

Consolidating AT-LARGE POSITION ON HUMAN RIGHTS



Joanna Kulesza
ALAC/EURALO/CBWG

AtLarge Consolidated Policy Working Group meeting, Sept. 2nd, 2020



THE UNIVERSAL DECLARATION OF Human Rights



Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone has the right to recognition as a person before the law.

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery or servitude shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition as a person before the law.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal treatment before the courts.

Article 8: Everyone has the right to an effective remedy by the competent national authorities for the violations of his fundamental rights and freedoms recognized by the constitution and laws of the country.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him.

Article 11: Everyone has the right to a fair trial.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13: Everyone has the right to freedom of movement and residence within the borders of each country.

Article 14: Everyone has the right to leave any country, including his own, and to return to his country.

Article 15: Everyone has the right to a nationality.

Article 16: Everyone has the right to marry and to found a family, which is the basis of the peace and stability of the world.

Article 17: Everyone has the right to own property alone as well as in association with others.

Article 18: Everyone has the right to freedom of thought, conscience and religion.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to receive and impart information and ideas without interference by public authorities and regardless of frontiers.

Article 20: Everyone has the right to peaceful assembly and to associate with other persons, including the right to form and to join trade unions for the protection of his interests.

Article 21: Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 22: Everyone has the right to social security and to the realization, through national effort and international co-operation, of the economic, social and cultural rights and freedoms stated in this Declaration.

Article 23: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to education.

Article 26: Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and vocational education shall be made generally accessible and higher education shall be equally accessible to all on the basis of merit.

Article 27: Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Article 28: Everyone has the right to a social order which makes possible the realization of the rights and freedoms set forth in this Declaration.

Article 29: Everyone has duties to the community in which alone the free and full development of his personality is possible.

Article 30: Nothing in this Declaration may be interpreted as authorizing any State, group or person to engage in any activity aimed at the destruction of any of the rights and freedoms set forth herein, or at their limitation by any means whatsoever.





HUMAN RIGHTS ∈ CORE VALUES

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 28 November 2019

ARTICLE 1 MISSION, COMMITMENTS AND CORE VALUES

(b) CORE VALUES

In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN:

(viii) Subject to the limitations set forth in Section 27.2, within the scope of its Mission and other Core Values, respecting internationally recognized human rights as required by applicable law. This Core Value does not create, and shall not be interpreted to create, any obligation on ICANN outside its Mission, or beyond obligations found in applicable law. This Core Value does not obligate ICANN to enforce its human rights obligations, or the human rights obligations of other parties, against other parties.

BUT...

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 28 November 2019

Section 27.2. HUMAN RIGHTS

(a) The Core Value set forth in Section 1.2(b)(viii) shall have no force or effect unless and until a framework of interpretation for human rights ("**FOI-HR**") is (i) approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2, with the CCWG Chartering Organizations having the role described in the CCWG-Accountability Charter, and (ii) approved by the Board, in each case, using the same process and criteria as for Work Stream 1 Recommendations.>

WS2 € ACCOUNTABILITY

WS2 - Enhancing ICANN Accountability Home

Utworzone przez Michael Cashin, ostatnia modyfikacja Brenda Brewer w paź 23, 2019

As indicated in the [CCWG-Accountability Charter](#), the CCWG-Accountability has divided its work into two Work Streams:

- **Work Stream 1:** focuses on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;
- **Work Stream 2:** focuses on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

To view a full list of upcoming meetings, see [Meetings](#).

[WS2 DASHBOARD](#)

ANNOUNCEMENTS:

24 June 2018 | CCWG Accountability FINAL REPORT

25-28 June 2018 | [ICANN62 - Panama](#)

- [CCWG ACCT Wiki page](#)

10-15 March 2018 | [ICANN61 - San Juan](#)

Use the page tree below to view the index of pages on the [CCWG-Accountability Wiki](#). To search for a page, use the search box below.

Szukaj

[Rozwiń wszystkie](#) [Zwiń wszystko](#)

- › [Implementation](#)
- [Final Report](#)
- [Charter](#)
- › [Members & Participants](#)
- [Documents](#)
- › [Meetings - WS2 Plenary](#)

HUMAN RIGHTS € WS2

WS2 SubGroup Topics

Utworzone przez Brenda Brewer, ostatnia modyfikacja paź 07, 2016

This Adobe Connect Room is open for **Subgroup** meetings to any and all silent observers: <https://participate.icann.org/mssi-projects/>

Google Doc Meeting Schedule: [HERE](#)

SubGroup Topics	Wiki Page Link
Diversity	https://community.icann.org/x/jhWOAw
Guidelines for Good Faith Conduct	https://community.icann.org/x/nhWOAw
Human Rights	https://community.icann.org/x/kBWOAw
Jurisdiction	https://community.icann.org/x/khWOAw
Ombudsman	https://community.icann.org/x/lhWOAw
Reviewing CEP	https://community.icann.org/x/nBWOAw
SO/AC Accountability	https://community.icann.org/x/lBWOAw
Staff Accountability	https://community.icann.org/x/mhWOAw
Transparency	https://community.icann.org/x/mBWOAw

[HTTPS://ICANNHUMANRIGHTS.NET/](https://icannhumanrights.net/) - CCWP-HR

MEETING NOTES | ARCHIVES | CALENDAR | MAILING LIST

ICANN HUMAN RIGHTS

NEWS | DOCUMENTS | GLOSSARY | CONTACT

- Diversity ●
- Due process ●
- Economic & social rights ●
- Freedom of Association ●
- Freedom of Expression ●
- Privacy ●
- Right to Security ●

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Summary report of
the first Human Rights
Impact Assessment for
the ICANN organization

commissioned by



FOCUS ON HUMAN RIGHTS

2019

Löning

Human Rights &
Responsible Business

About Löning – Human Rights & Responsible Business

Founded in 2014, Löning – Human Rights & Responsible Business is a Berlin-based human rights consultancy and think tank. With our diverse team, we support global companies and organizations step-by-step as they integrate respect for human rights into their strategies and daily operations. By providing a structure for the process of human rights due diligence, we help organizations navigate through the process and ensure it is compatible with international standards. We look at facts impartially and comprehensively, tackling difficult issues and providing practical tailored recommendations for action.

The core project team:

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About ICANN

ICANN's mission is to help ensure a stable, secure, and unified global Internet. To reach another person on the Internet, you need to type an address – a name or a number – into your computer or other device. That address must be unique so computers know where to find each other. ICANN helps coordinate and support these unique identifiers across the world. ICANN was formed in 1998 as a not-for-profit public-benefit corporation with a community of participants from all over the world.

ICANN's Global Presence

ICANN has evolved and rapidly expanded in the last few years, increasing its physical footprint and achieving greater global outreach. The ICANN organization (hereinafter "ICANN org") operates in 33 different countries with a unique workforce – a total of 397 staff members, with 318 based in an office and 79 working remotely in affiliation with a regional office or engagement center.



Authors: Sally Costerton, Sr
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02 Jul 2020

Status of ICANN org's Human Rights Impact Assessment Recommendations Implementation



ICANN org has implemented nearly half of all recommendations in the year since publishing its first-ever internal [Human Rights Impact Assessment \(HRIA\)](#). The focus has been on improving relevant processes, practices, and policies that may impact human rights concerns within the areas under review. Building on this progress, ICANN org will implement additional work in conjunction with, and as a part of, ICANN's ongoing plans to improve organizational processes and procedures. ICANN org affirms its commitment to incorporate this work into the overall culture of ICANN in order to uphold the positive human rights impacts of our work and mitigate negative impacts, wherever possible.

Specific examples of ICANN org's efforts during this past year include:

- Implemented International Organization for Standardization [ISO 3100](#)-based framework for managing risks at each ICANN meeting location
- Increased awareness about travel security through staff blogs and communications
- Enhanced pre-meeting training for staff
- Updated Physical [Security Program](#) framework to reflect staff and visitor privacy issues
- Incorporated questions about human rights to an annual third-party managed ICANN Org Employee Engagement Survey (e.g. questions regarding equal and fair treatment)

CURRENTLY UNDER DISCUSSION: HRIA TOOL

(LINKED TO THE CPWG AGENDA)

HERE: USED FOR THE GNSO HRIA

Link to Google Doc: https://docs.google.com/spreadsheets/d/1EKpMc8kIZLJE2AU78q5_oJhGbr7bWpQ5w7D5/edit#gid=853107611

PDP Topic	Short Description	Description	Negative Impact Scenario(s)	Impacted Groups	Severity of Impact	Positive Impact Scenario(s)	Salient Human Rights	Relevant CCWG Focus	Recommendation	Relevant Links		
Appeals	General lack of appeals mechanism	IRP is very formal (lawyers on both sides) expensive, and long takes anywhere from 6-18 months. Also only covers procedural ground, not actions made on substantive / technical grounds.	Under-resourced or inexperienced applicants have no access to due process or recourse.	- Minority / local communities - Not-for-profits - Global South applicants	High							
Link to Google Doc: https://docs.google.com/spreadsheets/d/1EKpMc8kIZLJE2AU78q5_oJhGbr7bWpQ5w7D5/edit#gid=853107611												
PDP Topic	Short Description	Description	Negative Impact Scenario(s)	Impacted Groups	Severity of Impact	Positive Impact Scenario(s)	Salient Human Rights	Relevant CCWG Focus	Recommendation	Relevant Links		
Applicant Guidebook	Selection criteria	Selection criteria in Applicant Guidebook too general and not interpreted consistently	Application unsuccessful as a result of irregular processes or knowledge asymmetries	- Minority / local communities - Not-for-profits	Low							
Applicant Support Program	Fee / cost information	Applicants not provided with sufficient information on overall fees for costs	Applicants under-budget or over-commit resources	- Minority / local communities - Not-for-profits	High	Dispute Resolution	Redress	No effective redress mechanism exists for ICANN dispute resolution processes.	Affected parties do not receive redress for abuses	- All (general) Accountability	Ensure availability of effective and accessible redress mechanisms.	
Applicant Support Program	Deadline notice	Applicants not provided with sufficient information regarding deadlines and time required to complete process	Application unsuccessful due to missed deadlines	- Minority / local communities - Not-for-profits	Medium	Dispute Resolution	Appeal mechanisms	No effective substantive appeal mechanism exists for ICANN dispute resolution processes.	Affected parties or their legitimate representatives have no access to recourse and can't raise concerns when they believe public interest or human rights commitments have not been met.	- All (general) Accountability	Ensure availability of effective and accessible substantive appeal mechanisms.	
Applicant Support Program	Notice of scoring practice	Unclear to applicants what criteria / which scoring practice will be used in selection practice	Application unsuccessful as a result of knowledge asymmetries	- Minority / local communities - Not-for-profits	Medium	Dispute Resolution	Liability for damages	Nobody (not the experts, service provider, ICANN, or their respective employees) are liable for any damages or injunctive relief	No attribution of responsibility for fair and adequate examination of cases.	- Procedural fairness / due process	Develop and enforce fair trial standards, which include provisions for independence, accountability, and transparency	
Application Process	Changes to application	Unlimited changes permitted to application fields after submission	Applicant modifies application fields 18A (mission and purpose) and 18B (benefit to registrants + internet users), challenging/intimidating community oversight		Medium	Dispute Resolution	Proliferation of processes	Proliferation of processes (UDRP, URS, PIDRP, RRD, TDRP, PIDRP...) makes it unclear where and how to resolve disputes	Rights-holders are unable to lodge grievances due to lack of procedural coherence	- Procedural fairness / due process Diversity	Establish single dispute resolution center within ICANN based on substantive and procedural grounds.	
Community Priority Evaluation	Panelist affiliations	CPE Panelists' professional background and affiliations not disclosed	Certain applicants may be favored, better understood, etc based on the composition of the panel	- Minority / local communities	High	Dispute Resolution	Remote hearings	Disputes resolved without an in-person hearing. Panel may decide to hold such a hearing only in extraordinary circumstances.	Lack of community involvement / oversight; applicants unable to present responses to counter-arguments	- Procedural fairness / due process - Effective remedy	Clearly define what constitutes "extraordinary circumstances"	
Community Priority Evaluation	Insufficient accountability mechanisms	Proliferation of insufficient accountability mechanisms: Reconsideration Request, Cooperative Engagement Process, Independent Review Process, Ombudsman	Applicants have no access to effective grievance mechanisms / remedy	- Minority / local communities - Not-for-profits	High	Dispute Resolution	Insufficient documentation	Dispute Resolution Service Providers' determinations not uniformly justified or documented	Difficult for community to process and track decisions; unpredictable / unfair outcomes	- Procedural fairness / due process Accountability	Common template used for all DRPs for quality assurance https://icw.gdn	
Community Priority Evaluation	Ultimate responsibility	Unclear attribution of responsibility for decision-maker (ICANN or external contractors?)	CPE panel not accountable for decisions; escalation path unclear		High	Dispute Resolution	Lack of guidelines	Implementation guidelines for service providers and evaluators do not specify which rights should be considered throughout the process	Freedom of Expression and other rights not properly considered throughout evaluation / objection processes, Requests for Reconsideration, and/or Independent Review Panel	- Freedom of Expression - All (general) Accountability	Specific implementation guidelines should be developed to ensure consistent respect for human rights in evaluation and dispute resolutions	
Community Priority Evaluation	Public Interest commitments	Unclear to what extent CPE panelists are aware or acting on behalf of ICANN's public interest commitments	CPE panelist undermines ICANN's public interest commitments		High	Dispute Resolution	Automatic evaluation	Policy principles and legitimacy of interests evaluated in isolation.	Skewed outcomes where approved policies goals are incongruent or otherwise seem in conflict	- All - Procedural fairness / due process	Policy principles should be evaluated through a balancing of legitimate interests, with respect for fundamental human rights paramount	
Community Priority Evaluation	CPE panel composition	CPE panel experts do not have relevant background in community and human rights	Narrow interpretations of "public interest" disadvantage certain applicants in the evaluation process	- Minority / local communities - Not-for-profits	Medium	Fees / Costs	High costs	Fees and costs set in EURD at level appropriate for commercial market players	Under-resourced applicants from smaller communities or developing economies priced out of acquiring TLDs	- Minority / local communities - Not-for-profits - Global South	Equal treatment / non-discrimination Transparency	Variable fees reflecting ICANN's global public interest should be supported.
Community Priority Evaluation	Conflict of Interest	CPE panels have insufficient safeguards against conflict of interest	Applicants disadvantaged in the evaluation process; less opportunity for community oversight and action	- Minority / local communities - Not-for-profits	Medium	Predictability / Framework	IRT composition	Implementation Review Team mostly consists of representatives from registries and registrars	Members of the Implementation Review Team make decisions that negatively impact human rights	- Freedom of Expression Human Right	Ensure that have inadequate knowledge and training in human rights	
Community Priority Evaluation	Language and accessibility	CPE panels held online in UN languages using a form of discourse approaching US legalese	Community applicants promoting diversity and genuinely serving the global public interest have uneven bargaining power	- Non-UN language communities	Medium	Public Interest	Definitions and Interpretations	Global public interests interpreted inconsistently in ICANN decision-making processes	Conflicting definitions or interpretations render the term moot and ultimately undermine ICANN's public interest commitments and standards for accountability	- Groups actually serving the global public interest	Harmonize definitions and interpretations of Public Interest, taking the ICANN Human Rights Core Value and other WS2 recommendations into consideration.	
Community Priority Evaluation	Inadequate documentation	CPE panels' research supporting findings or argumentation not adequately presented in determination	Applicants have fewer grounds for appeal		Medium	Public Interest	Spec 11	ICANN's "Spec 11" public interest commitments do not include mention of human rights	Salient rights (FoE, privacy, association, etc) not considered	All (General) Human Right	Update Spec 11 to reflect ICANN's Human Rights bylaw	
Community Applications	CPE & community objections	Applicants aren't permitted to pursue both Community Objections and Community Priority Evaluations for the same string	Valid communities are denied access to different safeguards provided by each process		Low	Public Interest	Limited Public Interest Objections	Limited Public interest objections can be filed if TLD strings are "contrary to general principles of law for morality and public order." ALAC provided with funds to do so.	gTLD applicants and end users aren't aware of this mechanism and can't protect their rights.	All (General) Accountability	Make use of this tool? https://icw.gdn	
Public Interest	PICs	Striated "Public Interest Commitments" (for example, mandatory vs voluntary PICs)	Oversight more difficult; false sense of security; more room to maneuver and get around commitments		Medium						Consolidate Public Interest Commitments; ensure that they're in-line with international human rights standards and best practices.	



QUESTIONS AND CONCERNS:

- What is the AtLarge position on WS2 implementation wrt HR / the HRIA tool?
- How easy would it be for (commercial) end users to use the HRIA tool?
- How does one do it „correctly” - differing interpretations and applications of HR treaties and customary law?
- Who would assess whether the HRIA was done „correctly”?
- Who would cover the cost of a HRIA?
- Would AtLarge want to get more effectively involved? If so, how?
- GAC/AtLarge/CCWP-HR working experience



THANK YOU
FOR
YOUR
ATTENTION.

Joanna Kulesza
ALAC/EURALO/CBWG