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BARCELONA – GAC: Human Rights and International Law Working Group Meeting  
Sunday, October 21, 2018 – 08:45 to 09:30 CEST  
ICANN63 | Barcelona, Spain

SPEAKER: Good morning. ICANN63 GAC, Human Rights and International Law Working Group Meeting, Sunday October 21st.

JORGE CANCIO: Good morning. Good morning, everyone. This is Jorge Cancio from Switzerland. I'm presently one of the two co chairs of the Human Rights and International Law Working Group. We will be starting very quickly. Let us give those who are still a bit sleepy 4 minutes and at 8:50 we will start with our working group meeting. So, in 4 minutes we will be starting, thank you.

JORGE CANCIO: Hello. Good morning, good morning everyone. This is the meeting of the Human Rights and International Law Working Group. My name is Jorge Cancio from Switzerland, I'm one of the two co-chairs and here I have our new co-chair, Suada Hadzovic from Bosnia Herzegovina. Perhaps you want to say a couple of words to introduce yourself.

SUADA HADZOVIC: Good morning, everybody. It is nice to see you. Well, I am a new member, and new co-chair, and I hope that I would give some contribution to the work of this working group, thank you.

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JORGE CANCIO:

Thank you so much, Suada. As you may remember, we circulated an agenda I think in August or even in July for comments. We received a couple of comments that we will mention later regarding the specific points of the agenda. So the first thing is to talk about a little bit the Work Plan of the Human Rights and International Law working group. The Work Plan we have is from 2016, so there are some items there that have not really been taken forward by this group because our priorities were elsewhere during that period. On other issues we have been working quite intensively, both within this group, and outside this group, as for instance in the Cross Community Working Group on accountability, but this we will explain and discuss later.

The second point is precisely about the latest developments of the Cross Community Working Group on accountability, WorkStream 2, which yesterday were the subject of our plenary discussions on a more let's say high level, and where we focused much more on the issue of jurisdiction. Here we have the specific item within that WorkStream 2 of the so called framework of interpretation, which is part of the recommendations of the CCWG and there we would propose that we have a discussion on what do we do as a GAC first as a working group and what can we propose to the plenary if possible.

And the third point on the agenda, there I'm looking a little bit, although the sun is beginning to work against us. I'm looking at Julia because we had an appointment, or a person from ICANN org here foreseen to tell us about the latest developments of ICANN org in there work to adopt

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to the Human Rights core value, so I don't know whether Julia will tell us later how that is going, but first of all, after reviewing the agenda and as it is a matter of not only a formality but of what is due, I would like to ask you whether this agenda is okay with you. Whether you have any comments or at the end of the committee meeting if we have time we would have Any Other Business, of course. So I don't see any requests for the floor, and I see also that the sun shade is going to protect our eyes.

Okay. So the first thing then in our agenda is to look at the Work Plan we had from 2016, and how we can adapt it to the present situation, and here Suada very graciously has endeavored to make some updates, some provisional updates of course to the Work Plan, and if it's okay with you, I will give over the floor to you so you can explain a little bit what the updates would be. Thank you.

SUADA HADZOVIC:

Thank you. So we have a new proposal on screen. Last one was from 2016, and it is a little bit strange that we don't have updating from 2016, so maybe we should make a new Work Plan only per year, so maybe this would be a new Work Plan for 2019. This proposal we will share it with you by email after this session for your comments, and after that we will send to our GAC leadership. Number 2 is about task participation of working group members in gTLD asPDP, so we got only one comment from the consul of Europe and you could see it on the right side of the table.

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After that task number 3 would be participation. Our working group members in GDPR WHOIS PDP. Task number 4 would be participation of working group members in the review of right protection mechanism PDP. Task number 5 would be participation of working group members in finalizing and monitoring on CC working group's recommendation implementation in regards to human rights diversity and jurisdiction.

So we got two comments. One from the consul of Europe and we have a note from Tom Dale. You could see it on the right side, so because of the comment of the consul of Europe we could talk only about finalizing and after that monitoring all the recommendation implementations.

Task number 6 we have this liaison with CCWP on CR and human rights. Number 7, liaison with other GAC working groups, and number 8 it would be some new issues, if you propose something new, and we don't have any new proposals.

JORGE CANCIO:

So I don't know if we can scroll up again to the first tasks. I think that we can open the floor to the working group if there are any comments on these tasks, and be mindful that this is only a draft, so I don't know. Any one wants to comment on task number 2 for instance? Task number 2? Okay, I see [inaudible] from Council of Europe. The floor of yours.

COUNCIL OF EUROPE:

Thank you, Jorge. Good morning, everybody. So indeed, in our public comment to the initial report on the new gTLDs subsequent procedures

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we provided a number of comments concerning desirable amendments in the ICANN policies from Human Rights' perspective under free general teams, transparency, accountability, fairness. Our comments are quite detailed, so I will not take your time to describe them in full, but I would invite you all to have a look at our contribution. It's online [inaudible] of the icon.

And so we do believe that these concerns require further consideration. I would not surprise you if they are not entirely new, they are a follow up to our previous contribution concerning community-based applications, so many of these comments refer to the community priority evaluation, but also more general accountability procedures and the right to substantial appeal, and we invite the working group to take these issues on board and consider them in the further works.

JORGE CANCIO:

Thank you so much for those explanations. May I take this as a sign that for the further work and for the updated Work Plan of the Human Rights and International Law Working Group we will maintain a task related to following up with the work of the GNSO, PDP on subsequent procedures from a human rights' perspective and that also perhaps the Council of Europe will be available to look into that? I see [inaudible] from EBU.

UNIDENTIFIED SPEAKER:

Yes, of course we support this idea, but I want to add an ancillary point to this, is the fact that we need also to look for what remains from the previous round because for instance dot gay is still in limbo and was

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one of the points on which was triggered all the reflection on the community based application, so I think that even if we are looking forward, we don't forget to look backwards on the problems that are still on the table.

JORGE CANCIO:

That's a fair point, so I think we will take those comments on board for the updated Work Plan, and maybe you may think about preparing some agenda point for the Kobe meeting on these issues, those who are interested in this. Okay, I see some nodding. I take that as agreement. Good.

Then we have point 3, which is really something that has evolved very much in these two years. Two years ago we had the PDP on new registry directory services, if I got that right, which was a huge endeavor of the ICANN community of GNSO especially, but with the entry into force of GDPR let's say that the conditions and the context changed so radically that, as we have seen, now this PDP that was ongoing in 2016 has ceased to be active, and instead we have you could say a plethora of procedures going on with probably the most important, the EPDP where this group the GAC is represented very ably but by a number of members of the GAC, amongst others from the United States, from the European Commission, from Iran, from India.

So I wonder whether our colleagues who are active in the EPDP would like to chime in on this point and let us know whether they see any value in this working group following up the process which is going on in the EPDP and also in other fora of the ICANN environment on this issue of

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updating WHOIS and adapting it also to the data protection legislations we have worldwide amongst others in the GDPR. So I personally see value that we have discussions here, at least from time to time, looking at more the human rights components of such policy development processes, but of course this working group is only what the working group members make out of it, so I would invite EPDP members to share their thoughts about this, and if you don't do it voluntarily perhaps you are voluntold. Thank you.

I see Ashley from the U.S. That's very gracefully, thanks.

UNITED STATES:

I was still kind of hiding but... so yes, Ashley from the U.S. I'm also one of the GAC representatives to the EPDP. Quite frankly, I don't know if this is the appropriate place to have a discussion with respect to human rights. While you know of course EPDP and compliance with GDPR is somewhat grounded in privacy, I have to admit that our participation is largely focused on ensuring that the WHOIS specification is compliant with the law so we're looking at the law and we're also very preoccupied with ensuring access to this information for legitimate uses. So there's really not a lot of discussion in this group on privacy per se. We are talking largely about compliance, so I'll stop there and see if any other colleagues have further thoughts on the matter. Thanks.

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JORGE CANCIO: That's a very useful comment. I see Georgios from the European commission behind you, Ashley.

EUROPEAN COMMISSION: Yes, good morning, [inaudible] from the European Commission, also a member in the EPDP process. I have to agree with what Ashley said, that basically the discussion is a compliance discussion there. We don't go in depth about the rights per se, so it's an exercise that it's quite mechanical, if I can say so. I see the value of going more in depth, particularly for the privacy in this particular one, but I don't have very concrete suggestions for the time how this could be done. Thank you.

JORGE CANCIO: Thank you so much, Georgios. I see Iran, Kavouss.

IRAN: Yes, good morning distinguished colleagues. I have no particular position with respect of what was said, but the EPDP is working based on the charter and cannot go beyond that, so if there is any missing, it is in the charter. Now, the main problem is the following, and similarly I would wish to draw the attention of the distinguished chair of the GAC. GAC is one of the chartering organizations of that EPDP. Although it is done under the GNSO but it covers more than GNSO. They have not been involved in the preparation of the charter. So the train is gone. We are left behind that. You cannot raise this issue in the EPDP because they refer you back to the charter, and if you have any questions, any comments, then you have the chair of the GNSO meeting with the GAC



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and also with the Board, you can raise the issue that you have raised now.

So I don't think that we could try to do anything. If we raise the issue in the EPDP, the chair said that yes, they are working in accordance with the charter. And I have not found clearly in a specific reference to the subject matter that people discuss. So there is some missing link that there was an action to have this expedited at this quick EPDP. A charter [inaudible], I look at the charter. I look at the minutes of the session in which the charter was prepared, and I don't see anything, or anyone from any other charter organizations than GNSO, so it is self tailored for GNSO and I'm not saying they don't care, but they have not referred to this issue. So, if you want to do that, still it is not late, but you have to do it through differently. You may raise it to your chair of GAC, or GAC meeting when you report, but that is the matter. Thank you.

JORGE CANCIO:

Okay. We will take those comments into account, and I think we have to speed up a little bit the session because we are getting a bit into substance when going through the items of the future updated Work Plan, so I'll just note that on the review of the rights, the PDP regarding the review of rights protection mechanisms was in our Work Plan, but there has been little appetite for following it from the perspective of this working group. So if anyone is interested in taking that still up, just let us know through email, and we will consider that for the updated Work Plan. And then we have the participation on the CCWG accountability. This goes into the second point of our agenda, so I will leave it for now

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in a while, when we go over. Anyway, we will update the Work Plan to the current state of the issue.

Then if, if we can scroll further down, of course liaison with CCWP on corporate social responsibility and human rights. This has been an ongoing task. This time we haven't had a meeting with them, but we are in let's say a close contact with the leadership of that working party, and finally the liaison function with other GAC working groups, I think this has been more on an ad hoc basis whenever needed, but maybe as co-chairs we should give some thought about that and perhaps set up some meeting or so after talking to the GAC leadership to see how that can be done best.

So with this, I think that we will take all the discussions here on board on the different points, and in the coming weeks we will circulate an updated Work Plan to you for your further comments and hopefully for consolidation and approval before the end of the year.

Then we would go to the second point of our substantive agenda today; if staff support could show the agenda, not that I have forgotten the second point, but so that everyone can see it. Basically, the question of the item refers to, as I said before, to one point we discussed yesterday in the GAC plenary, where we focused on the matter of jurisdiction, which is the report of the CCWG accountability WorkStream 2.

As you may remember, because we have explained this and discussed this in this working group in the last meeting and several occasions and also in different levels of detail, one of the recommendations of WorkStream 2 is to adopt a so called framework of interpretation on the

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human rights core value, which was included in the ICANN bylaws in 2016 when the WorkStream 1 recommendations were implemented into the bylaws, but which only will enter into effect once the framework of interpretation is adopted.

So now, as you know, the whole package of recommendations is before the chartering organizations, including the GAC, for approval. We already had some tentative discussion on possible GAC text on this approval, and yesterday in the plenary there was no discussion really on the framework of interpretation in this regard, so I would like to see whether anyone here in the working group has any comments on this current state of affairs with the framework of interpretation, or as we mentioned in the email circulated in the agenda, whether you have any thoughts on whether, and if so, how the GAC should implement the framework of interpretation in its activities, in particular GAC advice to the Board.

Because as you may remember also, the framework of interpretation defers the specific implementation of both the core value and the framework of interpretation to the supporting organizations like the GNSO, the ccNSO, ASO and the advisory committees like the GAC. So probably we should also give some thought to that, and with these remarks, I would like to open the floor, whether anyone wants to take the floor.

I remember that council of Europe shared remarks and an assessment on list, on the framework of interpretation, so I don't know if they will

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want to take the floor on this or explain how your thinking is evolving on this matter. So I see [inaudible] and after [inaudible], Kavouss.

UNIDENTIFIED SPEAKER:

Thank you, Jorge. So yes indeed, we sent some working comments to the framework of interpretation recommending to reconsider the current draft of framework of interpretation. While the idea of adopting a framework of interpretation deserves support in general, in principle, we believe that the actual text takes a very narrow approach to interpretation in the light of the human rights. So by committing to one of more obvious international instruments, national states are expected to embed with the human rights international legislation -- where it is?

Under the human rights core values, international human rights are not directly applicable to ICANN beyond what is provided in the applicable bylaw. We believe that these issues require some further thoughts and can be better drafted in a more inclusive, a more modern approach to human rights, and in the light of the current understanding of international public law, so we propose to have further reflection on the text.

If it's not possible, because I understand that the work on this draft took place for quite a long time, maybe it is to be considered to have another initiative, maybe on the implementation, indeed of the framework of interpretation to give those general guidelines more in depth, more specific humanrights interpretation.

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JORGE CANCIO: Thank you so much, [inaudible]. And before reacting to that, I will go to Kavouss and I would like to remind you that we have nine minutes left. Kavouss, please.

KAVOUSS ARASTEH: Yes, nine minutes left. I don't think we could do more than what we have done before. This issue was discussed, the details on so on and so forth. Some of this, if not all was raised by U.K., Switzerland and Brazil, and you were yourself, chairman, very very active at that level. Two others that are not members of the group, but Iran as a member of the group tried to reflect that position, but at the end you made almost more than 8 or 9 versions of some I would say consensus text and that was agreed, so now coming back saying that has not been addressed we can say whatever we want, but I don't think that there would be any reforming of the group to treat the framer of interpretation.

They did not want to take some of the items as raised by the governments. That's all. There was a serious objection, and so on so forth that the U.N. procedure would not apply as it is. They refer to that but in a very soft and mild manner. So I have no opposition if you want to take any further action, but I don't see any effective ways and tools how to do that, but it is up to you. I don't think that they will come back to that again. Thank you.

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JORGE CANCIO:

Thank you so much for those wise and also experienced words with the working of the CCWG. May I take this as there is limited appetite for rediscussing the substance of the framework of interpretation, whilst regarding the implementation, we may have some work to do especially as advisory committee, but also vis a vis the rest of the community because of course we can advise the Board, or we can give input to the GNSO on how we think they could implement the framework of interpretation and the human rights core value into their procedures. And I will take silence as agreement. I see Thiago from Brazil disagrees.

BRAZIL:

Thank you, Jorge. Thiago speaking for the record. I was just going to say that another way of going about these could be at the stage where the GAC is going to approve or not the recommendations on human rights. And one possibility open for the GAC is to suggest an alternative that would be acceptable for the GAC vis a vis those recommendations, and as a consequence of any such suggestions, the CCWG could consider whether or not to follow what the GAC would be suggesting and perhaps could address partially some of the concerns that were raised before. Thank you.

JORGE CANCIO:

I see some heads shaking, and Kavouss really was triggered by this comment.

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KAVOUSS ARASTEH:

Yes, I am triggered by this comment. I just wish to submit you a professional view. I don't believe that we could say that we would not agree with the recommendations of the framework of human rights and so on and so forth, but we should express concerns which were raised at this meeting, and at the following that perhaps GAC would be very cautious to monitor the actual implementation of that. Once experience gained, GAC could come back to the situations as appropriate. I don't think that we could start to have similar waiting for the jurisdiction here. Otherwise the GAC will be seen that that they want to review everything, chairman. This was for two and a half years, three years this was in operation so perhaps we should put it in a more mild manner saying that there are concerns expressed however since the issue is purely theoretical at this stage we wait for the implementation.

Once the implementation is carried out and we found some actual practical difficulties, we reconsider the matter and we may come back with possible, with possible alternatives, course of actions at this stage. We just refer to course of action, but not a methodology, not establishing [inaudible] with alternative course of action. So I submit that for your kind consideration and so on and so forth. Chairman, we would not like the GAC to be seen as an entity in ICANN that they are opposing to everything. Thank you.

JORGE CANCIO:

Certainly not. Thank you very much, Kavouss. I think we can take that for the discussion on the communique, almost all the GAC members are

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here, so I think we can take over those thoughts to the communicate discussion, but on what is the human rights and international law working group, I would understand that after this meeting we can start into looking on options of implementation focused especially on what we as the GAC can do, and if anyone is available to lead that process, please come forward in the coming days and weeks. Anyway, we will also discuss at our level how to best proceed with that work.

And with this, I would go onto the third point of the agenda, I heard from Julia that unfortunately, ICANN org is not available for participating. This is also why we have taken longer with the other points of the agenda, but I have a text sent by staff regarding human rights impact assessment to be read at the working group session so now imagine that I am ICANN staff and that I am reading this text.

“ICANN has engaged a third party vendor to conduct an independent, internal human rights impact assessment of ICANN's organizational operations. The scope includes the following areas within ICANN org: procurement, meetings security operations, and human resources. The human rights impact assessment is designed to evaluate the human rights impacts that occur as a result of the ICANN organization's business operations. The org is currently reviewing the draft report to ensure the findings fully reflect existing policies and practices, and the next step in this process is to share ICANN org's feedback with a third party that carried out the exercise. We expect this to be completed after ICANN63. The final report will be published and findings shared with interested community groups.”



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And this ends the statement. I see that we will get some interesting information with this final report in the coming weeks hopefully. We will circulate it to this working group, and we will see what reactions, if any, come from here because of course we can also advise or give input to ICANN org on these issues, and hopefully in the next meeting in Kobe we can count on somebody from ICANN management to give an in person briefing on their work in this matter. And with this, I would open Any Other Business. Ashwin?

ASHWIN RANGAN:

Yes, thank you. Just a short comment on the international law. In several occasions, in several meetings, mainly in the U.N. and ITU, Indonesia already proposed something about this, especially when we were talking about blocking some contents from other countries entering other countries; in this case for example entering Indonesia. We have a blocking system of course for content which is illegal in our country, but sometimes we also need to ask the operator in other countries to block some other contents because sometimes it is difficult in our country to block some of the contents unless we block everything off. Everything, all the content.

Now, in this case, in this proposal Indonesia proposed that the countries should also help us in blocking some contents operated by the operator in their country. It's just like if I go with some airlines to another country, the airlines will also check your Visa. Not only the immigration in that country, but also the operators that bring us to that country. They also check our visa whether we can enter or not. That is

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already [inaudible] regulation, so the same thing can be also carried out in the Internet interaction, thank you.

JORGE CANCIO:

Thanks so much for that information. If there is no other request for any other business, and as we are over time, I will close this meeting and thank you very much for your presence here and your active participation. Thanks so much.

**[END OF TRANSCRIPTION]**