JOHANNESBURG – Cross Community Discussion – Geographic Names at the Top-Level Session I
Tuesday, June 27th, 2017 – 17:00 - 18:30 SAST
ICANN59 | Johannesburg, South Africa

AVRI DORIA:
Okay. Then let's start. Okay. Welcome. This is a -- let me see -- gTLD subsequent procedure policy development process working group, cross-community session on geographic names at the top level at ICANN 59 in Johannesburg.

I'm Avri Doria, with my co-chair, Jeff Neuman, and also we'll be welcoming David Fairman and Julia Golomb, as Consensus Building Institute, who will be moderating and leading us through this discussion.

So, at this point, I would like to turn it over to David to sort of tell us about the session, give us some ground rules, and let us get started. Thank you.

DAVID FAIRMAN:
Yes. Oh, scary. Okay. Thank you all very much for coming. Our agenda for this session is, we've already done the welcome. I want to say a little bit about ground rules and the sort of flow of this session.

We're going to hear some background on the issue of geographic terms and names at the top level. We're going to hear more about

a "what if" straw person that attempts to put issues in the form of possible answers, and then get your feedback on that set of ideas and issues. And I'll say more about how we're going to do that in a little bit.

We're going to use most of our time today to get your input. And then at the end of today, we'll summarize some of the main things we think we're hearing and talk about next steps.

And just to say now, there will be another session, cross-community session, on Thursday, starting at 3:15 -- or 3:00, I guess, and so know that now.

So just to be very clear about a couple of things, what we are and are not talking about today.

We're talking about geographic names at the top level. This is not a session that is addressing second-level domain issues.

We are looking -- I'm speaking now on behalf of the co-chairs. I should clarify that the Consensus Building Institute is an independent nonprofit based in the United States, also with offices in other countries, that facilitates dialogue on complicated public and organizational issues. I think it's safe to say that geographic names at the top level for ICANN meets that test.

And we're just going to move through a process of giving you some information, inviting your feedback in a robust way, and then trying to move forward with the process.

I don't need to say anything more than that right now. I want to turn it back to our co-chairs to take you through some of the issues, and let me hand Avri the slide clicker. Thank you.

AVRI DORIA: So it falls to me to give a little bit of background on how we got here.

So, 2007, quite a while ago -- a decade ago, in fact -- we had a recommendation for new gTLDs that basically recommended that geographic names not be protected by any special lists or any complete lists. We thought building lists was probably too difficult and there would be too many, so we recommended that it would all be done via objection mechanisms and there would be no reservations.

The sole exception being the two letters that were registered for ccTLDs, which sort of preceded our whole effort.

There were community concerns, there was -- including GAC advice, and the board decided that there would be different measures in the application guidebook; that there would, indeed,

be reserved names and that country and territory names would be prevented from registration and that other geographic names would require support or at least non-objection.

So basically, the -- the board at the time decided to put in a policy that was not the GNSO policy, and the board has the right to do that in an emergency situation, and they determined this to be such an emergency situation.

In an application process, there were various confusions and disputes that came up. For example, with .BAR, .SPA, .VIN, Patagonia, and others not to be mentioned.

[Laughter]

So we had confusions. We had problems. We had issues that we really didn't have a proper way to handle and they ended up very difficult. So now we're looking to basically deal with that.

Since then, there have been many parallel efforts within the community working on geo names, different focus, different scope. The cross-community working group recently concluded without reaching agreement. There's a GAC working group. There have been many discussions. It's been an ongoing, almost permanent discussion on what do we do about geographic names.

So we recognize those efforts and the divergent views in the community. I don't think you can get a conversation going here between two people without at least three views on it.

[Laughter]

And so we have to do something. We have a new gTLD subsequent procedures group that has an obligation to deal with the issue. It's a topic that's in our charter, and so we are looking for ways to consolidate the work that's been done and collaborate with the community and all the parts of the community to get this.

In terms of this particular, how we got here, we had several Webinars. We invited the community, anyone in the community, no matter what SO, AC, stakeholder group, constituency, or elsewhere within the community they happened to be, who had an opinion, who had a recommendation for what we needed to do to put together a presentation and to speak in that Webinar.

And we had quite a few, so that Webinar was the precursor. It was when we sort of collected the issues and the views that we needed to talk about, we needed to deal with.

ICANN
POLICY FORUM 59
JOHANNESBURG
26–29 June 2017

And we had the history. We had the history of the AGB, we had the history of the policy, and we had the issue of various advice that had been given over the years.

We wanted to make sure that all voices were heard in this, that no voice took over, and that it was really a fulsome conversation.

So we now have the goal of creating a fair, predictable process for allocating strings that match geographically significant terms.

Without consensus for a change, we have the risk of remaining in a state of confusion, of continuing to have issues that we do not know how to solve.

So therefore, we've decided not to wait until we've got recommendations, not to wait until the board comes back to us and says, "But what about this advice? But what about this viewpoint?" But to tackle it early in our process, so that we can come up with a reasonable plan for how we go forward.

So some key criteria to consider in the PDP.

And these bubbles, they're not really a venn diagram, so don't look at it in that way, but we need to look at sort of the union of all of these, not the intersection that you need to be looking at.

It's legal protections.   There's public interest.   There's competition and choice.   There's predictability.   And it's predictability for applicants, for governments, for operators, for users, for just about everyone. And then there's the national interests to be dealt with. There's also user interests, et cetera.

So it's -- we could probably even add more bubbles to this. Remembering my discussion of two people/three opinions, we could add several more bubbles to this, I'm sure.

So please don't look at this as a complete set of issues, but we definitely need to consider these.

You'll take it from this point. Thank you. Great.

DAVID FAIRMAN: Just to test the mic again.

Just to build on Avri's comments about the overarching criteria and to put those in a little bit of a context of stakeholder perspectives, in advance of today's session, my colleague, Julia Golomb, and I had the opportunity to speak with a few colleagues across different elements of the greater ICANN community, and what I want to offer now is a naive outsider with a newcomer little tag on my badge perspective on some of the things we heard, and

needless to say, when we get into a conversation, feel free to clarify and amend my attempt to highlight some things here.

And let me emphasize that no one who we talked to suggested that he or she was speaking on behalf of anyone other than him- or herself, and so what I'm presenting is our effort to sort of categorize some of the interests and concerns that come up around the use of geographic names at the top level.

So clearly -- I say "clearly." Maybe not so clear. A number of governments feel very strongly about the importance of geographic names as denoting a national identity, and also important, subnational places, places of significance, and they want to make sure that those are protected and they want to have voice and authority in speaking to those and they want to avoid confusion in having others than those that they wish to using those terms.

For the ccTLD community, of course with the two-letter codes, there's already very well established national identity with those codes and it's important to that community to make sure that whatever happens with any other geographic terms, that that core use of two-letter ccTLDs is maintained and is clear that those are reserved for governments -- for countries, and that, indeed,

there will also not be a very confused market for ccTLD country code top-level domains.

There's a constituency that I will call for now "geo gTLDs, current and potential." That is, commercial and noncommercial groups that want to use geographic terms in their geographic form with a geographic meaning to denote and connote a place or a group connected with that place.

And they would like to expand their range of potentially available geographic names that they can have access to. There's a general sense of -- a strong recognition that it's important, if you want to make geographic use of a term, to have good relations with governments, because there is an interest there and it seems to be broadly understood among this group that it's important to respect that.

And they, of course, also want a clear, fair, predictable, and timely decision-making process on applications to use those gTLDs in their geographic context.

More broadly, gTLDs -- that is, those applicants, current and potential -- who would like to use terms that happen to have geographic connotations but in a non-geographic sense -- so you can think of some examples from those that Avri mentioned -- they would like to expand the range of strings that are available

to them for non-geographic use, whether commercial or noncommercial, and they too would like a clear, fair, predictable, timely decision-making process.

And last, an important subcategory of gTLDs, those with brand identities that happen to overlap with geographic identities, would also like to make sure that they can enable, use, and protect for their brand purposes those strings that -- that identify them but also have a geographic connotation, and they, too, want a clear, fair, predictable, and timely process for decision-making.

So that is an extremely broad sketch and not meant to capture in depth all the nuance that is clearly in play as people consider the use of geo terms or names at the top level, but I wanted to offer that for context in our ongoing conversation.

So today, then, just to remind you, what we're after is your input on: Given the key criteria that Avri just walked through, and given the range of stakeholder views and concerns that I tried to name, and probably more that you will articulate, how can ICANN, how can this community, find a way forward so that you avoid deadlock, you avoid ongoing confusion and dispute, if possible, around this set of issues, and as part of that, we want to talk at

least a bit about the process, the actual process, for working through this issue under the auspices of this PDP.

So that's where we're going to go on to.

But now I want to hand it back to Jeff to walk through this straw person, which is meant to be a conversation starter. Jeff?

>> (Off microphone.)

DAVID FAIRMAN: I think if you -- if you can bear with us for long enough to get through the straw person, we'll open it up, you'll have a chance, so just hang in there. Thank you. Go ahead, Jeff.

JEFF NEUMAN: Okay. Thanks. Can everyone hear me? Okay. Great. Thank you very much. I'm Jeff Neuman. I am going to talk a little bit about what some of you have seen and we have called, just for lack of a better term, a straw person.

From, you know, past conversations we've had in the community on geographic names and also in the Webinars that we held in April, it's clear that there are divergent views within the community on how geographic names at the top level should be addressed.

So Avri and I, as co-chairs and not representatives of our community but just as individuals, decided it would be a good exercise to see if we could come up with what could look like a compromise solution that would reflect, in large part, a number of the proposals and observations that we had from the Webinars and the past discussions, to see what it could look like.

It's -- again, this -- what I'm going to go through now, it's not a proposal from the policy development process working group. It's not even a proposal from Avri and I. It's not something that we are advocating, but someone had told me a little bit earlier they used the term "stalking horse" which was not a familiar term to me, but then when I found out that they shoot the horse at the end, it's not a term I wanted to associate with.

[Laughter]

But I get it's a stalking horse that hopefully will just stimulate some discussion on reaching a compromise solution.

The very first thing I want to go over is what this stalking horse or straw person does not change.

Two characters, ASCII, just as in the applicant guidebook and previous advice, would not be allowed.

Those are reserved and understood to be reserved for the use by ccTLDs that either exist or will exist in the future.

Additionally, capital city names of countries or territories, those, just as they did -- I know I skipped one. I'll get back to it.

Just as those required letters of support or letters of non-objection in the guidebook, under this straw person remains the same.

Country and territory names on the ISO lists, they weren't allow in the guidebook. The straw person does not change that. Still not allowed.

City names used in its geographic capacity, meaning New York City, let's say, .NYC, .BERLIN, those would still require support, a letter of support, or a letter of non-objection from the relevant governmental authority. No change is recommended.

UNESCO regions require the support -- require again letter of support or letter of non-objection from at least 60% of the respective national governments. That's what's in the guidebook today. Straw person does not recommend any changes to that.

Now where the -- well, so, in essence, applications -- so this is what we're going to talk about just a few of the differences with the straw person and what is in the guidebook today.

Applications for three-character strings, including those that match the ISO 3166-1, the alpha three codes, would be allowed unless -- and this is important -- if the applicant desires to use the three-character string that matches one on the ISO 3166 list but wants to use it in a geographic capacity. So if someone applied, let's say, for .BTN, which in the United States stands for -- or I should say on the ISO list stands for the country of Bhutan -- I hope I'm pronouncing that right. In the U.S. there is a famous TV network called the Big Ten Network, which goes by its trademark of BTN. They happen to show a lot of college football games. And my personal college is a member of the Big Ten, and they show those games.

That would be an example of if they had applied and they wanted to use .BTN for their television programs, that would be an example of an organization that wants to use the name in a non-geographic capacity.

On the other hand, if someone wanted to apply for .CAN because they wanted to use it to represent Canada, that would be a desired use in a geographic capacity. And they would -- just as under the applicant guidebook today, they would have to get a letter of support or a letter of non-objection.

Applications for strings that exactly match a subnational place name on the ISO 3166-2 list, which is also in the guidebook -- those are counties, provinces, states. Those would be allowed again unless the applicant desires to use those in a geographic capacity.

And then there's an exception in here we'll get to in talking about. There's an abbreviation in here RGN, which stands for a repository of geographic names. And we'll talk a little bit about that. If a term is in that repository, we will talk about a process by which an applicant could use that string.

So came this out of a proposal of two members of the GAC, though not on behalf of the GAC or on behalf of the GAC working group on geographic names but presented in their individual capacity, had proposed the use of a repository for geographic names. And we have incorporated that into our straw person.

Just as in that proposal, we proposed that any government can add a term that it wants to add. But what we have added to that is something we've heard in the Webinar, which is that there is a basis to protect that under government's existing law.

You will notice there are a number of terms here that are extremely vague. That is done by design. It is vague because we understand that more work, if this concept of a straw person were

ever accepted or, you know, any elements of it wanted to be used going forward, that we understand that the term "basis to protect under government's existing law," that would need to be defined and worked much -- there would be much more work that would need to be done.

What it says here, applicants would consult the RGN, again the repository, prior to applying. So if you could picture, let's say, another applicant guidebook for the next application window, it would have in there, "If you are applying for terms, please consult with this repository" and, say, a link to the repository. And they would see whether the term they were thinking of applying for was in that repository.

If there is an exact match of what they would like to apply for and something that's in the repository, then it could go down one of two paths. If they want to use that in its geographic sense, then they must get a letter of support or consent or non-objection. So what does it mean to use geographically? Again, I know this came up in a previous discussion.

So if, again, let's say someone wanted to apply for Bristol, Bristol is a location in the U.K. It's also a geographic location in the United States, in Connecticut, actually where ESPN is located. I don't know how I got on TV networks, but it was on top of my

mind. So if someone wanted to apply for Bristol -- but it also happens to be the name of a manufacturer of luxury planes. So if someone wanted to apply for .BRISTOL to represent the city of Bristol in the U.K. or the city of Bristol in Connecticut -- and I'm sure there are plenty of other Bristols in the world -- then they would need to get a letter of consent or non-objection. But if this company Bristol that manufactures luxury planes, they would not have to get a letter of consent or a letter of non-objection. However, they would be required to submit what has been called a geographic or a geo-PIC, public interest commitment.

This came from a proposal from a gentleman named Paul McGrady, who is in the audience somewhere -- I saw him earlier -- where, in essence, the applicant would state that they would not use the top-level domain in a manner that falsely suggests to the public that connection exists between the geographic term and the intended use.

This -- should note from here this was also taken out of the 6ter of the Paris Convention Treaty language. So this language should be familiar to a number of governments, usually applied in trademark law but here obviously these are not trademarks but a similar -- we thought -- Avri and I thought if we could bring in a similar -- a known concept into this, that might be something more easily understood.

This geographic PIC would be included in the Registry Agreement and would be enforceable by contractual compliance via a dispute resolution policy.

But we still have in here -- let's say a government finds that in the case of Bristol, Bristol, Connecticut, says, look, I just don't believe that's going to address my concerns, then there would be -- what we have in here is a formal mediation process to seek additional or different measures which could result in amendments to the application. So we have in here, it's involving ICANN as an observer because we thought that there should be a third-party observer in this mediation, not to direct the outcome but just as an observer to protect both the government's interest as well as the applicant's interests.

If an agreement still cannot be reached, then we have put in the straw proposal a notion of some form of arbitration or essentially a hearing of geographic -- a hearing from a geographic names panel of experts.

Again, it's a -- we understand there's a lot of elements in here that aren't defined, who would be this panel, what would be the standards, all of that. But this is a framework.

That panel would determine if a proposed use may mislead the public to assume that there would be a connection between the

top-level domain and the geographic term. Again, that's a concept that's taken from the Paris Treaty.

It would also -- if it was determined it would still mislead the public to assume a connection, would recommend any additional measures to address concerns. The last line says that absent extraordinary circumstances additional measures shall not include blocking the top-level domain's delegation.

We think that this is important because from feedback that we've had from a number of applicants in the 2012 round as well as other members of the community, in the current applicant guidebook, essentially there is a veto right of the governments in the guidebook. So, in other words, if the governments in the existing guidebook provided advice on a particular string, in the applicant guidebook today it states that there's a presumption that the top-level domain will not be delegated.

We, in drafting the straw person and wanting to go through these extra mechanisms, including a geographic PIC and including this mediation, wanted to provide an incentive to -- for the parties to agree, to come together and agree on a solution. But if in the end, the ultimate outcome could still be a veto from a government to a number of members of the community, that did not seem to

ICANN
POLICY FORUM 59
JOHANNESBURG
26-29 June 2017

provide an incentive to want to come up with a mutually beneficial and acceptable solution.

So, again, just to kind of wrap that discussion up, this is a straw person that was put together not as a proposal. It's not trying to say in any way that this is the way we believe the working group should go but really just to get some of the issues that have been discussed on the table. And we wanted a little bit of a different format for this than we have had in the past where usually you'd have a panel up here describing their positions and maybe you have a little bit of discussion and then you go home.

We wanted to kind of put something out there to see what people thought about it and whether they could provide some additional feedback.

So I'm going to turn it over to David. And actually Avri and I's role right now is to answer any question. But we are staying out of the rest of the conversation.

DAVID FAIRMAN: Thank you so much, Avri and Jeff.

So at this point, let me just say a little bit about how we want to go about this. And one thing to just put out there for you to consider is the spirit of the conversation. It would be great, not

only here and now but all the time, but certainly here and now, if we entered this conversation in a spirit of curiosity with an interest in actually hearing what others had to say as much as we were interested in letting other folks know where we were coming from; trying not to be totally reactive, even though we may very well have really strong views; to let something percolate and think about it and not immediately dismiss other people's ideas out of hand.

Think about ways forward that would be great for you and at least good for others. So actually thinking through what might be mutually beneficial as possibilities. And maybe just don't worry about needing to be right, right now. There's going to be plenty of time to debate all of this.

I see hands already going up. Just hold them for a second. I just want to talk a little bit about the mechanics here. Okay.

So we have some questions for you to structure the conversation, and I'm going to ask you to respond to those questions. I think you'll see that there is room for everybody to say what's on your mind. We have runners around the room with mics, a system that I think a number of you have seen before.

Requests, please don't make very broad general statements about geo names here. This is a forum where we want to use this

straw person to do what it's supposed to do, which is kick off a conversation.

If you are to my ear very off what I think we're trying to do, I may politely but ask you what you're trying to get at. And if I can also ask if you strongly support something somebody else said and for the record you need to say that you strongly support what somebody else said, that's okay but maybe just let's leave it at that. And you don't actually have to repeat what the other person said, just to help us with time.

We will try to summarize key points at the end. Julia is going to be taking notes throughout. Emily is here ready to flag comments coming to us from folks on line. I will try to keep my eye there as well as around the room.

Now let me give you the questions. We want to do this in rounds. So right now what I'm going to ask you for is: What do you think in this straw person is actually a strength from your point of view? So if you've got your hand up because there's something you really want to critique, hold on. Hold on. We're going to get to that. I promise, soon.

That's our second question: What's unclear or problematic? And we're going to take a bunch of responses on that.

Then we're going to ask you: What would make this better? Since nobody owns it, it's everybody's. Let's see where we can go with any of these elements to make them more interesting to everybody.

And, finally, before we end, we want to get some input about the policy development process going forward. What do you think would make that process as strong as possible as a way to build the chance for community consensus?

So that's how I would like to do it. I'm going to pose the first question: What do you think is a strength of the straw person? I've already got runners.

So we're just going to go -- in this round we will go across. I have got 5, 3, 1, 2.

Please go ahead. Thank you, Thomas.

THOMAS SCHNEIDER: Thank you, David. My name is Thomas Schneider.

DAVID FAIRMAN: Thomas, sorry. We also have a two-minute clock. Go!

THOMAS SCHNEIDER: Okay. My name is Thomas Schneider. I'm currently the chairman of the GAC. And I have a simple question on the way this session is organized and the spirit of this session. It was very interesting to hear 30-minutes presentation of the GNSO history and the GNSO framing and thinking on all these issues.

Understanding that this is a cross-community session, my question would be: Would it be fair to give five minutes or so to the GAC to quickly go through some of the GAC's history on these things so that we have a little bit more of an inclusive understanding of the deliberations that led to this applicant guidebook and the current discussions? Thank you.

DAVID FAIRMAN: Your call, co-chairs.

AVRI DORIA: Did mention that there had been and that they came in and that they were effective but have no objection to a five-minute impromptu presentation, if need be. Though, I felt we were being somewhat fair in mentioning the incredible effect that they had.

DAVID FAIRMAN: I think what I would ask of you, Thomas, if there are some points that you think are absolutely essential for the record right now, please make them, please be brief. Yeah, sorry, the mic.

THOMAS SCHNEIDER: I can also sing, if you want.

Well, thank you for this very nice gesture.

I will try to be brief.

I think, first of all, the GAC is the advisory body that gives advice to the ICANN board according to the bylaws on issues of all kinds of laws, international laws, and on public policy issues as they relate to ICANN's work.

So we have given -- I think this is important to know. We have given some advice back in 2007 on new gTLDs. And one thing that I think is important to note that makes a reference to the WSIS declaration, the World Summit on the Information Society of 2003 declaration, that states that policy authority for Internet-related public policy issues is the sovereign rights of states. That is, I think, an element that we should not forget.

Then it goes into more detail about new gTLDs where the advice says that the new gTLDs should respect the sensitivities regarding

the terms -- regarding terms with national, cultural, geographic, and religious significance. It says that ICANN should avoid country, territory, or places names and country, territory, or regional language or people descriptions unless in agreement with the relevant governments or public authorities. I'll leave out some things that are not necessarily relevant.

And then there's a letter from 2009 from the GAC chair to the ICANN board, plus an advice as part of the Nairobi communique that I think is relevant that says that strings that are a meaningful representation or abbreviation of a country name or territory name should not be allowed in the gTLD space. It also says that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccTLD PDP and other geographical strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

Some of these advice was taken into the -- as you said, in the applicant guidebook. The part about general protection of geographic names that would go beyond the ones that are now in the current applicant guidebook, where you have lists of country names, territory names, three-character codes, and regions of a country, and capitals, additional requested-from-the-GAC protection was not taken in.

I will stop here. Of course there will be a lot of advice after the issuing of the applicant guidebook, but I think it's important to see what we, as governments, in consultation with our businesses and our citizens, came up with as advice, and so to know the history -- a little bit of the history from us. Thank you very much for your attention.

DAVID FAIRMAN: Thank you very much.

Now, colleagues, we -- we've got limited time. I -- I'm -- I want to just ask of you --

Can we go back to the questions, though? I just want to ask of you: Let's try and do this on the questions because if we do that, we're going to find out a lot together pretty quickly. If we go way off topic, we're not.

So can I go back to the question: What do you think is a strength of this proposal? If you want to answer that question, raise your hand. If you don't want to answer that question, don't raise your hand.

Okay. Let's go -- so -- I don't know who we had before, but I see 1 and 3. Let's do that. 1 and then 3. Thanks.

EN

PAUL McGRADY:	Thank you. Paul McGrady. I was the person who put forward the Geo-PIC, and so naturally one of the things that I like about the straw horse is that --

[Cheers]

-- much of the -- yeah, much of the Geo-PIC is in the new discussion document, and so I was glad to see that.

I think that the strength of the Geo-PIC is that it provides flexibility. It provides some certainty.

Jeff mentioned Bristol, Connecticut, but he forgot about Bristol, Tennessee, and so when the issue of having to get letters of consent and letters of permission for top-level domains that would not be used in a geographic sense, it becomes quite complicated when you factor in Toledo, Spain, Toledo, Ohio, and Toledo, Oregon and how do you rank those, how do you get letters from everybody. It's quite complex and caused a lot of -- a bit of concerns and issues in the last round.

And so my favorite thing about the straw horse is the fact that the Geo-PIC is there, and for those of you that would like more detail on the Geo-PIC itself, if you go to my blog site, winston.domains, you'll see it explained in some detail, and -- if you've not had a chance to review it already, and so I'm very encouraged by the

straw horse and am looking forward to working out some of the details.

Also, a side benefit that makes me happy about the discussion document that's in front of us is the fact that it -- it accomplished its intended purpose.

When I look at this room that's full of people from all aspects of our community, from the GNSO, sure, but from the GAC, from the ccNSO, I see faces from ALAC, so it accomplished what it needed to accomplish, which is, it got us into a room for a dialogue, and I'm happy about that. Thank you.

DAVID FAIRMAN: Thanks. Thanks a lot, Paul. Yes. Number 3, please. And please state your name. Thanks.

BENEDICTO FONSECA: Yes. Thank you. My name is Benedicto Fonseca. I'm from the Brazilian government.

I'd like to follow the rules and address that first question because I'd like to comment the way you are proceeding this consultation.

I think it was very fair to represent the interests and the different concerns of different stakeholders. I would only add that

governments also have a concern about having predictable rules. We should also mention that. We also -- we share that concern.

And basically what I want in regard to the straw person is to say I think it's very clear. I'd like to acknowledge the amount of work that was invested in it, and I think it provides a very good basis for discussion.

So I think those were the positive aspects I'd like to highlight and I leave my -- to express my concerns and criticisms to the second question. Thank you.

DAVID FAIRMAN: Thanks very much for the spirit of that. Emily, please go ahead.

EMILY BARABAS: This is a remote comment from Yoshi Murakami. This is a comment from Yoshi Murakami participating in his personal capacity, representing a number of Japanese brand TLD applications in the first round.

His comment is, "Applicants need to have certainty of process so they must have guarantee that if they follow the rules set out in the applicant guidebook, their application will not be held up or refused for reasons which seem arbitrary to them. If a brand is

registered as a trademark and being used in the world including in a country where it expresses objections, this seems arbitrary, particularly when the proposed manner of use as a brand TLD would not cause confusion to the public. The idea of adopting a Geo-PIC seems like a good solution."

DAVID FAIRMAN: Okay.

EMILY BARABAS: "It reflects" --

DAVID FAIRMAN: Is there more?

EMILY BARABAS: Just a little bit more.

DAVID FAIRMAN: Okay.

EMILY BARABAS: "It reflects a commitment to avoid misleading use directly in the registry agreement. Brand TLDs guarantee governments that the

registry is serious and will take steps to enforce against improper use. Of course, in the case of a brand TLD with Specification 13, the registry operator has complete control over how names are used at the second level."

DAVID FAIRMAN: That -- Number 4, please. Thank you.

KIRAN MALANCHARUVIL: Hi. My name is -- whoa, this is loud. My name is Kiran Malancharuvil. I am with MarkMonitor. I am also the INTA subcommittee chair on geographic terms but I'm speaking only on behalf of MarkMonitor with this comment. What I like about this straw person is that it delineates between geographic use and non-geographic use, which I think goes really far in eliminating some of the concerns that some people might have felt crossed the line into hysteria about how these were going to really infringe on the rights of governments and how they were used.

So obviously there are plenty of problems, but in the spirit of -- of yours, that's one thing that I like. Thank you.

DAVID FAIRMAN: Thank you for that. Let's go to Number 1 here. Yeah.

MARTIN SUTTON: Hi. Martin Sutton from the Brand Registry Group.

On the primary strengths here, I just want to probably echo similar to what Kiran mentioned there, but that it recognizes context of use, which is very important for the brands, as Yoshi has also mentioned there in terms of use as well.

DAVID FAIRMAN: Thanks for that. Number 2, please.

J. SCOTT EVANS: Hi. I'm J. Scott Evans from Adobe Systems, Incorporated. I think one of the good things is, as Paul said, that it got us in a room. I think also it made an attempt to be balanced. I don't think it's perfect, but I think it tried to be balanced as best it could, and I think it has some safeguards and some safe harbors in there that people can use. We're never going to get something that everyone's going to agree on. You know, we do business every day where you have to compromise and you have to come to a consensus compromise about what's best and tries to take into account the best solutions so that people will have certainty,

because people are making business decisions based on this. They're investing money. They're coming up with business models and business plans. And I think we owe it to the community and to those investors who want to innovate in this space to come up with a compromise solution and I think this is a nice start.

DAVID FAIRMAN: Thank you for that. Let's come -- do we have another -- yeah. Number 3 here and then we'll maybe take one or two more, if there are, and we're going to move on. Please.

PIERRE BONIS: Yeah. Thank you. Pierre Bonis from afnic.fr, member of ccNSO. I would like to say that I'm happy with the -- the beginning of the proposal that reflects small parts of the consensus that -- or the small consensus that we had in the cross-community working group.

So for that part of the answer, I would like that I like very much what remains from the applicant guidebook 2012, and then after, I will have other comments on the rest of the proposal.

DAVID FAIRMAN: Do we have anybody else speaking to strengths right now? I'm seeing one -- one more. Number 4. Oh, and Number 2 and I think those will be the last for this. Yep.

GREG SHATAN: Hi. My name is Greg Shatan from the IPC but speaking solely in my personal capacity.

One of the things I like about this is that it points out that the -- if there is a registry of geographic names, that the names that are going into it need to be protected under existing law in the country that's advancing the objection, and therefore it's not merely based on whim or kind of sovereign rights of some sort. Thank you.

DAVID FAIRMAN: Have one more? No. Okay. Very good.

So from the headline to the detail: Good to get a conversation started; good to get something out there that at least attempted some kind of balance or an effort to suggest some modes of compromise or integration; good to see that some important elements of the AGB that some people liked are there; good to see that in principle, there are ideas for predict -- introducing and maintaining predictability and certainty in the process here.

Whether it's fully workable, that remains to be seen but that seemed like a strength. And that the basis in law seems like a useful starting point to at least some in the room.

So I think that's -- that's really helpful to get -- oh, and then the geo and non-geo use distinction, again, helpful to some.

Let's go to the next question, where I suspect we'll have a few more folks who want to comment on things that seem unclear or problematic.

[Laughter]

I'm going to ask my runners to just move where you want to move. Why don't we do -- we're going to go this way. So 2, 1, 3, 5, 4. 2, 1, 3, 5, 4. 2, you start.

SEBASTIEN DUCOS: Hi, Sebastien Ducos on behalf of the geo TLD group.

One thing that is absolutely missing -- and I've heard it many times this afternoon. It was my first point when we had the long discussion a few days ago. Why try to repair something that's not broken? We have an AGB that worked. Nobody died. A great number of TLDs were delegated. Some, indeed, are still in

contention. But before we start to change anything or want to change anything, what are we trying to do here?

DAVID FAIRMAN: Number 3? Yep. Oh, no. Sorry Number 1 and then Number 3, yeah. Number 1, please.

PAUL McGRADY: Thank you. So some things that are not my favorite with the discussion document.

Number 1, I think that we need to do some cleanup around the dispute mechanism. I think that, you know, this geo panel, we have to flesh out what that would be. We would have to bake in time frames so that applications weren't held up forever. You know, an application that's held up two or three years or four years in front of a geo panel is almost the same thing as vetoing it, and so I think we would have to focus down on that issue.

One of the benefits -- and I hate to keep saying it, but one of the benefits of the Geo-PIC also is that in terms of the dispute mechanism there, we already have it. We already have a PIC DRP that anyone can file. We already have ICANN compliance that looks to see how -- whether -- whether the contracts --

DAVID FAIRMAN: Paul? Yeah. Critique now. Yeah.

PAUL McGRADY: Right. So I am critiquing. I'll get there. I promise.

We already have ICANN compliance that looks at the contracts. The part of the straw person that builds in this final objection process at the end doesn't have that level of detail. It's not settled already in the community where the PIC process is. Thank you.

DAVID FAIRMAN: Okay. Now to Number 3. Yeah. Thanks.

BENEDICTO FONSECA: Thank you. I'd like to echo what was said by the first speaker on this. I -- I think one problematic element about the straw person is that it implies -- it's based on the assumption that we need new rules. And building on what Thomas has said, I think the compromise was made in 2012, in a way, because governments have expressed their concerns. They are not fully taken on board. Other sectors. So the compromise is there.

I think one problematic aspect about this that we need to change, maybe -- and as it was said by others, that those rules that were provided in 2012 allowed for the -- almost 100% of situations to

ICANN
POLICY FORUM 59
JOHANNESBURG
26-29 June 2017

be addressed, so maybe we need to make some improvements, some adjustment, but not to make a new set of rules.

And in regard to the Geo-PIC proposal specifically, I think there is a fatal flaw, if I can say, because it changes -- in a way, it reverts the -- totally the equation because I think it's inconsistent to think that in regard to parties that have expressed their concern and they have inserted their concern in the repository, that they would be completely out of the process in assessing whether the -- the assessment that it does not -- that the delegation will not affect their concerns, they are not part of this, this will be done only with the ICANN secretariat. I think it's -- it implies an ex post assessment and puts the burden on governments and ccTLD operators to provide for that.

And if I can use my 15 seconds just to say on the basis of what is taking place now in regard to the delegation of the two-letter code at the second level, this is exactly what is taking place. We are faced with a situation in which we have a number of a situations into which we have that delegation. We are not aware --

[Timer sounds]

-- and we can not assess. We should go one by one and we think it's not a good proposal.

DAVID FAIRMAN: Thank you. That's helpful. Number 5 and then we've got Number 4 and then we're going to come back around. Just runner colleagues, I'm counting on you now to go to people who have not already spoken. Yeah. Please.

DIRK KRISCHENOWSKI: Dirk Kirschenowski from .BERLIN. We've done some research on geo names and found out that every subnational place name with over a hundred thousand inhabitants, there are a couple of -- a handful of trademarks out there for every of these strings.

And going back to the example of Bristol, if I would be the company having the brand Bristol and selling toys or some things, one day I get rid of the toys and I want to make something else but I have the TLD there. What I can do is just open the TLD and let the market decide. I'm not talking about Bristol or something like this, but if this is on the registrar market, then the registrars will sell it to -- to cities of Bristol, and you can't do anything for -- for this, and that's -- that's a flaw.

Another flaw is the idea of having GAC advice on this, because we have seen with .GmbH or .INC or .LIMITED or something like this that there was no final advice if it was a string which concerns only one country or two countries, and if you have to -- all

governments decide on a name like .LYON, you wouldn't get a consensus on that.

So I would say -- but that is part of the next question, what's to do.

DAVID FAIRMAN: Very good. Thanks for that. Number 4. Yeah.

CHRIS DISSPAIN: Thank you. That is loud, isn't it.

Hi, everybody. It's Chris Disspain. I'm with the ICANN board but I'm talking entirely in my personal capacity and somebody who is interested in ccTLDs.

I tend towards the sort of view about if it isn't broke, why fix it, and that's why I want to address one particular issue, which is the three-letter character codes, rather than geographic names.

And I -- the devil's in the detail. So it's a -- it's a good idea to say, "Well, if it's not going to be used for a geographic purpose, then that's fine," as long as you can be sure that that is actually what happens.

So if "can," for example -- if it's -- clearly, what this means is it couldn't be an open slather domain because you wouldn't be able to do that, so you'd have to be using it for a particular purpose and you'd have to build a mechanism to ensure, assuming you had the consent, that it didn't happen, and then there would have to be a process to say what you would do, and I think that is something that's missing from that. But I accept, of course, that that's massive detail and you need to look at the principles first. Thank you.

DAVID FAIRMAN: Chris, before you sit down, before you sit down --

CHRIS DISSPAIN: Yes.

DAVID FAIRMAN: -- just a point of clarification.

Conceptually, the possibility of drawing a distinction between geographic and non-geographic use, viable in your mind? Not viable in your mind?

CHRIS DISSPAIN: Well, it's viable because we've already done it --

DAVID FAIRMAN: Uh-huh.

CHRIS DISSPAIN: -- and we do it in different circumstances. So leaving aside all of the passion that exists about USA meaning USA and nothing else and "can" meaning Canada but also "can," leaving aside all of that, it's obviously viable because we -- we already do it.

DAVID FAIRMAN: Thank you.

(Off microphone.)

-- 2, 1, and then over to Emily for 3. 2, 1, 3, please. Thanks.

DAVID CAKE: Hi. David Cake. I'm speaking here both as a sort of general representative of civil society and specifically as the chair of Electronic Frontiers Australia, which is one of the signatories of a letter in 2014 strongly objecting to the government rights of geographical names as it was put forward then.

I'd like to say I really welcome in this proposal that adding to the -- the regional -- the protected names list requires some justification in national law. That was one of our major objections, that this was sort of a power governments were giving themselves and we didn't know -- it wasn't clear where it was coming from. If it comes from national law, that certainly helps. But given that it is extending a national law into an international jurisdiction, there's still some sort of significant questions about how we translate sort of a national right into an international one, particularly where one -- you know, you may be referring to a similar geographical name but not the one that is protected, and so things like that. Like in a different country.

I say that as a resident of a city that is named after a city in a different country.

And we really think that one of our issues about PICs as a general mechanism is that there is not really any input into the -- from the community into the content of PICs and it can be sort of a -- somewhat of a fait accompli with no input from the community and a lot of the things that we have in the past thought are quite, well, in fact, against community policy, explicitly rejected by community policy, that found their way in. There needs to be -- how the geographical PICs are conducted sounds like a useful mechanism, but it really needs some thought about community

policymaking to inform how we construct those geographical PICs and what is in them, and that needs to include, you know, free speech rights under the national laws and so forth and things like that. Thank you.

DAVID FAIRMAN: Thanks for that very much. So we've got 1, 3, 5, 4. Please.

JORGE CANCIO: Hello. This is Jorge Cancio from the Swiss government. It's a bit difficult to sum up everything in two minutes, so I will try to be brief.

First problem, it starts on the basis of a narrative that is not shared by the community.

Second problem, it starts not with the issues or with a factual account of where we may find agreement on what the issues are but starts with one proposal.

Third problem, this proposal goes in a very specific direction, picking up the proposal of one individual from which is unknown to most of the community, with all due respect.

It doesn't look into what worked in the 2012 AGB. So there's no account on that, and that's why the argument we are fixing something that for many is not broken is so important.

It creates ambiguity and legal uncertainty with what is a geographic use. Who would adjudicate that? Who would control that? Who would enforce that? Who would prevent users, registrants, registrars from giving the TLD geographic use?

It sets the burden on those who have diffuse interests, be it the communities, be it the governments who are not --

[Timer sounds.]

-- focused on this.

I finish in a second.

DAVID FAIRMAN: Yep.

JORGE CANCIO: And instead it takes the burden away from the applicant who has a direct interest, who has very well-organized interest to pursue the application.

And, lastly, but not least importantly, it ignores the fact that TLDs are unique. And that for a solution to really work, we need to have all interested parties on boat -- on the boat when TLDs are delegated.

DAVID FAIRMAN: Thanks for that, Jorge.

Please, go ahead.

EMILY BARABAS: These are two short items from remote participants comments. First a question from John McCormac from hosterstats.com. Question: So what would happen if someone applied for .EARTH as it specifically relates to the planet? Would it still require 60% governmental approval?

[Laughter]

Are there territorial limits for a geographic territory, or will they be decided on the fly?

The second item is from Robin Gross from the Noncommercial Users Constituency.   It's a comment.   "Proposal doesn't adequately protect applicants' freedom of expression rights. People, businesses have legal rights to use geographical terms,

and the proposal doesn't account for applicant's free expression rights," end comment. Thanks.

DAVID FAIRMAN: Thanks for those. And just to quickly note, we are going to give Jeff and Avri the option to respond to questions at the end of this round. And it will be up to them how they want to do it.

So I'm going to go to Number 5 and then we're going to come back around to Number 1 and then Number 2.

OLGA CAVALLI: Thank you. Thank you very much. And thank you for organizing this session. We appreciate the dialogue. We just --

DAVID FAIRMAN: Olga, if you could just identify yourself.

OLGA CAVALLI: My name is Olga Cavalli. I am the GAC representative of Argentina. And I'm also the chair of the GAC working group on protection of geographic names and new gTLDs. So we have been working on this issue for several years. So I will be brief. I appreciate the dialogue.

I think this is a process problem. And so I won't repeat what Ambassador Benedicto Fonseca from Brazil and Jorge Cancio from Switzerland said. I support what they said so I won't repeat. This is for the record.

I also support what our chair said. There is a lot of GAC advice about this issue that should be taken in consideration because it's already informed to the board.

Predictability and clarity in process is also very important for governments, not only for businesses. So please have that in consideration.

There are governments, also, which are not part of this process. They are not -- totally not aware of what is happening in this process. So please have that in mind when preparing this policy.

About the text specifically, there shouldn't be no exceptions to the applicant guidebook as it is.

Oh, it was not me.

The text -- the text talks about every potential applicant is encouraged to consult. I think -- I'm not a native English speaker, but I think the word "encouraged to" is not enough. I think it should be "mandatory."

What happened in the first round is that no -- most of the conflicts that we had were companies that were not in contact with the relevant governments before. And then we had the conflicts, and then that was a problem for the country and for the government and for the company.

So I think the clue -- the key issue would be an early contact in between the parties, early contact before the application is made. Thank you very much.

[Timer sounds.]

DAVID FAIRMAN: Thank you. And very well timed. Now, I know -- I think we had a gentleman here who has been waiting a while. So I'm going to go to him. And then we are going to come back across. Go ahead, please.

JAAP AKKERHUIS: Jaap Akkerhuis, (indiscernible) and also from ISOC.

DAVID FAIRMAN: If you could speak up a little bit.

JAAP AKKERHUIS: The most problematic part which is proposal is --

DAVID FAIRMAN: Sorry, I don't think we quite got your name, please.

JAAP AKKERHUIS: The most problematic portion of this proposal is the way you are trying to apply ISO 3166 without understanding the data in it. The names are not defined in the standard. The names actually come from the U.N. terminology base.

So, furthermore, names are also often not stable. They change and more accurately they want to know.

And the other example we use, the second part, the data in the second part of the standard is just a dump from the governments into that. What it denote is entities they want to see in the country. And the only thing ISO does is providing the code for it. I mean, whatever is in there is not checked total whatsoever by ISO. It doesn't really have any status. It's just there. And it can change on a regular basis, and it does change on a regular basis.

And not every country's putting there the same type of information, the same type of stuff. There's some things, but the issues they have to look at this data to see what it is.

But it's a misunderstanding that 3166 is about geographical names. It's about coding, just coding systems.

DAVID FAIRMAN: Okay. Thanks for that. And acknowledging that there's nuance in the technicalities there.

So let's -- I think we're going to do 1, 3, and then 2. And I see there's also hands back here.

So, please, go ahead.

ALEXANDER SCHUBERT: Yes, hello. My name is Alexander Schubert, and I'm a potential geo applicant for the next round. I'm wrapping my critique into a question.

As I understand, the repository would be filled with terms or strings by the governments. And some governments have already said they would like to have their every small mountain and river, whatever they have, very detailed.

What if there is a large entity, like the state of Israel or Spain or Greece, wish to apply for their country name as a TLD and they find in the repository that there's 20, 30, 40 nations that have a small river or a small hill with their name, would they have to go

to all of those nations and get the permission just because they happen to have a small mountain that no one knows, no one has ever seen or heard about, compared to Israel that probably, you know, there's no being on the earth that hasn't heard about in Israel.

DAVID FAIRMAN: So we're going to go here. Okay, just to be clear for time, we're going to make this the last round on critique.

So 3, 2, 4, 5, yeah? Sorry, 3, 1 -- sorry, 3, 1, 2, 4, 5. Please. Go ahead.

KATRIN OHLMER: Okay. My name is Katrin Ohlmer from DOTZON. And I would like to question the effectiveness of some of the proposed mechanisms in there. So in the last round, we had close to 2,000 applications. And out of those, four -- exactly four had issues. So I would like to see a bit more balanced approach to solving issues which might be in the next round just one or zero or maybe five or eight applications. Why should we set up geo-PICs? Why should we find new mediation mechanisms when there are maybe some more effective mechanisms out there than setting up whole bunch of new rules?

DAVID FAIRMAN: Yes, please.

Number 1.

PIERRE BONIS: Thank you very much. Pierre Bonis, once again, from AFNIC, .FR.

Just two comments. The first one on the dispute mechanism that is explained. I see that there is an effort -- and really this is an interesting idea. But I don't see how it is simpler and more efficient than the governmental veto, by the way. I mean, if everyone knows that from the beginning, this is simple, efficient, and quick.

So this is my first point.

And my second point is about the three-letter characters within ISO 3166. I just have a question to the GNSO. Why is it in the remit of the GNSO as this is country code? ISO 3166, whether it is two or three letters, are country codes. And I guess that in ICANN there is something called ccNSO. Thank you.

DAVID FAIRMAN: Number 2.

GREG SHATAN: Thank you. Greg Shatan again speaking in my personal capacity. Some problems with this proposal. First, it assumes that there should be a repository of geographic names. I think that's a dangerous assumption. I think it encourages basically taking the entire index of the atlas and putting it in there and basically clogging up.

And, secondly, there's no idea of how this repository is going to be validated, what the costs are, who's going to bear the costs. Compare that to the trademark clearinghouse, for instance. That should have at least the same amount of structure around it as the trademark clearinghouse should.

Second, in terms of the geo-PIC, it gives the governments the ability to object merely on the basis that it's, quote-unquote, inadequate. That's vague and a extremely low bar.

Third, it assumes that there's a certain -- that there are some rights. We don't know what the basis of legal rights is that's there. They need much more clarity around that.

And it assumes that there is a certain balance of equities between these rights and legal rights. For instance, those of trademark owners. Thank you.

DAVID FAIRMAN: Number 4, please.

ELISE LINDEBERG: Thank you. Elise Lindeberg, GAC representative from Norway. I just wanted to underline that all of the arguments we heard now, almost all of them, we have heard before. We had all the debates in the first round.

And in that light, I would just like to underline that we should have the utmost respect for the solution we reached in 2012. You can have small adjustment, but why do we do this again and again? So I would just ask for -- if I could ask for a weakness, it's good that we debate. But could we have some more rationale about why do you want to change it? Why do we need a new solution?

DAVID FAIRMAN: Okay. Last on this... yeah.

MANAL ISMAIL: Thank you. My name is Manal Ismail. I'm the GAC representative of Egypt.

The paper differentiates between the use of the TLD and whether it's used in its geographic sense or otherwise. And I'm just wondering how this is going to be done because, I mean, it

doesn't rely only on the TLD itself but rather on the registrations at the second level, which, again, may differ. I mean, some -- at the second level, some may use the TLD in its geographic sense while others may use it in its English meaning or otherwise.

And even for the same second-level name, it sometimes can be hard to tell whether its used for its geographic sense or otherwise until you really get into the details of what's in the white page.

If I can use the example that was used in the paper, which is CAN, for example, it can be "can" which is an English word or Canada. So, for example, for the lack of a better example, I register EGYPTIANS.CAN, I mean, it can be that Egyptians can do anything and it can be Egyptians in Canada, for example. So, I mean, it's very difficult. I'm not clear how this is going to be implemented in practice. Thank you.

DAVID FAIRMAN: Colleagues, at the risk of arousing the ire of those of you who have not had a chance on this round, we need to go on.

Before we go on, since a number of questions of clarification were raised, I want to just give Jeff and Avri a pretty brief shot at anything that you feel strongly you need to speak to now. Yeah.

JEFF NEUMAN: Thanks. This is Jeff Neuman.

On the issue of -- I guess it was asked why the GNSO has any right to talk about the three-letter ISO codes, the only thing I could say to that is this is something that goes back to RFC-1591 in 1994, which defined a ccTLD as two characters. I will also state it said that it's very unlikely that new TLDs will ever be needed. It is kind of out of date.

But I guess on the question of -- at this point, if there is a debate on what is a ccTLD and a gTLD, that's probably something that should happen outside of this group. But for now, this is within the purview of the gTLD process, at least according to the GNSO. We're going to proceed on that in that manner. But obviously if a discussion needs to be had, it's probably in the bylaws and elsewhere.

On the issue of why do we want to change, so -- in the straw proposal, again -- I'm not defending the straw proposal, or, sorry, the straw horse as Paul said. But I will say that there was a need to draft new provisions because the guidebook doesn't address every situation.

And there is a desire, as we've heard from every single group, to have predictability and that there was a desire to address geographically significant terms that weren't mentioned in the

applicant guidebook. There was a lot of confusion on the terms that Avri mentioned earlier, including "bar" and "spa" and "wine" and "vin" and "Patagonia" and so on.

So there is obviously a need to address -- there were -- I can't remember the exact number of geographic TLDs that were applied for that were considered geographic but the number of ones that were disputed does actually constitute a -- more than a de minimus amount of the applications for geographic names. So this was an issue that we still do have to address.

On the three-character issue, for example, that was not something that was in GNSO policy at the time that the guidebook came out -- sorry, or the time the recommendations were made by the GNSO. That was decided in discussions between the GAC and the ICANN board in Brussels. 2011 I believe that was finalized. That was not a matter of GNSO policy. The GNSO was not separately consulted on that but did provide some feedback.

In either case, whatever the GNSO -- or whatever the community decides, whether it is to protect those three characters or not to, it still needs, in the view of the GNSO, to be stated definitively in policy, whichever way we come out as a community on that. Thanks.

EN

DAVID FAIRMAN: Okay, thank you, Jeff.

Avri?

AVRI DORIA: Just one or two quick comments. So, yes, so basically there hasn't been a decision that it needs to be changed. There is a decision that it needs to be reviewed, and it needs to be discussed, and it needs to be looked at.

And, also, as far as I can tell, I can't find "earth" listed on the UNESCO list.

[Laughter]

DAVID FAIRMAN: I think we're going to have a contest to answer the question what would we do with the .EARTH application.

Third question -- actually, let me just -- three headlines from the conversation we've just had.

Number one, there are some folks in this conversation who asked why are we even reopening this. That's a pretty fundamental critique.

Second, there are many questions about striking the right balance between governmental authority, responsibility, legitimacy, and applicant opportunity and predictability and opportunity, so that's there.

Third, even among those who think that some aspects or elements of this straw person are potentially interesting, there are many unanswered questions about the actual implementation of any such idea, is it feasible, would it work in practice. So just to acknowledge that those three baskets of challenge are all on the table.

Third question: What could be done to make this better? What -- what do you have to say about that?

So let's go -- we're just going to go across again. Number 1, please.

HEATHER FORREST: Thank you very much. Heather Forrest. I find it interesting, having listened to the first two questions, that it seems that there is disagreement as to whether or not we have a problem.

We've heard from two speakers if it's not broken, don't fix it. And given that we have some very public disputes, given that we are in the room here, and as many of us are in the room as we are,

given the hour, I'm -- I find it really fairly surprising that there are these statements that we're trying to fix something that isn't broken.

With that in mind, what elements --

Oh, we have the previous question up there, but what --

DAVID FAIRMAN: Sorry. We're going to the next question now. We're on Question 3: What would make this better? Yeah. Thank you.

HEATHER FORREST: Yeah. So I think one problem that most definitively needs fixing is there are mechanisms in the applicant guidebook that are not based in law, and that is something -- and there are certain aspects of the straw horse that are an improvement in that regard and there are others that are not an improvement in that regard.

So some work there, I think, would be -- would be very appropriate.

In terms of where to start, as we go forward it appears to me that we need to come to an agreement as to whether or not we have a problem. Thank you.

DAVID FAIRMAN: Thanks for that. Number 3, Number 5, Number 4. Yeah.

DIRK KRISCHENOWSKI: Dirk Krischenowski with .BERLIN.

So of economic interest to applicants are especially cities and regions, the large ones above a hundred thousand inhabitants, and there are -- there are a hundred thousands of these places out there.

And the 2012 applicant guidebook, as it states there, has a perfect protection for these strings, as it says, if there's an applicant who needs the non-objection or support of the relevant government. That's a very strong protection.

The new straw man proposal really flaws this down to if and when and is used as and something like to this to an uncontrollable situation for those names.

And as otherwise chair of the geo top-level domain association and interest group, I support what Sebastien and Katrin said. We don't need only very limited adaptions of the 2012 guidebook to really have a very strong protection and also open -- open the space for others like -- like brands which want to apply for a city.

Why shouldn't they ask the city for having a fair use of the name of that city as a brand? There shouldn't be a problem on this.

DAVID FAIRMAN: Thank you. Number 5, yep.

And just for time, we're going to -- I think we'll take 5 and 4 and then we're going to actually need to move to the last question.

Please, Thomas.

THOMAS SCHNEIDER: Thank you. Thomas Schneider, current GAC chair again.

Just one thing. What is the use of these notes? What will they be used for? I ask this question for the following reason: On the first question, there were about two or three people that supported the idea of a -- of a Geo-PIC, and that was noted visibly that that for some seemed to be a good solution.

On Question 2, there were about 10 who had doubts with the Geo-PIC, and I'm not really sure whether that can be read out of the bullet points that were there.

So I think we should try and make sure that the -- whoever writes this down adequately reflects it in an understandable way.

ICANN POLICY FORUM 59
JOHANNESBURG
26–29 June 2017

Then the second remark, I think it's absolutely legitimate to put everything in question, so whatever people think has worked can be questioned, should be questioned. That's part of a review analysis process. I think that makes sense.

I think what some government colleagues may want to say is that they think the -- the use of country names, territory names, three-letter codes, has worked, and where they see room for improvement or the need to improve is on those names that were not protected in a particular way in the applicant guidebook, where then the only way to protect this was a general consensus objection by the whole GAC that then triggered lots of questions why and so on, and missing rationale and these things. So -- but I think just to make the point, I think it is legitimate to question everything, go for everything, and then see what elements are agreed and what are not agreed. Thank you.

DAVID FAIRMAN: Please. Thanks.

RUBENS KUHL: Rubens Kuhl, NIC.br. I would like to prove something that I see missing in the Geo-PIC proposal which would address behavior of registrants. A Geo-PIC would address registries' behavior as

being -- using it in a geographic sense, so one way to augment that would be to have a UDRP-like process for TLDs with Geo-PICs. We could call it "Geo DRP." Very innovative way to call it. And that process could address concerns like cometo.can, which most likely is something referring to Canada and not to someone to become a can or things like that.

So we could expand and that could address some of the concerns that were raised in the previous questions.

DAVID FAIRMAN: Thank you very much.

So here's what we need to do, only because of time.

We want to switch to our last question, fully respecting that I know there are more good ideas for improvement out there and we're going to talk about how you can get them to the co-chairs in the process.

But let's -- let's go to the last question, which is about the process.

So we only have time for a couple of thoughts on this, but let's go to Number 1. Do you have a thought on the process? What could make this process on these issues, this PDP process going forward, as effective as possible in helping to build a consensus?

Do we have somebody to respond on that there?

>> Sorry. I have -- I wanted to answer to the prior question. The previous one.

DAVID FAIRMAN: We can't do it. I'm sorry. We're trying tight on time. Can we have people who want to respond on process, Number 4? Thank you.

MARK McFADDEN: Just talk to the three of us.

Oh. One of the things about this --

DAVID FAIRMAN: Sorry, sir. If you could just identify yourself.

MARK McFADDEN: Mark McFadden speaking on my personal account. One of the things about the straw person proposal is -- and I'm going to catch myself agreeing with Heather Forrest here -- is that there's not -- this is a solution in search of a problem, and what we're missing is a succinct and crisp problem statement here that came out of the previous round.

It's clear that some people believe that there are significant problems. It's clear that there are some people who believe that there are minor tweaks required. But what's missing from this analysis and what needs to move -- to take this conversation forward is a very crisp description that is a problem statement that then can be used as the metric against which you judge solution -- potential solutions.

So one of the things that I would tell the co-chairs is that they should go in search of volunteers to actually build a problem statement here and stay away from straw man proposals that don't define with any clarity at all what the problem is that they're attempting to solve.

And truly, with great respect to Avri, I mean, to talk about confusion in the last round doesn't get to the crispness of the level of detail that we need to identify the problems that we need to solve, and so I think my advice to the co-chairs here is that the next step here is not so much to abandon the straw person proposal but to set it aside and work on a very clear description of a problem statement.

DAVID FAIRMAN: Thanks for that.

So we're going to do 1, 2, 3, and I think that's all we're going to have time for. 1, please.

JORGE CANCIO:

Hello. Thank you. Again, Jorge Cancio, Switzerland.

First, I think we -- and similarly, we should start with identifying and describing factually the issues, so that they are understandable to all of us.

Second, we should distinguish between the different things we are talking about. Country codes -- country names, territory names, country codes are different species. We shouldn't be talking about that here or alone in a GNSO setting, so we should have there the ccNSO, the GAC, ALAC, everyone on the table. And then once we have that description of the issues, we have the right setting with the right people at the table framing the discussion in an environment where we act as peers on these issues, we can go to -- to the next level.

And I think that on the issues, we have identified some issues on those names that were beyond the AGB of 2012, so perhaps we should dig into those issues and see what is the adequate framework so that we create legal and policy certainty for everyone -- applicants, governments, public authorities,

communities -- taking into account the different incentive structures you have to set so that this is a fair process, because we are talking here about very different stakeholders, some with direct, concrete interests and some with diffuse general interests --

[Timer sounds]

-- which makes the discussion very different.

DAVID FAIRMAN: Thank you. Number 2 and then Number 3. Yep.

J. SCOTT EVANS: J. Scott Evans from Adobe Systems.

I think that one of the things that would make this process better is I don't think we have a clear understanding what the legal boundaries are around this type of thing, so if we could get maybe someone outside of this community that deals in international trade.

This has actually been an issue -- I'm a trademark attorney -- that's been going around since like 1920 in international negotiations, and so if we could bring in a panel of professors or a group of folks to educate the community on the issue so we can

understand what the issue is with regards to the protection of these names.

I think what makes some people uncomfortable is the 2012 AGB sort of made an assumption about what the law was around this and gave rights to countries which some people would dispute they even have.

Now, I may be wrong on that. I'm ready to be educated on it. But I would like to get an impartial panel in to educate us, because I think there's a lot of misunderstanding about what the law is or is not.

DAVID FAIRMAN: Thanks for that. Last one for now. Yes. And please identify yourself. Yeah.

KATRIN OHLMER: Yeah. Katrin Ohlmer from DOTZON again. If this is about a community discussion, I strongly would recommend that we start on Thursday with Number 3 again and including all the open comments we don't have yet.

>> (Off microphone.)

DAVID FAIRMAN: I'm going to use that opportunity to segue to where -- where we go from here.

So let me just name very broad headlines.

There are some questions about the -- both the history that got us here and the definition of the issue as a problem of what actually is the scope of the problem here.

There are a number of things that people find interesting in the straw person that could provide a good starting point for balancing the legitimate, but sometimes competing, interests of governments and some categories of applicants. There are many questions about each element of the straw person. No element, I think, could stand without much further development. There are some elements that raise major concerns for some stakeholders in the room.

So we are certainly nowhere close with this straw person in its current form but it has the potential to go as a starting point for further development, and that brings us to process.

Yeah. You want to come in on -- yep.

AVRI DORIA: Yes. Excuse me. One of the things we didn't get to is to answer questions.

One thing that perhaps we neglected to mention frequently enough is, there was a background paper that was put out before the Webinar, and that background paper was also discussed in this.

That background paper does contain much of the history and does contain the essence of the problem statement.

Now, perhaps we should have done a -- a discussion of the background paper here, but that was sort of the prerequisite to the Webinar, which was the first step in this process and such. So just wanted to mention that that was, indeed, put on the table beforehand.

JEFF NEUMAN: And to respond to a comment that -- sorry. This is Jeff Neuman. To respond to a comment that came from one of the previous sessions, the background paper was actually almost entirely derived from the introduction to the cross-community working group use of country and territory names, so this -- this had been fully vetted by other organizations and groups that were involved in the creation of the problem statement.

So as Avri said, wish we had more time for this. We had actually asked for three hours today. We weren't given it. But had we been given it, we would have gone into much more of the background and that there is a problem statement out there. Thanks.

DAVID FAIRMAN:

Thank you. Thank you very much, Avri and Jeff. I'm sorry to not have seen you earlier in this.

Let me just wrap up this session by confirming for everyone in the room, as well as those on line, there's more to come.

First, tomorrow, you are invited -- each and every person in this room is invited to Boardroom 4 between 9:00 and noon and 2:00 to 5:00 -- that is 12- -- 1400 to 1700 -- to come and meet with whatever combination of the co-chairs, Julia, and myself are there to further elaborate on your thoughts, concerns, suggestions. Door wide open. Please make use of it.

Second, as you know, on Thursday we've got three hours-ish here. We will attempt to organize that session in ways that are responsive to some of the issues raised here and continue to try to move the conversation forward, and we welcome your suggestions on how to make best use of Thursday.

If you are with us virtually, please feel free to email to geo-names-session@icann.org. That will be posted. Give us your input.

And then finally after ICANN 59 wraps up, the co-chairs are committed, as you heard them say, to a way forward that has a mechanism for cross-community participation in this PDP. I want to turn it back to Jeff and Avri to wrap us out.

AVRI DORIA: Yes. So really do appreciate the breadth of the comments we got today. Do ask people, if they have a chance action, to go back to the background paper. And do want to reiterate something that came up in some of the earlier discussions that as we look forward to resolving the problem we have to resolve in the PDP of what do we do, we are looking at putting together another work track specifically on this, and one of the thoughts we've had is that to make -- to make sure that that is fairly representative is to ask for leadership from the various communities so that that work track becomes -- while it is still within the context of the -- of the GNSO PDP, it is a shared responsibility by the other communities, if they're willing to work with us on that. So -- and that's an idea that we can perhaps talk about more in the next session.

So thank you very much for participating in this. Hope it was interesting enough to get you talking about it tomorrow and to come back to the next session on Thursday. Thank you.

[Applause]

[END OF TRANSCRIPT]