
NIELS TEN OEVER: Thank you very much, staff, and good morning to all participants and good evening to many of you to this fourth meeting of the Human Rights Design Team in the framework of the CCWG on Accountability Work Stream 2. We've seen quite an interesting discussion developing over on the list in the past week, so I'm sure we'll have a very inspiring call. It's great to see you all here.

First of all, I would like to ask if there are any points anyone would like to add to the agenda. And in the meantime, I'll ask the staff to do a quick roll call of everyone on the list. So could people who are only on the phone bridge please make themselves known, so that it is clear for the archives who has participated in this call? So there's no one on the phone bridge who is not in Adobe Connect as well. That's great.

CHERYL LANGDON-ORR: Yes, actually, I'll be joining shortly. I'm only on the phone bridge at the moment.

NIELS TEN OEVER: Thank you, Cheryl, that's noted. As absentees, I received a note from Nigel Roberts that he cannot make the call today, and I did not receive any further notifications. Are there any changes to Statements of Interests that people would like to declare here? No changes to Statements of Interest, so that means that we are –

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UNIDENTIFIED FEMALE: The host has left the meeting to speak with meeting support, and will rejoin soon.

NIELS TEN OEVER: That means that there are no other things left for administrivia, so we can go ahead with the content discussion of our call. Are there any other additions or suggested other points for discussion in the agenda? Okay, so then I propose we go ahead with the discussion of the first document, that seems to be shaping up quite nicely, which is the summary on what was agreed and discussed on human rights during Work Stream 1.

So can I ask Tatiana, who's been doing a lot of the work on this, and perhaps Greg, to give a short presentation on where the document is right now? Yes, Tatiana, please go ahead.

TATIANA TROPINA: Hello, everyone. Well, I think we did finalize the document, and I don't think there is any real need to go through it again on this call, because we did this two meeting ago. What was added, like introduction was modified a bit, but nothing significant, just to provide a bit more clarity, and we also added the conclusion, which refers to the Annex 12, that lists the tasks of this group, so maybe it would be worth for us to go through them at some point – not now, of course – just to see the frame for our discussion. Because I think the Annex 12 actually nicely frames what we have to consider. And somehow in all these discussions which we already have, I think we might have forgotten of some of the issues, or let's say about the general frame, that it should be in the context of

ICANN's mission or scope, that, yes, it has to be consistent with different things like ICANN's existing protocols and consider the effect of the Bylaw.

So yes, basically, I think the document is finalized now, so anyone can access it and just see, and if there are any questions, I believe that any participant of this group can ask them on the list. I believe that either me, Greg, Niels or David who composed these documents would be happy to answer or elaborate further on any of the points in the text.

But one more point: I saw the discussion on the mailing list again on the Ruggie principles. So maybe it would be worth to read this document again and see that we decide whether there would be no blind commitment to Ruggie principles and why we decided so.

That's all from me. Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana, for both the work and the presentation. I would like to send out a short reminder to everyone on the call to please mute your microphone when you're not speaking.

Greg or David, do you have anything to add to the presentation of Tatiana of this document?

GREG SHATAN:

I don't really have anything at the moment, but I think we'll come back as the sessions develop, I'll definitely have more to say. Thanks.

NIELS TEN OEVER: Thank you very much also, Greg, for this short note and also your work on this. That leaves us with quite a developed document, so I would like to open the floor for discussion on this document, or else we can go forward to approval of this document by the subteam.

I see a queue. Tatiana, please go ahead.

TATIANA TROPINA: Yes, Niels, I'm sorry, but I think it's too early to approve this document which was sent, what, half an hour ago to the group. Maybe we can approve it on the next call so everyone will have time to have a proper look at it. Thanks.

NIELS TEN OEVER: That sounds great, Tatiana, but before going there, I'd like to see if there are more comments on the document as is. It doesn't seem the case, so I think your proposal is very good, so that we leave the – oh, Kavouss, please come in.

KAVOUSS ARASTEH: [inaudible] time to everybody. I'm very grateful to Tatiana that said that we don't approve the document. I don't understand why you were rushing to approve something [inaudible]. Usually, we should not decide on anything in one repeat. May you kindly consider that we are dealing with a very sensitive issue? Therefore, we should keep in mind that not

hurrying up to anything, particularly when a document arrived a few minutes ago and I was not able to read it at all.

Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss, and you are all perfectly right, we should not approve it right now. Since it seems there are no other comments on the content of the talk, we can leave the document open this week for final comments and then we can seek to finalize it and approve it by next week if there are no content issues with the document.

So I think that will be then finishing the second point of the agenda, so I suggest we go forward with the discussion of the next document that's on our list. Namely, that's the document on the concerns people might have of adverse impact of the framework for interpretation that the Bylaw might have.

There have been a few additions to this, but not a lot. This might also be attributed to the unavailability of Paul Twomey to these documents, but I do think that it's good to have a short look at this document. Are there other people who have been adding to this document, like John, David, or Greg, who would like to say something about the document? Or whether people would like to take a discussion from the list relating to concerns and bring up those points here?

Greg, please come in.

GREG SHATAN:

Thank you. I think compared to the first document, this document is in a far more early stage of development. I think that we probably need to consider how to expand it, and also, how to organize it into perhaps sections, just so that it can kind of grow better organically, and I think as we note concerns in the course of our discussions, we should try to bring them back into this document. That said, right now, I think a number of concerns – certainly that I've raised – but I don't necessarily think it covers everyone's concerns, and some people may have concerns that are almost opposite of concerns that I've raised. I've raised a few times concerns about watching out for our scope getting too broad and going past our remit and the like, and I've seen an e-mail – at least one – that kind of said they thought that I was looking at things too narrowly. So in the spirit of honest discussion, that's probably a concern, even if it is a countervailing concern to one that I would raise.

Thanks.

NIELS TEN OEVER:

Thank you very much, Greg, for opening discussion on this point, and I see a queue is forming. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes, Neil. Is it possible to request you, the Secretariat, to put the document that we're discussing on the screen? Because there is a hyperlink. If we open the hyperlink, we miss the screen and I cannot ask for the floor. So is it possible that you show the document, number one?

Number two, I think, at least from my understanding, you're still struggling between respect and force protect. There is a clear statement in the first document, in the report of the CCWG, that we cannot talk about enforcement, because there is no enforcement mechanism. We could not talk about the protection, because there is no watchdog. So we should remain with the term respect or any other thing that is implementable. So first of all, could you kindly put the document on the screen, and second, distinguish whether still we are struggling with these verbs and so on and so forth? We have sufficient material to discuss saying that respect the human rights, in what sense, which ones, and how, what criteria is not respected? But going to these things, enforcement and protection, I think it is widening and widening the scope. Is it not possible to try to resolve this issue first?

Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I think that is exactly the job of the Design Team, so I cannot do that by myself, but I think we need to do that as a group, so that is exactly the task at hand, and thank you very much for reminding us of that.

Andrew, please come in.

ANDREW MACK:

Yes, can you hear me? Thank you very much. Kavouss said two things I was going to say. One was about getting it on screen, but the other one, I agree, I think that there are some real challenges about enforce and

protect, not just because those are difficult things, but it's also unclear to me whether they fit within our mandate, and whether we could even practically do them. I was asking myself who is doing the enforcing and who is doing the protecting. I think respect is already a thing that's going to take some time for us to design and for us to determine what the action is around it, and my strong sense is we should start with that one and see where we can go.

Thanks so much.

NIELS TEN OEVER:

Thank you very much, Andrew. I'm very sorry I had a slight fluctuation in the audio. I might be far away in Australia, so could you please repeat what you think we should stick with or stay with for the moment?

ANDREW MACK:

Yes, can you hear me?

NIELS TEN OEVER:

Yes, I can hear you very well.

ANDREW MACK:

No, I was agreeing with what Kavouss had to say, almost exactly the same thing, that I am concerned that enforce and protect are both difficult, and they seem to be on the very edge of, if not outside of our mandate. I'm also concerned about who exactly was going to be able to do the enforcing and protecting. I think if our goal is to start with

something, to start with understanding exactly what it means for us as a community to respect human rights is a good place to start, and I think that may be well a big enough task for just that.

NIELS TEN OEVER: Thank you very much.

ANDREW MACK: [inaudible] respect. Thank you.

NIELS TEN OEVER: Thank you very much, Andrew, that point is very clear. I see Tatiana's hand is up, and she might be able to respond to that. Tatiana, please come in.

TATIANA TROPINA: Yes, thanks a lot. I totally support this point of view, but I also want to highlight that the Bylaw prohibits enforcement and protection, so there is no one who would enforce and protect, because we basically banned it from the beginning. But building up on what Kavouss and Andrew said, when they're talking about respect – and this is the only thing we're going to do – why do we need to consider enforcement and protection? In my opinion, not to consider ICANN doing them, but to consider at least [inaudible] from how is to draw a clear line between respect, enforcement, and protection.

For example, take this debate about Ruggie principles, which happened in the Work Stream 1. The definition that Ruggie principles provides for respect, or the part B of this definition about definition, and some other points in Ruggie principles about seeking for remedy, in my opinion, are going to the direction of enforcement and protection. And this is why we first, of course, need to define respect, what respect means, but we also have to distinguish it from enforcement and protection exactly to address the concerns that Andrew and many other people raised, including ICANN Legal, that there would be claims which will drag ICANN into these gray areas of enforcement and protection.

And this is why I completely agree with Kavouss and Andrew, that we have to concentrate on respect, but then the next task would be to distinguish respect from enforcement and protection.

Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana. Greg, please come in.

GREG SHATAN:

Thanks, and building on what I've heard, and agreeing with those who have come before, I think we have to be very careful about these verbs: respect, protect and enforce, and to raise but not necessarily agree with Nigel, if our version of respect is different than the Ruggie principles version or if our application of it needs to vary from it in application, we're going to need to be explicit about that as we create this

framework of interpretation for those who come after us to actually interpret with.

I think even though the Ruggie principles themselves create certain challenges in doing that, for instance as I read it – and others may be more steeped in this than me – but the duty to protect is a state duty expressed in there. So in a sense, we couldn't protect, and I think enforcement is also phrased as a state duty.

On the other hand, there are all sorts of things that can be done that are really tantamount to enforcement. I think principle 19 refers to – in passing, but clearly refers to leverage that can be used by one business in trying to cause another business to take steps to deal with human rights concerns, or at least human rights concerns that the first business wants to.

And more clearly, we have contracts, which of themselves have enforcement mechanisms, and we also have the ability to potentially remove – to terminate contracts, and even potentially to challenge the delegation of TLDs. So while we shouldn't get into the business of enforcement, and indeed the Bylaw says we shouldn't, there are a lot of tools that could be at ICANN's disposal, that really will amount to enforcement, which means I think we need to be even more careful as we go forward not to stumble into de facto enforcement.

Thanks.

NIELS TEN OEVER: Thank you very much for this comment, Greg. I see Kavouss in the queue. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, do you hear me, please?

NIELS TEN OEVER: We hear you very well.

KAVOUSS ARASTEH: Thank you. I don't know which point we have to start first, whether we have to start with what is a human right, and the talking that we shared views. I suppose that one of the items of human right is freedom of expression. How do you enforce the freedom of expression? You push the people to talk? You push the people to what? How can you enforce that? And then, how can you protect that? You can respect that, provided that you try to elaborate more on the scope of respect, but I don't think that either of the words enforcement and protect works in reality. We should not talk on [aspect,] we should talk of implementation of reality.

I don't think that we should get into the trap of these two verbs. And if you read the first of the document of the CCWG, there is an explanation about this too, so why we start to spend so much time on one person or two persons that wanted to slide a bit in-between these three? We never get out of that. Even with respect – only one – we would have serious difficulty how to implement that. So let us, please, not go to the trap of enforcement and protect.

Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. David, I see your hand is up. Please come in.

DAVID MCAULEY: Thank you, Niels. I think I've mentioned this once or twice on the list, but listening to Greg and Tatiana, I agree with both of them, and on the concern for the concept of respect drifting towards enforcement and protection, etc. And in fact I saw a comment in the chat, and I think I've seen this on the list, and I say this respectfully, we're talking about if we develop something. I think it's important to recognize that we're not – our job is to interpret a Bylaw. It is not to develop policy. There are very organized mechanisms for ICANN to develop policy, and we are dealing with the concept of respect, not just of respect for human rights, but it's limited. We're dealing with interpreting a bylaw that says a respect for internationally recognized human rights. It's not just any human right, and it even goes further and says, "As required by applicable law."

Our remit is narrow, so I am with Greg and Tatiana saying we have to keep these in mind. That's our job. Thank you for giving me the opportunity, Niels.

NIELS TEN OEVER: David, thank you very much. David and Greg, I think those are old hands, so just going forward on that assumption, I'll continue the queue to Tijani. Tijani, please come in.

TIJANI BEN JEMAA:

Thank you very much, Niels. I have had a through the Work Stream 1 output, to Annex 36, and I saw that there are seven bullet points listed as [inaudible] task of the Work Stream 2, and no mention of enforcement, no mention of protection.

As everyone said now, we are about respecting human rights, so let's start by defining, and, how to say? Have a common ground on understanding of the respecting human rights, and then we can continue, but please, don't widen our scope. We are only about that.

Thank you.

NIELS TEN OEVER:

Thank you very much, Tijani, and all people commenting before. I think there is now a clear understanding that we want to focus on understanding, well, these three words, which has already been also a direct question for this Design Team all along: what does it mean to respect? What does it mean to protect? We need to enforce and we need to focus on respect, because that's our positive obligation, so what could be constructive ways forward? And there's been a discussion in the chat on the Ruggie principles. Should we go through the Ruggie principles and see which ones apply in their current form to ICANN, and which ones do not? Or what would be a constructive way forward to go about this? I see David, Tatiana and Kavouss's hands are up, so very curious to hear how you think we should go forward.

David, please come in.

DAVID MCAULEY: Thank you, Niels. With respect to the Ruggie principles, I have been following the list, and I have seen recommendations that we sort of incorporate the Ruggie principles, and then eliminate parts that may not apply. And I would take it just the reverse, and I think Markus has made a comment along the lines in the chat.

I think because ICANN's job is so sensitive, and because the Bylaw in 1.2b Subsection 8 is so limited, I think that what we should do with Ruggie is – we have plenty of time, we can go through those principles, but I don't think they should be incorporated into a Framework of Interpretation until we all agree that they should be interpreted into a Framework of Interpretation, and I think we should take that approach, rather than importing them wholesale and then trying to weed them out.

Thank you.

NIELS TEN OEVER: Thanks very much, David, for that suggestion. Tatiana, please, go ahead.

TATIANA TROPINA: Thank you. I totally agree with David, and that's what I was actually going to say. But as a practical matter, I believe that maybe we can put Ruggie principles to the document, or send them to the mailing list and let people comment. I don't believe that it would be about using the Ruggie principles, but just of the applicability or maybe usability of some of the provisions for the Framework of Interpretation, because I believe

that some of the wording of the principles, like let's say 11 or 15 might provide us with other guidance, but all in all, I think that Ruggie principles are out, unless we decide that they are in. By default, they should be out.

Another point, and the last point on this intervention: I believe that there were very good points that Paul Twomey made about Ruggie principles. I do think that we shouldn't rush this discussion and maybe it would be worse to start it, but to also wait for Paul to intervene, because he really had lots of experience and he managed to convince many of us on the call who were more or less pro-Ruggie principles that they shouldn't be applicable in the ICANN in that form. So that would be my suggestion. So it's Google doc, or e-mail and comments, but then also I'm looking forward to Paul Twomey's points about Ruggie.

Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana. Kavouss, please, come in.

TATIANA TROPINA:

Yes, Niels. If you want to put Ruggie principles in the document for discussion, we must have consensus on that. We are not convinced that we need to spend time on that, because I don't see any light at the end of the tunnel with that. But if there is a consensus, put it on the discussion, but with some limited time. We should not discuss meetings and meetings of these principles, whether it applies or not. If you give it a chance, one or two rounds, first on the e-mail [reflector] and then one

time discussion, and the next time you decide yes or no, and which one applies.

But first, we should have consensus whether they put it or not. I think respect is something we have, and we could concentrate on that. I am not in favor of putting protect, nor putting the other one to enforcement. Because enforcement, you should have a mechanism how to enforce that. Who will enforce that? It is very difficult. I have no problem instead of enforce, to use some other word, and so on and so forth. Respect enhancement, but enforcement has a legal meaning. You should have a mechanism to implement the enforcement. Please, kindly look for any consensus to put these Ruggie principles into the discussions, but that would be very risky, and you would not get out of it.

Thank you.

NIELS TEN OEVER:

Thank you very much for this guidance, Kavouss. Greg, please come in.

GREG SHATAN:

Thanks. I think certainly I agree with David and Tatiana that we need to start with the idea that the Ruggie principles are out until any part of them is in, and unfortunately, I think we may end up cherry picking from them, as much as I dislike cherry picking in other contexts, or interpreting them heavily. I do think though, given the absence of other inputs, we need to either consider whether there are alternative documents that could be helpful in addition to or instead of the Ruggie

principles. I'm not aware of any in particular, other than those that themselves build on the Ruggie principles, but they could be out there, or we could start from scratch. But I think that unless we do start from scratch, I think we kind of have to at least make a nod to the Ruggie principles, especially since we state in the positive that ICANN should respect human rights, and state in the negative that ICANN should not enforce or protect human rights, those are outside of its role.

I also have looked briefly at the [instantiation] or the implementation for FIFA, which you just highlighted in the chat. And I see that a couple of their points, the points that I made earlier are very much accurate in here on page 14. It talks about how an enterprise's influence, or "leverage" affects how quickly and effectively you can address risks to human rights, and that it is important to think creatively about leverage and how to use it, and it goes on to say that leverage can come through the terms of contracts and their enforcement through commercial and other incentives, or public advocacy joint action with other organizations, through personal relationships and quiet persuasion. That's a rather active definition of respect, and I think it gets into a certain amount of enforcement, so it kind of underlines my earlier kind of unease with how much pressurizing could be involved in some definitions of respect. So I think we do have a task ahead of us that will be painstaking.

Thank you.

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

KAVOUSS ARASTEH: Yes, Niels. I think Greg jumped into a conclusion. He said that, yes, we should put respect the human right, and we should put that not enforce, nor protect –

[Audio break]

NIELS TEN OEVER: I would like to take the responsibility of making the first analysis. Of course, this is a group work, but it often helps if there is a group of people taking the lead on this. Are there people who would like to volunteer for this work? Kavouss, I see your hand is up, please come in.

KAVOUSS ARASTEH: Yes, I don't want to be volunteer, but I would like to recommend that, please, when you call for volunteers, should be someone who is very familiar with the situation and not cause confusions for the others. I am not candidating myself, because I'm not among those, as I have mentioned, but someone who knows the background, the issue very well, and has sufficient knowledge and capability, time, devotions, patience and friendship to discuss this issue, but not volunteer that everyone raise his hand saying that "I'm volunteering," and then put the others into confusions.

Thank you.

NIELS TEN OEVER: Thank you, Kavouss. I don't think we have the luxury of being able to choose volunteers, but Tatiana, please come in.

TATIANA TROPINA: Well, I wrote already on the chat, but I don't think there would be lack of comments, but I see that Paul already volunteered, so maybe kind of volunteers would be for summarizing this comment and maybe bringing the enforcement back like on the calls, but I really don't think so, the lack of comments, let's say. If you need volunteers, I will also volunteer, no problem.

NIELS TEN OEVER: Perfect.

TATIANA TROPINA: But I believe that everyone should comment. Thanks.

NIELS TEN OEVER: Perfect, we have Paul and Tatiana on point, and of course, then we have an opportunity for everyone to comment on that document. That seems a very constructive way forward. I'd like to ask everyone who hasn't done so already to have a short look at the UN Guiding Principles on Business and Human Rights, I'll also share a short video in the chat so that we can go ahead next week with an in-depth discussion of these

principles. I will then reach out to John Ruggie and see if he's willing and interested to join us in a call in some time.

On our agenda officially now is a discussion of the third document, which is the Framework of Interpretation, but I think we've already dealt with the most important part of the discussion there, in the one that took place on the list, and we also got a quite concrete work plan for the coming week, so I would propose going to the final point, which is Any Other Business.

I see Tatiana's hand is up. Tatiana, is that an old hand or a new one? That was Tatiana's hand disappearing, and Kavouss's hand coming in its place. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes, thank you to Tatiana for doing this work, but I request that she kindly, when helping, just providing her understanding and views, and not insisting and expecting that everything will be accepted, and if not accepted, we should not be disappointed. So as a good volunteer, thank you very much, but with understanding that everybody would be free to agree or disagree, and comment on that without any insistence of the author.

Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss, for that comment. So I think that leaves us now in the last point of the agenda, Any Other Business. Let me please reiterate what we're planning for the coming week. We will be

awaiting the input from ICANN Legal on the question that we've asked of ICANN Legal last week concerning the core values. We will be reviewing the summary document that has been prepared by Greg, David, Tatiana, and myself, then we will be working on an analysis of the Ruggie principles, principle by principle, and see which one could be relevant and which one could be not. That work will be led by Paul, Tatiana, and Greg with input from the rest of the group, and then we'll all see if we can educate ourselves a bit more on the Ruggie principles. I'll send around a few links on the e-mail as just suggested by Cheryl Langdon-Orr. I see also Andrew and Bastiaan have volunteered for the work coming week. That's great.

I think those are all the to-dos for the work plan. So any other suggestions or questions are very much appreciated. I see Kavouss and Tijani are in line. Please, come in.

TATIANA TROPINA:

Yes, may I ask, Neil, if possible, if it has not been done before, to have an updated version of the plan, because for us, it would be very helpful to see when we have to be in a meeting and so on, because there are a variety of meetings, and some people – right or wrong – are participating at many meetings, so is it possible that this updated schedule will be available, if it is not already? Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. We live in a week-to-week situation, so everything I just mentioned is work for next week, so that is as far as our horizon goes right now.

Tijani, please come in.

TIJANI BEN JEMAA:

Thank you very much, Niels. Yes, as you said, please send the links to all the documents we need to read and to comment on. All the documents, the new version of the document Tatiana spoke about and prepared by Greg, Tatiana, etc., the link to the Ruggie principles, any analysis if you have already done on those principles, etc. So any document, any useful document, send it on the e-mail list, because people who are not today with us will not be advised about those documents if they don't read the e-mails. So please, send the mailing list the links to the documents that we need to discuss next time.

Thank you.

NIELS TEN OEVER:

I will do so. Thank you very much for that comment and reminder. On that note, I would like to propose an end to this, again, very constructive and fruitful call of the Cross-Community Working Group on Accountability Design Team on Human Rights, and I'm greatly looking forward to talking to you all next week again at the same time on Tuesday, 19:00 UTC.

So thank you all, and greatly looking forward to talk to you all again next week, and see you on the mailing list in the meantime.

UNIDENTIFIED FEMALE:

Thanks, Niels. Thanks, everybody. Bye.

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