
UNIDENTIFIED FEMALE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you very much, ICANN staff, and welcome all participants and observers to the Cross Community Working Group Enhancing ICANN Accountability Subgroup on Human Rights. I think this is our 16th meeting and this is definitely the last one of this year. We'll have a special theme to this session about which we'll talk in a little bit.

First of all, I'd like to start off with our standard administrivia, and that is ask who is [put] the people on the audio bridge who are not in the Adobe Connect room please make themselves known for the roll call. And can ICANN staff please be so kind to take the roll call from the Adobe room.

I got apologies from Tatiana Tropina, and I don't think I received any others.

Does anyone want to let us know of any update to their Statement of Interest? No? That means we have the administrivia behind us now, unless someone would like to suggest adding extra points to the agenda that we could not do under the Point #3, Any Other Business.

Very good. I think that leaves us with the administrivia. So, let's go forward to the next point.

First of all, I would like to congratulate everyone on the quite successful reading on the Framework of Interpretation in the CCWG Plenary. There

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.

were no questions, comments, or remarks on our work, so it seems we either have done something that was so incomprehensible that no one wanted to react to it, or that we might have delivered something that seems quite acceptable to a lot of people, or that a lot of people did not have the time to get around to read it. But as a first indicator, I think it's definitely a positive one.

Then we have been working with the standard Drafting Team with the excellent addition of David McAuley for this week. And in this festive ensemble, we were discussing – and we got into a bit of an existential moment which is not uncommon at this end of the year when you look back on what you've done and thinking about what you still need to do – while we were working, we actually got off on the discussion how much do we actually still need to do?

And to give a bit more depth and a proper representation of that problem, I'd like to ask Greg to perhaps illustrate the point a bit more than we discussed in the Drafting Team. And after that, I will ask Jorge to make some additional comments if needed.

Greg, would you be willing to do so?

GREG SHATAN:

Sure. I'll be willing. The issue I think – there are a couple of different ways to look at the issue, but one way is being expressed in the bullet point there about reviewing the FOI in the light of the tension between Annexes 6 and 12. Annexes 6 and 12 contain largely similar wording, but put together in a significantly different way.

Annex 12, I believe, says that we should work on the Framework of Interpretation, and during that process we should appropriately consider the various bullet point items that have become the second document that we're working on.

So, that construction implies that our remit is to make sure that our Framework of Interpretation appropriately takes those into account, discusses them, leaves appropriate room for that to be done, and that that's all, basically, about the assignment of doing the Framework of Interpretation, which if you look at some of what was described as our remit, that was our sole remit.

Annex 6, which is the Annex that describes the Human Rights recommendation of Work Stream 1, indicates that in Work Stream 2, this group will do a Framework of Interpretation; and then there's bullet points after that and then we're going to do all this other stuff, indicating that we need to give due consideration to all of those questions essentially as separate and equal assignments to the Framework of Implementation.

So, they're really very different assignments, even though they use almost the same words. And it's not clear, of course – as we were all rushing toward drafting this and finalizing it and getting it approved by the SOACs, people weren't thinking about the finer points of how these might be interpreted down the road and cross-checking between different sections that discussed similar things to make sure that they didn't create unintentional ambiguities.

So, here, we have an ambiguity, and one that could significantly influence which way we go with our work. In other words, are we going to have a more robust Framework of Interpretation but that is still interpretive and just then takes these items into consideration, or are we going to have, essentially, a series of separate answers that are not part of the Framework of Interpretation and that are kind of dealt with each as their own topic?

That's the existential issue, and I will confess I'm reading this with probably too much of a lawyer hat on and we should think about what makes sense, but we also need to think about what we were asking ourselves – or what the Plenary was asking us to do – and which one it is.

That's the summary that I've been asked to give by Niels. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. Unfortunately, Jorge has no audio but I am sure he will be typing and I'll be reading out what additions he has to summarize...

[inaudible] further is, have we either that out of this discussion can lead to the conclusion we are actually already done because we developed the Framework of Interpretation and we considered other things and that was it?

Do we need to address those considerations in the Framework of Interpretation, or should we answer these other considerations in another document?

Also, what should these considerations be, because we were finding out, while we were getting into the nitty gritty, that there were already quite some details we needed to make suggestions on, which is probably not our remit. And so, should we simply say another group after this should work on this and that could or should have this shape or form or in more detail?

So, it was, again, an exercise at the level and scope. And that's why I got the little bit of a sweat outbreak when I thought that we would need to reopen the Framework of Interpretation because we, as you all remember, struggled quite long and hard to understand the difference between implementation, interpretation, Ruggie, the ICANN situation. So, reopening it would mean quite a thing, I think. So, that's what's there.

I see Jorge has now typed up a comment that I will read out to ensure that his view is also represented here on the voice.

"To sum up my thoughts on the pending assignments with the Framework of Interpretation, we have covered everything relevant to the Interpretation. What is left are aspects with implementation.

1) What policies and frameworks do we need, or do we need to improve? 2) How do we do this in a bottom-up, multistakeholder, fashion? 3) How does this interact with existing and future policy and procedures? 4) How does it impact on GAC advice? 5) What is the effect on ICANN operations?"

That's similar to what is in Annex 6.

And Jorge adds, “Then we have to decide how deep and far we can and want to get on these five topics.”

So, while we were actually working on the document, we saw we could then discuss and go really far on this and design how PDPs should or could be changed – how this could be done. So, it was definitely something that we in the Drafting Team felt uncomfortable about – making a decision without having that discussion with you all. So, I would really like to invite opinions from what you all think about it.

I see David has his hand up. David, please come in.

DAVID MCAULEY:

Thank you, Niels. I encourage others to get involved as well. I think I agree with the way Jorge described it in the chat. It seems to me, when we developed the Framework of Interpretation, we did take into consideration a number of the other bullets that are underneath it consistent with the approach of the main report in Annex 6.

For instance, we spoke about which specific Human Rights to mention, etc. I don’t know that we addressed all of the bullets, however. I think we, at one point, said, “This may not have any impact on the GAC.” I don’t recall that specifically, but it seems to me that the Framework is done and I agree with Jorge. We maybe should discuss these other points to the extent they need to be discussed. Some of them we’ve already discussed as matters of implementation subsidiary to the Framework. Thank you.

NIELS TEN OEVER: Thank you very much, David. I see Paul McGrady has his hand up. Paul, please come in.

PAUL MCGRADY: I guess I don't understand what we mean when we say "implementation," because this isn't like a normal Policy Development Process where we're putting forward a new policy and we want staff to figure out how to get contracted parties to adjust their computer systems to make it work and all that.

What we're talking about is a Framework of Interpretation of this proportion of the Bylaws that will be used as a filter to address specific circumstances that come up from time to time, and ICANN will then use that to figure out what to do in those circumstances.

So, are we really talking about implementation or are we talking about developing examples of – if this, then that – and this is how we envision it going, so that whoever will be applying the Framework of Interpretation has a handle on what it is that we were – how we thought things would work out.

Because it's really not like implementation – unless you guys are talking about doing an audit of everything ICANN is doing to make sure that it fits within the Framework of Interpretation, which sounds like an enormous and Herculean job.

It seems to me that the Framework of Interpretation will be applied at a go-forward basis or when complaints come up to specific circumstances rather than us trying to come up with every possible way that the

Framework of Interpretation could interact with ICANN the corporation/ICANN the community. Thanks.

NIELS TEN OEVER:

Thanks, Paul. And I think you're hitting the nail right on the head there. It's, indeed, like, "What should we do?" We're not a Policy Developing Group. We can also not change the policies of the different support organizations. So, the question is what should we do and what direction should we point, or should we simply say this point should be addressed by a group that should be chartered for that? That's also a way of dealing with it.

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

GREG SHATAN:

Thanks. I think this point follows well from what Paul is saying. I think we're using the word "implementation" a little too loosely. Probably shouldn't use the word "implementation" because that term has a specific meaning in ICANN-land of what you do when you have a policy that has been approved and now you have to make it work – you have to operationalize it, you have to implement it.

That's not what we're doing here. At most, we're making recommendations about either future policies or revisions to policies or commenting on how the downstream work that this affects should take the Human Rights Bylaw into account.

So, we're not really implementing the Bylaw. Nowhere does it ask us to actually have a serious conversation about how we implement it. It does

ask us, either as we develop the Framework of Interpretation or after it – depending upon which document you read – to consider the policies in Frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment.

Everything after that – the next one that really asks us to have a serious comment that may go to policy or operations is consider how, if at all, this Bylaw will affect how ICANN’s operations are carried out.

So, I don’t think it’s within our remit to implement the Bylaw in the sense that we use the term “implementation” typically. I think we’re asked, in some fashion – not entirely clear; either in the Framework of Implementation or separately and alongside it, to give consideration to the half a dozen bullet points. And even then, the term “consider” relates some ambiguity.

We were asked to develop a Framework and we were asked to consider certain things, so without getting too pointy-headed about this, I’m not sure that “consideration” requires some massive amount of work as opposed to providing some guideposts for future groups. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. Jorge says, “I feel we have to touch on the five left issues on a very general level, giving some guidance and recommendations on how we think ICANN the Corporation and the community should deal with these topics.”

Paul McGrady says, “Examples at most. Jorge says, “I agree with Greg. We do not implement. We just give some guidance on how we think

implementation should be tackled, considering the five pending topics we have according to Annex 6.”

I would really like to invite more views from the group because it is quite existential because if it’s done, then we’re done. And if not, we should indeed address these points.

“Guidelines and recommendations, documentation.” That’s what Cheryl says.

Anne Aikman. Please come in, Anne.

ANNE AIKMAN-SCALESE: Yes. Thanks, Niels. I noticed in chat, I think, that Avri said something about going back to the Plenary to ask for clarification on the scope of the work. That seems like a pretty constructive idea to me. I don’t know. Maybe Avri wants to comment, but I think she said should we go back to the group for an answer.

NIELS TEN OEVER: Great. Avri, would you like to comment or elaborate a bit on that?

AVRI DORIA: Yeah. I think we can either – as I just put in my latest one – call ourselves done with a hearty, collective, “good job” on our backs, and such. Or, if we think there’s possibly more work that needs to be done because of Annex 6, then go back to the Plenary and check to see if that’s the case. It doesn’t make sense for us to start on work tip-toeing

around it because we're not sure whether it's our work or not and such. That's not really a recipe for getting something done properly. We shall either call ourselves done and be happy, or we should go and ask whether we have more work to do. Thanks.

NIELS TEN OEVER:

Thanks, Avri. What do other people think about this? Do we feel we have something that we want to do and then show that to the Plenary, or do people feel we should first go to the Plenary?

Greg, please come in.

GREG SHATAN:

Thanks. I'll be brief since I've spoken before. I think first off – and I agree with what Jorge said in the chat. We should go back to the Plenary with some idea of what it is we would prefer to do and what the options are, expressed as succinctly as possible. I think that either way, we should go back to the Framework of Interpretation and just see if we've given due consideration to the items we were supposed to consider. In other words, does this completely miss the point that these things will happen?

What's at question, I think, is whether we need to prepare in a separate documentation. Although, perhaps if we prepare that separate documentation – the guidelines and recommendations, whatever we want to call them – maybe we don't need the FOI to carry so much water.

So, maybe frankly, I'll change my mind in mid-stream showing that I'm not tide-bound and suggest that we should probably take a pause and decide whether... We need clarification of our assignment. I wouldn't necessarily call it "scope," but it's sufficiently critical to what our deliverable is that I think we should figure out how we – certainly what the options are, which I think have been broad-brushed out already.

And then if we have a leaning as to how we'd like to handle this, that I think would be something we could go back to the Plenary with and have a more guided discussion rather than just throwing ourselves at the feet of the Plenary and claiming that we're just perplexed. Thank you.

NIELS TEN OEVER:

That sounds very good. May I suggest, though, that we send an e-mail during this pause to the Plenary list – the CCWG Accountability list – so people have some time to think over it instead of just tossing it in front of them, in front of the Plenary. I could suggest that I make an initial draft of that and share that on our list, we perfect it a bit, and then we share it on the CCWG list in preparation for then discussion at the Plenary.

Does that seem a good way to spend the coming time? Is that a constructive way forward?

I have lost some Internet connectivity so, I'm only on the [inaudible] of the Adobe room. I don't think there are any hands up. If anyone has their hand up, please speak now.

GREG SHATAN: There's a hand from David McAuley, and I and Cheryl Langdon-Orr both have green checks up for your suggestion, as does John Laprise.

NIELS TEN OEVER: Okay.

DAVID MCAULEY: Niels, hi. My question to you is – I think the e-mail is a good idea – are you speaking about an e-mail in which we state a preferred route or simply the bald question, "This is what we're struggling with."

NIELS TEN OEVER: I would say – but this is now my general feeling – first what we're struggling with and then different possibilities of approaching that, and then maybe even if we have a preference, we can also add that. But definitely the problem and different scenarios and the one that we deem feasible or potential, or ideas that [we lift] from our mailing list.

I see Anne has her hand up. Anne, please come in.

ANNE AIKMAN-SCALESE: Yes. Thank you, Niels. I think if we take that approach to talk about listing our options, would we then use the rest of this call to talk about what some of those options might be? Or how would we address how the content of that e-mail is developed? Thank you.

NIELS TEN OEVER:

I think we have three options, but correct me if I'm wrong. One is, we're done because everything is in the FOI and that's it. Secondly is, no, we should have considered the other parts more carefully and integrate that in the FOI. Or, thirdly, we should create another document or an [excerpt] text that goes and explains some examples, recommendations, or a bit more guidelines on specific questions to ask. I think those are the three different texts that we see now.

I see Greg and Anne's hands up. Greg, please come in.

GREG SHATAN:

Thanks. I think that's a good summary. I think there may be a fourth option between one and two, which is to test the Framework of Interpretation and see if we agree that it's given sufficient consideration to each of the bullet point items. That may lead us either back to one (we're done) or three (we need to more robustly make the Framework of Interpretation carry this).

But I think one, two, and three, in a sense, are somewhat similar. And then four is different, which is – and four is really where we were going, which was to create a second document that dealt with the items that we're supposed to consider.

Although, frankly, you could put the whole thing in one document and call it the Framework of Interpretation, but I'm not sure that I would do that. The Framework of Interpretation really needs to talk about

interpreting the Bylaw as such, so in that sense I give the Framework a fairly strict interpretation. Thanks.

NIELS TEN OEVER: Thanks very much, Greg. So, that is four different options. Anne, please come in.

Oh, that was an old hand from Anne.

ANNE AIKMAN-SCALESE: I'm sorry. I forgot, Niels. I was on mute. I'm sorry. That was a new hand. Thanks. With respect to option number three where we were talking about the possibility of providing examples that could be further considered by this group and added to the Framework of Interpretation, I think that one of the things we would want to say in the e-mail related to that issue of examples is we'd want to ask whether the Plenary might have examples or hypotheticals that they might want our group to address if we went that direction.

NIELS TEN OEVER: Yes. That's a very nice ask. That's a very nice and concrete ask. We can ask the Plenary for example/cases. Yes. I think that should give us a pretty clear outline of what should be in that mail. I will draft that e-mail and send it to you before Christmas so we can discuss it and have it iterated a bit if needed and when not, we can send it on to the Plenary before New Year and then people have still 10 days to chew over it in the new year before our first Plenary call.

Is that a satisfactory way forward into the new year?

I see some reds or green ticks.

Greg, is that a new hand?

I see five green. Very good. With five I would do – two, four, five, six. Yes, I will do that. Avri proposed it so, I think – Avri, you are also okay with it or did we interpret your suggestion wrongly?

Okay, so Avri can live with it, depends on what the letter says. I'll share that on the list. "Yes, the distinction between 'interpretation' and everything else should be clear." Yes.

So, this seems to be the way forward.

I see Kavouss' hand is up. I was already missing Kavouss' voice on the call. Kavouss, please come in. Kavouss? I hear a faint sound now. We don't hear you, Kavouss, unfortunately.

KAVOUSS ARASTEH: Can you hear me now?

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

KAVOUSS ARASTEH: I'm sorry. I am terribly sick. I'm coughing, and last night Avri told that I should not speak because I'm coughing, so I don't speak. But please take into account what I said in the chat, and should appear in the note.

I am not just putting it in the chat to put it in the chat. I said that we should not create jobs for ourselves. I said that we should not engage in reconciliation between Annex 6 and Annex 12 and try to be more effective. There are many other issues to be discussed.

On those, there are professional talkers – they just talk and talk and talk. But we can't have that entertainment to listen to the long, long, intervention and multiple intervention of several distinguished colleagues.

So please ask them to reduce the number of intervention of any particular subjects to the minimum and the length of interpretation to the minimum. This is a formal request for the efficiency of the meeting. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. So, if I understand you correctly, you would also agree that we first go back to the Plenary to ask what we should do instead of creating work for ourselves, right?

KAVOUSS ARASTEH: Yes.

NIELS TEN OEVER: Excellent. It seems we also have consensus on that. That is great. I think I can let you all go early for the end of this year, for our last meeting of the year – unless anyone has any other business that they would like to bring up.

If not, I wish you all a very vitalizing, festive season and I'm greatly looking forward to see you all again in the new year.

Thanks a lot.

KAVOUSS ARASTEH:

Excuse me. I see that Greg is saying that [inaudible] intervention should be subverse. I don't agree with that. Intervention is intervention. If you say something, you want to be [inaudible]. It is not up to Greg to suppress something, as it is not up to me to suppress Greg's interventions on anything. What I said is reduce the number of interventions and the length of interventions, and nothing's wrong with that. So, I totally disagree with Greg saying that should suppress the [inaudible], which I don't understand what the [inaudible] means. It's a statement.

So, some people are talking and talking at every meeting. At every meeting. Thank you.

CHERYL LANGDON-ORR:

And some meetings are almost silent. And I don't think that anyone over-intervened today at all. That can't be said for all the meetings we've had at all the times, but right now there has been no – in my view at least – over-interventions. But your point's well taken, Kavouss.

KAVOUSS ARASTEH:

Yes, I clarify that. Whenever there is a meeting, one or two people continuously to come in and to make comment and come back again

and comment and come back again and comment, and won't allow the other people [here], Cheryl. So, I think I'm clear now. So, let's have some other people to also have the possibility to talk. It is not to monopolize the interventions to particular people. Thank you.

NIELS TEN OEVER:

Well, on that note, I will miss you all in the time that we have no calls during the coming weeks, and I wish you all a great festive season and see you all in the new year.

Bye all.

[END OF TRANSCRIPTION]