SAN JUAN – GAC: HRIL Working Group Meeting
Tuesday, March 13, 2018 – 18:30 to 19:30 AST
ICANN61 | San Juan, Puerto Rico

JORGE CANCIO: …apparently this working group. You all remember Mark Carvell has changed his functions. He used to be our Co-Chair from the U.K. Now we lost him in that role. Maria Milagros Castanon, who has been, up to now, the Peruvian Co-Chair of this working group and who sent her apologies because she had another commitment – there's a parallel GAC meeting going on, and there's another parallel thing, and there's a reception from the registrars for the Public Safety Working Group of the GAC, so this is really bad timing in the end – is going to be the Ambassador of Peru [inaudible], so she will no longer be able to be the Co-Chair of this working group.

So we have, really, a new setup and also a new situation, where, as GAC members – here I look especially to those who have chosen amongst the different options to come to the Human Rights and International Law Working Group – we will have to decide in the coming months, I guess from here to Panama, what we do with the leadership of this working group. I would, of course, like to have other Co-Chairs and, of course, the Co-Chairmanship, as always at the pleasure of the working group. If

you think that a complete renewal is needed, I would be also available for that option.

Having said that, I think that, first, we'll go through the agenda. The first point is this introduction. The second point is that Thomas Rickert, one of the only remaining original Co-Chairs of CCWG Accountability will inform us on the state of play of the working [stuff] of that work stream, how the FoI plays out there, when it will get adopted finally, and what the timeframe would be.

Then we are joined by Michael and Collin from the CCWG, who are the new leadership of that working party, replacing Niels, who used to come to all our meetings of the Human Rights working group.

He's here. Hello, Niels. He'll inform us, I guess, about two things. First, we are interested, of course, in your take on the Framework of Interpretation and how the work you had started, which was presented to us in Abu Dhabi, has evolved, and how we could implement the FoI in the ICANN environment, especially in the PDP environment. Of course, the other parts would be what other activities are now prioritized by you and, of course, where we can interact more closely or cooperate more closely.

On this issue of the FoI, ALAC has been so kind to send us Yrjo and Alan Greenberg. We are interested in knowing also how ALAC as an Advisory Committee, as the GAC, is intending or thinking to approach the issue of FoI implementation.

Well, I don't know. Is this agenda agreeable to the group? Is there no objection? No formal objection? So we have consensus? Okay. Cool.

Then I guess we will go for Thomas.

THOMAS RICKERT: Thanks very much, Jorge. In fact, I'm the longest serving Co-Chair in the CCWG. I've even been there during the phase of the drafting of the charter for this exercise. But we have fresh blood amongst our Co-Chairs, so I'd really like to welcome Tijani, who is the latest addition to the team of Co-Chairs. I'd also like to convey greetings from Jordan Carter, who can't be with us today.

I can give you a brief update on where we are procedurally. Should this group have questions on the substance of the FoI, we have Niels remotely, who was the rapporteur for this subteam that's been working on the FoI. Then we have very knowledgeable members of the subteam who have kindly accepted to be with us today, amongst those: Tatiana Tropina

and Greg Shatan. Jorge has also been on the team, so he might be able to answer his own questions, so let's see.

Where are we with our recommendations? As you know, Work Stream 2 activities inside the CCWG Accountability have been split into several subteams. The subteam working on the FoI has completed its work a while back. The FoI has been finalized. It has been put out for public comment. The subteam report has gone through two readings of the CCWG Plenary, which have been successful.

Last Friday, during the all-day plenary meeting at ICANN61, the CCWG had completed successful readings on the four remaining subteams' work. That puts us in a position to now assemble all the successfully-approved subteam reports into one report, which we're going to put out for public comment in the next couple of days.

But those who think that they can comment on the substance of these recommendations will be disappointed because, as I just mentioned, all the subteams have already sent their reports out for public comment. So at this stage we're only asking for comments on potential inconsistencies between the individual work packages.

We've done our own assessment – particularly Bernie, our great staff is supporting us – and we have not spotted any

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inconsistencies or the risk of inconsistencies. But nonetheless, we wanted to put that out for public comment.

Once we come out of this public comment period, we will pass on our finalized report the chartering organizations for their approval. Should that be successful, then it will go to the board for the board's approval. The rule for the board's approval are enshrined in the bylaws, so the board can only [inaudible] its approval of our report, should any of our recommendations should not be in the global public interest, according to the board's views. There need to be a two-thirds majority inside the board to turn down recommendations coming out of our group.

So we think the chances are good for our recommendations to make it through this process successfully. We hope that the chartering organizations will start the approval processes during the Panama meeting, or shortly thereafter. That is ICANN62. We hope that the board will subsequently make its own approval, although I should say that the board has asked questions about the implementation of the Work Stream 2 recommendations because, as you might remember, in Work Stream 1 we were forced to come up with implemented recommendations as a condition for the U.S. government to consider relinquishing its historical role with ICANN.

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This is not true for Work Stream 2, so neither does the CCWG Accountability have a mandate to implement its recommendations, nor do we have a budget for that. We will have a discussion with a board caucus to discuss how we're going to go about with the implementation of Work Stream 2 recommendations.

Our group has done its share by agreeing last Friday by consensus that we would suggest to the board to set up an implementation oversight team/implementation review team consisting of the Co-Chairs and the rapporteurs of all the subteams to ensure that the recommendations are being implemented in the spirit of the CCWG's work.

We do know that this is a massive piece of work, and not all of the implementations of our recommendations can be done at the time. So I think everyone should be prepared that the implementation of our recommendations will take a couple of years because it affects many areas of ICANN's actions.

With respect to the work package on the FoI, it will probably be easier because it is up to the ICANN organization to follow what's in the FoI when they do their work. And it's up to the SOs and ACs – i.e., the component parts of the ICANN community – to play by the rules established in the FoI when they do their policies and their procedures.

I will now turn to Bernie and Tijani to see whether there's anything important that I've missed. I think I have not taken up all the time. I think that's good news at this time of the day. Should Tatiana or Greg have anything to highlight in terms of the substance of the FoI, by all means, please do go ahead.

[BERNIE TURCOTTE]:   You go first.

TATIANA TROPINA: Well, to be honest, I'd rather ask Jorge if he has any questions concerning the substance of FoI to be addressed here.

JORGE CANCIO: Of course I would have a good question about the Ruggie Principles, but you won't hear it.

TATIANA TROPINA: Do you want to be free around 7:30, or do you want to continue until 7:30 the next morning?

JORGE CANCIO: No, seriously. I will give the floor to the members of the group and the other colleagues who have come in case they have any questions.

GREG SHATAN: I think one thing to consider is that the framework document really has two pieces to it: the framework itself and the considerations portion of the document, which was more forward-looking. The framework of interpretation itself is not really something to be implemented. It's rather a tool to make sure that interpretation of the human rights bylaw by different groups at different times is as consistent as possible. We often said in our group, "This is a framework of interpretation, not a framework of implementation."

The considerations document is more loose in the sense that it has some forward-looking statements, as one might say. So I was a little concerned about the idea that you could somehow implement the framework of interpretation. But I may be more speaking about the considerations part of the document.

Thanks.

JORGE CANCIO: Tatiana?

TATIANA TROPINA: I would like, first of all, to say that, Greg, I disagree with you that we have to implement the framework of interpretation. We have to implement the bylaw.

GREG SHATAN: That is true.

TATIANA TROPINA: Then you can take on the framework of interpretation. So a bit of a legal correction here. I'm sorry.

GREG SHATAN: I agree completely. We are implementing the bylaw. We are not implementing the framework.

TATIANA TROPINA: Yes. I also would like to highlight that I'm really curious if there would be any implementation subgroup not only for coordination on the level of CCWG, but would it be worse to establish a team which would ensure that, while – for those who haven't read the framework or read it for the first time and are not aware, the framework of interpretation in its substance is basically leaving the implementation of the bylaw while being consistent with this framework to different Advisory Committees and Supporting Organizations, taking into account their policy

development process or the process of providing advice. In this sense, of course, GAC is free to implement as it wants, including the Ruggie Principles – whatever you want to take into account as GAC.

I'm really curious as to how it's going to coordinated on the level of the CCWG and if it would be. So are we going to do something with this or not? Maybe it's more of a question to Thomas.

This is all I have to say about the FoI.

JORGE CANCIO: Before we go to Thomas, in case he was an answer to the question, is there any other point you would like to make, colleagues, on this? It's clear?

GREG SHATAN: The other point was kind of a point of subsidiary in a sense that each SO and AC has their own policy development or policy advisory processes and their own processes for changing their own procedures. So implementing the bylaw will be, within, say, if we're going to talk about GNSO PDPs, something that's done by the GNSO. The same thing for the ccNSO.

In terms of trying to have a grand plan, we may be here to serve, but not to dominate. Each group will take a look at and they may

take quite different looks at how this is supposed to go. Of course, the idea of the framework of interpretation and, to a lesser extent, the considerations, is to try to make sure at least that people don't look at the same words and interpret them differently. They may decide they have different choices to make, but at least the underlying bylaw should be interpreted as consistently as possible.

Thanks.

JORGE CANCIO: Okay. Tatiana?

TATIANA TROPINA: I do have a question to Jorge. Jorge, is GAC already going to consider how you're going to implement the bylaw, how you're going to look at the framework, or are you just starting the discussion? Or are you planning to start the discussion? Which stage are you in now?

JORGE CANCIO: That's a good question. I think we might be in a similar situation to the other Supporting Organizations and Advisory Committees. One of the purposes of this meeting is to get

everyone together and to have a first exchange of views because this would be a good segue to the second point.

Tatiana?

TATIANA TROPINA: Do we have the ccNSO here?

JORGE CANCIO: No, I don't think so. But at least we have some of the players here. Not all, but of course, this could be something we could discuss for the Panama meeting; to have a meeting of all the SOs and ACs to see how we will approach the implementation.

I don't know if Thomas would like to say something.

Okay.

UNIDENTIFIED FEMALE: [inaudible]

JORGE CANCIO: Thomas? No?

THOMAS RICKERT: Sorry. I was distracted with this list for a second. Would you remind repeating your question?

JORGE CANCIO: There's a question from Niels online. "Would the members of the GAC be interested to develop a coordinated, cross-community approach for the implementation of the bylaw or rather develop its own approach?"

It's a great question. As Greg mentioned before, the FoI and the considerations, according to the principle subsidiary, leave it to each other – SOs and ACs – to see how they implement the FoI and how they consider the considerations.

I think we haven't, of course, discussed this at the level of the GAC Plenary. We haven't even discussed this at the level of this working group. I think we are discussing it now. It's the first start to know, first, where we are with the FoI. That's what we got from Thomas. I thought it would be interesting to know how the thinking has involved within the CCWP in this regard because they had started work on how they would see the implementation of the FoI at the level of PDPs.

I think they were very much focused on the GNSO PDPs. So I don't know if would be useful and timely to go now to that discussion. Or do you want to make another comment?

Okay.

TATIANA TROPINA: Jorge, when I think about coordination, when I think about the question you asked, I find myself of two minds about this. On the one hand, I do believe that a coordinated approach is necessary. I believe that this should come, from extent, from CCWG Accountability.

But on the other hand, I think that this should be a very light-touch coordinating approach because, if you look at what GAC is doing, what ALAC is doing, and what GNSO is doing, having coordination will mean significant delays. Really, I believe that it will be a discussion in GNSO – how we are actually going to insert these into PDPs and at which stage and whatever.

So I'm of two minds about this approach; how [balanced] the coordination should be.

Thank you.

JORGE CANCIO: I think Tijani wanted to take the floor.

TIJANI BEN JEMAA: Thank you. Jorge, you spoke about coordinating or discussing the implementation by Panama. I think that, perhaps, you have to wait until the final adoption of the report. The report is not yet final since it wasn't… Or we'll put it for the public comment.

Then it will go the chartering organization and then to the board.

So don't waste your time and energy in the implementation since it is not yet adopted.

JORGE CANCIO: That's a good point. At the same time, I think it's not very foreseeable that there will be very big changes to the FoI, all the considerations. As far as I remember, the board and those in the chartering organizations in general had a positive position on both parts of the document. But it's true that the, let's say, discussions have a formal level, if there are any discussions. This is something for our leaderships to discuss and to decide. [It would start] afterwards.

I think it'd be good to start engaging views. That's a good goal and a good sense for this meeting.

I think that Greg wanted to make a comment.

GREG SHATAN: Two things. In terms of looking into the framework of interpretation and the considerations document for guidance, the section which answers the consideration, the policies and frameworks, if any, that needs to develop or enhance in order to

fulfill its commitment to human rights – the answer that was the output of the group was that each SO and AC should take the core value into consideration in its policy development or advisory role. It is up to each SO and AC and ICANN the organization to develop their own policies and frameworks to fulfill this core value.

There's a lot more there to it, but in terms of where the actual implementation, if you will, of the bylaw goes, it's in the SOs and ACs.

Now, I agree with Tatiana that we should not be siloed and that some form of liaising and coordination makes sense, but certainly nothing that's top-down or intending to have a common approach, as opposed to a common interpretation.

Thank you.

UNIDENTIFIED FEMALE: I would also say in response to Tijani's comment that, especially when we're considering how the ICANN community has had to scramble in light of GDPR, I think that there is a lot of value in already starting to get this ball rolling and considering how it could be operationalized and where before the hammer hits in June.

JORGE CANCIO:	Okay. In this case, I don't think we have a hammer, not like the GDPR, but it's good to start thinking. I would propose that we go over to the CCWP –
GREG SHATAN:	One point of information. Thomas and Tijani, when do you predict that the board would approve the FoI as part of the Work Stream 2 recommendations? What's the time window in which you think that's likely to happen?
THOMAS RICKERT:	It's entirely open. I don't have an expert guess. I think we will discuss tomorrow with the board. I think we will learn more about the mechanics that the board is planning to use for this tomorrow.
GREG SHATAN:	Any idea what the earliest would be?
THOMAS RICKERT:	Well, I had suggested during an internal co-chairs meeting that we should try to get the board to review our final report in parallel with chartering organizations so that, basically, in the logical second after the chartering organizations approve, the board would approve. I think the response was laughter.

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So I think that the board will only engage in reviewing this once the chartering organizations have given their blessing. I wouldn't be surprised if the board will also try to link its approval to having some idea about the implementation is going to work.

So I think we would be talking about a couple of months past Panama.

JORGE CANCIO: Then I guess we have all the available information on that on the table.

Collin? Michael? How's your working evolving? Have you looked beyond?

UNIDENTIFIED FEMALE: [inaudible]. I swear.

MICHAEL KARANICOLAS: We're living in the past, apparently. Thanks very much for sending us this invitation.

We're very happy to be here and to be engaging, particularly since both Collin and I, to a certain degree, represent new faces for the CCWP. We very much look forward to the opportunity to reestablish relationships and to hopefully set the stage for

further collaborations going forward. So thanks again for inviting us.

Could we get the next slide? Can I? All right. Okay.

This is the tenth ICANN for the CCWP. Since 2014, the CCWP has worked to develop a significant body of research on the relationship between ICANN's work and human rights. The slide behind me is extremely clear and easy to understand. A way to express it: it's a sort of visual scoping exercise of the different human rights considerations that may come up.

Could we get the next slide, please? Sorry, I don't actually know how to control it

As discussion of the issue moved forward at ICANN, several research papers were published by the CCWP on ICANN's corporate and social responsibility to respect human rights, with a significant emphasis on the United Nations' guiding principles on business and human rights, otherwise known as the Ruggie Principles. Next slide.

We've discussed about how the different SOs and ACs are going to have their own approach, but hopefully there will be some relevance to the underlying principles of the U.N. guiding principles on business and human rights, particularly due to their role in shaping the underlying thinking from both the

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development of the bylaw and the framework of interpretation. I'd like to take just a moment to discuss this a little bit. I know that these principles are going to be very familiar to many of you, if not all of you, but I think it is worth exploring once more.

The fundamental focus of the U.N. guiding principles is on the states' duty to protect human rights as a well-established principle of human law, in combination with the corporate responsibility to respect human rights, including adverse impacts, and to exercise due diligence in carrying out their operations.

The second aspect is naturally more relevant to ICANN's operations. There's two main components here: namely to avoid causing or contributing to adverse human rights impacts through their own activities and to address such impacts when they occur, as well as to seek or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by business relationships.

The main mechanism for these responsibilities is through due diligence and applying these considerations to the policy-making processes, typically via human rights impact assessment, which considers both the actual and potential impacts and which should draw on internal and/or independent

external human rights expertise and involve meaningful consultation with potentially affected groups.

According to the U.N. guiding principles, these assessments should further be carried out prior to any new activity, a major decision or change in the operation, as well as periodically through life of an existing activity or relationship.

Those two principles lead into the third principle, which alongside protecting by states and respecting by the private sector entities, is the availability of appropriate remedies where an entity has caused or contributed to an adverse human rights impact.

So that's my very brief run-through of the guiding principles. Next slide, please.

Before we get past the guiding principles, can we talk about how our framework of interpretation and considerations deal with the guiding principles?

[GREG SHATAN]:   Sure.

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MICHAEL KARANICOLAS: I'll read this out. With regard to the U.N. guiding principles for business and human rights, no consensus was reached as to their suitability for interpreting the core value.

However, with regard to the implementation of the core value, certain aspects of the U.N. guiding principles for business and human rights could be considered as a useful guide in the process of applying the human rights core value. There are certain guiding principles that may not be suitable for ICANN and others that might be applicable, depending on the circumstances. It is beyond the scope of this document to provide a detailed analysis of the guiding principles and their application or not in particular situations –

[GREG SHATAN]: Thanks. I think we understand that.

MICHAEL KARANICOLAS: Yeah, well this is not being presented as if anybody understands that. It's being presented as if this is part of the –

[GREG SHATAN]: But you've said that previously, and that's in the FoI. We are getting to the FoI.

UNIDENTIFIED MALE: [inaudible]

UNIDENTIFIED FEMALE: No. I'm sorry. I think it is very important.

UNIDENTIFIED MALE: [inaudible]

UNIDENTIFIED FEMALE: Yes, [inaudible]

JORGE CANCIO: Then we will wait a little bit. After the presentation, we can make comments, and then we can have a discussion. But let's give them at least three or four minutes more to finish the presentation. Okay?

MICHAEL KARANICOLAS: I do think that the point is well-taken and we're not trying to present this as a firm list of things that everybody has to be doing. I think that the point in discussing these principles is to provide a bit of information and background as to how the thinking was informed. It's not…

UNIDENTIFIED MALE: [inaudible]

UNIDENTIFIED FEMALE: [inaudible]

UNIDENTIFIED FEMALE: We're why they appear.

JORGE CANCIO: Sorry.

COLLIN KURRE: The fact that they do – maybe it's worth exploring them just by virtue of their appearance in the FoI, even if it is appearance that says there's a lack of consensus.

But can we just move on? Because we can talk about this afterwards. We were just reviewing it because it was something that came up often in the subgroup, if I'm not mistaken.

JORGE CANCIO: Okay. Can we finish the presentation? The point will be made later on, and Greg already made it. So I don't really see an issue.

How long is the presentation?

MICHAEL KARANICOLAS: We're done. We can move on to the next slide.

JORGE CANCIO: What is really interesting is to see how you think the FoI would apply to the PDP, so if we can go to that point…Thank you.

[MICHAEL KARANICOLAS]:   Do you want to [take the floor]?

COLLIN KURRE: Yeah. So how to I control the slides?

UNIDENTIFIED FEMALE: [inaudible]

COLLIN KURRE: Okay. We can go to the next. Next. This is what we already talked about. Most of you were in the subgroup, so it doesn't matter. Next.

We wanted to take the framework of interpretation as the basis for obviously interpreting the bylaw, but then that will be the basis for implementing the core value as well. Like you said before, it's up to each SO and AC as well as ICANN the organization to develop their own policies and frameworks. While there was no consensus reached on the U.N. GPs being

anything binding, it is cited in the framework of interpretation as a useful guide. That's just quoting what ends up being in the final version of the framework of interpretation.

I think the useful part of the U.N. GPs is their reference to human rights impact assessments because that could be a useful tool that you could incorporate into policy development processes. You may or not be aware that ICANN the organization is already carrying out its own human rights impact assessment of its policies and procedures, the results of which, I think, will come maybe roughly around the same time as the Work Stream 2 recommendations.

If we could move to the next slide, please. At this point, the Cross-Community Working Party in ICANN on Human Rights has been slightly depleted of its membership because there was the ongoing parallel process of the human rights subgroup in Work Stream 2, which had a bit of an overlap in terms of interest, to say the least.

So I thought it would be a good time to review the charter of the Cross-Community Working Party, which is intended to map the human rights effects of ICANN policies and provide a forum for related discussions, which is particularly relevant, Ruggie Principles aside.

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When we're talking about coordination and we're talking about trying to implement the human rights bylaw across the different SOs and ACs, I personally see a value in having a forum for discussion, a forum for sharing best practices, a forum for not duplicating efforts, and for bringing people together from the different SOs and ACs to potentially share knowledge about how to do that.

Greg, do you have a comment on this?

GREG SHATAN: Just a question. What is the chartering organization of the Cross-Community Working Party?

COLLIN KURRE: The GNSO, if I'm not mistaken.

GREG SHATAN: Yes, you're mistaken. It's the Non-Commercial Stakeholder Group.

COLLIN KURRE: Oh. The Non-Commercial Stakeholder Group.

GREG SHATAN: Yes. So this has the same validity as, say, an Intellectual Property Constituency subgroup. So it's not a place for SOs and ACs to congregate, expect informally. So we need to think about the structure of ICANN.

COLLIN KURRE: Right. Well, it doesn't need to be anything formal.

JORGE CANCIO: Greg, Collin, we are not discussing the CCWP, so can we go on?

GREG SHATAN: [inaudible] the CCWP. What's on the screen? [inaudible] understand what the CCWP is and what [inaudible].

JORGE CANCIO: I think that is quite clear.

GREG SHATAN: [Does] everybody know? It wasn't even clear to the person presenting it. Don't tell me it's clear when it's not.

COLLIN KURRE: Anyway, I still that, even informally, there's value in being able to bring the different SOs and ACs together. It remains a big

question mark about implementation, as I've talked to quite a few people here, and there is no clear idea of the way forward. I believe that each SO and AC will have to live up the bylaw as mandated by the bylaw. They will have to live up to this core value.

So determining how this is going to happen is an interesting question that we have to deal with as a community and as the different SOs and ACs, just as ICANN the organization with the implementation of its human rights impact assessment. Can we see the next slide please?

At ICANN60, the Cross-Community Working Party presented an initial sketch for how a human rights impact assessment could potentially be incorporated into the GNSO PDP. Speaking frankly, we have progressed. We, Article 19 – this is a bit of a side project – have progressed quite a lot in developing a model for assessing the human right impacts of registries, which is an infrastructure provider. Due to that work, we have learned several lessons that we hope we'll be able to feed back into this process and perhaps elucidate some of the challenges that we might be facing down the road when we're trying to assess the human rights impact of the different SOs and ACs.

This is just an example of the kinds of elements that we were looking at. Obviously you can see that this is D.1.1. So there were a lot of different elements that we were looking at.

If you recall, for those of you that were at our previous meetings, we were asking a lot of questions about who the duty holder were, who the duty bearers were, and who the right bearers were. This has been an attempt to begin quantifying these things and bringing it down to earth and having a measurable tool to employ.

We're still doing research. The Cross-Community Working Party is a place where people can informally gather to carry out research and have dialogue on how to advance these things. It's nothing binding. It doesn't have a hammer, to reference what was said earlier. But I do think this is something that's useful that can be able to feed back into the process. Can we go to the next slide, please?

In this room, in this discussion, I would be interested, to echo Tatiana's question earlier, to know if there had been any considerations in GAC or in ALAC of how they would move forward with developing the mechanisms to live up to this bylaw and whether or not the CCWP can offer a space or potentially research capacities or scoping and mapping exercises to facilitate or assist with these ongoing processes.

JORGE CANCIO: This is the end, I guess, of the presentation.

COLLIN KURRE: Can we have the next slide, please?

JORGE CANCIO: Okay.

COLLIN KURRE: This is the end.

JORGE CANCIO: Okay. Tomorrow morning, I guess many of us will have parallel meetings. Thank you for the information.

In any case, I guess it would be interesting that you shared the current draft of your work. Is it available for us so that we could have a look at it, perhaps, in the coming weeks?

COLLIN KURRE: You mean the draft for the GNSO HRIA?

JORGE CANCIO: Yeah.

COLLIN KURRE: We can share that. We shared that with the community before, and, again, it was the same thing: people were talking more about interpretation and not implementation. So we've gone back to the drawing board a bit to try to find how we can proceed and how we can begin collaboratively developing solutions because I don't think it's going to work in this environment if one stakeholder, if one person, tries to develop a tool and then bring it and show it to everyone. It just doesn't generate the same kind of buy-in that I think is necessary to make sustainable and implementable mechanisms for adoption.

I'd be happy to share it. If you would like to comment, then I would really welcome that.

JORGE CANCIO: Surely it's interesting to see. It would be interesting to see how you approach this.

The next question, of course, would be more for the GNSO leadership to answer, but if anyone in the room – I'm especially looking at you – from the GNSO has an idea on whether there is any thinking already ongoing at the formal GNSO level on how to approach the implementation of the FoI very shortly because, afterwards, I would like to turn the conversation to ALAC, who

has kindly accepted to be here too, to see what their current state of thinking is.

Of course, if there any questions on the presentation that Michael and Collin just made from other members/participants, the floor is yours.

First of all, Greg?

GREG SHATAN: Just to answer the question in terms of whether there's been anything at the GNSO level, which would really be at the GNSO Council level, other than reviewing the ongoing work and then being a chartering organization, I would say the answer to the question is no. If you get down a little further, then I think the NCSG committee on human rights, which is called the Cross-Community Party on Human Rights, and the NCUC member Article 19 have been doing their own work, and people have been talking to them.

JORGE CANCIO: Thank you, Greg. I guess that sets the framework of how the discussions are ongoing in the GNSO.

Tatiana, do you have anything to add?

TATIANA TROPINA: Well, I guess I have to say something here [as] a GNSO councilor. But I really cannot speak in my capacity in this sense because the GNSO Council has so much on its plate right now. We have GDPR and different processes, and these recommendations have not been approved yet. I do understand that a forward-looking approach would be cool and that giving a heads-up in the GNSO would be good. I believe that some of the councilors are well aware of what is coming, but I believe that, probably, the real work will start once the recommendations will get approved.

As to how it's going to be discussed and how we are going to proceed, it will probably depend on how CCWG Accountability is going to proceed. We'll be the implementation team or oversight team.

I think the substantive issue correlates here very much with the procedural issue. I believe that it will be at the level of the GNSO Council. But we have different stakeholder groups, different constituencies, and we have to see how it goes.

JORGE CANCIO: Okay. Any other questions beyond these issues related to how the GNSO will approach this? It's clear that there's the CCWP who is doing research work, but this is only that group. At the formal level, the GNSO hasn't started any work yet.

If it's very short, because otherwise I would like to go to Alan and Yrjo.

TATIANA TROPINA: I certainly think that this work could be helpful for the GNSO because, when you have to start with something, this might be an idea that the GNSO might take into account. But again, there are different stakeholder groups and contracted and non-contracted parties and whatsoever, so this will have to be adjusted.

But thank you, guys, for your work.

MICHAEL KARANICOLAS: I got to say I don't think we fundamentally disagree. Honestly, the research that's ongoing, the discussions that are ongoing, are obviously not binding on people. It's obviously not trying to impose standards on groups that want to go in a different direction. It's all optional.

Frankly, when we discuss looking for standards and how to research to develop different avenues, it's fundamentally about sharing different potentially effective avenues to go on. That's fundamentally what we're trying to do. That's the basis of our – do you want to go?

COLLIN KURRE: Yeah. One thing that I thought might be useful for the CCWP to be doing is to be asking about the specific considerations of each SO and AC and doing a bit a canvassing work to see what kind of – oh, for example, I have a question for ALAC. In the FoI, it says that ALAC has – no, no, no; I'm sorry; this is the ASO I'm thinking about – the less-defined policy development process. I've been researching trying to nail this down and trying to figure out where we can insert, potentially, human rights considerations.

But for ALAC, the same. I'm not exactly sure if I completely understand the step-by-step process of how the recommendations are made by this Advisory Committee. Maybe it would be helpful to try to pin this down, and then maybe we could try to figure out where a potential mechanism could be implemented.

Just an idea off the top of my head. So maybe we could speak to that and how ALAC is going to implement the bylaw?

JORGE CANCIO: Okay. That's why we have Alan and Yrjo here. I think you very much for staying for this late hour. Do you have any views? Is there any work ongoing on your side on starting to think how the

FoI would be implemented in ALAC, if you think that is necessary?

ALAN GREENBERG: Thank you. Before I start, I'll note that I have to leave on the half-hour absolutely, which is six minutes from now. You asked me if we have any questions on this presentation. Can you go back two slides?

That's right. I don't want an answer here, but I'll simply note that I'm a little bit confused. The bylaw explicitly says we have no obligation to try to enforce whatever our obligations are on our contracted parties, and that seems to be an assessment of the human rights impact within a contracted party. So just a thought.

In terms of the ALAC, number one, we have not discussed this. We have discussed the interim reports as they've come out, but there's been no discussion, and certainly no discussion of anything resembling implementation.

However, I can take a stab at where we're going by looking at not Roman numeral eight, which is the human rights core value, but the previous one, number seven. That says, "Striving to achieve reasonable balance between the interests of different stakeholders while also avoiding capture."

That falls straight, first of all, in the case of GNSO gTLD policy. It's a responsibility of the GNSO to make sure it sets up its various processes, both policy development and consultative processes, to make sure that things are reasonably balanced.

Our sole responsibility is, if we see something which is not compliant with that, to scream, in a form of comment or whatever it is, to say we been excluded from this processes or we have not been given a fair voice or whatever.

I would see we would treat human rights in the same way. If we see something that is evidence to us of the GNSO not doing its job properly, then we will make an appropriate comment. We will contribute during the processes, as we do for anything else, to try to influence the GNSO in how it does it. If that doesn't succeed, then we have public comments. If that doesn't succeed, we have the right to give advice to the board.

But we don't assess explicitly every document that comes out of the GNSO, saying, "Was there a fair balance of people?" It's something that we evaluate, essentially, on the fly and we make presentations if we think it's appropriate.

I would see us doing the human rights the same way. Again, I'm giving a personal opinion of how I think it's going to evolve. But our workload is such that there's no way we're going to go

through an explicit process of auditing everything they do to ensure it. All we can do is react.

There was a discussion in another group earlier this week of what the GNSO Chair called the scary spreadsheet of all the things they have to do. My comment was that we don't have a spreadsheet like that because ours is the sum of the spreadsheet of the GNSO and the ccNSO and the ICANN organization as they come out from public comments.

So we've got a lot of things that we look at. For many of them, we say, "Sorry. We don't think there's a significant on end users in this." And we simply don't consider it. It's an assessment that we have to make on everything. If we consider it, then we go into it and do it in some detail, but again, it's not following a set pattern. And we're not likely to run set tests against things.

JORGE CANCIO: Okay. Any reactions to that, especially from the GAC members? Do you feel mirrored by the comments made by Alan? Because I guess they made a lot of sense, at least to me.

If there are no comments from your side, I think Collin wants to say something.

COLLIN KURRE:

I just wanted to say, first of all, that this is an example of a private company that was taking on their own HRIA. So that's a completely parallel process. But it is within the DNS space, which is a hard one to analyze the impact of. So I was simply bringing this up as, perhaps, a potential to have lessons learned in this context and brought back into ICANN.

My second comment would be that I realize that a lot of these decision-making processes happen on the fly. I don't necessarily think that there's anything wrong with that. But I just wonder. When I do things on the fly, I have an internal logic that is consistent in one way or another.

However, in this environment, when you might have different people coming in or out, or you might have different people at any given call, I just wonder if, when you're doing things on the fly and you don't have mechanisms that are codified, you can be assured of having a consistent application of any standard at all.

ALAN GREENBERG:

The candid answer is: probably you can't, sadly perhaps. But that's the same level of standard that we use to simply assess whether we believe there will be a user impact on something.

This is all very subjective because people have different views, for instance. We can talk about, in the current policy

environment, the new gTLDs. Which part of that affects users? So we participate in the process, but ultimately, if we're going to give advice to the board, saying the GNSO has gone in a direction which we believe is counter to the interests of users, which is what our mandate is in ICANN, then that's a very subjective assessment.

I just don't see that we have a mechanism for doing anything else.

UNIDENTIFIED MALE: I think that's what we're getting at here: developing and formalizing an assessment process.

ALAN GREENBERG: Remember, we are a volunteer organization. Unlike virtually every other part of ICANN, where many of the people are paid in a related area or paid to be here, this is all volunteer. Virtually all of our people are not employed in the DNS industry. Many of our people are not even employed in the Internet industry.

If we say this is going to have to be a rigorous thing which is going to have to be done on every document that we look at in order to assess whether we think we even need to assess it – I understand that was somewhat redundant – it's likely not to get done. So we have to be very pragmatic in how we approach this.

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JORGE CANCIO: Alan, I would like to really thank you for being here. I think you have to go. So thanks very much for being here. I think that this conversation shows that we need to continue with this discussion. There are, of course, legitimate issues, both from what Alan mentioned about the overwhelming quantity of work we have on our plates and how we do our business in the Advisory Committees because, in the GAC, it's also similar. We usually develop the advice in one meeting. We don't have a long process before the meeting where we could insert lengthy procedures.

But at the same time, as Collin mentioned, perhaps even in such informal settings, it would be good to think about how you can codify that you at least have something in the process that reminds you to look at the core value of human rights and the framework of interpretation.

I think we are over the time for this session. If no other comments are to be made, especially from the working group members, I would like to close this meeting. We will be sending out the work plan and also the situation about the co-chairmanship in case of the members of the working group have any comments or any proposals.

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Remember, this is a member-driven working group, so it's mostly up to you to fulfill the tasks we agreed on in the work plan of 2016. For the time being, we will continue to monitor especially, at least from my side, the FoI and how the implementation of the FoI goes forward.

Thank you.

UNIDENTIFIED FEMALE: Implementation of the bylaw.

JORGE CANCIO: Okay. The core value. So thank you so much. You are released.

[END OF TRANSCRIPTION]