EN

RECORDED VOICE:	This meeting is now being recorded.

NEILS TEN OEVER: Thank you very much, ICANN staff, and welcome participants and observers in the Cross Community Working Group on announcing ICANN accountability, Work Stream 2, the Human Rights subgroup meeting 15. I'm back on my nest in the Netherlands and it is great to have you all again here for an exciting meeting. It's great to see such a high turnout again, that is really nice.

Let's go through the Administrivia. First, can everyone who is not on Adobe, please let themselves be known so they can be registered in the roll call? ICANN staff, would you please be so kind to make a roll call from the Adobe room? That would be great. Thank you. I did not get any apologies accept from Jorge Cancio, Greg Shatan and Corrine Kat. So, it's great to have that noted.

But would anyone like to update us on an update of their statement of interest.   No?   That leaves us with two more points for the Administrivia.   One is that tomorrow during the CCWG plenary the framework of interpretation will be discussed.   Unfortunately, I have another commitment at that time, but I know several of you will attend. So, I really hope that you all can be ambassadors for our joined work. I am sure you can all be present as well. I do know that Tatiana and Greg will be there. But you are all part of this subgroup, so I figure you can all help us present.

I asked the co-chairs whether it might be an idea to perhaps postpone it a bit, but they thought it would be better to get it on as soon as possible. So, you will all do a first reading without me, but I'm very sure you can all cover very very well for that. So, that's another reason for you all to attend the plenary call tomorrow.

So with that, I have one more Administrivia information. I see a question from Kavouss. Kavouss, unfortunately Nigel stepped back as co-rapporteur, so I'm the only rapporteur in this subgroup left. So, I'm afraid you all will have to do it without the rapporteur. It's sad, but that's the way it is. But luckily as a community we are like a leviathan, so that this won't hurt us.

One more point, and that is that we haven't heard back from ICANN legal on any of our questions, so we're inching forward on that, kind of sad, but that is unfortunately the way it is. Does anyone else have a point for the Administrivia that we will or might not be able to cover on any other business points? No? In that case I would like to ask ICANN staff to either load the PDF or the doc that we shared on the list and all the other people are more than welcome to have a look in the Google doc of which I will now pull up the address so we can also live make comments as we did last week.

The drafting team, and most notably Greg has done a lot of the heavy lifting on that this week to address a lot of the comments that were made last week. And hopefully we will be able to develop something like this soon again so everything can go to the plenary. I have shared with you also the Google doc link in the chat, so we can go from there.

So I propose we go through all the parts separately again. As you can see, we have a bit more text, and that is because two and three were originally merged but we separated them again to give a bit more space. There is a lot of new text.

So, I see that there is a request since Greg is not here with the most heavy lifting here. Jorge is not here neither, who is probably still recovering from the IGF. Only Tatiana is here. So, I will do the reading of them one by one.

So let's start with the first paragraph and then I will gather comments from that. So, the question that has been asked to us is: the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitments to respect human rights. So, in order to address this question, we typed, "While operationalizing the human rights bylaw, ICANN can prioritize areas of focus such as operations, internal procedures, and/or new policies consistent with its mission. ICANN's commitment to respect human rights and take human rights into consideration in its operations and policies in the foregoing manner if consistent with the human rights provision of the bylaws. This could involve the use of the human right impact assessments of how ICANN operations could impact human rights."

I see a hand from Kavouss and I see a hand from David. Please come in. Kavouss?

KAVOUSS ARASTEH: Good times to everyone. I have two small comments that refer to the first replay. I think the first line that says,"ICANN can prioritize". I don't

think that we should use the verb "can" which is a verb of ability. I believe we can say "should", or say "could", or "would", or "shall", alright? Because you said [Inaudible] can by should, "should prioritize areas of focus such as operations," but [inaudible] prioritize because otherwise everybody [inaudible] because it's the potential of the people. But what should do and what should not do is different then what it can do.

This is the first comment, and the second comment is a little bit awkward, because there is very clearly a distinction between various types of [inaudible] and saying that, "internal procedures, and/or new policies consistent with its mission." [inaudible] correct. "ICANN's commitment to respect human rights and to take human rights into consideration in its operations and policies in the foregoing manner if consistent with the human rights provision of the…," [inaudible] it should be consistent. How we could say that this is consistent? We haven't done anything in the future. So the word "is" is not correct. Thank you.

NEILS TEN OEVER: Thank you very much, Kavouss. You were a bit muffled. In the Google doc, I already changed "can" into "should", but could you repeat your second suggestion?

KAVOUSS ARASTEH: Thank you very much, and probably I'll just read the screen. The second suggestion is that we say that, "such and such in the foregoing manner is consistent." I don't think that we could judge and say what is or is not

consistent.   We could say "should be consistent" or "expected to be consistent" or "shall be consistent", but not "is consistent". Because we don't know.   We are writing interpretation of the issue, unless you would say that people read that and think that it is consistent. But "is" is not a good word, you have to use another word. Thank you.

NEILS TEN OEVER: Okay, I was reading at the wrong point, but I see Tatiana is -- perfect, perfect.   Thank you very much, Tatiana so that people who are in the Google doc will see the changes as suggested by Kavouss, so they are in the Google doc. Thanks very much, Kavouss. I think those were great changes. And I see that Tatiana is also agreeing with Kavouss, which is great.   So now let's go to -- let's hear from David McCauley. David, please come in.

DAVID MCAULEY: Neils, thank you. Hi, it's David McAuley speaking for the transcript. I have a couple of comments. First of all, this past week I've had other commitments and so I apologize to the group.   I've not paid strict attention to this document, but I commit to do so in this coming week.

That being said, I disagree with what Kavouss just said with respect to this thing. When we say instead of "ICANN can prioritize" and we move to "ICANN should", we're creating a document of some direction again. I'm worried that this is becoming a substitute for or an extension of the framework of interpretation.

And so, what we have I think, or what we might need to this document, is something I'm working on in the jurisdiction group and that is a preamble. We may need an introduction to this document as to what it is and where it fits within the human rights hierarchy within ICANN. So far, we have a bylaw, we have a framework of interpretation that we've submitted to the plenary and then there will be this document.

My concern is that this document is very complex and needs some work. And if we move from "can" to "should", that's going to change the tenner of the work. Let me just give one example. In this paragraph we say, "This could involve the use of the human rights impact assessment," with a link to a Wikipedia definition of those assessments, which is extremely broad complicated and could pull in the Rugi principles that we've spoken so much about.

So my position on this is, I beg indulgence, but I would like to add some comments in the coming week. And I think that this document should clearly be 3rd in line, there should be the bylaw taking over all precedent, the framework of interpretation 2nd, and this should be an aspirational document. Thank you, Neils.

NEILS TEN OEVER: Thank you very much, David. I think that David is also very clear from the questions that are asked because we are mandated to write the Framework of Interpretation and this is just a suggestion for going forward. So this is by no means something which ICANN or the Community needs to do. This is just a possible way forward. So indeed, the first, "should" should probably stay a "can". I'm very curious what

other people think about this. Tatiana says no. So Tatiana, please come in.

TATIANA TROPINA: Well, I'm just thinking because I wasn't really comfortable with "can" after I heard what Kavouss was saying, and then after the "can" was replaced with "should", I wasn't comfortable with the words "should prioritize". So, I think that maybe we will just actually instead of having the preamble, we will actually write like, "These groups suggest ICANN to prioritize". So like it's our suggestion, you know? Like one of the ways forward. You know what I mean? The words of the group suggest that, while operationalizing the human rights bylaw, ICANN can...," or like whatever, but to rephrase it to say that this is a suggestion from the group. So, we can get rid of "should" or "can" and we can just suggest ICANN to prioritize, to make clear that this is just our suggestion.

NEILS TEN OEVER: Very clear. So I have now tried, "The subgroup of human rights and the CCWG suggests that, 'While operationalizing the human rights bylaw, ICANN prioritizes areas of focus.'"

TATIANA TROPINA: Yeah, yeah, exactly. Write in the preamble, but then we can always refer to the preamble while reading this document. So maybe we will just rephrase the whole document as a suggestion, you know, or as a recommendation. Like the group recommends, the group suggests, the group advises, the group whatever, I don't know, like whatever

synonyms are there. I don't know if the rest of this group feels okay with this, but I think it might be a good way forward, if this is just a suggestion. Thanks.

NEILS TEN OEVER: Excellent, I keep on storing and live adding the Google doc. Thank you very much. Kavouss, is that an old hand or a new hand?

KAVOUSS ARASTEH: Yes, a new hand.

NEILS TEN OEVER: Then please come in, Kavouss.

KAVOUSS ARASTEH: The word "can" is not correct. I apologize to all Americans, to all those opposed to when I say something about "can" and "should". They insist, this is not an American group, this is a subgroup on the human rights. My understanding is that for 45 years "can" is not a good word. You cannot use CAN. "Can" is ability, everyone's ale to see everything. Whether we should do something or we should not do something, that is another issue.

I have no problem with the suggestion of Tatiana's way to take out the word "can". But I am not agreeing to put "can" in that. And all of a sudden, David comes and says this document needs to be revised.   I don't know. Why you say that? You have not been able to revise?

EN

Okay, that's all. We have all [inaudible] you are not going to revise that again because he was not able.

So we are under the pressure of some people, I'm very sorry. I can in no way agree with the word "can" in any place. And the language is not property of any country. Language is property of humankind. Everyone understands, we can understand what "we can" means. You can damage something, you cannot damage something. This is the "can", but it is not correct. So I'll just say that [inaudible], but I don't agree, I totally disagree with David McAuley who comes in and wants to correct me. I'm very sorry for that, I'm very sorry.

NEILS TEN OEVER: No reason to be sorry thus far, Kavouss, because we have dropped "can". The text reads now, "The subgroup on Human Rights of the CCWG suggests that while operationalizing the Human Rights bylaw, ICANN prioritizes areas of focus." So there is no "can" left in there. So, this is the current suggestion that we're working on. But I see David has his hands up, so David could also say that this might not work for him. David, please come in.

DAVID MCAULEY: Thank you, Neils. No, that wasn't what I wanted to say. I was just going to respond to my friend Kavouss and say, you know, I apologize for missing this. I think this document just came up in our last meeting. But I think we have time within this work group to add some additional comments to it. I'm not intending to rewriting it. I would like to make some suggestions in the next couple of days. Thanks very much, Neils.

NEILS TEN OEVER:

And thank you very much, David. And this is something I would definitely suggest that everyone does, because it is not only the drafting team that can hold the pen. Of course, the document is still very open, we're still in the very early stages and we're doing now just a rough reading of it. So, everyone who wants to follow what we just suggested, can have a look at the Google doc where he or she can see that we now have replaced the word "can" with, "The Human Rights of the CCWG suggests that operationalizing the Human Rights bylaw, ICANN prioritizes."

So, we removed both "should" and "can" by making it active. So I put here the little text that I pasted, that could be wrong. I would say that we continue to the next part because I do not think -- sorry Kavouss, your second comment is still in and I removed "is" and it was made "should be". I completely copied it over, so that last part, that second sentence is this. You can see it in the Google doc. I can also paste it in here to make your life a bit more easy, and that of the scribe as well; should be consistent. Here we go, that is the second, that's the second part, completely in line with what Kavouss said.

So, I think we now went through the first part. If people have concrete other text suggestions on where we are and how we should do this. Ann has a point, I spelled prioritize with an s. Okay, so, "The subgroup on Human Rights of the CCWG suggests that while operationalizing the Human Rights, ICANN prioritize...," that somehow sounds weird. So Ann, are you saying that it should be, "The subgroup on Human Rights of the CCWG suggests that while operationalizing the Human Rights

bylaw, ICANN prioritize areas of focus such as operations, internal procedures and/or new polices consistent with its mission?" Because I definitely think there should be an s there.

ANNE AIKMAN-SCALESE: Yeah, Niels. This is Ann. Hi, may I speak?

NEILS TEN OEVER: Of course.

ANNE AIKMAN-SCALESE: Yes, thank you. This is Ann for the transcript. I actually think it's much better if you leave it the way it starts, "The Human Right group suggests that while operationalizing the Human Rights bylaw, ICANN prioritize areas of focus;" technically that is, as far as it's subjunctive use and it should not be plural, but I think actually David is right. That whole structure could use a little working outside of this meeting.

And I think David was saying that he needed a little bit more time to come in on the actual wording if "can" is being replaced. I tend to agree with Kavouss that's it's a slang use of the word can, it's not really an accurate use of the word can. So, I certainly don't object to eliminating can. But I do think that the sentence structure there is still a bit awkward and needs to be worked. Thank you.

NEILS TEN OEVER: Thanks, Anne. I see Avri now offers "may prioritize". I see Kavouss hand is up. I think that at this moment we're not at the point where wordsmithing in the call would be the most helpful. I would definitely invite people who have ideas on such free structures add their suggestions in the Google doc. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, I'm sorry, I have already had discussions on other issues with some people. In their view, "may" is not stronger than "should". I don't agree with that. I cannot agree to put "may" there. I agree with what you have proposed without asking "may" or "could". In my view, may is not more stronger than anything. And I am not willing to put may there. May is the most ruthless verb in its legal aspect, you may do it or you may not do it, and we don't want to interpret it, do we ever think of it as we may do this or may not do that. So I don't agree with "may". Thank you.

NEILS TEN OEVER: Thank you very much, Kavouss. I am going to park this issue if everyone agrees. David McCauley has already offered to do some drafting over the week. Over the week, we probably have until Christmas. Let me see, do we have another -- I will look it up to see if we have another meeting or if it's only in the New Year. I'll quickly check that and update. But anyhow, I would like to postpone this up to our next meeting because I do not think, we are almost halfway thought our meeting and we only did the first para.

So, let's quickly go jump to the second part, which is the response to the question: consistent with ICANN's existing processes and protocols,

consider how this new framework should be discussed and drafted to insure broad multistakeholder involvement in the process.

The draft response that we have is the methods for developing any new policies or framework that may be needed to fulfill ICANN's commitment to respect Human Rights will be dictated by the type of policy and how ICANN develops those policies. Any substantive policies relating to generic top level domains and other responsibilities of the GNSO are the responsibilities of the GNSO and should be developed by the GNSO using their organizations policy and processes for policy development. It includes any changes to the GNSO's policy development process. The GNSO's processes allow for broad multistakeholder involvement in working groups developing these policies. In a similar or other supporting organizations and now my computer has died, but luckily, I am still on the call. So currently I'm trying to reboot. I'm very curious if there are any comments on this. I think I saw Kavouss' hand. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, I have difficulty with the word "substantive". Policies are policies. Who decides what policy is substantive and what policy is not substantive. I don't wish to introduce an adjective of substantive. And then I don't want to give everything to GNSO. Yes, GNSO is to act in collaboration with other SOs and ACs. Hello, can I talk?

NEILS TEN OEVER: Yes, please continue.

KAVOUSS ARASTEH: Because somebody is coming in. I said that the first think is that I don't like it is substantive. [Inaudible] But GNSO [inaudible] agrees that is in collaboration with other [inaudible]. Some of the policies are not only GNSO. Yes, GNSO is the focal point to develop the policies. Now we are doing something [Inaudible] GNSO arrangements are for the second [inaudible]. GNSO is the focal point, but everybody is participating so it's not only GNSO. So we could not monopolize that for the GNSO. So we could say GNSO in collaboration with other concerned SOs and ACs develop policies. Otherwise everything will be in the hands of GNSO. As far as justice is concerned, we don't want to do that. That causes problems and it that already caused problems to us. You have the policy and the use of the [Inaudible] and consider the problem solved. We don't agree to put only GNSO, I'm very sorry. Thank you.

NEILS TEN OEVER: Thank you, Kavouss. I think there are two points. One is that the quote that substantive policies relating to generic top level domains and other responsibilities of the GNSO are the responsibility of the GNSO and should be developed by the GNSO using their organizations policy and process. So this is strictly related to the GNSO, and I think we have this text here because the people in the drafting team were mostly for the GNSO and we have some very little text, but this is similar in the other two supporting organizations which should be broaden.

So what this text does is that it's saying that we should be using existing policy development processes within the three supporting organizations

to implement this work in the three organizations, and we can never shortcut that. So that is a preamble to go through these questions and to really make sure that we will not try to shortcut or strong-arm the supporting organizations in to anything. I see Paul McGrady's hand is up. Paul, please come in.

PAUL MCGRADY: Thank you. So I want to emphasize something that you've already said, which is that this seems to be flash chopped in two other supporting organizations. I think that we should have a paragraph that say -- we go into just as much detail as we do for the GNSO. This is a Cross Community Working Group so I think it affects others beyond GNSO.

And also, I think that it's incomplete if we don't make reference to Advisory Committees, they are also a part of the community and they also have participated in the CCWG process, and so I don't want to give the misimpression that somehow this is just a GNSO undertaking. So I think that we are about one-fifth of the way done on this section, thanks.

NEILS TEN OEVER: Thank you very much, Paul. I'd really like to ask a question, because I think this is very interesting. I think our steps are missing from this, but I never thought about the ACs. How do you think ACs should integrate human rights in their processes, because here we're talking about policy development processes and since the ACs are not developing policies, how do you think they could/should implement that in their work?

PAUL MCGRADY: So this is Paul McGrady again. They may not be developing policy, but they are advising on proposed policies, and hopefully that advising, as Kavouss has suggested, is in the early stages in cooperation with the supporting organization that's actually developing the policy, but they are definitely involved in that and they're involved after the policy is fully baked and I guess goes to the board to vote.

So if there's a human rights framework that has to be followed by the organization developing the policy I don't think it makes any sense for advisory committees to be coming at it from a different angle because this is a by-law that doesn't carve out just the GNSO or just the supporting organizations. I also wanted to correct my math, not one-fifth, one-seventh of the way done, thanks.

NEILS TEN OEVER: Excellent, excellent. Well, these are all good points. Later on we will go on by suggesting one way forward and that is having a cross-community working group on human rights in which all these SOs and ACs take place so that we have a kind of a sample that can then subsequently by the individual SOs and ACs be implemented. Is that still a suggestion that people feel comfortable with or do you think we should all have different processes in all the different SOs and ACs, I'm very curious what you all think about that? I see Kavouss hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Neils. When I proposed to delete substantive, somebody said that substantive is coming from by-law. We are not going to repeat the by-law, we are going interpret that. So if we are going to repeat the by-law, we don't need that. So we have to be quite careful and I don't understand the substantive. I have no problem with what you said either of the ways, either do it now or do it later, but we should not talk about substantive because who decides what is substantive and what is not substantive?

And there should be mention of other SO and ACs, and I don't want at the end of the [inaudible} that those other supporting on these issues. Either we should talk about all three or nothing altogether. We have already agreed to what the policy is doing by ASO and by the GNSO. We have not discussed that, it's just about the GNSO. So let us delete that at the end allowing the other SOs.   So this sentence requires modification. Thank you.

NEILS TEN OEVER: I, Kavouss, I and I think everyone on this call completely agree with you that the other SOs and ACs deserve at least as much space as the GNSO here and we will be working on that, but people seem to feel that this kind of length and depth seems to be good but then we need to come up with similar language for other SOs and ACs as well. So that is very good. I see Paul's hand is up, Paul please come in.

PAUL MCGRADY: Thanks, Paul McGrady again. So just to answer your question, you said, "should this affect the way different ACs conduct their business" and

the short answer is "no" in the same way that it shouldn't affect how the GNSO counsel conducts its business. The issue is when we get to the framework that the framework is applicable throughout the organization and not just to the GNSO and not just to the ccNSO.

So there wouldn't necessarily be any procedural operational changes in how the different organizations and advisory committees operate. This is more focused on substantive outcomes.

So let me give you a wild example that will never happen because the ALAC would probably be among the most sensitive on these issues. But say the GNSO counsel develops a consensus policy through its normal procedures and that went up to the board and that consensus policy took into account the framework on human rights but the ALAC decided to completely abandon the framework on human rights and issue advice that was inconsistent.

We need some mechanism to where something like that wouldn't happen. It's a completely hypothetical example and I just pick on the ALAC because I know them and they're nice and they would never do that, right? So it doesn't make any sense to develop consensus policies and I think that word, I'm with Kavouss, I think that word substantive policies, I don't know what that means and Anne Aikman-Scalese suggested the words consensus policies which make more sense to me, that's a better word perhaps and we can agree on sticking with terminology we usually use.

But it won't make any sense for consensus policies to make their way through the GNSO community or the ccNSO community only to be

thwarted by some other actor within the organization that doesn't believe a human rights framework would apply to what they do and that would necessarily put the board in a pickle because the board will have to choose between one group that's taking the framework seriously and another group that's not. Thanks.

NEILS TEN OEVER: Thank you very much, Paul, and thanks everyone for these great suggestions, but while it is getting hot on my feet, I'm very happy Fireman Greg is there to shed some light but maybe also to put out the fire. Greg, please come in.

GREG SHATAN: Thanks, this is Greg Shatan for the record. Just making sure you can hear me.

NEILS TEN OEVER: We can hear you very well.

GREG SHATAN: Okay, good. Sorry I couldn't be here for the first part. I had to go make sure I was still alive. The doctor agreed that I was. In any case, I'm fine with deleting substantive. I don't think putting in consensus makes sense because that's actually narrower than the remit of the gTLD, of the GNSO. I agree with what Anne said, which is that all gTLD policy is developed with the GNSO. So I think it should just say any policies relating to generic Top Level Domain.

And I agree with everyone who said that we should cover the other policy development bodies, I just didn't have the time to write it in and the GNSO stuff I could do more or less quickly because I know it the best. So hopefully someone from the ccNSO, someone from the ASO can supply something similar, unless the sentence that's there is something similar to the other two supporting organizations covers it neatly, but each organization has its own quirks so it may not cover it all that neatly. Thanks.

NEILS TEN OEVER: Thanks so much, it seems there is a consensus on removing substantive, so I did that on the Google Doc and the comment that there should be an expansion to the other two supporting organizations as well as advisory committees is there, which also means we will need some support and wisdom and experience from the other groups, so I definitely hope that we can get that from the list and get that in the Google Doc.

I see Greg's hand is still up, but I think that that might be an old hand, correct, old hand? New hand? Old hand, the hand disappeared. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Neils. This is one of the very very important causes of the interpretation. The major difficulty that we have in ICANN is the concrete [inaudible] GNSO policy and the ICANN policy because there is no collaboration among the two. One way to get by without taking into account the policies, the other is sudden policies without taking into

account the advice. So we need to brief this stuff and that is very important which involves in respect of this policy while [inaudible] situations on the GNSO, involve all SOs and ACs, and so on and so forth. That is very important to suggest to those people who are involved in the re-drafting to take that into account. Thank you.

NEILS TEN OEVER: Thank you all very much. We will all work together in the coming week to ensure that in our meeting on the 20th that all the text on the -- there is also texts in here on the ALAC, on the GAC, on the ccNSO and on the ASO. That should help us. So, that is what Kavouss suggested and that is what we all will work on and it seems that explicit mention of these processes makes sense here, so we will do so. I will now continue -- oh, I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA: Thanks, Neils. Tatiana Tropina again for the record. Well, there's an additional question about GAC at the end of this document, like consider how this framework will implement GAC's advice, so I'm wondering, will we duplicate or we we consider those two different questions because GAC somehow is covered? [AUDIO BREAK] Hi, can you hear me?

NEILS TEN OEVER: Yes, I can hear you. I was thinking and that takes pretty long in my case. I'm very sorry. I think we should take this into consideration this week if other people feel strongly about it. My initial response would be that's

a direct question, but yeah, let's consider. Maybe it can be merged. Let's think about that a bit more.

TATIANA TROPINA: Yeah, it just -- sorry, I'm just pointing out that we can merge these questions at the end because we have GAC as an additional question. So that was just to point out that GAC had some consideration at the end of the document. Thanks.

NEILS TEN OEVER: Thank you. Thanks so much, Tatiana. And there is Greg. Greg, please come in.

GREG SHATAN: Thank you. It's Greg Shatan again. Just to make things a little more complex, I want to point out the question we've just been discussing, it asks about considering how these new frameworks should be discussed and drafted. I know we've talked a little bit more about policy than we have about frameworks and in the previous question, it's not clear. I'm sorry, I missed the discussion of the previous row so I don't know if that decided that there were any policies or frameworks that would need to be developed or enhanced. The answer may not be quite the same for policies and frameworks.

Of course we can avoid that level of detail if we want to, but in the interest of trying to make sure that we're answering the questions being asked, to the extent that it makes any sense, I throw that out, especially along the issues of course, we have no real history of frameworks in

	ICANN. There's the ccNSO framework and then there's the framework we've been working on, so it's not quite clear whether a framework is the same way as policy. Thanks.
NEILS TEN OEVER:	That is a very good point, Greg. So we might also be asking tomorrow, or some of you might be asking tomorrow in the CCWG, or maybe not? Yeah, so we need to think about whether we want to interpret it as frameworks or should we understand it as policies or otherwise. I would suggest that we think about that a bit more during the week as well because we're going into the last 15 minutes and I'd like to continue with the second para of this part and then we go from the SOs and ACs to ICANN the organization, and there it reads, "Any employee related or vendor related policies should be developed by ICANN management, but ICANN management should strongly consider multi-stakeholder involvement in the development process. At the minimum, proposed policies should be set out for public comments seeking input and whether the policies would fill ICANN's commitment under the Human Rights bylaw." [AUDIO BREAK] So, Paul, please come in.
PAUL MCGRADY:	Hi there, this is Paul McGrady. So I think this is exactly backwards and is the fruition of my concern that we didn't undertake the hard work of determining what applicable law is before we got into this. We can put public comments out all day, but if ICANN's legal department determines that there's a federal state law that applies to how they operate in relationship to their employees, we can't not do that. I mean not we; they, ICANN the corporation, can't not do that because the community is unhappy if that federal law or state law applies.

And so this is where I think we have to say that they can be put out for public comment, but at the end of the day, applicable law applies. That's why it's called applicable law and that the organization will have to treat its employees in compliance with what the law requires. I think this needs some more work to kind of conform to the reality that even if the community decides it wants ICANN to not do what it has to do under law, ICANN simply can't do that. Thanks.

NEILS TEN OEVER: Thank you very much, Paul. I think this example actually made itself very concretely into the framework interpretation. Kavouss, please come in.

KAVOUSS ARASTEH: I think [inaudible] with, "Any employee related or vendor related." I don't know. What is the relevance of that to the paragraph that we want to interpret? I have no problem with that, it is right, what he said, but I think it needs to be redrafted. Because there are so many repetitions, multi-stakeholder, and at the end, once again, we came out as stakeholder and we say "the public comments". We should have chosen that and saying that why this policy developed by ICANN management they should involve multi-stakeholders including public comments. We should redraft this sentence and make it shorter. Thank you.

NEILS TEN OEVER: Thank you, Kavouss. That is very clear. And we only take into account here employee related and vendor related policies, but we do not take into account operations. Ah, operations is already mentioned in the first paragraph, so that explains that. This is about policy development so this is very illogical, coming from Greg. Excellent. Let's see if we can make the text a bit more clear, but I see Greg has his hands up. Greg, please come in.

GREG SHATAN: Thank you. This is Greg Shatan again. Appreciate the comments. This is definitely intended to be a first draft paragraph to spark some conversation. I agree with Paul that the applicable law boundary is critical here, so in essence, in terms of interpreting the bylaw or operationalizing the bylaw, the bylaw only requires respect for human rights to the extent contained in applicable law.

If ICANN were to decide to give three years of parental leave to every employee, that would in essence have nothing to do with the bylaw, so it's kind of out of the scope of this whole discussion. I think we do need to consider that we don't kind of overspill what we're dealing with here.

The overall point was just that with regards to any human rights consideration we have to look at both ICANN, the unusual which is all of us in this multi-stakeholder eco system, and then ICANN, the somewhat more typical as a company with employees and how that side of the operation deals with this as bylaw and how we may essentially be involved in all of that. Definitely agree this is right for refinement. Thanks.

NEILS TEN OEVER: Thank you very much, Greg. I see Paul has his hands up. Paul, please come in.

PAUL MCGRADY: Paul McGrady here. So Greg's example is a terrific one, so the parental leave issue. Say ICANN decided to give every employee three year off if they have a new baby in the house. Well, that might bump into the entire community's interest in smart budgeting, right? But so long as the entire community isn't trying to mess with that particular line item to the point where it had less parental leaves than applicable law required, then the bylaw's not triggered, but the entire community came back and said, "No, and in fact we want everybody to have two weeks," but if the law said 6 months, then the ICANN board will then potentially come back and say, "No, we have to comply with the law." This at the end of the day, whatever framework applies in relations with ICANN, especially in relation to its employees, I think at the end of the day the staff gap has to be applicable law. So Greg, great example. Thank you.

NEILS TEN OEVER: Thank you very much, Paul. So, we have some concrete suggestions there as well, we have a lot of work to do and I thought we were almost done. No no, we still have some work to be done here. So let's see whether we can in the last five minutes also drop into the next part that has been separated from the previous part, which I think is a very good suggestion from Greg because we see the parts expanding.

The question is: consider how the interpretation and implementation of this bylaw will interact with existing and future ICANN policies and procedures. So here we have clear policies and procedures and no frameworks which helps us to get a bit more ground.

The first part reads, "The interpretation of the bylaws should be driven by the framework of interpretation. It is expected that the bylaw will be duly taken into account when future ICANN policies and procedures are developed and interpreted in accordance with the framework of interpretation. The different supporting organization should consider incorporating human rights impact assessments in its policy development processes. The determination of the impact of our proposed policy on human rights will take place when it's all a policy impact assessment to occur during the drafting of the preliminary issue report in the PDP. If the PIA identifies potential impact on specific human rights, a human rights impact assessment will be triggered for those specific rights and would be undertaken during the drafting of the working group's initial report. The human rights impact assessment would be an integral part of the working group's final report."

So, this comes into, specifically, the different supporting organizations and how they might integrate the work. Paul, please come in. [AUDIO BREAK]

PAUL MCGRADY: Old hand, sorry.

NEILS TEN OEVER: Okay. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, [inaudible] I think in the fourth line there is, "and interpreted in accordance with the framework of interpretation." I think this is not the correct word, "interpreted".   [inaudible] in accordance with the framework of interpretation. They do not interpret again anything with the framework of interpretation. There is no interpretation. So this is [inaudible] "developed and [inaudible]".   So, "ICANN policies and procedures are developed and implemented in accordance with the framework of interpretation." But not "interpreted". So "interpreted" is not a good word here, it must be [inaudible] "implemented" or by something else. And the other sentence is too long and it's less quite clear what you want to say here. There are so many things there and I don't know whether to release something in particular or not. It may be shortened after. Thank you.

NEILS TEN OEVER: Thank you very much, Kavouss, and I made those changes directly in Google doc. So I replaced "interpreted" with "implemented". I see no other hands but it is also 2 minutes before the hour, So, I don't want to see too many conclusions on that. I'm quickly going to Greg's hand, then closing the queue, and then adding some final words. Greg, please come in.

GREG SHATAN: Thanks, this is Greg. Just briefly, I think we can certainly continue to work on this, but we are talking about both interpretations and implementation. So, let's see how that works. Also, I think we may be jumping too quickly into specifics with regards to the human rights impact assessment. Although at this point we are talking about the implementations, so we have got into the point where this is something potentially on the menu.

But we need to consider whether we're kind of drilling down to that and whether there are other implementations and also how we phrase this particular potential implementation, which is I think it's not the place of this group to develop an implementation or to mandate one, though I think we're definitely in a position to suggest. Thanks.

NEILS TEN OEVER: Thank you very much, Greg. And even though I wanted to close the queue, I will give a very short last word to Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, the second part of this text it's not good, "The determination of the impact of our proposed policy on human rights will take place." Again, you're using a deterministic verb, "will". [Inaudible} ensure that they will or will not. Should it take place, or shall take place, or expected to take place and so on, but we cannot say "will take place" because we don't know. You have to work on that a little bit or delete the "will".

NEILS TEN OEVER: Thank you very much, Kavouss. I just changed it into "would" with suggestions from Anne, but we'll work on it more this week. I would like to invite everyone to take some time to add some texts or change some text in the Google doc, especially the non GNSO people, so we do not leave all the way at the end of the year only to the adjusting group, but we have one more meeting. I'm greatly looking forward to seeing you all next week on the 20th 19:00 UTC for our last call, and in the meantime, on the mailing list and in the drafting team.

Thank you all for participating so constructively and I wish you all, all the best. We're discussing our framework of interpretation tomorrow in plan B. Thank you, all. Bye.

[END OF TRANSCRIPTION]