
CCWG-HUMAN RIGHTS SUBGROUP

Tuesday, July 25, 2017 - 19:00 to 20:00

>> MR. TEN OEVER: Thank you very much. I can start from making this possible and welcome everyone to the cross community Working Group on ICANN community work group 2 subgroup. On July 25th, 1907. -- 1917.

Welcome all very much to this meeting of our group. It's meeting number 27. And, I would like to take our roll call. I can [zart] to take a roll call from the Adobe Connect room. So could the people on the phone bridge and not in the Adobe Connect room please make themselves known.

We have got apologies from bass teaeen hot [l*ings]. Does anyone else have an update on their statement of interest?

No? Then we'll continue to agenda.

I propose we first finish what we started last week, namely going through the highlights. So that reviewing the last two individual commenters in the highlights documents. And then we will dive into the comments that we thus far have naturalized need further consideration, namely the Brazilian, Swiss and UK governmentsment and if we get that far, then we have any other business.

Would anyone like to change anything to that order of business?

Thanks again, Bernie for making all the notes in this nice highlight document I kept in the drup [PAL] dock but more structured so thanks for that.

Note: The following is the output resulting from the RTT (Real-Time Transcription also known as CART) of a teleconference call and/or session conducted 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.

So, let's continue where we left off last week in the highlights, namely the comment from Richard home [quis], and the comment from Richard home [quis] is in the different sections of the document, it states that human rights must be observed, that they are core values and that in some event core values should be balanced.

Looking at the other core values there is though sense for that. Human rights must be observed. There is no other core value more important than this.

This is in line with a comment government from Brazil has made in that we have also already made some notes on, but I will definitely make this note in the group he will -- Google doc.

At least it's a very concrete one.

Let me also share with you the, the link to the Google doc so you can help me make comments. And the final, tat [yan] a, I see you have some comments. Currently, -- no, we haven't discussed how we deal with the comments. Currently we're just doing a heat map of what comments we need to address and we haven't gone into solution mapping. We have just started with problem mapping.

So, let's continue with the last comment. And namely that of [shoo*ef] an [wan] [WA*R]. That reads on page 6 regarding consider which specific human rights Convention or instrument if any should be used by ICANN interpreting and implementing the human rights by law. It has been stated there is a conflict between any guiding principle and ICANN by law provision or article of incorporation must be resolved in favor of the by law or article.

I would like to propose that in the event of a conflict between any guiding principle or any other human rights declaration principle, Convention or instrument, ICANN by law profession or article of incorporation, the first thing to be done should be [AB] attempt to reconcile the two conflicting positions and arrive at an amicable solution that reflects the essential of both position allowing the by law to prevail out right without any attempt to reconcile them with the concerned human rights guiding principle. Would essentially limit the spirit of the core value to respect internationally recognized human rights.

So, let's make that comment there.

So, let's see if we can do some word Smithing there. Then, [sheef] V come aware has another comment.

It reads on page 8 regarding, consider [thow] to interaction implementation of this by law will interact with existing and future ICANN policies and procedures, it has been stated that SOs and AC, could consider defining and incorporating human rights infact assessment in that's reactive policy development processes. And I can organization could also consider HRIA to assess their impact on human rights.

If this is to be followed by the SOs and AC and ICANN organization the methodology and [tools] to be used to under this human rights impact should be qualified. The inclusion of HRIA gives rise to several questions such as will any existing tools and methodology be adopted to undertake the HRIA or will ICANN develop its own. Also will the SOs and AC and ICANN organization use the same [tools] and methodology to undertake HRIA or can they differ across ICANN organization structure?

Well, that is definitely outside of the scope. But it is good that [wif] now had -- Ocalf [voo*s] hand is up.

Please come in.

>> Yes, do you hear me please?

>> Yes, we here you very well, it's great to hear you K A V O U
S S.

>> Thank you very much. You mentioned that you have to reconcile between different provisions of the international issue of human rights and the ICANN by law. Two things. The first is that this international Convention or whatever name they have, because all of them they are not have the same name. Among themselves, there are, there are not exactly the same thing. So the first reconcile is within them, which is outside our mandate.

Second, if you have to reconcile and this reconcile [laetion] leads to the change of the by law, that would be a very difficult task to do. Because by law has been, has gone to the various examinations by various people, various stages, steps, by cities (indiscernible) and then by the expert group they put it into the provisions, implement table and if at the end of the this exercise, we come to the point that provided that all of this international is human, they say the same thing, different than By-Laws, then according to what you said, we need to reconcile within them.

This reconcile [action] may lead to the modification of the By-Laws which is very difficult. So I think before getting into that sense, the modification of By-Laws, we have to see to what extent this changes are required and to what extent this reconciliation affects the future implementation of human law. -- human rights. This is one point I want to make.

The second point I want to make, you mentioned that the future of the ICANN. I think we have addressed that before previously that SO and AC, this is two different places in the future activities, policies, recommendations, P V P and so on and so forth. They have to take into account of the human rights [-P] and principles and also on the framework. So I don't think that we can go beyond that. I don't think that is necessary we [coot] nice everything up to the last mile or last kill [lomt] and so on and so forth.

The implementation of the human rights by ICANN is very general and on a very high level, so I don't think that there is a need to reconcile within the ICANN By-Laws and the different Convention, Constitution, agreement, and so on and so forth, unless there is a big mistake in the By-Laws that very clearly ignore some of these things, but the way this international Convention and Constitution and whatever they mention, it depends on many things. It depends on the word. It depends on the [spirit]. It [spents] on the circumstances, condition have approve. And they may also change in future. No one guarantees that all of these will be fixed. So I don't think that we should subordinate By-Laws to them unnecessarily.

This is my comments. Thank you.

>> MR. TEN OEVER: Thank you very much calf [voo*us].

The next one, been gem [ma*], come in.

>> Hi everyone. Nice to hear you again.

So, when I read the comment from [shee] [ba*] Conn [WA*], my first reaction was the same as [koo*] views reaction, absolutely like, word for word. Then I [ree] it again and I think there is a bit of confusion this these comment, because the power graph, the sentence, it's refers to is about guiding principles. It's about (indiscernible). But then she [WA] con we are moved to his own interpretation and talksed about the human rights declaration principle, Convention or instrument. While this paragraph is only about (indiscernible) and this paragraph only about the conflict between rug [ee] and ICANN by law. And I think we discussed it extensive, even the inclusion of the rug [ee] principles themselves.

I think that it might be worth while for us to qualify that again, that this provision refers only to rug [ee] principles. Because I see that it [tcee] eights confusion in the public comments. It creates confusion even within like our group. And so I believe that there should be an action taken, but not in change the text of the framework of representation to include what she [va] Conn war is proposing to include. But clarify this exact power group, resource only to rug [ee] principles and ICANN vote By-Laws provisions. And I think we inserted it just to limit the application of rug [ee] principles to bring together to Mary the positions of different members of these groups, those who are for rug [ee] principles and against rug [ee] principles. So this would be my proposal how to deal with this comment, initial like a mind map, thank you very much.

>> MR. TEN OEVER: Thank you very much at that time [ya*n] A.

And [thengs] is T I J A N [*iz].

>> Thank you very much Niels. The two previous speakers said more or less what they wanted to say. And, in short, I strongly object to the concept of any reconciliation between icon [*P] [ka*n] By-Laws and any other things. If we want to change the By-Laws, there is a way to do it, with the new powers of the community. We know how to do it. It is another thing. But we said from the beginning that the human rights would be applied within the framework of the ICANN mission. And ICANN mission is part of the By-Laws and part also of the articles.

They also speaks about articles. He wants to change the articles, if there is any conflict between the human rights principles and the articles. It's absolutely unbelievable and undo able in my point of view.

So, I don't want this to be in our context, thank you.

>> MR. TEN OEVER: Thank you all very much.

Now, after having done this first reading of all comments, it seems that all parts of the community such as there are the A L AC, the S AC, the business con [stit] [-P] went see, the IPC, the N C S G, the wrenches industries, are all agree -- registries, all agree with what we have done.

Then there are suggestions from the government from Brazil, Switzerland and the UK. And in this case, also she [va] con war that touch upon the delicate consensus that we managed to build in the last year.

So, when we are going to respond, to consider these public comments, how do we want to respond to them? Do we want to write a report of them and respond to them or do we just want to consider them and say, like, okay we have thought about it and we have sufficient answer to this and it's in the records. How as a group would you like to reconcile it to feel that we sufficiently gone into depth, because that will of course impact the next steps that we will take in this process.

I see a queue forming. Ann, please come in.

>> Yes. Thank you Niels. This is Ann. I think it's a very good question to be asked. I think that's the fundamental conflict here is that there is probably some lingering dissatisfaction by commenters in relation to, you know, what the by law currently says about applicable law and the opinions received from ICANN legal.

I think, to answer your question, it would make sense to add sort of a, I guess you would say, Oan addendum kind of summarizing that fact, but, and state, you know, these, the dissatisfaction that has been expressed by some governments and maybe I think there was one additional commenter, but I think the other aspect of this that I had wanted to bring up was the question of the, would the -- what the bored requested from staff in terms of impact assessment of freedom -- excuse me of the framework of interpretation for human rights.

I am concerned that we don't want to create such a log jam that we never get anywhere on the topic of human rights because the board may no want to act on it, in other words they're looking at, wow,

implement this right away, [wla] are the implications for ICANN. And they've asked staff for a report, I guess. I don't know the status of that; but I think if we could summarize the government comments and explain that frustration and we know that the G AC is going to be making some kind of comments on this. I think we need to be primarily concerned with how to move this forward. We need to get things in a position where the board is going to be willing to act. Thank you.

>> MR. TEN OEVER: Thank you very much Ann. And for that, we are of course also waiting for the comments from the board. And Theresa swine heart said this will happen before August, so we're waiting for that.

I see tat [ya*n] a is next in line. Tat [ya*n] a, please come in.

>> Thank you. I'm speaking for the record. Wait. Comment to practical issue. I believe that we can just continue in this table and for each comment, for each lie light. -- highlight. We can just some of the consensus within the group, I mean on how we should address these comments.

I think for some comments, we should say like no action required, like it's in line with what we are thinking and whatever.

When it comes to rug [ee] principles, some of the comments from the governments and yes, present tents, we are waiting for the ICANN's board's comments. I think we have to discuss it in the group and we have to provide a summary. So how we proceed, are we taking any action? Are we going to change

the FOI? So I think we can't just, you know, get away with saying action taken, action not taken. If we are going to discuss them, we are going to provide a short summary, so that would be my suggestion. Nothing extensive, but with regard to each comment, just a short paragraph. To these, what can be done. Thanks.

>> That sounds.

>> MR. TEN OEVER: That sounds reasonable and then we could publish that in our review to the, both to the CCWG and we could also put it on the kick [ee]. That sounds very doable and transparent. Who is next in line.

>> Sorry. I'm intervening again.

>> MR. TEN OEVER: Yeah, no, please come in tat [ya*n] a.

>> No, no, I'm done. I was going to say totally, like on the Wiki and thinking it maybe to those who submitted the comments, we can see how we can proceed for the sake of transparency.

>> MR. TEN OEVER: Thank you.

Then next in cue is K A V O U S S, and I see David McCauley is also on the cue. Come in.

>> Yes, Niels. I think first thing we have to be quite careful. We are not dealing to change the By-Laws as such. If there is any -- anything to be added to FOI but not to the by law. Because by law has one paragraph, very very high level. And the

remaining is pointed toward the FOI. So if there is anything in the action to the comments received either from government or from private sectors, that may require to be taken into account in FOI; however the situation is that continuing that no matter what we write, if there is no way to implement that, I don't think it is useful. You can write many things. This should be done. This shall be done. That person should do this. Board should do that. But if it is difficult to implement that because of the lack of criteria, it would be serving for nothing.

So we should be quite careful to do that, to [maeg] any changes to the FOI. However, if there is an agreement in the group or consensus that the FOI text that we have provided need to be adjusted to the extent practical and possible to reply to this comment, I have no difficulty at all, but the problem is the following. It is not the issue that who is right and who is wrong. The issue is that we need to agree, we need to have a consensus to do something on FOI. If we reach a consensus to modify, the text modify, I have no difficulty at all.

Now, to your question Niels, whether you have to write to these people that have commented. I believe that usually we don't need to write to them. We put in the report of the group that following comments, we try to summarize it, were received and considered, and it was agreed as follows and you put what you have agreed. So we don't need to write them individually.

Because we had the same thing in the ICG, when we received comments. And further it was decided that we do not reply individually to any commenter, but you put something on the we can site or web page or reports that these have been considered. But we don't want to disappoint anybody. We should be open to every proposal. But you have to see whether there is a consensus and agreement to implement that, and before doing that, we have to check whether there is a possibility to implement that practically by criteria.

If there is no criteria to implement that, putting something as a word, I'm sorry to use this, I apologize, that would be empty words. Nonimplement table. So we should be quite careful. So I summarize. No change to the by law. Two, modification to the FOI, if everybody agrees to the the extent practical. Three we do not reply to each individual commenter, but we put the report, the action of the group as agreed by consensus in the report of the meeting. Thank you.

>> MR. TEN OEVER: Those all sound like great points and they also reverb right with what Ann has said, really great. I'm not sure who was first; Bernie or David McCauley. I think I saw Bernie first, so I hope David won't mind if I ask Bernie to go first. Bernie, please come in.

>> Thank you Niels. Can you hear me?

>> MR. TEN OEVER: Loud and clear.

>> Excellent. Just a small comment on how to handle responses. If you are actually considering the comments, it's accepted

practice these days for public comments in ICANN to respond to the highlights of the comments.

So, if you look at the staff summary that is published for those comments, we don't list everything as in the document that's in front of you, but we do some small [ga] amplification into another level higher than what we've got here, so that people within a page or two get a sense what the public consultation was about, get a list of who commented, and a very high level, highlights section of what the major points of the comments were.

And as such Tstaff could craft a response section in the highlights, because right now is just a summary of what was given, but if the group wishes, then we could also add to those very high level summary highlights what the group decided to do, again in very short format; and that might bridge the gap between what K A V O U S S was saying and what tat [ya*n] a was asking for. Just an option if you're interested would certainly follow well within what's available to be done with the official responses to the public comment and then it's covered as to what you have responded. Thank you.

>> MR. TEN OEVER: That sounds really good, Bernie, thanks a lot for that offer. And I think that [giefs] really well with what was said before. So go to David McCauley. David, please come in.

>> Thank you Niels. It's David McCauley here for the record. I'll be brief.

I was attracted to things that were said by tat [ya*n] a, by [KA] views and by Bernie. Maybe I'm somewhere in the middle there. It seems to me it would perhaps be useful to draft a response to, there is certain recurring comments especially in the rug [ee] and the term applicable law. I've stated my feelings about those terms, about those ideas throughout the whole process including back in workstream one. But there is recurring comments and maybe we should address them. I don't know that we need to address every comment in the highlight sheet, but maybe these recurring major points.

Then I think [KA] [voo*us] idea was a good one, take that language and put it in front of us as a [grop]. If we can agree, fine, and if we can't, we wouldn't make that explanation. And I use the word explanation, a little guardedly, because I think I heard Bernie spraining what we did rather than explain why we did what we did. So I think it's a work in progress, but what these folks said resonates with me and I think there is a way forward somewhere in there, we'll have to try and see what works. Thank you.

>> MR. TEN OEVER: Okay. So, then I think our next step is that we do not need to go through the whole comments of the Brazilian, Swiss and UK government. And frankly I've been going through them in quite a bit of detail and I think the comments [themsdz] contain more comments than we have in the highlight document.

So if we do through the highlight documents and select what are the main points, and then we come up with a response to that, then that could be the way forward. Is that something we can all live with? Maybe some particulars, % -- tics, if people feel that's okay, and some hands.

That looks pretty green to me. I see no hands.

Okay. So let's go back to the comments. Let's go back to the comments of the government of Brazil.

There was about the hierarchy between the core values and whether there would be a hierarchy among them. Tat [ya*n] a, please come in.

>> Hi again. Tat [ya*n] a speaking for the record. I do think that the suggestion from the government of Brazil about the hierarchy, is totally outside of the rem [nantd] of this group, and I will explain why. Because if the we look at the section 1.to see of the By-Laws, it says. The commitments and core values like the specific way in which core values are applied individually and collectively to any given situation may depend on manufacture that cannot be fully anticipated or he enumerated. Such creation may arise in (indiscernible).

So, I believe if we are to address the comment of the government of Brazil, basically we are providing the interpretation of the ICANN by law which do not say anything that hierarchy is possible. And I think that such interpretation is completely outside what, of what we are scheduled to do of our tasks. So I believe this comment should just be rejected. That's all. That's my position.

>> MR. TEN OEVER: Yeah. We have to stop this at length, and we are not in the, we are not mandated to have will ability to change the By-Laws and how the different core values should be

leveraged and how they should be balanced. There is text on how they should be balanced in the By-Laws themselves. We can not change that. As [KA] [voo*s] says, we cannot change the By-Laws. So therefore we're pretty simple, this is beyond our power, beyond our scope.

So, there we have addressed the first comment. This goes pretty well. I think [KA] [voo*s] hand up. [KA] [voo*s], please come on.

>> Yes. Just I would like to add something which was told by tat [ya*n] a. During the workstream one, considerable and extensive and heated discussions about this hierarchy. I remember there was some provisions, a paragraph in the mission. And after some discussions, bruise from kin came and said it is difficult to put it in the mission, therefore it should be sent to the outer-[H-F] other part, to the core values.

So, I think this was already taken into account. This group's task is just framework interpretations. Establishing the hierarchy between mission and the core value. That [br] [zil] may be right, but we can not do this, this group. That's outside our limit, our mandate. And would be difficult.

If you want to come back again, which element should go from the mission to the core value, and which element from core value currently should go to the mission, then we have to have a total exchange of information in this important article. So I think [wiem] I agree with the idea that who has the or what

has the hierarchy, but this group cannot. This group is limited, I would say I'm sorry, I apologize, this is a small group with a limited mandate. We can not go in depth into that very, very, I would say, sensitive and crucial issue to establishing any hierarchy within them.

So, we can't do that. We could say that it is okay. It is valid point. That we cannot make any such decisions. It's outside our mandate.

If somebody wants, perhaps people should start to go to the empowered community and modify the By-Laws, change the positions of the mission. Go back to the core value or from core value to the mission and so on and so forth. So that is the issue. But we can not do. Our work is limited and narrowed down to the FOI. Thank you.

>> MR. TEN OEVER: Thanks so much [KA] [voo*s]. And I have to say that I thoroughly missed the violent agreement that we sometimes reach in this group in the past weeks. So, very nice. We are of one heart here.

So, let's continue to next comment by the government of Brazil, which states on page 4, the first two sentence of the fifth paragraph reads applicable law refers to the body of law that binds ICANN in any given time any given circumstances in any relevant jurisdiction. It consist of status rules, as all [thrings] were appropriate. And Brazil suggests substituting the word binds with applies to. And Brazil also suggested before the word et cetera express reference to customary international rules and principles.

David. Please come in.

>> Thank you Niels. On this particular point, I would like to make a comment. First I would recognize the passion of those who are arguing these points and I respect that. I'm on the other side in an attempt to try to get us to a reasonable place, but the word binds in the definition is therefore a reason and it's reflective of the fact that the by law talks about internationally recognized human rights as required by applicable law. The word is required.

I would also note that the the by law goes on to mention applicable law in a second sentence in the same section. And there it talks about obligations. So it's not, it's not a loose term. The By-Laws is not loose [tauismt] it's really restrict active. It's rather confining. It's talking about requirements. I think the word binding is much more apropos than the word applies to.

And I also think that customary international rules and principles, these are recognized ideas. But I think our language, you know, the language that we compromised object in workstream one, internationally recognized human rights as required by applicable law was a heart-fought compromise and we should not open it up to something that could be loosely interpreted, especially at IRP. And I say that from the point of view of recognizing that. And I think Mark car go nailed it in his comment where he says ICANN has done something significant this this law by recognizing and clarifying its human rights requirements or respect requirement.

ICANN, it's perfectly appropriate for ICANN to start modestly in this effort to incorporating and stating human rights obligations going forward. ICANN is an open transparent organization. It is not a serial abuser of human rights. And it's working in an extremely sensitive area of the DNS.

So, I think it makes sense for us to keep the wording that we have. To keep the concept that we all agreed in workstream one. So I would be against both of these points. I respect Brazil, I know they're coming at it with great passion, I just feel that we should be maintain what we achieved in workstream one. Thank you.

>> MR. TEN OEVER: Thank you very much David for that comment.
Tat [ya*n] a. Please come in.

>> Thank you very much. Tat [ya*n] a speaking for the record.
I think even from the language point of view and from the point of view of the purpose of this framework representation. Very to the part which was actually, how to say, which was meant to interpret the by law, the text itself. And so what they basically want to us to do is say applicable law is the law which applies to ICANN. I mean that just sounds like, like the lock of implementation to me. Because we can not refer, you know, to these partly, like in the same words. We have to explain what it means. And here perfectly good, David McCauley, we have to use the word binds, because it is much more restrictive and we are dealing with a very sensitive issue. So that's all from me for now.

Osorry. One more point. I read in the comments already that there was a lot of support for inclusion of customary law. And I agree with David again, because I see in the document that he say, that these

inclusion of the customary law wording will under cut the by law language. And I totally support this. And I also, think also this refers to the last comment of the Brazilian government as well. Thanks.

>> MR. TEN OEVER: Thanks a lot for these comments. I think where it comes to binds vis-a-vis applies to, we are pretty much done.

I am not sure whether we already have agreement. I would like to hear a bit more from people on adding customary international rules and principles to that wish list that we have there, of statutes, rules, regulations.

Would it hurt to include customary international rules and principles to that?

Greg. Please come in.

>> Thank you, Greg shop/laundromat taken for the record, sorry to be a bit late.

I've been listening for a while. I would oppose that change. First we already have rules in there consists of statutes rules, regulations.

When we get into principles, we're really going beyond any kind of stated law. And I fear that gets us into very [mur] key territory.

. I also think, I recall, I can't, you know conjure up the exact concept right now, but that kind of the concept of customary international rules and principles, kind can have as a phrase brings in a lot of additional stuff that's not really included in the applicable law [-P]. Definition currently.

So, and we're not even talking about customary international law rules and prints, there is just some sort of squishy international rules. So, I think this is, certainly we can't, in a sense we can't go beyond the applicable law definition that is in the By-Laws as a whole; which I would want to take a look at, because, we can't contradict or expand the overall definition of applicable law that applies to ICANN.

So, in short, I would not support this comment. Thank you.

>> MR. TEN OEVER: Thank you very much. I see tat [ya*n] a is of the same mind. I see David McCauley as well. I think that makes sense. I wanted just to make sure we were explicit about this. I see California [voos] is also up. Please, [KA] [voo*s] come in.

>> Yes. Niels. I have seen many instruments. And in these many instruments, very rarely they use the [tirm] binds or binding, but very frequently they refer that such or rules, or provisions or course of action applies. So binding is very, very strong.

From my view, it looks like whether you use must or you use shall. Must is the most strongest, very rarely used. Binding is very rarely used.

I have seen another instrument of another organization. They use one or two times binding, and then they use hundreds of times apply. And there is no difference between the two as far as the application of the situation is concerned. If you have an action to be done by an entity and you say for this action, or the course of action applies, means that the application of those course of action is binding by definition, but not by words.

So, I don't think that we should go that far to change applies by binding, because this has another die mention of a verification and applications. Apply means the same thing. These rules apply. That means must be or need to be taken into account. But when you say binding, you go another category and then you have to see binding to whom? Bind [S-G] usually used when there are signatory to something. If there is signatory to something, and this signatory is a company's ratification, then it is binding.

Whenever there is applies, may not need to be any ratification. So I think it is too far to go in that detail to the place applies -- to replace applies with binding.

Then you go back to the by law that many times we have used applies or should play or shall apply or applies, simply with the present tense without any shall or would or could. So I think that it was rather difficult to go that far to modify or replace apply by binding. Thank you.

>> MR. TEN OEVER: Thank you [KA] [voo*s]. We already have binds now. So, replacing that, I'm not sure how it would change. But as you say, they're roughly the same. So maybe we just keep what we have.

Let's look at the next comment from the government of Brazil, where Brazil says, on page 6, the first full sentence at the top of the page reads. However ICANN community and organization could refer to any of the widely adopted human rights declarations Convention and other instruments while taking human rights into account in its policies and operations. Brazil suggests redrafting the above sentence as follows. However businesses can be subject to international customary law, rules and principles and they evolve in the field of human rights. Further ICANN the community and organization should refer to any of the widely adopted human rights declarations Convention and other instruments while taking human rights into account in its policies and operations.

Tat [ya*n] a, please come in.

>> Thanks. Tat [ya*n] a speaking for the record. I think we should redraft the custom issue of the rules, when we discuss the previous comment of the government of Brazil. I would like to address the suggestion to replace could with should. And I think that this should be, should be rejected for one simple reason. While first of all, could was a compromise language for us, because I remember that half of our group didn't want the reference to widely adopted and Revised human rights declaration conventions and other instruments. So there was a compromise language.

Secondly, I do not understand why would we ever add should, to any of those instruments if the by law itself is talking about applicable law. So basically again we are contradicting to the by law if we are going to oblige ICANN, to resort to any of those widely adopted and recognized human rights instruments.

So, I believe that there might be misunderstanding or a lot of information of how the compromise in this group was actual leave achieved. Thank you.

>> MR. TEN OEVER: Thank you very much tat [ya*n] a.

I see next in the cue is Greg. Greg please come in.

>> It is Greg [SHA] tan again. I agree with tat [ya*n] abut I want to address the suggested additional sentence that Brazil wants to begin with. You know, the however, businesses, et cetera.

I would not support inserting this. First, ICANN is not a business in the sense of the word, in any classic sense of the word. And you know this is, takes us down a path of characterizing ICANN as a business; and so for that reason alone, unless this is just a, kind of a generic statement standing on its own and not referring to ICANN at all, in which case it shouldn't be here either, it's irrelevant.

So, this is just some sort of a Random remark about evolving human rights laws and principles. And it really, it doesn't add anything, but it creates a lot of potential for challenges and for confusion. So I think it accomplishes nothing and confuses many things. And it's basic premise is unспорт table, even though as an abstract statement in isolation, it's probably true.

>> MR. TEN OEVER: Thanks so much. It indeed seems to anticipate potential changes in international law. But let's not go ahead, for us to look into a looking glass.

Tat [ya*n] a is in the queue again. Tat [ya*n] a.

>> No. It's a new hand, because, sorry, I was only speaking for the -- tat [ya*n] a speaking for the record. I would like to add to Greg statement about Random statement and I agree with him.

I think what I say right now, would also be very relevant to the next comment like about rug [ee] principles and the next discussion which will probably take time also from like on the other call.

I think [na] there is a confusion from the government of Brazil as well. The framework interpretation separates ICANN organization, ICANN community and ICANN board. And for this reason, we also like, we can not accept this kind of remarks about business and so on, we have to be clear which part of FOI it refers to. Like the entire (indiscernible) community or any part of the empowered community and so on. So I totally agree with Greg and I also think that we should avoid this word like businesses and so on, because the interpretation is separate element.

Thanks.

>> MR. TEN OEVER: Thanks very much tat [ya*n] a. [KA]
[koo*s], please come in.

>> Yes, Niels, I tend to agree with Brazil with respect to the concept of applicable law, but in the terms of jurisdiction, but not in the terms of the framework interpretation. There are two different things. Perhaps the dissatisfaction or comments of Brazil is more related to the applicable law, because of the place of incorporation or place of ICANN, other than to the framework of interpretation of human rights.

Here, I don't think that we could use any term other than, or other than applicable law, because it was difficult to do that and there is a very narrow area that we have here to maneuver, whether we change it from applicable law to anything else. If there is any need to change the situation or to go to the details of discussions of applicable law, that will be in jurisdiction group, but not in this group. This group from the very beginning, we were talk about applicable law. We discussed it several time. We do not find any better term or word, other than applicable law. And there is a very little probability that we go that far to see whether the FOI or human rights has not been taken into account according to applicable law, because still is a very detailed, and I don't think we would even in the next ten years we arrive on something to go that far in detail.

So, while I agree with Brazil about the applicable law, but not in this context of favor interpretation. But in the context of jurisdiction if there is any [PROBLT]. If there is any room to do that. [-P] and I think jurisdiction group is discussing that matter, whether to find a solution or not, but not in FOI. In FOI, not replace applicable law with any other things because there is no other possibilities. Thank you.

>> MR. TEN OEVER: Thank you very much [KA] [voo*s].

So, that means we have now discussed the comments from the government of Brazil, which is I think we came further than we expected.

I prop positive we leave the comments from the government of Switzerland for the next time; because we have only five minutes left in the call. And in the meantime we're looking forward to the summary of burn knee from our discussion in the next version of the highlight document. And then we can go forward from that.

So, on this note, I would like to thank you all very much for your attendance. For doing your homework. For having a look at this document, and for being with us in this prolonged process in the last steps towards the FOI and the considerations documents.

Thank you all very much. And, I wish you all a great evening and see you all next week on Tuesday, 1900 CV C. Bye all.

(end of session).

