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RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you very much, staff, and welcome, everyone, both participants and observers, to the ninth meeting of the Cross-Community Working Group on Enhancing Accountability Works into Human Rights Subgroup. It is 19:00 UTC on October 18<sup>th</sup>, and we are together here in the Adobe Connect Room to discuss the work that we've been doing. And for that, we have a full agenda, partly thanks to the Drafting Team that has been working hard this week, and whose work has been distributed to you before.

Before we continue, let's start off with the administrative matters. Staff, could you please be so kind as to take a roll call from the Adobe Connect Room, and could everyone who is on the audio bridge and is not on the Adobe Connect Room please state your names so that they are in the logs and archives?

There is no one on the audio bridge who is not on the Adobe Connect call? Oh, there is Jorge with a Swiss number, which is the only other number, and Jorge is also in the Adobe Connect Room, so that is correct.

I did not receive any apologies. And does anyone have an update to their statement of interest? No updates? So then, I'd like to ask, do people have an addition, or change, or suggestion for the agenda?

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*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.*

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I see Tatiana Tropina has some problems with the audio. Staff, could you please follow up on that? Because it would be great to have Tatiana in the call as one of the participants of the Drafting Team.

So before we go to the next point, I would just like to shortly remark that I've made a quick and short report update, which I sent to the list, which I will need to submit to the CCWG Co-Chairs by the end of the week. But of course, I do not want to misrepresent anything that we've been doing here, so I've been sharing you my short draft reports through the list, so if you have any suggestions to add, please feel free to comment on it, or add.

So, that's on the list. And now – oh, I see David McAuley has his hand up. David, please come in.

DAVID MCAULEY:

Niels, hi, it's David McAuley speaking, for the transcript. Thank you for that letter for the short summary. I saw it earlier, and I think the term – I don't have it in front of me – but I think the term that you used for the Ruggie Principles 13A and 15A were relevant, and I think that would be fine. I could agree with that. I just want to make it clear that with respect, I think in 13A, to the word "address," I'm not sure we're of one mind on what that means, yet. That's really my comment. But thank you for doing that, Niels. And that's my understanding of how it would be seen. Thanks very much.

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NIELS TEN OEVER: Thank you very much, David. I also tried to indicate that it was relevant, not that we completely agree on the text or how it would be implemented or [inaudible] up for anything, so that's why I kept a relatively loose description. But if you would like to edit or comment to it, I propose that we do wordsmithing on the list. I'm pretty sure that we can work out something there. But thank you very much for your comment. I think Kavouss' hand is up. Kavouss, please come in.

I'm afraid you might be on mute.

Kavouss?

KAVOUSS ARASTEH: Hello, can you hear me?

NIELS TEN OEVER: I can hear you now, Kavouss. [CROSSTALK]

KAVOUSS ARASTEH: May I request of everybody, especially David McAuley, when you speak – please kindly, for the benefit of non-English speakers, please speak slowly. Separate syllables from one another and allow [inaudible] to fully understand you. Is this possible? Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. And that's a fair point. It's very important that we all understand each other and that we do not – that

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we also think about people for whom English is not their first language, such as myself. So that's a very good point. Thank you.

So on that note, I would like to go into the discussion of the document that has been furthered by the Drafting Team, for which I'd like to ask the Drafting Team, consisting of Greg, Tatiana, Matthew, and Jorge, who have been working this week. This week, we've been able to, I think, present you a bit cleaner documents, which we can talk you through, where you are – where we are. So I'd like to ask the staff if they could please pull up the documents that I've disseminated, which is coming up. Thank you very much, staff. And then, I would like to ask the people from the Drafting Team to take us through it, part by part, starting maybe with a short introduction, and then through the part within the scope and mission. Who can I give the floor, of Tatiana, Matt, Greg, and Jorge?

NIELS TEN OEVER:

So, everyone is pointing to each other now. So, Tatiana, why don't you give it a – oh, Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. It's Greg Shatan, for the record. It would help to have scroll control on the document. I can only see the first page, otherwise. Kind of taking it from the top, if you will – the first part of the dialogue that we are looking at in this document is the phrase, "within the scope of its mission." And we felt that this was relatively self-explanatory and didn't need a lot of interpretive assistance, although perhaps some – so what we did here is really just to bring the mission portion of the bylaws into

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the document. So other than the three-line chapeau that you see there, everything else for the next several pages – and obviously, it would not be several pages if we did not have narrow columns, but that is life – everything goes on, and is just the mission statements until you get to about page – really to the end of this section – which ends on page six, I believe it is. Six or seven.

So it may be that we think that there needs to be some interpretative gloss within the scope of this mission, but by and large, I think there are other sections that do need interpretation, but this is one part that's self-explanatory, so there's really – at this point, the thinking of at least the sub-sub-group up here can be that the less said, the better, on this point. No reason to load on unnecessary interpretation. There's enough time and space that we'll need for appropriate and necessary interpretation. Thank you.

NIELS TEN OEVER:

Thank you very much for that, Greg. I think this was also roughly the feeling that was shared within the whole Drafting Team. Am I right? Tatiana, Jorge, do you have anything to add? Matt? I felt that we were relatively converging here. Tatiana, feel free to step in.

TATIANA TROPINA:

Hello, everyone. Tatiana Tropina speaking, for the record. Yes, I completely agree with Greg, and basically, our mission section is self-explanatory, and then when we're on this page of interpretation, or on this page where human rights will be taken into consideration, every case would be just checked against the ICANN mission, which

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establishes the borders, and see if it's overstepped the borders or not. So after the framework is adopted, after ICANN has taken human rights considerations into account, this could be a test for every case. But other than that, it's completely self-explanatory. Thanks.

NIELS TEN OEVER: Perfect. So many lawyers, and still, agreement. I like it. Let's continue. Jorge?

JORGE CANCIO: Good evening. Did you [inaudible]?

NIELS TEN OEVER: Very well. Great to hear you.

JORGE CANCIO: Hello. This is Jorge Cancio, for the record. I will be very brief on this. I think that Greg and Tatiana explained their points quite well. It is important to always bear in mind when we're talking about these core values that we are bound by the mission, and that we spent a lot of time in our Work Stream 1 in order to get to a very strict and well-defined mission, so it's something that is repeated in the core values, about human rights in several instances. And I think it's something also that may be taken into account regarding potential interpretations of risks that we will step beyond the mission with these core values. Because I think that this element of being bound by the mission and being this

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quick to commitment, or [inaudible] within the framework of the bylaws should compensate for such concerns of potential risks. Thanks.

NIELS TEN OEVER: Perfect, Jorge. So now, we have a short presentation of this first part by the people on the Design Team. So now, I would like to invite others to comment, and I see Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Yes. I'm trying to read these [inaudible]. I'm not a lawyer. I must [inaudible]. I don't think that they need this [inaudible]. Our role here is not to quote something from the bylaw. This is [inaudible]. Bylaw is above that, and we don't need to control it, or affirm, or object to what is in the bylaw. [inaudible] interpretation, at maximum, anything in the document is [inaudible] testament to [inaudible] the title of the mission or paragraph number of the mission, and later on the core values [inaudible] whatever you want to say [inaudible], but not quoting the bylaw. I am not ready to [inaudible] that. I'm very sorry. I'm very [inaudible] all these [inaudible], but I don't think that this is necessary. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. So it seems that – oh, so I see that Brett commented that we've already removed quite a lot of discussion, Brett, but I also kept the discussion that is in here now, to give you a full view of where we are with the Drafting Team. We'll try to clean up the discussion and the text every week, but this also gives the group a fair

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insight into where we are. So that is to ensure the dynamic collaboration between the Drafting Team and the whole Design Team. I'm also very happy to take other suggestions on how to lay out the document on the list, or in a direct call, because we're just trying to do what we can and have the two processes link and keep on speed. I see Tatiana is – her hand is up; but I'd like to try to not fall back to process discussions, but let's try to go through the motions of all the different texts, especially now we seem to have some agreement, which is pretty good. Tatiana, please come in.

TATIANA TROPINA:

Hey, Niels. I really wanted to address also the comments about the document, but whatever. So I thought that even if we will not quote these missions in the same book of interpretations, because clearly it is a very long text, and we can maybe just make a link to the bylaw. But we can, if the group agrees, on the latest page, just explain that every case of these human rights considerations in the process of ICANN activities and policy-making has to be checked or tested for the mission [inaudible] to not overstep the boundaries. So this is just a rough brainstorm and rough solution, so if you want to avoid the long and self-explanatory text, we can at least provide some explanation. Just an idea. Thanks.

NIELS TEN OEVER:

Thank you very much for that suggestion, Tatiana. I suggest we take the – we go to Kavouss, and then we try to go to the next point. Because we're already seventeen minutes into our call, and we'd like to discuss



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the whole document with the group, so that we as the Design Team can also benefit from the wisdom of the group. Kavouss, please come in.

KAVOUSS ARASTEH: To shorten the discussion of the next part, whenever there is in the [inaudible] a quotation from the mission and core values, the only thing [inaudible] is to say “no interpretation is required.” That is the maximum [inaudible], but we do not repeat that. We repeat [inaudible], and then if there is any interpretation, we mention what interpretation we have. If there is no interpretation required, the text is crystal clear, it says, “no interpretation is required.” That is what I suggest. Thank you.

NIELS TEN OEVER: I’m very sorry, Kavouss, but the audio was hard to hear. I think you made some suggestions to –

KAVOUSS ARASTEH: Can I speak?

NIELS TEN OEVER: Yes, please come in.

KAVOUSS ARASTEH: Yeah. What I said was that – I am sorry that you have not heard me quite well – I said that whenever we quote something from the mission or core values in the left-hand column of the document proposed by the

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four distinguished lawyers, on the right-hand side, we have two options. If no interpretation is required, we just put “no interpretation is required.” If interpretation is required, then we put interpretation that we agree on that. So that is what I suggest. I hope that this time, I am clear. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. And we’ll take that suggestion into consideration. I think it was clear for other members of the Drafting Team, so we’ll definitely have a look at that.

So on that note, let’s continue to the next point in the agenda, which is within the scope of other core values. And there is some text there on the left column, which is a bit shorter, I think, than the text in the right column, because there are some brackets and discussions. But I’ll leave this for Greg to introduce. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan again, for the record. In contrast with the mission limitation, we felt – or at least, I felt – that the core values statement within the scope of other core values, did require a good deal of interpretation, and prepared this text. And a little unclear why the language on the right side that was bracketed was not put in on the left. Not sure what the system here is, because there was no decision that that language should come out.

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NIELS TEN OEVER:

No. Exactly, Greg, what I did – and this was just one way to make this a bit more readable – is to put in the second column all text that was out of brackets. So that has been my process to clean up the document a bit. But of course, that it is in the second column doesn't mean that that is the final agreed text.

GREG SHATAN:

So I think what we need to do, then, is ignore the second column and look at the third column, because that's really what needs to be discussed, because that's really where the living thinking of the group is. So perhaps it would be better to not even have the second column, but whatever. But I think that the point here is to provide guidance for how to interpret the human rights bylaw as a core value, and to contrast it with the commitments and to understand how it – that it needs to be balanced with the other core values.

So we've again turned to quoting. First, what could be called the balancing test – well, it's not really a test; it's a balancing exercise – and then some more explanatory discussion of how to balance this and to guide those who are moving on and looking at this, to use this. So this was not agreed by all of the members of the Team, but we can get into who agrees or disagrees with any particular instance of this. Important to understand how the core values work. And unlike the mission, which is vague – a boundary – and the commitments, which are a requirement, the core values are something a little more complex and therefore, interpretation was felt to be unnecessary, at least by some of us. And so that is what is in there.

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Then the remaining points – again, it comes back to quoting the remaining core values, where it says, “The other core values are...” and so forth. So that is what we have here, is in fact, a framework for interpretation, as well as the citations to the sections needed for interpretation, beyond citation, having pasted them in there. We could also, as was suggested, just have cross-links, and once we have a clean document, we can look at whether a short document with links, or a longer, more self-sufficient document makes sense in terms of the work that we’re doing. But for the moment, at least, keeping that in, as well as the interpretive text, as well, which in a sense is really – our main charge is to provide a framework for further interpretation, so that different people visiting the human rights bylaw will interpret it consistently. And for that, we require more than mere citation. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. As we can see from the document, there were some other perspectives in the Design Team. We had a very interesting discussion. I’d like to invite Jorge to give his view on this, and how it would benefit us. Jorge, please come in.

JORGE CANCIO:

Hello? Do you hear me?

NIELS TEN OEVER:

We hear you very well, thank you.

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JORGE CANCIO:

Okay. This is Jorge Cancio again. I think there is common ground with Greg on this. And this is the element of stressing that we're talking about the core values. I think I was one of the first people in this Working Group to find this out in the emailing system, to repeatedly call also for evaluation or an opinion by ICANN Legal on how they intend to manage the balancing test. Now, I don't remember actually whether we had any response on that. But I think it would be important, and I think it's important for several reasons.

First of all, when we are talking about the core values and the balancing test of core values and the relationship between core values, we are not only addressing the framework of the interpretation of the specific human rights core value. We're talking about the general framework where core values and commitments and the mission work together within the bylaws. So I think that, before we make any specific interpretation about the human rights core values beyond what is in the bylaws, or what can be inferred directly from the bylaws, from its nature as a the core value, I think that we would need to have also the opinion from ICANN Legal on what is this general relationship between core values and commitments, how they intend to apply this, or how they intend to have support in applying this relationship, and also the balancing test, which is an important element or aspect to the core values as a concept.

And in the meantime, while we get that general assessment on these general questions which go beyond the human rights core value, I couldn't agree with some of the specifics proposed by Greg, which in my view, tended to downplay, in a way, the character of the human rights core value. So I think that, for instance, it mentions that core values are

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not intended to apply consistently and comprehensively to ICANN activities, or are at least subject to discussion. One thing is that they are not absolute, or that they are not something strictly to be followed, but something subject to balancing tests with other core values, and also in relationship with the commitment. And a different thing is to say that they should not apply consistently or comprehensively.

Another thing that I objected to is that the core value – that there is no hierarchy at all among core values. I'm not sure whether we are in a position of affirming that, especially if we look into the components of the core values, we see that some core values may have more or less importance, depending on the issue we are talking about. And generally speaking, to say that the human rights core value is always of an absolute equal importance than other core values, would seem to me a bit premature, before we have a general overview of how ICANN intends to generally apply this framework of core values, commitments, etcetera.

But returning to the beginning, I agree on the basic notion that of course, a core value is different than commitments, that that is clear in the mission, and that there is a balancing test that is spelled out in the bylaws, and that this surely has to have some consequence on how the core values apply later on. Thank you.

NIELS TEN OEVER:

Thank you very much, Jorge. I'd like to now invite Tatiana as the other member of the Drafting Team to also give her perspective, before we

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then open the floor to all the discussion within the group. Tatiana, please.

TATIANA TROPINA:

Thank you very much, Niels. Tatiana Tropina speaking, for the record. As you can see from the comments to the document, I fully support Greg's position. And now, when I actually look at the ICANN Legal reply about balancing tests, and the application of core values dependent upon situation, I strongly disagree that some of the core values have to be more important than others. At least, I don't see this required in the ICANN Legal reply. What I can say is that I do not mind if we contact ICANN Legal, but we shouldn't contact them with the same question. Rather, if there is any guidance for the application of the core values, if there is anything on how they are actually applied or practiced, if this can be useful for us, yes, of course.

Other than that, I think Jorge and Greg have an agreement here that core values are different from commitments. I totally think that interpretation of core values relies on some flexibility compared to commitments. And of course, [inaudible] many factors that will be occurring in any one situation when the core value is applicable. And I do believe that it would be a true case of human rights, for example, in policy-making and in some other activities. Let's say, if there are some other values or commitments, like a common carrier, for example, of course core values are more applicable, because core values are not absolute. So I basically agree with Greg here. So this is my interpretation of what ICANN bylaws say.

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I also think that, as the last point, core values are actually outlined in the bylaw. They are explained in the bylaw. And to me, it looks kind of self-explanatory. The only question – oh, sorry – and especially after the ICANN Legal response to our question – the only question is, maybe, the process of their application, or any process of their application that might be useful for us. Thanks.

NIELS TEN OEVER:

Thank you very much. We have now had two different perspectives from the Drafting Team, so it would be great if we would get input from the group to help us think further. So I'd like to welcome comments from the floor. I see Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

One point [inaudible]. Also that I was before Tatiana, so you've given me the floor, no problem; but please kindly, if you have [inaudible], so you have to [inaudible]. Number one. Number two, I don't agree with people saying that some parts of the core values are different than the others. Second, I don't agree that we seek receive advice from ICANN Legal group. We are going to give them recommendations. We are not seeking advice from them. We can seek views of them, but not advice. Thirdly, if I look into the text, the first paragraph of the [inaudible] is the preamble. I have no problems with that. The second part is the [inaudible] core value, [inaudible] are not intended – I see that we [inaudible] say that – this is itself second part of the sentence [inaudible] that the core value [inaudible] interpretive room in the bylaw [inaudible] from bylaw. So I don't think that we should



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[inaudible] if you go to the At-Large consistently and confidentially, we should not be so quick and so radical [inaudible] apply [inaudible] consistently and confidentially. We should forget about that part, and [inaudible] the core value of [inaudible] to follow [inaudible] interpretive room in the bylaw, and we go to what [inaudible] of the bylaws [inaudible], and if it's not on here [inaudible] go to the second part [inaudible] human rights [inaudible]. It would be difficult to agree everything at the same time, so this is [inaudible]. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. That was a very clear suggestion for our Drafting Team to go forwards. Greg, is that an old hand, or would you like to respond?

GREG SHATAN:

That's a new hand. I'll be brief. First, I did agree at least in part with what Kavouss was saying. I'm not sure I got as much clarity out of the whole thing as you did, Niels, but hopefully that'll be cleared up over time. I do agree, and as stated in the text in the third column, there is no hierarchy among the core values. The balance must be determined on a case-by-case basis without automatically favoring any particular core value. I don't see any basis in the core values, themselves, or elsewhere in the bylaws, or in the work that we did in the CCWG in redoing the core values, that would make any core value more equal than any other core value. So just wanted to weigh in on that.

I think it's also – it's unfortunate Matthew Shears can't be with us, but apparently he's in a far, far better place, Costa Rica – but it's fair to say

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that he agreed with Tatiana and myself on this section. So for what that's worth in terms of looking at the working document – obviously, as indicated, this is all still mid-stream. We hope to make further headway in the small group, but I would note that by taking the bracketed language away from the third column and putting it in the second, we basically eliminated all interpretation. So that does not reflect, I think, the thoughts that I had, and I believe fair to say that Tatiana and Matthew as well. But we will all move forward and try to work on what we've got. Thanks.

NIELS TEN OEVER:

Thank you, Greg. Yes. By no means intended, because I think further down, text by others has been bracketed. This is just to ensure that there is a piece that is well-readable for people who did not have the time commitment to go through as thoroughly as the Drafting Team has been doing.

So now that we have given people an overview of the different perspectives that are present on this part, I'd like to invite people from the Drafting Team to give an overview from the next part, and that's on respecting. I think that's where even more discussion ensued.

So, who from the Drafting Team can I give the floor on giving a short overview of where we are here? I see Kavouss' hand is up. Kavouss, please come in.

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KAVOUSS ARASTEH:

Yes. The second part in the [inaudible] the human rights bylaw must be balanced against other potentially competing core values. I don't think that this part should be in brackets [inaudible]. It should be balanced. Then, the sentence from [inaudible] this interpretive room [inaudible] there must be flexibility in applying the core values [inaudible]. I also agree with that, because we need to have some degree of flexibility [inaudible] people applying that, so I don't think that this part also needs to be – I don't think it should be in the [inaudible] brackets. And then consider that this is also [inaudible] that the core values section of the bylaw restates that the core values are [inaudible]. I think this also should not be in this [inaudible] end of this sentence [inaudible] core value. So at least this spot should not be [inaudible]. This is the first; this is the [inaudible]; this must be out of the [inaudible] some sort of interpretation [inaudible] what is in the text of the bylaw, or we at least [inaudible] of understanding that the [inaudible], so it should not be disposed in this third bracket.

The last spot [inaudible] core value can never create an absolute commitment. That is also the other thing. I don't think that we should put in square brackets because at the beginning, we said that the core value is just commitments. The commitment is the mission. Therefore, the whole paragraph should not be a square bracket, and I suggest that we take out the [inaudible] and retain the [inaudible]. Thank you.

NIELS TEN OEVER:

Kavouss, thank you very much for your comments, even though I'm afraid that many of them got lost due to bad audio quality. Therefore, I would really like to invite you, Kavouss, because many of your

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comments seem to be very actionable and very concrete, whether you would be able to make these comments on the list or maybe even in the Google Doc, so the Drafting Team can directly integrate them in their deliberations. I hope that will be possible.

KAVOUSS ARASTEH: Yes, it's possible. Just take out this square brackets, that's all. Take out the square brackets from the whole [inaudible]. Thank you.

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

TIJANI BEN JEMAA: Thank you very much, Niels. Do you hear me?

NIELS TEN OEVER: We hear you very well, thank you.

TIJANI BEN JEMAA: Do you hear me?

NIELS TEN OEVER: We can hear you very well, thank you. Continue, please.

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**TIJANI BEN JEMAA:** Thank you very much. Okay. I am really [inaudible] we are progressing very well. And first of all, I do agree that the first part [inaudible] I completely agree with that. The second part also, I agree with that. And I think that what Greg just said is relevant. There is no exact equality between the core values. It depends on the situation. We may have Core Value A more important than Core Value B, in a certain situation. In another situation, it might be the contrary; so it is [inaudible]. We cannot say that there is exactly a quality, or exactly the same level or same importance. But we cannot say that there is one core value more important than the other. It depends on the situation. So I read here another time, my thanks to the Drafting Team, I really like the text of these documents. Thank you.

**NIELS TEN OEVER:** Thank you very much. Thank you very much on that. So now, I would like to invite Tatiana, as suggested by Greg, to take us through a first reading of the wording on respecting, which really invited a lot of discussion. So it would be great, Tatiana, if you could take us through and give us a quick overview of the departure points and discussions. And after that, we'll invite Jorge and Greg to do the same.

**TATIANA TROPINA:** Thank you very much, Niels. Tatiana Tropina speaking, for the record. It is one of the most controversial issues for our group, and taking the lead on this, explaining the positions, I feel a bit like a dart – the board for darts – so feel free to throw them.

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The first thing to highlight is that respecting human rights is where the issue of applicability or inapplicability of Ruggie Principles came strong as it possibly could. I will not repeat again the debate about Ruggie and whether they're applicable and for what kind of businesses they were developed to commit. This is probably outside of the discussion, and we have rigid time limits. So what we could possibly suggest is that we could, of course, use Ruggie as one of the sources for interpretation of these provisions. But we also believe that the bylaw uses the term "respect" in a way to contrast it with the enforcement of human rights. And if we think that the term "respect" will also be guided by core values, there are many elements in this – and also tested again, the mission, so it is not clear whether Ruggie can be actually used as the only and unique guideline in this. To put it simply, we think that respecting human rights may simply be seen as avoiding human rights violations of the core values, and within the ICANN mission. But it sounds more like a negative commitment. It could be actually turned into a positive commitment, and I will add this to the document later. But it can be formulated something like, for example, "Taking into account the necessity to balance the human rights core value with other core values, ICANN shall take into account human rights in developing its policies and its decision-making processes." So I do believe that when we are talking about respect for human rights, we also – because now, the core value provision of the bylaw is much more clear – we can also think about how this respect provision can be balanced against the core value concept.

So basically, that's all from me. I hope that Greg or Jorge can follow on this, maybe. And then, just as a suggestion, I don't know what of the

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line in the queue. Maybe we can invite Greg first, and then Jorge, because I believe that Greg and I are on the same page, and I have disagreements with Jorge. So instead of splitting this discussion into three, we can just listen to one side and then listen to another side. Thanks.

NIELS TEN OEVER: Thank you very much, Tatiana. Even though I would like to see emphasized different sides, I think we're all on one team, and we're all trying to get one framework of interpretation out, and it has never been done for an organization like ICANN, so we're working on this together, and there are different ideas and approaches. But as you suggested, I would really like to invite Jorge to also give his perspective on how he thinks we can move forward. Jorge, please come in.

JORGE CANCIO: Hello, everybody. Do you hear me?

NIELS TEN OEVER: Yes, we hear you, even though I hear a bit of echo. I'd like to make sure that all other people who are not speaking have their phones muted.

JORGE CANCIO: Okay. So – sorry? I could make it very brief, and say that I agree with Tatiana, but I just – that would mean the whole – I think that there's a lot of common ground. I don't know. Perhaps because I've working in a diplomatic environment for so very long, I see that, actually, we are not

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so far apart. And I would like to stress some of the elements, I think, that we are in agreement.

We have an agreement on the parameters of the bylaw test that sets the frame for what the concept of the notion of respect or respecting may mean. These parameters are on the one side, the concept of respecting human rights, and on the other side, as a negative limit, that this cannot mean that ICANN will enforce human rights. So those are the two main parameters of the bylaw test. I think we agree on that.

We also agree on the notion that the UNGP, or the Ruggie Principles, are one of the sources that may be used. I'm of the opinion that it's a very relevant source, because it's international standards. Perhaps for Greg or for Tatiana, it's just one source. But we agreed to agree that it's a source, that it's valuable to look at. And the reaction from the community will determine what has to be the importance of this.

And going more into the substance, I think that there is a disagreement between us or amongst us on the notion of respecting. I think that "respecting" cannot be construed as only meaning "not violating." That would be a limited interpretation of the notion of "respecting." It would mean that respecting is equivalent to abstaining from violating human rights. I think that's too small a meaning for the notion of respecting. And the reference of the Ruggie Principles [inaudible] that respecting may mean, on the one side, the UNGP Principle 13A, where we have more or less rough agreement that it means that you don't violate human rights, that you don't actively contribute to violations of human rights. But it also means, in 13B, that you also do something about violations of human rights if they are permitted by your



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immediate business partners; although this is more of a moral obligation, because there is no commitment – there is no obligation to remediate relations by third party, and there is also no commitment, no obligation to sever relations with business partners. Just a moral obligation that you should do something about human rights violations when they have a direct relationship with you.

But going beyond the Ruggie Principle, I would just stress as my final consideration on this, that respect, for me, means both the negative element of not violating, not infringing, and also the positive element of adjusting and promoting your activity in a way that is human rights-consistent. So this concept should find both sides in our interpretation. I'll leave it by [inaudible]. Thank you.

NIELS TEN OEVER:

This is very great to hear and read at the same time, the positions of Jorge and Tatiana and Greg come together. That's very nice. We've also seen a possibility at the end of the text, in green, how we could go forwards. But it seems like we're really making steps with the text and the positive commitments also suggested by Tatiana, so that seems like a real fertile working ground. I see Greg and Kavouss' hands are up, and we'll definitely go through that queue, but I would also really like to hear other voices that can inform our opinions. I'd like to emphasize that the room should not be shy, even though we only have five minutes left. Greg, Kavouss, please come in. Greg.

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GREG SHATAN: Hi. I'll let Kavouss go ahead of me. I'm just multi-tasking here, for a minute. Thank you.

NIELS TEN OEVER: Okay. Kavouss, please come in. And then David McAuley, and then –

KAVOUSS ARASTEH: Thank you very much. I don't think that this is the [inaudible] of this group to reconcile with the views of Jorge, Greg, and Tatiana. That is their duty to sit down together and reconcile among themselves. That is point number one. Point number two, with respect to the applicability or otherwise of Ruggie Principles, first of all, we need [inaudible] start with some preamble, saying that the group has considered various sources [inaudible] which the interpretation of human rights may be [inaudible], among which are the Ruggie Principles. Then we could say that the [inaudible] that the Ruggie Principles [inaudible] of the UNGP and so on, so forth, is not applicable totally to the human side. In other words, there are some parts of that [inaudible] may be applicable under the following conditions, under [inaudible] conditions, under [inaudible] without any [inaudible] application, and with optional [inaudible]. So we could say that we could have some preamble [inaudible] principles. I don't agree that the Ruggie can be excluded totally. [inaudible] some of them may be applicable [inaudible] circumstances and conditions need to be [inaudible]. Thank you.

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NIELS TEN OEVER: Thank you very much, Kavouss, and unfortunately I'm afraid you're still suffering with muffled audio. I hope we can have that better next time. David, some final thoughts? And maybe some from Greg, and then we need to round up. Greg, David, please come in. David, please start.

DAVID MCAULEY: Thank you Niels. David McAuley, for the record. I'll be very quick in responding to your invitation for others to comment. On the idea of respect, I think we need to look at where we're coming from. ICANN is an organization that has been very open, transparent, etcetera. I don't think it's a human rights abuser, in any sense; and it has taken a step to now have a bylaw that says we will respect human rights. I'm concerned with comments that we see in the calls about taking steps to address human rights violations, to mitigate, etcetera. I think we need to just think just one step at a time. If there's a problem, we can leap to the next step if a problem arises. So I see respect as a positive statement. ICANN has said, "We will respect human rights." That ethos can infuse the whole organization, and I think it would be a mistake for us to say, "That means, therefore, that we will now address, we will mitigate, etcetera, etcetera." And I guess that's why I struggle so much with the Ruggie Principles. Anyway, that's my general comment. Thank you, Niels.

NIELS TEN OEVER: Thank you very much, David. That can open a whole range of discussion. I'll close the queue after Greg; we only have one minute left. Greg, do you have some very short final thoughts?

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GREG SHATAN:

Sure. It's Greg; I'll try to be brief, yet not talk too quickly. So I think we were quite clear in Work Stream 1 in preparing the bylaw that there was no intention to create an automatic application of the Ruggie Principles. And there was quite a bit of concern about applying all and particular parts, particularly, of the Ruggie Principles. So I think it would be of great concern to those who approved Work Stream 1 on that basis, if we were to now argue that because we've used the word "respect," somehow we've pulled the string and attached that string into every last Ruggie Principle. Because at that point, we're going to have significant issues – I hope somebody enjoyed their lunch – we're going to have significant issues, and I think the point is – and what we did do, as Niels led us through it, it was a point-by-point discussion of Ruggie – clearly does not jive either, with the idea that we are Ruggie-huggers up and down the line. There is a lot to be gleaned from them; not all of what is gleaned from them, even if it were to be adopted by ICANN, is within the remit of the bylaw, and not all of it, even if it is, is a question of interpretation. We've made the distinction between interpretation and implementation and policy decisions. And I think this is not intended to be, nor can it be, some sort of a wholesale adoption of Ruggie. Rather, it's retail. So I think – and there are reasons, and I think we need to look at those things – we need to look at this on a case-by-case basis. That's all I have to say. Thanks.

NIELS TEN OEVER:

Thank you very much, Greg. And I'm very happy that that's exactly what we've been doing. We're creating something based on the

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experience and model that is out there. I'd like to thank you all for in engaging in this exploratory and exciting exercise. We've made, again, quite a lot of progress; unfortunately, we haven't been able to discuss everything. Unfortunately, we haven't been able to do a second reading of the applicable law concept, as proposed by David McAuley, but then we also haven't had a response from ICANN Legal on that, yet.

All in all, we're making great progress, and thank you all very much for contributing to that. I have two questions. One is that everyone who made very concrete suggestions for text changes and contributions to the text, if you would like to support the Drafting Team in making their job easier, is take those comments and either put them in an email, or in the Google Doc, so it's much easier for the Drafting Team to work with it. And secondly, if you get so enthusiastic by hearing all these texts and considerations and perspectives, you can also be part of the Drafting Team, so feel free to share in the list and you can be part of the calls and the process. That would be very much appreciated. If not, it's also still great to see you back on the list during that week, and on the call next week.

Thank you all very much. Enjoy your evening, and see you all on the list and on the calls. [inaudible]

UNKNOWN SPEAKER:           Bye.

NIELS TEN OEVER:           Bye, all.

**[END OF TRANSCRIPTION]**