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LONDON – GAC Meeting: ICANN Policy Processes & Public Interest Responsibilities with Regard to Human Rights & Democratic Values

Tuesday, June 24, 2014 – 09:00 to 09:30

ICANN – London, England

CHAIR DRYDEN:

Good morning, everyone. Let's get started. So we have another busy day ahead of us with a number of meetings and briefings throughout the day.

First off, we have a couple of sessions before the break. And this next session is to look at a report on the topic of ICANN policy processes and public interest responsibilities with regard to human rights and democratic values. I would like us to move right into it. We're getting a little bit past 9:00 a.m.

So is it correct that I'm handing over to the Council of Europe to lead us through this? I understand there was a clarification or something to that effect around the status of the report. So, if you could clarify for us in the discussion, I think that would be useful. Council of Europe, please.

COUNCIL OF EUROPE:

Thank you, Madam Chair. And hello to everybody in the GAC. I'm looking around because I'm also looking for one of the authors of the report, which is Thomas Schneider, your vice chair. I was hoping he was in the room, and I was hoping he'd contribute too. Thank you for having this point on the agenda.

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Just a few words of introduction and context. The Council of Europe is an intergovernmental organization of 47 countries in a Pan-European context. Its main business and core values are to do with human rights, the rule of law, and democracy. And some of you may know that this means the European Court of Human Rights in Strasbourg, the European Convention on Human Rights. It means the Budapest Convention on Cybercrime and other conventions on data protection and firmly believes in multistakeholder dialogue as worked with a number of actors both state and non-states on a number of topics including issues such as net neutrality, the public service value of the Internet, and many other matters including regional spaces like the European dialogue on Internet governance. So very much a multistakeholder approach to Internet governance, policy making, et cetera. I'm glad to see one of the authors of the report here now.

Just, somewhat a context, as an observer to the GAC, the Council of Europe has been trying to see how it can contribute to the discussion -- its work into the GAC. How do governments feel about human rights, et cetera, in the context of ICANN?

The report is a report which has been commissioned by the Secretariat of the Council of Europe. It's not an adopted text of 47 countries. It's not negotiated. It's not -- hasn't been consulted and discussed widely with the member states. This is just a first attempt to put some issues on the table regarding how do human rights, rule of law, et cetera, fit into ICANN? What does that mean?

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So this really is a document for discussion. It's very much open. And it's for reflection, but it's inspired by global events. I refer particularly to NETmundial and the first part on human rights and shared values.

I also refer to the report of ICANN of the high-level panel. Because some of the issues in there include reference to human rights and, in particular, how to reconcile national governments' protection of human rights online without fragmenting the Internet. It's very much about that. It's very much about Internet as a global public resource which should be managed in the public interest, which is part of the NETmundial document. It's very much about the statement in the part on accountability, which is that governments have primary legal and political accountability to protect human rights online. So it's really incumbent on governments to think about incorporation with ICANN but to think about how do rights and interests of, for example, vulnerable groups such as LGBT and issues such as equality, non-discrimination, no hate speech, free expression, personal data, how are they protected in -- with regard to the policies and procedures of ICANN?

So we've heard yesterday in the high-level government meeting some words about -- from different delegations about the importance of human rights in Internet governance. And this report goes towards looking at that. So this takes a broad approach at some of the issues which have been highlighted by the authors of the report where you could reflect and discuss, if you so desire, how governments see and how they see protection of human rights in ICANN context.

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So I think I'm going stop there in terms of context. And maybe one of the authors, Thomas Schneider, may wish to give some comments. Thank you.

CHAIR DRYDEN: Thank you. Switzerland, Thomas.

SWITZERLAND: Thank you, Madam Chair. And good morning to everybody.

As Lee has already mentioned, I've been part of the team that wrote this. As you know, some of you might know, I don't remember Switzerland only in this forum but some others as well. One of these is the Council of Europe where I'm currently the vice chair of the steering committee on media and information society. And for quite some years we have been spending time on thinking about human rights aspects of Internet governance including also the mandate of ICANN. And as you have heard and as Lee has already said yesterday, what we're doing here is not just -- is also about economic issues, but it's wider than that. It has also human rights implications. In the end what we're doing and also NETmundial clearly showed that this is something that all stakeholders think are relevant that human rights is the basis of all activities here and should be the basis. And, as Lee has said, this is -- the main purpose of this is to raise your awareness on having, as well as the economic focus, also human rights focus on the discussions, on the decisions, and that our role as government is to make sure that we fulfill our obligation with regard to protecting the rights of our citizens.

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And we've already had quite some interesting reactions of people who liked or didn't like some of what is said in the report. And we're very happy to continue this discussion, because this is exactly what we intend. And this is where I'll stop now. But I also think that this is very important that we keep in mind that human rights is at the core of -- should be at the core of our deliberations here as well. Thank you very much.

CHAIR DRYDEN: Thank you. So are there any comments or questions for the authors' report or -- okay, Italy. Please.

ITALY: Thank you, Chair. I think that we welcome the idea that some statement that is inserted in the communique. And so I learned with interest these statements. And so, if we look at the straight core business of ICANN that is DNS management, then maybe there are even points inside like privacy and things like that.

But, since ICANN is also recognized in other fora and it is this more and more true, perhaps in the communique we should write some support to this recommendation came in from Council of Europe and quite general that we support this and ICANN will participate and the GAC asked to participate in these issues. Thank you.

CHAIR DRYDEN: Thank you, Italy. I have Canada.

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CANADA:

Thank you, and good morning to all.

Just like to make a couple of points. Firstly, unfortunately, we really haven't had a chance to really fully analyze the report. I think it came out just very recently. And it does appear to be quite an extensive report. So I would be hesitant to put anything too firm in the communique regarding the report simply because we have not had a time to examine it. And I just would also look for clarification, I believe, if I'm to understand correctly, this is not an official Council of Europe report. We'd just like clarification on that point. Thank you.

CHAIR DRYDEN:

Thank you, Canada.

Regarding the clarification, did you want to respond to that? And then I will continue through the speaking order or -- okay.

COUNCIL OF EUROPE:

Thank you, Madam Chair. Thank you, Canada, for that question.

It's a report which has been commissioned to express independently to look at those aspects, to do a text which will be discussed with the 47 member states together and, therefore, negotiate somewhat that it would take a lot longer. This is a first step. That's something that could come later, of course, if desired.

But it is very much inspired by the work both, you know, in the U.N. and also at the European level with regard to human rights. I mean, if you look at the footnote, if you look at the case law, it's very much granted and reasoned very thoroughly. So it's not a Council of Europe report as

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an adopted text, as an agreed position; but it's very much inspired by a very concrete facts and adopted positions of the member states in different parts of the Council of Europe regarding human rights and data protection and also other matters. Thank you.

CHAIR DRYDEN: Thank you. Okay.

So I have Sweden, U.K., and Iran.

SWEDEN: Thank you. And good morning, colleagues. Thank you, Chair.

We have neither had an opportunity to fully absorb the report. But it's certainly an issue of core value for the GAC. And it's an important issue. And we welcome the report and look forward to being able to do something more thoroughly with it. Perhaps -- I don't want to defer things to the future, but could it be possible that we welcome the report or something like that in the communique and then do something more substantial for Los Angeles, have a discussion about it at the GAC in Los Angeles and perhaps draw some conclusions? Thank you.

CHAIR DRYDEN: Thank you, Sweden. Next I have the U.K.

UNITED KINGDOM: Yes. Thank you, Chair, and good morning, everybody.

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I concur with the aims here of reminding us and the community that rights are an important aspect of what we're doing, what we need to take into account. I think this is a good start. It's -- it is a very thorough review of issues as they relate to ICANN's mandate, the new gTLD program, reflecting on what's happened there, and anticipating that program continuing with future rounds.

So I agree that we should make reference to this first tabling of review of the issues at this meeting in anticipation of further discussion in Los Angeles. And perhaps in Los Angeles we might broaden discussion to one that engages with the community, perhaps using the main headings of this paper as an outline for -- as a structure for discussion. So we bring in others in the community into a first review and exploration of the issues and first -- I have to say I'm also a member of the Council of Europe's steering committee on media and information society. So I'm closely connected with this dossier, if you like, of rights and Internet governance working alongside Switzerland and others.

So, yeah, I agree that this is a time to table it and anticipate some constructive discussion in Los Angeles. Thank you.

CHAIR DRYDEN:

Thank you, UK.

I have Iran, Australia, United States, Brazil, Germany, and Denmark. Iran, you're next, please.



IRAN:

Thank you, Chairman. Good morning. I don't think that there's any difficulty to put in the communique support and even a strong support for that. I don't think that anybody is against the concept and the thrust of this document as far as the human rights was concerned. And I think that there are other issues that defer to this document detailed slightly different from the human rights in a direct manner. Perhaps indirectly.

But the issue is not this. Issue is that now a group is being established to take into account or examine the accountability of ICANN.

If this group would not have any input, let us speak to various areas including the accountability relating to the human rights. Then when that would be taken into account. So, as a matter of events, as a matter of dates, as a matter of timing.

Secondly, this document is very rich, substantial. However, there is a need to propose a concrete course of action. ICANN should do this, ICANN should do that. Yes, but how? It should provide mechanisms, tools, ways, means, timing, roadmap. It is very good to say that we should do this, we should do that. But modalities should be mentioned. I'm not criticizing the author of the document. But I say that the way to proceed with that, first of all, we should take into account of the timing. It should be a matter of the discussions at the group, at least to some extent, if not to greater extent, dealing with accountability of ICANN. It should have been concrete proposals, ways and means and modalities. And we should have a roadmap of objectives and a time frame to achieve that. But, as far as the strong support for the essence of the document, trust of the document as far as the human rights are concerned, I don't see any difficulty.

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With respect to the gTLD, it is another issue. And we need to embark on that from various views that we have held. Still it is under discussions, and so we should not mix them up. Thank you.

CHAIR DRYDEN: Thank you, Iran. Australia, please.

AUSTRALIA: Thank you, Chair. And thank you to the Council of Europe and to Switzerland for providing this report to prompt discussion in the GAC. I think it's very welcome. These are clearly very important issues.

I agree with the U.K. and Sweden that I think this report provides a very good basis for our future discussion. Like many members, Australian government hasn't had extensive time to analyze all of the issues in this report. And I think it would be useful to continue this discussion in future meetings. As my colleague from Iran has pointed out, there's a lot of work that could be done here to take this from a preliminary discussion through to something that we could actually be talking about in concrete terms.

And, just to start that process, one being -- and for very obvious reasons -- the current draft of the report focuses very heavily on the European Convention of Human Rights. If we're going to discuss this and progress it forward within the ICANN context, it would be useful to start broadening that focus to international human rights law. So thank you, colleagues, for starting this very useful discussion.

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CHAIR DRYDEN: Thank you, Australia. United States, you're next, please.

UNITED STATES: Yes, thank you, Madam Chairperson. And thanks to those who drafted the report.

I think, from the perspective of the United States, obviously, this is a very important topic and quite a lengthy report that we just received last week. So we're still reviewing it across various parts of the U.S. government. And it's a bit premature for us at this point to sort of take any positive or negative or any statements on the report. And we'd have some concerns about that being -- reflecting the statements in the communique at this point.

CHAIR DRYDEN: Thank you. Next I have Brazil, Germany, Denmark, Russia, Lebanon, and China. So Brazil, you're next, please.

BRAZIL: Thank you, Chair. Good morning to all. While Brazil welcomes the report from the Council of Europe and we do support that there's a need to clarify the roles and responsibilities of states and securing human rights in ICANN, we all have to remember that in NETmundial that NETmundial recognized the relationship between Internet governance and human rights, in particular, the fact that the rights that people have offline must also be respected online. And we deem this report as a good basis for a friendly discussion. And I would like to see it reflected in our communique. Thank you.

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CHAIR DRYDEN: Thank you, Brazil. Germany, please.

GERMANY: Yes, thank you, Madam Chair. Also, from our point, even if other colleagues didn't have a chance to, you know, look through these papers thoroughly, I think it's -- the issue is important. And I think human rights are one of our common values. And so far it is very important that we discuss it further and bring it forward. And surely we support that this is also reflected in the communique. Thank you.

CHAIR DRYDEN: Thank you, Germany.

Next I have Denmark.

DENMARK: Thank you, very much. We'd also like to say that we welcome the report from the Council of Europe. And, even though we haven't had a very thorough look at it, this is a very important perspective to have in our discussions. And I think we should -- this is a very good starting point. And we could maybe -- yeah, have something in the communique about that, as other colleagues have said. Thank you.

CHAIR DRYDEN: Thank you, Denmark. Russia, next, please.

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RUSSIA: Thank you, Madam Chair.

I'd like to express support to this report.

I think it is good base for further work. And it is very correct point of view for the GAC approach to the policies. I think we can note it in the communique. Thanks.

CHAIR DRYDEN: Thank you, Russia.

Next I have Lebanon, China, and Peru.

LEBANON: Good morning. I believe that the GAC should be dealing with the effort in general. We haven't had a chance to look at the full details of the report. I believe the communique could reflect that we welcome the effort and that we should be engaged with it at a later time or at least in more detailed activities. Thank you.

CHAIR DRYDEN: Thank you, Lebanon.

I have China, Peru, and then I will look to close the speaking order. We need to move on to our next session. China, you are next, please.

CHINA: Thank you very much, Madam Chair.

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For us, the Council of Europe and the European Council, all these terms are very confusing. We don't know which one is which. So maybe some clarification can be provided in that respect. That's my first point.

And second point, this report was distributed very late, so we may need some time to study and thoroughly absorb the content of the report.

And preliminary, I have the feeling that when we talk about human rights, it often involves value judgments. So ICANN, as a technical organization, I don't know how these issues can fit in with the mandate of ICANN. And as some, I think it's the Iranian colleague mentioned, how can ICANN implement the provisions involving human rights and all these democratic values in their concrete work.

And another point I want to seek clarification on is that on the summary report, here the number is page 7. I don't know why it -- it only has three pages, but the number of the page is number 7. At the end of that page there is a mention about ICANN as a private corporation and a California law may not be a sustainable solution for systematically taking into account international human rights law.

I think this is a very interesting statement, and maybe the authors of the report can clarify a little bit what is behind this. Does it mean that ICANN needs to be taken out of California so that it can be exempted from the Californian law? And that is an idea we support, frankly. So we may want to seek some clarification in that respect.

Thank you.

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CHAIR DRYDEN:

Thank you, China.

Switzerland, would you like to clarify?

SWITZERLAND:

Thank you. First of all, thank you for the support and the consensus that human rights is something that is important also to the GAC. And I think the discussions in the past months and years have shown that especially since the new gTLD program, this is not just technical. Decisions that we take that they have as well as economic implications, positive and maybe negative ones for some, it also may have human rights implications. I just use, for instance, the example of .GAY. Whether or not a .GAY TLD will exist is probably not a question of scarce resources but a question of whether this is a sensitive term or whether there is a right to use such a term or this is problematic or not. So these are questions that are clearly linked to freedom of expression and maybe also freedom of association in this regard.

And as we said, this is the first text on some issues, and of course we took a European angle because this is what we know best. It doesn't mean that this can be applied. And I fully agree with my Australian colleague that this can be applied one to one, everything that he said in the report. To other areas, it's also said in the report. But of course there's internationally agreed human rights law, and in the end, that is the basis for -- should be the basis for future deliberations, and we are very happy to continue these deliberations in the next months and years and to go into more details of some questions and new questions that will arrive in the future.

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Thank you very much. I'll stop here.

CHAIR DRYDEN: Thank you, Switzerland, Thomas.

Peru, you're next, please.

PERU: I will speak in Spanish.

Peru supports the inclusion of the human rights issue in the final communique, as well as we support the inclusion of basic principles on international law in the entire functioning of ICANN, and particularly in the GAC.

Thank you.

CHAIR DRYDEN: Thank you, Peru.

And we have the Netherlands, and then I will sum up and we will move on to the next session. Netherlands, please.

NETHERLANDS: Thank you, Heather, for the floor.

I think I will make it very short. I would weigh in -- I would echo the many colleagues.

I wanted to add just one thing. ICANN is managing and coordinating a global public resource, which means that it's completely logical that



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with this, public interest should be also defended within this task. I just want to make it short. I think only I would say that the freedom of expression, freedom of association, fundamental rights like privacy are one of the main items which I think should be considered more in-depth in the GAC.

Thank you.

CHAIR DRYDEN:

Thank you. I understand the Council of Europe, you'd like to make a couple of remarks before we sum up.

COUNCIL OF EUROPE:

Thank you, Madam Chair. And thank you to all those people who have welcomed this first draft. I think it's very positive and just a couple of clarifications.

First of all, I think it would be very good if colleagues have comments, written comments. They could be shared, of course. If you do intend to continue this in the L.A. -- next L.A. ICANN meeting, that would be very useful.

It is a European sort of perspective on these issues, but it also refers to the Universal Declaration of Human Rights and International Covenant on civil and Political Rights. So it is also looking at other regions. It's not entirely European in perspective. If you read the report, you will see there is reference to that. But certainly it would be great to have comments on this, and other comments.

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One point, thank you to the colleague from China about the European Council and the Council of Europe. Indeed, there's lots of references to "council" in different bodies.

The Council of Europe is an intergovernmental international organization which can prepare international law instruments, not unlike the U.N. in some context, which start regionally and act globally.

I'm looking to my colleagues from the European Commission, too. But the European Council, and that's part of the European Union group of bodies, institutions, which are slightly separate but still part of the European family. And I would stress that this report also refers to the work of the European Union as well.

So there is a distinction, but there is some commonality. Maybe that's not too much clarification, but certainly it's inspired by different bodies, both in the region of Europe and globally.

So thank you very much.

CHAIR DRYDEN:

Thank you.

Okay. So I would like to conclude this session with a summing up.

I'm hearing that it is a good basis for further work, a good starting point. So there is clear interest in discussing it further and differing views on what we might anticipate for the communique. But if we can acknowledge, in some way, the report or the issue, then perhaps we can come to agreement on that. But I don't see us coming to agreement on

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much more than some sort of acknowledgment if, indeed, we can accomplish that.

So -- But I think that's positive in terms of this being an information item for this meeting, and identifying it as a basis to continue the discussions.

Iran, please.

IRAN:

Thank you, Madam Chairman.

I expected that we remain general, but some people, like Mr. Schneider went to the detail of that, X and Y and so on, so forth, and some other people went to the freedom of expression. The freedom of expression is a very sensitive and delicate term. Under that freedom of expression, something like expression of things, of discriminative nature, of hate nature, and of inciting nature with the belief, with the convictions and with the culture of various countries, various groups, various nations should be carefully looked at. And I don't think that under the freedom of expression there is such a total liberty without any responsibility.

Freedom is more or less accompanied with rights. Whenever you have rights, you have responsibilities. You have obligations. So these are always together from the legal point of view. And we should not look into the matters from of one aspects. There were years and times that under the freedom of expression, an excitement or exciting something put some part of the world in total chaotic situations, which produces something we were not expected at all.

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So we should be very careful with the use of the term "freedom of expression."

Thank you.

(Break)

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