
HUMAN RIGHTS SUBGROUP MEETING
Tuesday, August 15, 2017 - 19:00 to 20:00

[This meeting is now being recorded.]

>> Good evening everyone and welcome to another meeting of the cross community working group on enhancing ICANN connectability work sing 2. 33nd meeting. And I think we can rejoice in having worked together so constructively over quite some time. We got the know each other people from all parts of the world making policy together in the multi stakeholder model. Every time it's an honor for me to be able the facilitate the meeting of great minds.

Here we are on August 15th on 1900. So go through our agenda and we will start as always with the administrative area.

So we start with roll call. ICANN will you be so kind to take roll call from the Adobe connect room. And people who are on the call and not in the Adobe connect room, please make yourself known for the archives. Thanks very much.

We got apologies from Greg Shaton and Marcus Kumer but we still have quite a quorum in the room. So even though it's sad that Bustian and Greg and Marcus is not with us, we still have quite some people to discuss among ourselves.

And we have apologies from Ikmas too. Okay, thanks so much.

So, we still have quite some people in the call.

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Does anyone on the call have an update to their statement of interest?

No? No updates to statement of interest?

Then let's do some agenda. We have review of the proposed change by the drafting team. And then we can discuss how we would approach the drafting of a statement of our review of the public comment to CCWG. Could people who are not speaking please be so kind to mute their microphones. And then we would continue with the any other business, if we get that far.

Do does anyone have a suggestion for that?

No? So that might seem exactly the way to go forward. But I have just asked Bernard to prepare the draft text from the drafting team so we can pull it up the screen. Bernard is still preparing that. And in the meantime, I can share with you this link in the chat. And that is the announcement of the request for proposals of human rights impact assessments for ICANN organization. Which means that ICANN organization has launched a tender for a third party to conduct a independent internal human rights assessment of ICANN's organizational operations.

That's quite an interesting development. The detailed information can be found in the link I just shared.

And even though I another this group have direct influence or this, I thought it might be of interest to many of you, to share it here.

And I hope you will also share it with people like yourselves who are acquainted with doing human rights impacts assessments.

So, that was that. And I see Bernard productive as always, has got the text off of the drafting team to screen. And I see David McAuley's hand is up. David, please come in.

>> DAVID McAULEY: Speaking for the record. I wanted to introduce this language. I was a member of the drafting edema long with Tatiana and Anne and Greg and Matthew Shearers and you asked I think last week if someone would try to work on the language that you initially proposed. And it was all with a view to addressing comments. Mostly especially from three governments Brazil and the UK and I have taken to heart the emails that came in after the text was posted around a couple of hours ago. Especially from Kavous and Jorge. And can I want to assure them, that the people on the drafting team did seriously consider different alternatives. Including some reference to remediation and some reference to ruby. But I think we could not come to that. Now the drafting team is not special that in the sense it's broadly across the it's volunteers. We didn't reach anything except what you see in front of you.

I can only speak personally now is my concern with the ruby pins spells that the ruby principles don't apply to ICANN. The ruby principles speak about dealing with relationships written broadly. It also deals with remediation. The worry is that that could get to the content level or other levels beyond ICANN's mission. So I wanted to assure the people that were concerned about biased on to the part of the drafting theme we did our best, we looked at alternatives and this is what we came up with. If hopefully it will be of some interest. Whether it's solves or problem, that's for the group to say. So thanks very much Neil.

>> NIELS TEN OEVER: Thank you very much David and other members of the drafting team for working on this. Of course it is all a work of volunteers, of people that come together that look

to find consensus it doesn't mean we agree all the time. But hopefully we will get something better out of it. And I am sure Kavouss will help us with that. Kavouss please come in.

Had.

>> KAVOUSS ARASTEH: Thank you very much. And thanks to David and his team or colleagues for collaborate. I speak slowly because captioner have not totally captioned what I said.

They caption incomplete sentence, broken sentence and inappropriate sentence.

I don't [indiscernible] to currently and respectfully carefully listen to what I'm saying and caption what I'm saying.

My first question to the team, whoever would be the speaker, is to what extent this text capture the views of those chief commenters that they have commented in the public comment.

After that, we need to go to those chief commenter and ask them whether, according to what the team leader said, their views have been captured. A and B, whether they agree with this compromise text. And then, we go forward to see what our reviews of others including mine. So my question is now formulated. [indiscernible] kindly go ahead with the question I have raised. Thank you.

>> Thank you very much Kavouss. Who would like to respond?

David?

Please come in.

>> DAVID McAULEY: Neil, thank you David McAuley again. I just heard the first question. Then my attention was diverted. I believe Kavouss asked do we believe we captured the comments. Obviously not. As I believe the comments were looking for reference to ruby and the people on the drafting team, the volunteers to drafting team, we didn't see the case for that.

For reasons well in my case, for reasons I said before.

But we didn't see that as our mission. What we and I believe I'm speaking for the group but then Tatiana and others would correct me if I'm wrong we were charged to take the text on the table last week and see if we could come up with some way to create a bridge to a compromise and then as I said before, this is the language that we agreed upon and we didn't think necessarily that it would satisfy those that were looking for a compromise. But again I'm speaking personally and others can weigh in as well.

Thank you.

>> NIELS TEN OEVER: Thanks so much David. So please come in. Thank you very much [indiscernible] speaking for the record Tatiana speaking. I believe this is the notion behind what was drafted. A few remarks by making the language very broad and talking about the mechanism to assess in human rights I can deduct in human rights we didn't exclude anything. We made it very broad. So I can use human rights in assessment. We see the announcement for posting the link. I can commit to ragged or consider any of the ragged transcripts or any mechanisms in common years because there was discussions in the Internet and rights of DNS and so on. If something comes up again, why not? I mean we are leaving it blank and leaving it up to ICANN to decide. And I believe we address one of the main points of discussion, which was I think raised on two or three calls that it is only up to ICANN to decide which mechanism

and which framework they are going to apply when they are going to assess ICANN's inductive human rights. I also believe that I might be better to voice what mighty shares wrote on the lease because I'm totally in agreement with him. So he wrote about this text as explain in note that first of all ragged is just a framework not a Americanism and the scope of ragged we talk about call after call after call for already 1 year. It goes far beyond what is in the bylaw in the human rights and ICANN. And we all discussed it and we already agreed that we cannot really reach consensus and it's up to ICANN to decide. So it is reflected in the text. Then, as I told already, in my field reasons means these text rules out nothing. It's to say that it is up to ICANN to decide which two to use. And then, I don't believe and I believe that Matthew is also in agreement with me if I read his email that we are not really here to prescribe to ICANN any particular tool or mechanism because first of all it's outside of the hundred date of this group and I will strongly fight against such a prescription.

And we also talked about this fine line between interpretation and implementation. And I also believe that like developing what Matthew said in his email I also believe that once we live in adaptation open for ICANN, ICANN as an organization will be free to pick up ragged if they decide to do so. And of course one of the biggest questions is remedy and [indiscernible] a which was a initially proposed by various from this group. I believe they will in the initial text, Niels as well. With in the first call we discussed ragged in the first call last year remuneration was the biggest worry of this group because we don't know how it will effect business operation because I'm sorry because from my legal point of view a business rumination is not only from the contract it can be memorandum or the signing. It can be basically anything. And it would be very hard for us, and would be very dangerous for us to make such a blunt recommendation such a vague warning which might actually effect ICANN's operation to the

extent which we don't know when it comes to remediation and make both community and ICANN vulnerable and, also, the entire system of DNS vulnerable to any strange claims. Thank you very much.

>> NIELS TEN OEVER: Thanks so much. What might be good for us to see where we are, is ask Brenda and or Bernard, to pull up an overview of the original text the text that I couple together last time and the suggested text to see what the differences are. And I think we all said that if we cannot get agreement on a new text, that we will go back to the original one. But for that it might be good to see the three side by side. And while Brenda and Bernie are working on that and I think they have the magic to make that happen, in the meantime we will go to Kavouss. Please come in.

>> KAVOUSS ARASTEH: No I think Cheryl was before me. She asked before me for the floor. So please give her the floor and I'll come after her.

>> Okay Cheryl.

>> CHERYL LANGDON ORR: Can okay but great to hear you.

Kavouss please continue.

>> KAVOUSS ARASTEH: Should on I go ahead or wait for her.

>> CHERYL LANGDON-ORR: No you go ahead Kavouss.

>> KAVOUSS ARASTEH: I think first of all I count the minutes. We should not be more than three minutes. They are too long, the previous one. I don't see any sign of the public comment in this text. So it is not acceptable to me and I refuse that and I oppose the draft. Thank you.

>> NIELS TEN OEVER: Thank you Kavouss.

Brenda, have you got the document that

>> BERNARD TURCOTTE: Another two minutes and we will have that up for you.

>> That's my bad sorry I'm over asking, I know.

In the meantime, I think David, David's hand is up. That's good. So I will not say more things than I should that will not bring me in trouble. That's good. David please come in.

>> DAVID McAULEY: Niels, thank you. We have a brief hiatus here. I want to underscore that I think Tatiana made some good points. That ICANN remains free within its discretion to apply these things and my personal thought is reference to rube ease is a specific reference to ruby in some sort is something an IRP panel can turn into a requirement. We must understand these things maybe tested at IRP. Thank you for letting me the time to make that addition and thank you to that Tatiana for making that comment.

>> Thanks David for bringing that risk around.

I think we originally had a mention of human rights impact assessment. Brenda has the different document up now.

Even though I am starting to intuitively feel that we might fall back original text. So we have three.

We had initial text. Which was when examining it's operations ICANN organization can consider instruments such as human rights impact assessment to assess the impact on human

rights. However it is up to ICANN organization to develop and implement. The results of such a straight should be reflected in ICANN's annual reporting. Then the one we that led to quite significant discussion last week, was when examining it's interim operations the ICANN organization could consider using a framework like the UNDPs like specific instruments like try it's a to impact human rights and offer remediation but it's up to ICANN organization to decide the most appropriate framework and instruments to do this. And the instrument and analysis should be in ICANN's annual reporting.

There's a lot of should's and could's and may's in this here. This was still seen as too strong and now what is proposed is when examining its internal operations, ICANN organization could, if it so chooses, consider using a mechanism to assess it's impact on human rights. Whether and if so what mechanism to choose is solely up to irk can organization to decide. No such says. Should directly or indirectly impact gTLD policy formation or execution whilst being fully consistent in the existing processes and protocols and results of the organization's analysis should be reflected in it's the annual reporting.

We have the three texts side by side here and we have two hands up Kavouss he please come in.

>> KAVOUSS ARASTEH: Yes I think for the time limit it has been a practice that the [indiscernible] could not the speech longer than that and monopolies the floor. And it's only up to us, only the official member of the group, not someone else. To say whether we step out or step into after 5 minutes. So we should respect that.

I don't think we could agree with my any of this text. I like we should go back to initial text if United Kingdom, Brazil and Switzerland agreed with that. If not, we will send initial text first

to common from Switzerland, Brazil and United Kingdom without any text. Because we don't agree with this text. It is nothing [indiscernible] refer to the ruby principle at all. This is very vague and there's reference again to the gTLD and we don't have that one and we don't want any reference to any of the organizations. Thank you very much, less than 2 minutes. Thank you.

>> NIELS TEN OEVER: Thank you very much Kavouss. Tatiana please come in.

>> TATIANA: First of all I will I would like a clarification about the 5 minutes and where it came from. If there's a rule about 5 minutes I demand it be forced in the beginning of the call by or this group. Otherwise I consider it a personal attack against me and it's going to exclude me and my voice as a woman and a member of this group and as a member of the stakeholder group and I will consider submitting the complaint. Because this was not voiced at the beginning of the call. I cannot operate in the environment when I don't know the rules and then I'm being bashed for something I didn't know or doesn't do. So this is my first point. So please qualify about the 5 minute rule.

So secondly I want to know exactly on the record where the suspects came from. Who drafted is this?

Question to Niels, please clarify.

>> NIELS TEN OEVER: Thank you very much Tatiana and Kavouss. I think we still have a quiet broad group of people wanting to voice their opinions. They are known on the lines. So if we will just keep our comments as we have done thus far. I think we should be good. I think I've been the one who speak longest. I'll try to keep short. The text that is on top is the text that

comes from the document that we jointly drafted and that was up for public comment. That was the original text that we've worked on.

So Tatiana please come in. And oh, there was an old hand, Kavouss, please come in.

>> KAVOUSS ARASTEH: Sorry Niels I was just asking to 5 minutes. It has been used in cases of [indiscernible] several times. It has been used in SO and AC accountability several times. My intervention was interrupted several times because they said I'm exceeding 3 minutes. So I suggested in order to be sufficient to put 5 minutes is not addressing to any particular person. I said that we should have efficient work and that is 5 minutes. I don't think that is refer to any particular person or any particular individuals so on and so forth. I'm not making any difference. We are all equal. So my suggestion is that either we accept the initial text in UK, Switzerland or Brazil or we send initial text plus comment of UK and Brazil and Switzerland to CCWG. Thank you very much.

>> NIELS TEN OEVER: Thank you very much Kavouss.

If we are going the use rules that we need to have consensus on it and we don't have it then we also don't have along the lines so let's stick with the discussion at hand. Let's also stick with the discussion of this text and not what center CCWG, that's next disbound agenda point. So I think we can slowly come to the conclusion that we do not have consensus on the final text. So there were no major problems to initial text at all. We tried to improve it. Based on the comments. Apparently we cannot find consensus, perhaps we should know that. But perhaps Cheryl can help us find a way that we have not seen. Cheryl please come in.

Cheryl you might be on mute.

>> BRENDA BREWER: Cheryl, this is Brenda we are not able to hear you.

>> CHERYL LANGDON-ORR: Are you able to hear me now? I was going to say and take less than 45 minutes to do SO now I'm doubling my time to have two goes at it. I was going to suggest, that we do revert to the original text and we note with thanks the efforts played by the small ad hoc drafting team the try to accommodate issues raised by some of the commenters but really I don't think we can go further than that. And then I was finishing off by saying in this particular work team, I don't believe with the exception of one or two notable exceptions that anyone takes up too much time with their interventions and I think that reason for any such rule should be discussed. Thank you.

>> NIELS TEN OEVER: Thank you very much Cheryl.

Kavouss hand is up. Kavouss please come in.

>> KAVOUSS ARASTEH: Yes, I said at the very beginning at this meeting and previous meetings that if there's no agreement we should go back to initial text. But subject to the agreement of the commenters. So we have to hear from commenters. If commenters agree, that we go back to initial text, I personally and in personal capacity have no difficulty with the initial text as it was before, before this meeting and many other meetings. Just at the previous many, many previous meetings. Initial text that was agreed at your group before public comments. But subject to that given to those of the countries and we have to respect them. Thank you.

>> NIELS TEN OEVER: Okay. So it seems we have a group consensus as we go back to the initial text that we had during public consultation. So, that means that we go back to the consensus text where we were. So let's go back to the agenda. Would you be so kind to pull it up Brenda.

So except for the addition that the two footnotes have added, not limited to, we have no changes to the text that was drafted. So that means we need to explain to the CCWG that we considered the public comments but haven't made radical changes except for the two changes to the footnotes and we need to give a reasoning for that.

How would the group propose to draft this response?

I see Kavouss hand is up. Kavouss please come in.

>> KAVOUSS ARASTEH: Yes indeed. I think we should mention that the group considered the public comments received if you want to give the name, give the name. If you don't want don't give your name. And I think after a lot of effort and discussion and debate, they propose amendment was not agreed and the meeting had decided to go back to initial text. However seeking the views of the 3 commenters, we have to seek the views. When they agree or not agree. If they don't agree they have the right to come back another CCWG and raise the issue again. Please kindly consider the views. We could not say we don't agree. I don't know who from them. Only I see Mark is on the list. And two others they are not. So we have to seek an agreement. Please. Thank you.

>> Thank you very much Kavouss. Within these group we can only seek con silence within our group. It would be great if consensus within our group it would be great if others join us in the group but I'm sure there will be representatives in the CCWG so let's see where we can build from here and go ahead.

I think Bernie made a pretty good overview of the decisions this group has made when reviewing the document. So perhaps we can use that document, the official positions as we

made in our group at the basis of a of our response to the CCWG including explicit thanks for the work people have done within this group as well as thanks for the commenters that have been so gracious with their time and attention to look at our work.

How do people feel about that?

Does anyone have objections to this approach?

I see no objections.

Then, the next question would be, would you like me to draft that in collaboration with Bernie. Or would the drafting team prefer to have a staff edit. For me, both is totally okay.

I see Kavouss hand is up. Kavouss come in.

>> KAVOUSS ARASTEH: Yes, I have no problem that you and Bernie get in there and make that text but I see Mark Caldwell on the list. And I would like to know what is his view ongoing back to initial text before public comments. Because that text was over-written by the UK comments. If he agrees with that can and the other two people, Brazil and with Switzerland don't have any problem at CCWG I personally don't have any [indiscernible] with the initial text before CCWG. Thank you. Before the public comment I'm sorry. Before the public comments. Sorry about that.

>> NIELS TEN OEVER: Thank you very much Kavouss. I don't see Marc's hand up. So I think we will continue. I see that Mark is busy. Greg is not on the call. I will try to work with Bernie on such a text. And then release it shortly. So the drafting team and all this has ample time to

study and respond and then we can discuss that on next week's call. How about that? Anyone have any objections against that approach?

No objections, mark will consult internally with Brazil and Switzerland. That's great. So that means we have done point 1, 2 and 3 upheaver agenda. And that leaves us to any other business.

Anyone have any other business?

Kavouss hand is up. Kavouss.

>> KAVOUSS ARASTEH: Yes Neil we are all equal. I don't think that any person or individual or any group has any supreme supremacy or any inferiority with respect to the others. We should not take that one has superior to another. I heard someone saying that I am this and you are that. I don't think that. You are all equal. And you are all colleagues. And we have to listen to each other. And we have to understand each other. Thank you very much.

>> NIELS TEN OEVER: That's very true. And luckily we have admitted no rules to do that. So it's another time in which we managed to make a step further towards a activated human rights bylaw. Thank you all very much for this discussion. Sometimes heated. I'm very happy we came to the next step. Bernie and I will work on a draft overview for the CCWG. And we will look forward to discuss this again next week. Thank you all. Have a great evening or great day. Bye.