

**ICANN
Transcription ICANN Barcelona
New gTLD Subsequent Procedures - Work Track 5 – Session 3
Saturday, 20 October 2018 at 12:15 CEST**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
<http://gns0.icann.org/en/group-activities/calendar>

Javier Rúa-Jovet: Hi, to all, if we can start taking our places. ((Foreign Language Spoken))
Having your sandwich. You can keep on eating. We can just start. Let's continue with the session, the recording.

Welcome back. So this is our last part for today. We have a - we want to have an open discussion on specifically board resolutions that are of relevance to our work in Work Track 5 and perhaps the elephants in the room, the - in the prior session, we discussed whether these things were real issues or not real issues. And at the same time, there's processes that are parallel that are taking into account these equities on different sides and coming to decisions, if not ways forward to reconcile interests on this topic that we are discussing, particularly I would say non-AGB terms.

And of course, the elephant in the room is not Amazon and what the recent - and staff, and Emily, maybe you can go through the slides as I speak and people can look at them. But we can have a discussion as much as possible on the topic. But we start with Amazon. There's a recent board resolution that -- sorry, yes -- so their resolve clause, what the Board actually decided. And the Board directed the ICANN President and the CEO or his designees, if possible, to provide a proposal to the Board or the dotAmazon applications to allow the Board to make a decision on the delegation of the strings represented in the Amazon applications.

And resolved also that the ICANN President and CEO or his designees is directed to provide regular and detailed updates to the Board on the status of the dotAmazon applications. I think also, there's language in the resolution, I could be incorrect, maybe I could be corrected here, that the Board also makes a statement regarding potential solutions based on charity use of the name.

So the question, and I don't know if maybe Olga or somebody else that's well versed in the dotAmazon process from the beginning - we don't want to go there. So sticking to this, to the resolution of the Board, the big question to you all, and to us, and to us as a group is how do this type of process that's happening in the community outside of the Work Track, but the Work Track can't be a closed bubble to the reality out there, how does something like this dotAmazon Board resolution and its specific statements made on directing the CEO and this statement on charity use. How should that inform - how should those statements inform our work here? Should that be -- and this is open for discussion -- should this be directly referenced in the initial report? Should we wait - what should we do?

And I just wanted to be as open as possible for everybody to speak on this and - because, you know, I think what we don't want is that we're discussing something for a long time and then all of a sudden this resolution that comes top down and we were not part of it in any way, this is a bottom up, you know, multi-stakeholder body that's supposed to come up with policy - with solutions, and we have to take everything into account and we're here to do that.

So just anybody that wants to speak on this and on specifically what the Board is directing the CEO to do and what you think we should do with that in the Work Track 5? Come on.

Marita, thank you.

Marita Moll: Sorry. Marita Moll for the record. Someone recently sent me a copy of a resolution that's going through WIPO right now and it's all about top-level domains. And I'm quite surprised to see that they're not afraid to talk about what we're talking about saying - they're saying ICANN is talking about this in this resolution. And around here, we live in a little bubble where we don't know what's going on outside there. And I think that's just pure folly.

We may not like it. We may not like what they're doing or how they're doing it, but I just - I have been on the mailing lists and I've been on the calls, and I don't hear any reference to this sort of thing and how we should think about it or how we should address it, or why. What happens, for example, if they come up with some regulations or come up with some agreements that completely in opposition of what's being eventually decided here.

I just think, you know, like to have a little more discussion and thought about what's going on out there, WIPO 1, specifically because I just got it and I was shocked because I had never about this. I think a lot of people here know about this and I'm thinking why am I even doing this, because it looks as though it may well be solved somewhere else.

Javier Rúa-Jovet: Anybody want to comment on Marita's comments? Jeff?

Jeff Neuman: Thanks, this is Jeff Neuman. Specifically on the WIPO process. So this was raised, I can't remember if it was the last meeting or two meetings ago. And so we did some research into it and our researched revealed that I think as was discussed on one of the last sessions is that the WIPO process has been going on for ten years if not more. And every few years, there are new proposals that are being sent into that sub-committee. They're just not - the reason why we're not spending a lot of time talking about those is because until they get out of that sub-committee to the full committee and to the full membership, which it's already been, if you look into the WIPO record, there are already a number of countries that have objected to the proposals that have been submitted.

It just - it's one of those things where we know that there are proposals but it's just not ripe yet to have a conversation about the WIPO proposals because there are only submissions by a few countries. And when they get forwarded to this world here, into this bubble -- I think you called it a bubble, which it is -- but when it gets forwarded to this bubble, then it tends to be given more significance in this bubble than it is outside of the bubble. And I don't want us to, from an overall co-chair perspective, we can't really get distracted by things that are by no means even halfway certain to get further out of the sub-committee, much less to the committee, much less to the floor, much less outside of WIPO.

So there are some interesting things going on in lots of different places but I think we need to kind of keep our heads down and focus for this program than kind of look at all the other proposals that are out there. Thanks.

Javier Rúa-Jovet: Thank you, Jeff. So what Jeff is saying, if I hear them, is there are things happening out there but they're not ripe for our discussions because they're not ripe over there either. Okay, that's interesting. That's true. So I guess that's why we're focusing on resolutions that the Board has put out, which are out there. Some of them very, very final. Some of them are still in process and they're closer to home because they are in our community, in the ICANN community.

So Jorge, you have some comments.

Jorge Cancio: Olga has something first.

Olga Cavalli: Yes, just a clarification question. So reading the resolution, the Board's requested ICANN President to provide a proposal to kind of solving the issue. But it's my understanding that if there are conversations in between the company and the country, so how does these two things get together? So

that's a kind of philosophical question to my mind and it's just that maybe someone in the room can clarify that.

Javier Rúa-Jovet: Marita?

Marita Moll: Sorry, not to your question, Olga, but just following on to what I said. My point was really that I wish that we would know that these things are going on. I'm sorry, I must have missed that call, but maybe right up front or at some point, there could be some - the whole community would know, okay, these people need (unintelligible) they are also discussing this issue and you should be aware of it. I think that would be useful.

Javier Rúa-Jovet: Thank you, Marita. Yes, that would be useful to all - useful to me. It's just pure education. Pure education was what's going on out there and it enhances all our thought processes. So Jorge, did you have a point?

Jorge Cancio: Thank you. I'll try to be brief and I don't want to opine on what is an open process in the case of dotAmazon. But I think that in the end, what it reflects is that - or how I read the background or the thoughts behind these resolutions, because there have been several resolutions and also several GAC advice on the issue, is that the best thing is mutually agreed solution between the company and the countries involved. And that ICANN is acting as a sort of facilitator in this, in getting information across to both sides.

And my personal reading of that is that the principle is that we have different interests at stake. Now, they are on the table. Now, they are more or less talking to each other and hopefully, they will come to an agreed solution. But of course, and this will come as no surprise to you, I think that this would be much better dealt with, with the framework that instead of having a six-year long process, we would have a process, which is really worked out and which works before the application goes too far and which allows both sides, or the several sides to talk to each other.

That's on the dotAmazon and this can be applied to all similar cases, which are happening. And on the WIPO proceedings, I agree to a certain extent with what Jeff said. This is really a very long process, which is happening in WIPO. At the same time, there are new developments within WIPO and at least for those developments where my country is participating, they are very careful to respect the multi-stakeholder process, to only try to focus on a principle level and leave the policy development on the issue of TLDs to the ICANN environment. Because at least from our country's point of view, this is the right place to make policy on this matter in a multi-stakeholder fashion.

And at the same time, the fact that there has not been unanimity in WIPO in the last 10 or 15 years on this issue shouldn't lead us to the reading that this is not important. Because the very fact that this has been discussed there for so many years shows that for many countries, for many members of WIPO, which are at the same time also members of the GAC in most cases, this is an issue of key importance. So I would make the reading at the level of geo-names, TLDs reflect or impact on identity, are politically relevant, and that's why it's being discussed also in WIPO.

Javier Rúa-Jovet: Thank you, Jorge. Anybody with a comment over (Jorge)'s comments or any prior comments? Jorge, I don't think anybody is diminishing the importance of the topic. I think we all agree these topics are important and that's why we're here. They are very important. It's just whether or not, or at what level would other procedures that are outside of Work Track 5, that are advanced or not advanced, ripe or not ripe, inform our process formally.

So maybe we can go to Slide 25. So again to the group, what do you think could be the takeaway from something like what's going on in dotAmazon right now? I think we've discussed a little bit right - (Jap), go ahead.

(Jap): (Unintelligible) interrupt. It's simply to answer to the question that you raised before. I think that of course, we need to build on the cases. These cases are fundamental and the lesson - and we need to learn the lessons from the

past. If not, we are condemned to repeat the same mistakes again. What Jorge was saying before about the lessons to be learned by the Amazon case is that because everybody was convinced that was on the right side, they didn't talk for years. Why - I think that our duty is to create the condition since the very beginning that the people sit and talk and start to negotiate when there are interests at stake.

I understand that Amazon is only interest as a company in their own interests to protect the citizens' right. And they have to sit at the table and try to find a solution. We have technology and innovation are the key words for ICANN and we give up on this point simply because we want to give more work to lawyers. I prefer less work for lawyers and more concrete action and innovation.

Javier Rúa-Jovet: Thank you, (Jap). I'm a lawyer but I agree with you and I think the initial report reflects the importance of proposals like early contacts within parties, sitting down together early to hash out differences and try to come to consensual solutions. So your point taken.

Any issues - any additional issues that any Work Track member wants to raise on this dotAmazon? I mean the topics are the same or very similar with the Persian Gulf. Different result but there's a result in Persian Gulf. But any other - any point any other Work Track member wants to come on the applicability or what we can learn from the dotAmazon process up to now?

I see no hands. (Christopher)?

(Christopher): Just a quick work to reiterate what I've already said on the list. This is what in French we would call a dépannage. Whether it's successful or not remains to be seen. But it is I think a reflection of the fact that the 2012 procedures did not go according to plan. I think at this stage, given the enormous political and economic implications in this specific case, we have no option but to let the Board see if they can invent a top-down solution.

The whole purpose of the PDP, and the work tracks, and the rest of it, is to seek bottom up solutions so that this kind of thing never arises again. And above all that, this should not in any sense be a copout in the sense that we can say, oh well, we'll take that as a precedent. If there's anything that can't be agreed upon, we'll kick it up to the Board. No.

Javier Rúa-Jovet: Thank you. Several hands. Go ahead.

Nick Wenban-Smith: Nick Wenban-Smith. The question what is the takeaways for the group. I think while Amazon is obviously still a current issue, it's a bit hard to tell what the takeaways are going to be because it's premature to say what the takeaways are until it's resolved. But I think we can all agree that it's extremely unsatisfactory that an applicant could have made an application in 2012 and it was still to be unresolved some six years later.

I think what you're asking is we had an expanded differentiation of geographic terms in the 2012 guidebook, would we have avoided some of these problems. And I think my view is that the answer is no. I think that the geographic terms work pretty well in the 2012 guidebook and the vast majority did proceed through pretty smoothly.

And I would caution against sort of legislating the different edge cases because I think that creates a whole bunch of extra process and administration for everybody who didn't have any of these problems. Lots of geo names went through very well. We talked about the London and Wales, the capital cities, non-capital cities who managed to do this very well and went through in one or two years. And create a whole bunch of machinery around something, which probably would have been difficult whichever way it was cast is probably not my preference in terms of next time around.

Javier Rúa-Jovet: Thank you, Nick. Co-leaders, any points? Annebeth?

Annebeth Lange: Annebeth Lange. What I hear here is that the conflicts raised with Amazon and some others should learn as a lesson - teach us a lesson that was has been raised here, try to avoid these conflicts by talking together. That's been raised many times in the discussion, in the chat, and here again. That can't do any harm at least, to meet each other, to find systems that people talk together before it gets as bad as these examples we have here.

And I also agree with (Christopher) that we shouldn't have a precedent by this case that it should be the Board to decide after five, six years. That's not the good thing for the multi-stakeholder solution. So we have to try to find the solution to that but I also agree with Nick Wenban-Smith saying that whatever the system had been, and it's like when you're a lawyer and you work and try to make regulation for your country. You think that you have thought about everything when you make a new law, a new regulation, a new contract. And then when it gets into practice, you say, oh god, I didn't think about that and I didn't think about that.

So what we can do here is to try to make better the things we see when not as good as they should have gone. But perhaps there will be other problems afterwards. So to try to work together as a group and also new problems pops up. That is this process that we have had here that we have been working more together now in this round than we did in the last round and that is positive for the way forward, wherever we end.

So let us take that home that we know each other better. We know each other's views better and that can't be bad.

Javier Rúa-Jovet: Thank you, Annebeth and this discussion reminds me a little bit of when countries started doing their civil codes. Civil codes tried to be very specific, specific of every little situation in the world and that was bad too. So on one side you want to be as specific and prescriptive as possible within reason, but also you want to focus on principles.

And when we look at these Board resolutions, they have a rationale and what we discussed here. You have valid interests on every side. You have cultural concerns and those are principles that are there in the thinking. If we go to the Persian Gulf case, maybe we can go to a slide on the Board resolution there. So I don't know if we can learn much more, but in this case, the delegation will not happen and that's been decided. And in the rationale, the Board takes into considerations these types of cultural and sovereign related concerns. And so that's what we're discussing here. I don't know if anybody wants to make a statement on the Persian Gulf case, which is really final now generally in terms of the non-delegation of that string, and what we can learn from that, besides what we've discussed already on the dotAmazon case.

Any of the co-leaders? So we don't want to be in a bubble that's completely closed off from the real world, I think, but I don't think we're closed off. We're talking about this right now and we're gauging how things that happen on a parallel track inform our track or don't inform our track, or at what level inform our track, or when they inform our track. We're aware of these issues. We have to keep learning about them. There's also concerns I think that were mentioned by the representative of the United States early on, on a different topic, when negotiations are taking place between sovereigns and treaties. That's very sensitive also so we have to also walk a straight line on some things.

Any statements in the chat? I think (Jap) had a statement to make. Please.

(Jap): I think that about this case that for me is linked also to dotAfrica and also to dotHalal, dotIslam, the lessons to be learned is that where there is a clear subject that could represent a specific interest in this case, a geographic interest, or in dotIslam when there isn't somebody that could even define clearly that interest, then it's - we are right to do a conclusion that if there is somebody that have a correct right to (unintelligible) certain geo names then at the end, you've got the Board goes in this direction.

While for dotIslam where there is not a clear unique reference for dotCatholic exists, then the situation is different. So I think that on this basis, we need to think.

Javier Rúa-Jovet: Thank you, (Jap) and it is an important point that we have to keep thinking about because I think we could clearly say that dotAmazon and dotPersianGulf have geographic rings, geographic place name rings to them. I wonder if things like dotIslam and dotHalal are of course things have a geographic base in cultures and faiths. But dotHalal and dotIslam are not a geographic region. So this is a slippery slope and setting down a norm is almost always an act of faith.

But perhaps there's a distinction between dotPersianGulf, and dotAmazon, and dotHalal, and dotIslam that we can agree that we are trying to focus as much as possible because that's our remit on geographic terms and not things that are related but are a bit outside of scope.

There's a comment from Liz in the chat that will be read.

Annebeth Lange: I can try to read it. (Xavier), I think this thread of a conversation is very important. It would be most helpful to set up a new thread of conversations on our mailing list so everyone has time to read the resolutions and then think clearly about the impact of those decisions for our work here. We can then at some point, soon after, capture all the points that everyone wants to make, which will inform our recommendations. I think Emily that the details of the resolutions are in the slides, quite a lot of it there. So when we send out the slides, it will be easy for everyone to read it.

Javier Rúa-Jovet: Yes, and nobody wanted to hear me reading all through those slides. You would have died from boredom. So any other comments on this important topic? This goes to the heart of what we do, just thinking about these difficult issues that touch upon things we care about on many sides. Is there

anything in the chat, anything online? There's nothing online? No hands.
Sorry.

Annebeth Lange: I think that we will wrap up this discussion now and then we have ten minutes left before we wrap up, and if there is anything anyone here want to raise before we say thank you, that would be great. Martin?

Martin Sutton: Thanks, Annebeth. I'm just trying to think of using the ten minutes or nine minutes wisely and taking up Paul's offer earlier of trying to form a small drafting group for summarizing it into a short one or two pager. If there's any volunteers that want to come forward, we can have a little huddle over the right hand side there around Paul. Thank you.

Javier Rúa-Jovet: Or you shall be voluntold. No, no. So with that said, I think we can happily and with a bit of time wrap up this session. Thank you very much. A hand to you, please.

Woman 2: And if you could just announce where we are next for?

Woman 3: Yes, we're going to get started with the full group. I believe we are in the - yes, so we're - if you're sticking around to work with the sub-pro group in the afternoon, we're moving to Room 114 and we'll be there the whole afternoon and I believe that starts up in 15 minutes - 20 minutes. So please do follow us along and if you don't mind clearing out of this room rather quickly, the GAC has a session in here and people will be coming in shortly. Thanks. And you can stop the recording if you haven't already. Thanks.

END