ICANN

Moderator: Maryam Bakoshi
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8:00 am CT

Coordinator: The recordings are now started.

Maryam Bakoshi: Thank you very much, (Nori).

(Nils): Perfect.

Maryam Bakoshi: Good morning. Good morning...

(Nils): Hello, everyone. Welcome to you all to this call by - for the Cross Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights.

I would like to propose an agenda with four points on it. The first is a short evaluation of the human rights endeavors at ICANN Buenos Aires. Secondly, where we are with the work as agreed at the ICANN meeting so these were the three different work points. The third point would be a short discussion on the Cross Community Working Group on Accountability and the role human rights is playing there. And then four would be open for other issues. Would that be okay for everyone?

Okay, I hear - yes, we can get the agenda on the screen. There's the chart, legal and (unintelligible). So let's start with the first point, a short evaluation of the work we've done at ICANN Buenos Aires. So what we've done there is a short recap is that we had the - we had the public session. We have had the working session. We have had the liaison session together with the GAC. And then we had presentations for two other constituencies.

I think all went relatively well and I sent out a report over the mailing list. Is anyone - is there anyone who would like to ask a question or a comment about any of these meetings or anything else that came up during the ICANN meeting specifically? No, I see no hands. I guess that means that the report back to the list was relatively clear and I think it was.

So then we can go ahead to the work as it was agreed during the working session. So then we can go onto the first thing which was the mapping of examples and standards for human rights impact assessment. Sorry, it was the ICANN and human rights to create a chart on correlating rights with policies and operations as was mentioned during the public session. It would be very helpful to have a short and concise overview which would illustrate how ICANN's policies and operations touch upon human rights.

And this chart should link concrete policies and operations and their impact on rights. This does not need to be a detailed analysis but more of an overview. And this work was going to be undertaken by APC, Rafik, Dave and (Marilia). Is there anyone on the call who is a member of that group who have otherwise been contributing to that work?

There is (Marilia). (Marilia), go ahead. Feel free to go ahead, (Marilia). I don't hear you.

(Marilia):   Hello. Can you hear me now?

(Nils):   Yes, I can hear you now. Excellent, (Marilia).

(Marilia):   Okay perfect. Just forgot to connect my audio. This is (Marilia) speaking. We are part of this group and the participation of the group as we agreed made by APC. The group has not met yet. If you agree I would like to contact APC and see if we can schedule a meeting of this group for next week.

I think that some work has been - part has been done informally by some people who are in the GNSO. But I believe that we should get together as a group and I will touch base with APC and let you know.

(Nils):   That's great, (Marilia). I also heard from APC. They've been starting to rally around and read - and read into stuff so it would be great if those efforts could connect. Also feel free to report back to the mailing list where you are so that other people could connect to that endeavor and that we could also follow where you are and provide support where needed. Would that be okay?

(Marilia):   Yes, perfect. Thank you.

(Nils):   Perfect. And if there are other people that would like to contribute to this work then I'm sure (Marilia) would be very happy to...

Avri Doria: Just wanted to check the rest of us are here, right?

(Marilia):   Yes, we are here. We're just...

((Crosstalk))

Avri Doria: Okay, fantastic. Fantastic, I just wanted to make sure that I hadn't fallen off a call.

(Marilia):   No, we're all here.

((Crosstalk))

(Nils):   …do this. Is this workable in the meantime? Do people hear me?

(Marilia):   Yes, perfectly.

((Crosstalk))

Avri Doria: Yeah, hear you fine.

(Nils):   Then I'll just...

Man1:   Yes, we can hear you.

(Nils):   Oh okay. So where did you lose me?

(Marilia):   (Unintelligible) connect the work that was being developed and if anyone else would like to join this work group.

((Crosstalk))

(Nils):   Oh okay great. So, yeah, if other people would like to join the legal group they're also very welcome. (Paolo Vargas) from Latin America is also very interested in joining us so we'll further work on this. I see (Tatyana) is on the

call as well. (Tatyana), would you be interested in asking any questions or shortly introducing yourself as not everyone on this group might know you even though some might. No, we cannot hear you.

So while (Tatyana) and Maryam might be working out (Tatyana)'s audio, I'll slowly continue to the next point and see we have - if we can get (Tatyana) on the call in a second. So I'll continue to the (administrivia). Is that Rafik and I were to have organized three conference calls. This is the first and I propose that we organize the next one in three weeks at the same time since people seem to be able to have time on this time.

We also organized a preparation call with the GAC working chairs. We've reached out to them and we've also set a draft for a joint meeting with the GAC Working Group and Human Rights and International Law as well as with this cross community working party. Unfortunately we haven't heard back from the GAC working group co-chairs but at least that is in the pipeline.

With Rafik we're also currently requesting a public session again for the cross community working party to present the work that we've been doing in between as well as organizing, again, a working session where we can discuss the way forward.

The agenda and description for those have been shared on the list so comments on that are more than welcome. And then we are still to organize a presentations and meetings with all the other constituencies ahead of ICANN 54 to see whether we can be able to be on their calls or else see if we can have meetings with them face to face in Dublin.

That was it pretty much on (administrivia). Do we already have (Tatyana) on the line or are there questions concerning the (administrivia)?

(Tatyana Soropina):   Well I think...

((Crosstalk))

(Tatyana Soropina):   ....you do have (Tatyana) on the line. Yes, sorry for interrupting you. So shall I speak now?

(Nils):   Yes please. Please go ahead, great.

(Tatyana Soropina):   Okay, thanks a lot. So for those who don't know me, though I think that many of you we've met, I'm (Tatyana Soropina). I'm Senior (unintelligible) in Germany and I'm a lawyer and I ask (unintelligible) if I can volunteer for the second work flow, legal policies would be analyzed and met. And I do find this task interesting. So, yeah, just like that. And I'm very interested in contributing to this group and like (unintelligible). That's basically all. Thanks.

(Nils):   Great. Thank you very much, (Tatyana), for both volunteering and for being on the call, that's super. Are there also other people who have questions and/or comments about the (administrivia) even though they seem trivial? I see no hands. And that means that we could go ahead to the next point which is the discussion about human rights in the Cross Community Working Group on Accountability.

Who of you have been active in that group and would like to give a short overview of what has been happening there? I could also do it but it would be great also to have more voices on this call. Avri, would you be interested in volunteering?

Avri Doria: No, but I'll accept being volun-told.

(Nils):   (Matthew), (Marilia)? Avri?

Avri Doria: Yeah. Fine. Okay so what has been happening in that group is that there has been discussions of comments that came in on the need for inclusion of a human rights commitment. I actually hadn't expected to talk - on a human rights commitment.

We've had many discussions. And in the report draft that's out now there is the intention recorded of including a bylaw related to human rights and ICANN. There was not, however, the ability to arrive at wording for this with basically variations being offered that included how to constrain that with phrases like within the mission and operation but there were also questions then of what does operation include? Does that include any contractual issues? So there were questions asked like that.

And then at the other end of it there were whether it was an unrestricted human rights, human rights quoting, you know, as enshrined in the universal declaration of human rights or a more specific statement such as human rights especially freedom of expression and openness of the Internet or some such.

So there is now a Working Party 4 of the Accountability Cross Community Working Group trying to come up with wording as input to this wording has been - all the varieties of names that - of sentences of bylaws that had been offered. There's background reading material such as the various documenting covenants, the guidelines for corporations and human rights.

There's also been various sort of opening up - basically diving deeper into the issue in terms of looking at what some of the questions and importation of

incorporating human rights in the ICANN bylaws might mean. Some of this is directed towards Work Stream 2 activities because I think there's a general acceptance of the fact that most of the work in terms of doing this will need to be done in Work Stream 2.

However, there are some with this concern about needing to really understanding of the scope of that work before actually coming up with the wording we want to let that scope, you know, have an effect on how the wording is done.

So this discussion is going on sort of I'd say in fits and starts. I have not seen the group in any way aiming at any consensus point yet. We're still more, I would say, meandering around the front of the topic. And I guess that's about where we are. Thanks.

(Nils):   Thank you very much for that thorough overview, Avri. And I would indeed like to invite people to join Working Party 4 of the CCWG. But I would also be very interested in hearing from people on how we (unintelligible) with this process because the discussion on the Working Party 4 group seems to have slowed down so it might be interesting to discuss how we could ensure that something good comes out of this.

So I see (Marilia), your hand is coming up so please come in, (Marilia).

(Marilia):   Thank you. This is (Marilia) speaking. Just a question for Avri or (Matthew). In the beginning of the discussion did people agree on how to make a decision about this since, as you said, there were a lot of people sharing their views. And I think that most of them want to (unintelligible) with high level although some would like to see more details so the language is more tied in.

But with regard to the way forward how are we supposed to make a decision? Should we start to try to summarize the different views and proposed language at this stage? What are your thoughts about it?

(Nils): I see that there is a line so next one I'd like to ask (Matt) and what I heard from Thomas Rickert is that he would simply ask the subgroup to come up with a concrete proposal (unintelligible) that would come. So that is from what I understood from (unintelligible). But very curious to hear what you think.

(Matthew), please go ahead.

(Matthew): Yes, thanks (Nils). I mean, the way I understand it there's kind of a couple of things going on in parallel one of which is that obviously the work of the Working Party 4, which is focused on this issue, which really is, as Avri said, to really try and craft something at is acceptable to everybody that we can put into the bylaws.

The useful thing about the conversation, and I agree it's kind of trailed off a little bit, but the useful thing about the conversation is I think that it does recognize that if we can agree on some basic language, and I think most of the people in the working party could probably agree on some basic language, there are just some who are holding out for a more in-depth analysis.

But what really happened is that the work in Work Stream 2, in other words the work that will start and continue post transition will actually be incredibly important. And I think a little bit more complicated than perhaps some had thought at the outset. I mean, what's becoming pretty clear now is that, you know, ICANN doesn't quite fit into any type of structure that's been identified either on the kind of the government side or on the corporation in terms of the

analysis that's been done by an implementation mechanism by - in the (unintelligible) principles, for example.

So I think our discussions are going to be quite a little bit more involved and a little bit more breaking new ground possibly even in the post transition work on this.

I think there's opportunity for people to continue to contribute as a part of the accountability proposal as well, at least that's where I believe it was. But that process of being able to input on human rights in ICANN is very much open in the accountability proposal. So that's another avenue for addressing the issue.

But hopefully, yes, we'll be able to come up with some relatively short and concise language that does not in any way make people feel uncomfortable but points to the need of us to continue to consider this an ongoing issue. Thanks.

(Nils):   Thank you very much, (Matthew). Very concrete, very - thank you very much. Avri, please go ahead.

Avri Doria: Yeah, hi. Avri speaking. Just briefly to add to one part of (Marilia)'s question. As far as I know, no, we did not decide at the beginning on how we would proceed on this. Leon was I guess self-selected as leading this or chair group selected as leading this. At the moment I'd say that (Nigel) has probably offered the dissection of the issues that we're going to have work through before we get anywhere with it.

So - but, no, I have no idea how we're going to reach any sort of final answer on it. It'll be interesting. Thanks.

(Nils): Okay so that means that we are pretty much up for two different approaches I can see or maybe three. There is the opportunity for direct engagement on the list and we could try - we could push a bit more there. Or we could see if we could file a public comment which is still open up to I think September 8. And I'm also open to other opportunities people see of trying to ensure that at least during Work Stream 1 we'll get the high level comments proposal into the working group report because then we can go into the details into Work Stream 2.

Has anyone got a specific ideas or anything that they want to employ for that? Avri, is your hand still up? If so please go ahead. Oh, Avri is taking her hand down. Are there other people who would like to propose an approach on how to take the work forward in the Cross Community Working Party on Accountability and/or Working Group 4? Avri, please go ahead.

Avri Doria: So yeah, okay, I put my hand up. I guess - I mean, there's really a question of participating in Working Party 4 and, you know, but first we'd have to figure out what the, you know, so as individuals and I'd like to see, you know, more people participating I think the more the better.

I think also we need to decide whether this group can - if it wants to - can come to some view of something useful. And perhaps this group wants to add a comment. And I don't know - I wavered back and forth on whether the working party could or should put in a comment on this particular issue. I think it'd be appropriate, you know, in a general sense.

But I don't know if we have the ability within this group to actually come to a common statement, I really don't know, you know, where we're at in that kind

of level. And would it just be replicating the conversation that was going on in Working Party 4 in which case it might be marginally useful. I don't know.

So those are questions I think we need to answer. I have no idea of the - of how to say. I think certainly encouraging people to participate as individuals is, you know, probably the most important thing. Thanks.

(Nils): Thank you very much, Avri. I see (Matthew) is also coming up with some comments in the chat. (Matthew), would you also be so kind to make them on the call - would you be so kind to do that because I find them quite interesting actually.

(Matthew): Sure, don't want to jump the queue or anything. Can you hear me all right?

(Nils): Excellent, please go ahead.

(Matthew): So I guess my point is having participated in the review mechanism and - or the first round of comments it's worthwhile multiple entities putting in the same kinds of comments rather than a (unintelligible) with one single consolidated input on this particular issue.

Because the way the comments are reviewed is there's basically a kind of a tying up of views on each one of the paragraphs or - on each one of the substantive issues in the accountability proposal. And so the more that can be said by a broad diverse group of organizations or individuals putting in an issue like human rights the better. Thanks.

(Nils): Perfect, (Matthew). And I think that that doesn't - that that would indeed probably be the most practical because we don't have an official position to

come up with an official position for the cross community working party and I don't know if we would be able to do that in two weeks.

But I think handing in different public comments would be useful. And I think what is important to reiterate is that these do not need to be multipage documents but these can be relatively simple public comments which should not be too much work for anyone to (unintelligible).

What I would be interested to hear from you people on is what kind of definition you would like to see or hear in the - in that so that we could perhaps also reinforce each other's opinions a bit. Would you like a high level reference to human rights? Would you like a mentioning of the UVHR? Would you like a mentioning of the UDHR - the IPCPR and the ICESER? Or another taste or flavor? I'd be very curious to hear from you what you all think in that respect? So anyone who would like to comment on that?

Let me point out some volunteers because I know that some people of you have opinions on this. Or no, let's ask a lawyer. (Tatyana), what do you think?

(Tatyana Soropina):   Can you hear me?

(Nils):   Yes. Excellently.

(Tatyana Soropina):   Okay good. Well as a lawyer I really think that it's - well I would be the most comfortable with a more general version, let's say, which will encompass everything. General version...

((Crosstalk))

(Tatyana Soropina):   ...which will not maybe even refer to specific conventions. But this is just from the (unintelligible) side. I'm sure there were discussions about this, you know, (unintelligible) be aware of them. But on the soft side I'm very much into rather very general commitment which encompasses basically everything and then maybe developing kind of policies on this but which would be, you know, not in bylaws but which would be very specific. I might be mistaken again, I'm very new here, but well this is just my opinion if you are talking about bylaws.

(Nils):   Excellent. Thank you. First, (Marilia) and then (Megan) please.

(Marilia):   Thank you, (Nils). This is (Marilia) speaking. I tend to agree with (Tatyana) not only because I think other groups such as the GAC working group are still making an effort to map what are the relevant international instruments that should be taken into account in this discussion.

                 But also (unintelligible) something that is very broad and long-lasting like the bylaws I think that we should be as general as possible. And the only thing that I'm concerned about is that for some people who are concerned with kind of defining very clearly what human rights is about they seem to be reassured to have some reference to the fact and usually they mention the declaration or statements from (unintelligible).

                 Although I believe that there are some discussions in ICANN that touch upon economic and cultural rights this is something that we need to consider. If this is the only way forward for us to have consensus maybe would be a good thing to make reference to context. But my first option, my default option would be to (unintelligible) general and wait for the work of this working group and the work that will be done in Work Stream 2 to try to understand what are the relevant rights in the discussion. Thank you.

(Nils):   Thank you very much for that comment, (Marilia). (Megan), please go ahead.
                Am I the only one not hearing (Megan)?

Avri Doria: I do not hear her either.

(Nils):   That is a real pity. Maryam, could you perhaps set up a call-out line to Megan
                so we could hear Megan? And in the meantime I'd like to ask Avri to speak if
                possible.

Avri Doria: Sure. Yeah, I wanted to go into a couple things if I could. One is in terms of
                the wording I tend to agree with those that would prefer to see a simple
                wording that's very open and, you know, that's one of the ones that I found
                most helpful was towards the end was one that mentioned just respect for
                human rights as represented in the - in the UDHR which at least gives it a
                rooting in that particular tree that is rooted there and doesn't get into the
                specifics or notions of indivisibility or anything like that but does at least root
                it in one particular system of defining the human rights on a global basis even
                though, of course, there's issues of interpretation and such all the way through
                there, which I see as Work Stream 2 issues.

                And in terms of the other things, I just - I think that, you know, we have to
                hold onto the importance of having a bylaws on these because even though we
                have articles of incorporation that sort of and - I've just pasted them in - the
                ones that, you know, that sort of says that we have to conform to relevant
                principles of international law and applicable international conventions to the
                extent appropriate and consistent with articles and in bylaws.

                And so I think that in order to ensure that human rights within ICANN are
                considered relevant and do fit into what we consider applicable and then with

Work Stream 2 actually to find the extent appropriate is something we need to do because I think if we don't do it just our general statement in the articles of incorporation without substantive bylaws support or California or US law support does not in any way commit ICANN to respecting human rights.

You know, it's one of those things that are arguable from many different perspectives. So that's why I think it's very important that we hold on to that, you know, current position of making sure that there is a bylaw. And so from that position I'm actually also amenable to those that want to, for example, limit the statement to mission or to mission and operations.

I think there's that - I don't always agree with it but there's a palpable, you know, mission creep paranoia in - well paranoia is the wrong word but strong concern and angst over mission creep in many participants. Some people don't see it quite as strictly as they do and therefore if those - the people with that angst feel that it is necessary to pin it to mission and operations then I think that makes sense and works for me.

Likewise if people want to go a little further in defining not that it limits it to particular rights but that it brings several especially, and for example those mention, you know, within the scope of openness of the Internet, even though we don't fully understand what that means, we know that that's one of the NTIA requirements for the transition. A requirement that we've sort of talked about in very large safety terms but we really never put anything in there that mentions that.

So, as I said, while I prefer the short and unconstrained, the short and without further definition, I'm also completely amenable to a wider definition if that's what we need to get consensus. Thanks.

(Nils):   Thank you very much, Avri and others. I think we will also be working on a
                 comment. And I'll definitely be - let's share the text that we have on the
                 mailing list so we can build on each other's contribution. And I will definitely
                 (unintelligible) (Matt) proposal sounds very well that we try to get in as much
                 proposal as we can. And as Avri said, let's also continue to engage in
                 Working Group 4 of the cross community working party.

                 If people do not know how to (unintelligible) feel free to let me know. You'll
                 just need to set up an SOI to become a member of the CCWG and then ask to
                 also be a member of the working party. This should not take you more than 10
                 minutes of work, if you are not already a member of the CCWG.

                 I think this leads us a bit to an end of the discussion on human rights and the
                 CCWG. Are there other issues that people would like to bring up in this
                 conference call? I see no hands. I see no suggestions. I do see an argument in
                 the chat that is also increasingly heard and that would be an interesting
                 discussion - a discussion that has been held elsewhere as well is that while in
                 Article 4 of the articles of incorporation it already says that ICANN will
                 respect international law, why should then human rights be added to the
                 bylaws?

                 So are there people who would like to argue either for or against this to ensure
                 that we understand and have got arguments for this or against this? Avri,
                 please go ahead.

Avri Doria: Thanks. They probably varied it in the conversation but they actually, you
                 know, it's carrying out activities in conformity with relevant principles. So
                 there's constantly going to be a discussion of what principles are relevant and
                 applicable international conventions.

Now is a human rights convention that is only not even binding on but applicable to state and only applicable to corporations when states have made law based upon it sufficient commitments to ICANN the corporation for respecting. There is - it's very difficult to make the argument that without a US or California law that incorporation is actually committed to respecting those rights given the way it seems that international law works.

You know, first they agree then it is ratified and then it is actually brought into national law. But states don't necessarily (unintelligible) it all into international law and they (unintelligible) necessarily make that law binding on a corporation. And indeed California nor the US binds corporation to respect human rights.

And - but it does say that extent appropriate it's insistent with these articles and its bylaws. So by placing a specific statement for respect of human rights in the bylaws we basically move beyond issues of is it relevant, is it appropriate and is it - within the scope by answering positively yes because there is a commitment in the bylaws. So I'm very strongly in favor of, you know, one particular way of looking at this. Thanks.

(Nils):   Okay I see some interesting comments coming by in the chat but since (Megan)'s audio wasn't working earlier I'll read them out with her permission.

(Megan):   I can speak now...

((Crosstalk))

(Nils):   ...the articles - oh yes, we hear you excellently. (Megan), please go ahead.

(Megan): Okay, I'm sorry to come in on this again. I agreed entirely with what (Marilia) said and that is that the articles clearly say that ICANN has to respect the applicable and relevant provisions - I've forgotten the exact wording. This means that ICANN has voluntarily agreed to apply these. First.

Second, the bylaws will only limit what is in the articles by definition, therefore, I agree entirely with what (Marilia) said that we should have something that relatively general at this point and in Work Stream 2 go into more details.

Now I understand Avri's concerns about freedom of expression and freedom of the flow of information. So I have no problem whatsoever in a general comment or a general position that's already at this point to say including in particular freedom of expression and free flow of information. No problem.

But to start going into more details now, these are by definition limiting and these should be really done in Work Stream 2 I think. And I'm - Avri...

((Crosstalk))

(Nils): Excellent, (Megan).

(Megan): One other minor thing just re what Avri has said about what is relevant and applicable, etcetera, it's not for a court to determine. A court is not going to come out of the blue and say sorry, ICANN you can't apply such and such. It has to be in a specific case. And it's - anyway I don't want to get into that long polemic but I wouldn't worry too much about that.

I think if you're concerned about the US government approval and agreement to the transition then something that reflects freedom of expression and free

flow of information in particular would perhaps cover the provision. Okay? And I will see if I can fix this microphone problem. I'm going to hang up now and go back to the Adobe Connect. Thanks.

(Nils):   Thank you very much, (Megan), for that - for a very useful intervention. And I think the points have been made clearly by several ones and I see we've seen some point of convergence there as well. I see there is a lively conversation going on in the chat but are there other people that would like to comment on the line either Avri or (Tatyana) or anyone else?

So it seems that most people agree with simple wording for the bylaws and seeing it as an addition and specification of the articles of incorporation there seems to be broad support for that. So that is - that's really good. Are there other points that people would like to bring up under Issue 4 of the agenda, other issues?

No other issues seem to be suggested. Then - oh, (Megan) is typing. Yes, (Megan), please go ahead. Unfortunately I see your hand, I see your speaker but I don't hear you. Okay, (Megan) will be responding in the chat. Unfortunately we haven't got her on audio anymore.

(Megan) says that we should ensure that the work is not duplicating (unintelligible) in the human rights working group and other fora. Yes, very much so so that's why (Lee Hibert) of the Council of Europe is liaising between the cross community working party and the GAC working group. And we're also trying to maintain contact with the co-chairs of the GAC working group.

I would personally be very interested to hear if there is any progress on the terms of reference in the - of the GAC working group on international law and

human rights because that seems to be a bit of an optical for now. If there anyone who has more information on that that would be - would be very welcome.

From what I heard that has up to now not been resolved but I really hope that that happens to be the case before Dublin. But I haven't heard from either Mark Carvel or the other co-chair back on that issue.

Yes, I completely agree, (Megan). And I think that we're also working hard to ensure that we're not contradicting or working against each other, that's why also we had this liaison meeting in the Buenos Aires. And I think quite a lot of people from GAC are also on the CCWP mailing list and we're getting regular input from them on the list so I think that work is going ahead there.

So with this I would like to thank you all very much for your interventions and for your participation in this call. And ask - and thank you all for your interactions on the mailing list. We are clear to do for the next call. I will send out the invitation for the next call in three weeks. And hope to see you all there then and be able to present you some new work and hear from you where we are then.

In the meantime I'm looking forward to also hear from your work but also from the comments that you will be - or might be submitting in response to the CCWG on Accountability. Thank you very much and have a nice day and a nice week. Bye.

Avri Doria: Bye.

(Nils):   Maryam, you can stop the recordings. Thank you.

Maryam Bakoshi: (Nori), you may stop the recordings now. Thank you very much.

END