

ICANN

**Moderator: Brenda Brewer
October 6, 2015
5:00 pm CT**

Coordinator: Excuse me, the recordings have started. You may proceed.

Leon Sanchez: Thank you very much and welcome to this Work Party 4 Meeting Number 6 on October 6, 2015. We have no agenda for this call but, I mean, the agenda is pretty clear to me. We need to continue working on the assessment of the public comments that we received. We received a document by Niels and Tatiana which I find most useful and that is being displayed in our Adobe Connect room at this stage.

So I would like to of course thank Niels and thank Tatiana for this excellent document. And I would like to go ahead and maybe listen from others what are your thoughts on the assessment that Niels and Tatiana have done. For me it's pretty clear that this is a very good assessment, it pretty much concurs with what I had assessed on my own.

So I wouldn't do many additions or suggestions to this document, maybe just one comment for example, on the areas needing refinement, I note that on Paragraph Number 1 it says that more details on the modalities of how ICANN (unintelligible) human rights impact analysis within its mission (unintelligible) text can be added to bylaws 6 out of 26. That a subset of this

group thought this would be done - this should be done in Work Stream 2 - 2 out of 26.

So in my mind if we're talking about subset then we would be saying 2 out of 6, maybe not 2 out of 26 but of course that's just a minor comment on the document. So I would like to now open the floor for comments on your take on this initial assessment kindly put together by Niels and Tatiana. So the floor is open. Who wants to go first? Ellen Blackler. Ellen, you have the floor.

Ellen Blackler: Hi. Thank you. I thought it was excellent. Thank you, guys, for doing that. I did have a couple comments. I don't know if makes sense to just jump into them or do we want to start with each section because mine are actually down a little bit. Do I just jump into them?

Suddenly I can't hear you all. Can you hear me?

Greg Shatan: Yes.

Ellen Blackler: Oh okay.

((Crosstalk))

Leon Sanchez: What was that?

Ellen Blackler: Maybe we have lost Leon.

Man: Hello? Hello?

Ellen Blackler: Hello, Leon. We hear you now.

Leon Sanchez: Can you also listen to me?

Ellen Blackler: I said I had a couple comments. They are down a little bit in the document so I don't know if we should just jump into them or do you want to go through each of the sections? I think - and thank you, Nielss and Tatiana, it's a great document.

Leon Sanchez: Okay so I think we can go directly to the comments, Ellen, if you don't mind? I see that Tatiana is acknowledging that she went through those comments briefly but if you just elaborate at this point I think it would be most useful.

Ellen Blackler: Okay. And now suddenly I've lost my document so hold on. It's always something. I'll see if I can remember them. I think the first one was in the areas of divergence just a minor one. I thought we could say on Number 2, it says it is believed that only states have direct human rights obligations. Oh, that was my point that we add direct there which was an addition. It's just showing up here as the current.

And then the other one was actually in Number 1 right before that. It says we've got 2 out of 23, I think the 2 out of 23 is referring to the first clause so maybe we can clarify that. We say while some comments mention that special mention of these expression and free flow is needed to ensure that their respect to the 2 out of 23 said that, the majority said - or more than 2 out of 23 suggested broader wording to avoid human rights. Cherry picking. So I think we just have to clarify what that 2 out of 23 refers to.

And then lastly I felt like Number 3 was that the one - hold on, I have to find my notes now. Oh Number 3 almost seemed like the first part of that clause that the language shouldn't broaden the mission was an area of consensus and I think we got that listed as the area of consensus now. So I had added that

clause at the beginning that while there was broad agreement that any language regarding human rights should not broaden ICANN's remit there was a perceived risk so I had added that first...

Niels ten Oever: Can I respond to that, Ellen?

Ellen Blackler: Yeah, sure.

Niels ten Oever: So I completely would agree with you if that would be the point but this was a comment that said that even if we would add that text in the bylaws there - that would not protect us for demands from civil society that would demand human rights enforcement outside of ICANN's mission and scope of activities so that was the text that even if we put in the bylaws that it stays within ICANN's scope and mission there was still a risk that - a perceived risk that civil society organizations would push for ICANN to go beyond that. And that's what we tried to put in there.

Ellen Blackler: Okay, I understand now. So maybe we should just say even limited - even if we put that limitation in the bylaws there's a perceived risk. I just misunderstood.

Leon Sanchez: So I think that we can move on. Any other comments from Ellen or...

Ellen Blackler: No, I think those were mine. Thank you.

Leon Sanchez: ...in the queue I have Niels but I believe that Niels, you were just following up on Ellen's comments so I'll now go to Greg Shatan. Greg.

Greg Shatan: Thanks. It's Greg Shatan. I've been on a few of these calls today so I haven't really had a chance to look through this in detail since I've been on other calls.

But are we going to walk through this document now or are we going to just give comments where there are comments? What is the - how are we going to handle this? On the other calls I've been on we've been going through the comments - going through the analysis.

Leon Sanchez: I think that it would be good to walk through the different comments and see if there's - the assessment is properly reflected in this document that was set up by Tatiana and Niels. So I think that, as I said, this pretty much coincides with my personal assessment. But I think that it would be useful since we had spoken about giving our personal impressions each I think that it would be useful if you could tell us what is your take on the assessment of the public comments received, Greg. Could you do that - could you do that for us?

Greg Shatan: Sure. Well, starting with the introduction, I see it says that in the second bullet point, 23 of 92 submissions responded specifically to the question. See comments below. But it's not explained here what the question is. The question being which of the two is preferable - which of the two proposed items is preferable, is that what the question is, the one it's referred to? Or is there some other question that's...

((Crosstalk))

Leon Sanchez: ...either Niels or Tatiana to please (unintelligible). I see Bernie has his hand up. Bernie, would you want to comment on this?

Bernard Turcotte: Yeah, that's - can you hear me?

Greg Shatan: Yes.

Bernard Turcotte: That's probably an error that slipped in when we were doing the analysis. I mean, I'll defer to those who wrote the document but if you got it from the analysis spreadsheet it may have been something that was copied over from the three questions. It was corrected in certain areas and really should say there were 23 of 92 submissions which specifically addressed this area. So if there's no other interpretation, apologies for that, it should read 23 of 92 submissions addressed human rights specifically.

((Crosstalk))

Leon Sanchez: Bernie, I note that Tatiana and Niels are working live on the document at this point so we can either of course remain watching the document on our Adobe Connect room screen or we can just jump into the Google doc and have a live editing session. So I think that would be most productive for our call. So if you'd like to join everyone on the Google doc that would be perfect. And I will keep an eye of course on the queue to handle it.

So, yes, Greg, I interrupted you. I'm sorry for that so you can continue now.

Greg Shatan: Okay. So and I've switched over to looking primarily at the Google doc now. An anonymous squirrel is making some edits. And it's - seems like the summary that's here seems at odds with the conclusions below. So I'm trying to figure out what's what. Here it says of 23 specific submissions 17 had concerns. Twelve were in disagreement with the proposal. Eight were in agreement and four had new ideas.

Yet when I read down to the areas of consensus it seems to express agreement with the proposal or at least with the proposal that there be some language. So there seems to be a disconnect between the language right here and the language below. And I haven't, as I said, I've been doing this all day on

different calls so I haven't had a chance to figure out why this is what it is by looking at these individual comments. And I do see that, you know, in the comments it looks like, you know, half are in the issue area column as opposed to support area column.

So although those columns are not dispositive either. So trying to figure out what it is, you know, how we can accurately reflect what's going on because there seems to be some internal inconsistencies.

Niels ten Oever: So I'm happy to respond to that. And I think that's because different indicators or metrics were used and so for the numbers in the upper introduction we used the staff summary and they indicated whether a proposal was either an overall pro or an overall con or an overall new idea whereas a range of comments expressed different ideas.

So they had like several points were raised. So we would like to make use on the richness of the comments which some addressed like several points but that's why the total amount of points that's mentioned in the introduction does not necessarily to sum up to all the different points that are brought up in the document to ensure that all the great ideas that were brought up in the comments are also reflected in the document.

Greg Shatan: Well I think what we need to recalculate the numbers in the introduction so that they're reflective of the analysis afterwards because otherwise it's kind of a - you get whiplash switching between the introduction and the rest of the document.

So I think unless Bernie feels like these numbers are sacrosanct we should probably, you know, reconsider how we're summarizing what it is that we are seeing because by the time you get to the third bullet point now we're saying

20 supported the proposal. Right above we say 12 were in disagreement and there are only 23. So, again, this is - there's kind of - we have to eliminate the internal inconsistencies because this is - this document needs to function on its own.

Leon Sanchez: (Unintelligible) if you agree - if you agree I would say that we can narrow the number of comments to 23 which were the actual comments that were received on - with regards to human rights. And from there we can then say that 12 from 23 were in any sense or whatever. So if we agree, I mean, we could narrow down the language to 23 comments. And from there of course add to the different numbers.

And I see that, Bernie, you still have your hand up. I'm not sure if that's an old hand or a new hand. Would you like to add something to this?

Bernard Turcotte: I typed it in the chat. Thank you.

Greg Shatan: Now I got to go back to the chat.

Leon Sanchez: Thank you. It's the benefit of working remotely and having to look at two different browser tabs.

Greg Shatan: So in the third...

((Crosstalk))

Leon Sanchez: ...that there were 20 comments that (unintelligible) supported the proposal without specifically referring to human rights. So that is what Bernie just said on the chat box for those that are into reviewing live the Google doc. So, yes, Greg please.

Greg Shatan: Okay so I'm - so by proposal we mean the overall second draft proposal, not the specific human rights point. So and then - so I'm proposing some changes here. Something like that perhaps. And can make the same changes in the next one. I don't know if there's anything that necessarily can be taken away from all that but so then we go back to the second bullet point which said that 12 were in disagreement with the proposal.

In that case are we referring to the human rights proposal? Now suddenly it's been struck out. Bernie, are you suggesting that this should just be deleted?

Bernard Turcotte: This is going to - if I may, Leon?

Leon Sanchez: And I think that it is more effective if we just jump into the conversation. Feel free to of course chime in as you (unintelligible). And I mean to all of us of course.

Bernard Turcotte: Greg, on these we ended up mixing things up a bit given there were no specific questions. And given we're doing a really good second pass with this document, I would simply remove those things which is why I've struck them out.

Greg Shatan: Okay. I think it still makes sense to break the 23 down. If that's the wrong breakdown we should replace it with the correct breakdown.

Niels ten Oever: Greg, it's quite hard to break it down.

Greg Shatan: I do hard things all the time. But, I mean, it seems to me that we had, you know, it should be possible to characterize them, you know, generally.

Leon Sanchez: Greg?

Greg Shatan: It may be that's not the case but it would be good to see the overall trends.

((Crosstalk))

Bernard Turcotte: Greg?

Leon Sanchez: Bernie is willing to propose a way forward. Bernie, we are listening to you very faintly so you might want to adjust your mic volume.

Bernard Turcotte: Okay. Just very quickly, I think I can have another pass at classification once we've finished the document. And I'll go back to the spreadsheet and I can propose something to Tatiana and Niels and see if they agree with it. But I don't think we need to do that right now.

Greg Shatan: I think that makes sense. It'll become clearer as we go through the document what falls into what bucket or buckets.

Leon Sanchez: Move on. Any further comments, Greg?

Greg Shatan: Not at the very moment but I'm continuing to look through the document.

Leon Sanchez: So now with David McAuley and of course we'll keep the discussion flowing. David. You might be on mute because we can't hear you so...

David McAuley: Sorry about that, Leon. David McAuley here. Excuse me. I'm having some phone problems so I hope this will - I hope this will hang together. I'd like to make a comment but I first would like to, as Greg did and others are doing, thank Niels and Tatiana for putting this together and also when I looked at the

document before the call I saw that Ellen had gone in and made some comments and so my thanks to her as well.

I, on the other hand, have not done the homework assignment fully. My apologies to the group. I just ran out of cycles, I'm sorry about that. But the one comment that I would like to make as I look at this is down under the areas needing refinement.

And so if we're not there yet if you want to sort of save that I would be happy to do it. But if I could make a comment about one paragraph there I would be happy to do that as well, Leon.

Leon Sanchez: Kindly do so, David.

David McAuley: Go ahead and do that? Thank you. I would like to state a concern with the proposed new wording Number 2 under areas needing refinement. And it's a trope that I've had a number of times in human rights calls, and I think even in legal subteam calls, I forget exactly where it all got started.

But I believe that the new wording - the proposed new wording under Number 2 - and this is my personal position - would be very hard to accept. I believe that ICANN certainly should have, you know, a commitment to respect human rights but not to protect human rights. And I say that - and I recognize, by the way, that there are reasonable positions held by people of good faith on both or all sides of this issue. But my position simply is that ICANN itself is not a court. Courts handle protection of human rights.

It might be - maybe I would be persuaded otherwise if I felt, when I stepped back from the intense work of the CCWG and took an overall look at ICANN, if I felt that ICANN was somehow itself doing or even fostering others to do

human rights violations, but that's not the case. ICANN does a lot of good things very well. One of them, I think, in my opinion, is respect human rights.

So I would urge us to stick with respect and not have appeals mechanisms addressing human rights issues and things like that. I just think it's an invitation to things that would be very hard for ICANN to deal with. And so it's a statement that I've made before and I just wanted to make it again in light of that new paragraph.

And so, again, it's not a comment about anybody's intent or good faith. I recognize there's good arguments on both sides. Thank you, Leon.

Leon Sanchez: I think that would be useful to signal in the document that these areas needing refinement are just copy paste from the comments received and does not reflect the CCWG's or this Work Party 4 points of view because I think that would be - that would be worth clarifying because if you read through the document as it stands, those that have not been following our process closely might think that when we say propose new wording we might - or they might think that we are referring to a new wording that's being proposed by this working party and I think that's definitely not the case as you have rightly signaled.

So I would suggest that we in some way specify that this new proposed wording comes from either a specific commenter or some sort of clarifying statement that lives very clear to anyone that reads the document that this is not what we are actually proposing but only flagging as an area needing refinement.

So I see that Tatiana and Niels are already modifying the document to - which I thank them again. And next in the queue I have Niels. Niels, would you like

to comment? Okay so I saw that you lowered your hand, Niels. Was that right? Okay. Perfect.

So I see a comment from Robin in the chat box, "According to Article 29 ICANN doesn't respect privacy rights." Would you like to elaborate a little bit more on that, Robin? I am not sure I get the point really clear so I think it would be helpful if you could give us a little bit more of a context on that comment.

Robin Gross: Can you hear me? This is Robin. Can you hear me? Okay what I'm referring to there is...

Leon Sanchez: We can hear you.

Robin Gross: Great. What I was referring to in that comment is simply Article 29 in Europe, which is the collection of national European (data) commissioners and they've written to ICANN a number of times over the years and I'd be happy to provide a list of these letters to ICANN where they repeatedly tell ICANN that its Whois policy is in contradiction to European privacy rights. So that's what I was referring to there.

Because somebody had said that ICANN - they're not aware of any time in which ICANN undermines human rights and so I was just pointing out one example with the collection of one continent data protection commissioners has repeatedly said to ICANN that you are - that ICANN is violating privacy rights.

Leon Sanchez: Thank you very much for this, Robin. And yes I think that this could be mentioned at some point in the document. Maybe - I'm not sure where we could put that. But I'm thinking that of course this is the assessment that we

are going to deliver to the larger group so I would think that the next step for this document or the next page for this document would be to of course have it reviewed by the larger group and from there - from there gather their comments and in some way build our next recommendations in response to the public comments not only taking into account what we have been working on in this subgroup but also taking into account what the larger group has to tell us.

And I see Greg's hand is up. Greg.

Greg Shatan: Thanks. First, in response to your direct question about where to put the Article 29 issues that Robin raised, one place, probably the only place to put it in this - or a reference to it in this document is in the options for CCWG's consideration. We've been talking on a couple of the other calls about how to phrase these options and maybe this is a slight variation from the Zuck paradigm.

But I think that - I'll call it the DelBianco postulate - is to - for each of the options to have a sentence or two of context and then the option whether it's an option that we agree with or an option we don't agree with should be listed. And then finally a recommendation from the working party as to whether that option should be considered in terms of the - what the CCWG should do.

So for instance, there's at least one commenter that suggests moving this entire process into Work Stream 2. I would say that should be listed as an option although we can - because we're - this is first a reporting document and then in terms of analysis we could state that our analysis is that no we, you know, we don't recommend moving it into Work Stream 2. But I don't think we should massage the data too much in the document but kind of the let the different voices speak for themselves.

And then in our analysis indicate what our recommendations are then bring that to the, you know, back to the whole group ultimately after another I guess run-through of this in our group. That seems to be I think, the reason that Steve suggested that overall configuration is that as we bring this back to the larger group and its read quickly by people that they won't have the benefit of all the background, the analysis necessarily that we're doing.

And so that the suggestions should be, you know, or the options rather should be self-sufficient and should include both options that we would recommend considering and options brought up by commenters that we don't recommend be adopted by the CCWG.

I'd also note that most of the comments or analyses that I have looked at have given reference in some way to the specific comments from which they were drawn. Not if there's a number like 20, it didn't list 20 comments afterwards but if there's something comes from a particular comment there should be reference back to which comment it came from. Thank you.

Leon Sanchez: And I note that there are some comments in the chat box as to the complexity of going into these particular topic since of course it's often very complex. So I see Kavouss is commenting on the complexity. And he's also stating that he doesn't (unintelligible) that the CCWG examining the case. I would agree. I would agree also with what Greg has just said. So I think that for us to have the best use of our time it would be better if we focus in the actual comments that we receive rather than introducing new topics or new subjects for discussion.

So if we agree then just let's move forward with continuing our assessment on the comments that we received from the public comment because that is what

we are tasked to do. And actually - actually will deliver this to the group then we can have a better other panorama of what will happen to this.

So next in the queue I have Niels ten Oever. Niels.

Niels ten Oever: Thanks, Leon. And it gives me great pleasure that I completely agree with Greg. I think that's also something worth to be mentioned now. It is really good. And furthermore, Leon, I'd like to ask you what you mean when you're saying "bring it back to a bigger group" because I think the WP4 meeting, so do you mean bring it back to the list or bring it back to the CCWG?

Because I would really like to follow the steps mentioned by Greg that we first establish - these are the comments and then we can work on a following document in which we do the analysis and the balancing and why we think some sources should be made and one - some sources should be not. And then I agree again completely with you, Leon, that in the process of doing this we should first agree on this and then on next steps. Thank you.

Leon Sanchez: Niels, when I referred to bringing this to the larger group I was just thinking out loud on a process for us to make our recommendations at CCWG. But I definitely concur with the process that's been highlighted by Greg and one that you agree. And I think we're all on the same page. I was only thinking out loud when I said that. So I think we can move forward and continue the assessment of the public comments.

And I'm not sure if that answers your question but that was the intent of me saying that we would go back to the larger group. So I see Greg you still have your hand up. I'm not sure if you want to continue with the comments?

Greg Shatan: Well that was a new hand just in response to Niels. And, Leon, you know, maybe - I don't know if I'll phrase this as a question or a statement but see if you agree or disagree, my understanding that the various WPs are each working on an analysis of the comments and that's what we're, you know, what we're supposed to deliver back. So I think - so I guess I don't know if we're - the - as I understood that the analysis includes an assessment. But, you know, if we're - if I'm kind of misunderstanding and if other people are misunderstanding how much is supposed to go into this document, you know, we should decide.

I don't want to, you know, create more work for any, you know, particular group than the overall leadership or, you know, team has decided we should do. So let me just clarify kind of how much we're doing here and how much we're doing at some later stage. So I'm not sure, again, what in the work plan is the later stage for assessment if we don't do it here because I think we're supposed to be assessing and analyzing the public comments in this document. But what's your view, Leon, since you're one of our fearless leaders?

Leon Sanchez: My view is - my view is the same as yours, Greg. And I think that we're all in the same page. So let's continue to do the assessment of the comments and work on the document that we are trying to refine now. So I see Tatiana's hand is up. Tatiana.

Tatiana Tropina: Hi, can you hear me? So my suggestion would be like this. We summarize the comments and I believe that we provided a snapshot of what is in there. And if we are proceeding without assessment maybe we can create additional doc because I think like we were listening to David and Robin comments and we also have some comments like assessing the content of the public comment. So maybe we will create an additional doc for discussions for the assessment so we will not mix these two, we will clearly separate.

So this is the snapshot and this is what we think about this, like for example about the options for proposed language about the area for consideration which Greg mentioned about areas of divergence and so on too. And this would be helpful to sort that once the explanatory note of framework document, which will be - which we're going to draft in addition to bylaws language. So this would be my suggestion so let's separate, this is the summary of comments and this is our assessment. And I think we're doing an assessment and I'm happy to proceed with this as well. Thanks.

Leon Sanchez: Thank you very much, Tatiana. So yes this is, as you said, a snapshot and it's what we've been tasked to do at this moment. And what we should deliver by October the 12th. So I suggest that if anyone has any other comments on the document at this point I think that this is the time for us to I believe voice our thoughts and make the comments that we would like to suggest for addition or modification.

And this will lead us, of course, to having a deliverable in time. And we need to also work in parallel with what we have agreed on trying to put together the proposed language for - to be included bylaws. So let's remember that we have two parallel tracks here. And one is what we are doing at this time, which is as I said, the public comments, and the other one would be to continue to work on trying to agree on a possible language to amend the bylaws with regard to the human rights.

I see, Tatiana, you have your hand raised again so please go ahead.

Tatiana Tropina: Thanks, Leon. Tatiana Tropina speaking. I was also thinking that because other volunteers like for example, Greg, didn't have time to go through the comments and the document, maybe we will give some time to add some

comments to this snapshot and correct something and I don't know, anything. So we will have the document which will have input from all the people in the group who wish to contribute.

And maybe then we can process with the assessment or maybe we can do it in parallel. But I do believe that maybe a couple of more days will be needed to have the input from all the group members. Thanks.

Leon Sanchez: Tatiana that is very useful. And I think we had agreed that - we had agreed that we would be finishing this assessment by the day after tomorrow that is October 8. So I think we can - we can do that. We can continue contributing to this document offline. And well of course I encourage you to - actually the deadline for completing the assessment is October 7 so it is tomorrow. So I would encourage everyone to go through the document and please make your comments so we can - or Niels and Tatiana which set up the document, can add them to the next version of the document. And we can discuss it on our call on October 8.

And once we get to this final version then we would be of course in position to deliver this to the larger group and accomplish our task of having the deliverable by October 12. Are there any objections to moving forward in the way suggested? And I see, Greg, your hand is still up. I don't know if I have kept you several times, which would make me a very bad person. But...

Greg Shatan: No, that's a new hand.

((Crosstalk))

Leon Sanchez: New hand, okay.

Greg Shatan: You did not overlook me. I know it's very easy to do but you didn't. In terms of...

((Crosstalk))

Greg Shatan: I see we have one more WP4 meeting scheduled in about 48 hours from now. So my concern is that we've only had a single reading of this or single bite at the apple. And I think it might be better if we can to reconvene on this before turning it, you know, over to the whole group which we could probably do pretty much directly after the WP4 meeting on Thursday.

So I know that doesn't quite fit with the timeline but just given how quickly we're all working it would just seem to me that we kind of, you know, the alternative is just to kind of work on the document and then just turn over the document in whatever shape it is at, you know, 2359 UTC or something. But I would suggest that we would benefit from using that meeting on Thursday to complete our work before turning it over to the common wheel.

Leon Sanchez: Thank you, Greg. And, yes, that's actually what I meant to state, what I meant is that we should complete these documents and that we should discuss it in our next call in order to finalize it. And if we do have by then a final version of the document then we would next forward it to the larger group as our deliverable.

So I think we are in the same page, we would be completing the comment assessment in the proposed days. We would be discussing this same document with of course all the additions made by the different participants of this working party in our call on October the 8th. And hopefully we would be finalizing the document in that same - in that same call. And then we would be forwarding it to the CCWG at large.

Is that - is that okay? I think we're on the same page, I just (unintelligible).

Greg Shatan: Yeah, I think that makes sense. And I think reading over the chat I'm getting confused again whether we're going to have two documents we're going to work in or we're going to add the assessment to this document. I guess I'm not, you know, clear on our working method. And, you know, I just think we need to have the same, you know, hopefully the same level of - and type of work that the other work parties are turning in to the greatest extent possible.

You know, nobody - hopefully nobody is seeing everything because if they did their head would explode. But - and I think the deadline is for...

((Crosstalk))

Leon Sanchez: ...yeah the deadline is for everything. And I would say or I would suggest that we build a single document because if we begin working on two different documents that might create more confusion and might be harder to follow on the changes and the comments on two documents. So I would suggest keep it as a single document. And of course this document would reflect both the summary of the comments and the assessment of the comments. I don't know if that makes sense to the rest of the group but I would suggest we go forward on that process.

Greg Shatan: It looks...

((Crosstalk))

Greg Shatan: It looks like the chat is converging on a single document so.

Leon Sanchez: Go ahead and build a single document. And next in the queue I have Niels.

Niels ten Oever: Yeah, I think I also agree. I just think it's crucial that we keep on separating the summary from the analysis and then I don't care if we do that in two documents or separated by something else just have it super clear that one part is the summary and the other part is the analysis because these two things are quite distinct.

Leon Sanchez: So now we're all on the same page. Let's build this single document, maybe in two chapter fashion, let's say, one chapter would be of course the summary of the comments and the other one would be the analysis and assessment of those comments. So I would encourage us to focus on having this document ready in - within the next let's say 24-36 hours so we can discuss it as final - as a final task in our call on the 8th.

So let's work on that. Greg, you have your hand up.

Greg Shatan: Yeah, we can see how the document grows in terms of where we add, you know, the assessment or analysis as opposed to the, you know, the summary and the like. And, you know, part of it I guess if there's two ways to look at the concept of analysis first is just, you know, an objective analysis of what we're seeing, which I think is part of each of these sections of areas of consensus, refinement, divergence.

And then there's kind of the opinion based assessment or - which I think is in part what needs to go into the options for consideration in terms of, you know, recommendations of the WP which in the DelBianco postulate were put in italics to set them off from the neutral reporting of the rest of the document.

Leon Sanchez: Thank you very much, Greg. So can we have agreement on our way forward? The DelBianco postulate could be a movie title that's - David and I agree the DelBianco postulate could be - I'm not sure if a horror movie or some sort of other general, yeah, thriller, I agree. So okay so let's move on and let's focus on finishing this document within the next let's say, as I said, 24-36 hours.

And now I'd like to jump to our other parallel track, if we agree, and that is of course agree on the wording that we would be proposing to add to the bylaws and from there of course keep the discussion on the explanatory notes. So in our last call we had agreed to have some language to the second proposal that we have published in our second draft proposal document with regards to human rights.

So this final product reads within its mission and in its operations, "ICANN would (unintelligible) to respect internationally recognized human rights laws and standards." This is an addition that was proposed by Niels. And is I think language that is usually - that is used in many definitions. But it is also the same language that is being used by another working group within ICANN. And it's a working group that's dealing with the human rights issue.

And I remember that we said that it makes sense to those who attended that call to explore the possibility of having this added to the text that we were working on. So here we have it. And now I would of course encourage comments. I see that David McAuley is signaling on a question. "Are there examples of human right standards that are not laws?" And I would of course hand it to Niels to reply to David's question since it's a direct question for Niels. So, Niels, would you like to provide comment or reply to David McAuley's question?

Yes, Tatiana.

((Crosstalk))

Niels ten Oever: Sorry, Tatiana, go ahead, sorry.

Tatiana Tropina: Oh, sorry. Tatiana Tropina. I think it wasn't new the suggestion the standard. As far as I remember from the last call the standard came from someone mentioning Council of Europe formulations on human rights or something like this. And though we kind of agreed to put standards for a while here in the text. I think in the later discussions most of the people were against standards because it doesn't make any sense. It would be enough to have laws in the language.

I'm also not sure if we need standards is just, you know, looks like a kind of unnecessary thing like we are just decorating the language and nothing more so there is no substance in these standards. But this is just my opinion. And I believe it wasn't Niels who added this, I mean, that was someone else.
Thanks.

Leon Sanchez: Tatiana, and from the comments I recall reading that most of the comments that were made with regard to referring to some kind of document as a framework for human rights referred to the original declaration of human rights. And I also remember that the Business Constituency suggested, let me see I'm looking for the comment by the Business Constituency in regard to human rights. Let me see so I'm looking at another one of...

Greg Shatan: Leon, if I could interrupt? I'm looking at the public comment tool and the extract from the BC says, "The BC believes that the Universal Declaration of Human Rights is a comprehensive statement of human rights that is appropriate for ICANN. The BC does not support having ICANN selectively

commit to certain human rights while excluding others nor does the BC support having ICANN commit to the United Nations Guiding Principles on Business and Human Rights which is proposed by some subgroup members. ICANN is not a business and would be a poor fit with the limited view of human rights originally developed by the UN for businesses in the resource extraction industry.”

Leon Sanchez: (Unintelligible) thank you very much, Greg. So as you can see from reading this comment the BC signals - and not only the BC but many commenters signaled to referring to the Universal Declaration of Human Rights. But I don't recall any commenters saying that we would - that we should refer to the United Nations Guiding Principles on Business and Human Rights. And not only no commenters referring to this but we have express opposition from the BC to referring to this document.

So I just wanted to highlight this. And I see Markus Kummer has his hand up. Markus.

Markus Kummer: Yes, can you hear me? Can you hear me?

Greg Shatan: Yes.

Markus Kummer: Yeah, okay. Just follow up on Greg. I mean, 12 years ago in (WSIS) we had similar discussions and human rights was after Internet governance the most contentious issue and the lowest common denominator was also the UDHR. There were various - obviously they are various instruments and various participants wanted to promote this or that instrument as (NDN), or we could agree on what's UDHR. And this is - as a starting point largely sufficient to get this - the human rights enshrined in a process.

I think going forward reference to the UDHR would be sufficient and would also be able to find a consensus. Also at the LA meeting there are various participants who said this is overly broad. And I think we need to narrow it down and be more precise as to what we are referring to. And the same goes actually for mentioning individual articles. I, for one, was startled that there was no reference to Article 20, rights to assembly, which I personally would consider quite relevant in the context of new gTLDs. But there you go. Some people think this article may be more relevant than the other but, yet, same issue in - this is, in the end, the referred essentially to Article 19, but then others want the reference to Article 29.

It's - cut a long story short, the easiest is to keep it as high-level an simple as possible and do - the HR would be, in my view, the easiest way to find an agreement and then to launch a process as it is in (unintelligible) to refine it for the - in the coming months as years. Thanks.

Leon Sanchez: Thanks, (Markus). Next on the queue, I have Tatiana.

Tatiana Tropina: Thanks. Well Tatiana Tropina speaking. I think - well a few points to make - first of all, I think there is a general agreement that we should not refer to (unintelligible) principles within the group as well because we have an opposition and I'm in this position.

So this is not the point we need to discuss. Secondly, about mentioning specific articles and specific rides, I think there is also a general agreement that we cannot carry (unintelligible) rides. So we have to go for general land, which that's why most of the comments support the option to propose for bylaw language.

And thirdly, I am very much personally opposing any mentioning of Universal Declaration of Human Rights or any other document because we already had a big debate on which documents we are going to pick. But if we are going to mention anything, I would say that for me, probably, universal declaration would be the best compromise, of course, but again, I'm very much for just simple general language.

But I might be in minority here. Thanks.

Leon Sanchez: Tatiana, as I put in the chat, I don't mean to reopen this discussion. I have it very clear that within this working party, we had agreed to actually not refer to a single instrument or document with regard to human rights. I am just trying to go through the public comments as we, of course, need to address them.

So I think it is useful that we acknowledge that there are some commenters that are actually suggesting that we signal to - or refer to a specific document in any bylaw language that we try to draft. And we need to also remember that once reach agreement in this working party about any kind of language that we would like to propose to be included in the bylaws is language will be, of course, forwarded to our legal counsel for them to have a look at it and see if it needs any kind of adjustment or any kind of tweaks.

So we make it work. I see (Marcus), is that an old hand or is that new hand?

(Markus): Sorry, old hand.

Leon Sanchez: Okay, so next in the queue is Greg Shatan.

Greg Shatan: Thanks, (Leon). A couple things -- first, looking very quickly, mostly by using the find key, it appears that there are five comments that support the use of the universal declaration on human rights. And, you know, that's not in consequential number out of the total of 23, especially considering that some just opposed, you know, considering the language at all or didn't comment on the language at all.

I would also say that, personally, I don't recall when we came to the agreement you referred to because I don't agree. I know that there are those that agree, but I don't agree that we should stay away from mentioning particular documents or the like. So at best, you have rough consensus and I don't know how broadly we've polled the group.

But I think, you know, keeping in mind that we're, at least in part, supposed to be working with an eye on the public comments. As I said, I counted five mentioned the Universal Declaration of Human Rights favorably as an appropriate document and recommended the use of that document or use of a reference to that doc, rather, in the bylaw. Now that's not dispositive either, but it, you know, certainly - it represents a stream of thought.

Leon Sanchez: Yes, that's what I wanted to be part of our work and our assessment that there's definitely some people that are suggesting that we should refer some kind of document in bylaw language that we would be proposing to amend the bylaws. So I think that that's something that we need to take care and when we actually draft the assessment of the analysis of the public comments received.

And I mean, I'm not - while I don't want to reopen the discussion in this working party, I think that if the public comment signals that we should in some way be referring to any single document or a set of documents that

maybe would be worth going back to exploring whether we should be including any kind of records in the proposed language to amend the bylaws.

Tatiana, I see your hand up. You're next.

Tatiana Tropina: Yes, thanks. I actually agree with Greg that we should consider these options. Due - I am totally opposed and strongly opposed in agent any reference. But that's why I brought this issue on the call because if several comments are mentioning it, at least we have to address it in the discussion document or in the assessment document.

And to (Leonard's) statement, you don't want to open this discussion but it seemed that there are some disagreements in the group about agent or not agent-specific references. So we do have to address this somehow. Thanks.

Leon Sanchez: I think it would be useful if we could actually have agreement or at least feel the temperature in the working party as to whether we should signal or refer to any document in the proposed bylaws language that we would be suggesting to amend the bylaws or whether we should stay away of in single or set of documents and leave it as a high-level statement. So I think we need to make the call on this and I see Greg, you have your hand up.

Greg Shatan: Yes, just briefly, I think this is one of these questions where we come back to my favorite topic, which is the framework or rationale or explanatory document, or as some have characterized it, the 300-page research paper, which, of course, it's not. But that's kind of the Donald Trump version of characterizing the, you know, the document that underlies the - this sentence - - the commentary or whatever you want to call it.

And depending upon what we say there, we can say less here, perhaps. I'm not saying that's a conclusion that I've come to, but just depending upon how we frame this and how we guide ICANN to interpret this in an underlying document, we may or may not have to be quite so directive in the bylaw itself. Of course, putting it in the bylaw kind of cements it in place and having it in a - an interpretive directive is a more malleable sort of place to - for it to be, at best.

But anything we're saying here that's, you know, open to interpretation or ambiguous or, you know, raises concerns is something we may be able to solve in the rationale document, you know to quite concerns because as we've seen in every other area where there're kind of open spaces, people will fill the open spaces either with sunshine and flowers or with dragons and demons depending upon their opinion.

And usually it's neither. It's usually something more mundane, but until you actually fill it in, then the natural tendency is to fill it in kind of emotionally or to prove your point. So we should at least - you know, I still believe that we should refer to it in the bylaw itself, but a lot of that comes down to what is going to move forward aside from the bylaw itself. Thank you.

Leon Sanchez: Thank you very much, Greg. And yes, I can see that that is one of your favorite topics -- the rationale (unintelligible) the extractory note. But we had agreed that we should, of course, come to agreement as to which would be the wording that we would be proposing.

And from there, then we will keep up the discussion on building this extractory note and the rationale. So I think that since none - since not all of the participants from this working group are attending this call, I wouldn't want to just let them without a saying (unintelligible) deciding whether we

should be referring to any single document or a set of docs in this proposal bylaw language. And I think that we - while some are in agreement that this should be a high-level statement, I am mindful that there are those who think that we should (unintelligible) one document which is the, you know, declaration of human rights.

So I would like to ask staff whether it would be possible to actually have a poll.

David McCauley: Leon, can I interrupt for a second?

Leon Sanchez; ...or some kind of - yes.

David McCauley: Leon, hi. It's David McCauley. I lost my internet connection, but in the interim, my phone battery charged up a little bit. So I'm just having one of those days.

My apologies, but I'm on the phone line now only.

Leon Sanchez: (Unintelligible) to say something to what we have been saying?

David McCauley: I heard your summary just now and I was typing in my preference for a reference to the document UDHR. It was a personal preference and I recognized the chasm, but that was my preference.

Leon Sanchez: So I would ask staff to let us have a poll of this. Of course, we need to ask a question for the poll. And I would like to suggest that the poll goes with the question on whether the proposed bylaw language should refer to the Universal Declaration of Human Rights or not.

I think that would be - or that could be the appropriate way to deal with this issue once and for all and to poll those participants that are not attending this call. So if you agree with this question, please signal with a green tick so we can have staff send the polls to the rest of the working party participants. And let's have this poll closed by, let's say - okay, so I see that (Niels) sent (unintelligible) do not agree with this question.

So I would ask them to kindly propose an alternative to the question.

Niels ten Oever: So the question is do we want to specify whether there is going to be a specific reference to the UDHR or the - whether there's going to be a specific mentioning of any document at all? Because it seems to be conflating two issues, right?

Leon Sanchez: I had a hard time trying to hear you, (Niels). I'm not sure if the rest of the group was able to what you said. And I see that Greg is asking whether we are voting on the question or the answer? And I think that we are voting on the question that would be sent out for the poll.

So we are voting on the question, not the answer. And I also see that (Niels's) - is saying in the chat box will the question be should there be a reference to a specific document in the bylaw text or will the question be should we refer to the UDHR in the bylaw text? So I think that the question is that that has been - I see that Greg is suggesting another alternative, which would be, of course, to have two questions in the poll, and the first question being should there be a reference to a specific document in the bylaw text?

That would be Question Number 1. And the second question would be that, if yes, should that document be the Universal Declaration of Human Rights? Do we agree on these questions?

Greg, I see your hand up.

Greg Shatan: Just to say that the weakness in my two-question survey here - and normally, you have to pay a lot of money for survey experts, but fortunately, I'm not one so you're getting me for free. It doesn't have a place for people to answer that they're opposed, but if the - if it were agreed that we would have a document that the UDHR would be the right document. So, you know, we could say if no, would you be willing to have the UDHR?

But I don't want to make this too complicated. So those who say no to the first question won't answer the second question. So, for instance, (Tatiana) would - I assume - for the sake of argument, answer the first question no, then wouldn't answer the second question, although, if she were asked if a document must be - if a decision is made to list a document, should that document be the UDHR, then I think she would answer yes.

So the question is, A, how complicated do we want to make this? And, B, how many answers do we want to have?

Leon Sanchez: This is very easily, in my mind, we could ask the two questions and then if the second question is answered with a no, then we could add a third field - not a question, but a third field - to have still that answer that the UDHR would be the most useful document to refer to to provide their suggested preference. Would that make sense?

Greg Shatan: I see (Bernie) has put a formulation in that I like for kind of a third - the third question, which maybe could be asked to those who answer no. Or it could be a different formulation of the second question.

Leon Sanchez: I agree with what (Bernie's) suggesting. So...

Greg Shatan: (Bernie) is basically eliminating the "if yes" part of my question so that all people will answer the second question even if they answer the first question no, they'll still be asked whether - if a document is referenced - whether it should be the UDHR. I think that's probably better for this purpose because we'll know, clearly, from the first question whether people are for or against the general concept.

And, you know, clearly, we won't count them as being for the general concept, even if they answer the UDHR to the second question. So I would use my first question and (Bernie's) - question.

Leon Sanchez: We - okay, so you would do a mix with your first question and (Bernie's) second question, is that right?

Greg Shatan: That is correct.

Leon Sanchez: (Bernie), could we do that and could we send out the poll with indications that the poll will close within the next 36 hours? So that would make it - I'm not sure what time it is now in UCC, but let's say tomorrow's the 7, 23:59 UCC. That should be long enough for those who are not attending the call to check their e-mails and go through the poll and should be short enough for us to let us close this discussion and move forward with drafting the proposed language for bylaw amendment.

I see Kavouss has his hand up. Kavouss. Kavouss, we cannot hear you.

Kavouss Arasteh: (Unintelligible) internationally-recognized human rights laws. There are internationally-recognized human rights but they are not internationally - they

are not called human rights laws. Perhaps one possible way that we did it in other international and the organization including you and people do not criticize me, they use provisions instead of laws because it doesn't change the essence, but legally, it means that whatever is there in this internationally-recognized human rights and we call them provisions.

And provision is equivalent to the law. All their standards, I don't have problems whether there is a standard or not, I leave it to Greg who will talk especially - and others in these areas. But laws, I don't think that we could use the - I suggest that you call - people at least - they replace the laws by provisions. Thank you.

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

Greg Shatan: Thanks. I agree with what Kavouss was saying. I recognize that, you know, the lawyers will get their chance to wordsmith this, but on the other hand, you know, we have, in the working group, certainly a number of people with, you know, very good knowledge of the human rights treaties, conventions, declarations, standards, laws, principles, etcetera and if I wanted to be evil and tricky and wanted to create a bylaw that actually, you know, maybe meant nothing, if we said human rights laws, that would leave out the Universal Declaration on Human Rights because it's technically not a law.

You might be able to call it a convention or a treaty or something else, but I don't think it would be characterized as a law if we're getting down to, you know, using words kind of for their exact meanings as opposed to, you know, at this point, I think we know what we're trying to say. We can always decide how much time we want to spend trying to get it right and actually say when we're not going to be - this is not going to be the last step.

So I don't know if it's, you know, how we classify that, but in any case - I know I see (Tatiana) saying it is international law. So...

Kavouss Arasteh: I have another suggestion - a complementary suggestion, if you allow me. Can I go ahead?

Greg Shatan: I'm done.

Leon Sanchez: Yes.

Kavouss Arasteh: Do you allow me to suggest an alternative?

Leon Sanchez: Yes.

Kavouss Arasteh: Or (Jack). Who is chairing the meeting? Do you allow me to put an alternative.

Man: Yes, Kavouss.

Greg Shatan: Kavouss, why don't you go ahead? Thank you.

Man: Kavouss, please go ahead.

Kavouss Arasteh: Yes, so I suggest that if you want to keep that human rights, you could put law, a standard (unintelligible) provisions and add "as the case may be". Sometimes we have law, sometimes we have a standard, sometimes we have provisions.

So it covers the case. We have done that in several other (unintelligible)-type documents. And I'm sure that this document has more - let's just say - legal - very strong legal basis.

So I would suggest that we put comma between laws and standards and we add provisions and add comma after that "as the case may be" or "according to the case," which (unintelligible) says that (unintelligible) as the case may be because not always are law, not always are a standard, but not always are provisions. It depends from case to case. Thank you.

Leon Sanchez: Thank you very much, Kavouss. Can you hear me now because I think that I wasn't - so can you hear me? Okay, so thank you very much for this suggestion, Kavouss, but I think that we are going a step ahead in this discussion.

So I would encourage, of course, everyone to fill in the response (unintelligible) and after we get to the point of whether we would be including some kind of reference in the text, then we can continuously discuss whether we refer to human rights laws, standards, principles, or how we can, of course, address this. And I see that - I remember that (Tatiana) had her hand up and I see that you still have some concerns with regards to maybe the poll or the questions, (Tatiana).

So I'm not sure if you would like to have your thoughts voiced so we can listen to you.

Tatiana Tropina: Well, thanks, just briefly. I had my hands up to say that I agree with Greg because I do want to have options even as someone who will answer no, no instruments should be added to the bylaw language. But if I answer no, but

many people agree that there should be something else, I would rather prefer to have my voice heard there.

So that was my point, and, actually, I'm now - yes, it's resolved. Thanks.

Leon Sanchez: Well, we should not exclude those who answered to the first question in the no to the fact that if the decision was made that we should definitely refer to any document, then those who answered no should also have the option of saying, "Okay, if it's something that we can avoid, then we should refer to the UDHR or whatever the document you might be suggesting.

Is that right, (Tatiana)?

Tatiana Tropina: Sorry, I was muted. Yes, exactly.

Leon Sanchez: Perfect. So, (Bernie), can we have that - keep that option open so that those who answer no to the first question still have the option of suggesting the document that they think that should be referring (unintelligible) that the group decides or agrees on referring to a single document or a set of documents?

Okay, so I think that we are having a very fruitful discussion on international law in the chat box. And (Niels) is asking whether this should go to the working party core members? And that is right.

This is poll that should be carried out with a working party for it and from there, we will continue our discussion. So I think that we have exhausted the agenda for today. I'm not sure if anyone wants to raise any other business just to make a small recap, we will be continuing work on the single document that was set up by (Niels) and (Tatiana).

We will be dividing that document into two chapters -- the first one being the summary of the comments and the second one being the actual analysis and assessment of the comments. And we will be doing the poll on answering the question of whether we should be referencing to any document of human rights in our proposed text for amend the bylaws.

And of course, from there, we will be able to continue building these proposed language. Are there any other business that you want to raise or any objections or need for clarification as to how we will proceed in next steps? And time for the poll, I suggest it be October the 7 at 23:59 UCC.

Okay, (Tatiana), so I see that you want a clear summary in Steps 1 through 3. So first step is to continue to build the document in Google Docs. There, we would be building the summary of the comments we received in the public comments. And as a second chapter of that single document, we would be doing the analysis and assessment of the comments received.

That is Step 1. Step 2 would be to answer the poll with the question on the human rights document reference in our proposed language to be included in the bylaws. Step 3 would be to continue the discussion on the document in our call on October the 8, and hopefully, we will have closure of the document in that same call.

And we will, of course, have the results for the poll at that same call. And we will then be able to move forward on closing the item on whether refer to any document human rights in the proposed bylaw language that we are trying to build, or whether we just leave it as a high-level statement.

I hope those steps are clear enough now. If you need further clarification, I'm happy to go through the different steps again. Does that answer your question, (Tatiana)?

Okay, perfect. So are there any other business that anyone wants to raise at this point? I see Kavouss, you still have your hand up and I just want to check whether you want to add something or is that an old hand?

I see Ellen Blackler is asking if the poll will be e-mailed to the working party core list. And yes, Ellen, that would be the way forward. We would be e-mailing this poll to the working party core list.

And I see that - well, now, Kavouss is disconnected so I'm not sure if we actually - if he actually wanted to say something or he just dropped. But, well, okay, so having no other business to address at this point, I would like to thank you all for your attendance, for the fruitful discussion, and of course, thanks to staff for their support.

And we'll talk to you soon and let's continue to build our document. Thank you all. Bye-bye.

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