ICANN Transcription

Council Committee for Overseeing and Implementing Continuous Improvement

Wednesday, 03 August 2022 at 12:00 UTC

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DEVAN REED: Good morning, good afternoon, good evening. Welcome to the Council Committee for Overseeing and Implementing Continuous Improvement call taking place on Wednesday, 3rd of August 2022 at 12:00 UTC. In the interest of time, there will be no roll call, attendance will be taken by the Zoom room. We do have apologies from Manju Chen.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you need assistance updating your statements of interest, please e-mail the GNSO Secretariat.

All documentation and information can be found on the wiki space. Recordings will be posted on the public wiki space shortly after the end of the call. Please do remember to state your name before speaking.

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As a reminder, those who take part in the ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you. And over to our chair, Olga Cavalli. Please begin.

OLGA CAVALLI: Thank you, Devan. Good morning, good afternoon, good evening. I hope you are okay. And nice to meet you after these two weeks that we did not meet. We have the agenda on the screen, we will review the workplan status and see the progress that we have been doing which is quite visually easy.

Then, we will review the status of statement of interest taskforce and activities. And then we will work with Work Stream 2 recommendation number three for framework of interpretation for human rights. And then we will check the next steps and next meeting for Wednesday 17 of August. Any comments, questions, changes to the agenda? Okay, maybe Marika, you can show us the workplan status and see where we are.

MARIKA KONINGS: Yes, thanks, Olga. So that's up on the screen now. So basically, a lot of green. The only thing that is not green is this last part here at the bottom, which we started discussing during the last meeting, or at least we introduced it. But all the other items, we just need to add here the status detail of the recommendations you have discussed in the previous meeting. But again, from our perspective, all these are complete as the group has gone through those recommendations and assigned statuses for them.

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I think from a staff perspective, we just need to think what is the best way of recording this so it can be submitted to the Council. We may want to use the background documents and include here the conclusions in the background documents so when it's shared with Council, they understand the full picture and also see the information that the group has discussed. But that's maybe something Julie and Ariel and I can talk about so once everything is basically done, it's also in a nice format that can be shared with the Council and hopefully approved.

OLGA CAVALLI: Thank you, Marika. One question. Do other SOs or ACs are doing the same exercise? Is there perhaps a standard way of showing outcomes or progress or something?

MARIKA KONINGS: That's a good question. As I understand it, other SOs and ACs have been asked to do the same thing. I think what is standardized is the designations that are being given so that when something is assigned, it's clear that that status means the same across the different groups. But I'm not sure that there's a standard format that's expected or required. But I know that Ariel who couldn't make today's meeting and is participating in the internal coordination calls on this work, so we can check in with her whether or not we need to follow a standard format when this goes back to the Council and when the Council also then I guess conveys this back to Org and/or Board to confirm what the status is and see whether or not we can use them the background

briefing that we already have or whether we should think about a different format for doing so.

OLGA CAVALLI: Thank you Marika. Any comment, questions about the workplan? There you can see in a number 12 what we have to review today, rest is completed. Okay, let's move on to the next point in the agenda, which is the review of Work Stream 2 recommendations number three, for a framework of interpretation for human rights. No, we have the review status of statement of interest taskforce activities and public comment forum. There was an update that I sent, right, Marika, last week? Am I forgetting something?

MARIKA KONINGS: Yes, correct. And I've just put that up on the screen. And I can post a link in the chat as well.

OLGA CAVALLI: Well, I shared this with the Council, I don't know if you had the chance to review it. I didn't see any comments or reactions in the e-mail list. Any comments, questions?

MARIKA KONINGS: If you allow me, I can maybe briefly speak to this as well. So I think as you're all aware, this group assigned the task of looking at the GNSO statements of interest procedures and requirements to a taskforce, which is kind of nearing its the completion of its work. And as this committee has oversight over that group, we thought it

would be a good idea to provide you with an update on where that work stands. So you also can have a look at the direction the group is taking the recommendations, but also connecting that to the public comment forum that needs to open.

And as you may recall, you did some work earlier on, the working group self-assessment requirements and surveys that are associated with that. And as a result of that work, there are also a number of changes that will need to be made to the GNSO operating procedures. And in order to avoid duplication or having a number of public comment periods on the GNSO operating procedures, we discussed that it would be good to kind of combine that with any changes that the SOI taskforce is recommending as it also impacts GNSO operating procedures.

And as you may have also seen in the template public comment forum language, staff is also taking the opportunity of these updates to the GNSO operating procedures to also do some kind of cleanup. There are some issues with numbering and terminology. So we're also trying to see if there's an opportunity to do some of that cleanup, in conjunction with the substantive changes that are being proposed by the CCOICI in relation to the working group self-assessment, as well as the GNSO SOI taskforce in relation to the statement of interest requirements and procedures.

And one thing we did want to check with this group is, of course, if you have any comments or suggestions on how the public comment forum is phrased, or the language there in the descriptions, feel free, of course, to suggest that.

But one of the items that we wanted to flag is that, in principle, we think this could be ready to be published for public comments in the August timeframe. That's also what we had originally indicated in the kind of forward looking information that's available on the ICANN Org website.

But since then, we've realized that there are a number of other public comment forums opening in that same time frame, some of which are pretty substantive and I think also a high priority for the ICANN community, such as the EPDP Phase 1 policy recommendations, as well, I've already put the link in the chat there so you can see as well as some others, I think as well. There's a holistic review. And I think the framework for that is I think another one that's expected to be published.

So we've discussed with the SOI taskforce whether there would be any concern about delaying publishing the public comment forum to the September timeframe so that there's less direct competition and also recognizing that probably the changes to the operating procedures are of a lesser priority or lesser urgency than some of the other items.

And so from the taskforce perspective, they didn't indicate any concerns. The only thing that they have requested is whether it would be possible to publish the public comment forum leading up to the Kuala Lumpur meeting so that it would allow members of the taskforce to kind of talk to their respective groups to kind of promote the public comment forum to be able to explain what is being recommended as well as answer any questions that people may have, provided of course that sufficient time is provided after the ICANN meeting for people to respond.

And from a staff perspective, we wanted to check in as well with you all, whether you have any concerns about that approach, or whether you're happy to proceed that way so that we will be open in probably two or three weeks. Well, if we want to do it in September, I'm guessing there's some more two weeks prior to the Kuala Lumpur meeting, again, making very clear in the public comment period that additional time will be provided to accommodate for having the meeting in the middle plus to allow for those members of both the CCOICI as well as the GNSO SOI taskforce to be able to talk about this and promote it with their respective groups during the ICANN meeting. So that's the proposal that we would like to put forward here and if there are any concerns about that, we would love to hear that.

OLGA CAVALLI: Thank you, Marika. So something to think about. Any comments, reactions? Philippe says it sounds good, including the timing allowing for coordination with a stakeholder groups and constituencies. There's a link shared by Berry. Welcome, Desiree.

DESIREE MILOSHEVIC: Thank you. Just also wanted to agree that this new timetable seems very reasonable because of the priorities given to the other two more important tasks for the public comment period. So no objections here. Just a clarification, whether there should be a meeting with the GNSO SOI taskforce or not during ICANN 75.

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MARIKA KONINGS: I think it's really up to the CCOICI. If you believe there's a need or a reason to meet, that could definitely be set up. I'm guessing it's more challenging to do that in an ICANN meeting because there are a lot of competing priorities. But again, I think if there is something that the CCOICI is concerned about or has questions about in relation to the recommendations report that we also shared, I believe, with the group, and of course, that is something that you may want to flag either through conversation or via e-mail. So I think again, that's really a question for the group.

Nothing is scheduled at this stage or planned. But obviously, if something needs to be planned, it may be difficult to do that at an ICANN meeting for obvious reasons, especially I think as a lot of the schedule has already been penciled in. But of course, depending on the nature of what needs to be discussed, I think both groups can then consider when and where would be the best moment to do so.

DESIREE MILOSHEVIC: Thank you for that clarification. And no, I wasn't calling for a special meeting, I think from our end, I think doesn't need to be one, especially in person because it's hard to organize. So that was the clarification. Like when would you think, how would we communicate with GNSO SOI group if needed, the CCOICI GNSO one if there's anything that needs to be extra communicated and planned, do ... suggest we do that or just wait for the public comment period.

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OLGA CAVALLI: Marika, can you help us with that question?

MARIKA KONINGS: I think the same answer as before. If groups feel there is a need to discuss, it can definitely be done. I don't think there's a requirement to do so as such. And of course once public comment opens, would also notify the Council so that they're also aware of this being put forward. And with regards to working group self-assessment that is of course already something that has been discussed by Council. And I believe there were not any concerns or suggested changes to that.

And with regards to the statement of interest, I think the public comment period is also an opportunity to kind of obtain input also from Council if there are issues or concerns. But again, if anyone here thinks it's good to have a conversation before that, or send a heads up to Council before that, that is, of course, possible. I think we do cover as well the updates on these two groups in the project list. So Council members should already be able to kind of see where work stands and kind of follow up on that.

And I'm hoping and assuming as well, or at least I know from the GNSO SOI taskforce that the members have been quite diligent as well in keeping their respective groups up to date on what they're working on and the kind of directions the recommendations are taking. And they have also been able to bring some feedback back already to the group. So from that perspective, I think there has been some information sharing going on. So hopefully, what they're proposing is not coming as as a major surprise.

OLGA CAVALLI: Thank you very much. Marika. Is that okay, Desiree?

DESIREE MILOSHEVIC: Yes, thank you. I just noted it in the chat as well. So that's very helpful. Thank you.

OLGA CAVALLI: Thank you very much. Any other comments, questions about the status update of the statement of interest taskforce? See none. So we can move on with the agenda. Point number three, which is the Work Stream 2, recommendation number three, for a framework of interpretation for human rights, we can go to the document.

MARIKA KONINGS: I'll just have to stop sharing this and switch to another screen. And what I'm pulling off now is a prettier version, thanks to Ariel, of the [inaudible] that we shared with you previously. Okay, if I can maybe introduce this briefly and then maybe hand it over maybe to Thomas as one of the chairs of the Work Stream 2 efforts to kind of maybe see if at least our understanding is in line with his recollection of the conversation

So what we did on the staff side—and I have to probably say at the outset, I think neither of us are expert on the topic of human rights or were closely involved in when the Work Stream 2 group discussed this topic. So we've really looked at the

recommendations, the supporting documents that are available, as well as looked at what is already in the GNSO operating procedures and kind of our experience with PDPs and how they've approached some of these topics.

So what we've tried to do is, again, from a staff perspective, try to break this down into what are the questions that the CCOICI needs to ask itself in order to get to a recommendation or an assessment on this topic. So I think it's important to note that at the outset, again, our understanding is that what is in the Work Stream 2 recommendation is put forward as a consideration. So it's not a recommendation or requirements for groups to do this, but groups are basically asked to consider. So that is, I think, the first important point to understand. So it's really for this group to kind of discuss and consider the suggestion and then decide whether or not to go down that path. So that's where you also see in this decision tree kind of the start is really, the first question is, does the CCOICI agree that the Council should consider incorporating a human rights impact assessment into the GNSO PDP?

And again, from our perspective, once you have an answer or an agreed answer to that question, the flow kind of goes automatically either in one direction or the other. It's either a yes or no answer. And depending on that, there are a number of subquestions the group would need to answer.

So maybe first going to kind of the shorter path, if the answer is no, if this group is of the view that it's not necessary to incorporate a human rights impact assessment in the GNSO PDP, then we

believe there should be a rationale provided to the Council for why you would recommend not doing that.

For example, one rationale or one avenue could be because you already believe that the human rights is already factored in through alternative ways. And then of course, it would be helpful to spell out what are those alternative ways and what could or should those alternative ways be compared to human rights impact assessments, because again, the recommendation is very specific to a human rights impact assessment. So maybe there are other avenues that could be incorporated.

And again, it may also be helpful to point out that currently, the PDP manual already foresees that working groups should assess the impact of proposed policy recommendations as part of its final report. And it already kind of refers as well to the impact on rights. It doesn't call out human rights, but rights in general. So there's definitely a provision that allows for consideration of the impact of recommendations on rights in its totality. But there's currently no specific guidance or direction that is provided on how that is done. So that's kind of the one path if the group says, "No, we don't think that needs to be incorporated."

On the other hand, if the group says, "Yes, we do think a human rights impact assessment needs to be incorporated," you go basically to the yes line above here, that triggers a number of sub questions that again, from a staff perspective, we believe that need to be answered. So then the question is, if you think indeed there need to be human rights impact assessments, when does it need to happen in the PDP lifecycle? And where does it happen? Which stage? How is it done? By whom? And is there other work

that is helpful here or should be considered? Is it always necessary or only in certain circumstances?

So again, this is a bit what we've tried to do as kind of the potential of kind of thought process that may help guide this group in coming to recommendations on how to deal with this Work Stream 2 recommendation or consideration that has been requested all SOs and ACs take on.

So I think the first question really is for the group, is this helpful? Are we asking the right questions here? Is there something important that is missing? Maybe there are alternative avenues that we haven't covered here that we should factor in.

And also importantly, and that's why we're hoping that Thomas may be able to shed some light on that, is it indeed our correct understanding that the Work Stream 2 question here really is to consider whether they should be incorporated or not. It's not a requirement? I don't know if the Work Stream 2 specifically discussed the GNSO PDP and if how that could look like in that context. But again, from our just reading the report and the recommendation, it really seems this is a question that groups are being asked to consider. And it's really up to each group to decide if or how to respond to that consideration.

So I'll pause there and I'm really hoping that this makes sense. And of course, if you don't think it makes sense, it's really up to the group to determine how you want to deal with this specific recommendation and get to a response to the Council for how to deal with this specific aspect of the Work Stream 2 recommendations.

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OLGA CAVALLI: Thank you, Marika. Any comments, questions? The flowchart seems interesting. Thomas, go ahead.

THOMAS RICKERT: Hi, everybody. Marika, I think your summary of the events at the time were accurate and comprehensive. So thanks so much for that. So there's little to add to that. Maybe just to set the scene for further discussion. This topic has been discussed quite a bit in the Work Stream 2 deliberations. And it's a matter that's very important to many groups inside the ICANN ecosystem.

So I think whatever suggestion we might come up with, we need to be very cautious or very attentive to the fact that this is going to be very closely monitored by many inside ICANN, as well as outside ICANN. So I think we need to be very diligent in crafting our response. And I think that this flowchart that Marika has presented to us is asking exactly the right questions. Although I should say that if you look at the lower part, if we actually came to the conclusion that we recommend to say no, there is some duplication in the no section with the yes section, because if you look at alternative ways, or what these alternative ways could be, that could be found in [inaudible] is the impact assessment actually necessarily or not?

So if I may, I guess the only suggestion or advice that I would like to offer is that maybe not easily say no to this entire exercise because it might make things easier during the PDP process and it might save some time, because every additional hurdle that we

might wish to incorporate will add to the complexity of these. But I think there might be ways to look at question seven that if work is already done in other ways, that you can lower the burden of conducting the impact assessment.

And I should also say, and this is completely aside of what happened at the time of Work Stream 2 deliberations, that if you look at the GDPR, certain types of processing require prior data protection impact assessment anyway so you would need to take a look at these impact and the risks that processing activities might present to individuals anyway.

And also, even if we might say that additional [inaudible] are required, they might not be required by policy but they might be required by law. So I think that a lot of the work that needs to be done here potentially needs to be done anyway in order to comply with GDPR and potentially other privacy laws.

Final remark that I would like to offer is that you might say, why should ICANN so much focus on human rights impact assessments? And maybe an example is that if you look at the privacy proxy service activity or policy that ICANN has been working on for quite some time, if you don't get that right, then let's say when a domain is transferred, data might be disclosed that otherwise wouldn't be disclosed, and the rights and life actually of the individuals that hold the domain might be at risk if you don't consider the impact for those individuals if you get the policy wrong. So this has been worrying, hopefully not too worrying. Thanks so much for Marika again. And thanks so much, Olga.

OLGA CAVALLI: Thank you very much, Thomas. Flip, you have the floor.

FLIP PETILLION: Thank you very much. Very interesting, because I'm not so familiar with the topic, to be honest. What I think would help is that we would define what these rights may be. So we make it a bit more concrete. So we understand what is a human right. Is it for example the right to be heard? Is it the right to a due process? Yeah, just a couple of examples. Thank you.

OLGA CAVALLI: Interesting question. Thomas. Your hand is up.

THOMAS RICKERT: Yeah. Flip, it's great to ask that question, because that's been exactly the topic that the CCWG or the subteam has been struggling with at the time, because we are doing policy in all sorts of areas. And it's very difficult to specify in advance what the impacts or the human rights impact might be.

                      And this is basically why the CCWG at the time did not come up with concrete recommendations, but rather with a framework of interpretation which helps you navigate this challenging path when you are tasked with creating policy, what are the inflection points where human rights might be impacted or not.

                      So the framework of interpretation has been linked to in the Google Doc that has been shared in advance of the meeting. And I think that some of the answers might be found in there. But Flip,

you being a lawyer know this better than non-lawyers potentially. We are doing abstract general stuff and not concrete individual stuff. So it's very difficult to capture concrete, real-life examples in abstract general policy.

But I think that your point is well taken that maybe we should use that as an incentive for us to actually illustrate a little bit in our report where the relevance is given and what human rights implications there are in the ICANN world.

FLIP PETILLION: Thank you, Thomas.

OLGA CAVALLI: Thank you, Thomas. I see a comment from Marika in the chat. Marika, do you want to read it? Or should I?

MARIKA KONINGS: Sure, I'll just provide the context. In the background briefing, we kind of copy pasted some of the section that seems particularly relevant for the group's conversation on this topic, and I think exactly the question that Flip asked, we've asked ourselves as well. Indeed, in what circumstances to does this apply? And are there specific examples we can think of?

At least from my time at ICANN, I don't recall in any of the public comment periods that we've had or working group deliberations people specifically kind of calling out these recommendations will impact these human rights because of XY and Z even though of

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course, I think as part of the comment period, we always specifically ask that question as well, if there's any impact that the group should be aware of, please share that. But of course, that doesn't mean there isn't.

But this language I think tries to make, as I understand it, a bit more specific, what this means in an ICANN context. So human rights are required by applicable law will be relevant—only those that are required by applicable law will be relevant to ICANN. Furthermore, depending on the jurisdiction in which ICANN operates, the law applicable to its operations may vary and human rights applicable to ICANN's operations will vary as well. Nevertheless, ICANN understands that internationally recognized human rights, including those expressed in the Universal Declaration of Human Rights, can guide its decisions and actions.

So it does really seem to be indeed depends on each particular case or each particular policy that's recommended, where I guess that assessment needs to be made on whether or not those recommendations may impact those rights that may be applicable in that specific circumstance.

OLGA CAVALLI: So there's a comment from Thomas, a very accurate at the time, the freedom of expression, diversity of speech, and right of assembly were explicitly mentioned. Thank you so much for that. Okay. Do we have more documents to review, Marika? Any chart or something related with this?

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MARIKA KONINGS:	No. In the background briefing or the document you have, with all the relevant information, we tried to include as much as possible about this topic. So there's information from the Annex 3 of the Work Stream 2 final report where some more context is provided and we've kind of copy pasted those parts that from our perspective seem to be most relevant to this conversation and to better understand what the Work Stream 2 considered when they put forward this issue for consideration.

And there's some information on the march Work Stream 2 implementation status report from—I think we—or at least I also understand that from an ICANN Org perspective, their view is also that this is really something for the community to do. And that information, those impacts are to be shared with the ICANN Board. The ICANN Board can also factor in as they consider recommendations on whether or not to adopt what the impacts may be on rights maybe in general but human rights in particular.

And we provided some information here as well on what is already in the operating procedures. And as I mentioned before, there is already language that the working group is expected to consider the impact of the proposed recommendations and then goes on to say which could consider areas such as economic competition, operations, privacy and other rights, scalability and feasibility.

And having been involved in the original drafting of this language, I actually recall that we had a conversation on whether human rights needed to be called out here. But I think at that point, the agreement was that it was very difficult to call out what specific human rights might apply and whether other rights could also be impacted.

So at least at that point, the agreement of the community was by using other rights, that would capture both human rights as well as other rights that might be impacted. But for the moment, the onus is very much put on the working group to do that.

And then maybe sharing there as well kind of my personal experience, this doesn't maybe happen to the detail in which that some may expect that to happen. It is always a question that staff asks, and it's kind of covered in the report. And it's always specifically called out in the public comment forum as well to encourage people to share kind of input on the impact. But it's not something where we usually get a whole lot of detailed information back. And either it's because people don't know what the impact is, or don't have kind of the skills to make an analysis that may be expected if you talk about, for example, economic and competition impact, or that there are no obvious impacts that are expected. And again, that's why the group is putting those recommendations forward.

But again, for the moment it is very much alone the working group. But as we've shown in the chart, as well, of course, if the group believes that there needs to be human rights impact assessments, there are various moments in a PDP in which such an assessment could or should be done. And again, it doesn't need to be limited to one either/or, as we discussed, one of the options as well, may not always be necessary, maybe there are certain trigger points that would dictate whether or not that will need to be discussed.

And then we also added a part from the Council's prioritization efforts. As you may recall, a small team looked at all the Work

Stream 2 recommendations and kind of put a level of priority on it. And I think in line with what Thomas already said, for some groups, this is an important topic. And I think it was also kind of called out as kind of how to implement it also in the context of the bylaw obligations. And they think at that point suggested that it may be considered for a PDP 4.0 or other future endeavors kind of context. But of course, [inaudible] has been given to this group to make a recommendation on how to proceed or how to tackle this specific issue.

So our idea or suggestion would for the group to kind of start working through these questions and kind of see, is there a common viewpoint on kind of which direction to go? And of course, that may also result in maybe others you want to talk to or are there are other similar bodies that do something similar that may already have something like this implemented or factored in?

I don't consider myself an expert in these areas, but I'm sure there are others that the group may want to hear from. So again, I think it's really for the group to kind of think through how to go from here, you just start answering the question and start with Q1 and maybe there are already specific views on that or common view? Or maybe that's something that the group will come back to on the mailing list so that by the next meeting, you're able to say, "Okay, for Q1, it seems that we want to go down this path. So let's see what that looks like. If we go to the other questions, is there a common sense of what the responses to the other questions or subquestions then are?" Again, to see if there's a common viewpoint on this or to identify what other information or steps

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need to be taken for you to be able to give an answer to those questions.

OLGA CAVALLI: Thank you, Marika. Chat from Desiree. She says it's challenging to operationalize HR in advance, but it's important to have some further discussion. Okay. Comments, questions or reactions about the suggested way forward? Should we start focusing on the questions one, two, three? Do we need some time to reflect on this? Philippe, welcome.

PHILIPPE FOUQUART: Thank you. Hope you're all well. Speaking personally, by the way. But to your question Olga, I think, indeed, we'll need some time to address that. My initial thinking would be to try and learn by example. The difficulty I have saying that is if Marika said that for the time you've been at ICANN, with the policy work, you haven't seen similar issues b being needed during a PDP. I'm less tempted to suggest that. But ideally, that would be good to approach that through even an ongoing or past PDP. That would be good.

Another initial thought would be that having seen that in other contexts, such broad concepts being applied in policy work in other contexts, it's good to have that as something to review and translate into the context of a particular piece of work at the initial stages of a PDP, for example, of a particular piece of work for the working group to review policy questions that might be related to the broader context of human rights, but not being responsible to

figure out what those impacts might be. I hope I'm making sense, but this is a meta level in a way that needs to be put into the context of PDP work.

Now, whether that's always relevant for each and every PDP, I'm doubtful, given what you said, Marika, but those were my two comments, just some initial thinking on where that should happen. I'm tempted to say very early, and if we could do that through an example, I'm sure they would help people. Thank you.

OLGA CAVALLI: Thank you very much. Flip, your hand is up.

FLIP PETILLION: Thank you, Olga. I think every participant in PDPs has that intuitive approach to think of issues like that, but you don't necessarily expressly discuss them or raise them. But you have like a mute checklist that you intuitively go over it. And maybe that's the reason why we never had any issue with the past.

The question is for the future, I think, whether you have to formalize this, whether you have to institutionalize the checks, and then if yes, do you have to have dedicated people who do that regular check before we move to the next step and EPDP? Or would it suffice to bring the topic regularly to the attention of people, just like we do, for example, with the SOI, or with the reminder of the standards of behavior, for example?

Maybe that would be something to think of. But I agree with Phillippe, this needs some reflection. I think it's an interesting and

probably essential point. But because of that need for an intuitive check, I wonder how much attention we really need to give it. And I don't know the answer.

OLGA CAVALLI: Thank you, Flip. What I can hear from you is that we need some time to reflect on this. And before giving the floor to Marika, there are some comments I think that are very interesting in the chat from Thomas. Could be part of the issues report. And I think it does not have to be long document, just important to mention it and call it such. And Marika, the floor is yours, so I will leave your comment to do it lively.

MARIKA KONINGS: Thanks, Olga. So I think as well, something I wanted to emphasize, and I think that's also the kind of [Q9] of what stages of the PDP is and maybe it's not a human rights impact assessment, but consideration of the impact on human rights, maybe a more kind of general term to use and then just making sure that from our perspective, that doesn't necessarily need to be kind of on one stage only. And I think it's already being suggested, because for example, as part of the issue report, there are already a number of questions that staff is expected to answer.

Is this within scope of ICANN? Is this in scope of the GNSO? One question could be as well, is this expected to impact rights, including human rights? And again, I think that would be probably a very high-level assessment that staff could potentially give because, of course, at that stage, it's not clear yet what

recommendations or what direction the work would go but it could provide an initial indication on whether that is indeed an area that needs to be focused on.

And then, of course, a next level that you have after that is the working group charter. So that's also where if the Council is of the view, either through what's included in issue report, or maybe input that has been provided on the preliminary issue report, where again, it's also a question that could be called out at that stage, that the Council then also has the ability within the charter to call out specific questions or kind of attention points that it may want the group to focus on.

And again, I don't know if it wants to specifically call out human rights, or more generally talk about the impact of the recommendations on a number of aspects and recognize that that is something important that the group should think about and give due consideration, recognizing that of course the group may not have an expertise in all those specific areas. But again, I think there are ways in which it can solicit input or at least indicate that it thinks that there may be a negative impact, for example, that could or needs to be further explored at some point. So again, just to say there may be various stages in which if the group believes there needs to be kind of flag or further attention paid to this, that this could potentially be done, if that is the direction the group—

OLGA CAVALLI: Thank you. Marika. Thomas, your hand is up.

EN

THOMAS RICKERT: Thanks, Olga. I think there are many templates for human rights impact assessments out there. We can even ask some of the experts of the original subteam whether they have a template that they think is particularly useful for what we're doing at ICANN.

And when I suggested that this could be done within the issues report, Phillippe said that it should be at least the issues report. And you're certainly right. I think that depending on what the analysis in the issues report is, you know, there's no risk of human rights being impacted whatsoever, then the issues report can be the only place where it's mentioned. But if it turns out that there is a likely risk or high risk for human rights, then further diligence needs to be [applied to the policy] development process, and even an analysis of the [style of workflow.]

Maybe this could be the starting point. If we could find an easy to use matrix [inaudible] maybe that doesn't complicate the work too much. If you wish or if you guys think that the idea is a good one, I can send an e-mail to two or three of the original human rights subteam members and ask them whether they have something that they would recommend for us to use, or at least suggest as the basis for the session.

OLGA CAVALLI: Thank you, Thomas. I think it's a very good suggestion. Berry, your hand is up.

BERRY COBB: Thank you, Olga. So I'm sure amongst this group, and probably the whole community, I have near zero experience with any kind

of human rights impact assessments and what should or shouldn't go into them, and those kinds of things. So my comment is really just coming from your resident wet blanket project manager.

And one of the things that I don't see on this particular mind map, and that I think it will be important for this group as well as the whole community when they're considering this, is whatever framework is agreed upon and where it makes sense to perform that assessment, especially in the cases of during an actual policy development where the working group is to take note of traits of being nimble and lightweight, and not something so robust that adds three to six months to any given timeline.

And trying to take this to real world, the transfer policy is divided up into phases. There's a phase 1A and 1B, and then a phase 2. The timeline or the timing of that, of just the policy develop phase is already at, I think, two and a half years planned. So far we're on schedule. And it's in essence kind of a revamp of the entire transfer policy.

In the grand scheme of things, there's the potential for a lot of change. And a lot of change requires a greater assessment from a human rights perspective. So just, again, trying to be aware of how much—maybe it can be done in parallel and not necessarily an iterative process, or look for opportunities to streamline it in a way that doesn't add extra time to an already long process of policy development. Thank you.

EN

OLGA CAVALLI: Thank you, berry. Interesting comment. Marika, maybe you have some comments about Berry's suggestion?

MARIKA KONINGS: I can just say I fully agree with Berry. And I think, again, if an assessment needs to be done, of course, it has to be done. But I think we indeed need to avoid applying kind of a blanket approach to everything just for the sake of doing it, and thereby adding a lot of time and complexity to certain topics.

So personally, I think that the suggestion that Philipp made seems to make sense to maybe at the time of scoping—and of course, that is already something as well that maybe even at the time of the request for an issue report, the requester can already be asked, please identify—and maybe it already does, please identify if this specific particular policy issue is expected to impact on certain areas such as human rights.

So if you already have a very early indicator there that there might be [inaudible] then the issue report is kind of the next step where you can kind of call out to what that risk is, or how it may be factored in. And then that can be carried through as well to the charter of a PDP working group as indeed the Council kind of agrees that there's this particular risk, something they can call out in the charter. And I think they already do that in certain areas. Maybe not human rights, but where certain questions do say, "We'd like the group to pay specific attention to this, that or the other because we believe that there may be an impact or risk of maybe upsetting certain things if the group looks at this."

And then of course you have, again, the opportunity in the working group deliberations where you focus on those questions. Public comments is another opportunity to kind of specifically call out again, is there any impact that the group hasn't considered or hasn't addressed? And then of course, when it goes to the Council, the Council can still raise those questions there as well.

And of course, when it afterwards goes to the Board, similar questions are presumably being asked there as well. And I think that's also something that, for example, in ODP, I think we also deal with kind of risks and impacts that may also come up. And again, maybe not specifically human rights focused, but also in general. But if there are obviously specific pointers to potential human rights issues, that can maybe be carried through in that way.

And as I said, previously, at least from my perspective, I think nothing in the operating procedures currently prevents that from happening. There may be certain kind of easy tweaks that are made. For example, calling out in the charter to have specific information there. Of course, if there was something specific—and I would need to actually look back what the current requirements are for the issue report, what is captured there. But there might be an area when it's also called out as an area that staff is expected to pay attention to.

Again, obviously, I think at that stage, we can only do that at a very high level and based on our knowledge and experience. But again, for all those steps, there's also always the opportunity for public input. So there may always be more—those who have more

expertise in this area that are able then to flag and say, "Hey, hold up, we think you've missed this."

So maybe through such an approach which is kind of lightweight throughout the whole lifecycle, allowing for plenty of opportunity for people to kind of call it out, maybe that is a way to kind of accommodate. And again, I don't know if that gets the group to a yes or no line because maybe you're not saying [inaudible] human rights impact assessment per se but specific attention to impact of human rights is something that seems to be—while the group is at least open, or I think agreeing to what might need to be done, or additional focus may need to be put on.

OLGA CAVALLI: Thank you very much, Marika. Any other comments or reactions? Desiree, you have your hand up.

DESIREE MILOSHEVIC: Yes, thank Olga. JUST briefly to add, I agree with what Marika just said. And also, I think good examples from everyone how to address this issue. I just want to bring to attention also some similar ways of working that the IETF has, for example, adopted at the end of the protocols, you have security and privacy considerations. So it's not like a full assessment of privacy and security considerations and the impact that that particular protocol would have. But it is some kind of a framework or, as we say, paper is patient. Some kind of reference of that group has considered the issues that are important for that particular PDP.

So what I'm saying is, apart from starting it at the beginning, what Philippe was suggesting, is to also have some kind of a reference and report that these issues have been considered. And lightweight, also agree with Berry's comments as well. Thank you.

OLGA CAVALLI: Interesting comment. Thank you for sharing that, Desiree. Any other comments, suggestions? There are some comments in the chat from Thomas. Desiree agrees with Thomas.

I think what I can hear from you is that we need some time to reflect on this, to think and consult to your respective constituencies and stakeholder groups. And Marika, if you can share the flowchart with the e-mail list. I can see it in the screen, but I think that needs more time to review all the details. And we can keep on working on this in two weeks. But we may have some reactions also in the e-mail list from people that were not in the call. I think it will be important to hear from all of us to know and define the direction of where we want to head on our own. As Marika, there is also an issue report and final report template to which further checklist. Yeah, please add—any information that could help understanding and having all the map of all these issues in mind, I think it's very helpful. Am I missing something, Marika?

MARIKA KONINGS: No, I don't think so. Maybe [inaudible] I'm sure [inaudible] taking notes of this call, we could maybe try to kind of summarize some of the specific ideas and suggestions that have been made and

kind of maybe link it as well to existing documents, because for example, there is a template for a request for an issue report. Maybe the group can look at that and see, is there sufficient space there or should specific questions be called out to put focus on that? Similarly, for the issue report, there's a template on what needs to be provided and should further guidance be included there? Charter, same, [initial or final] report, the same.

So if the group indeed is leaning towards this kind of lightweight approach, those are documents that could be fairly easily updated and changed to kind of focus on that without doing very kind of heavy hand of requiring a full-blown human rights impact assessment for each and every issue, for example.

OLGA CAVALLI: Thank you, Marika. We are one minute past the hour. If there are no other comments, hands up, I want to thank you very much for your time this morning. Let's think about this. This is a very important issue, not only for the GNSO, but as [inaudible] said, it's very important for the whole community, not only ICANN community. So let's reflect on this. Have a nice rest of the week. See you in two weeks and let's stay in touch over the e-mail list. Have a nice day. Ciao.

DEVAN REED: Thank you for joining. Once again, this meeting is adjourned. I'll end the recording and disconnect all remaining lines.

[END OF TRANSCRIPTION]