

---

RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Thank you very much ICANN staff and welcome everyone to the Cross-Community Working Group on enhancing ICANN Accountability Work Stream 2 Human Rights Subgroup on our 25<sup>th</sup> meeting on the 21<sup>st</sup> of March, at 19h00 UTC. Our first meeting after ICANN58 in Copenhagen. We have a full schedule today with a lot of things to discuss. Because quite some progress has been made and let's hope we can continue to do so as well.

But before we go into that, is there anyone who is on the Audio Bridge who is not in the Adobe Connect Room? Could they please make themselves known so that we can take them into the archives? No one there? Excellent. Then, I have not gotten any apologies so maybe ICANN staff has, but I haven't heard of any. ICANN staff, is there anything on? No, I don't think so.

BRENDA BREWER: This is Brenda. I've not heard of any either. Thank you.

NIELS TEN OEVER: Thank you very much, Brenda, great to hear you. And does anyone have an update on their Statement of Interest? No updates to Statement of Interest. That's great.

---

Then let's give a short update of what happened at ICANN58. Of course, we had our face-to-face there where many of you, even though not all, could be present. I think it became rather clear that we are under some time constraints and general mood, well I think I can describe, people feeling that we should start working towards the end. So, that's something good to keep in mind.

Next to having a Plenary meeting, we've had a call which was facilitated by the GAC Working Group on Human Rights and International Law with a member of the UN Working Group on Business and Human Rights. And the name of this person was Anita Ramastray. And we've had a friendly exchange in which we explained with Ms. Ramastray about ICANN situation that she has followed, but a while before the transition, and she kindly pointed us to the Ruggie Principles and gave a very introductory overview of that. And she offered, on behalf of the UN Working Group on Business and Human Rights, their support for our Subgroup or the Plenary whenever that need be.

So, we have that offer of support. We have shortly had a very short discussion on the list. The initial moment when we reached out to the UN Working Group was very much in the beginning of the process, so I am not sure how useful it would be to have their direct input into the Working Group now. Because we probably spend quite a lot of time bringing them up to speed and repeating discussions that we've had here quite well with also a great group of experts.

So, I propose that we informally ask Ms. Ramastray, and potentially the UN Working Group on Business and Human Rights, to get their feedback during the public comment period once we get there. And I felt that

---

that was also a sentiment that was shared on the mailing list but if others feel differently about it feel free to say so. No? Not? So, then I will thank Ms. Ramastray for that and tell them I will inform them during the public comment period and would greatly look forward to get their input then. And then we also have the document where we followed the official process of the CCWG as I think is the best way forward, but else, why would we have such procedures?

So, for the rest of the agenda, we have the first reading of the Considerations Document prepared by the drafting team in Copenhagen. And any other business? Does anyone else have anything to add to the agenda? I say, no. I say, yes. Here we go. Excellent.

So, here I think we can also continue to build on the great experience that we've had working with the drafting team. So, I'll ask a volunteer from the drafting team to take us through the work. And let's start with the second paragraph, not the preamble, because we've read that now a lot of times and we know that by now. So, who would like to, of the drafting team, I can ask to volunteer to give a short reading and overview of this second paragraph of this Consideration? Greg, Tatiana, David, Anne, Matt? Oh, Anne has her hand up. Anne, please come in.

ANNE AIKMAN-SCALESE: Yes, thank you, Niels. And I think first of all, procedurally, I did want to apologize to you personally in relation to not making it quite clear enough regarding the, I guess, minority position that I held on a couple of issues. I certainly do appreciate your adding these to the discussion today. But with respect to your particular question here, we did have a

---

very good meeting, I thought, both on Saturday night and on Sunday morning, and thank you for your time in facilitating that.

Here with this paragraph that's been changed, we had a lot of discussion regarding the Ruggie Principles and how certain aspects of those might be valuable to the community going forward. Again, this is a matter on which the group has not achieved consensus, I guess you would say, but we did agree on this introductory language. When I say 'introductory' I mean in relation to the communities for their policy making processes.

So, I think you were doing the editing during the meeting and I think everyone agreed, with respect to the Guiding Principles, that "at least certain aspects of the Guiding Principles could be considered as a useful guide in the process of applying Human Rights Core Value. There are certain Guiding Principles that may not be suitable for ICANN and others that might be applicable depending on the circumstances. However, it's beyond the scope of this document to provide a detailed analysis of the Guiding Principles and their application, or not, in particular situations.

In any case, conflict between any guiding principle and ICANN Bylaw provision or Article of Incorporation must be resolved in favor of the Bylaw or Article. The use of the Guiding Principles as potential guidance has to be carefully considered by each SO and AC as well as ICANN the organization."

NIELS TEN OEVER:

Hi Anne, there was a suggestion in the chat and I think that it would be good if we go with this paragraph by paragraph. I know that there's the

---

part at the end that we'll definitely also have sufficient time to discuss. But let's go with it at the bit at the beginning. Would that be okay?

ANNE AIKMAN-SCALESE: Oh, I thought we were just looking at the paragraphs that had changed since the last draft, sorry.

NIELS TEN OEVER: No, we also changed the first one, but that's okay. But I think you already gave a great overview but let's do first things first. So, at the start of the Consideration. Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.

So, in the text that will follow now we had some comments last time, excellent ones by Paul, that thought we should make the text more consistent and we've been trying to do so and now we've reached as follows, "ICANN, as a non-state private entity, is not a party to any Human Rights declaration, convention or instrument. However, ICANN the community and the organization could refer to any of the widely adopted Human Rights declarations, conventions and other instruments while taking human rights into account in its policies and operations. It should be noted that the bylaw was not written with one specific Human Rights declaration, convention or other instrument in mind."

So, I think this text is now a lot clearer and a lot more consistent and we've also integrated the differentiation that we discussed also in the Plenary between the organization and the community and I have to

---

note, or just repeat, that the Board is part of the organization. So, I see Paul Twomey is typing, I hope that this paragraph makes it through the Paul Twomey test, or let's say, to Paul Twomey expectations. Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan for the record. One of the things that I've been thinking about in looking at this document, which I haven't done quite as much as I should have since we've come back, since suffering the after effects of Copenhagen, is where, if and where we might put a reference to our principle of no cherry-picking amongst human rights within an instrument.

And I would like to at least put a marker in that it might make sense to put it in this paragraph. I think in this draft it maybe referred to elsewhere, and elsewhere may also be a good place for it. But as I'm looking at this one as we're talking about conventions or instruments, referring to them, we may want to underline that they should be referred to in there entirely and not just by selecting particular rights out and ignoring others. Just a thought, thanks.

NIELS TEN OEVER:

Thanks very much, Greg, for that comment. And since that is also a concern that Anne has raised, I've been looking at this issue as well a bit, and then I've been digging into our past conversations and agreements and then I found actually some text in Annex 6, namely paragraph 11 of Annex 6, of the CCWG-Accountability Work Stream 1 report. And I will put this paragraph in the chat here.

---

I reads that, “The CCWG-Accountability also disagreed with any attempt to single out any specific Human Right in the proposed draft Bylaw text on the basis that Human Rights cannot be selectively mentioned, emphasized, or applied since they are universal, indivisible, interdependent, and interrelated.”

So, since we already have that text and that is also within our mandate, and we have not repeated that in the Framework of Interpretation, it might make sense to simply use that last part, “Human Rights cannot be selectively mentioned, emphasized, or applied since they are universal, indivisible, interdependent, and interrelated.” Is that something that could or would work? Or maybe that’s something to put on the scratchboard to see whether that would fit in. But I see Paul’s hand is up. Paul, please come in.

PAUL TWOMEY:

Hi Niels, hi everybody, thanks so much. First of all, Niels, I want to make an apology for my input on the list a while ago. The Word document that I was reading from didn’t have as much detail as the PDF version had, so I missed some of these paragraphs. But, I appreciate you picking up my main points. I’m asking a question that I don’t have a solution for and I put in on the chat. Which is, I do appreciate this wording, on one end, however, it leaves it open to somebody litigating ICANN in a US District Court saying, well, because you can choose any instrument you can mention, you should have chosen the one I wanted you to choose.

---

And maybe it's a question to put to the lawyers as to how you draft that such that, you know, I think your description in this first paragraph is the correct description of ICANN's legal positions vis-à-vis Human Rights Declarations and Conventions, but I wonder if there's a way of limiting the risk that somebody's going to say, because you could have chosen any one you should have chosen the one I think. Does that make sense?

NIELS TEN OEVER:

Thank you very much, Paul. As far as I understand this is a positive obligation we're making so I think it will be hard to litigate against it but I would not be against asking the lawyers and I definitely think the lawyers will be asking that themselves. So, that's something we could take with us. Let's make note of that. I think David McAuley is in list. David, please come in.

DAVID MCAULEY:

Thank you, Niels, it's David McAuley for the record. I have a little bit of a twist on this. I tend to agree with what Paul just said, but also with respect to the language, Niels, that you pasted in from Annex 6. The language that talks about "cannot be selectively mentioned, emphasized, or applied," is not itself a declarative statement of what applies, but rather, that's an explanation for why the group disagreed with any attempt to single things out. And so, I worry about the word "applied."

To me, the Framework of Interpretation and the Considerations are always secondary to the language in the Bylaw of the Core Value, and we did, there, cherry-pick or discriminate. We said we're going to



---

respect human rights that are internationally recognized and that come under an applicable law. So, there is a bit of discrimination there. And so then the language that you suggested that human rights “cannot be selectively mentioned, emphasized, or applied,” first of all, I have a problem with the word “applied.”

But I would say that there should be some interjectory language that says, in the context of considering various instruments, you can do these things. ICANN can consider whatever it wants, but with respect to its obligation to respect, that’s limited to internationally recognized human rights under applicable law. Thank you.

NIELS TEN OEVER:

Perfectly fine with me, but maybe we should also not discuss this in theory but perhaps later when it comes up as a suggestion in the text and not frontload that discussion. But I see Kavouss’s hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes, Niels. I thought tonight would be a simple meeting but now I consider that colleagues, one after the other, bring elements for modifications. Therefore, I could not take this meeting as a first reading at all. All these modifications must be put in, discussed and agreed upon. So, everyone has new ideas, someone says that not applies, someone says that cannot be considered. So, there are new ideas and I don’t think that we will get out of this Human Rights Interpretation, maybe at the end of this year, if the situation is like this.

---

Niels, you should have some authority to not allow changes come after the changes. At the beginning, I heard that we had a good meeting on Sunday, we had some sort of agreement, we had some sort of colleague consensus. But now, modification after modification. With all due respect of the colleagues, I cannot agree with these modifications at this stage, unless you start to prepare a new draft and put all the modifications, one before the others, and then we compare them. So, I don't understand. There are three modifications proposed, and in the chat, some others. So, it's difficult to follow this discussion. It's very, very difficult. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. Up to now it is only very high level discussion, so we still have the full text that you have in front of you and that you have read. But definitely, if we will make big changes then we'll need to make a new text as we start (inaudible), but let's see how far we can get today. Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan, for the record. A couple of brief thoughts in response to Paul's concern. I think this is really where the applicable law limitation actually is very helpful. Because I think that regardless of what human right instrument you make reference to, if somebody's trying to bring in a human rights instrument that goes beyond applicable law into some other form of desire or concept it's going to be beyond the remit of the Bylaw anyway.

---

And it'll probably be too much to hope for that within the bounds of applicable law there's probably much less difference between various instruments. But there probably isn't a huge amount of variation within the bounds of applicable law about what different instruments that cover the same sorts of things will cover, and to the extent that they're instruments that cover different aspects, such as those that cover labor, per se, as opposed to the more universal issues and wide-ranging ones that there isn't going to be necessarily a conflict.

Of course, I've never looked at a battle of the Human Rights Declarations and maybe there would be something there, but one can never worry too much about what lawyers will do and if we were to choose a single declaration, somebody else might still argue that we chose the wrong one and that there were reasons that it shouldn't have been chosen. So, I think, while it's a realistic concern I think the likelihood of it causing real problems is probably relatively limited and I think that for that reason I'm not too concerned.

And as far as what David McAuley said, if we do end up revising the text, I think the two concepts he's dealing with are not ultimately in conflict. I think the point is, within the bounds of applicable law, within the bounds of the Bylaws, we have to consider all of the human rights that are expressed in an applicable instrument and not pick some and leave some behind because we feel like it. I think that's all that we're trying to say.

The point is that we can't discriminate between human rights on the basis of support for some and not for others, desire to maximize some and minimize others. I don't think the point was ever that we couldn't

---

discriminate amongst them even if it went beyond the bounds of the Bylaw. I think the point was that within bounds of the Bylaw you have to take each human right instrument as a full panoply of rights as they're expressed and not just pick your favorites. Thanks.

NIELS TEN OEVER: Thank you very much for that, Greg. So, I think we've had a bit of tasting of this topic but I think that the first paragraph gets us pretty much where we are. And where we did not get it I think it's a draft later as well. So, I suggest we take that position where it gets very concrete and continue to the next paragraph. Would everyone be okay with that? Greg's hand is up. Greg, please come in.

GREG SHATAN: Sorry, old hand, no objection.

NIELS TEN OEVER: Anne, please come in.

ANNE AIKMAN-SCALESE: I'm sorry, I'm just agreeing. Niels, thank you, this is Anne, I'm agreeing to go on.

NIELS TEN OEVER: Okay, perfect. So, we now get to the next part. And we have been rearranging and reshuffling and I think making things also more consistent and clear here as well. Because I have to commend the

---

drafting team that we've actually stopped adding text and making the text more consistent and smaller which I think leads on a very much of a good route. So, let me read out where we are here.

"With regards to the UN Guiding Principles for Business and Human Rights, no consensus was reached as to their suitability for interpreting the Core Value. However with regards to the implementation of the Core Value, the UN Guiding Principles for Business and Human Rights, or at least certain aspects of the Guiding Principles, could be considered as a useful guide in the process of applying the Human Rights Core Value."

So, to give a bit of explanation why we have this here, if we look up a bit here we see the consideration asking for Human Rights conventions or instruments, if any, that should be used by ICANN in interpreting and implementing the Human Rights Bylaw. So, first we start with saying that there was no consensus reached on the suitability for interpreting the Core Value. However with regards to the implementation of the Core Value, the UN Guiding Principle, or at least certain parts of the Guiding Principles, could be considered as a useful guide in the process of applying the Human Rights Core Value.

And then we continue. "There are certain Guiding Principles that may not be suitable for ICANN and others that might be applicable, depending on the circumstances. However, it is beyond the scope of this document to provide a detailed analysis of the Guiding Principles and their application, or not, in particular situations. In any case, a conflict between any Guiding Principle and an ICANN Bylaw provision or Article of Incorporation must be resolved in favor of the Bylaw or Article. The use of the Guiding Principles as potential guidance has to

---

be carefully considered by each SO and AC as well as ICANN the organization.”

Paul, please come in.

PAUL TWOMEY:

Thanks for that. I appreciate this paragraph. I would be suggesting considering what’s said in the middle and the end of it that the phrase where it says, “However with regards to the implementation of the Core Value, the UN Guiding Principles for Business and Human Rights, or at least certain aspects of the Guiding Principles,” I think I would be more comfortable about all the issues I’ve raised about agreements with the (inaudible) entities, etcetera, on this list, if it was simply to say, “with regards to the implementation of the Core Value, at least certain aspects of the UN Guiding Principles for Business and Human Rights, could be considered.”

NIELS TEN OEVER:

So, could you state your change again, Paul, because there was quite a bit of echo on the line.

PAUL TWOMEY:

Okay, I’ll just type it and put it into the chat, what I’m recommending.

NIELS TEN OEVER:

Oh, sorry. While we get that in the chat, thank you very much, Paul. In the meantime, we’ll go Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Niels. Any proposal to change must be first put in the chat as a concrete proposal. We don't need explanations. We don't need five minutes of explanations because we all understand if the text proposed is a concrete proposal then we will discuss that. If it needs clarification, then we can clarify. I don't think that the people need to spend several minutes to explain then they propose. Please ask concrete proposals for changes only acceptable. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. Indeed, the time is nigh, so, concrete proposals, agreed. I think Mathew's hand is up. Matthew, please come in.

MATTHEW SHEARS: Yes, thanks, Niels. This is useful, obviously being a member of the drafting group, one sometimes gets too close to the language and it's useful to have this review. I think Paul makes an interesting point. Since it starts with, "However with regards to the implementation..." etcetera, ends with a clause that says, "could be considered as a useful guide," and then kind of go on to say, well, some of it might apply, some of it might not, so, this notion of a useful guide actually is a bit awkward.

So, I think what one could do to shorten and make this a little bit more punchy and impactful, we could remove the clause that starts with, "could be considered a useful guide," and then just go straight from "at least certain aspects of the Guiding Principles," and then go straight into

---

the sentence that follows, where it says, “may not be suitable... may be suitable,” etcetera. And I’d shorten it and make it a little bit more straightforward. Thanks.

NIELS TEN OEVER: Matthew, could you say that again or make that suggestion in the Google Doc. Saying it again would be easier now.

MATTHEW SHEARS: I’ll put it in the Google Doc, thanks.

NIELS TEN OEVER: Okay. And here is that for the live annotation. So, we now have two proposals. One by Paul Twomey and one by Matthew Shears. So, let’s see how they compare. Ah, okay, so Paul is proposing, “or at least certain aspects of the Guiding Principles...” to remove that part. Paul’s hand is up. Paul, please come in. That’s easier than me reading out your chat messages. Please come in.

PAUL TWOMEY: I’m sorry if I’m causing confusion. What I’m suggesting is that there seems to be consensus amongst us that certain aspects of the Guiding Principles could be a guide or could be applicable. Potentially I would be hesitant for us to say that the Principles as a whole could be applicable. And I’m just a little worried the way it’s presently written. It is well caveated, but I’m still a little concerned we don’t send any signal to the



---

community that we have a consensus that the whole document itself really is pretty okay.

So, rather than sit back, I don't want us to be getting into, we like chapter 3 but we don't like chapter 5, but I just don't want to send the signal that we're sending something out that the Principles as a whole are okay. And that's why I'm suggesting just put in there just (inaudible) that "at least certain aspects of the Principles," is the wording we should use. If that's the wording, then I feel more comfortable about these issues I've been raising around the applicability of contracts to third parties.

NIELS TEN OEVER:

Okay, I'm also getting it. It is quite weak, the text that's in there about the UN Guiding Principles and whether it could be useful or might be useful and could be considered as a useful guide, is already quite weak. So, now we're going to say that "some aspects could be considered." Is that the text that you're proposing? I haven't seen the added proposal by Matthew yet in the Google Doc. I don't see the one by Paul. Paul, could you perhaps make your suggestion in the Doc?

PAUL TWOMEY:

I'll do that now.

NIELS TEN OEVER:

Okay, perfect. And while Paul is doing that we can go back and read the alternatives. I see Anne is in the queue. Anne, please come in.

ANNE AIKMAN-SCALESE: Yes, thank you, Niels. This is Anne, for the transcript. At first I was thinking the deletion of that phrase didn't really change anything but then I saw comments from both Avri and Cheryl. It looks like what they're saying is that there's an important to keeping the word "aspects" in the draft and I guess I'd like to hear more from Avri and Cheryl on that, because at first I thought that the suggestion didn't change the draft, but they seem to be saying that it does, if I'm understanding it correctly. And I definitely don't understand what Matthew's proposal was. So, it would be great if it could be clarified from Matthew. I don't know what order to put those questions in but I'm sure you do.

NIELS TEN OEVER: Okay, so that's a question to Avri and Cheryl. So, I definitely invite them to get in the queue. I see Matthew and Paul are typing away so once you're done I'll read that out. But, in between I see Kavouss is in the line. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Niels, it is difficult to follow this discussion. There are proposals, counter-proposals, modification of proposals, not understanding proposals, we don't know where we are. Please ask the people to put the whole paragraph, alternative one. Alternative One by Mr. X. Alternative Two by Mrs. Y. Alternative Three... We have to see the whole text. We cannot look at the part or piece of that because we

---

have to read the entire text. So, it is difficult to agree and this meeting is unproductive. Non-productive, unfortunately.

Please ask for the concrete proposals as separate alternative by Y, X, Z and so on and so forth. It is difficult to follow this discussion. I thought that we already have some sort of consensus but now it means that we're starting from the very beginning because of this Guiding Principle, of does no one agrees or no one disagrees totally. So, please kindly ask for concrete proposals as an alternative to the text but not part of the text. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I see that Avri and Cheryl have entered the line and Paul Twomey has made a suggestion. So, I propose that I read out Paul's suggestion and then go to Avri and Cheryl.

So, the sentence as rewritten by Paul would be, "However with regards to the implementation of the Core Value, at least certain aspects of the UN Guiding Principles for Business and Human Rights, could be considered as a useful guide in the process of applying the Human Rights Core Value." So, that is the concrete proposal from Paul. And now let's go to the reflection on that from Avri. Avri, please come in.

AVRI DORIA:

Okay, this is Avri speaking. What I was going to say has probably gone by the by now. But I didn't think that the various rewordings of the sentence were really making any difference. It was basically a stacking of maybe really, "this might be considered," type of language. But I like

---

Paul's latest sentence. It seems clean, it seems to say what needs to be said. I very much agree with Kavouss that having seen the three possibilities would have been useful, but if the only one left in contention is Paul's, I would say, if it's there and it's written, that it's a good sentence.

NIELS TEN OEVER:

Thanks so much, Avri. Cheryl, please come in.

CHERYL LANGDON-ORR:

Thank you, Niels. Cheryl Langdon-Orr for the record. Just like we tried to say, relatively quiet before morning coffee, you're going to make me speak instead of type. First of all, to reference Anne's point, whilst wondering why I certainly liked the "aspects." I liked the ability to have that modifier, but I think we've moved past that point. And I think the record will show I've always liked the idea of only being able to say "aspects" or "selective parts" of some of these Principles should be applicable. So, it's just consistent with my view all along.

Again, I think I'm agreeing with Avri here in as much as I think the additional new text sentence, with or without the "at least" that Matthew's asking about is a good sentence that I am not having a gut reaction to. So, I think we probably have a concrete way forward with Paul's latest sentence. But I also do see Kavouss's point and wanted to reinforce it, as Avri did.

Kavouss, of course, does not have, I believe, the ability to be in the Google Doc where the live editing is happening. This is important

---

polishing process but it is one that we need to be careful and it is difficult to do so, that we bring everyone along with. So, I'm certainly respectful of Kavouss's concerns here. It is an exercise in mental gymnastics as we do this. But that said, we're damned close if not there, if we start to consider Paul's last contribution in text or a minor variation thereof. Thanks.

NIELS TEN OEVER:

Thank you very much, Cheryl. So, I see that there is now a discussion of removing "at least". I think there is some support in that but I as a not so native speaker think that that would mean that not all Guiding Principles could be valid in implementation, right? And then we would be making a qualifying sentence. So, what would we win with removing "at least"? And let me give the word to Paul because Paul has done some great drafting here, so, Paul, please come in. Your hand has been up very long.

PAUL TWOMEY:

Well Niels, as some version of a native speaker, the point that Tatiana and Greg and others are making I think is correct. If you leave the word "at least" in, it could be interpreted that it could be all of the clauses up to and including 100. If you took the word "at least" out, then you are probably signaling the less than 100%.

NEILS TEN OEVER:

Yeah, so then we are saying it could never be 100%, right?

---

PAUL TWOMEY: If we take out the word “at least” and it should be said “certain aspects” then that would signal, I would think, less than 100%.

NIELS TEN OEVER: So, we’re saying later that we do not completely analyze it? So, we have agreed that some parts are useful, right? So, why is removing “at least” important? Maybe Greg will speak to that. Greg, would you speak to that?

GREG SHATAN: Sure. It’s Greg Shatan, for the record. Another version of a native speaker. I think that with the “at least” in there there’s a lot of tapdancing in the sentence and it kind of waffles. Sorry to be overly colloquial, too native a speaker perhaps. And it really, I think, does become kind of an endorsement of the whole as a useful guide. And I think that implicit endorsement is beyond our consensus.

So, I think that what I would say is that “certain aspects”, we don’t say which aspects, which leaves it to some other time, for people to argue about which ones are useful and which ones are not, especially in the given context. But I think that creating the impression that we do endorse the totality is troublesome. So, I think that in any given circumstance the Principle that you’re dealing with at any given time, you’re probably not going to apply every Principle simultaneously in any case.

So, all these still leave quite a bit of ground for interpretation. I think the issue here is how strongly are we going to swing one way or the

---

other in our cautious and open ended statement about Ruggie implementation. And I think taking out the “at least” makes more sense to me as a place where I would feel comfortable. Thank you.

NIELS TEN OEVER: Okay, so I have removed “at least” because that’s the best sentiment I get from the room and I am here to channel the room as a medium. So, this is the text that we have which I think reads pretty well. So, let’s go back to Paul Twomey with his hand up. Paul, please come in.

PAUL TWOMEY: I’m sorry, that’s an old hand, but I’m supportive of the new language.

NIELS TEN OEVER: Excellent, thank you. And Kavouss, please come in.

KAVOUSS ARASTEH: Excuse me, what Cheryl says about me? She says Kavouss is unable to do what? What was my disability in view of Cheryl? Does she have any right to judge what I am able or not able? Please kindly restate what you said about my ability. Thank you. In clear and soft language. Slowly. What is the problem that you said that Kavouss is unable to do? What I am unable to do? I would be very happy if you describe that. Thank you.

CHERYL LANGDON-ORR: If I may, Niels?

---

NIELS TEN OEVER: Go ahead, Cheryl.

CHERYL LANGDON-ORR: Thank you, Niels. It's Cheryl Langdon-Orr for the record. And Kavouss, I was supporting, note, supporting your concern and criticism of not having written text and changes to written text available equitably to us all by the team, or at least most of the team, using live editing in the Google Doc. I am stating and did state that you have previously told us and other work teams that you are unable to access Google Docs for whatever reason, bandwidth, I don't know, I don't care.

So, I was recognizing a previous stated ability or lack thereof for you to be reading and operating in Google Docs. If my recognition of your previous statements is incorrect, I apologize. But it certainly probably affects more than you. I, for one, had to open up another computer so I could keep up. Is that clear, Kavouss?

KAVOUSS ARASTEH: Yes, it is clear, and thank you very much, whether it was necessary to refer, but I thank you very much, now it's clear. Now, coming to the subject, I agree with the deletion of "at least" because when we say "at least certain" you give more than certain. So, I have no problem, if the entire room is agreed with the deletion of "at least", take it out and agree with what Paul proposed and take out this portion and go ahead with the next one. Thank you.



---

NIELS TEN OEVER:

Excellent. So, we continue and we actually made some points and now we go to the end of this part which is the text suggested by Anne. Anne added, "These bodies must also consider Human Rights grievance procedures to be implemented such as Request for Reconsideration and Independent Review Process as well as any less formal steps to be taken prior to the invoking of either of these more formal procedures." I see Anne's hand is up. Anne, please come in.

ANNE AIKMAN-SCALESE:

Yes, thank you, Niels. I wanted to explain this comment and it does springboard actually from one of the Ruggie Principles. I'll mention that two or three of those principles, two of them I think, talk about the necessity of having good accountable grievance procedures in relation to human rights. This comment is made primarily in the interest of, and I know I've observed this several times on our list, good clear corporate governance. Because the Board often times has to reconcile differences in policy advice coming from different policy advisors that they use and consider and we all know how that works under the Bylaws.

So, the language that was enacted that relates to the Human Rights Core Value specifically states that no one can file a Request for Reconsideration or an Independent Review unless and until this Framework of Interpretation comes into play. So, it does seem to me to contemplate that Request for Reconsideration and Independent Review Process will be available remedies for the communities.

And I think that's all fine and very good but within ICANN I think that the community, as they go on through policy making, needs to consider

---

some less severe options for resolving human rights violations claims. I think that there are some internal procedures that could catch this much earlier, and very frankly, would result in much lower legal fees for ICANN. I think that what I'm trying to suggest here is that the community needs to consider that a human rights complaint to the Ombudsman as a basis, a human rights complaint maybe to the new Complaints Officer.

I agree with your observation that what actually has developed there in less formal procedures, it's not up to us, but I do think it's incumbent upon us, just in terms of clear corporate governance, to suggest some less formal, less expensive procedures, given that the change in the language that's already been enacted clearly implicates the use of these more formal procedures, the Request for Reconsideration and the IRP. I don't think we want the ICANN organization caught up in more and more formal RFR's and IRP's because they have—

NIELS TEN OEVER:

Anne, I think the point is clear. Maybe it would be good to also hear others on the text, if you don't mind? So, we have a queue forming. The first in the queue is Kavouss. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. I have two comments. One is the use of the word "must". "These bodies must also consider..." I want to replace "must" by something else. Because when you have consideration you don't use "must". Consideration is consideration. That will need to use another word such as either "should" or if somebody insists, more stronger. One could say,

---

“These bodies also need to consider...” This is the first problem. Replace “must” by either “should” or by “need”.

Second, I don’t understand who decides the grievance procedures. You say that Human Rights grievance procedures. Which are the Human Rights procedures of grievance and which parts of the Human Rights are non-grievance? And who decides on that? So, my question is, do we need grievance at all? These are the two comments and questions. Apart from that I have no difficulty. Thank you.

NIELS TEN OEVER:

Very clear, Kavouss. Thank you. And next in the line we have David McAuley. David, please come in.

DAVID MCAULEY:

Thank you, Niels, this is David McAuley again. I think I agree with both Anne and Kavouss, or at least a large part of what they said. And what I’d like to note is that the Bylaw provision that spoke implicitly about Reconsideration Request and IRP is 27.2-B and as Anne pointed out, it’s indirect. And it seems to me it’s in our interest if we’re going to start to address how IRP, Reconsideration Request, apply, we should do it a little more directly.

And I think that Anne’s point about having a hierarchy would be a good one. If we did want to say these do apply. ICANN could always argue that if we don’t address it directly it’s not invoked. But, a hierarchy might be something we would want to consider. That is, you have to go to Ombudsman first. If you have a claim that ICANN has breached its

---

obligation to respect, internationally recognized human rights under applicable law, you might have to go to Ombudsman first, then to Reconsideration Request before you can bring an IRP. People are always welcome to go to a court if they think they have a case to take in court. And that's sort of what Kavouss was getting at, you know, what grievance procedures? So, I think it might be nice to address this a little bit more directly. Thank you.

NIELS TEN OEVER:

Thank you, David. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan for the record. First, I think 27.2-B is just a second dormancy provision except for the last was some use for things that existed prior to the effectiveness of the FOI. I don't think there's any intent here to create any long-term role. This is only a transition role regarding grievance procedures.

And while I think it's a laudable goal to suggest that more lightweight procedures for human rights concerns be developed, or generally be developed, I don't think this is the time, the place, or the group to do it. And I would respectfully suggest that this sentence be removed, with apologies to those who think it should be here.

But I think it's not the thing to say here now. It's just, there are no Human Rights grievance procedures. RFR and IRP are not Human Rights grievance procedures. If they're grievance procedures, they'd all be generic. So, I think getting into astute resolution generically in ICANN is

---

not the job of the SO's and AC's individually unless it's just one that deals with say GTLD policy. I think we're getting ourselves deep in a rabbit hole by putting this in here. If there's some place, say, generally that we encourage the use of informal procedures for grievance concerns, maybe we could consider it, but I just don't see how it relates to this Consideration or to the remit of this group. Thank you.

NIELS TEN OEVER:

Okay. So, we're close to the end of the call. We've had Kavouss in his second point asking why here. We've been having Greg making the point that it should not be here. I've seen support for removal from David McAuley, Tatiana and Matt, and Erich Schweighofer, and Cheryl. So, I think we can for now remove this part and then I will circulate. We'll try in the drafting team to also discuss the cherry-picking sentence that was a proposal from Anne during this week. And then by Monday I'll also be able to give you a non-contested document from the drafting team.

So, thank you all very much for your attention and for your work and for keeping this going. We're making progress. We're really now going into more fine work so that's really good. I know it's a bit of a long run but we're really getting there. We're really making the progress. So, I'll see you all next week. Bye.

**[END OF TRANSCRIPTION]**