COPENHAGEN - GAC Working Group on the Protection of Geographic Names presentation to GAC Plenary
Sunday, March 12, 2017 - 17:00 to 17:45 CET
ICANN58 | Copenhagen, Denmark

OLGA CAVALLI: Okay. If our colleagues can have a seat. I know you are having coffee and we are tired but we are running late. We have three more sessions. We have this session, which is half an hour. Then we have two more sessions, and then we will be over. So you go to your interesting social events, or just go to the room, or home. Depends where you live.

If those colleagues having coffee may join us or make a little bit silent, that would be great. Thank you.

Okay. We started with this presentation this morning. This is quitely the same one. We did present it in the working group this morning, and now the idea is to have feedback from the plenary about this proposal. The idea is to talk about best practices for future rounds of new gTLDs in relation with geographic names.

The proposal has been presented by our colleagues from Switzerland, by the -- by September, October last year. We had a first discussion about this in Hyderabad. And the working group has been drafting this -- this document.

I sent the document to you on the GAC list, so I won't go into details of the document. I am sure that you read it and you know it by heart. But the PowerPoint, yes, I will go quickly through the PowerPoint. We have, like, half an hour, so I won't go into so much detail.

But before I go to the PowerPoint, I would like to comment on things that have happened since the morning until now. So we had these meetings yesterday and today with the GNSO especially talking about the PDPs related with new gTLDs. So we see this intention of the GNSO to create this cross-community dialogue about especially this issue, about new -- the geographic names. Some of us, I personally think it's a very valuable initiative. And this should happen somewhere in the near future. Perhaps I heard a date like April. So that we have -- we must have that in mind when we review this information, because we -- when we prepare this PowerPoint, we didn't know about that.

Also, we see that the GNSO is keen to interact with us. It seems that they have the same problem that we do in relation with the time available for following all the processes. So that have in mind.

EN

And also, we heard about the geo TLDs. And I would like to stress something that I told them when they made our presentation. They said that they were a successful example of gTLDs, new gTLDs. And I think that the key issue with them is that they had this previous contact with the interested parties, the cities or the regions. And so they agreed on a way forward so there was not conflict at the end. They mentioned only one or -- one -- one presentation that was not complete. Only that.

So going to our work. The working group is trying to find ways to solve the conflicts that appeared in the first round when there were names that were not in any lists included in the Applicant Guidebook. So we find a term, which is "geographic significance," for those terms that are not in lists but are important for countries. And this work of us should be inspiration and input to these PDP processes that we have been talking about all the time.

By the way, for those new to the ICANN environment, PDP is policy development process. Why the GNSO does the policy development process? Because they develop policy. We do advice, the board. That's a different role into the ICANN ecosystem. So we advise the board. But the policy development is done in, for example, the GNSO. So it's a different approach to the -- to the regulations there than here.

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So if we can go to the next slide, please.

So these proposed best practices and proposal made by Jorge -- that is entering the room. Gracias, Jorge (non-English word or phrase) -- has some concepts included which are important. It's the full-group principle would apply under the full basis to this -- these best practices would apply. And a due diligence search obligation is also -- it should be fulfilled, including a repository of terms, which is a list of names, of geographic names. Should have effective public consultation requirement to give all the opportunity to raise concerns about those strings. It should have a contact obligation for the applicant in case of a match, which is something that I find valuable in the geo TLDs success. It should have a no objection requirement from the government, authority or community subject to the possibility of a dispute resolution. It should have a dispute resolution in case that a non-objection is not obtained. So if both parties don't agree, well, there should be a dispute resolution. And before an independent panel, for example, or a specific neutral and independent panel. And there should be documentation obligation. The former steps and requirements shall be documented. So each party should show why they are doing that.

So these are the main -- the main characteristics of these proposed best practices.

And we go to the next one, it's about the repository of terms, something that was discussed later -- today about lists of names. This has been going back and forth several times in this working group. And we find difficulties, we find advantages, disadvantages.

This idea proposed is a repository of terms is to be maintained by ICANN compiling relevant list of terms. Governments and authorities and interested communities should be able to request addition to the names of their interest.

Sorry, I started with you -- without --

CHAIR SCHNEIDER: Perfect, perfect.

OLGA CAVALLI: It was late. Sorry.

We should include terms with contact details and proposal for addition to the repository would need to be supported by a reasonable explanation. And the initial sources feeding this

repository would be established in a community-wide discussion process.

And of course in the working group, we have voices in favor of this idea and voices contra -- and with some concerns about this idea. And I will summarize them in the next two slides.

What I would like comments from you is how do you see the way forward about this proposal? If you think that our -- you endorse it, if you think it's -- can be enhanced, changed, or we can move forward somehow, having in mind that we have this new idea of a cross-community dialogue about this issue proposed by the -- by the PDP Working Group from the GNSO.

So concerns. A term could have multiple legitimate meanings, which is true. Ex-post solutions are preferential. There is a de facto legal right to certain terms, which is true. There is harm to free speech and legitimate commerce. There is impractical and over burdensome to applicants. It could be very difficult to implement and difficult to maintain. Governments will be unaware of this database's existence. They don't participate in this process. How they know that? GAC should not develop its own rules isolated from the rest of the community. Immense project requiring a lot of resources. No established legal basis or widely accepted norm that would ensure predictability for new

gTLD applicants. Unclear legal status. Compensated by coordination with corresponding United Nations agency. That is not a concern but it's a comment. And concern about the practicalities, which is mentioned a little bit in some bullets above.

So these are concerns. We go to the pros, people that think -- some colleagues think that it's a good idea.

It's important to avoid future complexities and litigation. So the applicant would go and consult this repository of names, and then they know who to contact because the name would have the contact that they should talk with.

The repository based on existing reliable resources filled with concrete, standardized parameters so that it may be considered as one of most authentic and useful resources. So it could be enhanced, slowly but surely, and then finally have this place where all the applicants and the countries and the community could go and consult if the name is -- has -- has someone interested in it.

All the existing resources, including United Nations, can be reviewed and used. All the lists that we know. And first fully open new gTLD application round has revealed deficiency, we know that, in the guidance for applicants which are possibly

geographic terms. We have been struggling four years and we haven't found a solution to it.

Work based on the experience of the past and trying to limit damages. Remember that all the work that we are trying to do is not to veto any idea. On the contrary, we try to diminish the conflicts. We try to lower the objections.

Develop some high-level principles that represent a common ground within the GAC. The notion of a repository is good as it promotes an inclusive participation. The repository provides the applicant with a bona fide protection and sufficient warranty to proceed because the applicants also use a lot of resources of time and money to go through the application, and then there were problems and objections. So we would like to avoid that as well.

Promote coordination with, as we said before, United Nations agency like WIPO, for example.

So these are pros and cons. And let's go to the next one, I think.

So what we discussed this morning is there was -- there was some -- there was enough support to -- to work on high-level GAC input to the community process, especially to the PDP

Working Group that came to visit us yesterday and talked about this dialogue, this cross-community dialogue.

Based on this proposal, the working group could suggest ideas to the community that could be considered among other alternatives. Early contact between parties, consultations; possible use of different instruments, a repository for example; new ways to handle objections; creation of specialized panels; and of course having considered in the public interest, depending what you think is public interest.

So I will stop here, and I will open the floor as we have, like, 15 minutes. Ten minutes?

Comments from all of you of the work that has been done to -- for the -- by the working group, sorry. What do you think about the repository? What do you think about next steps for the working group? Should we work on these high-level principles? Should we engage in the cross-community dialogue? I think we all agree on that. It's quite -- it's quite obvious that we -- we are all in favor, but maybe you have another idea.

And can we go to the next one? I think I summarize some -- some -- Okay.

So I will stop here. I have -- and I will open the queue. We don't have much time, so after the session that will be short -- that is short, maybe I will take some time to summarize the comments, and I will share with all of you, perhaps, in the email list because I don't think that we will have much time to reach, perhaps, many conclusions.

So I have Peru and I don't know if someone else. Ukraine.

Go ahead, Milagros, and I can see who else wants to talk.

PERU: I will speak in Spanish.

I certainly graduate the working group led by Olga for the work they have done, how they develop it. This has been great. It's been very difficult. And I would also like to highlight Jorge's proposal regarding the repository.

I think this is a very good idea. I put that in writing because this initiative should be closely linked to the WIPO.

I would also like to say that Peru has been sent a notice, a letter to ICANN CEO attaching the non-exhaustive list of the names of places that Peru wants to protect, including archaeological sites that are really important for Peru. We took this initiative

following the advice of a group of lawyers, specialists in intellectual property with experience and expertise with WIPO, and I certainly urge you to do the same because at the end of the day, we would have to do it so as to have that repository. And why don't we start today by preparing our lists?

Thank you very much.

OLGA CAVALLI: De facto repository?

PERU: Uh-huh.

OLGA CAVALLI: Ukraine.

UKRAINE: Olexander Ryzhenko, Ukraine.

Dear highly respected colleagues, thank you for giving me the floor for to express interests which are important for our local stakeholders. I will draw your attention to the issue which goes beyond scale of the Geo Names Working Group object. I am talking about geographic regions structure of ICANN and the

final report which was prepared by the Geographic Regions Review Working Group of consideration by the ICANN community in 2013. Unfortunately, the voice of GAC was not significantly considered over. The working group included only participants from ccNSO, GNSO, ALAC, and ACO NRO.

We consider geographic regions structure of ICANN as without issue for GAC consideration and suggest that GAC must be included in ICANN geographic regions review process.

Furthermore, shaping regions by using special interest groups or cross-regional subgroups, offering you a diversity opportunity and opportunities and to be welcome GAC and the community by stressing the importance of this in the communique, and for the ICANN Board.

Thank you.

OLGA CAVALLI: Thank you. Thank you very much, Ukraine.

Other requests from the floor?

United States. And then I will read comment from -- Actually, will you allow me to read a comment from remote? Thank you. And thank you. One second.

We have a comment from Heather Forrest. I don't know if she's in the room or if she's following remotely. She said that, "I note in the transcript that it has been stated that there are de facto legal rights in geographic names. This has not been demonstrated by the working group work or, indeed, other studies, whereas the nonrecognition of such rights has been documented."

Thank you, Heather, for your comment.

We have United States, Mexico.

Please, United States, go ahead.

UNITED STATES: Thank you very much.

I just wanted to note that I think we had a very fruitful conversation this morning with respect to how best to reach a common-ground position. I don't feel that we are there yet with the repository best practice proposal. As I articulated this morning, at least from the view of the United States, those aren't principles or best practices. It's certainly consideration of one possible approach, but there are a number of fundamental concerns, these from the U.S., that that would be problematic for us.

The concept of trying to reach some principles, articulations of ideas, and finding creative ways in which we can share our respective approaches to this issue with the broader community I think is a great idea, an opportunity for us, particularly considering there's going to be a face-to-face conversation in Johannesburg.

So I think it would be a really great use of the GAC's time and this working group to continue to consider how we can share perspectives with the PDP group and the community rather than continuing to be focused specifically on the repository approach.

Thank you.

OLGA CAVALLI: Thank you, United States.

Mexico. I can see you now.

MEXICO: Thank you, Olga.

Dear colleagues, I am committed with the promotion of diversity within ICANN, so I will speak in Spanish.

First of all, in Mexico we want to thank the colleagues in this working group for the proposals put forward and the comments made to improve on those proposals.

We agree that places of geographical significance should have some mechanism to guarantee their use or their protection. And bringing back to the discussion what yesterday in the morning a colleague, a distinguished colleague referred to about the place for this GAC room and the decoration of this room, I'm concerned that governments are usually perceived as controlling entities. And this proposal may be viewed as such by the community.

So I support the proposal put forward to share this proposal with the community. We were talking about the release of two-character codes that were not properly taken into account. So I believe this would be a good sign of good faith and cooperation with the GAC and with the rest of the community.

Thank you.

OLGA CAVALLI: Belgium.

BELGIUM: Thank you, Miss Olga. Belgium speaking. Thank you, Olga. I would like to say congratulations to the working group. The work that you have done is remarkable. Unfortunately, I haven't been able to closely follow up on your work, and I apologize for that.

For the first time I realize that we have a significant basis here, a starting point that will allow us to put some weight on the discussions and the goal.

And my concern had to do with the consequences of the Beijing Communique that perhaps the group had not taken into account. But I see now the response. And I'm not sure that the events or the developments in Beijing have been effectively taken into account by the current working group.

That is why I believe that it is the right time to get to a common ground solution, a compromised solution. This is the time to do that. We need to reach some level of agreement. But we need to know what we are standing for. I believe that this is the right time.

We have a text before us. So I urge all states that do not agree on this text to identify the paragraphs, the phrases that pose some problems for them. And, eventually, we can consider withdrawing them or deleting them. But we shouldn't leave

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aside the -- all the work done. This presentation serves as a basis to look at the considerations of all the governments.

So, once again, let us not forget or leave aside the outputs of this working group. We have been working on this issue for four years. The others are moving forward. They are not waiting for us. If we want to be heard, this is the time to do something and finalize this document.

OLGA CAVALLI: -- edit texts that got very few edits, by the way. We got edits from the Ukraine, EBU, and someone else I'm forgetting right now. Very few colleagues did go to the text propose concrete edits. That could be a possibility in the next few weeks or months facing the Johannesburg meeting. Maybe we could get more input into the text, apart from the fact that some governments have concerns and some others have ideas in favor of the proposal made by our colleagues from Switzerland. But that's an interesting suggestion. We can think -- see what others think.

Any other comments? Iran.

IRAN: Thank you, Olga. Once again formally express our appreciation to the hard work that that you are doing in a devoted manner. As I mentioned this morning, we are of the view that we should have a coordinated action across the entire community.

No problem that we raised the issue of the repository. And, perhaps, if we have some elements, say, that what is the objective? What is the modality? What is the time frame? And what is scope of application? But, before going further, we have to seek comments from other parts of the community to see whether there is something. And perhaps we should share with them and finally maybe become along the side that we should work together before going to that very tedious actions to provide this repository. Perhaps in some country maybe easy. In some country maybe not so easy, because many other entities in that country are involved. We have cultural diversity. We have social diversity. We have political issues. We have many, many things. So, before going to preparation of that tedious list or repository, at least nationally, we should seek the usefulness and the -- sorry -- objective usefulness, modality, and scope of applications and so on and so forth and work on the coordinated manner. Once again, we should not continue to work separate from others as the others have kindly requested not to work separately from us. We should work together.

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Because we'll be pulled in one single source, and that is use of the repository for this action.

So I think we should not at this time go to the further detail. We should have no problem if we could agree on some principles. But raising the question of the repository, usefulness, objectives, and modality and scope of applications across the community and get some reflections. If there is no reply and so on and so forth, that is another issue. But at least we have to do that. But not to do the thing separately. Thank you.

OLGA CAVALLI: Thank you, Iran. Any other comments? This issue about the community -- if you allow me one second.

It's -- the purpose of working groups within the GAC is to give some agreed documents or input to the full GAC to deliver. Honestly, I think that the purpose of the working group is not to interact as a working group to the community. That's the -- that's beyond the mandate of the -- maybe I'm mistaken. But I see the internal working groups of the GAC as our own space to first prepare some documents and offer them to the GAC for their comments and agreement or not on consensus.

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And I agree with you that we have to engage. But this should be done at a GAC level perhaps coordinated with the GAC leadership, not at the working group level. I don't know if others have any comments about that. I see Georgia. You want to comment?

GEORGIA: Yes, thank you. First of all, I would like to thank all the member of the working group and, particularly, Olga for excellent work. Because a really great job has been done.

And, first, I would like to -- like Peru, I would like to say that I support Olga's proposal on repository. And I'd like to announce that Georgia will follow Peru's example. And Georgia is also going to send the same letter attached by the names, geographic, religion and cultural -- of cultural meaning. Georgia would like to protect.

But, at the same time, let me go back to Ukraine proposal. I think it's new. And it seems interesting for me this proposal. And I'd like to propose to discuss it first within the group in more detail and to decide.

So I propose -- I'd like to ask Ukraine to send this proposal by email to the members of working group in more detail and to start to open discussions.

Thank you.

OLGA CAVALLI: Thank you, Georgia. Any other -- I see you waving. Netherlands. Sorry. I cannot see you very well from here.

NETHERLANDS: Thank you. Thomas de Haan from the Dutch government. I've not looked at this proposal from Switzerland in detail. I couldn't find it in the mailing list, maybe because there are 3,000 emails there.

I think one of the first things which comes to my mind with the repository is the fact that what is their authority?

I think if everybody, every country on its own merits is going to fill a list with names, I think this will not be useful. Because we don't have the kind of instructions in how detailed -- what's exactly going to be in the list. One country could put 3,000; one other country could put 10. What do we do with the names which have also a brand implication, names which are used in

five different countries with the same name -- Bergen, for example. So it's terribly complicated to use a repository.

And that's separate from the fact of how you're going to use the repository and the names in the repository.

I think maybe it is a way to progress this or a way that using the repository, let's say, filled by governments and other entities will probably also complicate and make it very complex.

So I think we'll have many, many questions to answer using the repository. Thank you very much.

OLGA CAVALLI: Thank you, Netherlands. We all see the complexity. Some see the benefit in having a reference.

I think that's the other side of the fact of having a repository.

We don't have much time, unfortunately, to -- I would like to give the floor to Jorge, because he has been the one drafting this proposal. And I think that it's -- I proposal that we keep on talking. We had several calls from the working group. So maybe we can keep on talking and have ideas for this cross-community dialogue or webinar, whatever comes in the future.

Jorge, please, the floor is yours.

JORGE CANCIO: Thank you, Olga. I would be fortunate if I could look at the transcript of this morning. Because I think, at the end of the session we had, I made an intervention where I was fresher than now.

And I think I could articulate my thoughts better at that moment of the day.

But, again, the idea is to try to make an input to the community in order to solve a problem that we identified in the first round, which is what do we do with geo names that are not covered by the 2012 AGB protections but which will come to the fore in future rounds, be it names of rivers, of mountains, and so on and so forth, where you may have an applicant with a good business model; but you may have an authority, a country, a region which has a claim to that name.

And our proposal, which we submitted in September, tries to provide with some ideas for such a framework where all parties have a say and where you try to reconcile in a more reasonable, meaningful, sensible cost effective manner than the different interests.

And, once again, the repository is only one tool within that proposal. It's not the proposal. Let's not identify the proposal

with a repository, because that doesn't reflect what it's meant to be.

And, as said before by others, I think that the buildup to Johannesburg and the webinar and the session, which is apparently going to happen about geo names, is a perfect opportunity to share some ideas with the wider community to test those ideas and to see what makes sense, what doesn't make sense. Because we have our perspective. Others in the community have their perspective. All are legitimate and all can be legitimate. And the idea is to reconcile the different interests.

So I would propose, in the line of what has been said by different colleagues, to try to distill the ideas, the principles with which we can agree upon and, perhaps, to mention some of the tools of the instruments to make those ideas work, to have this more sensible framework where we can reconcile the different interests and to mention them as options or as possibilities or as instruments that are supported by some. Because, in the end, this is about input to a community discussion. This is not about a final formal GAC advice to the Board which triggers mechanisms according to the bylaws. This is about having a discussion with the community. But, to have a discussion, you have to put something on the table. You have to come with some substance. And I think we could do that.

And, I don't know, perhaps a small drafting team or something like that could work on that if people find time and energy to do that and especially a lot of goodwill to understand each other and to come up with some constructive common ground. Thank you.

OLGA CAVALLI: Thank you, Jorge.

I will have time for that. So you and me are the first volunteers for that working team.

We have to wrap up. Thank you. We have to close the -- not wrap up. We have to close. I'm tired. I'm also tired.

So thank you very much. We will keep on communicating in the geo names working group list. If you want to be included, talk to Julia, talk to Gulten. And, if you want to join Jorge and myself in the effort, you're welcome. Thank you very much.

CHAIR SCHNEIDER: Thank you. And sorry for the board representatives to have kept you waiting for a few minutes. We know there's another important thing at 6:30 where some of you, including myself will have to participate. So let's directly move into the BGRI session.

Just one word while you're walking over here to the Ukrainian intervention.

The issue of geographical regions or defining geographical regions is a complex issue. And you're right. There has been a work -- a CCWG by ICANN.

There has been a longer discussion also with regard to elections in the GAC on how to use regions. So far we have not yet found a meaningful way to use a regional concept. I'm just -- I just keep repeating that those interested in finding one are happy to signal to come to me and see whether we can find a regional concept that is actually usable for the GAC. So far we do not have one that is accepted in the GAC as having some meaning.

I'll stop here and welcome our colleagues from the Board. I'll not spend time but immediately give the floor to Manal or Markus or whoever wants to start with the BGRI update on the -- what you're working on.

[END OF TRANSCRIPT]