

Human Rights Gap Analysis for ICANN's Phase 1 Initial Report on the Internationalized Domain Names EPDP

Final Report

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Acknowledgments

Many people helped with this project, and we are grateful to everyone who put in their time and effort to make it a success.

In particular, thanks to members of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR) and Non-Commercial Stakeholder Group (NCSG) for their contributions to early versions of the HRIA methodology, the Non-Commercial Stakeholder Group Policy Committee and membership, and various individual members for providing comments on earlier versions of the analysis.

About the CCWP-HR

The CCWP-HR is a multistakeholder forum currently chartered as a sub-entity of the Non-Commercial Stakeholder Group (NCSG) within the Generic Name Supporting Organisation (GNSO) but remains open to the rest of the Internet Corporation for Assigned Names and Numbers (ICANN) community for research and discussion on the relationship between human rights and global Domain Name System (DNS) coordination. This is related — but not limited — to policies, procedures, and operations, with a particular focus on ICANN's responsibility to respect human rights. The primary goal of the CCWP-HR is to provide information, facilitate dialogue, and make suggestions to ICANN Org, its Board of Directors, and the ICANN community on ways to better harmonize ICANN's policies and procedures with internationally recognized human rights laws and corporate social responsibility standards. Membership is open to any interested individual, regardless of affiliation.

About the Authors

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Maryam Lee has 10 years of experience in human rights advocacy, policy making, and capacity building to nurture a progressive society. She is trained as an educator and is passionate about development. She is currently working on business and human rights in digital spaces in an effort to harmonize human rights and technology.

Introduction

In May 2023, ICANN published the Phase 1 Initial Report on the Internationalized Domain Names Expedited Policy Development Process (EPDP).

We welcome ICANN's decision to release the document in its entirety, in line with Workstream 2 Recommendations on ICANN Transparency.

We welcome most of the recommendations in the Initial Report, but urge for amendments to make it easier for Community-based TLD strings and in order to ensure that the privacy rights of registrants are respected.

Recommendations that we support in full without amendment

1) Preliminary Recommendations 3.10, 3.12, 3.11, and 3.14:

We welcome the recommendations, as they aim to ensure that the allocation of gTLD strings is affordable, including for applicants from the Global South, and that applicants are treated on an equal basis regardless of financial capability.

2) Preliminary Recommendation 3.18:

It states, "The Reserved Names list must not be expanded to include variant labels."

We welcome the recommendation because it enables the right to free expression, including the right to information. The Reserved Names list includes names that are considered harmful to the technical operation of the Internet. Expanding the list without proper analysis or justification to include variant labels would unnecessarily limit registrants in instances where these variants do not pose a threat to the operation of the Internet.

Recommendations that we support with some amendments

1) Preliminary Recommendation 3.16:

It states, "An applicant for a Community-based TLD string and its allocatable variant label(s) is required to submit a written endorsement of its applied-for primary IDN gTLD string and applied-for allocatable variant label(s) from established institution(s) representing the community that the applicant has named."

First, the definition of "established institution" is unclear, whether this means recognition from a State entity or not. This requirement may disproportionately impact communities that are not recognized by their governments or face other barriers to legal identity. Across the world, not all communities have a single

institutional representation, and there may even be competing ones. In such instances, it is unclear how ICANN would decide which institution is "established".

We thus recommend that this section be deleted, as it would limit smaller communities with no power to get recognition from a State entity.

2) Preliminary Recommendation 8.2:

It states, "In order to encourage a positive and predictable registrant experience, a framework for developing guidelines for the management of gTLDs and their variant labels at the top-level by registries and registrars must be created during implementation."

The recommendation is not clear on who would be responsible to develop the framework and also does not give clear timelines for its development. We thus urge amendments to the recommendation to ensure that this framework is developed and agreed prior to implementation, in order to provide full information to potential applicants for gTLD strings, and also in order to ensure that this framework is developed in a multistakeholder manner with full transparency to the ICANN community.

3) Implementation Guidance 3.9:

It states, "ICANN org may conduct research that helps identify additional standards or tests that should be used to evaluate the technical and operational capability to manage the variant label set."

The Implementation Guidance does not provide any explanatory information regarding the research proposed and does not state how the outcomes of this research will be applied. Given that these outcomes may ultimately be used as a basis for approving or denying requests for variant TLD strings, this research is of significant interest to the ICANN community and has implications for the rights of registrants. We thus urge amendments to stipulate that ICANN org will communicate to the ICANN community clearly defined timeframes, processes, and opportunities for public input before engaging in any research activities under this Implementation Guidance.

Preliminary Recommendations 7.7, 7.8, 7.9, 7.12 and 7.13

We note that there are various Recommendations (Preliminary Recommendation 7.7, 7.8, 7.9, 7.12, and 7.13) which discuss Registry Transition or Change of Control process and therefore bear implications for the right to privacy.

Unfortunately, none of these recommendations are worded in accordance with internationally-recognised data protection principles. For example, Preliminary

Recommendation 7.8 states, “If the registry operator of an IDN gTLD changes its back-end registry service provider, that IDN gTLD and any delegated variant label(s) associated with that IDN gTLD must simultaneously transition to the new back-end registry service provider.” This formulation creates the risk that personal data is retained in the old registry following the transition, increasing the exposure of registrants to the potential for breaches or misuse.

We therefore urge ICANN to redraft these recommendations in full accordance with applicable data protection principles, including purpose use limitation, data retention limitation, data destruction, and secure data transfer.

Recommendations that require harmonisation.

Finally, we note that there are two Preliminary Recommendations that are contradictory. Preliminary Recommendation 7.1 states that, “future IDN gTLD along with its variant labels (if any) must be subject to one Registry Agreement”. Preliminary Recommendation 7.3 states: “Any existing IDN gTLD registry operator from the 2012 round that applies for its variant labels in the future must be required to enter into a separate, new Registry Agreement for the newly approved variant label(s), while maintaining the existing Registry Agreement for its existing IDN gTLD. “

We urge harmonization to ensure that all contracts are treated the same, whereby any existing IDN gTLD registry operator from the 2012 round that applies for its variant labels in the future will be required to amend their existing contracts to include the variant labels. This will improve transparency for registrants, particularly those who are not deeply familiar with ICANN documentation.

Conclusion

CCWP-HR is grateful to have participated in this public comment process in accordance with the November 2019 ICANN Board approval of the FOI-HR.

We welcome feedback on any aspect of this initiative and extend an open invitation to any interested individuals to get involved in the next phase of work. To become a member of the Cross-Community Working Party on ICANN and Human Rights (CCWP-HR), visit [the CCWP-HR page](#) on the ICANN Community website.