ICANN

Moderator: Maryam Bakoshi
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8:00 am CT

Niels Ten Oever: Welcome everyone to this call of the cross community working party on ICANN's corporate and social responsibility to respect human rights. As you can see, we have a relatively concise and structured agenda upcoming with an update on the CCWG process as well as on the five subgroups of the CCWP.

I wanted to ask if anyone has any other points they like to bring up as (part of) the agenda. I don't see any hands raised so I hope that means that we can continue to the following point which is point two, which is an update on the cross community working group on accountability, especially in relation to human rights.

And perhaps especially in relation to the recent development, namely, the board comments on the human rights work. For this I would like to ask Tatiana or Matthew to give a short overview because I've been out of the running over the past weeks.

I was on vacation, so Tatiana or Matthew, could you give us a small update on what happens in the CCWG considering the human rights things that happened since last call?

Tatiana Tropina: Yes, I can. Tatiana Tropina speaking for the record. Can you hear me well?

Niels Ten Oever: Yes, we hear you very well Tatiana. Thank you very much.

Tatiana Tropina: Thank you, Niels Ten Oever. So just a short overview. On the 14th of December, the ICANN board submitted the comments to CCWG, the draft proposal, and one of the areas of their concerns, the board indicated it is human rights issue in the Annex 6.

So basically, our board expressed their concern that - I mean, I'm just giving a broad overview, that human rights, bylaw language, opens the door for many claims if it is adopted before the adoption of the proper framework.

So they think that, in the case of human rights, especially in accordance to the Bruce's email from today, that the framework for implementation shall come first and then the bylaw language which sounds a bit strange to me because you can't develop any framework of interpretation before you have the bylaw language.

That's my understanding of this. So the board is proposing an alternative way to do this like inviting external human rights experts taking over this issue to Marcus, then reporting to the community and Marcus and then working together as a community on developing the framework of human rights.

On the recent CCWG call, it was decided that we're not going to address the board's comments on this stage because the agreed that the board's comments will be treated like comments from any other stakeholder.

So I think this question is (muted) until the end of the public comment period and then we'll see how WP4 and how CCWG are going to actually address this issue and how we're going to deal with the (board performance) and how we're going to deal with any other comments. So this is my short overview. If Matthew has something to add, I mean, I'm certainly giving the floor to him. Thanks.

Niels Ten Oever: Thank you very much, Tatiana, and before giving the floor over to Matthew, I wanted to ask if all terms and (unintelligible) have been used in the explanation by Tatiana are clear to everyone.

If anyone has a question on those, please feel free to raise her hand or comment because I'd like to really - everyone to have a broad understanding of everything that's going on.

If not I'd like to go over - and if you would now like to speak up, always feel free to ask them in the chat as well, of course. And now I would like to call over to (Matt) to see if there are any other comments or details that he might want to highlight on this process.

Matthew Shears: Yes, thanks, Niels Ten Oever. So actually, no, Tatiana covered it very well. I think - I have to say from a personal perspective, I find the perspective that the board is taking to be surprising and also it seems as if that - that they are kind of listing a whole set of arguments to why it's premature, I suspect, in their minds, for a bylaw.

But they seem to be listing a whole set of arguments that we've already kind of discussed and reviewed and taken into account, those issues that we need to cover possibly as a part of work stream two or issues that we can sort of really want that relevance to, the bylaws, for the bylaws language that we were (supposing).

So I think it's worthwhile, and I have to do it, and it's worthwhile everybody taking a closer look at the rationale that the board has provided and just double checking the degree to which we've addressed those issues that they've raised which I believe we have done in the work that we have done so far.

So that's that. The other thing I just wanted to say was, Niels Ten Oever, I recall that you were going to send out -- I'm sorry that I haven't followed up on this -- but I recall they were going to send out a template for, and you did send it out if I remember, to the (last list), and I was just wondering if you had seen any responses to that.

But I - because I think (obviously) part of the public comment, those responses and those are using that template would also be very useful in terms of a counterbalance to the board's concern. Thank you.

Niels Ten Oever: Thank you very much, (Matt), and that is indeed one of the things I would like to suggest to everyone. And I also sent - that is that it's very important that we have everyone's voices on the response to the CCWG report, but specifically (to human rights), of course.

And I noted that everyone is busy. It's the end of the year. So that's why Tatiana and I, indeed, proposed a template text. And I pasted that in the email that I sent around with the agenda for this call.

So - and in that I also sent - I sent the draft text but also the email address to which comments need to be sent. So if you just would like to support the human rights language, you can copy and paste that text.

Just put in your name and organization and send that to the mentioned email address. But any comments like the comment saying that you would support any human rights commitments for ICANN to respect human rights to be added in work stream one would already be extremely useful, so I indeed, hope that a lot of people will actually comment.

The electricity just - I'm happy the phone is still working but I don't have access to the Adobe Connect anymore so I don't see if there any hands raised. Are there any people in the queue?

Tatiana Tropina: Tatiana Tropina is in the queue, Niels. Can I speak?

Niels Ten Oever: Please go ahead.

Tatiana Tropina: Yes, I forgot to mention one very important thing (the first thing I) would like to address. Again, thanks, Matthew, for trying (some of the lines) people to submit public comments because it's also very important for another reason which I forgot to address in my first intervention an overview.

The ICANN board, in their concerns and their comments told that if their concerns will not be addressed, they will raise the issue of this recommendation and not mentioned the global public interest.

To me it sounds a bit like an oxymoron and a bit of a contradiction, how human rights obligation commitment to respect human rights can contradict and not match global public interest.

So the (more) comments in support of human rights we will have, the more, let's say, contradiction it will look if the board will bring the issue of global public interest. So please do submit your comments and please do (modernize) the community. Thanks.

Niels Ten Oever: Yes, I couldn't support that in this call for responses more because now it really seems the time where push comes to shove and we've seen in other - in previous comments in terms that the board responses have been quite influential.

So I think it's very good to send in your comments and discuss these issues. Are there any people who would like to respond to this, either people who are active in the CCWG or the people who are active - or were not active in the CCWG? Is there anyone so on the - in the queue?

Avri Doria: Hi, it's Avri. I just put myself in the queue. Since - and no one else is at the moment. So I'll just mention something that I wrote in the chat, is that perhaps those that are still -- and APC is among them -- that are still working on the comments, mentioned how this is in the global public interest as part of their comment if we know that they've commented that they don't understand how it is in the global public interest, if perhaps some comments can explain why it is, that might also be helpful. Thanks.

Niels Ten Oever: That indeed, Avri, would be great if people can address that. And if people have boilerplate language on that or thoughts, specific thoughts on how this could be formulated, that is, of course, also very much welcomed on the list.

And what I would also like to address is that it will be very good to discuss that in your various constituencies because the next step after the comment period ends on December 21st, is that all SOs and ACs will be asked to approve or disapprove the recommendations for issue.

So then specific constituencies will be asked also specifically whether they would support or not support Annex 6 and human rights. So I hope that, if you like the Annex, that you can get your constituency - get a (point) in your constituency, that your constituency but also approve it.

Did I miss anything from anyone on the CCWG process? No? If not, then I'll go ahead into subgroup one. Is anyone who is active in subgroup one who would like to give a short overview of the work that has been done and/or that they are going through (in some time)?

Marilia Maciel: Hi, Niels. This is Marilia Maciel speaking. I sent...

((Crosstalk))

Marilia Maciel: I sent a brief summary of the call that we had in subgroup one on 3rd of December. We have approved our terms of reference. It's very short and sweet and they just produced of visualization correlating items, policies and procedures with specific human rights (unintelligible) raise awareness and present a contribution to policy development.

And that we have agreed upon a timeline for the work of the group until the end of December. We will be devoted to that space with different people in the community to ask for their input to complete the table that we have presented in the last meeting.

I think that the holidays and are going to be very helpful in that so I may need to follow up on that communication at the beginning of January. But our expectation is that it will be able to finalize the first draft and send to the list in the second (quarter) of January. So mostly that's (Steve) from subgroup one. Thanks.

Niels Ten Oever: That's great. So in the second half of January, we will get to see something pretty.

Marilia Maciel: (On that time), I'll keep you updated on that.

Niels Ten Oever: Perfect. Thank you very much, Marilia. Does anyone have any questions or do you have any questions or needs from the whole group, Marilia? Do you need designers? Do you have anything that you need in your group?

Marilia Maciel: Designers would be nice. Actually, the group is quite small today. I think that we were kind of (this specific phone call). It's open for others to join. And I think that we're going to take the bill of rights as a (base for) the work but just to see how it was a little bit complex.

So maybe we will focus on the first bill, the (email) bill, and the rights of (unintelligible) and then (extend) (unintelligible). But we see that this table and the visual is (unintelligible) kind of commentary and so we (unintelligible). But yes, a designer would be most welcome and also your help (on issues).

Niels Ten Oever: Perfect. Thank you very much, Marilia. So if there are - there is no one in the queue and there are no further questions, then I would like to continue to

subgroup number two. Who is here from subgroup number two? Is there anyone? I see no hands. Tatiana, that's an old hand from you in the room?

Tatiana Tropina: Sorry, yes, it's an old hand. I will put it down. I'm sorry. I just forgot.

Niels Ten Oever: Okay, so it seems we don't have anyone from subgroup two. Then will quickly join over to subgroup number three. I'll speak on behalf of subgroup number three.

We're still under discussion on what would be the best way to contribute to work stream two on human rights especially with the current development on - within the cross community working group.

It remains to be seen where and how we can best contribute. That discussion continues and when we set an exact scope, then we will start writing. So the thinking is still continuously developing. And my capturing that right, Tatiana?

Tatiana Tropina: Tatiana Tropina speaking for the record. Yes, it's absolutely right because we have to wait, actually, for the outcome, because if there would be strong opposition to the bylaws language been in the work stream two there would be no framework for interpretation. But, for example, there would be work (with boards), of course, so we do have to wait for the outcome of the CCWG proposal right now.

Niels Ten Oever: Okay. Yes, that's a discussion for the work to be done for subgroup number three. Then, is there someone here active in subgroup number four?

Marilia Maciel: Yes, Niels Ten Oever, this is Marilia speaking again.

Niels Ten Oever: Perfect. Go ahead, Marilia.

((Crosstalk))

Marilia Maciel: ...number four had a call on 4 December. Like the first group, we also proved (items) of reference. The mandate is providing (unintelligible) items (to solve this) problem from a human rights perspective.

Actually, the call was exploratory. We had new people involved which was great, people who have not been very much following the work of the GNSO but the call was mostly devoted for us to understand what are the different tracks (that lead) the new gTLD program that is being discussed.

And we have met three of them. Just a quick overview - the first of them is the consumer trust, consumer choice (completion) with (a new team) that is being created right now with all the different SOs and ACs are appointing their nominees to be part of this review team.

This will be kind of an important discussion and ICANN that as part of (the several reviews) that are part of the (affirmation of) commitments. The second one is the limitation review in the different reports that are being produced by ICANN staff as a self-assessment of what they think about the new gTLD program and what could be improved.

And, of course ICANN staff is also commissioning a lot of studies and the production of the metrics that are going to give basis of the work that is going to be developed.

So I think it is important for us to review the metrics that are being produced and the studies as well. And for us at the GNSO, the most important thing in our plate is that we will have enough (unintelligible) for this development

process, (unintelligible) subject (was defeated) and that probably will start soon.

We had a GNSO call yesterday that unfortunately I could not attend due to work commitments where I had a proxy there. I don't know anyone else was on the call - listened to the GNSO call yesterday.

But if everything went well, we will start this (activity) soon and, as I mentioned before, this would be a very important (unintelligible). (It will need to) half people involved. We're going to look - since this is related to community applications and (options) and freedom of expression to issues related to development and economic and social rights.

It's very important to have several people involved there. But this is what we did on the call - we agreed on following these different tracks. I have opened a Google Docs where I am placing the documents that are useful in terms of following this process.

I have shared a link of this Google Docs of my summary with you in the list so you can take a look and all the different people on the call said that they agreed to take a look at the different buckets of issues that are involved in this discussion and choose which area they want to specialize.

Because since this is very large in terms of the different (outtakes), we came to the conclusion that it is better if some of us become focused and specialize on some of these issues and do not try to encompass everything. So we are in the phase of mapping and sharing that (unintelligible). Thanks.

Niels Ten Oever: Thank you very well - thank you very much, Marilia for this - always for the great work you are doing and I'm so happy that there are several new people

that are involved that your shepherding in helping there, that really great work. And I see we're also turning to you for subgroup five, am I not? Because if I remember from mine - isn't that the PDP on Whois?

Marilia Maciel: Whois is not (with me). I think it's either with (Stephanie) or Stephanie.

Niels Ten Oever: Ah, Stephanie, I think you are on the call. Come on in. Is Stephania Milan still there? Can people here hear her?

Maryam Bakoshi: Stephanie's typing in the chat room. I think - yes, she has her hand raised up now, (Niels).

Niels Ten Oever: Okay, Stephanie, come on in. I don't hear her. Can someone really what Stephanie's typing? Ah, I hear Stephanie. Hi, Stephanie. I can hear you now.

Stephania Milan: Okay, hi. Sorry, I am connecting - okay, great. Sorry, I'm connecting through my phone and (it's apparently an unstable) so keep on being thrown out and I need to join, so I may have missed something.

As far as that Marilia Maciel mentioned me and (that it decided) at that moment the connection (was weird). So I don't know whether - so we still in subgroup five?

Niels Ten Oever: Yes, exactly.

Stephania Milan: Hello?

Niels Ten Oever: Yes, update us on where you are on subgroup five.

Stephania Milan: Yes, so with subgroup five, we tried to have a Skype call but we didn't - it didn't work out because of the - (probably the holidays) and traveling. So where we are at the moment is that, by today, I should send around to the rest of the group some draft (in terms) of reference.

And then we will have a brief online discussion and then it everyone is happy with that, before Christmas, we should have our documents ready and then go from there.

So there has been a delay based on the fact that we couldn't really meet and discuss things (like) but we're on the case. (Bosian), by the way, was also part of the group and sends apologies for not being able to join today. But - so people are on the case. We're there. We're going to actively pro- you know, produce something soon.

Niels Ten Oever: That's great to hear, Stephanie. That's really good. So with that, I think we're concluding a short overview of where all the groups on the subgroup are.

I think I can summarize it best by stuff is in progress, so groups are focusing in on the work that they are doing and slowly starting the big (brunt) to ensure that we get some very clear and clean deliverables before the Marrakesh that we'll constructively input into the process.

That brings me to the last agenda point and that's all other business. Does anyone else have anything to discuss or to bring up for us? Do I see a hand from Marilia Maciel? Yes, I think I see a hand from Marilia Maciel. Marilia Maciel, please come in.

Marilia Maciel: Hi, Niels. Actually, it's not any other business. I just was wondering that since it's a bit early, if no one has any other points to raise, and I'm not quite being able to follow what - comments that are on this CWG process.

I just was wondering if you could clarify just a little bit, how the board has mentioned that human rights is in conflict with the public interest because that's the only part that I could not quite get - if there are no other points. Thanks.

Niels Ten Oever: Oh, okay. I will give this point to Tatiana. Tatiana, would you like to respond to that?

Tatiana Tropina: Yes, I would. So how the board decides to address this is a question of the global public interest. The board submitted for comments and they told that, since human rights is a point of special concern, if the board's concerns will not be addressed, the board will raise procedure according to this charter of the CCWG, of the cross community working group, on ICANN accountability.

According to the board resolution from the last year, (which states) that if the board believes that this specific or particular recommendation doesn't meet the global public interest, the board has to initiate a formal dialogue with the CCWG.

So this issue of global public interest is not specific to human rights. It's specific to the process of how the community shall address the board's comments.

So process-wise, it is going to look like this - if WC4 and CCWG groups will not address or concerns on the human rights issues, the board is going to vote that this issue contradicts the global public interest. And then it will answer

formal dialogues with the CCWG. Yes, this is all for me for now. Are there any other questions?

Niels Ten Oever: Yes, there is, indeed, a small (section) in the board comments that it says that the board wants to think about whether the plan, the specific issues that are mentioned and commented on by the board, are in line with the public interest.

There nothing specifically but they are going to vote on it because this is clearly an indication that this could be the case. Does that answer your question, Marilia?

Marilia Maciel: (Well), I find it hard to understand the reasoning of the board but, yes, thank you.

Niels Ten Oever: Yes, I think we're...

Tatiana Tropina: May I intervene again - oh, sorry.

Niels Ten Oever: Go ahead, Tatiana.

Tatiana Tropina: Yes, Tatiana Tropina speaking for the record. Yes, I don't really think that there is any clear understanding how the board is going to vote on this because there is no definition of public interest for these (unintelligible) and so on.

So this is rather a process issue and maybe rather a threat. So if you do not address our comments, this is an issue of our particular concern and we're going to bring the question of public interest.

So this is my understanding of the whole thing, process-wise. It's not about the content right now, this public interest issue. It's about the process, on the

board submits their comments, how they indicate what is important and how it is going to be addressed formally.

Niels Ten Oever: Indeed. And has it's been on the (chat here), there is no formal definition of public interest in ICANN. There is a process supposed to be starting next year on that, but in the meantime, we don't have a clear understanding of that.

What other pressure has mentioned by (Nigel) we have on human rights is the Council of Europe Internet Governance Report statement on - which also makes explicit recommendations on ICANN and human rights.

So it's definitely something they can be referred to in public comments as well. And I want to get - it might be interesting to look at the comments, the board comments on human rights.

Because what the board is suggesting is that instead of making it a process which is led by communities, is that the ICANN board will go ahead with - will propose a process for the development of a human rights commitments which is expert led and for which there is opportunity to comment only from the community, so instead of doing it in work stream two and doing it via a bylaw change.

So that's definitely another proposed - another way of working that we've (envisioned it) so far, so that might also impact our work here. So it's definitely good to keep an eye on.

Stephanie asked if I have a link to the board comments to human rights. I sent - attached the board's comments to human rights in my last email in which I sent - we sent a reminder to the list.

So in that you can find the board comments, or if someone else's behind a computer, he or she could pass - or paste the link as I'm only on a mobile so it would be hard for me.

Does anyone else have any questions, concerns or statements? I see there are three hands. They see Matthew, Tatiana and Marilia. Matthew, would you like to come in first? We've heard the least from you.

Matthew Shears: Yes, thanks, Niels. Just on this issue of the public interest, I think that we should - this working party should pay quite a bit of attention to how the discussion is all going forward.

The whole notion of what is the global public interest and public interest is very much linked to human rights and particularly to corporate social responsibility.

I know we've discussed the latter quite a bit in this working party and I think we need to keep an eye on that and, therefore, on the public interest discussion. I think it would be worthwhile, perhaps, if it's possible for the working party to putting comments if there is some kind of review process or whatever paper will be coming our research will be coming out on the public interest. (Rafik) noted that in the chat.

And I think this is one of those areas where it's adjacent to what we're doing but I think in many ways, it's incredibly important to it, as well, particularly that's going to be used as a rationale for - and undefined rationale for the reasons for which the board can reject this or that recommendation within this topic. Thanks.

Niels Ten Oever: Think you very much, Matthew, and I, myself, am relatively hesitant to engage with that (strong)...

Maryam Bakoshi: Hello everyone. This is Maryam Bakoshi speaking. Accept my apologies. Niels Ten Oever is (unintelligible) we can't get him back on the line.

Woman: Can someone take over while we try to get back Niels Ten Oever? Maybe we can move on with the...

Niels Ten Oever: Hello?

Woman: Niels?

Niels Ten Oever: Did my call drop?

Woman: Yes, you're back.

Niels Ten Oever: Hello? Okay, sorry. I don't know where you left me but I wa- just shortly, that I'm afraid conflate human rights with public interest and vice versa because human rights, public interest is also conflated to a CSR and CSR is some - often something else.

The companies (do next) to their missions and operations and I think human rights should be at the heart of ICANN's mission and operation and not be a side project or a side (unintelligible). But I think Tatiana and Marilia Maciel might have something to say about this as well.

Marilia Maciel: Shall I or Tatiana...

Niels Ten Oever: Yes, go ahead. Go ahead.

Marilia Maciel: Okay. Just to share with you that we received a visit from (Nora) from the public responsibility division and she presented the plan of our work for the next year.

(Among) the deck, the slides in the decks, (unintelligible) there was absolutely nothing about public interest. And she said I know that what we will ask, we'll ask about the subject and I just would like to let you know that we are (producing) some kind of study for next year.

But it sounded vague in the sense that there is no idea about timeline or who will produce the study. So it felt, at least to me, that this is something that everyone is kind of hesitant to really grab and be working on it.

But at the same time, I feel like the idea of public interest and global public good and concepts related to this, they're popping up everywhere. There are in (unintelligible). They are in ICANN. They are - they have been discussed in (unintelligible) right now and including the text.

You have been raised by different governments under different frameworks. And I feel that there is real need for us to do something that is meaningful on that.

And what I suggested to (Nora), I don't know if this is going to be picked up or not, is that there are several studies that are coming from ICANN, suggesting studies of (DNS) industry in the Middle East are in Latin America. (Unintelligible) putting out Web site and people that feel that organizations, (can see) that they could meet these needs, they go and they present their proposal to develop a study.

So I think that this could be something that, if ICANN can commission that, that would be the best way to go, not keep this is a sideline, but to start this is a series of projects with the budget and with different people coming forward to develop this idea of what the public interest has been considered and the Internet ecosystem as a whole and how could that translate into what we're doing in (ICANN).

So I think that that we've answered your concern about not conflating both issues, but of course, I believe that we will recognize that there are strong points of convergence and correlation between human rights and public interest if (previous) studies can be, so just offer a quick update on that.

Niels Ten Oever: Okay, that's - such a study might at least be an option. Is there anyone else would like to comment or discussed this?

Tatiana Tropina: Tatiana Tropina speaking for the record. Well, (unintelligible). I mean, if they're going to (unintelligible) public interest in human rights, (whether this is for) the CCWG, I think it's a bit too late because we have just a few days left honestly for this work.

In the global sense, yes, it could be a good idea for us. So I kind of support it but I'm afraid to go into (the concern) in the situation where we are in now. But we still can. We can discuss this.

I would like, as something to what you said before, about reports to (capture) the process. I think the main point is not only that the board is (reporting) to take this over and to leave this process, to have community just as a consultant.

The problem with that, we'll not have a bylaw. And this is where the process fails because if there is no bylaw and if there is no interim bylaws which will

push the community to implement the framework for interpretation to the bylaw with the strict deadline of one year, the process is going to take ages.

And without the bylaw, there would be no commitment and, of course, no obligation to make this process, and actually to go anywhere. And this is my primary concern, that if there would be no bylaw language, there would be no (really) human rights in the work stream two because we cannot apply to the board to commit to this process anyway. Thanks.

Niels Ten Oever: Thank you very much, Tatiana, for that clear statement. So I think that's clear where we all are now. The comment on the board really change things quite a bit so there's anything that people will take away from this call, I hope it will be that everyone who hasn't done so already, will continue to work on their comments to the cross community working group report.

If you still feel that you need a bit of help or would need some suggestions for text, I am sure that Tatiana or (Matt) would be very ready to point you to the template text if you email them or could have a quick glance at the text that you have yourself and to ensure that we have a lot of comments on human rights. That will be very helpful.

So I'd like to thank you all very much and thank you for your attendance. I wish you all the best for the end of the year and I'm very much looking forward to working on this with you in the coming year.

And let's hope in 2016, we'll get human rights in the bylaw. We'll get (some fruitful) work on working on the human rights policy in ICANN.

So without further ado, and if there are no further hands or comments left, I'm like to end the call and great holidays to all. You can stop the recording here, Marilia Maciel.

Maryam Bakoshi: Thank you very much, Niels Ten Oever. Thank you everyone for attending the meeting. (Gina), you may now stop the recording please. Thank you very much.

Niels Ten Oever: Bye.

END