

**ICANN**

**Moderator: Brenda Brewer  
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1:00 pm CT**

Leon Sanchez: Okay so let's kick this off. So yesterday I sent the link for the draft document that we are trying to build as a proposal for our larger group concentration on with regards to the language that we would be looking to include as a high-level statement in our final proposal. I see that we have made some progress. I see some comments already in the document. And I also saw a couple of -- or many emails in fact in the mailing list with some comments asked to the proposed amendment.

I remember seeing an email from Nigel that stated that this document did not correctly capture our discussions. Let's not forget that this is just a draft and it is intended for us to of course comment on it, discuss it and build together a final version for forwarding to the CCWG at large.

So we have the document in our screen now. And I would like to open the floor for comments. I sense that there is a general acceptance that we could remove the words that referred to internationally recognized human rights and instead just leave it as hereby affirms its support to human rights and intends to develop bylaws and policy to give it full effect within the work and defined mission of the corporation.

Would that be an accurate assessment of the discussion that we have held on the list?

((Crosstalk))

Nigel Roberts: Nigel.

Leon Sanchez: Okay, Nigel, could you please take the floor?

Nigel Roberts: Yeah, I'm currently not, again, on the Adobe chat room although when I charge up my iPod I might be able to do that in about 10 minutes. Yes, is the answer to your question.

Leon Sanchez: Okay. So I see David McAuley's hand is up. David.

David McAuley: Thank you, Leon. David McAuley speaking here. First of all, I think Nigel asked right at the beginning how many are here and I think right now there is seven participants and Alice and Brenda as well.

Anyway, to your point, Leon, I put a comment on the list saying I would prefer, and my personal recommendation is that we stick with the two alternatives that are contained in Paragraph 151. I do tip my hat to Nigel for all the work that's been done. I personally feel that this would be better done in Work Stream 2 and that we can live with the commitments as stated in Paragraph 151. So that's the extent of my comment. Thank you.

Leon Sanchez: Thank you very much, David. Next in the queue I have Greg Shatan.

Greg Shatan: Thanks, Leon. Greg Shatan. A few comments. First, what's reflected in 150 and 151, the two alternatives in our current proposal, is proposed bylaws language itself that would actually go into the bylaws.

What we have in front of us here and in the Google doc seems to be something largely different. And I'm not exactly sure what the intent or effect of that -- the intent was or what the effect would be. And this language here is not proposed to be a change to the bylaws; it's proposed to be sort of a proclamation by the board or a statement of support and a statement of intent to do something in the future, presumably in Work Stream 2 but no actual change to the bylaws in Work Stream 1.

That maybe a better approach since it, you know, gives kind of an affirmation of the board's support for all of this, that's ICANN support, but without getting into the issues of actually changing the bylaws. As far as -- in either event I think we need the explanation and rationale as well as either a change to the bylaws or this proclamation or both and that just adopting a change to the bylaws without any rationale or explanation or framework for what it means and what it doesn't mean we've had discussions as recently as, you know, today that if we are adopting the (Regy) principles that they don't fit ICANN's let's call it business model because the (Regy) principles basically require you to try to discipline your business partners with regard to their human rights commitments or lack thereof.

And that doesn't really work for ICANN given the nature of it's, you know, contacts with most of the sovereign nations of the world who have varying levels of commitment. And then we're kicking around whether the guiding principles on business and human rights it or not. One person, I don't remember who said it, seemed like there was more for the resource extraction industry and not for an Internet governance and entity.

And then discussions about whether the universal declaration on human rights, which almost universally is and is called the UN Declaration on Human Rights, is something that we are adopting, and if so are we adopting it wholesale or are we cherry picking from it. All of that needs to be established before anything formal action by ICANN is taken.

I believe that Nigel prepared a second document which goes to that regard to some extent. Clearly we need to work on that document as well as this one. Lastly I would say that all kind of the introductory discussion that's in the document in front of us is probably, you know, good to capture in terms of our progress but ultimately it's not really needed in terms of, you know, preparing a final document or documents, you know, which would need, you know, explanation as I said to intent and effect and framework and not, you know, really so much explanation of our progress, although, you know, as we look at how we did things elsewhere in our proposal, you know, we have to have the necessary kind of or similar kind of set up and discussion and the like.

And I think that we have had, as we approached every other change that we've recommended ICANN should make and I think that also includes stress tests. As well we stress tested every other aspect of our proposal, I don't see why this would not be subject to the same. So sorry to kind of come out with so many comments at once and not having had made any of them on the list. But I will -- I'll stop now and see what reactions there are or lack of reactions moving on. Thank you.

Leon Sanchez: Thank you very much, Greg. So what I'm hearing from you and from David, and correct me if I'm wrong of course, is that we should rather seek to what we have wrote in Paragraph 151 of our proposal. And of course further

develop this point in Work Stream 2. Are there any reactions to what we have just heard from David or from Greg?

I know that there are some colleagues that would like to have this expressly put in the bylaws, of course as we have said in Paragraph 151, but was some kind of tweaks or modifications. So I would very much like to hear other views in this sense. Do we have any volunteers to have any kind of reaction to this?

Okay so I see - I see no volunteers for this. Can we please go to...

Greg Shatan: Um.

Leon Sanchez: Yes?

Greg Shatan: Leon, if I could just jump in. It's Greg.

Leon Sanchez: Yes, please do.

Greg Shatan: I just wanted to point out that David and I think suggested actually rather different things and it wasn't clear to me from your synopsis that that was clear. So I think what David was suggesting was that we should adopt your 150 or 151 and suggested, you know, recommended that those be added to the bylaws and do nothing further until Work Stream 2.

And I was suggesting that if we do that - if we do add one of those to the bylaws that we also need to prepare a document with a framework - essentially a framework of interpretation for lack of a better term. And also that we need to determine whether in fact we want to use this sort of proclamation that's been prepared and is now in the Google doc and whether

that is something that we would do instead of a bylaws change in Work Stream 1.

So I think we have a number of -- we have some choices here and some potentials - potential possibilities. Thanks.

Leon Sanchez: Thank you very much, Greg, for making that clarification. And I'm sorry I misrepresented the views of both David and you. And I see Matthew Shears is on the queue. Matthew, could you please take the floor.

Matthew Shears: Yes, thanks Leon. Can you hear me all right?

Leon Sanchez: We do listen to you.

Matthew Shears: Thank you. I do subscribe to the sentiment that - Greg's sentiment about really looking at the more -- the complexities and the substance of this issue in Work Stream 2. And I think that what David is pointing to in Work Stream 1 makes a lot of sense. I appreciate the work that Nigel has done. I'm not sure that the affirmation in the form that it's taking in the document we were looking at before is necessarily the right one. But I certainly agree that we should have a document that explains why we need a statement in the bylaws and what our thinking was incoming to agreement, hopefully coming to agreement on what that statement should be.

With regard to the two particular options that are in Paragraph 151 I certainly would lean towards the second one. It's awkward to single out two particular - while you're incredibly important of course it's a little awkward to single out two particular rights. And I think that number two could do with a little bit of wordsmithing. But if we can agree on moving forward perhaps with Option 2

that's in Paragraph 151, I think that we can probably make that work to everyone's satisfaction. Thanks very much.

Leon Sanchez: Thank you very much, Matthew. Next in the queue is Ellen Blackler.

Ellen Blackler: Hi. Thank you. Yeah, I think I agree with where Matthew is headed. I'm a little concerned that we are biting off quite a bit. And the rationale seems to me - kind of the core rationale everyone is after is that human rights are considered as decisions are made going forward and they're respected and considered. And that is going to take a lot of fact-based analysis in any circumstance.

And I'm a little concerned if we try to prejudice that in a long document about the rationale it seems to me the rationale should be that we know there will be human rights impacts and we want them to be considered and human rights respected. That we can't go too much further in advance of saying how that - the outcome would be in any one of those decisions. That's all.

Leon Sanchez: Thank you very much, Alan. Next in the queue I have Greg. Greg Shatan.

Greg Shatan: Thanks. It's Greg. I'm not sure why Ellen is suggesting a long document. I don't think it has to be long although it just depends on what somebody defines as long. I think it needs to be long enough to be clear about what we think we're accomplishing when we do this.

Because there are varying and conflicting opinions within this group and outside this group of what this would accomplish as to whether this is merely replacing the -- essentially a human rights backstop that the NTIA has always had in place with regard to ICANN or whether we are changing ICANN's way

of analyzing things and rebalancing certain things. And whether this is something where the (Regy) principles would or would not be involved.

I think that kind of just putting a short statement in and then waiting to see kind of how it gets interpreted or waiting until later to figure out how we believe it should be interpreted is too little work. I'm not trying to commit us to too much work but I think it's too little work. And I think it's maybe an expression of the eagerness that many have to see a human rights commitments explicitly made by ICANN.

But I think we owe it at least the same amount of focus and care that we've given other elements of our proposal. Obviously those have developed over many months but there are many many many provisions that were developed too. And if any one of those have been developed alone it would not have taken nearly as long to do so.

So I think, again, I don't think we are biting off more than we can chew by trying to explain what we're doing when we're doing it. And doing something and then explaining it afterwards sounds like the old it's better to beg for forgiveness than ask for permission sort of rubric or ready fire aim as an approach. I can't endorse either of those.

So I think that, you know, we can certainly expand on all of this in Work Stream 2 but I think we need to have a proposal that is - that is consistent with the level of detail and approach that every other part of the CCWG's work has entailed to date. Anything less than that I think is jumping the gun. Thank you.

Leon Sanchez: Thank you very much, Greg. So just thinking out loud would it be okay if we let's say continued to build our document and state that the proposed way



forward would be to actually implement the second proposal of Paragraph 151 but include of course a reference document that could guide us as kind of a framework of interpretation?

And I would very much like to see Greg, if you would like to volunteer on drafting these guidelines so we can discuss them in our next call and fine tune them. So I think that could be a good way forward. And I would like to see if we are in agreement with this kind of approach. Could you please signal with a green tick or rather are there any objections of going forward this way?

Okay. So I see no objections at this point and I see some support. Okay so - and I see that Matthew has pointed in the chat that we can agree a simple text with rationale and provide a supporting doc that outlines the issues that would be discussed in Work Stream 2. And that's a good way forward.

So I don't know, I sense - Nigel, I don't see you in the Adobe Connect room but I'm mindful that you are in the phone bridge. Would you like to make any comments? And next I'll go to Greg Shatan whose hand is up.

Nigel Roberts: Yeah, hello. I am actually here but I missed a lot of what you said because when I press star 6 I get this long message telling me about how it's going back onto talk mode and it sort of - it's far too long so I missed a lot of what you said. Could you say it again please?

Leon Sanchez: Yes, no problem. So the proposed way forward would be to state in our document, in our - in the document that we're drafting - that we would propose that the CCWG follows the path of embracing the second proposal in Paragraph 151 which reads, "Within its mission and its operations ICANN will be committed to respect internationally recognized fundamental rights," and we also draft a very concrete guideline that could serve as a framework of

interpretation to actually what were proposed to be included in the bylaws at the first stage. And state that we would be further developing the rest of the framework as part of our Work Stream 2 work.

Nigel Roberts: Well the one comment I do have is that I think we need to maybe drop the words “internationally recognized.” I think somebody suggested earlier on, “commitment to human rights” is perfectly adequate whereas we say “internationally recognized human rights” well and that’s a moveable feast and you start getting into the different classifications of the sources of international human rights law. And who accepts what bit of it and so on. I think dropping the words “internationally recognized” might help. But other than that I’m kind of with you.

Leon Sanchez: Excellent. Well, so then we could also include in our proposal to the larger group to drop the term “internationally recognized” and just leave it as to “respect fundamental human rights.”

And next in the queue I have Greg Shatan. Greg.

Greg Shatan: Thanks, Leon. First with regard to the explanatory document and your request. I’m certainly happy to start a Google doc or, you know, take some pieces of what Nigel has prepared and some I think earlier discussions that we’ve had in chat in trying to, you know, get something started in that regard. I put it up as a Google doc for all of us to work on collaboratively in terms of a framework.

And I’ll try to get to that in the next couple days hopefully if not certainly - I’ll at least get something mounted up there, major contributions may need to wait for the long weekend that we have here in the States coming up. But in any case happy to get that party started so to speak.

With regard to the language in 151, I'm not sure whether "fundamental human rights" is something that is - can be defined or limited either. You know, while "internationally recognized" may make it a moveable feast to me it seemed to me that that was at least tending toward a narrowing or, you know, a definitional framework for what was meant by human rights.

I think if we just - and I'm not sure which human rights are fundamental and which ones are not if there is such a distinction to be made. And I know that the term fundamental rights gets used versus human rights in certain contexts.

As well, I don't want to overly wordsmith this and I think that, you know, that's one of the reasons why the rationale and explanation is important is to - so that we can actually say what we mean because bylaws themselves, by definition, are not lengthy and entirely self-explanatory. So there needs to be something to interpret them with.

I don't think this is something we need to decide dispositively with regard to the language today. Indeed, I think the answer to what the language should look like, the actual bylaws language should best look like I think will tend to be clarified by the exercise of preparing the succinct framework. Thank you.

Leon Sanchez: Thank you very much, Greg. And one possible way out, before I go to Marilia, and just reacting to your comments, one possible way out that I can see is to of course we don't want to over engineer this proposal. And taking into account the very useful paper that Nigel set up for us with regards to the accepted definitions on human fundamental rights we could say that (unintelligible) and its operations ICANN will be committed to respect fundamental and human rights.

So I guess that would let us not have a debate on whether - which human rights are fundamental and which are not and would also take care or address the concerns with regards to corporations that don't have human rights that do have fundamental rights. So I guess that could be a probable way out.

The next in the queue I have Marilia.

Marilia Maciel: Thank you, Leon, very much. This is Marilia speaking for the record. I just would like to add my voice to others that gave support to the second part of (unintelligible) one, I think that it's a good way forward, the simpler the better. I also think that a lot of what we have been discussing here will be given to Work Stream 2 to work with. But during our discussions we have raised a lot of important points on the list and it's very important that we don't miss those points.

Because that - these points can provide a very good guideline for the people that are going to work on Work Stream 2. So just to flag that it's very important that with this background, this explanatory document that we're going to provide tries to set the questions that Work Stream 2 wants to do with. And maybe makes a comprehensive summary that can be kind of an annex or an additional note of all the points that have been raised on the list because I think that this helps give them more context and meat and to understand the background which we can from.

So I know Greg has made a - volunteered to do that. And I'm pretty happy with this. And if we want some help, Greg, because I have been trying to collect all the emails and information that has been exchanged so I have a file just to deal with that the different suggestions and text that we have sent to the list and rationales behind it. So if you want to - some help with that I'm volunteering to help you to.

And just then last note related to internationally recognized and the use of this expression, I do understand the concern that has been voiced on the list that internationally recognized well it's something relatively close, not all nations recognize the same human rights treaties. But I think that what we meant here by "internationally recognized" is that we're not talking about national law, we're talking about laws that have kind of given an international status regardless of the fact that they are universally acceptable or not. That is the qualification that I understand from the expression.

But I do think that this is another point to be made clear in the explanatory document so between Work Stream 2 we'll understand that. But I agree that the expression does not work. And for me I would leave it there but I'm not very strong on this. But I would leave it there. I agree with Greg. Thanks.

Leon Sanchez: Thank you very much, Marilia. This is most welcome and Greg has stated in the chat box. And I see already some reactions to the proposed way out on having the language include fundamental and human rights as it may be too broad as signaled by David or might raise confusion as signaled by Robin.

So well of course the aim of these calls is to discuss this and to try to reach a common agreement on the words meaning of this proposal. And I remember seeing (Carolina)'s hand up but it went down so I'm not sure, (Carolina), if you want to make a comment or did you - or do you want to stay silent?

Okay so I don't think, (Carolina), you're going to raise anything else. So well at this point I think we have had a fruitful discussion. And okay - okay well thank you very much, (Carolina), you say you have - you have written what you want to say. And I will read it so that Nigel that is in the phone bridge can also be aware of what you wrote.

And (Carolina) is saying, “Human rights are related to the inherent dignity of humankind and are equal and inalienable rights of all members of the human family forming the foundation of freedom, justice and peace in the world as per the definition in the documents of the United Nations in the Universal Declaration of Human Rights as per the link posted in the chat box.”

So are there any other comments or any other business that we should be taking care of taking stock of our discussion today, the way forward would be to continue of fine-tuning the definition or rather not the definition but the proposed text that we would like to include in the bylaws. And of course the way we would be amending or recommending the amendment to Paragraph 151 in our report.

And we would also be moving forward with drafting the explanatory note that would be a guideline for the framework of interpretation for implementation in Work Stream 2 of this - of this language, the proposed language that would go in the bylaws as part of Work Stream 1. I there any other business or any other comments or reactions on what we have discussed today?

David.

David McAuley: Leon, thank you. David McAuley again. Leon, could you speak, and maybe I missed this, could you speak to us about how we fit in - how this fits into the comment period on the second draft which is the coming up on the 12th? I know I've seen some comments where people are anticipating our work. Have you spoken with the other co-chairs as to how this fits in, what we anticipate when we're done with what we're going to do, etcetera?

Leon Sanchez: Thank you very much, David. My understanding is that we as a subgroup would be defining this issue were discussing this issue on human rights in order to go back to the larger group with a proposal in order to address of course the concerns that have been raised by many in the group with regards to including this commitment from ICANN to respect human rights in its bylaws.

And from there we would have a larger CCWG to approve or of course comment or modify whatever we are proposing to the larger group. And there we have of course to pass the first step being the approval of the proposal that we would be forwarding to the larger group. And the second one having proposed amendments by the larger group so we can put this as a finalized version in our final proposal document. That is my understanding.

So I don't think this would actually go into the work of the CCWG as part of the public comments but rather as part of the continued work of the CCWG. I don't know if that addresses your question, David.

David McAuley: It did. Thank you, Leon.

Leon Sanchez: Okay, thank you very much. So are there any other comments or any other reactions or any other business that we should be discussing in this call? I see Greg Shatan's hand is up. Greg.

Greg Shatan: Thanks, Leon. I guess I have an additional reaction to David's question which is I guess given that we have 151 and 152 and the section that precedes it in the current proposal that's out for comment, I think we should, as a matter of - as quickly as possible and ahead of the general kind of collating of information from the public comments, we should try to find the comments that have been - the public comments on the human right section of the

proposal and use those to inform our work as quickly as possible since we are essentially playing catch-up here to get this into more of the -- into step with the progress of the rest of this proposal.

And I think that waiting for the general public comment tool and kind of digestion of the public comments would be too long. We may even want to start looking before the public comment period ends, although I don't want to prejudice or exalt anyone public comment over another just because it came earlier in the period.

But I'm suggesting that only in terms of a working method since I think it's important that not only that we work ourselves on the framework and on refining the language of the potential bylaws but also bring into that work as quickly as you may possible the public comments from the community. Thank you.

Leon Sanchez: Thank you very much, Greg. And this is a very good proposal. I would definitely agree with anticipating the reaction from the group to the public comments that have been already received with regards to this issue. So, yes, I would definitely support that we look into these comments and have them as a tool for us to better guide or better inform our work in this subgroup.

So are there any other comments at this stage? Okay so I see no other hands-on or any other comments. Lastly, Ellen. Ellen Blackler. Ellen, you have the floor. Ellen, might you be on mute...

Ellen Blackler: Sorry.

Leon Sanchez: Thank you. Now we can - now we can hear you.



Ellen Blackler: Yeah, no so I was in the chat asking what I was looking was for an example of an explanatory note that other people have used to explain language in the comment back. Where I thought we landed is we were talking about a short statement like what's in 151 now and then an additional piece of paper that was an explanatory note. And I was looking for an example of where - another example of that kind of explanatory note just so I get a sense of what people have done in the past. Am I just thinking of the wrong?

I wasn't asking about the human rights documents, I've got that under control.

Leon Sanchez: Thank you very much, Ellen. So I don't know if the comments in the chat box have actually guided you a little bit on this but anyway I would ask staff to maybe point us in the list to a couple of examples of explanatory notes that could also guide us to the work that we would be undertaking in this subgroup. So please, staff, could you -- yes, Ellen.

Ellen Blackler: I think the (Regy) has said we've done it is that's how we usually do it. Maybe I just misunderstood that, I thought you said normally we -we have an explanatory note explaining why we decided what we decided. So that was what I was thinking.

Leon Sanchez: Okay. Thank you. Greg, I see your hand is up again. Greg.

Greg Shatan: Thanks. I'll try to provide a partial response to Ellen's question. I think first would be to look at the rest of the current proposal that we have here which was developed essentially as a series of explanations and interpretive frameworks and stress tests for the other items being proposed by this working group because the human rights suggestion really didn't take full grasp of this group until relatively late in the process, although there were some earlier indications that we were going to do it.

The suggestion - the language that precedes 151 is very short and, you know, does not have the full kind of level of explanation, stress testing and the like that the rest of the proposals that would be made by this group have. So I don't think that there's any kind of one - the way the document is organized, you probably would have to look, you know, in a couple of different places to kind of bring together the elements of explanation around any particular proposal that this working group is making, say regarding the IRP or regarding the community mechanism or regarding the change in bylaws or Affirmation of Commitments being moved into the bylaws, etcetera, etcetera.

So I think that's a partial answer is that we've - is that. And the second answer I would give is that because we are proposing a change to the bylaws I would look at what the ICANN board typically pass as documentation when it makes changes to the bylaws and indeed when it votes on just about anything it includes rationales and underlying documents.

There are times when they are very brief but by and large there is, you know, fairly substantial documentation around any changes that are made to the bylaws or any other kind of significant moves that are made by the board. And those are available on the ICANN website and maybe staff could identify some particularly useful examples. Thank you.

Ellen Blackler: Yeah, I'm sorry, I didn't mean to make it a thing. I thought you were saying there was such a thing as an explanatory note, with a capital E and a capital N and I wasn't familiar with it. But I understand now, you're just saying that whatever we decide we need to provide the rationale of what we were considering and why and how we decide it. I get it. I don't need anything else.

Greg Shatan: Okay.

Ellen Blackler: Thanks.

Leon Sanchez: Good. Thank you very much, Greg. Thank you very much, Ellen, for this. And are there any other comments or any other business that we should be taking care of in this call? Greg, your hand is up. Is that an old hand? Thank you.

Greg Shatan: Old hand. You really don't want to hear anything more from me do you?

Leon Sanchez: We always love to hear you. So...

Greg Shatan: Speak for yourself.

Greg Shatan: Okay so having no other topics or other business to discuss at this point I would like to thank everyone for attending this call. We have finished 15 minutes early. And we have 15 minutes back in our lives. So thank you very much everyone and talk to you soon. And let's continue the discussion off-line. Bye now.

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