

**ICANN**

**Moderator: Brenda Brewer  
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4:00 pm CT**

Leon Sanchez: Welcome, everyone, to this working party for Meeting Number 7 on October the 8th, 2015. May I remind you to please mute your mics if you're not speaking. And I think that from our last call the only issue we needed to - well of course there are a couple of issues but the most significant issue to review on this call are the results of the poll which I have forwarded to the group.

And it was an overwhelming no to having a reference to any kind of document in the proposed text to be subjected to be added into the bylaws. So I think that this closure now - official closure with that discussion. And we will not be suggesting to reference any special or any single or multiple documents on human rights in this amendment to the bylaws.

So the next step for this call I think it would be to go through the document that Niels and Tatiana were working on. And I think that we are almost there. I see some comments have been made today, many comments by Greg that I hadn't seen before so I think these are like the most latest - the latest comments.

So I see Markus Kummer hand is up. Markus, would you like to take the floor?

Markus Kummer: Yes, thanks. Can you hear me?

Leon Sanchez: We can hear you, Markus.

Markus Kummer: Yes, thanks. No my question is just what are actually the rules of procedure. Yes, there was a majority against it but there was no consensus around it. I mean, there was a - you could call it a strong minority arguing in favor of a reference to the UDHR. And I say this - I don't want to be awkward but based on my experience it is very difficult to find language that since everyone has had the beginning of the discussion the other night. And the reference to the UDHR makes things much easier on finding language. That's my question.

But essential point is what are the rules of procedure? So are we talking about majority or consensus here?

Leon Sanchez: Thank you very much for this, Markus. I would say that we are talking neither because we are actually not deciding finally, we're just - we were just having this call as a reference for our work on drafting the bylaw language that we would be suggesting to the larger group so they can review and they can in fact approve. So while we have closed this discussion on whether to point to even or a certain document on human rights in our proposed bylaw text, this could also be reopened of course when we go back to the larger group. But this is something that the group at large needs to actually decide.

So I wouldn't say that we either have consensus nor rough consensus nor a majority or whatever expression signaling to approval because we are not

supposed to be deciding for the group. I don't know if that makes sense, Markus.

Markus Kummer: Okay. Thanks for the explanation.

Leon Sanchez: Thank you. Next on the queue I have Greg Shatan.

Greg Shatan: Thanks, Leon. I was going to note that this is not a decisional group but I think you took care of that. So obviously we'll need to see what the decisional group, which is the CCWG, has to say about this. Thanks.

Leon Sanchez: I'm sorry, Greg, I had a couple of difficulties hearing, could you please repeat what you said?

Greg Shatan: I said that I was going to note that this is not a decisional group so talking about anything as if it were a decision is misplaced. But I think you touched on that already. Clearly, you know, this is something that's an option that we need to put in front of the full group and it should be included in our options section as such so that the full group can consider it.

Leon Sanchez: Okay so we're on the same page. Next in the queue I have Tatiana.

Tatiana Tropina: Thanks. Hello, Leon. Tatiana Tropina speaking for the record. If we are speaking about strong minorities and options I would also like to have on the record that I would like to include into this option the results of the poll where six I think people expressed their opinion that three documents actually has to be added, not only Universal Declaration on Human Rights, so I would like to have this on the results as well because I believe it's a strong minority. Thanks.

Leon Sanchez: Thank you very much, Tatiana. I think that this is something that we can forward to the larger group when we finalize our document. So, yes, I wasn't opposed to actually including this because it would reflect what we actually did in our working party. So I'm happy to have it as.

So now we could go through the different comments that were made to the document that was originally set up by Niels and Tatiana. And I see that the most prolific commenter is Greg Shatan. So, maybe, Greg, would you like to walk us through the comments that you made to the document?

Greg Shatan: Sure. First I felt that we were kind of - we needed to express with much more specificity, you know, what the results of the comments were. So I took significant extra time before making these comments to not only go through the comment tool but where it wasn't completely obvious from what was in the comment tool went back to each of the individual comments to determine what the position of the commenter was.

So that was the basis for all of the changes here in the introduction so that we could kind of appropriately keep score, if you will, of where the comments were coming out. I think that the impressionistic - the initial impression that was given by the initial draft I think wasn't entirely supported by more - by a deeper dive into the comments. So since we're trying to neutrally report what the results of the comments were I went in and did this work.

So I think that, you know, we can go through, you know, specifically. And I've tried, not in the introduction but further down the page to footnote the specific comments that are being referred to. So, you know, if anybody wants to check my work they can go ahead. I think generally it's good for the other people reviewing this outside of the working party to know which comments kind of the results come from.

So I've noted that many but not all of the analyses being worked on in other groups include some way of finding out which comments the - were relied on in a particular topic. Some did not, others did. So this - I'm not sure exactly what needs to be said. Funny, I see Niels is changing these - I actually had them as words. Tatiana changed them to numerals; Niels is changing them back.

So in any case happy to hear what other people think about any of these points here in the introduction section.

Leon Sanchez: Thank you very much for this, Greg. I have gone through the changes that you suggested in the introduction section and I find them - I mean, I'm in agreement with those proposed changes. It would be best to hear from other participants as well. And maybe Niels or Tatiana have something to add or something to say. Tatiana.

Tatiana Tropina: Yes, well basically I would like to thank Greg for doing this great job of attributing the points to the comments. And this is something which we didn't do, I mean, or we did rather impressionist job in drafting this document so just thank you, Greg, and I agree with all the (attributions) so I think the document really benefitted significantly from this. Thanks a lot.

Leon Sanchez: Thank you very much, Tatiana. So just for the sake of having it of course agreed in the working party I would like to go through each of the sections of the document, (written) very quickly. And of course (unintelligible) whether we can actually be - or go close in each section in the document.

So the first one being introduction, I feel like we already have agreement that this section is okay to go although I see some light editing as we speak. But -

well just going through the introduction very quickly, (unintelligible) in the comment period on the second draft report of the CCWG on Accountability, several comments have been made on human rights language.

And 11 out of 23 comments that addressed this point support inclusion of some language on human rights as part of Work Stream 1. But there was no consensus on what that language should be. Two comments supported inclusion of such language but stated that this work should be part of Work Stream 2. One comment stated that it would not oppose inclusion of human rights language.

And the next bullet, 10 comments that addressed this point did not support inclusion of human rights language as part of Work Stream 1. More specifically, 5 out of 23 comments did not support the inclusion of human rights language in the bylaws. One commenter stated that it was not (unintelligible) opposed the inclusion of human rights language in the bylaws. In addition two comments did not support the inclusion of human rights language in the bylaws as part of Work Stream 1.

Finally, two comments did not express either support or opposition for the inclusion of human rights language in the bylaws. And here I have a question for the pen holders on the document. When we state that - when we state that some comments - some commenters said that this would not feed into Work Stream 1 we have two comments that do not support the inclusion of human rights language in the bylaws as part of Work Stream 1.

Is one of these two comments from the board? Because in our LA meeting the board agreed to actually having human rights as a matter of Work Stream 1. And I feel like we could signal to this, although we are of course obliged to reflect the public comments as we receive them. I think that we should also

maybe insert a footnote into this part of the bullets in which we could state that from these two comments on corresponds to the board and after our LA meeting this would no longer apply as (unintelligible).

So I don't know if that makes sense. I see Greg's hand is up. Greg.

Greg Shatan: First to answer the process question, I just looked at the board's comments and did not reflect Los Angeles so based on the board's comment I put them into the did not support bucket. If - I guess I'd have to go back to the - I don't recall the board's exact statement on human rights from Los Angeles. Somehow that meeting isn't recalled with total clarity by me.

But, you know, if that's what they said, you know, I think it would be a good idea if we had the transcript to excerpt the language so that we give a sense of where the board actually came out. I would say, by the way...

Leon Sanchez: That's a good idea.

Greg Shatan: Yeah. By the way that some of the comments were harder to classify than others. The first time I went through just the public comment tool I had six or seven that were not able to be classified one way or the other. I was able to resolve nearly all of them by going back to the actual comment in question.

For instance, the excerpt from Avri's comment did not state whether or not she supported it. Clearly I would have expected that she supported it and when I went back to the full comment she did in fact. So I moved her over. I was hoping that I could have eliminated all of the did not comment but two just did not express an opinion one way or the other. Those were the ones that are left in that bucket.

And then just so you know, JPNic said they did not oppose or would not oppose. I classified that as support. On the other hand, auDA said they would not actively oppose and I classified that as did not support.

And the only other one that was a little bit tough to characterize was - or that was tougher than the rest was Malcolm Hutty's comment surprisingly, which basically was opposed to any proposal that we had in front of us but to the - and kind of without supporting his own statement said that to the extent it was necessary to do so that something like human rights either is reflected - already reflected or should be reflected in the core values. So while I scored that as did not support that may be a little bit reductive.

Leon Sanchez: Thank you very much, Greg. So as Greg suggested I think it would be good to have the actual transcript of that part of the LA meeting just to check on the language that was actually agreed upon. And I would kindly ask staff as an action item to rescue that part of the transcript and send it to the list so we could review it and see whether we would be including some kind of footnote just to signal that even though we received that comment from the board originally their position shifted at the LA meeting.

So next we have 23 of 92 submissions addressed human rights specifically. And I think that this was something that we had discussed in our previous call. I'm not sure - and I might be mistaken. But I think that we were in agreement to close the numbers to those - to those comments actually received and not the larger number of comments received overall. That might of course be just my interpretation. And I'm not sure - I'm not sure if that's the case.

I mean, in any case I don't think that's - it's something that really modifies very much what we have to say. So then three of the 92 submissions were against the second draft proposal overall. The (unintelligible) the human rights



one. And seven out of 23 comments supported Option 2, which states within its mission and its operations ICANN will be committed to respect internationally recognized fundamental human rights.

Then the last bullet on the introduction, one comment supported Option 1 within its mission and in its operations ICANN will be committed to respect the fundamental human rights of exercise of the expression and the free flow of information. And this is Ed Morris - yes, this is Ed Morris.

Okay so is there any opposition to have this section of the document declared good to go - I mean, closed for the review? Or are we good to go? Okay so I see no one opposing to having the introduction closed only subject to the transcript from the related part of the LA meeting with regards to board comment on human rights.

Then next section is areas of consensus in which we have 11 out of 23 comments that address this issue supported the inclusion of a commitment to human rights in ICANN's bylaws as part of Work Stream 1. One comment stated they would not oppose inclusion of such language.

Then we have the part that addresses the poll, I think, and it reads Working Party 4 agreed with rough consensus on the following text to be added to the bylaws. So here we are talking about what we would actually be proposing. And it says within its mission and its operation ICANN would be committed to respect internationally recognized human rights law. And on the brackets we have of course reflected in the UDHR, (ICCPR) and (ICESCR).

So I think that is pretty much solved the discussion on whether we should be signaling or not. And the way we send it to the larger group is we explain that the brackets section is of course one alternative that could be taken into

account but that must be discussed by the larger group. I think we could have actually our proposed text for the bylaws.

And just to make sure are we in agreement that this could be in fact the proposed bylaw suggested amendment? I don't know if that's an old hand or a new hand, Greg?

Greg Shatan: Two things. One, I think this section should be in our options section since it's not anything that really discusses the consensus between commenters and our written report so that's why I've highlighted the whole thing to move it off into the options section so that, you know, this section is just neutral reportage of the comments; the options section is where we get to let loose. Unless we want to create an additional section, you know, just for discussion of the language or something along that line, you know.

In one of these I had to diverge because there was a written minority comment on which people commented. So didn't really put that under divergence or any of the Zuck DelBianco categories.

And then last and least just to note that we should - the first time we use that abbreviation, especially those other than the UDHR we should, you know, put in a footnote or something, you know, spell it out for the acronym-challenged.

Leon Sanchez: Thank you very much, Greg. And I do agree with you that it might be better fit in the document that we place the highlighted text on the proposed bylaw change and how we reached some kind of - I don't want to say consensus but decision or proposal in - with regards to signaling to any given document on human rights to be on the CCWG options for consideration. I think it would be better put there than where it is at the moment.

So I see that Tatiana has - is in agreement with this proposal too. And I see Niels hand is up. Neils, could you please take the floor?

Niels ten Oever: Sorry, unmuted now. This is my first time speaking so good evening everyone. This is Niels ten Oever for the record. First I would definitely like to thank Greg a lot for his great comments which made the document much more precise and much better so thanks a lot for that, Greg. (Unintelligible).

What I have a question about methodologically-wise is if we're going to put our own analysis under options then I'm getting a bit confused, right? Because what we are working on now is our analysis based on the comments that were made. So and I think that we shouldn't put our analysis as options but we can give options that have come out of our analysis and discussion of the issues brought up, right? Or am I thinking wrongly? Yeah, curious.

Leon Sanchez: Thank you very much, Niels. What we have done in other working parties is to put under Options for CCWG Consideration of course what we think that the CCWG at large should need to consider based on our comment assessment. And of course if we would like to suggest any other discussion topics we should definitely include them in that section. I don't know if that answers your question.

Niels ten Oever: I'm thinking. Could you perhaps repeat it so I have a bit more time to think or maybe Greg can elaborate a bit more on it.

Leon Sanchez: Yes, I'll go to Greg. Greg.

Greg Shatan: Thanks. To be more precise about what I've seen other working parties do in this situation is to take the options that were expressed in the comments, put them in the options section as bullet points, and then to put any analysis,

improvements, changes, additional commentary in italics without a bullet point to distinguish them so it's clear when the working party is speaking as opposed to when the working party is channeling the comments.

So I agree with Niels that making no differentiation between the times when we're acting as spirit mediums and channeling the comments and when we're actually snapping out of our trance and communicating our own thoughts should not be confusable or highly confusable. So suggest that when we move the - our commentary to the options section that we set it off in italics and not bullet pointed so that it's clear that it's commentary.

And I think that will follow the standard that's been set in most of the other documents. Obviously any massively parallel process is going to have some deviation but that's how I suggest that we do it and if we want to drop a footnote that the italicized statements are statements of the working party, but I think it'll be pretty clear once we do it but let's see how it looks. Thanks.

Leon Sanchez: Thank you, Greg. And I like the idea that you're proposing and if there is no opposition to that I suggest we go the way suggested by you. So next in the queue I have Tatiana.

Niels ten Oever: I have one more question, just...

Leon Sanchez: Oh yes, Niels, please go ahead.

Niels ten Oever: ...in terms of clarification, sorry to barge in. But so are we then going to bring up points of our own? Because the way I see it right now is that we have a reaction in the area of consensus to a specific comment, right? And is really made super clear because we're already doing it in italics there that we came up with a specific options in relation to a specific comment.

So if you want to then bring it under options would we then...

Leon Sanchez: I think we lost you, Niels. I am unable to hear you.

Niels ten Oever: ...comments and provide analysis based on that. Or do you suggest that we move this whole bullet point down to options including with our comments? You know, so because I think they somehow belong together, right? Because one is a reaction to the other. And then I think these two remain together to make it really clear for the reader what is meant.

Greg Shatan: Just to answer that briefly. I think in our other groups where there's been let's say an area of refinement that also, you know, consists of an option to be considered by the CCWG it was reported without commentary under areas needed refinement and then listed again under options for consideration with the commentary.

Leon Sanchez: Thank you very much, Niels. Thank you very much, Greg. So I will now go to Tatiana.

Tatiana Tropina: Hi again. Tatiana Tropina speaking for the record. Greg, I have another question for clarification because I'm a bit lost now. We drafted this document using the doc - the Word doc you sent us and it was my understanding that there was some summary or assessment of the comments in the bullet points in each section. So I mean, from your comments to the document I see that some of the bullet points can stay as neutral summary and some of them will go to the end of the document for consideration.

Now I'm a bit lost. So is anything in italic will stay after comments like in areas of consensus in areas needing refinement and wherever? Or everything

will go to consideration? And if not everything will go to consideration where is the (unintelligible) line between what phase and what goals? I'm a bit lost. If you can briefly answer my question it would be very helpful. If not then well thanks anyway.

Greg Shatan: Thanks. I think I can clarify this. Anything that...

((Crosstalk))

Greg Shatan: ...anything that we are reporting as being in the comments should stay in the areas of consensus, refinement or divergence. Any one of those, you know, typically would be under refinement or perhaps - and perhaps divergence. Any of those that also constitutes an options for consideration would be repeated in the options section along with any analysis or commentary or original thinking of the working party.

The idea is to leave the three areas of sections as being pure report - neutral reporting out and to have the options section consist of a combination of the options to be actively considered by the CCWG plus any additional analysis and commentary by the WP that's either, you know, directly responsive to any of those options or that is, you know, more generally based on consideration of the comments.

Leon Sanchez: Thank you very much for this, Greg. I hope this clear your doubt, Tatiana.

Tatiana Tropina: Yes, absolutely. Now it's much more understandable for me. And, I mean, but then it's all about moving the assessment like from one section to another, right? And then I would suggest that maybe we will move to the text of the assessment because there are some language we proposed and we don't know if the group will agree with this assessment or disagree with this assessment.

So if we can agree that Greg or Leon or whoever would rearrange the structure of the document I am fine with this. I would suggest that maybe we move to substance then. Thanks.

Greg Shatan: I'm happy to - after this call just, you know, suggest where everything should be moved to. I don't think I have edit rights but I can do it as suggestions then everyone else can see where everything went and whoever has edit rights can accept it subject to further discussion.

Leon Sanchez: Thanks, Greg. I don't know I think that Niels is the owner of the document so if you could enable editing permission to those who have been commenting and are working on the document that would be excellent, Niels, or Tatiana. I am not sure who is the owner of the document in Google docs.

So let's move forward. And in the areas needing refinement, we have two comments (unintelligible) inclusion of the commitment to human rights, did not support including this work in Work Stream 1. Rather these comments proposed moving all (unintelligible) of this topic to Work Stream 2.

And I'm not sure if this is something that we could (unintelligible) an area needing refinement because I think that it's - it's something that it really doesn't show a lot of traction but of course I'm happy to listen to other thoughts.

On the next bullet, the next point is that 8 out of 23 comments (unintelligible) that commented human rights should not burden ICANN's (unintelligible) and scope of activity or mission. Then 2 out of 23 comments expressly stated that ICANN is already required to respect human rights in its operations by virtue of Article 4 of ICANN's Articles of Incorporation.

One comment expressly stated that Article 4 did not provide such a requirement. And one comment stated that Article 4 would need to be amended to specifically mention human rights.

Then where it comes to referral to specific documents there is no support for mention of the Universal Declaration of Human Rights, 6 out of 23. And this is something important because while we think that there is no support, I'm not sure if it's 6 out of 23 would be a clear signal to level this as major support to the suggestion of signaling or referring to the UDHR.

So the next (unintelligible) that an equal number of commenters also point out that the CCWG must rely only on (verbatim) text from assessing human rights instruments, also 6 out of 23. More details on the (unintelligible) of how ICANN integrates human rights impact analysis within its mission (unintelligible) before text can be added to bylaws. Again 6 out of 23.

And then a subset of this group thought this should be done in Work Stream 2. This is 2 out of 6. And we have some additional text here in addition to proposed language Working Party 4 will provide an explanatory document which includes the rationale for adding a human rights commitment to the bylaws and an overview of the discussion on the choice of bylaw language. Furthermore, Working Party 4 will provide a template for assess this further work will be undertaken in Work Stream 2.

Then our Bullet Number 7 is the new working proposed in public comments, these are the two options for, I mean, just an option that was proposed by one of the commenters that's in its mission and its processes and operations ICANN will respect and protect fundamental rights as defined in international law and applicable international conventions and local law.



ICANN will also establish processes to clarify and document the rights impact of proposed policies and in operations. ICANN appeals mechanism may be used for human rights issues relevant to ICANN's mission and core values along which are freedom of expression, free flow of information and privacy on the Internet.

And here I see the note which would be the note that us as Working Party 4 would be - this would be our saying to this suggestion. And it reads, Working Party 4 believes that adding the reference to protection of human rights is inappropriate in the bylaws (unintelligible) concerns were raised in the public comments and in the CCWG discussions about the necessity to make a clear distinction between the duty of states to protect and enforce human rights and obligations of other actors to respect human rights.

While there is a general agreement that ICANN should respect human rights within its mission, external enforcement is considered highly inappropriate by Working Party 4. Any wording that might lead to demands to enforce human rights shall be avoided. Working Party 4 has discussed the language "fundamental human rights versus human rights" and decided that the latter is more appropriate.

Fundamental human rights are affected differently in several geographical areas such as the European Charter of Fundamental Rights, or the Canadian Charter of Rights and Freedoms. Working Party 4 also considers adding the reference to specific rights to the bylaws text will not be appropriate. One cannot selectively mention or apply human rights because they are universal, individual, independent and interrelated.

So I guess I would like to call for any opposition from this suggested text. I am absolutely in agreement with what has been put in the document in this

comment by the Working Party 4. But I would like to - I would like to listen if there are any oppositions.

Okay, no oppositions. And I see a couple of green ticks. I see a green tick from Niels ten Oever. So we can have this as something locked into a document.

Then our next bullet, Number 8, new wording proposed in public comments. With (unintelligible) item will be committed to respect the fundamental human rights of the exercise of free expression and the free flow of information. This is also - merits of a comment, it has comment from the (unintelligible) and this is Working Party 4 chose not to mention a specific right or several rights because one cannot selectively mention or apply human rights since they are universal, individual, interdependent and interrelated.

So I guess this comes down to more or less the same agreement that we just made in the previous paragraph. And I see Greg Shatan's hand is up so, Greg, could you please take the floor. Greg, might you be on mute?

Greg Shatan: I'm just trying to see if this is the same as Option 1 or this is a slight variation on Option 1. I think this actually is Option 1 that we propose so it's not new wording unless I'm incorrect.

Leon Sanchez: Okay so I don't have our...

((Crosstalk))

Greg Shatan: I have it, it's in the last bullet point under introduction. Within its mission and in its operations ICANN will be committed to respect the fundamental human

rights of the exercise of free expression and the free flow of information.

Yeah, okay so away it goes.

Leon Sanchez: Okay so if it's the same I think we could strike that part of course from the document if we agree.

Greg Shatan: We don't have to keep hammering it.

Leon Sanchez: Okay. So next is Bull Number 9, proposed reference to rights that people have offline must also be protected offline itself but I think that it was meant to be online - in accordance with international human rights, legal obligations including the international (covenants) on civil and political rights and economic, social and cultural rights. And the convention of the rights of persons with disabilities. This is one out of 23 comments.

And here the Working Party 4 suggests to make this reference in the explanatory documents to the bylaws language but not in the bylaw itself. There is no need to refer the equal protection of rights offline and online in bylaws since it has been (unintelligible) agreement on these at the international level.

So I think this is also something that we should definitely be supporting. I agree with this way forward. And I don't know, I see Greg's hand is up. I don't know if that's an old hand or a new hand, Greg?

Greg Shatan: Just wondering if in order to footnote this if the original drafters remember whose comment this came out of.

Leon Sanchez: Okay so that would be something for Niels and Tatiana.

Greg Shatan: I think they're looking it up so we might as well move on.

Tatiana Tropina: Sorry for interrupting and I found it. It's in the chat in my comments.

Greg Shatan: That's great. Did we lose Leon or are we just...

Leon Sanchez: No, no, I'm here. I'm sorry, I was on mute. I accidentally put - hit mute. But so where did you lose me? I was reading through the areas of divergence.

Greg Shatan: I did not hear any areas of divergence.

Leon Sanchez: Oh okay so then I was all the way on mute. I'm sorry for that. So on areas of divergence we have 10 out of 23 comments did not express support for the inclusion of human rights language in the bylaws as part of Work Stream 1. And I think we can correct this.

Okay, most typically five out of 23 comments did not support the inclusion of human rights language in the bylaws. One commenter stated that it would not actively oppose the inclusion of human rights language in the bylaws. In addition two comments did not support the inclusion of human rights language in the bylaws as part of Work Stream 1.

Finally two comments did not express either support or opposition for the inclusion of human rights language in the bylaws. Then we have several comments express concerns about the implication and efficacy of a human rights commitment.

While two comments mentioned that specifically mentioning free expression and the free flow of information in the bylaws is needed to ensure that free speech and the free flow of information is respected throughout ICANN's

operations, 2 out of 23, others suggest broader wording to avoid human rights cherry-picking.

And here we have of course a number to be determined out of 23 and the comment from the Working Party 4 would be that Working Party 4 chooses not to mention a specific right or several rights because one cannot selectively mention or apply human rights since they are universal, individual, interdependent and interrelated.

So I guess this has something that we are all in agreement since it's been said before. And I see Niels's hand is up. Niels, would you like to take the floor?

Niels ten Oever: Yes, thank you, Leon. It's in reaction to the description under Footnote 14. I'm not sure if that is the best representation of the opinion because I think one could also easily turn the statement around and say that two comments did support the inclusion of human rights language in the bylaws, just not as part of Work Stream 1. So I'm - to say I wouldn't necessarily say - I wouldn't put that under that they did not support the inclusion. I would actually say that they did support the inclusion just not as part of Work Stream 1 but in Work Stream 2. So that's a matter of wording which I would suggest changing.

Leon Sanchez: So maybe...

((Crosstalk))

Leon Sanchez: ...an alternative wording would be that two comments considered that including human rights language from one might be - might be something - what was the word that the board used? I don't remember. Premature...

Niels ten Oever: Premature. No because they're not - premature is imprecise and this is wasn't exactly so I offered some language suggestion in the text which two comments did support the inclusion of human rights language in the bylaws but only as part of Work Stream 2. Or we can keep it (button up) as part of Work Stream 1. We can also keep it like that.

Leon Sanchez: Okay. I see other hands up. I see Tatiana and Greg so, Tatiana.

Tatiana Tropina: Thanks. Tatiana Tropina speaking. I'm wondering - I already wrote on the chat if we have to make our assessment so expressing opinion concerning these proposals to move everything as a part of Work Stream 2 and so on because we didn't express anything concerning this in the initial draft. So there is no opinion. And I would be happy to hear what other members of the group think about this.

Leon Sanchez: Thank you, Tatiana. Any reactions to Tatiana's comment?

Greg Shatan: This is Greg.

Leon Sanchez: Greg, you are next on the queue.

Greg Shatan: Yeah, in terms of process if there was - if anybody supported the language but didn't mention Work Stream 1 or Work Stream 2 I just took that as support for the proposal period. I'd say the majority of those who indicated support did not specifically say this must be in Work Stream 1. Several did, you know, underscore that they - the importance of having it in Work Stream 1; others just expressed support without saying anything about the work stream. So I counted those all as support or convergence.

Since our proposal is specifically to deal with human rights language in Work Stream 1, I would still count it as an area of divergence if the support - if the commenter did not support that proposal. But I, you know, appreciate adding the nuance that they did support the overall concept just not as part of Work Stream 1. So I think, you know, we need to tease that out. But it's still divergence from our proposal.

Leon Sanchez: Thank you very much, Greg. I see Niels's hand is up. I don't know if that's - okay, so now it's lowered. Okay so are there any other comments as to where we are standing now? Okay so no other comments, let's move forward.

So I lost track of where we were reading but I guess we are on Bullet 2 of areas of divergence which is - it is believed that only states have direct human rights obligations. This is one comment out of 23. And here our comment would be that Working Party 4 recognizes that states have human rights obligations under the international law. However, while it's a duty of the state to respect (unintelligible) human rights private sector is required to comply with all applicable laws relating to human rights.

There is a broad agreement within the group that the bylaw amendment will reaffirm ICANN's commitment to comply with the international law in its operations which already exists in the Article 4 of ICANN's Articles of Incorporation. The amendment is not (saying) to impose any duty to enforce human rights.

I believe that this is a very pertinent observation or clarification because we wouldn't want to have ICANN police any kind of human rights. Are we in agreement with this paragraph from Working Party 4?

Greg, your hand is still up, is that a new hand or an old hand?

Greg Shatan: It's an old hand but I'm actually still working on the prior paragraph. I went back and looked at the two Work Stream 2 comments and they actually don't support they just defer. So I'm, you know, put that in.

Leon Sanchez: Okay thanks. Thanks for that, Greg. Any other comments on - with regards to the area of divergence on that states are the only ones that have direct human rights obligations?

Okay so the next area of divergence would be that there's perceived risk that adding human rights to bylaws language might create demands from the civil society for human rights enforcement outside of the ICANN's mission and scope of activity.

Then our comment would be Working Party 4 stresses the necessity to make it clear in the bylaw language that ICANN commitments (unintelligible) to respecting human rights within its mission. Working Party 4 intends to avoid any bylaw wording that might lead to demands to enforce human rights. And I believe that we are all in agreement with this text. So if there is any - if there is no opposition? It's good to go.

Okay so the next section is options for CCWG consideration. And here we have that based on the public comments analysis some further areas for exploration were added (unintelligible) such as first, collaboration in Work Stream 2 with cross community working party on ICANN's corporate and social responsibility to respect human rights.

Our comment to this is that Working Party 4 aims to take all recommendations, suggestions and comments into consideration and invites everyone to join the work as described in the CCWG procedures documents.



I see David McAuley's hand is up. David, could you please take the floor?

David McAuley: Thank you, Leon. David McAuley here. I think I was having a hard time putting my hand up; I may have had the same problem there that Niels had. And so I missed something as I switching from the system to the phone. But in any event, and I have to - I just want to go back for a bit to make an observation and that is in the section where it says the WP4 recognizes - this is the section we spoke about just a few minutes ago that talks about only states having direct human rights obligations.

There is a sentence in red there where the WP4 is commenting that would say there's broad agreement within the group that the bylaws amendment will reaffirm ICANN's commitment to comply with. The articles actually say not to comply with but to operate in conformity with international law. I suspect there may be a slight difference but I'm not sure. I just wanted to note it though. Thank you.

Leon Sanchez: Thank you very much, David. And this has been edited as we speak by Tatiana I think - or no, it's (unintelligible). So that's - I think that's already been fixed. So next on the queue I have Niels. So you have an unstable connection, Niels.

Niels ten Oever: No, my connection is fine but Adobe Connect seems to be a bit unstable and other people seem to experience the same so I'm very sorry for the inconvenience that's causing.

I would like to go back to the text I was - we were discussing with Greg about the two comments that did not support proposal in - under Work Stream 1. Because right now I think actually it doesn't represent either what they say

because they actually do support the inclusion of human rights but not under Work Stream 1. And right now it says they did not support the proposal to include human rights language in (unintelligible).

Leon Sanchez: Okay, Greg, would you like to...

Niels ten Oever: ...any acknowledgement that these proposals actually supported in principle to include human rights is now left from this commentary. So I think it did not necessarily get much better.

Leon Sanchez: Thank you, Niels. Greg, would you want to - would you like to comment on that? Either way you are next in the queue so please go ahead.

Greg Shatan: Sure. First to respond to that at least based on the extract in the public comment tool the government of Australia used the rather nuanced and neutral - we do not, in principle, oppose the inclusion of a reference to human rights in ICANN's bylaws but as there's not yet an agreed definition of ICANN's role in relation to human rights we suggest that this issue is best deferred to Work Stream 2 to allow the community time to consider further.

So this might be seen as support based on, you know, we do not oppose. And the other statement from government of New Zealand merely says they welcome a discussion of ICANN's role and the possible inclusion of human rights as a bylaw within ICANN. So I don't see that as support.

Perhaps the best thing to do is to - since these are both very nuanced statements as (the fit) statements by government, we should footnote the, you know, drop the actual language into the footnote so that we're not, you know, creating - either creating two positive or two negative an interpretation of it but just let them kind of speak for themselves (unintelligible) as they say.

Leon Sanchez: Thank you very much for this Greg. So I think we have a way forward on this issue on the comments regards to Workstream 1 and Workstream 2. And I see that Avri has joined us. Welcome Avri.

And we are now going through the options for CCWG consideration. And the next bullet will be adding a clause considering (all things) human rights in Session 4...

Greg Shatan: Actually...

Leon Sanchez: Yes Greg.

((Crosstalk))

Greg Shatan: ...say what I had put my hand up about since I was speaking in response to (Milton).

Leon Sanchez: Okay. So just - you're next in. Thanks Greg.

Greg Shatan: Yes. Apologies. I think - and this is going back to the Number 2 under areas of divergence, which, you know, we will move. I think - I don't think it's a statement we can make unless we, you know, discuss it further at least that there is broad agreement within the group that the bylaw amendment will reaffirm ICANN's commitment to carry out its activities in conforming of relevant principles of international law and application international convention, which already exists in Article 4.

Part of it - I think only - we had two commenters who stated that they thought that Article 4 did contain a commitment that included a commitment in human

rights and one that said it didn't and one that said that it wouldn't unless we included more language.

So I think we're - I don't know if any of us are prepared, you know, if we're prepared as a group, the issue's kind of legal opinion on what's - on how to interpret Article 4. So I don't think we've had any chance to discuss this so that we could make any statement about whether we agree with this or not and whether this is a reaffirmation of anything or it's a new statement or what.

If this extends - if this changes anything that ICANN does or it doesn't, there's an interesting topic and reaffirmation is kind of an interesting topic in and of itself. So I just - this may just, you know, require some discussion before we can figure out what we actually all think about this.

I guess, you know, that's just obviously the, you know, part of, you know, taking a document that, you know, and moving it from, you know, a draft - by some draft or to reflect the whole group. It's just part of the process. But I am, you know, concerned that we kind of don't overdo. Thanks.

Leon Sanchez: Thanks Greg. So could we say that in these paragraphs we could change maybe a little bit wording so I agreed? There is broad agreement within this group that the intent - I'm going to - I'm going to write a little (speed) but intent for the bylaw amendment would reaffirm or would (aim) to reaffirm ICANN's commitment (unintelligible), I'm sorry (unintelligible). Would that read better?

Greg Shatan: Well I don't think this - the bylaw amendment says anything about ICANN's commitment to international law and conventions other than the issue of human rights.

So it's not really reaffirming anything I guess except to the extent that if you first take the position that Article 4 implicitly includes a human rights commitment to the extent that such human rights are embodied in applicable law. Then this reaffirms and makes explicit ICANN's commitment to do so.

But first we all have to agree or have rough consensus or something that Article 4 implicitly has that commitment in it. And, you know, we had two commenters that said yes, two commenters that said no and 90, you know, 88 commenters that didn't into such granularity.

Of course now this is not just about comments at this point. This is, you know, also independent thought. But, you know, this is a - this is a point that on which reasonable people can differ.

Leon Sanchez: Okay. Any other thoughts on this? Any other opinions on whether we should actually keep this sentence or we could live with striking it from these comments? I see Avri's hand is up. Avri.

Avri Doria: Yes. Hi. This is Avri speaking. Again apologies. I'm obviously one of the ones that said it most definitely does not say that. The only reason we had a commitment to freedom of expression and a free flow of information before was because NTIA guaranteed those to human rights.

So I think it's a fair statement. I know I seem to be in a strict majority - minority of one when I think it's a false statement. But as there are no other articles that guarantee it, there are no state laws that guarantee at full cooperation, there are no federal laws that guarantee at full cooperation and the articles are not explicit about it, there are the bylaws.

You know, you could say we have Board agreement that it says it but I believe we will be saying something false. Perhaps true that people - it's a fact that based on agreements that is not the case that it's a fact. And I think the lawyers even told us that. So, you know, if we want to say that there's Board agreement on us believing something untrue, fine.

Leon Sanchez: Thank you very much Avri. And I see (Neil) is saying incorrect. Lawyers told that it was I think. Okay. So at this point I think we should make a decision on whether we keep the sentence or whether we strike it.

My suggestion would be to strike it since it apparently is creating more confusion and from creating more problems that it is solving. So would there any - would there be any opposition to striking the sentence? And I see that Tatiana's hand is up.

Tatiana Tropina: One moment. Excuse me. Could you please clarify? Are we discussing the sentence that starts with W before believe or not? Just yes or no.

Leon Sanchez: We are discussing the sentence - well actually it's Bullet 2 of areas of divergence. We have the area of divergence and then we have a...

((Crosstalk))

Leon Sanchez: ...from Working Party 4. And it says Working Party 4 (recommends) that (states have) human rights allocations under the international law. However, while it's a duty of the state to protect human rights, private sector is required to comply with all applicable laws including without limitation those related to human rights. I think that...

Tatiana Tropina: Yes. Okay. Sorry (Leon). Sorry for confusion because I thought that - there was drop in the audio and I thought that another sentence concerning Article 4 was discussed. I'm not in the position. Thanks. I suggest removing this sentence.

Leon Sanchez: Okay. Thank you. So are there any opposition to strike this part of the sentence?

Greg Shatan: Sorry. Which part is being struck?

Leon Sanchez: The part to be stricken is this one that I highlighted.

Greg Shatan: No objection.

Leon Sanchez: No objection. Okay. So we have no objection. So I will now go ahead and strike. Done. So next bullet would be Number 3, (present) risk that adding human rights to bylaws language (unintelligible).

Right. So we had already gone through this. And we - in some way this was kicked back to this subject that we were just talking. I would now continue with the option for CWG consideration.

And we were already in Bullet 2 of these options. And it says adding across a specifically (know) human rights in Section 4 of the Articles of Incorporation. And our comment states that Working Party 4 believes that Article 4 of the Articles of Incorporation (outlines) the general obligation to carry out with (unintelligible) conformity with international conventions and local law.

And there is no need to cherry pick specific international instruments such as those related to human rights and provide a reference to them. Specific

obligations with respect to human rights should be outlined in the bylaws. Are there any comments or suggestions to enrich this text?

I see a (call) from Matthew Shears on chat (box). It says international law does not necessarily include human rights. It depends on interpretation. So the addition of human rights is useful. Any thoughts or comments on this? Greg, is your hand still up or is that a new hand or an old hand?

Greg Shatan: I took it down for a nanosecond because that was an old hand and I put a new hand, which looks exactly like the old hand. (So it's) new.

Leon Sanchez: Okay. So you're next in the queue. Please go ahead.

Greg Shatan: Thank you. The corollary to the statement that you can't step in the same river twice. In any case, I think this language kind of has the same problem as the language we were discussing earlier and ultimately took out that it, you know, advances a particular interpretation of Article 4.

Although I am a lawyer; I'm not a, you know, international human rights lawyer. I'm just wary that we're kind of getting into kind of general - kind of giving legal advice or making, you know, statements based on the law.

And I think to the extent that they are statements based on the law in general that's one thing, you know, if they are settled statements. But if where we get into interpreting the bylaws of ICANN, I think that that point we're starting to, you know, maybe cross over into something that's probably beyond our remit; that we're all having, you know, a go at it in one way or another. But I think that this, you know, again, you know, this has the WP - the Article 4 problem, so.



Leon Sanchez: Okay. So it seems that we need to have maybe some kind of discussion with our legal advisors as to how to interpret the scope of Article 4 in Articles of Incorporation. I don't know if that makes sense or just with the (outline). What are your thoughts? Would be useful to go back to our legal partners and ask them for some kind of interpretation of Article 4 in Articles of Incorporation. (Unintelligible).

Greg Shatan: Actually I would not suggest going that direction. I mean I though our position is that rather than get into a question of how to interpret Article 4 that for - at least for purposes of clarity a separate statement - a separate bylaw specifically addressing human rights is the most straightforward path.

At least that's kind of the approach that I would endorse. And I think that, you know, implicitly because we aren't trying to change Article 4. And we're instead, you know, dealing with a separate bylaw that seems to be where we're going.

So I don't think there's a reason for us to wade into the issue of whether or not or to what extent Article 4 already applies to ICANN and the human rights context. You know, that - I - we may want to get into that in our supporting document because it's not an irrelevant issue.

But I think that in terms of just at this point, you know, in terms of getting something ready for next week, you know, simply to state that, you know, we're following the CCWG's general principle of putting in a freestanding statement regarding human rights rather than dealing with any issues of interpretation relating to Article 4. That's my thought. Thanks.

Leon Sanchez: Thank you very much Greg. Next on the queue I have Tatiana and then (Neil). Tatiana.

Tatiana Tropina: Thanks. Tatiana Tropina speaking for the record. I honestly do not understand the arguments about this sentence concerning of human rights. It would be who drafted this. And maybe we can make it more neutral of course that it doesn't provide like for example obligation but it's a commitment of the ICANN.

It's not even interpretation of this article. Is just a few quotes from the Article 4 of the bylaw that ICANN should like carry out as activity and confirm activity relating to international law.

If you want to believe the interpretation like there is no need to reference specific documents, then well I'm fine with this. It was just a suggestion for discussion for the working group. But I don't think that this sentence (asserts) anyhow to ICANN's commitment to respect human rights under the Article 4. Thanks.

Leon Sanchez: Thank you very much Tatiana. So I would suggest, you know, as we move forward that we are reviewing the options for CCWG consideration that we just present the option as it stands without any kind of comment or addition from our working party because this is something that is going to be discussed of course by the larger group.

So I would suggest that, you know, as we move forward we either bracket these comments or we strike it and move forward to the next - to the next point. So are there any opposition on actually presenting this as it stands without the comment? That would mean that we would be striking the comment. (Neil) is asking we cannot simply strike it - anything we don't address, right.

And I think that we could - when presenting this to the larger group, we could comment on this but having it in the document to deliver it could give some wrong signals the larger group. So I would suggest that we strike this from the document and of course when we present this to the larger group we give - provide them explanation on what we discussed on this call. So are there any...

((Crosstalk))

Leon Sanchez: Yes (Niels).

Niels ten Oever: I would say not mentioning - I would say not mentioning it is wrong because it's a comment that someone made and we cannot leave like a comment and not mention. I think it's not giving respect to the commenter.

We do not however need to provide a full analysis if we do not agree. We should do things we agree on. It's that we want to address it in a bylaw. So let's put it in the text WP4 believes more appropriate to address this issue in the bylaw. Boom. And then we're done. And that relieves all the pressure of articles are gone. Would that be an opportunity? Would that be an option?

Leon Sanchez: I could definitely live with that. And just to clarify, I wasn't suggesting that we strike Bullet 2. We would of course need to present this to the group. I was only suggesting that we stroke our comments of Bullet 2 so that we could present it and have the larger group assess the situation. But if - I mean I can - I always should definitely respect the comment and present it to the larger group.

So I see that - I believe Greg and you - you are already editing the document. So we would be just seeing that Working Party for delete. Is more appropriate

to address this issue in the bylaws. And I think that - I think that's a very nice and elegant solution to - for us to move forward. Greg, your hand is up. Is that an...

((Crosstalk))

Leon Sanchez: (Niels).

Niels ten Oever: ...option to restate the current proposal. So the current proposal is WP4 believes it is more appropriate to address ICANN's human rights commitment in the bylaws.

Leon Sanchez: Exactly. Okay. Perfect. So next bullet point is the bylaws language or refer to our obligation to respect human rights within the ICANN mission to avoid any (demands come forward) protect human rights. And our comment is that we fully support this objective. Do we have any objections to this last sentence? (Unintelligible) no objections. And Greg's hand is up. Greg.

Greg Shatan: Thanks. I'm beginning to feel almost - like I'm almost as bad as Kavous or (Malcolm); not that I don't appreciate their many contributions but I generally don't try to take up quite this much air.

Specifically question first was if we could again footnote this so that we can indicate which comment or comments this came from. And I'm - I guess the phrasing of this I think is a little awkward, which is why I wanted it to go back to the comment or comments that it came from unless this is a new thought from the working party. Because I'm not sure that referring to an obligation to enforce to respect human rights necessarily avoids - by itself will not lead to demands to enforce it and/or protect human rights.

And I think - and in any case I believe our language is to respect human rights. That's we've, you know, in both cases that were suggested. So I think we just need a little more clarity around this one. And this is our intention. The question is just whether it's expressed.

Leon Sanchez: So would you mind suggesting an alternative wording for this Greg?

Greg Shatan: Well, I guess, you know, first I don't know whether this is a - so I see it says this comes from a comment. I know the last two didn't come from comments, which is why I put them in italics.

And so I think what we should try to do is go back to the comment itself and then either - if this is exactly what it says in the comment I'm not exactly sure that it works.

But I do agree that, you know, we're trying to draw a line between respecting human rights without turning ICANN into a human rights enforcement mission. So I reserve further comment until I kind of get back - see which comment this came from and then try to work with it.

Leon Sanchez: Okay. Good. Fair enough. So next in queue I have Avri Doria. Avri.

Avri Doria: Hi. This is Avri. My connection keeps going up and down. I just was trying to get - it looks like there's bracketed language in this thing we're agreeing to. So I was just wondering.

Leon Sanchez: Yes Avri. There is in fact...

Avri Doria: (Unintelligible).

Leon Sanchez: ...some bracketed language.

Avri Doria: To Greg's question, I don't see in what way respect means enforce. So I say I don't understand the manner in which respect could be interpreted as enforce. Those are very different concepts and enforce that's what we meant to say. Thanks.

Leon Sanchez: Thank you very much Avri. We are just about to see the end of our meeting. We have two minutes left. So I would like to recap in a very quick way. We have agreed to be production as it is now. We have agreed to be areas of concern (to) as they stand now.

And we have agreed to areas needing refinement. And we have almost agreed on areas of divergence. So actually we have agreed on areas of divergence. And we are almost (done) with the option for CCWG consideration.

So I think we could continue the discussion of the two last bullets, which are Number 4 to ensure that there is clarity between (a pathway) internal obligation for ICANN and an active external for the (growth). Explanatory document could lay out the difference between the role of companies to respect human rights and the role of governments to protect human rights.

Here are the comments for the working party is that working party will reflect this issue in the explanatory document, which I think it indeed addresses all the points. And then the last bullet point would be a need to discuss a bridge to divergence within the public comments concerning the choice of language and references to specific rights. This should be reflected in explanatory document.

And here our comment is that Working Party 4 recognizes the need. The discussion on choice of language will be summarized in explanatory document.

So I think we have gone through this document. We are reaching the end of the call. I think we made a lot of progress. Thank you very much to the penholders, (Neil), Tatiana, (Greg) for all your comments. Of course the rest of the attendance for this call, for - also for the discussion. Thanks Avri for your comments as well.

And I suggest we end the call. And just as a next step we continue fine tuning this last section of the document a produce a clean version of the document so we can circulate it to first the working part list, have a proofreading of the document.

And if we agree that it is a document that is good to go, then we would be forwarding it to the larger CCWG as planned before or in - by our deadline, which is October the 12th. Are there any objections to move forward with these suggestions? Okay. So there are no objections. So thanks everyone for attending this call.

Niels ten Oever: Sorry (Leon), I have a quick question. Sorry. The deadline is at 12:00, right?

Leon Sanchez: Yes, 12:00.

Niels ten Oever: The deadline is at 12:00. So where are we going - when and where are we going to work and agree on the next version? Is (there going to be) a call?

Leon Sanchez: We could schedule another call or we could continue the discussion...

Niels ten Oever: Yes. Because - or do you want to do it on email because we need to agree on a process of how we're going forward being we're going to submit this, no?

Leon Sanchez: I was suggesting we - I was suggesting that finalize this document on the list in order to not have another call scheduled because I believe that everyone has very heavy schedules on many calls in the next day. So I would suggest that we finalize the comments - I mean the document in the list and we agree to it to the mailing list.

Niels ten Oever: Okay. Excellent. Thanks.

Leon Sanchez: Good. Well thank you very much. This call is now adjourned. And talk to you all soon. Bye bye.

END