



Proposed Considerations concerning ICANN's Human Rights Core Value in the newly adopted ICANN Bylaws

Impact Assessment Evaluation
August 2017

INTRODUCTION

One of the outcomes of the Cross-Community Working Group on Enhancing ICANN's Accountability is that ICANN's Bylaws now include a Core Value that ICANN will respect human rights as required by applicable law. However, as outlined in section 27.2 of ICANN's Bylaws, this Core Value at Section 1.2(b)(viii) will only come into effect after a Framework of Interpretation (FOI) is "approved for submission to the Board by the CCWG-Accountability as a consensus recommendation in Work Stream 2" and then approved by the Board.

Within the CCWG-Accountability's Work Stream 2 effort, a subteam developed a proposed Framework of Interpretation for this human rights-related Core Value, and posted that FOI for [public comment](#). To assist in the consideration of the FOI, the ICANN Board [requested that the](#) ICANN organization conduct an initial assessment of the impact that the proposed FOI might have on ICANN's areas of operations.¹

This impact assessment evaluates how ICANN would be impacted based on a current understanding of the recommendations. If the ICANN organization's assumptions underlying the FOI recommendations are different than originally intended, the operational impacts on the organization might be different from those outlined in this document. This is a separate exercise from the ICANN organization's internal human rights impact assessment, for which ICANN is currently in the process of seeking vendors through an RFP.

¹ Complete language of the draft recommendation can be found at <https://www.icann.org/en/system/files/files/proposed-foi-hr-04apr17-en.pdf>

ASSESSMENT OF THE FOI AND CONSIDERATIONS REGARDING IMPLEMENTATION

In response to the ICANN Board's request on assessing how the FOI would impact ICANN's operations, the ICANN organization considered, across functions, how the FOI could be implemented. Fundamentally, the FOI does not appear to raise significant concerns in implementation.

Based on the understanding that neither the Core Value, the FOI nor the Considerations presented alongside the FOI are intended to impose obligations on ICANN, the FOI appears to strike a workable balance. The FOI identifies the complexity in relying on a single set of external guidelines to define how ICANN should respect human rights, and also the breadth of how applicable laws can guide ICANN's acts. Upon the Core Value becoming effective, ICANN will have to put into place practices to document how it balanced the core value of respecting human rights amongst and against the other core values. This is part of the Board's role in assessing if ICANN is fulfilling its obligations.

The area where the ICANN organization as well as the ICANN Community will be most impacted is in bringing in tools into the policy-making processes that ICANN facilitates so that the policy development takes into account human rights considerations. The ICANN Board cannot be solely responsible for identification of, or harmonization of concerns over, how policies developed through ICANN's processes respect human rights. If the FOI continues in its present form, the Board encourages the GNSO, ccNSO and the ASO to consider how, on any policy recommendation presented, to provide documentation to the Board about the human rights considerations raised and how they have been addressed within the recommendation. To the extent certain human rights guidelines or instruments are relied upon in the formation of the recommendation, those guidelines or instruments – and the rationale for relying upon them – should be identified as part of the information supporting the recommendation. The Advisory Committees (and all others) participating in the policy development processes are also recommended to participate and identify human rights-related issues while recommendations are being developed, as opposed to raising those issues for the first time when the Board is considering the finalized recommendations.

It will be helpful to have clarification on items raised in the Considerations portion, such as Supporting Organizations developing and reporting on human rights impact assessments for their work, including clarification as to which group(s) are responsible for reporting and where those reports are to be delivered. While the ICANN organization can compile reporting provided by the various SOs and ACs across the ICANN Community and publish those compilations, it may not be feasible or appropriate for the ICANN organization to be responsible for generating the content of the reports as suggested in the document, as posted.

The FOI as written is also not expected to have a significant impact on ICANN's contractual compliance work. The FOI upholds that ICANN is not obligated to enforce its own human rights obligations, or the obligations of other parties, against other parties.

The ICANN organization, which already follows applicable laws in its work, is already doing the work necessary to meet the proposed consideration on development of corporate or operational policies. The proposed Considerations document states: "ICANN the organization should propose a framework to the community,

which should include multistakeholder involvement in its development, and regular review.” ICANN has released a request for proposals from vendors to perform an internal Human Rights Impact Assessment over ICANN’s operations, at <https://www.icann.org/news/announcement-2017-08-15-en>. Human Rights Impact Assessments are becoming common practice within corporations, and typically result in the development of frameworks and tools to guide entities in the future development of internal policies and procedures. The ICANN organization will share the outcomes of this Impact Assessment with the ICANN Community for appropriate community input.