

**Transcription ICANN Dublin
Wednesday 21 October 2015
NCSG-CCWP ICANN's Corporate and Social Responsibility to Respect Human
Rights**

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Niels ten Oever: Good morning everyone. Welcome all very much to this session of - on ICANN's Corporate and Social Responsibility to Respect Human Rights. It's a framework of the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights. That's a mouthful in the early morning. I'm very happy you made it all here at nine.

Today we have a relatively packed session for the one hour and fifteen that we have. So I suggest we go ahead even so some of the presenters are still missing. But I'm sure that will get fixed underway.

So we're here today with Rafik Dammak, the Chair of the NCSG, outgoing today. So it's one of his last big acts. That's good. And without further ado I would like to go ahead with one of the first points on the agenda, and that's giving a short update on where we are in the community insight please.

So we're continuing the discussion on human rights as we had it in London, where it was spurred by the report by Thomas Schneider and (Monica

Sakaguchi). (Monica) is here. This is great. And the report was facilitated by the Council of Europe and really spurred the discussion.

It was discussed in London but we also had a session about that in Los Angeles, and it seemed the discussion really converged. And then in ICANN 52 in Singapore, we established this cross-community working party. And in response to the urgency of the topic or the need to discuss the topic, the GAC also formed a working group on human rights and international law. And there also went a report by Article 19, the organization I work for, was presented.

Then last session in ICANN 53 in Buenos Aires, we had again quite a lot of sessions, sessions together with the GAC working group, our session as we're sitting in here, and meetings with different constituencies. But right now here we're in Dublin, and I'm very happy to present to you the first report by the cross-community working party. So this is the real first product we've been publishing together. It's on the table. We've got some more printed copies that you get at the door, not these though.

Then - which will be presented in a bit. I got one administrative request and that is we're using a table desk mic today, so that means that everyone who scratches or taps the table also gets heard pretty loudly in the Adobe Connect room, and well you can think of whether you want that or not.

So hereby I'd also like welcome the people in the Adobe Connect Room, which there are quite a few. I'm very happy to welcome them as well. We'll also be tracking your comments and questions there.

Next slide, please. So we're doing this work because ICANN's policies and operations have the potential to impact human rights.

Next slide, please. And so we'll also draft the charter and a terms of reference for your cross-community working party to raise awareness, make

policies, provide information and suggestions and recommendations, propose procedures and mechanisms for human rights impact assessments, develop and explore a corporate social responsibility guideline, and produce position papers. That's exactly what we've been doing thus far.

Next slide, please. So there are different ongoing processes on which we'll get updates here today.

And please go to the next slide because then we'll start with the work on the Cross-Community Working Group on Accountability and especially Working Party 4 on Human Rights, of which we have the chair here and the co-chair of the CCWG. Leon, please take the floor.

Leon Sanchez: Thank you very much, Niels. Thank you for inviting me to share where we are at this Working Party 4 in the CCWG on Accountability. As - I mean some of the members of that working party here, and if I miss anything or I am mistaken or misrepresenting where we are, please feel free to chime in and correct me.

We have had several meetings, so far I believe six or seven meetings in this working party. And through the progress of the CCWG, of course the concern on how ICANN needs to comply and respect human rights in its activities and its mission was raised.

So we tasked this working party to look into what kind of suggestions or measures we could put into our next version of the report so this could of course be undertaken and implemented either in Work Stream 1, which is - which are those things that may be actually implemented or fairly committed before the transition takes place, or if this was a matter of Work Stream 2, which are those activities that will need more long timeline to develop and that can be carried out after the transition takes place.

We found out that this issue of human rights is a twofold issue of course and we need to have something on Work Stream 1, but we will continue to develop in Work Stream 2. So what we're trying to suggest as a matter of Work Stream 1 is to add a paragraph in the bylaws that will enable the community to of course engage with ICANN and effectively demand that it respects human rights within its mission and in its activities.

And what I emphasize within its mission is because one of the objectives of the CCWG on Accountability has been to take care of not widening ICANN's scope and mission, because this is of course one of the main concerns by the community that we wouldn't allow - that we shouldn't allow ICANN to mission creep.

So in this respect, I think that we've been careful to try to frame the language that we're trying to propose - that we're suggesting to propose to be included in the bylaws, not to widen this scope and this mission within ICANN.

And we're not only proposing or suggesting some text for the bylaws, but we are also working or looking into working in that explanatory note and an interpretation framework that will - I mean the intent of - the aim of that note is to help others interpret what we mean by inserting these - this text into the bylaws so that we prevent it, as I said, widening the scope of ICANN's mission and - within its activities.

So I think that is where we are at the moment, Niels. Of course if you want to follow the work of this working party, all our meetings are open. There is a mailing list for that. You can of course join us. Also there is a collaborative document being crafted online. And I think that's so much for Working Party 4. I don't know if I'm missing something. I see that (Tatiana), Avri, Greg, you are here. Many of you are here, so feel free to chime in if I'm missing something. Yes?

Man: Hi good morning. My name is (unintelligible). I apologize, I know this has been asked before. But just for me and others who are somewhat curious, I'm still trying to fit the human rights into the (unintelligible). But I'm still not clear on this one issue. Because (unintelligible) of human rights. And I know this has been asked over and over and over. So could you in a nutshell bring us some clarity to that.

Woman: I would also like to comment on that as well.

Niels ten Oever: I would like to, with your permission, restrict the questions now a bit to the specific work in the cross-community working group and put this question on top of the big Q&A question block at the end. Because I think it will be addressed in further presentations, but if not, please jump to the head of the queue. Okay?

Man: Fine.

Niels ten Oever: Excellent. Thanks. Greg, please go ahead.

Greg Shatan: Greg Shatan. I'm a member of Working Party 4. So I just think in addition to what Leon mentioned, I'd say that we've prepared and completed just before this meeting was announced the public comments, which I thought was pretty good. It took a lot of time, for a number of us quite a bit of time at different times. And (unintelligible) kind of helped scope out what at least we got from the community and beyond, and it's worth looking at as part of the public comment package that was distributed and, you know, dumped on people just before they left for Dublin.

Niels ten Oever: Yes and I think that report and analysis was really a good example of the cross-community work in the working party and how we managed to integrate the public comments and the discussion. That's really great work. Thanks everyone for contributing to that.

Leon Sanchez: And also we're looking of course forward to having more engagement and interaction with this working party on human rights, because I mean a lot of the work that you've already done is needed to be incorporated into what we're doing in the CCWG. So I mean what you guys have done is amazing. So thank you.

Niels ten Oever: Excellent. Thanks.

Greg Shatan: And I would say also we didn't get started on day one in CCWG accountability so there's more being brought together at this time than in some of the others which have been baking, maybe even over-baked.

Niels ten Oever: Thanks so much. So without...

Man: Oh sorry.

Niels ten Oever: No, please go ahead.

Man: Sorry. I will be very brief. Maybe this is the most appropriate time because I'm coming from Council of Europe and the PPD Advisory Committee for One Way Data Protection and Privacy. We are very glad to have this paper now on the table and to hear more about the cross-community working party's work and the working group four's work.

And definitely my message to convey today to you is that we definitely would like to get involved in this and bring enough of our expertise in privacy and data protection issues. So later on we will exchange cards and I will also convey your message back to Council of Europe, and we can start a good coordination - a cooperation.

Niels ten Oever: That is really appreciated and that also gives me a cue to point forward to our session at 5 o'clock, where we will be planning our work between now and

Marrakech to see that we can have a very concrete product for the next meeting as well.

So because of time, I'd like now to Maryam to go back one slide and ask (Lee Hibbert) to give us a short update on where the GAC Working Group on Human Rights and International Law is at.

(Lee Hibbert): Thank you, Niels. (Unintelligible) also observer to the GAC. And it will be very short because the meeting of the working group this afternoon at 12:05 has been rescheduled because of some conflicts, and now I'm sort of stepping in for the co-chairs because they're all in meetings between the GAC and board. So I'll convey the work here to the GAC.

I'll start by saying that there's a new co-chair, (unintelligible), who is joining the other two co-chairs, (unintelligible) of the U.K. and also (Miligraf Seon) from Peru. And so where we are is that there are revised draft terms of reference on the table and (unintelligible) a little. But the time is short and so it's expected it's (unintelligible).

And I think, I can't be sure but I think it is two weeks. So I think it's expected that these comments will come in on the re-revised terms of reference draft and hopefully this will be agreed in the session in November, December. And then the work has done its work. It has been I guess (unintelligible). That's the way it will be.

And with regards to what it will discuss, I mean I can't really say. There a recognition of the work (unintelligible) and there will be some synergy there I hope. I expect that the members of the GAC will be collecting international law relevant to international law. I imagine they're trying to scope out (unintelligible).

I mean it wants to look at what has in one's (unintelligible). So I expect that will be one of the first (unintelligible) but not the only thing of course. And

that's pretty much what I have to say for that. But the meeting is this afternoon. Thanks.

Niels ten Oever: That's excellent, (Lee). Thank you very much for that. All right. And there's a question. Go ahead.

Woman: (Unintelligible) just a really quick question. Could you say again who is the new co-chair?

(Lee Hibbert): Sorry?

Niels ten Oever: Who is the third new co-chair?

(Lee Hibbert): It's (unintelligible).

Niels ten Oever: Yes so the GAC working group is now chaired by the U.K., Peru, and Switzerland. Excellent. So I thank you very much for that short update, (Lee).

I don't know if there are any other questions about this. If not, then I'll go ahead to Slide 4 please, Maryam. And this will be presenting some of the work in a subgroup in the cross-community working party, led by Marilia Maciel, which she has done together with volunteers and people from the Association for Progressive Communications.

Marilia, please go ahead.

Marilia Maciel: (Unintelligible) As some of you may remember in the last meeting, we (unintelligible) which are the exact qualities that are (unintelligible) that correlate with human rights, associated with human rights.

As Niels mentioned, we have put together a small task force to try to do that, and we have done this exercise of trying to work those by correlating them with the specific rights that are affected. So we first we tried to go with some

of the rights that are more relevant in terms of qualities that we are discussing.

And I think that it has to do with your question, and maybe it helps to clarify why we're (unintelligible). But the first one is freedom of expression. We identified that there are three big clusters of issues that are related to freedom of expression.

And the first of them is the gTLD program. And basically what (unintelligible) says about these three and the community based applications. (Unintelligible) analyze and reveal the last round and prepare for the next round. So there is a policy development process that we're going to be starting (unintelligible) that is used with a specific round of new gTLD applications.

Another cluster related to progression is all the mechanisms related to rights protection. So you have the trademarks that you have more or less, and we're not going in to detail with regard to that, but these are all mechanisms related to dispute resolution and trademarks and company rights.

And the third cluster is related to IDS and the implementation of (unintelligible), which is something very important to foster diversity (unintelligible). The second right that we have identified that is very important is notifications.

Niels ten Oever: Can I ask you to talk towards the mic because the people in the Adobe Connect really would like to hear you?

Man: The mic's...

((Crosstalk))

Woman: ...right here.

Niels ten Oever: Yes.

Man: Presenters should...

Niels ten Oever: Talk in this direction.

Man: ...go to the front.

Marilia Maciel: Sorry about that. Well the second...

Woman: There is no mic.

Niels ten Oever: Maybe she could come here.

Woman: There.

((Crosstalk))

Woman: It's a bit tricky, yes?

Niels ten Oever: Sorry to make you...

Marilia Maciel: So the second (unintelligible) with the association and again in the application guidebook. This is very much related to community-based applications. And economic and social rights, we have identified that the new gTLD program, something that is of concern, is how application fees are going to be used and the resources that are coming from the auctions that have taken place in the program and how these resources are going to be applied in the future, even to bring more diversity into the domain name industry.

Privacy, I think that maybe is one of the most established discussions. Here we have been discussing privacy with relation to Whois, and we also with relation to the registrar accreditation agreement. We had some sessions

about this. Yesterday it was extensively discussed in a session dedicated to privacy.

With regards to -- oh thank you -- with regards to due process, there's another right that we have identified, and this is related to GNSO PDP improvement. We have a discussion group that is trying to improve the policy development process, and we believe that this improvements will reinforce right and due process in the organization. This is also related to the UDRP review that is upcoming and with GAC early warning that should observe due process principles.

So this is a basic attempt to map this policy and correlate them with rights. This is a work in progress. By no means this is finalized. So I would really encourage and even ask for the help of many of you here, who have much experience in the organization, to bring your comments maybe that I think that you bring at this table. And it's completely up to change of course. As I said, it's a work in progress. And also to help to identify if you see other correlations that the working group did not particularly see to make the table more complete.

The idea is to make it a useful instrument to the community. And a another thing that we're trying to do is to find a more user friendly way to present this table. This is what we had when you showed before the wheel of rights. This is a conceptualization that came from APC, and with a wheel of rights, the next step in this wheel would be exactly to correlate the particular rights with the policies that we have identified.

We were thinking about correlating them by color coding, but maybe there is a better way to do it. The wheel that is more to the center is the rights that we see more affected in terms of how many policies are touching upon these rights, and the ones that we see kind of in the outer part of the circle are rights that are relevant but maybe last touched upon in your organization, so

the circle also helps ask to visualize which are the rights which are more impacted, or at it was the attempt to do it.

So the next step would be to correlate the table with the wheel. And of course again this is completely open for improvements, and we would very much like your comments and suggestions about this work. And maybe we can present something more finalized and integrated in the next session in the next meeting in Marrakech. Thank you.

Niels ten Oever: Thank you very much, Marilia. Excellent. Thanks. Are there people who have any questions about this work? Please go ahead.

Woman: This will be available on today's website? Where is this (unintelligible)? And if we think on areas that are not covered, I was just thinking off the top of my head of ATRP and other things that aren't there, how do you contribute? How do I contribute?

Niels ten Oever: Well I would say we - I don't think we will put this on the website as of yet, because we haven't reached agreement on that. And this is more paperwork. This is a bit of an update on where we are with the work, and also signaling that we exactly need more input before we can create a finalized product.

So of course I would invite you to join the mailing list of the cross-community working party, but if you are specifically interested in this part, please come up to Marilia or me after the session and we're happy to integrate your ideas and get you on the list of the subgroup or integrate your comments on one-on-one communication.

Marilia Maciel: Yes we'll got together through the list but we are actually changing mails and CCs. It's not a very big group, so it's like five, six people that are copied that we're including that helped to develop this. So if you want to join us, I mean will we will make sure that you are copied. And this will be online, maybe not

in an open space but somewhere that we can collaborate and add comments to. So if anyone is interested, please give me your e-mail.

Niels ten Oever: And on Page 28 and 29 of the report, there's also a relative impressionistic mapping of the potential right at risk in relation to ICANN and its operations. But as said, we need to flesh this out more and make them more precise or exact mapping for which we would very much like to ask your help.

Thank you, Marilia.

Man: Excuse me. I have some suggestions for things that ought to go in this. Should I talk to you afterwards about that?

Marilia Maciel: Yes please.

Man: Because there are some mechanisms where due process applies, which I think also need to be added.

Niels ten Oever: Yes please. Please talk to us, post it to the list, or any other communication vehicle you might...

Marilia Maciel: I'll reach out to you.

Niels ten Oever: Thank you.

Maryam Bakoshi: Excuse me. Can I ask everyone to state your name before speaking to help the transcription? Thank you.

Man: Okay.

Niels ten Oever: Excellent. Thank you, Maryam.

So now we'll go over to the presentation of the new report. And for this I would like to present to you (Montico Isawa) from the Institute of Human Rights and Business, who helped the cross-community working party to draft a report. (Montico), please go ahead.

(Montico Isawa): Thank you. And good morning. First of all I would like to acknowledge the great collaboration we had in the process of putting this report together. And as Niels said, this is very much a work in progress.

So I believe - did you want me to go through this, Niels?

Niels ten Oever: Oh sorry. Next slide, please.

(Montico Isau): Yes. I believe some of you have already heard my shorter version of this presentation elsewhere yesterday. This is a longer version, but if you'd like to take a nap, please do so and a lot of you will come back alive at the end of the presentation.

Niels ten Oever: Sorry please go ahead. (Unintelligible) but I'm fixing it.

(Montico Isawa): Okay. So it's just a big topic that I often struggle where I start. And I guess inevitably I think of the mechanisms guiding principles on business. And so for those of you who are not familiar but now you have heard some of this. But it is a softball improvement, so these are guidelines (unintelligible) put together by the United Nations process (unintelligible) by the Human Rights Council in 2011.

And it focuses very specifically on the conduct of business, because as international law covers the conduct of state in protecting human rights. So the guiding principle put forward three pillars of responsibility: state responsibility to protect, corporate responsibility to duty -- that's a legal -- corporate responsibility to respect human rights, and remedy. So these are

responsibilities close to the public and private sector side to provide either judicial or non-judicial mechanisms for addressing complaints.

And so ever since the guiding principles came into effect in 2011, it - they have been taken up by different constituencies, including government, businesses, and civil society. And it's very interesting to watch what the ICT sector companies are doing in this regard. A lot of them have incorporated the guiding principles into their work.

And it's precisely because they feel that the guiding principles help with their risk management internally, and this is not just risk management. These are the stakeholder complaints and non-financial matters. But ultimately for some companies, these matters do turn into a bottom line issue, and therefore management is paying attention to these issues and also the boards are saying this is important for us, the boards, to take into account, because this is a key corporate governance principle that boards take into account, stakeholder concerns, and manage - help companies manage risks appropriately.

So - and on top of it, a lot of the companies are feeling the pressures from investors, particularly institutional investors who are asking about the company's human rights performance. And so a lot of the ICT sector companies are responding to these demands from inside and outside. And they have quite interesting responses to some of the dilemmas that they have, and we can come back to that. They may or may not be relevant to ICANN.

I mentioned these are guidelines, so they're not law. And as result, they're meant to be applied in a flexible way. So it's not about all the rights today, it's about rights that are risk prioritized, and with the expectation that companies would respond in a measured way.

The next slide, please. Okay. This might be an earlier version of that, but anyway. So the guiding principles are meant to apply to business enterprises, yes? And so there's been a lot of discussion about why are the guiding principles really applicable to ICANN, because ICANN is a nonprofit organization.

I've also heard arguments that it really is not in a process - in a position to say no to certain country decisions to switch registrars or to agree or deny certain applications. So ICANN has really no option to say yea or nay in a country activity, and as a result, that's not a characteristic of business.

So there are a lot of discussions, on the one side, the UNGPs are not applicable to ICANN. On the other hand, there are also lots of observations about how ICANN really has significant business relationships, particularly with registrars, and the UN guiding principles require that a business enterprise look into not only its own causation or contribution to human rights violations but also require due diligence, vis-à-vis what its business relationship is doing.

So all these activities through contractual agreements will have to be looked at. And in that sense, the fact that ICANN has a significant business relationship is very important.

The next bullet on the fact that ICANN can influence Internet content, I think there might be some prospective idea but just mere selection of domain names, I think that there are some opportunities for ICANN to say content can be put underneath that domain name. And as result, there - I don't think we should deny that there's a significant opportunity to influence content.

And of course ICANN does influence business activities is many ways indirectly through...

Man: Contractual compliance.

(Montico Isau): Among other things. Thank you.

So I've already mentioned that the UNGPs are widely referred to be ICT sector companies, and so if the private sector is doing it, would it not also be a factor in ICANN thinking about how the UNGP will be relevant for its operations.

And if you look at what the ICT companies are doing in their CSR reporting, in their transparency reporting, they say that users' privacy and data protection challenges are at the forefront in terms of the severity of rights that they want to address. And so that's something to keep in mind.

So assuming that we are of the view that the UNGPs are relevant for ICANN's operations, where do we start and what are the pathways to implementation.

Next slide, please. My organization had the pleasure of putting together a guide - sorry, an implementation guide for how the ICT sector companies can apply the UN guiding principles for their operations. So the chart to the left comes from that particular sector guide.

And as you can see, it's a very organized top down sequential suggestion. You start with policy, you embed it, you communicate it, you actually do some assessing, you tackle the impacts, you manage them, then you do some monitoring reporting, and then you feed all of that back into a policy commitment. And then you go again. So it's a nice circle.

Now that's one way of doing it, and a lot of companies actually do that. When they have nothing at all, they say well this is very useful. We'll just follow the recipe book from the topic.

Now you can also do it completely opportunistically. And I've seen companies, particularly in the midst of a human rights crisis, right, and they would say, "Oh my goodness, we've never known that human rights could affect our operations this way." So let's start with this particular issue that is controversial.

We'll take it from there. We'll have a process to address that particular issue. Maybe we will build some policy around it. Maybe we'll do some public reporting around it. Maybe we will broaden that policy to the entire corporate process. And so you could also do it a fairly organic way. And there are pros and cons to both approaches.

I'm certainly not advocating that it has to be one or the other. So I just want to put that on the table, that we have quite a lot of options in doing it in a very, very disciplined manner versus doing it in an opportunistic manner.

The next slide, please. So the specific questions that this working party had to address at the outset were whether we can put out some kind of a human rights assessment template for a policy development process for ICANN. And the other question was whether ICANN should be engaging in a process of a CSR reporting.

So these were the two substantive questions that this report was meant to address. And so I just want to compare a little bit between the basic concept of human rights impact assessment versus what might be slightly more appropriate for ICANN.

The human rights impact assessment process as used in the private sector today is a fairly comprehensive process. It's what's known as the 360 process, where, if you like, the analogy that I usually like to use is you step into a room of round mirrors, right, and you sort of reflect yourself against all the different rights applicable.

And under the UN guiding principles, you actually are required to look at all the applicable rights, which are under the international bill of human rights and the eight core conventions under the ILO. So you sort of reflect your operations against this mirror and then you find out what might be in conflict with these rights.

It's often done at a corporate level. And you're probably familiar with mining companies, natural resource extraction companies, food companies, apparel companies doing this, because they have severe human rights issues, either physical human rights issues in their supply chain, and in some cases at their corporate headquarters.

So a lot of people have come to me and said, "You know, these are absolutely not relevant. We don't have this kind of hideous, you know, pollution or labor, forced labor, child labor in the supply chain of this operation." And point well taken. These human rights impact assessments are used usually to understand the implications of a company starting a new activity, starting - opening up a new operation in country X, starting a new product, or doing some new project (unintelligible).

And because of the magnitude of these things, these assessments are often carried out by experts. They're expensive, they're time consuming, some of them take a couple of years. And then I think the most perhaps the challenging point is that there's really not an equivalency of something like this at a policy development level as opposed to the corporate level.

So in other words, these are sort of a big blunt instrument but there isn't something that's much more nimble that can be applied at a policy development process level. There are some countries that are using an instrument like this in the regulatory impact assessment process to understand the benefits and costs, but none of the templates that I'm aware of can really be used in a situation like a policy development process.

And so our proposal was then to perhaps think about something much more streamlined, much more tailored, start with the policy development activity only, not spread this all the way around to ICANN's operations, and because there's already a policy development process that's very, very specific to ICANN, why not build in one level of review process so that in connection with the policy issues identification process that ICANN already has, this process could just piggyback the existing process.

And if we pared it down to something fairly straightforward, perhaps this can be done by ICANN in-house staff or the working party members so that it doesn't have to go outside and incur an enormous expense. But the important thing is this: there is necessarily a desk review aspect of what we are proposing here that's a top down approach.

But the key is that whatever the top down process identifies, must be verified through community engagement, through actual engagement with rights holders and stakeholders, and that's the bottom up approach. Just because some of these issues are going to be fairly abstract, it won't be that straightforward footprint issue in other sectors. It's very important that the desk review process is verified from a bottom up process. And in that sense I think it fits the ICANN business model very well.

And that's why I am proposing perhaps that the top down process can be done in house fairly quickly but put it out for very extensive public consultation. And of course what is being proposed should be road tested, so we should test it through different policy development processes to see whether this works and what are the -- I guess you guys use the term stress testing, so maybe that's the right term -- and to figure what are the improvements that we could make to adjust the process.

And this could be a foundation for a future corporate-wide human rights impact assessment for ICANN, which probably is needed at some point. So this is the contrasting sort of options at the table - on the table. A human

rights impact assessment on the one side, and a much more streamlined human rights review process on the other.

Next slide, please. Now moving onto human rights reporting - sorry, the CSR reporting question that was put on the table. So first of all, what is CSR? That's a big question. There are different definitions, and the European Union has one definition. If you ask companies their definitions, they may or may not match with the definition of CSR.

In essence, it is a way to understand stakeholder input in - a perception in to a company's operations, particularly on the non-financial aspect of a company's operation, and to provide reporting against that. It's also (unintelligible) manage a company's risk through stakeholder feedback.

So having said that, the format of the CSR reporting, CSR reports used by different companies varies tremendously, as you know very well. So some are really slick and glossy but not a lot of substance, some of them are very detailed and very considered, and anything in between. And there are different templates being used. Something that is put out by global reporting initiative and has been around for ages.

A new initiative called RAFI. That is reporting and assurance framework initiative, which is meant to be the funding reporting framework for the UN guiding principles. SASB, that's the sustainability accounting standard board. It's something that's appropriate for publicly invested companies for reporting on environment and social issues. Integrated reporting is a methodology to combine non-financial reporting with financial reporting. There are all these different options.

A lot of people say it's a lot of bunk that this is all self-promotion, it's useless, and there are some people that say it's very useful. In any event, if we want to do this, data collection is the key. I mean we have to be able to tell a story. We also have to put out lots of data. And so there is a process associated

with it. It's quite an overwhelming process if you want to do it at the corporate-wide level.

Now the alternative might be something much more streamlined, which could be something that, for lack of a better word, human rights reporting, so that perhaps the opportunity right now is to merely report on the implementation process of the human rights review process that I just mentioned in the previous slide. Just put that out.

So this is what we decided to do. This is our methodology of the review. We applied the review to several policy areas. This is what we found. This is the recommendation to ICANN. These are other action so you can buy ICANN. This is what we're monitoring. These are things that we can easily put out potentially.

And for a better narrative, we could try to come up with a framework against which the reporting is provided, and it's useful to have something like a human rights policy, but it's not absolutely necessary in order to do that kind of reporting.

In any event, it's important to report extraordinary events, so any incidents, any issues that management discussed. That should be put out in the public. Those could be very easily incorporated here. Also it could be incorporated into the ICANN main report. ICANN does have a very impressive main report, and I so I just want to acknowledge that.

And the key component of public reporting in any event is engagement with stakeholders. So before the report is put out, the stakeholder review should be incorporated into the report. So that's one suggestion.

We were also asked about transparency reporting, because a lot of ICT companies are starting to do this. And the reason why they're doing that is because they are subject to law enforcement requests. They're also

subjected to requests from a country to either disrupt service or to block or to filter content, to censor content, all sorts of different requests.

And so a lot of the ICT companies decided that this should not be just our own dilemma, this should be put out in the public domain and there should be a broader public debate about the desirability of some of these practices. Also because there's no legal framework associated with some of these requests and how companies should provide their responses.

So today 58 companies produce transparency reports. Again, it's pretty ad hoc. The format is pretty loose and fluid. And so it's an interesting development to watch, and perhaps that's something that we could learn from. So I have been informed that there is already an ATI initiative in transparency reporting. Perhaps we could discuss that's something this community could build on or not.

In any event, I think it's really important for ICANN to keep track of law enforcement requests and how those requests are being responded to. There should be a central law, there should be a paper trail on the request and the responses so that that can be put out for public consumption once the decision is made to put that out.

So in any event, data collection is key. There should be a corporate process to make clear who is responsible for collecting what kind of data and also what is made public and what is not made public. All of that decision needs to be taken before a report can be put together.

So it's quite a corporate process but I think there's a lot of discussion about transparency, which is part of accountability discussion, which is part of governance discussion. And so I think it's a very timely discussion to have, so I just want to put that on the table and to conclude. I'm sorry for being

Next slide, please. What we are proposing is a measured approach over a period of time. It's not today all the rights. I just want to acknowledge that there is much incredible energy here to tackle a lot of governance issues within ICANN and it's a very welcome initiative to include human rights as part of that discussion. And therefore, this community should build on the momentum that's there but to take a measured and consistent approach on human rights.

Let's be practical, let's prioritize, let's stress test the proposal, let's collect data, et cetera, et cetera, right, and start from the beginning and one step at a time. Over a longer period of time, we should really discuss what the roadmap would like for human rights policy, corporate human rights impact assessment, CSR strategy, CSR reporting. These are all on the table. Nothing is off the table, but we need to start somewhere very concrete.

And finally, just to conclude, it's my personal recommendation that human rights discussions ought not take place outside the business discussion. We're talking about human rights in business. We're talking about business and human rights.

And as a result, human rights discussions can be separated from management discussion on overall business decisions, board discussions on overall governance issues. And so these questions should be integrated so that they are part of the values discussion of the risk management discussions and part of the business discussions.

So with that, I will finish. Thank you very much. And over to you, Niels.

Niels ten Oever: (Montico), thank you very much for this very thorough and detailed presentation to the work we've been doing in the cross-community working party.

I'm going to invite a few people to respond to the work and after that we'll open the whole floor for questions. We got roughly 20 minutes left, so I'd like to you keep your questions short. We have a lot of time for content discussions. And I would like to start by asking Greg Shatan to come up with some remarks or questions, if you have any.

Greg Shatan: Thank you. Greg Shatan. And it's an interesting report. There's a lot to digest. Having seen the short version, there's a lot more meat on the bones in the long version.

I'm trying to figure out how this will fit into the day-to-day, month-to-month and end stage outputs of ICANN's policy development process. It's something I still trying to wrap my head around as I think, you know, we all are. It seems to me that on several levels the impact will be significant, both in terms of workload and in terms of workflow, and in terms of perhaps refocusing and rebalancing certain ways that we tended to look at things.

So I wish that I had more fully developed thoughts, but I think that, you know, I see some areas of concern as there are different issues that are I think - kind of where there's going to be a fair amount of friction and concerns. I see, you know, both here and the previous session, most of the time on certain rights and on certain activities, I think going to the question that was asked earlier, even, you know, how this maps against ICANN and as a body, but, you know, realizing that ICANN is a policymaking body about that, you know, lies on a technical framework.

So we've kind of crossed that bridge already in terms of policy. So I think this is something, also in terms of process, trying to figure out how this group fits into the ICANN process and the existing kind of frameworks in different supporting organizations and the methodologies by which those groups do their work. I think that's a challenge that has to be considered.

This doesn't really - the way the presentation looks, things like this are going to kind of just happen in a sense and not be kind of go through the bottom up multi-stakeholder process to be considered.

So I think it's probably not an accurate - in the end, but it's kind of an impression that this is, you know, to how his this is going to be adopted. I think that's kind of an open question for me to see, you know, maybe I'm a little bit too process oriented and on a lot of working groups. So I see that as kind of how we do business here internally.

So I think that there, you know, clearly, you know, in the world that we're in, it sends the right message for ICANN to be respecting human rights and to find ways to do that. I think one thing that isn't understood here and there was a short video that was presented, which actually I thought was very educational, in a sense that (unintelligible) but we've used the word respect in the working party without really unpacking what the word respect means.

It sounds like it could be rather passive or limited, but it's within the context that it's been put together here, it's actually - it's an incredibly powerful word. It's been given a lot of meaning that I think until you look at a presentation like this, until you look at the short video, which is kind of a companion piece to this in many ways, you don't really fully contemplate -- I was going to use grasp but that probably dates me a lot -- how much that it means in terms of what happened differently.

So it's kind of where ICANN is going down this path specifically and, you know, not going down this path what they would look like. That's kind of - I see them as two potentially very different places, you know, with or without this. That doesn't mean that without this, you know, human rights would be violated all over the place, but it does mean that a different set of standards and thought processes would take place, which I think is incredibly interesting to think through.

I think there's a lot of, you know, we could probably spend hours on each bullet point, and probably before this is done, we will spend hours on each bullet point. I'm not going to do that now because we don't have the time and I actually should be in two other places right now. But I wanted to stay here and be able to make these remarks and hear some more remarks before then. Thanks.

Niels ten Oever: Thank you very much, Greg, for those comments. I'd like to now go to -- before we respond and to add Greg's remarks -- to go to three other people to respect. First I'd like to go to Patrick Falstrom.

Patrick Falstrom: Thank you very much. (Unintelligible) I sort of also think about (unintelligible) because I think I've not been participating heavily in the report itself even though I've been keeping my eyes on it and I have spoken up if I saw things not going the direction I would (unintelligible). So we are happy with what it has produced.

So just like Greg I think it's really important to, when developing a program like this like the one that's in the presentation, that we now have this report. We need to start to understand how that maps to what they're doing here in the ICANN community as a whole.

But we also need to find someone that is -- and I think that is the thing, Greg - - we need to find someone or something that will be responsible to ultimately measure everything from policies to other things that we are doing in ICANN with, for example, this document or maybe something is a compiled - that is compiled to the ICANN environment, what are the actual - what should we measure our results with and who is doing that measurement.

And the question here is of course can we rely on the various PDPs to do that and take that into all their work? Well if we did, in that case maybe SSAC would not be needed for security issues and maybe GAC would not be

needed for governmental - maybe then ALAC would not be needed for those kind of issues.

So there's a reason why we have these (unintelligible), there's a reason why we have the ombudsman. We have been sort of, over time, been creating these specific bodies just because we don't really trust the PDPs to take all of the issues into account, which of course is some ways might be a pity, but on the other hand, it could also be a strength in the process to have something that is really - so one big question is who is taking - ensuring that whatever we are now producing from now on is living to the results.

Hopefully we don't need to have, and I hope that we don't need to have, a special entity sort of being responsible for that, because we all should be responsible for taking these kind of things into account. So I don't want to rush into and lead us into inventing a process, even though I'm also process part of it, we should not invent the process.

I think we should start with, for example, revisit in a year for now, for example, how - what has happened, how people take this into account, can the SO and ACs demonstrate that they were on their way making a decision but they actually did change the wording in what they did because of this.

If the answer is no and we don't have any evidence about a year from now, then maybe it's the case that we should, at least in this group, sort of reconvene, investigate whether there should have been some action, and at that point in time decide that we have to talk to someone, we have to ask ICANN staff, we have to ask us in the community to have a specific com for it. But if we're lucky, we don't have to have to have a reason for it because hopefully all of us will take these things into account. Thank you.

Greg Shatan: Actually that just inspired one - a couple of extra comments on my part, so I apologize. I'll be very brief.

Niels ten Oever: Maybe after we heard everyone's comments.

Greg Shatan: Okay.

Niels ten Oever: Thanks, Greg. I'd like to go over to Matthew Shears right now for some comments.

Matthew Shears: Thanks, Niels. Matthew Shears (unintelligible). I have to say I agree with - first of all I want to say this is a fantastic (unintelligible). Congratulations to all of us who have been involved in bringing this human rights in ICANN (unintelligible).

I agree very much with Greg in terms of the process issues. I think we need to be very careful about how we take it forward. What's been presented in this particular presentation is a huge amount of information. It's a huge amount of information to digest, and many of us here have been working on this for awhile and (unintelligible). So I think we need to really look at a very measured incremental approach as to how we roll this out.

And I think we probably need to spend more time understanding the difference between human rights at an operational level and human rights within the policy level. We also need to be very careful and we need to spend a lot of time -- and Marilia's chart was getting to it -- to what are the actual human rights (unintelligible).

Because when you go to work (unintelligible) able to understand the occasional (unintelligible) and where and who are the customers and where are those - where are we - where is ICANN responsible across that chain, if you will. (Unintelligible) So I think we need to spend a little time with this.

The structure itself is really important. The thing that is interesting to me, and I think it's a really important thing, is even though ICANN is unique, we need to be able to point to best practices. Why are others doing this, why are

others going down to CSR human rights impact assessments, what's the rationale, and what's the closest example that we have with organizations doing them and how are they doing them, and what kind of approach did they take. I think we can learn some useful things from them.

I know that we have to go through this to learn it, but I think there must be examples out there (unintelligible) best practices for the whole thing. And I think we just need to - I think we need to share this more. I think I'd like to see that presentation broken out into component parts we can really almost go step by step, because we (unintelligible).

Niels ten Oever: Thank you very much, Matt. We'll go to - I'd like to go to a short comment from (Bastian Fosslinks) of (unintelligible).

(Bastian Fosslinks): Thank you, Niels, for the opportunity. I'm (Bastian Fosslinks). I will be speaking on my personal behalf. I'd like to make some general (unintelligible) comments.

In terms that I am not an ICANN watcher. I'm not a part of a particular constituency, so from that angle it's a lot of information. And I'm still struggling. The more I get to know about ICANN, the more complex it becomes. And I see the institution is struggling with trying to instruct balance and accountable response as best as possible.

But even for me, the amount of pressure coming from the different constituencies, the power play and the interest in both, I think especially from an economic commercial perspective (unintelligible). And then where does that leave me as (unintelligible).

Of course talking about human rights, I myself have a personal background (unintelligible). I'm from the Netherlands. I'm also (unintelligible). What I can see of this is looking at the ICANN position (unintelligible), it seems to me like this could make that more explicit in terms of (unintelligible).

So this is something from my perspective that is relatively (unintelligible). So I have another comment on the practicality of actually implementing this and picking up this project but it really has all been done, and hopefully I've (unintelligible).

Niels ten Oever: Thank you very much. Thank you very much. So now I would like to give (Montico) a short opportunity. No? Okay so then we'll continue with the queue and the discussion. And I saw one, two, three, four, oh, five.

Steve Coates: Thank you. Steve Coates from Twitter. I appreciate having the opportunity to speak, and I will be brief so everyone else can speak. Listen, that really inspired me. It was a very inspirational meeting for me. When I go to work, one of our core values (unintelligible) legal team is the defend and respect users' work. That guides everyone of my decision that I take into work. It inspires me. So seeing this is really good.

One thing, we have incorporated human rights into our core values, although they are present. What we do is have a transparency report. That transparency report applies information, mostly around intellectual property rights, but also around law enforcement requests. We spend a lot of human resources putting together these metrics, and I think they're very valuable.

We provide legal resources against foreign and domestic governments to be able to provide that information to haggle for our business. And what it does is it provides a starting point for that conversation about why these rights are important. It's a starting point. It starts that conversation. And I think putting together those metrics and requiring some sort of transparency in the beginning, makes the larger conversation about implementation that much easier. And that's my only comment. Please go to [Twitter.com/transparency](https://twitter.com/transparency).

Woman: Okay, okay.

(Monica Genuluta): Hey. I'm (Monica Genuluta) from NCUC. I would like to perhaps comment on some of the issues raised here. And first would be the rationale. Indeed, I would have some echo, because I think there is not a big secret that the main drive by the companies adopting the CSR policies and the human rights impact assessment is actually competition, yes? It's the reputation among the consumers that drives them to do that.

It's the - so for example in the clothing industry, if I figure out that my sports shoes are actually made by children, perhaps I go quit on that label and try to find another, hoping that perhaps this is made by at least adults. That's the idea.

And to be honest, it's the case in case of ICANN, yes? So generally speaking I cannot get a domain name without, for example, having my personal data getting stuck there for an extra two years for law enforcement to be able to finally access it one day and catch me, you know, somewhere. So that is one issue I think why we are here, why it has not yet been adopted, and it's difficult to say how to motivate ICANN to do it.

And so actually I might be able to choose some other exception and get perhaps a domain name without having my data stuck there, and there, if I'd be lucky enough to live in a country which has - where a registrar has applied for a waiver, yes, that's the only chance, which again brings us back to the state where ICANN is in such a loophole, because it's not a data collector and therefore it's not directly responsible for those issues.

Then it brings me to this bigger point, which I think is the remit, the mission creed that people are always saying, that human rights is not a place for a technical organization like that. And indeed, I would say so. It's not a place, because technical versus substantive. We just - I would say compliance. This issue has to be framed as a compliance in legal terms to be compliant with law that are, you know, binding in certain countries and on an international level.

So it's not - we don't want ICANN to create the laws like they did for example with RAA to keep the data for an extra two years. This was nonexistent on an international level. This was indeed created totally out of remit, not technical. And indeed I would say that respect as it was mentioned is an issue of compliance, simply a legal issue of compliance, nothing else. So these are my comments and I'll give the floor to the other people.

Niels ten Oever: Thank you, (Monica). Stephanie.

Stephanie Perrin: Hi. I'm Stephanie Perrin for the record and I'm a GNSO councilor. And I'm on the GNSO review working committee, where we have made a recommendation for a regulatory impact assessment type procedure in the GNSO. And I realize that there are many other committees other than GNSO initiated PDPs.

So I put a proposal in the Adobe chat of integrating this in. I think we need to look for opportunities in existing procedures to get this thing in and give it a trial run, and that opportunity exists in the GNSO improvements. We all like this idea.

I would also argue, I agree with Greg, you know, that this looks like work and it is work, and we're all trying to minimize work at this point, because we're all really burnt out. But I do find that in the PDPs, understanding what human rights obligations mean can take us I don't know how many wasted meetings, where the people who have some clue -- and I don't mean to sound disrespectful; it's not everybody's business to work on human rights to what understand what obligations.

Some of us have worked in this area. But we waste a lot of time doing that. If we had an instrument that consolidates the basic issues that came at the issues stage, the PDP draft report stage, and then we got comment and

feedback, because it's not a given that people will be able to receive the human rights implications in any outside working group.

It's a big leap. Unless you're used to doing it, it's often difficult. So I think we need to climb onto this process. And if you have (unintelligible) regulatory impact assessments that different countries have done, I think that's a great place to start. I know in Canada, ours is focused on our (unintelligible) of those rights in our charter, but they're not far off. And if we got ten countries and compiled them all, we would have the bones of a fairly streamlined impact assessment.

So I don't have the ones for other countries. I've only got the ones that we used in our legislative process. I'm sure among us we could throw them into the table and come up with something. Because ICANN staff are also burdened. I think if we asked them to come up with this in the GNSO context, it's going to be fairly streamlined. I'd rather we want to influence it that we come up with a few draft suggestions. Thanks.

Woman: Can you give me one minute on the process?

Niels ten Oever: I would like - because we have one more minute and I would (Montico) an opportunity to respond the issue that was raised.

(Montico Isawa): Thank you. Thank you for all your comments and observations. So I think every single statement you made resonates with me. And it's also something that I have heard with other organizations grappling with similar challenges. So just know that you are not alone, that this is not a very special conversation that isn't taking place anywhere else. It is taking place elsewhere.

And instead of commenting on very specific things that you have mentioned, I just thought I would share with you some work we're doing with a particular company who provides a country's entire Internet system. You might be able

to figure out who that is because there aren't too many of those, but just to share with you the dilemmas that they go through, yes?

So they are in a position to either instantaneously enhance connectivity in that country and enhance economic and social development or not do business and withhold that opportunity for the country to go through that development process because of that country's human rights track record. This is the dilemma that they are in.

And so what they do and what we recommend that they do is to have a relationship with the government, have a relationship with the local operator who will actually (unintelligible) through a lot of due diligence of both, to the extent they can include certain requirements in a contract.

And these are sale of equipment, so they cannot have a covenant that runs forever. But they can actually create leverage by withholding automatic upgrades, withholding certain service contracts. There are certain things that they can do. And so they will build these things into a contract.

It's a long-term view of doing due diligence, building contractual leverage, monitoring the situation, monitoring the country, bringing in the diplomatic core of that particular country if there is an incident in that country vis-à-vis human rights. It's just a lot of different things that you bring in, which would you would do in a business, right? For other businesses you would do that.

It's the same response except the issue happens to be human rights. And so actually the solution, the responses are business solutions and responses. We're not talking about bringing the UN, bringing the periodic review process, that's not what we're talking about. We're talking about integrating this into a standard business that a company would have within their menu of options.

And in that sense, that what I mean by integration into the overall decision-making process. And so we're not talking about something that's completely

alien as far as the business response is concerned. That's just one thing that I wanted to mention.

I wanted to respond to the regulatory assessment. To the extent these are fairly compact instrument, I thought it would be really ideal, but what I looked at are sort of the (OECD) model, which is very long, 200 pages. So I think we still need to do some market search to find out if there's something out there that's really, really useful instead of what we are proposing here.

So I'm completely open-minded about that. And basically I'm just looking forward to ongoing engagement more than anything else. I think it's a fabulous discussion that we're having, and it'd be even more fabulous if it continues. So apologies. I'm not addressing specific things, and if you'd like to have a bilateral conversation on that, I'm available. But if that's okay, I'll stop there.

Niels ten Oever: And I promised Greg could give a few more comments, and I also saw that (Lee) also had a few more remarks. But we're already heading over time. So I'm also conscious of time. Please go ahead, gentlemen.

Greg Shatan: Very brief. A couple of additional (unintelligible). One, there's a reference to, you know, going top down first and then bottom up, and that bothered me, because I see this is a very much more even that bottom up organization. It can be messy and include disagreements. But a top down in that same part, it seems that CCWP had kind of assigned itself a role as it was written, or you had assigned the CCWP a role in the desk review, the way it looked on the slide. So, you know, that was a concern.

One other word with respect is I think we need to find a way in moving this forward to maybe respect ICANN's processes a little bit more, because I see this as kind of - this is a very important effort but it's not fully integrated in a sense with, you know, for instance - if you're talking about making significant changes to policy and the way policy is viewed and analyzed, shouldn't there

be a formal policy development process for that, should that be a stakeholder organization and an advisor committee chartered group that looks at this.

You know, you can see by the fact that we're in a relatively small room that this is engaging a relatively compact group of people, and I think the multi-stakeholder needs to be brought in. Thanks.

Niels ten Oever: (Lee)?

(Lee Hibbert): Okay thank you. So many of us are on the Council of Europe. I'm not speaking on behalf of the GAC working group, but quite clearly you also have to bear in mind as (Montico) said (unintelligible), the legal duty of the state. I think you have to bear that in mind, the GAC's role, and I think it could be a very - it could be a positive role. I mean we can count on states to consider these things.

So I think bear that in mind in your (unintelligible) reflections, and maybe even encourage or communicate how - what could be the added value of the GAC working group with regard to this. You mentioned the three pillars, and black on white, I mean there are already countries, Council of Europe countries, 47 countries have already mentioned in speculation and documented its point of view, which is entitled ICANN Human Rights and the Rule of Law.

I think it's the first time you see ICANN in the title of an intergovernmental document. But I mean I could be wrong. Which encourages member states to encourage ICANN to commit to explicit policy statements, human rights impact assessments, and due diligence, all things you've been saying. So it's there. They're mindful of it. They see it. They're encouraging it. They want to encourage ICANN.

So, you know, these two groups should be - could be singing similar songs, and you could be partners in the same process. It could be very interesting to

think about to engage with each other, communicate and, you know, maybe you've got respective roles that you can (unintelligible). Thank you.

Niels ten Oever: Okay. So I'd like to thank you all very much for your very constructive agreement. Two more short comments from me is that with this report we've been trying to fit into the existing discussions that are there, so definitely we're not trying to assign ourselves an official position. Also we're really careful to not duplicate efforts that are ongoing elsewhere. So one could imagine that these issues will be discussed during Workstream 2 and then having two places where these things are being discussed would also not help.

So I think what the cross-community working party is doing is that it's reacting to a need for this to be discussed, trying to have a channel of convergence for there, and produce a product that could feed in back into that discussion. And I'm very happy to be able to work in both other fora and in this - on this with you and to plan the ongoing work, what we'll be doing and how we can be as productive and useful as possible.

We're going to discuss at 5 o'clock to see what the next steps are going to be. I heard people that mapping exact cases, coming up with exact indicators would make sense, but many more suggestions would be very useful so that in Marrakech we can have a new meeting, where we can already give an update on new work and relevant work that's upcoming.

So I'd like to thank you very much your contributions and for your attention, and I hope to see you later on during - bye.

END