

Cross Community Working Party
on
ICANNs Corporate and Social Responsibility
to Respect Human Rights

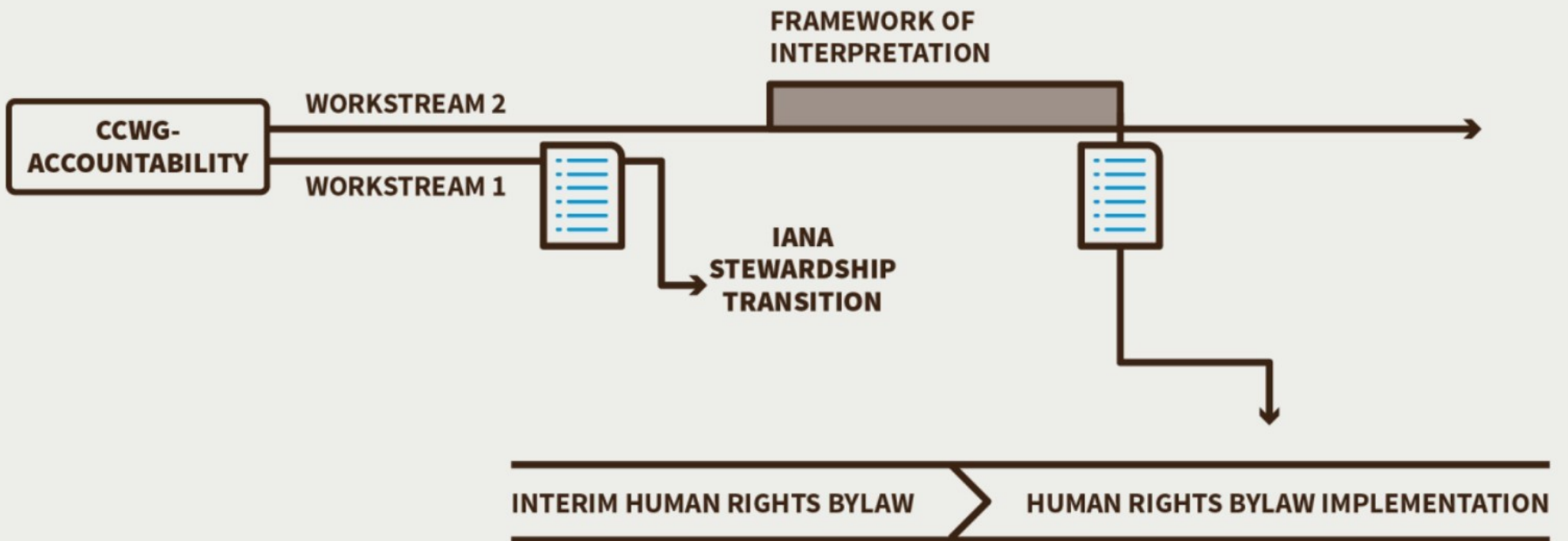
November 3 17:00 – 18:30
ICANN57 Hyderabad
Chair Niels ten Oever

Agenda

- **Introductions**
- Update Human Rights in Work Stream 2
 - Human Rights Subgroup
 - Transparency Subgroup
 - Diversity Subgroup
- Presentation WHOIS report (presenter Aarti Bhavana / CCG Delhi)
- Presentation new gTLD impacts on HR (presenter Vidushi Marda / CIS)
- Planning new work
 - Website
 - Publications
 - Outreach
 - Calls & Subgroups
- AOB

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Objective:

Develop a Framework of Interpretation for
Human Rights Bylaw

Human Rights Bylaw

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.

Section 27.2

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.

(b) No person or entity shall be entitled to invoke the reconsideration process provided in Section 4.2, or the independent review process provided in Section 4.3, based solely on the inclusion of the Core Value set forth in Section 1.2(b)(viii) (i) until after the FOI-HR contemplated by Section 27.2(a) is in place or (ii) for actions of ICANN or the Board that occurred prior to the effectiveness of the FOI-HR.

Work done thusfar:

- Documented the historical context of the discussions on ICANNs human rights bylaw.
- Analyzed the UN Guiding Principles on Business and Human Rights.
- Developed a draft structure for the FOI-HR.
- Formed an FOI-HR drafting team

Current FoI-HR draft structure

- ‘within the scope of its Mission’
- ‘within the scope of 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’ [against other parties]
- ‘or the human rights obligations of other parties, against other parties’

Description / Scope:

Develop a framework of interpretation for human rights bylaw, ("FOI-HR"), which was adopted in Work Stream 1. (Bylaws Section 1.2(b)(viii))

Rapporteurs: Niels ten Oever, Nigel Roberts

of signed-up Active Participants: 68

of signed-up Observers: 55

Useful links:

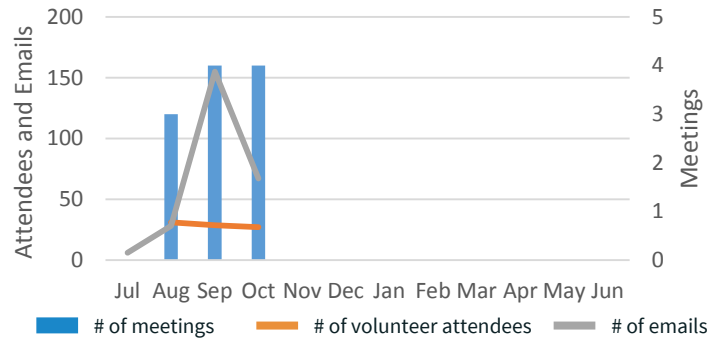
Wiki: <https://community.icann.org/display/WEIA/Human+Rights>

Mailing List archive: <http://mm.icann.org/pipermail/ws2-hr>

Meetings schedule: [WS2-Master Call Schedule](#)

Activity:

Total # of meetings:	11
Total # of emails:	256
Average participation rate:	43%



Work Plan:

Start work	Aug	✓
Document questions to answer	Sep	✓
Document work to do	Oct	✓
Produce draft for subgroup	Nov-Jan	
Produce draft for CCWG	Feb	
Produce draft for PC	March	
Public Comment	Apr	
Revise draft	May	
CCWG approval	Jun	

Updates:

- ✓ Documented the historical context of the discussions on ICANNs human rights bylaw.
- ✓ Analyzed the UN Guiding Principles for Business and Human Rights.
- ✓ Developed a draft structure for the FOI-HR.
- ✓ Formed an FOI-HR drafting team.

Upcoming Activities:

- Drafting Team develops an iterative draft FOI-HR that is being discussed with all participants during weekly calls (Tuesdays 19:00 UTC)
- Reach consensus on individual parts of the draft FOI-HR

Open Items:

- The current discussion in the subgroup focuses on the definition of:
 - 'respecting human rights'
 - 'applicable law'

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Transparency

Reporting Period:
OCTOBER 25

Progress:  40%

Status: On-track

Description / Scope:

Our research focuses on the following three areas:

1. Enhancements to ICANN's existing Documentary Information Disclosure Policy (DIDP).
2. Proactive Disclosure Policies (including interactions with governments and Board deliberations).
3. Improvements to the existing whistleblower policy.

Rapporteurs: Chris Wilson, Michael Karanicolas

of signed-up Active Participants: 32

of signed-up Observers: 29

Useful links:

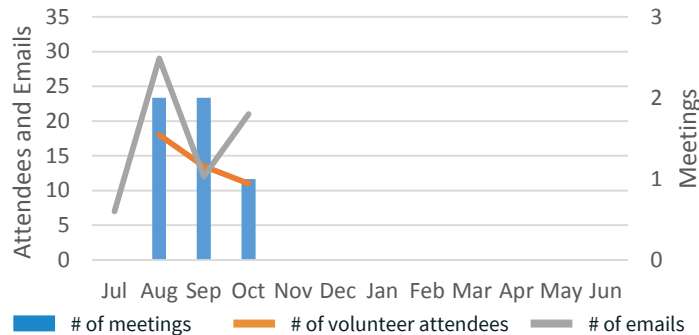
Wiki: <https://community.icann.org/x/mBWOAw>

Mailing List archive: <http://mm.icann.org/pipermail/ws2-transparency/>

Meetings schedule: [WS2-Master Call Schedule](#)

Activity:

Total # of meetings:	5
Total # of emails:	69
Average participation rate:	44%



Work Plan:

Start work	Aug	✓
Document questions to answer	Sep	✓
Document work to do	Oct	✓
Produce draft for subgroup	Nov-Jan	✓
Produce draft for CCWG	Feb	✓
Produce draft for PC	March	
Public Comment	Apr	
Revise draft	May	
CCWG approval	Jun	

Updates:

- The subgroup began by soliciting general areas for investigation. Participants then provided specific improvements they wanted to see.
- Based on this, volunteers developed a draft Report, including Rec's. The Report was presented to the subgroup on Oct 21 and, after some modifications, circulated to the CCWG for first reading on Oct 25.

Upcoming Activities:

- We have identified a few areas that require further research and examination, and plan to add those into our draft Report.
- We also look forward to further feedback from the CCWG on our draft, and will refine our Recommendations further through the face to face meetings in Hyderabad.

Open Items:

- All Recommendations are still being discussed.
- We require significant more examination of ICANN's proactive disclosure policies.
- What rules should apply to non-disclosure agreements?
- Who should have access to the whistleblowers' hotline?
- Does the review/IRP mechanism provide a sufficient remedy against refusals?

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Description / Scope:

With reference to recent discussion the group is looking at diversity mechanisms that enhance accountability within ICANN (Leadership, staff and community).

Rapporteurs: Fiona Asonga, Rafik Dammak

of signed-up Active Participants: 36

of signed-up Observers: 44

Useful links:

Wiki: <https://community.icann.org/display/WEIA/Diversity>

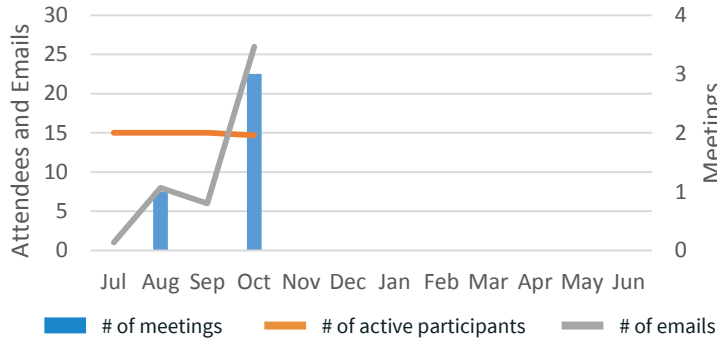
Mailing List archive: <https://mm.icann.org/mailman/listinfo/ws2-diversity>

Meetings schedule: [WS2-Master Call Schedule](#)

Activity:

Total # of meetings:	4
Total # of emails:	41
Average participation rate*:	41%

(* Participation rate = (# of active participants in a call) / (# of signed-up participants)



Work Plan:

Task	Month	Status
Start work	Aug	✓
Document questions to answer	Sep	
Document work to do	Oct	
Produce draft for subgroup	Nov-Jan	
Produce draft for CCWG	Feb	
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Updates:

- The diversity group has over the last 3 weeks been reviewing a strawman document prepared by the co-rapporteurs in an effort to define the scope.
- Questions raised by rapporteurs are being discuss within the group

Upcoming Activities:

- Workgroup conclusion on definition, scope and key elements of diversity around which questions need to be prepared for further discussion with the full CCWG

Open Items:

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Human Rights & the WHOIS Policy

Aarti Bhavana

Kritika Bhardwaj

Centre for Communication Governance , Delhi

Purpose

Primarily, to contact registrant for:

- Technical issues with domain
- Intellectual Property concerns
- Law Enforcement concerns

Current WHOIS Policy

- Personal data required to register a domain name: name, postal address, email address, phone number, fax number and the technical, and administrative contacts
- Affirmation of Commitments- special reviews adopted in ICANN bylaws
- Contractual obligations

Current WHOIS Policy

- Open and public access to data (term of agmt +2 yrs)
- Privacy and proxy services

Right to Privacy

- Art 12 (UDHR), Art 17 (ICCPR)
- UN: rights offline = rights online
- Forced consent

Other affected Human Rights

- Security of person
 - Doxing
- Freedom of expression
- Freedom of assembly and association

Data Protection and WHOIS

- Conflicts between registrars' obligations under local data protection laws and WHOIS
- Current procedure to address this is ad-hoc, inadequate

Data Protection

- OECD Guidelines on the protection of Privacy and Transborder Flows of Personal Data (1980 and 2013)
- EU Data Protection Directive (1995) and the General Data Protection Regulation (2016)
- APEC Privacy Framework (2004)
- Similar principles; influenced national data protection statutes

OECD Guidelines – Principles

1. Collection Limitation – legitimate basis for collection; notice
 - distinction between collection and publication
2. Data Quality – relevant, up to date, accurate
 - public access undermines accuracy
 - determining retention period

Principles (continued)

3. Purpose Specification –

- current WHOIS purpose very broad
- beneficial use ≠ legitimate use
- distinction between collection and publication

4. Use Limitation – notice and opportunity to object

- public access automatically defeats use limitation

Principles (continued)

5. Security Safeguards – protecting data from accidental *as well as* deliberate misuse
 - systems for authenticated or layered access
6. Openness – open and transparent policies; defining purpose

Principles (continued)

7. Individual Participation – accessing data held about oneself
8. Accountability –
 - enforceable rights against ICANN or registrars in case of negligence or wilful disregard for protection of personal information – irrespective of actual harm

Privacy by Design

- Organizational methods to safeguard privacy
- Preventive; not remedial
- Embedding privacy into architecture and design – RDAP or similar proposals for layered access

Potential for reform

- PDP on Next-Generation gTLD Registration Directory Service (RDS)- open Working Group
- WHOIS Replacement: Registration Data Access Protocol (RDAP) – possibility of differentiated access

Thank you!

Contact: aarti.bhavana@nludelhi.ac.in
kritika.bhardwaj@nludelhi.ac.in

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New gTLD Subsequent Procedures

- Diversity, Accessibility, Participation
 - According to an ICANN study, the representation of the global community is limited within the new gTLD program. The current system may be unable to bridge this gap.
 - 1586 out of 1930 applicants for new gTLDs are from Europe and the US.
 - Applicant support directory
 - First Come First Serve
 - Internationalized domain names

Freedom of Expression

- gTLD String Evaluations: Content based decisions
- Community and Public Interest Objections: Challenges to definitions
- Censorship

Procedural Fairness

- Base Registry Contract
- Trademark Clearing House

Subsequent Procedures PDP

Work track 1: Overall process, support, outreach

Work track 2: Legal/regulatory

Work track 3: String Contentions, objections, procedures

Work track 4: Internationalized domain names

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The Internet Corporation for Assigned Names and Numbers coordinates the policy making and distribution of domain names and IP numbers. Often dubbed as the 'telephone book of the Internet', its decisions can have an impact on human rights.

ICANN & Human Rights

Privacy

Diversity

Freedom of expression

Due process

Freedom of association

Right to security

Economic & social rights



Our Charter

We seek to map and understand the issues and potential solutions related to corporate and social responsibilities of the Internet Corporation for Assigned Names and Numbers (ICANN), and this related, but not limited to policies, procedures and operations, we particularly focus on ICANNs responsibility to respect human rights. We build on a long term community engagement on this topic, further catalyzed with the publication of the paper '*ICANN's procedures and policies in the light of human rights, fundamental freedoms and democratic values*', as commissioned by the Council of Europe, and after sessions held in London, Los Angeles and Singapore. We seek to improve ICANN's measures to respect human rights in accordance with article 4 of ICANN's articles of incorporation and and have established a programme for corporate social responsibility. → [READ MORE](#)

Recent publications

Procedures and policies in the light of human rights, fundamental freedoms and democratic values - paper commissioned by the Council of Europe/ICANNs Corporate and Social Responsibility to Respect Human

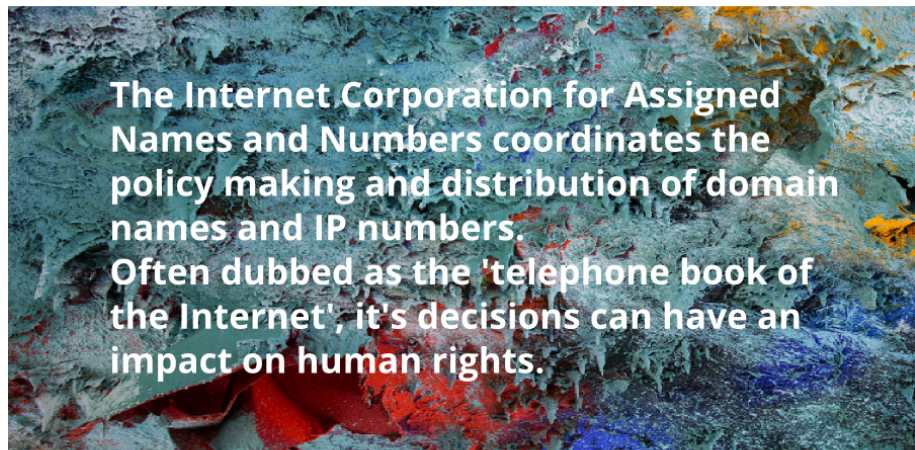
Procedures and policies in the light of human rights, fundamental freedoms and democratic values -Dendrogram by Article 19 - August 2016

What Is ICANN?

The Internet Corporation for Assigned Names and Numbers (ICANN /'aɪkæn/ eye-kan) is a nonprofit organization that is responsible for coordinating the maintenance and procedures of several databases related to the namespaces of the Internet.

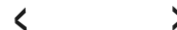
ICANN Glossary

PDP: Policy Development Process **GAC:** Governmental Advisory Committee **RP:** Independent Review Panel **GNSO:** Generic Names Supporting Organization **gTLD:** Generic top-level domain **IDNs:** Internationalized Domain Names **DIDP:** Documentary Information Disclosure Policy **DNSSEC:** xxxx **IGOs:** xxxx **INGOs:** xxxx **DCND:** Defined conditions of nondisclosure **WHO IS:** xxxx **RDAP:** Registration data access protocol **RPMs:** xxxx **DNSSEC:** xxxx **Ombudsman:** xxxx



[ICANN & Human Rights](#)

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- [Freedom of expression](#)
- [Due process](#)
- [Freedom of association](#)
- [Right to security](#)
- [Economic & social rights](#)



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Procedures and policies in the light of human rights, fundamental freedoms and democratic values - paper commissioned by the Council of Europe/ICANN's Corporate and Social Responsibility to Respect Human Rights paper by the CCCW (Cross Community Working Party) - October 2016

Dendrogram - June 2016.

Procedures and policies in the light of human rights, fundamental freedoms and democratic values - Dendrogram by Article 19 - August 2016

Procedures and policies in the light of human rights, fundamental freedoms and democratic values - paper commissioned by the Council of Europe/ICANN's Corporate and Social Responsibility to Respect Human Rights paper by the CCCW (Cross Community Working Party) - October 2016

→ [FURTHER READING](#)

Get involved

[Meeting notes](#)

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ICANN Announcements

Application Now Closed for the Second Security, Stability and Resiliency (SSR-2) Review Team

ICANN Submits Implementation Planning Status Report to NTIA

Additional IDN ccTLD Requests from India Successfully Pass String Evaluation

ICANN Quarterly Stakeholder Report – Register for the FY16 Q4 Call on 18 August
15 Successful Candidates Have Been Selected for NextGen@ICANN57

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