HUMAN RIGHTS SUBGROUP MEETING
Tuesday, August 22, 2017 - 19:00 to 20:00

>> NIELS TEN OEVER: Hello everyone. I can start. Please be so kind to start the recording.

[This meeting is now being recorded]

>> NIELS TEN OEVER: Thank you so much ICANN staff. And welcome everyone on Accountability Work Stream 2, Meeting 33, August 22, 19:00 UTC on the dot.

We have an exciting agenda today. But first of all, ICANN staff can you take the roll call if a Adobe connect room and those that a on the phone brick but not in the Adobe room, please make yourself known for the phone call.

So that means we can go ahead we have received apologies from Matthew Shears and Jorge and Anne and is Kavouss and Rudi. We still have enough people in the call to go ahead.

Does anyone have an update to the statement of interest?

No updates to that? Then does anyone have any additions to the agenda. So agenda point for today, which is discussing the draft email and the document. Discussing our comment on the public comments for submission to the CCWG.

No additions to that, then let's get to it.

After our out of finalizing our discussion of the comments a last week, Bernie and I got an email to the CCWG together. And we also summarized the comments and or analysis and responses to that on the public comments in a document. Which we have shared with you about 6 days ago. And I've also just shared it with you today. As a small reminder I would like to go over the e mail with you today so we can agree on it and then share it with the CCWG so we can finalize this part of our work in the subgroup.

And while Brenda is reading my mind, and putting the email up there.

So the email reads as follows, the cross community working group on enhancing ICANN's accountability human rights subgroup would like to sincerely thank those that take the time and effort to submit public comments there should be an S in there I see that. Let me quickly open the document so I can make life improvements. So nothing gets lost.

Comments to the framework and interpretation and considerations document during the public comment period.

The subgroup has analyzed and discussed the comments at great length and came to the following conclusions: The mandate of the group does not include suggesting any changes to the ICANN bylaws, this includes the bylaws human rights. As such any comments that would return change the bylaws cannot be accepted. This is a case for comments recollecting changes in the hierarchy of core values as outlined in bylaws or for comments pertaining to the use of the term applicable law. Which is part of the ICANN's Human Rights Bylaws. The subgroup does not recognize to the documents mentioned in the footnotes are not necessarily an exhaustive list of human rights documents, and therefore the text has been changed from including to including but not limited on the for purpose of the clear tee.

Show finally no knew references to any instrument to you remit of ICANN's mission.

The human rights document is including it in this email for reference by the CCWG accountability work stream 2. This will be published on the public consultation website as part of the standard process. As such the human rights subgroup is submitting the final documentations for the human rights CCWG accountability work stream 2 given approval given submissions made and the minimal changes that have been made to the document to address here. The human rights subgroup does not believe that it's necessary that this version be posted for a further you round of public comments.

So as you can see, there is first of all, does anyone have any comments on this text?

Does anyone have does anyone have any dash any other additions?

No?

David McAuley. David, please come in.

>> DAVID McAULEY: Niels hi, David McAuley far the record. I have no addition to make and I think this sounds fine. But I wanted to make one point of clarification and it might have been my phone but I thought when you read through the document you may have added a word in paragraph 4. That's the paragraph that reads the subgroup does recognize that the documents mentioned in the footnotes are not necessarily an exhaustive list, etc.

I may I thought I heard you say the subgroup does not recognize that the documents so, my apologies if I got that wrong. I wanted to clarify that the paragraph reads that the subgroup

does recognize that the documents recognized in the footnote are not necessarily an exhaustive list, etc. That's all I have.

>> NIELS TEN OEVER: You're reading is exactly right David. Then I would like to ask when anyone has any problem of adding the text suggested by Jorge that the Brazilian government does not agree on this text to that email. Perhaps as a postscript at the bottom of the email and would like the on see when people would have a problem with that, Jorge.

Greg please come in.

>> GREG SHATAN: I didn't raise my hand with regard to that question. Just to state that I do support this language. I note Collin had one suggestion to leave out the word does in the fourth paragraph. So just to be the subgroup recognizes. I think that probably is you know just as clear if not a little clearer and avoids the chance of what happened happening as I'm as unlikely as that is. A little more vernacular too. As someone that is monolingual I have to have some skill set.

As regard to the for potential contribution by the Brazilian government, assuming that it's Jorge speaking for them, actually it would be, if Jorge is not speaking for the Brazilian government, it could be Thiago.

>> NIELS TEN OEVER: His responses are not endorsed or supported by the president of Switzerland that is a member of this subgroup.

>> GREG SHATAN: Right.

Well I guess, we need the look at the charter of the CCWG and see how it deals with non-consensus. I don't I believe there's a particular method, you know, I think everyone compromises to get to a particular point. I don't know if this is time or place for minority statement, but I do think we should look into this. And see what the proper protocol is for this. Thanks.

>> NIELS TEN OEVER: Thank you very much Greg. I see Bernie's hand is up. Bernie please come in.

>> BERNARD TURCOTTE: Thank you. Can you hear me?

>> NIELS TEN OEVER: Loud and clear Bernie thank you.

>> BERNARD TURCOTTE: Yeah, having drafted some of the documents from work stream 1 where there were some minority opinions, the way we dealt with this in the past is in the report itself to include the minority opinion as an annex to allow the dissenting group to have some room to without being overly [indiscernible] in the report or anything like that. But have some room to state their point. And in any and refer to that annex in the executive summary as such. So that's been the history on this. It's the groups decision whether to do this or not obviously. But, you certainly have 4 participants in 4 governments agreeing to this text. And so you should consider that when making your decision. I don't think it's very complicated to do. And it would probably allow us to get done.

Over to you. Thank you.

>> NIELS TEN OEVER: Thank you very much Bernie. I'm a bit what I'm not clear about, I don't think Brazil is a member of this subgroup. And I have not heard UK government speak out on

this. If I only heard from Jorge who is a member and Thiago who is not a member, as far as I know.

And Mark was still consulting. And Kavouss noted that we didn't have a consensus. So, you're proposed way forward is offering to them to add a minority statement to the CCWG report? Or the FOI that we would submit to the plenary?

>> BERNARD TURCOTTE: What I was suggesting is in the bundle FOI submission to the plenary as part of the official final report, that we have an annex that is that minority statement and we should offer that to them. And they can coordinate amongst themselves and see what they want to include as text in that. Then we would just throw it in into an annex is what I was proposing. I'll also note, that although we have not heard from Mark Karvel on this, when we were discussing the comments, let's just remember that Mark Karvel did provide a comment that he was extremely disappointed that the UK government's comment would not be considered in any way and this may be reprogressive when we consider our full proposal from work stream 2.

>> NIELS TEN OEVER: Thank you very much Bernie. David, please come in.

>> DAVID McAULEY: David for the record. As Bernie said and Cheryl indicated in the chat, I want to mention the one benefit of that is it allows those that differ to put in their own words the position. And I know that Jorge and Mark and the Brazilian representative have stated principle passionate positions and they can put them in their words it doesn't have to be long I'm sure rather than having us put a recovery note. I would note, from last week's call that Mark in the chat said he was going to discuss it with his own government. So I think the point he was

making is he may come back to us with a comment. And if we choose this way that Bernie outlined this would give Mark a way to put his wording on the report. So thanks Niels. Bye.

>> NIELS TEN OEVER: Thank you very much Mark Greg. Thank you very much David. That's also what I remembered from Mark. Greg please come in.

>> GREG SHATAN: I looked at the charter from work stream one to get the information about they are discussing as we probably all know but always helpful to remind, the chair or rapporteur in this case is responsible for designating positions for having full consensus or a position no minority disagrees or absent of objection or consensus and a position where small minority agree and most agree. And absence of full consensus chairs should allow for submission of minority viewpoints and these along with the consensus view should be included in the report.

One other thing is important to especially given your citation to Kavouss' statement. Any member that disagrees with the consensus level he is made by the chair or believes his or her contributions are being first ignored or discounted should discuss with the relevant chair or the SGCC co chairs and the group member should request an opportunity to discuss with the chairs of the charting organizations or their designated representatives.

So first, seems to me if we were sending this forward, this is in fact a consensus decision. And that Kavouss' statement that we do not have consensus is a disagreement with the consensus level designation that we have.

Since if we are not acting by full consensus or consensus we are not acting at all. So I think we need to be more clear that what in fact we have is consensus and what we have is a minority

where viewpoints can be included in the report and however it seems we have some latitude for how we do that. But we also need to be clear that there's a consensus and if anyone needs to challenge that consensus they need to bring it up to you and then you know move on to the co chairs. And as such. Because I think we endanger ourselves in a sense if we shy away from the idea that we actually made a decision here. And that in fact the open way to make a decision is by consensus. Or full consensus.

>> NIELS TEN OEVER: Greg I would like to confirm that we have a consensus here on the call on this document. I asked if people have opinions against this. And people do not seem to hold any point against this text or the analysis we shared and discussed so we have a consensus on this. But we can offer the other the people who do not agree with this to have their minority position as suggested by Bernie. So that seems to be a way forward. And then, quoting the text that you just that you just mentioned, I will send the message to the governments that they can come with that statement and then all together we can submit it to the CCWG.

Would that work for everyone?

Does anyone I see Cheryl's hand is up. Cheryl please come in.

>> CHERYL LANGDON-ORR: Thank you very much Niels. Cheryl for the record. I wanted to make sure with what you just said that we would unnecessarily likely to delay the passing on of our report to CCWG waiting for formal minority report to go to the CCWG. I believe that we can inform the CCWG that we expect a minority report of one or more governments and that will be passed on to them as soon as it can be dealt with for the terms of our charter and the charter of the CCWG. Thanks.

>> NIELS TEN OEVER: I see Bernie's hand is up. Person see shed a bit more light on the proper process for that.

>> BERNARD TURCOTTE: Unfortunately I find myself in a difficult position and rare one of this stream with Cheryl. A final report that is submitted to the primary is a final report. You can't submit it and say there will be a dissenting opinion, because what the plenary has the look at is the full report and is make a judgment, if it's going to pass the first and second reading. So unfortunately, I can't agree with that.

This being said, the if we don't make Wednesday this week, it's not the end of the world. We are well within our time boundary since the report itself has not significantly changed. I doubt the plenary will be looking for a second public comment. So, are if the report only gets submitted on the next date, which by the way, I can confirm right now would be mid September, then we are absolutely fine. So if you want to do that, there's no problem. The due date for the next for the plenary after August is 20 September and the plenary is slated for Wednesday, 27 September.

Thank you.

>> NIELS TEN OEVER: Thank you very much Bernie. That's very insightful. Cheryl's hand is up. Cheryl please come in.

>> CHERYL LANGDON-ORR: Thank you Niels Cheryl again. [indiscernible]

I think we need to look at this is as an option. I am also aware that it is perfectly possible for all members of the CCWG who are not part of our work track to CCWG deliberations, seek putting minority report regarding this matter. And at any matter. And so, there may be some

wiggle room if we were to annotate the lesser as would originally suggested earlier in today's call which you have seen notice that this is their final report but not yet everyone agrees. And of course in the rights of the government to jointly or severely put in minority reports, the CCWG is left to them. That doesn't mean we can't do exactly as David scoffers that and give up the particular and specific deadlines. But I do think that if so deadline can't be met, it would be extremely unfortunate that our report were to be delayed past the point of no return. So I just wanted to be real clear that we watch this extraordinarily closely. We could put in a finally report but just say not everyone disagrees not everyone agrees or we could do just what David has said and give a deadlines. With people are meeting deadlines.

Thank you.

>> NIELS TEN OEVER: Thank you very much Cheryl. I see Bernie's hand is up. Bernie please come in.

>> BERNARD TURCOTTE: Agree Greg was first I'll let him go first.

>> NIELS TEN OEVER: Greg please come in.

>> GREG SHATAN: Briefly, I think we may be getting wrapped around the axle a little bit. The unless we want to get really beholden to past practice, the charter just states that those that disagree should be given an opportunity well let's see exactly what it says. It says the chair should allow for the submission of minority viewpoints. But within could interpret that is that talking Jorge's statement as it is, is his submission of a minority viewpoint.

And just include it.

You I would also note that Jorge in email also con tested that what we have here is consensus. So, on the one hand we can either essentially ratify what we already have is consensus and what we have here is a submission of a minority viewpoint and we move on, or we should formally announce that may be again, that what we have here is consensus and that we are now allowing for the submission of minority viewpoints as per the charter due by X date.

Either way, I think we need to be clear that we have a consensus where a small minority disagrees. So, that's and either we you know state that we have consensus and ask for those viewpoints or we have already stated we have consensus and the viewpoint has been submitted. One choice will get us done faster. Another one might close the door tighter on objections to the standing of our report.

>> NIELS TEN OEVER: Bernie please come in.

>> BERNARD TURCOTTE: Thank you Niels. First of all, I will note something that's not in our charter. But has been part of our money practice since work stream 1 is the two reading approach. So, you know, yes this document was provided about a week ago, this is the first time the group has met to consider it.

So, technically although I really understand what Greg is saying, I'm also very conscious of affording everyone you know that we respect common practice. And common practice has been as we all know to do two readings on things.

So if we say that this is our first reading, we have consensus on the document, we understand unfortunately that it's not unanimous, and offer the possibility to integrate minority

statements into the final document. And that people have one week to do that. And we will finalize this as our second reading at the next meeting.

Then I think all is pretty much fair. And if people can't get their statements in, then that's too bad. And we've followed our two readings process, which is fairly common. But anyway this is my suggestion to you.

>> NIELS TEN OEVER: Bernie, that sounds excellent. And I think that is a very good way forward. So let's summarize. We are going to call this a finalized first reading of the documents we want to submit to the CCWG. Next week we are going to do the second reading. And in the meantime we are opening up for one week for minority statements to have them include in the submissions to the CCWG.

Anyone got any issues with that?

So people agree. I think that's an old hand from Bernie.

Yes that's gone. I see perfect. That means we are done with our first reading. We will go ahead and I will draft an email communicating this. Thank you all very much. Or does anyone have any other business they would like to discuss?

On none. Then thank you very much. Have a great remainder of the day. Or evening. And looking forward to seeing you all next week. Thank you very much for the constructive collaboration. Bye all.

>> Thank you, bye.