

Human Rights Meeting #7 (27 Sept @ 19:00 UTC)

Attendees:

Sub-group Members:

Andrew Mack, Anne Aikman-Scalese, Avri Doria, Bastiaan Goslings, Berry Cobb, Brett Schaefer, Cheryl Langdon-Orr, Chris LaHatte, Claudio Lucena, Daniel Appelman, David McAuley, Farzaneh Badii, Greg Shatan, Griffin Barnett, Herb Waye, Iren Borissova, Isabel Rutherford, Kavouss Arasteh, Markus Kummer, Matthew Shears, Niels ten Oever, Paloma Szerman, Paul McGrady, Samantha Eisner, Stefania Milan, Steve Metalitz, Tatiana Tropina, Vicky Shekler. (28)

Observers: Taylor RW Bentley (1)

Staff: Ari (Anne-Rachel Inne), Elizabeth Andrews, Bernard Turcotte, Brenda Brewer, Yvette Guigneaux. (5)

Apologies: Erich Schweighofer, Jorge Cancio.

*** If your name is missing from attendance or apology, please send note to acct-staff@icann.org ***

Transcript

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

Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/p1c9n0r68mo/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-hr-subgroup-27sep16-en.mp3>

Agenda

1. Administrivia

Roll call, absentees, Sols, etc

2. Analysis of Ruggie Principles for ICANN - discussion on UN Guiding

Principles 15, 13, 19

3. AOB

Notes

WS2 Human Rights Subgroup Meeting #7 | 19:00 UTC | Tuesday, 27 September

Notes including relevant elements from the chat:

1. Administrivia - Roll call, absentees, Sols, etc.

2. Analysis of Ruggie Principles for ICANN - discussion on UN Guiding

Principles 15, 13, 19

- Paul McGrady 2: I would like to lodge my standard objection that we are jumping to review of external resources, e.g. Ruggie Principles, without first determining what human rights are already addressed by applicable law.
- Niels ten Oever: Starting with principal 15.
- David McAuley (RySG): I did not read #15 as an impact assessment exercise.
- Greg Shatan: This looks more like a framework of implementation vs interpretation and as such would be beyond our scope.
- Chris LaHatte: the point is not whether ICANN must adopt these under California law, but whether we as the community want ICANN to follow the Ruggie principles
- Paul McGrady 2: @Greg, do we know for sure? I don't think we want to guess.

- Anne Aikman-Scalese: Agree with Paul - but from a different angle as well - I am afraid we will lose time in developing the FOI.
- Kavous Arasteh: do not understand why this is not in scope - we need a policy and support 15 A, B and C as required.
- Chris LaHatte: international law is often an option rather than mandatory
- Tatiana Tropina: David, I agree with you and agree with Greg that B and C are more implementation but A could be required.
- Greg Shatan: there is clearly a difference between policy and implementation. We do have to distinguish between them in good faith as we are not here to do implementation.
- Anne Aikman-Scalese: I think that it's fine to discuss "due diligence" if we are saying that we believe the Bylaw obligates ICANN to conduct such due diligence. If the ByLaw does not oblige ICANN to conduct due diligence, then it may be outside scope - that is unless ICANN initiates a PDP in relation to voluntary Human Rights activities as a result of the FOI-HR.
- David McAuley (RySG): Disagree specifically on remediation - the bylaw says "This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties."
- Tatiana Tropina 2: Greg, yes absolutely there is a distinction. I agree with you that (b) and (c) is very likely are out of the scope.
- matthew shears: + 1 David
- Tatiana Tropina 2: and +1 to David...
- David McAuley (RySG): Agree with Greg that we are not here for implementation - if that comes later, as Greg says, then that group will address that. The bylaw calls for interpretation.
- Chris LaHatte: what is the point in having a human rights obligation without any enforcement? if that is the case then it becomes words without teeth
- Tatiana Tropina 2: We might think of (a).... (b) and (c) worry me a lot.
- Paul McGrady 2: Isn't 15(a) already done in the bylaws, except that such respecting human rights is subject to applicable law and with the caveat that ICANN is not to be an enforcer? (...respecting internationally recognized human rights as required by applicable law.) If so, why doesn't anyone care to know what applicable laws already apply?
- Tatiana Tropina 2: Paul, yes :) argument is against WS1 - we are interpreting a bylaw but not enlarging it, at least as I see it.
- Farzaneh Badii: Chris I don't even think you can use the word enforcement. It's to respect human rights. which I don't know if we discussed this meaning or not
- matthew shears: agree it is not our role to enlarge the bylaw or commitment
- David McAuley (RySG): I also agree 15(a) is satisfied by bylaw
- Tatiana Tropina 2: I agree with Greg, he convinced me and yes, 15 (a) is in the bylaw.
- Chris LaHatte: so if we don't respect the relevant human right, what happens?
- Paul McGrady 2: The bylaw is the bylaw. Swapping in 15(a) in an un-modified basis isn't what WS2 is supposed to do. We are supposed to be telling the community what we think the bylaw (as written, not as some wish it had been written) means.
- Anne Aikman-Scalese: @Paul - the ICANN Legal response to the question about "applicable law" was to send a summary in an opinion from last year from outside counsel relating to the applicability of the Federal Acquisition Regulations. I am not sure these still apply after the expiration of the IANA contract. Don't know whether the contracts for .mil and .gov obligate ICANN to FAR.
- Paul McGrady 2: @Anne, perhaps, but that is not what the bylaw says.
- David McAuley: Could affect future policy development.
- Kavous Arasteh: You cannot read 15 without considering the other principles. Do not agree.
- Anne Aikman-Scalese: If ICANN has a contract that obligates it to certain requirements, then that is "applicable law" but I am doubting the .mil or .gov contracts incorporate FAR - would need to know from ICANN Legal if .mil and .gov contracts so obligate ICANN.
- Tatiana Tropina 2: Greg, I am wondering whether we are all on the same page re interpretation vs. implementation. While I always agree with you I wonder whether the other members of the group see the same line between interpretation and implementation. I wonder if this is something that has to be discussed. A question to everyone actually.
- David McAuley (RySG): With respect, Kavouss, I do not agree - we have a bylaw based on respect with certain express limitations - we have to interpret that which we have been given
- Samantha Eisner: ICANN does not have a contract with the USG for .mil and .gov; it has an exchange of letters. There is no mention of the FAR in there
- Anne Aikman-Scalese: Thanks Samantha. This is helpful.
- Chris LaHatte: there is no point imho of having a principle without the ability to discuss what happens on a breach
- Paul McGrady 2: @Anne, the RA's would be
- Anne Aikman-Scalese: I think Greg is discussing the issue that ICANN policy is made bottom up vs a standard corporation which is top down and this has an impact.
- Paul McGrady 2: @Anne, the RA's would be obligations under the law, but they would not be "applicable law" themselves. Contracts are inherently private between the parties.
- Greg Shatan: @Tatiana, I don't think we are all on the same page -- that we are now preparing a Framework of Interpretation, not a Framework of Implementation.
- Matthew shears: I see a tendency on the list to possibly consider 15a but not 15b and c - perhaps we can park 15a for now and move on?
- Tatiana Tropina 2: Greg, exactly. I think it would be *really* helpful if we agree on what is the difference between the two :(
- Tatiana Tropina 2: Matt, and there is a tendency to say that 15a is the bylaw itself.
- Matthew shears: + 1 TT on agreeing on the difference
- Chris LaHatte: without implementation, as in 15 c, it is only well meaning words
- Greg Shatan: No one is suggesting there will be no implementation, only that implementation is outside the scope of this subgroup.
- Matthew shears: I don't believe remediation is within the scope of the bylaw
- Farzaneh Badii: is it not the framework of interpretation for implementation (or respecting) human rights?
- Greg Shatan: We need to decide what the words mean.
- Tatiana Tropina 2: Matthew, +1
- Avri Doria: Supports principal 15.
- Greg Shatan: No it is the framework of interpreting the Bylaw. 15A is satisfied by the bylaw as it is. 15B raises several questions as to how the bylaws is interpreted. In 15B this seems to go quite beyond due-diligence - seems to be more like the implementation of a full life cycle. Due diligence usually does not include prevention and mitigation. We need to identify what is meant by applicable law as suggested by PM.
- Niels ten Oever: From Annex 12: Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights
- Farzaneh Badii: so it is then
- Avri Doria: it seems to be that yes, this is something we should be doing. defining the responsibility call for by the bylaw
- Avri Doria: i think this is crux of what we need to do.
- Tatiana Tropina 2: Agree, Greg. Mitigating is not due diligence
- Farzaneh Badii: I think we really need to define "respect"
- Andrew Mack: agreed @greg -- this is more than due diligence... these are two different actions: identifying a problem then trying in some way to correct it (either ex ante or ex post)

- Anne Aikman-Scalese: @Niels - yes - there may be a need for ICANN to develop a written policy. That is much more detailed work than we are undertaking here in the FOI. The FOI must provide tools of reference for those who must later develop policies in the ICANN policy process. If we don't respect that policy-making process, then we don't respect the Multi Stakeholder Model.
- Kavouss Arasteh: nO WE DO NOT NEED TO DEFINE WATER AS WATER IS WATER OTHERWISE WE HAVE TO DEFINE ALL AND EACH WORD IN THE ccwg rEPORT
- Tatiana Tropina 2: Greg, agree fully. And (b) and (c) really go to the direction of even enforcement
- Niels ten Oever 2: @Anne - am just citing here what the CCWG report Annex 12 asks us to do
- Farzaneh Badii: well respect is not water :)
- Kavous Arasteh: Do not agree with GS. Would suggest we support A and park B and C.
- Tatiana Tropina 2: so it's not even only not *our* job - it is actually prevention and enforcement (which is not only outside of the scope but is directly prohibited by the bylaw)
- Tijani Ben Jemaa: Support GS.
- Anne Aikman-Scalese: @Chris - I don't know how we can say in the FOI0HR that due diligence process and remediation process can be adopted without an ICANN policy process. Annex 6 says we must consider these items consistent with ICANN existing processes
- David McAuley (RySG): +1 @ Tijani
- Farzaneh Badii: b9 and c9? where is that? Vague
- Brett Schaefer: b and c seems to cross the line established in the Core Value -- "This Core Value does not obligate ICANN to enforce human rights obligations, or the human rights obligations of other parties, against other parties."
- Tatiana Tropina 2: where did will land? can we have a quick summary? Have we got food for thoughts? Agreed to disagree at this point? :)
- Niels ten Oever: Let us move to Principle 13.
- David McAuley (RySG): Principle 13 - the word "address" is vague and possibly out of scope
- Chris LaHatte: i understand we have a specific task, so Anne, I understand the restrictions of our tasks, but I don't want adoption of empty principles
- Tatiana Tropina: ccTLDs cannot be included in any due diligence.
- Chris LaHatte: so if a ccTLD does something like censorship or worse can we still criticize them?
- Anne Aikman-Scalese: @Chris - the principle is not empty if it then produces further action down the road - e.g. a requirement that PDP consider and assess the FOI-HR regardless of the nature of the PDP.
- David McAuley (RySG): I think I agreed with you @Kavouss - "address" is vague - I'd be surprised if I did not think so before
- Greg Shatan: 13B is clearly out of our scope.
- David McAuley (RySG): 13(b) is very broad - seems way out of scope
- matthew shears: yep
- Paul McGrady 2: @Avri - I don't hear anyone saying that they don't know what Mr. Ruggie is saying. Even so, isn't the first step would be to determine what human rights obligations ICANN has under applicable law, not turning first to third party resources (especially if those resources are so ambiguous that we need their author to explain what they mean)?
- Chris LaHatte: @anne, as long as that happens
- Niels ten Oever 2: @Greg + Tatiana, for ccTLDs and gTLDs or any business relations?
- Tatiana Tropina 2: David, not only out of scope but opens the room for claims about enforcement
- Niels ten Oever 2: Paul I think only talked about ccTLDs
- Tatiana Tropina 2: Niels, for any business relations because it's enforcement... and protection!
- Cheryl Langdon-Orr (CLO): Agree totally Greg enforcement
- Paul McGrady 2: Agree with Greg. 13(b) seems to be already excluded under a clear reading of the bylaws requiring that ICANN not get involved in the business of third party enforcement.
- David McAuley (RySG): not sure I understand the context of ccTLDs and gTLDs comment, Niels
- Kavous Arasteh: uncertain why people against mitigation and remediation.
- Avri Doria: what about in ICANN's own activities?
- Tatiana Tropina 2: Paul, Greg, +1.
- matthew shears: while I think Ruggie important, I believe we have to first interpret: 1) agree what "respecting human rights" means; 2) agree the "international human rights" and what is appropriate for ICANN, and 3) agree what "applicable law" means in this case" and perhaps return to Ruggie later
- Niels ten Oever 2: Because if I remember correctly Paul Twomeys argument it was specifically focused on ccTLDs
- Tatiana Tropina 2: Niels, ccTLDs or gTLDs - no matter, (b) is enforcement and protection
- David McAuley (RySG): thanks @Niels
- Greg Shatan: Matthew -- agree 10000%,, that is the nub of our job.
- Niels ten Oever 2: know and show as well?
- Farzaneh Badii: Matt I agree. I think we should first agree on what "respecting human rights" means
- Greg Shatan: matthew shears: while I think Ruggie important, I believe we have to first interpret: 1) agree what "respecting human rights" means; 2) agree the "international human rights" and what is appropriate for ICANN, and 3) agree what "applicable law" means in this case" and perhaps return to Ruggie later.
- Tatiana Tropina 2: Matt, hear hear!
- Bastiaan Goslings: I agree with Matt too
- Avri Doria: i think that if the FOI does not include the avoidance of causing harm by our activities, we might as well have a null text for the FOI.
- Brett Schaefer: Agree with Matt, the discussion seems to presume that Ruggie is agreed to and the starting point for the FOI. It seems to be jumping several important steps.
- Avri Doria: i see absolutely nothing here that requires content regulation
- Kavouss Arasteh: Avri+1
- Chris LaHatte: +1 Avri
- Anne Aikman-Scalese: Adopting 13 as is could take ICANN to content regulation which would be dangerous as it is outside of its mission and scope.
- Andrew Mack: Support AAS - we should not be in content regulation.
- Paul McGrady 2: Ruggie is in the way of us actually discussing the process we should be on. Can we please start at the beginning instead of the (possible) end?
- David McAuley (RySG): I tend to agree w Avri's point and think we are experiencing problems trying to shoehorn Ruggie Principles into FOI
- Tatiana Tropina 2: David, agree with the latter.
- Kavous Arasteh: Need prevention and mitigation otherwise it is empty words.
- Tatiana Tropina: considering all principles imply that principle 13 is clearly interpreted elsewhere and goes to enforcement and protection which is beyond our remit.
- Anne Aikman-Scalese: AGree with Kavouss that the FOI-HR will require lots of further discussion and application to existing ICANN processes.
- Niels ten Oever 3: We are only looking at what we could like. With this we are not importing other principles. That is why we are discussing them one by one

- David McAuley (RySG): I think Tatiana put that well regarding 13(b)
- matthew shears: + 1 Tatiana
- Tatiana Tropina 2: Niels, one by one is cool but the lawyer in me always says that you have to interpret the provisions of the whole text in connection with other provisions of the same text.
- Avri Doria: i thought we had already decided by definition that we were against Ruggie principles
- Greg Shatan: these principles say ICANN's business principles should also respect Human Rights which could be an issue for ICANN.
- Niels ten Oever: @Greg is the document many different modalities are discussed - breaking relations with third parties should only be last resort (is what is in the Ruggie commentary).
- Tatiana Tropina 2: Niels, even as a last resort this would be sometimes impossible for ICANN
- Chris LaHatte: so we need to develop our own set of principles, and just use Ruggie et al as guidelines.
- Tatiana Tropina 2: Chris, I keep saying this
- Kavous Arasteh: (suggesting operation for the group by creating sub-teams for 13 and 15).
- Matthew shears: I am ot sure we need to develop principles - let's agree the key focu areas of the bylaw first
- Greg Shatan: Agree, Chris. At best this is a launching pad for our consideration.
- Tatiana Tropina 2: Matt, well not literally develop principles but rather develop interpretation.
- Matthew shears: yes
- Tatiana Tropina 2: 13 (a) with nuances... (for the record)
- Cláudio Lucena: Is there any concern on the potential scale of the adverse impacts on human rights we're looking at or are we treating all kinds of potential adverse impacts as similar? I'm thinking a general approach that does not address the potential scale of the impacts may pose much higher risks, costs and burdens than those which could be viably and reasonably handled by businesses.
- Greg Shatan: Agree with Matthew, we don't need to go all the way to principles -- we do need to figure out the parameters in which we interpret ICANN's actions.
- Avri Doria: I think we need principles not more constraints. guidelines not prohibitions
- Anne Aikman-Scalese: with respect to 13A and 15A do not agree there is convergence because Address is not identified.
- Kavous Arasteh: I have raised the point Address is unclear.
- Avri Doria: what harm do people find in the word address - why is it a scary word?
- David McAuley (RySG): what does it mean, @Avri
- Greg Shatan: Agree that we have not completed discussion of (a).
- Tatiana Tropina 2: Me too. (a) is not finished. I want more of (a).
- Avri Doria: look at, discuss and come to some conclusion about.
- David McAuley (RySG): then we should use such term(s) in my opinion
- Avri Doria: it i longer to use a stock phrase than a term we define, but ok, i guess.
- Bastiaan Goslings: I would at least want to add 'as required by applicable law.' to art 13a
- Anne Aikman-Scalese: I would not call 15 a or 13 a as "provisionally agreed" to be part of the FOI-HR - we did not go that far.
- Niels ten Oever: Adjourned.

Documents Presented

- [HR_Presentation Meeting 6.pdf](#)

Chat Transcript

Brenda Brewer:Good day all and welcome to the Human Rights Meeting #7 on 27 September 2016 @ 19:00 UTC!

Kavouss Arasteh:Good Day Brenda

Kavouss Arasteh>Welcome to CCWG Yevette

Yvette Guigneaux:Thank you Kavouss

Cheryl Langdon-Orr (CLO):hi all

Niels ten Oever:Hi all

Kavouss Arasteh:a Yevette

Kavouss Arasteh:Pls kindly do not forget to dial me in,tks

Chris LaHatte:good morning from NZ

Yvette Guigneaux:Will do Kavouss, doing it right now

Tatiana Tropina:Hi all!

Tijani BEN JEMAA:Hello Tatiana

Herb Wayne Ombuds:Greetings folks

Kavouss Arasteh:tIJANI,

Niels ten Oever:Thanks Tijani, I think the CCWG co-chairs use both terms interchangeably https://urldefense.proofpoint.com/v2/url?u=https-3A__encrypted.google.com_url-3Fsa-3Dt-26rct-3Dj-26q-3D-26esrc-3Ds-26source-3Dweb-26cd-3D1-26cad-3Drja-26uact-3D8-26ved-3D0ahUKEwjDrKbznLDPahUG6RQKHTnMDMEQFggdMAA-26url-3Dhttps-253A-252F-252Fcommunity.icann.org-252Fdownload-252Fattachments-252F58725713-252FGuidelines-252520for-252520CCWG-252520Design-252520Teams-252520in-252520WS2.pdf-253Fversion-253D1-

2526modificationDate-253D1457099195000-2526api-253Dv2-26usg-3DAFQjCNHOitVyoyxp4km3-5FFHSbKKPhnFivQ-26sig2-3DKMnAvjeVs-2DrgdJeIrZZYBA&d=DQIFaQ&c=FmY1u3PJP6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=xjNMRR-fjlgBx7tqUEv8IzV2O9RjYMyqWkymcecegCUuwDxFVsW6VBuvqKnS_lk&m=clVJOY9oUQ4e_RFtuQoQXerz8bVgNL54Jia93h3Rz98&s=sQ7v24-IgEiiOtmXeChBvxUHLudnL9Xe37SiiF2MPQ&e=

Yvette Guigneaux:Kavouss, did the dial in work for you?

Markus Kummer:Hi everyone!

Kavouss Arasteh:i AGREE WITH YOU THAT WE ARE NOT DESIGN TEAM AS WE DO NOT DESIGN ANY THING.

Kavouss Arasteh:We should not immitate CWG

Niels ten Oever:We are designing the Framework of Interpretation if I am correct.

Tijani BEN JEMAA:We are not

Tijani BEN JEMAA:the CWG call them Design team

Niels ten Oever:I am just following the instructions from the CCWG co-chairs :)

Tijani BEN JEMAA:the CCWG Accountability WS 2 calls them Sub-Groups

David McAuley (RySG):Brenda, I am 4154

Tijani BEN JEMAA:9 sub-groups

Niels ten Oever:@Tijani - pls see link I pasted above.

Tijani BEN JEMAA:This is the only group that calls it self design team

Kavouss Arasteh:niELS, GOOD DAY. PLS NOTE THAT WE ARE NOT DESIN TEAM

Paul McGrady 2:I would like to lodge my standard objection that we are jumping to review of external resources, e.g. Ruggie Principles, without first determining what human rights are already addressed by applicable law.

David McAuley (RySG):I did not read #15 as an impact assessment exercise

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Chris LaHatte:the point is not whether ICANN must adopt these under California law, but whether we as the community want ICANN to follow the Ruggies principles

David McAuley (RySG):I think 15 (a) may be in scope

Paul McGrady 2:@Chris, the bylaw specifically puts the umbrella of "applicable law" in place, so we can't skip that step.

Anne Aikman-Scalese:Agree with Niels in that, for instance, it is not a bad idea at all for ICANN to develop a written policy in relation to human rights. The policy would be based on the FOI-HR once approved.

Chris LaHatte:international law is often an option rather than mandatory

Tatiana Tropina:David, I agree with you

Tatiana Tropina:I raised my hand to say this but may be I will lower it now

David McAuley (RySG):Always good to hear you Tatiana

Farzaneh Badii:football?

Chris LaHatte:we cannot get bogged down by US law in any event, because we are looking at adopting international principles which are not something within the scope of a state law

Kavouss Arasteh:fFA DEAR DO NOT JOKE

Anne Aikman-Scalese:I think that it's fine to discuss "due diligence" if we are saying that we believe the Bylaw obligates ICANN to conduct such due diligence. If the ByLaw does not obligation ICANN to conduct due diligence, then it may be outside scope - that is unless ICANN initiates a PDP in relation to voluntary Human Rights activities as a result of the FOI-HR.

Farzaneh Badii:I am sorry Kavouss, but you are in no position to tell me what to do

David McAuley (RySG):Disagree specifically on remediation - the bylaw says "This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties."

Tatiana Tropina 2:Greg, yes absolutely there is a distinction. I agree with you that (b) and (c) is very likely are out of the scope.

matthew shears:+ 1 David

Tatiana Tropina 2:and +1 to David...

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Tatiana Tropina 2:Paul, yes :)

Kavouss Arasteh:pEOPLE must Stop to make noise

David McAuley (RySG):Then Chris I think that argument is against WS1 - we are interpreting a bylaw but not enlarging it, at least as I see it.

Farzaneh Badii:Chris I don't even think you can use the word enforcement. It's to respect human rights. which I don't know if we discussed this meaning or not

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Tatiana Tropina 2:and yes, 15 (a) is bylaw.

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Paul McGrady 2:@Anne, perhaps, but that is not what the bylaw says.

Greg Shatan:Sounds like he's walking in....

David McAuley (RySG):i did not hear you Kavouss

Greg Shatan:Nobody heard you Kavouss. You were talking to yourself.

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Anne Aikman-Scalese:Thanks Samantha. This is helpful.

Greg Shatan:Oh the irony.

Greg Shatan:@Tatiana, I don't think we are all on the same page -- that we are now preparing a Framework of Interpretation, not a Framework of Implementation.

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Greg Shatan:No one is suggesting there will be no implementation, only that implementation is outside the scope of this subgroup.

matthew shears:I don't believe remediation is within the scope of the bylaw

Farzaneh Badii:is it not the framework of interpretation for implementation (or respecting) human rights?

Greg Shatan:We need to decide what the words mean.

Tatiana Tropina 2:Matthew, +1

Greg Shatan:No it is the framework of interpreting the Bylaw.

Farzaneh Badii:to respect human rights! no ?

Niels ten Oever 2:From Annex 12: Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights

Farzaneh Badii:so it is then

Avri Doria:it seems to be that yes, this is something we should be doing. defining the responsibility call for by the bylaw

Avri Doria:i think this is crux of what we need to do.

Tatiana Tropina 2:Agree, Greg. Mitigating is not due diligence

Kavouss Arasteh:what do you mean by"so it is then"

Kavouss Arasteh:VAGUE

Farzaneh Badii:I think we really need to define "respect"

Andrew Mack:agreed @greg -- this is more than due diligence... these are two different actions: identifying a problem then trying in some way to correct it (either ex ante or ex post)

Anne Aikman-Scalese:@Niels - yes - there may be a need for ICANN to develop a written policy. That is much more detailed work than we are undertaking here in the FOI. The FOI must provide tools of reference for those who must later develop policies in the ICANN policy process. . If we don't respect that policy-making process, then we don't respect the MultiStakeholder Model.

Kavouss Arasteh:nO WE DO NOT NEED TO DEFINE WATER AS WATER IS WATER OTHERWISE WE HAVE TO DEFINE ALL AND EACH WORD IN THE ccwg rEPORT

Tatiana Tropina 2:Greg, agree fully. And (b) and (c) really go to the direction of even enforcement

Niels ten Oever 2:@Anne - am just citing here what the CCWG report Annex 12 asks us to do

Farzaneh Badii:well respect is not water :)

Paul McGrady 2:+1 Greg

Tatiana Tropina 2:so it's not even only not *our* job - it is actually prevention and enforcement (which is not only outside of the scope but is directly prohibited by the bylaw)

Anne Aikman-Scalese:Thanks Niels. I think we must recognize that F

Greg Shatan:Well, that's the pot calling the kettle black.

David McAuley (RySG):+1 @ Greg, as well

Avri Doria:we keep kicking the can down the road. first HR can really be in the bylaws until there is a FOI, then the FOI can include responsibility until we do policy, then it won't be policy but implementation, and gee wiz implementation is not our job.

David McAuley (RySG):on his phone intervention

Anne Aikman-Scalese:Thanks Niels. I think we must recognize that FOI-HR must be a flexible tool of principles that can be applied in any ICANN policy-making process or internal evaluation of procedures. The FOI-HR is like a Constitution. It is "high-level".

Paul McGrady 2:Why would we engage Mr. Ruggie when we haven't even addressed California law?

Greg Shatan:Agree with Anne.

Greg Shatan:Agree with Paul.

Greg Shatan:Saying nothing new.

Greg Shatan:Just supporting other people.

Greg Shatan:Repeating myself.

Greg Shatan:Repeating myself.

Greg Shatan:Repeating myself.

Kavouss Arasteh:We need not to address California Law

Chris LaHatte:it's avoiding our responsibility if we defer b and c. otherwise what is the point of this discussion?

Avri Doria:Paul to help us understand what he is saying instead of relying on sophisms

Greg Shatan:Of course we do KA, it's in the Bylaw. It defines the very boundary of what ICANN has to deal with.

Anne Aikman-Scalise:@Chris - I don't know how we can say in the FOI0HR that due diligence process and remediation process can be adopted without an ICANN policy process. Annex 6 says we must consider these items consistent with

Kavouss Arasteh:b9 and c9 are quite applicable and must be discussed either now or later

Tatiana Tropina 2:and again on the record: I agree with Greg that the scope of due diligence in Ruggie is way to far.

Anne Aikman-Scalise:@Chris - I don't know how we can say in the FOI0HR that due diligence process and remediation process can be adopted without an ICANN policy process. Annex 6 says we must consider these items consistent with ICANN existing processes

David McAuley (RySG):+1 @ Tijani

Farzaneh Badii:b9 and c9? where is that? Vague

Brett Schaefer:b and c seems to cross the line established in the Core Value -- "This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties."

Greg Shatan:sophism: a fallacious argument, especially one used deliberately to deceive.

Tatiana Tropina 2:where did will land? can we have a quick summary? Have we got food for thoughts? Agreed to disagree at this point? :)

David McAuley (RySG):Principle 13 - the word "address" is vague and possibly out of scope

Chris LaHatte:i understand we have a specific task, so Anne, I understand the restrictions of our tasks, but I don't want adoption of empty principles

Avri Doria:Greg that is not my definition of sophism.

Kavouss Arasteh:David, are you sure of that???? When I said the same, everybody attacked me in saying that Address is deal with and not vague

Greg Shatan:Avri, it was the first one in Google....Blame the algorithm.

Chris LaHatte:so if a ccTLD does something like censorship or worse can we still criticise them?

Anne Aikman-Scalise:@Chris - the principle is not empty if it then produces further action down the road - e.g. a requirement that PDP consider and assess the FOI-HR regardless of the nature of the PDP.

David McAuley (RySG):I think I agreed with you @Kavouss - "address" is vague - I'd be surprised if I did not think so before

Tatiana Tropina 2:+million to Greg

matthew shears:agree Greg

Tatiana Tropina 2:I do worry too!

David McAuley (RySG):13(b) is very broad - seems way out of scope

matthew shears:yep

Paul McGrady 2:@Avri - I don't hear anyone saying that they don't know what Mr. Ruggie is saying. Even so, isn't the first step would be to determine what human rights obligations ICANN has under applicable law, not turning first to third party resources (especially if those resources are so ambiguous that we need their author to explain what they mean)?

Chris LaHatte:@anne, as long as that happens

Niels ten Oever 2:@Greg + Tatiana, for ccTLDs and gTLDs or any business relations?

Tatiana Tropina 2:David, not only out of scope but opens the room for claims about enforcement

Avri Doria:not the definition in wikipedia - it is a form of Rhetoric used to convince people of a PoV. does not need to be fallacious and does not need to confuse, can even be an educational technique.

Niels ten Oever 2:Paul I think only talked about ccTLDs

Tatiana Tropina 2:Niels, for any business relations because it's enforcement...

Tatiana Tropina 2:and protection!

Cheryl Langdon-Orr (CLO):Agree totally Greg

Paul McGrady 2:Agree with Greg. 13(b) seems to be already excluded under a clear reading of the bylaws requiring that ICANN not get involved in the business of third party enforcement.

David McAuley (RySG):not sure I understand the context of ccTLDs and gTLDs comment, Niels

Avri Doria:what about in ICANN's own activities?

Tatiana Tropina 2:Paul, Greg, +1.

matthew shears:while I think Ruggie important, I believe we have to first interpret: 1) agree what "respecting human rights" means; 2) agree the "international human rights" and what is appropriate for ICANN, and 3) agree what "applicable law" means in this case" and perhaps return to Ruggie later

Niels ten Oever 2:Because if I remember correctly Paul Twomeys argument it was specifically focused on ccTLDs

Greg Shatan:Avri, I like the wikipedia definition better and thank you for clarifying your intended meaning.

Tatiana Tropina 2:Niels, ccTLDs or gTLDs - no matter, (b) is enforcement and protection

David McAuley (RySG):thanks @Niels

Greg Shatan:Matthew -- agree 10000%,, that is the nub of our job.

Niels ten Oever 2:know and show as well?

Farzaneh Badii:Matt I agree. I think we should first agree on what "respecting human rights" means

Greg Shatan:matthew shears: while I think Ruggie important, I believe we have to first interpret: 1) agree what "respecting human rights" means; 2) agree the "international human rights" and what is appropriate for ICANN, and 3) agree what "applicable law" means in this case" and perhaps return to Ruggie later.

Tatiana Tropina 2:Matt, hear hear!

Bastiaan Goslings:I agree with Matt too

Avri Doria:i think that if the FoI does not include the avoidance of causing harm by our activities, we might as well have a null text for the FoI.

Brett Schaefer:Agree with Matt, the discussion seems to presume that Ruggie is agreed to and the starting point for the FoI. It seems to be jumping several important steps.

Avri Doria:i see absolutely nothing here that requires content regulation

Kavouss Arasteh:Avri+1

Chris LaHatte:+1 Avri

Paul McGrady 2:Ruggie is in the way of us actually discussing the process we should be on. Can we please start at the beginning instead of the (possible) end?

David McAuley (RySG):I tend to agree w Avri's point and think we are experiencing problems trying to shoehorn Ruggie Principles into FoI

Tatiana Tropina 2:David, agree with the latter.

Greg Shatan:I leave the room for 2 minutes, and we're talking about "content regulation"?

Farzaneh Badii:again Greg! Again! and again

Tatiana Tropina 2:Greg, yes. It's a coincidence :)

David McAuley (RySG):Next time Greg just leave for one minute

Greg Shatan:All I wanted was a handful of M&Ms from Snacktime.

Farzaneh Badii:you should never leave the room

Tatiana Tropina 2:David, that would be a great experiment :)

Andrew Mack:Agreed

Greg Shatan:I almost never do.

Farzaneh Badii:I thought we were going to define respect past couple of weeks.

Anne Aikman-Scaless:@ Greg - direct application of Principle 13 to ICANN contracting activities with registries and qualification of registrars smacks of "content regulation".

Anne Aikman-Scaless:AGree with Kavouss that the FOI-HR will require lots of further discussion and application to existing ICANN processes.

Niels ten Oever 3:We are only looking at what we could like

Niels ten Oever 3:With this we are not importing other principles.

Niels ten Oever 3:That is why we are discussing them one by one

David McAuley (RySG):I think Tatiana put that well regarding 13(b)

matthew shears:+ 1 Tatiana

Paul McGrady 2:Inspiration for what?

Tatiana Tropina 2:Niels, one by one is cool but the lawyer in me always says that you have to interpret the provisions of the whole text in connection with other provisions of the same text.

Avri Doria:i thought we had already decided by definiton that we were against Ruggie principles

Avri Doria:we are not looking for how they can help us understand, but rather looking for arguments to kick them out.

Bernard turcotte Staff Support:Time check = 9 minutes left

Niels ten Oever:@Greg is the document many different modalities are discussed - breaking relations with third parties should only be last resort (is what is in the Ruggie commentary).

Tatiana Tropina 2:Niels, even as a last resort this would be sometimes impossible for ICANN

Chris LaHatte:so we need to develop our own set of principles, and just use Ruggie et al as guidelines

Tatiana Tropina 2:Chris, I keep saying this

matthew shears:I am not sure we need to develop principles - let's agree the key focus areas of the bylaw first

Greg Shatan:Agree, Chris. At best this is a launching pad for our consideration.

Tatiana Tropina 2:Matt, well not literally develop principles but rather develop interpretation.

matthew shears:yes

Tatiana Tropina 2:13 (a) with nuances... (for the record)

Cláudio Lucena:Is there any concern on the potential scale of the adverse impacts on human rights we're looking at or are we treating all kinds of potential adverse impacts as similar? I'm thinking a general approach that does not address the potential scale of the impacts may pose much higher risks, costs and burdens than those which could be viably and reasonably handled by businesses.

Greg Shatan:Agree with Matthew, we don't need to go all the way to principles -- we do need to figure out the parameters in which we interpret ICANN's actions.

Greg Shatan:With Nuages, as well (apologies to Django Reinhardt).

Avri Doria:i think we need principles not more constraints. guidelines not prohibitions

Chris LaHatte:+1 Avri

David McAuley (RySG):Agree with the "to some extent" language as Kavouss just said, I continue to have an issue with "address"

Avri Doria:what harm do people find in the word address

Avri Doria:why is it a scary word?

David McAuley (RySG):what does it mean, @Avri

Greg Shatan:Agree that we have not completed discussion of (a).

Tatiana Tropina 2:Me too. (a) is not finished. I want more of (a).

Avri Doria:look at, discuss and come to some conclusion about.

David McAuley (RySG):then we should use such term(s)

David McAuley (RySG):in my opinion

Avri Doria:it is longer to use a stock phrase than a term we defines, but ok, i guess.

Bastiaan Goslings:I would at least want to add 'as required by applicable law.' to art 13a

Anne Aikman-Scaless:I would not call 15 a or 13 a as "provisionally agreed" to be part of the FOI-HR - we did not go that far.

Farzaneh Badii:bye thanks

Cheryl Langdon-Orr (CLO):Thanks Everyone BYe

Tatiana Tropina 2:bye all!

Bastiaan Goslings:ciao

Tatiana Tropina 2:thanks!

Chris LaHatte:bye all

Greg Shatan:+1 Bastiaan. Agree with Anne too.

Greg Shatan:Bye!

Herb Waye Ombuds:ciao

Markus Kummer:Bye all

David McAuley (RySG):good bye

Cláudio Lucena:Bye all

Greg Shatan:Bye!

Greg Shatan:Bye!

Harold Arcos:thanks all, take care

Anne Aikman-Scalese:Bye all and thank you.

Greg Shatan:Bye!

Greg Shatan:Bye!

Greg Shatan:Bye!