

Dear all,

Please refer to this version of the email instead. The prior version inadvertently quoted from a draft version of the WS1 report.

We hope this email finds you all very well. As you all know we shared with you the Framework of Interpretation of the Human Rights bylaw. After this the Human Rights Subgroup worked on next steps, which led us to taking a close look at our mandate and finding that there are different ways of interpreting this. This difference stems, in part, from the different constructions of our mandate in Annex 6 and in Annex 12.

That is why we come to you for guidance to see where we are, and where we should go next.

In a bit more detail:

Paragraph 7 of Annex 6 of the CCWG reads:

Include the following in Work Stream 2 activities:

Develop an FOI-HR for the Human Rights Bylaw.

Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.

Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.

Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad multistakeholder involvement in the process.

Consider what effect, if any, this Bylaw will have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).

Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.

Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

Whereas Paragraph 24 of Annex 12 of the CCWG report reads:

.24 To ensure that adding the proposed Human Rights Bylaw provision into the ICANN Bylaws does not lead to an expansion of ICANN's Mission or scope, the CCWG -Accountability will develop a Framework of Interpretation for Human Rights (FOI-HR) as a consensus recommendation in Work Stream 2 to be approved by the ICANN Board using the same process and criteria as for Work Stream 1 recommendations, and the Bylaw provision will not enter into force before the FOI-HR is in place. The CCWG-Accountability will consider the following as it develops the FOI-HR:

Consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw.

Consider the policies and frameworks, if any, that ICANN needs to develop or enhance in order to fulfill its commitment to respect Human Rights.

Consistent with ICANN's existing processes and protocols, consider how these new frameworks should be discussed and drafted to ensure broad

multistakeholder involvement in the process.

Consider what effect, if any, this Bylaw would have on ICANN's consideration of advice given by the Governmental Advisory Committee (GAC).

Consider how, if at all, this Bylaw will affect how ICANN's operations are carried out.

Consider how the interpretation and implementation of this Bylaw will interact with existing and future ICANN policies and procedures.

Annex 6 makes it seem like each of the "bullet points" is a separate task, starting with the Framework of Interpretation. On the other hand, Annex 12 makes it seem like the "bullet points" are not really separate tasks, but only items to be considered as we prepare the Framework of Interpretation. This makes a significant difference in how we determine what work lies before us, and also how we look at the Framework of Interpretation we have completed.

In our initial work we focused on providing a Framework of Interpretation of the Bylaw, clearly stating how it should be interpreted, and we did not focus on how the Bylaw could be "operationalized", even though of course we considered the potential consequences this might have.

The question is now, what are the next steps? We see different options:

1. We're done. The FoI is developed, and under consideration by the plenary.
2. We need to have a second look at the FoI and make potential amendments to the FoI to give more guidance based on the considerations listed in Annex 6.

3. We need to produce a new document that responds directly to each of the “bullet points,” which could include examples and recommendations on what potential next steps could be

4. We need to test specific cases on a hypothetical basis to see whether the FoI suffices. (in this regard, hypothetical cases suggested by the plenary would be helpful.)

We've have made first steps into the direction of step 3, but this led us into quite detailed discussions on recommending the use of Human Rights Impact Assessments and how and where these could be integrated in PDPs and ICANN operations. In these discussions, it felt as though we were going into too much detail, and stepping outside of the mandate of our Subgroup.

5. A fifth option could be (and this might be a mix between option 1 and 3) to issue high-level recommendations on how ICANN and the SO's and AC's could best operationalize the core value contained in the Human Rights Bylaw. These recommendations could include (a) chartering a GNSO Working Group on Human Rights to consider and recommend how the Bylaw should be taken into account in gTLD policy development and implementation, and/or (b) chartering Working Groups in each of the other SO's and AC's for purposes relevant to their remit, and/or (c) chartering a new CCWG on Human Rights to specifically consider the steps needed to make the Bylaw operational, and provide guidance to each of the SO's and AC's on how they could incorporate the CCWG's output in their processes, as well as discussing measures that could be adopted by ICANN, the corporation, with respect to its own internal human resources, employment, and contracting practices based on the Bylaw.

We would like to bring these five options in front of the plenary, and we would greatly appreciate your thoughts on these and potentially other options.

The Human Rights Subgroup wishes you a revitalizing festive season and we're greatly looking forward to completing our work in Workstream 2 with you all in 2017.

All the best,

The CCWG Accountability Human Rights Subgroup

PS Thanks Greg and Brett for finding this error and for helping to correct it.