

Human Rights Meeting #5 (13 Sept @ 19:00 UTC)

Attendees:

Sub-group Members: Andrew Mack, Paul McGrady, Anne Aikman-Scalese, Brett Schaefer, Chris LaHatte, Corinne Cath, Daniel Appelman, David McAuley, Elizabeth Andrews, Erich Schweighofer, Greg Shatan, Daniel Appelman, Griffin Barnett, Harold Arcos, Hibah Hussain, John Laprise, Jorge Cancio, Kavouss Arasteh, Lousewies van Der Laan, Markus Krummer, Matthew Shears, Niels ten Oever, Rachel Pollack, Robin Gross, Ron Da Silva, Rudi Daniel, Steve Metalitz, Tatiana Tropina, Tijani Ben Jemaa. (29)

Observers: Cheryl Langdon-Orr, Herb Waye, Iren Borissova, Isabel Rutherford, Paloma Szerman, Taylor RW Bentley (6)

Staff: Karen Mulberry, Brenda Brewer, Yvette Guigneaux

Apologies: Bastiaan Goslings, Paul Twomey.

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

Transcript

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

Recording

- The Adobe Connect recording is available here: <https://icann.adobeconnect.com/mssi-projects/>
- The audio recording is available here: <http://audio.icann.org/accountability/ccwg-accountability-hr-subgroup-13sep16-en.mp3>

Agenda

1. Administrivia
Roll call, absentees, Sols, etc
2. Final Discussion on: Summary on what was agreed and discussed on human rights during WS1 (attached and here: https://docs.google.com/document/d/1rwpw9aSAqboRO2_rNkjMVJPOmYwmdr5B1_M_aNMoZb4/edit?usp=sharing)
3. General Discussion & Q&A on Ruggie Principles and Ruggie FIFA report (attached and here: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
https://www.hks.harvard.edu/content/download/79736/1789834/version/1/file/Ruggie_humanrightsFIFA_reportApril2016.pdf)
4. Discussion on: Analysis of Ruggie Principles for ICANN – Short presentation by Drafting Volunteers https://docs.google.com/document/d/10XMIVosuEfgmXwr7SQjeNLKI8r_hdONrJNV2ih72V80/edit
5. AOB

Notes

1. Administrivia

SOI changes and updates, concerns with process and procedures for group and with ICANN - Annex 6 procedures
2. Final Discussion on: Summary on what was agreed and discussed on human rights during WS1

2nd reading - No comments received on the list, asked for comments from participants on the call. no comments, proposed agreed document and accept it as is. Indication from participants that they support using the document as drafted.
3. General Discussion & Q&A on Ruggie Principles and Ruggie FIFA report

Discussion of the Ruggie Principles and concerns raised during WS1 and how they apply to ICANN and if they can be applied to ICANN. Need to look at framework for application, note that 1) we still are waiting for the assessment of the meaning of the HR commitment being a "core value"; 2) Last week we agreed to look into the Ruggie Principles, one by one: please let us do so, without making absolute claims as to their relevance. Might be a good idea to discuss the principles one by one for applicability and application. Principles 1 through 10 apply to member states so would not apply to ICANN as ICANN does not have a state role. Should start with Principle 11 to determine if apply's to ICANN. In response to a question the Ruggie Principles appear to apply to corporations who are governed/owned by a state, which is different than the role of ICANN which could make them a bad fit to apply to ICANN.

Conclude that ICANN is not a state, ICANN may not be a clear cut organization that the principles apply. Need to go ahead with the drafting team to have them analyze the appropriate principles as they may apply to ICANN
4. Discussion on: Analysis of Ruggie Principles for ICANN – Short presentation by Drafting Volunteers

Report from the drafting team

5. AOB

ACTION ITEM:

1. Drafting team to analyze the appropriate Ruggie principles as they may apply to ICANN
2. Add to the agenda for next meeting the process and procedures to use (PDP) for ICANN human rights

Documents Presented

Chat Transcript

Yvette Guigneaux: Welcome to the WS2 Human Rights Subteam Meeting #5 | 19:00 UTC | Tuesday, 13 September

John Laprise: Good afternoon all

Kavouss Arasteh: Dear Brenda, Dear NEW Host, good time, day or night

Brenda Brewer: Hello all!

Kavouss Arasteh: Good evening Niels

Niels ten Oever: Hi Kavouss, it's morning here in Australia :)

Niels ten Oever: Good evening to you and to everyone on the call of course.

Kavouss Arasteh: SORRY, I THOUGHT YOU ARE IN nETHERLANDD

Kavouss Arasteh: BUT YOU DO NOT aUSTRALIAN aCCENT

Corinne Cath: it's the beard kavouss - it hides the aussie accent

Cheryl Langdon-Orr (CLO): hi everyone

Niels ten Oever: You are right Kavouss. I am based in the Netherlands, but have to travel a lot for work..

Tatiana Tropina: hi all

Kavouss Arasteh: TATIANA AND hUMAN RIGHTS

David McAuley (RySG): Brenda, I am 8222

Brenda Brewer: Thank you David!

Cheryl Langdon-Orr (CLO): which State / city are you in Nidls?

rudi daniel: hi all

Tatiana Tropina: can't get a dial out from the system, doesn't connect me. Will try to dial in, but otherwise in listening mode for now

Kavouss Arasteh: Any Human Rights meeting without RTatiana and Nigel is not really formal

Chris LaHatte: Hi from Los Angeles

Tatiana Tropina: Brenda, I am 3791.

Brenda Brewer: Thank you Tatiana!

Herb Waye Ombuds: Hello from LA

Corinne Cath: Bonsoir from Brussels

David McAuley (RySG): I think BYlaw 27.2 tells of process to approve - like WS1 and then to Board

Brenda Brewer: no, she called in

Tatiana Tropina: we have to approve like CCWG WS1

Anne Aikman-Scalese (IPC): Thanks Neils

Tatiana Tropina: May be we ask for the comments on the call?

David McAuley (RySG):please mute if not speaking

Corinne Cath:Can you please mute your mic if you are not speaking

Cheryl Langdon-Orr (CLO):please MUTE

Kavouss Arasteh:Niels I disagree to put FOI of Human Rights within the process of PDP

Anne Aikman-Scalese (IPC):Annex 6 says we as a group need to determine how the FOI will be reviewed "to ensure broad multistakeholder participation" and consistent with ICANN "policies and processes".

Tatiana Tropina:green ticks may be?

Tatiana Tropina:otherwise we can give it one more week

Kavouss Arasteh:aNNE, BUT THAT DOES NOT MEAND TO PUT IT UNDER pdpè

Kavouss Arasteh:pdp

David McAuley (RySG):poor connection?

Tatiana Tropina:Niels you are breaking.

jorge cancio (GAC Switzerland):sound is very bad

Kavouss Arasteh:PDP

Anne Aikman-Scalese (IPC):@Kavouss - right but likely to GNSO Guidance for example

Cheryl Langdon-Orr (CLO):audio is BAD

Tatiana Tropina:Niels, we can barely hear you

Kavouss Arasteh:Niels I can not hear you well

Andrew Mack:line is really breaking

Paul McGrady:I'm having trouble hearing you.

Cheryl Langdon-Orr (CLO):loosing you Niels

David McAuley (RySG):audio became unintelligible

Greg Shatan:Niels you have degraded significantly.

Tatiana Tropina:no audio at all now.

Greg Shatan:Your audio, that is.

David McAuley (RySG):Tijani you sound great

Andrew Mack:hear you fine Tijani

Tatiana Tropina:No reds.

David McAuley (RySG):Well done, Greg, making clear it is #2

Kavouss Arasteh:who is chairng the meeting pls

Erich Schweighofer:Hi all, sorry for being late (EURALO call)

Tatiana Tropina:do we have the co-chair on the call?

jorge cancio (GAC Switzerland):lost sound - what's up?

Brenda Brewer:If your phone number is listed in Attendee pod as 202xxx1077, please identify your name for attendance purposes. Thank you!

Kavouss Arasteh:Don't we have the co-chair

David McAuley (RySG):Brenda - can you dial Niels?

Brenda Brewer:I do not hve Niels phone number. Please stand by

Corinne Cath:i have it

Brenda Brewer:Niels has disconnected

David McAuley (RySG):OK thanks Brenda

Corinne Cath:who should i give it to

David McAuley (RySG):to Brenda Corinne

Tatiana Tropina:Greg !

Tatiana Tropina:go to the item 4

Niels ten Oever:am back

Niels ten Oever:Go ahead Greg

David McAuley (RySG):Thank you Greg for filling in

Brenda Brewer:calling Niels now

Cheryl Langdon-Orr (CLO):we were not skipping but going back once Niels got back... happy to revert to 3 in order now he is back

Greg Shatan:Item 3

Cheryl Langdon-Orr (CLO):Anne was speaking to 3 Kavous

Tatiana Tropina:David, absolutely. I think some of the questions posted in the doc would be addressed if Paul speaks

Cheryl Langdon-Orr (CLO):I agree with your gnral points DAVID

Tatiana Tropina:we have a transcript, I can send it to the list if the group wants.

Tatiana Tropina:I mean Paul Twomey's concerns expressed on WP4 call

jorge cancio (GAC Switzerland):please do so Tatiana

Tatiana Tropina:Jorge, yes, I think it might clarify some of our exchanges on the google doc

Cheryl Langdon-Orr (CLO):Yes that would be helpful Tatiana

Tatiana Tropina:Alright, will send it right after the call

Niels ten Oever:@Greg - ICANN is a not for profit corporation, right?

rudi daniel:audio is breaking up

David McAuley (RySG):I agree we must disaggregate them - Ruggie for "corporations" ICANN is unique

jorge cancio (GAC Switzerland):What can we learn from the application of Ruggie to FIFA? anyone is able to sum it up?

Corinne Cath:That Ruggie can be applied to organizations that dont traditionally fit the Ruggie principles bill so to speak

Greg Shatan:FIFA is much more of a business enterprise than ICANN is....

Tatiana Tropina:The problem is not the application, the problem is the extent of the requirements

John Laprise:Great. "Neither fish nor fowl..."?

David McAuley (RySG):+1 Tatiana

Tatiana Tropina:Agree, Greg. Some of the impact FIFA can address ICANN can't

Tatiana Tropina:yes, parts or I would even say - some wording, the problem is some parts can be good but they contain some wording that is not applicable...

jorge cancio (GAC Switzerland):Could be useful to have a neutral, objective analysis of the value of the FIFA-Ruggie experience...

Niels ten Oever:Audio quality is not very clear unfortunately

David McAuley (RySG):poor connection

Paul McGrady:Andrew you seem fuzzy sounding

David McAuley (RySG):Agree with Andrew that if we do adopt any part of Ruggie we need to specify how, to what extend, etc

matthew shears:I think we need to be very careful about picking from this or that text - we can learn from the applicaiton of he Ruggie principles to FIFA but lets be cautious in bringing over any aspect of that analysis

matthew shears:agree David

Tatiana Tropina:Matt, wise.

Tatiana Tropina:and David.

rudi daniel:Jorge has a point here, it would be good to get view of the Fifa model.

Kavouss Arasteh:The discussion is not properly conducted

Anne Aikman-Scalese (IPC):Re: Guiding Principles on Business and Human Rights document we are discussing, we should refer to p. 19 Principle 18. (b), re assessment of human rights risks in its business activities. Document says "This process should ... (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation." This guiding principle is EXTREMELY important for ICANN because the MS Model operates very differently from other non-profit corporations.

Cheryl Langdon-Orr (CLO):Agree with you Andrew / Tijani they can *inform* us not much more

jorge cancio (GAC Switzerland):ICANN is a private organization - perhaps not a business enterprise - but it also engages in commercial activity. Let's not exclude the relevance of Ruggie out of a narrow definition

David McAuley (RySG):+1 Tijani, CLO

Kavouss Arasteh:We must merely focus on business enterprises only and examine if ICANN is really falling under business enterprises?

Corinne Cath:+ Jorge

Andrew Mack:Paul, this seems like a simple, good idea

Cheryl Langdon-Orr (CLO):Jorge that is of course where the Principals can*inform* us

David McAuley (RySG):Various laws apply I think as ICANN has a presence in various places

Cheryl Langdon-Orr (CLO):I suspect so David

Niels ten Oever:I only heard the first syllable

David McAuley (RySG):uh oh, just lost Jorge

Tatiana Tropina:Greg, + 10000000000

Tatiana Tropina:Greg, another plus million

David McAuley (RySG):exactly Greg, good point

Niels ten Oever:Agree with Greg, we need to stick to our mandate, which is the development of a FoI

matthew shears:I am concerned that we are in the weeds on Ruggie - should we not be up a couple of levels and looking at what the FOI is asking us to do?

matthew shears:+ 1 Greg and David

Cheryl Langdon-Orr (CLO):AGREE Greg

Andrew Mack:+1

David McAuley (RySG):and the bylaw mentions applicable law

Cheryl Langdon-Orr (CLO):yup

Paul McGrady:Agree Greg. We should find out what is already on the page before we go and add additional items.

Tatiana Tropina:I agree with Kavouss!

Tatiana Tropina:we are dealing with two many things in the moment, and it comes to the point Greg brought. About figuring out what we have to do

Tatiana Tropina:what is the scope of our work

Greg Shatan:Good point David. In order to provide a framework to interpret the Bylaw, that framework needs to identify the applicable law.

David McAuley (RySG):yes

Cheryl Langdon-Orr (CLO):yes

David McAuley (RySG):oh my

Cheryl Langdon-Orr (CLO):did he drop again?

David McAuley (RySG):Jorge's line is misbehaving

Anne Aikman-Scalese (IPC):QUE

Cheryl Langdon-Orr (CLO):is he getting a dial out then?

Anne Aikman-Scalese (IPC):QUESTION: When will we have an answer from ICANN Legal as to commitments pursuant to "applicable law"?

jorge cancio (GAC Switzerland):sorry and I apologize for the bad audio

Niels ten Oever:Greg - would Principle 11,12,13,14 and 17 work as contribution to FoI ?

Anne Aikman-Scalese (IPC):@ Jorge - do you want to type your comment and one of us will read it? I will volunteer to read it or Chair can read.

Greg Shatan:Our fundamental scope is to make a Framework of Interpretation so that the Bylaw will be consistently interpreted when it is applied, as much as possible.

matthew shears:+ 1 Tatiana

jorge cancio (GAC Switzerland):What I wanted to say: 1) we still are waiting for the assessment of the meaning of the HR commitment being a "core value"; 2) Last week we agreed to look into the Ruggie Principles, one by one: please let us do so, without making absolute claims as to their relevance

Andrew Mack:Greg -- it also doesn't include many other key ICANN actors

Tatiana Tropina:Jorge, agree. We better to go one by one and that's what I meant...

Tatiana Tropina:even after listing the general concerns

Chris LaHatte:why dont we develop our own set of principles-the ICANN principles, which commit to an agreed set of human rights?

Niels ten Oever:We did not get a reply from ICANN legal to our question.

jorge cancio (GAC Switzerland):And in parallel we may have a look at the FIFA paper and see what we can learn from there

jorge cancio (GAC Switzerland):FIFA: has NO immunity whatsoever in Switzerland

jorge cancio (GAC Switzerland):Please correct that

Greg Shatan:That's a relief.

Greg Shatan:They certainly have no immunity in the US, as we learned recently.

jorge cancio (GAC Switzerland):it's a private association, dealing with a sector, composed by private national associations

Greg Shatan:Thanks, Jorge.

Erich Schweighofer:Host states can give also "private" international organisations privileges and immunities

Andrew Mack:the question of applicable law is important, and sounds messy.

Erich Schweighofer:RedCross may be a better example

Erich Schweighofer:Applicable law = law of seat or activity

Erich Schweighofer:If you are active worldwide - messy

jorge cancio (GAC Switzerland):yes Erich - there are a number of such organizations... such as the Red Cross

Erich Schweighofer:therefore privileges and immunities for IOs were created

David McAuley (RySG):Here is the Bylaw phrase in which reference to applicable law appears (not the entire bylaw): "...respecting internationally recognized human rights as required by applicable law..."

Anne Aikman-Scalese (IPC):Many non-profit directors have immunity under applicable U.S. state corporate laws - including in California I think. - based on what Holly and Rosemary said. That is about personal liability.

David McAuley (RySG):To my reading, any interpretation would ask at least two questions: is that internationally recognized HR and is it required by applicable law?

Chris LaHatte:+1 Jorge, Red Cross is a good precedent

Greg Shatan:The Ruggie Principles depend on the role of the State as well as the role of the Business Enterprise.

Tatiana Tropina:+1 Greg

David McAuley (RySG):+1 Greg, Tatiana

Anne Aikman-Scalese (IPC):@ David - I think you make a very good point that the FOI would be much more helpful to the Community and to the Board if it breaks out framework in relation to the two questions you pose.

David McAuley (RySG):Thanks Anne, much for us to do to get this right

Anne Aikman-Scalese (IPC):I also think that if done the way you are framing these two questions, it makes the Board obligations much more clear and it reduces the risk associated with possible Request for Reconsideration and IRP actions.

Chris LaHatte:Ruggie principles are a guide for us to develop our own HR principles

Tatiana Tropina:I agree with Greg. Again.

Greg Shatan:Chris +1.

matthew shears:+ 1 Greg - then lets agree how they apply if they do to ICANN the corporation and then move on.

jorge cancio (GAC Switzerland):Icann is a special animal. It regulates through contract, applying policies adopted by its community. But it operates under corporate law.

Cheryl Langdon-Orr (CLO) 2:that is how I see them Chris

Greg Shatan:I agree Kavouss, but the Ruggie Principles assume the role of the state interacting with the role of the business in order to accomplish its objectives.

Greg Shatan:That is why the Ruggie Principles are a bad fit.

David McAuley (RySG):With respect, I am not sure I agree @Chris. If we develop principles they have to be internationally recognized as required by applicable law – can we do that?

Erich Schweighofer:Agree with Greg - ICANN is a sui generis organisation corporate law does not apply and regulation by contract is nothing new

Greg Shatan:As an employer it is obliged to follow applicable laws in the jurisdiction of employment, like any other business enterprise. That's why I brought that up -- to contrast it with ICANN's role in other facets of its operations.

jorge cancio (GAC Switzerland):@Erich: why does corporate law not apply? I feel we have learned the contrary

Anne Aikman-Scalese (IPC):@Jorge - you have identified one of my big concerns in relation to adopting FOI without GNSO expedited policy process. The Contracted parties CANNOT be bound by contract as far as I know, without development of "Consensus Policy" and Consensus Policy may only be adopted via either full PDP or Expedited PDP.

David McAuley (RySG):Sui generis captures it, good choice @Erich

Greg Shatan:Where it does not have a "state" in clear apposition.

Paul McGrady 2:I think my suggestion of finding out what the California baseline is should be given further thought.

Chris LaHatte:ICANN being unique, gives us the challenge to develop our own set, but based on existing templates like the UNHR and Ruggies

David McAuley (RySG):We need to develop a plan to review Ruggie if that is our intent

jorge cancio (GAC Switzerland):we conclude that ICANN is not a state :D

Erich Schweighofer:Chris: that is the challenge.

Tatiana Tropina:;) that's a good conclusion

Greg Shatan:Corporate law applies to ICANN, but where it stops acting like a traditional corp., the model falls apart.

Chris LaHatte:ICANN is a state of mind :-)

David McAuley (RySG):I will be out of touch Saturday through Tuesday

Erich Schweighofer:ICANN is not a corporation more an association

jorge cancio (GAC Switzerland):or a mind of state?

Andrew Mack:+1 Chris

Anne Aikman-Scalese (IPC):Re the subteam draft document, I would suggest we delete all of Roman Numeral I which is applicable only to States.

matthew shears:+ 1 Greg - then lets get that out of the way as a first step[and move on

Tatiana Tropina:+1 Matt and Greg

Paul McGrady 2:Apologies, but I have to go to the next call.

Greg Shatan:Bye all!

David McAuley (RySG):whoa - we are not developing contract principles are we?

Erich Schweighofer:Bye all.

David McAuley (RySG):we do need clarity here

rudi daniel:by all,

John Laprise:Advance Anne

Tatiana Tropina:bye all, have a great day or evening

Kavouss Arasteh:I totally disagree to put the FOI in a PDP

Corinne Cath:bye all

Anne Aikman-Scalese (IPC):Re the subteam draft document, I would suggest we delete all of Roman Numeral I which is applicable only to States.)

matthew shears:bye

Chris LaHatte:Bye all

Cheryl Langdon-Orr (CLO) 2:Thanks everyone talk again soon Thanks Niels Much more to discuss *clearly*

jorge cancio (GAC Switzerland):bye