

## **Human Rights Meeting #4 (6 Sept @ 19:00 UTC)**

## Attendees:

**Sub-group Members:** Aarti Bhavana, Agustina Callegari, Andrew Mack, Anne Aikman-Scalese, Avri Doria, Bastiaan Goslings, Brett Schaefer, Chris LaHatte, Daniel Appelman, David McAuley, Elizabeth Andrews, Erich Schweighofer, Farzaneh Badii, Greg Shatan, Griffin Barnett, Harold Arcos, Hibah Hussain, John Laprise, Jorge Cancio, Kavouss Arasteh, Lousewies van der Laan, Marilia Maciel, Markus Kummer, Niels ten Oever, Paul McGrady, Robin Gross, Ron da Silva, Samantha Eisner, Steve Metalitz, Tatiana Tropina, Tijani Ben Jemaa, Vicky Sheckler (32)

**Observers:** Cheryl Langdon-Orr, Iren Borissova, Isabel Rutherford, Taylor Bentley (4)

**Staff:** Bernie Turcotte, Brenda Brewer, Nigel Hickson

**Apologies:** Nigel Roberts, Rudi Daniel

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

---

## Transcript

- [DOC](#)
- [PDF](#)

## Recording

\*\* AC unexpectedly stopped and recording was restarted 40 minutes into call.

- The Adobe Connect recording is available here: [AC Replay Part 1](#) \*\* | [AC Replay Part 2](#) \*\*
- The audio recording is available here: [mp3 part 1](#) \*\* | [mp3 part 2](#) \*\*

## 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](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/1KcKGRJjuhKEzCh2AZ8PPR\\_MofOQFBN8CMuJqTG\\_h9h4/edit?usp=sharing](https://docs.google.com/document/d/1KcKGRJjuhKEzCh2AZ8PPR_MofOQFBN8CMuJqTG_h9h4/edit?usp=sharing)

### 4. Discussion on Fol draft document

[https://docs.google.com/document/d/1emqmzyB9\\_0vm6oKxhlWZ47L7lxcFKUBHVnkBYUOsA2Q/edit](https://docs.google.com/document/d/1emqmzyB9_0vm6oKxhlWZ47L7lxcFKUBHVnkBYUOsA2Q/edit)

### 5. AOB

## Notes

### 1. Administrivia

Roll call, absentees, Sols, etc

- Cheryl Langdon-Orr currently only on phone.
- Nigel Roberts Excused.
- No changes to SOIs.

### 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](https://docs.google.com/document/d/1rwpw9aSAqboRO2_rNkjMVJPOMYwmdr5B1_M_aNMoZb4/edit?usp=sharing)

- Tatiana Tropina: document essentially completed.
- David McAuley: I just lost my phone - will change - in meantime I was present in WP4 and have read document Tanya is speaking about and have no issue with it,
- Anne Aikman-Scalese: AGree with those on the list who have remarked that the definition of "respect" is a very important part of developing this FOI.
- Niels ten Oever: Comments on the document as is?
- Kavous Arasteh: We should never approve anything in one meeting especially given this short notice.
- Niels ten Oever: We will leave the document open for comments in the coming week and seek approval at our next meeting if there are no significant issues.

### 3. Discussion on: Concerns on possible impacts of Human Rights bylaw and Fol

[https://docs.google.com/document/d/1KcKGRJjuhKEzCh2AZ8PPR\\_MofOQFBN8CMuJqTG\\_h9h4/edit?usp=sharing](https://docs.google.com/document/d/1KcKGRJjuhKEzCh2AZ8PPR_MofOQFBN8CMuJqTG_h9h4/edit?usp=sharing)

- Niels ten Oever: Paul Twomey is still unavailable and as such the document has not advanced much.
- Greg Shatan: We need to have a plan as to how to add to this document and organize it.
- Kavous Arasteh: Can we have the document on the screen. We seem to still be struggling with respect vs enforcement.

- Andrew Mack: same concerns as KA.
- Tatiana Tropina: the bylaws clearly state we cannot put in enforcement or protection. Some parts of Ruggie go to enforcement.
- Jorge Cancio (GAC Switzerland): As the Ruggie principles are recognized as a standard, we would need to clearly explain when and why we would diverge from them in this in the Fol
- Greg Shatan: We have to be careful not to stumble into default enforcement.
- Kavous Arateh: Need to avoid enforcement.
- David McAuley: I agree with GS and TT. If we develop something we are not developing policy we are interpreting the bylaws which requires us to RESPECT Internationally recognized HR - this is very specific.
- Tijani Ben Jemaa: There is no mention of enforcement in the remit of WS2 for HR. this would be widening the scope and is not acceptable.
- Tatiana Tropina: Greg, I wonder if there is a transcript. We agreed in the WS1 to treat Ruggie with care but it seems that it comes up again and again. So may be finding the discussion makes the things easier (I am afraid to use the word "easy" now)
- Jorge Cancio (GAC Switzerland): agree that we are here for an "interpretation" exercise, not a policy development
- Greg Shatan: Thanks, Niels. I see it is an implementation for FIFA. How ironic.
- Markus Kummer: +1 - for sure. But we have to analyze why and where the Ruggie Principles don't apply to ICANN.
- Tatiana Tropina: Niels, ICANN is not like other non-profit too. there is already the ccTLD debate on the doc - as one of the points
- David McAuley: We should not assume that the Ruggie principles will be included in an HR FOI until we all agree on which parts apply.
- Tatiana Tropina: Completely agree. Need to wait for Paul Twomey who has significant experience with the Ruggie principals.
- Tatiana Tropina: Markus, exactly. One of the points I already voiced - in my opinion they do go to enforcement and protection (Ok, mitigation and remedies) and many of these ICANN can't do
- Jorge Cancio (GAC Switzerland): The Mission sets the limits to ICANN actions - insofar ccTLDs are concerned, ICANNs role is very limited
- Anne Aikman-Scaless: Unfortunately the Ruggie definition of "respect" appears to implicate ICANN in content regulation.
- Markus Kummer: +1 David
- Kavous Arateh: If we are to include the Ruggie principles it should be a consensus of this group.
- David McAuley 2: +1 Tanya, and Paul Twomey's insights as a prior ICANN CEO will be quite helpful
- Jorge Cancio (GAC Switzerland): It would certainly see Paul Twomey's comments again and consider them in light of the wording given to the commitment in the new Bylaws (...as a "core value")
- Tatiana Tropina: Ruggie shall be out unless we decide they are in... Agree that we shall not discuss for a long time about their applicability since we decided not to commit to them :)
- Greg Shatan: Agree with DM and TT that Ruggie principles are out until they are in. Given the lack of other input we need to find alternatives? or do we have to start from scratch. If we do start from scratch, then we have to give a nod to the Ruggie principles. FIFA definition of respect seems very active and bordering on enforcement?
- Kavous Arateh: we should not discuss Enforce or Protect going forward.
- Niels ten Oever: we should look at the Ruggie principles.
- Tijani Ben Jemaa: Participants should look at the Ruggie principles and given their input on the list as to what is applicable and what is not.
- Niel ten Oever: we need to analyze the Ruggie Principles to see how they could apply, or not, to ICANN. Who would take on doing the first cut of the analysis?
- Tatiana Tropina: Hm, Niels, no, I think co-chairs shall put the doc on and then we all comment
- Tatiana Tropina: I don't think there would be a lack of comments! Rather I perceive an unreadable mess
- Niels Ten Oever: PM and TT on point for this. Everyone should familiarize themselves with the Ruggie principles before the meeting next week.

#### 4. Discussion on Fol draft document

[https://docs.google.com/document/d/1emqmyzB9\\_0vm6oKxhlWZ47L7lxcFKUBHVnkBYUOsA2Q/edit](https://docs.google.com/document/d/1emqmyzB9_0vm6oKxhlWZ47L7lxcFKUBHVnkBYUOsA2Q/edit)

- Niels ten Oever: Mostly covered in the previous point and on the list. As such we shall skip this point today.

#### 5. AOB

- Neils ten Oever: review of agenda for the next meeting.
- Kavous Arateh: Can we have an updated version of the plan and when there are meetings schedule.
- Tijani Ben Jemaa: Please send links and documents on the list so everyone can familiarize themselves with those documents for our next meeting.
- Niels ten Oever: Adjourned.

## Documents Presented

- [Concerns \(google doc\).pdf](#)

## Chat Transcript

Brenda Brewer: Good day all and welcome to Human Rights Subgroup Meeting #4 on 6 September 2016 @ 19:00 UTC!

Bernard Turcotte: hi all

David McAuley: Brenda, I am 8222

Tatiana Tropina: hi all

Aarti Bhavana: Hi All

Brenda Brewer: Thank you David!

David McAuley: I count myself among those who like discussions on list rather than in google docs

Harold Arcos: Hello everyone from sunny Caracas

nigel hickson: Good evening

Paul McGrady:+1 David. I too find the lists easier than docs. It helps me see which ideas are gaining traction and which are losing steam.

Tatiana Tropina:David, I think they complement each other well, though the google doc comments make it almost impossible to follow everything. Too much of them

David McAuley:also as more folks comment the doc becomes an unreadable mess

Tatiana Tropina:exactly.

Tatiana Tropina:unreadable mess, sadly.

Avri Doria:i prefer the google docs as it forces the organization of the information.

Harold Arcos:+1 David. We must strengthen our working tools: lists and wiki

Tatiana Tropina:The structure of the google docs complements well the discussions on the list. Emails are just emails. Docs are still needed

Tatiana Tropina:Shall I start?

Greg Shatan:Please!

Kavouss Arasteh:Dear SDecretarait

Kavouss Arasteh:Pls dial me up

Brenda Brewer:Calling you now Kavouss.

Kavouss Arasteh:Bernard abd Brenda

Kavouss Arasteh:Have you forgotten me pls

Bernard Turcotte:How can we forget you KaVOUS

David McAuley:I just lost my phone - will change - in meantime I was present in WP4 and have read document Tanya is speaking about and have no issue w it

Anne Aikman-Scalese:AGree with those on the list who have remarked that the definition of "respect" is a very important part of developing this FOI

David McAuley:Brenda, i just came a back at 8222

David McAuley:not me Niels

Tatiana Tropina:"I will be back" says Greg :)

Vicky Sheckler:agree w/ tatiana. need a chance to review.

Tatiana Tropina:it's a finalised version from the drafting team but I think the participants can just go and comment if there are any issues/questions

Tatiana Tropina:so let's give it more time. :)

jorge cancio (GAC Switzerland):Thanks to Niels for reminding me/us that the group has sought feedback on the legal effects of the HR commitment being a "core value" - I would urge to make sure that we obtain a proper and timely response, as this character may impact the discussions on the FOI, the concerns expressed etc. - thanks

John Laprise:Recommend then that we assert change control at this point as a standard reference point as a prelude to approval

Tatiana Tropina:if there are any questions or requests for clarification the drafting team can make all the necessary amendments.

Tatiana Tropina:I think the concerns discussion went to the list already

Tatiana Tropina:google docs seems working less at this point.

David McAuley:Not yet Niels, thank you

Tatiana Tropina:Greg made an excellent point on the list about FOI

John Laprise:I'm fine at the moment. Concerns on the list have validity and people are thinking about them.

Tatiana Tropina:about what it means

Brett Schaefer:Sorry I'm late.

John Laprise:A risk matrix?

John Laprise:impact vs. likelihood?

Tatiana Tropina:I think we will be struggling with them for a long time :)

Niels ten Oever 2:Dear staff, could you be so kind to open the second URL on the screen?

Tatiana Tropina:but all in all, yes, we have a good distinction in the report.

Anne Aikman-Scalese:Is it true that the direction to our WS2 Human Rights Subgroup includes direction to develop "policies and framework"? It certainly does seem that we are considering policy matters and I continue to be confused about the proper interaction between the group and the Policy Development Process as well as the Public Policy Advice to be given by the GAC - and also Policy advice from ALAC and others. Since we know that policy is developed in the MS bottom-up process, how can we develop an FOI that does anything other than suggest a procedure applicable to that process?

Cheryl Langdon-Orr (CLO):+1 Andrew

Greg Shatan:Anne, we are suppose to "consider" them, not develop them.

Cheryl Langdon-Orr (CLO):Well said Tatiana

Anne Aikman-Scalese:@ Greg - but since no policy development has taken place, how do we "consider" these policies? And presumably we must "develop" the FOI.

David McAuley 2:I have lost net connection from time to time but am following on phone as well

Daniel Appelman:And what is a framework on interpreting human rights if not to consider the scope of ICANN's hr obligations and develop recommendations that if accepted would become policy?

Tatiana Tropina:Greg, exactly - state duty... but "mitigation" and "remedies" go into the direction of enforcement...

jorge cancio (GAC Switzerland):As the Ruggie principles are recognized as a standard, we would need to clearly explain when and why we would diverge from them in this FOI

Tatiana Tropina:Jorge, this is rather an easy task - ICANN is not "business" in sense of Ruggie principles.

Markus Kummer:@Jorge & Tatiana: +1. Whether easy or not, the Ruggie Principles are the baseline now for non-governmental actors.

jorge cancio (GAC Switzerland):When I see "easy", I get a bit surprised... ICANN is a special animal, and as Markus says the Ruggie principles are the closes we have as a standard

Tatiana Tropina:Markus, sure. I probably used the wrong word "easy" :)

Tatiana Tropina:But I remember Paul Twomey nailed it very well in the WP4 why IANN is different.

Tatiana Tropina:ICANN

Greg Shatan:+1 Tatiana. We should try to find that.

Tatiana Tropina:David, thanks, very well said.

John Laprise:+1 David

Niels ten Oever 2:There is an implementation of the Ruggie Principles for a not-for-profit organization, done by John Ruggie himself: <http://www.shiftproject.org/resources/publications/fifa-human-rights/>

Anne Aikman-Scalese:Agree that in our work, we must take into account that there is a Policy Development Process within ICANN and that is not the work of this group.

Tatiana Tropina:Greg, I wonder if there is a transcript. We agreed in the WS1 to treat Ruggie with care but it seems that it comes up again and again. So may be finding the discussion makes the things easier (I am afraid to use the word "easy" now)

jorge cancio (GAC Switzerland):agree that we are here for an "interpretation" exercise, not a policy development

Greg Shatan:Thanks, Niels. I see it is an implementation for FIFA. How ironic.

Markus Kummer:+1 - for sure. But we have to analyze why and where the Ruggie Principles don't apply to ICANN.

Tatiana Tropina:Niels, ICANN is not like other non-profit too. there is already the cctld debate on the doc - as one of the points

Tatiana Tropina:Markus, exactly. One of the points I already vocied - in my opinion they do go to enforcement and proteiton (Ok, mitigation and remedies) and many of these ICANN can't do

jorge cancio (GAC Switzerland):The Mission sets the limits to ICANN actions - insofar ccTLDs are concerned, ICANNs role is very limited

Anne Aikman-Scalese:Unfortunately the Ruggie definition of "respect" appears to implicate ICANN in content regulation.

Markus Kummer:+1 David

David McAuley 2:+1 Tanya, and Paul Twomey's insights as a prior ICANN CEO will be quite helpful

jorge cancio (GAC Switzerland):It would certainly see Paul Twomeys comments again and consider them in light of the wording given to the commitment in the new Bylaws (...as a "core value")

Tatiana Tropina:Ruggie shall be out unless we decide they are in... Agree that we shall not discuss for a long time about their applicability since we decided not to commit to them :)

Tatiana Tropina:oh not to commit to them blindly, sorry

Markus Kummer:@Tatiana:+1, but they are a good starting point!

Tatiana Tropina:Markus, sure sure

Tatiana Tropina:the usability of some of the guidance are not to be questions

Tatiana Tropina:Good question Greg.

jorge cancio (GAC Switzerland):I don't think we need to decide whether they are in or out - the question is to see what is useful in them and what is problematic. The result will tell us if it can be said that they are meaningfully in or out

Kavouss Arasteh:Niels, pls seek for consensus if RP should be put for discussion.

Tatiana Tropina:Jorge, I think we can all agree on this we need to see what is useful and what is very problematic

David McAuley 2:As I recall, one concern Paul T had about importing HR compilations was that of unintended consequences – meaning we must be cautious in this regard

jorge cancio (GAC Switzerland):To put it differently: we cannot decide on the general question, until we look into the specifics

Tatiana Tropina:David, yes, and there was something about ICANN's unique mission e.g. with respect to cctlds

David McAuley 2:exactly, thanks Tanya

Greg Shatan:That's what is in the Bylaws.

David McAuley 2:+1 Greg

Cheryl Langdon-Orr (CLO):I'm not sure how we have to get concensus in something yet either

Cheryl Langdon-Orr (CLO):wow bad typing award for me this morning

jorge cancio (GAC Switzerland):good idea

Andrew Mack:think this would be helpful

David McAuley 2:will take longer than a week i think

Tatiana Tropina:mmmmm I would say one week is tough but we can start with one week

Tatiana Tropina:David, :)

jorge cancio (GAC Switzerland):"a week" as a flexible concept... ;P

Avri Doria:i like the idea of inviting Ruggie to join a conversation

Tatiana Tropina:relativity of the deadlines :)

Paul McGrady:Happy to hear from John R. but don't want to delegate our thinking to him.

Markus Kummer:@Niels:+1

jorge cancio (GAC Switzerland):yep

Farzaneh Badii:This is all to define "respect" , right?

Cheryl Langdon-Orr (CLO):Yes we can make a start

Tatiana Tropina:Like the idea to invite Ruggie - he shall survive this

Anne Aikman-Scalese:Something else we need to be aware of in relation to the balancing act of "respect for human rights" is that the European Commission is in the process of developing a Code of Conduct for Countering Illegal Hate Speech Online. This may be someday be considered as "applicable law" in Europe.

Tatiana Tropina:the more I think about this idea of commenting on Ruggie the more appealing it looks - this will frame the "concerns" discussion as well and make our work following some logical steps

Cheryl Langdon-Orr (CLO):yes it seems so

jorge cancio (GAC Switzerland):+1 Tatiana

Tatiana Tropina:Anne, certainly worth to investigate this, we can then see how it goes together with the applicable law comment from the ICANN legal

Bastiaa Goslings:I agree

Cheryl Langdon-Orr (CLO):Perhaps even a table Neils for the Principles 'review'

Brenda Brewer:I don't know why recording stopped. I restarted it

Farzaneh Badii: I hope the meeting was being recorded all along

Paul McGrady: I would like to volunteer.

Tatiana Tropina: Hm, Niels, no, I think co-chairs shall put the doc on and then we all comment

Tatiana Tropina: I don't think there would be a lack of comments! Rather I perceive an unreadable mess

Andrew Mack: Can you clarify "which work"? Sorry, just trying to get clarity

Jorge Cancio (GAC Switzerland): Let's put the doc up for all to comment

David McAuley 2: we need a scope for the project - maybe spend this week specifying how we will study this - we will also need active input from ICANN staff

Farzaneh Badii: oh we are vetting volunteers now

Farzaneh Badii: very good approach!

Jorge Cancio (GAC Switzerland): I will non-volunteer, but will surely comment :D

Niels ten Oever 2: <https://youtu.be/BCoL6JVZhrA>

Anne Aikman-Scalese: Article 19 has provided comment to the European Commission draft Code of Conduct and has stated that the definition of "hate speech" is overly broad in that it proscribes "incitement to hatred" which is an emotional state or opinion. Article 19 also comments that "the right of individuals to express themselves anonymously online must be fully guaranteed". In my view, this does not represent a "balancing" of Human Rights.

Greg Shatan: I will join in halfway through and kibitz. :-)

Greg Shatan: and probably get completely sucked in.

Tatiana Tropina: I dunno what I signed up for, volunteering for Ruggie is scary since I am the opponent :)

Tatiana Tropina: Greg, volunteer please, too!

Tatiana Tropina: because you will comment anyway

Bastiaan Goslings: I'd like to be involved

Greg Shatan: Tanya, you will be debating John Ruggie. :-)

Bastiaan Goslings: as a 'newbie';-)

Greg Shatan: Oh, okay, I'll volunteer, too.

Andrew Mack: I'm happy to help with the volunteer group

Tatiana Tropina: Aha! Niels, we have more volunteers - Greg and Bastiaan is in

Cheryl Langdon-Orr (CLO): Can you also put any links placed into AC room Chat to the mail list please not all OS allow for live links from chat etc.,

Niels ten Oever 2: Will do

Tatiana Tropina: and Andrew! let the party start!

Tatiana Tropina: aww the system lowered my haaaand :(

Tatiana Tropina: will answer Kavouss here- yes of course, everyone will comment, we will just sum up the comments, no more

Tatiana Tropina: and Andrew and Bastiaan!

Bastiaan Goslings: haha

Bastiaan Goslings: Idd!

Anne Aikman-Scalese: [http://ec.europa.eu/justice/fundamental-rights/files/code\\_of\\_conduct\\_hate\\_speech\\_en.pdf](http://ec.europa.eu/justice/fundamental-rights/files/code_of_conduct_hate_speech_en.pdf)

Paul McGrady: I'm very happy to be a lowly member of the R.P. subteam. Maybe Greg or Tatiana could be the leader?

Cheryl Langdon-Orr (CLO): I would have thought that need not have been said but was rather a standard of our work methods

Anne Aikman-Scalese: One might well ask whether ICANN will consider itself obligated to principles of "illegal hate speech" as defined by the European Commission.

Cheryl Langdon-Orr (CLO): That was to Tatiana who graciously responded to Kavous IMO

Avri Doria: can't they all be found on the wiki pages?

Jorge Cancio (GAC Switzerland): +1 Tijani

Tatiana Tropina:Ruggie shall be certainly on the mailing list, too - so may be the volunteers can sum up the google doc comments for the mailing list!

Tatiana Tropina:and put the comments from the list to the google doc

Farzaneh Badii:bye

Bernard Turcotte:bye all

jorge cancio (GAC Switzerland):thanks and bye!

David McAuley 2:thanks Niels, staff, and all

Bastiaan Goslings:Bye!

Greg Shatan:Bye all!

Cheryl Langdon-Orr (CLO):Bye

nigel hickson:bye

Avri Doria:bye

Tatiana Tropina:bye all