON: Thanks, Edmon. I'm trying to recollect the conversations amongst Work Track 5 for the last 18 months or more. Whilst I know we've had linked the discussions on that, I'm not sure entirely if that point was picked up, but it was probably discussed in some form rather. [Catherine] and then Jorge.

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[CATHERINE]:   I think we discussed this and came to the conclusion that is pretty straightforward and good enhancement to the progress, so yes.

MARTIN SUTTON: Jorge?

JORGE CONCIO: Thank you, Martin. I think if we want to look for solutions beyond the AGB of 2012, this is the discussion. Perhaps we could combine some of the ideas we had during the discussions previously during this last year. I see some merit in the idea of having limited lists of cities but that would need some sort of research, some sort of implementation work.

For instance, we in Switzerland, we know what is a city because our Statistics office tells us, "This is a city." They have criteria and we only have I think some dozens of cities in that sense. So for us it would be very easy. For those cities we would like to get away with the intended use rule because for us it would be an incentive to [gain] the rule and we have very strong protections under Swiss law for Swiss city names. For the rest of cities in the wider sense, I think that as a compromise, we could live with maintaining the intended use rule. I think that could be one way of combining the two approaches.

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ANNEBETH LANGE: Thank you, Jorge. We have been discussing also that from country to country, it's different. You have a very clear law in Switzerland. Other countries don't have that clear, legal way that you have done it in Switzerland.

So we have been discussing the size of the cities. We have been discussing that each country could have a list of 10 largest. But lists are always very difficult and there will be some doubts especially in countries that are not really aware of what we are doing here. We still have countries not engaging in ICANN and we are sitting doing rules for geographical entities all over the world and we have tried to find some solution that will take care of all interests, and that is really difficult. But I think that we at least should try to enhance what we have today and find some more demands to be quite sure that you don't tread over others. Even if you can say it's not right, it's been a long discussion in this group if it's a legal right and if countries have a legal right, but some kind of identification they feel with their cities. We will try to go through all the input we have had and try to find some enhancement and we'll see where we go from there. It's difficult to – what we have been talking about here is if we can't find something that we all agree on then we have what we have and must do the best with it. [Catherine], please.

[CATHERINE]:   One idea which just came to my mind because Jorge was mentioning that the national law in Swiss and that's the same for Germany. It has some protection on city names. What if we were to say depending on

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national regulations to include them and the AGB terms, for instance? If there's no rule in, let's say, France or Italy or Taiwan protecting city names over other terms then the applicant is free to do whatever he/she wants, whereas there's an application for city name in a country where the national law protects that city name over other terms, this has to be respected and then the letter of support or non-objection is required.

ANNEBETH LANGE: Thanks, [Catherine]. Alan?

ALAN GREENBERG: That sounds really nice but I have enough trouble finding out what regulations apply in my own jurisdiction where I should have some knowledge. Putting a responsibility on applicants to know where to find all of the rules for every country in the world I think virtually is quite unreasonable. As I said, I've tried to find rules for what laws apply in Quebec and Canada on occasion and can't find them. And I know they're somewhere. It may be a law, it may be a regulation. To put an onus on people to find it in all other countries I think is not something we could expect to do properly. I like the idea but I don't know how to do it.

MARTIN SUTTON: Thank you for that, Alan. One other difficulty here is we want to create rules that don't make it impossible for applicants and communities also and common persons to apply. So, thank you for that.

ANNEBETH LANGE: This is a tricky area, really. Another option that have been suggested is that when you apply and you don't know that it is a geographical city or whatever, and it is published for some time and then the government or the public authorities in the country have to watch out. I think that will be a rule that can be managed by those countries involved in ICANN but it will be much more difficult for those not aware of what we are doing here. So it might be better than what we have today but it will not be completely solved. I think whatever we do here, we will have some problems afterwards, some objections, some things that are discovered too late, but I think we should go through all these different suggestions we have and see if we can check something out of it, at least we'll make it better. Again, we have to remember that if we can't find something that we have consensus on in the end then it is what it is.

MARTIN SUTTON: Olga?

OLGA CAVALLI: We have summarized as many of the suggestions that we have heard and read during all the months of work, which is in the next group of slides so we may have that conversation in more detail in a moment. Jorge, the floor is yours.

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JORGE CONCIO:
Thank you, Olga. Just to be very brief, I think we can make a combination between, first, this idea of the advisory panel coming from Alan. Applicants don't need to know everything. For that, we can concentrate knowledge in one advisory panel which on conditions of confidentiality can advise the applicants before they present their application. That's the first thing.

The second thing is a bit complement to the idea I shared before. In Switzerland we have this clear definition of what is a city but I understand in other countries you don't have that. But we could combine rule that restricts the applications to a non-objection letter for the 15 or the 20 largest cities in a country without prejudice to the legal definition in that country of what is a city if that definition exists. And for the rest of the cities, we would have the intended use rule as we have now. So that could be a combination. Whenever you have a legal definition in your country that can be found out, that prevails. If not, you have 15 or 20 largest cities where you have this non-objection letter, and for the rest you are free to use whenever you are not using it in a geographic sense because then you have to go to the local authority. So that would be a better rule for everyone I think. I think we can be constructive on that.

ANNEBETH LANGE:
Thank you, Jorge. I think that is a good idea, so let's do more with that when we discuss it further in the next session. It's five minutes left now of this section and then it's a coffee break but we continue afterwards.

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So is there anyone that wants to say something before we wrap up? Justine, please go ahead.

JUSTINE CHEW: I just want to add on to what Jorge has mentioned. In particular, my concern is we end up relying on the curative mechanism then to make sure that the group has some idea about looking at whether the objection mechanisms are available to people who may not know what ICANN is doing. Thank you.

MARTIN SUTTON: Thank you, Justine.

ANNEBETH LANGE: Kristine, please go ahead.

KRISTINE DORRAIN: Thanks. Kristine Dorrain, Amazon. I just wanted to mention, follow up a little bit on this idea that there's some countries that protect the city names. I think the Applicant Guidebook accounts for that already, you have to follow your local laws. My concern is that by extending the proposal to the top 15 or 20 largest cities, it is extending the rights of … it's being more restrictive than what your country currently is. To use the example that Italy doesn't have protection for city names, why would the Applicant Guidebook offer more protection where the federal government or that government hasn't provided that

protection? So my concern is you're going to extend restrictions beyond what normally exist.

ANNEBETH LANGE: Noted. Do you want to answer that question?

JORGE CONCIO: Sure. Thank you, Kristine. I think this is an old discussion we have had many times in this group. In the end, normally governments are bound by their laws so if your local laws tells you you have no rights whatsoever on that geographic name, you cannot deny a non-objection letter. So for me, that's basic rule of law.

For instance, in the U.S. if you have, let's say, a free market approach to these names and you go to the city of Kansas because it's one of the 15 largest cities in the country – I don't know, it's just an example – they wouldn't be able to deny to you that letter of non-objection. And if we go back to also the improvements, we've been discussing or proposing, at least from my side, to the procedure. If you have a deadline after you file the request for a letter of a non-objection, you have a deadline of six months for the local government to respond, and if you also have a provision in the Applicant Guidebook, if there's no response within those six months, you can go further in your application, then you have no problem. Even if they don't respond, silence means consent or non-objection. So you could go further.

So it really combines the approaches. It respects the approaches of countries which may have a completely free market approach,

countries which have very clear legal protections, and countries where you have more policy-based concerns or needs of having all the community at the table before an application goes forward. I hope that helps.

JAVIER RUA-JOVET: Thank you, Jorge. So we've hit the 15-minute mark. It's our time to go. Grab some coffee if you wish. I do. Please come back at 10:30 to this same room to continue this great conversation. Thank you.

[END OF TRANSCRIPTION]