

**ICANN Transcription - Marrakech**  
**NCSG Privacy & Human Rights at ICANN**  
**Monday, 7 March 2016 1345 UTC**

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On page: <http://gnso.icann.org/en/group-activities/calendar>

(Neils): Hello everyone. I'd like to welcome you all very much for this session on ICANN and human rights and the Cross Community Working Party on ICANN's corporate and social responsibility to respect human rights. We got a packed agenda and an overview of quite a lot exciting work. So I'd like to ask everyone to take their seats so we can get right to it.

Yes next slide please (Miriam). Next slide please. So of course some of you might leave early but I would like to take this opportunity to already extend the invitation and so far you're not doing it already to join our work -- next slide please (Mariam) -- to join our work. And you can see our work at [icannhumanrights.net](http://icannhumanrights.net). But we will also have more session as we will be progressing this work in the coming days. Some of those are the joint session with the GAC Working Group on human rights and international law which has now been chartered so that's really good. And that session will be

tomorrow from 6:00 to 7:00. And we'll have a working session where we'll discuss how we're going to take new issues forward in the time up till the next meeting in our working session Wednesday from 5:00 to 6:00. Next slide please.

The work we've been doing has been has roughly started in London. Of course several constituencies - human rights has always been a topic of interest. But things really converged when the report by Thomas Schneider and (Monica Selnaruchi) came out and was discussed and presented at ICANN 50 in London. At ICANN 51 in LA we had a session about ICANN and human rights which led to the establishment of the Cross Community Working Party on ICANN and human rights but also the GAC established a working group and human rights and international law as said which is now chartered. And there was also a report published by Article 19.

Then we went on to ICANN 53 in Buenos Aries where also another report came out and there were several sessions and also outreach sessions to several constituencies. At ICANN 54 in Dublin there was the first official report prepared by the Cross Community Working Party that I think you can be pretty proud of. And you can find it at ICANN human rights. And we also held sessions.

And right now we're here Marrakesh with several sessions but also with the outputs of the five sub groups that have formed in ICANN 54 in Dublin. And some of their work is what's going to be presented to you today. Next slide please (Mariam).

So the terms of reference of our group is to raise awareness, map the policies and procedures and operations that impact human rights in ICANN either positively or adversely, provide information, suggestions and recommendations for both procedures and mechanisms and develop and explore guidelines and produce position papers. And that is what we have been doing. Next slide please.

So I'd like to start with a very exciting update on very concrete work that has been happening in the Cross Community Working Group on accountability and human rights that many of you will probably have followed. Leon Sanchez was about to join us. I don't see him yet but I'd like to ask (Tatiana) to take us through the work that has been going there. You've got exactly ten minutes.

(Tatiana): I don't need actually ten minutes. I really that'd be better to spare time maybe later for Leon intervention. But I'm very - oh yes, there is no slide? But I'm very pleased to say that we worked hard and it's amazing progress we achieved since last year in a few months when human rights issue just came on the agenda of the CCWG accountability. I believe that - okay.

So the first human rights (law) which was introduced in the sell draft proposal and we got some feedback with several concerns which included (interarea) of the possibility or court litigations opening the mission to IPRs and the (unintelligible) because the language itself this was draft came with the transitional bylaw which included the commitment to develop a framework of interpretation of the bylaw with a strict deadline of one year. And several stakeholders commented that this deadline was too tight. It was just one year.

So after many discussions at the Accountability Working Group we finally came to the consensus bylaw language. And can we go to the next slide? You will see the language on the slide. And I will be happy to answer any of the questions after. But we believe that this language is a very positive development. The board agreed to this language. The supporting organizations represents just they're also supportive of this language. So I believe that we really made a good progress and we've got a good fundamental to work on these to work things out in the Workstream 2.

So what you see on this screen is language which frames ICANN commitment and which also limits the human rights all within the scope of

ICANN core values and which also sets the scene for further developments of the framework of interpretation of how did they call it at the last face to face meeting, human rights framework yes which also consider to be a very positive development. I think that for us it's not only getting these things done, getting the human rights language to the bylaw. It's also that we raised one, among different stakeholders, among different community structures about human rights and the importance of human rights for the whole transition of the ICANN. Yes well thanks I would be happy to answer any questions. I was trying to be short.

(Neils): Thank you very much (Tatiana). So we've seen indeed development of different human rights language in a different proposals of the CCWG. This is where we are and this is now what's there for approvals for the different stakeholder groups. And some have already approved and we'll hope to hear from others in the coming days. That's quite exciting. But a lot of the discussions here are dominated by the CCWG I know. But are there specific questions or comments on the human rights language in the CCWG proposal that (Tatiana) or others who have been very active this work could perhaps answer to you?

(Tatiana): Comments?

(Neils): If there are no comments I would like to save up some space for a discussion at the end if that's possible.

(Tatiana): I'll (unintelligible) if you come see this.

(Neils): Exactly, perfect. Let's do that. Are there - if there are any questions or comments of course from the Adobe Connect Room? I don't see anything there. If I - I will get a signal from you as well if there's something there. Perfect. So then we'll continue with the next agenda points. Next slide please. And these are views from the board on human rights. And we've invited several board members to be here and we're very happy to welcome them

here and continue our constructive work with them. Who of (Ron), (Lousavis), (Marcus), can I give floor? (Marcus) please go ahead.

(Marcus): Yes, thank you. Glad to be here and thanks and even the (Tatiana) for the introduction. It was a very good summary of what happened so far. Now as you know we didn't find it easy this issue to deal with as a board. And was mainly fear of unintended consequences. But we are happy with the language we finally found and we are happy that you are happy. But clearly we do have a strong commitment to take this forward.

But this is work in progress so don't expect a laid out plan. We were sort of brainstorming, maybe have a dedicated session at the ICANN 56 where we all get together. Our concern is that we actually streamline all these activities that we don't have parallel activities going on that we bring it to one fold that we all sit around the table as we are sitting now and take this issue forward.

But we were at one point thinking of passing on a resolution in Marrakesh. But we thought that might be actually a little bit premature as it might've been content free just sort of stating what we already said. So if it do something we want to have it substance and meaning working towards a human rights statement. We don't as I said it's thinking and progress. We know we can build much of preparatory work.

But at the same time you also have to recognize that ICANN is not like the average corporation. It's identity is different as it has a quasi-governmental function as a in charge of a global resource. So models that may work for a global corporation with commercial interests may not work for ICANN as a not-for-profit organization with a global responsibility. And this is where we have to tread carefully.

But we are really committed to the process and the fact that three board members are here I think are a visible sign for that. And I'm sure that (Lousavis) and (Ron) are happy to add to my introductory remarks.

(Ron): Yes thank you (Marcus). And thank you for allowing us to be here. Certainly just to add to (Marcus)'s depiction of the board's commitment a lot of the discussion that went into the language in the CCWG Annex 6 was really more around process and less around substance. A general sentiment of a board is in support. It was just as (Marcus) articulated a concern about will the process or the specifics introduce some unintended consequences? And I think that sentiment will remain. There's definitely a lot of interest and a lot of support from the board to move forward.

(Neils): Thank you very much (Marcus). (Ron), (Lousavis) would you like to - excellent. Thank you very much.

Woman: (Unintelligible).

(Neils): Yes I'm...

Woman: (Unintelligible).

(Neils): Yes sure but let's also see people who have not spoken yet. Are there any questions, reactions, comments to the board now we have that opportunity to exchange views with them? I would also encourage suggestions on how to move forward suggestions we can take back to the board. Perfect. (Tatiana) go ahead.

(Tatiana): Well first of all I already told the mailing list but I want to tell it again thank you very much for the board for your constructive dialogue and for us being able to arrive here. And I do believe that the work shouldn't be split into several streams with different communities duplicating their efforts. And it's really good to sit together because it should be the board and community exercise. It should be everyone's exercise.

And I have to say again that we are very much open to any constructive dialogue. And we are ready to provide any help for the board for the content of these human commitments because we have several experts on board on this issue. So If you need us to engage we will be absolutely happy to engage. Thanks.

Oh sorry, and the last point we - when we were developing the first draft of human rights language and when we were developing the second draft and when we were thinking forward about the process we've always bear in mind that ICANN is unique. And that's where the core of the Workstream 2 shall lay. Anyway in any case we will always be bearing this in mind and we will always follow this principle that we have to think about the ICANN's mission and core values. Thanks.

(Neils): Thank you very much. There was a quick queue forming of (Montico), Marilia and (Lousavis). And Please state your name for the remote participants. Thank you.

(Montico Garizella): Thank you. This is (Montico Garizella) for the record. Thank you so much for the statements for the - from the board members. In terms of suggestions on how the board could move forward on this topic one suggestion might be to look at this in the context ICANN's overall risk management. And particularly if you have conversations in your risk committee about both financial and nonfinancial risks this the human rights will normally fall into the nonfinancial side.

Some companies look at this in terms of ESG, Environmental Social Governance risk. And there are ways to think about what kind of risks that the board might be prepared to address and require management to respond to.

So I suggest that you might want to take advantage of your existing structure and to have that conversation about nonfinancial or non-economic risks. Thank you.

(Neils): Thank you (Montico), builds really nicely on the presentation that (Xavier) gave in the GNSO. So that would be a possibility to (instrumentalize), very interesting, thank you. Marilia please go ahead.

Marilia Maciel: Thank you very much (Neils). This Marilia Maciel speaking for the transcript. I would like to echo what (Tatiana) has said about collaboration with the board. We have really come a long way and we do appreciate that. And we will have the chance to talk about human rights again in our NCSG dialogue with the board but and just say how we are really happy to see that the dialogue being formed and moving forward.

My point being at the GNSO counselor as an NCSG representative and being very involved in that in the policy process is just a flag and highlight how what we are discussing here is really key and fundamental to the policy issues that we are now looking at the GNSO and be it the Whois 2, the RDS or the upcoming or already being developed a PDP on new gTLD subsequent procedures. There are many rights not only privacy, but freedom of expression, freedom of association, economic and social rights that would be touched upon on this policy development processes.

So whatever we come up as a structure to deal with human rights it's very important that is interlinked with the work and the policies that we are developing at the GNSO and thinking that we are going towards a Meeting B which will be very much focused on policy. I think that one important issue to bear in mind is that human rights is very much related to policy. So I know that you the board will be under an enormous pressure to assign space in the agenda for every discussion.

But I do believe that we need to find ways to have this discussion on human rights connected to the policy work that we are developing at the GNSO in Meeting B and we also offer help from the GNSO sides to discuss with you and arrive at that point this good schedule for all the interest. Thank you.

(Neils): Thank you very much Marilia. Before I go to (Lousavis) I have a question from David McAuley on the chat. And his question is will the board remain active in Workstream 2 framework of interpretation development? So I think there is an ample opportunity. (Lousavis) please take the floor.

(Lousavis): Great. Thank you very much. I'll try to respond to the different comments. First of all the suggestion that you made about the financing the risk committee obviously is a very good suggestion. And that's going to be - I think that will be taken forward.

The interesting thing about the whole human rights discussion I'm just going to try to reflect a little bit on also what I've - what I'm hearing here but the way we've gone into this and kind of the consensus that was reached until now is that there's different aspects to the human rights discussion. One is what I would call standard corporate social responsibility. You know, ICANN should not employ slave labor. We should not be, you know, getting, you know buying stuff which is I don't know, improperly mined and destroying the environment. You know this is just I think basic stuff where you have your legal responsibilities as an American corporation where you can go further than that. Okay that's one part.

There's the other part and then it gets interesting with the policy stuff. And this is actually where there are very diverging views in the community and why Workstream 2 is going to be very interesting that you have I mean as an outside observer I would say and the fundamentalists saying we are not the content police and we should never, ever go there. You know, I'm exaggerating but you know what I mean.

And then there are those who say, "But look, you know, there are serious issues with things that ICANN actually deals with." And I think the key challenge in Workstream 2 -- and the board will be fully engaged in that -- is to make sure that we get it right but that we do it together that we - that it's

not a small group of dedicated people dealing with human rights who are going to be pushing for something and we lose the rest of the community.

And I think your question this will be very interesting that for the first time we're going to have a B Meeting if everything goes as planned it will be in Helsinki. And then so there we can say, "Let's get out of our silos." "Let's stop doing it in three different places." "Let's get all those people together and let's talk precisely about these issues." "Where does it touch ICANN?" "Where should it touch ICANN, where should ICANN stay away, what can we do, what should we do, et cetera."

But that has to be done with everybody at the table and that, you know, and I can say we will definitely try to make time for that because I think it's an absolute priority and it should be part of the whole Workstream 2 process and there's no reason not to kick that off in Helsinki.

As a parallel the board will itself start to be educated on how other corporations do this. I mean obviously what we do is unique. Every corporation thinks it's unique but ICANN is pretty incredibly unique so that we kind of we'll always be there to try to engage at the right level. So and then can I kind of just since I have the floor also thank everyone who's been involved in this process because it hasn't been easy. And, you know, coming at it and I think, you know, you guys have done an incredible job in also trying to get consensus.

So it'll be very interesting to see, if, you know, at the end of this meeting, you know, the problem is not here so it'll be interesting to see how it moves forward. But it's great to see how, you know, sharing information, having open communication on something even which is very complex and very technical can get people to gather around something.

And let's make sure that in the next phase that we actually give it some substance because the last thing we need is for a beautiful expression, you know, in our bylaws which then in the end doesn't actually mean anything.

(Neils): Thank you very much for that for those comments and contributions. And I think we would - this is great bridge to the net part where we're going into the content and the suggestions that we would like to put into the discussion as we've been trying to before so that we can have an informed discussion with the rest of the community because it's not a problem to disagree and find consensus but let's also make sure that we're basing ourselves on the right information and proper research.

And I hope that the research that has been happening in the five different subgroups can add to this. Oh and next slide please. So I'll ask Marilia to present the work of Subgroup 1. Next slide please.

It's very - can you zoom in a bit (Mariam)? Go ahead.

Marilia Maciel: Okay thank you very much (Neils). This is Marilia Maciel speaking again. I'm going to talk about the work that has been developed in Subgroup 1. The aim of this work this sub group is to map the correlation that there is between the policies and procedures that are in place are being developed in ICANN and specific human rights. And the need for that came from a conversation exactly with the board one year and a half ago in which we were asked exactly that that the board was not clear back then what were - which were the human rights that were touched upon, I convene ICANN a technical organization. Where was exactly this correlation between what ICANN does and the human rights.

And with dialogue with the community we came to understand that somehow privacy issues are more clear. They have been discussed because of Whois policy development processes. Maybe they are more clear to the community

but there are several other rights that are impactors that maybe the community's not so clear about.

And when we started to map this, this table was originally presented the last meeting. The difference between this table and the meeting that you saw before is that this table has been circulated with different parts of the community. So the table that you can more or less see right now has been updated with observations coming from the registries, the registrars, coming from people that worked hard on the accountability proposals. And because of that had a very broad overview of the organization.

So I believe that even though the table is not complete and it will never be complete because ICANN is a work in progress itself and that our new policies being started in the GNSO for instance all the time in every meeting. But I think that this table right now gives a very, a comprehensive overview about where the exact correlations are and which are the human rights that are being touched upon.

I know it's very small for you to see. I'm going to send this table again onto the list and who's ever not on the list can register and (Neils) can pass the directions to the mailing list soon. But we have identified a freedom of expression, freedom of association economic and social rights, privacy rights, security, due process, gender diversity issues and LGBT issues are human rights that are being currently discussed in different parts of the organization in different policies and different processes. So there's a broad scope of issues.

And what we hope with this table is when we enter Workstream 2 to have more clarity from different sides which human rights we are talking about. I think that in the beginning there was a lot of misunderstanding which are the human rights that fall under the remit of the organization. Do you want to talk about world hunger and world peace? And it's not that we do have identified a subset of human rights that are the ones that are relevant to the work that

ICANN does. And we hope that with this table we will be in more condition to move the debate forward with more clarity.

One thing that the table needs my opinion and it was something that we should have done as Subgroup 1 is to transform this table into something more visually attractive and engaging. And so I do ask for your help. And I'm saying this in the public meeting we will probably address this in our working session. But if you are interested to join this subgroup especially if you have some visualization or design skills which is not my case but do join this subgroup and help to transform this table into something that we can present in a more engaging way in our next meeting which I believe will be a very important one to discuss human rights. So thank you very much (Neils). Over to you.

(Neils): Thank you very much Marilia. (Marcus) go ahead.

(Marcus): Just a question on the scope. I had not followed the work in detail. But is there broad agreement that we want to include second generation human rights, not just look at the first generation? I'm talking about particular economic and social rights because I personal feel that then that might go a bit far in terms of the scope of what we're looking at. In looking at the list already, you know, there seems to be the financial aspect of application fees and so on. My personal - but it's really only my personal view that I fear there might be some mission creep involved and that we might benefit actually from having a narrow scope on human rights on first generation rights which are actually here to protect individual. But that's a question.

(Neils): Thank you very much (Marcus). I would like to introduce a little cliffhanger here because I think that your question might be answered in the upcoming two presentations. So let's go there and then we also have more time for integrated discussion on all the work that's done. So I'd like to invite (Fiducci) to present the work of Subgroup 2. Next slide please.

(Fiducci): Thank you (Neils). So in Subgroup 2 and it was to document cases in which ICANN is impacting human rights. And we looked at not just cases but also policies.

When we were talking about the terms of reference for this group we thought it would make sense to look at specific topics within ICANN's ecosystem and then start understand the human rights impact of those as we wait a framework of interpretation. And we aren't clear as to what human rights and what exact convention we're going to be looking at.

So as part of our work we - so far we've managed to cover three topics. The first is ICANN's geographical regions final report. The second is the final issue report and a PDP to review all rights protection mechanisms in all gTLDs. And the third is an assessment of the new UDRP rules.

I'm just going to talk you through our work and where - what we found so far. But I'd like to be brief and get more input at this point.

When we look into the geographic regions final report that actually says that they want to minimize any changes to the existing structure. But through the work of Subgroup 2 we found that actually the existing structure of countries being assigned to ICANN geographical framework doesn't work too well because in many cases that isolates countries from themselves and so that it isolates countries from their communities and so the rights that we think are need to be thought of as a right to be represented. Next slide please. Yes the right of freedom of association and next slide please. Can I have the next slide? Yes and the democratization of inter-governance processes.

Now what we thought would be interesting was to have an actual case study which we do. And we've looked at the case of Armenia. Can I have the next slide please? Yes so the Media Education Center has had - you know, they've done quite a bit of work to understand how the regional model has affected Armenia.

And what we've actually found is that since Armenia's regional framework has changed and is Asia Pacific to Europe it has had a real impact on how Armenia's insight policies have moved and it's had a positive impact on Armenia's compliance of human rights standards. Could we move to the next slide please? Thank you.

So the next couple of slides are just some more detailed description of this work. And I'd invite all of you to please it's, you know, to go through it and give us inputs and, you know, maybe suggestions on how to build on this research. Can we have the next slide please?

Yes and the next slide. Thanks. The second issue that we looked at was at the final issue report and a PDP to view all rights protection mechanisms in all gTLDs. And we began to look at the report and try and understand the different areas which the support touches upon. And this builds very nicely from Marilia's work which - and we found the table very useful in that sense because you've already mapped on what interest and what rights are relevant to each part of ICANN's policies. Next slide please.

Yes so again we've kind of divided our research into these particular concerns. And we find that there are many cases -- and I won't go into them right now -- but there are many cases in which we could actually give constructive suggestions on how to make ICANN's impact in human rights more positive than they are right now. And this is actually the second topic that we have looked into.

I'm actually going to pass the mic over to (Monica) who's done some fantastic work in this area. And she's going to talk to us about the new rules with respect to the UDRP which hasn't been looked at in detail at all and we look forward to your feedback. Thank you.

Monica Selnaruchi): Thank you so much.

((Crosstalk))

(Neils): I would like you to ask that to do in two minutes.

(Monica Selnaruchi): Fine, indeed. So this is (Monica) for the record, (Monica Selnaruchi). I've been involved in this process for a long time from the very beginning. Since I have two minutes I probably just have to say why this would be important to talk about UDRP now? Because I would have to say that not many of us would know that new rules of UDRP have been in effect since the 31st of July of 2015 although the formal full review of UDRP is pending in ICANN. And I would like to just highlight several issues that might impact human rights very briefly since I have those two minutes.

So UDRP has been very controversial a policy of ICANN that has been in place for a long time now. And they're both substantives concerns that relate to freedom of expression. And indeed this mainly relates to the definition of conditions for transfer of domain name from the original registrant to the trademark owner.

So there are several concerns that I don't want to go deep into but mainly this would be the conditions that are - the complainant is required to establish the trademark owner in order to get the domain name transferred to them from the original registrant. And this would be like these conditions concern similarity of the domain name to the trademark the no rights or legitimate interests by the original registrant and bad faith.

One somebody looks at the details how it has been played in reality and how it has worked and the statistics it would seem that a lot of this have - might potentially implicate free-speech rights and of registrants. And mainly however I would like to highlight the issues of procedural aspects and concern which would be lack of choice rules with - and due process concerns within UDRP.

So this the first issue that is really important, the due process rights right to fair trial and this is the first generation, civil political right.

So the big concern from the human rights perspective is that there is no choice of laurels within the UDRP. And then my reality it might often play out that the trademark owners who are strong have a stronger position might choose the rules that are more beneficial to them.

And an interesting thing is the revised rules that are in effect since this summer July 2015 they do contain very many new things actually such as lock for example which is to be so briefly I'll just say it like this. Registrar of the domain name complaint is now required to lock the domain name within two business days of receiving the request to do so. And this lock is to remain in place for the entire duration of the UDRP proceeding. And the lock is to be applied prior to registrar alerting the owner of the domain name of the complaint. So without even the registrant knowing his domain would be locked.

And I don't want go into details I would say that these aspects are very problematic from the human rights perspective. And this is even more complicated because there is no appeal mechanism yet in place. And conclusion of this is just that we have to participate in the upcoming review. Thank you.

(Neils): Thank you very much (Monica). So this was Subgroup 2 that was mapping specific cases. I'd like now to go to the next presentation. I know this all brings up a lot of questions but I would like to have them all at the end so we can have that integrated discussion. And a way of going further with this in a structured way might be human right impact assessments that are presented by (Montico Garizella). Next slide please.

(Montico Garizella): Thank you very much. It's (Montico) again. (Neils) did a very nice job recapping the progress that this working party has made on the topic of human rights. And so I'd like to really build on that and also build on the last two presentations and to explain to you why we are now thinking about the process of our human rights impact assessment.

Those of you who were in Dublin might recall that we initially focused on ICANN's policy development process and to look at the human rights implications associated with that. But what happened was we couldn't just focus on that alone because there were all these other aspects that you just heard from the previous presenters that people were already observing that there are these incidents of potential adverse impacts.

And so what we are now thinking about is to use this process to systematically understand the potential adverse human rights impacts created by ICANN. And what this hopefully will let us do is to reach a broad consensus on what we mean by human rights as well as who within ICANN. Because when we say ICANN it - we have different constituencies. We have the board, the management the community -- different working groups. Who are we talking about?

And this process hopefully will help us verify some of those questions and to create boundaries yes and to let us prioritize. I think that's a very important thing that this process will give us lots of information. This will tell us that there's all these human rights that will come into play in this and other ways. But it will also help us focus on the severity of impacts, prevalence of impacts and help us prioritize thereby creating boundaries so that we can go at it in a very orderly fashion. This is what this is trying to get at.

So basically there are six steps and its sort of right in front of you to see from the planning and scoping phase all the way to the bottom process which is reporting an evaluation. This process is borrowed largely from the Danish Institute of Human Rights usual HRIA process except I built in step four which

is the process of developing a human rights policy because although a lot of companies do their policy development thing upfront I just felt that we needed to be informed by the issues and the facts first.

And once we know that that we are in a process, we are in a better position to develop this policy and complemented by the interpretation of the bylaws and so on and so forth. So I'm suggesting that that come towards the later part of the process. The next slide please. So the - phases one and two, this is essentially where we are. And we're just - well I should actually say it's at the cusp of one and two where we are planning and scoping the entire process and starting data collection. And you may have seen a set of questions that got circulated to this community. It is a set of potential documents that we might review from ICANN. And this covers a lot of different issues including a lot of physical footprint issues, employee issues, regulatory issues, reporting, contracting, business relationships, relationship with regulatory agencies, grievance mechanisms or (ombuds) process, what the NGOs are saying, what the press is saying. And so what we did is to create a Google Docs so that those who are aware of very specific documents that correspond with the questions can simply upload those.

If you go to the Google Doc you'll find that the initial work has been done with some blanks. So if you're able to fill the blanks as much as possible so that we build this knowledge up from ground up and to hopefully engage with the management and so have some information from top down and meet somewhere in the middle so that we have the full scope of information that would be very, very useful.

So that's a bulk of what we're doing in phase one. Also a process of stakeholder identification is a very important phase. This is largely a desk study phase. The next phase will be much more interactive trying to interview experts, trying to interview all the stakeholders, rights holder organizations and also understand the human rights framework that we need to look at.

You already heard from Marilia the kinds of human rights that we think are more relevant than others. You heard from the case studies also potential areas of human rights that might come into contact. So we'll benefit from all of it but we'll also look at the full international human rights instruments.

Just think of you as walking into a room full of mirrors right? The rooms are these international human rights instruments. And we're exposing to the mirrors different functions of ICANN to say would there be any correspondence. So that's what's going to happen in phase two. Next slide please.

And so phase three is a very natural phase where we're going to look at the impacts, the specific negative impacts first and foremost. We can look at the positives. But the positives don't offset the negatives. So the focus is on the negatives. And there are different scenarios that we need to look at.

One scenario is ICANN causing the adverse human rights impact. Another is ICANN contributing to the impacts. And the third one is ICANN through its direct business relationship or linkages are responsible for a human rights impact. This comes from the UN guiding principles. It's very difficult to conceptualize but it's actually far easier if you have specific scenarios. I'm just going to skip the scenarios and just go through that. We can have some conversations about what this might mean in the specific context. The next slide please.

So basically once we know what the - sorry, this is a little small. But once we know what the impacts are there are two things we can do. First of all to figure out what kind of impacts mitigation and management is necessary. So this should be done in accordance with the mitigation hierarchy which is to say the fundamental principle is to prevent the negative impacts where possible. And if that's not possible to mitigate and manage as much as possible. A grievance mechanism is usually the part of the mitigation. And so that is an important element of management.

And so the output up this might be a management plan or management system. And this then could feed into the process of a human rights policy development because we know what the impacts are. We know what the management should be looking at on a priority basis. And so then that could shape the shape of the human rights policy. So I see these two as sort of complementing with the.

And the last phase is to learn from what has been done and to improve on it. So it's also a process of reporting. And on reporting this document that (Neils) already talked about has some details on how one can go about reporting on human rights performance. So I won't go into the details.

So thank you for allowing me to take you through these different processes. I guess the important thing highlight here is to benefit from all these different work that is already ongoing and to complement that as much as possible to look at the impacts in a very systematic way to learn the severity prevalence so that there is some - a process of prioritization that's possible.

And as much is possible we would love your participation not just in the filling of the questionnaire but the internal action as stakeholders -- all of you as well as identification of impacts -- the relevant human rights and so on and so forth.

So I just put some questions at this point that might come to you naturally in terms of how long would this take, what kind of resources are going to be necessary, what's the role of ICANN board? What's the role of ICANN management, the community and also stakeholders who are not represented in these meetings, the role of this working party and going forward how does it interact with other work that's already ongoing. And finally how do we engage with others outside of this room and in this particular meeting. So here are some of the questions that we might want to have some discussions around but I'll finish right there (Neils). Thank you.

(Neils): Thank you very much (Montico) for this very structured approach. I think these - last slide please, previous slide. (Marcus) I hope that these mapping of cases and then coming up with a process in which we can potentially map human rights and the impact assessment can be a constructive way forward so we have a very clear understanding and systematic way to go forward.

We already have - we're already also working with parts of the community but also with ombudsman to fill in the questionnaire. If you want to have a look at the questionnaire where we are now I pasted the link in the Adobe Connect room. And I'd like now to go over to (Sean Suchsahail) because he's in the queue.

(Sean Suchsahail): Thank you. I've got a sort of question/comment. And first I should say thank you for the work of a mapping table, an excellent exercise. And concerning the impact assessment I was glad that you mentioned for instance the Danish Institute of Human Rights. That's good to start from such good practice.

I just want to go back to the point that (Lousavis) made before which is about the nature of ICANN. And when we talk about ICANN there's two ICANN's. There's ICANN as a corporation and then there's ICANN as a community that develops policies. And so when we look at this impact assessment, you know, you had (Lousavis) saying well you might have a human rights assessment of ICANN as a corporation looking at for instance our employment policies for instance and whether they fit with human rights. I noticed you mentioned slave labor for instance. So that's what we do as a corporation. That's got its own angle.

And then there's the policies being developed by the community. And actually the mapping table is about the policies. And so - and I'm sorry I haven't looked at the Google Doc yet so maybe that would clarify everything. But to me I think it would be really important to try and be very clear when, you

know, if we do an impact assessment about these two slightly different strengths. Because if I look at it now I think might be three strands potentially. In fact one is human rights investment of ICANN as a corporation, you know, the 350 employees not-for-profit corporation in California and (IRT) to human rights. Then there might be if I look at the previous few slides I mean by (Monica) and by Marilia maybe an assessment of existing policies. And then there might be a sort of forward-looking assessment of human rights which be how you might integrate a human rights assessment as part of a policy development process in the future.

I just wanted to sort of raise that as a comment/question because I - I think if we conflate those three it might be quite messy. So it will be important to try and be as clear as possible about what we're talking about because we don't produce production services like a normal company. So we need to be I think if we want to get to good useful structured result we'll have to be very clear about what we're looking at. That's what I hope that was clear. Thank you.

(Neils):

Thank you for that point Jean-Jacques. And I think it's indeed I think it will definitely help us to look at those different structures. That's a very valid point.

With that I can try to stimulate discussion now which I won't. So let's first finish what we have and then take the time that we have there because I got mandated to be very strict with time so that everyone has a equal time.

So I'll go forward with the work done by Subgroup 4. And that is I think part of the example of what Jean-Jacques put in his last point. So actually we're pretty much growing with the suggestions. This is - or progressing pretty organically. That's nice. So that is looking at - taking of forward-looking on how do new processes might impact human rights. And Marilia will give an overview of the new gTLD process. Next slide please.

Marilia Maciel: Thank you very much (Neils). This is Marilia speaking again. If you looked at the table you saw how many human rights are correlated with the new gTLD program. I think that we have freedom of expression, freedom of association, economic and social rights, due process. They all fall under the scope of this massive PSP that the GNSO is starting right now on new gTLDs. I don't much to report in terms of what the sub group has achieved because the working group in the GNSO has just been created. We just approved the charter one month ago. Actually we had two calls so we have justify no leadership and we will start a work.

What I propose to do here but you can cut me short at any time (Neils) if you want to save time is just to explain how the new gTLDs have been discussed so people can decide how they want to be engaged and then participate. Since this our public session I thought it was useful for people to visualize what we are talking about when we mention new gTLDs and whether they are discussed. But please cut me short yes.

So when we talk about new gTLDs there are several processes in which new gTLDs are being touched upon. The two that are highlighted in red are the ones that are policies actually being developed now in the GNSO. So these are process that are ongoing and they will result in actual policy being adopted in ICANN. That's why they are highlighted. But they are not the only ones.

We have a discussion that will start on auction proceeds and we will have a charter soon. This working group will be created. We have all set of new gTLD program reviews. This is being conducted by staff in different formats. Usually they are staff assessing the program themselves or commissioning work to assess the new gTLD program.

I would highlight among the reviews the competition consumer trust and consumer choice the working group, the group has been created to analyze and this aspect of consumer adoption and competition. And another one

which is the program implementation reviews which I think is a very important process because it is defining the metrics and commissioning studies and reports that will kind of give a substance and material for all the other groups and working groups to analyze how successful the policy development process and the new gTLDs have been. Next to slide please (Neils).

So this particular working group that I think is the most relevant one right now when we talk about human rights is the new gTLD subsequent procedures working group that will result in an ICANN policy. So the mandate of this working group is very broad. We will look at the whole process of creating new gTLDs the last round. We will try to clarify amend the guiding principles of the policy that has been adopted by the GNSO on this matter before. We will develop new policies and recommendations and we will go over issues with relate - with regards to implementation of the new gTLD program so it's a very broad scope. Next slide (Neils) please.

So as I mentioned the current status is that we just have just started working. We have our leadership team in place. We had two calls and the next steps is that we are going to agree on how the work is being carried out. As I mentioned this is a very large massive PDP. There are many questions on the table that the working group will need to analyze. So probably we will divide ourselves into subgroups or into strengths and to be able to tackle all the questions. Next slide please.

As an example of the questions that we're going to be discussing in this working group they are actually divided into five clusters. The cluster number one I kind of pinpointed the questions or the topics that I think are more related to human rights suggest community engagement, how to simplify the application program, the issue of application fees, the support for applications for developing countries. And if I could correlate this with human rights it would be economic and social rights and new process. Next slide please?

The second cluster of topics is a very broad one. I'm not going to read the title but under this cluster we are going to discuss reserve names, the base agreements and relation to the public interest names, second level rights protection mechanisms, IGO, INGO protections, closed generics. So this is very much related to freedom of expression and (due process). There is a very high point on freedom of expression there. And I know this is very important issue for many parts of our community. Next slide please.

The third group is (unintelligible) objections, implementation guidance. So this is I think maybe the core of what we want to do using Subgroups 2 and 3. This one will look at applicants freedom of expression, community applications, objections, spending fees, objection consolidation, accountability mechanisms. So if I could kind of correlate this with human rights to be freedom of expression and freedom of association and due process there is a very important point with relation to due process there. And next one.

Group 4 will be dedicated to internationalized domain names. This is a very small cluster. This is very kind of focused on this particular topic and that the correlated with freedom of expression and freedom of association. Next slide.

The last one is related to technical and operation issues, security and disability. And we could relate that to the right security. So there are five clusters. And I think there are human rights implications in each of them. And the one, two and three I think are where our core concerns are. But just to show how it is important for those who want to be engaged to be part of this different trends that are going to be created in this working group just to remind you that GNSO working groups that they are open to anyone, anyone that is a member of many different parts community are people who are not engaged in ICANN SOs or ACs. Any individual can participant so they are open and you can still be engaged and we hope that you will do. Thanks.

(Neils): Thanks Marilia for making really insightful how these are complicated policy processes directly related to rights and enable people to participate in them. It's very much appreciate it. Similarly (Stephane) will do the same for the PDP one Whois. (Stephane) next slide please.

(Stephane): Yes good afternoon everyone (Stephane Milan) for the record. I'm going to be much briefer because similarly to the PDP that Marilia referred to also this one has just started. It builds on preceding words. We find everything online but so far - okay well wait a minute first. What is the mandate of Subgroup 5? The idea is to follow the work of the working group for the policy element process on the new Whois which is actually called the next generation gTLD registry data directory services. I have to read it because I always forget exactly what it stands for. And as a Subgroup 5 what we want to do is to explore the human rights implication of the work that's coming out of this PDP.

Now because this PDP is just starting we have the first call at the end of January. We are still - we have been busy mostly with deciding on the leadership and deciding on the work plan for the coming months. This subgroup also hasn't done much.

The PDP is going to be a long one, a complex one. And likely there's - likely or unlikely - I don't know yet but there's a huge number of participants. The last count I believe from last week reported 134 members and over 100 observers. Of course there is always room for more specifically for the human rights work. We would need to have more people also Subgroup 5 to be able to tackle all the aspects of such a complex PDP.

The working group so far had weekly calls on Tuesday. Unfortunately I cannot even give you all the overview because it overlaps with my own work commitment. It's always in the same, more or less in the same slot which then might be complicated for people who are not based in the zone which is

favorable for the time of the call to follow. So three calls are on Tuesday afternoon, Wednesday the afternoon, one in the evening.

And at the moment there is the draft work plan which is under review. The PDP is going to be in three phases. But at the moment the first most important phase is to define what are the requirements for the registry directory services regardless of the delivery system.

So the question in other words is are new directory services needed or shall we simply modify make Whois better? So this is question number one. And depending on that people are going to follow a different path.

Now what is the work for the next for the Subgroup 5? We have to identify the human rights implication starting from the mind map for the working group that was just recently produced by staff. And it is under discussion by workgroup members and in relation also with the very useful table that Marilia and Subgroup own 1 produced and that was presented earlier. So that's where we stand.

There is a second slide that you see there that is not my slide. It comes from the working group, the PDP working group that these are summarizes their work. So at the moment we are still well not yet but what we are going to do first is to address question number one what are the fundamental requirements for gTLDs registration data. And I guess that's it.

(Neils): Thank you very much (Stephane) for giving a clear overview and giving opportunities for human rights implications. So aside from having presenters and contributors from all different subcontinents for all continents and we'd also like to engage in a new experiment here. And that is remote participation to see if we can get a remote presenter to introduce a concept that is not discussed a lot publicly in fora in ICANN.

So this is perhaps a primer of the issues that we can dig into deeper in other fora as well. And I'd like to ask Jeremy Malcolm to come in and take us through the interesting topic of intermediary liability. Malcolm you've got - Jeremy you've got eight minutes. Please come in. Next slide.

I do not hear Jeremy. Oh. So in the meantime while we got Jeremy - while we're trying to get Jeremy on the call does anyone have any questions, recommendations or suggestions based on all the presentations and information that you've seen?

Man: (Unintelligible).

(Neils): Jean-Jacques and then Milton. is in the queue.

Jean-Jacques: Maybe just a quick question that which I think goes back to the original question by Marcus which is - which essentially which level of human rights are we talking about? You know, we've new and declaration of human rights and we've got things like the international political covenant.

I notice in a mapping table, you know, for instance there's a couple of rights that could have mentioned which are not. And I know that's there's rights which are in the UDHR and others which are not in international covenant. I just wonder if you've got a particular view on what sort of a standard you're looking at, you know, what's the benchmark? Thank you.

Marilia Maciel: Thank you Jean-Jacques. This is Marilia speaking. I can respond for the table for the mapping. We try to be as comprehensive it so we are in the phase of letting ideas come in and trying to map them to identify them. But I do understand that the issues related to what is the priority for ICANN and what are the instruments that we're going to look at will be something the we discussed a little bit in Workstream 1 but we came to the conclusion that is more a Workstream 2 issue so I think that we will review what we have identified and come up with some kind of prioritization.

Of course when you talk about human rights they are indivisible so you cannot say that, you know, one is more important than the other. They are a package. But I do think that in terms of ICANN's remit we can identify the ones that are more directly impacted by what we do. But I think that we will get to the point. And sorry (Marcos) I think that we tried to be at this moment very comprehensive. And we want to gather as much input as possible and then we will get to the phase of narrowing down.

(Neils): Maybe (Montico) can also say something about the different treaties and principles that are out there and what is a structured way to go about that.

(Montico Garizella): Yes but essentially I concur with what Marilia said. We should look at - we should identify what we know already. We should also look at the broad set of rights. And for this purpose we are essentially talking about the universal declaration of human rights plus the two covenants. Those are the core yes?

And there may be additional covenants that come into play when it comes to women, children, indigenous people. But let's see, I think we just need to keep an open mind about what might come into play by looking at all these different aspects very systematically.

And I think as Jean-Jacques already said that could be at the corporate level. That could be at the policy development level. And because it is so complex it involves so many different stakeholders I think we should just suspend our judgment in terms of the specific rights but recognizing what's already coming out explicitly from the community. Thank you.

(Neils): Mr. Mueller?

Milton Mueller: So my timing was excellent. I just came from the RDAP session across the way and (Stephane) was giving her presentation on the human rights implications of all of the policies. So here's my concern. Human rights are

great but if they're not translated into the nitty-gritty details of ICANN policy they're just a bunch of fine sounding words that don't mean a lot. And I want to know in addition to your session here there is the RDAP session. There's the RDS. There is Thick Whois is.

Woman: Law enforcement.

Milton Mueller: And there's law enforcement and they're all talking about the same issues. So how do you - it looked like what (Stephane) was talking about was having a human rights overlay that would guide policy in all these areas. How do you do that? How do you get those concerns, you know, required and implemented in all of those divided policy processes?

(Neils): The really good question Milton. Who would like to take a - try for an answer for that?

((Crosstalk))

(Neils): (Tatiana)?

(Tatiana): No I mean look - oh God. I do think that this is a question which we have to ask ourselves for the future work. We can't answer these questions right now. We're spinning our heads around these. And yes I agree that this is a problem.

(Neils): Well I think what is an important thing to recognize is that up till now we have reacted too many issues post hoc.

(Tatiana): Yes.

(Neils): And that got us into a lot of very complicated and very long discussions. By developing a framework it should become easier to make these discussion so that we have a policy which can call them overlay if you will that can be used

to structure the discussion where you can see where the potential human rights impacts can be.

And to come back to Jean-Jacques earlier point there is a trigger for a right impact report in PDPs that we could further develop. And I think it's exactly what - when we went through the processes as described here and when we know what we're exactly talking about then we can think of prevention and mitigation and redress options.

And once we have those than we have a very clear and concrete instrument in hand that can make these discussions far clear. So I think that is not a silver bullet. It doesn't mean that we will not have to have these discussions but it will hopefully make these discussions much clearer.

(Tatiana): Yes (Tatiana) for the record. Yes that's exactly about having a silver bullet or having the answer to these questions. I don't think there is a silver bullet. I think that we have to think process-wise as well not only solution-wise because we have now more processes than solutions. But there would be no (unintelligible) answers to solutions as well. So it's always a process.

(Neils): And it seems staged but I think that's also actually why it - why the mandate of the Cross Community Working Party is broader than only Workstream 2. Because in Workstream 2 we will be working on a framework of interpretation and perhaps even a whole human rights framework with - for ICANN but there will always be issues that need to be mapped and need to be trace. And the Cross Community Working Party is the place where we can do the research, can have the conversations but also facilitates the conversations with the GAC Working Group with what's going on in the Cross Community Working Group. Because unfortunately we would like but not everyone can stand top of all the work that's been doing there. So what the working party to is - what the Cross Community Working Party and human rights is trying to do is also translate these different things and give people updates on everything that's going on as we're doing here.

Milton Mueller: Could I just add one? So you what you have to watch out for is okay you're all here in this room and you're all interested in human rights and you're talking to each other. But then there's six other rooms where the real policy is being made where the registries are deciding how they're actually implement software and what fields are going to be in the software, where the Whois group deciding which ones will be revealed under what conditions.

So you have to be careful that by having human rights oriented processes within ICANN that you don't defuse all the advocates and concentrate them in a place where they don't actually affect the policy.

(Neils): I would like to hear other voices as well.

(Tatiana): Sorry oh just very briefly (Tatiana) (unintelligible) for the record. Milton you told that you came in on time. No you didn't because we were discussing several subgroup works which were exactly aiming at different process. And people who are sitting here in this room are participating in different process. It's just an unfortunate coincidence that we have this session now colliding with other tasks. Thanks.

(Neils): Thank you very much for that comment. Are there other people who have questions, comments, suggestions? Now we even have the opportunity of having four board members in the session and people are on so many different constituencies here.

I think that means that we will ending and right on time which I think is a novelty for working groups and working parties. So I think it's something that we have been having on calls and having here as well. So I would like to invite you very much to join the session with the GAC Working Group and the Cross Community Working Party but also the Cross Community Working Party working session where we'll be evaluating our work and setting our work for the coming time.

So thank you very much for your attention and participation. Thank you all staff and thank you all everyone in the Adobe Connect Room. And I wish you a very fine day. Thank you.

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