
RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you very much staff for enabling us to do this work. And I would like to welcome you all to the cross community working group on accountability, enhancing ICANN's accountability work stream two design team on human rights, meeting four.

I would like to do a short roll call to ensure that everyone who is on the call is in the archives as well. And if there are people on the audio bridge, could you please make yourself known so that you're registered in the archives as well?

No? So that means that everyone is on the Adobe Connect, is a formal participant. Then I got an absentee note from Paul Tuni. And that is all of the absentees that I have for this call. I'd like to know if anyone has got a change to their statement of interest they would like to declare?

No, no change to the statements of interest. I think that's...

CORINNE CATH: Hi. Sorry, Niels? Niels?

NIELS TEN OEVER: Yes.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

CORINNE CATH: Hi Nels, it's Corinne. I think I should perhaps add that in addition to working with article 19, I'm also [inaudible] at Oxford, so I've changed my statement of interest and added this.

NIELS TEN OEVER: Perfect, thank you very much Corinne for that update. Now I'd like to ask, we're finishing off the administrative, has anyone got amendments to make to the proposed agenda?

No amendments to the proposed agenda, so I suggest we continue with the four points on the agenda, and there is the final discussion on the summary on the document on what was agreed during human rights [CROSSTALK]...

TIJANI BEN JEMAA: Nels, Anne raised her hand.

NIELS TEN OEVER: Anne. Please come in.

ANNE AIKMAN-SCALESE: Yes, thank you Niels. It's Anne Aikman-Scalese for the record. Regarding proposed amendments to the agenda, I don't know if we'll have time for this, I was going to raise it in all other business, but there has been some discussion on the list regarding, you know, what policies, or what procedure we're going to use to review the framework of interpretation once we come into it from our standpoint as a work

stream two group, and then it goes to the CCWG accountability. And then I've expressed concerns that are consistent with ICANN's policies and processes that, whatever we come up with should be vetted through the normal policy processes within ICANN.

And I mean, obviously, you can't do a whole PDP on this [inaudible], but there are processes and existence. I remember being part of the policy and implementation working group of the GNSO, and GNSO has, for example, both a guidance process and an expedited PDP.

And so, at what point is this group going to discuss procedure in relation to the annex six provision that says that we will do this in a manner that's consistent with ICANN processes? Thank you.

NIELS TEN OEVER:

Thank you very much Anne. I see Kavouss's hand is up.

KAVOUSS ARASTEH:

I think this issue under any other business table. I suggest that we don't discuss it now, but I have serious problem with the problem of Anne. Very serious problem. But we will discuss it under any other business. Thank you.

NIELS TEN OEVER:

Thanks Kavouss for that suggestion as well. So Anne proposed that we add it to any other business, and if we do not get to it, we discuss this further on the list and then if we do not manage to resolve it during the coming week, we can put it higher on the agenda for next week. I hope

that will work, but I hope we can get to discussing that today. So in that case, I would like to continue to point two, which is the final discussion on the document on the summary what was agreed and discussed in human rights during work stream one.

We did not receive any comments on the document on the list. It has been discussed several times, here now. And two times, this is the second time in its final form. So, we did not receive any comments on the list. I didn't receive any comments in the document, so I was wondering whether people have comments on the document here in the call?

I do not see any hands, and I'm not getting any concrete comments on the document. Does this mean that we can go ahead and agree on this document as is?

Yes, everyone, if there are no comments, I would like to see some green ticks. People are okay with the accepting the document as is.

I am not seeing any green ticks. Does this mean that people have read the document or they do not agree? [AUDIO INTERFERENCE]

This means that we can accept the [AUDIO INTERFERENCE]...

TIJANI BEN JEMAA:

I don't see anything. Is it only from my end?

CHERYL LANGDON-ORR: No Tijani, I think we lost Niels. Cheryl for the record. Staff will sort it out, I'm sure. But perhaps, Tatiana, if you could take a note of the green ticks or otherwise, we can continue to move on?

GREG SHATAN: This is Greg. I suggest you also ask if there are any red X's.

CHERYL LANGDON-ORR: Sounds like a perfect plan, Greg. I support that. [Inaudible]
[LAUGHTER]

GREG SHATAN: This is Greg. To be clear, a red X would mean that you object to adopting this first discussion document, number two on the agenda, as being final, or at least stable in its current form. So if you object, put up a red X.

This is Greg for the record. I see no red X's. So I suggest that all the green ticks clear their ticks. And see if anybody can raise Niels. I have no desire to chair this call.

This is Greg again. I don't recall if there is a co-chair for this subgroup. I don't believe so, but Nigel [inaudible], and I see that Nigel is not in Adobe.

CHERYL LANGDON-ORR: Are you on the call Nigel? It's Cheryl.

Brenda, could you let us know what is happening with the connection back to Niels please?

GREG SHATAN: It looks like Nigel is not with us, and that we have lost Niels.

TIJANI BEN JEMAA: Is the staff confirm that the connection Niels needs is really dead?

GREG SHATAN: If it's not the connection that's dead, then I'm really worried.

TIJANI BEN JEMAA: Okay.

CHERYL LANGDON-ORR: I haven't heard of any major disasters in Australia this morning, so hopefully, nothing has broken down our major telecommunications network anyway. I'm sure staff will do their best to get him back.

Who is, in terms of [inaudible] on the Q&A, who was on the sub-team that was looking at the [inaudible] principle? That they can manage the next part. I thought [inaudible] you actually were.

GREG SHATAN: This is Greg Shatan. I did volunteer for this, it's actually number four, but we can certainly... Whether we go to item four, or have a discussion...

CHERYL LANGDON-ORR: Cheryl here. Tatiana is suggesting we go to item four. That seems like a smart move to me. So [CROSSTALK] yeah, go that way. Thank you mate.

GREG SHATAN: Yes, let's go to item four, which will probably turn into somewhat of a discussion Q&A on [inaudible] principles anyway, and we can put the [P for report?] to one side. So let's open the table first for any of the drafting volunteers. I see Niels is back, so I will cede the chair to the Chair.

Niels said go ahead, he'll pick up in a more seamless fashion. So I've opened the floor first to any of the drafting volunteers. I see hands from Anne and Kavouss. I'm not sure if those are new hands. Anne?

ANNE AIKMAN-SCALESE: Yeah. Hi Greg, Cheryl, and all. I kind of didn't want to skip over the agenda item that Niels had put up with respect to the general discussion on the [inaudible] principles. And one aspect about, that I think is quite thorny, as I'm sure I commented on the list. I actually thing these [ruggy?] principles are fantastic in of themselves.

I really like them. I have, you know, worked with other businesses that apply them. And where I get stuck is this. In terms of the ICANN Board's responsibilities being clear, the Board itself, in the ICANN community, is just a very, very different type of organism than a top-down corporate entity, that has the ability to...

It has, at this point in time, a wider discretion than ICANN has under the new accountability framework. And I know that Niels is, in a very considerate manner, supplied us with the principles of how to apply these in the non-profit situation. The truth, of course, regarding non-profit Boards is in, they are also essentially top-down.

And in many cases, they are immune by statute to, you know, claims from, or parties in terms of the personal immunity. I'm very concerned about how we, as a group, figure out ways in which that when the Board finally takes a decision, that it, in this human rights arena, or human rights impact, that it is not, that its obligations are very clear, and it's not too subject to too many complaints against Board action.

I noted that in the revised bylaws, and I'll try to wrap this up, once we do adopt a framework of interpretation, then that will serve as a basis both for requests of reconsideration of Board action, and also, independent review panel action.

And so again, as is my habit, it's more of a procedural confirm. That once we come up with this, and it relies on general principles, general framework of interpretation, how are we going to make it clear for the Board what they're supposed to do, and not subject the organization as

a whole to too many of these requests for reconsideration independent review panel? Thank you.

NIELS TEN OEVER: Thank you very much Anne, for that point. I see a queue is forming. So Kavouss, please, go ahead.

KAVOUSS ARASTEH: Yeah, please, thank you very much that you got back. Which point of the agenda are we on now? I understood that we are discussing number two, and there was no further comment on number two, and we conceded that number two is stable, and now we go to number three. So, if we are on number three, we have to follow the agenda. General discussion, question and answers on [inaudible] principles.

And I don't understand the last speaker referring to how ICANN is going to implementation. We are not yet there. We are not yet there. We are just talking general discussions, questions and answers on [inaudible] principles. So, can we stick to that please? Thank you.

NIELS TEN OEVER: Thank you Kavouss. We're indeed under agenda point three, and I see David McAuley is now in the queue. David, please come in.

DAVID MCAULEY: Thank you Niels. It's David McAuley for the record. I would like to make two comments in response to the question that Greg asked in his

capacity as filling-in, and they're general comments, irrespective of what number on the agenda we are on.

And they are what I put on list basically, and that is, with respect to the [inaudible] principles, it's my opinion, my personal opinion, that there should be an overarching statement that says, the [inaudible] principles to whatever extent we eventually agree that they may apply, are subsidiary to the bylaw.

The second thing I would, the second comment I would make is it will do this group good to hear from Paul Tuni, and I recognize that it's an inopportune time that he is not with us, but understanding the difficulty that, you know, that he's going through. But I would simply say Paul is a former CEO, and he spoke in work party four, in work stream one to this.

And there are some very complicated issues that will implicate human rights and the [inaudible] principles. And I think we need to hear from Paul and give him a chance to speak with us. So I think it will sober us up in so far as what, just how complex this can be.

And then one brief comment in response to Anne's comment. It's my understanding that the applicability that we reconsideration request and the IRP is not a given, but it's something that will be addressed in the FOI. It won't surprise many in this group, at least those from work stream one, when I say that it is my opinion that enforcement is in courts.

There is already vehicles available for enforcement, and that's not ICANN's role. So I think that the issue of applicability of reconsideration

requests, and RP is a matter that this group needs to talk about with respect to the FOI. Thank you very much.

NIELS TEN OEVER: Thank you very much for that clear statement David. Greg is next in the queue. Greg, please come in.

GREG SHATAN: Thank you. Greg Shatan for the record. In thinking about the [inaudible] principles and their applicability here, you know, I think Anne, I just want to highlight a couple of the overall issues, which you know, include the fact that ICANN is not... Well, on the one hand, ICANN is a corporation. It functions in a way that it is unique and unlike any other traditional corporation.

The very fact that we are here and having this call, and that we have the role that we have, the roles that we have, is an ample evidence of that. I question whether ICANN is not a state, and I question whether ICANN is a business enterprise. And as such, it's really outside of the [inaudible] principles paradigm. That doesn't mean there is nothing to learn from the [inaudible] principles, but in continuing with our general idea that the [inaudible] principles are out, unless we decide that any of them are in, all of the [inaudible] principles themselves say that they are to be taken as a coherent whole, going to sense we're violating [inaudible] principles just by, you know, thinking we can aggregate them.

But I think we need to just aggregate them, you know. There are the reasons that Paul pointed out with regard to with the fact that we have to deal with, ICANN has to deal with various types of third parties in ways that are very different than a business deal, which is supply chain and the like.

So it may be a jumping off point, but I'm, I tend to be doubtful that it's a landing point. Thank you.

NIELS TEN OEVER: Thanks Greg. I see Kavouss is next. Kavouss, please come in.

That must have been an old hand from Kavouss?

KAVOUSS ARASTEH: No.

NIELS TEN OEVER: Then please come in, Kavouss.

KAVOUSS ARASTEH: Excuse me. If we are dealing with the [inaudible] principles, the purpose of these principles was two-fold. One fold is addressing the responsibility and the obligation of states, and the other is [inaudible]. Here, we do not deal with the state responsibilities and obligations, because whatever we put in the bylaw, has no impact on the state at all.

They do not bind, you understand, to respect that, because they are not part of this convention or bylaw, so we should address issues relating to the business and corporate. However, with respect to the governments, or the states, they might have some obligation as far as the registry, and the registrar in the country, under their jurisdiction. We can adjust that, but we could not make any obligation for them.

We could invite them, we could request them, we could at maximum, urge them, but I don't think that anything has any value to put in the ICANN bylaw saying that a state shall do this, a state shall do that. We can write whatever we want, but no one will respect that, because they are not part of that.

So we try to put it in more practical way. So I don't think that the part of the work of the [inaudible] on the United Nation mandate [inaudible], will not apply here. We should apply parts, this is applicable to the ICANN, business and corporate only, but we could also invite governments, or request the government, or ask the government, to endeavor to do something.

But we could not put something that they should do this, or they shall do that. I don't think that that is applicable. Thank you.

NIELS TEN OEVER:

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

ANDREW MACK:

This is Andrew Mack for the record. Thanks very much. I am [inaudible] said to the sub-team on this. I think that, to [inaudible] point about the

idea of it being not an exact analog, I [think that that's?] the case. I mean [inaudible] we should be primarily focused on [inaudible]...

Excuse me. Can you hear me? Okay. The fact that this is primarily focused on states and corporate, seems to me to be a bit of a miss for the ICANN community, although I do think that there are some real values we can take out this. The question really becomes two things in my mind. Number one is the fact that the technicalities of it, for example, if there is a reconsideration, reconsideration how reconsideration, or reconsideration over what timeframe, and what are the different roles that people would be playing?

Also, there are requests in the [inaudible] documents that I read that talks about reporting. Again, reporting to whom? On what? Over what frequency? I think it's... I just think from practical terms, this is going to be a fairly difficult thing to do. The other piece of it that jumps out at me when I read the documents that were circulated was to try to get a little bit more clarity about what exactly we are trying to avoid.

I know in the strawman case we can say that we definitely want to avoid something that is obviously, you know, someone mentioned dot child pornography, or something like that. Fair enough. But I think in order for us to be follow the [inaudible] principles in practical terms, we have to try to understand the harm that we're trying to avoid.

And then craft a solution that is more limited around that. I agree with the last couple of callers. This is not a perfect analog. There is no way we can just take it and drop it into our work. On the other hand, I think there are pieces of it that we can make it work. So I would try to work

backwards from a simple, practical solution, if at all possible, informed by the principles. Thanks.

NIELS TEN OEVER: Thanks for that Andrew. And I see Tijani is next. Tijani, please come in.

TIJANI BEN JEMAA: Thank you very much Niels. Tijani speaking. I went through the [inaudible] principles, and I love them. They are wonderful. But they are for states and business enterprises. Since ICANN is neither state nor business enterprise, I don't think we can take them and say we may apply them for ICANN.

As Andrew said now, we have to understand what harm we try to avoid, and I think it is very different from what is in the [inaudible] principles. I think we have to read them, we have to understand them. They are for the general understanding, it is good, but for ICANN to apply them... Are they applicable to ICANN? I don't think so.

So I think we don't have to put a lot of time on studying them. This call may be, as it is now, more or less dedicated to [inaudible] principles, but we don't have to put more time on them. Thank you.

NIELS TEN OEVER: Thank you very much for that Tijani. Next in line is Paul McGrady. Paul, please come in.

PAUL MCGRADY:

Hi. Paul McGrady. Thank you. So, I guess I sort of like we're doing this a bit out of order still, and I know that we've already had some discussion about this. And I apologize. But shouldn't we be doing a baseline review into what human rights allocations ICANN already has under the law that governs ICANN's home? You know, California.

And then asking ourselves whether or not they seem adequate, and if so, then going out to other sources like [inaudible] principles and the like? It just sort of seems to me that we are, you know, I would hate for us to spend months and months essentially discussing and negotiating and ending up where we would have been if we had just looked at what law actually applies to ICANN. Thanks.

NIELS TEN OEVER:

Thanks for that Paul. Maybe it helps to shortly clarify that only states are currently party to human rights law, so that if we make a commitment to human rights, as we did in the bylaw, we need to formulate on how we will do that. And just going through the applicable in the US, which is of course, needs to reflect the treaty that the US signed up to, is not a direct commitment to human rights, but only by proxy because the US signed specific treaties, and by that, committed itself to also reflect that in its national laws.

But at the risk of overstepping my role as the chair here, so I'm quickly returning to the queue. And by that, Anne, Anne please come in.

ANNE AIKMAN-SCALESE: Yes, thank you Niels. It's Anne for the record. And I do think that one thing that will be interesting is when we receive a reply with respect to the question that Paul just raised, then hopefully that might be coming soon. I don't know if we have any updates on that. But I'll let the chair address that after I make a quick comment about, on this general discussion about [inaudible] principles, I did want to point out, and typed in the chat, when we look at page 19 for the abiding principles document, there is abiding principle on page 19 in paragraph 18B that I think is extremely important for ICANN.

And it says that when assessing the risks of human rights impacts that are adverse, that businesses should establish a process that both draws on internal, or independent external human rights expertise. And I think we're kind of in the process of doing that when we look at these principles generally, but also very important again, 18B on page 19, involve meaningful consultation with potentially effected groups, and other relevant stakeholders, as appropriate to the size of the business enterprise, and the nature and context of the operation.

I am, again, very concerned that we not take an approach that is essentially a top-down approach. And that again, goes to the procedural discussion, which has already been raised, about getting input from all of our stakeholders on the FOI. Thank you.

NIELS TEN OEVER: Thank you very much for that comment Anne. Next in line is Jorge Cancio. Jorge, please come in.

JORGE CANCIO: Hello. Good...

TIJANI BEN JEMAA: I don't hear. Is it me?

NIELS TEN OEVER: No. I unfortunately only also heard the first syllable of Jorge speaking. And it seems like we lost his whole connection, that is sad. So, I see Jorge was back for a second. So I propose when Jorge returns, we put him on the top of the queue, and in the meantime I'll ask Greg to go ahead. Greg, please come in.

GREG SHATAN: Thanks. Greg Shatan for the record. A couple of things. First, and this is the most fundamental, I think we need to focus on what a framework of interpretation is intended to do, and I think that some of what we were looking at here, some of the [inaudible] principles, for instance, number 18, which is the due diligence, it goes way beyond any framework of interpretation, and goes to the issue of implementation.

So I don't think, you know, we should be adopting anything that is really prescriptive about implementation, but we have... Rather, we should be looking at... Somebody is leaving through things while I'm talking. And rather, I think we should essentially be kind of setting the stage for other groups after ours, many of us may be involved in those other groups, but for other groups after ours, to interpret the bylaw, and apply the bylaw, and implement the bylaw, within an understood framework constructor.

I think there, the first issue is what human rights are we talking about, before we get to the [inaudible] principles, and or not. But obviously, this all kind of fits in the mix, but a lot of, I think, the [inaudible] principles go beyond the remit of a framework of interpretation.

Second, and only very briefly, so it's kind of out of order. I do agree with the point that Paul makes, and I don't think it's an issue of proxy, since ICANN is subject to applicable law. It is directly subject any laws adopted in the United States, or in the state of California, which cover aspects of human rights. So this is not an issue of state accession to human rights conventions. It's an issue of actual laws to which ICANN must abide, and any analysis of what ICANN has to do in the human rights arena, doesn't start from an empty page, it starts from those laws. Thank you.

NIELS TEN OEVER:

Thank you Greg. That seems clear and straightforward. Kavouss, in the queue, please... [CROSSTALK]

KAVOUS ARASTEH:

...we are not currently dealing with applicable law, what is applicable law. We are dealing with the principles. I think the discussion is not very well structured. We are taking various points on various paths. Can we concentrate on one single document? If you take the [inaudible] principles, if we say guarding principles, you can go to that one to see which one is applicable, and which one is not applicable.

Once we dealt with that, then we go to the discussion, what does it mean, applicable law? Now, we are not there. So I think, Niels, you have to kindly do a little bit of conduct of the work to confine us in earlier that really on the subject.

We are discussing many things at the same time. So which document are we discussing? Are we discussing principles? Principles applicable to a state? Principles applicable to business and enterprises? Which one? And then, whether ICANN could be, as a part of the enterprises and businesses or not? So can you kindly guide us in a structured discussion. Thank you.

NIELS TEN OEVER: Thank you Kavouss. As far as I know, we're still discussing the [inaudible] principles, it is the same document as the UN guiding principles for business and human rights. And we're having a general discussion on this. And I see Jorge has returned. So would you like to come in at the top of the queue? Because you were dropped earlier.

JORGE CANCIO: Good evening. Do you hear me okay?

NIELS TEN OEVER: We hear you splendidly now. Thank you.

JORGE CANCIO: Hello. This is...

NIELS TEN OEVER: You're dropping again for me, Jorge.

TIJANI BEN JEMAA: For me too.

NIELS TEN OEVER: I'm very sorry to pass by Jorge again. I hope he can take this up with staff and get a dial out to ensure that we hear Jorge's point. I see Tatiana is next in the queue. Tatiana, please come in.

TATIANA TROPINA: Thanks Niels. Tatiana Tropina speaking for the record. I would love to support Greg in his intervention that we have to figure out what the framework is actually about, because some of the issues that we are discussing are rather related to implementation and not the framework of interpretation.

And I think to get that, we actually have the summary of what was discussed in the work stream two, and there is an annex 12 in the final report of CCWG, which actually lists what we have to discuss and where we have to consider, in relation to the human rights bylaw. [Inaudible] point, so maybe we can actually have a look at it, and frame our discussion. This is the first point.

Secondly, I do agree with Kavouss. I don't think that it's only about the documents we are discussing, it's also on the [inaudible] level, because

we are discussing so many things at once, that even I, who participated in the work stream two, who is very much into this issue, is sometimes getting lost. Like seriously, we do have to focus somewhere.

We do have to maybe not to limit the discussion, but at least to discuss one issue after another. Thanks.

NIELS TEN OEVER: Thank you very much Tatiana for that comment. Greg, please come in.

GREG SHATAN: Thanks. Well, I almost feel like I shouldn't after what Tatiana said, especially since she was agreeing with me. I will continue with the current discussion on the [inaudible] principles, and note that another issue of applicability is that it assumes a state actor, of certain roles, and assumes a business enterprise with certain roles.

There is really no single state actor that fully applies to ICANN as a policy making body, as an employer, and as a vendor, and as someone with vendors. ICANN is, you know, are under the laws of California, its incorporation and domicile, and subject to the various local laws and other places where it has its other operations, like Istanbul and Geneva and Singapore as well, which each may have their own, you know, human rights overlays to different extents, and applied to very different extents.

But the basic thrust of my point is that [inaudible] assumes that a single state actor... And I'll be curious to see how [inaudible] applicability deals with the role of the state, with regard to [inaudible], especially

given that [inaudible] has, I believe, some sort of immunity from the state in which it [offensively?] sits.

So, it's even perhaps more [state?] than ICANN, but on the other hand, [inaudible] doesn't really have to respond to, you know, global multistakeholders, nor do stakeholders have a real role in [inaudible], unless you're holding a bit, fat, juicy porterhouse steak and you're going to serve it to [inaudible] leadership, with a very large amount of money under it. Thank you.

NIELS TEN OEVER:

Thank you very much Greg. I see Tatiana and Anne are in the queue. And Tatiana, if you would like to go ahead and suggest concrete points of discussion on how we could compartmentalize the [inaudible] discussion, several points have been brought up, that would be great. Tatiana, please.

TATIANA TROPINA:

Thanks. Tatiana Tropina speaking for the record. I think that, well, I think that will go with my general comments about [inaudible] principles, because I can always see them into particular principles. But I think that the suggestion from Jorge to discuss them one by one would be a very good idea. I mean, like, of course, those which are applicable to the states, we can agree like, when we will consider them, or maybe remove them.

But just go one by one, or at least chapter by chapter. Thanks.

NIELS TEN OEVER:

Hi, Jorge here. I agree with that, and after Anne's point, I would like to see if we could wrap up a general discussion and then look into the document, and see where we are, and see whether we can have a bit more of a point by point discussion on [inaudible] principles.

[Inaudible] conclude, as Kavouss already did before, that the state principles do not apply, and then we can see which one of the early principles for appropriate actors would or could apply. So but before we go to that, Anne, please come in.

ANNE AIKMAN-SCALESE:

Yes, thank you Niels. It's Anne. I had volunteered to read Jorge's comment into the record. And what he wanted to say was, "Number one, we are still are waiting for the assessment of the meeting of the HR commitments being a quote/unquote, core value. So I don't know when we will get that." And this is my own comment, but maybe we have some information available through the chair on when we might get responses from ICANN Legal, or if we could follow-up with them?

And then his second comment, "Last week, we agreed to look into the [inaudible] principles one by one. Please let us do so without making absolute claims as to their relevance." And then just adding my own comment to what Jorge has said, I agree with some earlier commenters that it's more productive to go one by one through the items that apply to businesses rather than states.

And so, I think, you know, Greg's suggestion is constructive in that if we began that one by one discussion with principle number 11, that would be helpful. Thank you.

NIELS TEN OEVER: Thank you very much Anne. I'd like to continue, but I see Kavouss's hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Can you hear me?

NIELS TEN OEVER: Yes, we hear you, Kavouss.

KAVOUSS ARASTEH: Okay. I think we are converging that we start principle by principle. It is [inaudible] document, or document you have provided, under the general principles, you have two main titles, states, the role of the business, enterprises, and the need for rights and obligations to be matched.

If you take this one, one by one, I think we are in a good way. We're talking about this. If you agree with that, I could comment on paragraph A. As I mentioned before, we could refer to the responsibility and obligation of the states, but in the sort of invitation and request to them. And nothing is wrong if in the framework of interpretation, whatever principles [inaudible] put for the state as obligation, and as responsibility, we refer to them.

But the only thing we have to do, we have to replace the must and should by invited or requested, and retain those principles. They are

valid, and nothing is wrong, if we invite or request the states to observe these principles. That is on A. Thank you.

NIELS TEN OEVER:

Thank you very much for that Kavouss. Before we now head into the specific document, I can tell you that we do not have a response yet from ICANN Legal, because ICANN Legal, I understand, are very busy with the upcoming ICANN transition hearing in the [inaudible].

So probably next week that we will get an answer from ICANN Legal. So, as been proposed by both Greg and Kavouss, while we're looking at the [inaudible] principles, we will most likely jump over principles one to 10, since they are applicable to state, and I think we can all agree ICANN is not a state.

So we might have a look at the [inaudible] principles starting at principle 11. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. Let me clarify my point a bit. I do agree that ICANN is not a state, nor is it in anyway appropriate to apply the state role to ICANN. However, the way I read the [inaudible] principles, the whole, the [inaudible] principles on the whole, depend on the role of the state being played, as well as the role of the business enterprise being played, in order to essentially actualize human rights obligations at the business enterprise level.

So while it may make sense to start with number 11, I think we need to consider whether an ICANN, which in a sense, you know, has, which has

a very unique relationship to a state, or many states, really, whether that works, you know. In the traditional sense, you have a corporation that's domiciled in a place and it has a state in which it is a corporate citizen, and that is very much, you know, governed by that state.

ICANN has that in certain ways, but really shouldn't be viewed in having it in other ways. And so therefore, the kind of, the balance between the state and the business enterprise, that I think is assumed in the [inaudible] principles, evaporates in many aspects of ICANN operations, especially those involving the community. Thank you.

NIELS TEN OEVER:

Thanks for that comment, Greg. I see Kavouss is next in line. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. I think we are once again converging, starting on principle 11. And the only thing is that I have a question in all of these principles from 11, they referred with the term that business enterprises should do this, and businesses enterprises should do that. The risk of having a problem with some people, that I don't want to name, that they always problematically talk about should, and need, and shall.

I think that if you want to do something, should is a very rich term. We have to select another term that satisfies the situation. Having said that, I don't think that there would be any problem if you will start one by one on number 11. Thank you.

NIELS TEN OEVER: Thank you very much Kavouss. Greg, is your hand still up or is that an old hand?

Tijani, please come in.

TIJANI BEN JEMAA: Thank you Niels. Tijani speaking. I confess, I didn't understand the last Greg intervention, about the relationship with the US government because ICANN is incorporated in California, etc. But we are trying to put the framework of interpretation of human rights for ICANN. And ICANN [inaudible] but it is not working. We cannot put any commitment, or any respect for human rights governing the state of the US, because ICANN is incorporated in the US.

So, I didn't understand really what he means by that.

NIELS TEN OEVER: Thank you very much Tijani. We could ask Greg if he could elaborate. Greg?

GREG SHATAN: Sure. My overall point is that I think this is a fit issue between ICANN and the [inaudible] principles. And that the [inaudible] principles typically assume that you have a corporation that is governed by a state. And perhaps it's governed by other states in other places where it might have offices, but the least case, it is always governed by a state.

And while ICANN is certainly not above the law, outside the law, in any way, it's function is, in a way, [inaudible] to states, in terms of the multistakeholder model and the policy development model. And a certain aspect of what ICANN does, or how ICANN works, are so different from how a corporation works within a state in which it is domiciled or has an operation, that the kind of balance in the [inaudible] principles between the role of the state and the role of the enterprise in having, in accomplishing a human rights implementation, are just lost.

And basically, for this reason, it's another reason why the [inaudible] principles are a bad fit for ICANN. My only side note, maybe this is what confused Tijani and the other people too, is that to the extent ICANN is a normal corporation that hires people, and buys toilet paper, and you know, travel services and whatever else it might do. That there, it is a traditional corporation, and probably more traditional, you know, have to, be of both applicable law, and if it were to you know assume a responsibility to respect human rights, would have more traditional business enterprise concerns.

But I'm going to be that this group here is probably least concerned with those areas where ICANN is a traditional corporation, if we're concerned about it at all. Thank you.

NIELS TEN OEVER:

Thank you Greg. Kavouss, please, come in.

KAVOUSS ARASTEH:

I am not sure that we should subordinate ICANN duty, responsibility, and obligation to respect human rights to a particular government. Here, as somebody said, US. ICANN has all of the responsibility without any connection with any government. The [inaudible] principles make a distinction between the two parts. One part is safe, the other is business enterprises.

And there are not liaised with each other. It would be very difficult if we try to subordinate that to a particular government, and so on and so forth. And then there would be difficult to put any responsibility to ICANN saying that yes, I am with the government of the US, so whatever I do is under that. And then we don't know whom we have to deal with.

Do we have to deal with particular government to call that government into the court? But we cannot do that at all. So I don't think that what people said is right. That the corporate, because it employs the people, or may travel and so on and so forth, is under [inaudible] law and it is respect of human rights.

It depends on the will and responsibility of states. In fact, if they fully respect, then the ICANN does not need to do anything. If that may not effect, I don't know. I can, according to the people, I can't do anything at all, because he says that on the state I'm working.

So I don't think that we could not liaise these two together. Let us discuss the responsibility and obligation of ICANN, if it is a business enterprise under the section 11 onward, with the [inaudible] principles, but not yet these two parts linked or liaised together. Thank you.

NIELS TEN OEVER:

Thank you very much for that Kavouss. And I see that we are already nearing the hour. Well, I think we're closely approaching the whole hour, and I think we can make some conclusions on things we learned this week.

Namely, we've jointly concluded ICANN is not a state, so that the [inaudible] principles one to 10 would not be applicable to ICANN. We've also concluded that ICANN might not be the most, the clear cut organizations to apply the [inaudible] principles to. So, we would need to continue to go ahead with a careful analysis of the relevant principles, without going too deep into [inaudible] land, because it is clearly [inaudible]...

...should come up with a framework of interpretation of the bylaw, and not come up with an implementation plan. So, with that in mind, I hope that we can go ahead with the drafting team and the whole sub-group, to analyze this specific parts of the relevant [inaudible] principles to see if we could get relevant wording from there, which we can inject back and later on upon agreement into our framework of interpretation draft document.

I hope this is a constructive way forward, and I also hope this is a job that the volunteering drafting team would take up themselves, take on themselves. That drafting team was comprised of Andrew Mack, Tatiana Tropina, Greg Shafan, [inaudible], and David McAuley.

If other people would like to join this work, I think that work will go on at the same hyperlink. I think our discussion gets more constructive when we get more concrete, so I'll discuss with the drafting, with the

volunteer drafting team, whether we can focus on some specific principles and get some specific text out there, so that we can discuss that to further delineate our issues.

I'm very sorry that we did not get to discuss the point of Anne, but Anne, would you perhaps like to bring it up on the list and then we can discuss it there?

ANNE AIKMAN-SCALESE: Sure. I would like to get it on the agenda, though, for next call, if you please.

NIELS TEN OEVER: Sure. But do you think we can first discuss it on the list?

ANNE AIKMAN-SCALESE: Yeah. I had actually written about it on the list last Friday. But it didn't engender any further discussion, and I do think it merits discussion, especially in light of [inaudible] principle 18B. And I would ask that you put it on the agenda.

NIELS TEN OEVER: Okay. I can put it on the agenda, but I would like to reiterate that by no means...

KAVOUSS ARASTEH: Excuse me, Niels. I don't agree that you put it on the agenda. I totally disagree with that. We don't want that to go to the PDP. Let's discuss it on the mailing list first. I have serious problem to put this into the PDP. I'm sorry...

ANNE AIKMAN-SCALESE: I'm sorry. I know this is a late comment, but the thing is, there are issues around what contracted parties can be obligated to do, if no PDP is involved. In other words, you cannot adopt a contractual provision in relation to a framework for human rights without [CROSSTALK] consensus policy.

KAVOUSS ARASTEH: No, I'm sorry. Framework of interpretation is not [CROSSTALK]. Please do not...

NIELS TEN OEVER: Kavouss, I'm sorry...

KAVOUSS ARASTEH: We don't agree with that.

NIELS TEN OEVER: Kavouss, I would like to call to order please. I'd like to close down the call because we're at the top of the hour, and I'd like to first have a discussion on the list to see if we have sufficient traction to discuss this on the call, because I see this is a heated debate between Kavouss and

Anne, and let's see if there is sufficient interest so we can make this a working point on the agenda.

So on that note, I would like to close the call, and wish you all a great week, and looking forward to work with you on the list, on the document.

[END OF TRANSCRIPTION]