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NIELS TEN OEVER: Thank you very much, ICANN staff and welcome everyone to the Cross Community Working Group on enhancing ICANN Accountability, Workstream II, Human Rights Sub Group. It is the 22<sup>nd</sup> meeting. It is February 24<sup>th</sup>, which in some cultures is referred to as Valentine's Day, so, I'm very happy we can all share the love here. It is 19h00 UTC and I am very happy that we have quite some people on the call because I know some of you are actually already on ICANN travel, but I'm happy we can try to make some progress this week on our work so that we will not get outside of the deadline of the plan of Workstream II, and stay within our mandate. So, having said that, let's have a look at the agenda and start with administrivia. Is there anyone on the audio bridge who is not in the Adobe Connect room? If not, then staff please take the role call from the Adobe Connect room. We have not received any apologies. Does anyone have an update on their Statement of Interest? None. Then, does anyone have an additional point to the agenda? No amendments, suggestions or questions regarding the agenda so that means we'll be jumping in to reviewing the documents that the drafting team has been working on this week. We have a bit of a cleaner document but that doesn't mean that the document is not very much a work in progress. I think we have been able to address some of the points that were brought up last week. So, staff, would you please be so kind to bring up the PDF document. Or for those who want to do a live transcription, you can also have a look at the Google Docs, I will pull up

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the link here. I see that from the drafting team, David McAuley is here, so I hope David and I can represent can represent the drafting group a bit without speaking too much for others. Again, this is a work in progress, this is not an official first reading, let alone a second reading, so, let's go through the document and see where we are. So, if you all do not mind we start again at the top of the document and then we'll try to keep an eye on the time to ensure that we manage to get to the end of the document, something that we did not exactly manage last week. Is everyone okay with that? I see no hands. I hear only happy people. So, let's start off. So, we're starting off at the top with the preamble which is not really a preamble because the document is going to be part of the Framework of Interpretation, and to clarify that it starts with, "The following part of the document addresses the considerations listed in paragraph 24 of Annex 12, the CCWG Accountability Final Report." So, this is also a reference to the choice that was implied to us by the CCWG co-chairs that we do not follow Annex 6, but Annex 12. So, it's very clear what we're doing in this part of the Fol. So, then we're going to try to address a part of which we had some discussion last week and let's see if we manage to capture the spirit and the ideas that were brought up last week. And so, the consideration is, consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw. And the text then goes as follows, "The Framework of Interpretation aims to provide guidance in interpreting the Human Rights Bylaw. In addition to the Framework of Interpretation the following documents could provide additional guidance noting that ICANN is not a party to these declarations and conventions and the bylaw has not been written with one specific

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Human Rights declaration or covenant in mind.” And then there is the list that is also mentioned in the Framework of Interpretation itself, so we put that here again to ensure that there is clarity. And then it ends off with, “The UN Guiding Principles for Business and Human Rights could be instructive in the process of the operationalization of the bylaw.” And David McAuley has already remarked that operationalize might not be the right word but we might translate that to guide, so then the sentence might become, “The UN Guiding Principles for Business and Human Rights could be a useful guide in the process of the observing the bylaw.” Which I think is also a good text. So, I do not see any hands but I would be very curious to see if people have reactions to this. If not, then we listened quite well to you all last week and we’re doing what you want us to do and there’s nothing that makes us happier than that. That’s great. So, that’s nice to see that. David, David’s hand is up. Please come in.

DAVID MCAULEY:

Thanks, Niels, David McAuley. You correctly noted my comment, frankly, that comment that was added quite recently, I’ve just had a very busy schedule the past week, but I did want to take a moment to thank you. I think you took the hard broom to the document and cleaned it up and I think that that process helped a great deal. So, I just wanted to say a word of thanks, Niels, and thank you for correctly capturing my document which was, I think our effort here is not to operationalize things but to recognize that the bylaw is written purposefully as a guide. You know, the introduction to the core values is that these are things that will guide ICANN’s decisions and operations

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and things of that nature. So, thanks, and that's the reason for my comment. Thank you very much.

NIELS TEN OEVER:

Great, thanks so much, David. And the only thing I did was actually just re-word the things that have been put there by the drafting team so I'm merely the secretariat. So, let's go to the next part, and please continue to correct me and add additions to the thing, David, but also others, of course. So, here we are at the next part where the policies and frameworks, if any, that ICANN needs to develop or enhance order to fulfill its commitment to respect Human Rights. And here we directly come on the "operationalize" to which David alluded earlier but to not make it unclear, I'll go with the text as we have it now and then we can perhaps discuss it later. "So, in order to operationalize the human rights bylaw, ICANN the community, as well as the organization will need to consider how to reflect the core value in its policy and operation processes. This could involve the use of human rights impact assessments for assessing how ICANN's operations and policies could impact human rights, as well as the development of a Corporate Social Responsibility policy. The Subgroup on Human Rights of the CCWG suggests that while operationalizing the human rights bylaw, 1) ICANN the organization should prioritize areas of focus, such as its operations, policies and procedures, and 2) The ICANN community could focus on the integration of human rights considerations in its policy processes consistent with its mission. ICANN's commitment to respect human rights and to take human rights into consideration in its operations and policies in the foregoing manner should, of course, be consistent with the human rights core value of the bylaws." So, here we're saying that

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there might be a social responsibility policy but human rights cannot simply be slapped on top of things, it should also be integrated in existing operations and processes. We are also saying that it cannot all be done at once so we might want to choose to prioritize specific parts of the work. And then also put that in a policy so there is a clear stream of work and implementation there. There is some wordsmithing here, this is not perfect English, so sorry for that. But I think we're heading somewhere. I see Rudi Daniel seems to agree, that's great. So, no other hands, no other comments, so, we're having a great speed here. So, let's go to the next part. And here we're getting a bit into the weeds and I'm very curious what you all think. So, let's not get ahead of ourselves but let me first read it out and then feel free to also jump in half way if you feel like this is completely going wrong. So, "The consideration is consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multi-stakeholder involvement in the process." And then our consideration is as follows, "The methods for developing any new policies or frameworks that may be needed to fulfil ICANN's commitment to respect human rights will be dictated by the type of policy and how ICANN develops those policies. For example, policies relating to the generic top-level domains are the responsibility of the GNSO and should be developed by the GNSO using that organization's policy and processes for policy development. This includes any changes to the GNSO's Policy Development Processes (PDP's). The GNSO's processes allow for broad multi-stakeholder involvement in working groups developing these policies. Similarly, policies related to country code top-level domains are the responsibility of the country code Names Supporting Organization, the ccNSO. The ccNSO has a PDP

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process that is similar to the GNSO, therefore it is proposed that the same process is considered. The review and development of recommendations on Internet Protocol address policy is the responsibility of the Address Supporting Organization. The ASO does not have a similar formal PDP to the ccNSO and the GNSO. This does not mean that there are no moments in the development of the policies and procedures in which reviews and recommendations could be reviewed. Any operations, employee-related or vendor-related policies should be developed by ICANN operations and management taking human rights into account as outlined in the bylaw, but should also consider multi-stakeholder involvement in the development process. At a minimum, proposed policies should be set out for public comment seeking input on, among other things, whether the policies fulfill ICANN's commitment under the Human Rights Bylaw." So, here we have outlined a potential approach for integrating, or as I said, that there is a need for integrating this in the work of the GNSO, the ccNSO, the ASO and ICANN organization, but that these organizations themselves should design these policies with proper multi-stakeholder engagement. Very good, very good. So, we'll walk through this. So, let's have a look at the next part. "Consider how the interpretation and implementation of this bylaw will interact with existing and future ICANN policies and procedures. So, the interpretation of the bylaw, when we start again, 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 organizations should consider defining and incorporating Human Rights Impact Assessments in their respective policy development processes.

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Including doing a policy impact assessment of the impact of a proposed policy on the specific human rights that ICANN is obliged to respect in the preliminary issue report.” Oh, I see a hand is up, and that is Kavouss, and I see a question by Rudi Daniel. But Kavouss, speak to me.

KAVOUSS ARASTEH: Yes, can you hear me, please?

NIELS TEN OEVER: Yes, we hear you very well. Great to hear you.

KAVOUSS ARASTEH: Thank you. On the left-hand side in the column, “Consider how implementation and interpretation bylaw.” Where we have the interpretation of the bylaw, do we interpret bylaw or we interpret just human rights? “Framework of Interpretation of Human Rights.” Do we have any Framework of Interpretation of other provisions of the bylaw? Why this was included in Annex 12, interpretation. Implementation, yes, but interpretation? Who interprets bylaw? Bylaw is two parts, a standard bylaw and the other bylaw, fundamental bylaw. I don’t remember, neither for the standard bylaw nor for the fundamental bylaw, we have talked or there is currently anything in the revised bylaw about interpretation. Who has the right to interpret the bylaw? Implementation, yes. But I don’t understand so this is something that needs to be at least flagged to the CCWG Plenary, that we have not found of this, some people, some distinguished people they found, and they need to manage them, we have not found anywhere in the new

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bylaw or revised bylaw mentioning interpretation of the bylaw. The only word of interpretation is same word of interpretation of human rights, but there is no other interpretation. Are you going to interpret the empowered community? Are you going to interpret XYZ? I don't understand. Could somebody really shed some light on the matter? Thank you.

NIELS TEN OEVER:

Is there anyone who would like to respond to Kavouss' question? I see Anne's hand is up. Anne, please comment.

ANNE AIKMAN-SCALESE:

Yes, thank you, Niels. I think this is an excellent question and I do believe that it's come up in a way in the drafting team discussion because there was a question raised about how the HR Sol would ultimately affect policy making, for example, within the GAC. And we have a lot of very specific provisions in the draft about the PDP process within the GMSO but essentially what we're saying so far with respect to the GAC is that it does not affect the GAC processes and there's no change. I think that's a matter that's still under discussion somewhat but it was raised, the fact was raised that it's actually the obligation of the Board and the final determination of the ICANN Board in terms of who is responsible to comply with the Human Rights Bylaw. So that we want to incorporate processes within our policy development, certainly we've put that in the GMSO provisions. Some of us believe it's not yet accurately reflected in connection with the consideration of GAC provisions which is a little bit later in Annex 12. But ultimately it really is

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the ICANN Board itself that is accountable for, responsible for, the compliance with the bylaw and they are the ones who must interpret the bylaw. And if they go foul or awry of the bylaw it appears to me that the community has remedies, whether it be by way of request for reconsideration or independent review, but the buck stops with the Board. It's the Board that must interpret, and comply with and be accountable for the Bylaw. Thank you.

NIELS TEN OEVER:

Thank you very much, Anne. I think there are different parts also, Kavouss had a question on the interpretation, and I think Kavouss' hand is up so we'll soon go to Kavouss, but I think we have a Framework of Interpretation because at the time Human Rights was added to the core values in Workstream I, we did not completely understand yet what it would look like. And the consensus was then we do want a commitment to human rights but to ensure that we all understand what it is we add a Framework of Interpretation. And that's why we came up with a Framework of Interpretation so that it's clear how we understand the Bylaw. And I think Anne is completely correct when she says that the buck stops with the Board but I think we will be selling ourselves short to say that we are not a part of that process as well. I mean, we all, different parts of the organization have responsibilities and have contributions and should therefore also be living up to these parts. It might end with the Board but it doesn't mean that the Board is everything, I think. Kavouss' hand is up, Kavouss, please come in. Kavouss?

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KAVOUSS ARASTEH:

Sorry, this paragraph and the two previous paragraphs were written differently in the last meeting and when I went to issue at the Plenary of the CCWG the key paragraph was changed. We are grateful for the first, relating to the GNSO, we are grateful for the second, relating to the ccNSO and this is the same. It is (inaudible) the GAC, I don't understand the situation. Let me explain, in the bylaw it is clearly mentioned that it is the duty of the Board when appealing or deciding on the GAC advice they must ensure that the advice is consistent with the bylaw. That's all. We, GAC (inaudible) also in our appointing principles or discussions to include that that advice, before being submitted to the Board, need to ensure that we are consistent with the bylaw, that's all. We don't want that we mix up this situation of GAC advice which must be compliant with the bylaw or consistent with the bylaw, comes under this part of it, such a worthy task about interpretation of the bylaw. We are not interpreting bylaw. If you want to talk about the GAC advice, talk about the GAC advice. Similarly, that we talk about the GNSO policy which ends up with recommendations. Or ccNSO policies which end up recommendations. That must be consistent with the bylaw. Similarly, GAC advice must be also consistent with the bylaw which is already in the bylaw, and why we need to explain that? If you want to explain that, you say that must be compliant with the bylaw and with the human rights, we have no problem. But this paragraph is saying entirely different things. You are talking that there is a need to interpret the bylaw. No, there is not a need to interpret the bylaw. If the bylaw needs to be changed, they will change it. And now ICANN is having some discussions to change the fundamental bylaw for something and a resolution has been passed on that. So, I think a big part of it, okay, it must be revised, it is directly to the GAC advice, it should be referred to

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the GAC advice, but not interpretation of the bylaw. It is very broad and it leaves this impression that we get out of our duties, not only we prepare interpretations for the Framework for the Human Rights but also going beyond that interpretation of the provision of the bylaw. So many provisions. We don't have that authority and we don't have that mandate. So, I cannot agree with this paragraph, it should be revised. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. Nonetheless, I think it's good if we finish the reading of this part so that at least we have the proposed process clear. Let me start from the beginning because I'm sure if I've lost it, you've lost it probably too, or otherwise I'm doubling it. So, "the interpretation of the bylaw 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 processes are developed and interpreted in accordance with the Framework of Interpretation. The different supporting organizations should consider defining and incorporating Human Rights Impact Assessments in their respective policy development processes. Including doing a policy impact assessment on the impact of a proposed policy on the specific human rights that ICANN is obliged to respect in the preliminary issue report." This is the first part of a policy development process so, at the beginning of a process we'll look at which human rights are potentially impacted by this potential policy. So it could be, we have a policy and it has an impact on privacy and freedom of association. So then, the next part is, "If the assessment identifies potential impact on any such specific human rights, so, we've called now, two specific human rights, a Human Rights Impact

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Assessment would be triggered for those specific rights and would be undertaken during the drafting of the working group's initial reports. The Human Rights Impact Assessment would be an integral part of the working group's Final Report." This means that this way, so the differentiation of the two assessments is to ensure that they do not need to do a full assessment of every policy. So, there's the preliminary assessment and the full Human Rights Impact Assessment, if it is positive, on specific rights. So, "In order to operationalize these policy changes an appropriate mechanism should be established, for example, a Cross Community Working Group on Human Rights, or a similar group, could be established which would make proposals for the supporting organizations to implement in their respective Policy Development Processes." So, this is a way to see if we can come up with a harmonized way in which it could be implemented in the ASO, GNSO and ccNSO. Of course, they would need to agree themselves upon this but at least it would ensure that there is uniformity and we are not duplicating the same process in three different bodies. So, at least this is a proposal or a way in which this could be done. And then finally, "ICANN should also consider ensuring that it does not violate human rights in its operations. ICANN might consider instruments such as Human Rights Impact Assessments to carry out a preliminary assessment of the effect of its specific operations. However, this is up to ICANN the corporation to decide and implement. The results of such Impact Assessments should be incorporated in ICANN's annual reporting." I see Kavouss' hand is up. Kavouss, please come in.

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KAVOUSS ARASTEH:

Yes, when you read the entire text I see the issue of that is already addressed and that is good. We don't need to do anything. I have a simple way to fix the situation. At the beginning of this part when it starts, "The interpretation of the bylaw should be driven by the Framework of Interpretation", we leave that portion. This is the first proposal. If you don't want to do that, we add, "The implementation of the bylaw with respect to the human rights should be driven by the Framework of Interpretation." So, limit our task to the human rights but not anything else. So, you have two options, option 1, deleting the first line to have word from the second line, or, adding human rights after the bylaw, "The interpretation of the bylaw with respect to human rights should be driven by the Framework of Interpretation." That means we limit our task within the mandate given to us that is human rights. With the remaining, I don't have any comment. I'm very happy with the last part. You referred that GAC advice must be in compliance (inaudible), I have no problem with that at all. But just the first line I have difficult that I don't want your group or our group proposal, we should interpret bylaw. We should not. It's just with the Framework of Interpretation for Human Rights only and nothing else and nothing more. Thank you.

NIELS TEN OEVER:

That's a great comment, Kavouss, one that I also incorporated in the Google Doc already, thanks very much for that. And I see David's hand is up, David, please come in.

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DAVID MCAULEY:

Thank you very much, Niels, David McAuley again. My suggestion in this language would be that the sentence that begins, "In order to operationalize these policy changes an appropriate mechanism such as CCWG", etcetera, I would delete that sentence. In other words, I come down on the side of I think it would be preferable that you have three different takes on how to do this, sort of in the interest of a principle of subsidiarity within ICANN. And I think these SO's, like the GNSO, ccNSO, ASO, whatever it might be, they come at it with such different points of view, that that may make sense. They have much different remits in a sense, obviously for instance between a gTLD and ccTLD, so that would be my suggestion. Thank you.

KAVOUSS ARASTEH:

Please just take a suggestion on the chat, thank you.

NIELS TEN OEVER:

So, the suggestion to which David was responding was that we set up a CCWG on Human Rights so we could develop a potential policy which could then be recommended to the GNSO, the ccNSO and the ASO. The advantage of that would be that we would be making use of the expertise to design it at once. David replied, but these three bodies are inherently such different beasts that it might not make sense to do that all at once. And that was the overview of the positions. I see Kavouss' hand is up, Kavouss please come in.

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KAVOUSS ARASTEH: Yes, I'm very sorry to (inaudible). Still I have problems with the first part saying an interpretation of the bylaw. We do not do anything in regard the interpretation of bylaws. We just do preparation for the Framework of Interpretation for the Human Rights. That part should be deleted. This is causing problems. That we go beyond our mandate. We do not propose anything to the CCWG community, we just stick to the interpretation of the bylaw. This is not our task. That first line, plus one word from the second line of the last portion that you have read, must be deleted. I hope I am clear and I don't mean to repeat. This interpretation of the bylaw should be driven by the Framework of Interpretation, please delete that portion and the same (inaudible). No problem, no difficulty, thank you.

NIELS TEN OEVER: Thanks, Kavouss, that's in the notes and we'll work on it with the drafting team in the coming week. I'm very curious what others also think about... oh, I see I have missed a lot of discussion in the chat. So, what do all these people think about the CCWG on Human Rights? These are the independent processes in the SO's. And then also the point, we have not mentioned AC's extensively yet, except for the last part where we might be getting to now. But I'm very curious. I'd like to hear more voices on these parts, and I'm sure there are a lot of people with opinions here. Kavouss' hand is up, Kavouss, please come in.

KAVOUSS ARASTEH: Excuse me, David mentioned in the chat that it is difficult for him to hear me. Does he want that I repeat or you can repeat what I said? My

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proposal was quite simple. The first line plus one word from the second line from this section should be deleted. The interpretation of the bylaw should be driven by the Framework of Interpretations. Delete that because this is not the subject we are discussing. We are discussing Framework of Interpretation for Human Rights. I hope this time my voice is clear, thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. So, Anne is making a point. Anne says, I think it would be best if Human Rights are considered and included in the ongoing PDP's. In particular, these processes should be integrated in a manner that does not hold up another round, in particular a possible priority round for Community Applications. Yes, but a bit also a discussion about structurally addressing it, right, and not incidentally? So, let's see. But let's continue to the last part because I see we are also already progressing when it comes to time. And that is the last part and it is, "Consider what effect, if any, this bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee." So, we chewed on that a bit and then came to the following point. "There is no change to the status of GAC advice or how GAC advice will be considered solely due to this bylaw. The Board will need to take into account ICANN's Mission and Core Values, including the Human Rights Core Value, in considering advice given by the GAC." Mark Carvell's hand's up, Mark, please come in.

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MARK CARVELL:

Yes, hi Niels, and hello everybody. I think there's a generic point here isn't there, about the Advisory Committees. I mean, it's in the word, they are providing advice. They're not creating policy, they're giving advice to members in the community who do the development policy and then ultimately the Board who takes the decision, having received the bottom-up policy outcomes. I mean, you had a question earlier, how should we cover the Advisory Committees in this document? I don't really see there's much point in trying to do that. The first sentence in this section, "There is no change to the status of GAC advice", I don't really understand the purpose of stating that. The key point is in the second sentence, how the Board implements that advice or rejects it, should take into account it's mission and core values, including the obligation to respect human rights. That's the key point. But as I say, it's a generic point applying to all the Advisory Committees. And I said in the chat earlier on, the GAC will have regard to human rights. We have a Working Group on Human Rights, I'm one of the co-chairs of it, and when we are developing advice we will be alert to any human rights implications caught up in the advice. But it's for the Board to say, well actually we can't implement that advice because it will conflict with our obligation to respect human rights, and that's where the key action point, relevant to this document, is, is how the Board implements the advice. I hope that's a helpful intervention, thanks.

NIELS TEN OEVER:

Thank you very much, Mark. If I understand what you would like the drafting team to do is to remove the first part of this comment, right?

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MARK CARVELL: Yes, the first sentence, first of all, I didn't really understand it, but I don't think it's relevant. The second sentence is the key point. And my second point is, well it's generic to all the Advisory Committees presumably. Thank you.

NIELS TEN OEVER: Excellent. I've noted them both in the Google Doc so we will work on that. Thanks so much, that's really helpful. Thank you. I see Anne's hand is up, Anne, please come in.

ANNE AIKMAN-SCALESE: Yes, thank you, Niels. This is Anne for the transcript. I certainly agree with Mark's observations regarding what the GAC will be doing and that they will be considering the human rights issues when rendering public policy advice. Where I may differ is in relation to whether it's sort of a generic assumption or a given in relation to all Advisory Committees. In particular, because the GAC's public policy advice has very special status under the bylaws. So, for some of who are working in the smaller group it was difficult to understand, again, this language about there's no change in GAC procedures. We think it would be more accurate to recite some of the things that Mark has said about what the GAC will be doing. That it will be taking into account in rendering its public policy advice, the Framework of Interpretation with respect to human rights and the fact that that's a core value of ICANN. Because we believe that that same, I guess you would say, obligation to respect, which was mentioned earlier in the chat, in the policy making process, affects the GAC equally as it affects the GNSO. Ultimately, yes, it's the Board that

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makes the final determination but we don't understand why there would be kind of a different description for the GAC's public policy advice than there would be for all the processes that occur within the GNSO. Thank you.

NIELS TEN OEVER: Thank you very much for that, Anne. I think Mark, that's an old hand. I see Kavouss' hand is up. I will be very curious to see if there are people from ALAC. And I see Cheryl is here on the call, but all the others, they're here, people from ALAC, what they think about this issue. But first in the queue here is Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, do you hear me now?

NIELS TEN OEVER: I hear you very well.

KAVOUSS ARASTEH: Okay. I think if you read the left here of these procedures. It says, "Consider what effect, if any, this Bylaw will have to ICANN..." up to the end. In that case I tend to agree with Mark that the first sentence is not necessary. Because the key reply in the second sentence that "the Board will need to take into account ICANN's Mission, Commitments and Core Values, including the Human Rights Core Values, in considering advice given by the GAC." This is a key point so, first sentence need not to be retained and could be or should be deleted. Thank you.

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NIELS TEN OEVER: Thank you very much, Kavouss, for supporting Mark's point. Cheryl on the line, Cheryl, please come in.

CHERYL LANGDON-ORR: Thank you, Niels, you did call on me so I figured if I waved at you in the AC room you can put me in the list. Cheryl Langdon-Orr for the record. Of course, the large Advisory Committee does not have the privileged position under the bylaws with relationship to how a Board needs to react and interact regarding its capital-A Advice. It also has a specific difference in its operational procedures, its standard operational procedures, because it has always had the mandate to particularly interact with the support organizations. So, obviously, we as ALAC and as the At-Large community, being two different things, the ALAC thing, the 15-person committee which is the Advisory Committee, and the At-Large community being the grassroots via the RALO's that contribute to formulation of the ALAC's opinions and what it tries to do on behalf of internet end-users or in the best interests, I should say, of internet end-users. So, we are historically more and more embedded directly in PDP processes in both the ccNSO, when they occur, and GNSO. We're also embedded, wherever possible, in the early drafting or study groups, if in the case as this (inaudible) the latter, it tends to do expirations in a pre-PDP process, and in drafting of mandates, etcetera, within GNSO. So, there's a greater engagement and that means that any attention to human rights, as was suggested, specific to the SO's would be where we would operate. So, there's that sort of hierarchical sense of system or attention that David mentioned earlier. And of course I should also

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mention I did say SO's earlier because our regional At-Large organizations and our At-Large structures are frequently specifically embedded in the regional internet registry activities. So, from the numbering point of view we have a role that is outside of ICANN but contributory too. And acting as we do in the best interests of internet end-users means we're always thinking about needs and rights. So, we're a little bit different to the GAC on a number of levels. Thanks.

NIELS TEN OEVER:

Thanks for that, Cheryl. So, if I try to summarize you, it should say, different from the GAC but no need to integrate human rights in specific policy advice and activities of the ALAC, right? Okay, perfect, that's good. So, that means that we've had views from all different SO's and AC's. We went through the whole document. We identified some points for improvement but we've also seen that the document has improved from last week. So, I would like to open up the floor for any suggestions, ideas and any other business that you would like to give to the drafting team so that we can continue so that we might even have a document which we can discuss together by ourselves, maybe even with others by Copenhagen. So, that will be really great. I see a number of hands up, that's great. First Kavouss, then Anne. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes, thank you very much. I think I ask as a suggestion by March to delete the first sentence of the last part and the support given by David and support given by myself, I think the first thing is to delete the first sentence of this last part. Namely, there is no change in the status of

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GAC advice or how GAC advice will be considered solely due to this barrier. This was suggested to be deleted and it was supported and I have not heard any opposition so this must be deleted either by now or in the drafting team. And the second, the previous section, the first line, interpretation of the bylaw, I have said yes that should be deleted and you may assign to the team to look at that one, but I have serious difficulty if you retain that. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. That's well captured and we'll be working on that coming weeks. Perfect. Anne, please come in.

ANNE AIKMAN-SCALESE:

Yes, thank you Niels, it's Anne for the transcript. And I also agree with the deletion of the first sentence in that paragraph. I am not sure why we are unwilling to state that the GAC would have a positive obligation to take into account the Framework of Interpretation for Human Rights when rendering public policy advice. I think, you know, it's something that, as Mark has observed, it will occur but as to why we would be implying that GAC processes are not affected by this and just being silent on that, I don't really understand the reason for that. So, it would be helpful if somebody could illuminate that situation, maybe Mark has some thoughts, or Cheryl or Kavouss. Secondly, I think that there's, with respect to the balancing act that I think Jorge has raised originally a long, long time ago, I think there's a bit of an elephant in the room. And that is because, although we're all quite willing to talk about the balancing that must occur among core values, when push comes to

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shove and the Board has to make a decision, we've been so far unwilling to talk about the reality that there's balancing that must be done among the various human rights themselves. And so, obviously, I do come at this from a standpoint of both representing authors and artists, and also representing indigenous peoples, that the rights of authors are to be balanced in relation to the right of privacy and the right of free expression, and I think there should be some discussion. When I say free expression, I think that's probably it should be unlimited, but I don't know about free anonymous expression because that is something that can be harmful to the rights of authors in certain cases. And it does have to be balanced on a case by case basis. I think in some ways we're avoiding stating the fact that human rights, as they are enumerated in the various documents that we've referred to in the first section, will also have to be balanced, and I think that that merits a great deal more discussion, particularly in Copenhagen. Thank you.

NIELS TEN OEVER:

Thank you very much, Anne. I think we have addressed that actually in the Framework of Interpretation and that's something that will definitely come back once it's operationalized. I'm not also sure where that should be part here in the considerations document and I think that flows from the things we've written and said but I'm also, of course, always happy to go in further detail in this (inaudible).

ANNE AIKMAN-SCALESE:

Niels, may I have a quick follow up on that. I think that what we did in the Framework of Interpretation was I believe we referenced the

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balancing of the core values but not what will inevitably be a balancing of various human rights as well. And I had put a sentence regarding that in the red line that I sent around, but probably people didn't have time to read that. But I do think that we will need to talk about it in Copenhagen to be complete with respect to what we're putting out for public comment. Thank you.

NIELS TEN OEVER: Okay, let's discuss it and then see what we can get. And then let's close the queue and, Kavouss, (inaudible).

KAVOUSS ARASTEH: Can I reply to Anne?

NIELS TEN OEVER: Of course.

KAVOUSS ARASTEH: She said that it is necessary that the GAC advice should take into the account the human rights and so on and so forth. We don't need that. Why? Because in the bylaw it mentions that the GAC advice must be consistent with the bylaw. And the interpretation of human rights is part of the bylaw. So, in an implicit manner all cross-reference GAC advice should be consistent with the bylaw. If Anne insists that we exclusively mention the GAC advice should be consistent with the bylaw I also insist that in GNSO and ccNSO we also could mention that the policy of these two organs must be in compliance with the human

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rights. If you read the previous paragraph there is no mention of the policy of the GNSO and others to be consistent with the human rights, so why we should do it for the GAC. We should make a balance between the three. If you mention something for GAC we should also mention the same thing for the two others, for ccNSO and for GNSO. These are my comments and I request kindly secretary have reflect what I said. Thank you.

NIELS TEN OEVER:

I see there is also invited a response from Mark and then Mark is really closing the queue and then we're ending out. Mark, please come in.

MARK CARVELL:

Thank you, Niels. Well, I did have something similar in mind what Kavouss has said so I'm not going to repeat that but it's an interesting point that Anne has raised and I'm minded to discuss it with GAC colleagues. The capturing of the sense that there is an obligation for us to take into account human rights when formulating advice. I do like that idea but I don't think it's explicit anywhere, Kavouss may correct me on that. I don't think it's explicit anywhere but maybe it should be in our operating principles. So, I wanted to express appreciation to Anne for raising that point. I mean, my sense at the beginning was, you know, many of us are very close to the whole area of human rights and policy making and we, as part of our culture as policy makers in administrations, have regard to human rights. I mean, we will spot problems pretty quickly where there's potential contravention of somebody's rights. But as that, I appreciate the point that Anne has

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made. Thanks, and goodnight everybody, or goodbye if you're not evening like me. Thank you.

NIELS TEN OEVER:

Thanks a lot, Mark. The queue is closed so we have, and this is great, we have some new horizons, we have some new ideas, we've also concluded we made progress and isn't it a great place to be. That's really nice. On this note, I would like to end on this Valentine's Day in which we can look forward to meeting each other again in Copenhagen with an improved document. But luckily, we're already seeing each other again next week on the call. Coming week on the mailing list. And I would like to thank you all very much, including ICANN staff for being here, for your attention, and for making this all possible. Thank you all. Bye.

**[END OF TRANSCRIPTION]**