
JOHANNESBURG – Cross Community Discussion – Geographic Names at the Top-Level Session II

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DAVID FAIRMAN: Thank you, ladies and gentlemen. We are going to start in one minute. We invite you to take a seat. Thank you.

AVRI DORIA: Welcome. We are about to start. This is the second of the cross-community discussions on geographic names at the top level.

I'm Avri Doria. I'm here with my co-chair of the new gTLD subsequent procedures PDP working group, Jeff Neuman. We have David Fairman and Julia Golomb here as Consensus Building Institute, who have been working with us this week to try and understand the issues and start working towards building consensus.

So I welcome you all here for the second one of these discussions in this lovely Conference Room 1, and want to tell you that no matter what happens in this meeting today, there are cocktails at the end of it.

[Laughter]

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AVRI DORIA: So with that, I turn the meeting over to David.

DAVID FAIRMAN: Thank you so much, Avri and Jeff. And thank you all for coming. We recognize that we stand between you and cocktails and you and your flights or other forms of travel, and at the same time, we are aware of the rather high level of interest in this topic across the ICANN community and so we hope that you will stay as focused, as engaged as possible for as long as possible with us this afternoon.

Briefly, three goals for today. We want to help to clarify some of the key challenges that some stakeholders perceive have arisen from the implementation of the geographic names provisions of the 2012 applicant guidebook. That was a question raised in our first session on Tuesday and we will attempt to offer some understanding of that.

Second and very importantly, we want to offer a plan, the co-chairs want to offer a plan, for cross-community leadership of this process for addressing geo names issues and invite your thoughts on that.

And third, we want to get into some of the specific underlying issues that seem to be raised by the stakeholder comments and

concerns with regard to the implementation of geo names provisions of the AGB and start to explore that in more depth with you.

So that's what we're going to try to do.

The way we're going to go about that -- sorry -- is we're going to talk through some of the challenges and check with you how well those -- that -- how well does our reflection of those challenges capture your understanding.

We're then going to go through the cross-community leadership conversation. We think it's important to get to that conversation while we still have as many people as possible in the room.

And then on we go on issues and options and wrapping up with next steps.

So once again, for those of you who were with us on Tuesday and for those of you who were not and joining us the first time, here's what we hope we will have as the spirit of the conversation: curiosity, real listening, a willingness to suspend the need to be right, openness to hearing things that we disagree with, and motivation to suggest possibilities that could be good for a variety of concerns and stakeholders across the community. And

I want to applaud you already for the spirit that you showed on Tuesday and hope we'll have more of that today.

Mechanics.

So what we're going to do this time around is -- you'll see it as we go -- some combination of the co-chairs and myself will present each of these segments briefly and then turn to you for a round of feedback, and we'll run those rounds, trying to watch the time to keep us moving and get through everything during the time that we have. As before, we have a wonderful roving mic and number system, so raise your hand and somebody with a number and a mic will come to you and I will do my best to get to as many of you as possible.

You can help by being brief. We have a two-minute timer. You're not going to be able to see it on the screen but you'll hear that ding at the two-minute mark so please be mindful. And please don't repeat what other people said in any detail. If you want to say "Yes, I agree with that," that's fine. Let's move on.

And we'll try to summarize key points as we go.

So with that, I am going to speak briefly to try to reflect back to you some of what we, the CBI team, have heard, being newcomers, about the implementation of the applicant

guidebook and some of the issues that arose, and then you're going to say how accurately or how clearly we've captured that and what else you would say about these issues.

So I want to begin by acknowledging, without suggesting that there is a definitive history to be written or that one needs to be written, that there are concerns that reflect back on the development of the ABG and we heard some of them on Tuesday, and we've heard some of them in our conversations with some of you. That with all the good faith and good will in the world, it was challenging in the process of developing the AGB to effectively integrate a variety of recommendations and advice and concerns that came from different constituencies -- SOs and ACs -- at different times, and that some judgment calls were made that not everyone thought were great calls, both on process and on substance. And different people have different views on which calls were not great.

So that's my very shorthand way of acknowledging that overall, there was some confusion and uncertainty about that process, and as a result, some sense of not everything having been addressed in a way that people would ideally have liked in what was ultimately produced in the applicant guidebook.

That's when it got written on paper.

Then the second set of issues, more important for today and beyond, is about the implementation of the guidebook as it rolled out in 2012 and beyond.

So the main questions or concerns that we have heard are about how fair, predictable, clear the process of applying the guidebook's guidance and rules was or wasn't for different stakeholders.

Some applicants perceived that they were asked to get consent for uses of names that they did not perceive to have geographic significance in ways that were not in accord with the guidebook rules and guidance. Conversely, at least some governments expressed that they felt that the implementation of the guidebook, particularly the granting of registries to applicants with promises or provisions for non-geographic use, did not provide sufficient assurance in practice that those commitments to non-geographic use would actually be honored once registered.

So those are -- those are specific to those applications that actually went forward in some sense, whether they got all the way to the end or not in the process.

Beyond that, there were some things that never happened that I would describe as unmet interests with regard to the AGB. Some

governments wished that overall the AGB had provided more protection for terms that they viewed as geographically significant, whether in the form of non-objection or in the form of requirements for early consultation that were stronger than what actually took place. And again, the idea that -- the set of requirements for non-objection, which ended with cities, should have extended to geographic names beyond that.

Some potential applicants wished that more strings with potential geographical significance had been available to them to apply for. In particular some desired three-character strings from the ISO 3166-1 list, understanding that that would likely have been with government consent.

More broadly and overall, not just applicants and not just governments but many different kinds of stakeholders in this process wished for greater predictability, transparency, and consistency in the way that the AGB got implemented.

So I'm going to stop there. Just going to flash back to show you again the main points that we have heard so far in our attempt to reflect them back to you, and I want to open it up for feedback on how well this reflection of the challenges captures what you think is significant, as well as those of you who may say I don't think that was a challenge. So I want to open the floor. So please, raise

your hand. Someone will come to you, and just bear in mind that two-minute clock is going to be ticking. You should keep mental track of it. Anybody want to comment? Question right now, how well does this capture what's significant? Please. Thank you. That won't work. Table mics are turned off. You need to use that mic.

BENEDICTO FONSECA: Okay. So just a comment because --

DAVID FAIRMAN: I'm sorry. May I ask you to identify yourself? Thank you.

BENEDICTO FONSECA: Yes. For the record, I'm Benedicto Fonseca from the Brazilian government. Just for the record, I think it was very commendable of you to hold those consultations, but I maybe should say that for governments it was very challenging to be there. I do not know if you have the record of who went in regard to each constituency, each AC, but probably from government you had very meager participation because we were all the time sitting in this room. I assume the others were as well, doing other things. But just to say that maybe this should be taken with a grain of salt,

if I can say, because probably this does not -- that can be a sample but not maybe truly representative of views.

DAVID FAIRMAN:

Well, thank you for that. And I just want to emphasize your point, this -- in no way, shape, or form are we claiming that this is the definitive statement of the challenges raised by the AGB. In fact, the reason we're putting this up right now is so that you and others can say what we missed. So if you have -- I mean, I'm inviting people to add, modify, challenge, subtract. Please do so. If you think it's perfect, that's great, too. But this is the time to get into the question. Thank you. Please.

FLIP PETILLION:

Flip Petillion. I'm a Belgium lawyer. What I would add to the list is a reference to some basic principles that were in the bylaws of ICANN. Like international law, which is expected to be respected, applied, complied with. Good faith, fairness, transparency, but these are already on your -- on your slide. But at any point in time in that exercise I would suggest that we reflect whether or not an idea, a new process, or a principle complies with higher, more important principles which are actually in the bylaws of ICANN.

DAVID FAIRMAN: Okay. Thank you for that. Who else have we got? You can't possibly all think this is right. Emily, please.

EMILY BARABAS: This is a comment from a remote participant, Robin Gross. She says, comment, "There are also significant freedom of expression concerns that haven't been reflected here. Principle G of the new gTLD policy said applicants free expression rights would be respected. People have a right to reference geographic terms on the Internet. Governments are taking for granted that they are entitled to this restriction on speech." End comment.

DAVID FAIRMAN: Thank you for that. Flip, just wait one minute. I just want to see if we have anybody else right now. If not, we'll come back to you. Flip, please.

FLIP PETILLION: Thank you. I forgot one.

DAVID FAIRMAN: Sorry, just identify yourself again.

FLIP PETILLION: Flip Petillion. I forgot another topic that I would definitely suggest to add. We should make a distinction between issues of substance and processes. And if there is somebody raising a question, that can be fine, but it is for me insufficient that we say that we've followed the process to handle an objection, question, whatever. We should make a balance between process and substance and add to that that parties in a discussion about whatever issue may expect that we will go to the in-depth analysis and not simply stick to a process.

DAVID FAIRMAN: Okay. Let me just ask a clarifying question there. If there were substantive principles -- because the principles you named previously were principles mainly about process. Free speech is, you know, arguably a principle with substantive application. Do you have in mind a short list of such substantive principles or no?

FLIP PETILLION: Standards, for example. Differential standards. Elements that we can examine for a particular case. So it's very important to know them beforehand, if possible. Difficult exercise. But if possible, know them beforehand.

DAVID FAIRMAN: Okay. Thanks for that. Number 1, please.

SUSAN PAYNE: Thank you. Susan Payne. I work with new gTLD applicants in the first round. On the second bullet point down there, I just wanted to make the point that in relation to the three-character strings, you -- you've captured the idea that there might be non-geographic use involved but the slide seems to imply that that would always be with government non-objection. And I wanted to make the point that some of the potential applicants who might have wanted to use those three-character strings might have wanted to use them because they matched their well-known brand name or because they were a common word or commonly-used acronym, and in those cases I don't believe any of those applicants would have an anticipation of requiring government non-objection. Thanks.

DAVID FAIRMAN: Yes, thank you. Thanks very much for that point. And that's a bit unclear with the parentheses, but indeed the idea of putting that in parentheses was to be clear. That wasn't a universal expectation. Thank you for making it explicit. Okay. Yes, number 4. Thank you.

THOMAS DeHAAN: Thank you. My name is Thomas DeHaan from the Dutch government, Dutch gov rep. I think one concern which I didn't see is the basic question whether a PDP on generic names, especially for the category of geographic names, should be the sole responsibility and the sole, let's say, PDP process to be followed in the GNSO because ccNSO, GAC, to my interpretation are equally important stakeholders for this process. Thank you.

DAVID FAIRMAN: May I just -- a point of clarification. Are you referring back to the process that led to the 2012 AGB or are you referring to the forward-moving process now?

THOMAS DeHAAN: I think it's part of lessons learned and new insights. Thank you.

DAVID FAIRMAN: Thank you. Thank you for that. Do we have another? If not, we will move on. It's fine. But this was a question that was asked quite directly on Tuesday, so I want to make sure we have an answer that satisfies people. Please. Number 1.

JONATHAN ROBINSON: Hi, Jonathan Robinson with Afilias. I'll just say a couple of things. One, your set of points doesn't particularly surprise me. So to that extent it feels like a reasonable reflection of -- of what I would have expected, put it that way. I like the point made by Flip Petillion that this should be -- we should in addition be respectful and mindful of the overarching ICANN principles, and I would also be supportive of any work that perhaps -- I guess this is what you do and like about that, not really thinking about going forward. But certainly thinking a little bit about what the previous -- the speaker prior to me said, it would be great if whatever process that seeks to deal with this was open and inclusive but -- and you might expect me to say this as a GNSO participant, so I accept that that's the case, but I would remind everyone that the GNSO runs open processes to anyone who would like to participate.

DAVID FAIRMAN: Okay. Thanks for that point. And we are -- just to acknowledge that in a few minutes we are going to come to talk further about process. Number 5. Thank you. You look familiar, Paul.

PAUL McGRADY: Thanks. This is Paul McGrady. I'm probably going to drill down a little bit more bluntly on what Flip said. An Applicant Guidebook that has greater predictability, transparency, and consistency but

still has restrictions on the use of geographic terms that are not based anywhere in international law, that are not based on any sort of global public policy, restricting the use of geographic terms and domain names, because there is no such thing. In fact, lots of jurisdictions allow their people to use geographic terms in domain names all the time. You know, a strictly predictable, transparent, and consistent Applicant Guidebook that's based upon faulty, substantive thinking is no friend to an applicant. Thank you.

DAVID FAIRMAN: Thank you for that. We have a hand here, I think. Yeah. Please. Number 6. Yeah.

SEBASTIEN BACHOLLET: I'm going to speak in French, as usual, I would say. So I hope that you understand me. My feeling is that there's a question right before -- all of the questions that just have been asked and the question is to know what space we're talking about. We're talking about codes, generic codes or country codes or are we talking about something else? And if we are talking about extensions or codes, why are we talking about the GNSO and not ccNSO? Why are we talking about the Applicant Guidebook, even though the question is really more global, more general than just the

implementation of the guidebook. So I wanted to raise that issue at the very beginning of the meeting because obviously it would benefit us to answer that question first because -- before going into details because if our entire discussion goes on and then we end up considering generic and country codes, then really that should be the starting point.

DAVID FAIRMAN:

... that for today's discussion we were seeking to be responsive to a specific question raised with regard to what were the issues with the implementation of the AGB 2012. The question you're raising more broadly about domain-for-domain conversations I think is a good one. I think we are going to have some further conversation on that. Yeah.

AVRI DORIA:

I do believe we should answer that one. The reason we are -- yes, the two-letter character codes are indeed -- and we will get to that, are indeed the ccTLD domain and, you know, we're not talking about what to do further with two-letter characters. At the moment the definition is, two-letter characters are ccTLDs. The rest of the space is gTLD area. Now, we may restrict the use, but that is the definition that we have that we work on, that we will continue working on. Thank you.

DAVID FAIRMAN: Thank you. Let's see if there are a couple more, and then we will probably move on. Yes, please, number 2.

ALEXANDER SCHUBERT: Yes, hello. My name is Alexander Schubert. If -- and I'm talking about the -- this is about the 2012 round, right?

DAVID FAIRMAN: Uh-huh.

ALEXANDER SCHUBERT: I don't think it happened, but if someone would have applied for well-known city like London, Paris, Berlin, and they obtained the letter of non-objection and someone else applies for the same string as a usage for a brand, then it would make great sense, but I think it was not in the Applicant Guidebook that the well-known location has a priority.

DAVID FAIRMAN: Yeah. Thank you. And we will come later to the question of exactly that, when two or more applicants seek the same string. Number one. Yes, thanks, Emily.

EMILY BARABAS: This is a comment from James Blase, an Internet user with no specific affiliation. "The accuracy of the list of unmet challenges is difficult to assess because it is made up of general abstract allegations. The accuracy of the list is difficult to assess because there are no concrete examples of the issues that should now justify the elaboration of further rules or re-elaboration of existing rules on geo names at the TLD." End comment.

DAVID FAIRMAN: So just to acknowledge that point and to invite anyone who wishes to bring out specific examples of any of the concerns that have been raised to do so. Number 2, Jorge, please.

JORGE CANCIO: Hello. Jorge Cancio, Swiss government, for the record. I just wanted to make a comment on this distinction between gTLD space and ccTLD space. I think it's far from being clear. It's a disputed thing listed in the CWG UCTN. There were different positions. And we are referring here to an RFC, which is from the last millennium when we had like five generic TLDs and we had the ccTLDs which at that moment of time, when there was no expansion, no nothing about the gTLD space, were the two-letter codes. So I think we have to put that in an historic context. And at that moment of time, when the policy was made by Jon Postel,

he said he added to that classification and it is very unlikely that the TLD space will be extended. So I think that we have to be mindful that this has been -- has long history of being disputed and that's also reason why in 2012 the country codes and the -- the country and territory names representing countries and analog territory names and also their abbreviations and also the three-letter codes were excluded from the AGB following not only conversations with the governments but also conversations with the ccNSO. We can look into the history of the communications at that -- at that moment of time, but that's also, for instance, standing advice from the GAC from that period. So just to be clear, if we are having a cross-community conversation, I think we have to respect the views of all parts of the community. Thank you.

DAVID FAIRMAN: Thank you. Jeff.

JEFF NEUMAN: Thank you. This is Jeff Neuman. So I -- it's -- what it sounds like what's coming forth is that there may be a disagreement as to what constitutes a gTLD and a ccTLD, and, of course, we only have two supporting organizations. We have a ccNSO that deals with country code top-level domains and we have a GNSO that deals

with generic top-level domains. All of the gTLD issues, including cities that were allocated, all of those rules were previously in the 2000 -- I think it was '8, final report when it was approved by the board by consensus policies with input by the community. And what we're trying to do now, we are trying to address the issues that we as a community had with the Applicant Guidebook. And we could spend the next hour or two talking about which organization is actually the right home for this, but I think we should use this opportunity where we're all together to talk about what issues we had specifically with the new gTLD program.

The issues I don't believe are because it was decided within one organization versus another. I think the issues arose because we had applicants who were confused about certain policies and we had governments that were confused about certain things in the applicant guidebook.

We had a lot of confusion and a lot of challenges. Maybe not even confusion. We had challenges. That's a more appropriate word.

So what we are trying to do in this session is to pull those out, try to develop the key questions so that we as a community can discuss it in this environment for today.

We will have a proposal we will discuss in a few minutes of how we can see this going forward within the GNSO policy

development process. But I would ask that for this particular section if we could focus on the challenges that we had as opposed to the process we had getting here or what's going to be in the future, I think it would be really beneficial because whichever group or organization handles these issues going forward, we're still going to need this information.

So if we can do that for now and then talk about process later, you know, I think we would make some progress on this issue.

DAVID FAIRMAN: Okay, thank you.

Number 2, Number 1, please.

BENEDICTO FONSECA: Thank you. But I would like to second what was --

DAVID FAIRMAN: Sorry. If you could just...

BENEDICTO FONSECA: I always forget to identify myself. I lose ten seconds for that. My name is Benedicto Fonseca from the Brazilian government.

Very brief, I would like to second what was stated by the colleague from Switzerland. We think to discuss the substance is, of course, of crucial importance and we are willing to do it. We think it's useful to do it. But the framework to do it is also equally important. It should be a framework that is legitimate according to all -- in the light of the understanding we have. So for the moment, we think -- and I agree with what was stated by colleague from Switzerland -- that the framework to discuss this issue should be a framework that from the beginning would involve an equal footing not only GNSO but also ccNSO and the GAC. Thank you.

DAVID FAIRMAN:

Thanks for that.

Number 1, please, and then we will come back to Emily.

PIERRE BONIS:

Hello. Pierre Bonis from AFNIC, .FR. Just to remind us that this GNSO PDP follows a cross-community working group, I guess, that worked a lot for several months -- and I can testify on that -- and that gave very great historical improvement but not only -- the report from the CCWG is not only, as I heard two days ago, a background report. It was the word that at the end we saw that

there were no consensus on various parts of what the various communities of ICANN want to do regarding country, territory names, and three-letter country codes.

And that's why this issue of the framework of the discussion is so present here, because when you do a cross-community working group that doesn't reach the consensus and then you decide, okay, it's going to be a PDP of one organization within ICANN, some other communities may be not very comfortable with that. And I think this is something that was to be discussed, by the way.

And as you asked for, specific -- and I'm going to be very quick -- specific problems that arise during the 2010 application guidebook, for the geos, there were problems that were solved. But the first time you're going to see a city or a local authority that thinks that she's going to have a TLD that works more or less like a CC and you explain to her that she has to be contracted with ICANN, this is something --

[Timer sounds.]

-- a problem we faced and we have to explain it. It's going to be even more difficult with the three-character letter codes. Thank you.

DAVID FAIRMAN: Thanks for that.

We're going to go to Emily. We're going to go to Number 5. And then I think we may move on. Emily, go ahead. Mic for Emily, please.

EMILY BARABAS: There are three short comments from remote participants. The first one is from Martin Sutton, Brand Registry Group. The use of geographic terms should not be restricted at the top level for applicants that hold matching trademarks whereby the use of the TLD is to identify the brand and not to represent the geographic term and where there is no conflict with national or international law. This should include three-character strings.

DAVID FAIRMAN: Emily, I appreciate that. That's actually not pertinent not right now, but we'll come back to it. Yeah.

EMILY BARABAS: The next one is from Christopher Wilkinson, speaking in his personal capacity. Issues with significant political and cross-community implications and corresponding PDPs should not be led by the GNSO. We need cross-community entities with neutral

chairmanship and staff. And the third comment is from Robin Gross from the Noncommercial Users Constituency: ICANN's bylaws require gTLD policy to be made via a bottom-up GNSO policy development process. To make gTLD policy otherwise violates ICANN's bylaws. End.

DAVID FAIRMAN:

Okay. Thank you.

Number 5. Then we'll do -- I think we're going to do a recap and move on. Thanks.

HEATHER FORREST:

Thanks, David. Heather Forrest. I just wanted to follow up on the comments made by the gentleman representing AFNIC and clarify that there were a number of reasons why the cross-community working group wasn't able to progress. And one of those reasons was that the cross-community working group had an extremely narrow remit. And, indeed, one of the recommendations that was agreed upon, which is fairly remarkable given the group's outcome, was that the scope of that group, which was narrowly limited to country and territory names as that group saw them, wasn't helpful and wasn't productive. And one of the most powerful impacts of this effort here is that

we're trying to deal with names more broadly. We're not trying to put this at least in this stage, not trying to put this into a very narrow box.

I applaud that effort given the results that came out of the previous effort. So I just want everyone to be very clear that that group came to the conclusion that having multiple efforts ongoing, overlapping, and at times conflicting within the community was really the downfall to that group's work. And this is what we need to be rectifying here and why it's so refreshing to see a roomful of people from so many different areas of the community here today. Thank you.

DAVID FAIRMAN:

Thank you for that, Heather.

So let me just acknowledge that there is a good deal of appetite in the room to talk about the process for addressing these issues, and we're going to go to that in just a minute.

First, though, I do want to come back to the question of the moment, which was: Were there any issues with the application - with the implementation of the applicant guidebook in 2012? I would characterize what we've heard so far as a number of individuals saying, yes, issues like the ones that were named on

these slides seem to accurately reflect at least some sense of the community. There was a request for more specificity in the examples. I will simply acknowledge for now that at least some of what's cited here there are specific examples I think that are fairly well-known across the community.

We also heard a number of additional points made about issues related to the 2012 applicant guidebook, issues about overarching principles that may or may not have been well-reflected in the implementation of the applicant guidebook; a specific comment on the issue of free speech; a specific comment on the issue of international law.

We also had some input around the question of the status of different -- different forms of consent and whether those forms of consent were or were not welcome in the eyes of some applicants, were not workable in the eyes of some applicants.

So I just want -- I wanted to name those as issues that have been named in addition to the ones that came up and that were reflected in the slides.

Further than that, the only thing I would ask of you taking forward this conversation is no -- I just want to note that today we have not heard anyone say there were no issues or problems with the implementation of the applicant guidebook. So I just want to

name that in case anyone wants to say that what's been said today and added today doesn't seem valid. Now's your chance. Otherwise, we're going to acknowledge that there appear to have been some issues with the implementation of the applicant guidebook that justifies some form of review.

Please, Sebastien.

SEBASTIEN DUCOS:

Sebastien Ducos, gTLD group. I did say the other day, indeed, that there was no problem. I may reword this. There were some issues but at least they're known issues. What's scary here is to reinvent the book, the time it will take to get there, and the new issues that will arise from a new version of it.

There are problems and details, but at least these are known problems and known details and we know how to go around them.

DAVID FAIRMAN:

Great. I think that point is well-taken. And, in fact, as we go through, you'll see that we want to acknowledge some things that are issues but that have been answered in the AGB so that we can test whether, indeed, people feel strongly there's a need to change or not. So just to fully acknowledge that point.

Let us then take the next step together. I'm actually going to turn it back to Jeff and Avri, particularly I think to Jeff now, for a discussion on process. Yeah?

JEFF NEUMAN:

Okay. So thank you for that beginning. So now y'all kind of beat us to the punch with some of the process issues. What we wanted to do was put something on the table that we hope that you will have an open mind. We have certainly heard a lot of concerns over the week. And what Avri and I would like to do is to propose a path forward that we hope addresses your concerns so that we can move on to the actual issues.

The first thing we'd like to do -- you may have heard this already - - is to create a Work Track 5 within the subsequent procedures PDP on geographic names with a clear mandate to address key geographic name issues and seek consensus resolution.

Now, because we agree with the notion that was -- I think it was the gentleman from Brazil that made the point that it should have co-leadership, it should be a balanced group. Absolutely. Avri and I 100% agree with that. And, luckily, the rules of a GNSO PDP working group are flexible enough that we can adapt those working groups and subworking groups to have leadership from each of the groups.

So what we would recommend is operating this working group exactly like a cross-community working group to give fair representation to all of the groups, to give leadership to all of the groups, and to really try to work as a cross-community.

So we would propose having one co-leader of this group be selected by the GNSO, one co-leader selected by the GAC, one co-leader selected by the ccNSO, and one co-leader selected by the ALAC. Our goal is to really jointly ensure a strong, balanced, cross-community participation. So there is no limit as to the number of people that could participate.

However, because we've heard concerns over the week of, well, what if the GNSO piles in 100 people to overbalance the ccNSO or the ALAC, we've heard those concerns as well. So like the cross-community model, what we would propose is, if this is what the community would like, to have representation -- official representation of, let's say, five GAC members to be from each of the regions, five ALAC members, five ccNSO, and five GNSO as well so that we could have a good cross-section so that although -- and I want to emphasize this. The GNSO PDP working groups, we do not vote generally. We determine consensus. And I will come back to that in a second.

Sometimes we do do straw polls to figure out what way a group is leaning. In the event we were to do a straw poll, which, again, Avri and I have done this for many working groups so we usually don't do this, but if we did, then we would commit to only having those representatives vote in the straw poll. This way there would be equal footing, equal representation. But, like I said, generally we try to determine consensus which is -- in the GNSO world, which we do allow participation always in any working group to ALAC members and to GAC members and anyone that wants to join. When we measure consensus, we don't measure it by people.

So if you had 100 people from the registries, for example, and only two from the intellectual property constituency, we wouldn't just say, well, 102 people voted, 100 of them were in favor and two weren't. We would report it on the basis of what groups they were representing.

We really want to go out of our way to encourage full participation. We've heard not only at this meeting but at the last meeting and meetings before that the GAC really wants to participate in policy development processes. We agree. We strongly agree which is why we are taking this step because we recognize this is not only an issue that affects the GNSO. This

issue affects the ccNSO, the GAC, ALAC. And I might be forgetting whether any of the other groups want to be involved.

But to the extent they do, we welcome that in there. So aside from the issues that we've heard in terms of the -- this being within the GNSO -- being a GNSO PDP, we'd love to hear thoughts on issues with how we structure this, how we move forward, any concerns because we are really, truly -- and I'm saying this sincerely, we are truly interested in making it an environment that you all feel comfortable participating in so that we can actually solve these issues.

I guess I will open it up at that point.

DAVID FAIRMAN: Thank you so much, Jeff.

Number 5, please. And please remember to identify yourself.

HEATHER FORREST: Thanks very much, Jeff and David. Heather Forrest. Look, I wanted to speak now in my capacity as vice chair of the GNSO Council and perhaps reiterate for those who weren't there in our GNSO Council meeting with the GAC, our willingness to listen to the community at large as to their concerns about the

representativeness of this process. I think, Jeff, what you've just said picks up on a number of the issues that we had in the cross-community working group on the use of country and territory names, specifically dealing with representation. And we realize as the GNSO Council that it's not enough to say that PDPs are open to everyone. And what we said to the GAC in our meeting with them was this is a bit of creative thinking on the GNSO community's part as to how to get the community engaged. And I think what you've done here is ensure there's that sense of ownership by the community rather than by the GNSO.

Now, I understand that there are plenty of folks out there who think that the a PDP is dominated by the GNSO. And I personally, again, as vice chair of the council think that's really unfortunate. And I would like to see efforts like this break down some of that misconception. So I -- I don't speak for the council. I don't speak for council leadership. But with that mentality, I significantly applaud the efforts that's being taken here. Thank you.

DAVID FAIRMAN:

Thank you, Heather. Number 4 and then Number 2, please.

ALAN GREENBERG: Thank you. Alan Greenberg, chair of ALAC speaking on my own behalf but I suspect aligned with at least some people in ALAC. You say that this would be equally led and any votes or whatever would be balanced, taking into account the participants.

But it is Track 5 which would then go back to the PDP plenary. Are you also committing to say any recommendations of this group be honored? I have a follow-up, but I would like an answer to that first.

JEFF NEUMAN: It's a good question. Sorry. This is Jeff Neuman.

What I would say is that any recommendations that came out of Track 5 would and could go through any other processes that any of the groups have.

So those recommendations we develop, we fully would expect those recommendations to be discussed by the GAC, who could provide GAC advice later on, by the ALAC, who could provide ALAC advice later on, by the ccNSO that could use its processes to provide advice.

I wish I could stand up here and commit on behalf of an entire working group, and certainly I will take that question back to see if that's something that the working group could agree to.

I would -- speaking on a personal perspective and one that participates and, in fact, leads that working group, it would certainly be my recommendation that the working group as a whole would adopt those recommendations and then move them up to the council which would move them up to the board, but I cannot promise, honestly, that that would happen but I would make every effort that I have or I am able to to ensure that that would happen.

DAVID FAIRMAN:

I think Avri wants to follow up on that.

AVRI DORIA:

Yes. This is Avri speaking. I'd like to add one other thing.

I can't imagine us being stupid enough that if we actually get the cooperation and real work of this whole community breaking down the silos and coming to a set of conclusions, that we would then turn our backs on it. Just imagine how this community would react to that.

So while there is no bylaws -- but then again, even with CCWG's, there's no guarantee that it would be accepted beyond -- it can't be guaranteed but I cannot imagine the insanity that would ensue if we succeed in such a process from then denying it.

DAVID FAIRMAN: Okay. And I think you had a follow-on? Mic?

ALAN GREENBERG: Now? Now.

I was just going to point out, of course, then the next step is council has to guarantee to accept it.

The difference between a CCWG is that the charters and the results have to be ratified by each of the groups, and the board is not likely to act on them unless they are, and the subtle differences I think make a difference.

DAVID FAIRMAN: Okay. Yep. Go ahead, Jeff, please.

JEFF NEUMAN: So Alan, in a CCWG, it would have to go back to each of the groups to vote and approve it, right? So even if the CCWG approves something, if the ccNSO or the ALAC or the GNSO said no, you know, they're voting it down -- if you're concerned -- I want to drill down to the concern, you had mentioned the charter. So if we draft a scope of work, let's say, for this Work Track 5, and we were to then make sure that each of the groups approve of that scope of work -- I'm just trying to call it something different than a

charter, which is above a whole group -- then that would be something that would add another layer of comfort?

DAVID FAIRMAN: Are you asking that as a question?

JEFF NEUMAN: Yeah. I think that's -- yeah.

DAVID FAIRMAN: If I may ask, Alan, a brief response to that?

ALAN GREENBERG: My response is, very quickly: It would be an interesting discussion for the ALAC to have. I'm not going to try to predict the ALAC's outcome. But all those levels of assurances matter.

DAVID FAIRMAN: Thank you. Number 2 and Number 5 and Number 6. Thanks.

JORGE CANCIO: Hello. Jorge Cancio, Switzerland, for the record. I don't know how to handle the time, but first, this proposal assumes that all the topics fall under the GNSO remit, and that is something that

is at dispute, so it's -- we are jumping ahead of ourselves. We need a cross-community discussion on this and then we can decide whether, where, and how we can discuss the different issues. We cannot jump into a subgroup of the GNSO PDP working group just on the basis of personal trust on the co-chairs, who are absolutely trustworthy, but which enters a large number of assumptions which are unclear and which have consequences, such as if you go through the GNSO policy development process, it's assumable that you will be applying typical GNSO PDP policy frameworks for the gTLDs which will go out of that.

And the second thing is that if all the assurances, if -- if -- if we are really trying to do a CCWG, why don't we do a real CCWG?

So if it walks like a duck, it swims like a duck, it flies like a duck, let's take the duck and let's not take a pigeon, which is in the -- in the -- looking like a duck.

So let's go for the real thing, at least to solve the preliminary issues --

[Timer sounds]

-- of whether to -- whether to talk about this, when to talk about this, how to talk about this.

DAVID FAIRMAN: I do want to bring it back to Jeff and Avri and I also, colleagues, just want to remind you that you may want to hold for a little bit and then respond to several, but feel free.

AVRI DORIA: No. Thank you. This is Avri speaking again.

I understand your desire to have a larger discussion on it.

At the moment, we have bylaws that define what our responsibilities are. We have a charter on the working group that says we have a set of issues that we need to resolve.

Now, we decided that to resolve them meant coming out to -- cross-community and having a discussion.

If there's a desire among some groups here to petition to the board and whomever to have other discussions, that's not within our power. Our power is to take the PDP that is chartered within the GNSO's defined roles and try and respond to the questions as best we can. Our attempt to do it is to do it by discussing it with you all.

Now, you know -- and we'll continue to try and do that. It's not within our purview to talk about reassigning, to talk about changing the bylaws and such.

Our purview is truly restricted to, this is the work that we need to get done.

So it's fine to tell us that it should be otherwise, that you wish in a different reality that it would be otherwise, and perhaps at some point that can happen, I don't know, and I'm not making a judgment one way or another.

But in terms of the work that is assigned, in terms of the roles and responsibilities as they currently exist, this is a job that we need to get done and we'd like to get it done with people working together.

DAVID FAIRMAN:

I'd let Jeff respond. Then we may come back to our colleague from Switzerland for a moment. Yeah.

JEFF NEUMAN:

Yeah. The only thing -- thanks. This is Jeff Neuman. The only thing I can add to that is right now in the ICANN bylaws, there is no such thing as a CCWG. There is -- there -- it's a vehicle that has been used to make recommendations on certain things like accountability, but when it comes to policies affecting gTLDs, the only vehicle that we have -- meaning Avri and I -- is through the GNSO policy development process.

If there is a larger issue -- and it sounds like there may be -- perhaps that's an issue that the ICANN board should address. Not one that we should talk about, because I think the -- I think the positions are pretty clear. But it sounds like we need -- in order to completely satisfy, we need a determination from the ICANN board, I guess, the jurisdiction of each of the supporting organizations and the advisory committees.

That's going to take some time.

In the meantime, these are still substantive issues we need to address, and I'm reaching out to the community, like you've asked us to, to see if we can address these issues, regardless of the title of the group, so that we can all move forward and act like a multistakeholder body. Thanks.

DAVID FAIRMAN:

So colleague from Switzerland, Jorge, if you hold for the moment but put your hand back up again, we can circle back around. Yep. Number 6 and then Number 5. Yep. Please. And Number 1. Yeah?

ASHLEY HEINEMAN:

Thank you. This is Ashley Heineman from the U.S. government, GAC representative.

I just wanted to recognize at least my interpretation of what I see as a good faith effort here, and I appreciate it. And I'm not speaking for the GAC but I know that there's many of us within the GAC who have noted on a number of occasions that we would like to be able to effectively participate in PDP processes. We've got some issues with doing that effectively and I appreciate that you have considered and are proposing a potential way forward in which the GAC can effectively participate in a PDP process.

I think this is something that I would hope and encourage everyone to consider as something to try.

With that, I have one small question of clarification. I'm pretty sure I know the answer to it, but when we're talking about joint leadership and four representatives, one from each, that is just the leadership. It does not limit the participation in the PDP itself.

But also, I hope in terms of maintaining the cross-community aspect of it, that we can find a way to schedule it so GAC can actually participate in the conversations, recognizing this isn't -- this would be part of the PDP process but keeping that cross-community nature and the -- maintaining the ability for everyone to have time to participate. Thank you.

DAVID FAIRMAN: Thank you. You have a comment in response?

JEFF NEUMAN: Yeah. Thank you, Ashley. I think, yes, that was intended to say just the leadership is four representatives, but otherwise, open -- the group's open to all.

And I take your point. The way -- on the timing.

The way that work tracks generally work is that the leadership team of the work track gets together and decides the schedule, the milestones, and everything like that, so that's not something that Avri or I or the PDP working group as a whole would control.

DAVID FAIRMAN: Okay. Number 5, please.

LORI SCHULMAN: Hello. My name is Lori Schulman for the record. I'm speaking in my personal capacity, as clearly this is the first time we're seeing this so I cannot form an opinion for my organization yet.

That being said, my initial reaction to this is really hopeful and positive and I want to support, endorse, and thank the chairs for coming up with this solution because I think it's a good start and

it is in the spirit of community, and as we all know, that's what it took to get across the finish line for IANA and it may be what we need to get across the finish line for this particular issue.

That said, I have a clarifying question and a comment.

So my -- I'll start with the comment first and then I'll ask the question last so you can answer it.

So my comment is this: Based on what the representative of Switzerland observed, I agree, this looks like a CCWG, if it walks like a duck and talks like a duck, but I don't understand why procedurally we couldn't get started on this track, and if we find another procedural way to do it, to evolve into whatever might work. But I would hate to see the work itself stop because we couldn't agree that we can move forward as a community. So that's my observation.

My clarifying question is this: I follow many issues at ICANN. I do keep abreast of geo but I'm not what you'd call a hard-core geo person. I have not been heavily involved in the debates. But my understanding is there are other existing work groups that may be looking at these issues. I know there were work groups for the two-letter at the second level. I just want to make sure that I understand: Is -- would this work be replacing any work that's currently going on anywhere else in the community or would it

combine work? How does -- how does that work with parallel questions that may be being asked in other fora?

JEFF NEUMAN:

Thank you, Lori.

On the question, so as of -- at this point in time -- well, let me go back a little bit.

There is a cross-community working group on the use of country and territory names. They have now delivered their final report. So their work, as far as we understand it, is -- has been completed.

There is another group within the GAC itself called -- well, essentially -- I forgot the title of it, but it's essentially it's probably something like geographic working group. Probably something simple. So they're all discussing that issue. However, that's just an internal group within -- within the GAC, and of course any internal groups can still continue.

So at this point, this issue is within our charter, the subsequent procedures PDP charter, and at this point, it's our understanding that there's no other GNSO effort and there's no other cross-community effort that deals with these geographic names issues.

So there is no overlap at this point.

DAVID FAIRMAN: Number 1, then Number 2. Yeah.

THOMAS De HAAN: Thomas De Haan, Dutch government, representing the Netherlands in the GAC.

Just another thing about the design of this duck, which is now still a small pigeon but could grow into a big duck.

I'm a little surprised about still a kind of conservative reflex like, "No, it's in the bylaws, we can't do anything else." I respect the bylaws. They are our rules. But still, we have -- I mean, we have seen with the CCWG that we are able to be creative with charters and new groups.

I think it's perfectly good to try to come up with some charter between these organizations which we have mentioned, have some arrangements between them about decision-making, while still channeling the PDP through the GNSO. It's something extra on top. I mean, let's be creative. Thank you.

DAVID FAIRMAN: Thanks for that and that's a -- just to acknowledge that among other interesting suggestions. Like, for instance, Jorge's?

JORGE CANCIO: Thank you. And thank you, and sorry for coming back. Jorge Cancio, Switzerland.

I think that we have to be clear that this is not only some fancy wish about process. This is important.

If we go through the GNSO path, we arrive at a very specific global framework of policy and of regulations, of contractual arrangements that are suited, to a certain extent, to gTLDs, and we already have some issues with city names, as has been mentioned before, or with the adjective of a country, as happens with .SWISS. Why we have to abide by -- to the same extent as a global top-level domain with these kind of policies and frameworks, as if our community, our TLD is a -- is a local TLD? It's serving a local community.

So the distinction really goes to -- to the heart of the matter. And if -- why the .CH for Switzerland has no obligation whatsoever to have a contractual arrangement with ICANN, and it's free to set its policy nationally, and why the country name for Switzerland, .SWITZERLAND, should have to abide by all the GNSO policies and frameworks.

And that's a threshold issue we should be discussing in a true CCWG, and the real duck, not in a kind of pigeon. Thank you.

DAVID FAIRMAN: Jeff? Thank you.

JEFF NEUMAN: Thanks, Jorge. This is Jeff Neuman again, for the record.

So Jorge, what -- the issues that you're pointing out is, what is the definition of a gTLD versus what is the definition of a ccTLD versus are there potentially other types of domains that are not currently contemplated in the bylaws or the structure.

And while I hear what you're saying, at the end of the day we don't have -- our group does not have to answer whether something is a gTLD or a ccTLD. In theory, you could answer that elsewhere. However, what our group is looking at is, if it is a gTLD, these are the rules.

And I think your argument about answering to local communities, while certainly it makes sense and I understand what you're saying, but if we went down that path, there's no difference, in theory, of saying, "Well, you know, .PHARMACY, they answer to their pharmacy community" -- and had he do -- "and they have lots of rules and restrictions." I mean, there could be a whole different category of restricted TLDs that could say the same thing.

I don't want -- there -- we can't go down that path right now, as far as the GNSO. That is a constitutional type question, and if -- if that's something that I think is desired, I suppose something could be filed with the ICANN board. I don't know what mechanism there would be. But I would again strongly urge us to be able to take advantage. The work is going to happen. The work is going to happen within the GNSO. We're asking you to help us and participate.

I -- other than that, and trying to figure out what specifically concerns you, we can't answer those questions of whether something is a ccTLD or gTLD.

And just so -- just for the record, so I can understand, is it the view of the GAC that this is a question, or the ccNSO, or is this just -- just for the record, is this just a -- just individuals at this point?

It may not have been discussed. I just -- just want to clarify. Thank you.

DAVID FAIRMAN:

Yeah. Colleague from Switzerland, would you like to respond on that or not?

JORGE CANCIO:

Well, I'm not here to represent the GAC as a whole, and as you are aware, this proposal has come this afternoon, so how would we have a position?

What we have is standing advice, and in the standing advice from the previous preparations, we were stating that these kind of country and territory names and three-letter abbreviations that represent countries and territories shouldn't be dealt with by the gTLD space.

So in principle, that's still there. And, you know, because it's been in the discussions of the CWG, UCTN, that the ccNSO also has something to say on this. So it's -- I understand that you are just the co-chairs of the PDP working group, but we cannot turn a blind eye on what is happening around us, and that means if you go down a path of, "This is my way or the highway," even if it's nice highway for you all to participate but which takes some assumptions for granted and will lead us to a certain final destination, this cannot be done now.

This cannot be decided now. Why cannot we have a CCWG effort with short time frame, six months or whatever, and look together as peers, not with a podium and a audience, how we can tackle these issues.

DAVID FAIRMAN: Okay. Let me just -- I'm going to ask Avri to respond. And then we have Numbers 2, 4, 6 and 1. Before -- after Avri and before or anyone else, I want to make a couple of comments.

Avri.

AVRI DORIA: Thank you. And I do need to respond to this. Yes, admitting the limitation of what we have, one, I think we tried a CCWG. It could not come to consensus to change the current state of affairs. Therefore, we remain in them. The other -- and had that CCWG come to a consensus, a community consensus on changing things, then we would be having a different conversation now. It could not.

The other thing I'd like to ask is I'd like to ask which is the GAC advice that was accepted by the board that makes the claim -- makes the certainty that these are no longer gTLDs? That is actually news to me. I know of no advice accepted by the board that says geographical names are not gTLDs. So if -- I mean, please clarify that issue because it confuses me.

DAVID FAIRMAN: Jorge, briefly, please.

JORGE CANCIO:

I think this shows that we need long conversation as peers to sort things out. And we're not -- we're not talking about the board. We're talking about the different parts of the community. And what did the board do in the AGB after listening to the ccNSO and after listening to the GAC? They excluded these names from the AGB. So there was some sort of acceptance that there was an issue. If we want to really come to an understanding amongst each other, we cannot deal with this this afternoon. We have to really put some effort in it in a CCWG environment where we feel at ease.

And, okay, the other CCWG which dealt with one part of this issue didn't come to a consensus. But does it mean that, okay, if it doesn't come to a consensus, then we only take one part of the possibilities and we forget about the other part? No, I don't think so.

And there are other issues, and you know it. You both know it. We all know it. What was happening during the last years? The IANA transition, the accountability, the GAC was not a chartering organization as such and had no co-chair of that CCWG. Now we can do things better. We can set a time frame. But we have to do things right. And, again, I'm just speaking for myself.

DAVID FAIRMAN:

Yeah, thank you for that.

We have others eager to speak. Let me note because I think we've heard a good range of views and I'm anxious about repetition. Here's what I think has been said so far that is clear.

First, there is an ongoing PDP on subsequent procedures under GNSO auspices that is charged to address the use of geographic names as -- at the top level and there's a proposal on the table from the co-chairs to try to make that process as inclusive as possible.

Second, there is agreement in principle that a cross-community-led effort to address these issues could be a good idea. Could be a good idea. Won't necessarily be but could be a good idea.

Third, there is a serious question that goes beyond the ambit and the authority of this particular PDP about the best format and forum and process structure for a cross-community effort, whether it is a cross-community working group or some other thing that is not currently being done but might be done. And our colleague from the Netherlands had another creative suggestion about this. But that set of questions about if it's not this PDP, what is it, while a totally legitimate set of questions, isn't a set of questions we can answer today.

If somebody wants to put another option on the table, it's fine. But let's not go around again on the three things that have -- that I think are clear. There's a PDP, a cross-community effort could be a really good idea, and it's an open question whether that cross-community effort is best placed in this PDP or not.

Okay. Number 2, our colleague from Brazil. Please. Number 2.

BENEDICTO FONSECA:

Thank you. Benedicto Fonseca from Brazil for the record. I don't want to rival with your summary of the points. But maybe just to make sure my understanding is correct, I would say there is a very clear understanding of the benefits of having to be able to provide early input into a policy development process. This is something we have been calling for. This is, indeed, positive in itself.

On the other hand, there are some potential issues and challenges in regard to the particular topic we are discussing, I would say, in regard to three issues.

The issue itself. Many are convinced there's not an issue to be resolved and that would be the appropriate way.

The format. In spite of the fact of having a co-leadership, there is also concern of the format because this would be filtered by the council of one single organization. So this would be -- and the

speed, I would say, the speed in which maybe a decision is called for. I'd like to repeat one thing I said at the beginning, that the GAC -- as GAC would not engage in this. In between the meeting we had on Tuesday and today, we have been involved with a number of issues immersed in discussions so there was simply no condition as a GAC to reflect on this and come up with some, let's say, thoughtful remarks.

One thing I'd like to recall is that we had a session to discuss priorities. And there was -- I think all the SOs and ACs complained about having so many things and having scarcity of people and so on and so forth. So I think also part of the decision should also be guided by the understanding that this is, indeed, a priority issue to be pursued at this point in time.

So I think in light of this, my understanding is that for this meeting, we condone the idea of discussing this. But I think the ambition to come out of this meeting with a decision --

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-- is not feasible in the light of the fact we have not had time.

So my question -- if I can just a minute to ask a question: What was -- what would be, let's say, your anticipation of the outcome of this discussion? Are you expecting a decision to be made by

the end of this meeting? Or are you planning to give some time for us to digest everything that is being said and come up with something? I personally would like to wish we could move to the substantive part of the discussion. I think the moderator is eager also to do that because I think that would give us more clarity of what is intended. But, certainly, I think we need more time to come to something more concrete. Thank you.

DAVID FAIRMAN:

Thank you.

JEFF NEUMAN:

Thank you. So our proposal for going forward would be to soon, is to issue a call to have these leaders selected by each of the organizations. And then the leaders -- the co-leaders would get together and discuss the processes by which that track would work, including the agreement of an acceptable charter/scope of work. And so that's the plan, is to get that moving forward.

We, Avri and I, have a -- on behalf of the working group have a process by which we need to answer these questions. We could have just done this ourselves. We could have just had an internal group and done it. And we still in theory can, but our hope was to have a more inclusive type of environment.

Nothing that happens within this PDP is going to prevent the GAC from providing advice at any point in time. Nothing in this group is going to stop the ccNSO from doing its own PDP. And nothing would stop the ALAC from doing its own policy or advice process. So I want to make that pretty clear.

And I just want -- just for the record, when you say -- the point was made that even after this group does its work it still goes through a filter of the GNSO Council, one of the great things about the GNSO policy development process, which I have been around a long time and helped in the early stages to create, is that the role of the council is not to act as a filter. The role of the GNSO Council is really to just manage the process and make sure that the processes were followed.

It is not -- I don't know a better way to say it other than in the legal term. It's not what's called a de novo review. It's not like they take the issue and completely review it again. It is simply a mechanism to ensure that the processes that were set up were actually followed and then to send it to the board. So I don't know if that gives you more comfort, but it's not a filter. Thank you.

DAVID FAIRMAN: Jeff, just one specific question. Was it your intent that this question be resolved -- this issue be resolved by the end of this meeting? The process decision. Is this a meeting in which this process decision is being made?

JEFF NEUMAN: It was our intent to start this process. I suppose the decision could be made at any point in time. We will send out invites to each of the groups as to this is what we like to see going forward. So in that respect, yes.

I suppose that some groups can then internalize it and see whether this is an acceptable group -- way they want to participate.

But because the work is already chartered by the GNSO to be done -- and as we'll in a few minutes get to -- which I was really looking forward to, is getting to some real good, substantive discussion, that still will and has to continue.

DAVID FAIRMAN: So just -- here's where we are in the interest of time. I've got Number 4, Number 6, Number 1, Number 5, and Number 2, and Emily. And that's going to be it.

I besiege you, please do not reiterate, okay? If you have got something to add, please add it, okay?

Number 4. Please.

ALAN GREENBERG:

Thank you very much. Alan Greenberg. If I remember correctly, the CCWG that has just issued its final report, not only didn't come to closure on the substantive issue but also realized that even if it had, it wouldn't have mattered because it didn't have the force and the authority of a GNSO PDP or a ccNSO PDP.

And I did play a mind game of, okay, how do we resolve that. And really the only way I could come up with is each of the organizations charter a PDP under its own rules and then sub-delegate the actual work to effectively a CCWG.

You know, because the work has to be done by a single group or you don't come to a single answer. And, yet, it has to be able to pass the authority of the PDP rules that are in the bylaws for each of the groups. And I suppose one could, you know, include the GNSO -- the GAC or the ALAC also agreeing to abide by the rules by whatever the outcome is.

But that's not a simple process. And no matter how much agreement you get on this process, it doesn't have the rule of authority of a PDP.

DAVID FAIRMAN: Thank you for that.

Number 6.

JORDYN BUCHANAN: Thanks. Jordyn Buchanan with Google. So I'm struck by this conversation. First of all, a little frustrated in hearing so much talk about process when there's, I think, a real good-faith effort here to try to pull the community together and actually make some progress. It would be nice if we could, like, you know, take that extended hand and actually try to do that.

But independent -- but recognizing the issues that some of the country representatives are raising here, I think there's a delightful "why not both" approach here. I think we can all recognize that there are some contexts in which geographic identifiers may be used in generic contexts where they clearly should be a gTLD, right?

So if a brand, for example, as was indicated earlier, even if they have to get the consent of the relevant authority, they still may go ahead and use that brand that is also a geographic identifier, or there may be geographic identifiers that are generic terms in other languages or something like that. Those things certainly should be gTLDs, if they're delegated and approved. And they should have contracts with ICANN.

And so at a minimum, we need to resolve which strings should be allowed to be delegated as gTLDs, and that should be part of the GNSO process and the GNSO PDP process. And certainly this group could answer that set of questions.

Now, if separately the sort of governments and ccNSO community think, to Jeff's point, that there's a new type of TLD that doesn't exist today that's not a two-letter character code -- a two-letter ISO code but should have more characteristics like a ccTLD, I think that's a fine discussion to have as well. And you can have it -- you can either have it within this group and then have it peel off into something that goes to the board for discussion or elsewhere. But at a minimum, you have to have the discussion about what happens when these things are used in a generic context. And, therefore, that should happen here. And let's start doing it as opposed to, like, arguing about --

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-- what forum we are going to have this discussion in.

DAVID FAIRMAN: Thank you.

Number 1.

JONATHAN ROBINSON: Hi, it's Jonathan Robinson again. I will be really brief. I think I have really tried to listen to the concerns and objections, which I can see are heartfelt. But I'd just like to put -- to encourage everyone to think carefully before throwing out what does seem to be a genuine, sincere, good-faith, and thoughtful suggestion here.

So it seems like there's been that form of, as I say, good-faith attempt to do something. I would just like everyone to instead of rejecting it out of hand here, to take it back to their groups and approach it with an open mind as one potential mechanism for moving forward with what's clearly an intractable issue.

DAVID FAIRMAN: Thank you.

Number 5, Number 2, and then Emily.

HEATHER FORREST: Thanks, David. Heather Forrest.

As a member of the GNSO Council, it concerns me that up to now we have been hearing we want to participate in the PDP but we can't. And we have had a few interjections today that suggest we don't want to participate in a PDP. And that's something I think we need to tackle as soon as possible. Thank you.

DAVID FAIRMAN: Thank you.

Number 2. Number 2.

ALEX CORENTHIN: Alex Corenthin, chair of AfTLD but talking by myself. I'm going to speak French, if you allow me. The problem for me is that when I see all the communities and their concern about the PDP, I talk about what Avri said, the ccTLD already defined. If everything has already been defined, why do we have to discuss this?

If when we gather we have to go back on the definition on what is what where it concerns countries, I think it's a concern for

governments when we talk about the extension of three characters when I look at ISO, for example.

And when I look at the two-letter code, again, we need to have a base that will be open and then the GNSO can accept that this base is open. Therefore, we can have a discussion on a subject.

EMILY BARABAS:

This is a question from Ashley Graham, remote participant from the American Branch of the International Law Association. My question is about the constituencies dissatisfied with the way things are and whether or not these constituencies are the ones pushing for change. Even cases perhaps not expressly covered by the applicant guidebook have been dealt with to the satisfaction of almost everyone, except perhaps a handful of big corporations.

So here's my question: Should we make new general rules that are, in fact, intended to address these very exceptional cases? Should we make the exception the rule?

This attempt to depart from the solutions already arrived at, which seems to me an attempt to satisfy a very limited number of cases, would actually be converting into rules the solutions that satisfy mostly the private interests of a very limited number of

private parties, but any rule in this field, to my understanding, should be first responsive to the wider interest of the community.

DAVID FAIRMAN:

Okay. Thank you for that.

So colleagues, we are going to take a break in just a moment. Let me offer a couple of thoughts and I also then want to turn to Jeff and Avri for their thoughts.

I think it is important to distinguish, as our colleague from Brazil rightly did, concerns about overarching mandate or forum, concerns about participation and effective and balanced participation, and the substantive issues, of which there are arguably some. Maybe not that many.

And the only further comment I'd like to make at this point is: Hold -- hold the thoughts about process while we go through some issues of substance, because going through the issues of substance might actually change a little bit -- some, maybe -- some thinking about what process is needed.

So that's my only comment for now.

Jeff, Avri, anything you want to say before we go to a break?

JEFF NEUMAN: No. Let's keep the break to the time allotted and get talking about the substance.

DAVID FAIRMAN: Okay. So just to be clear -- and let me check with Jeff and Avri -- we're about five minutes overdue for our break. Should we go a full 15 or should we try to cut the break to 10?

AVRI DORIA: I think we should go for a full 15.

DAVID FAIRMAN: Okay. So colleagues, could you be back here at 5:05. Thank you very much.

[Break]

AVRI DORIA: Hello, folks. Let's get back to it in about a minute. Thank you.

DAVID FAIRMAN: Ladies and gentlemen, let's come back together. Where did that go? No. Okay.

So colleagues, thank you for coming back. Thanks to those of you who are able to stay with us. Now I really hope you will stay with us, both physically and mentally. We want to walk through five substantive questions about the treatment of strings of potential geographic significance with you and get your input on each.

These are a set of -- this is a set of questions that we understand arise from the issues around the implementation of the applicant guidebook and the policy development process and advice process that led up to it and that may or may not be worth reopening.

So what we're going to do, we have the questions you see on the screen, which I am -- I'm actually not going to read out loud. We're going to go through each of these questions. We're going to say for each: What does the applicant guidebook say is the answer to this question?

We're then going to report to you on a few other options that have -- that we have heard, with no implication that the options that we are suggesting are anything close to an exhaustive list, and we are going to ask your input, then, on what you think of the AGB's answer to these questions and what you think of the options, including the possibility that there are other options that should be considered.

So we're going to go right to it. Jeff and Avri are going to take turns on the AGB. I'm going to offer the additional options. Then we're going to go to you.

So first, what makes a string a geographic name? Over to you.

AVRI DORIA:

Yeah. That's me. Okay. So this is Avri speaking. So what makes a string a geographic name? The 2012 AGB defined two-character ASCII on ISO 3166-1 list, three-character ASCII on ISO 3166-1 list, country and territory names on lists and as common known.

And by the way, anybody that's read the AGB knows that its language is far more complicated but this is essentially --

Subnational places on the ISO 3166-2 list, capital city names of countries or territories, city names, and regions on UNESCO list or the U.N. Statistical Division regions list.

DAVID FAIRMAN:

Yeah. So that's what's in the AGB. Here's a few other thoughts on what could make a string a potentially geographically significant string or a name.

One, yes, as mostly was the case in the AGB, please let us use only non-ICANN lists that have some external validator that we agree

is mutually credible that -- a set of finite lists periodically updated and global as the set of geographic names, and let us have no other.

Second, and specific to the noncapital cities, because this was the one category in the AGB that -- the list that Avri just went through that didn't meet the test of this first point. That is, it was not referencing any external list. The idea of this option would be: Make a clear reference to one or more non-ICANN finite periodically updated lists of cities that qualify.

So for a -- an example that was given was you could use the U.N. Statistical Division's list of cities of over 100,000 population. You could use the UNESCO World Heritage Cities List. You could use other lists. But that -- to address that specific thing in the AGB.

Third, a different approach than was taken in the AGB entirely. Create a single repository of geographic names and allow governments to place any term that they consider to be a term of geographic significance, as long as there is some basis in the government's national law for protecting that term, some rationale, and that this list could be maintained by ICANN.

I want to stop right there. We want to open it up to you.

The question on the table: Is this -- is what we have -- what you have in the AGB, great, sufficient, and should not be reopened? Or if it should be reopened, comments on any of these options or any other options that you want to suggest.

The floor is open. Please comment.

Okay. We'll go here, Number 6. Thank you.

ANRIETTE ESTERHUYSEN: Thanks. Anriette Esterhuysen from South Africa.

A specific question on: Why should it only be governments that can propose terms for the repository?

DAVID FAIRMAN: Thank you. And I -- let me be clear. I will not answer that question. If somebody else wants to answer that question, terrific.

Other comments or input?

AGB is great, no need to deal with anything else? Any comments on any of these suggestions?

Thank you to our colleague from Switzerland and then we'll go across. Yeah.

JORGE CANCIO: Hello? Jorge Cancio, for the record.

While I think that the provisions of the AGB were more or less of a compromise and they make sense in defining what is a geographic name, but probably there was something lacking, because in those cases -- at least that's my point of view with the little or small evidence we have, at least by now, on the table -- is that there were issues with other names with geographic significance where there hadn't be really an approachment between the applicant and the corresponding public authority before that this created issues.

So it's really -- I think the AGB is a good baseline, but there is a number of other names with geographic significance where we should try to find solutions to avoid similar problems to happen again in the coming rounds so procedures or openings, extensions, expansions, whatsoever.

DAVID FAIRMAN: Okay. Thank you. Others? Number 1, please. Thank you.

GREG SHATAN: Thank you. Greg Shatan, for the record.

I think one of the shortcomings of the list that's in the AGB is that it lacks context. Certain things have context. Obviously the ISO lists. But the others do not. And as we know, strings can have a variety of -- of con- -- of meanings depending on the context.

So I think one of the things that makes a string a geographic name is if it's going to be used in a geographic context. If a string is not going to be used in a geographic context, then it's not a geographic name.

So if my client's trademark is Baba and there is a place somewhere called Baba and I'm not using it to have anything to do with that place called Baba and I could care less about it, then the area, the country where Baba exists, should have no right whatsoever, because there is no right in law that they would be able to assert, so my client should just be able to go ahead and register their geographic -- their name as a trademark, as a TLD, and I think that would help clarify some of those edge cases that Jorge mentioned. Because there seemed to be enough of an opening there for perhaps jurisdictions to assert rights that didn't really exist and generally gum up the works.

So I hope that we can use context to establish clarity and -- as well as, you know, make greater reference to actual rule of -- international -- of law specifically and legal rights.

So -- but particularly, we need to add context and not just, you know, deal with raw lists. Thank you.

DAVID FAIRMAN: Thank you. And just to confirm that we will also come to the question of distinguishing geographic and non-geographic use. Number 2 and Number 4.

ALEXANDER SCHUBERT: Is it on? Yeah. This is Alexander Schubert. Just a 20-second rebuke to that.

If there is a brand London -- and there are brands London -- and they're applying for dot London and the people of the city of London not, then you're saying that the people of London should never have the possibility ever again to claim their namespace and represent their businesses and their people there? At least they must have the possibility of an objection.

DAVID FAIRMAN: Thanks. And just to clarify, right now we're sticking with the question of what could be a geographic name. We're not addressing the question of conflict of applicants. Please. Number 4.

ANNEBETH LANG: Can you hear me? Yeah. Annebeth Lang with .NO. I think that the issue of context that was phrased and geographical use also raises some problems. We had that problem with the city names. If it's a city name used as a city, then it's -- you had to have the non-objection and -- or support, and if it's not, you shouldn't have that protection. And that is also suggested here, as far as I can see, for a repository in that way.

The problem is that even if you register dot Baba as Greg has said, if that is a very famous geographical name and a brand, it's okay, perhaps, because then it's a closed brand and no registrations, but if it's an open registry that all can use it, it doesn't help if they say that this is not geographical use. Those who are inhabitants of the city or the country or the three-letter code or whatever, then they will -- they will see it as geographical and they will use it and it will be more confusion than we have today.

So I'm a little skeptic about that way to do it.

DAVID FAIRMAN: Okay. Thank you. I sense that there is eagerness to get into some more of the questions about distinguishing uses and we're going to get there. I think we'll take one or two more and then we're going to move on. Please, Number 6, yeah. Yeah, that mic won't work. Right there. Yeah.

EDMON CHUNG: Edmon Chung here. I find the question a little bit strange because a geographic name is any name that is used for any geographic place, right?

But what we're really asking is what geographic names should be protected or, you know, some handling of it within this context.

And especially what we're looking at is, is there a gradation of different ways of handling it or different -- different thresholds or levels of protection.

And on that, I think, you know, that's a very different question than, hey, what's a geographic name and try to scope it that way.

I think defining the gradation might be even more important than defining what is a geographic name.

DAVID FAIRMAN: Thank you. And just confirming that that's a very important distinction that you're making. This is sort of a threshold question that then enables us -- we thought would enable us to go on to the next. Yep.

THOMAS SCHNEIDER: Thank you. Thomas Schneider, currently the chair of the GAC.

I think when you ask the question what makes a string a geographic name, we should keep in mind that there is no such one thing as a geographic name. There are different types of geographic names. It has been said before but I think it's worth restating this.

So there are specific types of geographic names, for instance, that are also political entities, like a country or territory or a capital or a region, and then there are other geographic names like a river or a mountain or just a piece of grass somewhere that is also physically in a geographic landscape.

So -- and these may have different meanings, different legal systems, different frameworks, and they may necessitate being grouped in different ways to address them properly, and I think that's -- maybe as a concept should be the basis of this debate. Thank you.

DAVID FAIRMAN:

Thank you. I think we are going to move on.

So next question: When can a geographic name be applied for?

So in the -- in the AGB.

JEFF NEUMAN:

Sure. So again, this is Jeff Neuman. So again, once you've kind of met the threshold of what is a geographic name, however that's defined, the guidebook specifically prohibited applications for certain categories of geographic names. The guidebook prohibited applying for two-character ASCII codes -- ASCII strings that are on the ISO 3166 list, but it also reserved all other ASCII two-characters for the purpose of, I guess, reserving those in case there are -- or when there are additional ccTLDs.

The applicant guidebook also prohibited applications for three-character ASCII strings that matched those on the ISO 3166-1 list. The guidebook also prohibited the registration of country and territory names on the ISO 3166-1 list and had a bunch of other language which we've summarized as how these countries and territories are known. It's much more in-depth language, but this is a PowerPoint slide. You can only fit so much.

DAVID FAIRMAN:

Great. And then just to say, again, a non-exhaustive list of some other things that have been suggested.

One is that actually nothing should be prohibited or reserved except for the two-character ASCIIs.

A second thought about what should be available for application would be to open up the three-character ASCII list for application, whether with or without a requirement for government consent or non-objection.

And a third, going in a different direction, would be to suggest that governments could reserve or should be able to reserve any term, any string with potential geographic significance, with or without a basis in law.

So this -- this question is now back to you. What's your view on this question of whether -- what name -- what potentially geographically significant terms should be off the table, if any? Over to you. The floor is open.

Again, is the AGB a good statement of what should or shouldn't be available? Do you have a different view? Do you like any of these options? Do you have a different option? Thank you. Number 6. Yeah.

MICHELE NEYLON:

Thanks. Michele Neylon, for the record. Blocking the two-character ASCII codes makes perfect sense to me. I think not doing that would be -- would cause all sorts of problems. And blocking all other two-character possibilities also makes sense

because there are new states formed from time to time. They change, et cetera, et cetera. That's perfectly fine.

The three-character one, I don't have particularly strong feelings about. I can see arguments in favor of and I can see arguments against.

The country and territory names as commonly known, could somebody expand on what exactly is encapsulated in that? Because I'm Irish, so Ireland is known, depending on the context, in several different ways, and I honestly don't know, in the context of this, which is which. I mean, Jeff, maybe you can answer that.

DAVID FAIRMAN: Thank you.

JEFF NEUMAN: So it's meant to cover, in the ISO list there may be an official name of a country which is not necessarily the way that most people refer to it.

So I believe the United States of America, for example, is the United States of America on the ISO list but it's commonly known as United States, right?

So it was meant to cover those types -- and there's a lot of other examples in there, if you look at the list. And commonly known is not just how -- you know, what you might call it. There's actually an official list of what it's commonly known as. So you're looking at two different lists.

DAVID FAIRMAN:

Okay. Thank you. Number 4 and then Number 2. Yeah.

THOMAS De HAAN:

Yes. Thank you. Thomas De Haan from the Dutch government again. I think my answer to what can -- when can a geographic name be applied for depends a little bit on the answer of the former question, what is a geographic name.

I think we should search to a definition which basically has the component that a geographic name means or represents the identity of a community or a substantial community. Meaning that if you make criteria for use, you should basically not go against the interests or abuse the identity or let's say other kinds of bad stuff you can do against the community which is represented by the geographic name. So --

By the way, Holland is the example Michele is looking for.

DAVID FAIRMAN: Just before we leave you, our colleague from the Netherlands, I just want to make sure. Your thought there is that one might then place in concept any possible geographic name, make it available for application, but restrict its use depending on whether a community had a concern about its use? I just want to make sure I get the thrust of your response to this question.

THOMAS DE HAAN: How you implement this can be varying. I'm not speaking on behalf of the GAC, but it could entangle that you meet one objection or approval. It could also be a procedure in which -- an article in which you force the registry to not do X, Y, and Z. Thank you.

DAVID FAIRMAN: Okay, thank you. Number 2. Yes, please, Emily, and then Number 5, and then Number 6.

EMILY BARABAS: This is a comment from remote participant Martin Sutton: The use of geographic names at the top level should not be restricted for applicants that hold matching trademark whereby the use of the TLD is to identify the brand and not to represent the

geographic term and where there is no conflict with national or international law. This should include three-character strings.

DAVID FAIRMAN: Thank you for that.

Yes? What did I say -- Number 5 and then Number 6, yeah?
Number 5, do we have?

ANNEBETH LANGE: This is Annebeth Lange from .NO again, speaking on behalf of the ccNSO this time. We have had the discussion in the ccNSO meeting this week. And our point of view at this time is that we are quite satisfied with the status quo in the applicant guidebook as it is.

If it should be done something with it, this should be the three-character ASCII opened up with their consent of the government, non-objection or support, and find a way to do this perhaps differently with brands that could be more preferable than using it as the registry -- open registry. That would be they're not very acceptable for us.

We used a long time to come to the consensus of the applicant guidebook as it is, even if I'm aware that that was in conflict with

the GNSO policy as it stood. But it has worked quite well, even if it had some flaws.

So starting from the beginning again, that is quite difficult in our view. So we should try and make the small, small differences that really made problems and find out what were the biggest problems and try to solve that but not start to define the wheel again. Thank you.

DAVID FAIRMAN:

Thank you for that.

Number 6 please.

JORDYN BUCHANAN:

Hi, it's Jordyn Buchanan with Google again. I guess as the idiot who applied for three of the ISO 3166-1 three-character codes, I would certainly think -- so I'll say two things. First of all, I actually found that a highly instructive experience because even though those were banned in the guidebook and probably TAS shouldn't have let us apply for them in the first place, I think we actually had fairly productive conversations with the governments after we applied for them. At least one of the governments was interested in allowing the application to proceed.

So I certainly think the policy on the three-letter code should change such that if you get consent from the government, you should be able to proceed with an application for that particular country code.

DAVID FAIRMAN: Thank you. You had another. Yeah, please.

Thank you, Sebastien.

SEBASTIEN DUCOS: Sebastien Ducos, gTLD group. I had bit -- Jordyn stole my thunder there. Yes, completely.

The other thing I would also add is that we try not to be an Anglo-centric definer of names. South Africa has got six, seven different names in different languages, local languages. They should be recognized, too.

DAVID FAIRMAN: Jeff and Avri, quick point of clarification, is that covered -- all those local language --

SEBASTIEN DUCOS: The wording says "in any language," but in any language of the ISO list. I don't know that the ISO list carries all those languages, for example, for South Africa.

DAVID FAIRMAN: Okay, okay. We'll leave that for now. Sorry, I saw Number 2, yeah, please, colleague from Switzerland.

JORGE CANCIO: Thank you, Jorge Cancio from Switzerland for the record. I think there is value in what has been said by my colleague from the Netherlands, by Annebeth, but also by the colleague from Google and Sebastien.

As long as we really make sure that there is a situation of agreement between the public authorities involved and the applicant, there's really no barrier to -- well, there is -- there shouldn't be an insurmountable barrier to delegate such kinds of names. So if we take all interest involved into that and for sure in the case of country and territory names, the government of the corresponding country should stay at least with a letter of support or non-objection. And that is really an incentive to get to an agreement with the corresponding applicant.

DAVID FAIRMAN: Thank you.

I think we're going to move on. Yeah? Okay. Next question. So, when can a geographic name be delegated to a particular applicant? Avri.

AVRI DORIA: Okay. This is Avri speaking.

The 2012 AGB: Capital cities, plus subnational places on the ISO 3166-2 list by express non-objection or consent of government. Other cities by non-objection of government, if intended use is geographic.

UNESCO/U.N. stats division regions by 60% of respective regional governments. And, of course, there are details about how one defines the respective regional governments.

All other terms of potential geographic significance: Open without government non-objection requirement. But note, GAC can provide advice on any application. And note again, rejected applicants have access to ICANN's accountability mechanisms.

DAVID FAIRMAN: I expect we might have some comments here. Emily, yep.

Again, the question for you, you see what the answer is in the AGB -- sorry, no, my turn before I go to you. Yes, okay. Sorry, sorry, I jumped that gun.

Here are some other options that have been suggested to respond to this question.

One, you could expand that non-objection requirement to non-geographic-intended uses of non-capital city names. So let me try that one more time for clarity. Right now the applicant guidebook 2012 says if the applicant does not intend to make geographic use and if the geographic names panel within ICANN accepts that statement of intent by the applicant, then the applicant can go ahead without any contact with a government entity.

This option would be to say any, any match of a city name would require non-objection, whether the intended use were geographic or non-geographic.

Second, continue with that non-objection expansion and expand it to all, any and all, terms of potential geographic significance.

Third, going the other way, actually remove the current non-objection requirements for one or more of the things that you

heard Avri list: Capital cities, non-capital cities, and subnational places on the ISO 3166-2 list.

And then next, right now there are -- as Avri mentioned, there is a procedure for an applicant who has been rejected to appeal that. An option to consider here is a more explicit process involving mediation and arbitration to address those concerns within the application process with clear criteria for objections from governmental entities and with fair, clear, and time-bound steps to resolution.

Finally, and echoing a comment that was made a little while ago, remove the non-objection requirement entirely for those brand TLDs that commit to brand use only; that is, those who clearly intend to operate a closed domain for brand use.

So, sorry. Now question on the table. Emily. Yep.

EMILY BARABAS:

This is a comment from remote participant Ashley Graham from the American branch of the International Law Association: The rule of non-objection seems to have worked well, so why not have it extended to three-character codes and geo names? It would give certainty to applicants and also protect the interests of communities these geo names refer to.

DAVID FAIRMAN: Thank you for that.

Others? Looks like we've got Number 5. Yeah, please go ahead and then Number 6.

ALEX CORENTHIN: Alex Corenthin from. SN. I have a question about what is the meaning of a brand? How can you define a brand versus a geographic location? If I can know that, maybe I can understand what is (indiscernible) for brand TLDs.

DAVID FAIRMAN: Thank you. I think Jeff can respond on that.

JEFF NEUMAN: Yeah, this is Jeff Neuman. And, unfortunately, slides don't allow us to put the whole definition in. But a brand TLD was defined in this last round as a top-level domain that had what was called Specification 13. And there are requirements in there of having a national trademark since a certain year. So there were other requirements in there, and that defines it.

They were assigned by, I think, close to half of the applicants in this last round that intend to use the space for their own purposes

and to not distribute those names to anyone other than themselves, their affiliates, and any trademark licensees.

DAVID FAIRMAN: Number 6, please.

SEBASTIEN DUCOS: Sebastien Ducos, gTLD group. So not that it's being discussed at all, but that criteria of consent or non-objection needs to absolutely stay. As representing a large number of geographic applications, governments found it in general very hard to give us full consent, as in go ahead. Non-objection is something that works extremely well with governments, it appears. And that, again, not that anybody is debating it but we need to absolutely leave it as is.

DAVID FAIRMAN: Thanks so much for that.

We will come up here to our colleague from Switzerland. We are going to go to our colleague from Switzerland. I just want to encourage those who actually do have a view, if you haven't spoken, don't be shy. Please.

JORGE CANCIO: Thank you so much. Jorge Cancio, Switzerland. I very much agree with remote participant and also Sebastien. I think that we should see not see the non-objection not as an element of a zero sum game where you get people together to reach an agreement. And removing that from certain categories of TLDs, I think it's a sure recipe for conflict. So even if you intend to have a close brand name, it's much better to have an agreement with a concerned public authority because that TLD, if assigned, is unique. And the community should know the community represented by the public authority should at least give its non-objection to that use if they find this is okay.

DAVID FAIRMAN: Thanks for that.

Number 4.

ANNEBETH LANGE: This is Annebeth Lange again.

I support the non-objection also for another reason, and that is all these countries in the world that is not a member of the GAC and the ICANN today, it's easier for -- if it's non-objection or non-support or all that and we don't have to get in touch with anyone because they are out there and nobody knows them, I know it's

difficult to reach them. Within the ICANN, you can do that through the GAC representative. But outside the ICANN community, it will be very difficult. But, still, if you do a fair try to do it and you can prove that afterwards, at least you have tried to make connection.

And I agree with Jorge, what he said last.

DAVID FAIRMAN:

Thank you.

So I have got Number 2 -- sorry, first Jeff, then Number 2, then Number 1, then Number 4. Okay. And then we're going to move on.

JEFF NEUMAN:

Thanks. This is Jeff Neuman. I just want to clarify with Annebeth. In the guidebook right now, everything is an express letter of non-objection, which means you still need to find someone. Or are you saying something -- just to clarify, are you saying something different, if you show you can't find someone, there should be some mechanism to allow that to go forward?

DAVID FAIRMAN:

Number 4.

ANNEBETH LANGE:

I think that could be discussed because I know that it would be difficult to reach all, but it's even worse not to try. So to find some way to have a fair try, I'm sure it's some mechanisms to do that and to prove it afterwards. And if you fail after having really done a try, it always the objection procedure in the end. But all the countries that are members here, absolutely it should be easy to do that.

DAVID FAIRMAN:

So we got Number 2, Number 4 -- sorry Number 2, Number 1, Number 4, Number 6, and then we're done.

Number 2.

SUSAN PAYNE:

Thank you. Susan Payne. I just wanted to comment because there do seem to be a number of people expressing the view that the non-objection process worked well and had few problems. And I think that's not really an accurate reflection.

There were a number of situations where either the consent -- someone felt they believed they had consent and it was later withdrawn, and there was some very high-profile disputes over

that. And, indeed, I think we are all aware of the Africa case, for example. I'm not making a judgment on the merits.

But there were also situations such as the one with the Tata brand who were under the impression that they had the right consent from the right person but it turned out that they either didn't or it got withdrawn. So we have -- we have to bear this in mind.

And we also have to bear in mind the real challenges that exist. If you're going to start asking people to go and get consent from multiple parties because, you know, the Toledo argument that was raised on the first of these sessions, you know, there are multiple different places and names and, you know, country names and town names are in multiple use. So the non-objection procedure does not work at all in that context.

And, again, to just come back to this point that we've been -- that has been mentioned before of, you know, if it's your brand and you have it registered as a trademark, why is this geo context being given primacy over the brand context when there is no basis under international law for that to be the case?

DAVID FAIRMAN: Thank you for that.

Number 4, Number 1, Number 6. I think that's the order I did. We're going to stop at it there. Number 4, Number 1, Number 6. Yep.

ALEXANDER SCHUBERT: Yeah, my name is Alexander Schubert. And I'm kind of answering your question, what I'm going to say. And I said it similarly but a different angle.

If there would be a brand Cleveland -- and there's a Cleveland in the United States -- and the people of Cleveland might one day decide, okay, we would like to have this TLD to represent our businesses and our people but they don't apply in the coming round but the brand Cleveland does, then shouldn't the brand ask the people of Cleveland whether they're okay with that? And the people of Cleveland are represented by their government, city council, whatever it is. And that's why we are asking the brand to go to -- we should ask the brand to go to the government and ask whether it's okay because they are representing the people. And the people might say, well, we are the Clevelanders. We would like to use .CLEVELAND in the future for us.

DAVID FAIRMAN: Thank you. That's clear.

Number 1.

GREG SHATAN:

Thanks. Greg Shatan for the record. Let's turn that hypothetical on its head. Let's say that the City of Cleveland does want to register Cleveland and the brand Cleveland did not seek to register in this round. Shouldn't the people of Cleveland ask the owner of the Cleveland brand who has a legal right to that trademark whether he will permit -- whether that company will permit them to register it? I don't see why one right is being given primacy over the other, especially when one right is founded in rule of law and others seem to be founded in some sort of sheer sovereign force of will. So I think that there's -- the non-objection system here creates potential for grave overreach that's based on nothing in particular. So, for instance, I would take out non-capital cities and subnational places, and I would also use the -- what is essentially the geo-PIC at the bottom and remove the non-objection requirement for brand TLDs that would make a commitment to use it for brand use only and not to transfer it to others who might use it for non-brand use.

I think that there's just no basis here for giving geographic context any sort of priority or primacy over trademark rights.

DAVID FAIRMAN: Okay, thank you for that. Number 6.

ANRIETTE ESTERHUYSEN: Anriette Esterhuysen again. Just a few questions for clarification. Would it be non-objection by GAC as a whole or by those governments who identify with the geo name under review or that's being proposed for delegation?

And then, secondly, what would happen if a geo name was being delegated and there was a conflict between, for example, an indigenous community and the government or governments in question? I'm thinking of something like Kalahari, for example, the name of a desert. It crosses certain countries, and there are territorial conflicts around that. How would ICANN deal with that if that objection cannot be channeled through the GAC? So that's a broader question. How else can intervention be made by the indigenous community who have a stake in that geo name?

DAVID FAIRMAN: Yeah. I will speak briefly to the first question and I don't know whether Jeff and Avri want to speak to the second.

Just in terms of what's up here on the slide, who's non-objection are we talking about? Governments, not the GAC. Yeah. And on the other question about the broader --

JEFF NEUMAN: Yeah. On the broader issue, assuming that both of the ones in your example required a letter of consent or non-objection and they both got that letter from different governments, then the applicant guidebook made it clear that ICANN did not want to get in the middle of it, that it would just suspend the application and not give it to anyone until the governments could decide amongst themselves what the right solution was.

DAVID FAIRMAN: Colleagues, I am apologizing. I do suspect that some of the outstanding questions have to do with relative priority of applicants and we are going to come to that question.

Only because this is an online comment, I think we're going to take it and then we're going to move on.

So Emily, yeah.

EMILY BARABAS: There are actually three different question/comment combinations.

DAVID FAIRMAN: Go. Go. Go.

EMILY BARABAS: The first one is a comment from Robin Gross. Requiring permission from governments is the quickest way to kill innovation on the Internet.

The second is a question from Michael Palage. Has ICANN provided any process or mechanism for when a government changes their mind post-delegation? For example, no longer consents or now formally objects. Seems like this is an important question for current and future rounds to provide predictability.

And third is Ashley Graham, a comment. If there were any problems with the non-objection rule, why not simply develop clear procedures for enforcing this rule instead of getting rid of it.

DAVID FAIRMAN: Okay. Thank you. And to acknowledge on that second question, we are going to come to the question of enforceability, so hopefully we'll answer that in a minute.

On we go, only so that we have a chance to get through the full set of issues.

So resolving simultaneous applications for geographic name. Over to you.

JEFF NEUMAN: Seems like we foreshadowed that.

So the applicant guidebook states that if there are two competing applications for a geographic name, either ones that require government consent or that -- those that don't, then there's a negotiation period. And where government consent is not required, so for cities being used in a non-geographic sense as an example, then that would go to auction.

Now, this is just what's in the guidebook now, so that's what I'm going over.

Where government consent is required, the 2012 applicant guidebook stated, as I said before, it would suspend the applications, if negotiation does not resolve the issue, or it also provides an alternative where there's -- where governments could request contention procedures if it had support between the multiple applicants.

So it was really -- I think it was like a dispute resolution mechanism where both of the parties or all of the parties had agreed to go to that.

DAVID FAIRMAN: So that's what's -- that's what's in now. A couple of -- a few additional options suggested -- and you've heard from our

colleague, Alexander Schubert one of them, which is, give priority to those who have government consent, and also priority to applicants who propose geo -- geographic use of the string over those who propose generic use.

I want to acknowledge the comment that was just made that would go arguably the other way: Priority to applicants with a trademark brand -- somebody might want to say something further about that -- over a community.

And third is, again, to -- as was suggested by the comment on line -- try to provide a procedure with more clarity and more likelihood of getting to resolution than the negotiation, auction, or suspension. So negotiation followed by mediation followed potentially by arbitration using agreed criteria, if there can't -- if mediation does not resolve it.

So back over to you. I think we've already heard some things about these options, so I would hope we would not repeat them, but that if there is a nuance or a new option.

Number 6.

THOMAS SCHNEIDER: Thank you. Thomas Schneider, currently chair of the GAC.

With regard to priorities, I think we have to be very cautious on both sides that we don't create rights in this space that are not existing in the analog world, and in particular, if you're paid as a civil servant, you're supposed to get balances of different rights right and not create imbalances.

So with regard to the rights of trademarks, a trademark right is normally attached to an owner in a specific industry branch, or whatever it's called in English. So you may have -- if I take the example of Zurich, which is the biggest city but not the capital of my small country, you may have an insurance that has a trademark right in the insurance industry, you may have a watchmaker that has a trademark right, and so on and so forth. So first of all, what do you do if two brand owners of the same brand in different industry branches apply? Does it -- does it then go to the one that has more money to win an auction? And the other thing is also, in my country you cannot trademark the name Zurich because that is considered to belong to the people, but you can trademark a figurative mark with a particular typo and some addings and so on and so forth.

So if we are giving -- and this is actually what has happened in the first round. If you are giving somebody that has a partial right on a name -- or on a name and a particular use an exclusive right on a virtual space, I think we should be very cautious about thinking

whether that is not creating something that creates an imbalance.

So you need to think about balances, and it's not that if you have a right and then you also have maybe another country, national situation where you have another Zurich that would have a local right in the U.S. because it's a city there.

So just to have a trademark right in one particular space, in one particular country, you cannot claim that this is more --

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-- important than any other right there is in the world. We really have to think about reasonable balances that are -- and I'll stop with this -- in the global public interest.

DAVID FAIRMAN: Thank you. Thank you. It sounded like you were about to break into song.

[Laughter]

DAVID FAIRMAN: Number 2, our colleague from Switzerland, yes.

JORGE CANCIO: Thank you. And be careful. He may do so later on.

[Laughter]

JORGE CANCIO: Yeah. Well, I think that on these options, we could go into more details if we had a good documentation and description of the -- of the issues, the cases with problems on the table that we could share, look at, and then, for instance, I can imagine there were implementation issues with this non-objection. How do I reach out to the government? How do I identify the right people? Some of the concerns have been mentioned before.

What happens if they change their mind?

Well, in most legal systems, you have something which is called protection of rightful expectation, so you cannot just change what you said before and expect that you can do that without indemnifying the person affected by your action, as a public authority.

But what I want to say is if the problems are in the implementation of the non-objection rule, let's look into them, let's look what we can do about that.

The outreach efforts by ICANN organization to public authorities and to governments have really had a quantum leap in the last five years. We cannot ignore that.

They are all the time in touch with public authorities all around the world.

The GAC has moved from being -- having a membership of around 120 countries to more than 170 now, with many observers. We can improve also our -- the way we help in implementing this rule.

So there's room for improvement on that, but don't --

[Timer sounds]

-- throw away the baby with the washing water.

DAVID FAIRMAN:

Thank you. We're going to go to Emily for on line and then I think we're going to move on. Yeah.

EMILY BARABAS:

From Ashley Graham: I'd like to clarify and perhaps restate my question to the chair because he's talking about procedures in case of conflict.

My question was: Why not develop procedures to make sure the non-objection rule is workable? In this case, there would be no conflict since the non-objection rule would work smoothly.

DAVID FAIRMAN:

I -- yes. I -- I will only just comment that I think that idea of addressing -- as several colleagues have said, address those elements of the non-objection procedure that seem, in fact, to have caused difficulty and see if, indeed, a process can be refined to be better for all the parties. That's a good idea. So I think that's where we're going to leave that one.

Only for time, we're going to go.

Next up, so an easy one. How could geographic use be distinguished from generic or non-geographic use?

Over to you.

AVRI DORIA:

Thank you. This is Avri again. This one's mine.

So the 2012 AGB, applicant declares intended use.

Second point, ICANN geographic names panel reviews and determines whether the applied-for gTLD string is a geographic

name requiring government support, and that's AGB Section 2.2.1.4.2.

Another point. Applicants for geographic names requiring government support specify intended use to relevant governments. Government must state non-objection for intended use. For noncapital city names, if (a) it is clear from applicant's statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and (b) the applied-for string is a city name as listed on official city documents, then the string is considered a geographic name.

DAVID FAIRMAN:

Okay. So this is what we've got on paper today, and just to acknowledge that there are some thoughts about some additions or changes.

Okay. One option is to say -- to waive this distinction away and say, on the face of it, it is too problematic to assume that a non-geographic use can be assured even if intended, can be guaranteed even if intended by anyone, and therefore, all geographic names, as defined by the AGB, will be considered to have geographic use, regardless of the applicant's intent.

Meaning that therefore, the non-objection procedure would apply for those that qualify.

Another option, distinct from the first, if you've got -- if you're proposing as an applicant to use a generic word that is also used as a geographic name like a place called Albatross in Canada, then the applicant commits to use as a generic term, then it should be treated as a generic term.

So you could make up many other -- in English alone, you can find many towns or places with names like Stone or Black or -- et cetera. So this is an argument to limit the understanding of geographic and not have that understanding for those words.

Third, just to reinforce an idea that has already been stated, if a dot brand applying for a string that has possible geographic significance but commits to only use it for its brand use or generic use of the string, then do not treat that as a geographic name for purposes of ICANN procedures or AGB procedures.

Another option. You could ask applicants or allow applicants to make what's been called a geographic public interest commitment or a Geo-PIC to binding -- to bind themselves to non-geographic use only. So that could be for a brand or it could be for someone who intended to operate an open registry and would therefore then have to enforce that on second-level registrants.

One more option. A little bit of an interesting nuance on the idea of how to handle the second-level registrant issue.

Create a set of reserved strings at the second level for TLDs that could be used in a geographic sense. For example -- and make sure that those could only be used by the governments of those entities.

So you could say that dot police dot geo name was reserved. You could say that dot mayor dot geo name was reserved.

In other words, no registry of any geographic term could use -- could allow those terms at the second level to be registered unless registered by a government.

Now, the floor is open for further thoughts on this.

Number 2, colleague from Switzerland, and then we'll go back. Yep.

JORGE CANCIO:

I'm so sorry to come again but this raises a lot of issues.

Jorge Cancio, Switzerland again.

If we go to the previous slide, I think that the geographic use is really only relevant under the AGB for the noncapital city names, so I think that should be clear.

For the rest, it's just whether the -- the term is one -- is on one of the lists. It doesn't have any impact whether it has a geographic intended use or a generic use.

Only for the cities. This is only relevant for the cities which are not capital cities. That's what I was saying.

And -- well, the timer can continue, I guess.

And I think the -- some of the -- of the options refer to what could be a sharing agreement or consequence of an agreement, but first you have to get the people together, and for that to happen, the non-objection is a tool that worked, and that's why I'm so supportive of it.

And the distinction between the uses also is problematic because we only have one piece. It's -- it's a scarce resource. You only have the one string with that name.

So whatever you do, either you foreclose a community, you foreclose others, you need to put those people together, and of course with the geographic names, the public authorities have a very important role to play.

In some countries, as in Switzerland, we have legal rights for those city names that pertain to -- to the cities or to the cantons, to the regions, to the villages, so -- and in other countries, it may be just a question of public policy, but you cannot ignore that. Otherwise, it's a sure recipe --

[Timer sounds]

-- for conflict.

DAVID FAIRMAN: Thank you. Number 6.

MICHELE NEYLON: Thanks. Michele Neylon for the record. A couple of little data points that might be of some help.

Wearing one of my hats, I'm involved in the policy development for the dot IE ccTLD, which at present and only at present, is about to change. It has a policy that restricts geographic names.

First problem was that there was no database for the geographic names.

>> (Off microphone.)

MICHELE NEYLON:

There was no database for the geographic names, which was a bit of a problem. So they came up with the best solution was if it was on a map. Which was fantastic until one of my clients turned up and actually owned enough of the land that his land appeared on the map. So that caused a bit of a conflict. But they've actually decided recently to remove that restriction completely, simply for the reason that after 20-odd years of the ccTLDs restriction, there's been ample time for public authorities to register the names, so there was no benefit in maintaining that restriction.

Going back to what's actually up there on the slide, there's a few things here -- I mean, I can understand why one might put them forward as a concept but I don't see how they would work in reality.

Taking, for example, the PIC commitment, so I go along to a registrar, I say -- and I register a domain, I agree to certain terms and conditions. How is the registrar or provider meant to -- to know that I'm going to comply with it? I mean, how does that actually work in reality? Does that mean that the -- the registrar or registry is obliged to actively police the content associated with the domain? And here's the real -- real kicker: What is the content with the domain? Because many people in this space seem to think of domain names being Web sites, which is completely ridiculous.

Domain names are more -- more often used for emails and other services, and unless you start actually reading everybody's emails, you've absolutely no way knowing what they're using the domain name for.

DAVID FAIRMAN: Thank you for that. Useful points. Number 2, please, our colleague from Brazil.

BENEDICTO FONSECA: Thank you. Benedicto Fonseca from Brazil. Well, I want to be very careful about saying it because I'm trying to jump into the discussion, so I must concede and defer to any other views, but to my understanding, basically what is being proposed and the scope of the exercise, the issues that are identified, with some exceptions, of course, but they aim at trying to solve some problems that have come about from the perspective of those who had interest in registering it and that were frustrated by the rules.

So I think it's very legitimate that it needs to be done. It's completely legitimate. But I think it is not the only view that should guide policies adopted within ICANN.

So I think we can take the -- I think, in a way, brings us back to what we discussed before. This should be the right place to discuss it and try to have that kind of thinking that would bring on board all views, either PDP or elsewhere.

I -- from the perspective of governments, I would say from my perspective, my government would be concerned, of course, to address commercial concerns but also to put into account also other concerns that are not represented that are not clearly identified. For example, the community-based possible -- not the actual applications, but also even people that might be interested that are not even -- don't even know what is going on. I think it's part of our responsibility as government to make sure that those interests are also represented.

So our concern in all this is who would make a final decision-maker? Who would take this on board, all those kinds of concerns? It's a matter of concern for us because as we have seen, it seems that the board --

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-- to which all those inputs will have their final destination has been taking the -- have been in a very comfort zone, just to say if there is a PDP, I will implement it, so I think it brings us back to the question as governments when their -- the right -- the

moment to input will be there. So those are questions, I mean, not requiring an answer, but just to voice some concerns. Thank you.

DAVID FAIRMAN: Thank you. Thank you. Seeing -- we have one more colleague here and then we're going to move on. Please.

ASHWIN SASONGKO: Thank you. Ashwin from Indonesia, for the record. Yes, listening to my friends from the GAC members, I think it is important to see that government has high interest on the geo names. However, it is also possible that this interest can be either restrictive or even supportive. And it depends very much on what you call it, situation of the country. One country might differ from another country. And in every case, it may be different also.

Just to give you an example, Java is one of the big islands in Malaysia. I come from Java. And Java is also the name of a brand from Oracle, Java whatever, Java software. And nobody complains about that. Everybody is happy. They say, oh, the island is very well-known now because everybody is using Java platform.

[Laughter]

Oracle doesn't make java.com. They put it under oracle.com.

But the other way, if suddenly you come to Indonesia, say, Mr. President, can I have Java dot something, oh, hang on, what it's used for? A good software? Might okay. A good place? Might be okay. But what about a bad word, for example. In Indonesia, pornography is not allowed. So perhaps if you use Java as a brand of nightclub, sex nightclub, it might not be good, you know? So this is the kind of things has to be considered when you are in a country. Thank you.

DAVID FAIRMAN:

Thank you. That sounds exciting.

Okay. So let us move -- this is our last question for discussion and gets to some of the issues that have just been raised. So this is -- okay, so let's hypothetically say, yes, we want to in concept continue with this distinction and the ability of some applicants to assert intent and commit to non-geographic use of a TLD that nonetheless has geographic name in it, how could such commitments be monitored and enforced?

Over to Jeff.

JEFF NEUMAN: Thanks. Jeff Neuman again.

The applicant guidebook states that a government or other geographically identified harmed established institution -- actually, sorry, it doesn't say this, but this is allowed under the guidebook, that the government or other geographically identified harmed established institution may bring its claim to ICANN contractual compliance. So, in other words, if a city said that it was using it in a geographic sense but it is found to be using -- or, sorry, if an applicant who applied for a term that also is -- or could be a city states in its application it's using it for a non-geographic purpose, which is how it got delegated but it turns out it's using it for a geographic purpose, a claim could be brought to ICANN contract compliance.

A government or other geographically identified harmed established institution may use the registry restrictions dispute resolution procedure to claim that the gTLD registry operator violated the terms of the Registry Agreement, including the commitment to not use it in its geographic sense.

Government -- the third one is the government that has supported an application for a non-geographic use of a capital city string or subnational place string listed in ISO 3166-2 and is in dispute with a registry operator may obtain a legally binding

order from a court in its jurisdiction to stop the harm. And, of course, ICANN receiving that order would comply.

DAVID FAIRMAN:

So those are mechanisms that exist. A couple of other thoughts, just to repeat, that with regard to enforcement, there's this concept of a binding geo-PIC, geographic public interest commitment, made by the applicant. If the applicant succeeds and becomes a registry operator, then the terms become enforceable in its agreement with ICANN and transferable in concept to registrars and registrants, granting all of the questions that remain about how that actually gets enforced.

Second, an option and a point that was made is that governments and/or ICANN can use watch services to monitor registration of second-level domains under a validly geographic -- or a gTLD that said it was going to commit to non-geographic use or, for that matter, a geographic gTLD that it's concerned about. So governments, if they want to, can look at that second level. They can't look at all the activity that goes on within the second level as easily.

Floor is open.

I'm going to ask our colleague from Switzerland to hold for just one minute in case we have -- oop, sorry, Jeff, clarification. Yep.

JEFF NEUMAN:

Sorry, this is Jeff Neuman. Another item -- and I thought this was in the first part. But, of course, for a geographic -- I just want to also say that for a top-level domain that claims it's geographic and has gotten a geographic top-level domain, usually in most cases there is some -- could be or usually is a binding agreement between the registry operator and the city that has granted the consent. And so there's oftentimes a contractual mechanism or some other mechanism for the government to enforce the geographic use of its -- of the entity that it granted consent or a letter of non-objection.

DAVID FAIRMAN:

Okay. Yep.

Okay. Colleague from Switzerland, please. Go ahead, Jorge.

JORGE CANCIO:

If there's anyone --

DAVID FAIRMAN: There's not, so it's okay.

JORGE CANCIO: Sorry. I think this is related to the previous question, of course.

This distinction between uses which is only focused -- only applicable under the AGB to the city names, if applied to all the rest would really create -- open a can of worms of many kinds of problems of enforcement. And Michele mentioned some of them.

But I really -- I'm surprised on bullet 2. It really is scary to me to have these watch services. I'm thinking about big brother looking into the content of all the domain names under this TLD monitoring. And that's one aspect to that.

And how do you really know when it's geographic, when not? How do you do that adjudication? If you do it in your country, how do you make it effective wherever the registry is based? It's changing a bright-line rule which is clear and sets the incentive for an agreement between the applicant and the corresponding public authority to something which is really a nightmare.

Just think about copyright, how complicated that is because in copyright, the issues that you have to look into the content of the website. And it's a complicated issue. And how many years have we needed to solve that? We have not. We have not solved that.

So the geographic use is even much more an undefined concept.
Thank you.

DAVID FAIRMAN: Yep. Thank you. Jeff.

JEFF NEUMAN: Just to add just another question, not a point of view but maybe a question back as well because Michele had raised the difficulty of enforcing with, I guess, open top-level domains. My question back is: Would that same difficulty exist if it were a brand TLD? What do people think? Is it the same? I mean, I understand if it's open and uses registrars. But what if it's a brand?

DAVID FAIRMAN: Why don't we give Michele a brief opportunity to respond and then we'll come across.

MICHELE NEYLON: Thanks. Michele for the record. That's a very interesting way to kind of focus in on a particular type of registry applicant.

A brand -- a brand is a completely closed registry. Single registrant who's also a contracted party. Slam dunk. I mean, this

should not be complicated. This should be simple. This should be easy.

Now, I don't agree with some of the arguments being made by some intellectual property advocates about, you know, brand versus geo. But assuming that the -- that they have that agreement, then it should be very, very easy to enforce. And I don't honestly see how it would be a problem.

And if they are abusing it, then I don't know. Then all the arguments they have been making for years that dot brands are different are completely bogus.

But, I mean, the other thing is -- going back to this, I agree, watch services, all these things, they all exist. They can all be done. I'm not sure -- but I wouldn't entirely agree with Jorge about with them being big brother because all you are looking at is the string. But I entirely agree with his point about adjudicating whether it's geographic or not. No, I mean, that's just possible.

DAVID FAIRMAN:

Thank you for that. Number 1 and then Number 6. Please. Emily. Thank you.

EMILY BARABAS: This is a comment from Ashley Graham. I see on the screen the suggestion that ICANN would oversee the non-geographic use of the TLD. But ICANN is not in the business of controlling online content. It is outside the scope of ICANN's function to monitor content. All the burden would be upon governments and not only governments but also communities, not necessarily with the resources to control that.

DAVID FAIRMAN: And let me just offer a brief comment here about this last bullet point which, you know, with encouragement for people who suggested this to clarify further. But with regard to what would be monitored, the suggestion was not that the activity inside a second-level domain be monitored, simply the actual names of second-level domains. Whether that's a good thing, bad thing, satisfactory, or unsatisfactory, I don't know.

Number 6, please.

JORDYN BUCHANAN: Hi, thanks. Jordyn Buchanan with Google again. And in the context of I don't know if it's a good thing or a bad thing, but combine a few thoughts that have been floating around the room as a crazy straw man that you might want to think about.

DAVID FAIRMAN: Straw horse.

JORDYN BUCHANAN: Straw person. Yeah. Or a straw unicorn.

Jeff pointed out that in the case where a letter is required from the government, there could be -- or often was a contractual relationship between the government and the applicant. In theory, you could just have ICANN require that the applicant in these cases as well, even if they don't need to get the consent, offer to the government some sort of form or contract that the government can sign or not but gives them some independent enforcement rights and have that jurisdiction of that agreement also be in the relevant jurisdiction so the government doesn't have to go through the exercise of getting a court order. There may or may not be laws relevant to that, but just to be able to enforce this specific non-geographic use through private contracting mechanisms so ICANN doesn't have to get into the middle either.

DAVID FAIRMAN: Thank you very much. Number 4 and then we will probably need to wrap up.

ANNEBETH LANGE:

Hello. It's Annebeth Lange here again.

About the non-geographical use, I would like to have some comments about that. I really think it would be difficult, very difficult, because what is really non-geographical use? You are talking here about who registered which name on the second level and what name that is, but that is not the whole truth.

If we take an example, for example, .CA for Canada, two-letter code today. We say .CAN can be the generic word for "can," can factory, whatever. And if that is supposed to be non-geographical, it's not for Canada, it's for the can -- those who like cans or whatever, all the organizations in Canada which didn't get their name under .CA, they would try to get it under .CAN, I suppose. And that would really be confusing because the one policy is global. All the ICANN policy will be for .CAN, and for .CA it will be the national policy. And the user out there will be more confused than ever. So I would really advise against that, not expanding it.

DAVID FAIRMAN:

Thanks for that.

We will take two more hopefully brief and then we must stop.
Yep. Please.

MANAL ISMAIL: Yes, very brief. Manal from the Egyptian government because this links again to the comment I made in the earlier session. It is very difficult to tell from the TLD itself. You have to get to the second level. Even the second level in terms of the string itself, it doesn't really ensure or indicate whether it's geographic use or not. So slowly you're getting into the content and then obviously ICANN doesn't get to do with content. And I'm sure governments would not want to do this exercise.

So I'm really skeptical about how this is going to be implemented. Thank you.

DAVID FAIRMAN: Okay. Thank you, Jeff.

JEFF NEUMAN: Yeah. Just, again, to make the distinction, would you have the same concerns if it were a closed top-level domain like a brand that has a specific purpose, it can only use it for certain purposes? And the same question to Annebeth because I believe both had mentioned their concern, same concern.

DAVID FAIRMAN: Do you want to respond?

MANAL ISMAIL: I haven't thought of it before, but I think the concern would be less. I think it's more concerning if it's a generic name, but this is an initial response.

DAVID FAIRMAN: Thank you. And Number 2. And with apologies, we're going to have to stop.

SUSAN PAYNE: Thank you. It's Susan Payne. I just want to point out that I think -- I'm not saying it will be easy or simple. And there are some people who may not be particularly happy about it if this was a requirement. But if you put contractual provisions in -- for example, in your registry terms and conditions and your policies on how you operate your registry, that could include things like if you use your second-level name in a way that is in breach, I will take this name back from you, you know. Potentially I could suspend it first. But you run the risk of having the name taken off you.

Now, you know, this is entirely enforceable. And if that is the price of getting the TLD delegated to you, you are going to have great incentive to ensure that you monitor and that you turn off names

that are in breach. Otherwise, you risk losing your TLD. It's not that difficult.

DAVID FAIRMAN: Okay. Thank you for that. With apologies to colleagues who wanted to speak further, we do need to move to wrap up for today. Needless to say, there's more to come.

May I turn it back to the co-chairs then to discuss next steps. Jeff and Avri, are you ready for that.

JEFF NEUMAN: Yes, thank you.

DAVID FAIRMAN: Should I go ahead to the slide?

JEFF NEUMAN: Yeah, please, sorry.

Okay. The screens aren't working in front of me so I'm going to -- from what I remember, there's an email address up there -- thank you -- we had sent out, I guess -- or we had told everyone about on Tuesday. That email address is still open. So for those of you that think about this question at any point in the middle of the

night, like I do unfortunately, you can submit your comment later on. That list will remain open.

And as we said before, we are looking forward to a very constructive dialogue with the community, including the ccNSO, the GNSO, and the GAC. We are going to -- and the ALAC. Sorry. Sorry to the ALAC. I apologize.

And so we're going to move forward. Like we said earlier, the GNSO PDP does have a mandate to look at these issues. And so, you know, our goal is to develop a set of recommendations for ICANN61. And I think that's March 2018. So we can have additional discussions and collect additional feedback.

And I really want to thank everyone for coming. I know there's a diverse set of viewpoints in this room, not only on the substance but on the process as well.

But I think from this afternoon, we can show that we can all get together in one room and have a constructive dialogue on these very difficult and sensitive issues. So thank you very much for staying around for this last session.

I also want to give a real large thanks to our moderators, our facilitators for this, David Fairman and Julie Golomb, who are from CBI and have worked tirelessly not just this week but really

you wouldn't guess that we only hired them a week or two before this started and how up to speed they are with all of the issues. I think they have done an incredible job.

I think this personally could be a model to talk about other really complicated and sensitive issues. So I want to -- I want to offer them a round of applause.

[Applause]

And, last, but not least, I would like to thank ICANN staff who has been -- have been helping us for an incredibly long time. Thank you, everyone. And I believe it's time for drinks!

AVRI DORIA:

Thank you.

[Applause]

[END OF TRANSCRIPT]