
NIELS TEN OEVER:

Welcome, everyone, to the Cross-Community Working Group on Enhancing ICANN Accountability, Work Stream 2 Human Rights Subgroup on April 4, 19:00 UTC. This is our 27th meeting, where we have planned to do a second reading of our document.

I'd like to start off with the administrivia. Could you please make yourself known if you are on the audio bridge and not in the Adobe Connect room so that the ICANN staff can take the roll call from the Adobe Connect room and also get you in there?

That's perfect. We have got a notice of apologies from Tatiana Tropina, who is traveling, and Anne Aikman-Scalese and Greg Shatan will be delayed in their participation.

Does anyone have an update on their Statement of Interest?

No? Does anyone have an update or a suggestion for the agenda? Oh, David is very correct. Paul Twomey also sent his apologies indeed and wishes us good luck with our second readings. Thanks for adding that, David.

If there are no additions to the agenda, we can go right into the meat of our meeting today, for which we have an hour. I hope we can get this done so we can submit our documents to the Plenary and we can discuss this in the Plenary meeting next week.

So I propose we go ahead. ICANN staff, would you pull up the document? Excellent. Thank you very much.

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.

Let's do this and do this paragraph by paragraph. You can find the text in the e-mail I shared with the group in the Adobe Connect room, as well as in the Google Doc, for which I'll share link right here in the chat.

Here we go. We'll start with the preamble. That's the first paragraph. The following part of the document addresses the consideration listed in Paragraph 4 of Annex 12 of the CCWG Accountability final report. That was Paragraph 1. I see no comments.

Then we continue with the next consideration. 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.

Here we go with the consideration: 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 for 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.

I see no concerns or comments on that, so let's continue to the next paragraph.

With regards to the U.N. 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, certain aspects of the U.N. guiding principles for business

and human rights could be considered as a useful guide in the process of applying the 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 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 Bylaws provision or article of incorporation must be resolved in favor of the Bylaw or article. The use of the guiding principles of [inaudible] carefully considered by each SO and AC as well as ICANN the organization.

I see no hands, queue, comments, or suggestions, so that means we'll continue to the next consideration. The next consideration that we were asked to reflect on is the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect human rights.

Here we go. In order to put the human rights core value into practice, ICANN the community, as well as the organization, 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 development 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 [inaudible] take into account the requirements to balance the core values.

So far, so good, so I'm continuing with the next paragraph: [inaudible] used in this sentence is not quite appropriate in the context of interpreting the human rights core value. There is different section of the Bylaws that sets forth ICANN's commitments, Section 1.2A, and the core values, such as the human rights core value, are distinguished from the commitments. The Bylaws state that, in performing its mission, ICANN will act in a manner that respects ICANN's core value – Section 1.2 – that core values should also guide decisions and actions of ICANN – Section 1.2B [and note] that specific way in which core values are applied individually and collectively to any different situation may depend on many factors that cannot be fully anticipated or enumerated – Section 1.2C.

Section 1.2C goes on to note that perfect fidelity to all core values simultaneously 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 community have an obligation to respect and be guided by the human rights core value as balanced with other core values where appropriate. A particular human right should not be considered in isolation – so it should be “a particular human right should not be considered in isolation since they are universal, indivisible, interdependent, and interrelated.”

David McAuley's hand is up. David, please come in.

DAVID MCAULEY: Thank you. I just wanted to mention – it hasn't happened in the last two minutes or so – that you were cutting out a little bit earlier. Also, I'll note that I'm having some Adobe problems – not the connection, but just a few problems. I think maybe they'll be resolved in a minute or so. Anyway, thank you.

NIELS TEN OEVER: Thank you very much, David. I also noticed a small typo in the end of this part. I proposed text to address that in the chat so that it reads "A particular human right should not be considered in isolation since human rights or universal, indivisible, interdependent, and interrelated." So now that should read well.

Seeing no issues nor hands nor [commitments] were there and hope that I'm not cutting in or out anymore. We'll continue to the next consideration.

The next 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.

Here we go. The methods for developing any new policies or frameworks that may be needed to apply the human rights core value will be dictated by the policy and how ICANN the organization and the community develop those policies.

Next paragraph. For example, developing and recommending to the Board substantive policies relating to Generic Top-Level Domains – Bylaw 11.1 – is the responsibility of the GNSO. Any new or revised policies or frameworks, including any changes to the GNSO Policy Development Process should be developed by the GNSO using the organization’s policy and processes. The GNSO’s Policy Development Processes provide 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 related to Country-Code Top-Level Domains – Bylaw Section 10.1A – is the responsibility of the Country Code Name Supporting Organization (ccNSO). 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 processes.

Going to the next paragraph – oh, I see Kavouss’s hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Could you go back to the beginning of this paragraph? The methods to develop.

NIELS TEN OEVER: Yes, we’re going back to the paragraph. What was your comment, Kavouss?

KAVOUSS ARASTEH: I don't believe that it is right the management, the methods we are developing, at least we probably [inaudible]. I think that the development of any new policies [inaudible] without a reference to methods because there are no methods. We just develop something. So I don't think that the word "method" is necessary. This is a [inaudible] thing that the development of any [inaudible] policy or framework. Thank you.

NIELS TEN OEVER: I am having a bit of a problem hearing your audio, Kavouss. It sounds a bit muffled.

KAVOUSS ARASTEH: I'll repeat. Okay. Do you hear me now?

NIELS TEN OEVER: I hear you, but not very clearly. I think you should –

KAVOUSS ARASTEH: I think the line from [inaudible] line, so I don't think that there is a problem. I suggest that, at the beginning of the paragraph, we delete "method" and continue with "the development of any new policy," or so on and so forth. So delete the word "method" before and start with "The development of any new policy or policies or framework." That is my suggestion.

If you can't hear that, I can put it in the chat.

NIELS TEN OEVER: Kavouss, I put the new text as suggested by you in the chat. I would have no problems with that, especially if it makes it clearer if we drop words.

KAVOUSS ARASTEH: Give me one minute, please. I will put it in the chat. One minute.

NIELS TEN OEVER: So now it reads, “The development of any new” – it should be “of any new policies.”

KAVOUSS ARASTEH: Yeah. I’ve put it in the chat now.

NIELS TEN OEVER: Yes. Perfect. So it reads, “The development of 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.” Sounds fine with me.

I see no other comments. Great. Everyone seems fine with it.

Now we continue with the part under ccNSO: the part on the ASO. Let me continue here.

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 GNSO. Nonetheless, ASO should consider how to apply the human rights core value.

Continuing... When developing corporate or operational policies 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.

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

KAVOUSS ARASTEH:

Just a clarification. "ICANN should propose" – propose to whom? When you say "propose," you need an entity – the "whom" of the proposal. [inaudible] to develop instead of proposed. So it's just the word "proposed." You need to replace it with something or you need to say to whom you're proposing. So I suggest that we replace "propose" to "develop." [inaudible]

NIELS TEN OEVER:

Okay. So let's do it like this. If we change "propose" into "develop" and then we remove "in its development" later, then the sentence becomes as follows: "In order to do so, ICANN the organization should develop a framework which should include multi-stakeholder involvement and a regular review."

David has a comment, and Andrew has his hand up. Andrew, please come in.

ANDREW MACK: I think I was going to agree with Kavouss. I think that, if you're promoting a framework, then you're promoting it to someone. If we're developing it, it's kind of in a vacuum. So the question is whether or not people are going to actually use it or whether there are any responsibilities.

Can we propose it to the community broadly? Is that enough?

NIELS TEN OEVER: Okay. That would also work. "Should propose a framework to the community."

KAVOUSS ARASTEH: That sounds good to me. No problem.

NIELS TEN OEVER: Okay. Then we have the text as follows. I'm pasting it in the text: "In order to do so, ICANN the organization should propose a framework to the community which should include multi-stakeholder involvement in its development and regular review."

I see a green tick from Cheryl. David McAuley says it sound good. Kavouss, is that a new hand or an old hand?

KAVOUSS ARASTEH: An old hand. Sorry. Excuse me. Old hand.

NIELS TEN OEVER: Okay. And I think Kavouss said that was also okay. So if that is okay –

KAVOUSS ARASTEH: Yes.

NIELS TEN OEVER: Perfect. Let's continue to the next consideration. This is going great so far.

The next consideration is: Consider how the interpretation and implementation of this bylaw will interact with existing and future ICANN policies and procedures.

Here we go. The interpretation of the human rights core value – oh. Sorry. My screen jumped for a moment. I'm sorry. I'll start from the top.

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 of interpretation.

Supporting organizations could consider designing and incorporating human rights impact assessments in their respect Policy Development Process. Human rights impact assessment should not consider particular human rights in isolation since they are universal, indivisible, interdependent, and interrelated. Given the interrelated nature of core

values, the supporting organization could also consider other core values as part of the balancing required by the Bylaws. Advisory Committees could also consider similar measures, designing an incorporating HRIAs in their respective processes.

When examining its operations, ICANN the organization could also consider instruments such as human rights impact assessments to assess their impact on human rights. However, this is up to ICANN the organization to develop and implement. The result of such human rights impact assessments should be reflected in ICANN's annual reporting.

I see no comments. Then we are at the last consideration.

Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee.

There we go. ICANN's mission, commitment, and core values, including the human rights core value, should be taken into account by the SOs and ACs and ICANN the 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, in all matters before the Board, which also include advice given by the GAC.

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

KAVOUSS ARASTEH:

Do you remember that for a long, long time, I had difficulty with this paragraph. However, [inaudible] over several times I found that perhaps we should leave it as it is. It is not perfect. It is not the balance but

perhaps we can do better than this. So I just want to come back to what I said as you all asked me to put on the mailing list. But after reviewing it several times, I thought that that is the maximum that we can do, even if we are not 100% satisfied. But that is to the best of our understanding and knowledge. So I don't propose any further changes to this. Thank you.

NIELS TEN OEVER:

That is very generous of you, Kavouss. That's great. Thanks so much.

This concludes the second reading of our document, and with that, this also concludes a big part of our work. If you will all allow me, I will merge this document with the framework of interpretation, and I will send it to the CCWG Plenary for review and for two readings.

Kavouss, please come in.

KAVOUSS ARASTEH:

No problem. Thank you very much. I think this document that's left concerns us at the level of the group. However, if in the Plenary there are proposals, I think the first things that you as the Chair or rapporteur and other participants of this group need to take into account this consensus and not easily abide for any major changes because if it's better to change, we may change [inaudible] [everything]. We have read this document more than ten times. So a better experience that I have had from SO/AC Accountability is that we have agreed on something, and at the level of the Plenary, someone proposed the

deletion of one word, which we had agreed on in consensus. Easily the meeting was pushed [inaudible] to that.

No problem that people openly explained their positions and argue, but we need to have consensus on any changes to your document because this document reflects the consensus of the group. To change the consensus requires the consensus of the whole group, but not on an issue that's raised by one or two people. So we need to have consensus on any changes. So that you have to kindly bring to that instead of the co-Chair of the Plenary of the CCWG. So we are not prepared to accept any changes without having consensus. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I think we have done quite some work on this. I think we can be very proud that jointly we reached full consensus on both the SOI and this work. It is up to us to all defend it in the Plenary. Because we have such broad participation, I think we will have a good chance. I think everyone in this subgroup also feels really invested in this, so I have good faith in that process.

So that concludes the second point on our agenda. That leaves us with the third point, Any Other Business. Kavouss, please come in.

KAVOUSS ARASTEH:

I think we are on Any Other Business, but perhaps we can take this as a general business item. We'll have completed this so-called very difficult, complex, and delicate task. First of all, thank you very much, Niels, for all your indefatigable effort, your patience, your competence, and your

hard work. And thanks to all distinguished colleagues, in particular the Drafting Team for what they have contributed.

However, we should last but not least express our thanks to the Secretariat, to [Bernie], to Brenda, and to [Karen]. They have been leading a lot of these changes, a lot of those document available, transcripts and records or notes and so on and so forth. So we would like that, when you present this document in the Plenary, you express or convey the appreciation of the group to the Plenary of these three very indefatigable and devoted persons. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I can do nothing more than plus-one that and thank you and thank staff and thank the group – thank everyone – for their constructive position.

But we're not done. This goes to the Plenary, and if the Plenary agrees, it will go to public comment. Then we will need to review the public comments together and consider whether any amendment needs to be made. I'm greatly looking forward to continuing that work with you and continuing that work in the Plenary.

I see there are no other points. So on that happy note, I'd like to end our meeting here and thank you all very much. I'll see you in the Plenary. I think we can also carefully bracket our following meetings because the following work will be in the [inaudible] in the public comments and after the public comment period. So I'll ask staff to, for the intermediate period, cancel the planned meetings of the Human

Rights Subgroup, unless something comes up; then we will call for a new subgroup meeting.

Thanks, everyone. Bye for now.

[END OF TRANSCRIPTION]