

# Human Rights at ICANN

A story

*Why a story  
and not a history?*

NARALO Monthly Call

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12 April, 2021

Though presented by a member of the ICANN Board of Directors, this is not a presentation of the ICANN Board's position, but rather the recollections and reflections of a single member.

## Plan for the talk

- Early days of human rights discussion at ICANN
- gTLD round of 2012 and the discussion of human rights
- Human rights and the Transition Period
- Where we are now
- Opportunities in the continuing saga
- Walk through the session's advertised questions
- Discussion

When the Perfect Plan Crumbles, the Adventure Begins [Jarrett, Valerie]

## Early Days

In the beginning human rights was not an explicit topic of conversation.

Privacy was an early HR concern, one that continues through to today.

EU and National Privacy Councils sent someone to ICANN most years to discuss ICANN and privacy laws starting in 2004.

Succession of efforts, Baby steps.

Policy advocates came into ICANN over the years, and worked for a time before moving on. Many left achievements as they moved on.

One of the earliest achievements was inclusion of rights as an optional issue in PDP issues reports: *What is the economic impact or effect on competition, consumer trust, privacy and other rights*

## GTLD Round of 2012

(2007) New gTLDs Final Report Rec 3 Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. *Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industrial Property (in particular trademark rights), the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (in particular freedom of speech rights).*

(2010) Rec 6 discussion, recommended reference to various Human Rights instruments in AGB. Resulted in Limited Public Interest - consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order. AGB 3.5.3

(2014) External Paper on ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values

(2016) COE Applications to ICANN for Community-based New Generic Top Level Domains (gTLDs) - Opportunities and Challenges from a human rights perspective

The gTLD round of 2012 saw the discussion of human rights move beyond privacy to a discussion of balancing values and human rights in making policy decisions.

## WS1

Change to Articles of Incorporation: Any determination of such global public interest shall be made by the multistakeholder community through an inclusive bottom-up multistakeholder community process.

### Change to bylaws

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.

## Transition Period

### WS2 (2018)

#### Framework of Interpretation for the ICANN Bylaws on Human Rights

Each of words and phrases, just about, in the Bylaws is discussed.

UN Guiding Principles for Business and Human Rights was discussed, but was not agreed on as to its suitability for interpreting the Bylaw, but was accepted as a possibly useful guide in applying the Bylaw.

## Where we are now

### FOI States:

In order to put the Human Rights Core Value into practice, ICANN the community as well as the organization will need to consider how to reflect this Core Value in their policy and operational processes. Each SO and AC should take the Core Value into consideration in its policy development or advisory role. It is up to each SO and AC, and ICANN the organisation, to develop their own policies and frameworks to fulfill this Core Value. In doing so, the SOs and ACs, as well as ICANN the organization, should also take into account the requirement to balance the Core Values

### HRIA 2019.

Midway through implementation.

ICANN org continues to enhance its operational activities to best meet international standards and best practices in the spirit of the HRIA recommendations.

### Global Public Interest

Framework includes Human Rights Pilot in the Board this year

Helped by discussion in the PDP  
Helped by advice and comments

With regard to PDP Issues reports, the following question is part of the request for an issues report:

*“What is the economic impact or effect on competition, consumer trust, privacy and other rights:”*

Requests and Comments or requests provide an opportunity to develop the theme of impact analysis

To GNSO

## Opportunities for input

To Board

The requirement on the Board to include a public interest analysis in making decisions allows for the opportunity for Advice and Public Comments on issues related to Public Interest.

Policy recommendation would be analysed in respect to this Advice and comments to determine whether the issues were addressed adequately by the recommendations and their rationale.

## The Questions

Can you provide a brief history on when the discussion on Human Rights started at ICANN? What was the motivation?

How well is the concept of Human Rights known within the ICANN community and specially At-Large?

How does the DNS relate to HRs? Where is the intersection?

Can you give an example of how HR has been implemented at ICANN?

Are HRs considered during the policy development process?

What is your personal opinion on how well (or poorly) HRs has been implemented at ICANN?

Has the COVID-19 pandemic had any effect on the implementation of human rights?

Where can we find more information about HRs at ICANN?



## References

COE Paper (Dr. Monkika Zalnierute, Thomas Schneider 2014)

<https://rm.coe.int/icann-s-procedures-and-policies-in-the-light-of-human-rights-fundament/168059673e>

Response <http://rm.coe.int/09000016805a5f60>

ICANN Human Rights FOI (2018):

<https://www.icann.org/en/system/files/files/ccwg-acct-ws2-annex-3-hr-foi-final-recs-27mar18-en.pdf>

ICANN HRIA (2019) : <https://www.icann.org/en/system/files/files/summary-report-hria-15may19-en.pdf>

GNSO Policy Development Process Manual (24 October 2019)

<https://gns0.icann.org/sites/default/files/file/field-file-attach/annex-2-pdp-manual-24oct19-en.pdf>

ICANN Blogs:

<https://www.icann.org/en/blogs/details/status-of-icann-orgs-human-rights-impact-assessment-recommendations-implementation-2-7-2020-en>, <https://www.icann.org/en/blogs/details/continuing-focus-on-human-rights-19-1-2021-en>

<https://icannhumanrights.net/> Cross-Community Working Party on ICANN and Human Rights (CCWP-HR) is a forum for research and discussion on the relationship between human rights and global DNS coordination. Includes good bibliography <https://icannhumanrights.net/index.html%3Fp=178.html>

Global Public Interest toolkit - <https://community.icann.org/display/prjxplrpublicint/GPI+Toolkit>

## Extras

(2010)

[https://gnso.icann.org/sites/default/files/filefield\\_12536/pdp-initial-report-31may10-en.pdf](https://gnso.icann.org/sites/default/files/filefield_12536/pdp-initial-report-31may10-en.pdf)

10. Impact Analyses Recommendation

13. The PDP-WT recommends that the Policy Development Process Manual or Guidebook describe the option for the GNSO Council to require that an impact analysis be conducted if appropriate or necessary prior to the vote for the initiation of a PDP. Such an impact analysis could include the assessment of the economic impact, the impact on competition, the impact on consumer choice and/or protection, etc.

GNSO Operating Procedures for Issues Reports includes:

What is the economic impact or effect on competition, consumer trust, privacy and other rights:

AGB Module 3 Dispute Resolution Procedures Applicant Guidebook | version 2012-06-043-21

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)
- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

## Human Rights relevant to ICANN

- Diversity
- Due Process
- Economic & Social Rights
- Freedom of Association & Assembly
- Privacy
- Right to Security

<https://icannhumanrights.net/>

### Also

- Accessibility
- Access to information
- Rights to personal property
- Right to fruit of labor

Assorted communications, comments and discussions

Not all HR related decisions and actions come tagged as HR, even when motivated by HR related concerns.