ICANN’s policies and procedures in the light of Human Rights: an issue for debate[[1]](#footnote-1)

1. Introduction

The Internet has become essential for individual’s every day activities and for the full enjoyment of rights. This key resource should be managed in a way that is people-centered and is consistent with globally recognized human rights and fundamental freedoms. Although corporations are not legally bound by international treaties on Human Rights, these conventions have set a moral and ethical global standard.

More specifically, they inspire the UN Guiding Principles on Business and Human Rights, unanimously adopted in 2011. This document sets a global reference in terms of corporate responsibilities, which include the need to respect human rights. These standards should certainly guide the work developed by ICANN when dealing with the specific set of issues that fall under its remit.

Moreover, according to ICANN’s Bylaws, pursuing the public interest is one of the core values that should guide ICANN’s activities with regards to administering domain names. Although there is not one unanimous definition of the public interest, upholding and protecting human rights should be one of its core elements, especially when pursuing a people-centered management of the Internet. The respect for Human Rights can be an important benchmark to clarify the meaning of serving the public interest in the scope of ICANN’s activities.

There should be a consistent effort from all ICANN community to increase the understanding of how ICANN’s policies and procedures impact on human rights. The report facilitated by the Council of Europe identified two types of human rights, freedom of expression and privacy, which are more directly affected by the following policies currently under debate in the Organization:

New gTLDs

* Sensitive applied-for strings

Domain names, including gTLDs may entail expressive and communicative elements and (national) courts have recognized the relationship between the so called “expression function” of domain names and freedom of expression.[[2]](#footnote-2) The domains are not completely dissociated from the content to the extent that controversy around gTLDs may be triggered by positive or negative evaluations of what kind of content could be potentially harbored under this gTLD.

The standards on “sensitive applied for strings” put forth by the new gTLD Applicant Guidebook are broad. As an example, an evaluation of adverse impact of an applied-for string on stability and security (which is one of the elements of the sensitivity and security evaluation) is likely to include a “TLD blocking or filtering assessment”. The potential of blocking of filtering of a particular TLD is highly related to culturally grounded considerations on what is considered harmful.

The breadth of concepts such as sensitive strings and of morality and public order are is enough to stir controversy over strings that would be traditionally within the scope of protection of freedom of expression. *(Do we have another example to avoid repeating .sucks?).* However, it should be noted that sensitive speech can be covered or not by freedom of expression, as this notion may encompass very different types of content, such as hate speech on the one hand, or simply disturbing content or acceptable criticism on the other. A case by case assessment would be advisable and ICANN would benefit from counting on the right expertise and mechanisms to do so.

* Community priority evaluation and the mechanism of actions

Mechanisms for community priority evaluation need to devote more careful consideration to minorities and vulnerable groups and their ability to fulfill all the requirements established by community applications or community objections. It is important that communities effectively receive the string to which their community is strongly related, and this has not consistently been the case *(.gay example?)*

Domain names may serve as facilitators or as barriers to the exercise of freedom of expression and the right to association online and to the establishment of an online presence of particular communities. *(do we have examples here to make it clearer?)*.

When the mechanism of auctions is employed to solve a contention among multiple applicants, it means that economic capacity is the element to define who will be granted the possibility to exploit a gTLD. Although this criterion may work for a good number of cases, it needs to be balanced against the needs and interests that are not necessarily economically fittest, but are community grounded.

* Data retention provisions on the 2013 RAA agreement
* Access to personal information in the WHOIS database

Conclusion *(do we want one?)*:

An evaluation of how the aforementioned policy areas are impacting on human rights needs to be conducted. Moreover, it could be important to introduce in the dynamics of the organization ways to consistently assess the compliance of policies with human rights on the stage of policy development and during implementation.

To become involved, join the mailing list: *(subscription)*

1. This document is based on the key points raised by the report “ICANN’s procedures and policies in the light of human rights, fundamental freedoms and democratic values”, written by Dr. Monika Zalnieriute and Thomas Schneider and facilitated by the Council of Europe. The report has been put forth as an input for discussion of the ICANN community during public sessions in ICANN 50 (London) and ICANN 51 (Los Angeles) and is accessible at http://www.coe.int/t/informationsociety/icann-and-human-rights.asp [↑](#footnote-ref-1)
2. Idem, p. 14. [↑](#footnote-ref-2)