
RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you very much. And after a small winter sleep, the subgroup here is back in action, and it is great to be again with you in this Adobe room, to continue some work, and continue the interesting discussions that we have had and take it to our next level.

So, before we dive into the content, of course, we first go through our administration. So, staff, could you take the roll call from the Adobe room? And are there people who are on the phone bridge and who are not in the Adobe room? Please make yourself known.

Everyone is in the Adobe room, that's great. We have apologies from Matthew, Jorge Cancio, and Tatiana. And are there any updates to the statements of interest? Would anyone like to announce?

No. Okay. So, in that case, we can continue. I made a bit late, an agenda, because I was preparing for this session, started making some summaries, writing some things down. And also to ensure we have a level playing field, I share it with all of you. I'm very sorry I did not do so before.

So, please accept my apologies. I hope you don't mind. But I made an agenda, of course, I should ask you all, are there any points that you would like to add, or remove, or suggested agenda?

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.

No? There are no... People seem to be relatively okay with this agenda? As a group, we can also be flexible as we go along. So, to start this discussion off, not everyone may have followed the discussion as closely as possible.

I made a quick summary of where we are. I see Greg's hand is up. Greg, please come in.

GREG SHATAN: Thank you. Greg Shatan for the record. It may come up under one of these, under two, but I think we need to review the bullet points in annex 12, point by point. And we should probably have a slide with those, I've actually prepared something like that. I'll send that to staff, and have that put up, but I think that's kind of part of what's here, and I didn't see that in the slide there.

NEILS TEN OEVER: Okay. That's great. And that's the slide with the bullet points [inaudible]?

Greg?

GREG SHATAN: Right.

NEILS TEN OEVER: Okay. So, please share, please be so kind. Thanks very much for that. Please share it with staff, and then we'll pull it up where it fits into the

discussion, if that's okay. I think it will definitely be somewhere under point two. So, I made this quick summary, feel free if you feel this is an unfair or a not complete summary. Greg, is that an old hand?

GREG SHATAN: Yes.

NEILS TEN OEVER: Okay, great. So, we got a... As you all know, we've submitted a framework of interpretation that we agreed upon in consensus here, in the subgroup. We submitted it to the plenary, where it has two readings, and [inaudible] was decided to go for public comment. But while we were then working on answering some of the remaining questions, namely the bullet points in annex 12, and in a document, as we have already also discussed, in this subgroup here, we felt that we were going quite far into operationalization territory.

And we were not completely sure whether we were with it, operating within our mandate, outside of our mandate, it's also because of some inconsistencies between annex six and annex 12. Based upon that, we decided and agreed here within the subgroup, that we could not set our own mandate.

So we went back to the CCWG plenary, and to the co-chairs, to ask for advice. In the plenary, it was decided that the co-chairs would come up with some advice, and that advice we've now received. So an in-depth advice, that email, if I may summarize it in four points, that we should keep using annex 12 for consistency with other subgroups.

So, in case there is other consistency between annex six and annex 12, which the co-chairs can be attributed to the short-time frame we had to finish work stream one, we should stick with annex 12. In annex 12, it was said that we should consider the bullet points that we will, in detail, go through in a bit.

And the co-chair said, consider, it's quite vague, and therefore, we should not go into an extended intellectual exercise. The co-chairs also said that the framework of interpretation has been produced, and they consider it as complete. But if the subgroup wants to develop suggestions for implementation, or operationalization, it can propose these suggestions to the plenary before May.

This was a summary of the email of the co-chairs. And after that, a discussion ensued on our subgroup list. And Tatiana was quick to respond with, there are so many questions left before the bylaw can be operationalized, to which Matthew responded, the framework of interpretation does not operationalize the bylaw. It provides context and guidance for interpretation, [inaudible] of the bylaws beyond the framework of interpretation.

And to which, Tatiana said, that might be true, but we've not sufficiently discussed the bullet points of annex 12. And Jorge responded, well, this might be true, but the public comment periods will also give us more insight in the matter, to see what the response from people will be, also how it is perceived within the community.

And after that, we could focus on developing the suggestions for ICANN, implementing the human rights framework of interpretation. So

actually, continue roughly the way we were going. Then, Greg came back, said we need to review the framework of interpretation based on the bullets in annex 12.

And the bullet in annex 12 should be part of the framework of interpretation, and should not be a separate document. In that case, it means we would need to mend the framework of interpretation. So, as Greg concluded, would it not be better to have everything out in public comment at once? Should we hold off on the public comments as they are prepared?

Now, and the open ended invitation from the co-chairs to develop suggestions for ICANN implementation, implementing the human rights framework of interpretation, is actually beyond our mandate. To which Anne responded, we should continue the public comment, but make it clear that the bullets from annex 12 are still to be considered.

So, this is where we are now. And we have by far, not heard everyone in the subgroup, and we also have enough time to discuss this amongst ourselves, but also in the CCWG plenary. So, we do not need to rush or jump to conclusions here. I would be very interested to weigh, and consider, and to hear what people think.

So, the point that we have now is that, should we revise the framework of interpretation based on the bullets on annex 12? And if so, should we do that before we put it out to public comment or after? So that we can also integrate the questions we get back from public comment. Should there be one or two documents? A framework of interpretation and suggestions, or should they be separate?

Previously we thought they were separate. That's also something that the co-chairs suggested now. Greg, got from annex 12, that it should be one, because it was something for discussion. And finally, what should we then respond to the CCWG and the co-chairs?

[Inaudible] some points for discussion, just to have some rough guidance. I would like to ask, since we also have these points on the right, and agenda, I'd like to ask staff to be so kind to put up the slide from Greg, with the points from annex 12, and then I would like to ask to everyone to join the queue, and share your opinions with us.

And I see there is a queue. I see Kavouss is there. Kavouss, please come in.

KAVOUSS ARASTEH:

Thank you, Neils. I think Greg, Tatiana, and Jorge, were part of the small group. They provided the first draft for us. Did I miss something from [inaudible]...? If they missed something. I don't understand why we should come back to annex 12. What is missing in the interpretation of framework interpretation that we had made, which is not covering annex 12?

We could not go to annex 12, it would give it again to the little group, to compare what we have agreed before and to see whether or not done anything from annex 12 should be added. We should not open discussion on annex 12 because [inaudible], everybody had his own view and so on.

So, give it back to the same group, [inaudible] of interpretation, and ask them, please check whether there is anything from annex 12 that should be added. If yes, it should be added, and they come up with [inaudible] indicating that these are these sort of things, these are the things to be added, or not to actually have something [inaudible], the elements should be added.

But we should not start another CCWG annex 12 and so on and so forth. We don't have such time, we have many other things to do, and it was [inaudible] section is totally at the very, very beginning, and it could not engage [inaudible] let us do many things. We want to Copenhagen or many other activities, and constituencies.

Not all of us like Greg, could put 24 hours for these things. We have other things to do. So, what I would suggest formally is this, give it back to the group, as I mentioned, [inaudible]. Thank you.

NEILS TEN OEVER:

Thank you very much Kavouss. Great to hear you again. I see John Laprise is next in the queue. John, please come in.

JOHN LAPRISE:

Hi. This is John Laprise for the record. In response to Neils's questions, I think that at this point, what I would recommend is to open the whole thing up to public comment, as is. We've done a lot of work at this point, and I think it's time to get some fresh eyes on the whole thing, and see what they have to contribute, and then come back to it. Thank you.

NEILS TEN OEVER: Very clear, very straightforward, John. And let's keep in mind, there is also a life after public comment. So we can both benefit from the people outside our group, and now we still continue with the public comment, because we can have another public comment. But I'm sure Greg will come in and analyze that.

Greg, please correct me if I summarized you incorrectly. So Greg, please come in.

GREG SHATAN: Thanks Neils. I think you summarized me quite well. The co-chairs have asked us to confirm that we've considered the elements in annex 12, if I read their email correctly. So, I think that it behooves us to actually do that. So, that, you know, to be exact, to confirm that we have completed developing the human rights FOI per annex 12, that this is complete.

At the very least, in order to confirm that, we need to go through each of these bullet points against the frameworks of interpretation, and determine whether these have, in fact, have been fully considered taken into account, not just discussed along the way.

I will say that, as a member of the small group that initially did this, that what we really concentrated on in what was submitted to the group, was a textual analysis of the framework, of the bylaw, and did not, nor did we think we were supposed to, fully take into consideration each of

the bullet points we thought was based on our working method, that that would be a second stage to this process.

So, to my mind, this is incomplete. And I think that we can't put it out to public comment unless we've confirmed that we have completed the work under annex 12, that's what the co-chairs have asked. If we want to put out something that's incomplete to be, to which additional first-time text needs to be added, then we'd probably end up with three public comments.

If this is a preliminary public comment period, we can't have a final comment period in which some things of significance appear for the first time. I know everyone would like to put them, put this behind them, and that includes me, in spite of what Kavouss might think, I don't have all day to work on this.

This isn't even my main job. I don't get paid for this, nobody pays me to do this. So, I'm fitting this in between billable work and other things. So, you know, I don't need this, but I also don't need to put out something that's half-baked and incomplete, and that, in fact, does not correspond to the bullets in annex 12, which are also the bullets in annex six.

The only difference between the two is whether it looks like they should be considered separately as kind of add-ons, or whether the organic framework of interpretation should reflect that all of these things have been appropriately considered. If we're going to annex 12, then we need to look at the text, and I think we should have the framework up, as well as these bullet points, in some fashion.

And really make sure that the framework satisfies these. So, these I'm not sure, I'm really not sure that it does, and I, you know, think that that needs to be an exercise of substance. If we all agree that it really does that job, then we can send it out for public comment, but we can't just send it out for public comments if we think we're done.

We can't just decide that we're done. We need to... Confirmation is an active process, not a passive process. And I'll look forward to that process. Thank you.

NEILS TEN OEVER:

Thank you very much Greg. I am not completely sure whether annex 12 is conclusive, that it needs to be in one document. Because also in part of the discussions that we've had, is that we said that the framework of interpretation should really focus on interpreting the bylaw, and initially we were looking forward to creating another document, that were addressing these bullets.

We've also already been doing work on that document. That's also what we flagged to the plenary. And we could also have that document still continuing, and going into a public comment at a later stage. So, that might also be a way of going forward, but that is something that I would like to just keep it up a suggestion, because before we all just start digging ourselves into strong positions, let's first see what is all possible.

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

DAVID MCAULEY:

Thank you Neils. It's David McAuley for the transcript. And I just wanted to weigh in at your request for the points of discussion, and first, with respect to point B on slide seven, should we revise the FOI before, after public comment?

I think the word revised is an incorrect word, should be considered. We should consider whether we need to revise, because it's possible that when we go through the bullet points in annex 12, we will decide that a revision is not necessary. With respect to before or after public comment, I would say before. I tend to agree with Greg, and also with Matthew, their emails were not totally aligned, but I largely agree with both of them.

I think we're almost done. If you look at the bullet points, some of them consider which specific human rights conventions, or other instruments, etc. we've considered that. I think we looked at what impact might have on ICANN's consideration of GAC advice. I thought we came up with the result that it wouldn't have any impact, but we've looked at some of these bullet points.

It's not as if we've not looked at any of them. And so I think we should only have to look at these we've not considered. With respect to one or two documents, I would think there could be two. I think the FOI are within scope work. I don't think there is anything that would prevent us from offering suggestions that were not colored or characterized as recommendations that were within scope. So those are my thoughts. Thank you Neils.

NEILS TEN OEVER: Thank you very much David, and the suggestion to take some time here to continue consideration, or ensure that we considered sufficient, might indeed be enough. That might be something to just spend our time on. A very good suggestion. Thank you. I think Kavouss's hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Hello. Do you hear me please?

NEILS TEN OEVER: Yes, we hear you now, Kavouss.

KAVOUSS ARASTEH: Yes. What I said, and what David and Greg said, are not different. The only thing that because of action or procedure is slightly different, what I said that, the same group, or another group, look at what we have prepared, and listen to the annex 12, and decide now whether there is anything missing in that, to be added from any bullet of annex 12.

We suggest that then we would identify where [inaudible] added. I don't agree with you that [inaudible] and document, we have a duty to provide a framework of interpretation. It doesn't have a difference between annex six, annex 12. This is [inaudible] between one, but it is not [inaudible] that [inaudible].

What I said, yes again, either the same group, with the same number of people see, or the same group with more people and doing the work,

fits into what we have [inaudible], and what was annex 12, and to see whether there is anything to be added.

And I agree with both of [inaudible], that should not have a public comment with [inaudible]... So we really the same idea [inaudible]. The [inaudible] is different, it's [inaudible]. Thank you.

NEILS TEN OEVER:

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

ANNE AIKMAN-SCALESE:

Yes, thank you Neils. It's Anne for the transcript. I very much agree with the observations made that these points have been discussed, but not necessarily fully considered. I remember making a lot of noise in the beginning about making sure that we're consistent with ICANN protocols and processes, especially in relation to the policy development process.

I do feel that the drafting team gave some attention to these. But I feel that they did not understand that they were charged with fully considering all of these points in annex 12, because I think that there was definite discussion, I think it will reflect in the minutes, that we said that we were not quite at that stage yet.

Reading the language of annex 12, now reconsidering my own suggestion on the list, because the first sentence says, as it develops the FOI HR, and so, you know, I could easily be persuaded to forgo the public comment for a further discussion and consideration at this time

of the annex 12 points, prior to putting the FOI HR out for public comment.

So, I could go either way on that, because I do think public comment would be helpful, but it sounds as though the plenary and the chairs, in particular, would not really want us to go that direction. And so, but I do think these points must be discussed more in-depth. Thank you.

NEILS TEN OEVER:

Thank you very much, Anne. So to get a bit of a feel. So, we all agree that this point has been discussed to different extents, whether that's considering or not, that's still open. But let's follow Greg's advice, since we still have over 30 minutes, we actually have 34, to maybe consider them again a bit, and see how far we are.

So, let's start at the upper bullets point. Consider which specific human rights conventions. Paul is asking to have the FOI upon the screen, but I'm not sure if we can have two documents open at the same time. What I can do is quickly see if I can find the link to...

Brenda is working her magic. Wow, Brenda, that is impressive.

Yes, where we would be without ICANN staff? Excellent.

ANNE AIKMAN-SCALESE:

Neils, it's Anne, may I ask a question please?

NEILS TEN OEVER:

Please, continue, sure.

ANNE AIKMAN-SCALESE: Are you now proposing that we go through each of these points, in the process during this call, as our analysis...? I'm not quite sure where you're going in the agenda with it.

NEILS TEN OEVER: So, as suggested by Greg, we do not know, if we consider all of these points sufficiently, if we do not consider them and have a look at them. So, the suggestion is indeed to go through the bullets of annex 12, and see whether they have been discussed and considered in FOI. And if not, we could task the drafting team or someone else to see how this could be worked on.

ANNE AIKMAN-SCALESE: Okay, thank you. I didn't realize that we were going to do this call as a working call on those points. Thank you.

NEILS TEN OEVER: Yeah, since we still have 32 minutes, and I'm also open for other suggestions for things to do, but there seems to be a concrete job at hand, and it will make it much clearer of where we are.

So, I suppose we continue. And another suggestion by Greg, if we put the bullets into the notes, so then we could have the FOI full screen, that might be a good idea. Staff, could you do that? So it would even be better.

While staff is working on the best configuration to make this happen, we can go through the bullets. So, the first bullet, is consider which specific human rights convention instrument, if any, should be used by ICANN interpreting and implementing the human rights bylaws.

Well, if we have a look at the part on internationally recognized human rights, there is a specific text about human rights declarations and conventions. This could be relevant for ICANN human rights core value, including a link to a number of documents. So, this is definitely a bullet point that has been considered, and has also been taken into account while drafting the framework of interpretation.

I think it is something we can agree upon, and it is something David also mentioned earlier. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thank you. It's Greg. If you look at what's under international human rights, it says they're a range of human rights declaration and covenants that could be relevant. And we footnote, eight of them. And only say that none of them have a direct application to ICANN, because they only create obligations to the states, and that the states are expected to embed human rights legislation due to that.

So, at this point, I think the interpretation I would take from that of how we have considered bullet point number one, is that no specific human rights convention should be used by ICANN in interpreting and implementing the human rights. Although some, any or all of these could be used, but we basically are punting.

And it's a little bit ambiguous as to whether that's really our intent, and so, while I think we certainly spend quite a bit of time talking about human rights instruments and conventions, we certainly didn't say that the following should or none should, or that ICANN can do whatever it wants at some later time, but we're really not answering that question now, and that's really kind of, if we say anything at all, it's really last, which is basically a non-answer.

So, I really would not consider that we've considered this, even though we've chewed on it a while, I don't think that what came out of the other end, was something that we could call full consideration. I might have another name for it, but I don't want to continue the analogy. Thank you.

NEILS TEN OEVER:

Thanks for that, Greg. I see David is next in queue. David, please come in.

DAVID MCAULEY:

Thanks Neils. David McAuley again. I largely agree with Greg, as I was typing in chat, but not fully. I don't think we've punted on this, and I do think we have met our mandate with respect to bullet one, which says we will consider the following, and first of all it's, consider which specific human rights conventions or instruments, other instruments, if any, should be used by ICANN in interpreting, etc.

The phrase, if any, recognizes that there may not be any. If the verb is should, there may not be any. I think what happens when you have a

duty to respect internationally recognized human rights as required by applicable law, you have set forth what the requirement is, but as far as what ICANN considers, they can do whatever they want, and consider input from any direction they could get.

With respect to this bullet that says they should, I think we've done our duty in the document that we have, the FOI. Thank you.

NEILS TEN OEVER:

Thank you very much, David. Very good. I think there is definitely... We're coming a bit under the problem, since we punted that a bit. To define consider, right? So, Greg says, we chewed on it, but we did not provide leverage statement. If I look at Merriam-Webster, it says that consider is to think carefully about, or to form an opinion about, to judge.

So, should we just think or should we also have [inaudible] opinion? We're probably somewhere in between. And then this question is also interpreting and implementing. So it's also a double thing. I think we do give definitely some guidance here, which is not a non-answer in my humble opinion, but I think Greg's hand is up again. Greg, please, come in.

GREG SHATAN:

Thanks. I don't think we actually need an elaborate answer, I just think we need to make sure that this reflects that we've fully considered the response essentially takes care of this point. So, if we have you know, the answer that we currently have, I mean, to some extent the problem

may be ambiguous too, because it really doesn't say that no instruments should be used.

It doesn't say that only certainly instruments should be used. It doesn't say that all of the ones below should be used. It really, it's not a not answer, I'm just not sure what the answer is, and if we want to say more clearly that because the instruments do not have a direct application to ICANN, ICANN should not use this in interpreting and implementing the bylaw.

So, we don't quite say that. And I think we do say, we do go on certainly to say that this needs to be limited by applicable law. I think that's correct. But I think the implication is that the insurance themselves shouldn't be used, because they apply to states and not to ICANN. And the last thing that we should do is leave much to be interpreted about the framework of interpretation.

So I don't think we're necessarily far from an answer, but I think we have less than ambiguity here that will, you know, cause interpretation issues down the road, which is the exact opposite of what our desire is, which is to try to create consistency of interpretation for the bylaw. Thanks.

NEILS TEN OEVER:

Okay. So, most people think that, seem to think that they discover [inaudible] not, let's chew on this a bit more because I would like to use our time to go through the [inaudible] is.

If we look at the next one, consider the policy and frameworks if any...

ANNE AIKMAN-SCALESE: Excuse me, Neils. Excuse me, my hand is up. It's Anne.

NEILS TEN OEVER: Okay, Anne. Please come in.

ANNE AIKMAN-SCALESE: Okay, thank you. As I listen to the commentary, there is an aspect of the language of the FOI that has kind of raised the question for me, because the language in the annex 12 is, which of these should be used by ICANN in interpreting and implementing human rights, and Greg was making the point that the FOI deals with applicable law, and has made the point that these conventions that provide kind of best practices, if you will, don't directly apply, and so I don't know if our FOI, perhaps it does make it clear enough, but the verb used by ICANN is when we talk about annex 12, is just a little confusing for me, because I don't know the extent to which these would actually be used.

That's really vague, I know, but I'm just trying to be thorough about our analysis of the bullet points.

NEILS TEN OEVER: Thanks, Anne. It's helpful, and I think this is the kind of thinking that we need. We do not need to be final or conclusive right now, but let's just continue and see where we are and get some ideas, and get that will help us think further. If we look at the following bullet points, this is consider the policies and frameworks, if any, that ICANN needs to

develop or enhance, in order to fulfill its commitment to respect human rights.

So, what, how do people feel about that? I do know that we have been thinking and considering about it, but it was in the drafting of the procedures and guidelines options, and not the framework of interpretation document. So, that's where we get into that discussion on whether we think we should address these points within the framework of interpretation itself, or in a separate document.

And if we would add such a thing into the framework of interpretation, then we would kind of also make the framework of interpretation into a framework of operationalization. So, we somehow become a bit into a spilt there, and I rather err on the side of interpretation rather than on the side of operationalization, because it seems to feel a bit beyond our mandate, but clear [inaudible]... I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. I don't think that we need to get into operationalization per se to consider this bullet point. And indeed, if we can't consider the bullet point because it's an operationalization, that really creates a real discord with annex 12, because we've been asked to consider it. So, we haven't weighed in at all in this document, on any policies or frameworks that ICANN would need to develop or enhance in order to fulfill its commitment to respect human rights.

I guess the question is, whether implicitly in how we have interpreted this in the contextual interpretation we have provided, how we

somehow provided, somehow indicates due to consideration of the policies and frameworks that ICANN would need to develop or enhance, in order to fulfill commitment to respect human rights.

And that's kind of, at that point, we're kind of almost looking, hopefully we don't have to look beyond the text that we've written, but I would like to figure out where in this text one can see consideration of policies and frameworks that should be developed or enhanced is beyond the bylaw itself.

I'm not saying they aren't there, but I think it will take some reading here to see whether they're there or not. And I don't, you know, off the top of my head, I can't say that they're there.

And Tatiana says there are none, in the chat. I think that Tatiana's audio may not be able to get the audio.

NEILS TEN OEVER: I think Tatiana is next in line, so maybe it would be a point to give the floor to Tatiana.

TATIANA TROPINA: ...hear me well? Because I'm not sure, I'm in the middle of [inaudible] on a very bad Wi-Fi on the street. Can you hear me?

NEILS TEN OEVER: Yes, we do hear you.

TATIANA TROPINA: Good. Thank you very much. So, about consideration, well, the Merriam-Webster dictionary means, I believe that draft was, drafting a little interpretation of the text of the bylaw. We didn't consider framework appropriately. We didn't consider instruments appropriately. And I believe that if we have to consider, we have to at least reflect on the outcome, because it's not clear.

Then my general comment about asking for input for valid points in the annex 12. It's the job of these groups to provide this input, and then to ask for [inaudible] for the community to comment on this. I don't know how we are going to ask the community to provide input on the issues which we have not even considered. Okay, have not considered properly.

So, this is my general comment. I don't know how what I'm going to say online, because my battery is draining. But I don't believe that this framework is ready to go for public comment. Thanks a lot.

NEILS TEN OEVER: Okay, that's a lot of different points at the same time. Thank you Tatiana. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Neils. I think it is not fair that you listen to everybody, but you don't listen to me. I proposed that any action on annex 12, should be assigned to a small group, whether the previous one or a new one, to consider the appropriateness of any bullet points on annex 12 into what we have done.

And then if they identify, then they have to say, there it should be implemented. I insist on that. This is my formal proposal, and the question to come is to take that into account. This facilitates the work. This is the way that you have done the work.

You give the [inaudible] and brought back from a small group to the [big?] group, and then we do exactly the same procedures. I do not agree on the and strongly oppose any other way that anybody propose that. Please kindly, this is what we have done, and we have to consider the same group.

The same group should come up and say that there is any impact or element of annex 12 into the world, and where it should be implemented, and come with a proposal for our consideration. I don't have any positions with the way that anybody propose, but because of action and [inaudible]... opposed to any other action, I strongly oppose it.

[Inaudible] because many other people lining up, one after the other, and supporting the other, but I stay on my point. And I insist on my point. This is what we have to do. Thank you very much.

NEILS TEN OEVER:

Thank you very much Kavouss. I actually think that there are different proposals that are out there, are not in... Actually, we'll work together. I just wanted to, during this call, to see where the thoughts on how things should look. The culture that's put up in an interesting area, we need to find our way out.

But we haven't had a clear path yet, so if we do a public comment period, that doesn't mean that we cannot have a public comment after, so there would be one thing, because we could benefit from the eyes from the community. And we then would have a reflection period.

On the other hand, and we could also benefit from the attention from a lot of people, because I guess later in the period, more people would open up for public comments. We could also ask to hold up, even though we had two readings in the plenary and resubmitted it to the plenary.

So, then we would need to take it back in the light of the answer of the co-chairs, which is kind of also in the contrary to what we asked the co-chairs, to what the co-chairs advice, which would also be a bit precarious. So, I do think we could look at this with a smaller group and come up with suggestions, that would be possible, and see whether we need to change the FOI, or whether we need to create an attached document as we did before.

They were going to continue working on a text document with suggestions and considerations, then we could still continue with the current bylaw, and they were going to disagree with the co-chairs and it might be easier to say, we rather create two documents instead of one, and then we could continue with the public comments.

So, there are so many different choices. I see a queue is forming, and they are Greg and Tatiana. Greg, please come in.

GREG SHATAN:

Hi, it's Greg Shatan again. First, I support Kavouss's idea of a small group. I think that might be a better place for careful consideration of the questions. I think if we do it in a small group or a large one, we should still do it carefully. Given that it is certainly my recollection and Tatiana's as well, that we did not, nor did we think we were supposed to, consider each of these bullet points as we drafted what was essentially a textual analysis, along with Matthew and Jorge, and Neils, and then in back to this subgroup.

We thought that that was kind of staged too. We didn't ask the plenary whether we had satisfied the bullet points, and since we didn't ask, they didn't answer, and I think that, I don't think that we suggested anything in the range of possibilities here, that in any way disagrees with the co-chairs.

The co-chairs have asked us to go through the exercise of confirming whether we satisfied annex 12. So, we could say yes, or we could say no. Both of those would satisfy the co-chairs. The co-chairs hadn't dictated the results to us. I think they've indicated that consideration should not turn into vast separate projects.

But neither have they suggested that we shouldn't really consider them, and that certainly they haven't suggested that the document that we're calling the framework of interpretation, shouldn't reflect that consideration.

Indeed, I think if they wanted to go that direction, they might have looked more to annex six, which views these more as separable pieces. Annex 12 is, really, the only difference between annex six and annex 12

is that the consideration document, or the consideration documentation is an integral part of the framework of interpretation.

And I think that's correct. So, I think it would be premature to send that half of the document for consideration, or to send out a document that we don't, haven't confirmed meets each of this particular considerations that we've answered, and maybe we have answered the first one and the answer is none, but I think we need to make that crystal clear, then, so we don't have ambiguities and interpretation, or the idea that...

And also, if people disagree with that, if we're going to put this out for public comment, we should be clear, because the problem with putting out something that's ambiguous for public comment, is that people won't be able to tell whether they agree or disagree with it, whereas if we put out something that is crystal clear, and people think that no, we should actually, ICANN should use A, B, and C, then they'll come back and say that in their comment.

Right now, we say they could. That's really not going to give enough meat to the commenters. So, I think we really need to make sure that we have, you know, given full consideration before we confirm that we've completed the tasks set forth in annex 12. Thank you.

NEILS TEN OEVER:

Thank you very much, Greg. I see Tatiana is next in line. Tatiana, please come in.

TATIANA TROPINA: Thank you very much Neils. Actually, Greg told what I was going to say. The co-chairs didn't ask us to issue this framework for public comment, they asked us to confirm whether they are done, over the annex 12 with the valid points, and we are not done.

And I believe that whether we have delegated this to the small group, or we have to discuss this on the group call, whatever, we have to finish this document because right now, it's not about submitting something. If we have submitted the work, the work should be done in a way that satisfies the requirements, and what we have now, it doesn't satisfy the requirements of the annex 12. Thanks.

NEILS TEN OEVER: Thank you very much Tatiana. The co-chairs also mentioned that although it would certainly be interesting [inaudible] exercise to consider how the interpretation implementation of this bylaw will interact with existing and future ICANN policies and procedures, it is unclear how long it would take to complete or what effect it could actually have on the FOI that has been produced.

So, I think there are different ways of interpreting the CCWG co-chair thing. And I think both readings are possible. Kavouss, I see your hand is up. Please, come in.

KAVOUSS ARASTEH: Yes, Neils. I don't think that we should just [inaudible] with the co-chairs, with the [inaudible] as Greg mentioned. They did not suppose any consideration, they just take their views, and it is up to us to say

yes, we consider, and we found that it may be useful, and have [inaudible] into annex 12, to see whether there is any [building?] of annex 12 into what we have got.

So, I think you have the co-chairs allow anything that co-chairs said in the way to oppose these for what they have [inaudible]. They did not oppose, we should not oppose [inaudible], we should just consider what suggestions they make, and [inaudible] on the way that we consider.

Once again, we deal with the small group, [inaudible] the matter, and the [inaudible] if you want to [inaudible] co-chairs directly or indirectly, we have considered what they have [inaudible], and we are taking the appropriate action.

So, I don't think that we need any [inaudible] of the co-chairs. Thank you.

NEILS TEN OEVER:

Thank you very much Kavouss. We have six minutes on the call. I would like to propose a few ways forward, but I won't do so before Anne speaks, and after that, I close the queue. Anne, please come in.

ANNE AIKMAN-SCALESE:

Yes, very quickly Neils, and thank you. This is Anne for the transcript. And I agree with the comments on the list to the effect that the discussion of these bullet points should be tapped at the level of the full subgroup. Thank you.

As the public comments, I'm quite open to sending the FOI out for public comment because I think it may inform that discussion, but and that would be something I think that Kavouss would like to see, I just don't know if there is a procedure for doing it. Thank you.

[CROSSTALK] [inaudible] that we haven't fully considered annex 12. Thank you.

NEILS TEN OEVER:

Thank you very much Anne. So, I think we do not need to answer everything at the same time. The public comment has not been prepared given to for affirmation to the CCWG plenary yet, so we do not yet need to say a go or no go for the public comment. So, we do have a bit of space there.

So maybe we could, in the meantime, say things for next week. See if we could do some work on the consideration of these bullet points, and see if we could do something. I think it would make sense to do it with some people that would like to do something, would like to propose something for the group, because drafting in the group doesn't work as well with such a great amount of people, but of course, everyone needs to have the ability to discuss.

So, thus far, we've been [inaudible] with a group of people that is open for everyone to join. So I would like to propose that again, for next week, see what we could achieve, and what conclusions we might reach there. We see that there is an appetite for some further discussion and consideration.

We also do not necessarily know what the scope of that is, so we might give it a try, give it a taste, be able to present next week with something that we may have, and then consider that next week. Instead way in which we could effectively spend next week and they would take the discussion to a next step.

So, Greg is a little worried about drafting. We have a discussion and conclusion about what we need to draft. Greg, I agree, but we might need to have a look at the different things that have been considered, have been discussed, and there might be a short analysis of that to feed the discussion.

David McAuley, David, please come in.

DAVID MCAULEY:

Neils, thanks. David McAuley. Let me put in an alternative suggestion, and that would be, you know, I think we have six bullet points in annex 12. If maybe we could assign a leader to each bullet point for purposes of setting the stage and being a thought leader, trying to prove others into making comments during the call of the full group.

It's an idea that maybe is worth considering. Thanks.

NEILS TEN OEVER:

I'm happy with that suggestion. Do people feel okay with that? I hope we can find six volunteers. Are there six volunteers?

So, people would rather volunteer for one bullet instead of discussing the six bullets in a group?

Okay, I think I would also prefer a group discussion, because I think we can have a more informed discussion. So, who are the people who would like to be part of the group discussion that would inform the discussion of the group?

I see there is Greg, Tatiana, David. Paul, we're going to talk about this in a group, but some people are going to prepare and bring some initial thoughts to the group, because that way we've been having richer conversations than before, so try to continue. And we'll also join that group. So, let's see if we could also get Jorge and Matt to join.

So, I will start a thread on that, and see if we have something to inform the group. For the next call on Tuesday 19:00 UTC, and before that, I think we have not something to concretely to send back to the co-chairs. So, let's work on that, and I'm looking forward to seeing you all on the list in the coming weeks, working a bit with a small group, and see you all on the call next week. See you then. Bye all.

[END OF TRANSCRIPTION]