

**ICANN
Transcription
GNSO New gTLD Subsequent Procedures PDP WG Work Track 5
(Geographic Names at the top-level)
Wednesday, 03 April 2019 at 20:00 UTC**

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Operator: Recording has started.

Julie Bisland: Okay. Thank you. Well, good morning, good afternoon, good evening, everyone. Welcome to the new gTLD Subsequent Procedures Sub-Team Track 5 Geographic Names at the Top Level call on Wednesday, the 3rd of April, 2019.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect Room. If you're only on the audio bridge, could you please let yourself be known now? And I already have noted Kavouss, Bram, Vernatius, and Abdulkarim on audio only. Anyone else?

All right. I'm hearing no other names. I would like to remind all participants to please state your name before speaking for the transcription and please keep your phones and microphones on mute when not speaking to avoid background noise.

With this, I will turn it back over to Olga. You can begin, Olga.

Olga Cavalli: Thank you. Thank you very much, Julie. This is Olga Cavalli. Hello from beautiful autumn afternoon in Argentina, in Buenos Aires, 22 degrees, very sunny, very nice day.

So, welcome to this call where we are trying to review all of the comments received about the Supplemental Report on New gTLD Subsequent Procedures Policy Development Process in Work Track 5 on Geographic Names. I would like to thank staff for a great job that they have done in putting together all these diverse comments in this document, that it's quite large but I will try to guide you to review it. And I would like to thank

my colleagues Annebeth, Martin, and Javier that have worked with us during all this process.

So, let's go to the document. Remember that the document is quite large. It has different sections that you can see in the lower part. Now we will review the section called "Questions for Community Input," and we will start in Line 55 in Question e.4. Remember that it is easier if you just don't look at the Adobe Connect screen, if you preferably look at the document in a different screen, because it's a lot of text and it's easier to follow. So, this is what I'm doing now. I have two computers in front of me. I will try not to get confused with all this technology around.

So, remember also the color codes that the staff has the fantastic idea that at a glance you have a feeling of it's agreement, which is green; some warning, which is yellow or orange; disagreement, which is red; and some new ideas, which is blue. There are some sections in especially this part of the document which has no color. It means that there are different comments which are not grouped into "yes," "no," or "disagreement."

Remember also what we are trying to do is review all the comments received and if they have been properly represented by staff in this summary. We are not opening discussions. We are not reviewing all the items for discussion. So, have that in mind.

And let's start with the document. As Steve has rightly mentioned in the chat, we are on Tab 4, "Questions for Community Input," and we are in Line 55. So, I will go through the comments. My idea is to go question by question and then open for comments. But if you really think that you have to make a comment, just raise your hand and we will give you the floor.

So, let's start. Any questions so far? Any confusions, ideas?

I see none. Okay. Let's go on. So, Line 55 has the Question e.4: "Work Track members have considered a series of principles that may be used to guide the development of future policy on geographic names. The principles were discussed in the context of city names and terms not included in the 2012 Application Guidebook, but they may be applicable more broadly." So, those principles include, in alignment from Principle C 2007 GNSO recommendations, "the program should allow for the introduction of new gTLDs and the program should enhance the predictability for all parties, reduce the likelihood of conflicts within the process, as well as after the process concludes and TLDs are delegated. Policies and processes should be simple to the extent possible."

So, the idea is to see if there is support for these principles, why or why not, additional principles that Work Track 5 should consider. And if it's necessary, explain why. So, there is a reference in the document about where to find the deliberations and details for these questions.

So, let's go to Line 56. There is support from the Brand Registry Group.

57 is support from the Business Constituency.

There is support from RDSHN Honduras.

59, there is support from DOTZON GmbH.

Line 60, there is support from the Registrar Stakeholder Group, and there is more comments there. Supports these principles, as they believe it is helpful to all parties to reduce conflicts while allowing innovation.

61, Line 61, dotBERLIN GmbH & Co. KG and Hamburg Top-Level-Domain GmbH and geo TLD Group support principles.

Line 62, International Trademark Association. "These principles make sense, generally, but overregulating creates confusion. Curative measures can address (inaudible) cases."

Let's go to Line 63. There are more comments here, from the NCSG. I will go to the green part. They agree on policies and processes. "It should be simple, to the extent possible. Moreover, considering the intent and designs of the new gTLD (inaudible), NCSG believes that Work Track 5 should strive to remove as many special cases for string delegations as possible, as there is no one-size-fits-all solution to regional names. Due to the inherently sheer nature of geographical names, it is inevitable that conflicts will arise unless the (inaudible) – (inaudible), what does it mean? – notion of banning all geographical names as string delegations altogether was enacted as policy. As such, ICANN's policies should be focused on allowing all opinions and objections to be heard and not create administrative roadblocks that prevent parties from applying in the first place." This is considered as agreement; so, it's in green.

And there is a blue section, in Line 63, from NCSG that reflects new ideas. The NCSG recommends that "international human rights, including those expressed in the Universal Declaration of Human, guide decisions and actions of Work Track 5 in accordance with the Human Rights commitment outlined in ICANN's core values and corresponding framework of interpretation. The group should moreover consider utilizing such established frameworks for (inaudible) human rights (inaudible) to document risk/benefits trade-offs and clarify decisions made during the policy development process."

So, these were the comments from NCSG.

New ideas and agreement. Let's go to the comments from Intellectual Property Constituency. There is some agreement. They support these principles. Individual development of policy for geographic names in the

scope of the new gTLD program. Apologies. I'm in Line 64. Forgot to tell you that. "But note that as illustrated in the Working Group, these principles mean different things to different people. We do not support any interpretation which would see the support non-objection mechanism applied more broadly as means to reduce conflicts later in the application process or after delegation." So, this is the part considered as agreement, with some qualifications.

And I will go to the section in yellow/orange, in Line 64, from Intellectual Property Constituency, with some concerns. "Indeed, we specifically support broader use of post-application objection mechanisms as more predictable means for addressing conflicts and increasing the simplicity of resolving conflicts concerning applications for new gTLDs, including those allegedly matching a geographic name. One of the aims of the new gTLD program is to increase competition at DNS in accordance with the ICANN bylaws. Reserving only post and support non-objection recognitions and the large number of names undermines this goal by reducing the opportunities for introducing new gTLDs and fails to recognize that many names have multiple different meanings and uses which co-exist in the real world. Further, while reserving names may be predictable, it is not supported by any basis in law, and the IPC is concerned with the potential chilling effect reserving a large quantity of names may have on potential applicants." Finally, the IPC notes "curative rights exist in the new gTLD program and highlights the potential of public interest commitments to be used by applicants and the role of objections and public comments for concerns to be raised in relation with a particular application."

No hands up, no comments. Okay.

Let's go to Line 65, from the Registry Stakeholder Group. Supports – the registries support these principles and believe our comments are aligned with them. And they have some concerns. There are concerns that "over-application of the principles may lead to undesirable outcomes and caution that the Work Track use the principles as overarching guidance only. They are not the only measure by which we will evaluate the policy."

In Line 66, a comment from the United States, with agreement and concerns. Agreement is they support this use of principles that may be used to guide the development of future policy. And then the concerns are "when developing future policy using these principles, the United States also supports taking international law into account and ensuring that no new rights are created."

No comments. No hands up. Okay.

So, 67. We are in Line 67. It's a comment from the Group of Registries: Uniregistry, Minds and Machines, Top Level Design, Amazon Registry Services, and Employ Media LLC. There is also agreement. And then there are concerns. "Over-application of the principles may lead to

undesirable outcomes and caution that the Work Track use these principles as overarching guidance only. They are not the only measure by which we will evaluate policy." This sounds that – well, they have some comments in brackets.

Comments? I heard someone wanted to talk. I don't see hands up. Okay.

68. We are in Line 68. There are some agreement, with comments and some concerns, from CENTR and AFNIC. The agreements regarding ruling principles, they agree that the program should allow for the introduction of new gTLDs. Important, as mentioned, the principles that the predictability of all parties is enhanced. We should try to obtain a process that reduces the likelihood of conflicts, both during the application process and afterwards, and we should aim to make the policy and process as simple as possible. So, this is the agreement part, which is in green. And the concerns are, "However, this does not mean that all names should be allowed." This was a comment from CENTR and AFNIC.

Now, I will go to Line 69, where there are also some agreement, from the ALAC. Supports the application of Principle A. Notes that predictability, avoidance of conflicts, and simplification of processes and policies are best facilitated by preventative measures known to all before the process starts, rather than curative ones that make uncertainty prevail long into the process." There are concerns, which are in yellow/orange. "The ALAC reiterates its stand that there has yet to be a discussion about whether or not another gTLD round or even an expansion of the gTLD is needed or desirable."

Comments? Hands up? I see none.

Okay. Let's go to Line 70. Line 70, comments from the ccNSO. There is some agreement and some concerns. Agreement: "Regarding the ruling principles..."

- Annebeth Lange: Olga?
- Olga Cavalli: Yes. Who's that?
- Annebeth Lange: Christopher Wilkinson has his hand up.
- Olga Cavalli: Okay.
- Annebeth Lange: Christopher has his hand up.
- Olga Cavalli: Christopher, go ahead. The floor is yours.
- Annebeth Lange: Christopher?

Olga Cavalli: Can you hear me, Christopher? Your mic is sometimes...

Christopher Wilkinson: Good evening. (inaudible), for the record. I can hear you. Can you hear me?

Olga Cavalli: Yes, we can hear you now.

Christopher Wilkinson: You can hear me. Okay. Just two small comments. First of all, having reviewed this document – and I thank the staff for the incredible amounts of editorial work that they must have undertaken to produce it – it strikes me that there seems to be a substantial number of registries and registrars who want to liberalize the access to geographical names in their own interests. When I came into this topic in the past, the last thing I thought was that the existing registries and registrars would wish to accumulate registries based on the names of other people's countries and places. And it seems to be the case, and I'm afraid to say that this will lead to a significant reaction and resistance worldwide, because these are names which belong in some sense or another to the people who use them in their own places.

So, I think there's a substantial bias in the comments that are posted and ICANN, the group, will have to accommodate that understanding. Because if we just go for a consensus on the basis of what we've got on the paper here, it will be internationally unacceptable.

And I support the at-large, ALAC, positions and hope that they be taken into account. They represent the very large number of large structures worldwide. Thank you.

Olga Cavalli: Thank you very much, Christopher. And as I said, this is why we are doing this exercise, to try to avoid conflicts and see – and have all this information in place for the next round.

Any other comments? Greg, you want to comment. Go ahead.

Greg Shatan: Thanks. Greg Shatan, for the record. Yes. Can you hear me now?

Olga Cavalli: Yes.

Greg Shatan: Okay. Sorry. I was a little slow on the draw. In any case, I think that, obviously, there are any number of views here, but I think we need to be careful about ascribing underlying kind of motivations to the views of others. People are of course more than welcome to reveal their own underlying motivations at any time. So, I don't know if the registry or registrar position is "in their self-interest" or not, and I submit that only the parties submitting the comments really know. I think there are arguments that a more open delegation in this area serve the public interests and serve the overall purposes of the new gTLD program and of ICANN. I think that while these are – we may be talking about strings that have

geographic meanings, we're talking about strings, generally speaking, that may have other meanings, as well. And those that are uniquely only associated with a geography or that have a certain category, we are dealing certainly with certain categories differently than others, which is entirely appropriate.

So, I think – I would say we certainly – I think we're heading perhaps toward the right balance; I'm not sure yet. But I am concerned about the idea that we have deep knowledge of other people's motivations or, for that matter, other people or other sovereign's reactions. Hopefully we get this right and right enough so that the balance at least leaves people equally satisfied or dissatisfied, as the case may be. Thanks.

Olga Cavalli: Thank you, Greg. Let's see – let's go on with the comments and revisions and see if we can have all the sides in our document. I think all the different ideas are expressed in the document. The thing is it's large and it's difficult to review it.

Javier, do you want to comment?

Javier Rúa-Jovet: Yes. Thank you. Just quickly, thanks for the comments, everybody. Just to remember that the scope today is to make sure that the summary here faithfully reflects the intent of the parties that commented, as close as possible, and try not to comment substantively outside of that scope. Thanks. Bye.

Olga Cavalli: Thank you, Javier. Any other comments? Greg, is that an old hand or a new hand?

Greg? Old hand. Okay.

Greg Shatan: Yes, my hand is old.

Olga Cavalli: I forgot which was my line. We did ccNSO? No, I didn't.

Okay. Thank you, Greg.

If I'm not mistaken, I was in Line 70. So, Line 70 includes a comment from ccNSO. There are also agreement and some concerns. Agreement is regarding the ruling principles. "We agree that the program's introduction of new gTLDs." And the concerns say, "However, this does not mean that all strings of characters should be allowed as top-level domains. ICANN community is in the position to strike a balance between unrestricted introduction and a more restrained strategic approach acknowledging religious, cultural, political, and legal diversity. We acknowledge the importance of having a predictable process in place. As you know, review predictability is, first and foremost, a question of the process. The ccNSO Council believes that the newly to-be-designed process should be acceptable to all stakeholders and should reduce the likelihood of

conflicts, both during the application process and afterwards." So, these were the comments from ccNSO in Line 70.

I will go to Line 71. And before going into several lines that have no colors, I will like perhaps Steve to explain to us why some parts of this document don't have so many colors, how they have grouped the comments, before reading them. Steve, can you do that for me?

Steve Chan:

Sure. Thanks, Olga. This is Steve Chan, from staff. Some of you who joined earlier might have heard an early conversation we had before the recording started. But just to reiterate, the nature of the section we're working right now is questions for community input. And by their nature, they are more open-ended and say the "preliminary recommendations" or "proposals." And so, in that regard, it makes them more difficult to assign the four categories that we've been assigning to each of the comments; so, agreement, concerns, new idea, or divergence. Responses to the questions for community input do not necessarily fall quite so neatly into that structure.

So, as a result, in much of this section – the questions for community input – you will probably not be seeing as much of the color coding, just because it doesn't, as I said, fit quite so nicely into that structure. But what we have done – and this was mentioned on last week's call – is that we've tried to pull out the themes and highlight the relevant sections and comments where we haven't been able to do the color coding and then group the comments accordingly so that they're batched together, which hopefully will make it easier for the group to consider.

Lastly is that by doing so, by pulling out themes in that way, we acknowledge that we're probably losing a fair amount of nuance. So, if anyone does need to take into consideration and understand the full context, you should of course review the full comment.

Thanks.

Olga Cavalli:

Thank you very much, Steve. Very helpful. Okay.

Let's go to Line 71, and there are comments from the Portuguese government. The principles should align with GAC principles, and Portugal believes that the principles set above "should be aligned with the GAC general public policy GAC principles regarding new gTLDs from 2007 related to geographic names. These principles should also recognize that geographic names are of national importance and that governments and public authorities are responsible for public policy. ICANN policy on geographic names should also consider the principles of international law and international conventions and applicable local law. As stated in ICANN bylaws, in performing its mission ICANN must operate in a manner consistent with these bylaws for the benefit of the internet community as a whole, carving out its activities of conformity with

relevant principles of international law and international conventions and applicable local law through open and transparent processes that enable competition and open entry in internet-related markets." So, those were the comments from the Portuguese government, which in general believe that principles should be aligned with that principles.

Let's go to Line 72, comments from governments of Argentina, Chile, Colombia, and (inaudible). Line 72. It's a similar approach to Portugal. Believes principles "should be aligned with GAC principles. Apart from comments in this document, GAC advice related with this issue should be considered. GAC principles and guidelines for delegation and administration of country code top-level domains from 2005." And then there is a list of different GAC advice, GAC principles (inaudible) 2007. GAC Nairobi communique, Beijing communique, Durbin communique, and Helsinki communique, with references of the parts of the communiques, each of them. Government – well, there is the years of each communique, but you can read it in the document.

No hands, no comments. So, let's go to Line 73, comments from Tom Dale as an individual. These are questions posted to the Working Group. So, talking about these principles, "it depends on what the policy objectives are for the new gTLD program, in general, and geo names, in particular. Is this to enable some GNSO members to make more money than they otherwise would and for ICANN to benefit from that? Is it to encourage innovation with associated consumer, technical, commercial, and other benefits? Is it to encourage decision making under the subsidiary principle?" So, Tom makes several comments – questions. Sorry.

Let's go to Line 74, comments from the government of Spain; Swiss Federal Institute of Intellectual Property, SFIP; Icelandic Ministry of Foreign Affairs; German GAC; Origin European Broadcasting Union; government of France; Association of European Regions for Origin Products, AREPO; and Republic of Peru. So, this is quite a large section. Let me...

We are in Line 74. So, let's go. "The rules applicable to (inaudible) Applicant Guidebook work generally well and set an appropriate balance between the different interests at stake. Therefore, they should be maintained, subject to the comments below. The exclusion of country names and variations thereof is consistent with the fact that such names are not generic TLDs and should be under the policy authority of the respective national communities, in analogy to ccTLDs. The non-objection framework established, for example, for capital city names, sub-national and super-national regions, etc., worked well and should be maintained. In the case of non-capital city names, the rule according to which the non-objection framework is not applicable when the alleged intended use is non-geographic should be suppressed, as it ignores the unique character of the TLDs and creates one incentive to circumvent – for example, game

– the requirement to contact and obtain the non-objection from the relevant public authorities. Accordingly, we also disagree with any proposals that suggest to extend the intended use rule to another categories of (inaudible).

"Issues have been identified for geo names TLDs not covered in 2012 Applicant Guidebook do not govern non-objection framework for such names has generated conflicts between the different interested parties. This should be avoided in future expansions for the TLD space. Extending the non-objection framework to such cases would be advisable. The non-objection framework, as such, can be further improved by establishing reasonable deadlines for issuing the non-objection by providing a (inaudible) non-objection if the public authority does not react within the given deadline by establishing a geo names advisory panel whom applicants may consult before even filing their string and by establishing a mediation process for cases where an objection by a public authority is not accepted by the interested applicant."

So, that were the comments from Line 74, from different governments and other organizations.

And we are in the final part of Question e.4. So, I will see if there are any comments or hands. I see none. So, any comments in the chat?

Okay. Let's go to Question e.5, which is Line 75, and I will read it. "To what extent should the following serve as a basis for the development of policies regarding geographic names: international law; national/local law and policy; norms and values; another basis not categorized above. Please explain." And see the deliberations; there is a reference where all these deliberations are included in the general document for you to have a background about it.

So, I will go to Line 76, comments from government of Spain; Swiss Federal Institute of Intellectual Property, SFIIP; Icelandic Ministry of Foreign Affairs; German GAC; Origin European Broadcasting Union; government of France; Association of European Regions for Origin Products, AREPO; Republic of Peru. So, "basis should be the international law, national law, and relevant public policy input from GAC and governments. ICANN is bound by its articles of incorporation and bylaws to respect relevant principles of international law and applicable local law. ICANN also has to consider the public policy advice from the GAC. Furthermore, the evidence included in the report shows clearly that many national legislations provide for protection of geographic names and that they are applied and enforced regarding domain names. Hence, both international law, national law, and relevant public policy input from the GAC and governments should be considered." Then there are several links to the comments in the main document.

No hands up? No comments? No.

So, let's go to Line 77, which are comments from the government of Argentina, Chile, and Colombia (inaudible). "Local, international, national public policy advice from GAC. ICANN must respect local law. ICANN also has to consider the public policy advice from the GAC. International law, national law, and relevant public policy input from GAC and governments should be considered."

Let's go to Line 78, Portuguese government. Bound by articles, bylaws to respect international law and applicable local law. Public policy from GAC. "ICANN is bound by its articles of incorporation and bylaws to respect relevant principles of international law and applicable local law. ICANN also has to consider the public policy advice from the GAC. Furthermore, the evidence included in the report shows clearly that many national legislations provide for protections of geographic names (geo names) and that they are applied and enforced (inaudible) names. Hence, international law, national law, and relevant public policy input from GAC, as well as long and short-form names in the ISO list, cultural and values should be considered." That was Line 78.

Now we will go to Line 79, government of Brazil. "ICANN is expressly bound by its articles of incorporation and bylaws to respect international and applicable domestic laws. Furthermore, ICANN shall consider the public policy advice from governments as declared in Paragraph 35 of the (inaudible) Agenda of the Information Society. Policy authority for internet-related public policy issues is the sovereign right of the state. Under ICANN bylaws, the Government Advisory Committee should consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues. Hence, international and national laws and the public policy input from governments should be considered." Those were comments from the government of Brazil.

And now we go to Line 80, where we have comments from ALAC. "The ALAC opines" – opines? How do you say that in English: Opines? Opinions? – "that international" – I'm learning many new words; that's very good – "that international law, national local law, and policy norms and values such as cultural names as well as immemorial usage – for example, usage of a name extends beyond the reach of memory – should all serve as basis for the development of policies regarding geographic names. We note that each gTLD is a unique piece of internet real estate and delegation to one party – for example, the successful applicant – will necessarily exclude control over it by other parties in the absence of a control-sharing agreement. As such, the delegation of a gTLD ought to be subject to prior scrutiny to the extent possible, and conflicts, objections, and contentions ought to be identified before or during the application

process. All applicants should be encouraged to research (inaudible) to the extent possible and identify conflicts ahead of time."

Justine Chew says, "Olga, I'm pleased to note the 'opine'" – okay. Two new words for me in this call. That's fantastic.

So, let's go to...

Annebeth Lange: Olga?

Olga Cavalli: Yes.

Annebeth Lange: Olga, it was a comment by Paul McGrady further on in your note that I think we should read that for those (inaudible).

Olga Cavalli: Okay. Thank you very much. Let me see if I can...

Annebeth Lange: It's about – I can take it. It's Paul McGrady.

Olga Cavalli: Oh, yes. Please.

Annebeth Lange: It's just a general comment to remind us that we are going through these comments and just because no one is agreeing or objecting to what is being read doesn't mean that everyone agrees with (inaudible) in the comments that were read. That's it.

Olga Cavalli: Thank you, Annebeth. That's a very, very good comment. Yes. Thank you, Paul.

So, I was in Line 80. So, I will go now to Line 81. Now colors have come again. So, we have comments from the Intellectual Property Constituency, with some comments and there are some concerns. I will start with the comments. "Support international law, principles." I'm sorry; I'm in Line 81. "Support international law, principles of national and local law. IPC supports relying on international law as a basis for the development of policies regarding geographic names. Principles of national and local law and policy may also be of relevance. Those operating within a particular territory must be mindful of local law. But it is important to bear in mind that one legal system should not be given preference over another in ICANN's policies."

The concerns of the Intellectual Property Constituency are, "The Work Track 5 supplemental report refers to some examples of national laws which some Working Group members have identified as addressing locally the use of certain names. These national laws, however, do not have global applicability, whereas a DNS operates at a global level. And further, it is necessary to recognize that many names have multiple different meanings and uses which co-exist internationally in the real world."

So, that was Line – I have Christopher. Christopher, before giving the floor to you, remember that we are just reviewing the comments. The idea is not to enter into debating if we agree or not. But you're welcome to make your comments. Go ahead.

Christopher, can you hear me?

Christopher Wilkinson: Okay. Hi. Christopher Wilkinson again. Yes, Madame Chair, I'll be very cautious not to enter into a debate. I would just say as a matter of history that the articles of incorporation of ICANN were amended in negotiation in order to include the reference to "applicable local law," because at the time – and this is still the case today – that international law does not cover effectively all the relevant issues arising from the internet domain name system. So, therefore, I have some reservations about the historicity and the accuracy of the comment that we have just reviewed.

Olga Cavalli: Thank you very much, Christopher, for reminding us that.

I forgot where I was. I was – I finished with Line 81, if I am not mistaken. Please correct me if I'm mistaken. Now I will go to Line 82, which is a comment from the International Trademark Association. There are mainly concerns and some comments. "International law and local local laws should serve as a basis. Cities, international, national law. Believes that governments do not have basis to claim exclusive rights to geographic names. International law and national local laws should serve as the basis."

The concerns are, "In this regard, international law and national law recognize trademark rights and balance them against other interests which have been codified in law and international treaties. Names that relate to geographic areas are understandably politically sensitive since they involve national pride and history. For more than 130 years – since the Paris Convention for the Protection of Industrial Property in 1883 to the WTO TRIPS Agreement in 1994 – the global community has debated how to best balance these national concerns with legitimate protection of trademarks, many of which have some form of geographical significance. Through the long line of global treaties, national statutes, unilateral and multilateral investment agreements, and other (inaudible) since 1883, a vast body of international law has developed on how best to balance the sometimes competing interests of trademark owners and governments in this area of the law.

"Any objection to use the geographic term that is determined to be of either national, cultural, geographic, or religious significance to a country or region has no legal basis under agreed principles of international law or national sovereignty. The express recognition of private legal ownership rights in trademarks, trade names, and geographical

indications by (inaudible) international treaties contradicts any government claim to exclusive rights in geographical names.

"No interpretation of public interests as it relates to ICANN policy justifies disregard of the established international legal framework as it applies to trademarks and geographic indications of origin. Such an approach is inconsistent with the legal obligations of the 176 member states of the Paris Convention under Article 6 and, in this regard, would not be upheld by the national courts of those countries. The established legal framework must recognize and adhere to the ICANN policies, as its development and implementation have been determined to be in the public interest by national governments across the globe."

Those were the concerns from the International Trademark Association, in Line 82. Comments? Hands? I see none.

Okay. Let's go to Line 83, comments from dotBERLIN GmbH & Co. KG, Hamburg Top Level Domain GmbH and geo TLD Group. "Bound by articles, bylaws to respect international law and applicable local law. Bound by the articles of incorporation and bylaws to respect relevant principles of international law and applicable local laws. To improve the application process from 2012, we urge ICANN to respect national legislations when it comes to geographic names and their protection."

Let's go to Line 84, comments from DOTZON GmbH. "Bound by articles, bylaws to respect international law and applicable local law. ICANN is bound by its articles of incorporation and bylaws to respect relevant principles of international law and applicable local law. To improve the application process from 2012, we recommend ICANN to respect national legislations when it comes to geographic names and their protection."

Comments? Questions? Hands up? I see none.

Okay. Let's go to Line 85, Registry Stakeholder Group. Some concerns and some comments. "The Registry Stakeholder Group supports developing policy based on international law. However, due to the diversity of registry membership, members have different views on how (inaudible) laws apply to the development of policies in this context."

The concerns are, "Some Registry Stakeholder Group members are of the opinion that national laws, policies, norms, and values are highly variable and that, therefore, requiring applicants to adhere to a super set of national laws could invariably restrict the release of TLDs that are noncontroversial in the jurisdiction of the applicant and have a chilling effect on speech. Individual applicants are subject to their own national laws and should comply accordingly."

The additional comments are, "Some Registry Stakeholder Group members, however, urge ICANN to respect also national legislation when

it comes to geographic names and their protection, as ICANN is bound by its articles of incorporation and bylaws to respect relevant principles of international law and applicable local law, especially when the request for the use of such names comes from a subject based in a cultural context totally different from that of the required name."

Greg?

Annebeth Lange: Olga, Annebeth here. Greg has his hand up. And also, there's a substantive comment from Jim. So, perhaps you should read that, as well?

Olga Cavalli: Okay. Greg, go ahead. And then we can read Jim's comments.

Greg Shatan: Thank you, Olga. Greg Shatan, for the record. Commenting both on this comment and on the ones immediately prior, in my view there seems to be, at least in some instances – most of the instances here, except for the first half of the Registry Stakeholder Group comment – a misinterpretation of the concept of "applicable local law," as the articles of incorporation and bylaws place kind of the relevant interpretive context of these documents within U.S. law, in general, and California law, in particular. And "applicable law" in almost all cases it relates to the law that would be applied based on the jurisdiction of the entity involved, which is ICANN, not everybody else. Otherwise, we're applying all national laws all the time, which just sounds like a traffic jam.

So, I think the idea of applicable – it's applicable law for ICANN and not for the various commentators, as much as they would wish it were so. Certainly, it's at least my view and based on having dealt with tons and tons of U.S. law documents that "applicable law" in this context does not relate to applying every country's local law, but only the applicable law that applies to ICANN. And I think that just needs to be kept in mind. Thanks.

Olga Cavalli: Thank you, Greg. Before giving the floor to Christopher, I will read the comments made in the chat by Jim Prendergast to Greg and Paul. "Two points and something for chairs to address. But in Work Track 1 to 4, this exercise, while somewhat painful, did not prove useful. One, there were some comments that were mistakenly omitted; so, they got added. And two, we identified a significant number of new ideas submitted via comments that were not previously deliberated by the group and now will be. And three, we identified some comments that were unclear. So, we were able to go back and get clarification on what was actually meant." And Paul agrees with Jim's comments.

And now I give the floor to Christopher. Christopher, please go ahead.

Christopher Wilkinson: Good evening again. Greg, I think we deserve it to each other to avoid a long debate about this, but I cannot agree to your last statement.

The European Union required that that clause be included in the articles of incorporation in 1998 in order to avoid the kind of situation that we risk getting into in this case. It is definitely a reference, as you put it, to the applicable law of everybody else. It is not just about ICANN relationship to applicable law in California. That was a political decision, and it was on that basis that the European Union accorded its cooperation and support – to Ira Magaziner and others at the time – to create ICANN. That text was written by the responsible officials of the European Commission in order to prevent the abuse that might arise in its absence. Thank you.

Olga Cavalli:

Thank you, Christopher.

Okay. Remember the line, the Line 86. Let's go to Line 86. There are some comments in the chat. I will let you review them, and please let me know, Annebeth, if you think we should read them aloud now.

Okay. Let's go to Line 86. There are comments from the Business Constituency. "Basis for preventative should be international, national law, and multinational treaties. As the basis of preventative measures, the Business Constituency supports reliance on international law, national law, and multinational treaties. Any other basis could be used to decide curative measures and policies." That was Line 86.

I see a lot of activity in the chat. So, Annebeth, please let me know if I should stop and read them.

Line 87, a comment from the United States. "International law should not contravene international law. National law only where there is general consensus among various national laws. The development of policies should not contravene any existing international law and, more importantly, should not create new international law or rights. Instead, policy development should merely reflect what current international law allows. National law may play a role, but only when there is a general consensus among various national laws." Those were comments from the United States.

Now we go to Line 88, comments from the Brand Registry Group. They don't believe there is a basis in international law for governments to grant approval for certain strings. However, basis should rely on international law. "The BGR believes that there is basis in international law for governments to assert the right to provide support non-objections for certain strings, which some members consider to be a veto power over applications for their strings. The BGR believes that national and local laws providing protections for geographic names do not give governments rights beyond those of other stakeholders in the context of the new gTLD program, including the application process. In addition, ICANN should not set policy by anticipating what international law may exist in the future. National and local laws only apply in the jurisdiction where the applicant is located. Therefore, Work Track 5 should look into international law as a

basis for any recommendations related to geographic names." Those were comments from the Brand Registry Group.

Now I'll go to Line 89, comments from Group of Registries: Uniregistry, Minds and Machines Group, Top Level Design, Amazon Registry Services, Employ Media LLC. "The Group of Registries supports developing policy based on international law only. National laws, policies, norms, and values are highly variable. Requiring applicants to adhere to a super set of national laws could invariably restrict the release of TLDs that are noncontroversial in the jurisdiction of the applicant and have a chilling effect on speech. Individual applicants are subject to their own national laws and should comply accordingly."

Okay. I will go now to Line 90, comments from the NCSG. I see a lot of activity in the chat. I will keep on reading unless Annebeth tells me I should stop.

Annebeth Lange: Olga, it's Annebeth here. I think that we should continue through the chapter on the law problem, and then we can go back and read the comments. Because it's a lot of discussion here on "applicable law." So, we can go back to that after finishing all the comments.

Olga Cavalli: I don't think we have the time, because there is one-hour call if I'm not mistaken. Julie, Steve, please correct me if I'm wrong.

So, maybe I would stop here in Line 90 and adjust a little bit what is in the chat. Can you help me with that, Annebeth?

Annebeth Lange: Sure. It's a lot of things here. So, just let me go back again. I think we start with just – Marita commented on Greg's comment: "I think that every comment that included the "applicable law" would need to explain their meaning, but I don't think they all mean California law."

And Yrjö Länsipuro, "Greg, if 'applicable local law' means California law, why don't the bylaws (inaudible) just say so?"

Kavouss: "Christopher, acknowledge your diligence in this regard. And Greg, as Marita I agree, which was the point I was trying to make."

Katrin Ohlmer of dotBERLIN GmbH: "Just one for Christopher. 'Applicable law' also means national law in the comments."

Paul McGrady, at Christopher: "Assuming for the sake of argument that your interpretation is correct, the relevant 'applicable law' would still need to be identified. We have been at this for years, and I have yet to have anyone identify a local law prohibiting geographic terms from existing gTLDs. (inaudible) references aren't laws."

Javier: "I believe that's not (inaudible)."

From Ann-Cathrin Marcusson: "Plus 1."

Katrin, from dotBERLIN: "Paul, can we identify those?" Katrin again, at Yrjö: "There doesn't seem to be a reference in the bylaws that local laws are tied to California law."

Paul McGrady to Kavouss: "Assuming they exist, they could be identified by those who want them considered. However, I have been asking for years that those who believe such laws exist come forward with them. So far, nothing."

Greg Shatan: "Yrjö, this is a very typical construction that you (inaudible) corporate documents and contracts. It's also possible that ICANN and the other parties would in particular instances be bound by applicable local law. For instance, ICANN's Brussels office is bound by pension and legal law in regard to employment, benefits, workplace safety, etc. Therefore, the construction we are looking at makes more sense and is more able to take such situations into account where a particular legal system has ruled that results in the application of their laws to ICANN."

Kavouss: "Yes, this is the dilemma that we all are facing with this vague expression."

I think that really what this shows us is that it's kind of (inaudible) of what is "applicable law." And when it comes down to it, perhaps ICANN Legal, the legal people in ICANN should look at this. Because here we interpret it in different ways what is "applicable law." So, at least this discussion shows that here we have a lot of different interpretation of what we are discussing.

Olga?

Olga Cavalli: Totally agree with you, and thank you very much for reading through all the comments in the chat.

I think we are done for today. It's one minute to 6:00 pm here in Buenos Aires. So, thank you very much for your patience, for your attention, for your comments. Remember that we are just reviewing the summary of this. We are not entering into discussions or debates. We had enough of that in previous months.

So, over to you, Julie or Steve, if you want to let us know when is the next call and some other details. Thank you.

Julie Hedlund: Hi, Olga. It's Julie Hedlund, from staff. And as has been posted in the chat, the next call is Wednesday, the 10th of April, at 05:00 UTC, for 60 minutes.

- Olga Cavalli: Thank you very much. Just a reminder that we will have weekly calls of one hour each. So, we keep on reviewing this very interesting document that was nicely prepared by our dear friends from staff. Thank you all very much. Thank you, my colleagues. Thank you, staff. And thank you, colleagues, for joining us this afternoon. And goodbye. We keep in touch. Bye.
- Julie Bisland: Thank you. All right. Today's meeting is adjourned. You can all disconnect your lines, and I will stop the recording now. Have a good rest of your day.