

Human Rights Subgroup

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Final Transcript

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[Captioner standing by]

>> NIELS TEN OEVER: And now it is 19:00 UTC. I can start. Would you please be so kind to start the recording?

[This meeting is now being recorded]

>> NIELS TEN OEVER: Thank you very much. I can start. And welcome, everyone at the 30th meeting of the Cross Community Working Group on Enhancing ICANN Accountability at August 1, 19:00 UTC. On this beautiful, summer day I welcome you all from Amsterdam. And we are quite far in the work of going through the comments that came in after the public comment periods that we held.

I can start, would you please be so kind to take the roll call from the Adobe Connect room and everyone who is on the audio bridge and not in the Adobe

Connect room, can you please make yourself known so we have a full roll call. From the absentees, I have seen an e-mail from Markus Kummer who apologizes because of a Swiss holiday, he has patriotic and social obligations and I'm sure Markus is living up to those obligations.

Has anyone got a statement, an update to their statement of interest that they would like to share with us? No? Then any agenda bashing? I suggest we continue with last week, we have been going from the comments from the Government of Brazil, made some conclusions for that, for a preliminary draft for our response to the public comments and I suggest we continue with reviewing the comments from the UK Government and the Swiss Government. And then it would seem that we have resolved the comments so we could [indiscernible]. We might be getting ahead of ourselves, but that seems to be the work plan. Is everyone still okay with going ahead like that? I see no comments, so I expect that people find that okay.

Then, Brenda, would you please be so kind to pull up the highlighted documents? Sometimes Brenda is faster than I can think. She is amazing. And you are lucky I can speak fast, so that helps. Perfect. And I have scroll control as well. Thanks so much.

So we were -- please remind me, we were done with the comment from the Government of Brazil, but I think we did not touch yet the comment from the Government of Switzerland? Or did we? Were we already done with Switzerland? I think we were at this comment.

>> BERNARD TURCOTTE: I believe we just completed Brazil.

>> NIELS TEN OEVER: Exactly. So here we are from the comment from the

Government of Switzerland, which I will read out and ask for people in the room to share their thoughts and ideas on how we shall respond to this. So from the Government of Switzerland, we've got, accordingly we propose that the following paragraph on page four, under internationally recognized Human Rights be rewarded as follows, however, because they, and that refers to internationally recognized Human Rights, only create obligations for states by committing to one of these International instruments national states are expected to embed Human Rights in their national legislation. Businesses should respect Human Rights as set out in the guiding Ruggie principles on businesses and Human Rights.

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

>> Hi, everyone. Tatiana [indiscernible] speaking for the record. I think that while the statement is true, it would create a lot of confusion for all of us for one simple reason. In this framework of interpretation, they are not only talking about ICANN as a business organization, but we are also talking about ICANN community and this is something completely different. So I think that for avoiding confusion, to avoid any confusion, we should not mention Ruggie principles there. We might mentioned them as we did somewhere else, but I don't think this comment is any how helpful because it's just a statement. Thank you very much.

>> NIELS TEN OEVER: David McAuley. David, please come in.

>> DAVID MCAULEY: Thank you. Excuse me, thank you, Niels. David McAuley here for the record. I agree with what Tatiana just said. I have said this before, but I would like to say it again because I agree with respect to the comment on the Ruggie principles.

I think it's important, I understand that the Ruggie principles are touched on by

the Government of Brazil, the Government of Switzerland, and the Government of the UK and I recognize, you know, the way they write it, it's in good faith, these are good authors, I just disagree and I think it's an important difference of opinion so I wanted it noted. The Ruggie principles are not recognized by [indiscernible] that is a hard thought phrase that we got to in Work Stream 1. And think we got to it because we recognized that ICANN is sort of a quasi-business, but a very important part of coordinating the DNS. Ruggie does refer to internationally recognized Human Rights, but it does so in expansive terms, in my terms.

Secondly, ICANN took on -- and I'm speaking on [indiscernible] where she suggested that ICANN not do this, but maybe the registries and Registrars should have [indiscernible] to recognize Ruggie. And while it's a good sentiment, I think they are sort of the business [audio breaking up] the business end of the [indiscernible] and should not be -- the school should not be tipped in favor of them. They are free to do it today on their own.

Finally, with respect to specific points, the obligations under Ruggie are not just to respect Human Rights, but to seek to prevent, mitigate adverse Human Rights impact that is are directly linked to the operations, products, or services or by their business relationships even if they have not contributed to those impacts. And business relationships is a loose term and in the [indiscernible] it including Registrars and registries. In the important work that is going on here, we should say that ICANN is a good social actor, we may have a difference of opinions at time, but it's a good social actor and until there's a demonstrated need for something more than the bylaw, I think we should not have a statement making reference to the Ruggie principles. Thanks, Niels.

>> NIELS TEN OEVER: Thank you very much, David. And I see there is some discussion in the chat. I'd like to mention that there is a U.N. guided principles regarding Human Rights are mentioned later in the text where they can give guidance for implementation, but here we are talking about interpretation and about the [indiscernible] International recognized Human Rights are applicable to states. So thus far we have people sticking to the agreed consensus and the agreed structure.

And, Greg, please come in.

>> GREG SHATAN: Hey, Niels. You actually made a lot of the points I was about to make, which is that this is not the right place to be mentioning Ruggie because this is the place where we are creating a framework for interpreting the bylaws itself, which means that we need to talk about -- the whole point of this was to allow for consistent interpretation of the bylaw across different parts of the community. You know, that's the point of this document. So, you know, we -- and the bylaw as drafted does not support the inclusion of this language. Thank you.

>> NIELS TEN OEVER: Thanks so much. So it seems that there is no -- there's not really support from this comment from the Government of Switzerland and we don't really see how this would help at this point.

Anyone else that would like to make a point about this? If not, then we will -- oh, Tatiana has her hand up. Oh, that was an old hand that got away. Okay.

So I guess we'll leave this comment to the side then. And then we'll continue with the next paragraph, which reads, as to internationally recognized Human Rights, a reference to the UNGP as standard for business enterprises

should be included as mentioned above. In addition, references to other [indiscernible] Human Rights agreements from the U.N. should be included such as the conventions on the right of the child, the International convention for the protection of all persons from enforced disappearance, the convention against torture and other cruel, inhumane or degrading treatment or punishment, and then [indiscernible]. Furthermore, also the Humanitarian [indiscernible] such as the Geneva Convention. Such as the [indiscernible] and the Budapest convention on cybercrime.

Tatiana, please come in.

>> Hello, Tatiana speaking for the record. I have to reiterate I'm really a bit flabbergasted about these comments. I'm sorry can those who don't speak mute their microphones because I hear echo, I hear my own voice. So about the mention of Geneva Convention, cybercrime convention and so on, I don't understand what the purpose of this is. Is ICANN going to engage itself in [indiscernible] because the Geneva Convention mostly refers to conflicts. The cybercrime convention, it's exactly my main area of work, my main job, and, again, is ICANN going to carry out as business of criminal investigation which is the domain of Law Enforcement agencies? So I believe that this is absolutely, absolutely out of any scope of the framework of interpretation. Humanitarian law and criminal investigations are not any how related to ICANN mandate, so I'm a bit surprised that it made to the public comment at all. I just didn't understand the purpose of this, so I would be completely against this. As to the Ruggie principles, my comments stand as it is with regard to the Ruggie principles. That's all. Thank you.

>> NIELS TEN OEVER: Thank you very much, Tatiana. Do other people have an opinion about this? I think if I pull off the text here, I don't think we make an exclusive reference currently to say that only these documents are Human Rights, right? So I am not sure -- I don't think that our current text says these documents are Human Rights and these are not, so I think there is sufficient room and space for people to bring up these documents if they would be relevant, but I'm also having a hard time to bringing these documents because I think they might create more uncertainty and despair than they might bring clarity in a framework interpretation, which is what the framework interpretation is supposed to do. So I am -- I tend to agree with Tatiana on this, but I would also like to hear from others.

I see Avri disagrees. Avri, would you like to come in and comment? Okay, Avri writes that she does not want to speak. Would you like to include all these documents or where? Avri has her hand up. Avri, please come in.

>> AVRI DORIA: Yeah. This is Avri speaking. If -- it's not something I want to speak on because I do believe it's a lost cause, but I do believe that we're constantly striking out things that we don't want to deal with and we worry about it and I think that's problematic. I think on many of things are aspects that may be relevant, but we are constantly saying no. And then we say they go against the bylaws, but that is not explained to me how they go against the bylaws. So I think the fact that a framework of interpretation, we do not want to consider all the possible rights. We just wanted to consider [indiscernible] speaking about it because, you know, I'm in a minority of one here, so, hey, thanks.

>> NIELS TEN OEVER: Thanks very much, Avri. I'm not sure if there are

[indiscernible], everyone's opinion is very much worthwhile because we have been on this for a while together. So Tatiana would like to respond.

Tatiana, please come in.

>> Hi, it's Tatiana Tropina speaking for the record. I would like to respond to Avri. The point about Geneva conventions and cybercrime conventions, they are related to Human Rights which is already in the declaration of Human Rights and other International instruments. Like look at the rights of competence and non-competence in the International Humanitarian rule. They are the rights which are regulated under the particular regime of armed conflict, but they are the same rights in addition to torture, right for life, and so on. I do believe that in any case the list is not exclusive. I don't believe that we are excluding any rights by mentioning -- by not mentioning the Geneva Convention. My perfect example is the cybercrime convention. I don't know why anybody would want to mention it. If you open the article it is [indiscernible] there is nothing about Human Rights in the cybercrime convention. But this is not the point. The point of the cybercrime convention is about how many national or criminal procedures [indiscernible] and it applies only to Governments and Law Enforcement agencies, only to legislators and only Law Enforcement agencies. So for example, the cyber convention, if we do this, it will show an utter lack of our understanding of what International Human Rights are, what they actually contain. So, again, I don't think we are excluding any rights. I just don't believe that particular instruments are related to this because they do not mention particular Human Rights. They do not refer to them. They refer to particular regimes like crime investigations, for example. To make a compromise, to marry two positions like those who just

want to include any instruments, which cybercrime is not, we can always say the list is not exclusive. I also think the list is not exclusive because we don't know what [indiscernible] will be, maybe in two years we will have [indiscernible]. This is why we do have to mention that this list is not exclusive. As applicable, but not exclusive as well. So I don't know why there is uncomromise here because I believe we are trying to cover all human right, it's just some instruments are not relevant because they do not contain Human Rights. Thank you.

>> NIELS TEN OEVER: Thank you very much, Tatiana.

Greg makes some points in chat that it doesn't seem we're cherry picking rights. Avri says, UDHR, but we're not just quoting the Universal Declaration of Human Rights. There are quite a number of instruments are that quoted. And it says including, so if we go back to our document, we say Internationally recognized Human Rights and we have a footnote that says including the UDHR and the [indiscernible] the International convention on all forms of racial discrimination, the convention of all forms of discrimination against women, the convention of the rights of disabled people [indiscernible] and rights at work. And I don't think we are excluding any documents. So when we are talking to the deck members from Germany that also mentioned a number of U.N. resolutions, the right to privacy in the digital realm, et cetera, I think if we are making exclusive lists, it makes it harder to include other documents. It's like it could be more. I think especially original documents is very problematic because then we are getting into jurisdiction problems.

Avri says, including, but not limited to. Accepts Tatiana's proposal. Okay, the text will be in the footnote, including, but not limited to. What about that? So

that seems to be the consensus. So let me type that in Google Doc and then Bernie, I'm sure, is also noting that. So in the footnote with the document we say, including, but not limited to. Perfect.

So that seems to satisfy all sides.

I see Greg's hand is up.

>> GREG SHATAN: Thanks. Greg Shatan for the record. Actually, winding back just a little bit, I think my comment, maybe it's a bit redundant, we have to consider in each case what level we're at. This is the level of interpreting the bylaw, which is essentially a level of bylaws compliance or putting the force or [indiscernible] of the bylaw behind anything that goes into the framework. The next level is the second document we have, which is essentially guidance to implementation at the policy level. The instantiation of policy. Below that, there's what goes on in the actual policy discussions. I think nothing is excluded. All avenues are open. The question is just what is kind of essentially dictated or instructed by the bylaw itself as a bylaw. So that is kind of the, you know, what we have to -- just because something is excluded from one level, unless it's actually prohibited at that level, it's not excluded from being dealt with at the next level, the next level down. You know, a particular PDP could make all kinds of decisions relating to Human Rights beyond what is required by the bylaw. The bylaw is essentially a floor, not a ceiling. Thank you.

>> NIELS TEN OEVER: Thank you very much, Greg. I think we -- I would definitely agree with that. I think with that we are also pretty much done with discussing of this comment from the Government of Switzerland. So I propose we go to the next one. Is that a new hand, Greg, or an old one? That's an old one, I

think.

So let's go to the next point and that is regarding the interpretation of the section as required by applicable law be considered that this element should never be used as a means to [indiscernible] of Human Rights subjecting and/or constraining them to national legislation. It would be desirable to include expressly that this needs to comply with all applicable laws and respect internationally recognized Human Rights. Which is interesting because as we had an earlier discussion, I think Greg's previous comment makes a lot of sense, the bylaw is a floor, not a ceiling, and also in relation to the previous comment that in the bylaw where it says only states are bound by International Human Rights law, it's hard to see how this would work and what it would concretely mean. I'm very curious what other people think about these comment from the Government of Switzerland.

David, please come in.

>> DAVID MCAULEY: Niels, hi, it's David McAuley, did you just call me? I'm having audio difficulties?

>> NIELS TEN OEVER: Yes, I called you, David. Please come in.

>> DAVID MCAULEY: Thanks. And I apologize for this. I'm just struggling, my phone is really coming in and out. I just wanted to ask, what did we just agree with respect to including but not limited to? And the reason I ask is as I put in chat, I don't think we can have any language that goes beyond internationally recognized Human Rights as required by applicable law. Thank you.

>> NIELS TEN OEVER: Thank you very much, David. And that was generally also the sense that we had when we discussed this earlier and very

much in line with our other comments, so perhaps we don't need to discuss this in very much detail unless someone else might want to. It doesn't seem like it. So that means we have addressed the comments from the Government of Switzerland.

And now let's continue to get comments from the Government of the United Kingdom. So let's have a look at this comment. The arguments that the entirety of the U.N. guiding principles could not be cited as a reference point or some sort of guidance for interpreting ICANN's core value is readily understood and accepted. Much of the text is concerned with stage responsibilities. However, it is very disappointing that there is no reference in the framework to the U.N. guiding principles despite direct applicability of key elements of the second pillar relating to the corporate responsibilities. These relate, for example, to comments of due diligence ensuring transparency, the undertaking of impact assessment, correcting negative impact, and generally creating a culture to respect Human Rights [indiscernible] organization. As such they provide fundamental elements for universal best practice for effective adherence to Human Rights and, therefore, merit direct reference in the framework of interpretation. Even though I would not doubt the truthfulness of some of the observations made here by the Government of the UK, where the Government of the UK is pointing out is the implementation of the bylaw in which the UNGP would be useful and that is exactly what we are saying in the framework of interpretation, which is as we clearly discussed not the framework of implementation. And, thereby, there have been issues about chain responsibility and we did not want to make ICANN a de facto regulator of GTLDs and CCTLDs.

So I actually think that what we have done is in line with what the Government of the UK would like us maybe was not exactly the way any were suggesting here. What do you all think? And I'm just trying to channel the thoughts and get a discussion going because as Rapporteur, of course, I can assess the opinion of the group. So, group, please speak. And Tatiana -- there, great, Tatiana, please come in.

>> Hi, Tatiana Tropina speaking. I'm really, really sorry, but I'm speaking to my share on this. I think, again, going into Ruggie more than we did misses one point and the point is that I don't think that it would be a problem if ICANN organization would commit to Ruggie principle as business. I think that in terms of framework of interpretation and ICANN community, it's not even about interpretation versus implementation, it's also about how the different parts of the community will take into account Human Rights in their policymaking as consideration. This is what Ruggie principles can offer us, can bring us. Basically it's not up to GNS to seek for the remedy, not part of any of the community for advisory committee. Basically the main purpose of this framework is not only to make ICANN respect Human Rights, I think the main concern about Human Rights for ICANN and it's activities is how community is making policy with Human Rights. They do not provide policy instrument, they do provide operational principles. If we want, we can mention in the framework that ICANN can commit to Ruggie principles, fine with me, but using the hammer when we need a drill, using a set of operational principles when we need to think about policy when it comes to ICANN community, when it comes to supporting organizations and advisory committees, I don't think this will make us any good

because it is simply missing -- it misses the main point. It misses the policymaking point. So that's my opinion. I think that it comes, again, to the point that this framework has to be, it has to be covering three parts. ICANN organization, ICANN community, and ICANN Board. And if we are talking about Ruggie principles, they will be applicable to ICANN organization because they really have nothing to do with ICANN policy. Thank you.

>> NIELS TEN OEVER: Thank you very much, Tatiana. I think that would actually be interesting to see whether we could add that because that might be a head nod to the comments that we could add that ICANN the organization -- the corporation, could consider adopting the UNGPs. So in the sentence that is in the paragraph, consider how the interpretation and implementation of the bylaw [indiscernible] with existing and future ICANN policies and procedures, then we have when examining its operation, ICANN organization could also consider instruments such as HIRH to assess their impacts on Human Rights. We could make that, but this is just me thinking out loud, when examining its operation, ICANN the organization could also consider framework -- a framework like the UNGPs, as well as specific instruments such as Human Rights impact assessment, to assess the impacts on Human Rights and offer remediation.

Is that something that people would -- could live with? I think it would be nice if we have some changes in response to the comments because it might seem that we are not listening whatsoever. Is this something that people could see? I put it here in the Google Doc. I will read it again in total, as David is asking, so I'll put the full text here as well. So when examining its operation, ICANN the organization could also consider a framework like the UNGPs as well

as specific instruments such as HRIAs to assess their -- which it should be its impact -- that's a mistake -- organization is singular -- assess its impact on Human Rights and offer remediation. However, this is up to ICANN the organization -- however, this is -- it should be it is -- however, it is up to ICANN the organization to develop and implement. The results of such HRIAs should be reflected in ICANN's annual reporting. It seems we need to do some wordsmithing there, it is a bit of a mess. Yeah, it needs editing, especially the last sentence, we didn't even -- not last, but the sentence before that, however, it is up to ICANN the organization to develop and implement. If people are okay with adding the suggestion that ICANN the organization could use the UNGPs, but it needs to decide for itself, and HRIAs, then I will see if I can offer some text and share it with you on the list. Would that be okay?

Oh, I see there are hands up. Sorry, I was focused on my other screen.

Greg, please come in.

>> GREG SHATAN: Greg Shatan for the record. I guess I need to look at this in the document. My concern, again, has to do with kind of where it is in the layer cake. That if this is about interpreting the bylaw, you know, in other words, reading the bylaw in a consistent manner, I don't think this is the right place to do it. If we're going -- if we're in the part of our documentation where we're kind of giving guidance, which, you know, could or could not be used to move forward in implementing or in operationalizing the bylaw, then I'm more receptive. But I think we need to be careful in how we deal with the part of the document that says -- basically says what the bylaw says because the bylaw doesn't say any of that. It doesn't prohibit it. It doesn't -- I mean, it can't be guidance from us. It can't be -- it

can be guidance from the Government of the UK, but it's not a bylaw's interpretation. So we just need to be sure we're saying it in the right place and the right way or else we risk putting more into the bylaw than is actually in it. Thanks.

>> NIELS TEN OEVER: Thanks very much, Greg. And I very much agree. Do you think in the later part where we say, might/could, you know, so let's see, let's see if we can draft something. Or maybe David McAuley has a suggestion. David, please come in.

>> DAVID MCAULEY: Niels, thanks. David McAuley for the record. I tend to agree with Greg's initial comments as to where this fits in the layer cake. Remember we have made a reference to the fact that the SOs can consider HRIAs in their own operations. We need to see where this fits in and how this affects that. I also think that before we did something like this for ICANN the organization, we should get someone from ICANN the organization to give their views on this. This language could be quite a burden for them. I mean, there's a little bit of a misnomer in the Ruggie principles calling them guiding principles. Let me just read one part of the Ruggie principles and 13 says [reading] I'll skip section A, seek to prevent or mitigate adverse Human Rights impact that is are directly linked to their products or services by their business relationships, even if they have not contributed to those impacts. And we all know that at least by strong implications, Human Rights claims may be recognizable as claims to be brought at IRP and a lawyer can take that language and make it into an obligation. We need to be careful here is what I'm saying. I've said many times and I tend to strongly believe this, we should not boil the ocean on the ICANN's Human Rights.

I'm worried with the language you are drafting. I think it would take very careful drafting and looking at how it impacts other parts of the document. Thank you.

>> NIELS TEN OEVER: Thanks very much, David. Tatiana, please come in.

>> Thank you very much. Everyone knows here that I'm not a big -- I'm not a fan of Ruggie at all, I'm a strong opponent of Ruggie especially when it comes to ICANN. But I also do believe that if we are to mention them in the framework interpretation at all, it hurts much less to mention and say that ICANN as an organization might in the future consider Ruggie principles as useful guidance, might consider, and leave it to the ICANN organization to decide than make any broad interpretation of Ruggie principles. I do believe if we are talking about ICANN Org, it's even more narrow than what we already put in the framework interpretation. But actually, I also do believe that what is already in the framework of interpretation was agreed between all of us. It was a consensus language. And here I also agree with David, that why are we going to break it again and go into all these Ruggie circles. We have been there already. I think we've done this. I think probably the best idea would be to reject this comment from the UK Government because we discussed it so many times. But after I thought about this many times, I also think that if we're talking about Ruggie and the ICANN organization and their consideration of whether to commit to Ruggie or not because otherwise they have don't implications at all, it's all under organizational risk. Thank you.

>> NIELS TEN OEVER: Thank you very much, Tatiana. So we will -- oh, Bernie, has his hand up. Bernie, please come in.

>> BERNARD TURCOTTE: Thank you, Niels. I can't speak officially for

ICANN the organization, but I'm in line with what David and Tatiana have said. And if this language is not very carefully crafted, I think there would be significant concern and that would be really unfortunate at this point. Thank you.

>> NIELS TEN OEVER: Okay. So am I hearing it well that perhaps the suggestion made by Tatiana of adding the text that ICANN might consider adopting a UNGP down the road will create more problems than it would solve? Or are we going to work a bit on the text on the mailing list? I don't want to push anything on anyone. I'm just trying to listen what people are saying.

What we do not have, and I'm responding to Tatiana who says, I don't believe it will create problems, but I believe we already have Ruggie and it's enough. What I do like is the comment that you just made that there's a difference between ICANN the organization and ICANN the community. And the UN guiding principles are not relevant for the community, but it could be relevant for ICANN the organization. I kinds of like the differentiation and I think it would help if we would add it. So if we could play a bit with it on the mailing list this coming week, I think it would be great. And if we just consider and discussing it, I think it would be good because the public comments are there to consider them. And that, of course, doesn't mean we are adding it. So let's work a bit on the text. I'll propose that we need to work on the last sentence any how because it's a bits of a mess.

Hi, Avri -- Avri is saying, I am strongly worried about constant effort to weaken reference to the U.N. guiding principles. I think we are working on adding a reference to the guiding principles. I don't think there's a concern to weaken the language. I think quite the opposite.

Okay, so we have a clear path forward for that comment. So let's see, let's go to the next comment of the UK Government. And that's the last comment of the UK Government, which is great because we have 12 minutes left. Furthermore, if these UN guiding principles are not directly cross-referenced in part by the framework of interpretation, it would be a lost opportunity for the ICANN community to be a global transnational beacon for advancing corporate respect for Human Rights.

I think this could also then be addressed by the text that we're going to work on on the list. So let's see if we can work a bit on that.

So, actually, I think -- ah, there was -- Bernie is asking something, I had the previous comments on the before last UK comment. Sorry, Bernie, I do not understand exactly your comment there.

>> BERNARD TURCOTTE: The last discussion we just closed, I had it as referring to the before last UK comment and not -- the one before that and not the before last UK comment. Now I may have gotten that wrong, but the comments we just finished I had associated with, and just trying to keep that clear, with the comment that starts from the UK of -- with the first UK comment. So I was still in the first UK comment. Maybe somewhere in the middle of there we switched to the second one and I didn't notice it.

>> NIELS TEN OEVER: You are right. We skipped one. We skipped the last one on the page. Thanks very much, Bernie.

It is the comment that reads, given the private sector-led multi-stakeholder Constitution of ICANN there seems to be no inherent disruptive conflict or inconsistency created by reference to these elements in the universal accepted

U.N. guiding principles. It is hoped, therefore, that? The course of finalizing the framework of interpretation following the current public consultation, there will be further consideration of the applicability of those elements of corporate responsibility contained in the U.N. guiding principles on business and human rights and of the value of their due reference and cited in the final document as an instrument for all SOs and ACs-including the GAC [Reading]. And Avri, think that's a good point. And that it applies only to the corporation. Avri, how would you like to marry that? Avri says only apply it to the corporation. I think we will try to do and make a differentiation and come up with concrete text on that on the mailing list in the coming week.

So that's good that we have a consensus there. And I think that's a very nice consensus that we -- there's an addition of something we did not have, so I'm very grateful for that.

So now we go to the comment of Ricardo Holmquist. We had looked at that, the balancing of core values and we have addressed that before, that it is not for us to change the nature of the balancing and the different prioritization of the core values because that is laid out in the bylaws.

And then there was a suggestion by Shiva Kanwar --

>> Niels?

>> NIELS TEN OEVER: Yes?

>> BERNARD TURCOTTE: I'm sorry. So we just finished -- I entered the comment on the before last UK comment. The last UK comment, we seem to have skipped over. I agree that it's covered by the previous points, I just want to make sure we're all okay with that.

>> NIELS TEN OEVER: Yeah, I read it before I read the previous one.

>> BERNARD TURCOTTE: Okay.

>> NIELS TEN OEVER: So that's why.

>> BERNARD TURCOTTE: So before the previous comment. Thank you.

Sorry.

>> NIELS TEN OEVER: Perfect. Then the comment of Shiva Kanwar, we've already had some -- David said he is lost. David, we are at the last point of Shiva Kanwar. We have discussed all of the points of the UK Government.

>> DAVID MCAULEY: Niels can I make a comment? It's David McAuley.

>> NIELS TEN OEVER: David, please come in.

>> DAVID MCAULEY: When I said that, I was referring to the conversation you and Bernie had about the last comments, et cetera. With respect to the one before that, I just made a comment in chat. I'm not sure I'm part of that consensus that you mentioned, but it depends on the language that we come up with that's going to address it. Thank you.

>> NIELS TEN OEVER: Yes. Fully agreed. No, no, no decision has been made except the decision that we will work to see if we can build some text saying that ICANN organization might consider the U.N. guiding principles, but that it's up to the ICANN organization to decide that and not for the community because the community is not a corporation. So something like that, but we'll play with that on the list. We decided that we will try.

And then the last comment on Shiva Kanwar, we have been talking about that a bit, so let's see if we have language we need to work on that. Sorry, let me just read the comment. On page 6 regarding considering which specific Human

Rights conventions or other instruments [Reading]. Tatiana said, I thought we commented on Shiva's comment last time. Yes, we did, but now we are drawing up the comments. So the time before we did a heat map and now we are coming up with concrete comments. We have dealt with all of the comments and responses thus far, except for the one we just suggested text for. So now we're checking that we do need to change text for this one. So we're trying to find consensus in doing careful analysis of the comments.

So Shiva would like to propose in the event of a conflict between any guiding principles and the ICANN bylaw provision or article of incorporation the first thing to be down should be an attempt to reconcile [Reading].

Tatiana, you have had a clear opinion about this. Could you summarize your opinion? And I think David as well.

David, would you say --.

>> DAVID MCAULEY: I'm sorry, I was distracted for a second. Could you ask me the question again?

>> NIELS TEN OEVER: Shiva Kanwar asked if we could add text so where we say the articles of incorporation between the ICANN bylaws and anything else will always be -- the bylaws will always prevail and Shiva is suggesting that we come up with an attempt to reconcile them. Is it something that we should add or do or?

>> DAVID MCAULEY: Well, personally, I feel that any time there's a conflict or apparent conflict between documents it always makes sense to reconcile them. This is me speaking personally, the document that I think is the governing document, the baseline to which you try and conform things are the bylaws.

Excuse me. So that's my opinion. I have no problem with trying to rationalize things to see if they make, you know, if they are consistent with the bylaws, but to me the bylaws are the ultimate authority. Thank you.

>> NIELS TEN OEVER: Thank you very much, David.

Greg's hand is up. Greg, please come in.

>> GREG SHATAN: I generally agree with David. Greg Shatan for the record. This misconstrues the very idea of bylaws. And the last thing we can do or much less recommend is that the guiding principles and the [indiscernible] because they are clearly not within kind of the governance structure of ICANN. It's not even, you know, open to debate. I agree also that if the bylaws -- if consistent with the bylaws a -- part of the problem here is, you know, how -- what length do you want to go on in talking about a conflict? You know, it's not necessarily, it's not binary at any given point. But what has to happen is you can't compromise the bylaws. You can try to be consistent with the bylaws, but when you actually have a conflict, first you can try to attempt to resolve the conflict so it's consistent with the bylaws, but ultimately the bylaws need to prevail. So I'm not -- I really think that essentially as a matter of corporate governance is just fundamentally flawed. I don't want to give the idea that we're saying that the bylaws mean we should give the back of the hand to any guiding principles that anybody attempts to invoke, but it's really up to anybody invoking a guiding principles or anything else to show that it is consistent with ICANN's governing documents. That's practice for what happens. But there can't be a kind of equal weighing of the two that reflects the essentials of both positions. The spirit of the bylaws is exactly talked about, unfortunately, you know, bylaws, you know, just

can't be reduced to spirit. They need to be observed as bylaws. Thanks.

>> NIELS TEN OEVER: Thank you very much, Greg.

And we are at the top of the hour. We aren't done with the last comment, but that gives us a very clear indication for discussion for the next time. So Bernie will compile the comments thus far. I will share some text suggestions on the list for the previously discussed items. And this comment from Shiva Kanwar we can discuss on the list or in next meeting and we can start next time when we discuss with Tatiana if she then remembers her point. So thank you all very much. It's great working with you on this and I feel we're very close to ending this and it's been a great process. And we're learning still every step, so I'm very grateful for your input and intellectual flexibility. Thanks, you all, have a great evening or afternoon, depending on where you are. Bye all!

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