DURBAN – GAC Plenary 2
Saturday, July 13, 2013 – 16:00 to 17:00
ICANN – Durban, South Africa

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| CHAIR DRYDEN: | Good afternoon again, everyone.  If we could begin to take our seats, please, we will begin. |
| | Okay.  Let's get started on our next session. |
| | So we now have about 45 minutes to deal with our next agenda item regarding the GAC Beijing communique and where we stand regarding the responses from the Board or the New gTLD Program Committee on that communique. |
| | And then at 5:00 we have, as you I think are aware, we have canceled the Board/GAC Recommendation Implementation Working Group session as we will talk about GAC early engagement in the policy development process when we meet with the GNSO.  And I understand that Board colleagues from the Board/GAC working group will aim to be in attendance when we discuss that in the GNSO.  So we will still have the benefit of their involvement in those discussions.  And so in light of having this additional time and a late request from a group that wishes to establish a constituency for geo registries, that the vice chairs were very supportive of including in our agenda.  They were able to agree to come and brief us at 5:00 on that.  So we've allotted 30 minutes to receive a briefing from them.  And I expect it will be along the same lines as the briefing we received in Beijing from the group wanting to set up the Brand Registry Group, which I understand has now been set up. |

So that will happen at 5:00. So in the meantime, here's what I would like us to accomplish.

We have a few documents that we can refer to for these next discussions, and I think probably the one that's most clear and summarizes everything nicely is the NGPC consideration of GAC Beijing advice dated 3rd July 2013, which is the full scorecard. So you will note that between Beijing and now, we have been getting scorecards coming from the New gTLD Program Committee, and based on their most recent meeting and resolutions and decisions coming out about the GAC's advice, they have now formulated a complete scorecard. So this is the state of play in terms of their responses on the entire Beijing communique including annex 1. And so this is a useful tool for us to see at a quick glance the state of play regarding the policy program committee's consideration of the GAC's advice. As well, recently circulated was a paper coming from the New gTLD Program Committee of the Board and that is titled "Questions and Concerns Regarding Portions of the GAC's Safeguard Advice." And this is focused on the category 1, which also relates to what is being called category 2.1 of the annex to the Beijing communique, where the committee has identified outstanding questions or concerns for the GAC.

And so this paper is meant to give us further information, further guidance for when we meet with them tomorrow morning, I think at 10:00, to look at these main outstanding issues that come from our Beijing communique.

The other issue is regarding the issue of implementation of acronyms of the intergovernmental organizations, and how to be responsive to the

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concerns that have been raised by the IGOs in light of the questions coming from the Board there as well.  And we can find some guidance from the New gTLD Committee in the covering letter from the 3rd of July that was sent to us and signed by the chair of the Board, and in the first section there entitled "Initial Protections for IGO Protections," and that is to update the GAC on some of the decisions they have made and some of the questions or concerns that they are now raising with us and the IGO coalition on that.

So I think these are the key outstanding issues, but I do expect that colleagues here will identify others if they think there are other parts of the scorecard where they would like the GAC to comment further or provide further guidance.

So at this point, can we take any initial comments from colleagues about where we are and their thoughts about the agenda that we have identified for tomorrow morning for our exchange with the New gTLD Program Committee?

China, please.

I'm sorry, I can't see who is raising their hand.  But, please, go ahead.

CHINA:                              I have no question.

PERU:                               This is Peru, Chair.

CHAIR DRYDEN:              Please, go ahead, Peru.


PERU:                      Okay.  Thank you so much, Madam Chair.  Peru is taking the floor on
                           behalf of a sizable number of countries concerned about the application
                           of geographic names and in general with the application of dot Amazon
                           in particular, concerns that we would like to request the GAC members
                           to endorse.  However, personally, allow me just to salute our fellow
                           colleagues here and to express our appreciation to the government of
                           South Africa for hosting us.

                           This statement is submitted by Argentina, Brazil, Chile, Peru, and
                           Uruguay with the full support of the Amazon region countries.

                           And it reads as follows:  We acknowledge that the GAC principles
                           regarding new gTLDs adopted in 2007 clearly establish that the
                           principles shall not prejudice the application of the principle of national
                           sovereignty.  Besides, we understand that highlighting the importance
                           of public interest is a relevant element that gives stability, sustaining the
                           multistakeholder model, and ultimately the legitimacy of ICANN's
                           administration.

                           In this sense, this model should contemplate adequate mechanisms
                           before the GAC to guarantee a proper representation of the
                           governments and their communities regarding the public policy issues
                           within the ICANN framework.  It is fundamental that governments have
                           the adequate instance where their opinions can be effectively
                           considered, particularly in a content of unprecedented wide-open call
                           for application that has brought uncertainty for both governments and

applicants and has created conflicts with system rules and will establish precedents and benchmarking for future operations.

In the context of the last applications for new gTLD process, various strings have generated concerns from different countries. This is the case of Brazil, Peru, and the Amazonic countries with the application for dot Amazon by the company Amazon, Inc. and, until very recently, was the case for Argentina and Chile with the application of dot Patagonia.

From the beginning of the process, our countries have expressed their concerns with the aforementioned applications presenting various documents to the GAC, referring to the context and basis of the national and regional concerns, including early warning and GAC advice requests.

Various facts recorded in several historiographical, literary and official documents throughout history, including the recent official regional declarations, have been submitted and explained by each country directly to the GAC and to the applicants through the established procedures and through an active engagement process with the interested parties that has allowed us to explain our position for requesting the withdrawal of the applications.

This is the position adopted, for example, by the fourth Latin American and Caribbean Ministerial Conference on Information Society, the Amazon Cooperation Treaty Organization, the Brazilian Internet Steering Committee, the Brazilian Congress, and the Brazilian civil society, the Peruvian Congress Commission on Indigenous Peoples, local governments of the Peruvian Amazon region, and several representatives of the Peruvian civil society.

The 2007 principle states that ICANN's core values indicate that the organization, while remaining rooted in the private sector, recognizes that governments and public authorities are responsible for public policy and should take into account governments and public authorities' recommendations.

They also make reference to the provision of the Universal Declaration of Human Rights and the obligation that the new gTLDs should respect the sensitivities regarding terms with national, cultural, geographic, and religious significance.

They clearly add that ICANN should abide country, territory or place names and country, territory or regional language or people descriptions unless in agreement with the relevant governments or public authorities.  Therefore, within the context of the approved principles, there is clear basis that supports our position as governments.

We understand that the introduction, delegation, and operation of new gTLDs is an ongoing process, and, therefore, it is subject to constant evaluation, evolution, and change in order to improve the program.

Being the first applications to be analyzed, the decision that will be taken are going to be relevant for future cases and will have effects in future applications which might potentially affect every country.  In relation with this application, involved governments have expressed serious concerns related to the public interest.  In particular, dot Amazon is a geographic name that represents important territories of some of our countries which have relevant communities with their own

culture and identity directly connected with the name. Beyond the specifics, this should also be understood as a matter of principle.

During our last meeting in Beijing, the great majority of the governments represented in the GAC understood the legitimate concerns we have raised related to the use of geographic names in new gTLDs. We believe that this new GAC meeting is again an important opportunity for the GAC to give a clear mandate following the current principles for new gTLDs, approving the GAC advice proposals submitted by Brazil and Peru for dot Amazon address to the ICANN Board in order to reject this application.

We stand by the commitment to the GAC principles regarding new gTLDs adopted in 2007 which require countries' prior approval for the filing of geographic names and encourage ICANN to formulate clear criteria limiting the utilization of geographic names as top-level domain names in the next round of the program.

Thank you, chair.


CHAIR DRYDEN:          Thank you for those comments, Peru.

The GAC will discuss this agenda item on Tuesday at 10:30, I believe. So I consider your comments relevant to that particular agenda item.

All right. Peru, you have further comments.

PERU:                               Yes, just very briefly.  Just we will come back in the next opportunity on this, but just to let our colleagues know that this statement has already been provided by the secretariat and you must have it all in your -- in the Internet in your mail accounts.

Thank you.


CHAIR DRYDEN:                       Thank you for that clarification about the materials.

So for that agenda item regarding the strings for further consideration that we outlined in the Beijing communique, we do have materials that we have posted and circulated and that are available to GAC colleagues, and that includes statements and reports from GAC members.

So if we look at the state of play with the overall scorecard and views regarding the agenda specifically identified for exchange with the new gTLD policy committee tomorrow, are there thoughts on -- for example, do we have agreement that those are the key items that we have a need to exchange with the committee tomorrow on.  Is there anything further that colleagues would like to flag that the GAC may need to look at this week in terms of the response?

As I say, most of the advice was accepted by the New gTLD Committee of the Board.  And then as I say, there are these outstanding items that we will have a discussion about with the New gTLD Committee tomorrow.

So I see Switzerland and Australia.

Thank you.

SWITZERLAND:              Thank you, Madam Chair.

There's one other issue I would -- wanted to bring to the attention.  In the GAC communique of Beijing, we had -- not in the safeguard part but in the general advice on new gTLDs, we had a text about community support for applications which basically says that in cases where a community has expressed a collective and clear opinion, positive or negative, on an application, that ICANN should take this into account.  And ICANN basically just responded referring to the community evaluation and objection process.

And the idea of this text is that this should be done also in cases where there has been no community application or no community objection, but because some of the communities were not aware of these procedures or have been advised not to use them for reasons because they were too complicated or others things.  There's lots of feedback that we have got in the past months that many communities, although they would -- they are clearly community, did not use these procedures and the idea of this text in the communique was to raise the awareness about this to ICANN and to the Board.  And I think we should clarify this in the meeting with the gTLD committee; that we did not intend just to refer to the existing structures but that (indiscernible) is more fundamental than this.

Thank you.

CHAIR DRYDEN:             Thank you for that, Switzerland.

My quick reaction is in terms of the understanding around what was intended by the GAC's advice, I remember there was some back and forth about that. And I think what we would need to do is, as a GAC, have a discussion about whether there's agreement that we would clarify along the lines you're proposing.

It's not clear to me at this point that we could do that, so let's create time for us to have that discussion, and then we can also raise it in the exchange with the Board on Tuesday, and then focus on the current agenda of the New gTLD Committee.

So we will take note of the need for a follow-up discussion in the GAC about what was intended in providing this advice, which was accepted by the Board gTLD committee, and identify what, if anything further, we would want to comment on or advise on. And we can also make use of the meeting that we have at the end of Tuesday with the Board.

So let's take careful note of that item and deal with it this way.

Okay. So next I have Australia, then United States, then Germany.

So Australia, please.


AUSTRALIA:                Thank you, Chair.

So I have a number of comments about the agenda. The first one is on the questions which the Board has sent through to the GAC to help structure our discussion, or the New gTLD Program Committee has sent through.

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For those who have had a chance to read them, as they only came through today, I think, they're quite detailed. And one thing which I think would be interesting to focus on in our discussion with the committee is if there are any areas of potential agreement. It seems where -- they've focused in great detail on the wording of a particular phrase and various questions, and they've gone into quite a lot of detail. The sense that I don't have from the feedback that we've got is areas where there may not be questions or where there is potentially some sort of provisional agreement. And it might be interesting to draw out areas where there aren't issues and see if we can build on those rather than diving into detailed areas where we may sort of get lost, so to speak.

The second one is I think we may -- although I don't think it's been flagged directly by the committee, we may be in a discussion with them about the closed generic issue. I also think the response from the Board indicates that they've accepted in part, there's a dialogue in the remainder. And in the dialogue it's mentioned they will seek clarification on our advice with respect to exclusive registry access.

And from the way it's phrased, I'm not exactly sure which bits they're going to seek clarification on. So I think it might be something for us to be prepared for.

There's a number of component parts to that GAC advice in terms of generic strings, what the public interest may be and so on.

So I'm not sure where the Board will focus, but their scorecard response does flag that they will want to talk with us about that at some stage.

And a potential third thing to consider is another one that the Board accepted the advice, but potentially where there may be still further questions is on the question of singles and plurals where we asked the Board to reconsider this. The Board did and considered that their initial response, reaction was okay.

I'm interested in whether any other GAC colleagues are as convinced as the Board is.

I think from my perspective, it still seems to raise questions from a very simple common-sense perspective.

I understand that there is an expert group that has provided advice here about confusability and so on. And -- But from a user perspective, I still find it very difficult to believe that this will not be confusing; that there will be a string and a plural of a string with an "S" at the end and that users will understand the difference.

There's a number of other aspects to this, potential gaming behaviors. In the second round, if it seemed to be okay to apply for plurals, what's to stop applicants from applying for plurals of very successful gTLDs in this round just to leverage off of that marketing and success and so on.

But I am concerned about consumer confusion with singles and plurals, and I'm interested to see whether anyone else shares that concern.


CHAIR DRYDEN:          Thank you very much for those comments, Australia.

So your first proposal to try and give some focus to our discussions and approach regarding the issues raised in the paper that we've just

received I think is a practical one.  So I'm happy for us to try to identify areas where we do agree with them as a way to help us move through consideration of these outstanding issues and touching upon closed generics and precisely how that will be handled.  What the process is around that I think will be of interest to us to understand as well.  So I have taken note of that.

Regarding singular and plurals, I will put them in the same pile, put that issue in the same pile as that raised by Switzerland regarding community support.  So that allows us, again, to have GAC discussion following our exchange with the committee tomorrow morning.  And then if we wish to raise that in the meeting with the Board, we can do so.  And having done so, after hearing from colleagues in the GAC and having a more full discussion.  And again, this allows us to focus on the outstanding category safeguard advice for tomorrow morning and the IGOs issue.

Okay.  So we have a second agenda forming that we will find time to discuss as a GAC later on.

Okay.  So next I have United States, please.


UNITED STATES OF AMERICA:     Thank you, Madam Chair.

First, I did think it's useful to throw this out there, and I trust that colleagues will share our view, I hope.  I think the Board, the New gTLD Committee has been amazingly responsive to the GAC, and I think this approach that is being followed of following the scorecard kind of

methodology and coming back to the GAC after succeeding meetings is extremely helpful so that we know what their thinking is.

And I think I'd like to -- hopefully we will also say this to the Board when we meet in public with the whole community.  I think we also owe a great deal of gratitude to the entire community for being so responsive to the GAC's Beijing advice.  And I think all of the applicants clearly stepped up and responded to the Beijing communique in a very short window, and every other interested member of the community did as well.

So I think it's worthy of note that the community was incredibly responsive to the Beijing communique.

So I just wanted to put that out as sort of a threshold statement.

We have been tracking all of the Board messages back to the GAC. Unfortunately, and with apologies to them, but this latest communication just came to us today, and I had very similar questions as Peter did from Australia.  In some cases it's not entirely clear to me what the Board is actually asking of the GAC.  So -- And maybe they think turn about is fair play, perhaps.  Maybe we weren't as clear, they thought, as we needed to be in our Beijing communique.  But, for example, when they have that side-by-side list of some generic words and highly regulated sectors, I'm not entirely clear I understand what they're asking us to do.  To verify whether a sector -- a string represents a regulated sector or not.

So we might want to try to frame some questions -- I don't know whether colleagues share the hesitation I have or the questions I have. I'm just not entirely clear what they're asking us to do with them.

They also point out -- Apologies, colleagues. I have managed to attract germs from several airplane rides, so I hope it doesn't get worse.

They also talk about we didn't have a principled basis for distinguishing between certain categories and certain strings. So I'm not taking issue necessarily with what they're raising with us. I'm just not entirely sure I know what they're asking us to help them do as a next step.

So I would certainly welcome thoughts from colleagues as to how we tackle these questions, because I assume we have, all of us, a shared goal as to moving the ball further down the field. We'd like to take as many of these things off the list as we possibly can.

And I did want to make just a comment, since we haven't yet met with the New gTLD Committee. But on the IGO issue, just to sort of confirm that it might take away from the most recent conference call that we held with the board members, which I thought was extremely helpful. So appreciation to you, Chair, as well for setting that up and managing to that have held before we came.

I understand the Board's statement to be they have accepted our advice in theory, and they've accepted it concretely for IGO names, but where we remain sort of -- where more work remains to be done is vis-a-vis IGO acronyms.

So I did not hear them say that they would not protect acronyms, but that they need to engage with us further. So I took that as a good sign.

And my understanding, and I hope that colleagues will share their impression, those of you who were on the call, that the primary question I think they want to work with us on is exactly what process we will be following to review those acronyms that actually have -- are in use and can be legitimately used by third parties.

So as we will all recall our IGO coalition, they worked very hard. They developed a proposed approach, and that was circulated around the GAC list and sent to the Board. And I'm going to put words in the Board's mouth, and I think I'm correct but the Board can obviously correct me if I'm wrong, and certainly colleagues can as well. My take-away from the July 3rd call was that the hesitation on the Board's part about the proposed process was that it put the IGOs themselves in a position of being judge and jury as to whether a third entity has a legitimate right to use that acronym. And I think that's the crux of the problem. Having said that, I think there should also be a solution; that we remove the IGOs from being judge and jury and rely on a more neutral approach, whether it's some variation of the trademark clearinghouse notification function. Something along those lines that would actually provide a different platforms so that -- and I'll use the World Health Organization, if I may -- the World Health Organization could get a notification if a legitimate third-party use of the word "who" in the English language for any TLD that had nothing to do with the health sector. And presumably the World Health Organization would consider that legitimate. I'm just throwing that out as an example. They're not here to speak but it strikes me that would be legitimate.

We need to find, I think, a more streamlined, cleaner way, more neutral approach where the IGOs are not somehow -- and I think they put

themselves forward actually in an attempt to be helpful. So I'm looking at my IGO colleagues. I know that was probably their intention. But I think we have to appreciate there is some sensitivity on this issue.

So I just wanted to throw that out, and I trust that others have the same perspective. If you do not, then we should probably talk about this before we meet with the Board.

So thank you.

CHAIR DRYDEN:          Thank you for that, United States.

So I think you've helpfully identified a couple of issues for us from the paper that it would be useful for us to raise when we meet with the gTLD committee.

And regarding IGO acronyms, WIPO is ready to comment as well as part of our discussions this afternoon. So I will turn over to them shortly to provide some inputs to us.

But I'm thinking that the crux of the issue as you present it is my understanding as well of where we are.

So hopefully, then, we can turn to the gTLD committee and have them confirm that or clarify for us what is the precise nature of the issue.

So I have Germany next in the speaking order. And unless I have other requests from GAC members -- I have U.K. Okay. And then I will ask EU Commission, and then I will ask WIPO to comment on the IGO acronyms points.

Germany, please, go ahead.

GERMANY:                    Thank you.  I just want to comment on some of the positions of my
colleagues.

First of all, I would like to support U.S. position in respect of the
questioning what expect the Board as answer for their questions in
respect of our safeguard advice.

I have also some doubt.  And maybe in general, the question is what
expects ICANN to be the role of the GAC in this respect?  And it would
be interesting to hear more about this.  And maybe we need to discuss
it in depth.

Second issue is community support, which was raised by Switzerland.  I
would like to support this idea, and I think we had an advice in this
respect.

I also have the feeling that it was not answered adequately, and I,
therefore, see a need for maybe refining our questions or reiterating it,
making sure that the answer we received wasn't exactly the one we
expected, but this is fine for me to discuss further in the GAC.

The same issue is on string similarity, which is connection to plural and
singular issues.  I would like to ask the ICANN Board whether they used
the same system for identifying string similarities for the ccTLDs, IDN
ccTLDs, and for this new gTLD process.  And if it was not the same
system they used, I think it would be difficult because, frankly, from --
it's more an impression and not a concrete notion, but I have the

impression that the rules in respect of IDN ccTLDs were rather strict, not allowing any changes without infringing string similarity tests. And for the gTLDs, it's the contrary. There seem to be quite a lot of possibilities, even if they seem to be similar. One example is singular plurals. And, for example, I would like to know whether they used the same algorithm. And if not, I think it would be some issue that the GAC could raise and ask questions.

Thank you.

CHAIR DRYDEN: Thank you very much for that, Germany. That's helping confirm, I think, where we're headed and how to prepare our agendas and discussions for our meetings this week.

Okay. Great.

So next I have United Kingdom, please.

UNITED KINGDOM: Thank you, Chair. Just two anxieties. Firstly, as maybe several colleagues here have done I did a consultation with our supervisory authorities and regulators last week. And it's a pity we didn't have these questions in time for that. And if there are issues that are in this document that require us to go back to our regulators and supervisory authorities, that's going to take some time. So I hope the Board will appreciate that. We've made this point on previous occasions, I'm sure.

My second anxiety is that I think there's a risk here that we are getting sucked into detailed implementation of safeguards, and I think we do,

as Germany has indicated, need to be mindful of our role in terms of providing high level advice and saying to ICANN really it's your job to implement and you take, you know, advice as you see fit but don't come to the GAC to help you on implementation.

In addition, I just want to say, I support Switzerland on the community applications issue as we discussed in Beijing. This was not about community applicants. It's about those applications that have proved themselves to be representative of communities. And that was the point of the advice. And I -- I fear the GAC has -- sorry, the board has misunderstood the advice. So we can talk this through in our discussion as you suggested.

On IGO acronyms, I think the proposal from the U.S. is a good one. This is a very tricky issue. Over 200 IGOs, some of them have very, you know, popular acronyms -- I mean, popular in the sense they're acronyms used by other wide-ranging commercial and private interests and some are even words and names. So some kind of neutral approach to sorting this out, which I believe the IGO's would be sympathetic to, is -- sounds to me like the way forward. Thank you.

CHAIR DRYDEN:         Thank you for that, U.K. Next I have EU Commission.

EUROPEAN COMMISSION:   Thank you, Chair. The U.K. GAC representative has actually passed on part of the messages I wanted to communicate with this intervention. But we would like to reiterate that the fact that the board gave its reply only on the 2nd of July has given very little time for the European

Commission to run internal consultation since are a big institution, as you know. And hence, for the time we have to engage in discussions with the board, there are some issues that might be still under discussion and we would like to defer big decisions for Buenos Aires. And we've also noticed that the response from the new gTLD community and the questions that are posed to the GAC actually force us to go beyond giving high-level response and force us to go down the road of implementation. Thank you.

CHAIR DRYDEN: Thank you. Okay. So next we have WIPO to provide us with some comments on the issue of acronyms, I believe. So over to you, please.

WIPO: Thank you, Madam Chair. Good afternoon, GAC members. My name is Gerry Tang from WIPO, and I am here with my colleague Sam Paltridge from the OECD to my left. We greatly appreciate being given the opportunity to be here speaking on behalf of the IGO coalition. This coalition consists of over 40 IGOs plus another 15 U.N. agencies such as UNICEF and all of us representing a wide range of essential public interests and who are created by and accountable to the states we represent.

The two GAC communiques from Toronto and Beijing recognize and endorse a strong public interest in protecting both IGO names and acronyms at the top and second level of the Domain Name System. On this basis the GAC and IGO's actively work together to identify a contained list of IGO's whose names and acronyms are to be protected.

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Since then the ICANN board has recognized that the remaining issue is the implementation of this protection. In relation to this implementation the board identified three points. First, the languages in which IGO names and acronyms are to be protected. Second, the process for future review of the list. And third, how to handle acronyms for which there may be several claims. IGOs have now provided answers and proposals to each of these points. IGOs have agreed that the names and acronyms will only be protected in up to two languages, rather than the U.N. six languages. IGO's have agreed that the list of names and acronyms would be regularly reviewed, either prior to delegation of any domains in a new gTLD round or every three years, whichever is earlier.

Finally IGOs have agreed that whoever wishes to register a domain name that matches an IGO name or acronym that IGO cannot stand in the way of such registration where the registration is for a bona fide purpose, as opposed to something unlawful or dishonest that would harm the public by pretending some kind of connection with the IGO. Should an IGO and user come into dispute over a proposed domain name registration, that dispute would certainly be able to be reviewed.

The mechanism proposed by the IGOs is workable, efficient, and vitally -- considering that IGOs are publicly funded by your states -- cost effective. That being said, IGOs remain as always flexible and open to engage in good faith discussions with the GAC and the board on the operation of such mechanism. It should, however, be kept in mind that the purpose of these discussions is to implement a system that protects IGO names and acronyms, particularly acronyms which, given that IGO names are a bit of a mouthful, are the identifiers by which IGOs are far

better known, from abuse in a vastly expanded domain name system. And I thank you very much for letting us speak here today.


CHAIR DRYDEN:          Thank you very much for those comments.  Okay.  So I don't see further requests at this time.  Okay.  Netherlands.


NETHERLANDS:           Thank you, Heather.  As you -- you asked for topics which could be discussed also in the safeguards and the other sections we have, I want to make the statement on behalf of registry dot Amsterdam which basically says that they will not be able to sign a registry contract because it's in violation of data protection legislation.  And there are remediation possibilities, and I think as the geo group will come back to this because it's not only a problem for dot Amsterdam.  While they have -- let's say many registries have a problem with signing the current and agreed registry agreement, however, there are remediation and exemptions possible, but this procedure and registry agreement doesn't fit the -- is not, let's say, something which is fit for dot Amsterdam as a public authority.  They will all -- they will even be in breach of national legislation, even signing the contract itself and then afterwards remediating it.  So I would raise this -- would like to raise this point not now in content but I would raise it in -- also in -- during our talks tomorrow.  Thank you.


CHAIR DRYDEN:          Thank you for raising this further issue.  We will have a briefing from the geo TLD group.  I don't know whether they will raise this issue, I suppose

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they could.  Okay.  You seem to think they might.  So this will give us some opportunity to hear from them and reflect on this issue further, and then in terms of whether we raise it tomorrow or whether we raise it as part of this other set of issues, list of issues that we are creating to come back to as a GAC, we can think about how to -- how to treat this. But I understand this as being an RAA issue, is that correct?  Or am I -- could you clarify?

NETHERLANDS:                    It is a registry agreement problem.

CHAIR DRYDEN:                    Ah, registry agreement.  Right.  Okay.  So that helps.  Thank you.  So I can put the right title to this, registry agreement.

All right.  So next I have a request from Belgium, and then I will move to close the speaking list so that we can receive our briefing from the geo TLD group.  So Belgium, please.

BELGIUM:                    Thank you, Madam Chair.  I just wanted to take the floor to express our support to Germany's and Switzerland's positions regarding this community applications.  We have the support of the communities in this regard, even when they have not been approved.  We also support the U.K.'s position regarding the need to define more accurately what advice is expected from the GAC with regard to the fact that we are not in a position to control the implementation of safeguards.

And finally, we would like to discuss the importance of having the support of the political authorities within the framework of geographical names applications, the importance of having the local authority's support when it comes to applications regarding geographical domain name. Thank you.

CHAIR DRYDEN: A quick last look around.

Okay. So we will continue these exchanges tomorrow morning at 9:00. So what I'm hearing is confirmation that we have a discussion planned and an agenda agreed with the gTLD committee for our exchange tomorrow to talk about category 1 safeguards as well as it relates to closed generics and plans around that. And as well the issue of protecting IGO acronyms. And then in addition, we have additional issues identified where we might need further GAC discussion. If we can do that tomorrow morning, then let's make use of that time. If not, we will find time to further discuss the issue of the advice we gave on community applications and what we intended, in fact, with that advice. And as well, the issue of singular and plurals of the same string, and again, our advice was accepted there where we asked the board to look at this issue and they did, and just to be clear, they -- they made a decision. There was a resolution saying that they would not do anything particular or make changes to the guidebook to deal particularly with this issue. So now it's being proposed that the GAC may want to look at this again and provide further comments and advice, so I also have that on the list. And as well the issue of registry agreements, and particularly a circumstance where an applicant would have a conflict or

potential conflict with national laws and how that would be treated based on how the -- the registry agreements are currently formulated. So that's where we are today.

We will continue in this manner when we continue at 9:00 tomorrow and before we meet with the gTLD committee. So I'll just check that our presenters are here from the geo TLD group. Perfect. Okay. So we'll move to have that briefing now. And just take one moment. Okay. All right. So we have a deck, and to my right is Dirk who will be giving us the briefing today. So please, go ahead.

DIRK KRISCHENOWSKI:     Yeah, my name is Dirk Krischenowski. I'm managing director and founder of dot Berlin, the initiative for the Berlin top-level domain name, and I'm speaking here now on behalf of our geo TLD interest group. We have so far, and I would like to thank Heather and the GAC members to invite us to speak to you and talk to you. And we much appreciate this opportunity to discuss some points with you. Some have been already addressed in the afternoon, and we would give some more briefing and input on the points in the following slides. Next slide, please.

The slides are who we are, the concerns with the registry agreement, our PM requirements and the formation of our geo top-level domain name constituency. Next slide, please. Who we are. Next slide. Yeah, this is quite small, but it gives an overview over all the top-level domain applications we have seen in this round. And you see where are many from, but I think we're from all ICANN regions. We have geo top-level domain applications there. And I would go next slide in more details.

**EN**

So as the group of geo top-level domain names we thought we should define geo top-level domain names a little bit closer so that everybody knows who we are. And we said geo top-level domain names are those who are geographic names like dot London, dot Paris, or dot Berlin, some geographic identifiers or abbreviations like dot Rio or dot NYC, or geographic indications like dot (indiscernible) or dot Irish or dot Catalonia and some others. And geo top-level domain names absolutely need to have documented support of their local or relevant government and authorities. This is essential as well. And a third point which would make up a geo TLD is -- the purpose of the geo TLD is to indicate and identify domain names with a geographic origin. This is somehow important because there are some geo TLDs which recently became geo TLDs by the geo TLD panel. And we -- our group consists at the moment of 50 applicants for geo TLDs out of 76 total geo top-level domain names. That's our group. Next slide, please.

The concerns with the registry agreement. Next slide, please. A short slide, but I think this reflects the discussion in the afternoon. We think potentially most of us as geo top-level domain names think that the registry agreement really overrides the national legislation, especially in the privacy and data retention policies, like the EU Article 29, and we see some potential problems facing us with the consistency of the UDRP and local dispute resolution policies which several geo top-level domain names have. And I mean with local dispute resolution policies are not only those implemented by the national legislation but implemented by the geo top-level domain itself. We have this already in some ccTLDs, these local dispute resolution systems, and we would be happy to discuss this with you and we would like to -- like you to address this

topic, especially at the GAC board -- at the ICANN board and the ICANN staff so that we have a solution when we go into the contract negotiation phase and sign the contracts with ICANN.  There's one slide, please.

The RPM discussion.  It's a little built complicated.  Please next slide. ICANN has said oh, this is not -- not very good to see, but ICANN has said there should be no registration phase prior to the trademark house clearing -- clearinghouse phase and these are the most models ICANN has.  On the top you have the trademark clearinghouse phase and then trademark clearing -- trademark claim service.  Afterwards general availability comes, and if a geo top-level domain name, a city or a local government wants to have its local face, ICANN says you can have this limited registration phase in number 2 and 3 before it comes to general availability.  And what does this mean for cities?  We like to have an example on that.  Please next slide.  Let's say -- a hypothetical example but could fit, we have the city of Paris having -- want to have a local governmental face where the city of Paris registers Metro dot Paris and police dot Paris.  These names would then go in this phase to the city of Paris.   Then  there  would  be  the  TMCH  phase  and  the  general availability.  Everybody's happy.  City has its names.  And the other phases can run properly.  But this is a proposal of Paris, and if we have on the next slide, please.

>>       [ Speaker is off microphone ]

DIRK KRISCHENOWSKI: Ah, yeah. On the next slide, the proposal of ICANN says the TMCH phase should be first and that would mean that Metro dot Paris would go to a big company like Metro AG, a very big GAC concern and let's say the police dot Paris would go to the very well-known Police band which you probably all know. And both names would be gone even before the local government phase would start. And there's probably no chance to avoid this. This is an example where our problems raised from. On the next slide we have summarized these topics. It's first prioritization phase and we would like to have -- or ask for that governmental reserved names should trump the TMCH phase. So the government should have -- the local government and probably national governments should have the ability to reserve their names or register them actually in -- before the trademark clearinghouse sunrise phase starts. And priority should be given to those registrants that have a nexus with a geo top-level domain name, let's say to Paris, to Berlin, to Barcelona or to other cities. That's what we are asking for. And second is, at the moment the RPM requirements say there can't be any names online before the trademark clearinghouse phase has been finished. And we think it's essential for the cities and regions, that key partners in these geo top-level domain names and by this I mean the city marketing or the zoo or some other public institutions as well as well-known organizations in the city should have the ability to launch their name before the trademark clearinghouse phase. This is essential for marketing the TLD. Imagine you want to launch a TLD with a trademark clearinghouse phase and you can't even do proper marketing with some good key partners projects which are already there and show the public what you can do with the TLD. And secondly, the launch phases could be different or should be different to illegible registrants. Next slide,

please. Yeah. Then we have the geo top-level domain constituency which is the third point we would like to address. Next slide, please. We are -- at the moment here's the picture from the GNSO and we are going to ask for a constituency within the registry stakeholder group. Next slide, please. And this group consists today of 22 gTLDs like dot com, info, org, info, travel, jobs, Asia, cat and others, and the new gTLD applicants interest group. And what we ask for -- next slide, please -- is to have, along with the brand constituency which has been proposed by many brands, gTLD applicants in Beijing along with those guys who want to ask for geo top-level domain constituency which represents our view and the intake group should still exist as a group of interested parties. And on the last slide, we have a brief mission statement of the geo top-level domain constituency, should as other constituencies represent interests of the geographic top-level domain names, promote cooperation, networking, and other sharing among its members, stakeholders, and within ICANN, ensure that policies are consistent with geographic and local communities, vital interests, and should give guidance to future applicants for geographical top-level domain names. These were the topics I'd like to address with you, and I would be happy if we, as I have two -- two other members of our group with me from Paris and from Africa and Cape Town, Joburg, and Durban, to discuss these points with you.

CHAIR DRYDEN:          Many thanks for that presentation. So are there any questions that GAC members have about the concerns identified by the geo applicants? So I see Paraguay and Portugal, please.

PARAGUAY:                    Thank you, Madam Chair.  I just want to know if we can have a copy of this presentation sometime?  Thank you.

DIRK KRISCHENOWSKI:          Yes, for sure.

CHAIR DRYDEN:                Okay.  Portugal, please.

PORTUGAL:                    Thank you.  Well, I shall talk in Portuguese because we have translation but I don't know -- (audio problem).  Or not.  Or I can wait.  Or I can speak in English because it's late.

                             [ Laughter ]

                             Well, I'd like to thank you for this -- this presentation.  That for me was the most important part of this afternoon.  So thank you very much.  I'd like to better understand why you set up this constituency, what was the reason behind?  So what did you make to see that you -- you would need to be together?  And if you -- it has this -- something to do with the fact that ICANN is not really supporting your interests.  Thank you.

DIRK KRISCHENOWSKI:          Okay.  The reasons why we are doing this, I think we are -- we are quite different from the rest of all new gTLD applicants due to our nature.  We all have support from the relevant local and presumably also the

national government in this case. And if you have seen, we have local topics which are really just not affecting the rest of the world but this local community that has applied for its name and with the local community there's -- there's always local government. And this local government has certain interests to use its name and to have its name as good in the root as the ccTLDs. Let's say they have their particular interests as well. And I think the geo TLDs are much closer to the ccTLDs like to the geo TLDs in a certain way, but potentially fits still in the registry stakeholder group because they have a contract with ICANN. Yep.

CHAIR DRYDEN: Thank you. Netherlands, please.

NETHERLANDS: Yes, thank you, Heather. And thank you, Dirk. I think it's very, let's say, we cannot plot this new constituency because I think many of you geo TLD applicants went -- applicants in the geo group were one of the first movers, let's say, in the gTLD process. I think you also from Berlin, I recall that you had many years of moving things around, trying to push things in the good direction in ICANN and I think it certainly helps the process.

One thing I would like to expand maybe more on your side is this, let's say, registry agreement problems which I have heard from two of my applicants from our country which is dot police and dot Amsterdam. I'm a little searching about what -- what's this problem means for you in

practice.  You mentioned (indiscernible) and privacy as being a potential problem in the RA agreement.  Thank you.

DIRK KRISCHENOWSKI:    Yeah, I think as absolutely a practical compound, when it comes to WHOIS, the ICANN contract asks us to publish all the WHOIS data including fax, telephone, and e-mail address, and this is not in line or in conflict with legislation in the European Union or in Germany or in Netherlands or the member states.   There they have all different systems, but no one has, I think, the full ICANN -- all the details published for the registrant.  I think some -- some ccTLDs might even have near too close a WHOIS system and that brings us to the first where we started to the first lawsuit immediately when we start by publishing all these data.   That is I think not what we want to be dragged into lawsuits the day after we have signed or brought the first WHOIS entry online.

CHAIR DRYDEN:    Thank you.

Do you have in mind a particular solution to that issue in terms of the registry agreements?

We covered, I think, a similar issue when we talked about the Registrar Accreditation Agreement earlier because we have had to acknowledge that there are conflicts that can arise with national legislation, and it's not a new issue, as such.  So if you could elaborate on that.

DIRK KRISCHENOWSKI: Yeah, but it is an issue which is still very important and the first geo top-level domain names are going -- could go potentially online in the a couple of, let's say, two or three months from now onwards. And we would like you, as a GAC, to address this topic, and we'll also discuss this with ICANN, but we want to have a solution where we can live with in our particular situation and with national and -- yeah, national legislation or EU, or other legislation which is there.

CHAIR DRYDEN: Okay. Thank you.

So I don't see any further requests. Well, Switzerland, perhaps, and then Italy. Okay.

SWITZERLAND: Thank you, Chair. I'll be brief.

Just to support what the Netherlands and others have said. We think this is a useful thing, and I will not recall, like I did not recall in the brand registry meeting that we had the idea of categories some years ago. And it obviously makes sense because they are very different.

Just one point about the sunrise phase and the need for local constituencies or local specific needs that should reasonably come before the sunrise. I think this is a key point that is very important for many of the geo TLDs, and I want to support this issue that a solution should be found and that ICANN should be flexible in finding a solution that makes sense for geo TLDs.

Thank you.

**EN**

CHAIR DRYDEN:          Thank you, Switzerland.

                       Italy, please.

ITALY:                 So you say that 50 of the 76 geo names are associated with the new constituency.  And my question is, first of all, do you have any information about the withdrawal of some of them?  I'm asking this because dot roma is one of these 76, and I can assure that they never, the top-level domain, limited, received the support from the City of Rome.  And I'm surprised that the name is still there and they didn't renounce or withdraw the application.

                       So, but in any case, I would like to know if you contacted all the 76 just to share the problems with your organization.

DIRK KRISCHENOWSKI:    Yes, we have contacted all geo top-level domain applicants to join our group, and we have, at the moment, 90 -- some 92 persons on our mailing list, which is running since I think the meeting in Toronto.  So a pretty long time.  And we have been organized and held meetings in between.  The last meeting was hosted by the City of London in London two weeks ago, with over 40 participants from all over the world.

                       And so we have good contact, and informed them also about constituency formation request and all these things which come up with geo top-level domain names.  So we try to have a very fair, transparent and open process in this matter.

Regarding to some of the geo top-level domain names which might have no support letter, at the moment I'm not the right person to talk to. They are still in the list of applicants and they are not withdrawn, so I can't say anything else as reflecting on this list which is published by ICANN.

CHAIR DRYDEN:          Thank you.  Okay.  So at this point I would just note -- Germany, did you have comments?  Please.

GERMANY:               Yes, thank you.  It is a simple question in this respect.  I just wanted to know how you make sure on this protection of city-specific names, you want to establish a list on this, how you want to make sure that you avoid some legal challenges maybe imposed by trademark infringements. Because, on the other hand, you have trademarks that you probably may infringe and that may be also have legal consequences.  And in this respect, it will be the registry who now takes over the responsibility for this -- for developing a list that contains maybe also trademarks from other regions and jurisdictions.

DIRK KRISCHENOWSKI:    I think lawsuits in this matter can't be -- can't be avoided.  And these examples here come from the real world.  The metro company, the big German one, they sued the Paris metro on the metro.com -- or help me. Yeah, metro.com and metro.FR and other names, and such lawsuits or legal things can't be avoided.

EN

This will happen, but I think we have a very clear legislation in the countries how to work with these names.  And I think when a city asks for metro.paris or police.paris, I don't see any company or other party getting into this name or getting this name.

Yeah.

CHAIR DRYDEN:          Your colleague from the geo TLDs would like to speak.

NEIL DUNDAS:           Thank you.  I'm Neil Dundas from the dotAfrica applicant as well as three South African cities.

I think just to answer that specific question, the trademark holders have always got alternative dispute resolution.   There are mechanisms designed to address trademark issues post delegation.

So if there is a domain that is allocated to a local government authority, such as metro, and the person that holds the trademark for metro believes that their marks -- their trademark rights have been infringed, they can always use the UDRP or some process like that where they would have to prove the name is abusive, essentially.  And that would be very difficult to do against a legitimate use such as metro for the City of Paris.

So I think there are catch nets for the protection of trademark rights post the sunrise process.

But from our perspective, if you are looking at a localized instance, the development of reserved name lists not only for our cities but for our continent is a very time-intense and very lengthy process. We're going to have to approach many, many governments in Africa, we're going to have to coordinate those efforts, filter down, build up this list. It might be quite an extensive list ultimately. And I'm sure the same would apply for some of the city names.

But I think what we're asking for is that we sensitize ICANN to be flexible when we approach them on these issues because, at the moment, the issues are still in a gray area. We cannot go ahead and invest all our time and resources on developing these lists to only find out in the next few months that the sunrise process, the trademark clearinghouse process trumps them.

So we need to start sensitizing ICANN to the fact that geos are developing these lists and these lists have the support of local governments and authorities and that they should be given due respect and due regard when they are published, and certainly should have priority above trademark rights.

And of course there's an element of reasonableness there. The geo TL applicants will employ reasonable measures to ensure sure that the lists are within reasonable bounds.

From our perspective, just a last point is on the rights protection mechanisms. For a continent like Africa, which is a developing region of the world, concepts such as the trademark clearinghouse are exceptionally difficult processes to create awareness and educate the local businesses and trademark holders on.

So we would like to see applicants have the flexibility to introduce their own localized systems to address trademark validations and verifications so that local participants can more effectively participate in the sunrise process.

This is an effective request. We want you to direct ICANN to say the trademark clearinghouse is fantastic for general protection across all gTLDs, but if we really want to promote and make our geo TLDs successful, allow the applicant some flexibility to implement their own processes, with the trademark clearinghouse as the fall-back position. But let us do something that we know can cater for the local communities we are trying to serve. And I think that's another issue we need to sensitize ICANN on, is when it comes time to negotiating these agreements, we're going to want them to see that flexibility is needed when they approach the geo TLDs.

We have local stakeholders such as governments involved, and there's a lot of thought and deliberation that has gone into this process, and ICANN must respect that and not simply push us to the back of the queue and then negotiate the agreements with us.

Thank you.


CHAIR DRYDEN:              Thank you.

So one final -- two final speakers, Netherlands and Norway, and then we need to conclude.

NETHERLANDS:            Yes, thank you, Heather.  This last remark I think is very essential, what you made.  And it proves for me that although there is -- let's say there is advantage of having a one size fits all, in this case I think one size fits all doesn't do justice to all the different kind of applications.  And would also even make one extra example.  I think your examples are very valid.

For example, we have national police applied for, polizei, dot polizei.  It would be, to be honest, very ridiculous to them to have a clearinghouse mechanism to have commercial entities reserve names under polizei.  So it completely doesn't make any sense.

So we have -- I think ICANN should really have, I should say, the flexibility to have certain applications, and I think the geo group is a very specific category to have an exemption to this rule, an adapted clearinghouse mechanism.

Thank you.


CHAIR DRYDEN:            Thank you.  Norway, please.


NORWAY:            Thank you.  This is just out of curiosity.  Do you have any knowledge on relevant governments' involvement in the running of the geo TLDs?  Like do you have like a new member list?  Have you got many high demands from governments or are most of the members just got an approval, a letter of approval without any terms and conditions?

Thank you.

**EN**

FABIAN:                        Hi.  My name is Fabian (saying name).  I am working for the dot Paris project.  As an example, the City of Paris is itself the applicant.  So it has applied itself as the City of Paris, the city government for the TLD.  And as far as running the TLD, it will be very closely involved in policy definition. So for instance, the TLD's launch policy has been designed with the City of Paris, and it's today put into question by those rules that ICANN has published.

But to answer your question more generally, I think there is a balance of the situation within the geo TLD community.   There are those applications where the local government's involved.  For instance, in France, out of the five geo TLDs, we have three of them that are the actual local government and two of them, two others, that are actually -- sorry, it's one of the four that is not-for-profit which has support from the relevant authority.

So in our group we have a balance.  We could get back to you with numbers, and to be precise.   But we do have relevant government involved directly in applying and in running the TLDs.

And, for instance, to come back to the example of the City of Paris, it will be the one -- it's envisioning to be the one signing the contract with ICANN.

DIRK KRISCHENOWSKI:    And we have a roster of our group where it's -- where we can put on, if it's a local government who is applicant or private entity or association or something like this, we can provide you with this list, certainly.

**EN**

But it's like -- it's a colorful mix, like the ccTLDs are, with every kind of legal entity running a TLD.  It's the same with geo top-level domain names.

CHAIR DRYDEN:          Okay.  Thank you.

So I would note that we have the issue of registry agreements and geos on our discussion agenda in the GAC so we will be coming back to this issue.  And I wonder whether it would be useful for us to ask for some sort of briefing about the registry agreements and, in particular, these issues from staff, if we can manage to schedule it to further inform the GAC returning to this topic.

So thank you for coming to present to us today.  And as I say, we will be looking at this further at our meetings here.

So for the GAC, we will conclude here and reconvene at 9:00 a.m. tomorrow.  So have a good evening, everyone.

Thank you.

**[ END OF AUDIO ]**