

At-Large Workspace: Draft Framework of Interpretation for Human Rights

Public Comment Close	Statement Name	Status	Assignee (s)	Call for Comments Open	Call for Comments Close	Vote Open	Vote Close	Date of Submission	Staff Contact and Email	Statement Number
16 June 2017	Draft Framework of Interpretation for Human Rights	<div>ADOPTED</div> 12A, 0N, 0A	Bastiaan Goslings	05 June 2017	12 June 2017	14 June 2017	20 June 2017	14 June 2017	Patrick Dodson patrick.dodson@ican.org	AL-ALAC-ST-0617-01-01-EN

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Brief Overview

Purpose: This Public Comment seeks community input on the Cross Community Working Group on Enhancing ICANN Accountability, Work Stream 2 (CCWG-Accountability, WS2) draft Framework of Interpretation for Human Rights. This draft was developed by the CCWG-Accountability as required by Annex 12 of the final report of the CCWG-Accountability, Work Stream 1.

Current Status: The CCWG-Accountability reviewed this draft at its 25 April 2017 plenary meeting and approved its publication to gather public comments.

Next Steps: Following the public comment period the inputs will be analyzed by the CCWG-Accountability WS2 who will consider amending the Framework in light of the comments received and will publish a report on the results of the public consultation. If significant changes are required as a result of the public consultation the CCWG-Accountability WS2 may opt to have a second public consultation on the amended Framework. If there are no significant changes required, the CCWG-Accountability WS2 will forward the final Framework of Interpretation for Human Rights to its Chartering Organizations for approval and then to the ICANN Board for consideration and adoption.

Section I: Description and Explanation

The CCWG-Accountability's final report for Work Stream 1 (WS1), Recommendation 12 proposed that a number of topics which were not essential for the transition to take place and that could not be completed in WS1 (due to time constraints of the transition) be undertaken in a Work Stream 2 (WS2) effort by the CCWG-Accountability. This recommendation was approved by the CCWG-Accountability's Chartering Organizations as well as the ICANN Board at its 10 March 2016 meeting. Annex 12 of the final report required:

- Developing and clarifying a Framework of Interpretation for ICANN's Human Rights commitment and proposed Draft Bylaw. As part of its standard processes the CCWG-Accountability will seek public input on all its proposed recommendations.

Section II: Background

The subject of including a commitment to respect Human Rights in the ICANN Bylaws was extensively discussed by the CCWG-Accountability.

The CCWG-Accountability sought legal advice on whether, upon the termination of the IANA Functions Contract between ICANN and the U.S. National Telecommunications and Information Administration (NTIA), ICANN's specific Human Rights obligations could be called into question. It was found that, upon termination of the contract, there would be no significant impact on ICANN's Human Rights obligations. However, the CCWG-Accountability reasoned that a commitment to respect Human Rights should be included in ICANN's Bylaws in order to comply with the NTIA criteria to maintain the openness of the Internet.

This draft Bylaw on Human Rights reaffirms ICANN's existing obligations within its Core Values, and clarifies ICANN's commitment to respect Human Rights.

Amendments to the proposed draft Bylaw text since the Second Draft Proposal aimed to prevent Mission expansion or "Mission creep," and under the Bylaw, ICANN commits to respect internationally recognized Human Rights "within its Core Values."

The proposed Bylaw does not impose any enforcement duty on ICANN, or any obligation on ICANN to take action in furtherance of the Bylaw.

The Bylaw also clarifies that no Independent Review Process (IRP) challenges can be made on the grounds of this Bylaw until a Framework of Interpretation on Human Rights (FOI-HR) is developed and approved as part of Work Stream 2 activities. It further clarifies that acceptance of the FOI-HR will require the same process as for Work Stream 1 recommendations (as agreed for all Work Stream 2 recommendations).

Section III: Relevant Resources

Report and Supporting Documents

- CCWG-Accountability Work Stream 2 – Proposed Framework of Interpretation and Considerations concerning ICANN's Human Rights Bylaw – <https://www.icann.org/en/system/files/files/proposed-foi-hr-04apr17-en.pdf> [PDF, 118 KB]
- CCWG-Accountability Work Stream 2 – Human Rights Subgroup wiki – <https://community.icann.org/display/WEIA/Human+Rights>
- CCWG-Accountability Charter - <https://community.icann.org/display/acctcrosscomm/Charter>
- CCWG-Accountability Work Stream 1 – Final recommendations Annex 12 - <https://community.icann.org/pages/viewpage.action?pagelD=58723827>

Section IV: Additional Information

Section V: Reports

Staff Contact

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FINAL VERSION TO BE SUBMITTED IF RATIFIED

The final version to be submitted, if the draft is ratified, will be placed here by upon completion of the vote.



AL-ALAC-ST-0617-01-01-EN.pdf

FINAL DRAFT VERSION TO BE VOTED UPON BY THE ALAC

The final draft version to be voted upon by the ALAC will be placed here before the vote is to begin.

The Internet Corporation for Assigned Names and Numbers (ICANN) has opened a public comment forum on the 5th of May 2017, to obtain input on the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability) Work Stream 2 Draft Framework of Interpretation (Fol) for Human Rights.[1]

As the primary organizational home within ICANN for the voice and concerns of the individual Internet user, the At-Large Advisory Committee (ALAC) treats respecting Human Rights a very important topic. The ALAC therefore commends the Subgroup's participants and rapporteur on the work done regarding the interpretation and future implementation of the Human Rights' Core Value that is now part of ICANN's bylaws. Some of its members have provided earlier input, and the ALAC is very pleased to see the high-quality draft Fol that has been submitted by the Subgroup.

The ALAC hereby wants to state publicly that, when looking at the draft Fol, it has no concerns when it comes to the interests of Internet end-users. Obviously the ALAC will have to review and decide whether to formally approve the final version of the Fol for Human Rights when it is delivered.

The ALAC believes it is imperative to ensure that the continued discussions concerning Human Rights are clearly scoped within ICANN's technical remit as set forth in ICANN's mission and bylaws. This remit is limited to coordinating the allocation and assignment of Domain Names, Internet Protocol (IP) addresses, Autonomous System (AS) numbers, and protocol port- and parameter numbers. As the Security and Stability Advisory Committee (SSAC) stated previously[2], assessments based on content accessed through these unique identifiers should not be in scope for discussions regarding Human Rights in an ICANN organisational context. This means any binding language that holds ICANN accountable to a Human Rights' core value should fall within the scope of ICANN's limited remit. Such binding language can only be required by applicable law and should be implemented via a Human Rights Impact Assessment and followed by the development of a Corporate Social Responsibility (CSR) policy for ICANN.

As stated in the Core Value itself, which is not a Commitment[3] but a 'guiding element' as the draft Fol states, ICANN shall 'respect internationally recognized human rights':

'within the scope of its Mission and other Core Values (...) 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.'

The draft Fol rightly says that this means 'ICANN will respect human rights, as required by applicable law (...) In order to do so, ICANN should avoid violating human rights, and take human rights into account in developing its policies as well as in its decision-making processes.'

The ALAC looks forward to the continued work of the Subgroup: as the draft Fol makes clear, there is still important work to be done to determine which 'internationally recognized human rights' are relevant and applicable for ICANN. From page 6 of the Draft Fol: 'With regards to the UN Guiding Principles for Business and Human Rights, no consensus was reached as to their suitability for interpreting the Core Value'. Also, it is still to be established what 'applicable law', within different jurisdictions, requires ICANN to adhere to the relevant, concrete Human Rights.[4]

It will furthermore be helpful if the Subgroup can (eventually) give guidance to Supporting Organizations (SOs) and Advisory Committees (ACs) how they can comply with the Human Rights Core Value. According to the Draft Fol on page 6, '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'.[5]

As a final consideration, the ALAC would like to ask the Subgroup to clarify the statement on 'Human Rights Impact Assessments (HRIAs)' on page 8 of the Draft Fol: 'HRIAs should not consider particular Human Rights in isolation since they are universal, indivisible, interdependent, and interrelated.' How does this relate to the criterium that Human Rights are only to be respected by ICANN as required by applicable law, and if applicable law does not require this within a certain jurisdiction, that the particular Human Right is not relevant to ICANN? [6]

[1] <https://www.icann.org/public-comments/foi-hr-2017-05-05-en>

[2] <https://www.icann.org/en/system/files/files/sac-092-en.pdf>

[3] See ICANN's Bylaws, Section 1.2(c)

[4] From page 4 of the Draft Fol:

'As a consequence, under the Human Rights Core Value, international human rights instruments are not directly applicable to ICANN beyond what is provided for in applicable law. Rather, only those human rights that are "required by applicable law" will be relevant to ICANN.

Furthermore, depending on the jurisdiction in which ICANN operates, the law applicable to its operations may vary and thus the human rights applicable to ICANN's operations will vary as well. (...)

This limitation requires an analysis to determine whether any human right that is proposed as a guide or limitation to ICANN activities or policy is "required by applicable law". If it is, then abiding by the Core Value should include avoiding a violation of that Human Right. If the human right is not required by applicable law, then it does not raise issues under the Core Value.'

[5] According to page 8 of the Draft Fol: 'Supporting Organizations could consider defining and incorporating Human Rights Impact Assessments (HRIAs) in their respective policy development processes. HRIAs should not consider particular Human Rights in isolation since they are universal, indivisible, interdependent, and interrelated. Given the interrelated nature of Core Values, the Supporting Organizations could also consider other Core Values, as part of the balancing required by the Bylaws. Advisory Committees could also consider similar measures defining and incorporating HRIAs in their respective processes.'

[6] See page 4 of the Draft Fol: 'Rather, only those human rights that are "required by applicable law" will be relevant to ICANN. Furthermore, depending on the jurisdiction in which ICANN operates, the law applicable to its operations may vary and thus the human rights applicable to ICANN's operations will vary as well.'

FIRST DRAFT SUBMITTED

The first draft submitted will be placed here before the call for comments begins.

The Internet Corporation for Assigned Names and Numbers (ICANN) has opened a public comment forum on the 5th of May 2017, to obtain input on the Cross Community Working Group (CCWG)-Accountability Work Stream 2 draft Framework of Interpretation (FoI) for Human Rights.[1]

As the primary organizational home within ICANN for the voice and concerns of the individual Internet user, respecting Human Rights is a very important topic for the At-Large Advisory Committee (ALAC). The ALAC therefore commends the Subgroup's participants and rapporteur on the work done regarding the interpretation and future implementation of the Human Rights' Core Value that is now part of ICANN's bylaws. Some of its members have provided earlier input, but the ALAC is nonetheless very pleased to see the high-quality draft FoI that has been submitted by the Subgroup.

The ALAC hereby wants to state publically that, when looking at the draft FoI, it has no concerns when it comes to the interests of Internet end-users, quite the contrary. Obviously the ALAC will have to see, and decide to formally approve, the final version of the FoI for Human Rights when the time is there.

As reflected by the draft Framework, the ALAC believes it is imperative to ensure that continued discussions concerning Human Rights are clearly scoped within ICANN's technical remit as set forth in ICANN's mission and bylaws. This remit is limited to coordinating the allocation and assignment of Domain names, Internet Protocol(IP) addresses, Autonomous System (AS) numbers, and protocol port- and parameter numbers. As the Security and Stability Advisory Committee (SSAC) stated previously[2], assessments based on content accessed through these unique identifiers should not be in scope for discussions regarding Human Rights in an ICANN organisational context. This means any binding language that holds ICANN accountable to a Human Rights' core value should fall within the scope of ICANN's limited remit, can only be required by applicable law, and should be implemented via a Human Rights Impact Assessment and followed by the development of a Corporate Social Responsibility (CSR) policy for ICANN.

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The ALAC looks forward to the continued work of the Subgroup: as the draft FoI makes clear, there is still important work to be done to determine which 'internationally recognized human rights' are relevant and applicable for ICANN. From page 6 of the Draft FoI: 'With regards to the UN Guiding Principles for Business and Human Rights, no consensus was reached as to their suitability for interpreting the Core Value'. Also, it is still to be established what 'applicable law', within different jurisdictions, demands ICANN to adhere to the respecting of (which) concrete Human Rights.[4]

It will furthermore be helpful if the Subgroup can (eventually) give guidance to SOs and ACs how they can comply with the Human Rights Core Value, as, according to the Draft FoI on page 6, 'it is up to each SO and AC, and ICANN the organisation, to develop their own policies and frameworks to fulfil 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.'[5]

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