
ICANN71 | Virtual Policy Forum – At-Large EURALO Policy Session: New gTLDs: Protection of Geographical Names in Europe
Wednesday, June 16, 2021 – 14:30 to 16:00 CEST

GISELLA GRUBER:

Thank you. The recording has started. Good morning, good afternoon, and good evening and welcome to the At-Large EURALO policy session of New gTLDs Protection of Geographical Names in Europe. My name is Gisella Gruber and I am the remote participation manager of this session. Please note that this session is being recorded and follows the ICANN Expected Standards of Behavior. During this session, questions or comments submitted in chat will only be read aloud if put in the proper form, as I've noted in the chat. I will read questions and comments aloud during the time set by the moderator of this session.

Interpretation for this session will include English, French, and Spanish. Click on the "Interpretation" icon in Zoom and select the language you will listen to during this session.

If you wish to speak, please raise your hand in the Zoom room and once the session facilitator calls upon your name, kindly unmute your microphone and take the floor.

Before speaking, ensure you have selected the language you will speak from the interpretation menu. Please state your name for the record and the language you will speak if speaking a language other than English.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

When speaking, be sure to mute all other devices and notifications. Please speak clearly and at a reasonable pace to allow for accurate interpretation.

This session includes automated real-time transcription. Please note this transcript is not official, nor authoritative. To review the real-time transcription, click on the “Closed Caption” button in the Zoom toolbar.

With that, I will hand the floor over to our moderator, Sandra Hoferichter. Sandra, over to you.

SANDRA HOFERICHTER: Thank you very much, Gisella. My name is Sandra Hoferichter. I am the moderator of this session. But first of all, I would like to give the floor to Sébastien Bachollet, the Chair of the European At-Large organization, to welcome you to this session. Sébastien, the floor is yours.

SÉBASTIEN BACHOLLET: Thank you very much, Sandra; and thank you very much all the speakers. I will switch to French, if you allow me.

Thank you very much. This is Sébastien. As we said last week, during this session, during the joint meeting, we had a very successful meeting. We talked about politics and the domain name, and this is a subject that concerns Europeans, first and foremost.

In 2012, we had a debate on dot-[vin], dot-wine, and [our minister] at the time came to participate to the ICANN meeting because these

questions on the geo names was a subject that concerned the French, first and foremost, again. So this debate is essential for Europe.

We had to work really hard during this session. And then we'll have a session to have fun, to discover Holland and the Netherlands and the arts and culture of the country. Stay with us, therefore, during the next three hours, as you will understand a lot of things. Then you can have fun.

Most specially, I would like to thank not only all the participants and the moderator of this session, I want to thank everyone who participated, especially [inaudible].

Sandra, you can take the floor. Thank you for your moderation of this session.

SANDRA HOFERICHTER:

Thank you very much, Sébastien, for welcoming everyone. Before I introduce the top of the session, I would like to introduce myself. I am the Chair of Medienstadt Leipzig e.V., which is a German not-for-profit association, and recognized At-Large member in Europe. We are organizing entirely the European summer school on Internet governance. And since 2020, I am also the Chair of the Board of Directors of EURid.

The session today will review and discuss the proposed protection afforded by the recent subsequent procedures policy development procedures and eventually the creation of new generic top-level domains.

We have invited four distinguished speakers, which are Yrjö Lansipuro— he is an ALAC and GAC liaison from Finland. Yrjö is a EURALO board member and the vice president of the Finnish ALS ISOC Finland and also the liaison, as I said, for the past five years already. His background is in journalism and public diplomacy. While working in government service, he represented also Finland and the GAC.

Our second speaker is Francis Fay. He is Head of Unit responsible for geographical indications in the Department of Agriculture and Rural Development at the European Commission. Francis has more than 20 years' experience of policy on geographical indications, agriculture, and standards and schemes, having been involved in more than one reform EU geographical indication policy. Previously, Francis was the desk officer responsible for agricultural trade negotiations with the US and Canada, notably on trade in wines and spirit drinks.

And we have Latha Nair. She chairs the trademark, copyright, and geographical indication practice at the Indian IP boutique, K&S Partners. Geographical indications is a niche area of her practice where she has had over 23 years' of experience in protecting several Indian and international geographical indications, including big names like Basmati Rice, Darjeeling Tea, scotch whisky, champagne, and [inaudible]. She has published a book as well as several articles on the issues pertaining to geographical indications, which are available on her firm website, knspartners.com.

Then we have Giovanni Seppia. He is the External Relations Manager at EURid since late 2007. In his function, he coordinates a 20-person team

from all over Europe who are in charge of EURid’s relation with registrars, registrants, communications, marketing, contractual compliance, international relations, and relations with the European institutions. The External Relations Team is also in charge of managing the lists of reserved and blocked domains under the dot-EU TLD. In his capacity as an External Relation Manager over the past 13 years, Giovanni has worked together with the European Commission to update these lists and to investigate the option to expand the lists to include geographical indications.

And last but not least, we have Lucien Castex who volunteered to be our rapporteur for this session. He is the representative for the public policy of AFNIC and currently serves as the co-chair of the French Internet Governance Forum Steering Committee and is a member of the Multi-stakeholder Advisory Group of the UN Internet Governance Forum. In addition, Lucien is an Associate Researcher at University of Sorbonne Nouvelle and the co-lead of the Internet Governance and Regulation Research Group.

And with this and without further delay, I would like to hand over to Yrjö Lansipuro, who would present the position on the At-Large Advisory Committee and the advice to the Board which is the basis for our session. Over to you, Yrjö.

YRJÖ LANSIPURO:

Thank you, Sandra. On geo-names, as always, At-Large thinking stems from end user concerns. How to avoid confusion for end users of the Internet. But beyond that, it’s recognized that geographic names for

many people are not only technical identifiers, but there is a strong emotional attachment to them. Place names sometimes come from really time in [memorial]. Sometimes, the oldest surviving legacy of languages spoken a long time ago.

So, At-Large representatives in work track 5 of the SubPro PDP were pushing for more protection for geographic names. We were happy that the Applicant Guidebook of 2012 remained as the default status quo instead of being rolled back to the 2007 policy.

Now, on the slide you see the main points of the ALAC statement to the PDP and the advice to the Board. There are three points we still hope to be considered. First of all, [inaudible] for the non-capital city names require letters of support or non-objection irrespective of the intended use of the name. You have to draw the line somewhere of course and we suggested that this would apply to cities with more than 100,000.

Second, a notification tool for GAC members who wish to be informed of applications under established criteria. This idea came from the GAC and we thought it was a good one. As we always say, citizens and end users often are one in the same people.

Third, we were disappointed at the lack of community support of an opt-in system for any interested parties who are interested in a specific string. These two-letter points are not attempts to restrict anything. It's just the fact that for affected parties there would be information available about applications for their names without—even if they are not following in the ICANN full time. Thank you, Sandra.

SANDRA HOFERICHTER: Thank you very much, Yrjö. Too many windows on my screen, so I had to find the unmute button. I thank Yrjö for being very brief in order to give the floor to our next speaker, which is Francis Fay, and he will speak about the geographical indications in the domain name system. Francis, you have the floor.

FRANCIS FAY: Thank you, Sandra. Do let me know if you can't hear or you can't see me. While the debate is clearly focused—and thank you, Yrjö, for that introduction—on geographical names, the area I work in, and Latha who is speaking after, is the intellectual property rights of geographical indications. They come under different names—appellations of origin, designations of origin—but altogether, they're known as GIs (geographical indications). And typically in the agriculture sector, we're looking at communities of somewhat less than 100,000 people—typically a group of small farmers in a region cooperate to make a value-added product and enter the market with their collective GI.

They are an intellectual property right and university recognized Paris convention 1883 has 177 members and it's one of the great pillars of the modern order of economic order in the world and one of the highest adhered-to treaties.

More recently, in 1995, the WTO Agreement also defines, defends, and protects geographical indications agreed by 164 members and again is the universal standard.

GIs have a definition agreed internationally and they have a protection obligation that members must protect them against unfair competition in the Paris convention or to prevent the name being used to present a good not coming from the place under the WTO and the WTO also picks up the Paris convention on fair competition.

So, GIs, if they are registered and protected widely, they protect local value at global scale and help small farmers, small operators, to an extent withstand the pressures from commoditization and globalization that they continually face.

Now, they can be protected through sui generis schemes, and slightly tongue in cheek I would like to highlight the United States alcohol and tobacco legislation—I'm old enough to call it ACF—which designated hundreds of American viticulture areas to ensure Sonoma County and Napa Valley would not be used on bottles of wine other than those coming from those places and meeting the standard.

But in Europe we find GI schemes in Turkey, hundreds of names—Switzerland, Russia, Georgia, UK—without even mentioning the European Union. That's thousands of GIs protected.

In the Union, we protect 3,200 EU GIs and 1,800 non-EU GIs. That's quite a health two-to-one ratio for the international protection.

So, I think you can conclusively show from Russia to Turkey to Portugal to Iceland, they are protected in what ICANN calls local law.

Now, core issues for GIs is bad-faith behavior in the DNS and the objective of intellectual property rights is to ensure fair competition, that one operates. They cannot exploit the property rights of another.

Now, if we as ICANN do not respect those rights, the alternative is giving a free pass to profiting from bad faith. If the holder of GI rights cannot even introduce a claim—and there's still the burden to prove bad faith—but if they cannot introduce the claim, then the door is open to speculators, the [chancers], and even the fraudsters and that will lead to trouble.

This is not just, I would say, a dot-amazon or dot-paris case where public entities act to defend their cities and regions. This is nullifying property rights and most of our economies, our countries, these are fundamental rights.

Now, fortunately, ICANN's Articles of Incorporation has the applicable local law clause that it—ICANN—shall operate in conformity with relevant principles of international conventions, like Paris 1883, and applicable local law and that would clearly cover GIs in Europe, Asia, much of the Americas and increasingly in Africa.

The alternatives, as I've said, is local producers seeing their rights usurped and having no recourse. This is the [inaudible] element. It's not that that ICANN, we are going to say, "You did not show bad faith. Your case was not well presented," or, "The owner has legitimate title." What we're saying is you small farmers, you don't have a voice. You have no [inaudible]. You are not permitted to defend your fundamental right from perfectly, avowedly bad-faith behavior. We're also saying we run

a system that licenses profit from bad-faith behavior. Now, this, to put it gently, is unsustainable.

At the very least, the local law clause really has to be used to protect the rights of the vulnerable in Europe, Asia, and elsewhere that there are geographical indication systems. Thank you very much.

SANDRA HOFERICHTER: Thank you very much, Francis. This is Sandra speaking again, the moderator. Now let's listen to the voice of an intellectual property lawyer from India which is Latha Nair. I'm very pleased that we have her and her group. Latha, you disappeared with your video for a moment. Are you still there?

LATHA NAIR: I'm sorry, I am there.

SANDRA HOFERICHTER: We can hear you. Please go ahead, Latha.

LATHA NAIR: My topic today is the example of India in protecting domain name rights and geo-names and geographical indications. The 2001 report of the second WPO Internet domain name process excluded GIs from the purview of recognized prior rights in the domain name process.

GIs have come a long way since 2001 and you just heard it from Francis, and hence [this report is too antique] so far as GIs are concerned. It is

high time this exclusion is reexamined and decided in favor of GIs as GIs are a mainstream IP right today. They are widely known to aid community development and are being looked at as a tool to achieve sustainable development goals.

In India, we have not had a domain name case involving a pure geographical name so far. However, I have had the pleasure to successfully represent CIVC, the French body in charge of champagne wines in a complaint involving the domain name champagne.in, registered by an Indian entity.

CIVC complained before the dot-IN registry, which has the dot-IN dispute resolution policy, or the INDRP. Notably, CIVC did not have a trademark or certification mark registration for champagne in India, but it held a registration as a geographical indication under the Indian GI statute.

As we know, the UDR recognizes only trademark rights in the domain name process. INDRP is closely monitored under the UDRP, so it was a pleasant surprise when the single arbitrator ordered a transfer of the domain name in favor of CIVC despite the fact that it had no trademark registrations in India. The arbitrator found that CIVC had established all the three requirements in the section four of the INDRP which is identical to paragraph four of the UDRP.

In particular, regarding the condition under 4A that the domain is identical or similar to a name, trademark, or service mark in which the complainant had [inaudible] that the requirements under the section excluded GIs. However, he held that considering that CIVC did not have

any trademarks or service marks in India and considering the legislative intent and looking beyond a little interpretation of INDRP, a similar weightage as that is given to trademarks could be assigned to GIs.

He noted that CIVC had established negative rights in India in the name champagne through consistent enforcement actions, as CIVC has clearly established its rights in the [GI] champagne in India, the arbitrator proceeded to create CIVC's GI registration in India [at par] with the trademark registration and granted the transfer.

This decision rendered in 2012 is sort of an outlier in this area and is much needed in the context of today's discussions. I know that there are so many other decisions that didn't go in this direction. Thank you.

SANDRA HOFERICHTER: Thank you very much, Latha. And now let's give the floor immediately to Giovanni Seppia and listen to a voice from practical consideration point of view on the aspects of eventual policies. Giovanni, you have the floor.

GIOVANNI SEPPIA: Thank you, Sandra, and thank you for the opportunity to speak about our experience with reserved and blocked domain names.

So, my name is Giovanni Seppia. I am the External Relations Manager at EURid, the registry operator of the dot-eu top-level domain in Latin, Cyrillic, and Greek.

EURid has a very special framework because we work under two European Union regulations and those two European regulations, they foresee the opportunity for member states of the European Union, candidate countries, and European institutions to produce lists of blocked or reserved domain names.

So, currently, we work with three lists that were produced quite a long time ago and one list is a list that was submitted by a few member states in 2004 and it's the list of so-called blocked domain names.

A domain name, when it's blocked in that list, cannot be registered at all, cannot be unblocked, it's there forever. So it's going to be unused forever.

Reserved domain names are [instead] two lists, one for member states and candidate countries, and one for the European institutions. Those two lists include quite many domain names from all member states, candidate countries, and the European institutions and include domain names that, via specific procedure, can be activated upon specific requests which the registry, EURid, has to forward to contact points that we have within each member state or at the European Union level.

I must say that managing the three lists has not been easy. The main challenge comes from the fact that if you think that those lists, they were produced in 2004, 2006, you may easily guess that people that weren't in the different member states, governments, and produced those lists, they are no longer there. And therefore, every time is just a matter to educate again the new contact point if we are ever told who is the new contact point about the procedure to activate those reserved

domain names and also to make sure that they understand whenever they may receive a request from us.

Recently, in a couple of occasions, the European Commission has requested us to participate in exchanges of views about the possibility to include geographical indications (GI) as reserved or blocked. This is currently under discussion. There is a reference to GI in the European Commission report to the Parliament and the Council which is a report about EURid cooperation with EUIPO. And in that case, we are working with EUIPO to understand to what extent the EUIPO and European Commission would like to move forward into that direction.

Again, the overall experience is positive because it's not impossible to manage blocked and reserved domain name lists. However, again, the main challenge is to keep the relation and to keep the different member states and contact points of the European institutions up to date and somehow know that those contact points know us and know the procedure.

That's it for the moment. I'm happy to answer any questions you may have. And I apologize because I have to leave for another meeting in 15 minutes. Thank you, Sandra, and thank you again, Sébastien, for this opportunity.

SANDRA HOFERICHTER: Thank you very much, Giovanni. I would like to thank all speakers for having given us a very brief introduction because that leaves now an

hour for discussion and I invite everyone to raise your hand and take the floor.

I also remind that if you would not like to take the floor but would like to have the session host reading out what you put in the chat, that you make it clear by putting question or comment in the chat and then Claudia will read out your comment or your question to the panel. So, please don't be shy and raise your hand with the hand-raise function or make yourself available in the chat so that we can continue the discussion.

I see at the moment that there are no hands raised. There is one hand, Greg Shatan. Greg, you have the floor, please.

GREG SHATAN:

Thank you. I would suggest that if there is a belief that ICANN should have a process or mechanism for protecting geographical indications that the appropriate next step would be to get a policy development process working group started through the GNSO.

UDRP protects trademarks, including geographical indications that may be registered as trademarks. This is often the case in the United States and some other jurisdictions, but it does not protect geographical indications as such. So, just as there was a process to get that put in place and a process still undergoing to review, that the UDRP and the URS, the next step here would be a PDP process. That I think is the route that is available to move on from the current status. Thanks.

SANDRA HOFERICHTER: Thank you very much, Greg. Are there any replies from our speakers on this or any thoughts that you would like to share in reply to Greg? If this is not the case, then I hand it over to Marita Moll for the moment but encourage the panel speakers to come into the discussion again as well. Marita, you have the floor.

MARITA MOLL: Thank you, Sandra. I was just wondering if we could have, for everyone's benefit, some clear definitions of geographical indicators and geographical names because I'm wondering where that overlaps. I'm sure there's plenty of people here on the panel who can resolve that. Thank you.

SANDRA HOFERICHTER: Thank you, Marita, for this question. I think that should be handed over to Francis Fay, and if I'm not mistaken, Francis you also wanted to take the floor. Could you answer this question from Marita?

FRANCIS FAY: Thanks very much, Sandra. For some reason, I had to use a physical hand because I don't see my electronic hand. I'm not a Zoom-friendly person.

Well, to take the second question, indeed there's a clear definition. There's a sort of base definition which is contained in the WTO agreement. It's a sub-agreement of WTO, which is a whole collection of

agreements. It's called the Trade Related Intellectual Property Rights Agreement. It's Annex 1C to the WTO agreement.

And in there, there is a definition, therefore a definition agreed by all, and there is a standard of protection which I alluded to earlier. So, we have a definition of GIs there. They're not just names of provenance saying it comes from this place, but it's the name used to describe a product which owes its characteristics or its reputation to the place it comes from and it's particularly easy to see that in the way that wine is marketed, very much associated with its climate, its soil, and its method of production by local winemakers. So, that would be the definition. There are a couple of other definitions that sometimes WIPO itself (the World Intellectual Property Organization) has a treaty there's been agreement which has two definitions, appellations of origin and geographical indications. But the basic would be that [inaudible] agreement is the one that all parties can buy into.

Geographical names. It's a very interesting question, not one I'm going to try to answer but I think you're very right to pose that question. Where does the geographical names stop and something else begins? Then you can also obviously get into the world of translations and representing names in different alphabets.

The comment I would have on Greg Shatan, which I was using my physical hand—not my electronic hand—was I don't know ICANN's procedures but I think what he says has a lot of sense to it, assuming that we could make some progress.

But I just want to highlight the dichotomy, that if you happen to produce your geographical indication in a jurisdiction that protects GIs through trademarks, you have rights. You can defend your GI. You can even therefore, if you apply first, you can defend you domain name through the system.

If you happen to produce the other side of the border in a country which protects geographical indications through a GI system, not withstanding that that's recognized internationally, not withstanding that the neighbor country also recognizes that standard, you can't even get in the room. This is what is so debilitating. It's not that you lose the case because it wasn't very well prepared. It's that you're not even allowed to introduce your case and defend your rights. And I think that highlights it's defending trademarks well. It's a bit more complex than that. Thanks. The key to the room is via the PDP. I don't know what the PDP is but I agree.

SANDRA HOFERICHTER: PDP is policy development process. This is what Greg was actually proposing. Apologies. I should say it's Sandra speaking again.

Also, in the chat, for many of you it might be interesting that the hand raise function has been moved under the reactions button. It should be on the very right of your cockpit that you can use. So, Francis, maybe you'll find it there as well under the "Reaction" button.

Are there any other? Marita, have you a follow-up question or is that an old hand?

MARITA MOLL: Yes, it's a follow-up question.

SANDRA HOFERICHTER: Please go ahead.

MARTIA MOLL: Thank you. I'm going to pursue my question a little further if I may. Let's take the example of Burgundy, France which obviously is a province and it is also a very well-known and I'm sure trademark-protected type of wine.

Supposing it wasn't ... I mean, is there some ... If it wasn't protected, is there a hierarchy here of which would come first? I'm sure there's lots of cases in which there are such things and the protection is not there. Is it just who comes first, who gets in first, or is there some kind of hierarchy of which is more important? Sorry, that's not an easy question, but I'll leave it there.

SANDRA HOFERICHTER: Thank you, Marita. Who would you pose the question to—to Francis, or to Latha, or to both of them?

MARITA MOLL: Whoever thinks they've got a good answer.

SANDRA HOFERICHTER: So, I see Francis seems to be ready already but I also invite Latha to comment on it. Francis, please go ahead.

FRANCIS FAY: Okay. Thank you. I think Latha will have the better view as the practitioner. Basically, I think the answer is fairly easy to work out, which is it's standard intellectual property process applies. If we're talking about the DNS and if you have a trademark, I don't think Begonia and Burgundy are protected as trademarks. I think, like Champagne, they only have the GI protection. But if you have a trademark then, you have to show the bad-faith behavior and that you have a right to the name and that the other guy doesn't have a right to the name. So, it's a question of proof according to the standards set out.

There are rules about coexistence. If it's a prior trademark, then it probably coexists with a later GI. Otherwise, GIs, there are rules on GIs which sound the same as each other. So there's homonymity is also provided for.

So, all of these rules are pretty well set out and follow the intellectual property standard, intellectual property rules and principles. Thank you.

SANDRA HOFERICHTER: Thank you, Francis. I would like to directly hand over to Latha. Latha, would you also reply to Marita's question?

LATHA NAIR: Yeah. I would also add that if GIs were protected in the DNS, it would be treated in the same manner as trademarks would be treated in the question that she raised.

SANDRA HOFERICHTER: Thank you very much, Latha. We have another hand raised by Christopher Wilkinson. Christopher, you have the floor.

CHRISTOPHER WILKINSON: Thank you, Chair, and apologies for arriving late. I spent the best part of the morning trying to reestablish an Internet connection here. Not fun.

Just a brief reply to Greg, we have had the PDP and the problem is that the PDP did not—and particularly work track 5—did not agree to discuss this issue. On several occasions it was raised and it was never debated.

To be frank, I don't think it needed to be debated. The Articles of Incorporation state clearly that ICANN shall take account of applicable local law. That clause was introduced specifically in the negotiation between the United States, ICANN, and Joe Simms in practice because ICANN had not yet exist. It was introduced specifically at the request of the European Union in order to create and record that ICANN shall respect international agreements, and I think Francis has walked us through what those mean in tis case, and applicable local law.

I don't think we need a PDP. I think we need GNSO just to accept that they have an obligation to respect applicable local law. Thank you.

SANDRA HOFERICHTER: Thank you very much, Christopher. Is there anything from the GNSO who would like to take up on what Christopher just said? Greg, please go ahead.

GREG SHATAN: I'm not from the GNSO. I'm actually the ALAC, but the point is that if the GNSO, as I understand it, were to recognize the geographical indications, it would have to take place through a policy development process. That's the way that this happens. Otherwise, there's no other way to develop policy. And right now there is no policy for geographical indications.

I'm not expressing a position for or against such a protection. I think it is important to have that policy development process where these issues can be fully decided and how you would set up, essentially, another dispute resolution procedure and how you might deal with conflict, say, between somebody who has Burgundy for leather goods as a trademark and the producers of Burgundy wine who presumably have a geographical indication or a series of them for the same thing. Or maybe—I haven't had a chance to check it—there might even be a collective—a certification mark in the US for Burgundy, which is possible. I just don't know if it's the case or not.

But I think the bottom line is there are relatively few roads through this forest and there's no, for better or worse and I think mostly for better, the ICANN board or Org cannot set domain name policy without a policy development process. Not the place to discuss the philosophical issues about the GNSO but it is the Generic Names Supporting Organization which develops gTLD or basically other than ccTLD policy. And unless we're going to change that, the road goes through Rome, certainly if as Francis and Christopher say there is ample support, that it could and should be protected and it's appropriate, then that could and should be born out in the policy development process and the end result would be a policy which would be recommended by GNSO to the Board and the PDP would be one that would be participated in by the entire community, not just GNSO organization. I think that really there's no other way around that. Thanks.

SANDRA HOFERICHTER: Thank you very much, Greg. Christopher, is that a hand in reply to what Greg just said or is that an old hand?

CHRISTOPHER WILKINSON: That's an old hand and it's also a long-standing debate. I could go along with Greg if I had greater confidence in the efficiency of the PDP process and the GNSO. Three years ago, GNSO accepted a mandate from the Board to conduct a PDP on the implementation of the GDPR and that was called the Expedited Policy Development Process, and three years later they still haven't produced a policy.

I take Greg's point just to the limits to current policy development in ICANN, but we can't go on indefinitely with PDPs that last for three years. Thank you.

SANDRA HOFERICHTER: Thank you very much, Christopher. I give the floor to Sébastien Bachollet.

SÉBASTIEN BACHOLLET: Greg, the PDP is the next [inaudible] but it doesn't function that [well]. Participation of the concerned people by the geo-name and for dot-[vin], dot-wine took part of the discussion with ICANN but it's not their life. They don't have time to just worry about all these things and discuss this. They have to go back to their daily life. But that's how it is.

So, if the voice of these users cannot be heard, cannot be present, and if it is only those who have the expertise who are there and these people do not connect with the people who are concerned directly, we have an issue. I think there is a time we have to think, we hope that there are proposals that will be made with that evolution of that model, multi-actor model, [inaudible] with the ATRT #3 and we hope we can reinforce the items that are not part of—those people who are not in the GNSO but are users who are concerned.

There is an example. This was a good example with dot-wine. We cannot do things in a daily life like we do in the PDP so much as [inaudible] but it's not enough. We need to find a way to integrate those who are concerned by those activities. They have to bring their opinion

to the table and I hope that we can start thinking about this. We can debate about this.

So, the answer is not only the PDP. It's another way of interacting with people. The PDP is a very administrative thing, too complex for the outside world, unfortunately. Thank you.

SANDRA HOFERICHTER: Thank you very much, Sébastien. I ask everyone to lower their hand if you don't want to speak again. I see now a new hand which is from Marita Moll. Marita, you have the floor please.

MARITA MOLL: Thank you, Sandra. In response to Sébastien, yes, I'd like to think that it was true that we'd have an opportunity to bring more people into the discussion once a decision is made, but we're kind of talking about real estate here and once a decision is made and a property is sent one way or another, I'm afraid the deal is done. It's often ... These things are often about, okay, who shows up? I guess it's up to us to make sure that there's enough of us in the room, people from one side or the other, to balance off the various discussions. Thank you.

SANDRA HOFERICHTER: Thank you, Marita. I see some questions and comments in the chat and I encourage the ones to take the floor, because at the moment, no one is in the queue. I think a discussion in the chat is worthwhile being held in public. Don't be shy. Raise your hand.

Olivier, you switched on your camera. It looks like you are going to speak next. Are you right?

OLIVIER CREPIN-LEBLOND: You're faster than my finger. Yes. thank you very much, Sandra. It's an interesting discussion because we're kind of stuck again around this concept that the policy development process, the PDP, is the one and only process by which policy can be created.

And what you end up with now with this new PDP 3.0, the latest one, is that it becomes extremely political because everyone is defending the points of their community rather than trying to find a solution to our problem. Policy development process, in my view, should be finding a solution to a problem—not politics.

So, we're kind of now putting ourselves into this stuck position. There used to be ... At some point, there was an opening to try to make cross-community working groups and I really deplore the fact that these are now being pushed aside, or at least I haven't seen any viable cross-community working groups being developed and that's because of the concerns [emitted] by members of the Generic Names Supporting Organization that is was effectively interference into the policy development process.

So, the new PDP 3.0 was created—it seems—to create a cross-community working group within the GNSO with the GNSO Council having the final say on what goes forward and what doesn't go forward.

I mean, I don't know. I don't want to speak against it as we just started it. But as you can see, I'm quite skeptical about how it will work and the early days seem to show that it's not going so well.

That being said, there have been some policy development processes in the past that have taken several years to complete, even before PDP 3.0 or 2.0 or whatever. Maybe we're just being impatient. That's one of the things.

But certainly, I do hope that when we manage to get face-to-face meetings back in order, we will be able to not only discuss this but also get some of the stalemates that we currently are seeing cleared up and actually make policy that works rather than take political stances on topics that effectively stalemates the whole process. Thank you.

SANDRA HOFERICHTER: Thank you very much. Olivier, it's Sandra speaking. Let me echo what you say. After one year of a pandemic and remote working only, it's really hard to deal with such issues when you can't really meet face-to-face and have an informal discussion on the corridors. I hope we will all be in better shape soon and we'll be able to meet again in person.

Now I see Francis, you have found the hand-raise button which is great. Francis, you have the floor.

FRANCIS FAY: Thank you. Francis speaking with video. Yeah, two questions, really, because I don't know the detail of this but I'm familiar with

bureaucratic processes that take so long you'd rather wish you hadn't started it.

First question. What happens with the enormous expansion of generic top-level domains that's going on? What happens if there is no protection? Because isn't ICANN heading for a massive clash? And it's this business not of who is right and who is wrong in any dispute and first to file and proving or not proving bad faith. That's all part of the game and I think people will accept that.

But not allowing them in the room, that seems to be quite a serious situation now that's going to be dot-wine, dot-[vino] but squared or to the power of ten.

And the second question, completely different, is what about using the reserved terms? Would it be feasible to take those 3,600 EU GIs and list them as reserved terms and the 4,000 Chinese GIs and list them as reserved terms? Is that a way forward or is that discounted? Thank you.

SANDRA HOFERICHTER: Thank you for the questions. Is anyone who would like to reply to those questions that Francis just posed? Olivier, would you like to follow-up on?

OLIVIER CREPIN-LEBLOND: Thanks very much, Sandra. I have my own views on this next round that we're about to see. Next rounds are usually pushed by financial incentives that there is money to be made in another round. And it's

interesting because we now have the successes or failures of the previous round to show what works and what doesn't work.

I expect—and this is just a general feeling, not having looked at the exact details, but I expect that there will be some expansion that will actually be pretty straightforward and not really cause too many problems and that's the brands. I can certainly imagine that world-known brands that will have already battled it out in the trademark wars out there will be able to register their brand and use their registrations for commercial purposes where they've already decided how to use it and we actually are seeing several brands from the previous round use their top-level domain [accordingly].

I can imagine the generic ones are going to be the ones with a bit more difficulty. So, the generic ones being the generic names, like a dot-table and dot-mouse. I don't even know if these exist already, by the way. But some that, in the past round, many thought, well, we're going to make an absolute killing on these, and in fact the only thing that got killed was their own wallet because they managed to reach very few registrations and the few registrations that they got ended up being registrations that caused a lot of problems with the top-level domain.

There are some that perhaps naively put the price down on the registration in the top-level domain, so the domain names underneath that ended up with a lot of throwaway domains being used for spam and all other sorts of malware and things and they got bitten by this and their reputation just went down the drain.

So, I'm not sure we're going to have as many of these generic terms being used because I've not seen so far a huge success rate for these of the thousands that were there before. I wonder why one would suggest or how one could suggest that there is ... There are thousands of registrations waiting in the queue for generic terms. I'd be interested to find out.

I don't know if anybody has done a study on these already and maybe it would be interesting that there would be some kind of a market study in advance and see if there is actually interest in those. Thank you.

SANDRA HOFERICHTER: Thank you very much, Olivier. I see there is a question in the chat and I guess it's Claudia's turn to read that out.

CLAUDIA RUIZ: One moment. Okay, we have a question from Bill Juris. The question is: if we are making a list of the reserved terms, we will set up a procedure to simultaneously block registration of names which differ from those reserved terms only by the use of the variants which have been identified.

SANDRA HOFERICHTER: Thank you very much, Bill; and Claudia for reading it out. The next in the queue would be Christopher Wilkinson. Christopher, please go ahead.

CHRISTOPHER WILKINSON: Thank you, Sandra. This is not a response to Bill Juris’s question, which I must confess I don’t think I really fully understood. But two comments. First of all, if it is correct—and Francis should know—that there are a few thousand geographical indications that should be reserved or could be reserved if they were asked to reserve them. Personally, I don’t see that as a major problem. Let’s compare it with the numbers of trademarks that are in effect reserved to their owners in the domain name system. I think there are rather more trademarks in play than there are of geographical indications.

To Olivier’s point, yeah, I think there will be pressure for dot-brands, and Martin Sutton has been a very effective in advocating protection of dot-brands but I would like to as Martin, who I think is on the call, why can’t all the geographical indications be treated as brands. After all, a brand is a brand and it’s not necessarily limited to trademarks. I think it’s a shortcut or a second-best, but I think ... There’s a building site next door to this house here, so there’s some background noise that I can’t moderate. But I would like to know what the dot-brands group in GNSO think about extending their whole policy to geographical indications. Thank you.

SANDRA HOFERICHTER: Thank you very much, Christopher. We have a pretty intensive discussion going on in the chat. I encourage the people involved to take the floor and speak up because then we also have the chance to translate it into other languages. But for now, since we read out the question from Bill and shortly thereafter he raised his hand, Bill, I would

like to give the floor to you, and after, too, Greg again. Bill, you have the floor.

BILL JURIS:

Thank you. I'm sorry, Christopher, that it wasn't clear what I was saying. Suppose we have ... Take the case, so you have registered dot-amazon, and then someone comes along and says—or we have blocked the registration of dot-amazon, reserved it, and someone comes along and they want to register dot-amazon, except the letter “M” is replaced by letter M with dot-[below]. The dot, of course, disappears and the underlining of any domain name that is displayed. Are we going to have a process which will block those sorts of variations on the reserved names? Is that clearer?

CHRISTOPHER WILKINSON:

Okay, I guess that's clearer. I believe that in trademark law, a kind of deception and misrepresentation can be tackled in the courts. I wouldn't regard that as an insurmountable problem. Personally, I regret that the Internet is being employed by some people in effect to deceive the users. But that seems to be part of the territory that we have to navigate. But [that's] certainly not an objection to reserving names.

SANDRA HOFERICHTER:

Thank you very much, Christopher. So, this is clarified now. Next is Greg and then Martin Sutton.

GREG SHATAN:

Thanks. I would note that, first, there is no reserved name process that would exist here or blocked names list that would exist without some form of a PDP process or the adoption of such a list by an individual top-level domain that wanted to have additional intellectual property protections beyond those that are for which that are currently policies.

For those of us who go back to, say, 2012 or before can recall that there were discussions about a blocked name list essentially for ICANN, and then that was for trademarks and that did not happen. But then you have companies like Donuts that adopted their own essentially blocked lists for the domains for which they were the registry operator.

So, as far as an ICANN process goes, all those things are possible and I think what you refer to as what's also referred to as a homoglyph where there are many uses of similar letters, the Bulgarian alphabet apparently and the Cyrillic alphabet produce number of lookalikes for this purpose, among others, and they would be captured—or should be captured—in any system that's ultimately set up.

And who knows, maybe a GI DRP will be a better model, kind of a DRP 2.0 if you will, rather than the venerable UDRP. Only time will tell.
Thanks.

SANDRA HOFERICHTER:

Thank you very much, Greg. Handing over to Martin Sutton.

MARTIN SUTTON:

Hi, Sandra. Martin Sutton here from the Brand Registry Group. Just to try to respond to some of the points from Christopher. And it is a bit confusing because we seem to be jumping in and out of top-level domain versus registrations at the second level. So I think there are different perspectives there to look at. But if we concentrate on the top-level domains as part of the SubPro activities, a lot of that is about balancing the openness of that space with restrictions.

so, trademarks don't have any additional protection at that top level and GIs similar to trademark holders could apply for a top-level domain. So I think that's important to get across.

And whilst people have certain opinions about what they would like to see, within the PDP process which spanned a number of years for subsequent procedures, there are lots of conversations, lots of inputs, different perspectives and to try and balance all of those and come out with a response to satisfy one individual or a small group of individuals is a very difficult ask within any policy-generating environment.

So, I think it's important that if there is issues that are being raised, that they need to be presented to ICANN through an appropriate channel and I think Greg has reflected on that in terms of the PDP.

But I'd just also point out to Francis that perhaps there is an avenue that is more suited to try the Intellectual Property Constituency to discuss and see if there is a way that an issues report could be generated by the Intellectual Property Constituency which is a direct member of the GNSO. So, from a tactical perspective, there are avenues in to air issues, see if there is appetite to that that further in terms of policy

development work, and the more precise those issues reports are and suggestions about how they can be resolved, perhaps that would actually speed up a policy development process in itself if it was much more focused and had an end goal in mind. Thanks.

SANDRA HOFERICHTER: Thank you, Martin. It's Sandra speaking. Greg, I'm not sure if that's an old hand or a new hand, but in any case, I would like to give the floor to Latha first and then to Francis. If your hand stays up, you are next in the queue, Greg.

LATHA NAIR: Thank you. It's a new hand. I have been listening to the policy development program discussions. I am a lawyer and not a policy maker, but I've been practicing GI law for the last two-plus decades here in India. When I started out in 1998, GIs were not very well-known in India or even in many other countries, except maybe Europe. They had not come to the full front.

But in the last two-plus decades, several things have happened and GIs are very well recognized. For instance, [origin] was formed. There is a Geneva act that was enacted, the Lisbon Agreement in 2015. Francis gave the statistics of the number of GIs that are registered. In fact, [origin] has been updating the records [inaudible] around the world protecting GIs.

I come from a developing country. We have a GI legislation which was enacted in 2003. A majority of the GIs which are registered under [this

legislation are textile,] non-agricultural goods as well as agricultural goods. But the majority are textile and handicraft products. And the rights holders of these products are small artisans and smaller communities whose livelihoods depend on this. Especially in the time of this pandemic, the only way in which they can get access to a market is through online.

Even otherwise, digital is becoming the norm and a lot of NGOs are helping out these communities to get access online and sell their products.

I also have participated in a series of webinars organized by the Food and Agricultural Organization which has been using GIs as ... I mean, the topic is about using GIs as a tool for sustainable development and for achieving the sustainable development goals [inaudible].

So, if GIs are not given a room in the domain name systems, what I feel is that you are actually marginalizing a lot of smaller communities whose livelihoods are dependent on this, and if a particular name that belongs to a smaller community is taken, that community doesn't even have sufficient resources to fight it out. Anyway, it would be a losing battle fighting at the domain name level to secure that domain name back.

So, policy or no policy, the process must be inclusive and the process must take into account the present realities and where GIs are today and the kind of recognition they have as an intellectual property right in its own standing. Thank you.

SANDRA HOFERICHTER: Thank you very much, Latha. Next is Francis. Then I have Marita and then Susan in the queue. Francis, go first, please.

FRANCIS FAY: Thank you very much, and thanks to Martin and several speakers for some very useful contributions. I realize that TLD, it's very good to highlight the difference between the TLD process and the second-level domain process.

In the TLD process, which if dot-amazon was anything to go by, ICANN is taking the decisions of allocations itself. We did not, therefore, call upon itself to implement Article 3 of its Articles of Incorporation which requires respect for local law, or indeed respect for universally applied conventions.

Is there to something in the allocations of the TLDs in case the GI rights owner—and that's a very good avenue as well, that the GI rights owners apply for the TLD or their local town or their local province. But can ICANN ... Surely it can apply its own articles to respect local law and therefore allow those that are going to lose out here a voice.

There was a comment. I regret I didn't write down who. A very good comment—why don't we go through the intellectual property channel? And indeed we are. And Latha— thought she was going to say it—has been part of this process in the WIPO (World Intellectual Property Organization) Standing Committee on trademarks, which full title is Trademarks, Designs, and Geographical Indications.

And pre-COVID—and we’re now picking up again—we’ve held a series of exploratory information sessions. It’s all by consensus. It’s a very good listening and speaking exercise—it’s not so far negotiations—exploring the difficulties and the fact that WIPO, the World Intellectual Property Organizations, its members—the IP fraternity—faces a serious issue, that an Article of intellectual property, universally recognized, is simply being ignored in this very important domain of Internet domain names. So that is a process which is going on.

That’s going to be a long haul, but as I say, Latha, the inaugural speaker which got that process going—so we’re doing that. But why not use Article 3 of the Incorporation Articles of ICANN to balance the power in the allocation of the TLDs? Thank you.

SANDRA HOFERICHTER: Thank you, Francis. Next is Marita and then Susan if Susan still wants to speak. I see the hand is lowered.

MARITA MOLL: Thank you. Thank you, Sandra. I’m going to bring up an example. I think you’ll appreciate this Sandra. I attended the EuroSSIG Internet Governance School which is in a German city called Meissen. I was surprised when I was part of the geo names work group to learn that Meissen, that top-level domain actually belonged to the famous porcelain company that operates out of Meissen—very well-known, world famous.

And I think that that was an agreement between the town and the company, if I understood it correctly, that the top-level domain would remain with the porcelain company. Correct me, Sandra, if I'm wrong there. There were no issues around that.

Then, look at Amazon, which the company Amazon actually has the name, and much to the dismay of the communities in that area, that was unable to be actually reversed.

So, my question is, again, is this about who gets in first? I don't know who got in first at Meissen or if it was an agreement between the two, but I'm still in a bit of a confusion about whether or not if a geographical location has a conflict with a product of some kind under certain geographical indicators, designation, is there a way that we can resolve these kinds of issues? They are going to come up again, no doubt about it.

SANDRA HOFERICHTER: Thank you, Marita. And I must admit I have to clarify the Meissen issue. I can't really tell you off the top of my head. But let me give the floor to Susan first. I see she has a hand up again. Then to Greg. Latha, is that an old hand? I think so. Susan, you go.

SUSAN PAYNE: Thank you, Sandra. I feel I've sort of jumped the queue because I put my hand down and then put it back up to respond to Marita, so I should perhaps go off to Greg.

SANDRA HOFERICHTER: Since Greg has spoken a couple of times already, please go ahead.

SUSAN PAYNE: Thank you. Actually, I just wanted to respond to you, Marita, and say who gets the rights or who gets the priority is obviously an extremely difficult issue and it is a question of balancing rights. And that is what the whole work of work track 5 was about if we're talking about the top level. And the outcomes of work track 5 set out a range of terms which are considered to be geographic and for which, if you like, the geographic usage is taking priority. Then a range of other terms where it's more of a free-for-all.

I'm saying this very high level, but the thinking behind that and the reasoning behind that is that there's a need to reflect a balance which is that, as you very rightly pointed out in the case of Meissen, that multiple difference uses for the same term—and in some cases, the geographic name has perhaps given the name to the brand. In some cases, the brand has in fact given the name to the town that has grown up above it. In some cases, there is actually no connection whatsoever between the town and any brand or any other usage. They are simply coexisting uses of the same word.

So, the work track 5 had to try to grapple with that thorny issue and reach essentially a compromise. And if you were to ask me as a brand lawyer whether I think they got the compromise in the right place, I would say no. And if you were to ask Jorge Cancio from the Swiss

governments whether he thinks that they got the compromise in the right place, I think he would say no for a totally different reason to me.

Ultimately, we were all a little bit unhappy and all kind of living with the compromise.

SANDRA HOFERICHTER: Thank you, Susan. This is indeed what a compromise includes, that no one is really happy. Greg, you have raised your hand and then Latha. Then I would rather close the queue. If you would still like to speak, please raise your hand immediately now, because after Latha, I will then close the queue. Greg, you go.

GREG SHATAN: Thanks. Just wanted to respond briefly to Francis on a couple of points. First, the Amazon or dot-amazon situation was fairly unique and took place over several years, and most of the time tried to follow established ICANN processes with perhaps some time out for informal mediation or the like. So, the point was that it doesn't form any sort of precedent for the ICANN Board or organization to put policies into place for protection of geographic indications.

Obviously, in the next round of TLDs—or as there was in the last round of gTLDs, there are certain protections in place through objection processes and string similarity and other sorts of processes that are intended to provide some protections.

Then there was, as mentioned, the whole geographic names group which was different from geographical indications, of course.

So, I think the fact that Article 3 is there provides a basis to move forward on policy making, but it doesn't provide a shortcut to policy making. Thanks.

SANDRA HOFERICHTER: Thank you very much, Greg. Our last speaker for today will be Latha. Latha, you have the last word.

LATHA NAIR: Thanks. I was more reacting to the question which was raised by Marita. One of the reasons which you can look at that would be then for fair use. To give an example. I cannot get the name of the place that you used, I'll give an Indian example which may be familiar to you. The place Darjeeling which is very famous for Darjeeling tea, which is a geographical indication, if somebody is using Darjeeling on a restaurant in Darjeeling, it's a fair use. But if they're using it in Bangalore which is many miles away from Darjeeling, that will not be a fair use. And if that is used in respect of a restaurant or café which is used to sell Darjeeling tea, it is even worse. So, one of the tests could be whether the use is fair or not.

SANDRA HOFERICHTER: Latha, is that a question you would pose to someone and would ask this person to answer or ...?

LATHA NAIR: I'm sorry, I was responding to Marita.

SANDRA HOFERICHTER: I'm sorry, it sounded like it was going to be a question. Okay. So, then we have five minutes left and I said already we have Lucien Castex being the rapporteur for today's session. Lucien, you agreed to summarize some key speaker points and a few points from the discussion. Lucien, you have the floor, please. Go ahead.

LUCIEN CASTEX: Thank you, Sandra, for giving me the floor. I'll try to be quite quick. It was an excellent discussion and it was a lively debate, both on the floor and in the chat. I will switch to French interface to do the summary.

First and foremost, in order to echo the points that have been discussed during the debate, we have participants who presented their point of view of the At-Large committee and also we talked about the need to have a better protection of the GI, especially the city we should have—talking about cities who are less than 100,000 people.

We also talked about the tool of notification and to be able to follow up the different implementation, different updates in this case.

We had a presentation from Francis Fay from the European community who gave us a complete analysis when it comes to the GI, the different terms, that were used and to which these terms would be linked to.

We talked about the convention of Paris on the industrial property convention. Those rules date from 1883.

We talked about GI in terms of protection against the abuse of the competition. And in order to protect the local actors, we talked about the example in the US, a convention that protects the vineyard in Napa, in California.

We talked about the GI in Europe and the framework. We know that within the ICANN we need to take into account the local laws of different countries and to protect ourselves against the bad will of actors on the international level and that would just be a danger to intellectual property. So we do need protection in that regard.

Then we also talked about the Indian case with Latha. She talked to us as an IP lawyer. She talked to us about the GI which could be assimilated to IP rights and needs to be protected when it comes to the case of Champagne, which was not a copyright and found itself a situation when it comes to framework.

We had the presentation of Giovanni who works with the European Commission when it comes to intellectual property and he gave us the example of the list of reserved names, reserved terms.

I think if I don't go any faster, I will not have enough time.

We talked about this list which would protect the users and other European institutions and he reminded us of the importance of the joint work between the actors, the European community, and also of the

challenge to keep the points of contact updated with all the institutions and different actors when it comes to European community.

Then we discussed the question of the definition of the GI. Notably, to come up with the definition, if it weren't for the words that were used to describe a product for this characteristic, we talked about the example of wine. Each wine which is associated to a climate or a soil, a specific soil, etc. The objective here is to ... The bad will of the candidate. So we talked about evidence.

Christopher talked to us about the fact that ICANN should take account the local rights, the local regulation. If in the case of local regulation, this could be a first solution. We were told that the work method of the ICANN is to go through a PDP but sometimes this process functions or not well. It is a tool which needs to change, be enhanced, because a lot of people outside of the ICANN community people find it quite complicated.

We have to, in the interest of the protection of the GI, we know that we will find a lot of difficulties. There will be confusion for the user. These concepts are also taking into account intellectual property. We will have a hard time to find a balance and a tradeoff, a compromise, between the different stakeholders which are involved. Thank you.

SANDRA HOFERICHTER: Thank you very much, Lucien, for that comprehensive report. We are just two minutes over time which is very good. I would like to thank all the speakers and everyone who participated actively in the discussion.

I found it a very interesting session. It was my honor to be your moderator. I assume the written report will be published on the Wiki workspace, the one that was displayed at the beginning of the session.

With this, I adjourn this meeting and hand over to the session host from ICANN staff. Thank you very much.

CHRISTOPHER WILKINSON: I would also like to thank Sandra for accepting to be our moderator and for her distinguished and excellent conduct of this session. Thank you very much, Sandra.

SANDRA HOFERICHTER: Thank you, Christopher.

ANDREA GLANDON: Thank you, Sandra. Thank you, everybody. This meeting is adjourned. Please enjoy the rest of your day. You can now stop the recording.

[END OF TRANSCRIPTION]