
NIELS TEN OEVER: Thank you so much, ICANN staff. Welcome, everyone, to the 26th meeting of the Cross-Community Working Group on Enhancing ICANN Accountability, Work Stream 2 Human Rights Subgroup at March 26th, 19:00 UTC. I wish you all a very good morning, good afternoon, or good evening from wherever you are. In my case, from a foggy Chicago.

We have some nice work ahead of us today, and I'm very happy that you are all with us even though we are not on our "normal" Tuesday. I'm very happy you made the time to be with us all today.

I would ask the people who are on the phone bridge and not on the Adobe Connect room to please state their names so they can be put into a roll call.

UNIDENTIFIED FEMALE: Sorry for the interruption. This is the operator. Kavouss Arasteh has joined.

NIELS TEN OEVER: Thanks, Kavouss. And so if anyone's on the phone bridge and not in the Adobe Connect room, could you please make yourself known so you can be taken into the record? And ICANN staff, would you please roll call from the Adobe Connect room?

DAVID MCAULEY: Niels, hi, it's David McAuley. I'm on the phone only.

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.

NIELS TEN OEVER: Hi, David. Great to hear that you're there.

DAVID MCAULEY: [inaudible]

NIELS TEN OEVER: I did not get any absentees. I did not see any absentees on the list. ICANN staff, did you hear from any apologies? I don't think so. And does anyone have an update to their Statement of Interest that they would like to announce? If not, we can continue with the agenda bashing.

Does anyone have something to add to the agenda or propose a change? If not, we can continue with our continued first readings of two of the considerations documents, and we can simply continue where we stopped last week. ICANN staff, would you please be so kind to pull up the document?

Thanks so much. And for those who are interested, you can also follow it in the Google Doc, of which I will put the link here right now in the chat where I will be taking notes in case we make any changes. And of course, I will also let the changes – if there are proposed changes – know in the chat to ensure it's also recorded in Adobe Connect.

Then, I would propose we continue where we left off last week. Last week we've done some great work together on this document. I'd like to continue with the polices – and frameworks – if any that [inaudible]

needs to develop or enhance in order to fulfill its commitment to respect human rights. I hope everyone is okay with that.

I see no objections, so as we now have become a bit of practice, we'll go forwards with discussion of the text, paragraph by paragraph, if that's okay.

There is one small administrative note I'd like to note, and that is that because I am now here at the IETF meeting, I could not have a call out. So if my connectivity drops, I'm very sorry about that, but I hope we can take that up as a group. But I have good hopes that we will be okay.

Let me start with reading out the first [para] and then have some discussion on that.

In order to put the human rights core value into practice, ICANN the community – as well as the corporation – will need to consider how to reflect this core value in their policy and operational processes. Each SO and AC should take the core value into consideration in its policy developments or advisory role. It is up to each SO and AC and ICANN the organization to develop their own policies and frameworks to fulfill this core value. In doing so, the SOs and ACs as well as ICANN the organization should also take into account the requirement to balance core values.

So, this text has not changed much from things that we've discussed already, and the rationale for this text is – and drafting team people, please feel free to add – is that we said that we do not – because the different SOs and ACs differ wildly, it would probably not be the best case to prescribe a way how they could do it, but leave it to the SOs and

ACs themselves and their respective processes to ensure that they live up to the core value.

I see there are no comments on this, so I'd like to go to continue to continue to the next [para]. This is going really well, so here we continue. This subgroup notes that the word "commitment" [new sentence] is not quite appropriate. Since there is a different section of the Bylaws that sets forth ICANN's commitments – namely section 1.2a – the core values, such as the human rights core value, are distinguished from the commitments.

UNIDENTIFIED FEMALE: The host has left the meeting to speak with meeting support and will rejoin soon.

NIELS TEN OEVER: The Bylaws state that in performing its mission, ICANN will act in a manner that respects ICANN's core values, section 1.2. That core value should also guide the decisions and actions of ICANN, section 1.2b, and knows that specific way in which core values are applied individually and collectively to any given situation may depend on many factors that cannot be fully anticipated or enumerated.

Section 1.2c goes on to note perfect fidelity to all core values [inaudible] may not always be possible, and that where one core value must be balanced with another, the result must serve a policy developed through the bottom-up multi-stakeholder process or otherwise best serve ICANN's mission. As such, it would be more accurate to say that

ICANN the organization and the community have an obligation to respect and be guided by the human rights core value as balanced with other core values where appropriate.

So, this text is specifically in response to the consideration, because the consideration mentions that it's a commitment. So, this quite text-dense paragraph is simply to actually say to return to, to speak to the Work Stream 1 report that commitment was not the right language. I see two hands are up. Kavouss. Please come in.

KAVOUSS ARASTEH:

Yes. With respect to the use of "inappropriate," I suggest that perhaps we use different terms or words, such as, "is not relevant," or "is irrelevant here," but not appropriate. Because commitment is appropriate. If you say "not appropriate," then say, "not appropriate in this regard," "not appropriate within the framework of interpretation." Because commitment is appropriate by itself, but it may not be relevant here. Could we be more specific? I just think that, "It does not seem to be appropriate here," or we could say, "That is not relevant here for this framework of interpretation." Because the reason you have given later on. You think that it is more related to the core value rather than commitment. So your argument is good, but the choice of the word, "inappropriate," I suggest we consider if we could replace it by, "irrelevant." Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I think you're very spot on there, and I see also a suggestion by Tatiana there to say, "Not relevant in the

context of this Fol.” Tatiana also says she agrees with Kavouss to replace. Okay, so let me look it up where it exactly is. Sorry, I’m looking for the word, “inappropriate.” Tatiana, if you see it, could you suggest a change in the Google Doc? Would you be so kind to do that? Perfect, there it is. Thanks so much.

Anne, please come in.

ANNE AIKMAN-SCALESE: Yes. Thank you, Niels. I may have gotten the language that was suggested among the drafting team in your last suggestion in the wrong place. I thought it came at the end of this paragraph, but I see in the chat you’re saying that it goes somewhere else, the language about human rights being interdependent and indivisible. So, I apologize if I got that [earlier.] I’m not able to scroll the document. Is the document released for scrolling?

NIELS TEN OEVER: ICANN staff, could you enable scroll control for everyone?

ANNE AIKMAN-SCALESE: That’s helpful. Okay, so I think that, Niels, what you had last brought into the Drafting Team discussion was the phrase, “Human rights should not be selectively analyzed since they are universal, indivisible, interdependent and interrelated.” And you had taken that language from Annex 6.

I have thought it was to come here in this paragraph, at the end of this paragraph. But I guess you're saying that you thought it came later. Was it the next paragraph?

NIELS TEN OEVER: No, two parts down where the burgundy colored text is, because this text is directly responding to the consideration and kind of correcting the word "commitment." So, I think that belongs further down.

ANNE AIKMAN-SCALESE: Okay. I see Greg is going to weigh in, so I guess Greg has his hand up on this one.

NIELS TEN OEVER: Perfect. Greg, please come in.

GREG SHATAN: Thank you. First, on the previous subpoint being discussed about the word, "Inappropriate," if we're going to change there, I'd prefer to say, "inappropriate" here, rather than say, "irrelevant," because it's not really a question of relevance. In plain English, it's the wrong word. So, we're trying to say it's not the right word. It's not relevant because it is a different concept, so if we could just say, "inappropriate" here, that would be more appropriate.

As to what Anne is getting at here, I think the point is that if we are mentioning just the core values in this section here, in order to analyze

or use the core value, it has to take into account all of human rights, and to balance them.

So, I guess the question is whether it's better to say it here or to say it where it is now – because I think the point is it's not just in human rights impact assessment that we need to avoid cherry picking, but rather in the application – in any analysis involving human rights.

So, I think it really does go up here, because this is kind of the broader place to put it. Because we're here discussing the core value analysis, if indeed we were to put it anywhere. We could make reference to it again two points down so that it also is kept in mind in the human rights impact assessment. It's not mutually exclusive, and the point is important enough to put it in both places where it's relevant. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. And to make it clear, because this was as discussion in the Drafting Team that we have some text and we also discussed that in the previous call – and I wordsmithed the text a bit – is that human rights should not be selectively analyzed since they are universal, indivisible, interdependent, and interrelated.

I don't really mind where we put it. If people think we should put it here, I'm happy to put it here as well. I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Hello, all. I'm trying to bridge the comments from Kavouss and from Greg. So, what if we say that it is not quite appropriate in the context of interpreting the human rights core value? I believe that it will address Kavouss's concern and it will also address Greg's comments. I don't know if it works or not. I'd like to hear the feedback. Because at the end of the day, it'd be better to address all the comments to make everyone happy, because I think it's quite a relevant comment.

So, I can write it in the chat, but I propose that we rephrase, "The subgroup knows that the word commitment used in this sentence is not quite appropriate in the context of interpreting human rights core value," then full stop and then the start of the next sentence is, "There is a different section. Blah, blah." I don't know if you're happy with this or not.

Concerning the proposal of Anne and Greg, basically, I don't mind it to be here as long as I'm happy with the formulation, as long as I'm happy with the text of the sentence about human rights and not cherry picking. So, it's okay with me. Thanks.

NIELS TEN OEVER:

I'm speaking into a muted mic, sorry. Thanks very much, Tatiana. We've put the text in the chat, and Kavouss's hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. First of all, I think I am frustrated. Whatever I propose, Greg immediately opposed to that. He insists on his own way of thinking. We

should listen to the others. If we have to stick on our own views, we never progress. This is not the first time I took it down. It is the third time that a proposal made and he comes and he says, “No, I don’t agree with that.” And he goes for ten minutes of explanations of why he doesn’t.

So, we have to work together. I do not agree with his wording, “It’s irrelevant,” or maximum we could say is, “Not quite appropriate in the context of...” whatever that Tatiana proposed. And also, I agree with the proposal of Jorge, putting, “considered” instead of the word “should not be considered” and so on, so forth. Please, let us work together and let us not stick to our own way of thinking. We are not master of everybody. We are collaborating with each other. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. That means I think we now have a text that seems okay. I just pasted it in the chat. Greg, please come in. Or is that an old hand, Greg? There is silence from Greg, so I reckon that this text is okay for the “not quite appropriate.” I think that’s a nice compromise between all the suggestions, so let’s continue. It might be a new hand, but I’m still not hearing Greg. So, if Greg wants to come in, he’s very much invited to.

And then we have the text that’s was now put forward by Jorge where we used “considered” instead of “analyzed.” I think that’s very right. If we put it up here, then it should be “considered” and not “analyzed,” because “analyzed” was especially in relation to human rights impact assessments. So, if we’re going to put it here at the end of this

paragraph, then we should say, “Human rights should not be considered in isolation since they are universal, indivisible, interdependent, and interrelated.”

So, I put that here at the end of this part. I see Greg’s hand is up. Greg? Greg’s audio is not working. Then I’ll skip to Anne. Anne, please come in.

ANNE AIKMAN-SCALESE: Yes, thank you, Niels. I am just fine with Jorge’s suggestion on the language. First of all, I’m also fine with the modification that Tatiana suggested in relation to, “Not appropriate in this context of the Fol” earlier. I’m a little concerned about the fact that Greg is now saying in the chat though that he’s been cut off, so I would really appreciate if we could get a dial out to Greg, just to try to confirm a couple points here with him.

I personally don’t see any problems with Jorge’s suggestion. I think it’s probably an improvement in that language, again, subject to the fact that we’ve lost Greg. So, I think that as we’re treating this as a first reading, we want to make sure we get him back on the phone.

NIELS TEN OEVER: That’s great. Well, I’m very happy with this, and then Anne, while we’re talking, do you think that this would then also sufficiently address your point later, or do you think we should address it there again? Because if we can remove that, then we would have a pretty much clean text now. Would that be okay, or do you think we should leave that in and discuss it when we get there?

ANNE AIKMAN SCALESE: No. I'm aware also that Greg has comments on this, and we do need to address – if we're going to talk about HRIAs, which really are a form of implementation, we do need to be clear – as Greg mentioned earlier, and I'm sure you will find in the transcript – that the HRIAs have to avoid cherry picking as well.

I think you're probably pretty well aware that when consulting companies come in to do HRIAs, they are not really used to framing those up in the way that we are talking about here with human rights, with the no cherry picking and – I know Greg's not crazy about the use of the term "principles of proportionality," and I think you have proposed something else again, Niels. But I think we should wait until we get to that point with regard to that.

NIELS TEN OEVER: Very clear. You're right. Let's do that. We'll tackle it when we get there. But we have made progress, and we have Greg back. So, Greg, are you okay with this paragraph now, with this added text?

GREG SHATAN: Since I was cut off and I didn't have my speakers on, I was listening through the phone, I don't know what the question is, where exactly we are. Are we in the Google Doc?

NIELS TEN OEVER: So, we've added at the end, "Human rights should not be considered in isolation since they are universal, indivisible, interdependent, and interrelated."

GREG SHATAN: And that has been added to the end where?

NIELS TEN OEVER: To the end of the paragraph we were just discussing.

GREG SHATAN: Certainly, I don't have a problem adding it here.

NIELS TEN OEVER: Perfect. That means we have tackled another paragraph, for which I am very happy, and I hope we can continue in this constructive effort. So, Anne, is that an old hand?

ANNE AIKMAN SCALESE: No. It's just a new hand, Niels. I did want to relay to Greg that I had expressed agreement to two different things pending his input. One was Tatiana's compromise language regarding the earlier language about, "Commitment is not quite appropriate in the context of this Fol." I don't know at what point Greg was cut off, but I think there was a suggested compromise by Tatiana that involved commitments not quite appropriate in the context of this Fol, and I wanted to make sure that Greg was onboard with that part.

And then the second thing was that the language that changed, Greg, while you were cut off, was simply that Jorge has said that rather than saying that human rights should be analyzed as universal –

NIELS TEN OEVER: I think Greg can read the chat, and I'd like to be a bit conscious of time. And there is another second reading.

ANNE AIKMAN SCALESE: Right, except that he told me that he wasn't going to be in Adobe all the time. So, Greg, did you understand Jorge's change in relation to, "Not considered in isolation," and you're fine with that?

GREG SHATAN: I did not see it. Let's see.

ANNE AIKMAN SCALESE: I had mentioned I was fine with it just subject to your input.

GREG SHATAN: It doesn't quite work in English. It's not that human rights should not be considered in isolation, it's that each human right should not be considered in isolation. Not that all human rights together should not be considered in isolation, because then the question is, in isolation from what?

ANNE AIKMAN SCALESE: Right.

GREG SHATAN: So, I think it's close, but I think it needs to be tweaked. Personally, I think the safest thing is to quote from Annex 6 since it's already consensus language, rather than changing the language that we have. But I think the point is that all of the human rights need to be considered together and not in isolation from each other, and that no human rights should be isolated and considered without considering all of human rights.

And that's way too wordy, but that is the concept. So, if that's what it is, I think we need to change it a little bit. I see Jorge, "Discrete human rights should not be considered in isolation." Well, in isolation –

NIELS TEN OEVER: Or individual?

GREG SHATAN: A human right should not be considered in isolation from other human rights?

ANNE AIKMAN SCALESE: I think individual works, yes.

GREG SHATAN: I'm not sure why we're going down this, but I'm trying to be accommodating to other people since we're using the language here.

NIELS TEN OEVER: Individual human rights should not be considered in isolation?

GREG SHATAN: From each other.

NIELS TEN OEVER: From each other?

GREG SHATAN: What was the problem with the original language? Why doesn't it say what we were trying to say? I just don't understand it.

NIELS TEN OEVER: What original language?

GREG SHATAN: I thought with the language we're taking from Annex 6.

NIELS TEN OEVER: Yes, but this is literally the second part of that sentence in Annex 6.

GREG SHATAN: Oh, okay. Maybe it doesn't make sense without the first part. Maybe that's the problem.

NIELS TEN OEVER: Well, that was –

GREG SHATAN: [inaudible] not making sense. The Annex 6 language of paragraph 11 did not use the word "isolated," it said, "The CCWG Accountability also [inaudible] any attempt to single out any specific human rights in a proposed draft Bylaw text on the basis that human rights cannot be selectively mentioned as the [inaudible] since they're universal, indivisible, independent and interrelated."

NIELS TEN OEVER: Specific human rights should not be considered in isolation?

GREG SHATAN: Let's see what Tatiana has here. "No specific right shall be considered in isolation." And then what's going to come after that is, "Because they're interrelated, interdependent," etc.? If that's the case, then that works for me.

NIELS TEN OEVER: I put the text in here. So, "No specific human right should be considered in isolation since they are universal, indivisible, interdependent, and interrelated."

GREG SHATAN: I like that, Niels. I think that works.

NIELS TEN OEVER: Okay. Then we'll leave that in for now.

GREG SHATAN: Thanks.

NIELS TEN OEVER: Oh, Kavouss's hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: I'm sorry, Niels. Several times, I have been interrupted in the past, and then I come in, nobody asks whether I agree or I did not agree because I was interrupted. But now, Anne becomes a spokesman of Greg and she says that he has been interrupted, now we have to see whether he agrees or does not agree. This is not proper course of action. You should treat us equally.

I have been interrupted several times but I've never been asked whether I agree when I come in or not. But now, because Greg was interrupted, now everybody waiting whether he agrees or he does not agree. And Anne becomes a spokesman of Greg. Greg is sufficiently mature to talk about himself. He does not need any spokesman.

I know that Anne is from IPC and Greg is from IPC, but it doesn't mean that we have to waste our time here. And I don't understand the proposal of Greg, "No specific human right." What do you mean by no specific human right? What is the word "specific" doing there? I don't understand –

NIELS TEN OEVER: I think –

KAVOUSS ARASTEH: And I don't understand Annex 6. If you're only repeating Annex 6 and cut and pasting Annex 6, why we are here? Why we have to spend our time here? So, I don't agree with introduction of the word "specific." The text which was proposed by others and Jorge I agree. But not the word "specific." I disagree. I oppose that. Thank you.

NIELS TEN OEVER: Okay. I thought we could move to the next part, but Kavouss doesn't agree. Maybe let me try to explain – and it took me also a while to get it, but that's because my limited comprehension of English. I think it is because it's about whether human rights should be seen as a unity, or whether it is a combination of specific rights.

And if we said no specific, then we make it clear that no individual human rights should be considered, but we can't use individual because then we get into the double meaning with individual rights versus collective rights. So, that is why the text "no specific" was introduced.

And Tatiana who is a much more informed lawyer than I am can perhaps explain it better. Tatiana, please come in.

TATIANA TROPINA:

Thank you, Niels. Basically, that was my proposal about specific human right, because as you rightly explained, when we say individual human right, we're getting into the double meaning of the human rights of individual. So, basically, what specific human right means is for example that we cannot do human rights impact assessment only on freedom of expression, only on copyright, on some specific human right.

But if someone is uncomfortable with this text, well, let's change to no particular human right or no – I'm a bit lost now trying to find the synonyms. But I think specific human right – not specific human rights – in singular, I think it should work because I think the meaning is quite clear that it means that we should not cherry pick. And the sentence explains it further.

But I would be completely comfortable with replacing specific with particular if it works for Kavouss and anyone else who is against the word "specific." Thanks.

NIELS TEN OEVER:

Thanks very much for this clear explanation, Tatiana. Kavouss, please come in.

KAVOUSS ARASTEH: Yes. For me, particular is better than specific. I agree with Tatiana, I agree with particular. No particular human right should be considered [inaudible] I agree with particularly, but not with specific. Thank you.

TATIANA TROPINA: I'm fine with this.

NIELS TEN OEVER: Okay, but then it becomes plural again, so what we then get is particular human rights should not be considered in isolation.

TATIANA TROPINA: Probably better to make it singular back.

NIELS TEN OEVER: Particular human right should not be considered?

TATIANA TROPINA: No particular human right should be considered. If native speakers are okay with this.

NIELS TEN OEVER: Yes.

TATIANA TROPINA: If not, tweak.

NIELS TEN OEVER:

Okay. So, that is now in the chat. It seems okay. Yes, excellent. So, we will still have a second reading, so then we can – “no particular human right,” says Anne. Okay, I’ll remove the S. I’m not married to either S or non-S. Okay, perfect. So, next paragraph. We managed to get through another one. I’m very happy about that.

So now, let’s go here. Let’s go to the next consideration, and that 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. So, here we go with our consideration.

Paragraph one: The message for developing any new policies or frameworks that may be needed to apply the human rights core value will be dictated by the type of policy and how ICANN the organization and the community develop those policies.

Then we go to the next para. For example, developing and recommending to the Board substantive policies relating to generic top level domains – comes from Bylaw 11.1 – is the responsibility of the GNSO and any new or revised policies or frameworks including any changes to the GNSO Policy Development Process should be developed by the GNSO using that organization’s policy and processes.

The GNSO’s processes allow for multi-stakeholder involvement in working groups developing these policies, and for public comment on any recommendations. Similarly, developing and recommending to the Board global policies relating to country code top-level domains –

Bylaws section 10.1a – is the responsibility of the Country Code Name Supporting Organization. Any new or revised policies or frameworks, including any changes to the ccNSO Policy Development Process should be developed by the ccNSO using that organization’s policy and processes.

And then we continue through the part of the ASO [that] 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. Nonetheless, ASO should consider how to apply the human rights core value. When developing corporate or operational principles and executing its operations, ICANN the organization should take the human rights core value into account. In order to do so, ICANN the organization should propose a framework which should include multi-stakeholder involvement in its development and regular review.

So here, we go through different SOs and ACs and how they themselves need to come up with process how it will be included. So, it’s very much consistent with what we said earlier.

Kavouss’s hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. In the paragraph, the first one is starting the GNSO’s processes allow for multi-stakeholder involvement. I have a question: how we could say allow? Should allow I agree? Shall allow I agree? But not allow,

because it is not to be taken as it does. It may not, so we should put a resource of obligations. Should allow multi-stakeholder involvement.

This is what we want that the organization, GNSO, have this obligation to allow the multi-stakeholder. What you're saying currently, that means it's already doing that. We should change it [inaudible] saying that should allow or shall allow or must allow. Any of these two, but not allow. It should have something, a sort of duty, obligation. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. I see what you're saying, but that might get us into trouble because we are not mandated to tell the GNSO what to do. Are supposed to allow would work. I see there's a suggestion, "Provides for multi-stakeholder involvement." Would that work? A suggestion by Markus Kummer.

KAVOUSS ARASTEH:

When you say provide, when you say present tense, means that you take it as is already doing and there is no other duty for that. "Needs to allow," I agree. "Should allow," I agree. "Expected to allow," I agree. But not "allow" or "provide." We should not put it in a tense that it is already doing and there are no more things to be done.

So, either need to allow or should allow, or is expected to allow. Any of the three.

NIELS TEN OEVER: Yes. The GNSO's processes are expected allow for multi-stakeholder involvement?

KAVOUSS ARASTEH: Yes.

NIELS TEN OEVER: Sounds good to me. Anne's hand is up. Anne, please come in.

ANNE AIKMAN SCALESE: Yes, thank you, Niels. I don't object to some modification to this language, but just as a point here, the Policy Development Process manual very definitely calls for multi-stakeholder involvement, and that's why the working groups send out letters to the various other Advisory Committees when they conduct a Policy Development Process. So, probably the reason it says that the processes allow for this is because the Policy Development manual specifically provides for it. I'm not sure of the distinction Kavouss is making, but the PDP does provide for this.

NIELS TEN OEVER: Thank you very much, Anne, and I think [inaudible] consistent. So Markus, please come in.

MARKUS KUMMER: Yes. [Can you hear me now?] Just along the same lines, so I think let's be descriptive, and the PDP does allow for multi-stakeholder

participation. So, we are not here to rewrite the Bylaws, but let's be as objective as we can. Thanks.

NIELS TEN OEVER: Thank you, Markus. Kavouss, please come in.

KAVOUSS ARASTEH: Are we discussing the PDP manual, or are we discussing the framework of interpretations? If everything is clear, why we need to refer to the GNSO approach which use multi-stakeholder? Because already in the PDP manual, why we need to explain it here? If we needed to explain here, we should refer it as such. So, this is not interpretations. This is reflections of the facts. It is not interpretation.

What interpretation we do? If it is manual only. So, we have to change the sense of the sentence, either saying that the current PDP development process in GNSO allows, otherwise you could not interpret something which [leads] to the policy development of GNSO here as interpretations.

Please put verbatim what is in the manual and say the [inaudible] and then say PDP process, development process, GNSO and put whatever is on the manual if you want to do that. So, we should be quite careful here. Thank you.

NIELS TEN OEVER: Thank you, Kavouss. Markus, please come in.

MARKUS KUMMER: Sorry, old hand.

NIELS TEN OEVER: Anne, please come in.

ANNE AIKMAN SCALESE: Yes. Thank you, Niels. [inaudible] We could I think easily say – and I don't know who's not muted, but we could say the GNSO Policy Development Process provides for multi-stakeholder involvement, and that was my only comment in the chat.

NIELS TEN OEVER: Thank you, Anne. Greg, please come in.

GREG SHATAN: I was going to make the same suggestion that Anne made, so please consider it as if it was hers. Thank you.

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

KAVOUSS ARASTEH: Yes. If you change the sentence saying that GNSO Policy Development Process provides, I have no problem. You refer to something which exists. You don't interpret that.

NIELS TEN OEVER: Perfect.

KAVOUSS ARASTEH: Thank you.

NIELS TEN OEVER: GNSO's processes provide for multi-stakeholder involvement in working groups developing policies and for public comment on any recommendation. Excellent, another problem solved, another pat done. Really, this is great. Really nice.

So, we've got 13 minutes left, so let's see if we can do the next part as well. Yes, very good. And here we go. We go into the next consideration, and that is, consider how the interpretation and interpretation of this Bylaw will interact with existing and future ICANN policies and procedures.

Paragraph one: The interpretation of the human rights core value should be driven by the framework of interpretation. It is expected that the core value will be taken into account when future ICANN policies and procedures are developed and interpreted in accordance with the framework and interpretation.

Then the following part. I'm first going to read it without the addition, and then we're going to discuss the addition.

So, supporting organizations should consider defining and incorporating human rights impact assessments in their respective Policy Development Processes. Given the interrelated nature of core values, the Supporting Organizations could also consider other core values as part of the balancing required by the Bylaws. So, then there was a suggestion by Anne, so it would read, "Supporting Organizations could consider defining and incorporating human right impact assessments in their respective Policy Development Process. HRIAs should avoid cherry picking and should give due regard to principles of proportionality.

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

KAVOUSS ARASTEH:

Yes. I'm very sorry. This addition is not understandable for everybody. I don't understand the necessity to have this addition. Why we need that? Why we need cherry picking? And should give due regard to principle of proportionality. What are those principles? Where are those principles written? Who have access to those principles? So, something that we don't have access, and we don't know where it is, who has agreed. It is not to be included in the interpretation framework. So, I am not very comfortable with this addition for those reasons that I have given, and in particular principle of proportionality. There is no principle of proportionality universally agreed in any aspects at all. It is subject to different views by different lawyers. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. Anne, please come in.

ANNE AIKMAN SCALESE: Yes, thank you, Niels. I actually would be happy to change that reference to principles of proportionality and agreeing with Kavouss about that. I think we could make a different reference that wasn't so quick to invoke legal language. And so I have put in the chat an alternative proposal that would just say, "HRIAs should avoid cherry picking" – which is a concept we've talked about quite a bit from the beginning – and should honor the principle that human rights are indivisible and interdependent. Because that's the language that we had agreed on up above. So, I think what's important here is just the same principle has to be considered when you contract for an HRIA, because they're not commonly done this way. Thank you.

NIELS TEN OEVER: I am not sure whether the statement that "HRIAs are cherry picking" is – well, let's not get into the discussion of practice of HRIAs. Tatiana, please come in.

TATIANA TROPINA: Hi. I'm very much comfortable with Anne's compromise, but what about rephrasing a bit? Because I'm not sure about the word "principle." What about saying that human rights impact assessments should avoid human rights cherry picking and should honor the indivisibility and interdependency of human rights. Then we will remove the principle, because for me, it's a bit out of the concept, because it's not clear. Is this principle outlined anywhere, or is anything going on? So, I'm going

to put my suggestion into the chat and see how comfortable everyone with this. So, just one moment. But this is all from me.

NIELS TEN OEVER:

Thank you very much, Tatiana. I've also been cobbling together some language, because I thought we already have the language above, so why don't we try to stay as much in line with that? So, if we say, "Human rights impact assessments should not consider human rights in isolation since they are universal, indivisible, interdependent, and interrelated," would that work? Because I think the word cherry picking is not really a word of art, and we already have something saying above already the same thing, so I would hope we could do that. Okay, that's good. Anne says, "Should not consider particular human right."

Does that work, Anne? And then it should HRIAs, because it should be plural. So, sorry for the – sorry, I'm making a mess. HRIAs should not consider particular human right in isolation since they are universal, indivisible, interdependent and interrelated. And now it only should be plural. And then that might work. Tatiana, please come in. I see your hand is up.

TATIANA TROPINA:

Sorry, that's a very old hand.

NIELS TEN OEVER:

Okay. And Anne is okay, so here I'll paste in this text. People, you have no idea how happy this makes me. Excellent. So, we have that. So, we

have a five-minute time check. That means we are done with this – oh, Anne’s hand is up. Anne, please come in.

ANNE AIKMAN SCALESE: Yes. Thank you, Niels. I just want to note the point that at least three persons on the drafting team had noted and need to discuss again the possible need for a more informal method of resolving human rights complaints than the request for reconsideration or independent review process. And I think that [inaudible] David McAuley wasn’t able to be on the call and he mentioned that this was something that he was in favor of, and Greg had also mentioned it. It’s just we’re not sure where it should go, but it does deserve further discussion.

NIELS TEN OEVER: I think it definitely deserves further discussion, but if we do not have concrete text, it’s very hard to discuss.

ANNE AIKMAN SCALESE: It strikes me that here in the last three or four minutes, we won’t be able to address that. Perhaps the Drafting Team could work on it during the week. But there were at least three of us who felt that needed to be further explored.

NIELS TEN OEVER: I’m happy to discuss if there’s concrete text. That’ll be great. Greg.

GREG SHATAN: Thank you. I think there was some text that Anne had earlier that I felt was misplaced but I didn't disagree with. But we can certainly work on getting the exact language. As for a place for it, I believe the right place for it is in the second row, where we ask – we're asked to consider the policies and framework – if any – that ICANN needs to develop or enhance in order to fulfill its commitment to respect human rights. I think that's a more –

NIELS TEN OEVER: Greg?

GREG SHATAN: Yes?

NIELS TEN OEVER: I would like to break in here. If I quickly do a last reading of the last paragraph – of which I think there's not much contention – then we can work in a Drafting Team on proposing something that we could discuss the next week, and then if everyone agrees, we could ship the document to the Plenary, which I think would not be a bad thing. So, I propose we take that to the Drafting Team and come back with a proposal, and then I would do a quick last reading of the last paragraph in response to the, "Consider what effect if any this Bylaw will have on ICANN's consideration of advice given by the GAC."

Then we respond, "ICANN's mission, commitments and core values – including the human rights core value – should be taken into account by the SOs and ACs at ICANN organization when considering policy

matters. The Board will need to take into account ICANN's mission, commitment and core values, including the human rights core value and considering all matters before the Board which also includes advice given by the GAC."

Kavouss, please come in.

KAVOUSS ARASTEH:

Niels, you remember our discussion in the GAC. You remember you said that this concern has been over. We mentioned that [why] in this interpretation we mentioned the recommendations of GNSO and ccNSO must also take into account – sorry, ICANN in considering recommendations from GNSO and ccNSO must also take into account the core value and human rights. Where we have mentioned that? We have not mentioned any of that. And we said that we should treat SOs and ACs equally. And you replied that this has been considered and you have a solution for that. And I see that always, there is no change. So, either at the last paragraph you mentioned all matters and then including recommendations from GNSO, ccNSO and advice from GAC, or you have to mention in previous paragraph something that Board in considering recommendation of GNSO and ccNSO must also take into account the core value and human rights. We must treat all SO and ACs equally. This was a concern in the GAC and you were there. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I thought that that was included in this text. But if not, let's discuss it on the list a bit. We at least did a first reading of this text. It is on top of the hour. I thank you all very much for

your attention and your attention and your great collaboration. We made great progress. Kavouss, I'd like to invite you to send your concerns to the list, so the Drafting Team and we can consider that and work on that, so they can continue to the second reading all next week. Dear all, it's a real honor to work with you all on this, and I'm greatly looking forward to continue working with you on this, on the list, in the Drafting Team and on the call next week. Thank you all. Bye.

UNIDENTIFIED FEMALE: Thank you.

UNIDENTIFIED MALE: Thank you.

[END OF TRANSCRIPTION]