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NIELS TEN OEVER:

Thank you very much, staff, and welcome, everyone, to the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 Human Rights Subgroup. We have an interesting agenda today, and I would welcome any comments on the agenda.

First, I'd like to note that we have gotten apologies from Alberto Soto, Erich Schweighofer, and Jorge Cancio.

Staff, would you please be so kind to take the presence of the roll call from the Adobe Connect room. If anyone is on the audio bridge, would you please make yourself known if you're only on the audio bridge and not in Adobe Connect. There are none. I am luckily on a phone call. I have to say that I have some problems with my Internet connection, so if I do not completely follow the chat, that is because of that.

Are there any suggestions for the agenda? Any comments? Any suggestions? Please feel free to speak up.

In that case, we can go ahead with the agenda as planned. As you can see, we selected three different Ruggie Principle for discussion to continue the work as we together agreed to see if part of the Ruggie Principles could inform the development of our framework of interpretation. This does not mean by any means that we're accepting the Ruggie Principles, simply that we are currently analyzing them together and seeing what is useful and what is not and what could be used and what could be useful for us.

After a very constructive discussion last week, I'd like propose to take the biggest problem by the horns as it was first brought up by Paul to

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me outlining the UN Guiding Principle 13 and 19, but also see what we can do and what we can understand of reporting and impact. That's how I selected the Ruggie Principles for us to discuss today to see where the hot zones are and to see if there is a way we can work around them, if this is something we want to use, or if this is explicitly something we would like not to use.

On that note, I would like to go to the next slide and start off with Principle 15, namely one of the core principles of John Ruggie that helps us to know and to show what an impact assessment could look like.

I'd like to ask people to comment on whether they see whether such a principle would be useful in answering the question, what would a human rights [commitment] to ICANN implementation actually look like and whether such impact assessment as it is described here in Principle 15 would be useful.

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

PAUL MCGRADY:

Thank you. My question is, under California law, are any of these A, B, and C already required? Thank you.

NIELS TEN OEVER:

Thank you, Paul. Is there anyone who would like to respond to that? I see Greg's hand is up. Greg, please come in.

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GREG SHATAN:

I'm just a humble New York lawyer, so I can't respond to that with any professional understanding of it. I would tend to believe the answer is no, but maybe we have some counsel [admitted] in California who have looked at this or who might be able to shed some additional light on the topic.

But I think in looking at this, I feel like this is beyond our scope. I think this gets into what I would call a framework of implementation and not a framework of interpretation. I suppose one could answer whether these should in the abstract be part of what we do, but in terms of actually making them happen that would clearly be beyond the scope of this group. I'm not saying it couldn't ever happen. Obviously, groups follow other groups. But in terms of trying to actually figure out what the Bylaw means when it says what it says, I think this goes beyond our scope. Thanks.

NIELS TEN OEVER:

Thanks, Greg. That's a great comment, but I'd like to also remind the group that to do a framework of interpretation, we might need to have an idea of what the framework of implementation could look like. So I completely agree with your idea/suggestion in the abstract. I see Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

Thank you very much. Please kindly confirm that Greg is not in favor of any of these A, B, C or he is in favor but he believes that they are implementation process. Because I have difficulty to understand why they are not part of our work.

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In order to respect human rights, you must [set] policy. Then you have due diligence to implement that policy. Then you have to remedial action. If you do something wrong, [you have to remedy that]. So I don't understand why they are not applicable.

Greg is taking the same process as he had in the jurisdiction, going to implementation and principle. This is misleading totally. I can't agree with that. This is the principle. You want to have human rights, you must have a policy how to respect that. Then you must have due diligence [inaudible]. Then you must have remediation. If you did something wrong, you have to remedy that.

So I don't understand. I don't understand to spend the whole one hour to say it is implementation, it is not implementation. There is no such a distinction. These are applicable. You have not created yourself. You have not invented. You're taking something which exists. It is exactly for the UN. It is exactly for this football, what is called, this international football so on and so forth [tip off]. In both of them, this exists, so I don't understand why they are not applicable unless I misunderstood. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Hello, everyone. I tend to agree with Greg mainly, especially with regards to the Paragraph B and C that they are on the implementation and maybe even enforcement side. But I do believe that a policy

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commitment might be within the scope of this group in a way. If we are talking about scope or whatever task for this group is, I believe that B and C should be analyzed carefully because they are about due diligence process. I believe that B might also cover business partners if we read it together with other principles. Also, remediation of any adverse human rights [infractions] might also be hard with regard to what this group is doing.

It seems that my Internet connection is very bad, but I hope you can still hear me. Thanks a lot.

NIELS TEN OEVER:

I heard you loud and clear, Tatiana. Thank you very much. I see the hand of Greg is up. Please, Greg, come in.

GREG SHATAN:

Hi. I think first that there is clearly a distinction between policy and implementation. I don't want to play games in trying to assign one thing to one bucket or the other for the purpose of delay or many of the ways that those terms have been used over the years to send things in one direction or another.

But I think that we do have to distinguish between them and [just say], and that's all that I'm doing. We are not here to deal with implementation. We may be setting the stage for implementation, so there's nothing to say that many of the same people on this call might not be involved in a follow on group to figure out how to implement this. But that's a different question, and it may be a question that is dealt with differently in different SOs and ACs, etc. So that's my point.

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I'm at this point neither for nor against these, and it doesn't matter if I am because the point is that they're not for us to deal with yet. I do agree that A may fall into the line of a policy rather than implementation, but I think we have to be very client about the word "policy" because in this case Ruggie is talking about a more traditional business enterprise. I'm not exactly sure what he means by a "policy commitment" say in DuPont or Unilever, and unfortunately I've buried my copy of the guidelines so I can't look at the commentary. My desk apologizes.

But in this case, we're in the age of something rather than different. We have this outside policy development system, of which we are all a part. You need to think about how, if at all, we were to take A and apply it to ICANN's unique method of dealing with policy. Then we have to consider, what does it mean to have a policy commitment? We have the commitment in the Bylaws. Is that not a policy commitment already? [May we assume] we've satisfied 15A with the Bylaw? Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. That is, I think, definitely a way I think we can read the Bylaw as 15A. Now I'd like to ask a bit of more question for the sake of the discussion and also for our understanding because Annex 12 is asking us also to have a look at what measures ICANN might need to be taking, if I am correct. So we might not need to design the full human rights due diligence process, but would calling for such a process be part of the framework of implementation do you think? Or do you think that's already a step too far?

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GREG SHATAN: I think you're asking me. It's starting to sound like a step too far, but I don't want to dismiss that just out of hand at this point. I think it's something we need to contemplate as we go forward. Thanks.

NIELS TEN OEVER: Thank you very much, Greg, because I would like to really that we can have this process of contemplation [inaudible]. Of course, we don't need to answer all questions. This is just a quick first reading of the guiding principles. But one of the questions that we have in Annex 12 is that we're asked to consider one of the following points, and it's consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures and how this would work.

I see Kavouss' hand is up. Kavouss, please come in. Kavouss, is that an old hand? Because I do not hear you. While we wait for Kavouss to come in, I see David McAuley has his hand up. David, please come in.

DAVID MCAULEY: Thank you, Niels. I just wanted to say I agree with Greg with respect to the language in Annex 12. It's something that we need to contemplate. I don't think it has been on the radar screen, and so we should take it under advisement and look at it.

However, having said that, I would note that on list Anne Aikman-Scalese brought up something just prior to the call that might fit into this idea of considering how the interpretation and implementation of the Bylaw could affect future policies and procedures. That's with respect to PDP processes perhaps considering the framework of

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interpretation as part of a human rights impact analysis when they do their work. Thank you.

KAVOUSS ARASTEH: Niels, I was talking. Why David came into my talk?

NIELS TEN OEVER: Because we did not hear you, Kavouss. Please, come in.

KAVOUSS ARASTEH: That is not my [problem. That is] your problem. The communication link is okay. I was saying that the reading of 15 should not be in isolation of 13 and 19 and others. So you cannot discuss them in isolation. You can discuss them all together. Therefore, I am not convinced that B and C is not applicable, no matter whether X [inaudible] by Y or Y supports X. I know we are the group of people that are supporting each other, that's all, without any reason and without any argument. We should have a valid argument.

I am not convinced why "human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts" are not valid. I don't understand this distinction between implementation and policy and so on and so forth. This is totally misleading. I'm sorry, I don't agree with that. Thank you very much.

NIELS TEN OEVER: Thank you very much, Kavouss. So let's continue with this first preliminary reading of this principle. And luckily, we will also be reading



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the other principles, so no conclusions are being taken whatsoever. Indeed, Anne's point of a human rights impact in the PDP is quite interesting, especially because there is already a possibility in the GNSO PDP for a rights impact assessment as part of the preliminary issue report. But as far as I know, that option has actually never been used. But I might need to defer to other more seasoned GNSO participants in here.

Kavouss, I see your hand is up. Would you like to come in again, or is it an old hand?

KAVOUSS ARASTEH: No, no. Somebody is typing, pounding on my head. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. I am not sure if there are any other people who would like to come in on this principle, or we'll leave this principle for discussion now so that we have had a first reading and had some ideas and had a diversity of opinions so we can go to the next. I see Anne's hand is up. I was silently hoping for that. Anne, please come in.

ANNE AIKMAN-SCALESE: Thank you, Niels. I appreciate the opportunity to talk about this Principle 15. I think that these items – “policy commitment,” “human rights due diligence process,” and “processes to enable remediation” – I think that what Greg is trying to point out when we talk about those types of actions is that we are actually talking about things within the

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ICANN community that do involve policy determinations and that policy is made differently within ICANN from how it's made in top-down corporations because ICANN is a bottom-up corporation.

So the distinction really isn't about a for-profit or a nonprofit because the for-profit and nonprofit corporations both operate top-down and ICANN, policy-wise, operates bottom-up per multi-stakeholder model and those are two different things.

I think that when the Work Stream 1 folks, everyone, adopted this framework of interpretation, it was precisely because of that difference in how corporations work and how ICANN works because a framework is not in and of itself a policy. It may result in later consideration of a policy either in the context of a PDP on particular rounds like subsequent procedure, or it could result in a policy with respect to strictly applicable law that's considered just by ICANN the organization with respect to its own actions and hiring and firing and whatnot. Those are two different things.

A framework is not a policy. A framework provides that ability to evaluate a possible need for a policy or to evaluate a possible need for due diligence or to evaluate a possible need for remediation of adverse impact. Thank you.

NIELS TEN OEVER:

I was muted, talking to myself. Thank you very much, Anne, for that point. I see Avri is in the queue. Avri, please come in.

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AVRI DORIA:

Thanks. I don't think it makes a difference whether things are top-down or bottom-up in terms of a commitment. I think things happen differently in each of those, that the implementation of these intentions of these responsibilities is different in the two and so we couldn't look at Unilever Corporation and borrow its method of doing it.

Now in terms of the "this is a framework, this is not a policy, this is not an implementation," I think in a framework what we are doing is defining the responsibility, is looking at the responsibility. If that's the case, I don't see why the responsibility to do this would not be incumbent on us in ICANN without stating that, yes, C is done through Ombuds and B is done through impact analysis and A is done through Bylaws. We don't need to do that mapping at this point, but to say that we have a responsibility within the framework to deal with these three kinds of issues – and, in fact, it looks like we're doing it – is not in error.

So I guess I'm disagreeing with Greg and perhaps others in saying this isn't applicable because I think in terms of an enumeration of responsibilities, which I thought a framework kind of was, it's totally applicable. Thank you.

NIELS TEN OEVER:

Thank you very much, Avri. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. I think part of this has to do with where we slice the process here. I'm not saying that there will never be any such thing as implementation, and I'm not saying I'm exactly sure where making an

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interpretation of the Bylaw stops and where mapping out implementation begins. I think 15A, as I've indicated, I think is probably satisfied by the Bylaw. Not that we're saying we necessarily need to satisfy Ruggie, but if we were, we've satisfied 15A.

Now the question on 15B is – there are several questions – whether this is part of what we're supposed to be doing here or something that will happen at a later date after we determine what exactly the Bylaw means and how it needs to be interpreted, not how it needs to be put into action.

Reading this one a little [more] closely and maybe jumping the gun here a little bit, I've done a lot of due diligence in the last 30 years, and what Ruggie identifies here is not what I would call due diligence, at least in my profession. Due diligence is only identifying; it's not "preventing, mitigating, and accounting for." God even knows what "accounting for" means. This is a whole policy in and of itself. This is kind of a lifecycle of things.

Now whether this is so bog standard or wasting time even arguing about whether it's implementation or whether it's something we need to do, this is a lot more than just due diligence. I think it's actually either a matter of different people using different words in different professions or it's extremely disingenuous to call this due diligence.

Due diligence is a matter of diligently exploring and identifying and uncovering issues. It's not prevention, it's not mitigation, it's not accounting for. So I'm kind of a little ticked off at Ruggie for using the term "due diligence" when he's describing something that's about five steps further than that.

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Now whether we decide that this is something that must occur, that's really the question. First off, whether it's within the idea of interpreting the Bylaw to say that what's laid out in B must occur every time human rights are dealt with at ICANN, that's part of the question. Whether that's something we're going to answer or whether we need to first make sure we know the scope and parameters of the Bylaw.

For instance, Paul McGrady has repeatedly, and I think wisely, asked the question of what is meant by applicable law. That is clearly a framework of interpretation question. That's one that, if we are going to use the limited amount of time, we need to make sure that we answer that question.

Whether respecting human rights means preventing and mitigating and accounting for them, maybe that's self-evident. I'm not sure. But certainly anything beyond recognition or [a nod] or partial recognition of this I think definitely falls into implementation and not our job. Thanks.

NIELS TEN OEVER:

Thank you very much, Greg. I see Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

I think there is no new element in the argument of Greg. He's repeating himself ten times, using different words but does not say anything new. I don't understand that the due diligence is limited to identification. Due diligence is also applicable to preventing to do something and so on and so forth.

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What I suggest is that, as Matthew mentioned, for the time being [inaudible] on A and pause on B and C and come back to that. But we don't want to hear this similar argument which does not help at all because it seems that people [keep] pushing on their own points and they do not listen to others. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss and Greg before that. I see Tatiana's hand is up. Oh, one quick response to Greg, by the way, and to the whole group is that as the group asked me a while ago, I reached out to John Ruggie and he seemed quite interested to engage with us. So we might be able to actually ask himself in the not so far future what he means with due diligence and how he thinks this could work. But I see now that Tatiana's hand is up so, Tatiana, please come in.

TATIANA TROPINA:

Hello again. Well, I do fully agree with Greg that the principles [define] due diligence way too far what I could imagine due diligence might look like. But even if we agree that what they describe is due diligence – like identification, prevention, mitigation, and accounting for (which I also don't know what it actually means) – I do think that if we analyze these principles in the proper way, it would be rather going to the direction of enforcement and of protection rather than just respect or rather than just simple due diligence.

So I urge the group if we are going to analyze it further or if we are going to use these principles, we have to see how they are actually related to enforcement and protection. And where would be the hard

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stop for ICANN if we are actually doing due diligence? Is it only about its own policy development processes and operations? Or if this principle is to be interpreted together with other principles, it really looks like ICANN will have to perform due diligence also on partners and on partners' impact on human rights. Then it will go to the due diligence of gTLDs and ccTLDs if we don't exclude them.

So it would read it too wide and too far in my opinion. So even if we are going to analyze these principles, it would be better to think about enforcement and protection, how they relate to this due diligence and where we have to stop. Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana. I think that is indeed also a point that we will arrive upon in the discussion of the next principle. I think also having one eye on the clock, it might be good to start to move there. But I see we have Tijani in the queue so, Tijani, please come in.

TIJANI BEN JEMAA:

Thank you very much, Niels. I am sorry I was dropped when I asked for the floor, and I just resumed and came back. I wanted to say at the time that I agree with Greg and also with Tatiana about this principle and especially B and C. That's all. Thank you.

NIELS TEN OEVER:

Thank you very much, Tijani, for that comment. On that note, I think it might be good to make the step into Principle 13, look at A and B and see what we think can or should be done inside ICANN and whether or

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not we would like to consider ICANN's business relationships and whether we would like to exclude specific parties, include all, or whether we think it should clearly stay within ICANN because else it might fall under [enforced law]. I would like to invite opinions of everyone on this. I see, is that an old hand, Tatiana, or is that a new one?

TATIANA TROPINA: Sorry. It's an old hand. My Internet connection is lost, so I'm trying to lower it and I cannot. So I'm sorry for that.

NIELS TEN OEVER: Okay, but while you have your microphone on, would you like to share some of your because you mentioned ccTLDs, gTLDs. Do you think these should be included, a part, ccTLDs should be included, gTLDs, what about other business contracts? Do you have an idea of how we should deal with this in ICANN respecting human rights?

TATIANA TROPINA: Oh, well, Niels, of course I do have an idea, but I do believe that it is a big discussion and maybe we have to [ask]. So we are actually going to analyze it now. I still remember the intervention of Paul Twomey in this regard, that there is not that much we can do with ccTLDs at least like enforcing human rights when there are some adverse human rights impacts and/or violations by the governments because we just simply cannot enforce these.



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So I do believe that ccTLDs shall be completely excluded from any due diligence because otherwise even if we are not mentioning them but we have the broad provision which will require us to do due diligence and mitigate particular impacts, we might have some [inaudible]. I'm very sorry that Paul Twomey is not on this call because he would explain it in a much better way with his practical experience.

With gTLDs, well, I will listen to what other people say, but I think that should be a hard stop for ICANN. In the policy development process is taken into account human rights. But in monitoring all the operations of gTLDs, I don't know. I don't think it will work. But, again, this is just my personal opinion, and I will listen to what the group will say. Thanks.

NIELS TEN OEVER:

Thank you very much, Tatiana. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. If we have now moved to Principle 13, I would bet one million of Paul Twomey's dollars that 13B is really out of our scope as ICANN. I really, really worry actually about the idea that ICANN would put the arm on contracted parties and others and/or sort between potential TLDs and the like. And that gets into a whole other set of things.

I appreciate why this concept is here. It's sort of a "pay it forward" methodology. But here in particular is where I think ICANN is different and that we have what I think of as somewhat of a principle of neutrality when it comes to dealing with everybody. Sometimes that ticks people off. We'll deal with countries that we have to get OFAC

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licenses for in the U.S. because ICANN should deal with people that the U.S. doesn't want to necessarily make it easy to deal with.

Because, in a sense, we're Switzerland or we're above making choices. To some extent, there's a neutrality in providing resources and, in a sense, that even goes to the issue of freedom of speech in that we need to provide resources to entities and countries which may not fully respect freedom of speech or some other human rights as we see it, but to some extent this is an open Internet and it's not a "pick 'em and choose 'em" Internet.

Not to mention, of course, that we have a technical remit and [maybe] this is one of those times when we really do want to look at the limits of our remit or what ICANN's mission is in this regard. So this is one where I really feel like ICANN could actually do itself a disservice, or we would do ICANN a disservice by trying to weaponized ICANN as a way to force others to respect human rights, which of course they should but ICANN is not the tool. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. I Kavouss is in line. It would be good to have a specific discussion because we mention countries now, and I think this was also the point that was taken up by Paul Twomey. So I think we seem to have for a while a pretty convergent understanding of ccTLDs. Is the same true for gTLDs? But in the queue, I see Greg's hand is up. Is that an old hand, Greg, or would you like to respond directly?

GREG SHATAN:

That's a shriveled ole hand.

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NIELS TEN OEVER: Thanks very much, Greg. Kavouss, please come in.

KAVOUSS ARASTEH: I understand whenever we talk about prevention and mitigation, some people disagree immediately. We had that in 15, and now we have it in 13. It is more or less a replicate of both, but every time we talk about prevention or mitigation people disagree. So I don't understand.

People are just talking about policy with these empty words, nice words, without any diligence to implement that, without any diligence to mitigate any problems, without any diligence to prevent the situations. So I am not quite sure why people are so radical with respect to any type of mitigation or any type of prevention and they just want some words or policy, a policy which is not implementable, a policy which does not have any tools, ways, and means to implement that, so remain nice and empty words on the paper.

So for the second time, [this is the same]. We will have some people, I'm sure that immediately two or three people will agree with them because all of them are belonging in the same group. Thank you.

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

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ANNE AIKMAN-SCALESE: I'm sorry. I was on mute. Thank you, Niels. I did want to comment on the references to "empty words" and "empty principles" that we were discussing a bit on the list. In the ICANN context, I believe that rather than being empty, these principles that we might adopt in the framework of interpretation really operate more as a constitution that those processes within ICANN that already exist would be compared and assessed as against that framework operating as a constitution.

Now more specifically in relation to Principle 13 that we're discussing here, there are a lot of things in the wording here that would I believe if we adopted these principles directly involve dangerously in content regulation because "contributing to adverse human rights impacts through their own activities," as I keep saying, ICANN's primary business relationships are the awarding of registry contracts and qualifying of registrars, etc.

One thing I previously said by way of example is, I certainly would not be opposed to and would support the notion of an objection process on a human rights objection to a gTLD application. Again, I don't think that's necessarily an opinion shared by my IPC brethren, but what that would do if you had an objection process is it would take the content regulation outside of ICANN so that ICANN is not involved in content regulation.

I'm afraid that here in Principle 13 that we see a lot of principles or policies here that are going to require if truly applied and truly applied as they're intended will involve ICANN in content regulation, which is outside of its mission and scope. That's why I want to suggest [FYHR] is not about obligating ICANN to these things directly but providing more

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of a high-level view of what principles should be assessed in other [inaudible].

Anyway that was the point regarding Principle 13. It smacks of content regulation if applied directly to ICANN.

NIELS TEN OEVER: Thank you very much, Anne. My Internet connection is hampering a bit, but if I remember correctly I think Andrew Mack is next in queue. Andrew, please come in.

ANDREW MACK: Yes, Niels. Can you hear me? Hello, Niels?

NIELS TEN OEVER: I can hear you perfectly well.

ANDREW MACK: Okay, great. Hi. Two things. Number one is I agree very much with Anne. I don't think we want to be in the content regulation business. I think that's both well out of our scope for this activity, and I think it is a slippery slope. We're not the right tool for that.

The second piece of it is that I think as we're trying to figure out where that bright line is, we keep skirting one of the issues that keeps coming back to me which is: what is the problem exactly we're trying to solve? What is the harm? Can we enumerate the harm that we're looking to avoid? I know that may sound obvious to people, but I don't think it's something that we should walk away from. Because if we're going to try

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to create principles, the tighter those principles are the more likely we are to be able to make them work, especially in a multi-stakeholder environment.

In the abstract when we're talking about avoiding harm to human rights, that's great in the abstract. What exactly are we talking about. Can we knock that down? Can we make that a little clearer? I think that will help our task a lot. Thanks very much.

NIELS TEN OEVER:

Thank you very much, Andrew. I think that exercise would also be part of the previous principle discussed because what might be a human rights impact now might not be a human rights impact later. So I completely agree that measurement [and] scoping is very important. And as Matt said, we need to have a clear understanding of respect. I see Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

I think somebody said that empty words are not empty words. They are principles. They are part of a constitution. No matter what you put in the constitution, until the time that you have modalities, ways and means how to implement that, it remains empty, nice words. I don't understand why we are afraid of putting anything relating to prevention and mitigation. Otherwise, putting principles in a constitution is talking of abstract, just nice words. There have been many things nice words but never implementable.

So I don't think that this is our duty to just talk and talk and turn around and talk of abstracting the principles and good principles and not any

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tools to implement that. Mitigation is implementation of the policy, prevention to do harm is implantation of the policy, and it must be done. If you don't want to discuss it now, you have to discuss it at some time. You don't discuss under 15. We come under 13, you don't want to discuss it. That means we don't want to discuss anything. We just want to maintain what is in the Bylaw and that is all. End of business. Thank you.

NIELS TEN OEVER:

Thank you very much for that, Kavouss. I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Thanks a lot. Even if we don't think about content regulation as I told in my opinion these tend to be rather enforcement and protection. Why I think so? Because it's not only in Principle 13. Principle 13B has to be read together with other Ruggie Principles. What they require in terms of mitigation and addressing human rights impact, I believe it will not go well with ICANN. Because they require due diligence on business partners. They require the organization has to break the contract or end the contract with business partners who are actually violating human rights.

If we just read B here in Principle 13, we should bear in mind that it is not for us to interpret it if we are talking about Ruggie. There are other principles which provide interpretation of prevention and mitigation and if we have a look at these principle, they really require a lot. I believe that this is (a) dangerous and (b) it goes to the direction of

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enforcement and protection, which is absolutely no-go under the Bylaw.  
Thanks a lot.

NIELS TEN OEVER:

Thank you very much for that comment, Tatiana. I'd like to remind people that we're discussing things one-by-one and not the whole package because we already said we were only looking. Nothing of Ruggie is in. We're just looking for inspiration in this because this is the only model existing out there for human rights as they are applicable for other things than states. That is why we are at Ruggie. Not because we necessarily want to sign up to this, but because this is the best practice in the field. So that is what we see: what we can learn from this and see what we can build and what is applicable for us. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thank you. Not to repeat myself, but the way I look at 13B, it essentially tells a business enterprise to seek to do business with companies that have themselves also agreed to respect human rights, the other Ruggie Principles, or that will in order to get your business agree to do those things and conversely to avoid doing business with companies that don't or that won't be influenced by attempts to use the power of ICANN to bend them toward respect themselves.

I think that if we were sitting here in a startup company deciding that we wanted to be a company that respected human rights, that we would want to only do business with other companies that respected human rights, and that was the way we were going to run our business,



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that would be fine. But I don't think we can do that. It just seems to me to run contrary to what we can do here.

Now 13A is a different thing. I have some problem with the language there, but I think it's fair to say we would have to figure out what "causing or contributing" means. But clearly "causing...adverse human rights impacts," I guess where I start to have trouble with that is kind of in a more nuanced way. I think we can't leave that out entirely, but the nuance is that as a core value this is something that needs to be balanced. And we know that human rights need to be balanced against other human rights too, and human rights need to be balanced against other rights.

So the "avoiding" I think would have to have balance attached to it rather than just being an absolute obligation. Which, again, if we were sitting here as a startup, we could agree to go all out in agreeing to the Ruggie Principles, but that's just not where I think ICANN can be. Thank you.

NIELS TEN OEVER: Thank you very much, Greg. I see Tatiana's hand is up. Tatiana, is that an old hand?

TATIANA TROPINA: Sorry. Yes, it's an old hand.

NIELS TEN OEVER: I think that's also an old hand for Greg. So that means Kavouss. Kavouss, please come in.

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KAVOUSS ARASTEH:

Yes, Niels. I think we have at least for the first round sufficiently discussed 15 and 13. Maybe if I'm not wrong, if I'm understanding correctly, A in 15 and A in 13 is to some extent agreed and the remaining B and C in 15 and B and C in 13 is discussions. So you create two groups. Group one provisionally or to some extent agreed or agreed, and the second group those yet to be discussed.

So either we don't time to go to the Principle 19, but at least you create these two things that we don't come back to A in 15 nor A in 13 and we continue to go to 19 at your next meeting and then to see what falls in the category of those which have provisionally agreed and what happened for those which have not been agreed [inaudible] point of view. After you discuss these three and any others that you design for the next meeting, perhaps we should come back to see which ones really we have to delete and which ones we have to [inaudible]. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss, for summarizing the process. I could have not said it better. But since we still have six minutes left, I think it would be a waste if we would not even have a short look at the next principle. Staff, I lost control over the slides. Could you perhaps continue to the next slide? Ah, yes, exactly. This is Principle 19, even though it says 13 on top. It has a more detailed description of the things we've actually discussed. Because it's so much text, I think it would be good to keep that for next week.

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So we indeed seem to have convergence on the two points as summarized by Kavouss. There are other points for discussion. I'll see if we can already also develop some text based on this and propose other principles to discuss for next time. I see Anne's hand is up so, Anne, please come in.

ANNE AIKMAN-SCALESE: Thank you, Niels. With respect to the proposition that we have convergence on the principles specified in A in both 13 and 15, I just want to bring us full circle back around to the issue of what the word "address" means. Because there are those who think that "address" as contained, for example, in 13A have implications for enforcement. So I won't say that I find the same kind of consensus necessarily that you and Kavouss have expressed in terms of those principles because "address" is not really defined. Thank you.

NIELS TEN OEVER: Thanks, Anne. Thanks very much. We discussed the issue of "address" in the last meeting, and I have several notes of that also with some language suggestions by several of you. So I'll definitely take that into account also in discussing further language that we could discuss on these points.

I would like to move to the end of the meeting. I see Kavouss' hand is up. Kavouss, please come in.

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KAVOUSS ARASTEH:

Yes, in brief, the term “address” first I raised the issue that this is not clear, but immediately people jumping onto my talk and saying, “No, no, no. This is clear.” Somebody says that address means to deal with. Somebody else says that address means to take into account. So I have no problem to put “address” in order to find a better term, whether we say “deal with,” “take into account,” whether we say [inaudible] and so on and so forth. Taking that into account that being one of the issues “address” [inaudible] we can still create these two lists for the future: all of those we have provisionally agreed and those that we are still under discussions for the next meeting, Meeting 7. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. We will indeed do that and continue with analysis. I hope also we can have a discussion on this during the week on the list so that it will even speed our work, even though I’m actually quite happy with the constructive discussion and point of converging we seem to reach.

I would like to thank you all for your constructive contributions and your volunteering time effort in making this happen. I’m looking forward to seeing you all on the call next week, same time, same place. Thank you also staff for facilitating this. Bye all.

[END OF TRANSCRIPTION]