
HELSINKI – GAC HRIL WG and CCWP Joint Session
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ICANN56 | Helsinki, Finland

NIELS TEN OEVER: Hello, everyone. We'll start in about five minutes. But please join us at the table so we can have an interactive discussion and make efficient use of our time. We've only got 45 minutes, so let's hope we can get everything done. Great you're here.

Hello, everyone. Welcome at the joint session of the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights and the GAC Working Group on Human Rights and International Law. I am the Chair of the CCWP HR. And I am here, together with the co-Chairs of the GAG Working Group on Human Rights and International Law, who will introduce themselves.

MARK CARVELL: Okay. Thanks, Niels. I'm the United Kingdom representative on the Governmental Advisory Committee. So I'm one of the co-Chairs. Milagros?

MILAGROS CASTAÑÓN: I am from Peru, from the Ministry of Foreign Affairs. And I am also co-Chair in the same group, the GAC.

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JORGE CANCIO: Hello, everybody. And we have three co-Chairs. And the third is me. I am from the Swiss Office for Communications.

NIELS TEN OEVER: We're very happy in this government-civil society partnership, because in this ICANN B Meeting, the cross-community working party was not able to get a session. So we'll also use a part of this session to update you on the work we've been doing and will be doing up to Hyderabad. But we will be starting off with a short overview of the work from the GAC Working Group on Human Rights and International Law.

MARK CARVELL: Okay, Niels, I'll kick off on that. So the GAC Working Party met yesterday morning. And this is our first meeting, in effect, really since our Terms of Reference were concluded and our Work Plan was agreed, which we did so intercessionally. And indeed, our Terms of Reference refers to one of our objectives being to cooperate with other Advisory Committees and Supporting Organizations, and community processes and so on, in particular the cross-community working parties. So here we are, ticking that box, fulfilling that objective of working closely with

community groups and so on. And we refer in particular to the CCWP in our Terms of Reference in this regard.

And secondly, in our Terms of Reference, we refer to working with applicable work streams and studies. And our Work Plan, which is on the GAC website – maybe you’ve seen it – refers to a number of processes that are now in train: PDPs in respect of New gTLD subsequent rounds, the new registry directory services, the new WHOIS PDP, and the rights protection mechanisms PDP.

So in addition, and so we’ve tabled these as key elements of our Work Plan, along with participation in the CCWG Work Stream 2 and subgroup on human rights. So we tabled these immediate areas of focus for the working group’s work. And we decided at our meeting yesterday to prioritize participation in the CCWG subgroup on human rights. So we’re kind of now back in sync, if you like, with transition and accountability in respect of human rights. And we are committed to working closely, to being involved in the subgroup, to report back to the GAC, and to develop possible inputs as a working group of the GAC for agreement by the GAC plenary, to input into the subgroups process.

So that’s broadly how we’re going to approach the work. We’ve prioritized human rights in the CCWG Accountability. With regard

to the PDPs, we have issued an invitation for volunteers from the GAC Working Group to help with the representation and participation in the PDPs. And that is gradually coming together. We've got commitments on the Next Generation registry services PDP for working group member to lead for us in that. And we're hoping that other members of the group will populate the other opportunities to lead for us in the other PDPs that I mentioned earlier.

So that's broadly where we're at. We're up and running. We have a forward look, with the Work Plan. And we have an immediate focus, the accountability process and the subgroup on human rights. So we're off and running, and I hope that's good news to you all. And close working, as I mentioned earlier, close interaction with the CCWP on Corporate and Social Responsibility for Human Rights is key to our whole approach. So look forward to hearing from you all on the CCWP side on your progress of work. You're more advanced than us. But we're hoping, nonetheless, we'll be able to work jointly and very effectively so in the future.

And, yes, I don't know if Jorge or Milagros will want to add to what I've said.

MILAGROS CASTAÑON: I would like to comment that this meeting with you guys is really very important to us. And I will try to work as an observer or as a participant in the Framework of Interpretation for human rights within the Accountability Group. And to that regard, I would be very interested to know, from you guys, what you expect from that Framework of Interpretation. What are your expectations? So that I can also have them into account in my work. Thank you.

JORGE CANCIO: Hello. Yeah, I was going to say something very similar. I guess you will introduce some of your ideas in your presentations. But we would, of course, be very interested in knowing what kind of ideas, what kind of vision you have for this Framework of Interpretation, what elements it should contain. And of course, to call for mostly informal exchanges during the months to come in this subgroup. Also in relevant subgroups, if you are participating there in the CCWG.

And of course, also in the PDPs, if you are there. And we are calling for volunteers for the PDPs. It seems that for the WHOIS PDP, or the new registry directory services, we will have [Click] from Thailand – is it Thailand? One who also is very interested in the implications with IDNs, etc. And myself, I'm trying to participate in the PDP on subsequent procedures, which is also

touching upon a lot of issues which are of possible common interest to us. And so that's mostly it.

And as another point of information, it might be of your interest that there's work starting on community-based applications, which is being facilitated by the Council of Europe, which was introduced as – well, we were informed that this work is ongoing in the GAC. And we are looking forward also to the results of that work, which is of course related to human rights issues.

NIELS TEN OEVER:

Thank you very much for that overview. And before we get into the overview of the cross-community working party, I would like to also first welcome the people who are not fluent in ICANN-ese. You may see – and this is a bit of an ironic note to the amount of acronyms there on the slide, which can often be interpreted as what anthropologists call argot. And argot is a term for words that are being used to show who has power and who is initiated in certain spheres. And I think we should really take into account that we're actually here to ensure the rights of end users and ingrain that. And to do that, we should also have the perspectives of everyone in the room. So we are really trying to break it down. Unfortunately, these are complex issues that go into abbreviation. So we also might be contaminated by the

language. So if you have critiques or questions, always come up and hold us to account there.

So that to start off, if you will allow me, I'll take a bit of a step back to then take a sprint, and hope to go straight into the work, is that the topic about human rights is not a new topic. As you all know, they are defined in 1948. But also, the discussion on human rights and the Internet goes back as far, at least, as the World Summit on Information Society and the Tunis Agenda in 2005, where we decided the Internet should be based on human rights, notably freedom of expression and the right to privacy. This was also then recognized again in the UN General Assembly and Human Rights Council, where it was said human rights online should be respected and protected as well as human rights offline, and that there is a right to privacy in the digital age.

These are all intergovernmental fora. But of course, this was also reaffirmed in a meeting such as the NETmundial meeting in Sao Paulo already two years ago, where it was said that Internet governance should be based on human rights principles. Then David Kaye, the UN Special Rapporteur for freedom of expression, in his most recent reports, also reiterated the importance of the private sector in upholding human rights.

And this brings us pretty much where we are here. This is where the rubber hits this road. This is where we're trying to understand what it means to work with human rights on an Internet infrastructure layer. So that's what we're trying to work on concretely.

That's a bit of the background. Now let's go straight into the work. Next slide, please. Next slide, please.

This is a bit of overview of the things that we're working on with the Cross-Community Working Party on ICANN's Corporate and Social Responsibility to Respect Human Rights, which I will from now on abbreviate as CCWP. What we're aiming to do is coordinate and bring together all the strings of work on human rights in ICANN. We do not do policy development ourselves, but we're trying to coordinate and understand where are all the different strands of work going. In the policy development processes, the PDPs, within the transition within the GAC, and we're trying to be a bit – to spur the discussion to coordinate and give a bit of an overview of where we are.

Next slide, please.

So a big part of that is the opportunity that we got with the stewardship of the oversight of ICANN, of a part which was improving ICANN's accountability. And in that work, we managed to get a Bylaw in which it was said that ICANN will

commit to respect human rights within its narrow scope and mission. That Bylaw, unfortunately, will not get into effect until we develop a Framework of Interpretation. And that is part of Work Stream 2 that we actually just kicked off last Sunday.

So the upcoming process is in this Design Team, that's a subgroup of the Cross-Community Working Group on Accountability, we will be designing this. And when we've designed it, we'll be bringing it back to the Cross-Community Working Group on Accountability and how we get agreement on that. The maximum time we have for that is a year. So it should be done by June 2017. But as the co-Chairs for the Cross-Community Working Group on Accountability have indicated, we really hope to do that in a shorter timeframe, and we hope to be well underway by our meeting in Hyderabad.

I would also invite everyone to become part of that work. You can fill in your Statement of Interest and join the work there. You can sign up as participant or as observer to just put a toe in the water and see what we're doing. Part of the Framework of Interpretation, to go directly to Milagros's question, I guess my personal opinion, I already answered a bit in a presentation I did last Sunday, is that the Framework of Interpretation should be what it is. And luckily, we do not need to reinvent the wheel because the ccNSO, which is the Country Code Name Supporting Organization, already before us once made a Framework of

Interpretation. And a Framework of Interpretation is actually very much what it says. It should provide an interpretation of the Bylaw. This is not a full human rights policy for ICANN. We should just make it very clear what is meant with the Bylaw, what are the relevant instruments on what it has impact.

MARK CARVELL: Thanks. Sorry, just to interject, just a quick question. That ccNSO work is easily accessible?

NIELS TEN OEVER: Yes, it is. And on the slide, which I will share right now in Adobe Chat, there is a overview document, which was initially prepared by Grace Abuhamad, of the support of the Cross-Community Working Group on Accountability, with relevant documents. I pasted in there the ccNSO document and other relevant documents. If other people think there are other relevant documents to human rights and to this Framework of Interpretation, please add that there and help us frame the discussion there. That would be extremely helpful, please.

UNIDENTIFIED FEMALE: Excuse me if I am a little off maybe with my questions. But I wanted to know also what your opinion is on the chapter on human rights on the new Bylaws. Have you read it? Do you like

the way it's written? Is there any space for making this chapter better? Have you noticed anything? Have you studied this chapter?

NIELS TEN OEVER: Well, the CCWP subgroup too has been closely involved with the discussions on the framework of the human rights Bylaw. And of course, it's a consensus, but I think it's a very constructive consensus, which is definitely an improvement over what we had, which was only Article 4 of the Articles of Incorporation, where it was said that ICANN would respect international law. So I think that we have a commitment to respect human rights within ICANN's narrow scope and mission, is definitely a progress. And what it now exactly means is part of the upcoming work.

UNIDENTIFIED FEMALE: So you like the way it is written? The way they have worked that chapter in the new Bylaws?

NIELS TEN OEVER: I think it's a consensus document on which we reached consensus, and it gives us a – that is better than what there was, and it gives us a very good way of going forward.

OZAN SAHIN: If I may interrupt, if you could get closer to the microphone, because we have a comment on the chat box, they cannot hear you well.

UNIDENTIFIED FEMALE: Okay.

OZAN SAHIN: And turn the mic off when you're not speaking. I would appreciate it. Thank you.

And we have a question in the chat box. Would you like to address that? This is coming from Anne, IPC. The question is, "Is there a plan to initiate a human rights policy development process as these principles relate to New gTLD policy?"

NIELS TEN OEVER: I do not have such plans, but it is a great suggestion by Anne that we perhaps can discuss a bit further down in the work and planning ahead, if Anne is okay with that.

So this was a short update on where we are in Cross-Community Working Group on Accountability. And now we'll give a short overview of where we are in the Cross-Community Working Party.

Next slide, please. Next slide, please.

So at ICANN 55, we structured from, I think, five groups we had then into three subgroups: one subgroup to do research, one subgroup to work on visualization and Work Stream 2, and a third subgroup to follow the specific PDPs. Right now, we merged the PDP subgroup with the research subgroup because we saw a lot of overlap there. And we have weekly calls. So there is a call for each subgroup, and then we have a general call, which are all very much invited to attend. They are also all recorded and transcribed, and you can find all that information on the website, ICANNhumanrights.net.

Next slide, please.

One of the parts of the work was creating a visualization, because what we saw is that for a lot of people, it was still quite vague what we meant when we were talking about ICANN human rights. And we produced several reports. And one can even say that this discussion was really converged and stimulated by the reports facilitated by the Council of Europe and written by the current GAC Chair, Thomas Schneider, but definitely also by [Monica], who is here with us. And we created reports after that, but the beautiful thing with reports is that – or sad thing – is that not everything reads them. And a visualization

can be a bit easier way for people to access complex topics. And that's what we've done, and you can see it here.

Next slide, please. Oh, can you zoom out a bit? And a bit more? And a bit more?

You can also all find this at ICANNhumanrights.net, where you can also find it. This is a first iteration of our work. And what we tried to do is do some initial work that is based off the start of a human rights questionnaire, which is part of the official Human Rights Impact Assessment Procedure, as specified in the UN Guiding Principles, and of which I put the link now in the Adobe Chat. So based on this, and a table made by [Mario Michele] that unfortunately could not be here, we tried to visualize everything that was going on. So different rights and different processes for which those rights might be relevant.

In the upper-right corner, you can also find a tentative response to a question that a lot of people ask, like what are human rights, and whose human rights? So there are the Universal Declaration of Human Rights, but there are also other treaty documents that are a part of human rights. And there are also the guidelines, like the UN Global Compact and UN Guiding Principles for Business and Human Rights. And hopefully, this gives a high-level overview of the different issues and how the different issues can relate.

We will further iterate this and break this further down in our work towards Hyderabad. But I would also definitely like to invite your questions, comments, and suggestions on this work, both on the visualization style, the content, and the relationships, so we can improve that work and make this work even more accessible. So that would be – all comments on that are very much invited.

Next slide, please.

Next to that, our research subgroup, which is led by Vidushi Marda, here next to me, also produced a report on the human rights impact of gTLD subsequent procedures. I'll leave it to Vidushi's able hands to produce an overview of that report.

VIDUSHI MARDA:

Thank you, Niels. So as the research subgroup, our mandate is to document cases and compile instances in which ICANN could potentially impact human rights. And the main audience of this, I guess, is people who haven't thought about human rights in the context of ICANN before, or are new to ICANN, or are trying to locate human rights concerns within ICANN. And so we decided that it would make sense to focus on particular PDPs that are going on right now and analyze them in the context of human rights.

Also, one of the first ones we've done is the final issue report on gTLD subsequent procedures, and where we have looked at specific instances of human rights. And we have tried to explain how they are relevant and why they matter, and have tried to document cases in which, even in the past, or are potential cases that occur, that we would have human rights impacts.

So, for example, for freedom of expression, issues such as content-based gTLD string evaluation, at what point are we entering into the zone of censorship? At what point is a restriction on freedom of expression reasonable or not? And we've also looked at community objections or public interest objections, because in an area where we have people from so many countries and so many different legal frameworks, what does community consensus mean? What does public interest mean? And just highlighting the concerns that can arise from vague or not properly defined standards.

And, yeah, so that is the approach that we've taken to freedom of expression. We also have consumer welfare and privacy. So the UDHR, in Article 12, recognizes the right to privacy. And just looking at interests like TLD squatting, looking at issues of unsafe registries, looking at issues of are registries equipped enough to grant us these rights, is a second way of looking at it.

Under procedural fairness, this is actually interesting, because we didn't find a specific article under the UDHR. But it is a principle of natural justice, and that kind of complicates our work, because that then brings about the question of, do we restrict our framework to just the UDHR? And we found that maybe it doesn't make sense to do that, because if you don't have procedural fairness when you're giving out New gTLDs, then other human rights are impacted.

So for example, you have the base registry contracts, where something like premium names are given an advantage. You have the Trademark Clearinghouse, where existing applicants are given priority over applicants who don't already have the trademark. So does this lead to a perpetuation of people who already have the rights? Does this lead to a situation where not everyone can easily access New gTLDs? So that's third point.

And the fourth is diversity. 1,586, out of 1,930 applicants for the New gTLDs were from Europe and the USA. And this obviously brings about a question of, is the cost too high? [We have] an applicant support that actually how effective has that been in ensuring that human rights are respected in this process? How efficient has it been in actually helping people? And actually, we're trying to figure out exactly how many people have been helped by this process, not just applied for but actually been given New gTLDs. Also, things like cultural sensitivity,

internationalized domain names, is it inclusive in the sense that you're welcome to participate or your enabled to participate? And so this is, I think, a really exciting part of the entire report, because we're looking at actual effectiveness of the architecture that's already in place.

And so, again, this is a six-page document, which is available on the website of the CCWP. So it would be great if you could go through it and give us your feedback and your comments. And whether you agree or disagree, would be really happy to hear from you and get your feedback. Thank you.

NIELS TEN OEVER:

Thank you so much for the work, Vidushi, and for the great presentation. I see there is a direct question from David McAuley. David, come in, please.

DAVID MCAULEY:

Thank you. I've been a participant in CCWG on Accountability, Human Rights Subgroup, Work Stream 1 and Work Stream 2. Vidushi, thank you for that. How is the CCWP participating in the Subsequent Procedures Working Group? Both groups are working at the same time, simultaneously. So other than – excuse me. Other than reading the paper, is the CCWP seconding people into the subsequent procedures PDP?

VIDUSHI MARDA: Our actual mandate is to make it easier to understand what is going on at ICANN. And so we're trying to simplify the issue report and trying to make available this information, which is actually quite challenging to put together, because it doesn't exist as a document. It doesn't exist as a list. So right now, what we've been doing is that we've been trying to make available this information and feed this information to people who are working on these particular PDPs.

So a lot of members of the CCWP are also in the CCWG. And we just hope that our research will have an impact in at least statistics, or these are the things that are affected by, these are things that we can bring about. And we also will contribute to discussions and on mailing lists. Thank you.

NIELS TEN OEVER: Lousewies, please go ahead.

LOUSEWIES VAN DER LAAN: Thanks. I also have a question. I'm on the Board of ICANN, and ICANN Board has appointed liaisons on specific subjects. I am the liaison on diversity, and my colleague, Lito, is the replacement on that. And Markus Kummer is for human rights, and I'm the replacement on that. And I have a couple of

questions, because I know I will get them from the Board and they will expect me to have all the answers. So I'm going to take advantage of the expertise you have here.

I was a little bit surprised that procedural fairness and diversity are kind of ranked in the same way, as two explicit rights which are in the Universal Declaration of Human Rights. And I was just wondering where that came from, whether that was controversial at all. Because I had thought that it was quite a strict agreement, like we would stick with Universal Declaration of Human Rights.

And I was wondering also if the diversity – because Work Stream 2 will also be working on diversity. So then the question is, are issues of diversity that may or may not relate to human rights, will they be dealt with here or will they be dealt with somewhere else? And how are we going to make sure that there's no overlap or that it works out well?

VIDUSHI MARDA:

Thank you for your question. With respect to whether we're sticking to the UDHR or not, actually, this took a lot of time. This particular – the third point, on procedural fairness, took a lot of time to decide whether we should put it into the report or not. The reasoning behind actually putting it into the report is that if you don't have procedural fairness and if you don't question

these things, that has an almost irreversible impact on human rights.

And so maybe we compromised a little bit on the methodology, but it's not a compromise that I think I am uncomfortable with. I definitely took a lot of time to think about it. But if we don't think about the procedure or the architecture by which you're going to allot these New gTLDs, then it's not as effective when you're thinking about human rights once you have allotted them. And that was the reasoning behind putting procedural fairness under it.

We also looked back into the legalese of it. And I'm a lawyer, so we tend to have this problem of getting into it, so I'm not going to. But with respect to procedural fairness, just as an aspect of natural law, is, I think, quite compelling. And I understand the confusion with why it's put here, but I hope that answers your first question.

And as for your –

LOUSEWIES VAN DER LAAN: Was that controversial? Because I can follow your reasoning, and I can see the argument. But that's not really relevant, what I personally think. I'm a human rights lawyer. But we have a whole community, and I could imagine there are others who

would think that other principles, which are not in the Universal Declaration, could warrant the same kind of treatment. So I just want to make sure that we're not opening a Pandora's box, or if we are, then doing it very consciously.

VIDUSHI MARDA:

I wouldn't say it was controversial. It was definitely pointed out that it's possibly something that's not exactly, you know, something you expect to read in a document like this. So, yeah, I take your point, definitely. And I think, as we're developing this document, we'll have to see whether we keep it out, whether we make that a completely different document. Or I think that's a good possibility as well, because there's a lot to be said with respect to that. But thank you.

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