WP4 Meeting #5 (2 October @ 15:00 UTC)

Attendees:

Sub-group Members: Avri Doria, David Einhorn, David McAuley, Ellen Blackler, Gonzalo Navarro, Greg Shatan, Kavouss Arasteh, Leon Sanchez, Marilia Maciel, Mark Carvell, Matthew Shears, Niels ten Oever, Rudi Daniel, Tatiana Tropina   (14)

Staff: Alice Jansen, Bernie Turcotte, Brenda Brewer, Trang Nguyen

Apologies: Seun Ojedeji, Martin Boyle

Please let Brenda know if your name has been left off the list (attendees or apologies).

Transcript

- Transcript WP1 Meeting #5_2 October.doc
- Transcript WP1 Meeting #5_2 October.pdf

Recordings

- The Adobe Connect recording is available here: https://icann.adobeconnect.com/p99yszluotx/
- The audio recording is available here: http://audio.icann.org/gnso/gnso-wp4-02oct15-en.mp3

Notes

These high-level notes are designed to help you navigate through content of the call and do not substitute in any way the transcript.

There appears to be consensus position that ICANN should respect human rights. Most of the comments reflect concern on whether we should be able addressing this as a WS1 issue. Concerns also raised regarding mission: it may broaden ICANN's mission. Public comments take us through path of not being able to establish language in Bylaws but rather commit us to work as part of WS2.

Feedback:

- Is there consensus that we should not have language for WS1? That is not what I am reading.

--> We have consensus on addressing human rights. My reading is that while most of comments support having language included into bylaws as part of WS1, contributors raise concern that it may lead to consequences we should first analyze. It is unclear whether it should be a Bylaw change or if it is a commitment to further work at later stage.

- We have consensus on commitment. Next steps would be for us to provide framework.

We should provide a rationale and continue our work to frame discussion. We should first go through comments and if this group agrees to add language in Bylaws - we will move forward.

- We need to take into account comments and understand where points of divergence. We need to come up with proposed language.

- Let's aim for drafting Bylaw language instead of high level commitment after careful analysis of comments. Agreement on wording needed.

--> Many comments did not agree on cherry picking rights but also comments that we should refer to UN declaration of rights.

- We need to be focusing on public comment.

- We should be mindful of implementation.

MOVING FORWARD

- Review public comments and draft assessment paper

Volunteers: Ellen Blackler - Leon Sanchez - Marilia Maciel - Matthew Shears - David McAuley - Greg Shatan - Niels Ten Oever - Tatiana Tropina

- Assessment should be completed by Oct 7
- Discuss on call Oct 8
- Follow discussions online Oct 9-11
- Deliver Oct 12

Use J. Zuck template for analysis.

Volunteers should go through all 26 comments.

Additional call to be scheduled for Oct 6

- Suggestion to classify comments ourselves

- Suggestion to color code

Discussion of option 2 "Within its mission and in its operations, ICANN will be committed to respect internationally recognized fundamental human rights.

- There is difference between respect and protect.

- Will must be replaced with shall.

--> Lawyers will determine appropriate language.

- History around shall is being replaced. Recognize international fundamental rights.

- Fundamental is too narrow. General would cover all.

- Fundamental rights is a separate concept to human rights. Removing reference to fundamental is not something we discussed. Use internationally recognized human rights.

- Problematic when need to define fundamental.

- Confirm most international and neutral wording with lawyers

- The text of the Council of Europe Declaration on ICANN which I referred to on Saturday says internationally recognised human rights laws and standards."

--> This could be a compromise.

- It does not make reference to standards.

ACTION ITEM - Add wording - internationally recognised human rights laws and standards - and wait for our public comment assesment to establish next steps.

Action Items

ACTION ITEM - Add wording - internationally recognised human rights laws and standards - and wait for our public comment assesment to establish next steps.

Documents Presented

- To Dublin and beyond.pdf (page 4)

Chat Transcript

Brenda Brewer: (10/2/2015 09:56) Welcome to WP4 Meeting #5 on 2 October @ 15:00 UTC!   Please note that chat sessions are being archived and follow the ICANN Expected Standards of Behavior: http://www.icann.org/en/news/in-focus/accountability/expected-standards

Bernard Turcotte Staff Support: (10:00) yesx

Brenda Brewer: (10:00) Yes, loud and clear

David McAuley: (10:01) Thanks leon, hello all

David McAuley: (10:01) Leon, that is

Tatiana Tropina: (10:01) Hello all!

Marilia Maciel: (10:02) Hello everyone

David McAuley: (10:02) Agreed

Niels ten Oever: (10:02) Hi all

Matthew Shears: (10:02) Hello

Matthew Shears: (10:03) also need to look at the discussion points from LA

Marilia Maciel: (10:04) You are referrig to the spreadsheet, right, Leon? This is where the information is consolidated, I i suppose?

Niels ten Oever: (10:04) audio dropping for me

Tatiana Tropina: (10:05) no probme with audio here, clear and loud

Marilia Maciel: (10:05) It sounds ok here, Niels

Matthew Shears: (10:07) I assume that we have to make that proposal if that is what the comments suggest - but that should be as a result of our analysis of the comments right that are due oct 12

David McAuley: (10:07) I have read most, but not yet all, of the public comments

Greg Shatan: (10:08) Among the things not completely clear, Leon's name.

Tatiana Tropina: (10:08) Greg :D :D :D

Niels ten Oever: (10:09) Text 2 is mostly supported, right?

Tatiana Tropina: (10:10) Is tehre any specific reason why we are going for commitment + bylaw instead of proposing bylaw language? I am somehow against adding an additional layer

Tatiana Tropina: (10:10) ah, ok listening now, but not convinced yet.

David McAuley: (10:11) Greg, if we can settle on a doc like the Google doc would that constitute the framework that you suggest?

Matthew Shears: (10:12) think we need to follow the approach of analyzing the commetns etc. first

ellen blackler: (10:13) agree with Matthew

Tatiana Tropina: (10:13) Agree with Marilia!

Niels ten Oever: (10:15) +1 Marilia I also thought we would be getting feedback from the lawyers on our proposed text that most people agreed to in the comments.

Niels ten Oever: (10:19) yes

Marilia Maciel: (10:19) If the deadline to present the assessment of the comments is in Dublin, we need to have it done in advance. When is our deadline?

Matthew Shears: (10:20) oct 12

Leon Sanchez: (10:20) Yes Marilia. Deadline is October 12

Marilia Maciel: (10:21) Thanks. What is the approach to do it? We all read and who proposes the first draft of the assessment of comments?

Matthew Shears: (10:22) whoever volunteers - usually 2 or 3 persons

Tatiana Tropina: (10:22) if we have to refer to something. let's agree on this first instead of just working on the document blindly :)

Leon Sanchez: (10:23) Exactly Tatiana

David McAuley: (10:23) Agree w/Greg

Tatiana Tropina: (10:24) Greg, +1. It will be easy to draft the note after we decide on the language. It will just reflect the discussions

Matthew Shears: (10:24) yep

Tatiana Tropina: (10:25) How can we be sure that no controversial susbstance will be added?

Tatiana Tropina: (10:25) like the bylaw comes back from the lawyers and we see something we discussed and decided to drop

Matthew Shears: (10:26) legal counsel make suggestions the ccwg decides

Tatiana Tropina: (10:27) ok good

ellen blackler: (10:28) i will volunteer

Marilia Maciel: (10:29) I read most of them too. I can volunteer

Matthew Shears: (10:29) i can assist

Alice Jansen: (10:29) Volunteers: Ellen Blackler - Leon Sanchez - Marilia Maciel - Matthew Shears

Greg Shatan: (10:29) I am volunteering by use of a check mark.

Tatiana Tropina: (10:29) I can join the team too

Alice Jansen: (10:29) Volunteers: Ellen Blackler - Leon Sanchez - Marilia Maciel - Matthew Shears - David McAuley - Greg Shatan

Niels ten Oever: (10:29) I am also volunteering to assist

Alice Jansen: (10:30) Final list of volunteers Volunteers: Ellen Blackler - Leon Sanchez - Marilia Maciel - Matthew Shears - David McAuley - Greg Shatan - Niels Ten Oever

Tatiana Tropina: (10:30) Alice, could you add me as well? or is it final?

Alice Jansen: (10:30) yes :-) Happy to

Brenda Brewer: (10:30) Next WP4 Meeting : WP4 Meeting – Thursday, 8 October 2015 from 21:00 – 22:30 UTC

David McAuley: (10:30) OK - there are enough, including me, to do this in time - we need to divide effort somehow

Matthew Shears: (10:31) almost the whole WP

Marilia Maciel: (10:31) ok

David McAuley: (10:31) Thanks Leon - it makes sense to me

Tatiana Tropina: (10:31) The WP is much bigger :) at least the list on the web page

Matthew Shears: (10:32) just kidding

David McAuley: (10:32) Ticks will do that to you Greg

Bernard Turcotte Staff Support: (10:32) The one suggested by Jonathan Zuck

Tatiana Tropina: (10:32) Matthew :)

Bernard Turcotte Staff Support: (10:33) which has been agreed by WP1

Matthew Shears: (10:33) yes the Zuck model is a good one

Bernard Turcotte Staff Support: (10:33) we will provide the link

David McAuley: (10:33) Thanks Berniw

David McAuley: (10:33) Bernie, that is

Alice Jansen: (10:33) https://community.icann.org/download/attachments/52888421/Budget%20and%20Strategic%20Plan%20Veto-PC2%5B1%5D.docx?version=1&modificationDate=1443790131000&api=v2

Alice Jansen: (10:34) Link to J. Zuck template

Rudi Daniel: (10:36) will read the transcript as I have a meeting currenly..regards.

Matthew Shears: (10:36) well we will have to synthesize I suspect - so two step review commetns and then synthesize

David McAuley: (10:37) This sounds like a nearly objective task - can we divide the work up rather than all comment on all

Marilia Maciel: (10:38) David, there are not that many comments that directly mention this issue

Tatiana Tropina: (10:38) there are 8 people. Not so many comments. I think it's gonna be fine

Marilia Maciel: (10:38) For comparison purposes, I think there is value in everyone reading all comments

Marilia Maciel: (10:39) They are usually short

Tatiana Tropina: (10:39) Marilia +1

Greg Shatan: (10:40) Should each of us start with five comments and then move round robin to look at all the comments.

Matthew Shears: (10:40) yes - we should look at LA transcripts as well

Gonzalo Navarro: (10:40) Taht´s correct Leon

Gonzalo Navarro: (10:40) That´s

David McAuley: (10:42) Nice analogy

David McAuley: (10:42) Fore!

Alice Jansen: (10:42) Link to LA transcript - https://community.icann.org/download/attachments/56135592/Transcript%20CCWG-Accountability%20Meeting%20-%20Day%202-EN.pdf?version=1&modificationDate=1443723741000&api=v2

Greg Shatan: (10:42) We need to work between the calls!

Matthew Shears: (10:42) we could just copy paste the commetns intoi the google doc and then the Zuck model above and just start reviewing and drafting

Niels ten Oever: (10:43) Sounds very workable Matthew

Brenda Brewer: (10:43) 22:00 on is open on 6 Oct

Greg Shatan: (10:43) 19:00 is taken by WP1

Greg Shatan: (10:44) After that is fine.

Niels ten Oever: (10:44) 22h which timezone?

Marilia Maciel: (10:44) Yes, just a quick comment

Tatiana Tropina: (10:44) I am the only one agreeing :)

Greg Shatan: (10:44) UTC

David McAuley: (10:44) 22:00 UTC fine w me

kavouss arasteh: (10:44) Brenda

kavouss arasteh: (10:44) Pls advise to dial me up

Marilia Maciel: (10:44) And yes, I agree with the call, although I will not be able to make it

Brenda Brewer: (10:44) 10:00 UTC til 16:00 UTC has open time also

Tatiana Tropina: (10:44) 22 UTC? We are going to have fun here in Europe .

Greg Shatan: (10:45) UTC is the Official Time Zone of ICANN

Brenda Brewer: (10:45) will send Doodle momentarily

Greg Shatan: (10:46) Speaking of "fun", I note that the CCWG ACCT meeting that day is 06:00 UTC (2-4 am here in NYC).

David McAuley: (10:46) Correct, 2-4 am here in DC area

Tatiana Tropina: (10:46) after fun we from Europe had at LA meeting (time-zones-wise) nothing is scary

Bernard Turcotte Staff Support: (10:48) @Greg - yes the comments have to be broken down into the various

Bernard Turcotte Staff Support: (10:48) Not in Excel

Bernard Turcotte Staff Support: (10:49) re different colours

Greg Shatan: (10:51) So I see, same problem in Google Sheets

Greg Shatan: (10:51) My capacities are not far beyond those of mortal men.

Greg Shatan: (10:52) I cannot leap tall buildings in a single bound.

Greg Shatan: (10:52) I am not faster than a speeding locomotive.

Matthew Shears: (10:52) Greg :)

Tatiana Tropina: (10:54) Greg :D :D :D

Matthew Shears: (10:54) Leon - these are things that we would note in the analysis I would have thought

Matthew Shears: (10:57) understood

Bernard Turcotte Staff Support: (10:57) 2.   Within its mission and in it operations, ICANN will be committed to respect internationally recognized fundamental human rights.

kavouss arasteh 2: (10:58) Now is ok

kavouss arasteh 2: (10:58) TKS

David McAuley: (10:58) no objection here

David McAuley: (10:59) please mute

kavouss arasteh 2: (11:00) lEON

kavouss arasteh 2: (11:01) The verb " WILL " needs to be replaced by" SHALL"

Niels ten Oever: (11:03) But it is in the bylaws, the bylaws indicate the intentions/obligations of the entity, right?

kavouss arasteh 2: (11:03) due to the fact that the former one is deterministic and the latter is mandatory and legal

Tatiana Tropina: (11:03) I think any language will go through lawyers

Tatiana Tropina: (11:03) aw Leon is saying this

Greg Shatan: (11:04) Adams on Drafting: http://www.adamsdrafting.com/wp/wp-content/uploads/2014/09/Banishing-Shall-from-Business-Contracts-ACLA.pdf

Tatiana Tropina: (11:04) Thanks Greg. Very helpful for foreign lawyers.

kavouss arasteh 2: (11:04) Greg

Brenda Brewer: (11:04) Doodle poll sent...please respond as soon as you can! Thank you!

David McAuley: (11:05) Thanks for link, I shall have a read

kavouss arasteh 2: (11:05) I spent 40 yrears dealing will shall, should, will, would, may, might , and so on

kavouss arasteh 2: (11:05) I am serious about what I am telling

kavouss arasteh 2: (11:06) and also can or could or endeavour to or or endeavour doing ....

Leon Sanchez: (11:06) We get your point Kavouss. It is a serious one and will be taken into account. Thanks for bringing it up

Greg Shatan: (11:07) Let's deal withthe substance first, please.

David McAuley: (11:07) I am concerned with making a distinction between fuundamental and human rights - how would we know what fundamental rights are that are not also human rights?

Tatiana Tropina: (11:08) I think we earlier agreed to remove the word "fundamental"

Avri Doria: (11:08) sorry i am so late was chairing an IGF Best pratice forum meeting.

Tatiana Tropina: (11:08) But we seemed to agree on something many times so I lost track.

Matthew Shears: (11:08) we should remove fundamental

David McAuley: (11:09) We are adding a call Avri on Tuesday the 6th - will get a doodle poll in a bit

kavouss arasteh 2: (11:09) Mathieu+ 1

Greg Shatan: (11:09) As I understand it, fundamental rights are the corollary of human rights but applied to entities rather than humans.

Avri Doria: (11:09) unfortaunte tuesday /wednesday i wil miss most all meemtings as i have some very rare paying work i must attend to - a face to face meeting.

David McAuley: (11:09) Thanks Greg, need to give this more thought so I will not comment now

Niels ten Oever: (11:09) The drafting period of that doc has closed unfortunately

Avri Doria: (11:10) unless of course it is the eveing or the wee hours.

David McAuley: (11:10) May be in the evening - possibly 22:00 UTC

Tatiana Tropina: (11:10) Greg, if we go for "human" without fundamental, it will be broad enough to cover fundamental

Tatiana Tropina: (11:10) "human" are applicable to entities (court decisions, etc)

Greg Shatan: (11:11) I agree, we should not modify "human rights" by "fundamental." However, the issue of "fundamental rights" is separate.

Marilia Maciel: (11:11) Fundamental is usually used on national instruments, in a particular jurisdiction, like in a country's constitution. In international instruments we usually use human rights. I agree we should drop fundamental.

David McAuley: (11:11) we already have a CCWG call in wee hours 06:00 to 08:00 UTC

Tatiana Tropina: (11:11) Mrilia +1 thanks for such a clear point

Tatiana Tropina: (11:11) (sorry, typo, I meant Marilia)

ellen blackler: (11:11) agree

David McAuley: (11:11) Agreed

Marilia Maciel: (11:12) I did not understand Greg

David McAuley: (11:12) But I thought we were tasked with looking at human rights

Tatiana Tropina: (11:13) This is redundancy....

Tatiana Tropina: (11:13) It's like referring to a car and four wheels as a part of it

kavouss arasteh 2: (11:13) I do not agree with Greg proposal I hope he forgives me

kavouss arasteh 2: (11:14) aVRI+ 1

Leon Sanchez: (11:15) To me, speaking personally of course, human rights are in nature fundamental therefore would go with just human righte

Tatiana Tropina: (11:15) avri + 1

Tatiana Tropina: (11:15) in addition it's hard to define fundamental without referring to national jurisdictions' context

Tatiana Tropina: (11:16) +1 Marilia

Tatiana Tropina: (11:16) absolutely. It's odd to make reference to fundamental on the international level

Greg Shatan: (11:17) To be clear, I am not in favor of "fundamental human rights"

Tatiana Tropina: (11:17) Greg, absolutely, that's understood, but you want to separate and refer to both, but it doesn't make sense

Mark Carvell GAC - UK Govt: (11:18) The text of the Council of Europe Declaration on ICANN which I referred to on Saturday says internationally recognised human rights laws and standards."

Tatiana Tropina: (11:18) my first question when I see such a reference will be "an which jurisdiction does this refer to?"

David McAuley: (11:18) Thanks Mark - seems very good

Tatiana Tropina: (11:19) Looks good to me.

David McAuley: (11:19) I like that Leon

Marilia Maciel: (11:20) I would still prefer only human rights for being general and culture neutral

Tatiana Tropina: (11:21) I know that after public comments we better to consider references to documents but I am still not convinced it's a good idea.

Marilia Maciel: (11:21) Ok, sounds good

Tatiana Tropina: (11:22) To Human Rights conventions, etc

Marilia Maciel: (11:23) Thanks, Mark

Mark Carvell GAC - UK Govt: (11:24) Glad to be of some help!

David McAuley: (11:24) Agree w/Kavouss

David McAuley: (11:25) None here

Tatiana Tropina: (11:25) Leon, thanks a lot!

Bernard Turcotte Staff Support: (11:25) bye all

Tatiana Tropina: (11:25) bye all

Mark Carvell GAC - UK Govt: (11:25) Very helpful call - thanks to eveyone. Bye

David McAuley: (11:25) Thanks all, bye

Niels ten Oever: (11:25) Thanks

Marilia Maciel: (11:25) Bye!