

Human Rights Meeting #3 (30 August @ 19:00 UTC)

Attendees:

Sub-group Members: Aarti Bhavana, Agustina Callegari, Avri Doria, Brett Schaefer, Chris LaHatte, Corinne Cath, Daniel Appelman, Elizabeth Andrews, Erich Schieghofer, Farzaneh Badii, Griffin Barnett, Hibah Hussain, John Laprise, Kavouss Arasteh, Lousewies van der Laan, Markus Kummer, Matthew Shears, Niels ten Oever, Par Brumark, Paul McGrady, Rachel Pollack, Robin Gross, Ron da Silva, Rudi Daniel, Steve Metalitz, Tatiana Tropina, Vicky Sheckler (27)

Observers: Isabel Rutherford, Taylor Bentley

Staff: Bernie Turcotte, Karen Mulberry

Apologies: Bastiaan Goslings

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

Transcript

- [Word Doc](#)
- [PDF](#)

Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p8fhz3a62/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-hr-subgroup-30aug16-en.mp3>

Agenda

1. Administrivia

Roll call, absentees, Sols, etc

2. Discussion on: the Summary on what was agreed and discussed on human rights during WS1 https://docs.google.com/document/d/1rwpw9aSAqboRO2_rNkjMVJPOMYwmdr5B1_M_aNMoZb4/edit?usp=sharing

3. Discussion on: Concerns on possible impacts of Human Rights bylaw and Fol https://docs.google.com/document/d/1KcKGRJuhKEzCh2AZ8PPR_MofOQFBN8CMuJqTG_h9h4/edit?usp=sharing

4. Discussion on: Fol draft document

https://docs.google.com/document/d/1emqmzyB9_0vm6oKxhIWZ47L7lxcFKUBHVnkBYUOsA2Q/edit

5. AOB

Notes

1. Administrivia

Roll call, absentees, Sols, etc

- Dan Appleman phone only
- Nigel Roberts - excuses.

2. Discussion on: the Summary on what was agreed and discussed on human rights during WS1 https://docs.google.com/document/d/1rwpw9aSAqboRO2_rNkjMVJPOMYwmdr5B1_M_aNMoZb4/edit?usp=sharing

- Tatiana Tropina: no progress this week. Will simply add the text from the WS1 Final report.
- Niels ten Oever: Hope to complete this document next week.

3. Discussion on: Concerns on possible impacts of Human Rights bylaw and Fol https://docs.google.com/document/d/1KcKGRJuhKEzCh2AZ8PPR_MofOQFBN8CMuJqTG_h9h4/edit?usp=sharing

- Niels ten Oever: Given the sad news from Paul Twomey there has been no progress as expected. It would be great if we could keep adding concerns to this doc.
- Tatiana Tropina: I have been going through the records on the calls and chats to put them into the concerns doc but I am waiting for Paul because he was supposed to lead this one. but once Paul is back I will be ready with info :)

4. Discussion on: Fol draft document

https://docs.google.com/document/d/1emqmzyB9_0vm6oKxhIWZ47L7lxcFKUBHVnkBYUOsA2Q/edit

- Niels ten Oever: Should the Framework be a core value? We should ask this of ICANN legal as to what the implications of being core value imply. does anyone have an issue with this - no.

- Paul McGrady: Seems like we would want to ask the community that, rather than the lawyers.
- Tatiana Tropina: So basically you want to ask ICANN legal about this as a starting point for our further discussion?
- Kavous Arasteh: views of lawyers should not be privileged, everyone has input.
- Anne Aikman-Scalese: have no issue with asking ICANN legal. Still unclear what a human rights policy vs policy development activities in ICANN. Would such a human rights policy imply that ICANN would have to make a human rights assessment of the propose registry before contracting to delegate a TLD?
- Niels ten Oever: you should include these in the document.
- Tatiana Tropina: ICANN legal added the term core value and we should ask them why they did so.
- Niels ten Oever: any views on this?
- Paul McGrady: Agree. I'd like to know why they made that unilateral change, but I don't think we need them to define "core" for us.
- Farzaneh Badii: Let us find out who suggested using Core Value.
- Daniel Appelman: I disagree with separating policy from operations. That would weaken any human rights commitment we recommend as a policy matter. Operations should be consistent with policy.
- Niels Ten Oever: Will ask staff to pass on this question to ICANN legal - ACTION ITEM. Niels ten Oever: Question to ICANN legal: 'What is the rationale for the addition of 'core values' to the ICANN bylaws, and what are its legal and non-legal implications in your opinion, especially for the human rights bylaw?
- Niels Ten Oever: What is meant by International Human Rights? I have pasted several references in the document which could help with this.
- Tatiana Tropina: Uncertain that these instruments which are applicable to states are not applicable to ICANN. They can help shape of things for ICANN.
- Kavous Arasteh: We should go through these and see which parts could apply to ICANN.
- Tatiana Tropina: I think Kavouss misunderstood me Of course we should go through them I was clear about this. I am more than up for going through all the conventions.
- Anne Aikman-Scalese: to what parts of ICANN should Human rights apply? It would certainly include awarding a TLD. We should identify policies and procedures and activities in ICANN which would be subject to HR.
- Paul McGrady: starting with the principles and then look at how they apply is my approach - but we should end up in the same place.
- Markus Kummer: The Board was very worried about unintended consequences. the baseline for ICANN will probably remain the Ruge principals and which ones apply and see where we can go from there.
- **Avri Doria:** an explicit exhaustive list of operations?
- **Anne Aikman-Scalese:** @AVri - no - just certain test examples - how do Human Rights principles apply to specific activities of ICANN - a practical application of principles in certain examples of ICANN's operations.
- **Tatiana Tropina:** I think there has been some job done on this at the CCWP on human rights which might be interesting to look at, Niels, do you have anything to share on this?
- **Matthew Shears:** I would turn that around Ann and suggest that we need to look at ICANN's operations and determine very realistically and cautiously what might apply or not.
- **Matthew Shears:** this should not be about trying to see what fits - but rather what is appropriate - measured against other orgs and institutions perhaps
- Farzaneh Badii: What we need to consider what is in ICANN's scope. Does this imply that there are going to be contractual provisions for Human Rights in registry agreements? I think the ICANN responsibility stops at the string level (unclear what is meant by string level).
- Kavous Arasteh: Seems chair is unfair in analysing comments by participants.
- Anne Aikman-Scalese: @Niels - I think the document you linked presupposes a negative impact on Human Rights in all cases. For example, it states that there is a "right to use all words and names in domain names". There is actually no such right and the entire scheme of trademark protection for the new gTLDs demonstrates the balancing of freedom of expression against the right of the artistic community to protect its artistic creations. This is Article 19 versus Article 27 UDHR balancing. Article 27 says: (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
- Niels ten Oever: We will discuss this on the list. We should go on to the issue of Applicable Law. Do we want to relay this to the Jurisdiction subgroup.
- Kavous Arasteh: Leave to the Jurisdiction sub-group.,
- Niels ten Oever: Will contact Jurisdiction to advise we will wait on their results regarding this.
- Anne Aikman-Scalese 2: ICANN Legal should be asked what Human Rights Law is applicable to ICANN operations.
- **Niels ten Oever:** 2. 'What Human Rights Laws and/or Guidelines is or are applicable to which ICANN operations.'
- Anne Aikman-Scalese 2: should this be two separate questions. Which laws and then guidelines.
- Daniel Appelman: Getting the views of legal counsel is ok; but our own work this week should be to think about all relevant ICANN operations and activities and then discuss what human rights are implicated by them. Via mailing list and comments in the document.

5. AOB

Documents Presented

- [HR_Presentation Meeting 2.pdf](#)

Chat Transcript

Brenda Brewer: Good day all and welcome to WS2 Human Rights Subgroup Meeting #3 on 30 August 2016 @ 18:00 UTC!

Kavouss Arasteh: Good Day

Kavouss Arasteh: Brenda

Karen Mulberry: Hello

Kavouss Arasteh: Hello Karen

Karen Mulberry: Brenda is not on the call today, she is supporting another group

Kavouss Arasteh: No problem

Kavouss Arasteh:She also ,like you, deserve salute

Kavouss Arasteh:By tze way ,the meeting is schediuled on 19,00 hrs and NOT, 18.,00 UTC

Markus Kummer:Hi everyone

Bernard Turcotte Staff Support:hello all

Niels ten Oever:Welcome all

Kavouss Arasteh:dEAR sTAFF, pLS ADVISE NOT TO FORGET DIAL ME UP TONIGHT

Tatiana Tropina:hi everyone!

Niels ten Oever:Can everyone who is not speaking please mute their mic?

Kavouss Arasteh:once I am connected I will do .But I am not yet dialled up

rudi daniel:Rudi Daniel, hi all

Farzaneh Badii:Hi

Farzaneh Badii:oops

Tatiana Tropina:There are concerns in the Fol document

Farzaneh Badii:Farzanaeh and Kavouss

Tatiana Tropina:these two seems to be overlapping for now

Kavouss Arasteh:My mic is already muted

Kavouss Arasteh:it is

Tatiana Tropina:I have been going through teh records on the calls and chats to put them into the concerns doc but I am waiting for Paul because he was supposed to lead this one

John Laprise:Agreed

Tatiana Tropina:but once Paul is back I will be ready with info :)

Paul McGrady:What is the question? Isit the meaning of "core value"?

Anne Aikman-Scalese:@STAFF - could you please post the document itself soe we can have chat and document available together?

Paul McGrady:Seems like we would want to ask the community that, rather than the lawyers.

Tatiana Tropina:So basically you want to ask ICANN legal about this as a starting point for our further discussion?

Farzaneh Badii:what is "core value" is our question? hmm

Tatiana Tropina:I think Paul is right but it won't hurt to ask for legal opinion, but only as one of the points... I rather agree with Paul.

rudi daniel:I think k it is very necessary to get icann legal view very quickly

Matthew Shears:what is a core value - human rights or the Framework? and where specifically is it suggested that human rights and/or the Framework is a core value?

Tatiana Tropina:Anne +100

Niels ten Oever:@Staff could you please open this document on the screen:

https://docs.google.com/document/d/1emqmzyB9_0vm6oKxhIWZ47L7lxcFKUBHVnkBYUOs

A2Q/edit

Farzaneh Badii:so question for our own counsel? I mean ccwg council

rudi daniel:that is very hairy indeed

Farzaneh Badii:ICANN legal, or ccwg lawyers?

Robin Gross:I agree with Tatiana.

rudi daniel:thank yoellelent

Anne Aikman-Scalese:@ STAFF - can you please release the doc for scrolling?

rudi daniel:thank you excellent points

Niels ten Oever:Question to ICANN legal: 'What is the rationale for the addition of 'core values' to the ICANN bylaws, and what are its legal and non-legal implications in your opinion, especially for the human rights bylaw?

Farzaneh Badii:why human rights is the core value

Paul McGrady:Agree. I'd like to know why they made that unilateral change, but I don't think we need them to define "core" for us.

Daniel Appelman:I disagree with separating policy from operations. That would weaken any human rights commitment we recommend as a policy matter. Operations should be consistent with policy.

Anne Aikman-Scalese:I don't see any of the comments from the working document in this document as posted. There were numerous questions and comments.

Kavouss Arasteh:There is a strong echo or distortion

Kavouss Arasteh:I do not follow the comments

Tatiana Tropina:or may be the board? I can check the history

Tatiana Tropina:I think in the CCWG proposed draft we had only mission but my memory is fading.

Farzaneh Badii:no it's ok . go ahead

Tatiana Tropina:Daniel - I don't suggest separating them, I suggest separating concerns.

Tatiana Tropina:and then looking at them again :)

Vicky Sheckler:sorry - need to drop off early today

Karen Mulberry:Sorry about not having no comments as I need to post the doc as a pdf file so the edits do not show

Tatiana Tropina:but that was just a very rough thought - happy to drop this suggestion

Avri Doria:yeah, i have never found a way to print the suggested changes and comment on a drive doc. one of its few deficiencies.

Anne Aikman-Scalese:@ Karen - in future can you please create (or export) a pdf that actually contains the result of the work being done between calls?

Tatiana Tropina:I had a comment there!

Tatiana Tropina:No I wouldn't

Tatiana Tropina:I spoke too much - you can read my comment

Tatiana Tropina:OK I will speak.

Matthew Shears:+ 1 Tatiana

Tatiana Tropina:I think Kavouss misunderstood me

Tatiana Tropina:Of course we should go through them

Tatiana Tropina:I was clear about this. I am more than up for going through all the conventions.

Markus Kummer:trying to

Markus Kummer:can't unmute

Kavouss Arasteh:I did not misunderstand any one.

Kavouss Arasteh:I know who comes from whereh

Farzaneh Badii:Kavouss I can hear you typing please mute

Tatiana Tropina:Kavouss, I never said anything about new convention or anything.

Tatiana Tropina:And apparently I never said that we had to abandon them, I wanted to change Niels wording.

Kavouss Arasteh:We need to identify all relevant docs and then go through them and further identify the relevant part of these docs.

Kavouss Arasteh:We should not take them all

Kavouss Arasteh:That would be unmanageable

Daniel Appelman:Anne's comment is helpful--trying to tie particular human rights to specific actual ICANN responsibilities and activities.

Tatiana Tropina:Well we have the same attitude - I agree that we have to go through all the documents.

Avri Doria:an explicit exhaustive list of operations?

Tatiana Tropina:+1 to Ann.

Farzaneh Badii:yes hence looking at the scope and mission of ICANN might be more relevant now

Tatiana Tropina:I think Anne is very right.

Markus Kummer:can I try again...?

Farzaneh Badii:Markus was before me I don't know why he is after me now.

happy to give him my place

Anne Aikman-Scalese:@AVri - no - just certain test examples - how do Human Rights principles apply to specific activities of ICANN - a practical application of principles in certain examples of ICANN's operations.

Tatiana Tropina:I think there has been some job done on this at the CCWP on human rights which might be interesting to look at, Niels, do you have anything to share on this?

Kavouss Arasteh:I can not hear at all

Farzaneh Badii:turning up the volume helps

Avri Doria:typing is louder than Markus.

Matthew Shears:I would turn that around Ann and suggest that we need to look at ICANN's operations and determine very realistically and cautiously what might apply or not

Kavouss Arasteh:what volume

Niels ten Oever:@Anne- do you mean a more elaborate version of this:

https://community.icann.org/download/attachments/53772653/article19_ICANN_17

06_reviewed.png?version=1&modificationDate=1466841961000&api=v2 ?

Kavouss Arasteh:I here some sort of background hum

Matthew Shears:this should not be about trying to see what fits - but rather what is appropriate - measured against other orgs and institutions perhaps

Chris LaHatte:I need to apologise as I am travelling and cannot stay

Paul McGrady:ccTLD=sticky. But, if ccTLD operators are going to get a pass, I guess we need to at least discuss it rather than assume it.

Farzaneh Badii:Paul definitely

Farzaneh Badii:human rights within ICANN mission and scope

Anne Aikman-Scalese:@Niels - I think the document you linked presupposes a negative impact on Human Rights in all cases. For example, it states that there is a "right to use all words and names in domain names". There is actually no such right and the entire scheme of trademark protection for the new gTLDs demonstrates the balancing of freedom of expression against the right of the artistic community to protect its artistic creations. This is Article 19 versus Article 27 UDHR balancing. Article 27 says: (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Farzaneh Badii:mailing list might be better. people dont look at gdocs

Tatiana Tropina:I am for mailing list but will participate in anything that group will decide as appropriate

Paul McGrady:Mailing list is better than document. Hard to know how many times to check the document. I think at this point we can take the comments from the document and make a work plan from it,

Anne Aikman-Scalese:@Niels - it is possible that the categories you list under THEMES in your linked document could be a starting point for listing relevant parts of ICANN's operations.

Tatiana Tropina:Paul +1 - great argument for the mailing list

Farzaneh Badii:mailing list

Matthew Shears:I think we shoudl get back to adressing the first 4 points in the doc onthe screen at the moment

Paul McGrady:Mailing list helps ideas compete with each other.

Tatiana Tropina:we can list things in doc, but discussions like ccTLD can be brougth to the mailing list

Farzaneh Badii:I can

Matthew Shears:looking at a laundry list of treaties and other docs does not move the ball much

Tatiana Tropina:Agree with Matt.

Anne Aikman-Scalese 2:ICANN Legal should be asked what Human Rights Law is applicable to ICANN operations.

Farzaneh Badii:yes Anne

Tatiana Tropina:Absolutely, Anne +1

Matthew Shears:interesting question

Kavouss Arasteh:Fully agree with ANN

Farzaneh Badii:ICANN legal should be asked

Farzaneh Badii:but human rights law on what operation?

Matthew Shears:I suspect they are looking to this WG and the CCWP HR for insights

Farzaneh Badii:yes thanks Niels

Niels ten Oever:2. 'What Human Rights Laws and/or Guidelines is or are applicable to which ICANN operations.'

Daniel Appelman:Do you suggest that their answer would commit us to their limitations?

Farzaneh Badii:yes

Matthew Shears:good point Daniel

Farzaneh Badii:for me it would

Tatiana Tropina:Their answer certainly will allow for the decision whether we are going to commit to their limitations

John Laprise:Hmmm...what HR conventions has the USA signed & ratified?

Matthew Shears:I am not sure that this is a wise move at the moment - we are early in the process here

Lousewies van der Laan:maybe clarify whether you mean ICANN the community and ICANN the corporation, which needs to abide by US law already

Daniel Appelman:I would hope that we consider their answer as advisory only and not limiting our exploration.

Niels ten

Oever:[https://en.wikipedia.org/wiki/List_of_treaties_unsigned_or_unratified_](https://en.wikipedia.org/wiki/List_of_treaties_unsigned_or_unratified_by_the_United_States)

[by_the_United_States](https://en.wikipedia.org/wiki/List_of_treaties_unsigned_or_unratified_by_the_United_States)

Matthew Shears:agree

Tatiana Tropina:HR is not strong in the US. But I think what we missed in the document is the discussion in the WS1 on the applicable law. But I think ICANN legal can answer this question, our discussions on this were rather chaotic

Matthew Shears:I would be cautious in asking these of ICANN legal - perhaps ask CCWG's independent counsel

Matthew Shears:that is what they are for

John Laprise:@Matthew Might be useful to limit scope?

Tatiana Tropina:I am ok.

Farzaneh Badii:yes

Niels ten Oever:'What Human Rights Laws are applicable are applicable to which ICANN operations.' 'What Human Rights Guidelines are applicable to which ICANN operations.'

Paul McGrady:Yes, so long as we remember ICANN legal isn't the community.

Daniel Appelman:No harm in getting their views as long as we don't feel limited by them

Paul McGrady:+1 Daniel

Matthew Shears:+ 1 Farzi

Kavouss Arasteh:THERE IS A BACKGROUD HUM OR ECHO WHEN FARZANEH SPEAKING

Avri Doria:Kavvouss she is in a place where there is noise in the background.

Matthew Shears:Exactly what I was going to say - ask independent counsel

- if we have to ask at all

Avri Doria:agree with using external counsel.

Bernard Turcotte Staff Support:2 minute warning

Bernard Turcotte Staff Support:I have a comment regarding external counsel

Farzaneh Badii:ok Bernard

Matthew Shears:why are we asking these questions at this juncture?

Robin Gross:when does the legal committee become reconstituted?

Farzaneh Badii:oh I'm sorry Kavouss, I will intervene with imepccable voice quality in the future meetings

Robin Gross:I've thought that would have happened by now.

Matthew Shears:we have 4 questions to asnwer in the doc on the screen

Farzaneh Badii:Mathew I am a bit concerned too

Daniel Appelman:Getting the views of legal counsel is ok; but our own work this week should be to think about all relevant ICANN operations and activities and then discuss what human rights are implicated by them. Via mailing list and comments in the document.

Farzaneh Badii:who mentioned specific country ?

Daniel Appelman:Unless that has already been done.

Farzaneh Badii:Daniel, I agree

John Laprise:Disagree kavous: nonstarter: that

John Laprise:Disagree kavous: nonstarter: that's a rabbit hole of dissention

John Laprise:No consensus

Avri Doria:typing is louder than Markus again

Niels ten Oever:we hear you very faintly Markus

Farzaneh Badii:I can hear typing

Niels ten Oever:Can everyone who is not speaking please mute?

Anne Aikman-Scalese 2:I apologize but I do have to leave the discussion for another call. Thank you everyone.

Avri Doria:sounds like an angry hunt and peck. now we have two of the in harmony

Kavouss Arasteh:Niel, I oppose to talk about guidelinene one question and not twon

Paul McGrady:Very hard to hear.

John Laprise:Heard nothing

Farzaneh Badii:it's too early. lets give it more time before asking the question

Farzaneh Badii:yes that's fine . also not bad to send it to ccwg group as a whole

Tatiana Tropina:Farz+1

Matthew Shears:Niels I think we should focus on popints 1 to 4 on the screeen and postpone sending questions out to counsel whether ICANN or other

Brett Schaefer:What default is being used? Are we assuming a narrow perspective first, i.e. it is not included unless a specific reason or link to ICANN operations is clear? Or the opposite, i.e. that everythin gis included unless shown to be outside the mission?

Tatiana Tropina:bye all - thanks !

Farzaneh Badii:Brett we are gonna discuss that on the mailing list :)

Brett Schaefer:OK< I was in and out on thsi call.

Farzaneh Badii:I am gonna send the questions and start a converstation

Anne Aikman-Scalese 2:Agree with Dan Appleman re identifying ICANN operations and activities and related HR implications. I think Farzaneh is going to initiate this discussion on the list.

Markus Kummer:bye all - thanks!

Farzaneh Badii:ys Anne I will

Farzaneh Badii:bye

Erich Schweighofer:bye

Daniel Appelman:Thanks everyone

Lousewies van der Laan:bye

Farzaneh Badii:be lovely

Robin Gross:thanks Niels and all, bye

John Laprise:O&O

Pär Brumark (GAC Niue):Thx all! Bye!

Bernard Turcotte Staff Support:bye all