
NIELS TEN OEVER: I'm very sorry, staff. Sorry, I should have asked for that, so yes, we're starting now, and could you also proceed to the next slide please?

We'll start with the roll call, so everyone who is connected to the phone bridge and is not on Adobe Connect, could they please make themselves known? Who is the person whose number ends in 8361?

DANIEL APPELMAN: Sorry, it's Dan Appelman.

NIELS TEN OEVER: Great, Dan, thank you very much, so you're now also on the roll call. From the absentees, I got a message from Nigel Robert that he could not be present. Does anyone have any alterations to their Statements of Interest that they would like to declare? No? Does anyone have any additional points that they would like to add or amend to the agenda? If not, then let's dive right into the discussion. We have three different documents open that we're currently working on in parallel in this Design Team. You'll see the links for you on the screen.

The first document is a summary of what was agreed and discussed on human rights during Work Stream 1. I have gone through the document, and I have not seen a lot of changes. I think, actually, most [heat] is in the last document, but still, I would like to invite the people that have been working on the summary document to give us a short update if something progressed or if something has happened. So who of Tatiana,

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David Margolis, Greg Shatan or maybe even Jorge, can I invite to comment on this document and the progress that has been made?

Tatiana, please, go ahead.

TATIANA TROPINA:

Hello, everyone. No, there is no progress on this document. I think we were undecided about the last point, whether we are going to add a summary from the Work Stream 1 report. I think, basically, after the update we made on the call yesterday, this work should be more or less finished in terms of updating the participants of this group. But I will take some time this week just to finalize it so everyone can have a look then, but for me, the main decision is that we are adding the information from the final report of CCWG-Accountability, but this is more or less a formality, I believe. I think I will just add it on Jorge's suggestion.

Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana. I think that is an excellent idea, because by adding that, I think we can finalize the discussions on this on the document as well.

I think that the other issues are not really consequential anymore. I think that for everything, a solution has been offered, right? For all the open issues. So if that is the case, I will have a look at it afterwards and after Tatiana added the last text, and then I'll see if we can resolve the final issues, and then hopefully, by next week, we can finalize this

document. I see no response to that, so that seems to be a concrete and constructive way forward. That means we can continue to the next discussion, and that is the document on the concerns.

Because of the unfortunate news we had from Paul Twomey, I think not too much work has been going into this document either, but we already knew this, and Paul Twomey already excused himself for it.

Can I please ask people that have their microphone on to mute it? That would be Farzaneh and Kavouss, if you would be so kind as to mute your microphone.

Indeed, as it is in a document that will follow, as well as on several of the calls, specific concerns have been brought up, and I would suggest that we try to move them into this document so we populate it further. So I'll definitely –

I'm very sorry, Kavouss, but your mic is not muted. Thank you.

So it would be great if we can continue adding more concerns here and keep this document open, because I think it is quite relevant. Tatiana has been going through records in the calls and chats to put concerns in the doc, but has been waiting for Paul, because he was supposed to lead on this one. Yes, that'd be great. Okay, so let's do that, but I definitely think we should keep this document open even though it's not progressing very fast, because I think it is good to keep an archive of concerns that we've discussed, I think it's relevant.

If there are no further discussion points on this document – I see no hands, I see no comments on the chat – then we can move to our latest

document, and that is a document that we only opened after last week's calls, but that has already got four pages and quite a lot of discussion, and I think we will spend most of our time discussing this document, which is the document on the draft framework of interpretation on ICANN's Human Rights Bylaw. The link is on the screen, and this could be the draft framework of the job that we finally need to do.

I populated it with several questions that several people have also replied to, and I will try to go through the document from top to bottom and see what are concrete to-dos and discussion points that we can get from here, because I think there are many, but it would also be nice to get some concrete work out of this.

So the first half page is the text of the Bylaw and links to other documents, but as one of the first comments that Jorge Cancio made is that a preliminary issue is to consider and discuss the effect and legal implications that we're talking about a core value within the new Bylaws.

So there is this category in the Bylaws, which is a core value, and our Human Rights Bylaw is one of them, so it would indeed be interesting to understand what that concretely means, and my proposal would be to bring this up directly with ICANN Legal, because they have been the authors of this, and they should probably be the best interpreters of this.

Would anyone have a problem with that, or would anyone have a suggestion to approach this differently? I see a question from Paul Mc

Grady in the chat, and Paul asks, “What is the question? Is it the meaning of core value?”

Yes, Paul, that would indeed be the question, so my question would be to ICANN Legal, “What constitutes a core value, and what are its legal and non-legal implications?” So what does make it different from other parts of the Bylaw? Because speaking to different people, people have different ideas about it.

Okay, so I see Paul is asking, “Should we ask the community rather than the lawyers?” Well, I think we are part of the community, but probably the lawyers have a very concrete idea about ICANN Bylaw, and I would indeed like to see it as a starting point for further discussion. We do not need to abide or accept the explanation ICANN Legal gives us, but I’m pretty sure ICANN Legal has a pretty concrete idea about what it could or should be for them. I see Kavouss has his hand up. Please, Kavouss, come in.

KAVOUSS ARASTEH:

Thank you very much. I think each one of us may or might have concrete ideas, so please do not distinguish and do not give any additional priority to any lawyers, whether ICANN lawyers or any outside lawyers. Every one of us has the ability and has the right to make interpretations. We are not a passive listener.

Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss, and I see Ann's hand is up. Ann, please come in.

ANN: Yes, thank you, Niels. First, I was wondering if staff could actually post the document that we're all discussing, rather than just having the agenda remain there? I mean you can click through, but then it sort of takes over the whole screen, and I think it would be helpful for everyone on the discussion if we could actually see the document that we're discussing.

And then also, beyond that, you probably noticed that my main question – and I certainly don't object at all to having ICANN Legal advise us what they think the current requirement entails. I think it's just one piece of information and can be helpful. But I think what Paul McGrady has raised is kind of the separate issue of what respecting human rights means as a policy matter.

I've always been a little bit confused myself about how the Framework of Interpretation interacts with the whole ICANN policymaking process or policy development process, what is the relationship between our Work Stream 2 work and the whole policy development process with respect to human rights. So that's kind of one question I need to try to get a better handle on.

Then the last thing is that I believe that when the language and the Framework of Interpretation was taken, and whether it was taken from [inaudible] or wherever and it was taking about ICANN needs to respect human rights in its business relationships, and I do think that this is a

very important principle. But of course, when we talk about business relationships for ICANN that are definitely very much within its scope and mission, one of those business relationships is the contract that ICANN signs with registries when it awards a registry contract. I would read this Framework of Interpretation as basically requiring ICANN, prior to entering into such a contract to award a registry a top-level domain contract, that it would in fact need to conduct due diligence to make a human rights impact assessment prior to awarding a registry contract.

Now, that in and of itself is perhaps not a bad idea. The only question is – everyone keeps saying, “Oh, ICANN is not a content regulator and so they shouldn’t be making qualitative judgments on the purpose of any particular top-level domain,” or whether or not there is a human rights impact as a result of award of a top-level domain, it seems to me to be a very hairy question that has to be looked at as a type of a stress test as we’re developing a framework.

Thank you.

NIELS TEN OEVER:

Thank you very much, Ann. Your first request has already been answered, so the text is on the screen. That’s good. I would also really be appreciative if you think you could put your concerns in the concern document, because I think this is a very well-articulated concern that we will need to address, and I think it would be really great if you could put that in the concern document, so that we have it there as a reminder and as a piece of work there. That would be really great.

I see that Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Thank you very much. I'm sorry for taking the floor again, but two comments: first of all, about the core value. I think maybe I got your own views, but do you want to ask ICANN Legal because it was actually them who added core value to the text of the Bylaw? Because I believe that when we proposed the Bylaw text, there was no core values, right? So we didn't discuss what it actually meant. But I believe that, yes, in this sense it would be good to ask ICANN Legal, but I agree with Paul that it's just one of the opinions and we have to figure out ourselves, but it would be good to ask them for the rationale, why they actually added this into their suggested text of the Bylaw.

This is the first point. The second point I would like to make answering to Ann, because I think this is a very important question for us. When I was going through the Framework of Interpretation document earlier, and read all the comments and texts that we put in there, I was thinking would it be – just as a very rough idea, like not cooked at all, would it be good if we will look from two perspectives? First of all, policymaking or policy development processes, how human rights will have impact there, and then just separate operations or all these registry contracts out from the first part. I'm open for any criticism of this idea, but I believe that if we're going to mix these two, we are going to be on a slippery slope.

Thanks.

NIELS TEN OEVER: Could you please repeat your two points, the different two points of you? Could you please restate your proposal?

TATIANA TROPINA: Yes, okay. The first proposal is that ICANN Legal should not be asked what core value is, but they should be asked why they added it to the final text of the Bylaw, because I believe that it was not I the initial proposal from the CCWG. It was a text suggested by ICANN Legal or ICANN Board which we agreed on. I believe that we can discuss and define core value, but I think that we would like to know their reason.

And the second point is, shall we, just as a proposal, separate policy development processes or policymaking, and operations and contracts with registries and so on, and look at the impact differently? But this is just a proposal, just a thought. Thanks.

NIELS TEN OEVER: So let's take the two different proposals apart. If I heard your proposal concretely, then the question for ICANN Legal could be "What is the rationale for the addition of core values to the ICANN Bylaws, and what are its legal and non-regal implications in your opinion, especially for the Human Rights Bylaw?"

TATIANA TROPINA: Yes, this would be my proposal, but if the group wants to fine tune it, then yes. But I don't think that we shall ask what core value is in this sense. We can discuss it ourselves. Thanks.

NIELS TEN OEVER: Okay. Are there people who would like to respond, or suggest different text to ask? And then we'll get back later to Tatiana's second proposal.

I see Farzaneh put a question in the chat. Farzaneh, would you care to elaborate on that on the call?

FARZANEH BADII: I'm sorry, but there's Jazz playing in the background. Can you hear me?

NIELS TEN OEVER: Yes, we can hear you.

FARZANEH BADII: Yes, good. So I wonder if you want to qualify what core value or what it means human rights in core value, because I think we have discussed this core value – I'm speaking human rights in core value – before, but I'm not sure. I can ask Robin, but of course, we can ask for clarification, but I think there was a specific reason, and I'm not sure if it came from ICANN Legal. So I think we can qualify this, definitely, but – yes.

I'm sorry, Kavouss, there's an echo, yes [inaudible].

But we have to clarify this and look at the transcripts beforehand, to look at the core values, and I think that we have to rethink whether ICANN Legal suggested this, or if it was CCWG.

NIELS TEN OEVER: Thank you very much, Farzaneh. Do you think that would work with the text that is proposed in the chat, or would you like to add or change some language?

Okay, so if there are no other people who have problems with this text, then I will ask the staff to pass on this question to ICANN Legal. I see Ann has her hand up. Please, Ann, come in.

ANN: Sorry, Niels, I was on mute. I'm wondering, the document that has been posted on the screen doesn't have any of the comments and questions posed in the working document, and so participants who maybe haven't had time to read all those, this document is totally clean, almost as if there had been no questions and comments, and I'm wondering why we're not posting the actual working document that had all those questions and comments.

Thank you.

NIELS TEN OEVER: Thank you very much for that question, Ann, I cannot answer that question, I think it's because of time and coordination, and I think maybe the way it was downloaded and imported in Adobe Connect. This is what Karen says: "Sorry about not having the comments. As I need to post the doc as a PDF file, so the edits do not show." That is the explanation, very sorry about that, and so for the comments, we unfrequently have to go back to the Google Doc.

So I would like to now confirm that we are done with the question for ICANN Legal that we'll ask the staff to relay to ICANN Legal. That's great, that's the first point done in this document, so I will resolve that one.

When we then continue, we see in question one, what is meant with internationally recognized human rights, or which specific human rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Right Bylaw? So there, I pasted the document we have put in our background document, as well as the [inaudible] treaty that has been suggested by Ann as well as the UN Guiding Principles for Business and Human Rights.

I see that Tatiana has a comment on that, so Tatiana, perhaps you would like to respond to this list or anyone else who thinks that this could be a useful list? There are some things missing, we should add some things or we should define it completely differently. I would be very interested to hear the comments.

So the documents that we are concretely proposing are the Universal Declaration of Human Rights, the Convention on [inaudible] and Political Rights, the Convention on Economic, Social, and Cultural Rights, and a number of other treaties. This seems to be a rather broad net and it encapsulates quite a lot of the documents that are generally seen as international human rights law.

I see Tatiana and Kavouss have their hands up. Tatiana, please come in.

TATIANA TROPINA:

I'm very sorry that I'm speaking again, but I had a comment to the wording of your suggestion that the treaties and guidelines could illustrate the depth and width of ICANN's commitment to respect human rights. My comment was that I'm not sure that all these conventions and declarations can illustrate the depth and width of ICANN's commitment. I think that, basically, international instruments, because they're applicable to the estates only, they have nothing to do with ICANN itself in terms of their direct application.

I think the right wording would be that they can help to shape it, to look at it, but this if for the task of this group that defines the depth and width of commitments of the human rights, and I don't think that instruments can actually illustrate them, even if we are talking about [inaudible]. But they can point us to reach human rights we're talking about, they can point us to what respecting human rights means, and so on.

Thanks, and I'm sorry again for yet another intervention.

NIELS TEN OEVER:

Excellent. Kavouss, please come in. Kavouss? Kavouss, unfortunately, we do not hear you. You might be on mute.

KAVOUSS ARASTEH:

Hello? I listened to the previous [speaker] and she put in question all of these, saying that they don't have any value, because they are coming from the estates, so the person is, let us say, estate of [inaudible] is the case and she would like that we start to have a new convention based

on the private sector or whatever, so I think none of these two is productive.

So I think we should just stick to the Work Stream 1 and we'd go to these conventions and identify the areas that they are applicable, but not to start from scratch, and not to say that these are applicable to estates. I don't think that we are discussing estates and non-estates. Estate is composed of the people, mostly. Some countries do not [inaudible] the views the public, that is different, but I don't think that we should say that these conventions are not valid at all because they are reserved to estates. This is a very radical position.

Thank you.

NIELS TEN OEVER:

Thank you for that, Kavouss. I see Markus Kummer's hand is up. Markus, please come in.

Unfortunately, I do not hear any audio from Markus. Markus can't unmute. That could be a technical issue. I see Markus has removed himself from the queue. Markus, we'll keep a place for you in the queue, and any time you're coming up, I will grant you a place.

So I'll go to the next one in the queue, and that's Ann. Ann, please come in.

ANN:

Yes, thank you, Niels. I noticed around the right in the notes that Dan Appelman has commented that operation should be consistent with

policy, and where I feel that we might be making a mistake as a group is specifying certain documents that we believe apply as a policy matter to ICANN without actually identifying what are the specific operations within the scope of ICANN's mission and purpose to which one needs to apply human rights analysis. I feel that – and I know I've made that comment before that – to me, identifying, say, one of those would be the award of a top level domain registry contract. There would be others, for example the administration of a dispute resolution procedure.

For example, it's ICANN that has the authority when a complaint is filed to adjudicate with respect to public interest commitments, and I think oftentimes, there is an intersection between some of these public interest issues, and potentially there as well, a human rights impact assessment. So it seems to me that perhaps the group is putting the cart before the horse by identifying documents that apply rather than identifying operations and procedures and activities within ICANN to which the human rights analysis and commitment to respect human rights must be applied as we go forward and develop this framework of interpretation. I think we're operating in a vacuum unless we identify some of those specific activities and operations of ICANN.

Thank you.

NIELS TEN OEVER:

Thank you very much, Ann, and I completely agree with you that it would not be good to first find documents that apply, and then see what they apply on, but I think what we're currently looking for to see

what are the documents that we see as internationally recognized human rights, then we can perhaps have a look at operations they're relevant to, and then we can perhaps see how they apply. So I think we're still looking at a very high level of what do we understand as human rights, and we're not yet at operationalizing level at all, I would say. But I'm also very curious what other people in the queue have to say about this.

I see Paul, Farzaneh and Markus in the queue, so I'd like to go to Paul. Paul, please come in.

PAUL MCGRADY:

I guess from my point of view, starting with the principles and then figuring out how they apply makes the most sense. Ann has a different point of view, and would start with the operations and then go look for the accompanying principles. I don't think that it would matter one way or the other, we would end up in the same place, I hope.

My concern is that whether we start with looking for principles or whether we start with looking at operations and then go look for principles, that we have to keep in mind that one of the primary things that human rights provisions around the world do are protecting people who don't necessarily have a voice. So as we go through these things, I think it's very important for us to keep that in mind, even if a particular group that enjoys a particular human right may not actively participate in the ICANN model. I think we all have to keep those issues in mind to make sure that they don't get overlooked just because they're not on this call.

Thanks.

NIELS TEN OEVER: Thank you very much, Paul, that's a great note. Thanks. I would now like to ask Markus to give it a try, because he's been waiting for a while. Markus, please come in.

MARKUS KUMMER: Can you hear me now?

NIELS TEN OEVER: Yes, we can hear you. A bit faintly, but we hear you.

MARKUS KUMMER: Okay. I switched devices. The first one didn't work, this one seems to kind of work. Anyway, I'm not really having much new to say. I think the Board was very conscious that the human rights endorsement might lead to some unintended consequences, and I was very much supportive of [inaudible] proposal to study these unintended consequences. But having said that, we have what we have. We have the outcome of Work Stream 1, and that is something that has been said and there's not much point [arguing with] that. Rather, let's go forward in our bet to fight towards a Framework of Interpretation.

And again, the definition of what we have is very broad indeed, but the most relevant baseline for ICANN still, I think, would be the [inaudible] principles. The outcome of Work Stream 1 said they're not applicable

one to one. But nevertheless, they are the only instrument we have that's non-governmental [inaudible] propose would be to take that as a starting point, and look from where to go.

NIELS TEN OEVER:

Thank you very much, Markus. At times, you were hard to hear, so if you would like to repeat your main message, I think that's very good, because I see also on the chat several people had audible problems with hearing you. Now I don't hear Markus at all anymore.

So let's go to Farzaneh now. Farzaneh, please come in.

FARZANEH BADII:

Hi. I'm going to reiterate what I said in the Google Doc. What we need to consider is what is ICANN's [court] and what is not going out of ICANN's [court.] Are we talking about [inaudible] or are we actually talking about registry operation and their contract with ICANN? I think we have to be clear on that. If we cannot be clear on that, then we are going to – every time we are going to come up with hypothetical questions.

So I really think we have to define what has to happen: are we going to think about whether we are going to have some contractual agreement with the registry that's going to have human rights aspects in them? Are we going to have that or not?

And then ccTLDs are another matter, which I have made my comments in the Google Doc. This is what I'm just reiterating. And to Ann's point, I

think we have to first identify what is ICANN's [inaudible] not going out of ICANN's [court].

NIELS TEN OEVER: I think it's an excellent question, Farzaneh. Would you also offer an answer for that?

FARZANEH BADII: Yes. it is going to be a very controversial one, but I think ICANN is responsible for the strings, and I think the group has to come up with the contractual compliance for the human rights, or not. Do they have it? Do they have to tell the registry operators whether to be obligated to follow human rights? And what is that human right that ICANN means? Can we actually establish that?

So I think at this level of clarity, I will go with strings. I think ICANN's responsibility for compliance of human rights stops at the strings level. But the group might say, "Oh, no, there might be some compliance thing," then we have to come up with measures for also ccTLDs, because you can also have ccTLD operators that have intents to breach human rights law. So my intention, my first suggestion is to look at the string and say, "Okay, so this is within the scope of our mission, the string level. We have to uphold human rights within the string level," but we have to uphold human rights and [whether watch] the registry operators to uphold human rights in their level?

Thank you.

NIELS TEN OEVER: Thank you very much, Farzaneh. I think that will also create some response. I see Markus is next in the queue. Markus, please come in.

MARKUS KUMMER: Sorry, old hand.

NIELS TEN OEVER: That's an old hand. Thank you very much, Markus. Kavouss, please, come in.

KAVOUSS ARASTEH: Neil, I'm very sorry, I think maybe unintentionally, you qualify some comments and you ignore some other comments. For some comments you say, "That is a good question," for some other comments you even not say anything. You say, "Okay." That's all. So I think it is better you take a very balanced approach. I don't think that we are talking about registry or ccTLD only. There are many other things here. You said that we have to have an understanding of human rights, what we mean by human rights. Please make a shortlist, a shopping list of the human rights. What are the rights? Rights to freedom of expression, rights to free flow of information, rights to education, rights to access to communication, rights to communicate, rights to education, rights this and this, and among them, find out which one is related to the ICANN.

I think we're turning around and we're wasting the time very considerably, so we set up this. My first question, please, you or any other [inaudible] or your co-Chairs make a list of your understanding of what are the human rights under this first question.

Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I am not sure if I completely understood your remarks, because in the Google Docs, there is a whole range of instruments mentioned under that question. That is what we're referring, so we might be talking about exactly the same, so I'm not quite sure, but I'll definitely take to heart your comment about qualifying comments. Thank you very much.

I see that there is also a discussion, and I see that now Ann, Paul and Farzaneh have brought up the issue about scope and mission, and about what would fall under ICANN's scope and mission and what would not fall under it.

This is actually question five of the document, and there have been several people contributing there to the text. So the question would be do we continue discussing this issue here on the call, or will we see to work that out on the mailing list, during the week, or would people like to work this out in the document? I'm open for different ways to approach this. I offered earlier on a link to a preliminary mapping that has been made by the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, which was a very preliminary scoping, and that we could perhaps build upon, or not. So there are different ways we could go about that, and I'm very curious to hear from the group how the group would like to take that work further.

Okay, this is great. I see a convergence in opinions from Farzaneh, Tatiana, Paul to do it on the mailing list. Also, Ann sees an opportunity within the work of the CCWP to go into a deeper analysis, so I propose that we take this issue to the list, because I think this might be an opportunity to crystalize the different options better, and also see what are the different parts of the problem, because this could potentially be a sizeable problem which we'll discuss for a while.

So I hope that perhaps I can ask either Farzaneh or Ann, would one of you like to start this thread on the mailing list? Perfect, so Farzaneh will take that to the list. That is very much appreciated, Farzaneh.

Then there are, in the last ten minutes of the call, a few other points that I would like to discuss, that are currently in this doc, to ensure that we have a quick overview. One point is the question about applicable law, which is a question that has been answered by the ICANN lawyers in the CCWG Work Stream 1 process, and I was wondering whether we would like to have a bit larger elaboration on that as well, or whether that is a discussion that we should leave to the Jurisdiction Group, or whether that's something that we would like to relay to the Jurisdiction Group. What are the questions about that? Or do you think that the question about applicable law is not something we should discuss here at all? Because currently, it is mapped in our draft framework of implementation.

Kavouss, please, come in.

KAVOUSS ARASTEH: Yes, I tend to agree with you that we should not discuss this issue of what is applicable. We have spent hours and hours in Work Stream 1, and we just find this magic word: applicable law. We will agree/disagree. Limit to the jurisdiction. Greg Shatan and others, maybe they find something, or maybe they found nothing. You can spend your time on some other useful thing, it might be preferable. And with respect to the list that someone is going to – I also said yes, but Ann joined that person making both the documents that you wanted, because Ann makes a lot of good comments, and this is a very valuable contribution, so I also think that if she agrees, she should join Farzaneh in making the document as we have asked.

NIELS TEN OEVER: Perfect, thank you very much, Kavouss. I will inform then the rapporteurs of the Jurisdiction Design Team that we have applicable law in our Bylaws, and that we would like to understand it, but we will not address that issue by ourselves, but we'll defer. We'll await their design and work on that.

I see a question from Ann in the chat that ICANN Legal should be asked what human rights law is applicable to ICANN operations. And I see agreements from Farzaneh, Tatiana, Matthew, Kavouss, so that could be something that we forward. I see two hands up at the same time at this point. So, Kavouss, please come in.

KAVOUSS ARASTEH: Yes, I think the ICANN Legal unit or Legal advisor are the most – I would think – relevant persons or appropriate persons to ask what are those

things applicable to the ICANN, rather than we talk about a theory. So I think that's a good way, thanks to Ann to raise that question, and I fully support it.

Thank you.

NIELS TEN OEVER:

Excellent, so if we want to make the question a bit more specific, then we could perhaps phrase it as follows, and this is just a suggestion: "What human rights laws and/or guidelines is or are applicable to which ICANN operations?" So in that case, we would have a bit more precise answer perhaps. Is that something that would work? I see three people in the queue, first of which is Ann. Ann, please come in.

ANN:

Yes, Niels, I think maybe that those should be perhaps two separate questions. One relates to applicable law, so which laws are applicable human rights laws, because you will find many that are within, for example, the U.S. scheme of civil rights regulation that essentially are human rights type laws in general. And then a second question related to what you added in about guidelines, because I think the question posed in the group was: what's the applicable law? And then if, for example Article 4 involves the application of guidelines separate from the application of applicable law, it would be very good if ICANN Legal could distinguish those two things for us.

So I think they're two separate questions to be posed to ICANN Legal. One is applicable law and the other is guidelines. In other words, I think

that the way it's phrased in the Bylaw is international legal principles, something like that.

NIELS TEN OEVER: I am now missing a bit how we would concretely phrase that, so if someone can offer concrete language on this in the spirit of Ann's suggestion.

ANN: Actually, I could just read what's in the notes. I'm sorry, Niels, but to try to do it as quickly, you said, "What human rights laws and/or guidelines is or are applicable to which ICANN operations?" I would simply make it two separate questions: "What human rights laws are applicable to which ICANN operations, and then what human rights guidelines are applicable to ICANN operations?"

NIELS TEN OEVER: Okay, that's definitely an option we can discuss. Is the rest of the group also okay with that? So those are then the two added questions. I see that there is a suggestion by Matthew – I'm sorry, there is a queue. Pardon me, let me first go through the queue. Farzaneh, please, go ahead.

FARZANEH BADI: Hi, so Matthew was faster than me I think. I was standing in the queue to say, "Why are you thinking ICANN Legal? Why can't we certify these questions and send it to [ISOC] which is a CCWG external lawyer, not

ICANN Legal?” I totally agree with Ann on the questions. One is, “What human rights laws actually apply, and to which operation at the moment, like what we have already?” These are the questions that we need to ask, and maybe we have to come up also with hypothetical questions.

So if we want to change like the contractual compliance between the registries and ICANN and stuff like that, we have to also consider these questions. So I don’t know if this is a premature question to ask our external counsel, but I totally agree with how Ann actually framed the questions. But bear in mind that we have not agreed on anything yet. We might want to change our approach and we might want to seek advice from the external counsel again.

Thank you.

NIELS TEN OEVER:

Okay, so we could propose these two questions. So the first question that we already agreed on, those we’ll pose to ICANN Legal, and then we will forward these two questions to the CCWG counsel. I see Bernard has a comment about that. Bernard, would you like to make that comment? Would you like to come in?

BERNIE TURCOTTE:

Thank you, Niels. Yes, I just would like to remind everyone of the process for external legal advice. It has to go through the Legal Committee, and I would encourage you – given we only have a few minutes left – to read the process and the scoping. There are no open-

ended questions that are going to be allowed. They have to be tightly framed, and there has to be a clear expectation.

Next, the Legal Committee will, of course, discuss this with ICANN Legal and see if there is a valid quick answer first, so I just want to make sure that there is not misunderstanding that if this group decides they are sending a question for external counsel, that it will simply go to external counsel. I want to be certain you understand that there is a process and it doesn't mean that the question will be accepted as it is framed.

Thank you.

NIELS TEN OEVER:

Thank you very much for that interjection, Bernard. I see we have Kavouss's and Markus's hands up, but I also notice that we are on top of the hour, so we have actually used all of our time, but I'm not going to limit everyone, so I'll just give the floor to Kavouss and Markus, but with the question to please be so kind to keep it short.

KAVOUSS ARASTEH:

Niels, thank you very much. I agree with Bernard that we should not raise question, as such, to the legal counsel or legal [inaudible] to ICANN, they are very busy people. Any question must be validated if there is, and I don't agree with the two questions, I agree with the first one only, but not guidelines. Furthermore, I disagree that we ask guidelines which are applicable in specific countries. The European Directive have their own guidelines, and there are many others, so I don't think that we should defer to one specific country. This is

something that I had difficulty from the very beginning. We should not refer to one country only, we should look what are the applicable in the entire world. The world is composed of 193 countries, or 269 countries and territories, so do not stick to one single country.

Thank you.

NIELS TEN OEVER: Thank you, Kavouss. Markus, please come in.

MARKUS KUMMER: Yes, very much along the same line. I think [inaudible] of this group [inaudible] legal advice [inaudible]. I think it's the remit of this group to come up with a proposal [inaudible] and if necessary, ask for legal [inaudible]. I think in many ways, it is too early to ask for the legal advice. This is a difficult task, and [inaudible] is very important and it's [inaudible]. Let's see if we can come up to, but asking for legal advice too early, I believe [inaudible] UN processes. If you want to stall a process, you ask for legal advice, and then you know it's stopped. So let's not do that, it's not our intention. Let's try and dig in and come up with [our proposal].

NIELS TEN OEVER: Thank you, Markus, for that, even though I'm not 100% sure I captured everything that you said. I think we have consensus about forwarding our first question to ICANN Legal, "What was the rationale for the addition of the core values to the ICANN Bylaws, and what are its legal and non-legal implications in your opinion, especially for the human

rights Bylaw.” And then for the other two questions that we discussed, we will need to take it and discuss it further onto the list this week, and seek [inaudible] consensus there and discuss next week, because we will need to refine it a bit more because we haven’t been able to reach consensus here.

On that note, I would like to thank you all very much for this call and the work you’ve all clocked in during this week and the coming week. During the coming week, we’ll try to move things a bit further to the mailing list and a bit from the Google Docs even though all your work in all Google Docs is still very much welcome.

As a follow-up to a discussion we’ve had last week and the week before about the Google Docs versus the wiki, I’ve asked ICANN staff whether there’s opportunity for simultaneous collaboration tools on the wiki, and I haven’t heard back yet. So as soon as I hear back from ICANN staff on ICANN provided tools for collaboration, I will let you know as soon as possible, and until that time, we’ll make use of the instruments that we’re currently using.

On that note, I would like to thank you all very much, and I’m looking forward to speak to you all next week and looking forward to work with you on the mailing list. Bye all.

UNIDENTIFIED FEMALE: Bye, everybody. It’s been lovely.

[END OF TRANSCRIPTION]