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On page: https://gnso.icann.org/en/group-activities/calendar

Niels ten Oever: Welcome everyone to the session of the Cross-community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights. First of all, I hope that that name is something we will be able to change by the end of this session. So there is some good news and some productivity we hope to achieve to date. So.

But first we have some substantive work to do. First we'll start with the overview of the status of the human rights-related in the CCWG. A lot of the work that we've been doing in the CCWP slowly moved towards the CCWG but with the CCWG ending up, we might see other places where the work will pop up. So it's a good way to prepare and understand where we are in that sense.

After that we'll have a presentation by Vidushi Marda, who did research in the possibilities of implementing the human rights bylaw in the GNSO, using human rights impact assessments. And then finally we could talk about what

this group should do for the coming time. We are not with a huge group so feel free to interrupt and discuss so we can have an interactive session.

For the first part of the agenda, I invited several (rapators) from CCWG subgroups. Not all have arrived yet on human rights-related topics but I'm very happy that we have David McAuley, who is working on the IRP process, and Michael Karanicolas, who has been working on the transparency work. And I'll be telling you a bit about the human rights subgroup.

So next slide, please. As you all know, the subgroups have been doing their work, and in the last face-to-face meeting that was held last Friday, we've been able to finish all second readings of the subgroup's work, which means that now a final report will be prepared that will go for a public comment period. Now after the public comment period, there might be some revisions to the report, which then will be forwarded to the chartering organizations for approval and then to the boards. And after that we hope that by June that Workstream 2 will end and changes will be implemented.

And to see where we are with that, I would first like to ask Michael what changes there are and what progress has been made in the field of transparency. Michael, please.

Michael Karanicolas: Oh we're moving forward by leaps and bounds on the transparency side. Yes, so we had our second reading of the transparency report at the plenary on Saturday - Friday? Friday, sorry. So there were a couple of minor issues raised by ICANN staff as well as - or sorry, it was - actually it was raised by someone on the board, as well as a couple of people from the audience raised, mostly minor, kind of word-smithing things, and so we made some minor revisions to the document as a result of that.

And I've sent a revised version into the leaders of - to Thomas Rickert and to the -- I'm not sure what the term is -- to the people running it. What's Thomas', Thomas Rickert what's his title?

Man: The co-chair.

Michael Karanicolas: The co-chair, sorry. To the co-chair. And that should be circulated again soon. Yes that's basically where we stand. A second reading has been done. There was a few minor changes as a result of that and so we're moving forward with it as a result and we're - yes, expecting it to get into the review process.

Niels ten Oever: So would you say that this also brings ICANN in line with international standards on transparency?

Michael Karanicolas: Yes, actually. So the standards for the most part on the access to information side in particular represent a really dramatic improvement on ICANN's DIDP that would bring the DIDP procedurally into line with the best access to information systems in the world in terms of the way that it's framed and defined, as well as, and far ahead at what you would find at parallel organization like the United Nations and the World Bank. So it's a very promising set of amendments.

There are areas which still I think need some improvement, including clarification on transparency around contracting, as well as transparency at ICANN Legal. So those are still - there still are some areas of improvement and I think that it's still going to be a part of a broader push towards greater transparency.

There is also - it's also worth noting that there is aspects of ICANN's transparency that we didn't really look at due to the scope of our mandate in this. So we only looked very kind of broadly at ICANN's proactive disclosure policies and ICANN's open data policies. That's another enormous area that needs to be tackled. It wasn't within our mandate this time around but that needs to be done.

And there's also going to be further work to be done in terms of monitoring implementation. So, you know, if the current recommendations on the transparency side are implemented in full, it's going to create a fantastic policy on paper but then the next step is how does - what happens when the rubber meets the road and how does it actually get implemented when people start filing requests and decisions need to be made about what goes out and what doesn't.

So I see the current recommendations, if they're properly and fully adopted, as a very important and major step forward but, you know, transparency is always going to be a process and it's always a question of progressive improvement where you're looking to level up standards of what goes out and how open and transparent the organization is over time. So I think this is an important step forwards towards that but part of an ongoing process, as I'm sure is the same for human rights.

Niels ten Oever: Thank you very much, Michael. I have one follow-up question and please others feel free to ask questions as well. Of course I'll also monitor the hands in the Adobe Connect room. There has been talk about open contracting. Could you give us a short lowdown of the standards from that because that might not be common knowledge?

Michael Karanicolas: So what open contract? You mean what is open contract, you know, what is the recommendation? So open contracting basically means that information about procurement processes are disclosed, and this can take a variety of different forms, including from simple stuff, like making sure that the call for procurement is openly and widely publicized to publishing the contracts that are signed with the contracting parties to ensuring that cost estimates, bids received are published so that people can oversee which bid was chosen and why, to assessments internally of the success or failure of the project.

So ideally what you want to have is an ability for people to - outsiders to look at the process all along to view every stage of the procurement process so that they can first of all you get a measure of oversight on whether or not things have been done honestly and with proper integrity and proper due diligence. And it also tends to encourage competition by ensuring that more people can look at the process. It tends to get - to bring in more bidders, to drive down cost as a result. So there's benefits in terms of accountability and in terms of actually cost savings as well.

The main international standards on this are called the Open Contracting Data Standard. The way that it's phrased in the recommendations at the moment is a little bit more open ended, partly because this was little bit tangential to our main focus and so - or to our - to the scope of what we were meant to be looking at. So we only sort of mentioned the need to push for open contracting.

Without going into a huge amount of specifics, we mentioned contracts over a certain amount should be published and that there should be rules how non-disclosure agreements are entered into -- or I guess guidelines rather than rules. But this is another area that's going to need be clarified going forward. There's - it's a core practice among lots of governments around the world and so it's an area that, again, we're seeing these recommendations as taking a push towards but as part of an ongoing process.

Niels ten Oever: That nice to hear that ICANN is living up to and breaking ground in the area of transparency. That's very helpful. Are there any questions to Michael on his overview? David McAuley.

David McAuley: Thank you, Niels. It's David McAuley speaking. It's not a question, it's just a comment. I want to thank Michael. He was the leader of the group. For awhile it was co-led and so it was - there were things we differed on but we made great progress, and hats off to the (rapator) for moving it forward and taking up the work. Thank you.

Niels ten Oever: Yes I think we can all join in thanking Michael for that great work. And heading over to the other side of the table where there is David McAuley to give us an update on the piece or actually the process that will make the accountability measurements really hit the road, the IRP work. David, could you give us an update on that?

David McAuley: I would be happy to. David McAuley speaking again. One of the things that came out of Workstream 1 of the CCWG on Accountability was a new look at ICANN's independent review process. So the process itself has been in existence for some time. It's basically a formal arbitration process within the ICANN community. It's the top accountability level within the community before you go outside seeking relief somewhere else.

And so in the past, the IRP was set up under the bylaws in a fashion that the ruling - if anyone had a complaint that the board or the staff had violated ICANN's bylaws or articles of incorporation, they could go to the ombudsmen, they could go and file a reconsideration request, and, if those didn't work, they could go to IRP, a formal arbitration process.

And the results of that process would be a declaration by the panel, the IRP panel saying yes or no, this did or not violate the articles or bylaws and that would be delivered to the board and the board would then have to consider that. But there was nothing binding about it. And so in Workstream 1, the IRP was reviewed principally with that in mind, that is is this accountability mechanism sufficient going forward post IANA transition, and the decision made was no it's not, it needs to have more teeth, more enforceability.

And so the change that's come about to IRP as a result of Workstream 1 is that now the IRP decisions are binding in a sense. ICANN will be given a declaration that this or that did or did not violate the articles or bylaws. The judgment won't give direction as to what to do but it will effectively give direction that it must be corrected.

And so that will be binding on the board. It will be binding to the point that it will be a judgment that someone can take to a court and have enforced, and the bylaws recognize that. The bylaws also empower the empowered community to bring actions in its name, and ICANN, under the bylaws, will not be able to assert that this is not a legal entity. They won't have - they won't be able to bring standing arguments.

And so it's a big move forward on the IRP. But to implement all of that there needs to be adjustments to rules and procedures underneath the articles and bylaws that give this life. And so the bylaws gave life to a committee that the CCWG had actually created, and that's called the IRP Implementation Oversight Team and that the team that Niels was referring to that I head up.

And our role is to revise the rules of procedure for the IRP to take into account the new changes. Our role is also to help ICANN and the SOs and ACs pick and to vet and to vet applicants for and to pick members of what's called the standing panel. There will be a standing panel of at least seven arbitrators from which claimants and ICANN will pick three to hear any one case.

Our role is to come up with rules for appeal and other administrative things relating to the conduct of an IRP. Those are all in work right now, and our IRP IOT team has been working on rules. We've had public comments to our first draft. We are taking those into account and fashioning the rules to be final basically.

So I expect that, I hope, will be done by the end of this year, and I know that ICANN Legal and ICANN Policy are working on putting together a process for SOs and ACs to come together to pick members of the standing panel. That's going to be very important. These are jurists basically who will be independent of ICANN. ICANN has an obligation to train them about DNS but it's an important body -- and I may speak about it later when we speak about

Vidushi's paper -- and it's an important body that will be giving life to the things that we're doing.

And the IRP decision will be precedential. Precedent will be set. Records will be kept. And so this first standing panel will be very important in that respect. So the work is ongoing. It's not yet done, and I'm looking forward to getting it done. And that's pretty much where we are right now. Happy to answer questions.

Niels ten Oever: Do people have questions for David? I can understand if there are none because David explains it very well but I very - how could people if they are interested or could you tell us a bit more how these people will be found? Will those be like an open process, maybe we can apply, or are we going out to find - headhunt people?

David McAuley: Thank you, Niels. It's David McAuley speaking again. It's actually a combination. The way we will find members for the standing panel is there will be a formal expression of interest document released by ICANN, and frankly that's almost imminent. The IOT team, we came up with a draft and we delivered it to ICANN saying this is what we think would be a good expression of interest document, and ICANN has worked on it and the two groups have sort of come together. And I believe we're almost done with that document.

When ICANN releases that document publically, and we'll be asking SOs, ACs, all of us to push this word out within your communities and beyond, then of course applications will come in. And I know from people contacting me that there are people standing in line now that want to apply. So I mean it - I don't think we will lack for people of stature that have the qualifications applying. But in any event, we're going to try and broadcast that work.

The bylaws direct the selection process to look for diversity, both gender, linguistic, regional, legal tradition diversity, so not just everybody from a

common law background, whatever other legal backgrounds might exist. So. And again, it need not be seven members, it could be more. It can't be less. So that's something that the people who are vetting and nominating will have to decide. That's not the IOT team. Our role will be to assist in that respect but not to do it.

And so I expect that this will be released soon. So that's one part. I said it was a combination. The other part that it's combined with is, and the bylaws ask the SOs, the ACs to go out and put the word out and try and find people, try and find people that might be qualified to apply. And so the - it is the hope that there will be sufficient applications, that it will be no trouble to find seven, nine, whatever it might be, stellar candidates to be the standing panel.

At the end of vetting, interviewing, et cetera the SOs and ACs together will nominate the standing panel, them alone, nobody else except SOs and ACs, and those nominations will be the standing panel. ICANN board has a right to approve it but the bylaws also say that approval cannot be unreasonably withheld. And so that's the process and it's coming soon. And when I say soon, I think it's probably my guess, and this is just a guess, is coming within the, you know, this will all be underway in the first quarter of the next year, I think.

Niels ten Oever: That sound like a very solid process and great work. So. Also thanks a lot for leading this work, David, and doing it so diligently.

Then we'll move on. So I think Fiona Asonga is not here. She would present work on diversity. But she might arrive later. In that case we'll park it in the agenda later. And Maryam, could you go to the next slide, please. We'll have a short moment to talk about Human Rights Subgroup in the CCWG. Of course during Workstream 1 we had additional human rights core value to ICANN bylaws but there was also a bylaw edit that said that the human rights bylaw would only be activated once a framework of interpretation would be developed, as well as some considerations answered.

That has been exactly the work of the subgroup in the subgroup on human rights in the CCWG and we have been working on that framework and consideration and considerations document. By the time of the previous meeting, we had a document that was just done with the public consultation. We receive 12 public comments and we've been working - seeking to address them.

There were initially minor additions but then we had some more discussions, especially with governments that brought up comments during the public comments that felt we needed to discuss more. And based on those discussions, we've managed to come up with some consensus text, and that means that within the subgroup we were able, in the plenary, we were able to come up with a full consensus document, and I will show you. Maryam, could you go forward with two slides?

Maryam Bakoshi: Maryam for the record. We have a question from Kathy Kleiman. Yes it says, "Can you speak to the rules of standing in the new IRP?"

David McAuley: I didn't hear it, sorry.

Maryam Bakoshi: "Can you speak to the rules of standing in the new IRP?

David McAuley: Thank you. David McAuley again. The bylaws talk about standing in the - where they define a claimant. And basically I'll give a brief description, I don't remember the exact words, but in order to have standing, a claimant has to be materially affected by the action or inaction of the ICANN board or staff, and materially affected means harmed in a material way.

Now that's something - obviously those are general terms. The panel obviously would have to decide whether someone has standing in any one case, whether their complaint rises to the point, but that's my answer.

Niels ten Oever: I hope that answered Kathy's question. Now I can continue with explaining the contents of the consensus we've reached. Maryam, two slides ahead, please. One more. Perfect. So we've added direct text that you see on the screen. So we've added an extra reference to the UN guiding principles on business and human rights about we've talked extensively here in the cross-community working party, but to give you a short reference, Maryam, could you go back one slide, please?

The UN guiding principles for business and human rights consists of three pillars, namely the obligations of states to actively protect human rights, the responsibility of non-state actors to respect human rights, and the third pillar is access to remedy through due process.

So whereas the subgroup and the CCWG plenary hasn't come to a consensus on the applicability of the UN GPs for the interpretation of ICANN's human rights bylaw, it has said it can guide the - could guide the implementation of the human rights bylaws. And we will see a bit more about that. Next slide, please.

Because now that we have agreed on that in the subgroup and the plenary, we need to think about what could this concretely mean? Next slide, please. And for that I created like a selected reading from the considerations document on the framework of interpretation, which says that now ICANN's mission commissions - commitments and core values, including the human rights core value, should be taken into account by all SOs and ACs in ICANN organization when considering policy matters.

So all SOs and ACs in the ICANN organization need to come up with models for that. We've already said the ICANN organization bring up a tender to do a human rights impact assessment, the organization. The tender period has ended and as far as I know ICANN is currently considering it. But I think (Ergus) could perhaps comment a bit on that. Please, (Ergus).

(Ergus Romi): Thank you, Niels. This is (Ergus Romi) with ICANN. The - we put out an RFP about a month or so ago and we have received quite a few responses. We're now in the final stages of evaluating and assessing the bids the came in, and in the next couple of weeks we'll make a final decision on who is going to be the entity that's going to undertake that exercise on behalf of the ICANN organization.

Niels ten Oever: That's very exciting. In this case the ICANN organization is ahead of the community. This is very exciting. Could you give us a bit of a timeline on when you think it will be done, when can we see early results?

(Ergus Romi): Yes. So in terms of the timeline that we have set out, it's - we are - we would like to have this completed before the end of FY 18, which is June 2018. Now depending on which entity we go with, there may be some implications in terms of their time and bandwidth, but I don't anticipate much later than that time.

Niels ten Oever: So that means ideally before - at the time Workstream 2 is done, it will coincide with the publication of the findings of the organizational human rights impact assessment. So those two are really also dovetail and go make for a very interesting discussion at that time.

(Ergus Romi): Yes that is correct.

Niels ten Oever: I think that must be complete coincidence, whether it's a very happy coincidence.

(Ergus Romi): We try.

Niels ten Oever: Great work. Thanks so much. Does anyone have questions to (Ergus) about this process? So you see we have a lot of trust in you. And great, looking forward to the outcomes of that process.

(Ergus Romi):   Glad to hear I'm off the hook. Thank you.

Niels ten Oever: And so while the ICANN is going ahead with the human rights impact
                   assessment, the SOs and ACs still need to find ways on - to do that. Could
                   you go back one slide? And these SOs and ACs will need to develop these
                   ideas themselves. But that's where we get into a bit of an issue. So are we
                   going to repeat the same process in four different places or are we going to
                   find a place where we can come up with high level solutions or advices for
                   the SOs and ACs on how to proceed?

                   This is something we need to discuss and cannot be discussed likely and
                   should be discussed with everyone. We could consider starting some of this
                   discussion in the CCWG subgroup. We could also offer to facilitate part of
                   that here. But I think that also depends on the SOs and ACs. But I'm very
                   happy to be flexible on that and think about it because I'm very afraid that
                   there will be duplication of effort, and I think there's a lot for us all to learn and
                   also a lot of trust being built in discussions and experiences shared. So let's
                   see whether we can make use of that, how that could be done.

                   What we already could add or offer is a kickoff of the discussion and that
                   kickoff will be done by Vidushi Marda, who has been doing some research in
                   the practices of human rights impact assessment and has been thinking of
                   how it could fit on one SO and AC, namely the GNSO. Vidushi, go ahead.

Vidushi Marda: Thanks, Niels. So before I get into the specifics of the particular model, I think
                   it would be really useful to take a step back, especially for those who are not
                   very familiar with the work of the CCWP to just talk about what we're trying to
                   do.

                   So the Cross-Community Working Party on ICANN's Corporate and Social
                   Responsibility to Remain Human Rights has a mandate to research and
                   conduct analysis on existing ICANN policies and procedures. And to this
                   analysis what we try to and understand is the potential and existing human

rights impact of policies and procedures. So we're not a policymaking body but we supplement policymaking through informed research and analysis.

So towards this, we have been working on specific PDPs and human rights aspects within ICANN. For example we have a report on the Subsequent Procedures PDP, which we presented at ICANN 57 or 58 I think. We most recently discussed the economic, social, and cultural rights impacts of ICANN. And this particular human rights assessment model builds very well from the work that we've been trying to do.

And if we could move to the slide please, Maryam. Thanks. So in terms of where this fits into not just the GNSO but, you know, in existential sort of sense, this is - this model is meant to be an initial sketch. It's meant to serve as inspiration for what living up to the bylaw would actually look like. As we wait for the framework of interpretation to be - to go to public comment and then be approved by SOs and ACs and then adopted by the board, we thought it would be a very useful exercise to begin thinking about actual procedural question and where this would fit in.

And it's also not meant to replace any existing mechanisms. It's not meant to, you know, create a new mechanism. Rather, it's meant to understand how we can use existing mechanisms and implement human rights considerations within them in way that's more seamless but also constructive. Next slide, please.

So I mean the next logical question would be why did you choose HRIA and the answer to that is, A, they're an accountability mechanism for affected parties that aren't just governments, so they're an accountability mechanisms for non-governmental organization, for civil society organizations, and for affected parties.

Usually when we talk about accountability and business, it's a case of vertical integration in the sense that it's the case of vertical laws vis-à-vis states. And

this offers us an opportunity to look at holding companies accountable to stakeholders in a way that companies also benefit. It's kind of like a symbiotic relationship.

It also has evaluate the human rights impact of business activities and ensures that business - that businesses make an effort to identify, to understand, and to mitigate potentially negative human rights impact. If you could go to the next slide, please.

So the aim of this particular model, the diagram you see on the right is actually just an example from the Danish Institute of Human Rights that looks at different phases of a HRIA model and what that would look like. We have used that as inspiration and also looked at the statuses from other human rights impact assessments models, but we've used that in the sense that we're adjusting it to fit within the ICANN atmosphere.

And the first thing that we were very mindful of is to ensure that there is meaningful participation from all stakeholders in the sense that it's not just a particular set of stakeholders that already active in it that have a voice, but also that we're engaging - we're actively engaging other stakeholders. There's also a lot of scope for misunderstanding or lack of communication in such a process. And so we're quite enhanced - we're looking at enhancing transparency and accountability. And also, like I mentioned a little earlier, this looks at feeding into ICANN process as opposed to creating a new one, which I think is something that is useful and also more doable. Can we move to the next slide, please?

So we looked at the GNSO's policy development process, and this diagram kind of lays out the exact steps that a policy development process must go through. And what we've done is to look at a phase wise breakdown, keeping this in mind. So if we could move to the next slide, that is phase one, which is planning, scoping, and mapping risk.

So this would start at the request for initial issue report till the publication of the preliminary report. And the main objective here would be to, A, assess the existence of human rights implications. B would be to map out potential stakeholders and also people at risk. So who are the duty bearers that we're looking at, who can actually fix a potentially negative human rights impact and who is affected by it, who are the parties that can do something to mitigate the situation and so on.

We're also looking at who are the relevant stakeholders in the ecosystem. So we're not just looking at specific instances, but we're looking at, at least at the stage of planning and scoping, we look at really the universe of stakeholders at ICANN. And the responsibilities here in stage one would be to justify potential risks against standards, against human rights standards and against stakeholders that are identified.

And we also look at underlying causes of risks and sort of list them out as a baseline against which we can then better understand and evaluate human rights impact of the GNSO's PDP process. If we can move to the next slide, that's the analyzing the impact stage, which means that at this stage we start - which starts after public comment stage till the working group's final report, we look at articulating potential risks against human rights standards. So you kind of strengthen the report that you've already published but also use public comments as a time period in which you get diverse voices but also from important stakeholders that aren't always heard.

And then we also begin to think of mitigation measures in stage two. So here what we're doing is we're really ensuring that the HRIA's accounted for within the PDP process. We're looking at demonstrating stakeholder engagement as opposed to just saying that we'll look for it. So you have to - you should be able to prove that stakeholders will engage. They were invited and they were also heard. And third is to also engage in dialogue as to the impact of certain human rights implications.

And then we move to stage three, which is the next slide. That starts after publication of the working group's report and it's an ongoing process. And here we publish findings and learnings, we sent in grievance (unintelligible), and we also implement findings. And this is sort of like the last logical step in this particular model because you are - stage one is identifying, stage two is building on what you have identified, and stage three is then distilling learnings and also looking at how this can be a living process.

So if we can move to the next slide, this would give you an idea of exactly what the different phases are, where they start, where they end, what the objectives would be, and also what the responsibilities are at this stage. Now I'd just like to reiterate at this point that this not something that we say must happen.

We rather think that based on research on best practices for companies that not only work in one sector such as - or cross sectors, to best understand what human rights impact assessment model could look like in a way that is fair and transparent to all stakeholder but also effective in the actual measures that it takes and the evaluation of that should ideally become a continuous process.

So I'd be really interested to hear your views on how practical this model is and where it could be strengthened and what we could look at closer, because I think we have a bit of time to like better think about different mechanisms to live up to the bylaw, and this is just a first step. And I'm happy to answer any questions. Thanks.

Niels ten Oever: Thanks so much, Vidushi for breaking down like two complex processes and I know you've put in quite some time on this because both HRIA process is quite complicated, as is the GNSO processes. And then making them - putting them together and then getting something that doesn't seem so complicated is a great job. So thanks so much for that.

Now I'd like to ask people for comments, and I know that David McAuley has looked at the things a bit so I'd be very curious to hear what people think about it.

David McAuley: Well I have and thank you. David McAuley. First of all, Vidushi, thank you. In my previous career I was a lawyer and I used to do a lot of drafting. I know the power of the first draft, the difficulty of the first draft. And so my thanks go to you for doing the work to put something on the table that we can speak to. I do have some things I want to comment about it and suggest some changes, but it's a lot of work, and so compliments to you for this.

My take on this is it's a good idea but it also gets back to your point, Niels, is we ought to try and bolt these groups together into one because the - it would be good to have one group come up with one consistent approach on human rights and implementation of the bylaw. In this respect, in this document, my major comment, and I'd be happy to help with word-smithing, but my major comment is that, with respect to a human rights impact assessment for a PDP within GNSO, the document should be tailored sort of precisely to the framework of interpretation and the considerations document if in fact that is approved by the board eventually. I expect it might - will be but it hasn't been yet.

And what I'm getting at there is things like there's mention in here of - and I'm speaking principally of the key criteria section of the document, where there are reference to international human rights standards constitute the benchmark for this impact assessment model. And there I would say actually what constitutes the benchmark is the bylaw, the FOI, the framework of interpretation, and the considerations. And it's not just human rights standards. I think it's more precise than that.

And it has an impact on the GNSO. I would also mention that we - Niels has heard me say this before about reference to Ruggie Principles. I'm a little bit concerned that that - about those references and I think they need to be

precise because the Ruggie Principles speak about a corporation remediating human rights impacts negative consequences. And the Ruggie Principles speak in terms of a corporation exercising whatever leverage it has among its business relationship.

And business relationship is defined much more broadly than people who are simply (unintelligible) of contract with the business or people who are directly working with the business. And so in the ICANN context, I think that includes registrants and I would just be concerned about that.

In the slide that's on the screen right now, one other thing I'll mention, this are just points to be illustrative, it mentions that, under that bottom box, that we should strengthen grievance redress all mechanisms, and I don't know what that means in the context of a PDP because the ICANN organization has grievance process in the ombudsmen reconsideration request, an IRP, but GNSO doesn't. It doesn't have - it's not a legal entity. It doesn't have a grievance procedure.

And so I would just - I think maybe there would be some work around that. But my comments are roughly along those lines. My hope would be that this document could be tailored to the FOI and the considerations, and I'd be happy to work on word-smithing and help if I can. And again, thank you for taking the pen and putting something on paper to get us all working to. Thank you.

Vidushi Marda: Thanks, David. I just had a quick follow-up question, which is your point about the human rights standards. Are you suggesting that we don't, you know, we don't commit to a particular standard or - I wasn't too clear on that point.

David McAuley: I'm sorry. I should have been a little clearer. But I'm looking in the key criteria documents and there is a paragraph that says this.

Vidushi Marda: Sorry. The document's been updated. I think Niels put in a link.

David McAuley: I'm sorry.

Vidushi Marda: Yes. It was updated I think last week sometime.

David McAuley: I looked at this a couple of weeks ago. So this is not (unintelligible).

Vidushi Marda: Ah, okay, okay.

David McAuley: But let me tell you what my point was. There was a reference to human rights standards and I thought that's not really consistent with what the bylaw says. The bylaw is pretty precise in saying what ICANN's obligation of respect for human rights is is to respect to internationally recognized human rights as required by applicable law. And those words, as you know, Niels, we've discussed those words many times and in great length, and that's - to me that's a more precise statement of the standards. So I - I haven't seen the latest draft or I just missed it. I don't know.

Vidushi Marda: No that's fine. But it's very useful to get that kind of feedback because that's what we're looking for, a position but also integrating it with existing standards. Sorry, Niels.

Niels ten Oever: No, I think David's actually very right and what we did is we that we did indeed combine the GNSO process document and human rights impact assessment literature but it should become a boundary document also between the framework of interpretation and considerations document. It should find itself in this three way and there in the middle. So we should get that through there as well.

I see Maryam there is a question.

Maryam Bakoshi: Yes. Maryam Bakoshi for the record. There's a question from Kathy Kleiman.
"Did Vidushi say that the mini-version of the FOI was applied to the sub pro
PDP? If so, could she summarize a bit of the issues raised?" Thank you.

Vidushi Marda: Sorry, could you read out that out again?

Maryam Bakoshi: Sure. "Did Vidushi say that a mini-version of the FOI was applied to the sub
pro PDP? If so, could she summarize a bit of the issues raised?"

Vidushi Marda: Oh no. I was actually pointing to the previous work of the working party on
subsequent procedures where we looked at the human rights impact, but we
haven't looked at subsequent procedure vis-à-vis the framework of
interpretation.

Niels ten Oever: So I would like to ask other people in the room to have comments and ideas
about this document and about this approach. Is this the right approach to go
ahead? Michael?

Michael Karanicolas: Sure. I agree that unified standards I think are very important, partly to
avoid a duplication of labor, as you mentioned also, but also to ensure that
there's a consistent standards being applied. And I think that the question of
who's doing these assessments, what level of training, what level of
guidelines they're going to have is enormously important if you want to take
this beyond sort of checking a box and moving on and really creating a sense
of material responsibility among the people that are doing the assessment
and among the people that are making these considerations for the impact -
for the human rights impact of the decisions that they're taking.

But I also want to sort of go back to what was just being discussed in terms of
the human rights standards because I think this also kind of relates to
something that we discussed on transparency. And I think it really comes to
the core of this issue, which is what kind of value should ICANN be aiming for
and what level responsibility should inform these standards?

And I sort of point this back to what we discussed in the transparency subgroup because it leads to this very challenging question of what is ICANN. So international human rights law is typically applied to states rather than to private sector cooperation's. States are the primary duty bearers of international human rights. And the conventions that are out there, the international law that's out there, is targeted at states.

But there's also, you know, challenges in thinking of ICANN as a classical business because of the role that is plays, not only over the fact that it has this crucial mechanism over the internet, which is a key delivery mechanism for human rights. It's not just that responsibility aspect of it. I think it's also the fact that it's problematic for states to contract out of their human rights obligations.

So when a state subcontracts a key human rights service out to a private sector entity, that entity adopts human rights obligations and the state is - states are responsible for ensuring that those entities comply with those human rights obligations. So with ICANN essentially being delegated this responsibility, not just by states but it's a responsibility over the global Internet that if ICANN law isn't doing, it would be done by an intergovernmental organization potentially or governments themselves, it creates a lot of questions as to what responsibilities ICANN carries.

And this comes to the root of it. When you look at an assessment of the human rights impact of what ICANN is doing, what level of responsibility should we expect from the organization? It's not a standard that we would apply to a government but it's also not a standard that we would apply to Coca-Cola. And that idea of where this is targeted towards I think cuts to the core of the issue.

So I think that that's probably the most important issue to try and tease out more in terms of providing as clear as guidance as possible for the people that are ultimately going to be carrying out these assessments.

Niels ten Oever: Thank you very much, Michael. I think people in the subgroup will have quite an opinion about that. Vidushi, would you like to respond?

Vidushi Marda: Yes I think that's actually been one of the more challenging parts of this entire thing because we look ICANN and its sort of unique legal position and we also look at how traditional international law is operationalized but also how responsibilities are looked at. I mean I think one way that we tried to do this, which is in actually a very exact way, but the responsibilities section here talks about justification of potential risks against standards and stakeholders.

But what the model does is that it allows you to set your own standards right at the beginning. It's kind of like a circle. So phase one is where you're scoping. You're looking at stakeholders, you're looking at effective parties, but you're also setting the standard against which you will judge your own sort of policies and procedures. That's the fix that we have as of now, and I'd be interested to hear what you have to say about that. Because there's actually no black and white kind of answer about this. It's more about operations I think as opposed word-smithing and some such. So.

Niels ten Oever: Do other people have thoughts on this? Actually I'd be also really quite interested. For instance, Sébastien do you think such a similar thing would be fitting for the ASO or do you think that would then need to be completely reworked? What are your initial thoughts on this?

Sebastian Ricciardi: Thank you, Niels. This is Sebastian, in my personal capacity but I am member of the ALAC, not the ASO. So.

Niels ten Oever: Well you could answer for both actually.

Sebastian Ricciardi: Right. I can share some thoughts. I'm somewhat confused. On the one
                hand I appreciate the fact, you know, I want to thank you, Vidushi, for sharing
                this is and I think it's very interesting. And I have not read the Google Doc,
                right, this is initial sketch. So then one hand it's up to the SOs and ACs to
                make their own choice, right, how they will use an instrument when it comes
                to their work.

                And on the other hand, I do think, you know, it would be very beneficial if
                you're not like reinventing the wheel and duplicating efforts and preferably
                would like to see that we're all using the same methodology, right? I think that
                would be very beneficial, okay? And then what are we going to use and what
                is going to be effective and also efficient?

                Because I was interested and I found this initial sketch, right, the one that
                Vidushi summarized, it seems to me on the one hand I'm struggling how I can
                translate that to the work that for instance the ALAC is doing when it comes
                to advice reflecting public comments and other ad hoc stuff. And
                simultaneously, if I look at this, and this is the summary, right, I'm trying to
                think, there probably are templates that we could use, et cetera, it seems like
                it's going to be a lot of work, a human rights impact assessment.

                And then of course if it's going to be a voluntary aspect and I think it would be
                very unfortunate, right, if the amount of work and the fact, you know, that
                people are not experienced at using this and that somehow, you know, it's
                not going to be used and not - and then, you know, everyone's going their
                own way and that would be very unfortunate I think. That's not really an
                answer to your question but these are some of the things, you know, that I'm
                struggling with at the moment.

Vidushi Marda: Thank you so much for that. So actually the first point that you raised, which
                is about the methodology and you're concerned about it not translating on to
                the ALAC, we actually very similar feedback from the GAC. And the idea was

that this is just like sort of, as I said, initial illustration and we just chose the GNSO because that happens to be something that we're well versed with.

But what is interesting is that policy development happens in the GNSO very differently from how it happens in the GAC or the ALAC. So for example, the PDPs are much slower, they're much longer, there's much more back and forth, as opposed to like just, you know, in drafting a GAC communiqué. So I think we could also look at how does standards then feed into policy. Like if we're going to know what exact standards that we're looking at or how do we think about ICANN, like Michael just said, then the procedure bit is hasn't complicated.

And to your second point about a lot of work, actually that's something that we've been discussing for a long time, that we don't want to make it seem onerous or anything like that, which is why for example in the PDP we're saying at the public comment stage, you have to expressly invite those stakeholders that you do. So it's just like a small step in existing procedure anyway so that you can demonstrate as opposed to defend your actions. That was kind of the thinking behind this model so as to minimize the amount of extra work but also maximize how efficient we could be. Thank you.

Haoran Huang: Thank you, Niels. Haoran Huang speaking for the record. I'm a member of NCUC and firstly congratulation to Vidushi and to Niels for your milestone to this very hot topic of human rights. And I still remember at Copenhagen at ICANN 58 I still remember in that there was a session you talked about your draft report. And this time I can - I'm so glad to see your milestone (unintelligible) here.

And I have a question to Vidushi and Niels. And just like we Vidushi has introduced that there is an GNSO initiated model and it's will be - reflect the human rights into GNSO PDP and I'd like, Vidushi, would you can clarify the PDP process, how can it can reflect the human rights in this process and just as we can see, ICANN not care about the content in the website and also

maybe ICANN is involved as a human rights watchdog. And so in brief, (unintelligible) how it can reflect the human right in PDP? Thank you.

Vidushi Marda: Thank you for your great question. Maryam, if I could ask you to go back to the slide with the PDP process, maybe I could talk us through it. Is there another question at the back? Oh. Could we go to the PDP - it's the - yes. Perfect. Thank you.

So you had two questions, right? A, ICANN doesn't look at content. And the second was how it would fit into the PDP process. So if you look at -- just one sec. Let me get all my - okay. So phase one that I spoke about would start at the request for issues report and it would end at publication of preliminary report, which is just the first two blocks, right? Because that's where we're trying to assess exactly what the issue is. We're trying to assess what stakeholders are affected. We're trying to understand who affected parties are but also trying to understand who can do something about it.

So between the request for the report and the preliminary report is where phase one occurs. And then phase two is - it starts at the point of public comments, so after the first report has been published, and this is where you make sure that affected stakeholders and parties that have been identified are invited to at least say yes or no or maybe even no comment, but demonstrate that you're inviting those stakeholders into the process.

And it ends at the working group's final report, which is all the way down just before the second horizontal line. So that's kind of phase two, where you're kind of building on the preliminary report. You're strengthening it. You're going back and forth to different stakeholders but also engaging in conversations with them, not just getting a yes or no or a tick in box but substantive engagement.

And then phase three, which is where you usually look at evaluation and impact mitigation and stuff like that, is on the last five boxes. So this is very

much the inspiration behind the particular model because, like I said, we were trying to reduce the amount of like - the amount of extra work that we've been given people but also to make it meaningful within existing processes, so as to minimize the amount of work we add in.

And the second thing you said about ICANN not regulating content and it's not a human rights watchdog, that is true. But I think what we're trying to do here is that ICANN as an organization and as policies and procedures that are going on within ICANN, we're still mindful of human rights impact and on mitigating and reducing the negative human rights impact. So that's different from a human rights watchdog where you like look for violations of human rights and call them out.

Here you're kind of understanding the human rights implications of the policies and procedures that you part in, and then you're saying okay let's understand it, let's minimize the risk, and let's analyze it in this sort of fashion. I hope that answers your question.

Haoran Huang: Yes you did. Thank you.

Niels ten Oever: So, Vidushi, if I listened to you clearly, do you think it would be possible that the brunt of the work in the first two blocks would be actually done by ICANN staff and not by volunteers?

Vidushi Marda: Definitely, because ICANN staff is the one that prepares that issues report. And of course it would be really useful to have a conversation with ICANN staff and people who have actually done this so we're better informed when we prescribe policies. But from the best of my knowledge and from all the reading and research that I've done, the first stage is where it's kind of like scoping, which issue reports to anyway, but we're just adding another requirement that you address one specific question as well as opposed to just a pie in the sky kind of…

Niels ten Oever: Thanks very much. (Yance Holder) was first after that.

(Yance Holder): Yes thanks. (Yance Holder) at the University of (Coffinberg). A comment a question. The comment is maybe to suggest that you could look more widely in some of the work that you're doing. ICANN is part of a wider development of private global governance and so not surprisingly in other areas of private global governance they too are asking how human rights should be brought in.

So if you look at the global fund for - to fights AIDS, tuberculosus and malaria, they have incorporated human rights into their work. The (Kimberly) process on conflict diamonds has had major struggles and debates about how to bring human rights into their work. The (Ford) Stewardship Council has had debates, the World Fair Trade Organization has had debates, et cetera, et cetera.

I think it's one of those cases there's a little bit too much inward looking and one organization can sometimes slow. So you might get ideas and, you know, speed up your work if you see what other people have been doing and what's worked for them and what hasn't worked for them. That's the suggestion.

The question was on the human rights impact assessment. I think I heard you say, Niels, that you were doing four of them on the SOs and ACs, which made me wonder which ones are - which SOs and ACs are you not doing these human rights impact assessments on and why have you kept them out?

Niels ten Oever: I misspoke there, because we will need to adapt them - or we need - if all the SOs and ACs want to live up to the bylaw, then we all need to develop models for all them. So that was a miscounting or a miscommunication from my side.

(Yance Holder):   But the impact assessments will be done for all of them so the SSAC, the RSAC, the GAC, et cetera?

Niels ten Oever: Well they need to live up to the bylaw but a human rights impact assessment would be one way of living up to the bylaw. So there could be other ways of living up to the bylaw which is not necessarily human right impact assessment, even though the best practice seems to be that. Right, Vidushi?

Maryam Bakoshi: Maryam Bakoshi. We have a question from Kathy Kleiman and it's to Vidushi. It says, "It is my understanding that you did a human rights impact analysis of the Subsequent Procedures PDP. Can you talk about some of your findings?"

Vidushi Marda: Again, so I haven't done a human rights impact assessment of Subsequent Procedures PDP. What we did do, and I think Kathy was there at that meeting, where we discussed just an initial report on subsequent procedures and the impact it could have on human rights. I mentioned that at the beginning to kind of give context on what the CCWP does. But this particular model is actually geared towards thinking about the processes and the safeguards we put in place when we do live up to the bylaw. I hope that answers Kathy's question, unless I did not understand it.

Niels ten Oever: So I've had - I think we've had significant time to discuss this and also opportunities to rework and continue work on this, so I'd like to ask for an applause for the great work that Vidushi has been doing.

And now luckily, because of my mistake I have to say, but luckily was Fiona was very flexible that even though of my administrative tardiness she was still able to be here and give us a short overview of the work of the diversity subgroup in the CCWG and how that will be improved and the agreement that was reached on that. So, Fiona, please go ahead.

Fiona Asonga: Thank you very much, Niels. Fiona Asonga speaking for the record. I'll be very brief, partly because a lot of our work is already out there for public

comments. We have managed to have our draft recommendations out on the 26th of October. That's a few days - actually a day before the ICANN meeting. And we are hoping that the community can read through those recommendations and be able to give us feedback on the mechanisms that we are proposing to improve diversity within ICANN.

Now just to highlight some of the issues that are in that report, we made an attempt to define diversity, which was a bit challenging and it took us quite a bit of time, because coming up with an appropriate definition of diversity that would work for ICANN was a bit of a challenge. So we decided to do that by identifying key elements of diversity that we thought were cross-cutting.

We had our public initial engagement to the community (unintelligible) and we sent out a questionnaire and got responses from the community, the different ACs and SOs on what their definition of diversity was in regard to their role within ICANN. So in the report of our summary of what we collected, and the answers was the rest of the groups and stakeholders within ICANN.

And so we tried to consolidate that and see how it could best be able to then draft recommendations that would support the diversity mechanisms within ICANN. And so we've broken our recommendations into three main areas. These recommendations are around the definition of diversity. There is recommendations, measuring, and promoting diversity. There is - and then there is finally recommendations on supporting diversity within ICANN project. That will be an ongoing process.

And so if I can just quickly run you through the recommendations, which I'll expect you to actually read the rest of the report because there are issues that are not in the recommendations that are in the main report and are important for you to give us feedback on.

So the first recommendation was that the different SOs and ACs need to agree on the seven elements of diversity that we had identified and consider

them as a common starting point for all the groups. However we're not restricting it to that. That means that if groups within ICANN find that they need to go deeper into issues of diversity and so setting aspects of diversity are more important or very important, they're allowed to include those in.

So we expect that when it comes to measuring, we'll see how we expect that ICANN will be able to keep track of all the different elements of diversity that have been factored in as ICANN grows and moves along and becomes a more global multi-stakeholder organization.

We also are expecting groups to add the second recommendation, groups to add to the criteria of diversity that you had developed their elements that are important and publish the results of how they track these elements. We are expecting that the different (unintelligible) different ACs and SOs, supported by ICANN staff, will undertake initial assessment of their internal diversity of their structure, their leadership based on the diversity criteria that they publish. And the results of this we expect will be on the different group's websites.

Fourth is that we expect each SG and SO to use the information from the initial assessment to define and publish on their websites diversity criteria objectives and strategies for achieving the diversity goals that they have identified from the initial assessment and the timelines for doing so, because we expect that we are starting at a very initial phase. We will grow gradually, and as we grow we need to have clear targets for each step as we move along. So that means that periodically the groups will have to be assessing

Fifth is that with the support of ICANN staff, all ACs and SOs will undertake annual updates of their diversity assessments against the diversity criteria and objectives that were set within the group. And this will also include in the levels of leadership so that there is diversity not just in the membership.

So it's no longer an issue where you bring in participation to show that you have these different diverse participants in you group but it is about how effective they are in the group. So that means they need to contribute, they need to participate, and that means that they also need to be taking leadership positions.

Sixth is around supporting diversity, and on this we're talking about ICANN staff being able to have - to provide support to the different ACs and SOs and tools to assist them in assessing their diversity in an appropriate manner. And we hope ICANN will be able to identify staff and community resources to assist the ACs and other components of the community with diversity related issues, activities, and strategies.

Seventh is that ICANN staff should be able to develop and publish our process for dealing with diversity related complaints and issues as and when they arise. So. And we've left it open ended. We're trying not to also be too prescriptive, so we've not gone into prescribing how diversity complaints will be handled and will be addressed. We're leaving it open for now, and it's out there for public comments.

If there is any specific recommendations that you'll require as to develop very specific strategies, we will pick them from the public comments. So it's open, right? It's really an open-ended recommendation that there should be a way in which we should be able to file complaints and address complaints around issues of diversity.

And finally is that we hope ICANN staff will be able to support and capture and analyze and communicate on diversity information in the following ways: by creating diversity section on the ICANN website, by gathering and maintaining all relevant diversity information from the different ACs and SOs into one place, by producing an annual diversity report for ICANN based on all the annual information that is provided through global analysis of trends

and summaries of the different ACs, SOs, and recommendations for improvement where appropriate.

And this should also include some form of reporting of also the diversity complaints that come through to ICANN, and it should include information derived from an ICANN diversity report that will contribute towards ICANN's annual reporting.

So in a nutshell, that is what we have put out for public comments. There's still a lot of conversation going on on a number of issues, and one of those issues is whether or not we should recommend for ICANN to have an office of diversity. And that is in the report and we're asking for feedback on that because, again, that's another prescriptive recommendation that has an impact on ICANN's structure and we, as a subgroup, we did not agree, and even within the CCWG we could not agree on how to deal with it. So we are coming back to you as a community to give us feedback on that as well.

So in a nutshell, those are the really important in the report that you need to pay attention to, but it's important that everyone takes time to read the -- it's not too long. It's a 30-page report, shorter than most. So we hope that you'll be able to go through it and be able to give us feedback. The closing day for the public comments is the 15th of December.

So there's a lot of time between now and then for discussions for you to come back to us if we are not clear on some of the areas, in some of our recommendations. We are open to receive feedback and to assist with that. Rafik, who's very active in the GNSO, is my co-(rapator), and I'm glad that he was - he walked in. When I came in, I didn't see him. I was a bit panicked.

But yes, so he's - you have two people who are active in different parts of the GNSO who are happy to help clarify any issues that are not clear in our report. So in a nutshell I think, Niels, that's where we are at. And we expect that by February next year we'll have incorporated the final - the input from

the public comments into the final recommendations and then the report will be going out with the other reports that will be ready as a consolidated document for final input. So that is basically how we are moving right now.

Niels ten Oever: Thanks so much for laying it out so clearly. But first of all, thanks so much for doing this work to make ICANN a truly international organization. Very important work from - in terms of the organization from a view of human rights but from all sides. So thank you very much for that work.

We don't have much time left so I would still like to repeat the urge that Fiona made to have a look at the report, fill in the global comments, because this is really crucial work and only then we can make ICANN a truly - an international organization. So thanks so much for that work. Anyone has a question they would like to here to Fiona and Rafik? No? So Fiona also explained it very clearly. So thanks so much.

So on the next steps for the CCWP, this will be my last ICANN meeting for the foreseeable future. So in the calls and on the list I've also asked for new volunteers to take up the chair position of the CCWP. I've received an application of one volunteer but I would still like to give people the option here in the meeting also to step forward.

So feel free to send an e-mail to the list, send an e-mail to me in person, or find me later. I'm sure that co-chair constructions are also possible to the weight. It is not very active but very fun and pioneering week. So I would definitely invite people to apply and see if they want to join.

Then next, something that has made my life a bit less pleasant than it could be is the name of the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, which might be a bit unhappily chosen in the beginning. So I would like as like some of my few final deeds to correct that mistake and make everyone's life a bit more

pleasurable and propose that we change the name to the Cross-Community Working Party on ICANN and Human Rights.

So would anyone have an objection to that? Thank you very much. So on that happy note, thanks all for the input. We'll be - oh Michael?

Michael Karanicolas: Just before we go, I think that we should definitely take a moment to express our heartfelt thanks to Niels for all the excellent work that he's done. Certainly all the great work that he's done for this working group, now working party, or working party I guess, sorry.

Niels ten Oever: The working party.

Michael Karanicolas: Always a party. My apologies. But not only just the work that he's done here but all of his contributions more generally to the ICANN ecosystem. This has been a big focus of his but he's contributed in a lot of different ways, and I think that I can certainly speak for myself but he'll be very much missed during his hiatus from ICANN but hopefully we will see him again sooner rather than later because he's a tremendous contributor to the ecosystem here.

Vidushi Marda: And can I just add a couple of words. So I started at ICANN not knowing what to do and where to go and I was super interested in the human rights aspect of things and Niels has been amazing in not just helping newer entrants into ICANN understand it better but also encouraging them to do more and not be so worried or intimidated. So thank you, Niels. I couldn't - I mean, I'm sure most of the people at the party would agree when I say that. And we'll definitely very much miss you.

Niels ten Oever: Thank you. And I'll quickly say it's adjourned. Thank you.

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