
LOS ANGELES – Human Rights and ICANN
Tuesday, October 14, 2014 – 09:30 to 10:00 PDT
ICANN – Los Angeles, USA

CHAIR DRYDEN: Good morning, everyone. If you could take your seats, please.

Okay. Let's get started. We have an announcement before we get started with our first session, which Tom will make. And then we have a couple of items of business to cover, and then we will start our first session on human rights and ICANN.

So I'll just hand over to Tom for this announcement.

TOM DALE: Thank you, Heather. Good morning, everybody. I think as a preliminary logistical matter, if anybody would prefer to go back to the tent, if you really like the tent, please let us know. That could be arranged, I think, at this stage. So we don't want to put you in a place where you don't want to be.

More seriously, can I remind the GAC that there is a meeting of CTO -- the CTO, the Commonwealth telecommunications organization, has organized for GAC members at lunchtime today between 12:30 and 2:00, and that will be here in this room. That is also, I mentioned, on the GAC agenda. So the CTO agenda is here at lunchtime here in this room.

Thank you, Heather.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

CHAIR DRYDEN: Thank you. So now I'm going to invite Nick Tomasso to just say a few words to you. As Tom reminded us, we did start our week in a tent outside, and ICANN has addressed that challenge for us by moving us to this room. But Nick was just going to explain how that happened so that you know how we ended up being seated in a tent that didn't quite meet our needs and what led to us being moved here into this room.

So, Nick, if you could, please.

NICK TOMASSO: Thank you very much, Heather. And thanks for the opportunity to address the group.

I want to assure you that it was not our intent to have you in that facility that you were in, and I want to apologize to you for the less-than-adequate facilities that you've had over the past two days.

When we selected this facility for the ICANN meeting, it had a semi-permanent structure called a Plaza Pavilion which, in fact, was a tent but 6,000 square feet in size with the appropriate insulation as well as air conditioning, noise baffling, et cetera.

Three weeks before the start of the meeting, we were advised by the hotel that the City of Los Angeles demanded that they take the tent down because it did not meet fire code regulations.

As much as we tried to negotiate, it was not an option.

They gave us -- The first proposal they made to us was a 4,000 square foot tent, which of course would have been totally inadequate. We wound up with a 5,000 square foot tent in its current location, and we were assured it was of the same quality of what they were replacing. Well, the fact was, it wasn't.

We worked very hard to make it better and did not succeed in a great -- to a great extent.

So I just wanted to say I'm sorry you had less than adequate facilities. I was very, very pleased to be able to rearrange our meeting room setup to bring you indoors for the next three days. And thank you very much for your understanding.

Heather, thank you very much for letting me address the group.

CHAIR DRYDEN:

Thank you very much, Nick. We do appreciate you coming to give us some background on that issue.

And I can see we are already comfortable and settled in here in our new location. So thank you.

All right.

So let's begin with the first item on our agenda. We have a session now on the topic of human rights and ICANN.

We had a bit of discussion where this topic was raised at our last meetings in London. And as far as materials, we have a briefing prepared by the ACIG secretariat on the issue to help guide members in

this discussion, and, as well, a proposal submitted by Peru on the same topic.

So if you look at your brief, providing some background, it also sets out some options for our consideration for moving forward. And since we have a brief session today, if we can perhaps hear some initial thinking about how to proceed, if we wish to proceed, that would be useful. But again, our brief does set out some options that colleagues may wish to consider in terms of how we move forward, if we do choose to move forward and consider human rights issues further.

Okay. So in terms of initial thoughts on this.

Switzerland, please.

SWITZERLAND:

Thank you, and good morning to everybody here in this room that doesn't have an air conditioner making noise behind me which is quite convenient. So thank you to those who made this possible.

Just a few remarks with regard to this issue. Not just -- Not just for government representatives, but especially also for businesses that are active and operating in countries, it has become evident in the past few months that they are bound by national laws which are derived from international human rights legislation. For instance, on data protection or freedom of expression or other issues. And there has been a process of realizing that it is actually important also for businesses and customers to have legal clarity and to have provisions that come from ICANN that do not force them to breach they're national laws. And just a reference to this is, for instance, the RAA where, for instance, in

countries like Germany a registrar had to ask for a waiver to get some exceptions from these contracts in order to act in conformity with German law. And this is not the only case. So that more and more people are realizing that it is actually in the interest of everybody to look at relevant human rights legislation on international law and on national laws and to help ICANN work within ICANN, work together to make sure that the regulation or the processes that ICANN is producing are in conformity with these laws.

So there has been a growing awareness. We had a discussion, initial one already, in London. There was an interesting debate at the IGF where the ICANN ombudsman, three members of the ICANN board and representatives of all the ICANN constituencies were present to discuss this issue, and this is just something that I would give you on the way to understand that this is not just about human rights for governments. It's the relevance of human rights for the whole of the ICANN community.

CHAIR DRYDEN:

Thank you, Switzerland.

Are there any other comments on this topic?

United States.

UNITED STATES:

Thank you, Madam Chair. And grateful to have this opportunity to have a comment.

If I could just be a little more clear as to what we are commenting on. Is there a specific proposal for the GAC to consider? Are we commenting on the proposal from Peru, for language?

So if that can be clarified, I'm more than happy to share some initial thoughts from the United States.

Thank you.

CHAIR DRYDEN:

Thank you, United States.

So we're referring to the brief prepared by ACIG, which does attach the contribution from Peru. And some options are set out for us to consider, but I think the initial question is to get a sense of what is the level of interest in the GAC in pursuing a discussion in human rights, and what the views are. I wanted to get a bit of a temperature check on this and use the brief to help guide us to the particular proposal that's on the table from Peru.

And I see Peru asking to speak, so Peru can refer to their thinking and the nature of their contribution.

Okay. All right. So I have Brazil, Peru, and Lebanon, Indonesia. Okay.

So Brazil, please.

BRAZIL:

Thank you, Chair. Good morning to everyone.

I'd like to recall that human rights, the importance of inserting and being guided by human rights principles was one of the main messages coming from NETmundial, which most of us attended.

And one of the messages coming from NETmundial and one which we would like, certainly, to follow up is that those principles should be, to the extent possible and to the -- not to the extent possible, but in the appropriate way fed into the different processes.

So we think this is an extremely relevant discussion, one we would certainly like to see unfolding in GAC and with the purpose of giving concrete meaning or concrete dimension to that very important message coming from NETmundial, one that we think was embraced by the full community. Thank you.

CHAIR DRYDEN:

Thank you, Brazil. Okay. So, just to check the speaking order, I have Peru, Lebanon, Indonesia, Ukraine. And I think there were a few other hands. So we've got U.S., U.K., and in the back. Okay. Is that Chile? Okay. Thank you. And Denmark. All right. Please.

PERU:

I would like to speak in Spanish, please. I would like to speak in Spanish, because I feel more comfortable when I speak in my own language so that I don't make any mistakes -- I don't want to read again the proposal I submitted to you because you all have it in printed form.

I would simply like to go back to the reasons why Peru came up with this proposal. We perceive ICANN as a changing organization, an entity that

we all expect to evolve in order to become an inclusive organization, a fully inclusive organization that truly represents us all, an organization that represents an international community that for decades has been coordinating, harmonizing, and mainly reconciling positions and turning them in to rules accepted by all.

It is the notion of a common good applied to international law. This process has led us to review and agree all these issues over decades. And, as you all know, we continue to do that with a number of internationally-applied standards and conventions. We are talking about international case law here. This is a non-stop process. This is a continuously evolving process.

ICANN cannot be detached from this process. And, as I clearly said in the proposal that I submitted to you, there is no doubt that at a given point during the drafting process of the ICANN bylaws, there was a notion or the idea of committing to the international law. ICANN has to be part of this process. And it has to acknowledge the existence of a set of international standards that transcend its own bylaws.

Today the issue is that of human rights. However, the idea is effectively to go beyond today's ICANN to make it more inclusive, to be aware of the fact that international law is a living body that continues to evolve on a daily basis and that ICANN has to take ownership of this evolution. This can also be applied to other areas of international law. Today, we are focusing our attention on human rights. We came up with a proposal for amending and changing the bylaws. And this proposal is included in the materials that you have received. And we would really like that, as a result of this morning's discussion, in our GAC advice at

the end of this meeting, we may include a paragraph taking a clear position as GAC on this topic. Thank you.

CHAIR DRYDEN:

Thank you, Peru. So we have a suggestion to pursue the option related to amending the bylaws proposal from Peru. All right.

Next we have Lebanon, please. Ah, Indonesia. Okay.

INDONESIA:

Thank you. Regarding the human rights, yes. We -- many of the countries have signed a declaration of human rights, basically, including Indonesia. And we have to follow the human rights conventions that we have signed. And together we have to work together to get the human rights globally. However, it has to be mentioned that each country has their own legal system, has their social system that may differ from one to another.

It is in this case that we believe that every country should also respect other countries' legal system as well as social system of the countries.

In addition to that, globally, we also have some sort of particular agreement regarding several activities like child online protections, Internet for kids, and so on. So, in this case, it will be very useful if every country worked together to get the maximum result for the child online protection, for example, as well as other activities.

One country alone will be in difficulties to protect the children unless it also works together with other countries. So global cooperation is needed for these things, these activities like child online protections.

But also global respect to -- between countries is also necessary. Thank you.

CHAIR DRYDEN: Thank you, Indonesia. Lebanon, did you still want to speak? No. Okay. Ukraine, please.

UKRAINE: Thank you. I would like to say thank you, Peru, for a great job on these amendments. But they're very narrow, I guess. The Internet itself is a way how individuals reach their basic human rights. And in a cyber-age, it is impossible to get -- to find a job to meet to publish some materials online, especially when you are on the territory on the conflict.

So I proposed on August 20th to write up the amendment to guarantee that each person, each individual must have a right to have an Internet access. Because, without Internet access, it is impossible to realize the basic human rights, especially when you are not in a developed country and in some territories.

So I would like to draw your attention. Please consider this proposal, which was sent by -- to the mailing list from Ukraine. Thank you.

CHAIR DRYDEN: Thank you, Ukraine.

Okay. So we have about another 10 minutes. So I have closed the speaking order.

We have United States, United Kingdom, Chile, Denmark, and Argentina. We're hearing quite a range of views and some fundamental differences in perspective based on what people have intervened so far. So I just want to take us through the speaking order. And I think it's -- what we need to focus on is how to continue this discussion. Since colleagues do seem to be interested in discussing this topic, I think we've probably made that clear already with the speakers we've had. And then for it to continue and to find the right way for this discussion to continue. Okay. All right. So we have United States, United Kingdom, Chile, Denmark, and Argentina. So United States, you're next, please.

UNITED STATES:

Thank you very much, Madam Chair. And thank you to colleagues, particularly Peru. I appreciate the clarification there. We certainly think it could be extremely helpful for the GAC itself to engage in a little more detailed discussions and actually would prefer to do that before advancing very specific proposed amendments to the bylaws. We're also very mindful that there is a great deal of interest in this set of issues, if you will.

It's not really just a single issue that is implicated here. There is a great deal of interest in other parts of the community. So I do think we could pause and reflect as to what the appropriate next steps would be, but I think from our perspective it may be a bit premature at this moment to decide on a particular way forward such as a proposal to amend the bylaws. Thank you.

CHAIR DRYDEN:

Thank you, United States. U.K., please.

UNITED KINGDOM:

Thank you, Chair. And good morning, everybody. Very much agree with Brazil in terms of it being highly appropriate at this time for discussions to move forward within the ICANN community consistent with the statement from NETmundial which put human rights right at the core of Internet governance and its place in debates in the various Internet governance fora, including ICANN. So support that contextual statement from Brazil.

I also support the identification of the need to provide clearer definition of ICANN's responsibilities with regard to human rights and the obligations under the existing treaties and conventions with regard to freedom of expression, privacy, freedom of assembly, ensuring plurality, and so on. And a lot of that is captured very helpfully in the input from the authors of the -- from the Council of Europe authors of the paper. And that's a valuable input. I'm sure there are going to be other inputs that we in the GAC should take account of, and indeed the whole community. And no doubt we may hear more about that in the cross community discussion that follows tomorrow, if I -- if I remember correctly.

So I think it's worth our moving forward with an expiration of options to achieve that clearer definition of ICANN's responsibilities. And, of course, these are obligations which fall to us as representatives of governments to ensure are put in place because we are obliged to ensure compliance with international treaties and so on.

So let's move forward in an inclusive and cooperative way, look at the options, more possibly explore amendment of the bylaws. Let's perhaps take legal advice on that or request ICANN to provide legal advice on that. I'm also mindful of the successor, if there is one, to the Affirmation of Commitments. Maybe there's another route to provide clearer definition in this area.

And I will just finally comment that the whole new gTLDs round experience has really brought this key issue to the fore of all our deliberations here, and if we're talking about the prospect of another round in the relatively near future, rights are going to be key to ensuring that that round does deliver equitable opportunities and takes account of communities ambitions in the new gTLD space. So this is the right time to move forward on this. Thank you.

CHAIR DRYDEN:

Thank you, U.K. Okay. So included in your intervention, seeking clearer definition of what ICANN's responsibilities are in human rights and also requesting legal advice regarding any bylaws changes, including the one we have in front of us. Okay. So those are options that we can keep in mind. All right. Chile, you are next, please.

CHILE:

Thank you, Chair. Good morning. I just wanted to thank the translators for the great service they are doing and I -- so I'm going to speak in Spanish now.

Madam Chair, Chile thinks that inclusion or the discussion that we are having is really significant. We think -- or from our perspective, we think

that the most relevant is to consider the human right aspects from a constructive point of view. So we are flexible in the way it may be put forward. We think that there should be a specific mention to human rights and what has been discussed in the council of human rights at the United Nations or in the General Assembly, it may be good, may guide a way. We think the proposal and the work of the Secretariat in that respect and the proposal that we have in front of us and we also want to support what has been said that some other delegates perceive (indiscernible) of the United Kingdom. We think that the inclusion of general principles and the respect in the work of ICANN is really important, and for the benefit of time I will leave it here. Thank you very much, Madam Chair.

CHAIR DRYDEN:

Thank you very much, Chile. Next I have Denmark.

DENMARK:

Thank you very much, Madam Chair. I would like to support what the U.K. has said and the suggestions that was made there. I mean, Denmark has a general view that it is very important that human rights is taken up in the GAC and in the context of ICANN and what we do here. And we would like to -- to talk further about how to continue the discussions here. And I -- I believe that -- we believe that -- that the suggestion to take this issue up in a cross community working group could be one of the ways also to take -- yeah, to discuss further. Thank you very much.

CHAIR DRYDEN: Thank you, Denmark. So a proposal to pursue this as part of a cross community effort, which I assume wouldn't preclude perhaps setting up a GAC working group also. Okay. Argentina, please.

ARGENTINA: Thank you, Madam Chair. I will speak in Spanish.

Argentina is fully convinced that human rights is a very important topic in all environments, particularly when we talk about the virtual world, the Internet. Our contribution to NETmundial was -- put really emphasis on human rights. We shared the views of Brazil, Chile, Peru, the United Kingdom, and Denmark so I'm not going to repeat their words. But we would like to make a specific reference to the new gTLD program. Argentina wants, and repeats, that the communities mentioned as vulnerable communities in the report prepared by the Council of Europe should be considered as such, should be treated as such, as communities in the new gTLD program. Thank you very much.

CHAIR DRYDEN: Thank you, Argentina. Okay. All right. So we've come to the end of our session. There is clearly an interest in continuing the discussion. Not everyone is making precisely the same proposal about how we take this forward, but clearly it's going to take some time to draw out all the issues that need to be drawn out, to move ahead in the GAC, and this also needs to be done with other parts of the community and on the basis of further information about these issues. So I wonder whether requesting the -- the legal advice might be useful, since we have a proposal to amend the bylaws, so we could be doing that and that could

further inform our efforts here and the community efforts. So that does seem to be a good way to help get us additional briefing so that we can move this discussion forward.

In terms of getting a clearer definition of ICANN's role and responsibilities in this, well, that's -- that's a good objective, I think, for - for furthering the work here. And this needs to be done with the community. Again, I think that was made clear as well in the discussions that are here.

So do we want to have a GAC working group? Perhaps. Or we can have the GAC participate in a cross community effort on this topic. So -- and we could possibly do both as well, if there was interest in that. So if you like, we can look at those options and organize ourselves accordingly.

Iran, please.

IRAN:

Thank you, Madam Chairman. Not on the way forward, but we continue to refer to cross community working group. Which one? The one dealing with names or the one dealing with accountability? If it is the one dealing with names, it's quite difficult and different from that dealing with accountability. I think it's more relevant with the general working group, cross community working group, discussed yesterday dealing with accountability which has two tracks, track one, transition, and track two, overall accountability of ICANN. It's more fit with that group. Currently they're mixed of the one name for two different aspects. Thank you.

CHAIR DRYDEN: Thank you, Iran. So I think the proposal to work with other parts of the community is really just that. It's not that this issue would be added to existing cross community working groups. I'm reminded that there is some sort of community session taking place, is it Wednesday? Is it tomorrow? I'm looking around. Someone, help me. No, I'm just looking for a yes. Okay. So I think it's Wednesday morning. Wednesday lunchtime?

UNDESCERNIBLE: Morning.

CHAIR DRYDEN: Morning.

1:15.

Thank you, 1:15 on Wednesday. And so it may be that out of that discussion we can get a better sense then of how we want to contribute to that effort. And we can address that after that meeting has happened and look at how to move forward. But we would only be dealing with it as a procedural point. So we're not able to get into discussions of substance. We have a wide range of interests and views already that we've heard this morning. So it's not to get into substance. I do not anticipate GAC advice other than explaining in our communique how we're moving forward. So we will come back to that very narrow point when we reconvene on Wednesday afternoon following the community session. For those of you that are interested in finding a way to work with the community or engage the GAC, then I expect you to be really active on this and to be coming back with some guidance to

us here in the GAC. In the meantime, we can begin looking at what we need to inform our discussions, and I think the -- the proposal to get the legal advice, there was some support here to do that, so we can be doing that as well, in order to support further consideration of this matter. It's absolutely clear that there's interest in discussing this further, so we will find a way forward as we get to the end of our meetings. Peru. Please.

PERU:

Peru speaks. I don't know why we cannot foresee some kind of statement or paragraph in the GAC advice. I don't see any reason why this should be discarded or set aside. I have listened to several opinions that should be mentioned, for instance, the idea of seeking legal advice. I think that idea should be brought in the communique. To have a cross community working group should also be reflected in our communique. I think there are some elements that should not be set aside. So I think that we include a paragraph in the GAC advice related to this issue.

CHAIR DRYDEN:

You seem to have misunderstood what I was saying. In our communique those are the things that I think we can include. So how we move forward, that procedural point, if we're seeking legal advice, we could actually make our request via the communique to have that legal advice. We're not able to get into the substance because the discussions just aren't mature enough for us to get into the substance of the issue. So right now we're looking for a way forward, a way to work with -- within the GAC, with others in the community, and we're looking

at what information we need in order to again as well move our work forward. So I hope that is clear. Peru.

PERU:

I think your explanation now is better, clearer, that there is a certain point that should be mentioned in the GAC advice. So I think there is a common denominator. And if I'm not mistaken, please correct me, but the human rights issue is something that should be reviewed and included perhaps in the bylaws of ICANN.

So when and how we do it, this has to be defined in the future. This is our way ahead.

But the starting point, the issue, the human rights topic is not something that may be discarded or set aside. Because I think that there is quite a consensus or a majority supporting the inclusion of this topic.

CHAIR DRYDEN:

There's been no discussion about whether or not the bylaws should be included. Clearly, this is your view, and you have been very clear, I think, in submitting a proposal and identifying a particular amendment that you would like to see made to the bylaws.

So again, we are looking for a way forward so that we consider that. We can look at that option. But there hasn't been an actual discussion about where we've heard views about whether that's the case. So we're really wanting to allow the discussion to continue.

Again, I hope that is clear.

I do want to conclude our session and come back to the procedural points on Wednesday, after the community session.

Okay. All right. So let's conclude here. And then we have a break, a coffee break, and when we come back, we will be having the GAC elections.

Iran, do you insist?

IRAN:

Yes, Madam. I insist. We should not ask ICANN to give us legal advice. We are Governmental Advisory Committee. We will give them advice. We could ask ICANN to give a legal view on the matter, but not legal advice.

Thank you.

CHAIR DRYDEN:

Okay.

I would like to conclude this session.

Jamaica, do you insist? Is it Jamaica asking to speak?

JAMAICA:

Yes, Chair. Thank you.

Just a point of clarity. You mentioned earlier two options, I believe, one setting up a GAC working group on human rights and as against taking the issues in the Cross-Community Working Group. Would it be the same team that would represent GAC on both or two separate teams?

The reason for my question, I think the GAC needs to have one vote on this issue, so it's important that we are very, very clear on the way forward.

Thank you.

CHAIR DRYDEN:

Thank you. This is precisely the question we will come back to Wednesday afternoon. So please be thinking about that in the meantime. Those of you that are really interested in these issues can join the community discussion and hopefully come back with that guidance.

I don't want to spend a lot of time on this when we reconvene on Wednesday. I want us to come with a clear idea about how we can proceed.

Okay. So we're going to end this discussion in this session, and then we have our coffee break, and then we will come back and have the election of the chair. So we'll have that process run.

The chair and vice chairs will not be here while that is happening, so the ACIG secretariat will be running that.

Okay.

All right.

So we have one announcement from the secretariat.

MICHELLE SCOTT-TUCKER: Thank you, Madam Chair. And thank you, Madam Chair for all your work over the last four years.

We have a small, gaudy, fairly ugly token of our appreciation and thanks. We couldn't think of an uglier cake, really. It's a tiara. It's a crown for the queen of the DNS. And we'd all like to say thank you very much.

[Applause]

CHAIR DRYDEN: Thank you. After that heated discussion, I think it's quite a change of gear.

I've never seen anything like it.

[Laughter]

That's very kind, and is in a really nice spirit. So thank you very much for the gesture.

So thank you.

[Applause]

So let's all have some cake (laughing), and come back and then we will run the election process.

So thank you everyone. Very kind.

[Coffee break]

[END OF TRANSCRIPT]