

**Transcription ICANN61 San Juan
CCWP on ICANN & Human Rights Meeting
Wednesday, 14 March 2018 at 8:30 AST**

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Collin Kurre: All right, so I think we can go ahead and get started in the interest of time because I know that there are a lot of competing sessions. So if we can move through our packed agenda and have some time left over then we can all go see the GDPR session.

Is there a recording?

Man 1: There is.

Collin Kurre: All right, great. So I am Collin Kurre. I am from Article 19 and I am co-chair of the cross-community working party on ICANN and human rights with Michael Karanicolas. Mike, would you like to introduce yourself?

Michael Karanicolas: Hi, my name is Michael Karanicolas. I'm Collin's co-chair. I'm on the NCUC and thanks very much to everyone for joining us.

Collin Kurre: Great. So could we put up the slideshow, the slide deck. Yes, for us. So this is a special meeting for the CCWP. In case you haven't realized, we've got two new chairs, Niels ten Oever who has served us so well and is actually connecting remotely, steps down at the last meeting. So Michael and I have taken over the CCWP.

In addition, this is the 10th ICANN meeting since the CCWP HR was chartered. So we've done a lot in those ten ICANNs. Could we go to the next slide please? Here, I'm just going to click this. Here we go. So this is one of our most recognizable works, perhaps. This process mapping is mapping all of the human rights that are impacted by ICANN policies. I know it's a bit small as it appears on the screen so if you'd like to see it, it's on the internet or I have plenty of PDF copies on my computer. So I'd be happy to send it to you.

So the CCWP -- could we go to the next slide? There we go. So the CCWP was chartered to do many things. It is a chartered organization of the NCSG and it is intended to map the human rights aspect of ICANN policies, procedures, and operations, like the infographic that you saw before, to provide forum for related discussions about human rights in the ICANN context, to research better ways to harmonize ICANN's policies and procedures, and to provide information, suggestions, or recommendation to SOs, ACs, and the broader communities. And then potentially to propose procedures or mechanisms on how these SOs and ACs, these chartering organizations, might be able to fulfill the human rights bylaw.

So let's go to the next slide. So in addition to this beautiful infographic, we've had many other papers and things that we have put forth for the ICANN community's consideration. So this first one at the top was in 2014. That was launched right when the CCWP was chartered and it was written by two authors. I think it was commissioned by the Council of Europe. Since then, we have tried to do a deep dive into how either specific ICANN processes or specific rights are impacted, impact one another.

And then at the last meeting in Abu Dhabi, we presented an initial sketch for how a human rights impact assessment model might be incorporated into GNSO PDPs. And there we used the Zorro process map and tried to identify potential areas where an impact assessment could be asserted and then the types of questions or considerations that might be considered in doing so.

So if we could go to next slide, we have a special guest joining us today. Ergys Ramaj, am I saying that right?

Ergys Ramaj: It's Ergys Ramaj. Close enough though.

Collin Kurre: Ergys Ramaj. Oh, well. So he has his own slide deck. I don't want to step on his toes. So maybe if we could go to him because I know you don't have very much time. He's going to be tell us about ICANN organization and the ongoing human rights impact assessment they are carrying out.

Ergys Ramaj: Thank you, Collin and good morning everyone. Thanks again for the opportunity to address the group today. I have prepared a couple of slides but I will go very quickly through them and hopefully, we can engage in a discussion. I can answer any questions that you or anyone around the table or the room may have. Just a little bit of background before I get into the details of this.

Could you please go back one slide please? Just here. About a year and a half ago, within ICANN org, we got together to discuss the possibility of carrying out the internal human rights impact assessment as it relates to ICANN org conducting its daily business operations. And at the time, we had concluded that this is a good thing to do for the organization. It is the right thing to do and it is the proactive thing to do. It is not just a risk mitigation exercise but it's also an opportunity for us to improve and enhance our business operations.

Fast forward to about six months ago in October, we had issued an open call for request for proposals, which was answered by seven individual entities and after going through that process, we had identified and selected Löning for Business and Human Rights, which is a Berlin, Germany based consultancy that is spearheaded by Markus Löning who is the German former human rights leader.

Next slide please. So what I would like to make very clear in this discussion is essentially, the difference between what we're doing on the org side and what the community is doing primarily through Work Stream 2 and developing the framework of interpretation for human rights as it relates to the core value in the new ICANN bylaws.

The human rights impact assessment that I am discussing today is strictly limited to ICANN, the organization, conducting daily business operations. It does not touch on the policy development process that ICANN community is currently involved and taking a closer look at. So I think this distinction needs to be made very, very clear.

Essentially, this is, as I mentioned earlier, just the benchmarking exercise. A lot of organizations and corporations are engaged in carrying out internal human rights impact assessment and ICANN is now engaged in its very first one.

Next slide. So in terms of the scope, and I apologize for not introducing (Betsy Ann) before. She's on my team and (Betsy) and I work very closely together. We'll be working very closely together on this exercise. We were in Germany about two weeks ago where we had our initial kickoff meeting with Markus and his team. And this is when we decided on the scope. And essentially, there will be four areas of focus. The first one will be human resources, the second one will be procurement, and of course, in no particular order, event planning as well as implications of running worldwide offices.

I'm more than happy to provide some potential examples of what each one of these may include a little later as we engage in a discussion. Next slide please. And this is the last slide for me. Just a rough timeline here. I mentioned that (Betsy) and I were in Germany a couple of weeks ago. In the next two weeks, we have started the collection of documentation, Markus and his team are taking a look at the documents that we have provided.

Over the course of the next two weeks, there will be in person interviews with the leadership from the ICANN org side that oversees the four focus areas I mentioned earlier as well as individuals who work on their team. Bottom line is we expect the final report to be ready sometime around this summer, so around August and of course, at that point, we will make some of the recommendations publicly available and when I say some, I mean some not all of them because there may be information in there that ICANN organization might not be able to share because of privacy concerns.

So that concludes my very brief presentation and I'm more than happy to engage with anyone and answer any questions that you may have. Thank you.

Collin Kurre: Thanks for that. Have we got any questions from any of our participants? And you guys sitting in the back, feel free to grab a spot at the table. Yes, David?

David McAuley: Thank you. My name is David McAuley. I'm with VeriSign and new to this working party but fresh from CCWG accountability work stream 2 human rights subgroup. So my question touches on this. It's a budget question. Is this effort touch both fiscal year 2018 and 2019 budgets and are the contracts -- how are they funded? Is it a fixed price contract?

Ergys Ramaj: Yes, it's a fixed price contract and all of the funds will come from FY18.

David McAuley: Thank you.

(Parochi Vaselde): Good morning, everyone. I'm (Parochi Vaselde) from the same country as Goran Marby, Sweden. I'm from the Swedish Police. I'm an old and grey hairy man so excuse me for using my question here. I will tell you that I represent 28 different law enforcement countries from all over Europe fighting against child abuse on the internet. If you know, internet is the place where all young people of today gather.

More and more our children use cellphones and connect as soon as they wake up. Unfortunately, some kids don't want to wake up and some of them don't wake up. We think that up to 3% of the depopulation of the main population are predators who are interested in sexual abuse against children. When I say children, I mean kids from as young as one day old up to 18. So human rights forms also is a question for children and my question is the human rights of the children taken into account here in this project, the child convention is quite clear. Every country in the world except USA I think and one more country have signed this convention.

And I would be really happy if you -- and I quite suppose that you would talk about children's rights here as well. So it's just a former question.

Collin Kurre: I didn't catch your name. Could you?

(Parochi Vaselde): (Parochi Vaselde).

Collin Kurre: Okay. Tijani, did you want to respond to that?

Tijani Ben Jemaa: Thank you very much. This is (Gianni) speaking. I would like to ask you how do you see this issue of child abuse can be addressed her in ICANN?

(Parochi Vaselde): I think this could be the place because you have make the plan here or just making -- talking about this issue in the different sessions of ICANN.

Because you know the predators use the internet. They use the different web pages, URLs, the domain names and so on. I know that ICANN is not responsible -- has no responsibility for what's in the context or what do you call it. But we have also the internet service providers helping us. We have the bank, the financial helping us. So why not the ones who are driving the internet?

Collin Kurre: Holly, would you like to comment?

Holly Raiche: Holly Raiche for the transcript. First, I'd like to point out that in fact if you look at your timeline, globally that's incorrect because August for us is winter. So please be a little bit careful and respect the fact that some of us actually live on the other side of the globe.

That said, just to clarify, I think this is about human rights in the ICANN org context, not human rights in terms of the output, which would be working groups and policies. So I'd be interested to know in the org context if any of those issues arise. I think I'd be a little bit surprised if that were the case. Thank you.

Ergys Ramaj: May I respond to that? Ergys Ramaj for the record. You are correct, this exercise does not touch on any of the work that the community is doing on the policy side. And I apologize for the summer there. We will make sure to correct that moving forward.

Collin Kurre: I just want to say that I'm really excited that this session has kicked off with such a lively exchange. We will be speaking a bit later about how to incorporate impact assessments based on internationally recognized human rights law into the different policy development processes, but that's going to be a little bit later in the session. So maybe we can just put this conversation on hold for a little bit and move forward.

Does anybody else have any questions about the human rights impact assessment that ICANN, the organization, is carrying out? Yes, David.

David McAuley: Thank you, one request. David McAuley speaking again. One request and one question. The request is can those brief slides be made available or are they available on the wiki?

Woman 1: This is (unintelligible) from staff. All the slides are already uploaded to the ICANN 61 schedule page so you can check the PDF links on the site.

David McAuley: Thank you very much. So the question is, taking the point that this is an exercise having to do with ICANN org, what will happen with -- what does it mean to communicate results? Communicate them to whom? Will the community get involved in this at all?

Ergys Ramaj: Yes, absolutely. This is Ergys for the record again. When we publish the final report, we mean to the community and what this will be is a set of recommendations in priority order based on what Markus and his team will -- after they conduct all the analysis and this will be reflecting their findings and it will be in priority order. I think Tijani has...

Tijani Ben Jemaa: Okay, Tijani speaking. I'd like to highlight the fact that we have a mission. ICANN has a mission and anything that is addressed here should be inside the ICANN mission. We cannot address anything related to the content. Thank you.

Collin Kurre: So I've actually got a couple questions. Could you tell us, are you at liberty to tell us a bit about your vendor selection process and how you determined which bid was the most appropriate?

Ergys Ramaj: We follow standard ICANN procurement practices. I don't know what kinds of details you would like for me to share with you. That way that we conduct our procurement practices are available online. You can take a look at how the

process work. What we did, we worked very closely with the head of our procurement. We designed the criteria that we were going to follow and then we conducted the interviews with all of the vendors and then we determined which one was the most appropriate one based on the needs that we had identified.

Collin Kurre: So my thinking behind that question was I was wondering -- I would imagine that perhaps different vendors would approach assessing human rights impacts with using different methodologies. So I wondered if that was something that played into your selection criteria or if it was just more standard procurement procedures?

Ergys Ramaj: So you'd be surprised to know that I would say by and large, all seven of those who bid on this particular opportunity used or referenced the same mechanisms and instruments. They're internationally recognized human rights instruments that are out there. It was pretty much uniform.

Collin Kurre: So are there any plans to share the methodology that is used to assess the impact afterwards?

Ergys Ramaj: Absolutely. Yes.

Collin Kurre: Great. Thank you very much. Do we have any other questions, comments? Are there any questions from our remote participants? Okay. It appears that there are not so maybe we can move onto our next agenda item. So if we could go back to the -- yes, let's go to the next slide. So thank you very much for giving that presentation.

So human rights are obviously very important and ICANN, the organization, is taking an active step in recognizing this, but there's a bit of a story behind ICANN organization human rights impact assessment and it all starts with a bylaw. So if we could go to the next slide please. This is the ICANN human rights core value, which is a part of the bylaws that govern the organization.

You can see here I've highlighted what I think is the most relevant part. It is that ICANN will respect internationally recognized human rights as required by applicable law.'

And then you can see that the rest of the text obviously puts a bit of a condition on this in saying that within the scope of its mission and it does not obligate ICANN to enforce human rights obligations on contracted parties, for example, or other actors. If we could go to the next slide. So when this bylaw was implemented, at the same exact time, another bylaw came into effect, the interim human rights core value, which says that the human rights bylaw that we saw before would not have force or effect unless or until a framework of interpretation for deciphering what exactly was meant by that bylaw have been developed. And this was a mandate that was given to a particular sub-group of the cross-community working group on ICANN's accountability.

So I think I'm going to turn to my co-chair to review what's going on in Work Stream 2.

Michael Karanicolas: Thanks so much for that and we have I think some members of the group, the human rights group, who were already working on this in Work Stream 2, who are active in the human rights group, as well as rapporteur of some other groups, who I'm sure will correct me if and when I inevitably make a mistake.

So as the slide up there indicates, there were several different sub-teams for Work Stream 2. We have, as of Friday, gotten to the point where each of those work streams has now finished their draft report and it's going to be presented to the community for commentary. The commentary upcoming is mainly meant to be focused on inconsistencies or overlap between the different subgroup recommendations as opposed to the substance of the individual reporting, which is because there were so many opportunities to comment previously.

So even though the Work Stream 2 work is still ongoing, the reports that you're seeing there on each different issue, including human rights, are pretty much close to being finalized, and as soon as the community approves it, will go to the board for their own approval.

Can we get the next slide please? So in terms of the human right subgroup, in particular, important output that's there is the framework of interpretation. Yes, sure.

Collin Kurre: So we do have I think maybe some people who were either participating or observing in the human rights subgroup. The human rights subgroup finished its work actually in October, which was very exciting and it was really a very much a bottom up, multi-stakeholder driven document that we have at the end. There were a lot of exchanges, sometimes heated, but the final product is something that I think is quite agreeable to everyone.

As you can see, it took quite some time. Even though we finished early there were 32 meetings and 816 hours on calls. So it's a lot of time. And then you can see in our little flowchart here where we are in this graphic is that we're right there at the end of the human rights subgroup. And then you see the framework of interpretation being the product of that. And then this is dictating how it should or shouldn't be applied to the different SOs and ACs, which are in the little circles below.

Do you want to...

Michael Karanicolas: So as part of the framework of interpretation, it presents a -- it's up to each SO and AC, as well as the individual PDPs to develop their own policies and frameworks to fill that core value that's in the bylaws or will be in the bylaws later this year.

There was no consensus reached within the working group as to a single standard to draw on for carrying out these human rights impact assessments.

There was a lot of back and forth around the UN guiding principles. Obviously, the UN guiding principles can be a useful guide if the different SOs or ACs consider that to be the case. But fundamentally, it's up to the individual groups to decide how to carry out the human rights impact assessments, what standards should be informing this decision making process, and fundamentally which values to draw and should inform their thinking, particularly with regards to the different PDPs.

So I think that that's probably about it for that. We can -- with that sort of introduction, I know that there are a lot of people here from different SOs and ACs, from different stakeholder groups, from different interests. And so given that we are going to have in front of us an interesting challenge going forward in terms of how to carry out -- implement this human rights bylaw -- I thought it would be very useful to open up and try to foster a conversation of different approaches that people might consider, particularly in consideration of the FOI that's been passed.

What are some thoughts as to how that can be applied by the different SOs and ACs? Maybe either as a broad statement or from the perspective of a single individual SO/AC or even a PDP. What are some considerations? What are some procedural ideas? What are some values that should inform this decision making?

Sorry, did you want to?

Collin Kurre: David, did you want to make a comment?

David McAuley: Thanks, David McAuley speaking again. I just wanted to go back one point and make an addendum to what Michael's summary was of the CCWG accountability. I thought it was a great summary but I just want to make a brief addendum that will then be relevant to the next point of implementing the human rights bylaw.

And the addendum would simply be that Friday the group took the decision -- by the way, I think parenthetically I should say that CCWG for accountability ends at the end of June this year, at the end of the fiscal year, and there are no funds for that group to work as a group in the next fiscal year.

And that ICANN 62 and Panama is when the final report will basically be done, and dusted, and the handed off to the COs and the board. In any event, the group on Friday took the decision that there will be basically what amounts to a standing group of people to help in interpretation and that standing group will be the co-chairs of the CCWG and accountability together with the rapporteurs for each of the subgroups.

So there will be some expert help available in the future for interpreting, for helping the board and the community interpret what was meant by this long report that's going to come out. So I just thought I'd say that. So they will be available to help and that would affect, I would assume, the framework of interpretation on human rights. Thank you.

Collin Kurre: Thanks for that clarification and that's actually a really great segue into what we're going to be talking about. So as you said, in the Work Stream 2 and in the human rights subgroup it was really dedicated to interpreting the human rights bylaw and there were conflicting opinions on how that should be interpreted vis-à-vis the United Nations guiding principles or the Ruggie Principles.

If we could go to the next slide. So here, we have just a little overview of the Ruggie Principles and I think that Mike might be able to explain a bit more, but wait just a second because I do want to make the clarification that as we transition into talking about implementation rather than interpretation than the Ruggie Principles can be interpreted in a different light. It doesn't need to necessarily need to be interpreted, as we saw in the bylaw, it does not create the obligation for ICANN to, for example, enforce human rights frameworks in its contracted parties or beyond the scope of its mission.

However, the framework of interpretation does cite the United Nations guiding principles as a potentially useful point of reference, specifically in how it recommends human rights impact assessments for implementation. And again, there we see the clear division between interpreting the bylaw and implementing the bylaw.

So Mike, if you want to give us a little bit of a rundown about the UNGPs.

Michael Karanicolas: Sure. So the UNGPs as indicated in the slide there are basically predicated on two main principles, namely that the states have a fundamental duty to protect human rights as firmly established under international law. Whereas the duty of private sector entities is mainly to respect human rights and to avoid adverse impacts on human rights.

Just give me one second to get my presentation out. Right, so the second impact is obviously more relevant to ICANN's operations as a fundamentally non-state actor. There are two main components to that, as understood in the UN Guiding Principles. One is to avoid causing or contributing to adverse human rights impacts and to seek to address such impacts when they occur, and the other is to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they've not contributed to those impacts.

The main mechanism for these responsibilities is through due diligence and applying these considerations to policy making processes. That will typically be done by human rights impact assessments, which considers both actual and potential effects, and which should draw on internal and/or independent external human rights expertise and involve meaningful consultation of potentially affected groups.

These assessments should be carried out prior to a new activity, prior to a major decision, or changed in the operation and periodically through the life

of an activity or relationship. And those two fundamental principles sort of lead into the third principle, which alongside the duty of states to protect and the duty of the private sector to respect human rights is the availability of appropriate remedies where a corporation has caused or contributed to an adverse human rights impact.

So that's sort of a cliff notes version of the Ruggie Principles and the basic outline for how they should be applied in assessing human rights in the private sector.

Collin Kurre: I think we might have a comment. Kathy, would you like to weigh in? Yes.

Kathy Kleiman: Is the microphone on? Yes. Kathy Kleiman. So a question and maybe we haven't gotten there yet. Where in the ICANN process, say, a PDP working group, would a human rights impact assessment take place prior to implementation? Is it after? And let me pose, is it after the PDP working group finishes? Is it during the implementation review team phase? Is it after -- because then the policy is already adopted. So I'm a newcomer to the group. So I apologize I this is a well-covered issue.

Michael Karanicolas: That is the million dollar question. That is this enormous challenge that I think faces the community where we know that there needs to be human rights considerations now baked into these processes, as well as applied to these processes.

So how do you that particularly there's different contexts where we need to puzzle that through. Presumably, going forward, when a new PDP is set up, there will be at the very least a human rights impact assessment baked into it. So that there's human rights thinking informing how it's established.

Collin Kurre: We actually mapped this out at ICANN 60 and actually, Vidushi did quite a lot of work on this scoping and mapping the potential areas, particularly in the

GNSO policy development process where these human rights impact assessments or elements of them could be inserted.

She's actually joining us remotely so perhaps we can let her speak to that question since she's done so much research on it.

Kathy Kleiman: And a quick hi from Kathy to Vidushi.

Collin Kurre: Vidushi, can you hear us?

Vidushi Marda: Yes, hi. Hi, everyone and thanks for that comment. I was trying to figure out how to raise my hand. But thank you for that. So I think this is a really important aspect of the human rights discussion, which is how do we actually make human rights part of ICANN policy and procedure in a way that's systematic and organic and not really an afterthought of something that we look at with anxiety.

And when you are, like Collin mentioned that we presented this model at ICANN 60. The thinking behind that was that we already have these really elaborate procedures for policy development in ICANN, specifically the GNSO. It's a lovely V shaped diagram, which I'm sure many of you have seen. And the thinking behind baking in human rights here considerations into the development of (unintelligible) is to have a check at the time -- at the point of every report being published.

So when staff comes out when an initial issue report and a final issue report, we have a check through, and just as an added step to existing procedures. So it's also doable. It's (unintelligible) and it's also something that's very realistic in terms of just going to it from top to bottom to human rights (unintelligible) at the time, just before you publish it.

And this can be replicated even at the working group stage. It can be published right up to the board book. I'm happy to share the resources and

the report that we presented at the last meeting. Maybe I could mail it to Maryam right now but I'm happy to take any questions. Thank you.

Collin Kurre: I've actually just emailed that to her, so that will be available shortly on the ICANN 61 event page for this meeting if you'd like to take a look. So this is something completely different. Now, for something completely different. It's not completely different but I would like to clarify right off the bat that this tool that you are seeing in front of you is an example of a private company that is implementing the NHRAA of their own services. It was a CCTLD registry SIDN in The Netherlands and we worked with them since presenting at ICANN 60. We worked very closely with SIDN and then the Danish Institute of Human rights, which was actually one of the bodies that put forth the proposal to do the HRAA for ICANN organization.

And we worked with them to begin developing a tool to assess the impacts of provision of services in the DNS space, which is easier said than done because a lot of it is quite esoteric, quite broad, quite hard to nail down into concrete impacts. But we think that we've got a great point of departure in doing that. So I wanted to bring this research, let it to the table, let you know that this is something that we have been working on in parallel to our work at ICANN. And hopefully, once we get more SOs and ACs involved in this conversation about implementation and how we're going to move forward, hopefully this is research that will be able to inform these conversations and perhaps serve as a point of departure when we're trying to design specific mechanisms for each SO and AC to comply with the bylaw.

If we could go to the next slide. So now, if we can perhaps echo the question that Mike asked earlier, how this implementation is going to happen is a big question mark. We've got ideas. We've got maybe some suggestions but each SO and AC's decision making process is unique. So it will be a challenge not only to implement them but to implement mechanisms that have some level of consistency or some level of interoperability, let's say,

between them to ensure that the bylaws are being consistently applied across all of the chartering organizations.

So if you have any more -- any ideas about how we could move forward, I'd welcome that. But I'd also welcome ideas about challenges, ideas about things that we need to consider or potential barriers that we might face in attempting to proceed with implementation.

Yes, Claudio?

Claudio Lucena: Thank you very much. Claudio Lucena for the record. Are you directly involved with the previous initiative in the Netherlands? Are you the one working with them? Because I was wondering if you could, for example, pick up one example of an issue that you thought was a bit more concrete and objective and one other that you thought was a little bit more challenging in terms of the abstract nature of it so that we can see pretty much where we're going here or gauge at least the challenges that are ahead, if it's something that comes to your mind easily.

Collin Kurre: Well one thing that comes to, just off the top of my head, and this is a very comprehensive spreadsheet. Actually, David, you've seen it, you can confirm that it is very long, it is very detail oriented. But just off the top of my head, for example, trying to assess the impact, as in number of people impacted on, for example, a domain - seizing a domain or shutting down a domain or denying domain services to a certain registrant for XYZ reason, that was quite difficult, to say how many.

In standard human rights impact assessments, if you're talking about drilling a well or you're talking about building a mine, then you might be able to estimate the number of people in the vicinity that could be affected by this action. It's much harder in the DNS - when dealing with the DNS. It's much more harder to tease that out: is it 10,000, is it 100,000, is it one? So that was

something that was a really big challenge and that's one element of impact assessments that remains a challenge.

However, the second half of impact assessment is almost like a gap analysis of internal policies. It's kind of a review to see where the holes are. And one of the holes that we identified was that SIDN hadn't included transparency reporting in its annual report, transparency report about the number of requests for data that come in or the number of takedown requests that they received.

So that was something that I wish that (Martin) could have joined us, (Martin) from SIDN, but he had a conflict, a scheduling conflict. But that was something that they really - I think that they appreciated and they intend to implement was this kind of transparency reporting. So the two sides of an HRAA would be analyzing impact but then also analyzing policy gaps. So analyzing policy gaps will be easier, in some scenarios.

If you look at the ASO, which maybe doesn't have quite so defined a policy, then it - a policy development process, it might be harder to identify the gaps. But the hardest thing will be trying to assess the range of impact and the degree of impact on human rights and ultimately on humans.

Yes, David?

David McAuley: Thank you, Collin. I'd like to make two comments and then ask a question. The two comments are first with respect to the Ruggie Principles, I think I want to just strike a note of caution. And it's a note of caution -- if Neils is still on the line, he'll recognize what I'm about to say -- and that is we need to keep in mind that the Ruggie Principles, in my opinion at least, are subsidiary to the ICANN bylaw in the ICANN context, and I think that's important.

The Ruggie Principles do great things but among the comments are - I use two as an example. One comment is they talk about a string of business

relationships that someone may have influence on, and it's a broad definition. It's not what lawyers call privity of contract or people who are in direct line of contract, it's much broader than that. And the other thing that the Ruggie notes say is if you have leverage to enable human rights, you should use it.

So in the ICANN context that means to a registry or a registrar to go down to the registrant level, and that conceivably pulls in content. That's something we have to be very careful about. And so that note of caution that I've sounded in the working group, I will continue to sound.

The second comment I have is about Vidushi. I just want to say thanks to Vidushi because she's held the pen on this document that's called, I forget the name, but it's about human rights impact assessments in the PDP process. So hats off to her. I do have some questions and so my question to Vidushi is where does that document stand? We did discuss it in Abu Dhabi and frankly I still had some remaining comments.

I'll illustrate them this way. It addressed dealing with people who are vulnerable and potentially vulnerable. Well to me the idea of people who are potentially vulnerable is everybody in the world, and so I thought it was just a little bit broad.

And the other thing that the document talked about in the PDP process was identifying, if I'm not mistaken, a dispute resolution mechanism. And it sounded to me in that document like it was within some kind of a PDP process. So those were my questions. I don't need those to be answered now. I'm simply saying if Vidushi could bring us up to speed as where the document is now and what opportunity we'll have further input. Thank you very much.

Michael Karanicolas: I can just, for a small briefing on your first point, I think that we are in total agreement regarding the bylaws and that the bylaws are - fundamentally the bylaws are guiding everything, not everything that's going to be done in this

working group but everything that ICANN does. So that is at the core of the question is how should the bylaws be interpreted.

I think that we introduced the Ruggie Principles as a potentially helpful framework to supporting that interpretation and to guiding that interpretation and that fit, certainly not to say that we should be guided by the Ruggie Principles to the detriment or to the - to be conflicting with the bylaw. And certainly, you know, the last thing that we - the last thing that I think that anybody here wants is to be pushing into content regulation, which obviously is the third rail that we hear every meeting we need to stay away from and I think that's a value that everybody shares. Did you want to...

Collin Kurre: I think maybe we can let Vidushi answer the question.

Vidushi Marda: Thanks, Collin and thank David for that very, very important question. I think the thinking behind the model was that we didn't want to be premature and say this is the solution, rather we wanted to create a space for discussion (unintelligible)...

Collin Kurre: Sorry, Vidushi?

Vidushi Marda: Yes?

Collin Kurre: Hey, Vidushi, could you speak just a little bit more slowly because we're not hearing you very well?

Vidushi Marda: Oh I'm sorry. Yes I'm going to speak a little more slowly. So I was saying thank you to David for that very important question and just to - I think the answer to your question I will have to talk about what the model that was presented at the last meeting was intending to do. It was meant to be an initial sketch and initial idea of how we could integrate the human rights into policy development at ICANN, it wasn't supposed to be a concrete or really

fleshed out model simply because we wanted to create a space for disagreement and discussion around what that should look like.

Having said that, I do agree with you that some of the terminology in the document as it stands right now is broad and, again, the thinking behind that was that we could define it through discussion. So for example when we say vulnerable community, at the moment in initial issue reports and then final issue reports during PDP, I very rarely come across a consideration that even has that for the title or even something that describes that sort of title, right?

And what we were trying to really bring out there was the need to have an explicit reference and an explicit consideration of these particular problems. So for example, if we have a particular section that looks at okay, how is this human right compliance or not and then we say okay how does this address vulnerable persons, how does it address the issue of diversity, how does it impact freedom of expression, that could also be still a lot of what the reports are actually trying to get at. And, yes, like I said, this is part of a longer conversation but I can stop there and happy to take any follow-up question and thanks for the opportunity.

Collin Kurre: Yes please, David.

David McAuley: I just want to say, Vidushi, thanks for all the work you're doing on this. I look forward to the next iteration and I'll comment. Thank you.

Vidushi Marda: Thanks, David.

Collin Kurre: Kathy, please.

Kathy Kleiman: And I had a question for you Collin. You said something very quickly that I wanted to make sure I understood. So you're working with SIDN, which is .nl, right, the Netherlands? And you said that there were two things they weren't tracking and I didn't catch the second one. One was takedowns and the other

one based on your review that they weren't tracking that they should be tracking was what?

Collin Kurre: They were tracking it. It was request for data.

Kathy Kleiman: Thank you.

Collin Kurre: So they were tracking it. They have records of all of these things but it wasn't something that they were including in any kind of transparency reporting.

Kathy Kleiman: So that would be like requests for the Whois, kind of the equivalent of Whois data and things like that?

Collin Kurre: Exactly.

Kathy Kleiman: Thank you.

Collin Kurre: So, yes, and thanks very much, Vidushi, for that comment. The only thing that I might add is that in terms of resources, time, and energy, we as a team really have - we - instead of trying to progress on the HRAA model for ICANN, we did use SIDN and our collaboration with them as a kind of test bed of how to make the kind of language that you were saying is quite broad, David, and rightly so.

We were using this as a bit of a test bed to try to make that more precise. And then, like I said, we're hoping that these kinds of lessons learned we'll be able to feed back into this process and inform the conversation that results in multi-stakeholder input into this model. Because I don't think that it's going to work if we unilaterally bring the solution to the table. It's much less likely to be received than if everybody works on it together and we come up with something that's a consensus document.

So I'd like to pass it back to Vidushi actually now because she's going to make a brief presentation about ongoing research that she's doing about human rights impacts of specific PDPs. Vidushi?

Vidushi Marda: Hi, Collin. Thank you. Can you hear me? I was having some trouble with my line. Are you able to hear me now?

Collin Kurre: We can hear you, thank you.

Vidushi Marda: Super. So thanks again. Very happy to be here and I'm sorry that I can't join you all in Puerto Rico. My presentation actually follows really nicely from the conversations that we've had so far. So while this area focused on dedicated spaces and the message for human rights, I think it is also important to take a step back and to question and study the human rights implications of ongoing policy development processes so that we can invite these concerns into day-to-day functions at ICANN.

And this is also part of our commitment to make human rights more systemic and organic to existing systems at ICANN. Like I was saying earlier, it has been baked into processes as opposed to (unintelligible) consideration. So we move to - actually I'm sure if the slide is around but there is a slide of where I've listed out all the different policy development processes at the GNSO and you'll notice I have color-coded them.

So the ones in red are at the stage of board vote, the ones in yellow are at the implementation stage, and the ones in green are at the working group stage. So at this point, I think I'd like to hear some initial findings and some research analysis on the way this particular development processes are progressing and I'd invite participants and leaderships in these PDPs - I'm not exactly sure who's in the room.

I believe Kathy and David are in the room, which makes me very happy, but I would invite active participation from the PDP to engage with this research

and give us feedback on what areas we can work together on and in what ways we could make the research more actionable for the actual working group.

So the first PDP that I'd like to talk to you about is the PDP for the new all rights protection mechanisms in all gTLDs. That's on the next slide. And the charter of this particular PDP asks a very simple question: do human rights protection mechanisms collectively fulfill the process for which they are created, and that is of course in the new gTLDs?

And the (unintelligible) created is from - to provide trademark holders with preventative but creative positions against cybersquatting and other abuses of their legally recognized trademarks. And so I just want to walk you through a few of the learnings that I have come across in my research in trying to understand where this PDP is and some of the human rights that arise out of it.

So the first is when it comes to balancing the rights of applicants and other Internet users or more specifically in the creation and allotment of general top level domains - generic top level domains, sorry. So as you can imagine, deciding who is the owner of a particular domain is always difficult but we - what I've found in the research so far is the standards and the tests that are applicable to decide who is the rightful owner is a bit problematic.

So for example if you look back at the .africa case, right, the .net africa applied for this name, it was disqualified by ICANN in 2013 on questionable grounds because when an independent review was carried out it had found that ICANN had some amount of problematic procedures in terms of how it applied to their bylaws, how (unintelligible) et cetera, et cetera. Now I realize that is a single case but I think the important learning from that particular case is that we need more well fleshed out examples of - sorry. I just got the you can't hear me one. Can you hear me? I'll speak even slower.

So I think what the .africa case teaches us is that we need better standards for what constitutes a fair procedure for allotment of gTLDs, and so far that hasn't been needed to be defined because (unintelligible). The second is the trademark clearinghouse. For those of you who...

((Crosstalk))

Collin Kurre: Hey, Vidushi?

Vidushi Marda: Yes?

Collin Kurre: I'm being asked to call a quick timeout by Kathy Kleiman, who's actually the co-chair of the RPM PDP. Kathy, would you like to step in?

Kathy Kleiman: Yes. Vidushi, this is Kathy. You're raising very important issues but the first and the last point, if I understand what the last point means, and I'll read them out loud, are not part of this working group. Creation and allotment of new gTLDs, GCC, I don't even know what that is, .africa, .islam. And the last one: a gTLD objection procedure, which I assume are the community objections and the rights objections and the string objections.

I'm not sure that's what you mean. But if that's what you mean, this is outside the scope of the RPM working group, which only deals in second levels. So your other points apply but we only deal on the second level. I think you might be interested in the Subsequent Procedures Working Group on these other two points. We're only at the second level. Thank you.

Vidushi Marda: Thanks, Kathy. That's actually a really important point and I was going to get into that towards the end. So I will discuss subsequent procedures as well. The idea behind talking about this on this particular section is that in the initial issues report with the questions that I had reading the report, right, because either the framing was such that this did come under this particular PDP and so this is the kind of engagement that I was really hoping for.

So thank you for bringing up. I'm happy to discuss why I did think it was irrelevant to have it in this section but maybe we can save that for the end after you've heard my analysis on the subsequent procedures. Does that sound okay?

Collin Kurre: Sure, she says.

Vidushi Marda: Okay. Thank you. The second is the trademark clearinghouse, which is potentially a mechanism that provides rights holders with special privileges (unintelligible) of domain names but complain (unintelligible) home. Also legislation in this particular clearinghouse also gauge access to (unintelligible) which means we have a priority access to trademark claims, we have, you know, sort of like a hierarchy with domains.

So while this is in line some would say with the mission of this group, I think what we do need to take a step back and think about is how this is consistent with intellectual property and trademark law internationally. So for example, the trademark protection usually afforded is within a class of goods and services and not in a blanket fashion as the trademark clearinghouse has.

Secondly, there's usually (unintelligible) positions that is invited trademark law but that isn't the case again on the clearinghouse. And this clearly has, you know, a lot of implication of the freedom of expression and also (unintelligible), freedom of expression of people who want to use generic words and proper names without malicious or fraudulent intent. It also hinders the reason of trademark owners, which again is very detrimental to freedom of expression.

The third point that I want to talk about is ineligible or prohibited goods. So while ICANN often or historically maintained that content-related decisions and discussions outside the mandate, we have examples like, you know,

(unintelligible) and Red Cross where there was a decision on content made within ICANN which is also detrimental to the freedom of expression.

And the last bullet point of gTLD objection procedures, Kathy was right, I was going to talk about community objections, but keeping in mind the point, I think what I can do is I can talk about this at the level of the second PDP, which is that of subsequent procedures.

So moving on to the second PDP on subsequent procedures, can I ask you to please move to that particular slide?

Collin Kurre: It's up.

Vidushi Marda: Okay thank you. So this PDP looks at whether changes on a document that is within policy recommendations need to be changed, whether they need to be amended or whether - and whether they need to be supplemented with new implementation items. Right?

And so the first issue that I've identified there, as you can see, is content of gTLDs in evaluations, which is very similar to the last point that I made with respect to ICANN moving into content regulation. There were a great number of thinking and writing about this issue now and I think at the point of a PDP working group that we need to ask ourselves is where does this just occur and how - what policy or procedures do we have that let this happen and maybe we can think of them to keep us within the mandate that ICANN had originally envisioned for itself.

The problem with content (unintelligible) was, you know, first expressed by ICANN I think in 2011 in the GAC communiqué and then the councilor's report that Collin mentioned at the beginning also talks about this. Then we have community trademark and public interest related to gTLD strings, and so as the chair I think that is concerning is because (unintelligible) concerning

is that the definition of what is a significant objection from the community that by itself is quite loaded and we don't have clear definitions for it.

I was following the Subsequent Procedures Working Group day before yesterday and I was really pleased to see that this is a point of a lot of discussion in the group. They're thinking about whether, you know, the word community should be defined, that is really the different standard, if they're going to define it, what would that look like.

And I think this is really important because usually then we think about community objections, community is usually viewed by applicants who already have fundamental standards, which tends to entrench industry inputs and it marginalizes individual members without a clear definition of why and when that occurs. So that's another really important consideration and issue that I think needs deeper work and it's great that it's only beginning to happen, or a lot already happened there.

The follow on to this is the extent of special rights granted to IGOs. So as the present framework stands, we have special rights granted non-governmental, intergovernmental organizations and while this is of course important, again, the question of how narrow or how wide those communities should be and how they're configured now does come into question.

There's also a possibility that gTLDs could development an easier set of (unintelligible) and I do expect (unintelligible) just to share what I'm thinking on this particular point. So there is a possibility that gTLDs could result in easier censorship. So for example, the Chinese government has made a particular law which would allow only the (unintelligible) would be accessed within the country and so all others would be automatically blocked, right?

And it sounds like good (unintelligible) only happens in one end of the world, it also happens, you know, with the United States government I believe. So if we take the immigration and customs enforcement, there's a lot of

(unintelligible) that occurs on the ground and Internet (unintelligible) privacy. So while domain names are (unintelligible) control of the domains by the registrars, I thought the greater control for the sourcing of domain names has been proposed by (unintelligible).

And the reason the DNS has control of intellectual property is already a tenuous relationship, but when you look at it in terms of how governments could use existing policies and procedures, that's another I would say food for thought.

The second point on procedural (unintelligible) is something that I already sort of discussed as we went through the trademark clearinghouse. I don't want to repeat myself because I've already talked about the problems that arise out of that and if you look at the work that we - and access, there's a lot of inequity in how new gTLDs are allotted, right?

So to give you an example, as of 2017 there were 1,930 applicants for new gTLDs. Out of this, 1,586 of them were in the USA alone and that is a problem because costs - the cost of a new gTLD is around 185,000 US dollars, which (unintelligible). And I think we need to widen our mechanisms to help applicants a bit, they aren't as necessary as they'd like to me because not much support has been given.

So for example, the applicant support directory, as created by ICANN, is allowed to financially (unintelligible) new gTLD applicants to see financial and technical assistance, and also an ICANN (unintelligible) applications. But how many times that assistance has been given is also a big question mark because, as far as my research, I think there's at best one case and I'm sure we all think we need to do better.

And finally, you know, there are concerns about the first-come-first-serve policy of that nature of these gTLDs are allotted. So this again is intensive vested interest (unintelligible) have and kind of isolate the have nots, and

maybe when they're thinking about how these procedures need to be adopted, we could also think about something that is more accreditable, that is more open (unintelligible) is more welcoming fashion.

So if you can go to the next slide on apprenticeships and legal services. So this is by the far the hardest of the PDP to study here because it was drowning in a lot of paperwork, at least (unintelligible) pages I've been trying to get through. But I think what I would definitely like to share about this particular PDP is that it has a lot of grounding in international data protection law.

So for example, some of the questions that were put up (unintelligible) from the charter and from the final issue report, which is, you know, what kind of data should be processed and what - and who has - who can decide what kind the data should be processed for. The second question is who can access this data. The third is, you know, how do you ensure that there's accuracy of this data and so on.

I think a lot of this is found in international data protection law. For example we have budget limitation, you know, we have principles that allows only those people who have been in their particular national jurisdictions are accredited to need access to certain data, say for example law enforcement should be given access to this data.

And I think what's really interesting about this is many ICANN policies and procedures, you know, have a tendency to create accreditation schemes on their own or make it much more ad hoc problem. Well that is not only expensive but it's also not practical. And so I'd love to hear from anyone in the room who is actively in the PDP as to what (unintelligible) is between ICANN policy versus international data protection, which is already fleshed out (unintelligible) great amount of understanding.

But I just wanted to add these issues - well sorry. I think you can hear me, Collin? I can stop here and take questions.

Collin Kurre: Okay. Do we have any questions? Unfortunately we've lost Kathy but do we have any questions from anyone in the audience about this ongoing research? Yes, David?

David McAuley: Thanks. My - I just didn't understand. I think maybe Vidushi mentioned it, but where is the - in another words, what's happening as a result of the research? I saw Kathy took notes for the RMP group. I was just - I mean is this just pure research in the background?

Vidushi Marda: I think the thinking behind this is actually work with PDP leadership and try and figure out what is (unintelligible) but Kathy left. We've only just started this. It's been (unintelligible) past couple of months. But if you had ideas on how to make it more actionable or if there was a way in which we could participate in the PDP as the CCWG, that would be very useful. Thank you.

David McAuley: Thank you, Vidushi. I just need to give it some thought. I don't have anything to say about it now, but thank you very much.

Collin Kurre: So if I can give my personal opinion of how - of the articulation here, I think that it's really valuable to continue assessing - actually if we could skip down. This is the future research so I'll - if we - I think this is really valuable as a part of ongoing due diligence to continue exploring ICANN's effects on human rights in the more research and academic scenario.

And if the gentleman from Sweden has any ideas about how we can research particular rights, like those relating to the child for example, if you, or your colleagues, or your partners would like to work with the CCWP to flesh out that a bit more and kind of decipher what may or may not be within the ICANN community or the ICANN mission, that's definitely something we would welcome.

But then this kind of research and exploration into the application or the effects of ICANN policies on human rights really goes hand in hand with the work to develop tools and frameworks and mechanisms for living up to the bylaw. So the way that I see it first we - if we don't know which rights are potentially impacted, then it's very hard to develop a tool for measuring those impacts more systematically.

So I think that this is all research. It will feed back into the PDP only perhaps in the form of comments, public comments for example. But at this stage, this is very much exploration research and then going hand in hand with the ongoing research to develop human rights impact assessments tools.

Would you like to speak to future research?

Michael Karanicolas: Yes I mean I think that it would be good to use that last discussion to springboard into finding an avenue forward and specifically to look into what the community suggestions are for how to make the best use of the working party and what areas of research and investigation would be most useful in order to support implementation of the bylaws and support the ongoing challenges that the community's going to face with regard to human rights going forward. Are there any questions or comments on research that you think would be helpful?

Collin Kurre: Okay. Yes. Like we said, these are a couple ideas that we had come up with about tracking decision-making processing and the effectiveness of remedy. Like I said, this is an ongoing effort. But do we have any other business from our participants here? No?

Okay. Well then I think that it's time for us to wrap up. I can see that maybe people are itching to go to the impromptu GDPR session, which is unfortunately scheduled right at this time, because this is something that obviously has an impact on human rights. So I would just encourage you to

visit our website to track our work, to subscribe to the mailing list. I would like to get your contact information and let's keep the conversation going, especially ahead of the next meeting in Panama and the various calls that we will have in between.

And then the forthcoming implementation of the human rights bylaw, which will be a fun and exciting time for us here at the Cross-Community Working Party. Mike, do you have anything to add?

Michael Karanicolas: Yes just in terms of avenues forward, like I think it's great to see such good turnout that we got, at least for the first hour before people started to trickle out. It's great to get so much turnout and it's particularly good to see people from different communities and different stakeholder groups coming out and engaging.

Fundamentally what we're hoping to do is to use this forum as a space for collaborative research and engagement in developing these human rights avenues forward. So we hope that you all stay engaged with our work going forward, including in between the ICANN meetings when we're going to be having regular calls to discuss the research that we are carrying out hopefully to get more ideally volunteers to take some of this stuff forward, but at the very least to offer your opinions and insights, which are very valuable and which will help us to proceed forward in a proper multi-stakeholder fashion.

So thanks very much to everybody for coming out, and we'll look forward to connecting with the rest of you on the list. And join our list, if you're not on it, please -- also that.

END