
RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you so much ICANN staff, and thank you so much all participants and observers to the cross community working group on enhancing ICANN's accountability work stream two human rights subgroup, for joining us together in this call at 19:00 UTC on October 25. It is our tenth meeting.

So without further adieu, I'd like to continue to welcome you. This time I am sharing another time zone with some of you, because I'm currently in an airport lounge in Boston. I would already like to excuse me for any noise that might result from that.

I would also like to ask people who are not currently talking, to mute their microphones. We have a full agenda today, and I'd like to thank again the drafting team that has really been working diligently on providing us with [inaudible] to discuss, and we indeed got quite a lot of new text to discuss, in which the comments from last week have been reworked. So let's see where we are.

But before going ahead, I first wanted to do a roll call. ICANN staff, could you be so kind to take a roll call from the Adobe room, and could everyone who is only on the audio bridge, make themselves known so that we could then record it in the logs.

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.

Then I also have to ask if anyone has got any changes to their, updates to their statements of interest. If not, then I'll ask for suggestions, amendments, or changes to the agenda.

No suggested changes to the agenda. So, then I would like to continue to the next point on the agenda, which is the analysis and discussion of the progress of the drafting team working on the new proposal for the framework of interpretation. And here, it's starting to become a bit of a tradition. I would like to ask the members of the drafting team, to maybe first give us some initial thoughts on the work of this week, and then take us through different points, maybe starting with the first point, and then slowly moving us through.

Staff, could you please be so kind to pull up the Work Doc in the Adobe room?

Thanks so much. And then I would like to ask Jorge, Tatiana, and/or Greg to take it away. Who of you would like to start?

Greg's hand is up. Greg, please come in.

GREG SHATAN:

Sure, I can... This is Greg Shatan. I can start, or Tatiana has volunteered to start as well, but since I'm talking, I guess I'll continue talking. And then Tatiana can take the next phase. Overall, as you see, we've now added a fourth column, of newly suggested text coming out of the group.

Just to remind folks, the proposed commentary column was basically the stopping points for the previous At-Large subgroup discussions of

commentary. Everything in the working discussion column is work of commentary and proposed text that came up in our discussions. And then the next column, the suggested text column, is text that was either created in that column, or in some cases, pulled over from that column, and suggested by one or more members of each section, or a bit of each was brought in by each person.

Some of it has been discussed, some of it has not entirely been discussed yet. So it is fairly, it's fairly far along, but clearly, at the same time, a work in progress. And those reports on one of the things that we've done here is more logistical than substantive, but we've decided that having the entire mission statement sitting in a body of a document, at least a working document was just making it harder to follow.

So we moved the mission language to an annex at the end of this document, so we can get directly to the interpretative work of the document. While there had been some earlier discussion, and perhaps we would let the mission speak for itself, I think we've tried to take a middle ground, which is what you see here in the first block of text in the chart.

So, you know, interpreting the phrase within the scope of its mission. So I think, some sense, I don't know if it makes sense to read the text out loud, I think that's not necessarily the best use of time, but basically, well maybe I will read it out loud. This part is not that long.

The mission establishes the boundaries of ICANN's capability to consider human rights as one of its core values. Given the broad scope of human

rights, attention to this limitation is necessary to ensure that ICANN will not step outside of its designed remit. In this regard, any interpretation of the application of the HR to human rights core value, provided in the framework of interpretation, must be checked against ICANN's mission to ensure compliance with the general limitations provided in this part of the bylaw.

While the mission provides the outer boundaries for ICANN's activities, it does not create any particular obligations with regard to human rights. So I think this basically sets out the mission as more of a fence than anything else, for what ICANN can do and what we all can do. In a sense, this is consistent with the work in work stream one, where a lot of the time, the mission was spent in writing restrictions to the mission,, which were not previously part of the mission statement and the bylaws.

So, that's a fair statement of the mission here. Documents disappeared, and I see Jorge has his hand up. So, maybe I'll stop talking and turn the mic to Jorge.

NIELS TEN OEVER: Jorge, please come in.

JORGE CANCIO: Hello. Good night. Do you hear me okay?

NIELS TEN OEVER: Yes we hear you, but we can hear an echo, so maybe someone has his or her mic still on.

JORGE CANCIO: So I wonder... Shall I put it....

NIELS TEN OEVER: There is quite a strong echo there, but please go ahead.

JORGE CANCIO: Yes. I think the text on screen, reflects the changes made until this today's event, at least European time, more or less 1 AM, but they don't include other work, what's been doing today, amongst other things, the proposals I made, although now I'm seeing that there is a new version, which on screen, which could correspond to the last one we were working on.

So if that is the case, I would leave the floor. Thank you.

NIELS TEN OEVER: Thank you very much Jorge. I see ICANN staff has been kind enough to pull up the last version of the document, that is very nice, but we exported it from the Google Doc, as PDF I think, so I think we do not see all of the comments now, which is also a bit of a pity, but I think it is sufficient to say that this is a text that was discussed.

I would like to ask ICANN staff to perhaps save the Doc as Doc X from the Google Doc, and then upload it because now we cannot see the

changes in the comment that was made, and it might be a bit unclear on where we are. Ah yes, yes, yes. This is much more a document that I recognize. Thank you so much, that's great.

So it seems that we have something that is growing towards a consensus on the drafting team, also building on the discussions of last week for the first part, within its scope and mission. And I do not see direct comments on this part from anyone, except from Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. Sorry, I read the text, and I see that it is mentioned that the ICANN consider human rights. I think, I don't know where this comes from, is it pulled from bylaw? Or it is written by the sub-team, because there is a difference between consider and [inaudible], so I am reading the first column, and the first part of the fourth column, it is mentioned that [inaudible] outside this one.

And so, that is the [inaudible] work to consider here. The mission establishes the boundaries of ICANN's ability to consider human rights. Is it ICANN to consider human rights, or ICANN to respect human rights, or ICANN to what? Where is this text coming from? I think in fourth column we should be very careful, is it per something, we should [inaudible] deviation from the bylaw.

[Inaudible] but a different to consider and respect is quite a big difference. Thank you.

NIELS TEN OEVER: Thank you Kavouss. I think what is meant here, Greg and Tatiana can explain, so let me not speak on behalf of the drafting team, the drafting team will explain it themselves. Greg, please come in.

GREG SHATAN: Greg Shatan again for the record. I'll try. And then let's have Tatiana come in as well. I think the reason that... Well, first, as a general matter in terms of framework of interpretation, we are trying to provide interpretive guidance to those who are considering the application of the human rights bylaw. So, of course, we'll need to move beyond the actual language of the texts in order to provide guidance on interpreting those texts, so that it's done consistently in the future.

I think the reason the word consider was chosen was precisely because it was not the term respect, which is a term that we need to define in this context of this framework. Consider seemed to be kind of a value neutral word, and therefore, you know, just as we make our preliminary approach, for the topic seem to be, words to take kind of the scope of what we're doing here without prejudicing it in anyway, or using any word that is going to be interpreted within the document itself. Thanks.

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

TATIANA TROPINA: Thanks Niels. Tatiana Tropina speaking for the record. Actually, I would like to point out again, [inaudible] that these... I hear a very bad echo...

...mute their microphones.

GREG SHATAN: Jorge's mic is still on.

TATIANA TROPINA: Jorge, can you mute please? Thank you very much. So, well, I mean, it's a product of drafting team, and of course, sometimes, we have to use like our heads, and it's a material produced by our brains, you know? So we are trying to make connections and interpret the bylaw in consideration of different ICANN documents and basically, sometimes, common sense.

But of course, they're open to the comments, but while I do agree with Greg about choosing consider as a neutral word, I don't have actually a problem [inaudible] and put in the word respect there. Of course, it wouldn't be straightforward, because just replace the word consider with the word respect, maybe sentence having no sense.

But I will certainly make a comment and we will, well, consider this, I believe, because it is a valuable comment. Thanks.

NIELS TEN OEVER: Thank you very much Tatiana. Kavouss, please come in.

KAVOUSS ARASTEH: Yeah, I'm sorry Niels. I don't agree with Greg, because he was not in favor of respect, and some other people have difficulty with respect,

now find solution to put consider the most weakest, [the worst?] that we have. You can consider, but you can't apply that. Respect has different meaning. I don't think that this group is authorized to interpret meaning of respect from meaning consider. It is not correct.

[Inaudible] It is not correct to interrupt respect to mean consider. This is a new invention by lawyers, by respect [inaudible]. I don't agree with that. We should put respect [CROSSTALK]... I don't agree with Tatiana, nor respect. Thank you.

NIELS TEN OEVER:

Thank you Kavouss. I think Tatiana has said that she will, that she will seek to reword to use respect, as you suggested, and she has also now noted that into the Google Doc. So, I think we should give the drafting team some time to see what alternative they could come up with. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan for the record. And for the record, I was not, nor did I say at any time, that we should interrupt the word respect to mean consider or vice versa. So that was not my invention, rather it was an invention of someone misinterpreting me. So, however, is the word is causing confusion, we can certainly look at trying to be clear.

This is, again, just a discussion of the undertaking that ICANN is doing with regard to the human rights bylaw. And also, for the record, unless my memory fails me, I was not opposed to the term respect. You know, showing up here. So, but if I was, it doesn't matter, because that's

what's in there. In any case, I'm not inventing anything, or at least if I am inventing things, I'll tell you what I'm inventing.

Moving back to substance. Unless there is any further comments on this initial paragraph, obviously there is no [inaudible] we want to this to be as clear as possible, if one needs the framework of interpretation to interpret the framework of interpretation, we failed. So we need to write with as much clarity as possible.

And it is good to have a lot of eyes with a lot of different language backgrounds and professional backgrounds, to make sure that we write for everybody who will read this. [Inaudible] take on core value here. Let me just talk about the core value section, then I can stop talking, especially because I've got a cold and my throat is about to give out on me.

So, within the scope of other core values, this is, here where we get to the point, first, that the human rights bylaw is in there as a core value, which is a particular type of bylaw. And we discuss here the fact that it needs to be applied through the interpretive rules, which apply sort of a balancing act, not to mentioning balancing test, but a balancing act between one bylaw, one core value and all of the other core values.

And yet, must all be considered against the commitments which are not part of the balancing test. So, there are some changes here, obviously this is still a work in progress, but I think it's, to my mind, it's clear from the language itself, that the, that it says, in any situation where one core value must be balanced with another, potentially competing core value as a result of the balancing serve a policy developed through the

multistakeholder process. To my mind, it means that we do have a balancing test requirement here. And so, the next point that is made is that there is no hierarchy among the core values. And that, you know, basically, just goes through kind of a description of how to try to exercise the balancing act.

Initially we had the rest of the core values quoted in this section, and for the same reason as we did with the mission, we parked it in an annex, so this would be more readable as well. So, to some extent, this is, there is nothing particularly deep about this, but nonetheless, I think it's important that we be clear about how one works with the core values, especially since this is a new context for us to be working in. Thanks.

NIELS TEN OEVER:

Thank you very much Greg for that overview. I see Kavouss and Jorge's hand is up, but I first want to give the drafting team the opportunity to give the different perspectives that there are on the drafting team before we continue with discussions from perspectives from the other members. So Jorge, please come in.

JORGE CANCIO:

Hello. Do you hear me okay?

NIELS TEN OEVER:

Very well, thank you.

JORGE CANCIO: Okay. This is Jorge Cancio for the record. On the core value part, as you will see, there is a lot of checks to this, more or less, agreed among the [inaudible] team. There are some nuances, I think moral differences on the different parts of this. I think, however, that as I proposed last week, that we would benefit from an overview by ICANN legal, not only about the core values, and the core value balancing test, which they already provided some thoughts on it.

But on the question of what is the relationship between commitments and core values in general within the mission part of the bylaws. Because in the end, here, we are, amongst other things, trying to come up with an interpretation of what the relationship between the specific human rights core value, and the commitment is.

And that relationship should be consistent, in my view, to have a relationship in general between core values and commitments. And I don't think that we have any guidance or any document by ICANN legal, where they explained their approach to this question, which is a general question. And I think we would very much benefit from knowing their views about this. Thank you.

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

TATIANA TROPINA: Thank you very much Niels. Tatiana Tropina speaking for the record. I would like to have on the record that I agree with Greg, and I also think

that [inaudible] that there is no core value that is no core than any other values. The conditions where we have in the bylaw. And we have to be very clear about this, and this is actually one of the key issues about human rights as a core value, that core value has to be balanced, about this balancing test. So this is my only comment, thanks a lot.

So I'm basically agreeing with Greg on every point and highlighting balance an issue, and this equality of the core values issue. Thanks.

NIELS TEN OEVER:

That's very good. So we have a question from Jorge. Jorge, do you think you could provide us with a draft for the question in the chat, so we can consider it and see if multiple people are interested? And if so, we can ask ICANN legal. And here, of course, I note that we have not heard back from ICANN legal on our reference on our questions on applicable law.

But I would like to now go to the other participants. So Kavouss, please come in.

KAVOUSS ARASTEH:

Yes, Niels. I'm very sorry, the last... Can you hear me?

NIELS TEN OEVER:

Yes, we hear you.

KAVOUSS ARASTEH: There are some other people speaking or background. I still have difficulties with the last part, the last part of the fourth [inaudible]. Why [inaudible] provide the outer boundaries of ICANN activities? Correct? Then it says it does not create any particular obligation with respect to human rights.

This is not correct. Mission always creates obligations. The core value is not obligations, because they are balance between what can be done, and what cannot be done. So, [inaudible] after why the mission provides the outer boundaries of ICANN activities, then you add core values does not create any particular obligation.

This is [inaudible], because you mix up the core value with the mission. Mission has participated long, long hours, and everything is a start with [inaudible], it's an obligation [inaudible]. So I don't understand. I think I know who has drafted this text, I know the composition. So it is a source of something which does not correct with the reality, and I don't think it is a good interpretation.

We should be very, very careful. Thank you.

NIELS TEN OEVER: Thank you for being so sharp on that, Kavouss. But all I see from Tatiana is that the last paragraph on the mission is not on core values. And I think Greg would also like to respond. Greg, please come in.

GREG SHATAN: Thanks. Greg Shatan again for the record. I think Kavouss may have been speaking about the last part of the mission, that he's talking about.

And I think that the mission itself, if we're looking at it, of the language of the mission, does not provide any obligations with regard to human rights. It's really the core value that does. But if there are, in fact, at least... Again, this is a work in progress, so if there are aspects of the mission that one might say create a, that are part of the human rights obligation, or create the human rights obligation in part, then we should amend this and identify it.

And if you look at the mission, I'm not sure what part of this would, in fact, create any kind of a human rights obligation, which is why we have the core value. Thanks.

NIELS TEN OEVER:

Thank you very much Greg. So we might seek some clarification there. In the meantime, Jorge has posed his question in the chat. What is ICANN's legal approach and relationship between commitments and core values in general, and human rights core value and commitments in particular?

Do others feel strongly about asking or not asking this question to ICANN legal?

There are no extra costs incurred, so it might be interesting to get their view. I see Tatiana and Avri are typing.

Avri is asking Jorge's question to legal staff or to the Board. David says it would be good to get ICANN legal input.

Tatiana has her hand up. Tatiana, please come in.

TATIANA TROPINA:

No, I just wanted to follow Greg on the mission and core values. Well, we interpreted the mission as a major limitation and core values as the actual respect commitment, well, let's not call it a commitment. Capacity to respect, or ability to respect. But I believe that if anyone will find anything in the mission that makes ICANN respect human rights, we will be open to any suggestions to amend our text.

Right now, we see mission as a limitation provided in the bylaw text. Thanks.

NIELS TEN OEVER:

Thank you very much Tatiana. I see there is some support for asking this question to ICANN legal, I think it won't hurt. So, staff, could you please pick this up and forward, relay this question to ICANN legal? It will be great to hear from them on this.

And I think this also gives us an overview of this second part. I'd like also in the, because of time, move forward to the next part.

To also give us an idea... Well, there is indeed, also the balancing test piece which we haven't really discussed, as [inaudible] says, so this might also need some comment or further elaboration from the drafting team, or does the drafting team, it might be better to continue to the more contentious issue of respect.

I don't see any strong opinions on where we're going, so in that case, I would rather have a reading of more parts of the document. So here I would like to ask the drafting team again to elaborate a bit on

respecting, and I see Tatiana's hand is up, and I just want Tatiana to comment. Tatiana, please come in.

TATIANA TROPINA:

Thank you very much Niels. While I'm moving through the document, the part with respect, I would like to bring my apologies for the document, which you can see on the screen, because I don't know why there is a red highlight, because there is no red highlight on the main document. So I just absolutely don't understand how it happened.

So the text, and the thoughts we have, are quite long, and I [inaudible] to have a lot of disagreement in the small drafting team, so I will provide my views, and then I believe Greg and Jorge can jump later.

So, in my opinion, and that's what I put in the text based on what we discussed on the last call, respect and human rights have both negative and positive notion. And maybe seen as negative and positive obligation. So if we can say as a negative obligation, this will just simply mean avoiding human rights violation.

And if we decide to follow just a negative obligation, there would be no particular actions that ICANN would have take to respect human rights. But we also saw that interpretation of respect can be translated as a positive obligation, and this positive obligation, the focus mostly on the ICANN policy processes. And this obligation can be [inaudible] for example, [inaudible] given the necessity to balance a human rights core value with other core values.

ICANN should take into account human rights in developing its policy and the decision making process. This text suggestion, with regard to positive obligation, also includes the notion of core values that are intended to guide ICANN and its decisions and action.

And as an alternative for this language of avoiding human rights violation the policy making, in my opinion, this positive [inaudible] might create less risks for ICANN than the strong language of avoiding. And I also believe that the language can be constructed by combing both negative and positive obligations, like and I will cite again word by word, given the necessity to balance human rights core value with other core values, ICANN should, within its mission, avoid human rights violations, and take into account human rights in developing its policy decision making process.

Of course, it has been suggested that one of the possible resources for interpreting the variable is the [inaudible] principles, the UN guiding principles on business and human rights. However, I believe that at least three people on the team, think that there should be no presumptions that these principles apply to ICANN in any way, because we believe that, I mean, we have a point of disagreement here.

So I'm just voicing, being the voice of three people on the drafting team, we are four. I believe that Jorge has a lot to say here, but I will express our opinion that [inaudible] is for business enterprises, especially for those who are manufacturing goods, and perform services for those who have big supply chains, like Proctor & Gamble, and with the partners that can be possibly involved in the [inaudible] violation, and they create the framework for voluntary commitment of private

companies to respect human rights through [inaudible] their supply chains, and in the context of those parties who are involved in, I don't know, child labor, or slavery, or any other violation of human rights.

But we believe that, in a way, we can come up with our own interpretation, which will be both positive and negative obligation. And in this way, we don't have to rely on the [inaudible] principles, we don't have to commit to them, and it makes [inaudible] easy, and it makes the interpretation stable for ICANN, as it should be. Thanks.

NIELS TEN OEVER: Thank you very much Tatiana. This leaves me with some questions, but I will first let the people who have their hands up, and other members of the drafting team, comment first. Jorge, please come in.

JORGE CANCIO: Hello. Can you hear me okay?

NIELS TEN OEVER: Very well, swimmingly. Thank you.

JORGE CANCIO: Okay. Thank you. This is Jorge Cancio for the record. As you will see in the specific wording, there are still disagreements in the small group. And on what is the way we express these ideas. At least, as we see today, and this is progress from last week, I think, we have an agreement that the notion of respecting human rights has both a

positive and a negative aspect to it. On the negative side, we can define this as avoiding infringement of violations of human rights. On the positive side, I think that possibly there are more disagreements on how we interpret this.

I think that respecting, in a positive sense, means also to practically do something. And probably we could use the word further human rights, further the respect of human rights, or something like that, in the text. So, I think there is a certain disagreement on what is the extent we want to give to this positive notion.

As to the [inaudible] principles, I wouldn't like to get, once again, into that kind of debate. I think that it would be fair for us to [inaudible] or somewhere in the framework of interpretation, that the [inaudible] principles, the UN guiding principles on human rights for business enterprises are relevant, and they are a possible source for ICANN in this endeavor, both on the interpretation side, and on the implication side, which is different to this framework of interpretation.

But I would certainly be surprised if ICANN as a global organization would step away from what is the gold standard for business enterprises in human rights, both for the UN the [OECD?] or the Council of Europe. So there are a lot of places where these principles have been supported and sustained, that's a very important international standard.

So we have to be also aware of the perception we may create if we come up with [inaudible] and different interpretations of concepts like respecting, which are very well laid out in that guideline. So, that is

mostly what I would like to say for the moment. In this respect, as to the specific wordings, we are discussing them in this fourth column. I would very much welcome also, proposals from other participants in this working group, and finally as a more on a personal note, I think that [inaudible] that the small group is comprised of a certain number of people who are a certain number of people [inaudible] a certain opinion, and the other might not, is not very conducive to creating a good working relationship in that small group.

Because after all, the composition of that small group is not representative of working group at large. Thank you.

NIELS TEN OEVER:

Thank you very much Jorge. And I see that there is a lively discussion. I also see that Kavouss's hand is up. Kavouss, please come in.

I think, Kavouss's hand is up...

KAVOUSS ARASTEH:

Yes, I'm sorry. I say that I put my comment in the chat, paragraph one to eight, and paragraph one to C of the bylaw have been mixed up together, combine them, some part of one two eight, and one two, one two B eight and some part one two B C, a mix of something and [inaudible] interpretation. [Inaudible] that interpretation is a [inaudible] of these two.

I'm sorry, this is not interpretations. Thank you.

NIELS TEN OEVER: Thanks for that Kavouss. I see Jorge and Greg's hands are up. Jorge, please come in.

Jorge lowered his hand. Greg, please come in.

GREG SHATAN: Thank you. This is Greg Shatan for the record. First time I've been accused of minestrone. It tends to be borscht more often. Cold, with sour cream. But in any case, I think that there is a lot of discussion in the chat, and I'm kind of looking more at this, it's too bad that Paul McGrady is not on this particular call, because I think I'm going to channel him a little bit and say this is why it's important that we figure out what the heck is meant by applicable law, and there is, you know, a number of things being thrown around there about what might be applicable law, and I think that's a very good discussion that we need to have.

Because it is a key to the bylaw the way that it is drafted. So, encourage us to do that. There is, if we get to that point in the document, at least a placeholder on how to deal with applicable law. Last, and while this is perhaps a little premature for this particular document, I would hope that we can avoid loopholes or [inaudible] language. Obviously it's the inevitability of compromise in any multistakeholder solution, but in annex 12 which [inaudible] help us interpret in the jurisdiction working group, there is some language there that could be used to say almost anything if you want it to say that.

And that's something we should avoid in this, you know, we need to be clear at the end. Thanks.

NIELS TEN OEVER:

Thank you very much for that Greg. I think we should also... What I would like to understand from the drafting team, is that, is why there is this explicit mentioning of why [inaudible] is or is not valid, because I thought in previous discussions we came on the point some parts might be valid, some parts might be not, a lot of it might also be implementation.

So I'm not necessarily understand why such an explicit denunciation of [inaudible] is helpful here, also because we're just providing interpretation for our bylaw and have an analysis about what model would or not be useful. So, I'm afraid this is like getting out further away from [consensus?], whereas the rest of the text read moving us towards convergence.

So maybe the drafting team, or members of the drafting team, could elaborate a bit more on that, because it's also the sense I get in the chat.

Greg, please come in.

GREG SHATAN:

Thank you. Greg Shatan. I'm not sure what you're saying is a denunciation. It's just the paragraph about the final issue absolutely clear. The point, I think, that's being made there is that we would be putting the cart before the horse to try to satisfy [inaudible]. If we're using [inaudible], we're using it to interpret the bylaw, we're not

measuring our interpretation of it against bylaw, against [inaudible] with [inaudible] as the goal.

You know, it was one of the clear discussions in work stream one is that using [inaudible] as a goal, using it as the methodology, was not what we were doing, but this in no way is a denunciation of [inaudible]. And as you said, in part, or parts of the UN GPs, as it says here, that really go into what we would consider implementation or activation of, and really implementation in this case really needs work, policy work, and individual policy working groups.

So, this is not to say that [inaudible] could not be brought into those discussions about how to implement a particular aspect of [inaudible]. But rather, our job is to interpret the bylaw, not to comply with [inaudible]. This is not a compliance test. Thank you.

NIELS TEN OEVER:

I think I completely agree with you, Greg. But then I do not understand why [inaudible] is so extensively discussed in where it does not apply, or where it does not [inaudible] we simply need to define respecting. So I would understand it if we relate ourselves to the specific part of [inaudible] that talks about respecting, but why [inaudible] is applicable or not?

I'm not sure if the framework of interpretation is the best document to make such an analysis, but I will see [inaudible] Titania, please come in.

TATIANA TROPINA:

Thank you very much. Tatiana Tropina speaking for the record. Well, I can try to explain why [inaudible] appeared. As far as I understand, this team was formed after the initial document was shaped, and there was a lot of references to [inaudible], and a lot of interpretations that the group didn't agree on. And we were supposed to suggest some alternative, and that's what they're doing.

Most of that, we are trying to come up with, and not based on [inaudible] of course, but just because this is not a final proposed text. We are proposing the text more like a [concert?], it does need fine tuning, and once we're talking about respect, we do have to reflect the [inaudible] discussion, because when they discuss [inaudible], many of the discussions related to the definition of the word respect, and what respect basically meant, so I believe that we're not trying to denounce it, we're just trying to say there might be alternative interpretations, which ICANN, which this team can come up with, because there are many, there are many voices to [inaudible], but there are many voices against [inaudible].

And we have to find the consensus here, because I believe we'll probably not meet anywhere in the middle. And while suggesting some alternative solutions, we still have to reflect this [inaudible] discussion, we're not saying that this will stay in internal, in the final text, maybe we will not mention [inaudible], or maybe we will commit to [inaudible], we don't know yet the temperature in the room about this.

And it's up to the group to take this decision finally to At-Large, not to the drafting team. So, we are trying to suggest alternative [inaudible] as we're supposed to do, and some time, the text is not perfect and it does

reflect the discussion, and especially on the respect part where we have significant disagreements, and this is why it's in there. I don't know if everyone is [inaudible] based, but I suppose that it's hard to make [inaudible] in this group. Thanks.

NIELS TEN OEVER:

Thank you very much Tatiana. And I think [inaudible] sometimes be closer around the corner than we might think. Because I think where we are with the approach that you've provided last week, with the negative and the positive definition, and the things that come with that, I think we're very close, and let's try to work up to Hyderabad, and maybe use some of the time we have there to discuss to see what respect can mean, and where we can get different definitions from respect from, because there might be different points, and I think the provisions again, as Jorge said, might not be as far from each other as we might think.

And if we look at the second and the third column, and where we are now in the fourth column, I see we have made already a lot of progress in a very short amount of time. So I think there is no need for despair whatsoever.

We only have about seven minutes left. I do want to make a very short [inaudible], and just have a quick glance on the internationally recognized human rights part. I see two hands are up, Tatiana and Greg. Tatiana, please come in.

TATIANA TROPINA: Sorry, it was an old hand. Sorry. Thanks.

NIELS TEN OEVER: No problem. Greg, please come in.

GREG SHATAN: Thank you. I'm a bit confused about this entire discussion of obligations because the subject matter has been banded back and forth here, seems to reflect broader obligations than the rather narrow subset that Greg laid out, which is just within the mission and, as required by applicable law, have been trying to figure out whether that is actually the narrow definition that we're applying here, because the core value does, or the bylaw does state that the core value does not obligate ICANN to enforce its human rights obligation, or the human rights obligations of other parties against other parties.

And so, if we're not talking about obligations in that area, I think we can narrow this discussion down quite a bit, and a lot of the implications, at least as far as the UN guiding principles are concerned in terms of addressing or mitigating the impact of human rights adverse effects, kind of goes away at that point. And so, we need to... I'm trying to figure out what we're actually discussing here, what we're disagreeing on, what we're agreeing on.

I think that will be incredibly helpful in moving forward from this point. In terms of the international human rights document, as I mentioned before in the chat, a lot of these documents are not universally recognized. Some of them are. Most of them are not. They apply to

states and our discussion here, we say that they are not applicable to ICANN. I'm not sure exactly how helpful they are in terms of being mentioned in this discussion, because we should be focused on what exactly is applicable to ICANN, not exactly, not instead what is applicable to states, or what is the aspirational intent of human kind of whatever terminology or grouping of people you want to apply in this case.

I think we've gotten very big, and I think we need to get much smaller in our discussion if we're going to make any progress. Thank you.

NIELS TEN OEVER:

Thank you very much Greg. I'll have a look at the document, I see we are making some progress, and if we also look at six then a reference to [inaudible] document is actually asked for us, and I would like to say really close to what the CCWG actually asked from us. But before we go into the in-depth discussion of this part, I would like the drafting team to give us a short overview of what we have here.

Jorge, Tatiana, Greg?

I see Brett. Brett, is that an old hand or is it a new hand? That's an old hand. Greg, would you start? Will you take it away?

GREG SHATAN:

Sorry?

NIELS TEN OEVER: Would you give us a short overview of the internationally recognized human rights part? Or should we ask...

GREG SHATAN: I am more than happy to try. Actually, I think this is probably better for Tatiana, has a little bit more of her DNA in it than mine. Tatiana?

TATIANA TROPINA: Thanks Greg. This is Tatiana Tropina speaking for the record. So, we propose, as [inaudible] that there is several generations of the international human rights related frameworks, like universal declaration on human rights, and some second generation instrument, that could be [inaudible] for us to the ICANN human rights core value.

However, none of these instruments that actually have, are actually applicable to ICANN, because we all know that they create obligations for [inaudible] only. And by committing to one or more of this international instruments, nation states are supposed to [inaudible] to translate this human right in different areas of their legislation, and discover [inaudible] of human rights obligations, national level can be very broad.

From [inaudible] slavery, from regulation of the, let's say, age that one can start working kind of [inaudible] child labor, to previous legislation from freedom of speech to protection of different social rights, rights of minorities, and all other pieces of legislation, just how to say, but if you.

So the reference to international recognized human rights, the bylaw should not be read in isolation, rather it must be read and limited by the

reference to applicable law. This record, as required by applicable law, and as a consequence, international human rights instruments are not directly applicable to ICANN, and rather under those human rights that I require applicable law, carry out such human rights.

And here, we might come to the debate of applicable law. I very much enjoyed the debate on the mailing list, and the inquiry to ask ICANN legal about this. And we also wanted to know that depending on the jurisdiction in which ICANN operates, the law applicable to its operation may [inaudible], include the human rights applicable to ICANN, internationally recognized human rights, operations applicable to ICANN operations [inaudible], for example.

So the offices which are operating in Europe or for the hubs which operate in Europe. I believe that all European human rights frameworks, [inaudible] into international law, and this recognized regional instruments would be applicable. Thanks a lot. I think we're on the top of the hour.

NIELS TEN OEVER:

We are indeed, with this excellent explanation, on the top of the hour. This hour also went over again, like clockwork. I would like to thank again the drafting team for all of their efforts, and for helping us to continue these discussions and for informing the constructive discussions we're having every week here.

I hope to see many of you in Hyderabad, where we, of course, can continue to discuss. We have the face to face session. And I will see

how I can offer some [inaudible] of this, and then work with¹ the drafting team, how we can get to [inaudible].

In the meantime, of course, very much invite discussions on the mailing list as well. And I wish you all safe travels to Hyderabad, [inaudible] see you on the remote participation, on the mailing lists, or otherwise. Thank you very much, and enjoy your evening. Bye all.

[END OF TRANSCRIPTION]