

**ICANN**

**Moderator: Brenda Brewer  
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10:00 am CT**

Leon Sanchez: It's two minutes past the hour. I didn't (unintelligible) because I want to base this call exactly on this slide. And we are required to provide a summary of the community feedback on the second public (unintelligible), and of course, highlight any new proposed solutions that we might find in these comments, and of course, continue our (LA) discussion.

So what the larger group expects from us, from this working party, is that we summarize (this input) into three different areas, the first one being those areas of consensus. Then those areas needing refinement for further details and those areas of (divergence).

So I don't know if you have had the chance to go through the public comments submitted and through the Google Doc that I have loaded and that (Greg) kindly fixed in the columns but I think that, from my perspective, you can go through the comments and find that it seems to be consensus on that ICANN should be respecting human rights.

I think that that is something that it's a non-contentious topic from my point of view. But what I do find, too, is that most of the comments reflect some kind of concern on whether we should be addressing these as a work stream one issue and why they may not be sticking to this openly because I think only one or two comments actually say that this should be a work stream one issue, but rather a work stream two.

I do have the feeling by reading the different comments that most of these raise the concern on whether this might have some consequences on widening ICANN's mission, ICANN's operations day-to-day, so that would seem to me that, while not explicitly suggesting that we should take care of this issue on work stream two in the way it does highlight the concern that it seems to be - I don't want to say premature but at some point it seems to be something that needs to be further explored.

And that is something that I think we should be discussing here. I know that we have focused our work in the previous meetings in the previous calls on the document that we are expected to deliver.

But I think there is a good time now to - from the public comments, take a decision on whether they want to go forward with drafting this document or we take a decision, or at least not us, but the larger group, we make (a decision) on, instead of adding a bylaw that speaks and human rights, maybe add (commitment) because we need to remember that work stream one refers to issues or ICANN staff must be implemented or fully committed before the transition takes place.

So, as ever through the comments, I couldn't help to begin thinking that all the (themes) from these public comments tend to take us through that path of not being able to establish some kind of language into the bylaws already, but

rather, commit further work as part of work stream two, but of course, leave this is something that is being fairly or firmly committed by ICANN, and of course, the rest of the community.

So at this point, I would like to open the floor for thoughts and forth comments because I think that this is, of course, my personal view. I'm not speaking here as co-chair of the group, but rather the (repertoire) for this working group and one more of the members of the CCWG.

So I wouldn't want to - I wouldn't want you to think that I'm trying to steer things in other ways different than we have discussed, but it's just my impression in my opinion on how I read the comments.

I went through them, and my interpretation of what I believe that those comments are telling us. So I encourage anyone to please voice your thoughts, and the floor is now open for participation. Niels, you have the floor.

Niels ten Oever: Hi. Thank you very much for this opportunity, Leon, and I have to say some things might not have been completely clear to me because my audio dropped. But we suggesting that there seems to be consensus that we do not have language for work stream one because that was not my reading of the comments nor of the discussion that we had thus far?

Actually it seemed that we had pretty much commitment to a high level of commitments to human rights without a specific link to a specific document. And that also seems what most comments were about. So I was - I'm now a bit surprised by the change but it might also be because of the audio, so it will be great to hear from you.

Leon Sanchez: Thank you very much, Niels, and my feeling from reading through the comments is that we do have consensus on addressing the concern raised by the community regarding human rights. That is something that I have no doubt about.

What has come to me, as ever through the comments, is that well most of the comments support having some kind of language included into the bylaws as a matter of work stream one, these commenters also raise the concern that, because of us not having agreed into a specific language, and the proposed language being too broad, this might have or (bring) some secondary consequences that would need to be further analyzed for further inspected in order to have a more clear view on where we would be standing on the subject.

So, yes, I understand that it's kind of surprising because, as I said, when I was beginning to address the group, our agreement so far has been to include some kind of language into the bylaws that addresses the human rights issue and I think we're working towards that.

But as I also said, from reading the comments now, it appears to me that, but we all support, most of the community supports, having some kind of language included into our proposal regarding human rights, what is not clear to me, because of the concerns raised by the commenters, is whether this should be an actual bylaw change suggested in our proposal, or should this be a commitment to further work down this path at a later stage and after the transition takes place.

So that is my interpretation of the comments that I read. And of course, that, as I said, is not an intent to drive towards that path. It's only a discussion starting point for us to consider and that's why I would like to please open the floor for more people to raise their voices and we can further discuss whether

we should be taking more - one path or another. Next in the queue I have Marilia.

Marilia Maciel: Thank you...

((Crosstalk))

Marilia Maciel: Yes. Sorry I was muted. This is Marilia speaking for the record. Well, I think that your interpretation is correct. We do seem to have a consensus on the importance of this commitment.

I believe that, if people believe that we should have this commitment and we're in the framework of discussing the bylaws, it is an instrument where the commitment should go into.

I went through most of the contributions and I believe that one or two raise the possibility for us to include this commitment in another instrument, in the affirmation of commitments. But I believe that the general framework is that this should be high-level commitment that should be included in the bylaws.

I think that concern have is the concern that we also shared here - what is the best way to do it? What is the best language in the framing for us to do that? I think that for us to move forward it is very important that we arrived at the proposal of this working party with regards to the specific language.

I do not believe that it's very productive and useful for us to discuss the documents in the different sections of the documents before we arrive in a specific language proposal. Otherwise, we'll get lost in discussing aspects that, to be honest, do not seem to be very relevant to justify why we're including

this specific language right now and what are the issues that we have identified that should be further explored in work stream two.

So I would say that the next step is for us to arrive in the concrete language framing and then to justify why we're including this in this moment and what are the issues that need for the discussion.

Another issue that I would like to raise, though, is for us, that we're not (really) - the conclusion of the debate was a little bit fuzzy. So if I understood correctly, this language will be for the review by a law firm or different law firms.

And I would like to know, to have more clarity about, what is the role that, if this is correct, that what is the role that these positions are going to have in the process? When can we expect to hear something from them? And what is the process in terms of moving forward?

I think that it would be nice to clarify that, in order for us to have complete time frames, and what do we intend to do in a meeting that we're going to have in Dublin? It's a great opportunity for this group to meet and to discuss this specific issue. Are we planning something in Dublin and what are the next steps on the timeline? Thank you.

Leon Sanchez: Thank you very much, Marilia. And to your first comment, I do agree that if we actually come to the conclusion that we need to include some kind of language into the bylaws that addresses the human rights issue, we do need to offer the rationale and the thoughts that made us to these as a part of work stream one and, of course, as some amendment to the bylaws.

But what I also think is that if we do come to this conclusion, it should be as a matter of process, after reviewing the comments that we have received from the public comment period. So this is where we might have some kind of divergence and use since, of course, we were discussing this to our last meeting as a matter of agreement within the group but not as a matter of a conclusion from reading the public comments.

So when I would suggest now is that, since we are expected to go through the public comments and deliver our summary of these public comments in Dublin, I suggest we go through the different comments that we received.

And if the conclusion from this group is that the conclusion of the LA meeting which was to, of course, include bylaw language as a part of work stream two. Then we should, by all means, continue our work on defining the wording and the rationale for these to happen.

And what we task, or will be concluded in LA, too, was that we would be tasking the lawyers to provide us with an example of bylaw wording on human rights so we could have that as a continued point of discussion.

It's not a starting point because we have already done a lot of work in this track and we also have already paragraphs on our proposal that suggests some kind of language to be included in the bylaws.

So I'm not sure if I'm getting my message right, but my sense is that we should, of course, accomplish our task on reviewing and going through the public comments.

And if, after going through the public comments, it is the conclusion of this group that adding some kind of amendments into the bylaws that addresses

human rights, then of course, we would continue this work that we have done by - in our previous meetings. So at this point I'd like to hand over the floor to (Matthew Shears). Matthew.

Matthew Shears: Yes, thanks, Leon. I think you just added clarification to what my concerns were. I got the impression that when you opened the discussion that we were already forming an opinion of the comments that have been inputted, so many of us haven't actually looked at the full range of comments yet.

I think that we need to follow the process, if you just outlined. That's - you know, that we need to take into account the comments. We need to understand (what are our) points of divergence. We need to come up with a proposal, and if we can come up with a proposal of language, then that is a very good way forward.

I think that is an expectation of us when we go through that analysis, is that we are supposed to provide a ways forward. If it means support for one or two - one - option one or two that was in the comments, that's great.

If it means that we may have to (message) or text a little bit further, then that's even better. But I think, based upon the understanding of the working group going into the public consultation, that there was an agreement that we should have language in the bylaws and that seems to be generally the thrust of the discussion in LA. I think that should be kind of our point of departure looking at these comments. Thanks.

Leon Sanchez: Thank you very much, Matthew, and I remember that I saw Tatiana's in before Greg's and then it came down and then it was raised again. So, as a matter of courtesy, if you don't mind, Greg, I would go to Tatiana, and then I'll go to you.

Tatiana Tropina: Hi everyone. Can you hear me well? Hello?

Man: Yes, almost too well.

Tatiana Tropina: Well, thanks. I just want to say that, in the beginning I was a bit confused why the strategy shifted from bylaws language to eye level commitments instead. Now I understand the reason behind this.

But still my point I would like to make is that I'm very much against going back to square one after all discussions that have already taken place in this group. I would rather aim for draft and bylaw language, of course, after carefully analyzing all the public comments and everything.

But still, I would rather prefer go-aiming for bylaw language and go for high-level commitment only if we have no other choice. This is the first point. And secondly, I agree with Marilia and I keep saying this, that there is no way, in my opinion, to draft any explanatory note or any rational for bylaw language before we would agree on the language itself.

Because, as we can see from the document, the last version of this explanatory document, that issues - the same issues keep coming up and coming up recurrently, like for example, (unintelligible) universal (declaration) of human rights and so on. Let's first agree on the wording and then we'll draft the document.

And I do believe, in this case, this document will follow the simple structure just explaining the rationale for doing this and then the rationale for choosing the language and we don't need to write a big, theoretical paper about human

rights and everything. But this is just my opinion, and again, let's go for bylaws instead of high-level commitment. Thanks a lot.

Leon Sanchez: Thank you very much, Tatiana. And as a matter fact, one of the concerns raised by different commenters was that, while we, in the group, have been working on drafting language, that didn't refer to a particular document on human rights, and we still have this debate internally, we had, which a final conclusion, most of the commenters asked that we should definitely refer to, at least, the universal declaration of human rights in order to, of course, have a more clear framework.

There was - there were many comments received that didn't agree on actually cherry picking rights, and leaving, of course, out of the scope, out of the proposed language, the rest of the rights but rather, as we have discussed, having a more wide open scope for human rights.

And in this sense, they suggested that we should, at least, refer to the universal declaration of human rights. And as I said, this is one of the things that we need to address from the public comments. So next in the queue I have Greg Shatan.

Greg Shatan: Thanks, Leon. Greg Shatan for the record. I think in terms of, you know, the work we need to do, you know, clearly the public comments review, which you know, some of us have done more of than others, but we have no kind of concerted view of what the public comments say is really the next task, as it was going into the face-to-face in Los Angeles.

So just in terms of process, we really need to be focusing on the public comment. With regard to our overall work plan, I have no problem trying to see if we can nail down the language of the potential bylaw or language

indicating what a potential bylaw should say before turning to what the supporting document should say exactly.

I think a lot of the same issues will be surfaced in the discussion regardless of which entry point we choose, you know, for instance, should we include reference to a particular set of recognized human rights such as the universal declaration or more or less or none.

You know, that can be a discussion that takes place when we're looking at the language or can it take place when we're looking at the document? Either way, you know, it's a decision that, you know, we at least need to try to come to, so no problem starting with the language first.

With regard to process with the lawyers, and we had a discussion earlier this morning on the working party two call about this, I think whatever we come up with, and this is not just a working party four issue, but also bylaw suggestions, we should not be thinking of, as the final bylaws language, but more as something that the - our outside counsel, for skilled in the ways of drafting bylaws, will take and work with.

And there may be, you know, drafting issues that we don't recognize in the way this is drafted or unintended issues regarding substance that we haven't considered. So, you know, the lawyers will be tasked with looking at all of the proposed bylaws language and trying to turn it into bylaws language just like a client doesn't expect the architect to build exactly what they sketch but intends them to build something that will actually stand up and meet code and be able to live in.

A friend of mine once you're up a plan and the architect kindly pointed out that she had forgotten any bathrooms, so there are reasons to get some

professional hands-on this that are, you know, specifically tasked - you know, they are counsel. They're here to meet our needs.

They're not, you know, here to - independent, but you know, the ideas for them to help operationalize these thoughts that we're having and so, in terms of specific language.

And as far as - I don't think anybody has suggested a long research paper. So I don't know why bring it up as something we're not going to do really makes a lot of sense but we need to get enough sense of what it is that we're doing here so that we're not just kind of aiming to go over a hill that we don't know what's on the other side.

I don't think that needs to be particularly on more involved. It's certainly nothing that's going to look like a research paper. But I think, you know clearly, you know, one of the things that I get from the comments is a certain level of concern in the best way to meet concern is with clarity. Thanks.

Leon Sanchez: Thank you very much for this, Greg. And next in the queue I have Marilia.

Marilia Maciel: Thank you, Leon. I'll just say that I very much agree with Greg's perception on the roles that the lawyers should play. At the beginning, I (understood what was said) that they would kind of propose (no) language and that this should be the case.

But the (true) versions that we've arrived at, emerged from our discussion that we're going to further enhance from the comments coming from the public comments, so I think that that their role in the processes more related to getting an opinion with regards to the sort of language (unintelligible). So I

think it's more like advice - given their advice to the group more than anything else. Thanks.

Leon Sanchez: Thank you very much, Marilia. So I suggest we do moving forward, because we seem to be (rolling) in circles at some level, is we need to, of course, follow our process of reviewing the public comments.

So for that, I would (ask) for volunteers to the document and public comments in draft an assessment paper that we can deliver to our larger group, and of course, be the base for our participation in the session in Dublin.

So I would like to call for volunteers at this point. I can, of course, be part of the volunteer team. I've already gone to the public comments. But it would be, of course, a good thing to have more people to go through the comments and share documenting which we can build an assessment.

And I see (Ellen Blacklear) has volunteered. Marilia, you have your hand up. I don't know that is because you want to volunteer or because you want to speak, so I'll hand the floor.

Marilia Maciel: It's okay. I was just volunteering.

Leon Sanchez: Okay, so we have volunteers (Ellen), Marilia, Matthew. I don't know if David is - that hand is something you want to say or if you're volunteering.

David McAuley: I was considering vol- this is David McAuley, for the record. I was considering it, Leon, but my question to you is, this assessment, we have another call next weekend. When you want the assessment to be done or can we talk about putting this in the context of timeline just because there are

other things that people are volunteering for? And is this assessment to be done by the 12th or before the 12th or what?

Leon Sanchez: Thank you, David. I would say that we need to have the assessment before our next call which, if I'm not mistaken, will be October 9th or - no, October 12th - or by - sorry, October 8th. October 8th we have our next call.

So I would suggest that we have this assessment concluded by October 7th at the most so we can circulate it to the working party list and discuss it in our next call because we're supposed to deliver our assessment by October 12th.

So it would be best if we have this done by October 7th and we discuss it in our call on October 8th. And we suggest any tweaks or amendments that the volunteering group should need to take or undertake to the document.

And then we can follow the discussion off-line between the 9th and the 11th and we can deliver on October 12th. So I don't know if that's a reasonable timeline. Does that make sense for the rest of the group? But I think that we want to accomplish or meet our deadline, which is October 12th we should definitely have this assessment before our next call and then follow the path that I suggested. Are there any objections to follow this path?

Okay, I see David says that it makes sense to them. And I see no objections. And I also see Greg Shatan has a green tick and Niels has a green tick. But I don't know if those ticks are - if you agree to the way forward because you are volunteering to work as well on the comment assessments. Greg.

Greg Shatan: Thanks. Greg Shatan. It's both. I think the work plan sounds good and I am volunteering. But a question of process - I believe, not entirely certain since

my brain seems to be turning to putting, that there is some sort of a format for the assessment. Is that correct?

Leon Sanchez: I'm sorry Greg. I missed that. Could you please...

Greg Shatan: Yes, Leon, I was asking if - I believe, but would like to confirm it also, you know, see that there is a standard format which is requested of all parties for their assessments of the comments.

Leon Sanchez: Yes, I do believe that that document exists and I would, of course, ask staff to provide us with that format and to confirm whether that format actually exists. I remember seeing that format somewhere at some (unintelligible) in the avalanche of Wiki pages through the Wiki Web site, but I don't have it handy. So, (Alice), could you please confirm whether this format actually exists?

Greg Shatan: I see the so-called Zuck model being mentioned in the chat which is the model that Jonathan Zuck used for the budget and strategic plan veto, public comment, which basically broken up into areas of consensus, areas needing refinement, areas of diversions, options for CCWG consideration.

And underneath each of those, enumerated the - both gave a general idea of what would appear under each and then enumerated specific topics under each that were - that appeared in the comments.

Leon Sanchez: Okay, so I think that Jonathan's format would work and I suggest we go ahead with Jonathan's format. We have already - Alice has (pasted) the link to this format already.

So I suggest that we open a collaborative document in Google Docs or whatever platform you prefer to work on and begin filling in this format with our assessment of the comments.

Now I don't know how we can build the document without, of course, having conflicting views but I would suggest that we - I haven't taken a look to - the actual document that I would suggest that we make our comments in a way that we identify these areas. And, of course, (level) them with the (unintelligible) of each comment so we can go forward on building the assessment documents.

Greg Shatan: That actually was not done in the Zuck comments but that doesn't mean that we don't have two do it that way.

Leon Sanchez: And how is it done, Greg? How was it done - at least...

Greg Shatan: Just a broad list, you know, for instance under areas needing refinement, budget and strategic plan veto, the first one was unless loop and it said ten comments expressed concern over an endless loop of budget vetoes and reliance in the prior year's budget as the default. Number two, escalation threshold - two comments suggest blah, blah, blah.

Leon Sanchez: Okay. Okay, so...

Greg Shatan: One thought that comes to mind, if you don't mind, is perhaps...

((Crosstalk))

Greg Shatan: ...more Google Docs, I have no investment in Google, nor client, but...

Leon Sanchez: You should.

Greg Shatan: I should have. Yes, that along with the investment in Apple I should have gone 15 years ago, and the domain names I should have bought 15 years ago. But in any case, I digress. The - my suggestion would be to maybe take this to either annotate, in some fashion, the human rights comment, PCP2, just the public comment tool. That's where they are - so that we can kind of try to put them into these, you know, four broad categories - consensus, refinement, divergence and options for consideration.

There are a whole bunch of columns off to the right which I have an action found all that useful, I must say. But if we find some way to work with the comment to extracts that are in the tool to try to put them in those areas, maybe by color coding more maybe by creating better columns, that's an idea.

I don't want to get all bogged down in process but that would at least allow us to collaboratively markup the collected comments and try to come to a common understanding of whether something, you know, should be classified as an area of divergence and whether it's similar to other areas of divergence so that we can kind of count them up.

But it's kind of basically a worksheet for the actual Zuck model because the Zuck model is definitely, you know, does not correlate to the comment tool directly. Thanks.

Leon Sanchez: Thank you very much, Greg. I think this is a (good) approach and, as David points out, this is something we could (divide) the work. We have 26 comments received and we have some five volunteers I think.

So we can take comments each and begin our assessment on whether we have consensus, whether it's refinement or further details or whether it diverges from what we have been working in these working parties.

So if we agree, we could just go ahead and divide the work into each of the volunteers, that have our personal assessment and then in the call, we could, of course, discuss whether we concur with the assessment (made) by each person or whether we should (shift) that assessment to any other thing that (the groups comes up to). Next in the queue I have David McAuley.

David McAuley: Thanks, Leon. David McAuley. I probably should've taken my hand down but the idea that I suggested of dividing it up, I think, is not carried today in the chat. So, I mean, I don't feel that strongly about it but I assume, then, that we - if we don't do that, will also to be taking all the 26 comments and trying to put them into slots.

For instance, the board's comment is one that I recall most - having read it most recently and that is they see the separate is premature. You know, that would be non-divergence whatever the term is. So my request to tie things up, I think, is not really sitting too well and I'm happy with that.

Leon Sanchez: Okay, thanks, David. Just to follow up on your comment with regards to the board commenting on prematurity of addressing this issue, one of the conclusions from our LA meeting was that the board agreed to actually look into this is a matter of work stream one and not having it (unintelligible) premature.

So I think that hurdle has been already crossed and we can see that the board is in agreement that we should be looking into this as a matter of work stream one. And I do agree that, even if we decide to divide the work into small

chunks for each of the volunteers, we should definitely go, each of us, through all 26 comments because that will, of course, give us a better feeling of how the community expresses itself in this public comment period. So next in the queue, I have Greg Shatan.

Greg Shatan: Thanks, Leon. My suggestion is kind of a variation of that and David's and the comments, which is, I think that we should each, just as a matter of process or for the Canadians, process - the - as a matter of process we should each start with a bunch and then kind of go round robin and kind of look at all of them so that ultimately everyone has looked at all of them.

But if everybody starts with number one and then moves to number 26 kind of altogether, it's going to be kind of crowded. So it's kind of like - I hate to use such a bourgeois and environmentally unfriendly analogy like a golf tournament where everyone starts on a different whole but everyone ultimately ends up playing the entire course.

Leon Sanchez: That is a good analogy, Greg. Thank you for that. So yes, I think that's a big - a good way forward. And one thing that I'm trying to figure out here is that you may be short on the number of calls (required) for us to actually deliver to this cause these comments.

So I would now call for agreement on whether we should have another call, let's say, on October, the 6th. I do see a couple of slots open at could do the trick for us to hold another call and, of course, continue the work in this assessment.

But, of course, this is something that's just, but this time. So I wouldn't want to push a previously - commitments. But I would say that maybe having a call

on October the 6th at 19:00 UTC or maybe having a call at, let's say, 21:00 UTC - no, 23:00 UTC could also work.

So I don't know. I'm opening this for agreement, whether we could have a call on October the 6th. We'll figure out the slot, of course. We'll ask Brenda to do her magic and try to fit this into the general agenda.

But you feel like we could actually have a call on October the 6th? I see that Tatiana is agreeing. And I see Greg's and Marilia's hands are up but I don't know that's because they want to say something, but because they are agreeing to actually have a call on October the 6th.

I see Brenda is telling us that 22:00 hours is open on October the 6th, 19:00 hours is taken by working party one. Twenty-two hours - which time zone? That would be UTC, (Nels).

And, okay, so I only have agreement from Tatiana, although I don't have objections from anyone. Is there anyone objecting to actually having this call on October the 6th? I think that the slots open are a couple, so I would suggest, Brenda, if you could send us a Doodle poll with the open slots for October the 6th that would be very useful.

I think that no one is opposing to us having a call on that day, so the next (thing) would be to actually have the Doodle poll filled in and the site, of course, based on the Doodle poll, which would be the most convenient slot for all. Okay, so we're having a party on October 6th. We're having another call. And next in the queue I have Marilia.

Marilia Maciel: Thank you and just a quick comment on how to proceed with the evaluation. Something that I thought about doing for myself -- I don't know if others will

find it useful -- but to go through the comments and try to classify them, like the example that (Greg) gave in being in favor, being yes, that we would like to see more clarity in this particular point.

If we classify them ourselves, I think that we can (unintelligible) a request numbers like X comments for in favor, X comments for - or have this kind of concern, we can compare the ones that we have classified differently because I think that maybe we will have differences in terms of seeing the glass half-empty or half-full.

So we can compare the ones and reach our interpretation (unintelligible) we're going to agree with most of that. But we have doubts in terms of particular comments then we can discuss that.

But for that, we need to (map) for ourselves we're do we see, like, each comment (sent) so we can make this comparison afterwards. If the numbers they verge, we can go through them. So I'm going to do kind of a table for myself. If others find it useful, we can compare afterwards. Thanks.

Leon Sanchez: Thank you very much, Marilia, and of course, this also seems to be a useful approach but I'm mindful that since we already have some volunteers to do the assessment - I mean, it doesn't oppose to their work if we each (have our) on table and classify the comments in the way we think they actually are, either a consensus, (maybe) a refinement for the rest of divergence.

So, yes, I mean, if you want to also circulate that table that you will be building for yourself, I think it would be useful. And one other thing that I - that I think could be useful for us - okay, so it slipped my mind. So I'll hand over the floor to Greg again. Greg.

Greg Shatan: Thanks, Greg again. I think some of the comments are actually a mixture in the sense that they have consensus with parts of the report and divergence or, you know, suggestions or refinements of the comments, you know, will in part, fall into anywhere from one to four of the categories which is why I was thinking, at least from my own self, of you know, perhaps color coding, you know, by changing the color of the text if that's possible.

I don't know it's possible to do it within a single cell or in some way just trying to distinguish which pieces kind of form with which. I think this exercise is supposed to be objective.

In other words, I think we should, or less, you know, come to the same conclusions regardless of what our opinions are of any particular opinion - comment, whether we agree or disagree with it personally. We should be able to tell whether it diverges from our proposal in the second draft report. Thanks.

Leon Sanchez: Thank you very much, Greg. One thing that I would definitely encourage you all to do is to fill in the Doodle poll as soon as it gets to your inbox because we would need - and I would also kindly ask you to mute your mics if you're not speaking.

So as soon as you get the Doodle poll in your inbox, it would be very useful if you could fill it out as soon as possible because we need to, of course, plan the meeting with staff. They need to make all the arrangements that - for us to actually hold calls.

So I think we can move forward. I think we have agreement on how to - what are our next steps with regards to analyzing the public comments. Of course, we would be making this assessment and discussing it on our call on the 6th and hopefully having a final version by our - by October the 7th and having

any tweaks, any final tweaks done in our call on October 8th so we can deliver by October 12th is it is expected. Greg, is that a new hand or an old hand?

Greg Shatan: Old hand, sorry.

Leon Sanchez: Okay, so next in the queue I have Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: Yes, hello, Leon. I see the timetable or the schedule. Please kindly be sure that we should not have overlapping within the meeting and we should have some (little) space between the two meetings. One immediately after the other would not be effective for very - let's say - dynamically (like) Greg and (Steve) and they (participate) in all meetings.

They may be very energetic and very (powerful) people, but we're not like them. We need a little bit of time between the two meetings. I had one this afternoon. I had another one. And it is limited - our capacity is limited.

The demands - the (men)'s brain is have to capacity, sometimes maybe saturated. So they would not accept any more things. So, please, can we arrange that? We're rushing and rushing and rushing. Thank you.

Leon Sanchez: Thank you very much, Kavouss. This is a very good point and I assure you that our meeting fairy, who is Brenda, will make her best effort to send the slots that will, of course, provide the best times and, of course, also it's possible, time between meetings so anyone can have a break and not have one call after another.

So Brenda, could you please look into this and do your best to have it the way it was suggested by Kavouss? Thank you. Okay, so now I'd like to move to

our other point which kind of goes parallel to what we're doing and that is the continuing a fully have been doing in our previous meetings.

Of course, the assessment of the public comments might take us in another way but I feel like, at least within the group, we have had agreement that we should be drafting some kind of wording to include the bylaws and to be suggested in our next version of our draft document.

So since we seem to be in agreement that we should be having the proposed bylaw text and then, from there, build the document that would be the rationale and explanatory note for this, having read through the public comments, to me the option that has found more traction in the community is the second option that - yes, it's option two, from our published draft document.

And maybe some (unintelligible) that we could do or one refinement that we could do is whether we actually refer to some kind of documents or not. As I said, most of the comments suggest that we should definitely be referring to at least the universal declaration of human rights.

But this was an open end issue and I would like to, of course, advance the discussion at this point on whether we should be actually referring to any kind of document, to a single document, to a series of documents, so I'd like to listen to your thoughts. And for that I hand over the floor to Kavouss.

Kavouss Arasteh: Leon, two suggestions. One is, yes, if everybody agreed that we should have a (unintelligible) document, we could do that but the way we (suggest) that document needs to be discussed, whether we wanted to be under something like hyperlink or some other way.

But that document would be for information only. It is not part of the legal text that we provide. This is number one. Number two, my little experience indicates that you or we could try whenever we want into an agreement or consensus, but however, we should (think the) implementation.

If you write something and there is no criteria to implement that it is that we're writing for ourselves. It is not implemented. But if you refer to human rights and so on and so forth and you would not put anything which could be implemented, and how you could say that whether I have - implement that or could (expect) that or follow that are not because there is no criteria.

It would be very, very difficult. It would be just (a theory). So please kindly try to do something which at least has some degree of implementation process otherwise we're writing for ourselves. Thank you.

Leon Sanchez: Thank you very much, Kavouss. And I note Matthew Shears comment on that these are things that we would note in the analysis of the public comments. And while that is true, Matthew, I think, I don't think that it is something (bad) to continue our discussion because I feel that, even though we need to go through the (repeat of) public comments, the sentiment or the feeling of this group, at least, is -- working party -- is that we should definitely be addressing this is a matter of work stream one.

So instead of - I mean, we still have time for this call, and instead of just adjourning and going to reviewing the public comments, I would like to advance the discussion on whether we could make this work in parallel to the comment analysis.

I mean, if from the comments, it is concluded that this would be a work stream two issue, then I mean, that would of course be something different.

But my feeling is that everyone is in agreement that this could be or this should be addressed by ICANN.

The only thing is that we need some refinement and if we do refine the language that we have been working, these comments might have already been addressed and then it would be suitable to actually propose something as part of work stream one.

So are there any objections to actually continuing to wordsmith the proposed bylaw change in parallel with, of course, the assessment of the comments? Okay, I see no objections and actually I see a green tick from Tatiana on this point.

So I would kindly ask staff and we could display option two. And why am I referring to option two is because I feel that we have widely discussed that option one is not an option and if we would be looking...

((Crosstalk))

Leon Sanchez: ...kind of language, it would be option two and option two...

((Crosstalk))

Leon Sanchez: Could you kindly please mute your microphone?

((Crosstalk))

Leon Sanchez: I think that might be Kavouss. Okay, so our option two states that within its mission and in its operations, ICANN will be committed to respect internationally recognized fundamental human rights.

And I see that (also it is) a process. And thank you very much. This is the draft text. And they see David McAuley's hand is up. David, could you please take the floor?

David McAuley: Thank you, Leon. Hi, it's David McAuley. If we are going to press forward with wordsmithing, I would make a suggestion here. And I appreciate the distinction that was made; I think it was during Los Angeles meeting between the verb to respect and the verb to protect.

And with respect being considered and seen within the CCWG, I believe, as pointing to a high-level principle that does not carry along with its obligations to open avenues for dispute resolutions which I think is important.

And so I would say, in another - (for avoidance of doubt) clause following that sentence, that this is meant to be a high-level statement and not open the door to any dispute resolution of any kind and that it may be further developed in conjunction with work parties or a work party that is currently working on human rights issues within ICANN.

In other words, take account of the fact that, within the ICANN community generally, there is more work being done separately and hopefully in the future we can coordinate with that. Thank you.

Leon Sanchez: Thank you very much, David, and yes, as a matter of fact some of the comments, or most of the comments, actually raise the concern that whatever we do with the bylaws with regard to human rights, these additions or this amendment should absolutely, in no way, widen (up) of ICANN's mission.

And, of course, should avoid at all costs having ICANN a (police) on human rights in the domain name space. So I think that's the difference between respect and protect is (one) noted and we should drive our discussion with this in mind. So next in the queue I have Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: Thank you very much, Leon. I had this discussion this morning in working party two, and in particular here, because your text is very, very general and good and addresses the issue, I don't think that you can use the verb will because what you're saying is that ICANN decided deterministically to do that.

We cannot talk on behalf of ICANN. We can say ICANN shall be committed but not will be committed. This is something that many big lawyers in your group unfortunately do not pay any attention and they insist on the appearance of will.

Will is not a verb that can be used in any legal. Will - will be used by someone (unintelligible). I can say I will do that or I will not do that, determining to do that. But at the legal term, you cannot say I will. There should be an obligation, mandatory so that you could replace the will hereby shall. Thank you.

Leon Sanchez: Thank you very much, Kavouss. This is a very important point and we will be having - whatever we come up to, in this group, will be reviewed by our external lawyers and they could, of course, tweak any language that we have - that they have suggested and that will then come back to us to see if we are in agreement or if we reject any changes that the lawyers would actually due to our initial suggestion. Next in the queue I have Greg Shatan.

Greg Shatan: Thanks. A couple of things. First, the point that Kavouss made, there's actually quite a bit of vibrant discussion among lawyers who drafts for living, at least part of the time, including myself, about the use of will versus shall in a variety of context, and if you want to spend endless happy hours reading divergent opinions on it, there are many.

I'm pasting them into the chat - one article in the context of contract drafting which is slightly different than bylaws drafting but not a whole lot, which proposes that shall shall be banished from the drafting of contracts.

So, I don't think we need to worry about this point yet. I have engaged in many happy hours of discussions about will and shall and may and other things in doubling up on words and contract drafting, et cetera.

But it is a - there's definitely a history around shall, but the history is being replaced, to some extent, current events. But in any case, the other thing, in terms of, you know, what David was saying I think at least a note, at least as far as it started, getting longer and longer, start summing like something that needs to be in our explanatory text and not in the bylaw itself.

Again, we should be discussing how we want to limit this now. The bylaw text itself should be fairly short. It doesn't have to be all that short. We can add more to it so that there's stuff in it that has the force of bylaw.

And we could - at this point, maybe we should be over-inclusive in terms of what we include in the bylaws and we're not - a number of steps between this and having a bylaw being voted into the bylaws, and so for now, we can kind of keep her thoughts in the bylaw.

But we may find, in the end that we're moving all or part of our thoughts off into explanatory text so that we're not stuck with a four-page bylaw. On an entirely separate point, you know, I think that we do need to - I view is that we should be making reference to specific human rights documents, you know, such as the universal convention.

And I - lastly, the reference to fundamental human rights, I think it may be too narrow. The fundamental human rights are a subset of human rights. I think he had talked to, and one of earlier meetings, by making that fundamental rights and human rights or fundamental and human rights. So I would suggest that that the fundamen- internationally recognized, fundamental rights and human rights. Thank you.

Leon Sanchez: Thank you very much, Greg, and I do think that Kavouss has a point but I also think that we don't have enough time to go deep into the discussion whether will or shall should be the right word. And I - of course, my study in different international treaties, I see both words come up usually or regularly.

So my suggestion on the way forward is that, instead of actually going into the discussion on whether we should say will or shall, we just submit one option that's as well and one option that says shall to our lawyers and have them explain to us the different legal implications that one place or the other could have with regards to ICANN's mission.

So I would say that that could be a way forward in a reasonable way for us to advance the discussion and focus on what we're tasked with. So I do share your point, Greg. And one point that may be missing, I think, is the reference to any particular document or treaty that deals with human rights.

So I would suggest that, comments and signal us to actually refer to, at least one document, I would suggest that we include the universal declaration of human rights as a reference in this bylaw.

And I have also been pointed to the work that's been ongoing in another working group within ICANN. (Nels) pointed me to this document that's a work in progress and that has very useful language in it that we could take advantage of.

And I would appreciate, (Nels), if you could circulate the link to the document that you shared with me a couple of days ago to the rest of the working party so we can have a look at it and, of course, take advantage of what others have already worked.

And if we see it fits, we could take advantage of what that working party has (unintelligible) so far. So next in the queue I have Kavouss. Kavouss, could you please take the floor?

Kavouss Arasteh: ...or partly with Greg, fundamental human rights is narrow. We do not miss anything if we remove totally fundamental. It would be more general and could cover everything - fundamental rights and fundamental - and human rights and so on and so forth.

I suggest that, for the sake of time and clarity, we remove fundamental. For the first option I make, shall or will, I agree with you - many things are (mute) - shall, will, would, could, might, may, but it depends on the concept. It depends on the issue under discussion.

However, here, I suggest that we would not use will or shall we say ICANN is committed or to be committed. Is committed is something that (we just use)

present tense that is more or less similar to a mandatory but in a different manner, a different fashion, to (avoid) between challenge will.

ICANN is committed to (respect). It has the same meaning as the same application. So if you want to put options, this - put one - this one is option three - ICANN is committed, and also the least fundamental because that is too narrow. Thank you.

Leon Sanchez: Thank you very much, Kavouss and I'm seeing - I'm looking at the discussion in the chat box on whether we should go with human rights or fundamental rights. My interpretation of this discussion in the chat boxes that we should stick to human rights rather than fundamental.

And if we all agree, then let's talk this is an agreement of this group and dropped the fundamental rights wording and substituted by human rights. Okay, agreed. Excellent. So then we...

Greg Shatan: My hand is up.

Leon Sanchez: I'm sorry, Greg. Yes, please go ahead.

Greg Shatan: Okay, there's a distinction here that we just somehow steamrolled over. Fundamental human rights are a subset of human rights. Fundamental rights is a separate but corollary concept to human rights as I understand it.

So the point of not narrowing the list of human rights only to those human rights that are identified as fundamental human rights, I agree with. Removing any reference to fundamental rights is not something we've even discussed. So let's be clear on what we're agreeing to, please.

Leon Sanchez: Okay, so what would you suggest then?

Greg Shatan: I suggested what I suggested earlier, was internationally recognized fundamental rights and human rights or internationally recognized human rights and fundamental rights, if we want to put human rights first.

Leon Sanchez: To my mind, and I agree with what Marilia said in the chat box, and (unintelligible) is taken but, when I read human rights, to me it encompasses fundamental rights. So I would be agreeing on dropping fundamental rights and only refer to human rights, but that's, of course, maybe a misunderstanding on my side.

Greg Shatan: I understand and I am not all human rights scholar. But it - the fundamental rights is a separate concept. If I'm incorrect, and fundamental rights has no separate meaning other than as a subset, referring to the subset of fundamental human rights, then I withdraw my objection, but it's my understanding that fundamental rights is a separate but related concept.

And at least in some of our prior calls - and we have discussed adding the concept of fundamental rights so that it would be fundamental and human rights.

Leon Sanchez: Thank you very much for this. Next in the queue I have Avri.

Avri Doria: Thank you. This is Avri speaking, and again, apologies for missing the first hour. I had to chair a different meeting. I think that - there is no definition that one could point to fundamental rights that are not a subset of human rights.

And so I think saying fundamental and human rights becomes problematic when you have to define what you mean about fundamental rights. I don't

know of there being any way to define them outside of the scope of human rights.

When you say fundamental human rights, what you're trying to say that there's some subset of human rights that are more fundamental than the other human rights which, again, becomes a problematic construction.

So I find it hard to understand how either of those would be appropriate, how either of those would add meaning that could be understood and just a simple reference to human rights includes rights that are considered fundamental and such.

So I don't believe that there's any, you know, scholarly reference that makes the distinction is it within human rights or separate from human rights, though of course, there are some rights that are considered more applicable in some places than others. It doesn't make them more fundamental than others.

Thanks.

Leon Sanchez: Thank you very much, Avri, they see that there are people agreeing to what you just said. I personally agree with you too. So next on the floor I have Marilia.

Marilia Maciel: Thank you, and this is Marilia speaking. Well, from a very general international law standpoint, which is where I come from, when you talk about fundamental rights, you usually are talking about rights recognizing a particular jurisdiction.

So let's say the fundamental rights are recognized in a particular jurisdiction. When you talk about the international level, the expression that we use is usually only human rights.

(If support fundamental) human rights, besides the points that Avri may that we're kind of classifying rights and thing that some of our fundamental than others, you may create a (dubious) interpretation.

Because when we look at human rights, we have some human rights that are recognized as (unintelligible) which is the human rights that cannot be delegated or satisfied that any context even if we are (leaving) a war, for instance, the prohibition of genocide or torture.

Or - these are recognized as rights that you cannot delegate. So when we talk about fundamental human rights, we may be interpreted as talking about discussions that honestly do not apply very well to what we're talking about in (unintelligible), like genocide and torture.

So I would go with the expression that is more general and used in an international context which is human rights but I think that this is one question for us to formulate and confirm this interpretation with the external lawyers that we're hiring.

What is the most mutual and international recognize expression, because of course, if we go to the regional system, legal system, we will find expressions such as human rights and fundamental freedom which is the expression that is preferred in Europe - the instruments from the Council of Europe?

For instance, they tend to use the expression. But this has, like, a historical regional explanation behind it. And since we're addressing document here that would be as general and as cross-cultural as possible, I think that we should go for the expression that is also more general and it is human rights. But I

would ask at this point that we had it in the conversation with the external lawyers. Thanks.

Leon Sanchez: Thank you very much, Marilia. And I see a comment from (Mark Rebell) that seems to be particularly useful at this stage which he says, the text of the Council of Europe declaration (on) ICANN which I referred to on Saturday says internationally recognized human rights laws and (unintelligible).

So I guess that that would only forward for our (words) maybe. I would say that maybe we could add these same texts to the proposed bylaw that we have on the screen and it could read something like - within its mission and its operations, ICANN will be committed to respect internationally recognized human rights laws in the standards.

And that, I think, could be the way forward in this discussion. I don't know what others think but I think that that could be a report. We don't need to reinvent the wheel.

And that would definitely, in my view at least, address the issue of human rights. So I see that Tatiana says that looks good to her. David McAuley also likes the idea. And I see Greg, you have your hand raised. Please, take the floor.

Greg Shatan: Yes, the Council of Europe declaration, I guess, does not make reference to any particular human rights laws and standards. I guess, we now getting away from what seems to be many of the comments suggest that which is to make reference to a particular universally recognized internationally recognized human rights laws or - and standards?

I guess laws and standards is a little bit different because universal declaration of human rights, I guess, is not a law. Maybe can be defined as a standard. So we're getting often do something a little bit different.

I think the formulation - internationally recognized human rights, laws and standards is probably better than our formulation of internationally recognized human rights. So in that sense, I support that as an improvement on our language. But not nec- not to the exclusion of considering whether or not we're going to make reference to some things more specific than that. Thanks.

Leon Sanchez: Okay, so I suggest that, in order to have an improvement in this wording, we (act) this wording that (Mark) pointed out and we leave it and wait until we have the assessment on the public comments and that would give us light on whether we should be coming back to the discussion on the reference to certain documents or a particular document with regard to human rights or whether we can leave it in this (approach) and open way that (we're) suggesting at this point.

So I see that Marilia says that this sounds good. And Tatiana is saying that after the public comments, it would be better to consider reference to documents. And she's not convinced that it's a good idea. I think that it's too - with regards to the reference of documents, but I might be mistaken.

So I would suggest that we modify this wording to add (Mark Rebell)'s suggestion. I will circulate this improved text to the list so we can have it as a reference for our way forward. And we can also do as I was saying in parallel, the assessment on the public comments.

And after we get that, we then we have more clarity on whether we should revisit the concept on referring to any particular human rights documents or

convention whether we can just continue to build the rationale and explanatory note to this phrasing that we have just put together now.

So we're almost reaching the top of the hour and I would like to open the floor for any other business or comments. And of course, thanks, (Mark), for pointing to this text which has made us improve our (actual) wording on the (suggested) by law. So is there any other business or any other comments? I remind you that you already have the...

((Crosstalk))

Kavouss Arasteh: Leon, I am (not) on the Internet. I am only audio. Could you allow me to talk?

Leon Sanchez: Of course, please do, Kavouss.

Kavouss Arasteh: Yes, Leon, let me admire the way that you're conducting a meeting - very, very efficient, very democratic and fair. And so I congratulate you and I hope that you continue like this another areas. You're dealing with a very, very difficult, delicate subject and I continue to support the we're conducting the meeting. Congratulations.

Leon Sanchez: Thank you very much, Kavouss. That is very flattering and I feel very honored with your words. And so I remind you that you already have the Doodle poll in your inbox, so please don't let it rest there.

And if you are able to fill it in as we speak or as we end this meeting, that would be most helpful because we could (lock this lot) for our meeting on October 6th. So is there any other business, any other (unintelligible) that anyone would like to comment at this point?

Okay, so having no other business or issues to take care of this meeting, I would like to thank everyone for your attendance to this call. I would like to thank staff or their support and this call is now adjourned. Talk to you soon. Thank you. Bye-bye.

Woman: Bye.

END